

MALTA



Law and Practice

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Ganado Advocates is Malta's largest full-service business law firm, with more than 100 lawyers and professionals. It has been involved in a large array of corporate and financial transactions for over 50 years and has contributed to Malta's achievements by supporting its clients' success. Its lawyers and other professionals reflect the firm's values, principles, and passion

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1. General

1.1 General Characteristics of the Legal System

The Maltese legal system has developed into a mixed legal system. In private law matters, it is largely a jurisdiction based on the civil law tradition; however, decades of British rule exposed the Maltese legal system to English law in various aspects of public law and the law of civil and criminal procedure. Consequently, many branches of contemporary Maltese law are influenced by English law, ranging from public law to company law, fiscal law and maritime law.

The legal system primarily follows the adversarial model, but there is some flexibility for judges to intervene at various stages, although not typically in an inquisitorial manner as is the case in most continental European jurisdictions. The legal process is generally conducted in both written and oral form.

1.2 Court System

The Maltese courts are divided into the Superior and Inferior Courts. In view of the size of the country, the judicial system is not split between federal and state courts.

Superior Courts

The Superior Courts consist of the Civil Court, the Court of Appeal and the Constitutional Court.

Civil Court

The Civil Court of superior jurisdiction hears all cases, except where competence has been vested in another court or tribunal, and in principle, where the monetary value of the claim exceeds EUR15,000 or cannot be quantified when filing the lawsuit. The Superior Courts of criminal jurisdiction deal with criminal offences where punishment ranges from over six months up to life imprisonment.

The First Hall of the Civil Court is generally vested with competence to determine claims of a civil and commercial nature, and is divided into four sections:

- the general jurisdiction;
- the commercial section;
- the family section; and
- the voluntary jurisdiction section.

Court of Appeal

The Court of Appeal hears and determines all appeals from judgments of the Civil Court and the Court of Magistrates (Gozo) in its superior

jurisdiction, and for this purpose is presided over by three judges.

Constitutional Court

The Constitutional Court acts as a first instance court in two instances:

- where any question arises as to the membership of the House of Representatives; and
- if the Electoral Commission suspends the electoral process.

It also has appellate jurisdiction in a variety of circumstances, as follows:

- in the case of appeals from decisions of the First Hall of the Civil Court on matters of human rights and fundamental freedoms;
- in the case of appeals from decisions of any court of original jurisdiction affecting the interpretation of the Constitution, other than on a matter of human rights; and
- in the case of appeals as to the validity of laws, other than on a matter of human rights.

Inferior Courts

The Inferior Courts are the Court of Magistrates (Malta) and the Court of Magistrates (Gozo). They are vested with competence to hear and determine all monetary claims of an amount which exceeds EUR5,000, but does not exceed EUR15,000. All monetary claims of an amount not exceeding EUR5,000 are heard and determined by the Small Claims Tribunal.

The Court of Appeal also hears and determines appeals from the Inferior Courts; the Court of Appeal in its inferior jurisdiction is presided over by one judge for this purpose.

The laws of Malta also establish the following specialised tribunals to hear and determine disputes of a special commercial nature:

- the Financial Services Tribunal, which is set up by the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta), and is vested with the competence to determine disputes in relation to decisions made by the Malta Financial Services Authority;
- the Public Contracts Review Board, which is set up by the Public Procurement Regulations (Subsidiary Legislation 601.03), and determines remedies provided for in Maltese public procurement law, including challenging procurement procedures, challenging decisions made by contracting authorities, and challenging contracts which have been entered into illegally by contracting authorities;
- the Financial Services Arbiter, which is established under the Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta), and hears complaints lodged by aggrieved investors against licensed financial services providers;
- the Industrial Tribunal, which is set up by the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta), and is vested with the competence to determine certain cases relating to a set of employment relations issues and all cases of alleged unfair dismissals from employment;
- the Administrative Review Tribunal, which is established by the Administrative Justice Act (Chapter 490 of the Laws of Malta) for the purpose of reviewing administrative acts by the public administration (ie, the government of Malta including its ministries and departments, local authorities, and any body corporate established by law of any order, licence, permit, warrant, authorisation, concession,

decision, or refusal to any demand of a member of the public). Any party to the proceedings before the tribunal who feels aggrieved by a decision of this tribunal may appeal to the Court of Appeal, sitting in either its superior or its inferior jurisdiction. Administrative acts that do not fall in the competence of the Administrative Review Tribunal are reviewed by the First Hall of the Civil Court, composed of one judge; and

- the Information and Data Protection Appeals Tribunal, which is established by the Data Protection Act (Chapter 586 of the Laws of Malta), and hears and decides appeals following a decision of the Information and Data Protection Commissioner relating to data protection law or freedom of information requests. One may also appeal the decision of the tribunal on a point of law before the Court of Appeal.

Timeframes for Getting to Trial

When it comes to proceedings before the Maltese courts, there is no fixed timeframe within which a case must be scheduled for trial; the timing is entirely dependent on the practices of the presiding judge. However, in practice, after the filing of a court application, the first hearing is typically set within eight weeks. This also applies to cases brought before specialised tribunals.

An exception to this general position applies to special summary proceedings related to debt collection claims that are certain, liquid and due. In such cases, the hearing must be scheduled no earlier than 15 days and no later than 30 days after the respondent has been served with the sworn application.

1.3 Court Filings and Proceedings

All proceedings before the above-mentioned courts and tribunals are held in public, and all documents and records of the proceedings are accessible to the public. As an exception to this general rule, the relevant court or tribunal may order certain documents filed in the records of proceedings to be sealed, particularly where such documents contain confidential information or may otherwise be prejudicial to the parties to those proceedings. Any proceedings filed against or by the Financial Intelligence Analysis Unit (FIAU) involving money laundering cases are not public and are heard behind closed doors.

