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RESTRUCTURING & INSOLVENCY

Malta

LEXOLOGY

Restructuring & Insolvency

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GENERAL

Legislation
What main legislation is applicable to insolvencies and reorganisations?

The main legislation is the Companies Act (Chapter 386 of the Laws of Malta).

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt was mainly transposed into Maltese law through the enactment of the Pre-Insolvency Act (Chapter 631 of the Laws of Malta), the Insolvency Practitioners Act (Chapter 632 of the Laws of Malta) and Act No. XXIII of 2022, amending the Commercial Code (Chapter 13 of the Laws of Malta).

Law stated - 9 October 2025

Excluded entities and excluded assets
What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The provisions on insolvency found in the Companies Act generally applies to companies.

The provisions on bankruptcy in the Commercial Code generally applies to traders. Act No. XXIII of 2022 extended the definition of 'traders', for the purposes of the provisions on bankruptcy, to any other natural or legal person, in respect of commercial debts (but not to companies).

Sector specific laws also apply to regulated entities, such as credit institutions (the Credit Institutions (Reorganisation and Winding-Up) Regulations, subsidiary legislation 371.12 of the Laws of Malta), investment firms (the Investment Firms (Reorganisation and Winding-Up) Regulations, subsidiary legislation 370.30 of the Laws of Malta) and insurance undertakings (the Insurance Business (Reorganisation and Winding Up of Insurance Undertakings
) Regulations, subsidiary legislation 403.15 of the Laws of Malta), as well as to companies owning ships (the Merchant Shipping (Shipping Organisations – Private Companies) Regulations, subsidiary legislation 234.42 of the Laws of Malta) or aircraft (the Aircraft Registration Act, Chapter 503 of the Laws of Malta). These entities are also excluded from falling within the scope of the Pre-Insolvency Act (as debtors).

Law stated - 9 October 2025

Public enterprises
What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The provisions of the Companies Act and of the Pre-Insolvency Act apply to government-owned companies. Public corporations that are not incorporated as a company are incorporated by statute – the relevant statute or instrument of incorporation guides the insolvency.

Law stated - 9 October 2025

Protection for large financial institutions

Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

Malta does not specifically protect large financial institutions considered 'too big to fail'. However certain insolvency rules apply to regulated entities such as credit institutions, investment firms and insurance undertakings, with the said sector-specific rules applying together with the Companies Act.

Law stated - 9 October 2025

Courts and appeals

What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Insolvency proceedings fall within the jurisdiction of the Civil Court (Commercial Section). Recent decisions of the Court of Appeal have suggested that there is no right of appeal from a decision dealing with the insolvency or otherwise of companies.

The new Pre-Insolvency Act does offer the possibility of appealing decisions delivered in relation to preventative restructuring procedures to the Court of Appeal. There is no specific requirement to post security; however, upon the filing of any appeal, the court costs for the appeal are demanded by the Registry of the Courts of Malta. Litigation costs (including filing fees and lawyers' fees) are calculated according to a specific tariff established at law.

Law stated - 9 October 2025

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

If a company is solvent, shareholders may pass an extraordinary resolution whereby the company is dissolved and put into liquidation through a members' voluntary winding-up procedure. For this procedure to be followed, the directors would be required to make a declaration of solvency (consisting of a statement that in their opinion the company will be able to pay its debts in full within 12 months from the date of dissolution).

If, on the other hand, the directors are not in a position to make a declaration of solvency, a creditors' voluntary winding-up procedure would be followed upon the adoption of an extraordinary resolution by the shareholders of the company. In this case, a creditors' meeting must be convened within 14 days of the shareholders' resolution, during which time the creditors may nominate a liquidator, which will be given preference over any shareholders' nomination. A detailed statement of affairs of the company and a list of creditors would need to be laid before the meeting of creditors.

Act No. XVIII of 2025, once in force, will introduce a simplified dissolution procedure for solvent companies registered for a minimum of six months and that, among other things, have not traded or otherwise carried on business in the six months before pursuing the simplified procedure.

Law stated - 9 October 2025

Voluntary reorganisations

What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

A company is free to enter into any agreements or compromise if it is confident that such an arrangement will include the entire body of creditors.

