

# Legal 500

## Country Comparative Guides 2026

**Malta**

**Construction**

**Contributor**

**Ganado Advocates**



**Dr. Antoine G. Cremona**

Partner | [agcremona@ganado.com](mailto:agcremona@ganado.com)

**Anselmo Mifsud Bonnici**

Senior Associate | [ambonnici@ganado.com](mailto:ambonnici@ganado.com)

**Jacques Farrugia**

Associate | [jvfarrugia@ganado.com](mailto:jvfarrugia@ganado.com)

**Krista Muscat**

Advocate | [kmuscat@ganado.com](mailto:kmuscat@ganado.com)

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

For a full list of jurisdictional Q&As visit [legal500.com/guides](https://legal500.com/guides)

## Malta: Construction

### 1. Is your jurisdiction a common law or civil law jurisdiction?

Malta has a hybrid legal system, combining elements of both civil law and common law traditions. Its core private law framework is derived from Roman law, while certain areas of commercial law reflect common law influence.

In the area of construction law, however, Malta is predominantly a civil law jurisdiction. Construction-related matters such as contractual obligations, liability for defects, and prescription are primarily governed by the Civil Code (Chapter 16 of the Laws of Malta).

Although common law influences emerge in practice, particularly through the use of international standard form contracts, the substantive legal framework governing construction remains rooted in civil law principles.

### 2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

Construction and engineering projects in Malta are governed by a number of different regulations which impose obligations at contractual, planning, statutory, regulatory and procurement levels.

The Development Planning Act (Chapter 552 of the Laws of Malta) imposes obligations concerning development permission. No development may be carried out without the required permission or in breach of its conditions. Where development is undertaken without permission or in contravention of conditions, the Executive Council of the Planning Authority may issue stop notices and/or enforcement notices. Enforcement notices may require demolition, alteration, restoration of land to its original condition, or cessation of unlawful use. The Planning Authority also monitors development to ensure compliance with permits, licences and certificates issued concurrently with planning decisions. Developers, contractors, architects and site professionals are therefore under a continuing obligation to ensure that works are authorised and carried out strictly in accordance with approved permits and applicable policies.

While the Development Planning Act regulates whether works are permitted, the Building and Construction Authority Act (Chapter 623 of the Laws of Malta) further provides minimum statutory requirements and regulations which must be observed by all stakeholders before the commencement and during the execution of building and construction works. The Building and Construction Authority Act establishes the Building and Construction Authority and provides for the development and implementation of a National Building and Construction Code, the process for which commenced in early 2025 and is targeted to be completed over a three-year period. The Building and Construction Authority Act governs the regulation, oversight and enforcement of demolition, excavation and construction activities in Malta, including both permanent and temporary works, and places particular emphasis on matters such as ensuring safe construction practices, health and safety on site, safeguarding third parties and neighbouring properties, professional accountability, licensing, technical standards, structural integrity, fire safety and environmental protection. Compliance with these standards is mandatory and no person may carry out prescribed construction activities unless properly qualified and licensed in accordance with regulations. Licences may be suspended or revoked for misconduct, negligence, or non-compliance with regulatory requirements, and enforcement notices may be served on owners, contractors, clients or other responsible persons requiring compliance within a specified period. This regime imposes statutory obligations relating to professional competence, adherence to technical standards and regulatory accountability.

Where construction projects are procured by public bodies, the Public Procurement Regulations (S.L. 601.03 of the Laws of Malta) apply. Public works contracts must follow the prescribed procurement procedures and may only be awarded where the tender complies with the procurement documents and the tenderer satisfies the relevant selection criteria. In addition, the main contractor remains liable for the acts or omissions of its sub-contractors. Accordingly, contractors engaged in public projects are subject to statutory duties of procedural compliance, transparency and proper contract performance.

Beyond performance obligations, the Civil Code governs liability in construction disputes, including contractual

liability for defective or incomplete works, damages for non-performance or delay, and the respective rights and obligations of employers and contractors. It also regulates the prescription of actions, setting time limits within which claims must be brought.

Construction and Engineering projects are also subject to other laws relating to health and safety and the environment, which will be discussed in question 3 below.

**3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.**

**a. health and safety;**

Health and safety on construction sites in Malta is principally regulated by the Health and Safety at Work (Minimum Health and Safety Requirements for Work at Construction Sites) Regulations (S.L. 646.27 of the Laws of Malta). The Regulations establish minimum standards and impose specific duties on clients, project supervisors, contractors and workers.

Before works commence, the client must appoint a Project Supervisor for Health and Safety Matters, who must be a competent person registered with the Occupational Health and Safety Authority. Works may not start or progress unless such appointment is validly made and notified to the Authority, and failure to do so constitutes an offence. The 'client', namely the natural or legal person for whom a project is carried out, must also ensure that a health and safety plan is drawn up prior to the setting up of the construction site, and that a health and safety file is compiled and kept available for future works. For larger projects exceeding specified thresholds of duration or workforce, a prior notice must be submitted to the Authority at least four weeks before works commence.

The Project Supervisor coordinates health and safety both at design and execution stages. The supervisor must prepare and update the health and safety plan, particularly where works involve particular risks such as excavation, demolition or work at height. During execution, the supervisor must coordinate preventive measures, organise cooperation between contractors, carry out inspections, issue written reports identifying hazards and corrective measures, and may order the suspension of works where there is a serious and imminent risk.

Contractors must cooperate with the supervisor, comply with directions, and implement the preventive and protective measures set out in the health and safety plan. They are required to carry out a written, suitable and sufficient risk assessment for each project, keep it updated, and implement the protective measures identified. Contractors must also ensure that works receive adequate information, instruction and training, and comply with requirements concerning personal protective equipment and work equipment.

