



Appendix 15



March, 2008

STANDARD QUESTIONNAIRE FOR REMOR PARTNERS



Q1. National law on "maintenance obligation" (civil and private international law).

Please provide the Coordinator with all national legislation (both substantive and procedural), soft law measures (i.e. recommendations, draft of legislative measures) and case-law, which may be relevant to the development of the Remor project's objectives and connected to the proposal of the Regulation on "maintenance obligation".

Please note that all documents need to be duly translated in English and submitted on word-pdf-htlm format, so that they can be up-loaded on the web-site.

Regarding private international law, please note that, in addition to the relevant discipline on competent Authority, applicable law, recognition and execution of decisions, it is necessary to specify whether your Country has ratified international (multilateral or bilateral) treaties on maintenance obligations and/or on any other topic related to maintenance obligations and, if so, please provide the Main Partner with all relevant legislation.

Please specify also if your Country has entered any reservation.

Maltese National Legislation on maintenance can be mainly found in the following:

- The Constitution of Malta.

Article 17 (1):

Every citizen incapable of work and unprovided with the resources necessary for subsistence is entitled to maintenance and social assistance.

- Chapter 19 of the Laws of Malta, the Criminal Code.

Article 338 (z):

Every person is guilty of a contravention against public order, who -

(z) when so ordered by a court or so bound by contract fails to give to his or her spouse the sum fixed by that court or laid down in the contract as maintenance for the spouse and, or, the children, within fifteen days from the day on which, according to such order or contract, such sum should be paid:



Provided that, notwithstanding any other provision of this Code, the criminal action for an offence under this paragraph is barred by the lapse of six months;

- Chapter 12 of the Laws of Malta, the Code of Organisation and Civil Procedure. The most relevant provisions to the current study are listed hereunder.

Article 255 (c):

The following may be enforced after the lapse of twenty four hours from delivery:

(c) any judgment ordering the supply of maintenance;

Article 381 (a) - (e), (2):

(1) It shall not be lawful to issue a garnishee order upon -

(a) any salary, or wages (including bonus, allowances, overtime and other emoluments);

(b) any benefit, pension, allowance or assistance mentioned in the Social Security Act or other allowance of any person pensioned by the Government;

(c) any charitable grant or donation made by the Government;

(d) any bequest expressly made for the purpose of maintenance, if the debtor has no other means of subsistence and the debt itself is not due in respect of maintenance;

(e) any sum due for maintenance whether awarded officio judicis, or by public deed if the debt itself is not due in respect of maintenance;

(2) Notwithstanding the foregoing provisions of this article, in causes for maintenance, the court may, either in the judgment or in a subsequent decree upon an application to that effect by the creditor suing for maintenance, where such creditor is the spouse, or a minor or an incapacitated child, or an ascendant of the debtor, order that a specified portion of the salary, allowance or bequest mentioned in sub-article (1)(a), (b) and (d) or of the salary of any person, be paid directly to the creditor; the service of any such order on the person by whom the said salary, allowance or bequest is payable shall have the same effect as a garnishee order; and the person so served shall pay directly to the creditor the portion of the salary, allowance or bequest specified in the order.



Article 382:

(1) In the case of any salary, wage benefit, pension or allowance mentioned in article 381(1) (a) and (b) when the same exceed six hundred and ninety-eight euros and eighty one cents (698.81) per month or such amount as may from time to time be established by order made by the Minister responsible for justice, the issue of a garnishee order shall be applicable on that part in excess of the amount aforesaid:

Provided that if the debtor, upon an application shows to the satisfaction of the court that he needs such excess or part thereof for his maintenance or for the maintenance of his family, the court shall revoke the garnishee order with respect to the excess or such part thereof, whereupon the said order shall be deemed to be and to have been without effect to the extent to which it had been revoked:

Provided further that this article shall not apply to the pay of an officer or man of the regular force of Malta.

(2) The court may, at any time, vary the order given under subarticle (1), on a demand by application of the creditor or the debtor, if there be any change in the material circumstances of the debtor.

Article 752:

In actions for maintenance the value of the claim shall be the equivalent to the amount of maintenance claimed to be due in five years.

- Chapter 16 of the Laws of Malta, the Civil Code. The most relevant provisions to the current study are listed hereunder.

Article 2:

(1) The Law promotes the unity and stability of the family.

(2) The spouses shall have equal rights and shall assume equal responsibilities during marriage. They owe each other fidelity and moral and material support.

Article 3:



Both spouses are bound, each in proportion to his or her means and of his or her ability to work whether in the home or outside the home as the interest of the family requires, to maintain each other and to contribute towards the needs of the family.

Article 3B:

Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

Article 4:

(1) The spouses shall on marriage adopt the surname of the husband after which the wife may add her maiden surname or the surname of her predeceased spouse.

(2) The wife may, instead, choose to retain her maiden surname or the surname of her predeceased spouse after which she may add her husband's surname.