Short of this, a company can opt for a company reconstruction procedure and apply to the court to:

- appoint a mediator whose task will be convening meetings between the creditors and the company with a view to reaching a compromise or arrangement that can then be submitted to the court for approval; or
- sanction a compromise or arrangement that enjoys the approval of those creditors who represent two-thirds in value of the claims against the company.

A compromise or arrangement approved by the court in such a manner will bind the entire body of creditors.

Alternatively, a company can:

- opt to apply to the court for a company recovery order, in which case the court appoints a special controller to manage the company and grants a moratorium of four months in respect of any action that creditors can take against the company. For such an order to be granted, the court must be satisfied that the company has good prospects to survive as a viable going concern, or alternatively that the moratorium is conducive to the company reaching a compromise or arrangement with its creditors; or
- opt to apply to the court for entry into a preventive restructuring procedure in terms of the Pre-Insolvency Act, to the extent that the company is merely exposed to a likelihood of insolvency (without actually being insolvent), and to the extent that the company has reasonable prospects of viability. In terms of this procedure, the directors remain in-possession, but an application to the court to enter into this procedure would require the endorsement of an insolvency practitioner. This

procedure is entered into for a four-month period, which may be extended until a maximum of 12 months from the date of an application.

Law stated - 9 October 2025

Successful reorganisations

How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability and, if so, in what circumstances?

In a company reconstruction process, creditors are not classified in any particular manner and hence no distinction is made between lenders and suppliers or secured creditors and ordinary creditors. To obtain a compromise or arrangement under the company reconstruction provisions, the creditors representing two-thirds in value must approve. In a company recovery procedure, the law allows for different classes of creditors to be recognised and their respective interests dealt with separately. Moreover, if the application is filed by the creditors instead of the company, the creditors petitioning the court must represent at least more than half the value of debts of the company. In any approved compromise or arrangement approved by the court, whether by way of a company reconstruction or a company recovery procedure, the court has various powers to issue orders leading to the transfer of the undertaking, or its assets and liabilities, to a transferee company, or orders considered supplemental or consequential to ensure an effective reconstruction of the company.

In a preventive restructuring procedure, all affected parties are to be organised into classes, distinguishing between the varying economic interests of the said parties. As a minimum, the different classes should distinguish between holders of secured claims, holders of unsecured claims, holders of claims for the payment of wages, holders of subordinated claims and the holders of shares, equity or other ownership rights in the debtor. A restructuring plan requires approval by not less than two-thirds of the affected parties in each class (by reference to the value of the claims represented). If, however, the restructuring plan is not voted through in this manner, cross-class cramdown is possible. The restructuring plan is deemed to be adopted if, in the view of the insolvency practitioner, the 'best interests of creditors test' is satisfied, that is:

- if the plan will not result in any class receiving value in excess of its claims;
- if dissenting classes are treated pari passu with equally ranking claims and more favourably than lower ranking claims; and
- if the plan is approved for adoption by at least one class of 'in the money' creditors.

Law stated - 9 October 2025

Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

Creditors wishing to trigger an involuntary liquidation may apply to the court and request the issue of a winding-up order on a number of grounds, including on the basis that the company is unable to pay its debts (meaning that it is insolvent). For the court to be satisfied that a company should be dissolved and put into liquidation based on the insolvency of the company, it must be satisfied that the applicant is a creditor and that the company is insolvent with due regard being given to the contingent and prospective liabilities of the company. There is a presumption of insolvency empowering the court to issue a winding-up order if it is shown that the petitioning creditor obtained the issue of executive measures against the debtor on the basis of an enforceable judgment or other executive title, and the debt remains wholly unsatisfied following the lapse of 24 weeks from the date of effective service of such executive measures.

Law stated - 9 October 2025

Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Creditors can file applications to the court for a company reconstruction process if they represent two-thirds in value of the combined debts of the company. Alternatively, they can file for a company recovery order if they represent more than half in value of the company debts.

Law stated - 9 October 2025

Expedited reorganisations

Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

Three types of preventive restructuring are contemplated by the Pre-Insolvency Act, two of which constitute more expedited forms of reorganisation plans.

The Pre-Formulated Preventive Restructuring Procedure is commenced by the filing of a court application once a reorganisation plan has already been formulated and needs to be confirmed by the affected parties. This type of the procedure can take no longer than four months. The Pre-Approved Preventive Restructuring Procedure is the most expeditious and commenced by the filing of a court application when a reorganisation plan has already been approved by the affected parties; court confirmation is all that is required. This type of the procedure envisages court approval being delivered within 30 days.