**b. environmental issues;**

The Environmental Permitting (Procedure for Applications and their Determination) Regulations, 2025 (Subsidiary Legislation 549.172), enacted under the Environment Protection Act (Chapter 549 of the Laws of Malta) establish a framework governing any activity, operation or intervention that may have an environmental impact, and they apply to projects processed by the Environment and Resources Authority (ERA). Any activity listed in the First or Second Schedule to the Regulations cannot be carried out without an environmental permit issued by ERA.

The Regulations introduce a three-tier system of environmental permits, depending on the nature and environmental risk of the activity:

- Level I – low-risk activities, subject to shorter processing and consultation periods.
- Level II – activities with moderate environmental implications.
- Level III – high-risk or industrial-scale activities, subject to the most rigorous assessment and the longest processing timeframe.

The First Schedule lists the activities which require prior permitting, and includes quarrying operations, waste management facilities, storage and treatment of construction and demolition waste, marine discharges, aquaculture, fuel storage, and industrial emissions-related activities.

The Second Schedule introduces additional activities that must obtain clearance and subsequently full permitting, including land reclamation, cement packaging facilities, cement terminals, shipyards, animal slaughterhouses and certain manufacturing operations.

Environmental permitting must be considered at the earliest stages of project planning and due diligence. Activities involving excavation, quarrying, waste handling, reclamation, discharge of effluent, fuel storage, industrial

processing or works within protected areas may require an environmental permit in addition to development planning permission.

Failure to secure the required environmental authorisation may result in refusal of the application, suspension of works, penalties, revocation of permits, or enforcement proceedings.

#### **e. planning;**

Planning requirements for construction projects are mainly governed by the Development Planning Act.

As a general rule, no "development", which includes building operations, engineering operations, material changes of use, and certain alterations, may be carried out without a development permit issued by the Planning Authority, unless expressly exempted by law.

The Planning Authority, established under the Development Planning Act, is the competent authority responsible for the receipt, processing and determination of development applications. Development planning in Malta is regulated through approved plans, policies and regulations. These instruments are binding and must be taken into account when assessing applications for development permission. Accordingly, parties must ensure that proposed works conform not only to the statutory requirements of the Development Planning Act but also to the applicable planning policies and local plan provisions in force at the time of the application.

An application for development permission must be submitted in the prescribed form and manner and is subject to public consultation procedures. The Authority is required to maintain a public register of all applications and decisions, including the relevant plans and reports, and interested parties may submit representations within the consultation periods. For certain categories of development, including major projects, an Environmental Impact Assessment or other form of assessment may be required in accordance with applicable regulations. Non-compliance with these requirements may result in refusal of permission or subsequent legal challenge.

Where permission is granted, it is subject to conditions, and a commencement notice must be submitted by the architect (perit) on behalf of the applicant at least five days prior to the commencement of works or utilisation of the permit. In addition, development permission fees and infrastructure contributions are payable in accordance with the Development Planning Act. Failure to adhere to the terms and conditions of a development permit, or the carrying out of works without permission,

constitutes illegal development and exposes the parties to enforcement action, administrative penalties and potential criminal liability.

#### **d. employment; and**

Employment is mainly regulated by the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta). This Act governs contracts of employment, recognised conditions of employment, protection of wages, working time, leave entitlements, termination, unfair dismissal, discrimination, collective bargaining and the jurisdiction of the Industrial Tribunal.

In the construction sector, the general framework under Chapter 452 is supplemented by the Construction Wages Council Order (Subsidiary Legislation 452.08 of the Laws of Malta), which establishes the Construction Wages Council and defines its field of operation, covering employees engaged in building, civil engineering, mechanical and electrical engineering works, marble works and lime kilns, and the Construction Wages Council Wage Regulation Order (Subsidiary Legislation 452.59 of the Laws of Malta), which sets out binding minimum conditions for employees within the sector, including minimum wages, normal working hours, overtime rates, rest periods, vacation leave, sick leave and other statutory entitlements.

#### **e. anti-corruption and bribery.**

At the institutional level, the Permanent Commission Against Corruption Act (Chapter 326 of the Laws of Malta) establishes an independent Permanent Commission Against Corruption vested with powers to investigate alleged or suspected corrupt practices involving public officers and persons entrusted with public functions.

Corruption and bribery offences are criminalised under Sub-title IV, Part II, Book First of the Criminal Code (Chapter 9 of the Laws of Malta).

Malta has also adopted a National Anti-Fraud and Corruption Strategy in 2021 (NAFCS), which aims to strengthen prevention, deterrence, detection, investigation and prosecution of fraud and corruption, while promoting transparency and accountability across public administration. The Internal Audit and Investigations Department published an updated National Risk Assessment on Fraud and Corruption in 2024, which is subject to biennial review in accordance with the NAFCS Action Plan.

The Public Procurement Regulations (Subsidiary Legislation 601.03) impose transparency obligations

throughout the tendering process and at the contract award stage. Where there is evidence of collusion or corruption, a tender would be considered as irregular. The authority responsible for the tendering process is required to exclude economic operators from participation in a procurement procedure who have been the subject of a conviction by final judgment for, among other reasons, corruption, fraud or money laundering, in accordance with the mandatory exclusion grounds set out in the Public Procurement Regulations. A public may likewise not be awarded to an economic operator who, during the procurement procedure, is subject to a conflict of interests.

Any interested person may also challenge the tendering process and/or the award of any public contract before the Public Contracts Review Board and the said Board's decision is subject to a further appeal to the Court of Appeal, sitting in its superior jurisdiction.

The Protection of the Whistleblower Act (Chapter 527 of the Laws of Malta) protects public and private employees and workers making protected disclosures concerning bribery, corruption or other improper practices and wrongdoings, and prohibits detrimental action against such persons.

