



# Malta

## Narrative National Report

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## PART I: LEGAL FRAMEWORK

### I.1 Legislation affecting civil enforcement

Judicial officers (Court Marshalls) are appointed by the Director General (Courts) and shall be entrusted with the service and the execution of any judicial acts, warrants and other orders given by the courts, judges, and magistrates and to perform such other duties as may be assigned to them by the Director General (Courts) and the registrars. There are also judicial officers who shall be entrusted with the service and the execution of any judicial acts, warrants and other orders given by the courts, judges, and magistrates and to perform such other duties as may be assigned to them by the Director General (Courts) and the registrars. The relevant legal provisions include:

- The Law on Enforcement Procedure: Chapter 12 of the Laws of Malta (Code of Organisation and Civil Procedure); Chapter 9 of the Law of Malta (Criminal Code).
- Civil Procedure Laws and securing measures: Chapter 12 of the Laws of Malta (Code of Organisation and Civil Procedure); Chapter 16 of the Laws of Malta (Civil Code).
- Insolvency Proceedings: Chapter 12 of the Laws of Malta (Code of Organisation and Civil Procedure); Chapter 13 of the Laws of Malta (Commercial Code); Chapter 386 of the Laws of Malta (Companies Act).
- Enforcement-Mortgage: Chapter 12 of the Laws of Malta (Code of Organisation and Civil Procedure).
- The Framework Law on Pledges: Chapter 16 of the Laws of Malta (Civil Code).
- Collection of the costs of the criminal proceedings and court fees: Chapter 9 of the Laws of Malta (Criminal Code).

### I.2 Enforceable titles

In accordance with Article 253 of Chapter 12 of the Laws of Malta, Code of Organisation and Civil Procedure, enforceable titles are as follows:

1. **A *res judicata* judgement** of any court of Malta, which refers to a judgement against which there is no right to appeal. This may either be a preliminary judgement delivered by a court of first instance against which no appeal was filed during the relative time-limit to file that appeal, thus rendering it into a final *res judicata*<sup>1</sup>, or a *res judicata* judgement delivered by the court of second

<sup>1</sup> It should be noted that Maltese law does provide for provisional enforcement of preliminary judgements 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 are required to wait until the preliminary judgement becomes a *res judicata*.

instance, namely the Court of Appeal, against which there is no 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 modified 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, and 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 subject 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.
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. Finally, it should also be noted that Maltese law provides for a special procedure whereby a **judicial letter** can also be an executive title in a specific case concerning debt recovery. A judicial letter filed by a creditor to recover a debt which is certain, liquidated, and 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.

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 becomes 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. As a final observation about enforcing *res judicata* judgements it would be pertinent to note that 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<sup>2</sup>, 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. Therefore, 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 service<sup>3</sup>.

Depending on the type of executive title, the time-limits within which they can be enforced varies from 10 years to 5 years, or 3 years. However, upon the expiry of the time-limit, the executive title would still be enforceable, but the party wishing to enforce it should file a sworn application in the Court Registry of Malta, declaring on oath (a) the nature of the claim or debt sought to be enforced, and (b) that the claim or debt is still due.

The enforcement of foreign court decisions, foreign court settlements, and foreign arbitration awards is subject to the discretion of the courts of Malta. In the case of a *res judicata* judgement, one would require a certificate from the Court Registry indicating that the judgement was delivered and that there is no right to appeal that judgement. In all other cases, a judicial letter must be filed to enforce the executive title.

### **I.3 Service of documents to parties and third parties**

#### **I.3.1 Legal basis**

The mode of service is regulated by Article 187 of Chapter 12 of the Laws of Malta.

Service of a judicial act shall be effected by the delivery of a copy of the act to the person on whom the judicial act is to be served, wherever such person may be found. Service may also be effected by leaving such copy at the place of residence or business or place of work or postal address of such person with a member of his/her family or household or with a person in his/her service or with his/her attorney or person authorised to receive his/her mail. If service is not effected on a first attempt, the officer charged with the service shall make two other attempts to serve the copy of the pleading without further authorisations by the court and such attempts shall be

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<sup>2</sup> Special procedure whereby a judicial letter can also become an executive title in a specific case concerning debt recovery.

<sup>3</sup> When some cases are deemed by the court to be a matter of urgency, the executive title can be rendered enforceable within a shorter timeframe.

made at different times of the day with the last attempt of service made after judicial hours.

Each attempt of service is to be made after the payment of the appropriate fee due to the registry. The officer charged with the service shall file a separate certificate of service for each attempt made in the acts of the proceedings, if it shall not be lawful to leave such copy with any person under the age of fourteen years, or with any person who, at the time of the service, has a mental disorder or other condition, which renders him/her incapable of giving evidence of such service. A person shall be presumed to be able to give such evidence unless the contrary is proved. No objection may be raised on the ground of irregularity of service for any of those reasons if it is shown that the copy has reached the person to be served therewith.

Provided further that where a person to whom a pleading is addressed refuses to receive it personally from an executive officer of the courts, the court may upon an application by the interested party and after hearing the executive officer of the courts and considering all the circumstances of the incident, declare by means of a decree that service shall have been effected on the day and time of the refusal and such decree shall be considered as a proof of service for all purposes of law.

In the case of persons on board merchant ships, or members of the crew having no place of residence in Malta, service may be effected by delivering such copy to the master of the ship or any other person acting in that behalf.

If it appears from the certificate of the officer charged with the service of a written pleading or any judicial act that, although it does not result that the person upon whom such a pleading or act is to be served, is abroad, access to his/her place of residence cannot be obtained, or such place of residence is not known, the court may direct service to be effected by the posting of a copy of the written pleading or act at the place, in the town or district in which official acts are usually posted up, and by publishing a summary of such written pleading or act in the Gazette and in one or more daily newspapers as the court may direct and, where possible, when the residence is known, by posting up a copy of the pleading on the door leading to such residence.

The court may also adopt such other measures as it may deem fit to bring the pleading or act to the notice of the person upon whom it is to be served. In such cases, service shall be deemed to have been made on the third working day after the date of the last publication or after the date of such posting, whichever is the later. In cases where service has been ordered with urgency, service shall be deemed to have been made at such time, after posting or publication as the court may determine, which time is to be stated in the publication or posting.

In the case of a body having distinct legal personality, service on such body shall be effected by leaving a copy of the pleading: (a) at its registered office, principal office, or place of business or postal address with any of the persons mentioned in article 181A(2) of Chapter 12 of the Laws of Malta, or with an employee of such body; or (b)



with any of the persons mentioned in article 181A(2) in the manner provided for in sub-article (1) of the afore mentioned law.

If it appears from the certificate of the officer charged with the service of a written pleading that service as provided in the previous paragraph has not been effected, the court may, if it appears that at least one of the persons mentioned in article 181A(2) of Chapter 12 of the laws of Malta is in Malta, direct service to be effected by the posting up of a copy of the written pleading at the place in the town or district in which official acts are usually posted up, where the body has its registered office, principal office, or place of business, and by publishing a summary of such written pleading in the Government Gazette and in one or more daily newspapers as the court may direct and, where possible, by posting up a copy of the pleading on the door of the registered office, principal office, or place of business. The court may also adopt such other measures as it may deem fit to bring the pleading to the notice of any of the persons mentioned in article 181A(2) of Chapter 12 of the laws of Malta.