1.4 Legal Representation in Court

No person may exercise the profession of advocate in the Courts of Justice in Malta without the authority of the President of Malta, granted by warrant under the Public Seal of Malta. In order to obtain such a warrant, an individual must:

- be a fit and proper person as recommended by the Committee for Advocates and Legal Procurators;
- be of good conduct and morals;
- be a citizen of Malta or of a member state of the European Union, or be otherwise permitted to work in Malta under any law;
- have obtained the academic degree in law from the University of Malta, or such other qualification at Master's level as the Minister may from time to time prescribe, after consultation with the Senate of the University of Malta, or a comparable degree from such other competent authority in accordance with the principles of the mutual recognition of qualifications, after having read law in Malta or in a member state of the European Union (EU);
- have, for a period of not less than one year, regularly attended the office of a practising

- advocate of the Bar of Malta and at the sittings of the Superior Courts;
- have full knowledge of the Maltese language, being the language of the courts; and
- have been duly examined and approved by two judges.

Advocates so admitted to the Maltese Bar have rights of audience before all courts.

Legal procurators in possession of a warrant issued by the President of the Republic and under the Public Seal of Malta have rights of audience before the Courts of Magistrates (inferior jurisdiction) and special tribunals and boards.

Foreign legal professionals from other EU member states wishing to practise in Malta may register with the Ministry for Justice, Equality and Governance, but will need to apply for a local warrant in order to practise in the Courts of Justice in Malta. To be eligible, the applicant should have practised law in Malta for at least three years, have experience of Maltese law, and must satisfy the remaining requirements.

2. Litigation Funding

2.1 Third-Party Litigation Funding

In principle, third-party funding of claims governed by Maltese law is permitted, unless the funding is characterised as champerty (stipulations quotae litis are deemed void). Regulatory clearance may however be required if funding is made on an ongoing basis.

Third-party litigation funding is possible, although not expressly regulated. In fact, there is no specific and dedicated legislation that regulates third-party litigation funding models

yet. Notwithstanding this, lawyers are prohibited from entering into funding arrangements with their clients or third parties.

2.2 Third-Party Funding: Lawsuits

Subject to 2.1 Third-Party Litigation Funding, any lawsuit is available for third-party funding.

2.3 Third-Party Funding for Plaintiff and Defendant

Subject to 2.1 Third-Party Litigation Funding, both the plaintiff and defendant can use third-party funding.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Subject to 2.1 Third-Party Litigation Funding, there are no minimum and maximum amounts that a third party may fund.

2.5 Types of Costs Considered Under Third-Party Funding

Subject to 2.1 Third-Party Litigation Funding, there is no restriction on the costs a third-party funder may consider funding; such costs may include the court registry costs of filing judicial documents, legal representation fees and other court fees.

2.6 Contingency Fees

Lawyers are ethically prohibited from entering into contingency fee and other conditional fee arrangements.

2.7 Time Limit for Obtaining Third-Party Funding

Third-party funding can be sought at any point in the litigious process.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

There are no rules that impose certain pre-action conduct that must be undertaken by parties prior to initiating litigation. However, it is customary for plaintiffs to send informal legal letters or formal judicial letters putting the defendants on notice of their respective claims. The latter type of letters are similar to pre-action letters, are formally filed through the court registry and served on potential defendants through court bailiffs or registered court mail, and also serve to interrupt the running of prescriptive periods/applicable statutes of limitation.

3.2 Statutes of Limitations

Time limits for civil suits vary and are usually determined by the nature and facts of each individual case and the nature of the claim. The default limitation period is 30 years, but this suffers a number of exceptions, mainly:

- five years for contractual claims; and
- two years for tort claims.

Unless otherwise provided by a specific law, time limits start to run on the day the relevant action can be exercised.

In addition to the general prescription periods highlighted above, the law establishes shorter time periods for specific actions or classes of actions, including the recovery of funds arising out of specific types of contracts. On the other hand, claims for fraud or breach of fiduciary obligations are not time barred.

3.3 Jurisdictional Requirements for a Defendant

In the case of civil or commercial disputes against a defendant domiciled in a member state of the

European Union, the Courts of Justice in Malta would apply the provisions of Regulation (EU) No 1215/2012 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).

In the case of disputes where the defendant is not domiciled in a European Union member state, national rules of jurisdiction are applied by Maltese courts. In this regard, the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) provides that the civil courts of Malta shall have jurisdiction to try and determine all actions concerning the following persons:

- citizens of Malta, provided they have not fixed their domicile elsewhere;
- any person as long as they are either domiciled, resident or present in Malta;
- any person, in matters relating to property situated or existing in Malta;
- any person who has contracted any obligation in Malta, but only in regard to actions touching such obligation, and provided such person is present in Malta;
- any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out such obligation in Malta, or who has contracted any obligation that must necessarily be carried into effect in Malta, provided in either case that such person is present in Malta;
- 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; and

- any person who – expressly or tacitly – voluntarily submits or has agreed to submit to the jurisdiction of the court.

3.4 Initial Complaint

In the Superior Courts, proceedings are usually instituted by a sworn application (ie, a statement of claim), or where the law permits, by a mere application (which is not confirmed on oath upon filing). In the Inferior Courts, proceedings are instituted by application.

A sworn application must be confirmed on oath before the Court Registrar or a Commissioner for Oaths, and must contain:

- a clear and explicit statement of the subject of the cause and a declaration of the facts;
- the cause of the claim;
- the claim(s);
- a notice to the recipient that a sworn reply must be filed within twenty days of service of the sworn application, in lieu of which the court may proceed to adjudicate the matter according to law; and
- an exhaustive list of witnesses intended to be produced in evidence.

The ordinary procedure before appellate courts is by application, which must contain a plea that the judgment appealed against, or any part thereof, be reversed, annulled or varied. In the case of a request for reversal, the application must contain a reference to the claim and to the judgment appealed against, together with detailed reasons on which the appeal is entered, and a request that the claim be allowed or dismissed. In the case of a request for variation, the application must also distinctly state the heads of the judgment complained of, together with detailed reasons for which the appeal is entered and, in conclusion, shall specifically state the

manner in which it is desired that the judgment be varied under each head.

