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CHAMBERS GLOBAL PRACTICE GUIDES

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# International Arbitration 2025

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**Malta: Law and Practice & Trends and Developments**

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## Law and Practice

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**Ganado Advocates** is Malta's leading commercial law firm servicing international clients doing business in or through Malta; it has a particular focus on corporate, financial services, maritime/aviation, and dispute resolution, and has one of the leading dispute resolution practices in the jurisdiction. In international commercial and investment arbitration matters, Ganado Advocates has been engaged to represent clients under the leading sets of rules in Europe and

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## 1. General

### 1.1 Prevalence of Arbitration

Arbitration is a frequently used and broadly accepted method of dispute resolution in Malta for both general and sector-specific commercial disputes. It is particularly prevalent in certain sectors such as construction, maritime, and information technology, where most domestic parties engaged in international contracts have recourse to institutional or ad hoc international arbitrations as the preferred method of dispute resolution. Arbitration clauses also feature regularly on a more generic level across various other industries. Institutional arbitration clauses are increasingly featured in commercial contracts governed by Maltese law or involving a Malta-based entity.

There has been a discernible uptake in the use of international arbitration in relation to contracts involving public and private entities, shipping, insurance, as well as financial services disputes. Various factors, such as the geographical location, legal framework, and cost-to-quality ratio, may incentivise parties to resort to arbitration as opposed to court litigation in Malta.

The principal advantages of arbitration in Malta are the flexibility of procedure, the value added brought by arbitrators, as well as the relative ease of the enforceability of awards. With some notable exceptions in judgments that are widely regarded as outliers, the jurisdiction is generally supportive of arbitration, and the courts have extensive powers of support (including interim relief) for both domestic and international arbitrations having their seat in Malta.

On a purely domestic level, litigation remains the predominant method of dispute resolution in Malta amongst local market players. Litigation costs in Malta are generally low and, in domestic disputes, arbitration, despite a discernible upward trend, has not yet managed to break through as the prevalent method of dispute resolution.

### 1.2 Key Industries

The use of arbitration in Malta has been increasing steadily. In particular, due to the increased number of large-scale infrastructure projects, the construction industry has seen a significant increase in arbitration, especially since International Federation of Consulting Engineers (FIDIC) contracts have become the prevalent construction contract in Malta for medium-to-large-scale developments. Accordingly, a number of claims are arbitrated. Arbitration clauses are increasingly being incorporated in contracts which are the subject of public procurement processes with public authorities, clearly indicating to the market the preference for disputes being referred to arbitration.

Moreover, a marked increase in arbitrations relating to areas which were hitherto the exclusive domain of the Maltese courts has been witnessed. This includes shareholder disputes and certain intellectual property disputes, largely due to the flexibility afforded by arbitration as well as an expert's focus on the subject matter.

### 1.3 Arbitration Institutions

The Malta Arbitration Centre (the "MAC" or the "Centre") is the principal institution that oversees the conduct of domestic arbitrations and an ever-increasing

number of international arbitrations having Malta as their seat of arbitration. It is run by a publicly appointed board of governors that is responsible for the policy and general administration of the affairs and business of the Centre and has its own secretariat. The MAC offers basic facilities for the conduct of arbitration and may act as the default appointing authority with a choice of arbitrator(s) from panels of professionals practising different areas of law.

Malta is also regularly designated as the seat of ad hoc international arbitrations, as well as the seat of institutional arbitrations under the rules of leading arbitration institutions, most commonly, the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA).

No new institutions have been established in Malta in 2024-25.

## 1.4 National Courts

The Superior Courts (the First Hall of the Civil Courts and the Court of Appeal) are vested with the powers to stay arbitration proceedings, grant interim relief, hear procedural challenges, and make recognition orders. The specific division of powers and jurisdiction of the particular courts depend on the nature of the relief sought. The courts are regulated by the Arbitration Act (Chapter 387 of the Laws of Malta) (the “Act”) and the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) (the “Code of Organisation and Civil Procedure”), and will be addressed in more detail in subsequent sections of this chapter.

## 2. Governing Legislation

### 2.1 Governing Law

The Act and the Arbitration Rules (Subsidiary Legislation 387.01) (the “Rules”) are the principal legislative instruments regulating arbitration in Malta. The Act is modelled on the UNCITRAL Model Law on International Commercial Arbitration of 1985 (the “UNCITRAL Model Law”), and the Rules are likewise modelled on the UNCITRAL Arbitration Rules of 1976. The Act also incorporates the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the “New York Convention”), the Geneva Protocol on Arbitration

Clauses of 1923 (the “Geneva Protocol”), the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 (the “Geneva Convention”), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the “ICSID Convention”).

The UNCITRAL Model Law is annexed to the Act as the First Schedule of the Act and forms an integral part thereof in its entirety.

The Act has not yet been amended to reflect the later versions of the UNCITRAL Model Law, although reform initiatives on this front are expected.

### 2.2 Changes to National Law

Until an amendment in August 2020, the MAC was the designated court for recognition and enforcement purposes under the New York Convention. The decisions of the chairperson of the Centre were final and could not be appealed against, although nothing barred a party from subsequently bringing fresh proceedings for recognition and enforcement if recognition proceedings were initially not accepted by the chairperson.

One significant feature of the 2020 amendment was the introduction of a right of appeal before the Court of Appeal against a decision by the chairperson of the MAC on the registration of a foreign award. An appeal by an aggrieved party must be filed within 20 days from the date on which the determination of the chairperson of the MAC on the registration of the foreign award is communicated to the parties. Such appeals are to be lodged with the Court of Appeal in its inferior jurisdiction.

Through this substantial amendment, the recognition court is effectively no longer just the MAC but there is a second instance proceeding in front of the Court of Appeal. Notwithstanding the inclusion of a second tier, there has been a marked increase in the efficiency of the process leading to the recognition of foreign arbitral awards in Malta over the past few years. However, the two-tier process will, in the longer term, delay the process of exequatur of international awards, although it is expected to produce a greater level of consistency and predictability of outcome.

## 3. The Arbitration Agreement

### 3.1 Enforceability

Insofar as the formal requirements of an arbitration agreement are concerned, Maltese arbitration law follows the UNCITRAL Model Law and the New York Convention, which are reproduced in the First Schedule and Part III of the Second Schedule respectively, both forming part of the Act. An arbitration agreement must be in writing and may be drawn up in the form of an arbitration clause in a contract or in the form of a separate agreement. Domestic law requires that an arbitration agreement be made in writing as provided under Article 7 (2) of the UNCITRAL Model Law.

