

# Malta

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Malta is a unitary state with a monarchical form of government. It came into existence as an independent state on 21 Sept. 1964, in virtue of the Malta Independence Act passed by the United Kingdom Parliament in the same year (1964, c. 86).

The territories of Malta comprise the Island of Malta, the Island of Gozo, and the other islands of the Maltese Archipelago, including the territorial waters thereof.

## I. CONSTITUTIONAL SYSTEM

### 1. Nationality

Maltese nationality is unitary, but a citizen of Malta, by virtue of his Maltese citizenship, also has the common status of a Commonwealth citizen in common with the citizens of other countries in the British Commonwealth.

Maltese citizenship is *acquired* by birth or descent, or by registration or naturalization under certain conditions. It may be *lost* by voluntary renunciation, by automatic cessation in the event of dual nationality, or by deprivation by the state in certain circumstances where citizenship was originally acquired by registration or naturalization (Const. s. 23-32 and the Maltese Citizenship Act, 1965).

### 2. Territorial Division

It has not been found necessary, having regard to the small size of the whole territory, to divide Malta into regions for administrative purposes, though the Island of Gozo has a limited form of local government (*infra* 3c).

For electoral purposes, however, the territories of Malta are divided into 10 constituencies.

### 3. State Organs

a. *General structure.* – The fundamental laws embodying the Constitution of Malta are contained in the Malta Independence Act passed by the Parliament of the United Kingdom on 31 July 1964, and the Malta Independence Order in Council, with its accompanying Schedule, issued by Her Majesty “by and with the advice of Her

Privy Council” on 2 Sept. 1964 (S.I. 1964 no. 1398).

The power of government in Malta is vested in the Head of State and Parliament. In this Malta follows the United Kingdom pattern of parliamentary democracy.

In Malta the Constitution is supreme and the Constitutional Court is empowered to decide on the constitutionality of legislation.

The machinery for amending the Constitution is somewhat involved, for many provisions of the Constitution are entrenched. Entrenchment takes two forms. One group of entrenched sections can only be amended if an amending Bill is passed by a two-thirds majority of the total membership of the House of Representatives on the final vote. Another group of sections requires, in addition, an affirmative vote in a referendum after a period of not less than three nor more than six months of its passage through the House. Sections not entrenched may be altered by a majority of all the members of the House.

b. *Head of State.* – *Queen Elizabeth II*, Queen of the United Kingdom, is also the Queen of Malta. A Governor-General, appointed by the Queen on the recommendation of the Maltese Government, is the Queen’s representative in Malta and acts on her behalf.

In Malta, as in most other constitutional monarchies, the Governor-General acts on the advice of the Prime Minister, who is the political leader of the country, except in the exercise of those powers which are stated in the Constitution to be exercisable in his discretion (Const. s. 86). In general, these relate to the dissolution of Parlia-

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ment in certain specified circumstances, and to the appointment or removal of the Prime Minister.

c. *Legislative body.* – Malta has a unicameral legislature. The legislative authority resides in the Governor-General and the House of Representatives, but a rather unusual provision in the Constitution lays it down that when a Bill is presented to the Governor-General “he shall without delay signify that he assents” (Const. s. 73 (2)).

Broadly speaking, citizens of Malta resident in Malta who have attained the age of 21 years are entitled to vote for members of the House of Representatives, who are elected on a system of proportional representation by means of a single transferable vote. The House of Representatives consists of 55 members, but it is constitutionally possible for the Speaker to be elected from outside the House, in which case he is, by virtue of holding the office of Speaker, also a member of the House in addition to the other 55 members.

The House of Representatives is empowered to legislate for the peace, order and good government of Malta, but the Constitutional Court has jurisdiction to invalidate any law which runs counter to the provisions of the Constitution, though the Constitution itself is capable of amendment in the prescribed manner (Const. s. 67).

The party system plays an essential part in the working of the Constitution. The party which wins the majority of seats at a General Election forms the Government. The larger minority party becomes the Opposition, and its leader is accorded official recognition as Leader of the Opposition (Const. s. 91).

d. *Government.* – The executive authority of Malta is nominally vested in the Queen and is exercised by the Governor-General on her behalf. The Governor-General appoints as Prime Minister the member of the House of Representatives who, in his judgment, is best able to command the support of the majority of members. Members of the Cabinet are chosen by the Prime Minister and are appointed by the Governor-General on the advice of the Prime Minister.