The application before the Inferior Courts shall take the form of a notice signed by the Registrar, containing the names of the plaintiff and the defendant, the demand, and the date and hour when the defendant is to appear.

Appeals from Inferior Courts may be made by application of appeal, whether for reversal or variation.

All written pleadings, regardless of the court they are filed before, must contain the following:

- an indication of the court and section;
- the full name of both parties and, if applicable, the capacity in which they appear;
- the description of the pleading; and
- the reference number of any relevant action previously brought.

Parties wishing to correct any act instituting a lawsuit may request court authorisation to do so, by means of an application, where such correction does not affect the substance of either the action or defence on the merits of the case. Such authorisation may be made at any stage of the proceedings until delivery of the judgment.

3.5 Rules of Service

The application instituting proceedings, once filed, will need to be served on the defendant through court bailiffs or judicial officers. Service is affected by delivery of a copy of the judicial act by a court bailiff to the defendant directly. In the case of corporate entities, a copy of the act may be served at its registered office, or with the director, company secretary or other officer.

Multiple service attempts can be made without court authorisation at different times of the day. Once service is validly affected, the court bailiff charged with service shall draw up a separate certificate of service for each attempt in the records of that judicial act. If multiple service attempts are not successful, court authorisation may be requested for substitute or indirect service by affixation of the judicial act in the relevant town (specifically at the local council and police district office) and on the door of the defendant's residence, accompanied by publication of a summary of the judicial act in the Malta Government Gazette and in one or more daily newspapers.

Defendants can also be sued if they are established or physically located outside the jurisdiction. If they are located in an EU member state, service of judicial documents may take place in accordance with the procedure laid down in Regulation (EU) No 2020/1784 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (recast).

If they are located in a country that is 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 take place in accordance with the procedure laid out therein.

3.6 Failure to Respond

The failure of a defendant to respond will result in them being contumacious (that is, in default), provided that they have been validly served with the judicial act instituting the proceedings.

At law, contumacy is deemed to be an automatic contestation, and not an admission of a lawsuit.

3.7 Representative or Collective Actions

The Collective Proceedings (Competition) Act (Chapter 520 of the Laws of Malta) and the Representative Actions (Consumers) Act (Act No. XVII of 2023) which transposed the Representative Actions Directive (Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers), allow consumer class actions, group actions, as well as representative actions, where a party is in breach of laws on, amongst others, competition law, product safety law, consumer protection, data protection, utilities, financial services, product and medicine safety, environment and others. Proceedings may be conducted by a representative plaintiff on behalf of multiple plaintiffs. In the case of consumers, representative actions may be brought by qualified entities, generally designated organisations or public bodies representing consumers.

Thus, all collective actions and representative actions are opt-in.

3.8 Requirements for Cost Estimate

There is no statutory requirement to provide clients with a cost estimate of the potential litigation at the outset.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Plaintiffs may seek the issue of interim court measures, known as precautionary warrants, in support of lawsuits, but only as security for claims made on the merits. The precautionary warrants may only be issued if the essential requisites particular to each warrant are satisfied, and each warrant is subject to any procedural formalities or exceptions provided by law. They are issued on an ex parte application confirmed

on the oath of the plaintiff. They are generally granted within 24 to 48 hours (except for the warrant of prohibitory injunction) without the need for a hearing.

There are various types of warrants available under Maltese law.

Garnishee Order

A garnishee order would require that moneys or movable property held by third parties for a debtor are attached and deposited in court. The third parties must be generally present in Malta, and would typically include credit or financial institutions. Such third parties would be duty bound to deposit any such funds or movable property in court within 19 days from service of the garnishee order.

Warrant of Seizure of Movables

This warrant of seizure orders the removal or attachment of property of the debtor, which is subsequently seized under court authority on a precautionary basis. This is done with a view to the property being eventually sold by means of a judicial sale by auction once the executing creditor is in possession of an executive title, such as a final and binding judgment or arbitral award. This warrant can seize not only tangible movables, but also intangible movables such as shares in a company owned by the debtor (which would block future transfers of shares, any pledging of the shares, and certain internal reorganisations).

Warrant of Arrest of Sea Vessels

This warrant of arrest orders the seizure of vessels (exceeding ten metres in length) only to secure a debt or claims, whether in personam or in rem, which could be frustrated by the departure of the vessel.

Warrant of Arrest of Aircraft

This warrant of arrest orders the seizure of an aircraft only to secure a debt or claims, whether in personam or in rem, which could be frustrated by the departure of the aircraft.

The term “aircraft” includes:

- all data, manuals and technical records;
- the airframe, all equipment, machinery and other appurtenances as accessories belonging to the aircraft, which are on board or which have been temporarily removed therefrom; and
- if in Malta, any engines owned by the owner of the aircraft, whether attached to the aircraft or not, as well as any replacement engines which are designated for use on the aircraft and owned by the owner of the aircraft but temporarily not attached to the aircraft.

Warrant of Prohibitory Injunction

An application for a warrant of prohibitory injunction must demand that a person is restrained from doing or omitting to do anything which might be prejudicial to the person suing the warrant. This is the only warrant that is not decided on a purely ex parte basis but requires a hearing before the injunction can be issued. That being said, the court may, upon the plaintiff’s request, issue the injunction on a provisional basis until the matter is heard and decided.

Warrant of Description

This warrant orders a court bailiff to take an itemised inventory of movables.

Warrant of Seizure of a Commercial Going Concern

This warrant has the effect of preserving the totality of the assets of the going concern, including licences and goodwill, to order that

they are not sold and are to be concurrently kept in business. If this warrant is upheld, a court-appointed administrator would oversee the business at the cost of the plaintiff.

Pursuant to, and by virtue of Regulation (EU) No 1215/2012, provisional measures can be sought in Malta in support of proceedings being heard in another EU member state. In this instance, such measures will only have territorial effect.