Law stated - 9 October 2025

Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

A proposed reorganisation under the Companies Act 1995 is defeated if it fails to be approved by the required majority of creditors or if the court is not satisfied that the legal requirements for the approval of such a plan have been met. If such a plan is not approved, the likely effect is that the company concerned will need to consider filing for insolvency in court or for a creditors' voluntary winding-up, unless some other informal out-of-court rescue is feasible with the assistance of third parties or creditors injecting funds into the company.

A proposed reorganisation under the Pre-Insolvency Act will be defeated if the essential requirements for the procedure are not met, namely where:

- the affairs of the company are no longer exposed to the likelihood of insolvency;
- the affairs of the company have deteriorated to the extent where there is no chance of economic viability; or
- the majority of the creditors no longer support the current course of action.

Should the period prescribed by law for the preventive restructuring lapse, the procedure will also terminate.

The procedure will likewise be defeated if it is eventually not approved by affected parties (including through a cross-class cramdown procedure).

Furthermore, this procedure will terminate if the term permitted for the adoption of a restructuring plan expires (ie, a four-month period, extendable to a maximum of 12 months in the case of the standard preventive restructuring procedure).

If a reorganisation plan is not approved, the company will need to seriously consider whether it is insolvent and should commence insolvency proceedings.

Law stated - 9 October 2025

Corporate procedures

Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Members of a company can resolve to dissolve the company by means of an extraordinary resolution. Whether the dissolution will be a members' voluntary winding-up or a creditors' voluntary winding-up depends on if the company is solvent or insolvent, respectively.

Corporate dissolution procedures tend to be more expeditious, however more costly as they always require the remuneration of a private liquidator. Court (compulsory) dissolution will take longer, however the default liquidator appointed by the court will be the Official Receiver, a public officer, which will limit the costs of the liquidation.

Law stated - 9 October 2025

Conclusion of case
How are liquidation and reorganisation cases formally concluded?

Liquidations are concluded by the publication of the final report of the dissolution and ultimately by striking off the company's name from the Malta Business Registry.

Reorganisation cases, on the other hand, are concluded either through the adoption or rejection of a restructuring plan that would have effect on the debtor and its creditors.

Law stated - 9 October 2025

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency
What is the test to determine if a debtor is insolvent?

Maltese courts invariably apply a combined test based on a cash flow analysis and balance sheet assessment. Specifically, a court must also be satisfied that the company is, or is likely to become, unable to pay its debts as they fall due, account being taken also of the contingent and prospective liabilities of the company.

Law stated - 9 October 2025

Mandatory filing
Must companies commence insolvency proceedings in particular circumstances?

Where directors of a company become aware that the company is unable, or is imminently likely to become unable, to pay its debts, they are under an obligation to convene a general meeting of the company to discuss the possibility of the dissolution of the company or the filing of a company recovery application with shareholders.

The Pre-Insolvency Act also imposes a similar obligation on the officials of a company at an earlier stage – where they become aware that the company may be exposed to a likelihood of insolvency, they are required to convene a meeting of the officials of the company for the purposes of reviewing the company's position and determining what steps should be taken, having regard to the interests of creditors, equity holders, employees and other stakeholders, including whether the company should consult with an insolvency practitioner for the purposes of making a preventive restructuring application.

Law stated - 9 October 2025

DIRECTORS AND OFFICERS

Directors' liability – failure to commence proceedings and trading while insolvent

If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

Directors can be exposed to liability on a number of fronts. Primarily, directors may be exposed to liability for breaching their general duties of care towards the company. Directors may also be exposed to wrongful trading liability where they knew, or ought to have known, that there was no reasonable prospect the company could have avoided being dissolved owing to its insolvency. In this instance, directors may be held liable to make a contribution to the company's assets at the discretion of the court. More grievously, if there is evidence that the business has been carried on with an intent to defraud creditors, any individual knowingly party to the carrying on of business in that matter will be exposed to fraudulent trading liability. This liability constitutes a criminal offence and exposes those individuals to a fine of up to €232,937.34 or imprisonment of up to five years, or both.

Law stated - 9 October 2025

Directors' liability – other sources of liability

Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

There are a number of fiscal debts for which company directors or officers are personally liable. Typical examples are claims in respect of unpaid value added tax, social security contributions and unpaid wages.