For the purposes of Maltese law, an agreement is considered to have been made in writing solely in the following circumstances:

- if it is contained in a document that is transferred from one party to the other party or by a third party to both parties, provided no objection was raised within 30 days from receipt thereof;
- if reference is made in a written contract to a document containing an arbitration clause, insofar as that reference operates to make such clause part of the contract; or
- through the issuance of a bill of lading, provided the latter contains an express reference to an arbitration clause in a charter party, in which case the bill of lading is – in and of itself – deemed to constitute a written arbitration agreement.

The UNCITRAL Model Law further elaborates in this respect, and confirms that the “in writing” requirement is also satisfied if it is contained in:

- a document signed by the parties;
- an exchange of telecommunication that provides for a record of the agreement; or
- an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

Naturally, the references in the 1985 UNCITRAL Model Law and the 1958 New York Convention to an instrument “in writing” have to be interpreted in the light of more recent laws establishing equivalence between

traditional written instruments and electronic communications.

### 3.2 Arbitrability

Over the past few years, there has been an increase in the scope of the types of disputes that are considered by arbitration tribunals and the courts of law as “arbitrable”, both in terms of subjective and objective arbitrability. The general provision contained in Article 15 of the Act (under the part dedicated to domestic arbitration, but equally applicable to international commercial arbitration having Malta as its seat) states that disputes concerning questions of personal civil status (eg, marriage, legal capacity, or parentage) are not capable of settlement by arbitration. Equally, most public law matters are generally regarded as not arbitrable.

However, even in traditionally non-arbitrable areas of law like disputes concerning personal status, purely patrimonial or monetary claims arising from such disputes can still be referred to arbitration. For example, disputes involving the division of property between spouses or claims for damages arising from intellectual property rights or public law disputes are considered suitable for arbitration.

### 3.3 National Courts’ Approach

As a signatory of the New York Convention and having modelled the Act on the UNCITRAL Model Law, Malta is a jurisdiction that supports the arbitration process.

National courts are less likely to interfere with international arbitrations that have Malta as their seat of arbitration than they are with domestic arbitrations, where they still exercise residual powers. In general, Maltese courts look with disfavour on parties attempting to circumvent or frustrate arbitration proceedings through court actions. When this happens, the Maltese courts have generally (with some notable exceptions in a limited number of judgments, which are largely recognised by the legal profession to be outliers) shown themselves to be supportive of arbitration and unsympathetic to such claims, and tend to recognise the arbitrator’s jurisdiction to rule on their competence.

There is no significant case law to report in the last year on the approach taken by the Maltese courts on matters relating to the applicable law to the arbitration agreement. Typically, the arbitration agreement will be deemed to be governed by the law of contract.

Recently, Maltese courts have refused to lift local precautionary measures in support of pending recognition and execution proceedings of an international arbitration award in Malta, despite the existence of security in another member state of the European Union in support of foreign exequatur proceedings of that same award. Maltese courts have also stayed proceedings in favour of a valid arbitration clause invoked in litigation that involved, apart from the signatories to the arbitration clause, a non-signatory party in litigation.

On a more general note, arbitration agreements are, for the most part, immediately recognised and enforced by the courts, and the courts regularly stay proceedings in favour of arbitration proceedings when they are faced with what appears to be a valid arbitration agreement.

When the court that is seised stays proceedings in favour of the arbitral jurisdiction, it does not automatically decline all residual jurisdiction, but merely stays until the arbitration tribunal ascertains jurisdiction on the matter and proceeds with the decision on the case.

### 3.4 Validity

In terms of Article 16 of the UNCITRAL Model Law and Article 32 of the Act (modelled on Article 16 of the UNCITRAL Model Law), an arbitral clause shall be considered valid even if the rest of the contract in which it is included is determined to be invalid. This applies to both domestic and international arbitrations. There can be little doubt that Maltese courts may consider an arbitral clause to be valid even if the rest of the contract in which it is contained is invalid in full application of the doctrine of separability that is contained in statutory provisions.

## 4. The Arbitral Tribunal

### 4.1 Limits on Selection

In accordance with the UNCITRAL Model Law, the Act allows the parties to an arbitration agreement the faculty of determining any matters relating to the choice, as well as the number, of arbitrators. Failing a determination, the default number of arbitrators is three. This is except for those cases where the disputed amount is under 11,646.87 (currency not specified), in which cases there will be only one arbitrator. In addition, the MAC (the chairperson of the Centre being established as the default appointing authority) has set up various specialised panels for domestic, as well as international, arbitration which may be resorted to in order to appoint accredited arbitrators. To name a few, these panels include:

- the Maritime Panel;
- the General/Civil Commercial Panel;
- the Banking, Finance, Accounting and Taxation Panel;
- the Building Construction Panel; and
- the Medical Panel.

There is no law imposing a restriction on either the parties or the default appointing authority as to their choice of arbitrators from the said panels.

### 4.2 Default Procedures

In default of any agreement on the procedure for the appointment of arbitrators, the Act provides that, in the case of an arbitration with three arbitrators, each party will appoint one arbitrator, with the two party-nominated arbitrators then appointing the third arbitrator, who shall act as the chairperson of the arbitration tribunal. However, if a party fails to appoint an arbitrator within 30 days of receipt of notification of the appointment of an arbitrator by the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon the request of a party, by the chairperson of the MAC. In an arbitration with a sole arbitrator, where the parties fail to agree on the choice of arbitrator within 30 days after receipt by a party of a proposal, that arbitrator shall be appointed, upon request of a party, by the chairperson of the MAC.

In the context of international arbitration, the MAC chairperson fills the role of default appointing authority and the functions mentioned in Articles 11 (3), 11 (4), 13 (3) and 14 of the UNCITRAL Model Law. Therefore, the chairperson shall appoint the arbitrator(s) at the request of one of the parties in any of the following circumstances:

- if there is no agreement as to the method for the appointment of arbitrators;
- the parties do not agree on the arbitrator(s);
- any of the parties fail to act as required under the agreed appointment procedure;
- an arbitrator becomes unable to perform their functions or fails to act or their office terminates; or
- an arbitrator is successfully challenged.

Default procedures for selecting arbitrators in multi-party arbitrations are contemplated in Article 21A of the Act. These procedures mimic the default procedures explained above, with the difference that the multiple claimants or multiple respondents are to make a joint nomination and to jointly reach an agreement with the other party on the choice of the arbitrator(s).

### 4.3 Court Intervention

Outside the parameters of the procedures for challenge or removal of arbitrators described in 4.4 **Challenge and Removal of Arbitrators**, there is no room for court intervention in the selection of arbitrators. This excludes the possibility of extraordinary remedies including constitutional challenges on matters like due process, which are exceptional and outside the scope of the current review.

