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The Legal 500 Country Comparative Guides

Malta

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Malta.

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MALTA LITIGATION



1. What are the main methods of resolving commercial disputes?

The main method of dispute resolution in the commercial sector is court litigation before the courts. Other means of dispute resolution systems and fora include tribunals, arbitration, mediation and boards.

2. What are the main procedural rules governing commercial litigation?

The main procedural rules governing litigation are provided in the Code of Organisation and Civil Procedure (the “**COCP**”), Chapter 12 of the Laws of Malta.

In the superior courts, proceedings are ordinarily instituted by sworn application, whilst in the inferior courts, proceedings are instituted by application. Whosoever is in receipt of the sworn application in his regard shall file a sworn reply within 20 days from the date of service. In default, the respondent would be held to be contumacious at law. Parties are given opportunity to produce evidence and final written and oral submissions made prior to the judgment being delivered. The COCP also provides for other special procedures.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

The courts of justice of civil jurisdiction for Malta are either superior which can deal with matters over the monetary value of €15,000, or inferior which can deal with matters up to the monetary value of €15,000 and each court may be divided into different sections.

The superior courts are the Civil Court; the Court of Appeal and the Constitutional Court. The inferior court is the Court of Magistrates (Malta) presided by one Magistrate. The Civil Court is further divided into the Civil Court, First Hall; the Civil Court (Family Section); the Civil Court (Commercial Section); Civil Court (Asset Recovery Section) and the Civil Court (Voluntary

Jurisdiction Section). One Judge shall sit in each section of the Civil Court. The Court of Appeal (Superior Jurisdiction) consists of the Chief Justice and two other judges whilst the Court of Appeal (Inferior Jurisdiction) is presided by one judge.

Boards and Tribunals such as the Small Claims Tribunal which can deal with matters up to the monetary value of €5,000 and the Industrial Tribunal, presided by a chairperson; the Financial Services Tribunal, presided by a chairperson and a committee; and the Competition and Consumer Appeals Tribunal presided by a Judge and two member of a panel are also established.

The Court of Appeal is the final forum for appeal.

4. How long does it typically take from commencing proceedings to get to trial?

In special summary proceedings, the sworn application shall be served on the defendant without delay; and defendant would be ordered to appear not earlier than 15 days and not later than 30 days from the date of service.

In other proceedings, there is no set period for commencing proceedings to get to trial as duration depends on the case-management of the Judge adjudicating the case. Typically, cases at first instance are appointed within 8 weeks.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

Cases are tried in public, however, court may order that the cause be heard with closed doors when decency or good morals so require and at the request of both parties, upon good reason being shown.

Judicial acts, unless sealed by court order due to sensitive and confidential information, are accessible to all persons, and copies can be given at the request of

any person.

6. What, if any, are the relevant limitation periods?

Prescriptive periods depend on the nature of the action and the relationship between the parties filing the claim, however contractual claims are generally barred by the lapse of 5 years from day the contractual obligation is due. Tortious claims are barred by the lapse of 2 years from the day damage occurs.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In certain instances, prior to filing an action, an intimation is to be made by means of a protest in order to place other parties in bad faith, or to preserve one's own rights; by a judicial letter or orally. Generally, there are no consequences of non-compliance.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings are commenced by a sworn application which is served onto the defendant by an executive officer of the courts after the payment of the appropriate fee due to the registry. The COCP indicates the methods of service, the places where and people who may be served by the application in case the person who is to be served is a natural person, a person on board ships or a body having a distinct legal personality in Malta.

Where the defendant is not located in Malta, but has an address in another European Union ("EU") member state, service is effected through the designated transmitting agency according to Regulation (EC) 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extra judicial documents in civil or commercial matters (service of documents) or by postal or private service in accordance with the Regulation.

When the defendant has an address in a contracting state to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, then service is affected through the designated central authority of the contracting state.

When the defendant cannot be located, upon a request made by the plaintiff, the court may order the appointment of curators to represent the defendant.

9. How does the court determine whether it has jurisdiction over a claim?

The COCP lists the persons and circumstances in which the Maltese courts shall have jurisdiction to try and determine the action.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) is also applicable in determining jurisdiction in civil and commercial matters.

10. How does the court determine what law will apply to the claims?

National written laws expressly indicate which law would be applicable in certain circumstances. Maltese courts also give weight to former judgements, particularly decisions delivered by the superior courts in Malta.