#### **4. What permits, licences and/or other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?**

Under the Construction Industry Licensing Regulations (Subsidiary Legislation 623.09 of the Laws of Malta), any person or entity intending to carry out demolition, excavation, piling or construction works in Malta must first obtain a valid contractor's licence from the Building and Construction Authority. The exercise of any of the service activities listed in Schedule I of the Regulations may not be undertaken without a valid licence.

An applicant must submit the prescribed application form together with the relevant administrative fee, VAT registration details, a recent conduct certificate, a declaration of non-bankruptcy, proof of financial standing, and documentation evidencing that the applicable qualification and experience thresholds in Schedule II are satisfied. Where the applicant is a company, additional documentation is required, including details of the licensed administrator, board resolutions, and conduct certificates for directors. In certain circumstances, an applicant who has submitted a complete and valid application may continue operating pending determination, particularly where a provisional

clearance is issued.

Before commencing any works, the licensed contractor must also ensure that appropriate insurance policies are in place. The licence holder is required to maintain insurance covering third-party liability for loss, damage, injury or death arising from the works, as well as insurance covering workplace risks and bodily harm to employees. Failure to maintain such insurance may result in personal liability, including, in the case of companies, personal liability of directors. Additionally, licensed contractors must ensure that works are supervised by suitably qualified personnel and that the relevant certification requirements (including Level 4 plant supervisor certifications for demolition and excavation works and mason licensing requirements for construction works) are satisfied in accordance with Schedule II.

During the execution of the works, the licensed contractor is required to comply with all licence conditions and with any orders or requirements imposed by the Authority. The licensed contractor must ensure that works conform to applicable regulations and guidelines and must abide by directions issued by the architect and other competent authorities. The licence certificate must be issued upon payment of the applicable fee and kept in the possession of the licensed contractor at all times. Any changes to licence details, nominated personnel, or the licensed administrator must be notified to the Authority without delay, and where a licensed administrator ceases to act, the licensed activity must be suspended until a replacement is approved. Licences are valid for two years and must be renewed not later than 90 days prior to expiry.

Following completion of works, contractors remain responsible and liable for the works executed and for any resulting damages. If a contractor wishes to cease operations, a formal application for cancellation of the licence must be submitted together with the prescribed fee. Cancellation does not affect liability for works previously carried out.

A person who carries out licensable activity without a valid licence, or while the licence is suspended, commits a criminal offence and is liable upon conviction to imprisonment of up to six (6) months, or to a fine of up to €50,000, or to both such punishments, together with daily fines for continuing offences. Breaches of licence conditions or other regulatory provisions may result in the imposition of fines of up to €10,000, plus daily penalties for continuing infringements. The Authority may also impose administrative penalties following the issue of an enforcement notice, and may suspend or revoke a licence for failure to comply with statutory requirements.

In addition, the Court may order suspension or revocation of a licence upon conviction.

## 5. Is tort law or a law of extra-contractual obligations recognised in your jurisdiction?

Yes, Maltese law clearly recognises tort law, or more properly, a system of extra-contractual obligations. Tort is governed by Book Second, Part II, Title IV, Sub-title II of the Civil Code, specifically entitled "Of Quasi-contracts, Torts and Quasi-torts" (Articles 1012 to 1051A of the Civil Code).

Under this framework, a person who, through fault, causes damage to another may incur liability even in the absence of a contractual link. The injured party must generally establish a wrongful act or omission, fault, damage, and a causal link between the fault and the damage.

The Civil Code contains a number of specific provisions that are particularly relevant in the construction context. Article 1037 provides that where a person employs another who is incompetent, or whom he has no reasonable grounds to consider competent, he shall be liable for any damage which such person may cause through incompetence in the performance of the work. Article 1038 further establishes that any person who undertakes work without the necessary skill is liable for damage caused through his unskilfulness.

In addition, Article 1041 imposes liability on the owner of a building for damage caused by its collapse where such collapse is due to lack of repairs or a defect in construction, provided the owner was aware, or had reasonable grounds to believe, that such defect existed.

As regards quantum, Article 1045(1) provides that damages recoverable under the extra-contractual regime include the actual loss directly caused to the injured party, expenses incurred as a consequence of the damage, loss of actual wages or earnings, and loss of future earnings arising from permanent incapacity, whether total or partial. The measure of damages is therefore compensatory in nature and aims to restore the injured party, as far as possible, to the position he would have been in had the wrongful act not occurred.

Article 1638 of the Civil Code establishes an extended liability regime applicable to architects and contractors in relation to buildings and other substantial stone works. It provides that where such works perish, wholly or in part, or be in manifest danger of falling to ruin, owing to a defect in the construction, or even owing to some defect

in the ground the architect and the contractor may be held responsible. Provided that such event occurs within fifteen years from completion, and an action is brought within two years from the day on which any of the said cases shall have occurred. The rules governing extra-contractual liability under the Civil Code function autonomously from other legislative frameworks that regulate construction activities. For example, the Avoidance of Damage to Third Party Property Regulations (Subsidiary Legislation 623.06) expressly clarify that these regulations do not exempt the developer, the architect in charge of the project, the site technical officer and contractor or the sub-contractor from observing other obligations and provisions of the law that are regulated by other laws. This clear delineation ensures that civil liability remains under the purview of the Civil Code, while matters of administrative and regulatory compliance are addressed through distinct statutory mechanisms.

## 6. Who are the typical parties involved in a construction and engineering project?

Construction and engineering projects involve both private and public stakeholders, depending on the nature and scale of the development. Every project includes the employer or developer, who may be a private individual, a property development company, or a public authority.