Where it appears that all the persons mentioned in article 181A(2) are absent from Malta or there exist no such persons, the court shall appoint a curator in the interest of such body as provided for in article 929(d) of Chapter 12 of the laws of Malta.

In the case of an action against a ship or other vessel, service shall be effected by the delivery of a copy of the pleading to the master thereof or any other person acting in that behalf or, in the absence of such persons, on the agent of the ship or other vessel or in the absence of such persons and agent, on curators appointed by the court in terms of article 929 of Chapter 12 of the laws of Malta. Provided that the court may also adopt such other measures as it may deem fit to bring the pleading to the notice of the person upon whom it is to be served.

Saving the provisions of article 193 of the same law, service may also be effected by officers of the Post Office in such manner and under such rules in conformity with postal regulations as the Minister responsible for justice may order by notice in the Gazette. However, applications of appeal, and sworn applications made under the provisions of the Constitution of Malta and the European Convention Act, shall be served by the executive officers of the courts.

The executive officer shall, on the same day when he/she serves or unsuccessfully seeks to serve the act, or, at the latest, on the following day, draw up a certificate stating whether the service was effected or not. In the affirmative, the certificate shall state the name and surname of the person on whom service was effected and, if the act was not served directly on the person on whom service was to be effected, the name and the surname of the person to whom the copy was delivered and the place where the act was served. In the negative, the certificate shall state the reason why service was not effected. Any certificate referred to above shall be drawn up in the manner prescribed by the registrar, who may also direct that a form or forms printed, impressed, or otherwise prepared be used for the purpose.

The registrar may also require that any such certificate be confirmed on oath by the



officer entrusted with the service and any such oath shall be administered by the registrar.

If an act filed in, or a warrant or garnishee order issued by any court in the Island of Malta is to be served or executed in the Island of Gozo or Comino, a copy thereof shall be transmitted by the registrar of the said court to the registrar of the Court of Magistrates (Gozo).

The officer effecting service or execution shall deliver to the registrar of the Court of Magistrates (Gozo) the certificate of service or execution, duly confirmed on oath before the registrar him/herself who shall transmit it to the registrar of the court in which the act was filed or by which the warrant or order was issued.

If an act filed in or a warrant or garnishee order issued by the Court of Magistrates (Gozo) is to be served or executed in the Island of Malta, a copy thereof shall be transmitted by any officer of the said court to the registrar.

The officer effecting service or execution shall deliver to the registrar the certificate of service or execution, duly confirmed on oath before the registrar who shall transmit it to any officer of the court of magistrates (Gozo).

Documents must be served under a court order by a judicial officer on business days between 6 a.m. and 6 p.m. Service cannot take place during public holidays.

### **1.3.2 The legal capacity to serve documents**

Judicial officers in Malta may serve judicial documents in civil and criminal proceedings. The service of a judicial document may only be carried out by judicial officers. This activity must be personally exerted by the judicial officer. The judicial officer can serve any judicial document, including sworn applications, sworn replies, precautionary warrants, executive warrants, judicial letters, judicial notifications, summonses of witnesses, within the territory of the Republic of Malta. The geographical jurisdiction of judicial officers for the service of documents is the same as for the enforcement of court judgements. When serving documents, judicial officers have access to information to locate the addressee in the framework of his/her mission of service of whatever document needs to be served, and this information is provided to him/her by the Court Registry. They do not report and do not have access to the contents of the documents served.

### **1.3.3 The contents of the documents to be served**

To be valid, the document served by the judicial officer must comply with a special format, and must include the following:

- The date of service to the addressee.
- The time of service to the addressee
- The coordinates of the authority who effected the service.
- The signature of the judicial officer having served the document.

- The details of the applicant and addressee as a natural person (first name, surname, address), the details of the applicant as a legal person (legal representative).

When the document to be served is a document initiating proceedings, known as a sworn application, the following must be mentioned in the document for it to be valid:

- Details of the competent court and jurisdiction.
- Mentions of the consequences for the addressee in case of lack of a response or appearance of valid representation at the court hearing.
- The object of the claim.
- The factual elements on which the claim is based.
- The legal elements on which the claim is based.
- In the case of monetary claims, the amount of the claimed debt and the amount of interest due.

### **I.3.4 Service upon the addressee of other persons**

To be valid, the document must be served on all parties involved, including the respondent. Documents may be served not only upon the natural person himself/herself but also upon other persons residing in the same premises with him/her. The recipient must accept the document. It must indicate the name and surname of the addressee. The judicial officer must respect the confidentiality of the document and is prohibited from opening the envelope.

Judicial documents may be served at the place of domicile or residence of the addressee. Judicial documents addressed to legal entities may be served upon any able person met at the domicile of the addressee who accepted to receive the document. The document may also be handed to an employee of the addressee met at the domicile of the addressee and who has accepted to receive the document. In such cases, the recipient must accept the document, the recipient must be able to receive the document, the recipient must indicate his/her name and surname as well as present identification documents. The judicial officer must once again respect the confidentiality of the document and is prohibited from opening the envelope.

If a judicial document cannot be served upon a natural person personally or served upon other person related to the said natural person, the document is posted on the door of the domicile, visible to all, and must be published in the Government Gazette.

### **I.3.5 The use of new technologies**

It is currently not possible to serve documents electronically.

### **I.3.6 Probative value of the service of documents**

The method of service of documents does not have any special probative value, other than proof that the document was served upon the recipient. To have such probative

value, the document must have been served by a judicial officer. These documents include the documents initiating proceedings, the documents relating to the attachment of the debtor's goods, and summonses.

#### **I.4 Legal remedies, appeal and objection**

An objection can be raised against the enforcement process. It is known as an appeal, which can be filed within 20 days from the date of the judgement sought to be enforced. Such appeal would be decided by the competent court of second instance. In civil or commercial proceedings, the court would be the Court of Appeal or the Constitutional Court, as the case may be. The objection may be stated in the appeal, but it cannot be supported by evidence which was not submitted before the court of first instance. Such objection may only be raised on a point of law. The deadline for filing a response to the appeal is usually within 20 days. The court is not obliged to decide the case within a certain time-limit.

If a third-party files an application before the court to show that he/she has juridical interest in an ongoing court case and proves to the court's satisfaction that the judgement influences his/her rights, the court may issue a court decree to permit such third-party to intervene in the court case. Such third-party would be called an intervenor (I-intervent). The third-party may request his/her intervention at any stage of the proceedings, including at appeal stage *in statu et terminis*. The original parties to the claim cannot oppose the third-party's intervention if the court determines that the latter has the required juridical interest to intervene. Such juridical interest may either have existed at the start of the proceedings, or it may have developed during the proceedings in accordance with the *jus superveniens* doctrine. It should be recalled that the nature of the intervenor is not that of a party to the proceedings, and the court cannot compel such third-party to do anything upon delivering its judgement. Such third-party also cannot be held responsible for any of the court expenses.

#### **I.5 Postponement, suspension and termination of enforcement**

The court shall decide whether to postpone enforcement.