The Cabinet is the real executive authority, though its acts are, in form, acts of the Governor-General on its advice. The Cabinet formulates policy and sponsors most of the important legislation, the adoption of which it can usually obtain through its control of the majority of the legislature. The doctrine of Cabinet responsibility, whereby the Cabinet as a whole is held responsible for the official acts and policies of individual ministers, is incorporated in the Constitution (s. 80

(2)) and the Cabinet must resign as a body if the legislature gives formal expression to lack of confidence in its policies or its personnel.

e. *Territorial authorities.* – A restricted form of local government was established in the Island of Gozo by the Gozo Local Government Ordinance (Ordinance XI of 1961), enacted by the then Governor. The Ordinance provides for the creation of a Civic Council in Gozo, composed of 14 members, which is empowered to discharge certain local functions, chiefly connected with matters relating to public works and public health in the Island.

#### 4. Judiciary

a. *The constitutional judiciary.* – The Constitution establishes a Constitutional Court and defines its jurisdiction (Const. s. 96 (2)).

The Court has (1) exclusive original jurisdiction in electoral cases, and (2) appellate jurisdiction from decisions of lower courts on alleged violations of the Fundamental Human Rights enumerated in the Constitution and on questions relating to constitutional interpretation or to the constitutional validity of ordinary legislation. Appeal to the Privy Council has been abolished (Const. of Malta (Amendments) Act, 1972).

b. *Judicial organization.* – Courts of Justice in Malta are either inferior or superior.

The *inferior courts* are (1) the Court of Magistrates of Judicial Police for the Island of Malta, and (2) the Court of Magistrates for the Islands of Gozo and Comino.

In civil matters, appeals lie (1) from the Court of Magistrates for Malta to the Court of Appeal constituted by one judge, and (2) from the Court of Magistrates for Gozo and Comino, to a Court of three magistrates in Gozo or, in appropriate cases, to the Court of Appeal in Malta.

In criminal matters, appeals lie to the Court of Criminal Appeal in Malta composed of one judge, sitting *without* a jury.

The *superior courts* are (1) the Civil Court, divided into First Hall (contentious jurisdiction) and Second Hall (non-contentious jurisdiction); (2) the Commercial Court, which is also an Admiralty Court; (3) the Court of Appeal; (4) the Criminal Court, composed of one judge sitting with a jury and (5) the Court of Criminal Appeal.

The Court of Appeal hears and determines appeals from judgments of the Civil Court, First Hall, and the Commercial Court, while a party aggrieved by a decree of the Civil Court, Second Hall, may bring an action before the Civil Court,

First Hall. The Court of Criminal Appeal, composed of three judges, hears appeals from judgments of the Criminal Court, other than judgments of acquittal.

Appeal from the Court of Appeal to the Privy Council has been abolished (*supra a*).

c. *Administrative tribunals.* – In Malta, as elsewhere, the continuing extension of governmental activity and responsibility for the general well-being of the community in the post-war years has led to a substantial growth in the number and importance of Administrative Tribunals. In fact, so varied have they become in constitution, function and procedure that a classification which is both succinct and satisfactory is impossible.

d. *Prosecution.* – The principal law officer is the Crown Advocate-General, who holds a public office and is appointed by the Governor-General acting in accordance with the advice of the Prime Minister. In the exercise of his powers to institute or to discontinue public prosecutions, the Crown Advocate-General acts in a quasi-judicial capacity and is not subject to the direction or control of the government of the day.

The Crown Advocate-General cannot be removed from his office except by the Governor-General upon an address by the House of Representatives, supported by the votes of not less than two-thirds of its total membership, praying for such removal on the ground of proved misbehaviour or proved inability to perform the functions of his office.

## II. SOURCES OF LAW

Modern Maltese law is derived from the following sources: (1) *Statute law*, which includes the Constitution itself, the five Codes forming part of the Revised Edition of the Laws of Malta, and other Acts of Parliament and subordinate legislation made thereunder; (2) *Commercial custom*, originating in unwritten traditions built up over the centuries; (3) *Judicial decisions* and the *opinions* of institutional writers.

The fundamental law of Malta is the Constitution which came into force on 21 Sept. 1964. The Constitution is supreme and if any legislation is inconsistent with the Constitution, the Constitution shall prevail and such other legislation shall, to the extent of the inconsistency, be null and void. Subject to the provisions of the Constitution, Parliament is the supreme law-making body in Malta, so that statute law takes precedence over other sources of law.

A judicial decision, even by the highest court in the land, does not constitute a binding precedent. Nevertheless, any reported judgment has some measure of persuasive weight, and this persuasive weight steadily increases as the courts progressively establish a uniform course of deci-

sion, a *jurisprudence constante*, on a particular point. Similarly, the critical writings of distinguished jurists are frequently cited in the Maltese Courts and, while not considered to have binding authority, are treated by the judges with considerable respect.