The design team generally includes architects and civil and structural engineers. Under Maltese law and practice, the architect often performs a central coordinating role, not only in preparing the design and technical drawings but also in administering the building contract and certifying payments. Other specialist consultants may also be engaged depending on the project's scale and complexity, such as mechanical and electrical engineers, quantity surveyors, project managers, geotechnical consultants, and health and safety practitioners.

The main contractor is engaged to execute the works in accordance with the contract documents.

In public sector projects, the employer is a contracting authority, and the procurement process is regulated by the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta). These regulations govern tendering procedures, evaluation and award of public works contracts.

Banks or other lenders may impose conditions relating to disbursement of funds, project milestones and security arrangements.

Lastly, regulatory authorities are also involved. Development permits are dealt with by the Planning Authority under the Development Planning Act. Building standards and construction site regulation fall under the Building and Construction Authority Act, which establishes the Building and Construction Authority and regulates site safety, licensing of contractors and compliance obligations. The Occupational Health and Safety Authority ensures health and safety standards are upheld on construction sites. The Environment and Resources Authority evaluates environmental impacts of construction projects and enforces environmental regulations. Transport Malta regulates road access, traffic management and transport related infrastructure during construction works. The Superintendence of Cultural Heritage assesses and protects cultural heritage sites potentially affected by construction.

## 7. What are the most popular methods of procurement?

The methods of procurement in construction projects in Malta depend primarily on whether the employer is a public authority or a private entity.

In the case of government procurement, including projects involving Government land, the process is tightly regulated. Public works contracts are governed by the Public Procurement Regulations, which require contracting authorities to follow prescribed procedures such as the open procedure, restricted procedure, competitive dialogue or negotiated procedure, depending on the nature and value of the contract. The open procedure, where any interested contractor may submit a bid, is the most commonly used method for construction works. These procedures are underpinned by principles of transparency, equal treatment, non-discrimination and competition, and the contracting authority must comply with strict rules on publication, selection criteria, exclusion grounds and award criteria.

By contrast, in private construction projects, procurement is largely left to the discretion of the employer. There is no statutory obligation on a private developer to issue a public call for tenders. The employer may opt for an open tender, selective tendering (inviting a limited number of contractors), negotiated procurement, or direct appointment of a contractor. The choice is typically influenced by commercial considerations such as time, cost certainty, and the employer's prior relationship with contractors. The process is governed primarily by the agreed contractual framework, general principles of civil law and other legislative frameworks that regulate construction activities, rather than by procurement

legislation.

## 8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

The most widely used standard forms of contract in the construction industry are the FIDIC forms of contract published by the International Federation of Consulting Engineers.

These are commonly adopted for medium to large-scale projects, particularly in the private sector. By contrast, public sector works have traditionally been governed by the General Conditions for Works Contracts issued by the Department of Contracts. Notwithstanding this, recent procurement exercises have increasingly incorporated FIDIC forms, reflecting a gradual alignment of public procurement practices with those prevailing in privately commissioned construction projects.

## 9. Are there any restrictions or legislative regimes affecting procurement?

Yes, the procurement of works, services and supplies by contracting authorities in Malta is subject to the Public Procurement Regulations. These Regulations impose comprehensive restrictions across, eligibility, procedural compliance and financial thresholds to ensure transparency, equal treatment and fair competition.

Contracts below the prescribed threshold may be administered directly by the contracting authority, whereas contracts meeting or exceeding the threshold must be issued, administered and determined by the Director of Contracts on behalf of the contracting authority. The Minister is empowered to determine the applicable thresholds in line with EU law.

Certain contracts are expressly excluded from the scope of the Regulations, such as contracts relating to the acquisition or rental of land and other immovable property, defence and security contracts, and contracts governed by international agreements.

## 10. Do parties typically engage consultants? What forms are used?

Yes, in both the Government and private sectors it is typical for parties to engage professional consultants in construction and engineering projects. Consultants commonly include architects, civil and structural

engineers, quantity surveyors, project managers and other technical advisors, depending on the project. Their appointment is usually governed by a separate agreement setting out the scope of services, remuneration, liability and duration of engagement.

In the Government sector, the Department of Contracts publishes the General Conditions of Contract for Contracts of Supply and for Contracts of Works, which are updated periodically and made available on the eTenders.com.mt website. These General Conditions form part of the tender documentation issued by the contracting authority. For each specific project, the contracting authority typically drafts Special Conditions which amend, supplement or vary the General Conditions to address the specific technical, financial and administrative requirements of the project. Together, the General Conditions and the Special Conditions regulate the relationship between the contracting authority and the successful contractor and set out the terms binding on bidders.

Consultants engaged on Government projects are similarly appointed under formal written contracts, often aligned with the procurement framework applicable to public service contracts.

In the private sector, there are no mandatory or standard forms. The parties are free to agree the terms governing their relationship. It is nevertheless common practice for employers to engage consultants under written agreements defining their professional duties. Where FIDIC forms are adopted, consultancy services are typically governed by the FIDIC White Book (Client/Consultant Model Services Agreement).

## 11. Is subcontracting permitted?

With regards to public contracts falling under the Public Procurement Regulations, subcontracting is expressly permitted but is subject to specific conditions. Regulation 60 provides the principal framework governing subcontracting arrangements in public contracts.

The contracting authority may require, in the procurement documents, that the tenderer indicates any share of the contract which it intends to subcontract to third parties, together with the identity of any proposed subcontractors. The tenderer remains the main contractor and is fully liable for all acts and omissions of its subcontractors. Accordingly, subcontracting does not relieve the successful bidder of contractual responsibility towards the contracting authority.

In the specific context of public works contracts and services performed at facilities under the direct oversight of the contracting authority, further obligations apply. After the award, and at the latest upon commencement of performance, the main contractor must notify the contracting authority of the name, contact details and legal representatives of its subcontractors, and must keep this information updated throughout the contract's execution. This requirement does not apply to suppliers, unless extended by the contracting authority in accordance with the Regulations.