##### **I.5.1 Request for postponement by the creditor**

The court may postpone partially or entirely the enforcement of a judgement upon the request of the creditor if there is another hearing pending before a different court which may affect the outcome of the decision, or if a liquidator is appointed.

##### **I.5.2 Request for postponement by the debtor**

The court may postpone partially or entirely the enforcement of a judgement upon the request of the debtor if there is another hearing pending before a different court which may affect the outcome of the decision, or if a liquidator is appointed. The debtor is not required to pay a deposit when requesting for postponement. Submission of a request for postponement does delay enforcement. The judicial officer must inform the creditor of the request for postponement of enforcement, and the creditor in such case has the right to make a statement and present evidence in

opposition to the postponement. There is no specific time limit for processing the request for postponement and there is no maximum time limit for postponement of enforcement. At the request of the party that requested the postponement, enforcement can be resumed before the expiration of the period for postponement.

### **I.5.3 Request for postponement by the third-party**

In cases where liquidation proceedings are involved, the judicial officer can postpone the enforcement by request of a third-party.

### **I.5.4 Suspension of enforcement**

*Ex officio* suspension of enforcement proceedings is not possible.

### **I.5.5 Termination of enforcement proceedings**

The reasons for the termination of the enforcement procedure are:

- After the settling of the creditor's credit, the enforcement document is annulled.
- The enforcement document is revoked following the filing of a counter-warrant.
- The enforcement document is invalidated.
- Where a third person fulfils the obligation in benefit of the creditor instead of the debtor.

### **I.6 Counter enforcement**

There is no provision for a counter enforcement procedure.

### **I.7 Objects and exemptions on enforcement**

No objects are exempted from enforcement.

As regards enforcement on property of a foreign country, if the court deems that the foreign judgement is executable in the relative foreign jurisdiction, it is possible to execute it in Malta provided that the assets are situated in Malta.

### **I.8 (Court) penalties and fines**

The court can impose a fine on the debtor or other person who does not comply with the judicial officer's requirements or otherwise prevents the judicial officer from enforcing the enforceable titles. The fine may be imposed repeatedly. Such a fine can be replaced by imprisonment in the case of failure to pay court-ordered maintenance/alimony to dependents. It should be mentioned that disobedience of a judicial officer's demands can result in other forms of punishment, which are:

- Reprimand.
- Expulsion from the court.
- Arrest for not less than 24 hours within the court building itself.

- As well as the aforementioned fine.

## **I.9 Access to information on the domicile and assets of the debtor**

### **I.9.1 Access to information**

A judicial officer who is executing the enforcement proceedings shall have access to information on the assets of the debtor (this access is not secured). The creditor shall have direct access to certain information on the assets of the debtor and under certain conditions, such as during a sale by judicial auction and upon filing a garnishee order.

A judicial officer and/or creditor can obtain information on the debtor's declared place of residence, ID number for legal reasons, movable tangible goods, movable intangible goods (e.g., trademarks, etc.), real estate rights (e.g., hypothecs), as well as information about specific goods such as vehicles, ships, aeroplanes, etc.

The Chief Electoral Commissioner shall make accessible online and free of charge the Electoral Register for general elections to the court registries from where the courts, court officers, advocates and legal procurators may access the data contained in such register for purposes related to the service of judicial acts. The Registrar of Companies shall make accessible, online, and free of charge at the Court Registry, such data related to companies required for the purposes of service of judicial acts on such companies, which the courts, court officers, advocates and legal procurators may access. These are tools to find someone's address.

However, in general, all State bodies which administer databases with the information required for efficient enforcement can be relied upon by the judicial officer in the framework of enforcement proceedings with information relating to debtors. Banks, the debtor's employers (unless prevented by the General Data Protection Regulation - GDPR), the tax authorities (Inland Revenue Department), bodies which administer public registries (e.g., Malta Business Registry and the Malta Financial Services Authority), land registries services (the Public Registry), and the courts.

A judicial officer may obtain the necessary information in various ways, mostly by telephone, internet, through an official request, and with the relevant justification. A judicial officer must ensure the confidentiality of received information – not disclose any personal circumstances which became known to him/her during his/her professional activities, and not disclose any commercial and other secrets protected by law. If the judicial officer violates the duty of confidentiality or abuses his/her powers, the said judicial officer may be subject to disciplinary, civil, or criminal liability.

### **I.9.2 Statement of assets**

There is no obligation for the debtor to declare his/her assets as part of the enforcement process.

## **PART II: ORGANIZATION OF ENFORCEMENT**

### **II.1 The status of the judicial officer**

Name of the judicial officer: judicial officer in Maltese – ‘Marixxal tal-Qorti’/ ‘Court Marshall’ (singular), ‘Marixxali tal-Qorti’ / ‘Court Marshalls’ (plural).

All judicial officers operating in the Republic of Malta are civil servants employed by the State. They are authorised by the State to perform any orders that the courts of Malta deem fit to issue or deliver, including but not limited to executing any executive warrants or precautionary warrants issued by any courts in Malta.

A judicial officer assumes certain obligations related to his/her activities. The nature of these obligations is statutory, legal, and ethical/deontological. The said obligations are compulsory service of the judicial officer, obligations relating to the professional activities of the judicial officer, conditions of keeping of archives of the judicial officer, book-keeping, obligation to comply to ethical and/or deontological rules and professional secrecy. Judicial officers must comply with any court order, including in cases where they are summoned to testify whether notice was served. Territorial restrictions apply.

It should also be noted that the judicial officer is duly bound to perform all actions ordered by the court, including evict any person who the competent court deems to have insufficient title from any tenement.

There are, however, certain exceptions where the judicial officer is not competent to perform certain tasks. The arrest of persons is exclusively handled by the Police, as is the case where the court orders that a party is physically brought to a hearing. The handing of children according to a court decision is the responsibility of the person duly appointed by the court who is competent to handle such matters.

Therefore, whilst it can be said that the judicial officer has the monopoly of all enforcement of court decisions and other enforceable titles in civil matters, they do not have such responsibilities in criminal matters – the latter being the exclusive competence of the Police.

There are codes of ethics in respect of all law professionals and lawyers. No specific code of ethics concerns judicial officers. The Chamber of Advocates is responsible for establishing the rules of the code of ethics for lawyers. The code of ethics for lawyers concerns the following:

- The conduct of advocates.
- The relationship with the client.
- The relationship with third parties.
- The relations with other lawyers.
- Employment contracts of lawyers.

There are rules relating to disciplinary action against judicial officers under Maltese law. There is no jurisdiction specialised in dealing with questions relating to the discipline of judicial officers. Rules for instituting disciplinary proceedings against



judicial officers apply to all law professionals. The Courts of Malta, as a mixed body, are responsible for disciplining judicial officers. Disciplinary liability may be imposed for violation of the law relating to the professional exercise. There is no level of disciplinary sanctions. Once a judicial officer commits an offence, he/she will be liable to punishment for that offence. One of the possible disciplinary penalties is deprivation of the right to carry out the functions of a judicial officer, but this is in the discretion of the competent court. Judicial officers may be subject to a disciplinary penalty of dismissal. The judicial officer can challenge the disciplinary sanction pronounced against him/her before the Court of Appeal.

