



Malta

e-manual appendix





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What is enforced

In Malta, the legal mechanism through which a right is enforced is known as an executive title. Seven types of executive titles exist under Maltese law, namely:

1. A *res judicata* judgement of any court of Malta, which refers to a judgement from which there arises no right to appeal. This may either be a preliminary judgement delivered by a court of first instance from which no appeal was filed during the relative time-limit to file that appeal, thus rendering it into a final *res judicata*, or a *res judicata* judgement delivered by the court of second instance, namely the Court of Appeal, from which there does not arise a right to appeal. It should be noted that a *res judicata* may only be enforced by the court of first instance which delivered the preliminary judgement, even if such judgement was appealed and varied or revoked by the court of second instance.
2. A decree of any court of Malta, which refers to any court order issued during the proceedings to facilitate or regulate the proceedings and to efficiently lead to a final judgement.
3. Any contract which is a public deed recorded in the Public Registry of Malta in respect of a debt which is certain, liquidated, due, provided that the contract refers to an obligation to transfer a thing (*obbligazione di dare*). Such contracts can be executed without the need for any court to acknowledge the debt's existence, however in practice such contracts may still be subjected to the court's authority to verify the amount due in certain cases. Maltese jurisprudence has also identified at least three instances where contracts cannot include a) loans not evidenced by a written contract, b) bank overdrafts, and c) contracts concerning emphyteusis, unless the ground rent is stated.
4. Any bill of judicial costs issued by the court (locally known as "it-taxxi") – once issued by the court following the delivery of a judgement, such bill of costs becomes due and is not subject to appeal.
5. Any decision of any arbitrator registered with the Malta Arbitration Centre – such decisions are not subject to appeal and are considered to have the same effect as a *res judicata* judgement.

1 Maltese law does provide for the provisional enforcement of preliminary judgement in various cases: 1) in any judgement regarding maintenance, 2) in any judgement regarding the infringement of right to life, illegal arrest or forced labour, or any other judgement concerning fundamental human rights, 3) cases where a party to the case or a third party provides sufficient evidence to show that prejudice will be caused if the parties required to wait until the preliminary judgement became a *res judicata*.

6. Any promissory note or bill of exchange if these must be accompanied by a judicial letter. It is observed that if a promissory note or bill of exchange is challenged the relevant court of Malta will issue a decree which will not be subject to appeal.
7. Maltese law provides for a special procedure whereby a judicial letter can also have executive title in a specific case concerning debt recovery. A judicial letter filed by a creditor to recover a debt which is certain, liquidated, due, does not have a value which exceeds €25,000, represents an obbligazione di dare, is owed by a debtor who is present in Malta and aged over 18 years of age and who is not incapacitated.

Who enforces

The judicial officer in Malta is 'Marixxal tal-Qorti' / 'Court Marshall' (singular), 'Marixxali tal-Qorti' / 'Court Marshalls' (plural). The judicial officer (Court Marshall) is the judicial officer appointed by the court to execute the warrant. He/she is vested with all the powers reasonably required to execute the executive warrant in civil and commercial matters. The judicial officer does not have such responsibilities in criminal matters – the latter being the exclusive competence of the Police. All judicial officers operating in the Republic of Malta are civil servants employed by the State.

Enforcement procedure

Executive titles may only be enforced by the following exhaustive list of executive warrants, namely:

1. Warrant of seizure of movable property.
2. Warrant of seizure of immovable property.
3. Warrant of seizure of a commercial going concern.
4. Executive garnishee order.
5. Judicial sale by auction movable property.
6. Judicial sale by auction immovable property.
7. Judicial sale by auction of real rights over immovable property.
8. warrant of eviction from immovable property.
9. Warrant in factum.
10. Warrant of sea vessels.
11. Warrant of arrest of aircraft.
12. (12) Warrant in procinto.

Any executive warrant may only be demanded by the party in whose favour the executive title is given. Any such demand may only be made through a sworn application, and such demand must indicate the desired outcome of the executive warrant. To be executed, the warrant requires the

signature of the court registrar and the signature of the respective judge or magistrate hearing the demand. In cases of urgency, the executive warrants listed 1 to 4 above can be executed without the signature of the relative judge or magistrate if the court registrar is of the opinion that such signature cannot be obtained within a reasonable time.

Maltese law establishes that an executive warrant may be challenged. The counterparty or any interested third-party may file a counter-warrant application to demand the partial or total annulment of the executive warrant. Damages will arise if the court determines that the executive warrant was not justified, or if the judicial officer (Court Marshall) acted negligently in the execution of the warrant.