(3) The children of the marriage shall take the surname of their father, after which there may be added, in terms of article 292A, the maiden surname of the mother or the surname of her predeceased husband.

(4) Where the wife intends to retain her maiden surname after marriage she shall, before marriage, so declare her intention when applying for the publication of the banns in accordance with the Marriage Act and shall subscribe the appropriate declaration in the Act of Marriage. Such declaration shall be irrevocable.

*(5) *Sub-article (1) of this article shall apply to a wife who has married prior to the 1st December, 1993, unless and until she delivers or causes to be delivered to the Public Registry Office, the Form Q contained in Part II of the Schedule to this Code showing that she is opting to reassume her maiden surname. Such note may not be made after the lapse of six months after the 1st December 1993, and when delivered to the Public Registry Office, the Director shall register the same in a book kept for the purpose, for which he shall keep an index under the wife's maiden surname and that of her husband.*

(6) Where a wife intends to retain the surname of her predeceased husband after remarriage, she shall, before remarriage, so declare her intention when applying for the publication of the banns in accordance with the Marriage Act and in lieu of the declaration in the Act of Marriage referred to in subarticle (4) she shall subscribe to a declaration, in Form R contained in Part II of the Schedule to this Code and containing



the particulars therein indicated, such form shall be delivered to the Public Registry together with the Act of Marriage and shall be signed by the spouses and countersigned by all the other signatories in the Act of Marriage.

Article 5:

(1) In regard to maintenance, the spouse shall have a prior right over the parents or other ascendants.

(2) Where both children and spouse claim maintenance, they shall be in a position of equality.

(3) It shall not be lawful for either of the spouses to claim maintenance from the children or other descendants or from the ascendants if such maintenance can be obtained from the other spouse.

Article 6:

The duty of one spouse to maintain the other shall cease if the latter, having left the matrimonial home, without reasonable cause refuses to return thereto.

Article 7:

(1) Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code.

(2) In default of the parents, or where the parents do not possess sufficient means, the liability for the maintenance and education of the children devolves on the other ascendants.

Article 8:

The children are bound to maintain their parents or other ascendants, who are indigent.

Article 12:

Where, according to the foregoing provisions of this subtitle, there are more persons liable for maintenance, such persons shall be so liable in the following order:



(a) the children or descendants of the person claiming maintenance, in the same order in which they would according to law be vested with his or her succession;

(b) the parents;

(c) the other ascendants in the same order in which they would according to law be vested with the succession of the claimant.

Article 13:

(1) The obligation of such persons as according to the order set forth in the last preceding article are placed in the same degree of liability, shall be a joint and several obligation.

(2) The persons, however, who according to such order, are placed in a remoter degree shall have only a subsidiary liability, if those in a nearer degree are unable to discharge their obligation.

(3) Nevertheless, it shall be lawful for the court, in urgent cases, to condemn any of the persons liable for maintenance, in whatever degree, to supply maintenance, reserving to such person the right to claim reimbursement from such other persons as, according to the said order, were bound to supply such maintenance.

Article 14:

(1) Where several persons claim maintenance from a person who is unable to supply maintenance to all of them, the order set forth in article 12 shall be observed in determining the right of priority of such claimants.

(2) Nevertheless, it shall be lawful for the court to depart from the rule laid down in sub-article (1) of this article in cases of great urgency, regard being had to the health, age or other circumstances of the claimants.

Article 15:

(1) The liability for maintenance shall extend to brothers and sisters, of the full or half-blood, only in default of other persons liable for maintenance.

(2) In any such case the liability of brothers and sisters shall be joint and several.



(3) The persons mentioned in article 12 shall, in all cases, have a prior claim over brothers and sisters, except in cases of great urgency, regard being had to health, age, or other circumstances.

Article 16:

(1) The liability for maintenance, by reason of consanguinity, shall only exist as between the persons, and in the cases mentioned in the foregoing articles of this Sub-title.

(2) Such liability shall cease even in regard to such persons, if the claimant shall have become indigent through his fault:

Provided that this shall not apply where the claimant are the parents, or other ascendant.

Article 17:

(1) Where a brother or sister has received maintenance, and, within ten years of the last supply thereof, becomes able to repay the amount so received, he or she shall be bound to repay such amount to the person supplying the maintenance, provided the demand for reimbursement be made within the said time.

(2) In no other case, in the absence of an agreement to the contrary, can a claim be made for reimbursement of the amount of maintenance supplied under the provisions of this Code.

Article 19:

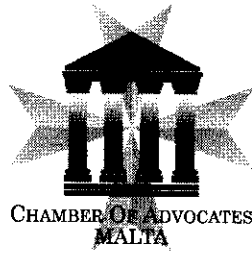
(1) Maintenance shall include food, clothing, health and habitation.

(2) In regard to children and other descendants, it shall also include the expenses necessary for health and education.

Article 20:

(1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.

(2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.



