



The Legal 500 Country Comparative Guides

Malta: Litigation

This country-specific Q&A provides an overview to litigation laws and regulations that may occur in Malta.

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

Litigation of commercial disputes in Malta generally takes place before the Superior Courts of Malta at both first and second instance, however, specialised tribunals do exist that may be vested with special jurisdiction over disputes of a specific nature. The Inferior Courts have jurisdiction over claims of lower monetary value.

Parties may also agree to resolve their dispute in arbitration, either prior to any dispute arising or after a dispute has already arisen. Arbitration in Malta tends to be more efficient and more specialised than litigation, with the possibility of appointing arbitrators with particular technical or industry knowledge and experience. Moreover, since Malta is a signatory to the New York Convention (1958), any arbitral award resulting from arbitral proceedings having their seat in Malta may be fully recognised and enforced in other Contracting States to that Convention.

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

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

Commercial litigation before the Superior Courts of Malta is generally initiated by means of an application filed by the applicant in the court registry stating the subject of the claim and the remedy sought, confirmed on oath. Once filed, service on the defendant takes place who is in turn afforded twenty (20) days therefrom to file a reply, in default of which, he or she would be held to be contumacious at law.

Following the commencement of proceedings, a court hearing is typically held to address case-management matters, including confirmation of valid service on the parties. A judicial assistant may also be appointed by the court for the hearing and collection of evidence. Once the evidentiary stage is concluded, each party will have the opportunity to make their concluding arguments in either written or oral submissions, and the court will deliver final judgment which is open to appeal.

The COCP also provides for a more expeditious procedure to enforce an uncontested claim for a debt that is certain, liquid and due and does not exceed twenty-five thousand Euros (€25,000). Any such application must be accompanied by a declaration of the applicant’s belief that there is no defence to the claim. Following the lapse of thirty (30) days from service with no reply from the defendant, the Court may proceed to render judgment in the applicant’s favour.

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

At first instance, monetary claims of a value up to five thousand Euros (€5,000) are heard by the Small Claims Tribunal.

Monetary claims ranging between five thousand and one Euro (€5,001), and fifteen thousand Euros (€15,000) may be heard and decided by the Court of Magistrates (Malta) or (Gozo), in their inferior jurisdiction.

For claims of a larger value and to a great extent claims that are not monetised or liquidated, the Civil Court, being one of the Superior Courts of Malta, shall have jurisdiction. The Civil Court is divided into three sections:

- The First Hall of the Civil Court, which is known as the General Jurisdiction Section;
- The Civil Court (Commercial Section), which hears cases related to matters specifically regulated by the Companies Act (Chapter 386 of the Laws of Malta), and namely, dissolution and winding-up applications, proceedings relating to insolvency, creditor enforcement actions, and proceedings relating for instance to the legal protection of minority shareholders;
- The Family Section; and
- The Voluntary Jurisdiction Section, which does not, in principle, hear and decide cases of a contentious nature.

Unless provided otherwise, first instance decisions may be appealed to the Court of Appeal, being another section of the Superior Courts of Malta and the final forum for appeal.

Apart from the courts of Malta, the law also establishes various specialised tribunals having jurisdiction over particular types of disputes, including:

(a) The Financial Services Tribunal which is vested with the competence to determine disputes relating to decisions of the Malta Financial Services Authority;

(b) The Competition and Consumer Appeals Tribunal which determines appeals from decisions, orders or measures of the Director General for Competition and the Director General for Consumer Affairs in terms of the Competition Act and the Consumer Affairs Act, respectively; and

(c) The Industrial Tribunal which is vested with the competence to determine employment relations issues and all cases of alleged unfair dismissals from employment.

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

There is no set timeframe within which proceedings must be appointed for trial. The duration largely depends on the case-management practices adopted by the judge assigned to the case. In practice however, following the filing of a court application, a first hearing is usually

set within six (6) weeks.