## **II.2 Supervision over enforcement**

The activities of judicial officers are not monitored or investigated unless an application is filed before the competent court.

## **II.3 Access to the premises**

The judicial officer is not allowed to enter the premises where neither the debtor nor a (legal) representative are present. The judicial officer is neither allowed to enter a premise where the enforcement action is to be conducted in premises which are locked, whilst the debtor is not present or does not agree to open the premises.

## **II.4 Obstructing the judicial officer from carrying out enforcement**

The judicial officer is not authorised to remove a person from the place where enforcement action is taking place. Police bodies have a duty to provide the enforcement body with the appropriate assistance for commission of enforcement actions.

## **II.5 Time of enforcement**

Enforcement may only be carried out on working days. However, with the approval of the court, a judicial officer can conduct enforcement outside such restrictions.

## **II.6 Mediation**

Judicial officers cannot conduct mediation.

# **PART III: ENFORCEMENT PROCEDURES**

## **III.1 Initiation and end of the enforcement procedure**

### **III.1.1 Initiation of enforcement**

Enforcement procedures are initiated through a sworn application filed by the plaintiff.

The judicial officer who is appointed by the court to execute the warrant, is vested with all the powers reasonably required to do so. Any executive warrant must be executed before two witnesses. A copy of the executive warrant must be served by the judicial officer on the party against whom it is issued or on his/her legal representative at the first available opportunity. Upon execution, the judicial officer



must return a copy of the warrant to the court registry along with a certificate stating whether the warrant was executed or not.

In the case of an executive or precautionary warrant of seizure, the judicial officer may be ordered to either seize certain movable property or any immovable property. Seizure may be effected on any movable property, including tangible goods, shares in commercial partnerships, licences issued by any competent authority and insurance policies, but cannot be effected on clothes for daily wear, personal documents or registers/minute-books of notaries. The purpose of a warrant of seizure is to bring an asset under the control of the court for the purpose of liquidating the asset by means of a judicial sale by auction by an auctioneer appointed by the court.

Upon issuing an Executive Warrant of Seizure of a Movable, the appointed judicial officer can be authorised to seize any movable property indicated in the warrant, without informing the defendant debtor, and to force any enclosure open if the defendant fails to provide access after two requests. These two acts must be done in the presence of two witnesses and the ‘official consignee’, who would be the person appointed by the court to act as depository of the seized movables. The judicial officer must attach to the warrant a detailed report describing the condition in which the movables were seized. If the judicial officer does not find any movable assets that, he must attach to the warrant a list of all the items found at the location. Any movable assets seized must then be transported by the judicial officer to the official consignee. The court may, in cases deemed to be urgent, order the judicial officer to seize the movable after working hours, or on a Sunday, or on a public holiday, and to also force open any enclosure if the defendant fails to provide access after two requests.

The court may also issue a Warrant of Seizure of a Commercial Going Concern. This may be an executive or precautionary warrant and relates to the seizure by the court of any kind of commercial enterprise or business activity and includes any movable property, immovable property, machinery, apparatus, goods and any corporeal or incorporeal rights or licences, copyright, and goodwill. In such cases, the role of the judicial officer is that of performing any acts ordered by the court, including seizing of any movable assets pertaining to the commercial activity.

The garnishee order may be issued by the court to guarantee or obtain payment of a debt from a debtor. In such cases, the judicial officer will be ordered to serve a notification to any third-party who is in possession of money or movable property belonging to or owed to the debtor and order such third-party (in their capacity as garnishee) to deposit such money or movable property with the competent court. The judicial officer may execute the court’s order even by virtue of an email. The garnishee order can be effected against any movable assets, except any salary or wages amounting to below €700.00, any social benefit amounting to below €700.00, any charitable grant, any Government donation, maintenance, bank guarantees, or any letters of credit.

### **III.1.2 Determination of the means and object of enforcement**

It is the task of third-party institutions, such as banks, to furnish the courts with information on the enforceable assets of the debtor. The creditor, when submitting a request to the Civil Court, must specify the amount of the debt being recovered. The creditor must request the enforcement of an enforceable document through the lawyer. The debtor cannot propose to the judicial officer the preferred enforcement assets. Only the court has this discretion.

### **III.1.3 Withdrawal of enforcement**

The creditor in the enforcement process is entitled to withdraw the writ of execution and cancel the enforcement. 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 acted negligently in the execution of the warrant.

It is also possible for the party against whom a precautionary warrant was issued to demand the same court to revoke the precautionary warrant totally or partially by filing a counter-warrant. The court would 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 should be noted 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.

### **III.1.4 Enforceability of the enforcement document**

The enforcement document needs to be final in order for the enforcement proceedings to be initiated (a *res judicata*).

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 of movable property.
- 6) Judicial sale by auction of 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) 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.

According to Maltese law, it is also possible for the court to issue precautionary warrants. In basic terms, these are guarantees which 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<sup>4</sup>, which must contain the origin and nature of the 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 will serve the sworn application<sup>5</sup> to the other

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<sup>4</sup> In the cases of warrant of seizure, garnishee order and warrant of description, a judicial letter must also be filed.

<sup>5</sup> Along with the judicial letter in some cases.

party or his/her 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.

### **III.2 Enforcement against movable assets to settle pecuniary claims**

#### **III.2.1 General**

The court in whose territory the movable items are situated is the competent authority to decide on the enforcement proposal. The creditor is obliged to specify the movable items in respect of enforcement.

#### **III.2.2 The inventory**

In the case of commercial law proceedings where a liquidator is involved, it is necessary that prior to the inventory of the movables, the enforcement decision is delivered to the debtor. Moreover, the right exists in civil cases too, where the debtor would have a right to the ‘benefit of discussion’, namely the right to indicate which of the assets listed in the inventory that court can act over to liquidate and collect a debt.

The third-party who claims a right on the items that are in the possession of the debtor will need to notify the competent court. There are time-limits for the third-party to prove the rights on the items in the inventory, but they are not based on the proceedings which required the inventory, but on the nature of the right and the way it was breached. For example, if the third-party is claiming a right over a thing which was transferred by virtue of an invalid contract, he/she would have two years to prove such rights. The position of matrimonial and extra-marital spouses is that it is assumed that they are equal co-owners of all movable items that are in the house, flat or their business premises. If the items of the debtor are in the possession of a third-party, the court will issue a garnishee order to instruct the judicial officer to bring those items under the control of the court.

The court has the power to decide on the custody of the inventoried items. The creditor does not acquire any right to the property sequestered.

#### **III.2.3 Valuation of the movable items**

The court decides on the manner of determining the value of the movable items. If the parties disagree with the court’s valuation, the parties can request a re-valuation.

#### **III.2.4 Method of sale**

The issuing of a warrant of seizure or garnishee order may lead to a judicial sale by auction. In the event of a judicial sale by auction, the role of the judicial officer would be that of serving the defendant with the application through which the creditor requested the court to appoint the judicial sale by auction. When the date, time and

place of the auction have been established by the court, the judicial officer will then physically transport the movables from the consignee's storage facility to the place where the auction will take place. The judicial officer must also ensure that the movables are exhibited to the public at least two hours before the judicial auction begins.