The official collection of laws is the Revised Edition of the Law of Malta (Rev.Ed.) which came into force on 31 Dec. 1942. The arrangement of the laws in the Revised Edition is chronological. Each law is referred to as "Chapter" and has a serial number. Among the more important Chapters are those embodying the five Codes, namely, Chapter 12 (The Criminal Code), Chapter 13 (The Code of Police Laws), Chapter 15 (The Code of Organization and Civil Procedure), Chapter 17 (The Commercial Code), and Chapter 23 (The Civil Code). A yearly volume has been published from 1943 onwards embodying the laws enacted during a particular year; these laws are quoted by their numbers and the year of enactment. The official collection of judicial decisions is known as *Decisioni delle Corti Superiori di Malta*.

## III. HISTORICAL EVOLUTION

The first known settlers in Malta were the Phoenicians, but Maltese law shows no traces of either Phoenician law or custom. This was almost cer-

tainly due to the all-pervading influence of Roman law during the period of the Roman occupation between 216 B.C. and 870 A.D., when *Justinian's*

*Corpus Juris* was expressly enforced in Malta. Nor did its influence cease with the Roman occupation, for Roman law permeated the Norman legislation which was applied in Malta between 1090 and 1194 A.D., as also the legislation of the Order of St. John of Jerusalem which was promulgated in the Island between 1530 and 1798.

The modern period of Maltese legislation begins with the advent of British rule in 1802, as a result of the voluntary cession of the Island by the Maltese to His Britannic Majesty. As a ceded territory, the existing Maltese legal system continued in being, and there was no question of its

having been superseded by English Common or Statute Law as was then the case in settled Colonies under the authorization of the Crown. Nevertheless, the development of Maltese private law, while remaining under European and Roman influence, gained much momentum during the period of British rule. In fact, it was during the latter part of the nineteenth century that the Civil and Commercial Codes (now incorporated in the Revised Edition of the Laws of Malta) were promulgated, however much their compilers may have drawn inspiration from the legal systems of the Continent of Europe.

#### IV. CIVIL LAW

The main source of the civil law is the Civil Code (Rev. Ed. Chapter 23), which was originally enacted as Ordinance VII of 1868, dealing with the Law of Things, and Ordinance I of 1873, dealing with the Law of Persons. In spite of the fact that they were enacted during the period of British rule, these Ordinances contain no traces of English law. They were largely influenced by the French Civil Code of 1804, though a number of provisions were also borrowed from the Codes of Sicily, Sardegnna, Parma, Piedmont and the Italian

Civil Code of 1865.

Furthermore, the Canon law is part of the civil law of Malta in the matter of the celebration and dissolution of marriage, and Roman law remains a great source of interpretation with regard to those statutory provisions having their origin in *Justinian's Corpus Juris*.

The Revised Edition incorporates all amendments to the Civil Code enacted up to 1942, while other amendments are contained in the yearly volumes published from 1943 onwards.

#### V. COMMERCIAL LAW

The main source of the commercial law is the Commercial Code (Rev. Ed. Chapter 17), originally enacted as Ordinance XIII of 1857, dealing with Trade in General, and Ordinances VX, XVI, XVII, XVIII and XIX of 1858, dealing with Maritime Trade Ordinance XIII of 1857 followed closely the provisions of the French Commercial Code of 1808. The principles of maritime law

embodied in Ordinances XV to XIX of 1858, have now been supplemented and, in certain matters, superseded by the Merchant Shipping Act, 1973.

Where no provision is made in the Commercial Code, the usages of trade acquire the force of law. English law constitutes an important source of such commercial usages.

#### VI. STATE DIRECTION OF TRADE

The exportation of goods from Malta and the importation of goods into Malta is under the control of the Minister of Trade, Industry and Agriculture. In exercise of the powers conferred on him by the Supplies and Services Act, 1947 (Act no. IV of 1947) s. 3, the Minister has enacted two sets of Regulations, *viz.*, the Exportation (Control) Regulations, 1948 and the Importation (Control) Regulations, 1969.

In virtue of the Exportation (Control) Regula-

tions, the exportation of all goods from Malta is, in principle, made subject to the grant of an export licence, but Regulation 3 (3) then proceeds to grant what is described as an "open general licence" for the exportation of goods grown or mainly manufactured in Malta listed in the Schedule to the Regulations. Similarly, although in general a licence is required for the importation of all goods into Malta, Regulation 5 of the Importation (Control) Regulations grants an open general

licence for the importation of goods not included in the Schedule to the Regulations if they originate in the so-called Relaxation Area and in the Dollar Area, irrespective of the country from which they are consigned. The underlying purpose of the

import licensing system is the creation of a healthy balance of payments, and the Schedule therefore lists the goods the importation of which would tend to interfere with the diversification and general development of the national economy.