### 4.4 Challenge and Removal of Arbitrators

The Act expressly provides that arbitrators are to be independent and impartial. Accordingly, prospective arbitrators are obliged to disclose any conflict of interest as soon as possible. An arbitrator may only be challenged if circumstances exist that give rise to justifiable doubts in relation to their impartiality or independence. However, a party may only challenge an arbitrator appointed by them for reasons that it becomes aware of after the appointment has been made. While the UNCITRAL Model Law adopts a similar approach, in the context of international arbitration, a party may also challenge the appointment of

an arbitrator when that arbitrator does not possess the qualities previously agreed to between the parties.

The parties are free to agree on a procedure for challenging an arbitrator. Failing such agreement, a party that intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances giving rise to the challenge, send a written statement containing the reasons for the challenge to the arbitral tribunal.

Unless the challenged arbitrator withdraws from their office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. If a challenge is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the chairperson of the MAC to decide on the challenge, and this decision shall not be subject to an appeal. While a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award. If the chairperson of the MAC sustains the challenge, they are to appoint a substitute arbitrator.

### 4.5 Arbitrator Requirements

See 4.4 **Challenge and Removal of Arbitrators**. Maltese law adopts both tests of independence and impartiality, which are qualities that have to be assessed at the appointment stage and throughout the procedure leading to the expiry of the jurisdiction of the arbitrators.

In matters relating to the assessment of such qualities, regular use is made of the International Bar Association Guidelines on Conflicts of Interest in international arbitration and publications issued by the leading arbitration institutions in Europe and beyond.

## 5. Jurisdiction

### 5.1 Challenges to Jurisdiction

An arbitral tribunal in arbitrations having Malta as their seat of arbitration determines its own jurisdiction. In the event that proceedings are filed before a court for a declaration relating to the jurisdiction of an arbitral

tribunal, such proceedings shall be stayed and the parties shall in principle be referred to the arbitral tribunal for its decision on such issue, unless the court considers that a party will suffer irreparable harm if it does not determine such issue immediately. The principle that an arbitration tribunal is competent to rule on its own competence is widely acknowledged and the provisions of the Act are designed to safeguard its application.

## 5.2 Circumstances for Court Intervention

Article 32 (5) of the Act expressly provides that proceedings filed before a court for a declaration relating to the jurisdiction of an arbitral tribunal must be dismissed as this is a matter for the tribunal to decide. This is unless the court considers that a party will suffer irreparable harm if it does not determine the issue. Accordingly, in terms of Article 16 (3) of the UNCITRAL Model Law, the tribunal is to decide claims pertaining to its jurisdiction, with parties having a right of appeal from the tribunal's interim award finding jurisdiction before the Court of Appeal. On the other hand, if the arbitral tribunal decides that it does not have jurisdiction, there is no right to appeal to domestic courts. With a few exceptions, national courts have generally taken a positive approach in preserving the jurisdiction of the tribunal, thereby showing a general reluctance to intervene in issues of jurisdiction of an arbitral tribunal.

## 5.3 Timing of Challenge

A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that they have appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified. The arbitration tribunal may rule on a plea of non-jurisdiction either as a preliminary question or in an award on the merits.

If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within

30 days after having received notice of that ruling, the Court of Appeal to decide the matter, which decision shall not be subject to a further appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

## 5.4 Standard of Judicial Review for Jurisdiction/Admissibility

The standard of review under a challenge to the jurisdiction of the tribunal is *de novo*. The court will review the tribunal's jurisdiction by way of complete reassessment of facts, without being bound by the tribunal's reasoning.

## 5.5 Breach of Arbitration Agreement

As explained in 3.3 National Courts' Approach and 5.2 Circumstances for Court Intervention, the court will stay proceedings if there is a valid arbitration clause. With a few exceptions, the approach of national courts has been positive in the preservation of jurisdiction of the arbitrator.

In fact, courts typically view proceedings brought in breach of an arbitration agreement with disfavour. It has to be said, however, that the courts usually stay rather than outright dismiss proceedings so brought until the jurisdiction of the arbitration tribunal is ascertained by the tribunal itself.

## 5.6 Jurisdiction Over Third Parties

The general rule under Maltese law is that an arbitration agreement binds the parties to it. Doctrines addressing the binding of non-signatories, such as alter ego, agency, or group of companies theories, are not well developed under Maltese jurisprudence specific to arbitration, although the Maltese courts have applied these concepts in contract or corporate law generally.

However, a third party may be joined to arbitral proceedings if all parties involved in the arbitration, including the third party itself, consent to such joinder.

## 6. Preliminary and Interim Relief

### 6.1 Types of Relief

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take such interim measure of protection as the arbitral tribunal considers necessary in respect of the subject matter of the dispute. The arbitral tribunal may require a party to provide appropriate security in connection with such measure.

In principle, there is no classification or limit on the interim relief that may be granted by the tribunal. However, the effectiveness of such orders is limited in that the tribunal cannot issue binding orders against third parties. As a result, recourse is often made to the Maltese courts, as the courts of the seat of arbitration, for assistance in matters such as the subpoena of witnesses, garnishee orders, or security in the hands of third parties, as further explained in **6.2 Role of Courts**.

### 6.2 Role of Courts Granting Interim Relief

Courts may play a very important role in the granting of interim relief in support of arbitration in Malta in the immediate run-up to arbitration, during the arbitration, as well as after the award in support of recognition proceedings. Interim relief is typically granted upon ex parte application by a party. If the requisites in terms of law are satisfied, the court may accede to an application for the issuance of the following precautionary measures in support of an arbitration.

The interim measures of protection which can be sought are listed in Article 830 (1) of the Code of Organisation and Civil Procedure, and include:

- a garnishee order;
- a warrant of seizure of movables;
- a warrant of description;
- warrants of arrest on vessels and aircraft; and
- a warrant of prohibitory injunction preventing a party from carrying out certain actions.

Recourse to such interim measures may be made even prior to instituting arbitral proceedings, provided that arbitral proceedings are brought within 20 days

from the filing of the request by a party for precautionary measures. If arbitral proceedings have already been instituted, the request to court must be accompanied by a confirmation issued by the registrar of the MAC confirming that arbitral proceedings have been lodged.

### Choice of Venue

The courts recognise the freedom of the parties to choose the venue from which to seek interim relief. Further, there is no limitation in principle on the powers of the arbitral tribunal to grant interim measures in terms of the applicable rules. Where interim measures have been granted by the tribunal, the courts will recognise and enforce such measures upon the application of the party in whose favour the measure has been granted.

In addition, national courts also regularly grant, upon application, interim relief in support of arbitration proceedings seated outside of Malta.