Exceptionally, special summary proceedings filed in connection with a debt collection claim that is certain, liquid and due must be heard not earlier than fifteen days and not later than thirty (30) days following the service of the sworn application on the defendant.

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

All commercial proceedings are public, and all documents and records of proceedings are publicly accessible. Nevertheless, exceptionally, the relevant court or tribunal may order that certain documents filed in the records of the case be sealed. This is usually done where documents contain confidential information or may otherwise be prejudicial to the parties.

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

Limitation periods depend on the nature of the claim. As a general rule, claims of a contractual nature are barred by the lapse of five years which normally starts to run from the date that the contractual obligation is due. However, shorter limitation periods may be applicable for particular types of relationships or contracts.

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

There are no pre-action conduct requirements in Malta in relation to commercial matters except in limited circumstances.

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?

Commercial proceedings are generally initiated by means of an application, which in certain proceedings must be confirmed on oath upon filing

When the defendant has a residence or business or place of work or postal address in Malta, notification (i.e. service) must take place in accordance with the ordinary rules of Maltese procedure which include personal service, postal service and extraordinary methods of service including service by publication in the official Government Gazette and local press. The extraordinary methods of service are not available to all types of proceedings.

Where the defendant is not located in Malta, but has an address in another European Union Member State, service may be effected through the designated transmitting agency in accordance with 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 through postal service and private service available under the said Regulation.

If on the other hand, the defendant has an address in a Contracting State to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, then service may be affected through the designated central authority of that Contracting State.

When the defendant is not located in Malta, and does not have an address within any other Member State of the European Union or Contracting State to the Hague Convention of 15 November 1965, or where their address is unknown, upon a request made by the plaintiff to the court, the court may order the appointment of curators *ad litem* in order to represent the defendant's interests in the suit. Curators receive the sworn application on behalf of the defendant and are henceforth entrusted to communicate with the applicant, filing a reply and representing him or her in the proceedings.

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

Where a dispute falls within the subject-matter and temporal scope of Regulation (EU) No. 1215/2013 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (the **Brussels Regulation Recast**"), jurisdiction will be determined in accordance with the conflict-of-laws rules laid out therein.

Where a dispute falls outside of that scope, national rules of jurisdiction are applied by Maltese Courts. In this regard, the COCP provides that the civil courts of Malta shall have jurisdiction to try and determine all actions concerning the following persons:

- (a) citizens of Malta, provided they have not fixed their domicile elsewhere;
- (b) any person being either domiciled or resident or present in Malta;
- (c) any person, in matters relating to property situated or existing in Malta;
- (d) any person who has contracted any obligation in Malta, however jurisdiction will be limited to actions concerning that obligation, and provided further that, that person is present in Malta;
- (e) any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out that obligation in Malta, or who has contracted any obligation which must necessarily be carried into effect in Malta, provided that in both cases such person is present in Malta;

(f) any person, in regard to any obligation contracted in favour of a citizen or resident of Malta or of a body having a distinct legal personality or association of persons incorporated or operating in Malta, if the judgment can be enforced in Malta;

(g) any person who, expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the court.

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

When a claim falls within the scope of either:

- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (the “**Rome I Regulation**”); or
- Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (the “**Rome II Regulation**”)

then the courts of Malta will determine the applicable law through the conflict-of-laws rules found therein.

When a claim falls outside of their respective scopes, applicable law is determined through national conflict-of-laws rules scattered in various legal instruments. In the absence of any legislative conflict-of-laws rule, our courts make reference to rules of the English Common Law.

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

Where special summary proceedings are initiated in relation to a demand solely for:

- the recovery of a debt that is certain, liquid and due, not consisting in the performance of an act, or
- 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?**

Interim measures in Malta involve precautionary warrants that are granted by law to the creditor or holder of a real right to secure the future payment of his or her credit or other rights, whenever the latter has no title which would grant him immediate execution.