Subcontractors are also subject to the exclusion and blacklisting regime. Regulation 191 makes it clear that no economic operator or subcontractor may be given a public contract if subject to exclusion or blacklisting grounds. Where a subcontractor is found to be excluded or blacklisted during the procurement process, the contracting authority must require its replacement; failure by the main contractor to do so results in automatic exclusion of the tender. This ensures that subcontracting cannot be used to circumvent mandatory exclusion rules.

Failure by the main contractor to comply with the subcontracting obligations may entitle the contracting authority to suspend payments or even terminate the contract.

Subcontracting is not expressly regulated as such in the Civil Code in the same detailed manner as under public procurement law. However, within the framework of the contract of works (*locatio operis*), the Civil Code clearly contemplates the involvement of third parties and, in principle, permits the contractor to employ others in the execution of the work.

A contract of works is defined in article 1633 as a contract whereby a person undertakes to execute certain work, either by bestowing only his labour or skill, or by also supplying the materials. The Code does not prohibit the contractor from engaging assistants or other workmen to perform the work. On the contrary, article 1642 expressly provides that the contractor is responsible for the acts of the persons employed by him. This provision therefore recognises that the contractor may employ others (which in practice may include subcontractors), while maintaining full responsibility towards the employer.

Moreover, article 1643 clarifies that masons, carpenters and other artificers employed in the construction of a building have no direct action against the employer, except to the extent of sums due by the employer to the contractor. Thus, the contractual relationship remains between employer and main contractor, and any persons

engaged by the latter have recourse primarily against him, not against the employer. Subcontracting, therefore, does not create a direct contractual link between the employer and the subcontractor.

## 12. How are projects typically financed?

Construction projects in Malta are typically financed through short-term working capital facilities, bank financing, intra-group funding and, in some cases, capital market instruments.

With regards to short-term finance, trade credit is commonly used, which reflects the importance of supplier financing within the industry. Additionally, funding from related parties is also common, particularly where construction companies form part of wider corporate groups. Bank overdrafts are also used to meet operational liquidity needs and, in certain cases, to support project cash flow requirements.

Long-term financing is primarily obtained for specific development projects and for the acquisition or upgrading of high-value plant and equipment. Conventional bank loans remain the principal source of such funding. Overdraft facilities are often used for operational purposes, while term loans are more typically linked to particular projects.

Some construction groups have issued bonds to the public, usually through a finance vehicle within the group structure, mainly to fund identified projects rather than general operations.

## 13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

Typically medium to large scale projects in Malta are secured by performance guarantees issued in favour of employers, for both private and public projects. The guarantee is generally in the form of a first on demand bank guarantee and covers an amount between 4%-10% of the agreed contract price. Depending on the type of contract, the performance guarantee is held up to handing over of the works to the Employer or upon the passing of the defects notification period.

The contracting parties often agree that retention monies are withheld by the Employer as security for the Contractor's performance and to ensure that defects are remedied during the defects liability period.

It is also common for advance payment guarantees to be provided to the Employer, whenever an advance payment is provided by the Employer. Such guarantee is held until the advance payment has been repaid. Whilst parent company guarantees are less common, they are occasionally requested by either the Contractor or the Employer, in case the other party is a special purpose vehicle company or a company with minimal assets.

## 14. Is there any specific legislation relating to payment in the industry?

No, Malta does not have any sector-specific legislation that regulates payment practices exclusively for the construction industry. Payment obligations between contracting parties to a construction contract may generally be classified as commercial obligations when both parties qualify as "undertakings" engaging in economic activity. This classification triggers the indirect application of the EU Late Payment Directive, which was transposed into the Commercial Code (Chapter 13 of the Laws of Malta) and which provides for enhanced creditor protection, automatic accrual of interest and higher interest rates in comparison with the interest payment obligations under the Civil Code (Chapter 16 of the Laws of Malta).

Briefly, Article 26C of the Commercial Code in relation to transactions between undertakings provides that unless otherwise agreed, payment becomes due 30 days from the invoice or receipt of goods/services. It also provides that contractually agreed payment periods may not exceed 60 days, unless a longer period is expressly agreed and is not grossly unfair to the creditor.

With regards to where the debtor is a public authority, Article 26D fixes a general maximum payment period of 30 days, with a limited possibility of extension to 60 days for certain public entities.

In practice, payment arrangements in construction projects are primarily determined by the contractual terms agreed between the parties, subject to the provisions set out in Articles 26A to 26J of the Commercial Code, where this legal framework applies.

## 15. Are pay-when-paid clauses (i.e. clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

Pay-when-paid clauses are not specifically excluded and are generally considered as permissible under Maltese

law. Whilst generally the payment obligations of the main construction contract and subcontract remain distinct from each other, it is not uncommon for "pay-when-paid" clauses to be included in the subcontract agreement. More rarely, parties have also agreed to include "pay-if-paid" clauses.

#### **16. Do your contracts contain retention provisions and, if so, how do they operate?**

Typically medium to large scale projects in Malta contain retention provisions, both for private and public projects. Amounts are generally retained from interim payments to guarantee the performance of the contractor and released either as one or two tranches following either completion of the works or the expiry of the defects notification period. The percentage of retention generally hovers between 5%-10%.

#### **17. Do contracts commonly contain liquidated delay damages provisions and are these upheld by the courts?**

Yes, construction contracts in Malta commonly contain liquidated delay damages or penalty clauses providing for the payment of a fixed sum in the event of delay in completion. Such clauses are particularly prevalent in works contracts, where time for completion is contractually stipulated and a daily or weekly rate is agreed to apply in case of completion beyond the stipulated time for completion or the completion date.