## VII. INDUSTRIAL PROPERTY AND COPYRIGHT

1. *Industrial Property* is regulated by the Industrial Property (Protection) Ordinance, 1899 (Rev. Ed. Chapter 48), which is virtually a reproduction of the old English Statute, the Patents, Designs and Trade Marks Act of 1883. It makes provision for the protection of trade marks, patents, and designs and models of manufacture, and has not been amended to any substantial extent since it was originally enacted.

It should be noted that marks which are not registrable in terms of the Industrial Property (Protection) Ordinance are nevertheless entitled to protection under the general principles of the Commercial Code prohibiting unfair competition. In this connection, traders are prohibited from making use of any mark or distinctive device which is capable of creating confusion in the public mind with any other mark or distinctive device *already lawfully used by others* (Comm. C. s. 36).

2. *Copyright* matters are governed by the Copyright Act, 1967 (Act VI of 1967) which was brought into operation on 1 Jan. 1970 by notice issued in the Government Gazette by the Minister of Trade, Industry and Agriculture. Before that date, copyright was still governed by an old Imperial Statute of the United Kingdom Parliament, the Copyright Act, 1911, which before Independence had been made applicable to Malta as a Dependency of the Crown by Proclamation VI of 28 June 1912.

The Copyright Act, 1967, is to a very large extent modelled on the British Copyright Act, 1956, and the Universal Copyright Convention signed at Geneva on 6 Sept. 1952. Literary, musical and artistic works other than photographs enjoy copyright for a period of 25 years after the end of the year in which the author dies.

## VIII. LAW OF CIVIL AND COMMERCIAL PROCEDURE

The Law of Civil Procedure is contained in the Code of Organization and Civil Procedure (Rev. Ed. Chapter 15), which was originally enacted as Ordinance IV of 1854 and based, in essence, on the French *Code de Procedure Civil* of 1807 and on local custom.

The underlying purpose of this legislation is to give effect to the overriding principle (which is now embodied in Const. s. 40) that, in the determination of the existence or the extent of civil rights and obligations in proceedings before any

court or other adjudicating authority, the individual shall be afforded a fair and public hearing within a reasonable time by an independent and impartial tribunal.

There is no separate Code of Commercial Procedure, and the Commercial Court exercises jurisdiction in accordance with the provisions of the Code of Organization and Civil Procedure. Bankruptcy proceedings, however, are governed by the provisions of the Commercial Code (Rev. Ed. Chapter 17).

## IX. PRIVATE INTERNATIONAL LAW AND INTERNATIONAL LAW OF PROCEDURE

Maltese private international law and international law of procedure is not codified, although one or two principles have found their way into the Civil Code and the Code of Organization and Civil

Procedure (CC s. 719 and 1360 and Code of Organization and Civil Procedure s. 743, 829 and 830).

### I. Private International Law

Broadly speaking, there is very little difference between Maltese law and English law in the field of private international law. Thus, in a long series of judgments, the Maltese Courts have laid it down that English principles of private international law are to be followed where no corresponding Maltese principles exist. Nevertheless, there is a conspicuous divergence in at least one very important respect, *i.e.*, the law of marriage, for in Malta the Civil Code only deals with the civil effects of marriage and does not concern itself with questions relating to its celebration or dissolution.

These questions are governed by the Canon law of the Roman Catholic Church, and civil marriage and divorce are therefore unknown in Malta. Consequently, the Maltese Courts will declare null and void all marriages not solemnized in accordance with the formalities prescribed by the Canon law, where at least one of the spouses is a Maltese Catholic. Furthermore, a divorce decree

validly obtained by a Maltese spouse in another country is incapable of legal enforcement in Malta and re-marriage in Malta is equivalent to bigamy.

### 2. International Law of Procedure

The Maltese Courts will exercise local and international jurisdiction in respect of those persons indicated in the Code of Organization and Civil Procedure s. 743, *e.g.*, any person as long as he is domiciled in Malta or in matters regarding property situate in Malta.

Foreign judgments generally are enforced in Malta provided that they are not defective in terms of the Code of Organization and Civil Procedure s. 830, *e.g.*, provided that the foreign judgment is not contrary to Maltese public policy. British judgments are treated as a separate category and are given effect to through the simplified procedure provided for in the British Judgments (Reciprocal Enforcement) Act, 1924, which is an exact duplicate of the United Kingdom Statute, the Administration of Justice Act, 1920.

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