If, on the other hand, Maltese courts have jurisdiction over the main lawsuit, any provisional and protective measure sought in Malta is automatically recognised and can be enforced in any other member state.

The Code of Organization and Civil Procedure separately allows provisional measures to be sought in Malta in support of international arbitration proceedings.

Bringing an Action

The plaintiff is bound to bring an action on the merits of the claim within 20 calendar days from the date the precautionary warrant is issued by the court.

Some of these interim court measures may be subsequently converted into an executive court measure once the title becomes final and definitive by virtue of the court's final ruling in the relevant merits-based proceedings (*res judicata*). The interim order will remain in force until the judgment in the relevant merits proceedings is either confirmed or set aside.

There are also injunctive measures provided for under specific laws. In the realm of intellectual property law, for instance, the court has wide powers to order the conservation of evidence in the hands of the defendant or third parties,

and even to issue a “cease and desist” order, restraining the performance of an act likely to infringe a party's intellectual property.

4.2 Early Judgment Applications

When a claim is solely for the recovery of a debt that does not exceed EUR25,000 and is certain, liquid and due, the creditor may file a judicial letter instead of a lawsuit, accompanied by a confirmation on oath stating clearly the cause of the claim, the reasons it should be upheld, and the facts. The letter must warn the debtor that if they do not contest the claim within 30 days from service, then the judicial letter will constitute an executive title, without the need for a trial.

Maltese procedural law also provides for special summary proceedings in certain instances, particularly when a claim is solely for the recovery of a debt that is certain, liquid and due (and which falls within the jurisdiction of the Superior Courts), or for the eviction of a person from an urban or rural tenement.

In these cases, the plaintiff may request, in its sworn application, that the court proceed to give judgment without proceeding to trial. The sworn application must contain a sworn declaration that the plaintiff believes that there is no defence to the claim. If, at the hearing, the defendant does not make an appearance or fails to satisfy the court that they have a *prima facie* defence to the action on the merits, the court will proceed to judgment in summary proceedings.

4.3 Dispositive Motions

Prospective defendants may ask for a case to be dismissed before a full trial, most commonly in the following instances:

- where there is a lack of juridical interest of either the plaintiff or the defendant;

- where they allege a cause of nullity in the procedure followed by the plaintiff;
- where they allege a lack of jurisdiction;
- where the matter has already been decided by another judgment (*res judicata*) or otherwise compromised/settled; or
- where the action is barred by a particular prescriptive period established at law.

In these instances, the court may hear and decide such defences or pleas first without delving into a full trial. These motions typically take the form of preliminary pleas raised in the sworn reply (statement of defence).

4.4 Requirements for Interested Parties to Join a Lawsuit

Any interested party who shows to the satisfaction of the court that they have an interest in a pending suit, may file an application to be admitted as a party to the suit (in *statu et terminis*). An application to intervene may be made at any stage of the proceedings, whether in first or second instance, provided that such application does not suspend the actual proceedings between the parties to the suit.

Alternatively, anyone with an interest in the proceedings may be joined by application of either party or by court decree, when their absence would render the judgment less effective. While intervention in *statu et terminis* is voluntary, the intervenor does not become a full party to the suit, with the result that the judgment will not be binding over them.

4.5 Applications for Security for Defendant's Costs

While the Code of Organisation and Civil Procedure caters for a request made by the respondent for an order on the applicant to give security for the costs of the suit, this is limited to

those instances where the applicant is expressly required to give such security at law. Such instances would include security for costs by the appellant in appellate proceedings, by the applicant in intellectual property cases, and in cases for the enforcement of mortgages on ships and aircraft.

4.6 Costs of Interim Applications/Motions

Costs of interim applications are typically reserved at the interim stage, saving the right of the court to reapportion liability for costs based on the outcome at final judgment.

4.7 Application/Motion Timeframe

There is no timeframe within which an application must be dealt with, or within which proceedings must be appointed for trial. Generally, causes are appointed for a first hearing within two months of the application being made.

In cases of urgency, the court may abridge any legal time and may even appoint the case for a trial before the close of preliminary written procedures.

Applications for precautionary warrants, especially *ex parte* applications for such relief, are typically dealt with very expeditiously, and interim court decrees are obtained in a matter of hours.

5. Discovery

5.1 Discovery and Civil Cases

There is no express statutory full and frank disclosure obligation on the parties. The possibility of discovery is limited, and the disclosure of documents is generally achieved through subpoenas containing very specific disclosure

requests. These requests must be relevant to the subject matter of the dispute, and they should not be excessive.

5.2 Discovery and Third Parties

The possibility of discovery from third parties is limited. Documents are typically disclosed through subpoenas that include precise requests for information. These requests must be relevant to the dispute and should not be overly broad or excessive.

5.3 Discovery in This Jurisdiction

As stated above, there is no system of discovery in Malta, and no specific rules regulating which documents parties must disclose.

5.4 Alternatives to Discovery Mechanisms

Evidence is generally limited to that brought by the parties to corroborate their claim or defence, and must be relevant to the issue between the parties. A court may disallow evidence if it considers it irrelevant or superfluous to the cause, or if it considers that it is not the best evidence that can be brought on the issue.

There are some specific rules of disclosure – for example, in the private enforcement of competition law claims in terms of the Competition Act (Chapter 379 of the Laws of Malta). Moreover, as part of the enforcement of intellectual property (IP) rights, the court has wide-ranging powers to order disclosure (subject to confidentiality) and the conservation of evidence in the hands of the defendant or third parties (by virtue of the Enforcement of Intellectual Property Rights (Regulation) Act (Chapter 488 of the Laws of Malta)).

A specific procedural right exists for a party in proceedings to demand the production of par-

ticular documents (*actio ad exhibendum*) in the following instances:

- if such documents are the property of the party demanding the production thereof;
- if such documents belong in common to the party demanding their production and to the party against whom the demand is made;
- if the party demanding the production of the documents, although they are not the owner or a co-owner thereof, shows that they have an interest in such documents being produced by the other party to the suit;
- if the person possessing the documents, not being a party to the suit, does not declare on oath that, independently of any favour for either side, they have special reasons not to produce the documents; and
- if the documents are public acts, or acts intended to constitute evidence in the interest of the public in general.