### Emergency Arbitrators

Maltese law is silent on the use of emergency arbitrators and orders issued by emergency arbitrators under specific institutional rules have not yet been tested by the Maltese courts. There should, in principle, be no objection or difficulty with the enforceability of orders issued by emergency arbitrators. It is expected that these will be dealt with in the same way in which interim relief issued by the tribunal is dealt with.

In principle, it is also believed that the choice of an emergency arbitrator does not in itself preclude courts from issuing interim relief in support of the arbitration, unless parties themselves close such avenue in the arbitration agreement. As a matter of fact, interim relief by Maltese courts is relatively easy to obtain and, in circumstances arising in Malta or involving assets located in Malta, is likely more cost-effective and efficient than seeking interim relief from emergency arbitrators under most institutional rules.

### 6.3 Security for Costs

Maltese law allows the arbitral tribunals to order security for costs. This power extends to both ad hoc tribunals and those administered by the Malta Arbitration

Centre (MAC) in domestic and international arbitrations.

Moreover, when administering such proceedings, the MAC requires the parties to make deposits as advances on costs.

During the course of the arbitral proceedings, the arbitral tribunal may request from the parties' supplementary deposits to cover further costs. If the required deposits are not paid in full within 30 days from the receipt of the request, the arbitral tribunal shall inform the parties in order that any one of them may make the required payment. If the payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

At the recognition and enforcement stage, on the application of the party claiming recognition or enforcement of the award, the court may order the other party to provide appropriate security.

## 7. Procedure

### 7.1 Governing Rules

In domestic arbitrations, the procedural framework is primarily governed by Part IV of the Act and the Rules, which are mandatory unless explicitly stated otherwise. One notable domestic requirement is the filing of a notice of arbitration *ad validitatem*, a rule unique to domestic proceedings. In contrast, international arbitrations seated in Malta afford parties greater procedural flexibility. In such cases, the Act and Rules function as default provisions, applying only if the parties expressly adopt them or have not otherwise agreed on a different procedural regime (such as the UNCITRAL Rules or institutional rules). However, fundamental principles concerning due process and the right to a fair hearing apply without exception in both domestic and international arbitrations, as they form part of Maltese public policy.

### 7.2 Procedural Steps

The parties are at liberty to determine the procedure to be followed by the arbitral tribunal in international arbitrations having Malta as their seat of arbitration. The Act and the Rules provide rules on procedure as

default rules in case the parties do not agree on the procedure, or the parties expressly adopt such rules in international arbitrations. The general public policy provisions regulating fair trial (due process) naturally apply. In domestic arbitrations, procedural flexibility is much more limited and is managed by the MAC.

### 7.3 Powers and Duties of Arbitrators

In domestic arbitration and where, in international arbitration, the parties adopt the Rules to regulate their arbitration, the tribunal is empowered to:

- rule on its own jurisdiction, including on any objections on the existence or validity of the arbitration agreement;
- order interim measures of protection;
- in the absence of party agreement, adopt appropriate procedure to conduct the arbitration – this includes the power to determine the admissibility, relevance, materiality and weight of evidence;
- appoint experts and require parties to co-operate with the experts;
- request court assistance in taking evidence;
- decide whether additional written statements should be exchanged;
- issue an order for the termination of the arbitration proceedings if their continuation becomes unnecessary or impossible, unless a party raises justifiable grounds for objection; and
- impose penalties for non-compliance with orders, for failure to observe time limits and for failure to attend hearings or cancellation thereof without valid reasons.

Apart from the duties of independence and impartiality which have already been discussed in **4.5 Arbitrator Requirements**, an arbitrator is expected to perform their duties as arbitrator honestly, impartially, with due diligence and without fear or favour according to law.

Article 10 of the Act also lists, amongst the functions of the MAC, the right to review the performance of arbitrators, including the right to admonish or issue appropriate sanctions against arbitrators that do not perform their duties.

## 7.4 Legal Representatives

Those appearing on behalf of parties to arbitration proceedings are not required to have any particular qualifications. However, representatives should be familiar with both the legal and procedural rules relating to the matter in dispute as well as arbitration law and procedure. Therefore, it is possible to engage legal representatives who are not qualified under Maltese law.

In fact, in terms of Article 18 (2) of the Act, “a legal practitioner or a person not qualified under the Laws of Malta may act on behalf of a party to an arbitral proceeding to which this Act applies, including appearing before the arbitral tribunal, and he shall not thereby be taken to have breached any law of Malta regulating the practice of the legal profession”.

## 8. Evidence

### 8.1 Collection and Submission of Evidence

In arbitrations seated in Malta, parties are free to determine the procedure for collecting and presenting evidence, often by incorporating institutional rules or opting to apply the Rules. Although the concepts of discovery and disclosure are not traditionally part of Maltese legal practice, parties may agree to adopt rules on document production – such as the IBA Rules on the Taking of Evidence in International Commercial Arbitration – which are well recognised and frequently applied, either as binding rules or as guidance.

In the absence of a specific agreement between the parties, the arbitral tribunal will determine the evidentiary procedure, ensuring it complies with the applicable law, which is typically the law of the seat. In domestic arbitrations, the production of evidence is governed by the Code of Organisation and Civil Procedure. Under this Code, tribunals may admit both oral (*viva voce*) testimony and written sworn statements. Maltese law also allows for “documents-only” arbitrations, where no oral hearings take place.

Each party bears the burden of proving the facts on which it relies. Tribunals may set deadlines for parties to submit a summary of the documents and other evidence they intend to present in support of their

claims or defences. Unless otherwise agreed, the tribunal may appoint its own experts or request expert evidence from the parties.

### 8.2 Rules of Evidence

The Rules provide that the arbitral tribunal shall regulate the production of evidence before it in order to ensure compliance with the provisions of the Act.

As stated in **8.1 Collection and Submission of Evidence**, the Act provides that in domestic arbitrations the rules of the Code of Organisation and Civil Procedure shall apply as they apply to the production of evidence before a court of civil jurisdiction.

Any application for the subpoena of a witness before an arbitral tribunal shall indicate that the witness is to appear before an arbitral tribunal for the purpose of arbitral proceedings and shall indicate clearly the address of the place that the witness is to attend and the date and time of attendance. The arbitral tribunal may administer oaths to persons called as witnesses or experts giving evidence before an arbitral tribunal.

### 8.3 Powers of Compulsion

In domestic arbitrations, where the evidence of any person is required, the registrar of the MAC may issue an application for writs of subpoena in the Superior Courts to ask the courts to compel the attendance of a witness to give evidence or produce documents before an arbitral tribunal.

Where any person who has been properly subpoenaed to appear before an arbitral tribunal in accordance with the aforementioned procedure fails to appear before the said tribunal without reasonable excuse, the tribunal may make a report thereon to the registrar of the MAC, who shall by application bring the report to the attention of the Superior Courts, requesting it to deal with the matter in the same manner as if the person concerned had failed to appear before that court when properly subpoenaed and thereupon the court shall deal with the matter in the said manner.