The auction itself is conducted by a public auctioneer in the presence of the court registrar. Before each sale, the public auctioneer has a right to demand that any bidder provides a guarantee to ensure that he/she will be able to pay for any items acquired by virtue of the sale. The auctioneer will not be permitted to accept any offer which is below 60% of the appraised value of respective lot. Following the conclusion of the judicial sale by auction, the defendant is entitled the *jus redimendi*, which refers to the right to repurchase any movable or immovable property sold within four months from the date of the registration of the act of sale.

An alternative mechanism to the judicial sale by auction can be applied in cases involving ships and vessels, referred to as the Executive Warrant for Court Approves Sales for Ships and Vessels. The creditor and the debtor may enter into a private agreement whereby the debtor's assets are sold by the creditor to a third-party purchaser. This agreement may only be entered into if there is an executive title which acknowledges a debt that is due to the creditor. To initiate these proceedings, the creditor must file an application before the competent court to identify a third-party for the ship or vessel, and the price tendered by such third-party purchaser, which must be confirmed by two experts.

Along with the application, the parties must submit evidence to show that that private sale would be in the interest of all the debtor's creditors, and not only the creditor signing the agreement. The court will then appoint a hearing within 10 days from the date of the creditor's application and order the judicial officer who will then proceed to serve this application and supporting documents to all the creditors involved. After hearing all parties, the court may approve or refuse the private sale – in the former scenario, the court will nominate a person to facilitate the delivery of the vessel or ship to the third-party and nominate another party to collect the proceeds from the third-party purchaser within seven days from the date of the court decree.

The sale of movable items is available through verbal public auction. The verbal public auction, known as the sale by judicial auction ('is-Subbasta') is decided and organised by the court. The judicial auction is conducted by and exercised in the court.

There are time-limits to conduct an auction that must be taken into consideration before a judicial sale can take place. After the lapse of two days from the service of the decree ordering the sale by auction, or from the filing of the report of the referee, the court shall appoint one or more days for the sale by auction and order the issuance of advertisements. The publication of the advertisement shall, unless the court otherwise directs, take place, as regards the sale of immovable property or of ships or other vessels, or aircraft, at least fifteen days before the day appointed for the sale by

auction, and as regards other movable property at least four days before the date appointed for the sale.

During the judicial sale, a bid shall cease to be binding as soon as a higher bid is accepted, although such higher bid might subsequently be declared void. However, a higher bid shall be binding, provided the adjudication is made, in the case of immovable property or of rights annexed to such property, within one month, in the case of merchandise within two days; and in the case of other movable property, including ships, within seven days, from the day on which the bid was made.

### **III.2.5 Sale through direct settlement**

Sale through direct settlement is not possible.

### **III.2.6 Public sale of movables**

The purchaser must have the capacity required by law to enter contracts. There is an obligation to publish the place, day, and hour of the public sale on a newspaper published by the Government known as the “Government Gazette”. Potential buyers do not have to deposit a guarantee. The auction is deemed to have taken place, if at least one buyer participated in it. The procedure of a judicial auction includes three distinct stages.

#### Stage 1

The first step involves the proceedings prior to the auction itself. As a rule, a judicial auction can only take place after the following executive warrants are issued by the First Hall of the Civil Court of Malta: a) warrant of seizure of movable property, or b) warrant of seizure of immovable property, or c) warrant of seizure of a commercial going concern. There is an exception in cases where the court establishes that a judicial auction is required for the provisional enforcement of the above precautionary warrants. Once the above warrants are issued, the applicant must file a further sworn application which must contain a detailed description of the now-seized movable/immovable assets, as well as the demand for their judicial sale by auction.

The court would then appoint a date, time, and place for the judicial auction to take place. An advert would then be published by the court registrar (in both English and Maltese newspapers including the Government Gazette) in a list of all upcoming judicial sales by auction. In the days preceding the judicial auction, the judicial officer would need to transport any movables to the place of the auction from the official consignee’s storage facility. The movables must be exhibited to the public at least two (2) hours before the judicial auction begins. It should be noted that movables can either be sold together, in groups, or in separate lots.

#### Stage 2

The second stage is the proceedings of the auction itself. The auction is conducted in public by a public auctioneer in presence of the Registrar. Before auctioning any lot, the public auctioneer has the right to demand that any bidder must provide a



guarantee to ensure that he/she will be able to pay for any lots that he/she acquires. Bids are made verbally. The auctioneer must repeat the highest bid three times before declaring the lot as sold. If the highest bid is above 60% of the appraised value, the item would be sold. However, if the highest bid is only 60% of the appraised value, the plaintiff can request that the asset is auctioned off again on a different day and time. If no bids are made above 60% of the appraised value, the item would be unsold.

It should be stressed that only immovable property, commercial going concerns and specific types of movables must be sold with an appraised value. All other movable items will not be sold with an appraised value unless the plaintiff or defendant requests an appraisal. Upon the termination of the judicial sale, the court establishes the remuneration which must be paid to the auctioneer.

### Stage 3

The third stage of a judicial sale by auction is the aftersales period. Whilst immovable property and rights thereon and commercial going concerns are transferred to the buyer upon successfully bidding at the auction, movable property is delivered upon the physical delivery of the movables to the buyer. The purchaser must cover the entire proceeds of the sale, which comprises the following expenses, namely the winning purchase price, the total amount of the debt which was the reason for the sale, the costs of the judicial auction, and the costs of the judicial proceedings. The purchaser would be obliged to pay these proceeds 24 hours from the date of the sale in the case of a movable property being sold, or seven days in the case of any other property being sold.

It should be noted that the seller in a judicial auction has the right to repurchase (*jus redimendi*) within four months from the date of the judicial auction. This right is exercised by filing a deposit of money to cover the debt. This right only applies to the judicial sale by auction of immovable property (as opposed to movable property) or commercial going concern.

If there is more than one public sale scheduled for a particular day, there is no requirement for an amount of time to elapse. If the movables are not sold at the last session of the public auction, the enforcement procedure will be suspended.

#### **III.2.7 Payment of the sale price**

The purchaser is obliged to pay the full expenses incurred through the judicial auction 24 hours from the date of the sale in the case of movable property, or seven days in the case of any other property being sold (including immovable property).

If purchaser fails to pay the full expenses incurred through the judicial auction, the plaintiff may demand that the purchaser be arrested, or the purchaser may file an application to request that the same property be resold through another public judicial auction at his/her own expense. If the latter is opted for and the property is sold, two outcomes may arise: a) if the selling price is lower than the original purchase price, the loss must be paid by the applicant (i.e., the original purchaser / debtor /



defendant), but b) if the selling price is higher than the original purchase price, the profit will be paid to the applicant (the original purchaser / debtor / defendant).

### **III.2.8 Handover of movables to the buyer**

To hand over the movables to the buyer, the judicial officer will physically deliver them to the buyer and issue a written declaration or order concluding that the movables were sold and delivered to the buyer.