(3) *In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.*

(4) *A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.*

(5) *In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.*

Article 27:

(1) *The obligation of any person to supply maintenance to another shall cease if the person in whose favour such obligation is established, shall contract marriage, notwithstanding the opposition of the person liable as aforesaid, provided such opposition be made on good grounds, and the demand from the release from such obligation be made by the person objecting within the time of six months following the celebration of the marriage.*

(2) *Such opposition shall only be operative if it is made by means of a judicial act to be served on each of the parties intending to contract the marriage, and filed in the registry of the civil court, in the island in which the person objecting, or either of the said parties, resides.*

Article 32:

Besides the ground referred to in article 27, parents or other ascendants may refuse maintenance to children or other descendants on any of the grounds on which an ascendant may disinherit a descendant.

Article 34:

Nevertheless, in none of the cases referred to in the last two preceding articles can maintenance be refused where the injury, or other ground of refusal therein mentioned, has taken place very long before the claim for maintenance is made.



Article 37:

(1) All suits for personal separation shall be brought before the appropriate section of the Civil Court as may be established by regulations made by the Minister responsible for justice:

Provided that prior to the commencement of proceedings, a demand may be made for determining the amount of an allowance for maintenance during the pendency of the proceedings and for the issue of a decree ordering the payment of such allowance or a demand for the court to determine by decree who of the spouses, if any, shall during the pendency of the proceedings continue to reside in the matrimonial home.

(2) The application containing the demand referred to in the proviso to subarticle (1) shall be duly appointed for hearing by the court and shall be served on the respondent together with the notice of such hearing:

Provided that where domestic violence is involved, the said application shall be appointed within four days and the court may, of its own motion before or after hearing the parties, issue a protection order under article 412C of the Criminal Code and, or a treatment order under article 412D of the same Code and the provisions of those articles shall mutatis mutandis apply to an order issued under this article as if it were an order issued under the corresponding article of the said Code:

Provided further that for the purposes of this article and of article 39, "domestic violence" shall have the same meaning assigned to it by article 2 of the Domestic Violence Act.

(3) The court shall summarily hear the applicant and the respondent and shall then, by decree, decide on the demand: Provided that the court may decide on the demand where the applicant or the respondent or both the applicant and the respondent fail to appear on the day of the hearing.

(4) The decree referred to in subarticle (3) shall be an executive title deemed to be included amongst the decrees mentioned in article 253(a) of the Code of Organization and Civil Procedure and shall be enforceable in the same manner and under the same conditions in which such acts are executed.

(5) The decree referred to in subarticle (3) shall cease to be enforceable if the action for separation is not instituted within two months of the date of the decree or within such longer period as the court may in the same or in a subsequent decree allow.



(6) The provisions of article 381(3) of the Code of Organization and Civil Procedure in pursuance of which a court of contentious jurisdiction may make the order therein specified shall apply, mutatis mutandis, as if the court in that subarticle were a reference to the appropriate section of the Civil Court before which the demand referred to in the proviso to subarticle (1) is made.

(7) The decree and the order mentioned in this article may be only reviewed, altered or revoked upon an application made by the party seeking such review, alteration or revocation.

(8) Subject to the provisions of article 39 of the Constitution, regulations made under this article may provide for the hearing of causes in camera.

Article 38:

Either of the spouses may demand separation on the ground of adultery on the part of the other spouse.

Article 41:

Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other, without good grounds.

Article 46A:

During the pendency of the action for separation, either spouse, whether plaintiff or defendant, may demand from the other spouse a maintenance allowance in proportion to his or her needs and the means of the other spouse, and taking into account also all other circumstances of the spouses.

Article 48:

(1) The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit -

(a) the rights established in articles 631, 633, 825, 826 and 827 of this Code;

(b) the things which he or she may have acquired from the other spouse by a donation in contemplation of marriage, or during marriage, or under any other gratuitous title;



(c) any right which he or she may have to one moiety of the acquests which may have been made by the industry chiefly of the other spouse after a date to be established by the court as corresponding to the date when the spouse is to be considered as having given sufficient cause to the separation. For the purposes of this paragraph in order to determine whether an acquest has been made by the industry chiefly of one party, regard shall be had to the contributions in any form of both spouses in accordance with article 3 of this Code;

(d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.

(2) The things mentioned in paragraph (b) of sub-article (1) of this article shall revert to the other spouse, and the acquests mentioned in paragraph (c) of the said sub-article shall remain entirely in favour of such spouse, saving any right which the children or other third parties may have acquired thereon prior to the registration of the judgment of separation in the Public Registry.

Article 54:

(1) The spouse against whom the separation is pronounced shall not, as a result of such separation, be relieved from the obligation of supplying maintenance to the other spouse, where, according to the provisions of Sub-title I of this Title, such maintenance is due.

(2) The amount of such maintenance shall be determined having regard to the means of the spouse bound to supply maintenance and the needs of the other spouse, taking into account also all other circumstances of the spouses.