Under Maltese law, penalty clauses are expressly regulated by Articles 1118 to 1124 of the Civil Code. A penalty clause agreed by the parties is, in principle, valid and enforceable. Where a contract stipulates a penalty for mere delay, the employer is generally entitled to claim the agreed amount upon proof of delay, without the need to prove the actual quantum of loss. The clause operates as a pre-determined contractual consequence of breach.

Maltese courts do not treat penalty clauses as *prima facie* unenforceable. On the contrary, the starting point is that contractual provisions freely agreed between the parties are binding in accordance with the principle of *pacta sunt servanda*. Provisions providing for liquidated damages in cases of delay are therefore usually upheld.

That said, the courts retain a supervisory role grounded in the principle of good faith. In certain circumstances, particularly where the stipulated penalty is manifestly disproportionate to the nature or gravity of the breach, the courts have intervened to reduce the amount claimed.

Furthermore, the Civil Code limits double recovery. As a general rule, a party may not claim both the contractual penalty and damages for the same breach unless the contract expressly provides that the penalty is stipulated specifically for mere delay and is without prejudice to additional damages. Where the wording permits, Maltese courts have allowed recovery of both the agreed delay penalty and proven additional loss.

#### **18. Are the parties able to exclude or limit liability?**

Yes, parties are generally free to contract and may agree to exclude or limit liability. However, such clauses are not absolute and are subject to judicial scrutiny, particularly where they purport to exclude liability for serious breaches of contract.

The Maltese courts have consistently held that exemption or limitation clauses cannot shield a party from liability arising from negligence, including *culpa lata* (gross negligence), *culpa levis* (failure to exercise the diligence of a bonus pater familias), and *culpa levissima* (slight negligence). In particular, where a party is engaged to provide professional or remunerated services, the courts have emphasised that a higher standard of care is expected and that such parties cannot rely on exemption clauses to evade responsibility for negligent conduct.

In the specific context of construction contracts, Article 1638 of the Civil Code imposes a 15-year liability period on architects and contractors. If, within fifteen years from completion, a building or other substantial stone structure collapses, wholly or in part, or is in evident danger of collapse due to defects in construction or defects in the ground, the architect and contractor are jointly responsible. Any action for damages under this provision must be brought within two years from the date on which the defect or collapse occurs. Such provision is a mandatory provision of the law and cannot be excluded.

Furthermore, under Article 1642 of the Civil Code, the contractor is responsible for the acts and omissions of persons employed by him in the execution of the works.

#### **19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?**

Yes, as a general rule, parties are at liberty to regulate termination rights in their agreements, including the grounds and consequences of termination.

In the context of contracts of work, Article 1640 of the Civil Code expressly regulates the employer's right to terminate. The employer may unilaterally dissolve the contract at any time, even after the works have commenced, without the need for court authorisation. Dissolution takes effect immediately upon notification to the contractor.

Where there is no valid reason for the termination, the employer must compensate the contractor for all expenses incurred and works executed, and must also pay an additional amount, determined by the court according to the circumstances, capped at the profit the contractor would have made under the contract. Where there is a valid reason, the employer is only required to pay an amount not exceeding the contractor's expenses and work carried out, taking into account the benefit derived by the employer and any damages suffered.

Accordingly, Maltese law recognises a form of termination for convenience in contracts of work, subject to compensation.

With regards to force majeure, this is generally contemplated in contracts. It is also recognised under Article 1134 of the Civil Code, which provides that a debtor shall not be liable for damages where performance is prevented by an irresistible force or a fortuitous event.

The Civil Code does not define these terms. However, Maltese jurisprudence has established that, for force majeure to apply, the event must be: (i) irresistible, rendering performance objectively impossible (not just difficult); (ii) unforeseeable; (iii) external to the debtor; and (iv) not attributable, even in part, to the party invoking it.

Where these elements are satisfied, the courts have applied the principle of *rebus sic stantibus*, recognising that obligations may be discharged or adapted in light of fundamentally changed circumstances, rather than strictly enforcing the principle of *pacta sunt servanda*.

## 20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

The doctrine of privity of contract applies under Maltese law and therefore in order for third parties (not party to the construction contract) to be granted rights, separate legal arrangements would need to be entered into. Typically these arrangements will take the form of (i) collateral warranties; (ii) direct agreements; or (iii) assignment and novation agreements. These types of

arrangements are more common for private projects.

## 21. Do contracts typically contain strict provisions governing notification of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?

Yes, in local construction projects – particularly those using the General Conditions for Works Contracts (issued by the Department of Contracts) and FIDIC standard forms – it is common for the Contractor (and at times the Employer) to have a prescribed time within which to submit a claim for additional time and/or payment.

Whilst the clause in the FIDIC standard forms is expressly drafted as a condition precedent, meaning failure to notify within 28 days bars entitlement, the Government Works Contract also includes detailed notice procedures which appear to have less definitive language.

Under Maltese law, such provisions are generally permissible, but their application may be scrutinised against overarching principles of good faith (Article 993 of the Civil Code) and the prohibition against unjust enrichment (Article 1028A of the Civil Code). These principles may allow courts to excuse technical non-compliance where the employer has actual knowledge of the claim, suffers no prejudice, or where the contractor has substantially complied.

## 22. What insurances are the parties required to hold? And how long for?

Pursuant to regulation 12(c) of the Avoidance of Damage to Third Party Property Regulations (Subsidiary Legislation 623.06 of the Laws of Malta), the Director responsible for the Building and Construction Authority is required to verify that demolition, excavation and construction works are covered by a third-party insurance policy in accordance with the Regulations. Moreover, regulation 13(1)(b) empowers the Director to issue an enforcement notice where no third-party insurance is submitted for the works. Thus, third-party insurance is mandatory for works affecting contiguous property.