In all cases, the party demanding the production of the document must prove that the document is in the possession of the person from whom the production is demanded.

5.5 Legal Privilege

There is a privilege pertaining to advice and communications between a client and their lawyer in professional confidence and these cannot be disclosed in court. There is no distinction between external and in-house counsel.

5.6 Rules Disallowing Disclosure of a Document

Certain specified documents are privileged, and their production during proceedings cannot be made. This would include documents which are subject to legal privilege but also correspondence exchanged on a “without prejudice” basis in furtherance of a compromise.

Documents that would damage the security, defence or international relations of Malta, or that would divulge information or matters communicated in confidence by or on behalf of a foreign government, authority or international organisation, would also be considered privileged documents. Specific documents relating to the cabinet's government are also considered privileged documents.

Moreover, the courts have discretion to restrict the public nature of cases or of pieces of evidence in the interests of justice (such as court disclosure of banking documents or other confidential documents).

There have been court decrees protecting documents containing trade secrets or confidential information, but the circumstances will vary depending on case-specific facts or depending on whether specific legislation applies (for example, private enforcement proceedings issued under the Competition Act).

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

The injunctive relief available in terms of Maltese civil procedural law are the acts referred to in **4.1 Interim Applications/Motions**.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

In urgent circumstances, interim injunctions can be issued provisionally, and even on the same day of the request. Exceptionally, they are even issued out-of-hours, as is very common in the case of arrests of sea vessels and aircraft.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

See **6.1 Circumstances of Injunctive Relief**.

Ex parte injunctive relief is in fact obtained without the defendant being able to make submissions, although the application is served on the defendant.

The corresponding protection for the defendant is the possibility to request the removal of injunctive relief on very limited grounds or, exceptionally, to seek countersecurity. This system ensures the effectiveness of injunctive relief, including the element of surprise, but also creates a balance in case of abusive recourse to injunctive relief. Admittedly, however, court judgments have unduly limited the availability of the countersecurity or the application for the removal of injunctive relief by interpreting very strictly the instances where such remedies may be available.

6.4 Liability for Damages for the Applicant

Plaintiffs will be responsible for damages suffered by the defendant if it is shown that:

- the proceedings were frivolous or vexatious;
- the plaintiff sought more security than they were reasonably entitled to; or
- the plaintiff fails to file an action on the merits within the set timeframe established by law following the grant of injunctive relief.

In some instances, plaintiffs may need to provide security for such damages.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Worldwide asset relief is not possible under Maltese law.

6.6 Third Parties and Injunctive Relief

Injunctive relief against third parties is not strictly possible, but the warrant of prohibitory injunction can be served on third parties to ensure that they comply with the terms of the injunction and not allow the debtor to act in contravention of the injunction.

Moreover, garnishee orders are typically issued against third parties who hold funds or assets for and on behalf of the debtor.

6.7 Consequences of a Respondent's Non-compliance

Defendants who do not comply with injunctive relief will be guilty of contempt of court and will be liable to imprisonment and/or to a fine.

7. Trials and Hearings

7.1 Trial Proceedings

Unless otherwise specified by law, judicial proceedings are instituted by filing a sworn application in court, containing a statement of facts and the relief requested, and to which a list of documents and witnesses is attached. The court will then issue a decree scheduling a first case management hearing and ordering service on the defendants, who will then have 20 days from the day of service to file a sworn reply.

Assuming no preliminary pleas are raised, the trial then starts by the plaintiff initiating the evidentiary process, including the presentation of affidavits and other documentary evidence. The defendant would then typically cross-examine the witnesses who submitted the affidavits and produce its own witnesses and documentary evidence.

This is followed by the exchange of legal submissions in writing, and then by a final round of oral rebuttals.

7.2 Case Management Hearings

Provided that all defendants are served with the lawsuit, the first sitting scheduled for the case is generally a case management hearing.

7.3 Jury Trials in Civil Cases

There are no jury trials in civil cases.

7.4 Rules That Govern Admission of Evidence

The rules that govern the admission of evidence at trial are as follows:

- the court requires the best evidence that the parties are able to produce;
- all evidence must be relevant to the matter at issue between the parties;
- any procedural objection to evidence must be recorded in the proceedings; and
- as a general rule of thumb, the burden of proving a fact shall, in all cases, rest on the party alleging it.

7.5 Expert Testimony

Expert testimony is permitted at trial. If an expert witness is introduced *ex parte*, their opinion shall only be admissible if, in the opinion of the court, they are suitably qualified in the relevant matter. The court may nominate its own experts, and their opinions would also amount to evidence.

7.6 Extent to Which Hearings Are Open to the Public

Trials are generally conducted in public. However, it is within the discretion of the court to order that the trial be heard with closed doors on the grounds of decency, good morals or in proceedings of anti-money laundering. The request for

a trial to be heard with closed doors may, upon good reason being shown, also be made by both parties together.

Judgments are delivered in open court, with a signed transcript of the judgment itself being deposited in the records of the case.

7.7 Level of Intervention by a Judge

Malta has adopted the adversarial model. Accordingly, the judge is generally passive, intervening only if required to provide direction, seek clarifications from the parties or witnesses, or in the event of the issuance of an order, directive or interim decision by judicial decree.

In this respect, in order to ensure full compliance with all matters of procedure, to seek more detailed information, to expedite or facilitate proceedings, or to avoid the unnecessary appearance of parties or witnesses, the court may give all such orders and directives it may think fit in chambers.

The court may also, by way of a decree, demand the parties to answer any questions it might have or else demand the parties to clarify any issues that are deemed necessary for the court before handing down its judgment.