Therefore, any person, without an executive title such as a *res judicata* judgment, may secure his or her rights by filing an application for the court to issue one or more of the following

precautionary acts, provided that the conditions prescribed by the law in respect of each are complied with and provided further that the court issuing the warrant is satisfied, on a *prima facie* basis, that such warrant is necessary in order to protect the rights belonging to applicant. The interim measures that may be sought are the following:

- (a) warrant of description;
- (b) warrant of seizure;
- (c) warrant of seizure of a commercial going concern;
- (d) garnishee order;
- (e) warrant of impediment of departure;
- (f) warrant of arrest of sea vessels;
- (g) warrant of arrest of aircraft;
- (h) warrant of prohibitory injunction.

An application for the issuing of a precautionary warrant is to be made by means of an *ex parte* application confirmed on oath containing certain basic information, such as the nature of the debt and the quantity thereof.

Once the application has been filed, the applicant is bound to bring an action in respect of the claim within the time limit specified by law, typically 20 days, which varies according to the precautionary act requested. If the claimant fails to do so, the effects of the warrant shall cease and the applicant shall in addition be liable for all damages and interest.

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

Documents necessary to support the claim may be submitted at the time of filing. Once court proceedings have already begun, the plaintiff may further present any further evidence that may substantiate his or her claim, including documentary and witness evidence.

There is no defined timetable for the presentation of evidence, however the COCP provides that at the first hearing, the Court shall plan, in consultation with the parties' legal counsel, all of the sittings to be held as well as the projected date of judgement, and shall also give directions to the parties on the evidence and submissions it expects at each sitting. This

schedule is not final and conclusive and any other sittings or evidence can be ordered by the court as it deems fit.

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)?

Documentary evidence is generally limited to that brought by the parties to corroborate their claim or defence, as applicable. There are no full and frank disclosure obligations similar to discovery proceedings.

Discovery rights are limited and sector-specific. For instance, in the enforcement of IP rights, courts have wide powers to order the disclosure (subject to confidentiality) and conservation of evidence in the hands of the defendant or third parties.

Maltese law also provides for a specific action known as the *actio ad exhibendum* whereby a claimant may demand the production of particular documents in the following circumstances, and solely after proving the document is in the possession of the defendant:

(a) where the documents are the claimant's property, or are otherwise commonly-owned by the claimant and the defendant to the *action ad exhibendum*;

(b) where the claimant shows an interest that such documents be produced;

(c) where the party in possession fails to declare on oath that the defendant has special reasons not to produce the documents; or

(d) where the documents are public acts, or acts intended to constitute evidence in the interest of the public in general.

Courts have discretion to restrict access to certain evidence in the interests of justice (such as court disclosure of banking documents or other confidential documents). Moreover, certain witnesses cannot be compelled to testify on any privileged communications, which include:

- privileged communications with advocates and legal procurators and clergymen, unless the consent of the client or confessor is obtained;
- privileged communications with accountants, medical practitioners, social workers, psychologists, and marriage counsellors, unless by court order; and

privileged communications made between spouses during marriage, unless made in the presence of third parties.

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?**

Witness evidence may be filed at the initial stages in the form of a written affidavit sworn before a commissioner of oaths, together with the sworn application or reply, as the case may be. Such affidavits may also be produced later on during the evidentiary stage of proceedings. Witness evidence can alternatively be produced orally, through an examination-in-chief by the party producing him or her, under oath and during a court hearing.

Witnesses may be orally cross-examined by the opposing party, solely on the evidence-in-chief or on matters calculated to impeach his or her credit. As opposed to examinations-in-chief, leading and suggestive questions are permitted in cross-examinations. It is possible for the court to ask such further questions directly to the witness both *during* the examination-in-chief and the cross-examination, and *after* their conclusion.

Where a witness is about to leave Malta, or is gravely ill or of significant age, or is unable to attend the trial, the court may order he or she be examined by a judicial assistant. The evidence shall be taken down in writing, signed by the witness and the judicial assistant, then sealed by the Registrar, and filed in the record of proceedings.