Additionally, Regulation 3 of the Construction Sites Insurance Obligations Regulations (S.L. 623.11). provides that any construction site must be covered by a valid insurance policy indemnifying against any loss, damage, injury or death sustained by any third party as a

consequence of acts or omissions arising from the construction works. The policy must extend to the activities of clients, contractors and subcontractors, including their employees, and must provide a third-party liability limit of not less than €750,000 prior to the issuance of clearance to commence works. The extent of cover beyond this statutory minimum is to be determined by the insurance contract on the basis of a risk assessment.

In practice, this third-party insurance requirement is typically satisfied through a Contractors' All Risks ("CAR") policy. Such policies generally operate on a project basis and cover both damage to the contract works themselves and the insured's liability at law towards third parties for bodily injury, death, or property damage arising out of the execution of the works. Although the law requires third-party liability cover, CAR policies combine both 'own works' generally cover and third-party liability cover under one contract.

In procedural terms, the client is required to submit a declaration of insurance cover to the Authority within two weeks prior to the commencement of construction works. This declaration confirms the existence of the insurance contract, which must be issued by an authorised insurance undertaking and be subject to Maltese law and the jurisdiction of the Maltese courts.

As to duration, regulation 3 of S.L. 623.11 requires that the insurance policy be maintained, extended or renewed throughout the duration of the works until the submission of a certificate of completion of the construction works. Upon completion, the client must submit the certificate of completion, approved by the responsible architect, within two weeks. The insurance obligation therefore runs from prior to the commencement of works (as a condition for clearance) and continues uninterrupted until formal certification of completion.

In practice, Contractors' All Risks policies are typically issued for the duration of the specific project, rather than for a fixed annual period, unless an annual contractors' policy is already in place. In some cases, contractors may hold an annual CAR policy covering multiple projects, subject to a per-contract limit, and the client may be included as a co-insured under such policy. However, it remains essential that valid cover is in force prior to commencement and maintained throughout the entire execution phase of the works.

In addition to insurance, S.L. 623.06 also requires the developer to submit a bank guarantee to the Director in respect of potential damage to contiguous third-party property, unless exempted where equivalent insurance

cover is provided. This guarantee may be retained for up to three months following notification of project completion, and longer where judicial or arbitral proceedings for damages have been initiated. Although not an insurance policy, this mechanism functions as financial security in favour of third parties.

Typically, consultants engaged on a project are also required to hold and maintain a professional indemnity insurance and public liability insurance.

### 23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

Construction and engineering disputes in Malta are most frequently resolved by arbitration, particularly in projects where the contract includes an arbitration clause. Domestic arbitration is governed by the Arbitration Act (Chapter 387 of the Laws of Malta) and is commonly administered through the Malta Arbitration Centre.

Where no arbitration agreement exists, disputes are typically brought before the ordinary civil courts, usually the First Hall of the Civil Court. Litigation, however, may be more formal and can be comparatively less efficient than arbitration.

Parties may also adopt alternative dispute resolution mechanisms, either on an *ad hoc* basis or as part of the contract's dispute resolution procedure. In projects using FIDIC-based or similar standard forms, it is common to provide for an initial, contract-based determination (often by the Engineer) and/or referral to a dispute adjudication / avoidance board (DAB / DAAB), followed by negotiation / amicable settlement. If the dispute remains unresolved, the matter is then typically escalated to arbitration.

### 24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?

Maltese courts are generally supportive of both domestic and international arbitration. Arbitration agreements are regularly recognised and enforced, and where court proceedings are initiated despite the existence of a valid arbitration clause, the courts will typically stay the proceedings in favour of arbitration. In doing so, the court does not automatically relinquish all jurisdiction; rather, it suspends the case pending the arbitral tribunal's determination of its own jurisdiction and the substantive issues in dispute.

In the case of international arbitrations seated in Malta, the courts are even less inclined to intervene than in domestic arbitrations, where certain residual supervisory powers may still be exercised. Overall, the courts adopt a pro-arbitration approach and are generally unsympathetic to attempts by parties to undermine or circumvent arbitration through parallel court actions. They consistently uphold the arbitral tribunal's competence to determine its own jurisdiction.

Foreign arbitral awards are enforceable in Malta in the same manner as domestic awards, once registered with the Malta Arbitration Centre (MAC). Upon receipt of a complete application for registration, the Registrar of the MAC serves the respondent with the relevant documentation. The respondent is granted ten working days to submit any written objections to registration. If no valid grounds for refusal are established, the award is registered and acquires the status of an executive title.

Once registered, an arbitral award has the same legal effects as a judgment of the Maltese courts and may be enforced accordingly by means of executive warrants.

In practice, where no objections are raised, registration may be completed within a matter of weeks. If objections are filed or enforcement is contested before the courts, the timeframe may extend to several months, depending on the nature of the issue.

## 25. Are there any limitation periods for commencing disputes in your jurisdiction?

Limitation periods (referred to as prescriptive periods) depend on the legal basis of the claim and are primarily regulated by the Civil Code.

In the context of construction disputes, a distinction must be made between claims arising in tort (extra-contractual liability) and those arising in contract.

Claims in tort are governed by Article 2153 of the Civil Code, which provides that actions for damages not arising from a criminal offence are barred by the lapse of two years. Accordingly, where a construction dispute is based on negligence or other extra-contractual fault, the applicable limitation period is two years.

By contrast, debts arising from contractual obligations are generally subject to a five-year prescriptive period unless a shorter prescriptive period is specified in the Civil Code or in any other law or unless the debt results from a public deed. For instance, as article 2149(a) of the Civil Code provides that actions of contractors for the

value of the works carried out by them and for the materials supplied by them are barred by the lapse of two years then the shorter prescriptive period applies to such claims. A shorter prescriptive period of two years also applies to actions for fees and disbursements brought by architects or civil engineers. In each case, it would therefore be advisable for each party to determine the applicable prescriptive period to the respective action or claim and to take the appropriate legal steps to interrupt it where this is required and permitted by law.