7.8 General Timeframes for Proceedings

Once the application is filed in court, the defendant has 20 days within which to file a reply, whether sworn or otherwise. The same time limit will apply for the filing of any counterclaim. Following the trial proceedings as explained above, the court will generally deliver judgment within four to six months. On the other hand, the process before the Inferior Courts from start to finish is likely to take two to three years.

8. Settlement

8.1 Court Approval

Court approval is not required in order to settle a lawsuit.

8.2 Settlement of Lawsuits and Confidentiality

The terms of settlement agreements cannot be disclosed without the consent of all parties to the settlement, and therefore, settlements of lawsuits are entirely confidential and privileged.

8.3 Enforcement of Settlement Agreements

Settlement agreements would be enforced in the same way as any other contract. They will invariably contain their own dispute resolution mechanism and method of enforcement, including by recourse to court or arbitration.

8.4 Setting Aside Settlement Agreements

Adherence, enforcement and the setting aside of a settlement agreement would take place in the same way as for any other contract and they are thus regulated by the law of contracts.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

The damages available to the successful litigant are:

- actual losses already suffered;
- future losses;
- legal interest; and
- moral damage, available only in limited instances.

Apart from compensatory or monetary relief, declaratory and injunctive awards are also possible at the full trial stage. With some notable exceptions, damages in Malta are restorative in nature and therefore generally no punitive damages are granted.

9.2 Rules Regarding Damages

Damages under Maltese law are restorative in nature, and therefore, are aimed at restoring the injured party to the position held prior to the damaging event. There is no punitive element in the quantification of damages.

For damages to be awarded, there must be a direct causal link between the damaging event and the loss suffered by the plaintiff. The damaging event must be a result of the defendant's conduct, and cannot be due to a force majeure or due to contributory negligence by the plaintiff or third party.

In terms of contractual damages, the successful litigant is only entitled to damages that could have been foreseen at the time of the agreement.

In personal injury claims, a specific formula is largely followed by the Maltese courts in calculating future losses, namely: yearly projected income multiplied by a multiplier based on the projected working life expectancy and further multiplied by the certified percentage disability. A cash deduction (using largely discounted cash flow) is then applied as a deduction.

9.3 Pre-judgment and Post-judgment Interest

Generally, judgments given on civil pecuniary claims also include the award of interest at the rate of 8% simple interest per annum. In commercial matters, this runs from the date the debt was due, and therefore before the judgment

is entered. However, interest should only be imposed from the date of judgment where damages are considered not to be liquid at the time the claim was brought and quantified during, and pursuant to, a court judgment. Commercial debts are also subject to default interest under Directive 2011/7/EU on combating late payment in commercial transactions (recast) (Late Payment Directive), as applied through the Maltese Commercial Code (Chapter 13 of the Laws of Malta).

9.4 Enforcement Mechanisms of a Domestic Judgment

The court can give various orders for enforcement, including:

- the issuance of warrants/executive acts, including some of the warrants mentioned in **4.1 Interim Applications/Motions**. It is also possible to issue an executive warrant of seizure of an immovable property; and
- judicial sale by auction to recover the payment due, costs of the procedure and interest.

9.5 Enforcement of a Judgment From a Foreign Country

In cases where a judgment delivered by the courts of another EU member state is being enforced in Malta, the procedure is regulated by Regulation (EU) No 1215/2012. In these cases, recognition is automatic, and enforcement can take place immediately with the filing of any executive measures. Enforcement measures will be served upon the judgment debtor, who will then have the opportunity to file an application before the First Hall of the Civil Court, raising any of the grounds of objection to the enforcement of the foreign judgment contained in the aforementioned regulation. Any eventual judgment will be subject to appeal.

In cases where a judgment delivered by the courts of an EEA/EFTA member state is being enforced in Malta, the procedure is regulated by the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the so-called Lugano Convention. This will require the party demanding recognition and enforcement to file in the First Hall Civil Court:

- an application containing such demands;
- a copy of the judgment (accompanied with a certified translated copy); and
- a recognition and enforcement order issued by the court registrar of the EEA/EFTA member state of origin (also accompanied by a translated copy).

The court will recognise and enforce that judgment without a trial if all these requirements are satisfied. The judgment debtor does have remedies to challenge that judgment, but this first demand will not require the judgment debtor to make submissions. The judgment debtor is permitted to challenge the recognition and enforcement of such a judgment by lodging a separate and subsequent appeal application before the appellate courts within one month, according to the case, from the delivery of the judgment at first instance.

In cases where a judgment delivered by the courts of a non-EU and non-EEA/EFTA member state (third country) is being enforced in Malta, the procedure is regulated by the Code of Organisation and Civil Procedure. A foreign judgment that is final and binding, and has been delivered by a competent court outside of Malta, will first need to be registered. Such registration requires the filing of an application before the First Hall of the Civil Court. Proceedings involve the judgment debtor, who will have the opportunity to

raise any of the grounds for objection to the registration of the foreign judgment contained in the aforementioned code, such grounds being far wider than those contained in the EU Regulation. Once registered and recognised, the foreign judgment may then be executed locally in the same manner as other local judgments.

However, in cases where a judgment has been delivered by a court outside of the European Union or EEA/EFTA, on the basis of an exclusive choice of court agreement by the courts of a Contracting State to the Hague Convention on Choice of Court Agreements, then the enforcing judgment creditor has the choice to proceed with recognition and enforcement of that judgment in Malta pursuant to the procedure laid down in that Hague Choice of Court Convention, as opposed to the procedure laid down in the Code of Organisation and Civil Procedure. Where the judgment has not been delivered on the basis of an exclusive choice of court agreement, and has been delivered by the courts of a Contracting State to the Hague Judgments Convention (the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters), it can also be recognised and enforced in accordance with that convention, at the choice of the enforcing judgment creditor.

