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International Arbitration 2026

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Malta: Law and Practice

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MALTA



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 and maritime/aviation, 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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1. General

1.1 Prevalence of Arbitration

Arbitration is a well-established and widely embraced method of dispute resolution in Malta for both general and sector-specific commercial disputes. It is particularly prevalent in sectors such as construction, maritime and information technology, where domestic parties engaged in international contracts routinely opt for institutional or ad hoc international arbitration as their preferred method of dispute resolution. Arbitration clauses feature regularly across a broad range of other industries, and institutional arbitration clauses are increasingly featured in commercial contracts governed by Maltese law or involving a Malta-based entity.

Recent years have witnessed a marked and sustained uptake in the use of international arbitration in relation to contracts involving public and private entities, as well as in the shipping, insurance, mergers and acquisitions, gaming, and financial services sectors – a trend which reflects Malta's growing prominence as an international commercial hub. Factors such as Malta's strategic geographical location, its robust and arbitration-friendly legal framework, and its highly competitive cost-to-quality ratio continue to attract parties to arbitration, both as a contractual choice and as a seat.

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

On a purely domestic level, litigation has traditionally been the method of choice amongst local market players, owing largely to the comparatively low cost of court proceedings in Malta. That said, domestic arbitration is on a clear upward trajectory, with parties increasingly recognising the advantages of speed, confidentiality and procedural flexibility that arbitration offers over traditional litigation.

1.2 Key Industries

The use of arbitration in Malta has been increasing steadily. The construction industry, in particular, has seen a significant rise in arbitration activity, driven by the growing number of large-scale infrastructure projects and the fact that the International Federation of Consulting Engineers (FIDIC) contracts have become the prevalent form of construction contract in Malta for medium-to-large-scale developments. This is increasingly the case also in publicly funded infrastructure projects. As a result, a substantial number of construction claims are now referred to arbitration. Arbitration clauses are also increasingly being incorporated in contracts awarded through public procurement processes, a clear signal to the market of the preference of public authorities for disputes to be resolved by arbitration. Moreover, there has been a marked increase in arbitrations concerning areas which were hitherto the exclusive domain of the Maltese courts, including shareholder disputes and certain intellectual

property disputes – a development attributable largely to the procedural flexibility afforded by arbitration and the benefit of arbitrators with specialist expertise in the subject matter.

1.3 Arbitration Institutions

The Malta Arbitration Centre (MAC) 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 MAC 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 2025–26.

1.4 National Courts

The Superior Courts (the First Hall of the Civil Court 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 "Arbitration 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 article.

2. Governing Legislation

2.1 Governing Law

The Arbitration 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 2006 version of the UNCITRAL Model Law, although reform initiatives on this front are expected.

2.2 Changes to National Law

In the first quarter of 2026, Act No. IV of 2026, "An Act to amend various laws to provide for the establishment of the Commercial Court and to provide for consequential amendments", was published. The Commercial Court will be competent to hear and determine causes relating to commercial matters arising under, inter alia, the Companies Act, the Competition Act, the Banking Act, the Merchant Shipping Act and the Trademarks Act, as well as matters regulated by the Carriage of Goods by Sea Act, the Civil Aviation Act (excluding its criminal provisions), the Ports and Shipping Act, the Financial Institutions Act and the Consumer Affairs Act.

Of particular relevance to the arbitration landscape, Act No. IV of 2026 amends the Code of Organisation and Civil Procedure so as to allocate to the Commercial Court competence to perform any function relating to the recognition and enforcement of foreign

arbitral awards, as may be provided from time to time in the Arbitration Act, in regulations made thereunder, or in any other law.

It remains to be seen how this allocation of competence will operate in practice. The Arbitration Act currently provides for the recognition and enforcement of arbitral awards through the MAC, with appeals lying to the Court of Appeal, and no corresponding amendments to the Arbitration Act have yet been proposed.

The re-establishment of a specialised Commercial Court is, in principle, a welcome development for arbitration users, as it holds the promise of enforcement and arbitration-related court functions being handled by a bench with dedicated commercial expertise.

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 to the Arbitration Act respectively. Accordingly, 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.

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 that 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 that the bill of lading 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 arbitral tribunals and the courts of law to be "arbitrable", in terms of both subjective and objective arbitrability. The general provision contained in Article 15 of the Arbitration 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 such as 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 Arbitration Act on the UNCITRAL Model Law, Malta is a jurisdiction that is supportive of the arbitration process.

The Maltese courts adopt a generally supportive posture towards arbitration and are especially reluctant to interfere with international arbitrations seated in Malta, while retaining certain residual powers over domestic arbitrations. As a general matter, the courts look with disfavour upon parties that attempt to circumvent or frustrate arbitration proceedings through recourse to the courts. Faced with such attempts, the courts have consistently shown themselves supportive of arbitration and unsympathetic to these claims, and readily recognise the arbitral tribunal's competence to rule on its own jurisdiction. 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, and in the absence of specific circumstances indicating otherwise, the arbitration agreement will be deemed to be governed by the law applicable to the underlying contract.

Recently, Maltese courts have declined to lift local precautionary measures granted in support of pending recognition and enforcement proceedings in respect of an international arbitration award in Malta, notwithstanding the existence of security in another EU member state in support of foreign exequatur proceedings concerning the same award. The courts have likewise stayed proceedings in favour of a valid arbitration clause where the proceedings involved not only signatories to that clause but also a non-signatory party.