## 26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a "fair and reasonable" proportion of the innocent party's losses), and are these commonly used?

Multi-party disputes are common in the construction sector due to the complexity of modern projects involving multiple contractual tiers (employers, main contractors, subcontractors, consultants), tortious liability which may arise towards third parties and increasing regulatory compliance obligations. The use of net contribution clauses is not widespread in Malta and reliance on statutory apportionment appears to be the norm. However, limitation of liability clauses are commonly used and are generally enforced by the courts but not to shield a party from liability arising from negligence, especially gross negligence.

## 27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

One of the most significant challenges facing the sector is a marked decline in profitability. Construction firms have experienced pressure on margins due to escalating material costs and increased compliance expenses. Firms that are unable to pass on these rising costs to clients have been particularly affected.

Expectations regarding future business conditions have also declined, reflecting uncertainty in the pipeline of new projects. Although property sales have remained strong, demand for new construction projects has been comparatively subdued, leading to concerns about medium-term growth prospects.

A further challenge is the availability of skilled labour. The sector continues to face difficulties in recruiting and

retaining adequately trained workers, which affects project timelines, quality standards and cost structures.

Regulatory pressure has intensified in recent years. Stricter compliance requirements and the introduction of enhanced licensing regimes for contractors and builders have increased operational complexity. While these reforms aim to improve standards, safety and public trust in the industry, they have also raised administrative and cost burdens for operators.

Despite these challenges, however, the resilience of Malta's property market, including steady growth in residential prices and a strong rental market, continues to underpin demand. Commercial office space and mixed-use developments also present potential for strategic growth, particularly in support of high-value sectors such as financial services, digital industries and gaming.

Moreover, the current environment presents an opportunity for the sector to refocus on quality, professionalism and long-term sustainability. Increased regulatory scrutiny is encouraging industry stakeholders to invest in improved governance, technical standards and environmental performance. Alignment with climate and sustainability objectives, such as energy-efficient construction and environmentally responsible development, also offers scope for innovation.

## 28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

Currently, tourism and hospitality projects are attracting some of the highest levels of investment in Malta. The sector remains one of the country's principal economic pillars and continues to draw substantial foreign direct investment, supported by Malta's strategic location, year-round tourism activity, and ongoing redevelopment of hotels and mixed-use hospitality complexes. Investment is not limited to new builds but also includes the upgrading and repositioning of existing hospitality assets to higher-end and boutique standards.

Beyond tourism, infrastructure projects are a major focus of both public and EU-supported investment. Large-scale transport upgrades, road networks, port and maritime facilities, as well as wastewater treatment and environmental infrastructure, have been prioritised in response to rapid population growth and increasing pressure on national infrastructure. Sustainability-oriented projects, including renewable energy initiatives and energy efficiency upgrades, are also receiving

increasing attention in line with EU climate obligations.

Malta's digital economy continues to attract significant investment, particularly in FinTech, payments services, online gaming, blockchain-related services and broader ICT infrastructure. The country's regulatory framework, English-speaking workforce and established financial services ecosystem make it attractive for technology-driven enterprises.

Commercial real estate also remains active, driven by the expansion of high-value sectors such as financial services, gaming, professional services and digital industries. Mixed-use developments combining office, retail and residential components are particularly prominent. Furthermore, Malta's geographical position has reinforced its potential as a regional logistical and maritime hub, supporting investment in port facilities, warehousing and related commercial infrastructure.

## 29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

Over the next five years, technology is likely to fundamentally reshape Malta's construction and engineering industry. The sector will need to adopt more innovative and integrated approaches to project delivery and asset management. In this context, artificial intelligence, data analytics and immersive technologies are expected to move from limited application to mainstream adoption.

AI has the potential to transform how infrastructure is planned, designed, constructed and operated. By analysing extensive datasets, identifying patterns and forecasting potential risks, AI-enabled systems can support better decision-making across an asset's entire lifecycle. This could result in faster project delivery, more efficient resource allocation and improved sustainability outcomes, all of which are particularly relevant in a small and densely developed jurisdiction like Malta.

It is also anticipated that there will be a greater reliance on integrated digital platforms. Such platforms would enable structured data sharing among contractors, consultants, public authorities and asset operators, improving coordination and reducing fragmentation across project phases. Over time, this is likely to influence procurement frameworks and contractual structures, with increased emphasis on digital capability, innovation and collaborative delivery models.

### 30. What do you anticipate to be the impact from ongoing supply chain issues and the escalation of material costs over the coming year?

Ongoing supply chain disruptions and the escalation in material prices are likely to continue placing pressure on the Maltese construction sector over the coming year. Given Malta's heavy reliance on imported construction

materials, contractors remain exposed to fluctuations in international freight costs and energy prices. This may result in tighter margins, longer lead times and increased project risk.

In practice, this is likely to encourage more cautious pricing at tender stage and an increased use of price revision or fluctuation clauses.

## Contributors

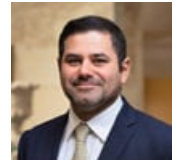
**Dr. Antoine G. Cremona**  
Partner

[agcremona@ganado.com](mailto:agcremona@ganado.com)



**Anselmo Mifsud Bonnici**  
Senior Associate

[ambonnici@ganado.com](mailto:ambonnici@ganado.com)



**Jacques Farrugia**  
Associate

[jvfarrugia@ganado.com](mailto:jvfarrugia@ganado.com)



**Krista Muscat**  
Advocate

[kmuscat@ganado.com](mailto:kmuscat@ganado.com)