According to the British Judgments (Reciprocal Enforcement) Act (Chapter 52 of the Laws of Malta), a limited number of money judgments delivered by the Superior Courts of the United Kingdom may be registered in Malta in accordance with a separate procedure established in that act. The procedure under this act is very similar to that found in the Code of Organisation and Civil Procedure.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

There is only one level of appeal in Malta. There is a right of appeal to the Court of Appeal against judgments delivered by courts of first instance. There is no third-level review in cassation or by a supreme court. In fact, judgments delivered by the Court of Appeal are not appealable.

Appeals from judgments of the First Hall of the Civil Court and the Court of Magistrates in its superior jurisdiction are heard by the Court of Appeal in its superior jurisdiction.

Appeals from specially constituted tribunals, such as the Financial Services Tribunal, shall lie, before the Court of Appeal in its inferior jurisdiction presided over by one judge. Appeals from decisions of the Court of Magistrates (Malta) and the Court of Magistrates (Gozo) are also heard by the Court of Appeal in its inferior jurisdiction.

It is also possible to appeal against certain interim or interlocutory decrees, such as a decree allowing a request for urgency or the appointment of a referee. However, such appeal may be lodged only after the delivery of a definitive judgment, and only if an appeal against the definitive judgment itself is entered.

Other decrees that necessitate a final decision before the delivery of a definitive judgment (eg, a decree refusing the joinder of a third party) may be appealed against by means of an application within six days of the date on which the decree is read out in open court.

Certain other interlocutory decrees may be appealed against only by special leave of the court, to be requested by means of an applica-

tion filed within ten days of the day on which the decree is read out in court.

Furthermore, Maltese civil procedural law provides an exceptional remedy of seeking a “retrial” (also known as “new trial”) of a judgment delivered by the Court of Appeal (in the last and second level of review). This remedy would seek a review of the judgment on limited and stated grounds at law.

10.2 Rules Concerning Appeals of Judgments

An appeal may be lodged by means of an application, which shall contain the part of the judgment the appellant may wish to be reversed, varied or annulled. The appeal must also be substantiated with detailed reasons in the application. If the appeal is seeking variation, the application must state the manner in which the appellant wishes the judgment to be varied.

There is no appeal from judgments given upon the admission of a claim, or if the party in question has renounced the right of appeal.

Appeals may also be entered into by interested third parties.

Furthermore, if several issues are decided by more than one judgment, then appeals may only be made upon the final judgment, unless the potential appellant obtains leave from the court to appeal at various instances prior to delivery of the final judgment.

10.3 Procedure for Taking an Appeal

An appeal can be entered by any party against either all other parties or any one of them. As mentioned above, an appeal is lodged by means of an application that must be filed in the registry of the Court of Appeal within 30 days of the date

of the judgment. If an appeal is not entered into against the whole judgment, then the application must specify the heads of judgment being appealed. This time period cannot be extended.

Security for costs must be deposited in court just after the written pleadings are closed.

The appeal application is served on all parties, but only the parties against whom the appeal is directed must file their answer within 30 days, specifying why the appeal should be dismissed. The written pleadings in appeal are deemed closed by the submission of an answer to the application, but if it deems so expedient, the court may make an order to allow the filing of any additional submissions whether in writing or verbally.

The appeal application or reply must contain all the documents in support of such application or reply. No new evidence is admitted on appeal, except in specific circumstances.

10.4 Issues Considered by the Appeal Court at an Appeal

An appeal can be filed on either points of law or points of fact. In fact, the Court of Appeal may deal with both the principles behind and the merits of a judgment.

Although an appeal from judgments of the Superior Courts in first instance are meant to be full appeals on both the law and legal principles applicable, as well as on the facts, a significant number of judgments have consistently upheld that the Court of Appeal should not, in principle, typically disturb the assessment of facts made by the first courts, which would have heard witnesses and had other evidence heard before them.

Generally, new points that were not explored at first instance cannot be raised in appeal, and no evidence that had already been available to the parties can be submitted in appeal. There are, however, certain specific pleas (eg, the defence of prescription) that can be raised for the first time also on appeal. In exceptional cases, new evidence may also be submitted with the Court of Appeal's prior authorisation.

10.5 Court-Imposed Conditions on Granting an Appeal

There are no conditions associated with an appeal from a final judgment, other than the security for costs. The appeal represents a right exercisable by a party to a judgment to request quashing or amendment of the judgment in first instance.

Appeals from certain interim, interlocutory or other decrees delivered by the courts can only be made following an application for leave of appeal. If such leave of appeal is not granted, appeal from such decrees can only be made together with an appeal from the final judgment.

10.6 Powers of the Appellate Court After an Appeal Hearing

The Court of Appeal may confirm the judgment delivered by the court of first instance. It may also amend, reverse, vary or annul the judgment of the court of first instance. In certain cases, the logical conclusion of the decision in appeal may be to remit the case back to the court of first instance for a decision on the merits, depending on the circumstances of the case.

Furthermore, if an appeal is found to be frivolous or vexatious, the Court of Appeal may award double costs against the appellant.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

In its judgment, the court will decide who will bear the costs of the proceedings.

These costs are typically made up of Court Registry fees, advocates' fees, and legal procurator's fees, which are established and levied in accordance with statutory tariffs. These official rates are found in the schedules to the Code of Organisation and Civil Procedure.

When judgments allocate responsibility for litigation costs, whether so apportioned or whether they are allocated against the losing party, the quantum of costs is typically determined by the schedules.

The courts generally apply the "costs follow the event" principle.

11.2 Factors Considered When Awarding Costs

Maltese law does not attempt to restrict judicial discretion in terms of cost allocation. As explained in **11.1 Responsibility for Paying the Costs of Litigation**, costs typically follow the event, although there have been instances where one party's dilatory behaviour during proceedings or a party's refusal to reach an early settlement have been considered in the allocation and award of costs.

11.3 Interest Awarded on Costs

Interest is not awarded on costs.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

There has been an increased drive in recent years to integrate ADR mechanisms within the general architecture of civil procedure in Malta, with varying degrees of success. Some initiatives have been of purely domestic origin, with others following the transposition of EU instruments like the Mediation Directive.