(3) Notwithstanding any other provision of this Code, on separation being pronounced, the court may if it deems it appropriate in the circumstances, order the spouse liable to supply maintenance to pay to the other spouse, in lieu of the whole or part of such maintenance, a lump sum, which the court deems sufficient in order to make the spouse to whom maintenance is due financially independent or less dependent of the other spouse, as the case may be.

(4) For the purposes of sub-article (3) of this article, the court shall, among the circumstances, consider the possibility of the person to whom maintenance is due, of receiving training or retraining in a profession, art, trade or other activity or to commence or continue an activity which generates an income, and order the lump sum for that purpose.



(5) *The court may direct, according to circumstances, that the payment of a lump sum referred to in the previous sub-articles of this article, be made by equal or unequal instalments spread over a reasonable period of time.*

(6) *The court may also direct that in lieu of all or part of the lump sum referred to in sub-article (3) of this article, the spouse liable thereto shall assign to the other spouse property in ownership or in usufruct, use or habitation.*

(7) *Where there is a supervening change in the means of the spouse liable to supply maintenance or the needs of the other spouse, the court may, on the demand of either spouse, order that such maintenance be varied or stopped as the case may be. Where however, a lump sum or an assignment of property has been paid or made in total satisfaction of the obligation of a spouse to supply maintenance to the other spouse, all liability of the former to supply maintenance to the latter shall cease. Where instead, the lump sum or assignment of property has been paid or made only in partial satisfaction of the said obligation, the court shall, when ordering such lump sum payment or assignment of property, determine at the same time the portion of the maintenance satisfied thereby and any supervening change shall in that case be only in respect of the part not so satisfied and in the same proportion thereto.*

Article 57:

(1) *Whosoever may be the person to whom the children are entrusted, the father and mother shall maintain their right to watch over their maintenance and education, and shall still be bound to contribute thereto, according to law.*

(2) *It shall be in the discretion of the court, according to circumstances, to fix the time, place, and manner in which the father or mother shall have access to the children.*

(3) *It shall be lawful for the court entirely to forbid such access if it may be detrimental to the welfare of the children.*

Article 623:

Saving the provisions of article 630, the grounds on which a descendant may be disinherited are the following only:

(a) *if the descendant has without reason refused maintenance to the testator;*



(b) if, where the testator has become insane, the descendant has abandoned him without in any manner providing for his care;

(c) if, where the descendant could release the testator from prison, he has without reasonable ground failed to do so;

(d) if the descendant has struck the testator, or has otherwise been guilty of cruelty towards him;

(e) if the descendant has been guilty of grievous injury against the testator;

(f) if the descendant is a prostitute without the connivance of the testator;

(g) in any case in which the testator, by reason of the marriage of the descendant, shall have been, under the provisions of articles 27 to 29, declared free from the obligation of supplying maintenance to such descendant.

- Chapter 48 of the Laws of Malta, the Maintenance Orders (Facilities for Enforcement) Ordinance

The aim of this Ordinance is to facilitate the enforcement in Malta of Maintenance Orders made in England or Northern Ireland or in other parts of Her Majesty's Dominions and vice versa.

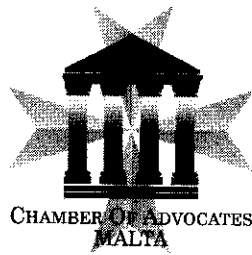
It must be noted that by Article 18 of Chapter 242 of the Laws of Malta, this Ordinance was repealed. Such Article, however, was to come into force on a date or dates to be fixed by notice in the Government Gazette. By three separate notices (L.N. 48 of 1975, L.N. 153 of 1977, and L.N. 44 of 1978) the said Article was brought into force but only with respect to the United Kingdom of Great Britain and Northern Ireland, the Commonwealth of Australia and Gibraltar. The Ordinance is therefore still in force with respect to Bermuda. Although, therefore, the Ordinance is still reproduced in its original form, as amended, and still includes references to England, Northern Ireland and other parts of Her Majesty's Dominions, such references are now to be construed as limited only to Bermuda.



- Chapter 242 of the Laws of Malta, the Maintenance Orders (Reciprocal Enforcement) Act

The aim of this Act is to make new provision in place of the Chapter 48 of the Laws of Malta; to make provision with a view to the accession by Malta to international conventions relating to maintenance; to make other provision for facilitating the recovery of maintenance by or from persons in Malta from or by persons in other countries; and for purposes connected with the matters aforesaid.

- All relevant Maltese case-law may be accessed on the website <http://www2.justice.gov.mt/sentenzi/default.asp?lng=ENG>.



Q2. What is the “meaning” of maintenance / alimentary / assistance obligation in your country?

It is necessary to understand what is the concept that “maintenance” and “maintenance obligation” underlie according to your domestic law. In particular, we wish to know if in your Country there are different legal terms for maintenance, alimentary and assistance obligations (or, on the contrary, if “maintenance” obligation covers all kinds and extent of this type of obligation). Please provide the Main Partner with all information useful to define these concepts.