There are also a number of legal frameworks in place allowing the taking of evidence abroad where the witness is not present in Malta.

Where the witness is located in another EU Member State, Regulation (EC) 1206/2001 on cooperation between the courts of the EU countries in the taking of evidence in civil and commercial matters (the “**Evidence Regulation**”) allows Maltese courts to either:

1. Directly request the competent court of another EU country to obtain evidence on their behalf; or
2. Directly request permission to gather evidence itself in another EU country;

in accordance with the form specified in the Evidence Regulation.

Where the witness is not located in another EU Member State, but in a Contracting State to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1970) (the “**Hague Evidence Convention**”), upon a request from the registrar of the courts of Malta, the Maltese competent authority may send a letter of request containing the questions to be put to the witness to the competent authority of the other Contracting State, that will in turn obtain the evidence and transmit it back to the requesting authority.

Where the Evidence Regulation and the Hague Evidence Convention do not apply, the COCP allows for a letter of request, or letter rogatory, to be drawn up with all of the witness

questions attached thereto, and sent to a judge or magistrate of the place where the witness is situated, requesting that they examine the witness over there under oath. Courts of Malta may also allow for the audio-recording or video-recording of any evidence required, and may even allow witnesses to give testimony by video conference or teleconference from the place they are situated.

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?

Expert evidence is permitted where the witness summoned is, in the court's opinion, suitably qualified.

An *ex parte* witness is normally appointed by a party before the proceedings have commenced and included in that party's declared list of witnesses. There is no particular procedure for the taking of such expert evidence.

The opinion of expert witnesses is not binding upon a court, however, a court will invariably be reluctant to disregard it, particularly where matters of a technical nature are involved.

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

Appeals in all cases are made by means of an application to be filed in the registry of the Court of Appeal, and typically must be filed within twenty days of the decision.

Appeals from final decrees must specify which part of the decree is requested be reversed, varied, or annulled, with detailed reasons thereto.

With respect to interim decisions or decrees, the COCP lists those decisions that cannot be appealed prior to final and definitive judgment, such as decrees allowing a request for urgency, for adjournment, and decrees dismissing a request for a stay of proceedings, among others.

However, an appeal from the following interim decrees may be entered before final and definitive judgment, by an application filed within six (6) days from the reading of the decree in open court:

1. a decree refusing the appointment of additional referees;
2. a decree transferring an action for trial to another court;
3. a decree refusing the joinder of a third party to the cause;
4. a decree disallowing a request for urgency;
5. a decree permitting a stay of proceedings;
6. a decree ordering the production of a document which qualifies as an exempt document.

Moreover, any other interim decree in respect of which appeal is not specifically prohibited may be appealed with special leave of the court hearing the case, following a request filed within ten (10) days from the reading of the decree in open court.

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

Foreign judgments in civil and commercial matters delivered by the courts of a Member State of the European Union that fall within the scope of the Brussels Regulation Recast, are recognised in Malta automatically, and judgment-creditors may proceed with all locally-available executory measures without the need to seek a declaration of enforceability. If the judgment-debtor wishes to object to enforcement on the limited grounds set out in the regulation, an application may be filed and served on the judgment-creditor, following which the action will be heard and determined by court and subject to appeal.

Foreign judgments in civil and commercial matters delivered by the courts of a Member State of the European Union that fall outside the scope of the Brussels Regulation Recast, but within the scope of its predecessor Regulation (EC) No 44/2001 (the “**Brussels I Regulation**”), namely, a foreign judgment in respect of which legal proceedings were instituted prior to 10 January 2015, recognition and enforcement must take place in accordance with the provisions therein. An application seeking a declaration of enforceability must be filed by a judgment-creditor wishing to enforce the foreign judgment in Malta, which can be preceded or accompanied simultaneously by precautionary interim measures. This is served upon the opposite party, who is given the opportunity to object to the enforcement in its reply based on the limited grounds of defence laid out in the Brussels I Regulation. Once a declaration of enforceability is obtained, the judgment creditor may proceed with all locally-available executory measures.