## 9. Confidentiality

### 9.1 Extent of Confidentiality

There are no provisions relating to confidentiality in the Act.

However, when the Rules apply – whether in domestic arbitrations, international arbitrations where the parties have expressly agreed to their application, or where Part IV of the Arbitration Act (governing domestic arbitration) applies by operation of Article 60 of the same Act – the proceedings are subject to a duty of confidentiality.

Article 47 of the Rules imposes an obligation on arbitration participants to maintain the confidentiality of the proceedings. Neither the existence of proceedings nor the eventual award are publicised. The MAC treats all documents filed with it as confidential, except to the extent as authorised by the parties or otherwise necessary to implement the provisions of the Act. Related to the confidentiality of documents, the Rules also provide that the documents filed in the arbitral proceedings shall only be accessible to the arbitral tribunal and the parties on request, unless confidentiality is waived by the parties. Moreover, the hearings are held in private and only the parties, their assistants or representatives, the Registrar and individuals necessary for the support of the proceedings as ordered by the arbitral tribunal are permitted to attend.

However, confidentiality is subject to certain exceptions – for instance, where a party expressly agrees to disclosure, where disclosure is necessary to safeguard a party's rights in legal proceedings under the arbitration agreement or the Arbitration Act, or in cases involving mandatory arbitration.

The general rule is that disclosure in subsequent proceedings is prohibited unless otherwise agreed to in the arbitration agreement.

## 10. The Award

### 10.1 Legal Requirements

Article 44 of the Act and Article 31 of the UNCITRAL Model Law establish the legal requirements for an arbitral award, which must:

- be in writing;
- be signed by the tribunal (if the tribunal is composed of three arbitrators, the signature of the majority is required, provided that the reason for any omitted signature is stated);
- unless the parties have otherwise agreed, contain the reasons for the award; and
- state the date and place of arbitration.

Unfortunately, there are no pre-set time limits for the rendering of an award under Maltese law. Time limits contained in institutional rules for the rendering of an award by the arbitration tribunal are, however, recognised by Maltese law as an expression of the will of the parties.

Nonetheless, the Act sets specific time limits for post-award remedies. According to Article 47, a party may request an interpretation of the award within 15 days of receiving it, and the tribunal must provide its interpretation within 45 days. Under Article 48, parties may request the correction of errors – such as computational mistakes, clerical or typographical errors, or similar inaccuracies – within 15 days of receiving the award. The tribunal may also correct such errors on its own initiative within 30 days. Additionally, Article 49 allows a party to request an additional award for claims that were omitted from the original decision, provided the request is made within 15 days of receiving the award; if warranted, the tribunal must issue the additional award within 45 days.

### 10.2 Types of Remedies

The Act does not address the types of remedies available, but, in principle, all kinds of remedies are available, provided they find legal support under the applicable law and are not in violation of the public policy of Malta. Tribunals can, therefore, make declaratory reliefs and order monetary compensation, specific performance or other ad hoc types of remedies

requested by the parties within the parameters outlined above.

### 10.3 Recovering Interest and Legal Costs

In both domestic and international arbitration, the Act specifies that the costs of arbitration shall in principle be borne by the unsuccessful party, reflecting the “loser pays” principle. However, this rule is not absolute and it is at the discretion of the arbitral tribunal to apportion the costs, taking into account the particular circumstances of the case.

In accordance with Article 50 of the Act, the term “costs” includes:

- the fees of the tribunal;
- travel and other expenses incurred by each arbitrator;
- costs of expert advice and other assistance required by the tribunal;
- travel and other expenses of witnesses approved by the tribunal;
- costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only if the tribunal deems such costs to be reasonable; and
- any fees and expenses payable to the MAC.

Unless otherwise agreed by the parties, an arbitral tribunal may include interest at a reasonable rate in any monetary award, whether for a liquidated or unliquidated amount. This interest can apply to the whole or any part of the awarded sum and for any period between the cause of action’s date and the award’s date. Additionally, the tribunal may direct that interest is payable from the date of the award or a later specified date. In practice, interest is often awarded at a rate of 8% simple interest per annum, which is the standard statutory rate under Maltese law.

## 11. Review of an Award

### 11.1 Grounds for Appeal

Recourse to the national courts against an international arbitral award may be had only by an application for setting aside in accordance with specific provisions provided by the Act.

The party making the application must show that either:

- a party to the arbitration agreement was under some incapacity;
- the agreement is not valid under the law that the parties have stipulated or, failing any indication thereon, under the law of Malta;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present their case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the Act from which the parties cannot derogate or, failing such agreement, was not in accordance with the Act.

An arbitral award may also be set aside if the court finds that:

- the subject matter of the dispute is not capable of settlement by arbitration under the law of Malta; or
- the award is in conflict with the public policy of Malta.

An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made for correction, interpretation, or an additional award, from the date on which that request had been disposed of by the arbitration tribunal.

Recourse against an international arbitral award may be made to the Court of Appeal by an appeal on a point of law only if the parties to the arbitration agreement have expressly agreed that such right of appeal

is available to the parties in addition to the rights of recourse as contemplated in Article 34 of the UNCITRAL Model Law.

When it comes to domestic arbitral awards, recourse against an arbitral award may be made to the Court of Appeal by application for:

- setting aside in accordance with specific provisions of the Act;
- appeal on a point of law in accordance with specific provisions of the Act; and
- appeal on points of law and fact in accordance with specific provisions of the Act in the case of mandatory arbitrations.

In these cases, the application must be made within 15 days from the notification to the applicant of the award in accordance with the Act, and the applicant is to notify the arbitrators and the MAC with a copy of the application as soon as practicable but not later than 15 days after the application is filed.

## 11.2 Excluding/Expanding the Scope of Appeal

The parties may agree to exclude the right of appeal in domestic arbitrations either in the arbitration agreement or in a separate document in writing.

## 11.3 Standard of Judicial Review

In principle, there is no right to appeal (*de novo* review) an international arbitral award unless the invoked grounds require a limited review thereof, such as a violation of public policy. See **11.1 Grounds for Appeal**.

## 12. Enforcement of an Award

### 12.1 New York Convention

Malta is a signatory to the New York Convention, having signed and ratified it on 22 June 2000, and has incorporated its provisions into domestic law through the Act. Malta has made two reservations to the Convention: the reciprocity reservation, limiting its application to awards made in the territory of another Contracting State, and a reservation concerning its temporal scope, stipulating that the Convention

applies only to arbitration agreements concluded after Malta's accession.

The Act also incorporates the Geneva Protocol, the Geneva Convention, and the ICSID Convention.