Please specify also whether the concept of maintenance obligation used in your Country is different from the one used by the Court of Justice of the European Communities in its case-law (see in particular C-120/79; C-220/95) and, if so, to what extent.

Maltese Law, specifically Article 19 of Chapter 16 of the Laws of Malta, states:

(1) Maintenance shall include food, clothing, health and habitation.

(2) In regard to children and other descendants, it shall also include the expenses necessary for health and education.

At Maltese Law, the term ‘maintenance’ defines that material assistance granted to a person/s, generally a dependant by Law, who is in financial need and consequently liable to be maintained.

Emphasis is to be placed on the words ‘shall include’ and ‘shall also include’, which render the definition of ‘maintenance’ at Maltese Law a non-exhaustive one; the concept *per se* therefore covers a wider spectrum than that encompassed by the four pillars of ‘food, clothing, health and habitation’ and by the other two pillars of ‘health and education’. Notably, the concept of ‘maintenance’ is widened in relation to children, therefore partially reiterating Article 3B of Chapter 16 of the Laws of Malta:

Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

Attention must be paid to the fact that while Article 19 of Chapter 16 of the Laws of Malta refers to ‘children’, Article 3B refers to ‘children of the marriage’. In accordance with



the former Article, 'maintenance' is due to all and any child/ren and not only to those of the marriage.

One should further note that at Maltese Law, there exist no different legal terms or legal variants to the term.

In that the indicated milestone decisions of the Court of Justice of the European Communities, namely C-120/79, Jacques de Cavel v. Louise de Cavel and C-220/95, Antonius van den Boogaard v Paula Laumen deliver an understanding of 'maintenance' in terms of spousal provision, the concept of 'maintenance' as outlined therein may be said to be congruous with and encompassed within the wider concept of 'maintenance' under Maltese Law.



Q3. Which is the competent authority to apply to?

Please indicate which courts/administrative bodies within your system have jurisdiction to consider applications on maintenance obligations. Please specify:

- (i) whether the competent Authority is a judicial or an administrative body;*
- (ii) whether the competent Authority has a specific competence on problems regarding marriage-separation-divorce and or minors;*
- (iii) what kind of measures the competent Authority may apply;*
- (iv) whether legal aid is required for this sort of proceeding and, if so, on what conditions;*
- (v) what procedures and measures exist for the enforcement of the judicial and or administrative orders.*

For the establishment of a maintenance obligation, the competent authority to apply to, in case of disagreement, is the Civil Court [Family Section].

For the recovery of the same, the competent authorities to apply to are the Civil Court, First Hall [entertaining claims of €11646.87 and any other higher claim], the Court of Magistrates [entertaining claims from €3494.06 to €11646.87] or the Small Claims Tribunal [entertaining claims of up to €3494.06], depending on the amount of the claim.

For the recovery of a maintenance obligation accompanied by a penal remedy, one may also apply to the Court of Magistrates as a Court of Criminal Judicature.

All of the above-indicated are judicial bodies forming part of the Courts and Tribunals of Malta. The competent authority with specific competence to entertain issues regarding marriage, separation and minors [in Malta, the institute of divorce does not exist] is the Civil Court [Family Section]. In fact, Subsidiary Legislation 12.20 of the Laws of Malta, with regard to competence, points out:

4. *To the Civil Court (Family Section) shall be assigned those cases falling within the competence of the Civil Court and which relate to matters regulated by:*

- (a) Titles I, II and IV of Book First the Civil Code;¹*
- (b) the Maintenance Orders (Facilities for Enforcement) Ordinance;*
- (c) the Maintenance Orders (Reciprocal Enforcement) Act;*

¹ Of the Rights and Duties Arising from Marriage, Of Filiation, Of Parental Authority.



- (d) the Marriage Act; and*
- (e) the Child Abduction and Child Custody Act.*

Before the Civil Court [Family Section], the Civil Court, First Hall, the Court of Magistrates, and the Court of Magistrates as a Court of Criminal Judicature, legal representation is generally (but not invariably) required and recommended both due to the nature of the matters brought before the said court and also due to the fact that filing of certain acts before such Courts may only be done by an Advocate admitted to the Bar of Malta. On the other hand, before the Small Claims Tribunal, legal representation is generally (but again not invariably) less required, but still recommended. Before the said Tribunal, acts need not necessarily be filed by an Advocate.

The procedures and measures in existence for the enforcement of the judicial orders given by the aforesaid courts and tribunals may be said to be both of a civil nature as well as of a penal nature.

Articles 829 and 830 of Chapter 12 the Laws of Malta respectively state:

829. It shall be lawful for any person, without the necessity of any previous judgment, to secure his rights by one or more of the following precautionary acts, which shall be issued and carried into effect on the responsibility of the person suing out the act, provided he shall have complied with the conditions prescribed by this Code.