Where a preventive restructuring is taking place under the Pre-Insolvency Act and the directors act with an intent to defraud any creditor of the company, upon an application of the insolvency practitioner the court can declare the directors as personally responsible, without any limitation of liability for all debts and liabilities of the company.

Law stated - 9 October 2025

Directors' liability – defences

What defences are available to directors and officers in the context of an insolvency or reorganisation?

Directors are not likely to be cited as defendants in the context of any insolvency or reorganisation proceedings. If directors or officers are sued for fraudulent trading, the obvious defence open to those directors or officers would be that they had no intention to act fraudulently and that they had acted honestly, in good faith and in the best interests of the company and its creditors. In an action for wrongful trading, it would be open to any directors defending such a claim to show the court that despite the insolvency of the company, they took all reasonable steps to mitigate the losses of the company creditors.

Law stated - 9 October 2025

Shift in directors' duties

Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

Directors' duties do shift to prioritise creditors' interests in such a situation. Directors have a duty to react to a situation where the company is insolvent or imminently likely to become insolvent. They must consider the future of the company, the likely prejudice that might be caused to the general body of creditors and, more importantly, decide whether the company should be dissolved and wound up, or alternatively whether recourse to a company recovery procedure or a preventive restructuring procedure should be commenced.

Law stated - 9 October 2025

Directors' powers after proceedings commence

What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

Once a company is dissolved and put into liquidation, all powers of directors cease and the appointed liquidator exercises the duties and powers envisaged in the law. Similarly, if a special controller is appointed in the context of a company recovery procedure, the directors' powers are suspended until such time as the court reviews the future of the company at the end of the statutory moratorium. Pending the hearing of a winding-up application, a court may also consider appointing a provisional administrator, in which case the court will determine its function and powers. The directors can continue to hold office and exercise their powers unless the court restricts or suspends their powers and grants the provisional administrator specific powers and functions in its order.

On the other hand, when preventive restructuring proceedings are commenced in terms of the Pre-Insolvency Act, directors continue to be in-possession, though certain actions, such as the termination of employment of employees on the basis of redundancy, the sale or encumbrance of any assets of the company, or the entering into of any long-term commitment, would require the consent of the appointed insolvency practitioner.

Law stated - 9 October 2025

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

Upon the filing of a winding-up application, any creditor or the company itself can request a stay of proceedings, and the court enjoys a discretion whether to stay proceedings. If a winding-up order is issued by the court, any proceedings pending against the company,

whether commenced before the order or yet to be filed, require the authorisation of the court to continue being heard and decided.

On the filing of an application for the commencement of a standard preventive restructuring procedure, or a preformulated restructuring procedure, the execution of claims of a monetary nature against the debtor (other than for workers' claims) will be stayed. Furthermore, no party may terminate, accelerate, modify, withhold or suspend performance of its obligations towards a debtor in terms of an essential executory contract solely by virtue of the debtor's entry into a preventive restructuring procedure. No precautionary or executive warrant may be made or continued against the debtor or its property, and no arbitration or judicial proceedings may be made or commenced against the debtor upon the filing of the said application. Certain exceptions to this do exist (particularly in the case of actions ***in rem*** against ships or aircraft), and the court also has the authority to lift any such stays in certain instances (such as when the protections granted will cause substantial harm to the creditor, or where the protections granted no longer fulfil the objective of supporting negotiations on a restructuring plan).

Law stated - 9 October 2025

Doing business

When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

In a liquidation process, the liquidator is permitted to carry on the business of the debtor company that is necessary or beneficial for the proper winding-up of the company. Much will depend on the circumstances of each case and the particular business activity of the company. Similarly, and in the context of a company recovery procedure, a company is likely to be authorised to carry out its business activity in line with its rescue plan under the direction of the court-appointed special controller. Both the liquidator and the special controller are accountable to the court and will regularly inform the court of the performance of their duties.

Concerning a preventive restructuring order issued under the Pre-Insolvency Act, the company is protected from its creditors, with a view to the company continuing to carry on its business and agreeing on a restructuring plan with its creditors, with the directors of the company continuing to be 'in-possession'. The company will, however, require the approval of the insolvency practitioner to carry out certain acts, such as the termination of employment of employees on the basis of redundancy, the sale or encumbrance of any assets of the company or entering into long-term commitments.