### 12.2 Enforcement Procedure

Foreign awards to which the treaties set out in the Second Schedule to the Act apply are enforceable in the same manner as if they were awarded locally, once registered with the MAC. Part VIII of the Rules outlines the documents required for the registration of the foreign arbitral award with the MAC, these being:

- the duly authenticated original award or a duly certified copy thereof;
- a certified translation of the award into English when the award is not in the English language;
- the original arbitration agreement or a certified copy thereof;
- a sworn declaration by the applicant or their authorised attorney that no recourse has been taken and is pending against the award and the award is final; and
- the name, address and all other known communication details of the respondent, and if they are not resident or otherwise present in Malta, of their representative or other connected person in Malta together with a description of the connection to them or their property in Malta.

On receipt of an application with all the attachments, the registrar of the MAC shall serve the respondent with a copy of all the documents received. The respondent shall have ten working days to state in writing whether there are any reasons why the registrar should not proceed with the registration of the award.

On registration with the MAC, awards constitute executive titles. The awards are then enforced with the intervention of the national courts through the issuance of a number of executive warrants.

### Awards Set Aside

Maltese courts have not yet dealt with the issue of recognition of arbitral awards set aside at the seat of arbitration. In such a circumstance, it would be diffi-

cult to see Maltese courts enforce awards set aside at the seat, due to overarching principles of international arbitration and considerations of public policy.

Where an arbitration award has not been set aside at the seat of arbitration, but is subject to ongoing set-aside proceedings at the seat, the recognition procedure in Malta is typically stayed. This is in line with the procedural requirement under Rule 54 of the Rules which states that together with the application for recognition the applicant has to provide “a sworn declaration [...] that no recourse has been taken and is pending against the award and the award is final”. There is some uncertainty as to whether this requirement exceeds the minimum standards set by the New York Convention; however, in practice, it has led Maltese courts to suspend enforcement proceedings when annulment actions are pending at the seat of arbitration.

## Sovereign Immunity

Malta has not enacted national legislation on sovereign immunity or ratified any international conventions addressing the matter. Although Maltese courts have occasionally referred to foreign statutes such as the UK State Immunity Act and the US Foreign Sovereign Immunities Act, sovereign immunity generally applies as a principle of customary international law.

Maltese case law on the enforcement of judgments or awards against state-owned assets is limited. However, existing decisions on sovereign immunity from jurisdiction suggest that the defence may only be successfully invoked at the enforcement stage if the state or state entity demonstrates that the assets targeted are used for, or intended to be used in, the exercise of sovereign (public) functions.

In determining jurisdiction over a foreign state, Maltese courts typically distinguish between sovereign acts that are purely governmental (*acta jure imperii*) and those of a commercial nature (*acta jure gestionis*). For example, in *AWT Handels Gesellschaft mbH v Il-Bastiment M/V Dmitriy Polujan et*, the court held that the vessel in question, although owned by the State of Ukraine, was engaged in commercial activities as part of the Ukrainian maritime fleet and was therefore not entitled to sovereign immunity. Later cases, includ-

ing *Clark v Salem I.S. Alhenshiri pro et noe et*, have assessed sovereign immunity based on the subject matter of the dispute rather than strictly applying the *jure imperii/jure gestionis* distinction. In this instance, the court rejected Libya’s claim to immunity, finding no evidence that the obstruction of property rights in Malta that were the subject of the proceedings constituted a sovereign act.

Overall, Maltese jurisprudence reflects a willingness to apply international principles to limit sovereign immunity in cases involving commercial activities or commercial assets of a foreign sovereign. Consequently, an enforcing creditor must demonstrate that the property subject to enforcement qualifies as being used for “commercial activity” or “commercial purpose” under the applicable law. Furthermore, enforcement may be pursued against assets held by a state entity, even if the award was made against the state itself, provided that the entity is an organ of the state.

## 12.3 Approach of the Courts

The MAC and the Maltese courts apply a strict standard to the enforcement of awards but have generally taken a positive pro-arbitration stance towards the recognition and enforcement of arbitration awards, interpreting the Article V exceptions in the New York Convention restrictively. Awards are generally considered to violate public policy only in cases of blatant and manifest contrast with the basic principles of the Maltese legal framework. However, there is no developed case law on international public policy similar to French case law on the subject.

## 13. Miscellaneous

### 13.1 Class Action or Group Arbitration

While Maltese law does not specifically provide for class action arbitration, it is possible to have multiple parties as claimants or defendants to arbitration proceedings (Article 21A of the Act).

### 13.2 Ethical Codes

In Malta, arbitrators are governed by a code of ethics issued by the MAC, although this code has not been updated for some time. In practice, international soft law instruments – such as the IBA Guidelines on

Conflicts of Interest in International Arbitration – and professional standards from bodies like the Chartered Institute of Arbitrators (CI Arb) are commonly referenced and relied upon in international arbitrations seated in Malta.

Regarding legal counsel, there are no arbitration-specific codes under Maltese law. Instead, counsel are bound by the general ethical and professional standards applicable to legal practice in Malta, including those set by the Commission for the Administration of Justice.

### 13.3 Third-Party Funding

Third-party funding of an arbitral claim is not contemplated by Maltese law and there is currently no market for the industry.

### 13.4 Consolidation

An arbitral tribunal seated in Malta may consolidate separate arbitration proceedings relating to one or more contracts, but only under the following conditions:

- If the parties agree to consolidate the proceedings or to hold concurrent hearings, the parties have the freedom to set the terms and conditions for consolidation in accordance with Rule 52 (2) of the Rules.
- If there is no party agreement, the tribunal may order consolidation or concurrent hearings only if all parties have expressly authorised the tribunal to do so.

### 13.5 Binding of Third Parties

See 5.6 Jurisdiction Over Third Parties.

## Trends and Developments

### Contributed by:

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**Ganado Advocates**

**Ganado Advocates** is Malta's leading commercial law firm servicing international clients doing business in or through Malta; it has a particular focus on corporate, financial services, maritime/aviation, and dispute resolution, and has one of the leading dispute resolution practices in the jurisdiction. In international commercial and investment arbitration matters, Ganado Advocates has been engaged to represent clients under the leading sets of rules in Europe and

beyond. The firm regularly assists in the recognition and enforcement of foreign arbitration awards, setting-aside proceedings, interim and injunctive relief proceedings, as well as providing expert evidence on Maltese law in various arbitration proceedings. The team has a significant breadth of experience in matters relating to proceedings under the New York Convention and matters relating to sovereign immunity in international commercial arbitration.