830. (1) The precautionary acts referred to in the last preceding article are the following:

- (a) warrant of description;*
- (b) warrant of seizure;*
- (c) garnishee order;*
- (d) warrant of impediment of departure;*
- (e) warrant of prohibitory injunction.*

Article 253 of Chapter 12 the Laws of Malta, *inter alia*, also states:

The following are executive titles:

- (a) judgments and decrees of the courts of justice of Malta;*
- (b) contracts received before a notary public in Malta, or before any other public officer authorised to receive the same where the contract is in respect of a debt certain, liquidated and due, and not consisting in the performance of an act;*



Article 273 of Chapter 12 the Laws of Malta furthers:

The executive titles mentioned in article 253 may, according to circumstances, be enforced by any of the following executive acts:

- (a) warrant of seizure of movable property;*
- (b) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;*
- (c) Repealed by: XII.1985.9.*
- (d) executive garnishee order;*
- (e) warrant of ejection or eviction from immovable property;*
- (f) warrant in factum.*

In addition to the above, note is also to be taken of Article 338 (z) of Chapter 9 of the Laws of Malta:

Every person is guilty of a contravention against public order, who -

(z) when so ordered by a court or so bound by contract fails to give to his or her spouse the sum fixed by that court or laid down in the contract as maintenance for the spouse and, or, the children, within fifteen days from the day on which, according to such order or contract, such sum should be paid:

Provided that, notwithstanding any other provision of this Code, the criminal action for an offence under this paragraph is barred by the lapse of six months;



Q4. Who is entitled to receive maintenance and who is obliged to provide maintenance?

It is therefore important to know the persons to whom the Regulation shall apply. As pointed out in the Green Paper of the Commission on maintenance obligations, the types of relationship that can generate a maintenance obligation between two people vary from one State to another, since sometimes only parents and their children or spouses or ex-spouses are concerned, whereas elsewhere the family circle is broader, extending even to living together persons and "civil (or registered) partnership".

Please indicate:

- (i) who is entitled to receive maintenance and who is obliged to provide maintenance under domestic law;*
- (ii) up to what age and under which condition a child may benefit of a maintenance allowance;*
- (iii) if your Country has adopted (or is going to adopt) specific legislation on "registered partnership".*

Moreover, the recovery of maintenance is sometimes handled by public agencies, acting on behalf of the creditor or subrogated to the creditor's rights.

Please indicate whether under your domestic law public bodies/agencies may take an action for the recovery of maintenance obligation. Please provide also any relevant legislation, case-law, soft law on this specific topic.

Under Maltese Law, the following are entitled to receive and obliged to supply maintenance:

- a spouse;
- children;
- brother and sisters of full or half blood;
- descendants;
- ascendants;

Malta has not, to date, adopted any specific legislation on "registered partnerships". There exists no indication that such legislation is going to be adopted in the near future.



Under Maltese Law, and more specifically under Article 30 (11) Chapter 318 of the Laws of Malta:

The Director may, if he so deems fit in the circumstances of the case, take proceedings before the competent Civil Court against such relatives being the spouse, father, mother, son or daughters as the case may be, of any person in respect of whom Social Assistance is claimed or received under this Article (other than subarticle (8) thereof) to compel them to refund any such assistance that is paid to or on behalf of such person and the court shall order the refund of any sum paid as Social Assistance up to such sum as would have been due by such relatives or relative had the person to whom Social Assistance is paid had claimed maintenance from such relatives in accordance with the provisions of the Civil Code.

The Executive Police, under Article 338 (z), Chapter 9 of the Laws of Malta may, generally upon the demand of the maintenance creditor, take such action and prosecute a person who when so ordered by a court or so bound by contract fails to give to his/her spouse the sum fixed by that court or laid down in the contract as maintenance for the spouse and, or, the children, within fifteen days from the day on which, according to such order or contract, such sum should be paid. Such person, if found guilty will not only be punished according to law, but also ordered to fulfill his/her obligation thereunder.

The voluminous case-law on the matter may be accessed on the website <http://www2.justice.gov.mt/sentenzi/default.asp?lng=ENG>.



Q5. What are the legal criteria by which maintenance obligations determinations are made?

In particular it is necessary to know

- *how maintenance obligations may be fulfilled (i.e. directly, by giving to the beneficiary a determined amount of money or indirectly, as for example by paying costs and/or expenses for services used by the beneficiary);*
- *whether there is a difference in the legal status of mothers and fathers in providing maintenance obligations towards their child and/or children;*
- *what determinations are made as regard maintenance obligations towards children in case of joint custody;*
- *whether legislation and/or case law provide criteria for the assessment of maintenance obligation (like length of marriage, financial capacity of spouses, etc.), and, in the affirmative, it is important to know them, in order to make a comparative analysis;*
- *whether in case of breach of obligations arising from the marriage, the right of maintenance might be reduced and/or limited and/or eliminated;*
- *whether domestic legislation provides automatic adjournment of maintenance obligation taking into account the changes in the costs of living and or other criteria.*

Please provide all necessary documents and information at this regard.