Law stated - 9 October 2025

Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

A liquidator appointed by the court is entitled to raise credit and offer company assets as security subject to court approval. Priority will be determined in accordance with the applicable legal rules on rights of preference and will depend to a large extent on the type of security agreed to. Otherwise, there is no rule whereby any loans or credit granted in such circumstances will enjoy priority over debts previously incurred.

In the context of a preventive restructuring procedure, the Pre-Insolvency Act distinguishes between the granting of unsecured financing and secured financing. If the insolvency practitioner is satisfied that interim financing is necessary to preserve the economic viability of the debtor, it is only the debtor's approval that is needed for unsecured financing. On the other hand, secured interim financing would also require the approval of not less than 50 per cent of the affected parties in each class (by reference to the value of the claims represented).

Law stated - 9 October 2025

Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

A liquidator is expected to sell company assets as part of the winding-up process. There is no rule whereby an asset would be sold to a buyer free and clear of claims if specific rights of preference attach to the particular asset. Accordingly, the liquidator needs to negotiate, with court approval, the best terms for a suitable outcome. In the case of a company reconstruction, the sale of an undertaking or the transfer of specific assets and liabilities requires court approval and may involve assets being transferred subject to rights of unpaid creditors, unless agreement can be reached between the interested parties to allow for a sale free from such claims.

Law stated - 9 October 2025

Negotiating sale of assets

Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

No such specific sale procedures apply in Malta. Generally, a liquidator will be inclined to sell privately after a tender process or alternatively sell by public auction.

Law stated - 9 October 2025

Rejection and disclaimer of contracts

Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

Contracts are binding between the parties and remain so unless, as a result of the event of a liquidation or reorganisation, the performance of the contract is frustrated or very difficult to achieve. Otherwise, a debtor cannot assume that a contract can be rejected by the mere fact of insolvency unless specific terms and conditions in the contract provide otherwise.

The Pre-Insolvency Act, on the other hand, has introduced novel provisions in Maltese law in the context of preventive restructuring procedures – officials of the debtor, in consultation with the insolvency practitioner, may invite a counterparty to engage in bona fide negotiations for the renegotiation or termination of an executory contract to the extent that this would be conducive to the economic viability of the debtor. If the parties fail to come to a mutual agreement, the debtor may unilaterally terminate the said contract and become liable to compensate the counterparty for losses incurred as a result of such unilateral termination.

Law stated - 9 October 2025

Intellectual property assets

May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

These matters are likely to be regulated by the terms and conditions of the particular licence agreement, but in the absence of any such terms, an intellectual property (IP) licensor or owner would be entitled to terminate the debtor's right to use IP on the basis of an implied resolutive condition, given that in a liquidation or reorganisation the continued use of the IP may be limited and not what was originally envisaged in the agreement.

This would also apply in the context of a preventive restructuring procedure, unless the IP is deemed to be an 'essential executory contract', which would therefore be necessary for the continuation of the debtor's day-to-day business.

Law stated - 9 October 2025

Personal data

Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

Any transfer of personal information or customer data would be subject to, and needs to be carried out in conformity with, applicable data protection laws. This is an obligation that equally applies to both the company in liquidation or reorganisation (as the transferor) and the purchaser (as the recipient of the information or data). In particular, the parties need to ensure that they have and are able to rely on a lawful basis, as recognised under applicable

data protection laws, an agreement that legitimises the transfer or sharing of the information or data concerned between them. Failing this, the transfer would be without a lawful basis at law and, if carried out, could be adjudged as a case of unlawful processing and potentially lead to fines or other sanctions and corrective measures being imposed on the company or the purchaser, or both.

Law stated - 9 October 2025

Arbitration processes

How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Liquidation and reorganisations are court-based proceedings and as such arbitration does not feature in the process. A liquidator is, once appointed, entitled to refer any disputes to arbitration, although in practice this seldom happens. Generally, all disputes of a civil or commercial nature are arbitrable.

Law stated - 9 October 2025

CREDITOR REMEDIES

Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

The general rule is that seizure of assets requires court authorisation. There are some instances where a creditor can take possession of an asset without court authorisation, such as in the case of a mortgagee taking possession of a ship upon an event of default, which is possible due to the special nature of the right *in rem*.