### **III.2.9 Payment to the creditor**

An indication of the order of priority of the creditors to be paid from the sale revenues is as follows:

- 1) Requests of the insured creditors with pledge, shall be realised by the order of priority before the enforcement creditor.
- 2) Claims of creditors insured with pledge, which are realised by order of priority, shall be settled after the enforcement creditor.
- 3) The request of the enforcement creditor.
- 4) Expenses of the enforcement procedure.

The received contribution is distributed proportionally to cover all debts. If a *res judicata* has established the ranking of creditors, there is no further right to dispute that ranking.

### **III.3 Attachment on the bank account of the debtor**

The judicial officer does not have the possibility to access the debtor's available bank accounts. Prior to the issuance of the warrant, it is not possible for the judicial officer to contact any individual bank requesting information on bank accounts. The bank account numbers are not mentioned in the order for attachment to the bank. The warrant will only indicate the name and identification details of the debtor. The attachment order does not automatically refer to any deposited savings, current account, foreign currency account, or any other account in the bank.

The attachment on bank accounts is not done electronically but through the issuance of a warrant by the court. Upon attachment of the bank account, communication with the bank on the transfer of any funds is not done electronically. Upon the order for attachment, the bank is obliged to inform the court whether the debtor has a bank account with the bank and disclose any bank account numbers of bank accounts held by the debtor. Upon the order for attachment, the bank is not obliged to provide other information (e.g., the transactions history of all the debtor's accounts).

There is no specific time limit for the bank to inform the judicial officer on the existing bank accounts and funds unless one is stipulated in the warrant. Upon receipt of the attachment order, the bank accounts are blocked immediately after the bank is served with the warrant. The garnishee order can be effected against any movable assets, except any salary or wages amounting to below €700.00, any social benefit amounting

to below €700.00, any charitable grant, any Government donation, maintenance, bank guarantees, or any letters of credit. The court will issue a single warrant which will serve to freeze the assets of the debtor that may be held in any of the listed banks. The court may instruct each bank, through separate orders, to transfer the funds to a bank account in the name of the court.

No time limit applies to the transfer of funds from the bank to the court's account unless the relevant warrant provides otherwise. If there are insufficient funds in the accounts to settle the transfer order, all accounts held by the named debtor will continue to be blocked until the claim is fully satisfied, preventing all withdrawals of funds. In case there are more attachment orders, the bank will conduct the payment according to the date when each warrant was filed. The judicial officer is obliged to notify the bank to release the debtor's accounts upon payment of the claim in full, or upon termination of the execution process.

The bank can be held liable in case of failure of the bank and its official persons to comply with the attachment order.

### **III.4 Enforcement against savings deposits and current accounts**

See III.3.

### **III.5 Enforcement on immovable property**

#### **III.5.1 General**

The court where the creditor is domiciled is the competent court to decide on the enforcement proposal for an immovable property. All immovable properties are registered in the Land Registry and the Public Registry.

#### **III.5.2 The enforcement**

It is not the obligation of the creditor to list all the properties owned by the debtor in the application. The debtor has a right to propose to the court that the order is enforced against a particular item in his/her possession. This is referred to as the right to the benefit of discussion. The creditor cannot contest the outcome of the debtor's decision to exercise the aforementioned right.

The debtor has a right to propose to the judicial officer the assignment of enforcement on some other means of enforcement than the immovable. It is not possible for the ownership of the immovable to change during the enforcement procedure to the Warrant of Prohibitory Injunction that can be issued by the court to prevent such changes.

It is possible, after the logging of the enforcement recording in the real estate's public books, that another creditor also attaches the same immovable. Real servitudes, real encumbrances, and the rights of construction on real estate do not elapse by the sale of the attached real estate. They pass onto the purchaser along with the immovable property. Personal servitudes do elapse by the sale of the of the attached real estate. A lease contract (a personal right) will be terminated upon the sale.

### **III.5.3 The preparation of the sale of the real estate**

The judicial officer can provide the person interested to buy the real estate with a permit to observe the immovable. To prevent damage to the real estate, enabling evaluation, observation and protection, the judicial officer has the right to measures necessary for the protection of the real estate or for performing enforcement without any obstacles. There are no exemptions with regards to the real estate that can be seized by the court.

### **III.5.4 Valuation of the real estate**

The value of real estate is determined based on an expert evaluation and other facts related to its market price on the day of evaluation and taking into consideration facts that may decrease its value. Persons cannot propose the suspension of enforcement if the ascertained value of the real estate cannot cover the amount of credit of the enforcement creditor.

### **III.5.5 Conditions for sale**

The conditions for sale are made known by virtue of a document on sale which is served to the persons who have a priority right to settle their credits. There is no time limit for the publication of the conditions for sale.

### **III.5.6 Method of sale**

Immovable property may be sold by way of auction. Auctions are carried out in an oral public sale organised and exercised by the court.

### **III.5.7 Sale by direct agreement**

Any parties/creditors secured by pledge or any other party with juridical interest (including the debtor) may take the initiative for a direct agreement.

### **III.5.8 Public sale of real estate**

No persons are exempted from buying the attached real estate. Potential buyers are not obliged to deposit a guarantee. One registered participant is enough for the action to take place. The sale is organised as for movable goods<sup>6</sup>.

If there is more than one public sale schedule for a particular day, there is no requirement for an amount of time to elapse. If the auction object is not sold at the auction, the enforcement procedure would be suspended.

### **III.5.9 Payment of the sale price**

The purchaser is obliged to pay the full expenses incurred through the judicial auction<sup>7</sup> 24 hours from the date of the sale in the case of a movable property, or seven days in the case of any other property being sold (including immovable property). If the

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<sup>6</sup> See Section III.2.6 above.

<sup>7</sup> See Section III.2.7 above.

purchaser fails to pay the full expenses incurred through the judicial auction<sup>8</sup>, the plaintiff may demand that the purchaser be arrested, or the purchaser may file an application to request that the same property be resold through another public judicial auction at his/her own expense. If the latter is opted for and the property is sold, two outcomes may arise: a) if the selling price is lower than the original purchase price, the loss must be paid by the applicant (i.e., the original purchaser / debtor / defendant), but b) if the selling price is higher than the original purchase price, the profit will be paid to the applicant (the original purchaser / debtor / defendant).

### **III.5.10 Handover of the real estate to the buyer**

Whilst immovable property and rights thereon and commercial going concerns are transferred to the buyer upon successfully bidding at the auction, movable property is delivered upon the physical delivery of the movables to the buyer. The buyer is entitled to evict the debtor if the latter does not voluntarily leave the premises.

### **III.5.11 Payment to the creditor**

An indication of the order of priority of the creditors to be paid from the sale revenue is as follows:

- Requests of the insured creditors with pledge, shall be realized by the order of priority before the enforcement proposer.
- Claims of creditors insured with pledge, which are realized by order of priority, shall be settled after the enforcement proposer.
- The request of the enforcement proposer.
- Expenses of the enforcement procedure.
- Rewards for personal servitudes, which are terminated through the sale of real estates.

The person who bids for the immovable property during a judicial sale by auction acquires the property in preference to any other party who enjoyed a property right such a privilege or hypothec over it. In Malta, creditors may participate in judicial auctions to avoid the ranking of creditors that would apply by virtue of law. The received contribution is distributed proportionally to cover all debts. If a *res judicata* has established the ranking of creditors, no further right to dispute that ranking exists.