More generally, arbitration agreements are, for the most part, readily recognised and enforced by the Maltese courts, which regularly stay proceedings in favour of arbitration when faced with what appears to be a valid arbitration agreement. Where a court seised of a matter stays proceedings in favour of the arbitral tribunal, it does not thereby decline all residual jurisdiction; rather, it stays the proceedings pending the tribunal's determination of its own jurisdiction and its decision on the merits.

3.4 Validity

In terms of Article 16 of the UNCITRAL Model Law and Article 32 of the Arbitration Act (modelled on Article 16 of the UNCITRAL Model Law), an arbitration 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 arbitration 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 Arbitration 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 EUR11,646.87, in which cases there will be only one arbitrator. In addition, the MAC (the chairperson of the MAC 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, however, 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 Arbitration 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 arbitral 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 the request of a party, by the chairperson of the MAC.

In the context of international arbitration, the chairperson of the MAC 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:

- 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 multiparty 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 such as due process, which are exceptional and outside the scope of the current review.

4.4 Challenge and Removal of Arbitrators

The Arbitration 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 it 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 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 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 (IBA) 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 an arbitration having Malta as its 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 tribunal for its decision on such issue, unless the court considers that a party will suffer irreparable harm if the court does not determine such issue immediately. The principle that an arbitral tribunal is competent to rule on its own competence is widely acknowledged, and the provisions of the Arbitration Act are designed to safeguard its application.

5.2 Circumstances for Court Intervention

Article 32 (5) of the Arbitration 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 the court 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 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 it 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 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 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 arbitral 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. The approach of national courts has been largely positive in the preservation of jurisdiction of the arbitral tribunal.

In fact, courts typically view proceedings brought in breach of an arbitration agreement with disfavour. It should be noted, however, that the courts will generally stay proceedings rather than dismiss them outright, pending determination of the arbitral tribunal's jurisdiction 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 measures of protection as the tribunal considers necessary in respect of the subject matter of the dispute. The tribunal may require a party to provide appropriate security in connection with such measures.

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 and 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;
- a warrant of arrest on a vessel or 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.

In addition, Maltese courts 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 arbitral tribunals to order security for costs. This power extends to both ad hoc tribunals and those administered by the 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 tribunal shall inform the parties in order that any one of them may make the required payment. If the payment is not made, the tribunal may order the suspension or termination of the arbitral proceedings.

At the recognition and enforcement stages, 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 Arbitration 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 both domestic and international arbitrations having Malta as their seat of arbitration. The Arbitration Act and the Rules provide default procedural rules which apply where the parties have not agreed otherwise, or which the parties may expressly adopt. In all cases, the general public policy provisions safeguarding the right to a fair trial (due process) naturally apply, ensuring a baseline of procedural integrity regardless of the procedure chosen.

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 Arbitration 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 who 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, in practice, 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 Arbitration 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 in line with the applicable law, typically that of the law of the seat. In domestic arbitrations, or international arbitrations seated in Malta where no other rules of procedure have been chosen, 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. As a general rule under Maltese procedural law, 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 Arbitration 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. This also applies to international arbitrations seated in Malta where no other rules of procedure have been chosen by the parties.

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 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 Court of Appeal, 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.

9. Confidentiality

9.1 Extent of Confidentiality

There are no provisions relating to confidentiality in the Arbitration Act.

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

There are no preset 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 arbitral 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 that 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 Arbitration Act does not address the types of remedies available, but, in principle, all kinds of remedies are available, provided that they find legal support under the applicable law and are not in violation of the public policy of Malta. Arbitral 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 Arbitration 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 Arbitration 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 its 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 arbitral 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 Arbitration 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

Procedures and Standards for Enforcing Awards

Foreign awards to which the treaties set out in the Second Schedule to the Arbitration 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. Any objections to registration are limited to the grounds exhaustively listed in Article V of the New York Convention and must be substantiated with all necessary supporting documentation. The matter is then referred to the chairperson of the MAC for determination. The chairperson may decide the matter on the basis of the written submissions and documentation already exhibited but retains discretion to order a hearing if the issues raised warrant further argument or evidentiary clarification. Following the conclusion of these proceedings, the chairperson will proceed to deliver a reasoned decision on the issue.

A decision of the chairperson of the MAC may be appealed by any party to the Court of Appeal. The appeal must be filed within 20 days from notification of the chairperson's decision to the parties. The respondent to the appeal is entitled to file a reply within 20 days from service of the appeal application. This ordinarily concludes the written phase of the appellate proceedings. The Court of Appeal may, where it considers it appropriate, schedule a hearing for oral submissions. Proceedings before the Court of Appeal and records thereof are public. No further ordinary appeal lies from a final judgment of the Court of Appeal.

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 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 difficult 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 setting-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, including *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 have generally adopted a positive, pro-arbitration stance towards the recognition and enforcement of arbitration awards, construing the grounds for refusal under Article V of the New York Convention strictly and narrowly. An award will be regarded as contrary to public policy only where it is in blatant and manifest conflict with the fundamental principles of the Maltese legal order. There is, as yet, no developed body of Maltese case law on international public policy comparable to that developed by the French courts.

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 Arbitration 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 such as the Chartered Institute of Arbitrators (CIArb) 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**.

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