According to Maltese law, it is also possible for the court to issue precautionary warrants to ensure that the rights of the parties are safeguarded even before an executive title (e.g., a *res judicata* judgement). For any precautionary warrant to be issued, the competent court must conclude based on *prima facie* evidence that the rights of the applicant will be prejudiced if such precautionary warrant were not to be issued. Most commonly, it is used to prevent the disappearance or deterioration of the assets of the debtor who would usually be a defendant in the proceedings. Either party may demand the court to issue any of the following precautionary warrants at any stage of the proceedings:

1. Precautionary warrant of seizure of movable property.
2. Precautionary warrant of seizure of a commercial going concern.
3. Precautionary garnishee order.
4. Precautionary warrant of arrest of sea vessels.
5. Precautionary warrant of arrest of aircraft.
6. Precautionary warrant of Prohibitory injunction.
7. Precautionary warrant of description.
8. Precautionary warrant of impediment of departure.

A plaintiff may file an application to demand the court to issue a precautionary warrant even before the proceedings are filed.

For the court to issue a precautionary warrant, the applicant must file a sworn application, which must contain the origin and nature of right sought to be secured. If the right is a debt or any pecuniary claim, the amount of the debt must be indicated. Once filed, the judicial officer (Court Marshall) will serve the sworn application to the other party or his legal representative. The applicant must then initiate the related proceedings within twenty days from the issuing of the precautionary warrant, failing which the court will revoke the warrant and hold the applicant liable for any damages caused by the issuing of the warrant.

It is possible for the party against whom the precautionary warrant was issued to demand the same court to revoke the precautionary warrant totally or partially by filing a counter-warrant. The court can then issue a decree to either accept to issue the precautionary warrant, or accept the pleas filed in the counter-warrant. In the latter case, the court may impose a fine or damages against the party who sought the issuance of the precautionary warrant. It is to be observed that once issued, a precautionary warrant will continue to be enforced until a res judicata judgement is delivered, at which point it would be converted by the court into a precautionary warrant.

Duration of enforcement procedure

To appreciate the mechanism through which executive titles are enforced in Malta, one must establish a distinction between the first type of executive title listed above, namely the res judicata judgement, and the other six types of executive titles. A res judicata judgement is the most appropriate executive title because it is directly and automatically enforceable. Whilst the length of the process for the relevant court of Malta to deliver a res judicata judgement varies considerably, from a few months to even decades, once such judgement is delivered, the judgement would become enforceable after two working days from the day on which the court delivers it.

Maltese law also establishes various exceptions to this rule where, in cases of urgency, the judgement can be less than twenty-four hours. While an application to appeal a judgement delivered by a court of first instance will suspend the enforcement of that judgement until the court of second instance delivers its own judgement (which would be the res judicata), an application to demand a retrial will not suspend the enforcement of the res judicata judgement which the party wishes to be re-trialled. On the other hand, the remaining executive titles, except the seventh, are not directly or automatically enforceable.

In each case, the creditor must file a judicial act known as a judicial letter against the debtor demanding compliance with the executive title for it to be enforceable. In these cases, this official intimation must be filed before the competent court. Once the debtor is served with the judicial letter through the courts, the executive title (e.g., the contract) would be enforceable after two days following the date of service².

Depending on the type of executive title, the time-limits within which they can be enforced varies from 10 years, 5 years, or 3 years. However, upon

² When some cases deemed by the court to be a matter of urgency, the executive title can be rendered enforceable within a shorter timeframe.

the expiry of the time-limit, the executive title would still be enforceable, but the party wishing to enforce it must file a sworn application in the Court Registry of Malta.

Cost of enforcement procedure

The fees/expenses are usually covered by the debtor when the creditor wins the case. When the creditor wins the case, the Court may still request the creditor to cover all or part of the fees/expenses. The Court has full discretion to decide. The enforcement costs are divided into the amount of the claim and the type of enforcement action. In case the debtor is insolvent, the costs of enforcement are covered by the enforcement service. The judicial officer is remunerated through his/her salary. A creditor can apply to legal aid in enforcement cases. In that case, prepayment of enforcement fees is not due. Enforcement fees and costs are then covered by the State.

Before starting proceedings, the creditor must pay an initial fee. The creditor is informed in advance by the lawyer on the likely costs of the fees involved, including initial fee, third party expenses (e.g., storage, locksmith et cetera), enforcement expenses, performance fee. The debtor will pay the applicant's fee if the case is won by the applicant. The debtor is informed in advance on the likely costs of the fees and cannot be exempted from them.

There is a fee for initiation of enforcement proceedings. This fee is paid in advance by the creditor. The amount for the fee for initiation of proceedings is a proportional amount based on the amount of the claim and is a proportional amount based on the type of claim (monetary or non-monetary). Enforcement expenses to cover reimbursement of procedural expenses necessary to fulfil the judicial officers' functions are fixed for a specific enforcement activity. The expenses from third parties may include any external spending that the judicial officer is contracting outside his office.