Alternatively, where a foreign judgment delivered by the courts of an EU Member State is certified as a European Enforcement Order by the state of origin, recognition in Malta is automatic by virtue of Regulation (EC) No 805/2004 (the “**European Enforcement Order Regulations**”), and with limited rights of review. Enforcement may then be sought in accordance with local procedure.

Foreign judgments falling outside of the scope of both the Brussels Regulation Recast, the Brussels I Regulation and the European Enforcement Order Regulations may be recognised and enforced in Malta in accordance with the provisions of the COCP, provided they were delivered by a competent court and constitute a *res judicata*. An application requesting enforcement may be filed by the judgment-creditor, and an objection thereto may be made on any of the grounds listed therein, which are significantly broader than those of the Brussels Regulation Recast and Brussels I Regulation.

In the case of foreign judgments falling outside the scope of both the Brussels Regulation Recast and Brussels I Regulation, consisting in a money order and delivered by a Superior Court of England and Wales, enforcement may be sought in accordance with the provisions of

the British Judgments (Reciprocal Enforcement) Act (Chapter 52 of the Laws of Malta), as an alternative to the enforcement procedure laid down in the COCP. An application must be made to the Court of Appeal requesting registration of the judgment, and the judgment-debtor is entitled to object to such registration on any of the grounds laid out in the Act.

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?

The costs of litigation may only be recovered up to the sum taxed and levied in accordance with the tariffs set out in the Schedules to the COCP, and which vary according to the amount and nature of the claim or act filed. In order to be able to claim such costs, the relevant party must include the words 'with costs' in its initial application or reply, as the case may be. Typically, but not necessarily, costs follow the event.

Invariably, it is the judgment-debtor who will be ordered to pay such costs following judgment. However, other factors may be determining, such as any contributory negligence on the part of the judgment-creditor, or the prior willingness of the judgment-debtor to negotiate.

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

Generally, there is no prohibition in ordinary procedural law for several claimants to file a single action, provided they each prove juridical interest. However, the Collective Proceedings Act (Chapter 520 of the Laws of Malta) allows for class actions in respect of claims brought under the Competition Act, the Consumer Affairs Act and the Product Liability Act, to be brought by a class representative.

Moreover, the Arbitrator for Financial Services Act (Chapter 555 of the Laws of Malta) allows for the collective treatment of individual complaints made by aggrieved investors against financial services licence holders, provided they are intrinsically similar in nature.

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

At any stage of proceedings, including appeal, third parties may either apply to be joined in proceedings, or may be joined by court decree whether following the demand of either party or otherwise. Such third parties joined in the suit shall, for all purposes, be considered a defendant.

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?

Third party litigation funding is not prohibited, provided it does not involve any arrangement

with the legal counsel of either party.

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

International commercial disputes benefit greatly from the procedural framework offered by litigation in Malta, particularly in light of lower costs, increased efficiency in the service of documents overseas, and in the taking of evidence through video and audio technology. Nevertheless, litigation generally does tend to suffer longer delays, particularly when compared to the speed of arbitration.

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

The next five years will undoubtedly see substantial growth in disputes relating to digital and financial technology, particularly following the ground-breaking enactment in Malta of the Virtual Financial Assets Act, the Malta Digital Innovation Authority Act, and the Innovative Technology Arrangements and Services Act.

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

Malta is already focused on implementing a system for the online filing of court applications with the aim of increasing the efficiency and convenience of Malta as a litigation forum. Future years might also see the introduction of virtual hearings conducted on web-based platforms, which poses significant time and cost benefits to parties located overseas. As a result of the COVID-19 pandemic we have witnessed an acceleration of efforts in this area.