Aside from arbitration, since both domestic and international arbitration with a seat in Malta have gained significant traction and a life of their own, mediation has become increasingly popular.

Judges now have the power to refer a case before them to mediation and, in certain specific types of lawsuits, there is a mandatory reference to court-annexed mediation schemes before the case can proceed to litigation.

12.2 ADR Within the Legal System

Court annexed mediation schemes and inferences on costs as a result of unreasonable refusals to refer to ADR before litigation seem to be the direction forward in Malta.

See **12.1 Views of ADR Within the Country** regarding the promotion of ADR. As far as is known, there are not yet any clear sanctions for refusing ADR.

12.3 ADR Institutions

The institution which regulates arbitration in Malta is the Malta Arbitration Centre (MAC), and the institution which regulates mediation is called the Malta Mediation Centre (MMC).

The functions of the MAC/MMC include the following:

- the promotion of Malta as a centre for international commercial arbitration;
- encouraging domestic and international arbitration/mediation as a means of settling disputes; and
- conducting domestic and international arbitration/mediation in Malta.

The MAC operates under the direction of a board of governors, whose chairperson and deputy chairperson must have been practising lawyers for at least 12 years. The MMC is also subject to this requirement.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

For arbitrations where the arbitral procedure is governed by Maltese law, the Arbitration Act (Chapter 387 of the Laws of Malta) and the Arbitration Rules (Subsidiary Legislation 387.01) apply. The arbitration agreement must be in writing, and the arbitration must be registered with the Malta Arbitration Centre (MAC). In order to institute arbitration, a notice of claim must be lodged with the MAC, including information about the claim and the nomination of an arbitrator. The notice must then be served on the defendant. If the parties agree on the procedure to be adopted by the arbitral tribunal, then the arbitrator may themselves determine the procedure to be adopted. Proceedings are generally informal and flexible in nature. In default of agreement between the parties, the rules set out in the Code of Organisation and Civil Procedure will apply with respect to the production of documents and/or witnesses.

Domestic arbitration awards are deemed to constitute an executive title under Maltese law.

As for the recognition and enforcement of foreign awards, Malta has signed and ratified the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. In matters relating to international arbitration, the Arbitration Act is based on the 1985 UNCITRAL Model Law.

13.2 Subject Matters Not Referred to Arbitration

Certain subject matters are not arbitrable, including criminal cases and cases relating to acts of civil status and public law matters.

13.3 Circumstances to Challenge an Arbitral Award

An application may be made to the Courts of Justice in Malta to set aside an award where Malta was the seat of the arbitration largely on the same grounds as those for the refusal of recognition and enforcement of foreign arbitral awards listed in the New York Convention and the setting aside grounds in the UNCITRAL Model law. The Court of Appeal will only set aside an award if the appellant proves to its satisfaction, for example, that:

- a proper notice was not given;
- the arbitral award falls outside the parameters of the arbitration agreement;
- the arbitration was not conducted in accordance with the agreement of the parties; or
- the award conflicts with the public policy of Malta.

An application to the Court of Appeal to set aside an arbitral award must be filed within 15 days of the notification to the applicant of the award, and the applicant must provide a copy of the application to the arbitrators and the MAC no later than 15 days after the filing of the application.

Appeals against arbitral awards can also be filed with the Court of Appeal. However, this right of appeal may only be exercised in domestic arbitrations or if the parties have agreed in writing to do so. Furthermore, under mandatory arbitration, parties have the right to appeal to the Court of Appeal both on issues of fact and on issues of law.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Domestic awards in procedures that have been initiated by means of a notice of arbitration and delivered by arbitrators under the auspices of the MAC are recognised as executive titles and can be enforced in Malta in exactly the same manner as court judgments.

Foreign arbitration awards must also be registered with the MAC, whereby they will be enforced by the courts of Malta in the same manner as domestic arbitral awards. This applies to foreign arbitral awards to which the treaties set out in the Second Schedule to the Malta Arbitration Act (ie, the Geneva Convention, the Geneva Protocol, and the New York Convention) are applicable. A registration application will be served upon the judgment debtor who will have the opportunity, within a specified time period, to object to the registration on any of the grounds specified in those conventions.

The entity designated as the competent entity for recognition and enforcement under the New York Convention is the chairperson of the Malta Arbitration Centre. Decisions regarding recognition and enforcement delivered by the chairperson of the MAC may be appealed to the Court of Appeal.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

A draft legislative proposal was presented to Malta's legislative body in the third quarter of 2022. It proposes, amongst other things, amendments to Malta civil procedural law to provide additional safeguards for journalists and protections against strategic lawsuit against public participation (SLAPPS), including the following:

- a proposed prohibition from issuing interim court measures in support of libel and defamation proceedings;
- the possibility for a court to dismiss a lawsuit during the preliminary hearing where the defendant proves that it is manifestly unfounded; and
- new grounds to refuse the recognition of foreign judgments ordering monetary payment against authors, editors and publishers in Malta.

An amended draft legislative proposal was presented to Malta's legislative body in the second quarter of 2023, further elaborating on the above changes to the current legislative framework. This is still awaiting Parliament's position in first reading.

14.2 Growth Areas

It is envisaged that the main area of growth for commercial disputes in Malta is in the realm of digital and financial technology. In line with the country's Digital Malta Strategy, there has been an ongoing strong focus on establishing and maintaining Malta as an attractive jurisdiction for both attracting investment, as well as settling disputes in these sectors. This growth is, in fact, driven by the enactment of key legislation in this area over the past few years.

Contributed by: Antoine Cremona, Clement Mifsud-Bonnici and Chiara Frendo, **Ganado Advocates**

Over the next five years, disputes involving larger intra-EU matters and increased use of both domestic and international arbitration in sectors like construction, shipping, insurance and financial services are also expected to expand. The latter is particularly so as Maltese parties increasingly adopt arbitration clauses in public procurement and large infrastructure projects.