EU laws and regulations are also directly applicable or transposed into Maltese laws; the Rome Convention 1980 as a result of the Rome Convention on Contractual Obligations (Ratification) Act, Chapter 482 of the Laws of Malta applies in cases concerning contractual obligations within non-EU countries; the Rome I Regulation (Regulation (EC) 593/2008 on the law applicable to contractual obligations, applies in contractual obligations within EU countries; Regulation (EC) 864/2007 on the law applicable to non-contractual obligations (known as Rome II) applies in non-contractual obligations.

In the absence of legislation regulating private international law Maltese Courts have recourse to the principles of English Common Law.

11. In what circumstances, if any, can claims be disposed of without a full trial?

In special summary proceedings within the jurisdiction of the superior courts where the demand is:

- a. for the recovery of a debt, certain, liquidated and due; or
- b. for the eviction of any person from any urban or rural tenement, with or without a claim for ground rent, rent or any other consideration due or by way of damages for any compensation, up to the date of the surrender

of the tenement.

12. What, if any, are the main types of interim remedies available?

One may, without the necessity of a judgment, secure his rights by one or more precautionary warrants. The demand must be made by an application confirmed on oath by the applicant who must bring an action in respect of the claim within 20 days from the date of issue of the precautionary act.

The court issues a precautionary warrant if it is satisfied that it is necessary in order to preserve any right of the person suing out the warrant.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

Documents in support of the claim should be produced together with the sworn application filed by the plaintiff to institute a lawsuit. Each party must list the witnesses he intends to produce so that court allocates a number of sittings to each party for the filing of evidence. Further sittings may be allocated during the case as the court deems fit.

Documentary evidence including affidavits can be filed only if it is the best evidence which can be produced, necessary and relevant to the case. Procedural law requires that certified copies of each document filed must be given to the other parties.

Pending proceedings, each party may also file written applications requesting the court to decide on preliminary or urgent matters. On the case being closed, the court may grant leave for filing within a fixed time, a written pleading containing a summary of the parties' submissions.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

The COCP lists the documents which a party to a lawsuit can demand the production of from witnesses. It also provides that a party cannot, unless by court order, demand the production of;

- a. any document which is held by a public authority and which is an exempt document

from the Freedom of Information Act, Chapter 496 of the laws of Malta; or

- b. any procès-verbal, record of inquiry, or other document relating to criminal matters, unless it is deposited in the registry.

The court may determine when a witness is not bound to answer a particular question which exposes his degradation or give evidence on facts prejudicial to the public interest. Moreover, the COCP provides that;

- a. the spouse, civil union partner or cohabitant of a party to a suit may not be compelled to disclose any communication made to him during the marriage, civil union, or cohabitation, or answer any question tending to incriminate his spouse, civil union partner or cohabitant.
- b. A witness cannot be compelled to answer a question which may subject himself to criminal prosecution.
- c. An advocate, legal procurator or clergyman without the consent of the client or person making the confession, cannot be questioned on circumstances stated in professional confidence or during confession.
- d. Unless by court order, no accountant, medical practitioner, social worker, psychologist or marriage counsellor may be questioned on circumstances stated in professional confidence. This privilege extends to the interpreter.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witnesses may testify by a written sworn affidavit or may be summoned to appear by a subpoena to be sworn and examined in open court during which they cannot be assisted or advised. Leading or suggestive questions cannot be put on an examination-in-chief; these are allowed in cross-examination. In cross-examination, a witness may only be questioned on the facts deposed in his examination, or on matters calculated to impeach his credit. A party producing a witness is not allowed to impeach the credit of the witness but may contradict him by showing that he has made previous statements inconsistent with his present testimony. Further questions arising out of the answers given during the examination or cross-examination can be made. The court can put any question to the witness at any stage of

the examination or cross-examination.

Special procedural rules apply when a witness is about to leave Malta, or is infirm or advanced in years that he might die or become unable to give his evidence before trial, or is unable to attend, or is absent from Malta; the deposition of these witness shall be in writing and read at the trial.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

A person, who in the Court's opinion is suitably qualified on account of his knowledge or experience, is competent to give expert evidence on any relevant matter.

Proof by means of a referee may also be ordered on demand of the parties, or by the court of its own motion. The court shall appoint a referee of its own choice where the parties fail to agree on the name of a referee. The referee must draw up a report which states the inquiries made and his findings together with the grounds of such findings. The documents produced by the parties and the depositions of the witnesses shall be annexed to the report which is signed and confirmed on oath by the referee following which it is published.