Maltese Law caters for both the direct as well as the indirect fulfillment of the obligation of maintenance. In Malta, maintenance may be paid either by way of periodic payments or by way of a lump sum, or in certain cases, in both ways simultaneously. It may also be paid by offering the party liable to receive maintenance house accommodation and/or in kind; Article 23 of Chapter 16 of the Laws of Malta states:

(1) The person bound to supply maintenance may not, without just cause, be compelled to pay a maintenance allowance if he offers to take and maintain into his own house the person entitled to maintenance.

(2) Where maintenance is to be furnished out of the house of the person liable thereto, he may, on good cause being shown, supply such maintenance in kind instead of paying an allowance in money.

It must be stated that the indirect payment of maintenance arises, in general manner, in the case of maintenance payable for children whereby the party liable to furnish maintenance is bound, or binds himself/herself, to pay the party entrusted with the care



and custody a share of those expenses relating to the education and health of the said children.

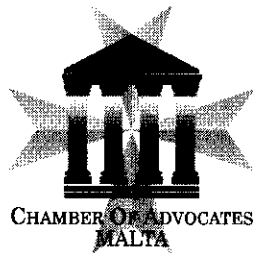
Moreover, under Maltese Law there is no difference between the legal status of mothers and that of fathers in the provision of maintenance obligations towards their child and/or children.

Generally, but not invariably in those cases where both parties are entrusted with the joint custody of children, the party with whom the children are living is generally granted a maintenance allowance for the same from the other party together with a credit towards one half of the expenses relating to education and health of the said children. It has been established, in general manner and in those cases where the circumstances of the parties so allow, by the Civil Court (Family Section) that such maintenance allowance is not to go below the sum of €185 monthly. In this regard, Article 3B of Chapter 16 of the Laws of Malta states:

Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

Maltese Law lays down the following general criteria for the formulation of the maintenance obligation; Article 20, Chapter 16 of the Laws of Malta reads:

- (1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.*
- (2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.*
- (3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.*
- (4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.*



(5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.

With regard to the breach of the obligations arising from marriage and the right to maintenance, the following Articles of Chapter 16 of the Laws of Malta set the domestic legal scenario:

6. The duty of one spouse to maintain the other shall cease if the latter, having left the matrimonial home, without reasonable cause refuses to return thereto.

48. (1) The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit -

[...]

(d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.

[...]

52. It shall also be in the discretion of the court to determine, according to circumstances, whether the provisions of article 48 shall be applied, wholly or in part, in regard to both spouses or to one of them, or whether they shall not be applied at all in regard to either of them, if both spouses shall have been guilty of acts constituting good grounds for separation.

54. (1) The spouse against whom the separation is pronounced shall not, as a result of such separation, be relieved from the obligation of supplying maintenance to the other spouse, where, according to the provisions of Sub-title I of this Title, such maintenance is due.

[...]

In connection to Article 48 of Chapter 16 of the Laws of Malta quoted hereabove, reference need also be made to Articles 38 and 41 of the same Chapter of the Laws of Malta:

38. Either of the spouses may demand separation on the ground of adultery on the part of the other spouse.



41. Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other, without good grounds.

Interestingly, the provisions of Article 40 of Chapter 16 of the Laws of Malta is excluded from the purview of Article 48 of the same Chapter; it states

Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down:

Provided that separation on the ground that the marriage has irretrievably broken down may not be demanded before the expiration of the period of four years from the date of the marriage, and provided further, that the court may pronounce separation on such ground notwithstanding that, whether previously to or after the coming into force of this article, none of the spouses had made a demand on such ground.*

In conclusion, it must be stated that domestic legislation does not directly provide for the automatic revision of maintenance obligations.



Q6. Is it possible to recover the arrears?

The question of arrears, that is to say the recovery of maintenance awarded by a court but not actually paid, arises in a number of cases. As expressly pointed out in the Green Paper, difficulties can arise in particular if the law of the country where the judgment is to be enforced provides that the judgment awarding maintenance can be enforced, after exequatur, only for future payments, or permits the recovery of arrears only in respect of a limited period.

Regarding this it would be interesting to know (i) whether under domestic law arrears may be awarded and (ii) with specific reference to the enforcement of decisions ordering the payment of arrears, whether limitation rules are regarded as procedural or substantial.

Maltese Law, as the law of the country where a judgment awarding maintenance is to be enforced, provides that the judgment awarding maintenance can be enforced, after exequatur, not only in respect of future payments, but also allows the recovery of arrears for that period not barred by lapse of a prescriptive period. In this regard, Article 2156 (b) of Chapter 16 of the Laws of Malta, reads:

2156. The following actions are barred by the lapse of five years:

(b) actions for payment of maintenance allowances;

Interestingly, on this matter, Article 122 of Chapter 16 of the Laws of Malta specifically provides:

(1) Where an adoption decree is made in respect of a person who is conceived and born out of wedlock, then, unless the adopter is his mother and the mother is a single woman, any judgment, decree or order for the payment of maintenance in force with respect to that person, and any agreement whereby the father of that person has undertaken to make payments specifically for his benefit, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the judgment, decree, order or agreement at the date of the adoption decree.