### **III.6 Enforcement against wages and other permanent pecuniary income**

The employer is obliged to inform the judicial officer whether the debtor is his/her employee, and the level of the debtor's salary paid by the employer, if this is stipulated in the court order which issued the warrant. No time limit applies. The employer cannot be held liable for payment of the instalments that ought to be paid but were not deducted from the debtor. The debtor is not entitled to give his/her consent, to settle the claim, for sequestration of a part of his/her personal incomes and direct

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<sup>8</sup> See Section III.2.7 above.

payment to the creditor. The garnishee order can be effected against any movable assets, except any salary or wages amounting to below €700.00, any social benefit amounting to below €700.00, any charitable grant, any Government donation, maintenance, bank guarantees, or any letters of credit.

### **III.7 Attachment under the debtor's debtor**

#### **III.7.1 General**

The court where the creditor is domiciled is competent to decide on the enforcement proposal for attachment on the debtor's debtor. In the case of an attachment under the debtor's debtor, the creditor is obliged to specify such claim in the request for enforcement.

#### **III.7.2 The enforcement**

The debtor's debtor has a right to object or to appeal against the attachment order. In this case, the creditor has a right if the right of pledge is established by contract. The priority of the right of pledges is organised according to how the respective contracts were entered. The debtor's debtor does not need to give a statement on whether and at what amount an amount is owned to the debtor, and whether he/she is ready to settle the debt, and if his/her obligation for paying the debt is conditioned with fulfilment of any other obligation.

#### **III.7.3 Distribution of the moneys received**

The funds received as repayment of debt are transferred to the court. In the case where more creditors claim the enforcement for the same debtor's claim, transfer shall be assigned in respective separate amounts in benefit of each creditor, provided that no rights of preference apply. The received funds are distributed proportionally to all the debtor's debts, provided that no rights of preference apply.

### **III.8 Enforcement against shares**

#### **III.8.1 General**

The court where the creditor is domiciled is competent to decide on the enforcement proposal for attachment on the debtor's shares. With regards to the attachment on shares, the creditor is obliged to specify such shares in the request for enforcement.

#### **III.8.2 The enforcement**

The attachment order on the debtor's shares is effectuated at the debtor's registered office. The creditor does not gain a right of pledge over the attached shares. The registration in the register of shares is not obligatory to effectuate the attachment.

#### **III.8.3 Evaluation and sale of shares**

Shares that can be traded at the Stock Exchange or public market are sold in accordance with the legislation regulating such shares.

### **III.9 Other attachment procedures**

An executive title may also be enforced through the Executive Warrant *in procinctu*. This is a rarely used right of recourse, as it exists as a means of last resort in a case where an Executive Title exists, but none of the other executive warrants listed in the law can be used to enforce it. In such cases, the application may only be filed by the creditor. The judicial officer will then serve the application upon the debtor, who will have four days within which to submit a response. Upon the lapse of the four days, the court will appoint a date for the hearing, and thereafter issue any decrees it deems necessary to ensure that the executive title is enforced, provided that it finds that a valid one exists.

### **III.10 Handing over movable assets**

The court where the creditor is domiciled is competent to decide on the enforcement proposal with the purpose of handing over of one or more items, or with the purpose of delivery of certain amount of substitute items and for implementation of the enforcement. The enforcement for handover of one or more certain items which are with the debtor will be deposited in court by virtue of a schedule of deposit. In the case of money held in a bank account, the creditor must file an application to demand the transfer of such funds to an account controlled by the court. The procedure if the items were not found with the debtor or the third person is that the judicial officer assigns an expert to evaluate the movable items and issues a decision ordering the debtor to pay the amount of their value as set by the same enforcement procedure.

### **III.11 Enforcement in reinstatement of employee to work**

The enforcement proposal based on the enforcement document forcing the employer to reinstate the employee to work, or to assign him/her to appropriate position is decided by the Industrial Tribunal. There is no deadline with regards to the enforcement request for reinstatement of work by the creditor – this is in the discretion of the tribunal. The creditor can request the court for the issuance of a decision forcing the debtor to pay him/her monthly salaries which become claimable, from the day when the decision became final until the day of return to work, as compensation.

### **III.12 Eviction**

The court covering the territory of the real estate has competence to decide on the enforcement proposal for eviction and hand over of the real estate and for the commission of enforcement. The law sets certain deadlines with regards to the eviction procedure. There are no special procedures in case juvenile persons are also to be evicted from real estate. Movable items which should be removed from the real estate are handed over to a consignee appointed by the court. The debtor is responsible for paying the enforcement expenses. In case the items cannot be handed over to the debtor or the debtor refuses to pay the custody costs, the items will be sold through an auction.



### **III.13 Enforcement of obligations to act, refrain from acting or suffer action**

#### **III.13.1 Enforcement of the decision for division of items**

Another means of enforcing one's rights is through a Precautionary Warrant of Description, which takes the form of a judicial inventory and is generally used in proceedings pertaining to separation, divorce, and inheritance. During the proceedings, the applicant may file an application to ensure that his/her rights would be safeguarded until the case is decided. This application must include a detailed list of all the movable property over which the applicant claims to enjoy rights, and a request that the court safeguards this right during the proceedings. The judicial officer will then be tasked with confirming the list in question by describing the movable property and the current condition of each item, their quantity, and the weight or value of the movable items. Upon confirming the list provided in the application, the judicial officer will ensure that the listed items will remain in the same location and the same condition in which they are found.

The judicial officer may also be responsible for establishing the identity of the appointed custodian, who is usually the same person who possessed the items at the beginning of the proceedings. The court may give any order to prevent any loss, damage or deterioration of the things described, in addition to preventing their alienation.

The court will decide whether to conduct physical division of the items, or through sale, if the enforcement document does not assign the manner of division, and the parties have not agreed on such issue. Costs of applying the enforcement are covered by all the co-owners liable for the amount.

#### **III.13.2 Enforcement of the decision in which the debtor has a duty to perform certain action, tolerate certain actions, or to omit certain actions**

The court may issue a Precautionary Warrant of Prohibitory Injunction. The purpose of this is to inhibit or restrain a person from doing anything which causes prejudice to the applicant. After the person claiming prejudice files the sworn application before the court of first instance, the judicial officer will serve the application upon the respondent, who would have ten days to file a sworn reply. The judicial officer will then serve a notice to the applicant or his/her legal representative indicating that the application was duly served. The competent court will then issue a decree as soon as possible, not later than one month from the date when the sworn application was filed.

If the court issues a decree indicating that the Warrant of Prohibitory Injunction was allowed, the applicant must file another sworn application within 20 days from the date of the decree, to the related commence proceedings. Failing that, the warrant can be revoked, and the respondent can be eligible to damages. The warrant can be converted from a Precautionary Warrant to an Executive Warrant if the court, after hearing the proceeds, issues a *res judicata*. Following the *res judicata*, the warrant can remain enforceable for fifteen days following the date of the *res judicata* judgement.