The court may, on the demand of the parties, appoint additional referees. Ultimately, the court may decide the cause without the reference or independently of the evidence produced before the referee.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

The mode of procedure before an appellate court is by application which generally is to be filed within 30 days from date of judgment; this however depends on the nature of the case and which forum delivered the decision on first instance. The default of any party in filing a reply does not preclude such party from appearing before, or making submissions to, the court during the hearing following which the Court of Appeal would proceed to deliver its judgment. Judgments delivered by the Court of Appeal are not subject to appeal.

As regards interim decisions, the COCP lists the:

- a. decrees which may be appealed after a definitive judgment;
- b. decrees from which the one may file an

application within 6 days from the date on which it is read out in open court, requesting the court to reconsider its decision;

- c. decrees from which one may file an application for special leave to appeal or to file an application to reconsider its decision; and
- d. decrees from which one may appeal before the definitive judgment following special leave of the court requested within 10 days from the date on which the decree is read out in open court.

18. What are the rules governing enforcement of foreign judgments?

The COCP provides that any judgment delivered by a competent court outside Malta and constituting a *res judicata* may be enforced by the competent court in Malta upon an application containing a demand for the enforcement of such judgment, unless:

- a. the judgment sought to be enforced may be set aside upon retrial;
- b. it is a judgment by default, if the parties were not contumacious according to foreign law;
- c. judgment contains any disposition contrary to public policy or to the internal public law of Malta.

According to the British Judgments (Reciprocal Enforcement) Act, Chapter 52 of the laws of Malta, where a judgment has been obtained in a superior court in the United Kingdom, the judgment creditor may apply to the Court of Appeal, within 12 months after the date of the judgment, to have the judgment registered in one of the superior courts of Malta.

Where EU regulations provide differently, they shall prevail; Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation); Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims and the EFTA Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988, are applicable in Malta.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

Every definitive judgment shall award costs against the party cast. If two or more persons are condemned in costs, each person shall be condemned either *in solidum* or in proportion to his interest in the cause according to the decision on the merits. The court shall establish how the said costs are to be apportioned between the parties and any party can recover his judicial costs from the other accordingly.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

The COCP allows two or more plaintiffs to bring their actions by one application, if the actions are connected in respect of the subject matter thereof or if the decision of one of the actions might affect the decision of the other action or actions and the evidence in support of one action is, generally, the same to be produced in the other action.

The Arbiter for Financial Services treats individual complaints made with the office together when such complaints are intrinsically similar in nature.

The Collective Proceedings Act, Chapter 520 of the Laws of Malta also allows proceedings which are to be brought by a class representative on behalf of persons whose claims raise common issues in respect of claims brought under the Competition Act, the Consumer Affairs Act and the Product Liability Act.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

The COCP provides that a third party may, by decree of the court, at any stage of the proceedings before the judgment, be joined in any suit pending in a court of first instance, whether upon the demand of either of such parties, or without any such demand. The third party joined in the suit shall be served with the application, whether sworn or not, and shall for all purposes be considered as a defendant.

Court may order that several actions are heard simultaneously;

- a. When the defendant sets up a counter-claim against the plaintiff which arises from the same contract or title giving rise to the claim of the plaintiff; or if the defendant's claim is to set-off the debt claimed by the plaintiff, or to bar the action of the plaintiff, or to preclude its effects;

- b. Where an action is brought before a court after another action in respect of the same claim has already been brought before another court, the second action may be transferred for trial to such other court; and
- c. If two or more actions brought before the same court are connected, or if the decision on one of the actions might affect the decision on the other action.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Champerty is illegal in Malta; article 83 of the COCP specifically states that lawyers may not enter any *quota litis* agreements. Litigious rights may however be transferred legally in Malta, which would allow for the concept of broad third-party litigation funding to function correctly within our jurisdiction.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

To mitigate the spread of the COVID-19 virus, measures were introduced which caused procedural delays, however created the opportunity to adopt remote hearings when possible.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

The main advantage has been the corresponding growth in the volume of international contracts and a spur to cross border commerce and investment. Litigation may however be costly and time-consuming due to several technicalities and strict procedural rules.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

We expect most growth in data protection litigation and related technology areas which would include financial

technology, gaming and intellectual property.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The impact of technology in the next five (5) years will be the adoption of remote hearings and the further introduction of an online court registry.

27. What, if any, will be the long -term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

The use of technology in litigation by adopting remote hearings to prevent mass gatherings in court rooms. Future years might also bring about the filing of all judicial acts through online portals creating a more efficient and secure system which legal professionals can easily access at their convenience.

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