Law stated - 9 October 2025

Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

Typical remedies available to unsecured creditors include a warrant of seizure, a garnishee order, a warrant of description, a warrant of arrest of a vessel or aircraft and so on. These attachments can be obtained with relative ease and rather swiftly, within the same day of filing an ex parte application.

It is not possible to obtain any such warrant (whether precautionary or executive) during a period when individual enforcement actions are stayed, including where an application for a winding-up order or a preventive restructuring order is filed.

Law stated - 9 October 2025

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

Meetings should be held within the statutory period laid down at law. For instance, in the case of a liquidation, creditors' meetings must be held annually, and in the case of a company recovery procedure, a meeting must be held within one month of the appointment of a special controller. In a preventive restructuring procedure, a meeting of creditors must be convened within 30 days from the date of appointment of an insolvency practitioner (with the insolvency practitioner also being able to reconvene other meetings of creditors if deemed appropriate).

Information to be provided will vary from the general state of the winding-up in the case of a liquidation, including a general picture of the assets and liabilities and any expected recoveries or disposal of assets; whereas in the case of a company recovery procedure under the Companies Act 1995, the controller must submit a comprehensive statement of the company's affairs, together with preliminary proposals on the future prospects and management of the company. The meeting of creditors in a preventive restructuring procedure is convened for the purpose of:

- laying before creditors a comprehensive ranking of claims against the debtor;
- laying before creditors a list of the affected parties and the classes into which they would be organised; and
- allowing creditors to request further information on the financial situation of the debtor and the debtor's expectations from the preventive restructuring that would be taking place.

Law stated - 9 October 2025

Creditor representation

What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

A liquidation committee can be set up in the course of winding-up, either in the case of a creditors' voluntary winding-up or a liquidation by the court. The creditors may appoint not more than five representatives and, likewise, the contributories may appoint up to five

persons on the committee. The committee is consultative. A joint creditors' and members' committee can be set up in a company recovery procedure.

Any advisers or external consultants to the committee would be paid by the creditors forming part of the committee, unless there is agreement with the liquidator that any such expenses are to be borne by the liquidator on the basis of any direct benefit to be derived from them in the course of the winding-up.

Law stated - 9 October 2025

Enforcement of estate's rights

If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

Maltese law does provide a remedy whereby a creditor can pursue an action or remedy available to the debtor against a third party. In the event of a successful recovery, the proceeds would benefit the general body of creditors, and any claims of the creditor would rank on these proceeds in accordance with their ranking at law.

Law stated - 9 October 2025

Claims

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?

The period for the submission of claims is set by the liquidator and, upon a review, the liquidator will either admit the claim or reject it. In the latter scenario, the creditor can file an action against the company in liquidation to obtain a judgment in support of its claim. Rights of action can be freely assigned to third parties and, provided notice of any such assignment is given to the debtor or company in liquidation, these actions can continue to be pursued by the assignee acquiring the claim.

Law stated - 9 October 2025

Set-off and netting

To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Mutual debts, credits and dealings can be set off after insolvency provided they have arisen before the insolvency. Creditors cannot be deprived of this right.

Law stated - 9 October 2025

Modifying creditors' rights

May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

No. Ranking and priority of claims are established by law and cannot be varied by the court.

Law stated - 9 October 2025

Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

Fiscal claims – such as claims in respect of unpaid value added tax, unpaid social security contributions and income tax – are likely to rank with priority over claims of secured creditors. Other claims that are typically privileged are claims of financing banks and major suppliers, such as contractors who may in certain circumstances enjoy privileged claims.

Law stated - 9 October 2025

Employment-related liabilities

What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

Employee claims are only partially privileged and up to a maximum amount that is equivalent to the statutory minimum wage payable to employees and spread over a period of 13 weeks. Any other claims beyond this amount would rank without any priority or privilege.

Law stated - 9 October 2025

Pension claims

What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

The remedies that apply arise within the context of contractual rights the employees may have against their employers, but in any event such claims would not enjoy special priority at law.

Law stated - 9 October 2025

Environmental problems and liabilities

Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Maltese law extends liability for various defined environmental offences committed by a company to every person who, at the time of the commission of the offence, was a director or officer of the company, or was purporting to act as such, unless they can prove that the offence was committed without their knowledge and that they tried to prevent the commission of the environmental offence. There is no extension of this liability to any insolvency practitioner who takes office subsequent to the event, or to any creditors or third parties acting outside the remit of this specific capacity.