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## Towards a Modernised Arbitration Framework in Malta: The Case for Legislative Reform

### *Introduction*

Malta's arbitration framework is built on a strong foundation, having been shaped from its inception on the UNCITRAL Model Law on International Commercial Arbitration of 1985 (the "UNCITRAL Model Law") and the UNCITRAL Arbitration Rules of 1976 (the "UNCITRAL Arbitration Rules"). Arbitration, including the recognition and enforcement of foreign awards, had long been recognised in Malta, but this legislative alignment, coupled with a centralised institutional framework under the Malta Arbitration Centre (MAC), was intended to offer a legally secure and procedurally sound environment for arbitration. In recent years, arbitration has seen steady growth in key sectors in Malta, driven by its inherent flexibility, confidentiality, and party autonomy.

To continue ensuring this growth and to further strengthen Malta's position as a seat for international commercial arbitration, targeted legislative refinement is now warranted. The current Arbitration Act (Chapter 387 of the Laws of Malta) (the "Arbitration Act" or the "Act") and Arbitration Rules (Subsidiary Legislation 387.01) (the "Arbitration Rules" or the "Rules") are based on the original 1985 UNCITRAL Model Law and 1976 UNCITRAL Arbitration Rules. Moreover, a number of practical and procedural challenges – particularly in areas such as recognition and enforcement, form requirements, and procedural consistency – have highlighted the need for modernisation in line with global trends.

This article identifies areas where Malta can build on its current strengths to ensure that its legal framework remains responsive to contemporary commercial realities and emerging arbitral practices. With thoughtful reform, Malta can consolidate its reputation as a reliable, arbitration-friendly jurisdiction for both domestic and cross-border disputes.

### *Current legal framework and a need for reform*

Arbitration in Malta is governed by the Arbitration Act and the Arbitration Rules, which together provide a structured legal framework for the conduct of arbitral proceedings. The MAC acts as the central institution responsible for administering both domestic and

international arbitrations seated in Malta, where the parties have not agreed to submit their dispute to a different arbitral institution. Its functions include the appointment of arbitrators, registration of awards, and general procedural support to arbitral tribunals. This institutional framework is underpinned by an accessible legal system and a judiciary that is generally supportive of arbitration.

The Act incorporates, in full, the UNCITRAL Model Law as its First Schedule. As a result, the core principles of international arbitration – party autonomy, competence-competence, limited judicial intervention, and equal treatment of parties – are firmly embedded in Maltese law. The Arbitration Rules, largely based on the 1976 UNCITRAL Arbitration Rules, provide procedural guidance applicable to both domestic and international arbitrations. Malta is also a party to key international instruments that support the enforcement of arbitration agreements and awards, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). The Act makes a distinction between domestic and international arbitration, with different provisions applying depending on the nature of the dispute. While this bifurcation is not unusual, it introduces certain procedural differences that may benefit from clarification or harmonisation, particularly as more disputes span multiple jurisdictions.

As international arbitration continues to evolve – driven by complex cross-border transactions, technological advancement, and procedural innovation – Malta's arbitration regime must be updated to remain competitive and aligned with global standards. Although litigation remains the primary method of dispute resolution locally, particularly due to its relatively low cost and the familiarity of court procedures, arbitration is the preferred dispute resolution mechanism across an increasing spectrum of economic activity having a link with Malta. There has been a noticeable rise in the use of arbitration clauses in areas such as construction, public procurement, intellectual property and shareholder agreements, signalling growing awareness of its advantages, including procedural flexibility, confidentiality, and the ability to appoint sector-specific arbitrators. Sustaining and expanding this momentum

will require both legislative updates and institutional strengthening.

If Malta is to position itself more prominently as a seat for international commercial arbitration, particularly in disputes involving parties from Europe, the Mediterranean, and Africa, it will need to modernise its framework. Encouragingly, reform efforts appear to be underway. The recent introduction of Bill No 133, which proposes the re-establishment of a Commercial Court and includes consequential amendments to the Arbitration Act, reflects a positive step towards institutional modernisation. If implemented coherently, particularly with respect to enforcement procedures, this reform could enhance the overall functionality and appeal of Malta's arbitration landscape. A specialised commercial court should provide added certainty and a constant confirmation of pro-arbitration bias of the Maltese courts in arbitrations seated in Malta and elsewhere, thus avoiding outlier judgments. In addition, the government has recently launched a public discussion initiative amongst arbitration practitioners, intended to lead to a holistic reform of the Arbitration Act.

### *Specific legislative gaps, challenges and proposed reforms*

Several targeted updates are needed to address emerging practical, procedural, and interpretive challenges. The following sub-sections outline key issues currently under discussion in Malta's arbitration community. They also highlight opportunities for modernisation and present some specific proposed reforms. These reforms aim not to overhaul Malta's existing framework, but rather to modernise it in line with international developments, comparative best practices, and the evolving needs of commercial users.

#### *UNCITRAL frameworks*

The Arbitration Act is based on the 1985 UNCITRAL Model Law, and the Arbitration Rules reflect the UNCITRAL Arbitration Rules of 1976. While these instruments were groundbreaking at the time, both have undergone important updates, particularly in 2006 and 2021, respectively. Malta has not yet incorporated the 2006 amendments to the Model Law, which introduced significant clarifications on issues such as the form of arbitration agreements and interim measures.

Likewise, the 2021 revision of the UNCITRAL Arbitration Rules includes provisions on expedited arbitration. These procedures are increasingly favoured in commercial contexts where efficiency and cost control are critical. Their introduction within the Maltese framework could therefore prove highly relevant to Malta's ambition to attract a wider range of commercial disputes.

#### *Form requirements and electronic agreements*

Article 7 (2) of the Model Law, as incorporated into Maltese law, defines an arbitration agreement as one made "in writing", which includes communications by letter, telex, telegram, or similar means. However, there is uncertainty as to whether modern forms of contracting such as emails, online terms and conditions, or clickwrap agreements fall within this scope. While Maltese courts are likely to adopt a liberal interpretation in line with international developments (including the 2006 Model Law amendments, the 1996 UNCITRAL Model Law on Electronic Commerce, and the 2005 UN Convention on Electronic Communications), these instruments do not automatically apply under Maltese law.

A clearer statutory framework recognising electronic and potentially cryptographic agreements would resolve this ambiguity and ensure legal certainty in the context of smart contracts and digital platforms. Adopting Option II of Article 7 of the amended UNCITRAL Model Law, which permits arbitration agreements made in any form capable of being evidenced by text, could also be a practical solution. This approach would encompass emails, digital platforms, smart contracts, and other electronic communications, aligning Maltese law with international trends and increasing its appeal in technology-driven industries. Other jurisdictions, such as Switzerland, have adopted similarly flexible approaches.