The court would decide the enforcement proposal if the debtor based on the enforcement document has a duty to perform certain action, tolerate certain actions, or to omit from certain action. The judicial officer authorises the creditor that another person can be entrusted with the action which is subject to enforcement for the settlement of an obligation for an action which can be performed by anyone, at the debtor's expenses. The judicial officer can ask prepayment to cover the expenses to be incurred with the commission of the action by another person, or by the creditor from the debtor.

If the action assigned by the enforcement document may be performed only by the debtor, the judicial officer will assign a deadline to the debtor for fulfilling the obligation. The judicial officer cannot order the debtor to deposit with the enforcement body an amount of money for compensation of damage which the creditor may suffer by further behaviour of the debtor in contradiction with his/her obligation for tolerance and omission. If the enforcement is completed based on the enforcement document, issued upon the claim due to obstruction of possession, or if the debtor has voluntarily fulfilled his/her obligation, and after this the debtor obstructs the possession again (like the previous obstruction) the judicial officer cannot once again enforce the same enforcement document.

### **III.14 Sequestration of goods**

In Malta, the court, the judicial officer, and the banks are involved in the activity of sequestration of goods. These may be movable tangible things, movable intangible things (e.g., trademarks) and businesses. Sequestration in the hands of a sequester cannot be formed on a voluntary basis or formed on contract basis. Sequestration in the hands of a sequester is ordered by a court decision. As a sequester, the judicial officer can place the goods under seal.

### **III.15 Enforcement of foreign enforceable documents from non-EU States**

An enforceable or non-enforceable decision issued in another non-EU State cannot be enforced directly in Malta without any recognition proceedings.

The formalities for the recognition of a court decision made in another non-EU State are identical irrespective of the court decision. In Malta, the court of first instance or equivalent (county court, local court, etc.) oversees dealing with requests relating to the recognition of court decisions issued in another non-EU State. The proceedings for a court decision issued in another non-EU State to be recognised in Malta are conducted upon request. The intervention of a lawyer/solicitor is compulsory in the proceedings for the recognition. The recognition proceedings concern judgments. The conformity or the legality of the court decision with domestic law and the regularity of the procedure carried out abroad are examined during the proceedings for the recognition of a decision issued in another non-EU State. The judge cannot amend the decision. The proceedings do not involve confrontation of the parties.

The decision recognising in Malta the court decision issued in another non-EU State can be contested to challenge its enforceability. It can be enforced notwithstanding a

possible contest. When the decision which recognises in Malta the decision issued in another non-EU State is contested, the intervention of a lawyer/solicitor is not necessary. The Court of Appeal is competent. When an appeal is lodged, the enforcement proceedings are stopped. It is also possible to contest the decision refusing to recognise in Malta a decision issued in another non-EU state. In this case the intervention of a lawyer/solicitor is necessary.

The average duration of the proceedings for recognition, when not contested by the defendant, is up to three months. When contested by the defendant, the duration of the proceedings is between three and six months.

## **PART IV: ENFORCEMENT COSTS**

### **IV.1 The costs of enforcement**

#### **IV.1.1 General questions**

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.

#### **IV.1.2 Prepayment of enforcement costs**

Before the initiation of the proceedings, the creditor must pay an initial fee. The fees charged by lawyers are guided by Tariff E of Schedule A annexed to the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta). Advocates are also guided by the Code of Ethics and Conduct for Advocates when establishing their fee. Ultimately, the fee charged to the client by the lawyer is at the lawyer's own discretion and charged following an agreement with his/her client. The Code of Ethics considers a fee to be reasonable when it is in line with specific factors, such as the time required, the novelty and difficulty of the issues involved; responsibility undertaken, the time limitations, the nature and length of the professional relationship; the experience, reputation and ability of the advocate, the costs recoverable from the other party.

#### **IV.1.3 Creditor and enforcement fees**

The creditor is informed in advance on the likely costs of the fees involved, including initial fee, third-party expenses (e.g., storage, locksmith et cetera), enforcement expenses, performance fee. He/she is informed by the lawyer. The fee scheduled is obligatory. The judicial officer is not entitled to receive any "extra remuneration" depending on the success of the enforcement or the urgency of the enforcement case.

#### **IV.1.4 Debtor and enforcement fees**

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 involved, including initial fee, third-party expenses (e.g., storage, locksmith et cetera), enforcement expenses,

performance fee. He/she is informed by the lawyer. The debtor cannot be exempted from the enforcement.

#### **IV.1.5 Period of voluntary fulfilment and fees**

In case of full or partial payment before the term for voluntary fulfilment, no fees can be charged to the debtor.

#### **IV.1.6 Enforcement fees charged based on various phases within the enforcement process**

With regards to the calculation of the fees, the enforcement process is divided in various successive phases: application, reply, lawyer's fees, and legal procurator's fees. These differ on a case-by-case basis. The judicial officer is not entitled to any remuneration including performance fees in the various phases.

#### **IV.1.7 Fee for the initiation of enforcement proceedings**

There is a fee for the initiation of enforcement proceedings (amount to be paid upon presentation of the enforcement request to the judicial officer). This fee is paid in advance by the creditor. The amount of the fee for the initiation of the proceedings is a proportional amount based on the amount of the claim and the type of claim (monetary or non-monetary). As highlighted above, whilst the law and Code of Ethics offer guidance on how much can be charged to the client, the amount which is charged depends on the lawyer involved and on whether the client agrees to settle the fee. All fees are covered by Tariffs A to L of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).

#### **IV.1.8 Enforcement expenses**

Enforcement expenses (fees to cover reimbursement of procedural expenses necessary to fulfil the judicial officers' functions) are fixed for a specific enforcement activity. They are proportionally based on the amount of the claim. With regards to auctions, the debtor is charged a fee for the use of the auction room within the framework of enforcement proceedings.

#### **IV.1.9 Expenses from third parties**

The expenses from third parties may include any external spending that the judicial officer is contracting outside his/her office, such as transportation and storage of attached assets, travel, interpretation, use of experts or specialists, banking fees and commission, bringing a person in for interrogation, getting access to premises, public announcement of enforced sales, or documents from the land registry needed for enforced sales of real estate. The creditor is always informed prior to the enforcement activity on the likely expenses of third parties. The judicial officer receives the reimbursement of such expenses from the Government.

#### **IV.1.10 Performance fee**

There are no performance fees (fees upon partial or full successful completion) as remuneration of judicial officers. The remuneration of judicial officers is established

by contract between the Government and the judicial officer concerned.

#### **IV.1.11 State as a creditor or debtor**

Unless the case is decided in favour of the debtor, the State as a creditor is exempted from prepayment of enforcement costs, including when enforcement is unsuccessful. As highlighted above, this matter is always in the Court's discretion. If the Court determines that the enforcement costs should be settled by the creditor, then the creditor will be obliged to pay them. If the Court decides that the State should settle the costs, the State would be responsible for them, unless it is exempt from paying them, in which case the fees will be waived.

#### **IV.1.12 Legal aid**

A creditor can apply for legal aid in enforcement cases. In this case, prepayment of enforcement fees is not due. Enforcement fees and costs are then covered by the State.

### **PART V: LINKS, LITERATURE AND SOURCES**

- In Maltese/English: <https://legislation.mt/Legislation>
- In French: n/a