Law stated - 9 October 2025

Liabilities that survive insolvency or reorganisation proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

In an insolvency, certain liabilities of a debtor may be passed on to a third party in possession of immovable property if that property is acquired by the third party without settling the liability secured by a special privilege or by a special hypothec. In such cases, the creditor can pursue a claim against the third party in possession of the property based on the ***droit de suite***.

Law stated - 9 October 2025

Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

In liquidations, once the assets are realised and the liquidator has a clear picture of the liabilities and their respective ranking at law, a scheme of distribution can be put to the creditors or the court for approval and, once approved, the distribution can be completed.

In a reorganisation, much will depend on the context and the type of reorganisation involved – in the case of a company recovery procedure or in the case of a preventive restructuring procedure, the outcome of the process will either lead to the recovery of the company, the approval of a compromise or a restructuring plan with the creditors, or alternatively the company being put into liquidation.

Law stated - 9 October 2025

SECURITY

Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

Special privileges or special hypothecs are the types of security that can be taken on immovable property.

Law stated - 9 October 2025

Secured lending and credit (movables)

What principal types of security are taken on movable (personal) property?

Pledges or security by title transfer are typical securities that are taken on movables.

In the case of ships or aircraft, mortgages are often resorted to as security over the particular asset.

Law stated - 9 October 2025

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

A transaction carried out within the six months preceding a company's deemed date of dissolution can be annulled if it constitutes a transaction at an undervalue or a fraudulent preference. A transaction at an undervalue is one that is made either for no consideration or for a consideration that is lower than its estimated value. A fraudulent preference is given when the particular transaction is made with a creditor, surety or guarantor of the debtor, and has the effect of placing them in a better position than the one they would have been in had the debtor gone into insolvent liquidation. These transactions can be attacked by the liquidator or any creditor.

Law stated - 9 October 2025

Equitable subordination

Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

No, there are no such restrictions in Maltese law.

Law stated - 9 October 2025

Lender liability

Are there any circumstances where lenders could be held liable for the insolvency of a debtor?

There are no such circumstances under Maltese law.

Law stated - 9 October 2025

GROUPS OF COMPANIES

Groups of companies

In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

No specific legislation addresses this particular issue. There could potentially be remedies available to creditors on the basis of fraud, bad faith or improper purpose, but this would depend on the circumstances of each case.

Law stated - 9 October 2025

Combining parent and subsidiary proceedings

In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

Maltese law makes no provision for group insolvencies or winding-up, and hence each company forming part of a group of companies would have to be wound up separately.

Law stated - 9 October 2025

INTERNATIONAL CASES

Recognition of foreign judgments

Are foreign judgments or orders recognised, and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

Malta is a member of the European Union and as such judgments obtained before a court of an EU member state would be recognised in Malta in accordance with applicable EU regulations, including the EU Insolvency Regulation Recast and the Brussels Regulation Recast. Otherwise, foreign judgments can be recognised and enforced locally in accordance with general remedies available in the Code of Organisation and Civil Procedure.

Law stated - 9 October 2025

UNCITRAL Model Laws

Have any of the UNCITRAL Model Laws in relation to insolvency been adopted or is adoption under consideration in your country?

No.

Law stated - 9 October 2025

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

Foreign creditors receive equal treatment to domestic creditors.

Law stated - 9 October 2025

Cross-border transfers of assets under administration

May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

Yes, provided that the transfer of assets is conducted properly during the course of a winding-up or company reorganisation, and all necessary authorisations are given, whether from creditors of the debtor or the court, as the case may be.

Law stated - 9 October 2025

COMI

What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

The centre of main interests (COMI) test prescribed in terms of the EU Insolvency Regulation Recast is the one that is used. The presumption, therefore, is that COMI coincides with the place of the debtor's registered office. However, if sufficient evidence can be brought that the COMI is elsewhere, this presumption can be rebutted.

Law stated - 9 October 2025

Cross-border cooperation

Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border

insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

In the context of foreign insolvency proceedings in the European Union, cooperation between a domestic court and a foreign court in the European Union is achieved in accordance with the applicable EU Insolvency Regulation. Otherwise, as regards any other foreign judgment obtained outside the European Union, one would have to seek its recognition in accordance with domestic conflict-of-laws rules. Moreover, there is no provision at law for cooperation between domestic courts and the relevant foreign courts in this instance.