#### *Stay of judicial proceedings and Article 15 (3) of the Arbitration Act*

Article 15 (3) of the Arbitration Act allows a party to request a stay of court proceedings in favour of arbitration where a party to an arbitration agreement commences judicial proceedings in circumvention of such arbitration agreement, provided that the request is made "before delivering any pleadings or taking

other steps in the proceedings”. However, confusion has arisen over whether this application must be accompanied by a formal statement of defence, and courts have interpreted this differently in practice. In some cases (eg, *Cobra Installations Limited v Stephan Caruana*, Court of Appeal (Inferior Jurisdiction), 8 November 2013 and *Avv. John Refalo ne. v Avv. Abigail Bugeja ne. et.*, First Hall of the Civil Court, 24 October 2016), courts have interpreted the two options mentioned above as complementary rather than alternative, requiring respondents to file both an Article 15 (3) application and a reply with full defence. They have further held that failure to do so may constitute a waiver of the arbitration clause. As a result, the operation of Article 15 (3) of the Act should be clarified.

### *Recognition and enforcement of awards*

Rule 54 of the Arbitration Rules requires a party seeking recognition of an award to submit a sworn declaration that no recourse has been taken or is pending against the award, and that the award is final. There is a valid argument that this requirement may go beyond what is required under the New York Convention, which does not obligate applicants to certify that no recourse is pending, but instead allows for the refusal of recognition if the award has been set aside by a competent court. Since the New York Convention sets maximum standards that cannot be exceeded by domestic rules, this requirement may inadvertently undermine Malta’s reputation as a pro-enforcement jurisdiction. Removing or revising this requirement would reinforce Malta’s commitment to the New York Convention, prevent the application of requirements that are more burdensome than those it imposes, and confirm Malta’s pro-enforcement attitude.

Further, Rule 55 requires service of enforcement applications on respondents that are not resident or present in Malta through mechanisms that are often cumbersome and unclear. In particular, the rule provides that the MAC’s Registrar is to notify, in such cases, “such other person as [they] may establish as having representation of the respondent”, which has proven impractical in many cross-border contexts. A more streamlined and simplified procedure would improve enforceability and legal certainty. First, provisions regulating service abroad should be introduced for this

purpose. Second, and drawing on familiar mechanisms under Maltese civil procedure, recourse to the use of a curator ad litem in cases of failed service attempts would greatly reduce delays and procedural uncertainty in cross-border enforcement.

### *Jurisdictional challenges and the principle of competence-competence*

Maltese law recognises the principle of competence-competence, allowing arbitral tribunals to rule on their own jurisdiction. However, current rules provide for an appeal to the Court of Appeal from interim decisions affirming jurisdiction, but not from those declining jurisdiction. While this is not unusual (eg, Germany has a similar approach), it creates an imbalance in access to judicial review. Malta may wish to consider harmonising review mechanisms in both directions, especially in light of similar discussions in other reforming jurisdictions. Such an amendment would promote greater procedural efficiency in cases involving parallel court and arbitral proceedings.

### *Other suggested improvements*

Several additional enhancements, though more limited in scope, could also make Malta’s arbitration framework more robust and responsive to international expectations:

- **Emergency Arbitrators and Interim Measures:** Maltese law is currently silent on emergency arbitrators, and the enforceability of orders issued in emergency (expedited) arbitration proceedings under institutional rules remains untested in local courts. As things stand, recourse to an emergency arbitrator does not in itself preclude national courts from issuing interim relief in support of the arbitration, however, it is unclear how these interact with emergency arbitrator orders. Introducing provisions that recognise emergency arbitrator orders and clarify their relationship with interim measures granted by national courts would provide greater flexibility to parties seeking urgent relief.
- **Remote Hearings and Videoconferencing:** In an increasingly digital legal environment, the possibility of remote hearings should be explicitly provided for in Maltese arbitration law. This would allow arbitral proceedings to be conducted more efficiently and with greater flexibility. Drawing inspiration from

the IBA Rules on the Taking of Evidence (2020) and recent reforms in other jurisdictions, Malta could codify: (i) the tribunal's discretion to hold oral hearings via videoconference; and (ii) rules concerning the recording and authentication of such hearings.

- **Consolidation, Joinder, and Multi-Contract Proceedings:** As complex, multi-party disputes become more common, Malta would benefit from express provisions allowing for joinder of third parties, consolidation of parallel proceedings, and multi-contract arbitration. These mechanisms would enhance procedural efficiency and flexibility, particularly in infrastructure, finance, and energy disputes.
- **Third-Party Funding:** Although not prohibited, third-party funding remains unregulated in Malta. Introducing clear guidelines on the disclosure of funding arrangements for purposes of transparency and conflict checks, along with provisions on cost recovery, would provide greater certainty for parties and tribunals alike.
- **Arbitrator Ethics and Conflicts of Interest:** Updating the Code of Ethics for Arbitrators issued by the Malta Arbitration Centre and aligning it with international soft law instruments such as the International Bar Association (IBA) Guidelines on Conflicts of Interest or Chartered Institute of Arbitrator's (CIArb) Code of Conduct, would promote further integrity, impartiality, and party confidence in arbitral appointments.

### Implications of Bill No 133

The proposed Bill No 133, which introduces the re-establishment of a Commercial Court, includes a notable shift in competence over matters relating to the recognition and enforcement of foreign arbitral awards. Under the current framework, the MAC is the designated authority for such functions. However, under the Bill's present formulation, this responsibility would move to the newly created Commercial Court.

While this development could streamline the enforcement process by aligning it more closely with judicial mechanisms, it also raises important questions of legislative consistency. In particular, Article 253 (d) of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta) (COCP) currently classifies arbitral awards registered with the MAC as executive titles. If the MAC's role in the recognition process is removed, this provision would require amendment to reflect that recognition by the Commercial Court, rather than MAC registration, is the operative basis for enforceability. Such an adjustment would be necessary to ensure that the transition in authority does not inadvertently undermine the effectiveness of arbitration awards as executive titles.

### Conclusion

There is clear momentum behind arbitration in Malta, particularly in sectors such as construction, public procurement, and shareholder disputes. Updating Malta's arbitration regime through targeted legislative reform and institutional strengthening offers a timely opportunity to enhance its international appeal and ensure it remains fit for purpose in a changing global landscape. The proposed introduction of the Commercial Court under Bill No 133, along with the shift of recognition and enforcement functions to the judiciary, represents a constructive development. To be effective, however, these changes must be accompanied by coherent amendments to related legislation, including the COCP, the Arbitration Act, and the Arbitration Rules. Ultimately, this should form part of a broader strategy to modernise and consolidate Malta's arbitration framework, building on its existing strengths and positioning it for the decade ahead.

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## CHAMBERS GLOBAL PRACTICE GUIDES

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