Law stated - 9 October 2025

Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

No.

Law stated - 9 October 2025

Winding-up of foreign companies

What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

In accordance with the applicable EU Insolvency Regulation, a Maltese court may exercise its jurisdiction to wind up a foreign company if its COMI is in Malta.

Law stated - 9 October 2025

QUICK REFERENCE

Summary of law and procedure

Applicable insolvency law, reorganisations and liquidations

The Companies Act (Chapter 386 of the Laws of Malta).

The Pre-Insolvency Act (Chapter 631 of the Laws of Malta).

The Insolvency Practitioners Act (Chapter 632 of the Laws of Malta).

The Commercial Code (Chapter 13 of the Laws of Malta).

Law stated - 9 October 2025

Summary of law and procedure
Customary kinds of security devices on immovables

Special hypothecs.

Law stated - 9 October 2025

Summary of law and procedure
Customary kinds of security devices on movables

Pledges and security by title transfer.

Law stated - 9 October 2025

Summary of law and procedure
Stays of proceedings in reorganisations/liquidations

Creditors of the debtor may request a stay of proceedings once a winding-up application is filed.

Stays of proceedings also apply in the context of a preventive restructuring procedure.

Law stated - 9 October 2025

Summary of law and procedure
Duties of the insolvency administrator

The liquidator is responsible for the winding-up process (including the sale of assets and ranking of claims).

Law stated - 9 October 2025

Summary of law and procedure
Set-off and post-filing credit

Maltese law does permit set-off on insolvency provided that this would have been agreed to before the company would have become insolvent.

Post-filing credit can be obtained but will not be given priority unless agreed to by creditors.

Law stated - 9 October 2025

Summary of law and procedure
Creditor claims and appeals

The period for the submission of claims is set by the liquidator and upon a review, the liquidator will either admit the claim or reject it. In the latter scenario, the creditor can file an action against the company in liquidation to obtain a judgment in support of its claim.

Law stated - 9 October 2025

Summary of law and procedure
Priority claims

Fiscal claims such as claims in respect of unpaid value added tax, unpaid social security contributions and income tax are likely to rank with priority over claims of secured creditors. Other claims that are typically privileged are claims of financing banks and major suppliers such as contractors who may in certain circumstances enjoy privileged claims.

Law stated - 9 October 2025

Summary of law and procedure
Major kinds of voidable transactions

A transaction carried out within the six months preceding a company's deemed date of dissolution can be annulled if it constitutes a transaction at an undervalue or a fraudulent preference.

Law stated - 9 October 2025

Summary of law and procedure
Operating and financing during reorganisations

In the context of a company recovery procedure, it is the special controller who operates the company debtor.

In a preventive restructuring procedure, the directors of a company continue to be 'in-possession' and continue to operate the company.

Financing during a reorganisation continues to be possible, but priority can only be obtained with the consent of the existing creditors.

Law stated - 9 October 2025

Summary of law and procedure
International cooperation and communication

This mainly takes place through the application of the EU Regulations. Judgments obtained from outside the EU will need to be enforced in Malta in accordance with Malta's conflict of

laws rules. Other than for the provisions in the EU Regulations, Maltese law does not cater for cooperation of Maltese courts with foreign courts.

Law stated - 9 October 2025

Summary of law and procedure
Liabilities of directors and officers

Directors and officers may be held liable for both wrongful and fraudulent trading of an insolvent company.

Liability may also arise if a court determines that there has been fraud or bad faith.

Law stated - 9 October 2025

Summary of law and procedure
Pending legislation

We are not aware of any pending legislation.

Law stated - 9 October 2025

UPDATE AND TRENDS

Trends and reforms
Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

Malta's insolvency laws are in need of updating. The recent introduction of the Pre-Insolvency Act and of the Insolvency Practitioners Act (together with amendments to the Commercial Code provisions on bankruptcy) implement Directive (EU) 2019/1023.

However, existing insolvency provisions in the Maltese Companies Act are in urgent need of an update. In particular, there does not exist any legislation to deal with cross-border insolvency and restructuring procedures that fall outside of the scope of the EU Insolvency Regulation.

Once brought into force, Act No. XVIII of 2025 will introduce a simplified dissolution procedure for solvent companies.

Law stated - 9 October 2025