(2) After an adoption decree has been made in respect of a person who is conceived and born out of wedlock, no judgment, decree or order for the payment of maintenance shall be made with respect to that person unless the adoption decree was made on the application of the mother of that person alone.

In such cases, limitation rules are regarded as substantive.



Q7. Are the parties (debtor and creditor-beneficiary) free to fix the amount and/or to determine how or who has to pay maintenance?

Please explain whether under domestic law the party entitled to receive maintenance and the party obliged to provide maintenance are free to determine the amount of the payment/obligation and how to pay (i.e. directly, by paying an amount of money to the beneficiary and/or indirectly, by paying for example some specific costs and/or expenses) or whether they have to follow specific criteria and limits indicated by legislation, which has an imperative character.

Under Maltese Law debtor and creditor are, in general manner, free to determine both who has to pay maintenance as well as the modality of payment of the same. As explained in the reply to question 5 hereabove, Maltese Law caters for both the direct as well as the indirect fulfillment of the obligation of maintenance. Domestic law does not indicate specific imperative criteria. In the absence of agreement between debtor and creditor/ beneficiary, the amount of maintenance is determined by the Civil Court (Family Section).

Having specific regard to contracts of personal separation, it must be noted that such freedom to determine the issues above is subject to vetting and approval of one of the judges presiding over the Civil Court (Family Section).



Q8. Is it possible to dispose of a maintenance obligation (assignability, negotiability, leviability, seizurability)?

Please give all necessary information on actions and remedies that may be taken in case the maintenance debtor does not pay, in order to force him/her to pay (like seizure orders, salary attachment order, etc.)

Please specify whether third parties may recover their credits on maintenance credits.

Under Maltese Law, it is not possible to dispose of a maintenance obligation; as such, *ab initio* it must be stated that, in the absence of such possibility of disposal, there exists no mechanism whereby a third party may recover his/her credits on maintenance credits.

The actions and remedies that may be taken in those cases where the maintenance debtor fails to pay may be subdivided into two categories, namely the Civil remedies and the Penal remedies.

The Civil remedies to such non-fulfilment for the recovery of a maintenance obligation, basically stated, amount to court action to such effect. As already stated in the reply to question 2 hereabove, in such cases, the competent authorities to apply to are the Civil Court, First Hall [entertaining claims of €11646.87 and any other higher claim], the Court of Magistrates [entertaining claims from €3494.06 to €11646.87] or the Small Claims Tribunal [entertaining claims of up to €3494.06], depending on the amount of the claim.

When an individual fails to pay maintenance and is ordered by a court on the basis of the above-mentioned court action, or bound by a contract so to pay, the procedures and measures in existence for the enforcement of the judicial orders given by the aforesaid courts and tribunals become available to the maintenance creditor.

Article 253 of Chapter 12 the Laws of Malta, *inter alia*, states:

The following are executive titles:

- (a) judgments and decrees of the courts of justice of Malta;*
- (b) contracts received before a notary public in Malta, or before any other public officer authorised to receive the same where the contract is in respect of a debt certain, liquidated and due, and not consisting in the performance of an act;*



Article 273 of Chapter 12 the Laws of Malta furthers:

The executive titles mentioned in article 253 may, according to circumstances, be enforced by any of the following executive acts:

- (a) warrant of seizure of movable property;*
- (b) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;*
- (c) Repealed by: XII.1985.9.*
- (d) executive garnishee order;*
- (e) warrant of ejection or eviction from immovable property;*
- (f) warrant in factum.*

Note must be taken that prior to the above-stated court action, a maintenance creditor may also avail himself/herself of the following Articles of Chapter 12 of the Laws of Malta:

829. It shall be lawful for any person, without the necessity of any previous judgment, to secure his rights by one or more of the following precautionary acts, which shall be issued and carried into effect on the responsibility of the person suing out the act, provided he shall have complied with the conditions prescribed by this Code.

830. (1) The precautionary acts referred to in the last preceding article are the following:

- (a) warrant of description;*
- (b) warrant of seizure;*
- (c) garnishee order;*
- (d) warrant of impediment of departure;*
- (e) warrant of prohibitory injunction.*

Further note must, in this connection, necessarily be taken of the following provisions of Chapter 12 of the Laws of Malta:

381. (1) It shall not be lawful to issue a garnishee order upon -

- (a) any salary, or wages (including bonus, allowances, overtime and other emoluments);*
- (b) any benefit, pension, allowance or assistance mentioned in the Social Security Act or other allowance of any person pensioned by the Government;*
- (c) any charitable grant or donation made by the Government;*



- (d) any bequest expressly made for the purpose of maintenance, if the debtor has no other means of subsistence and the debt itself is not due in respect of maintenance;
- (e) any sum due for maintenance whether awarded officio judicis, or by public deed if the debt itself is not due in respect of maintenance;

[...]

(2) Notwithstanding the foregoing provisions of this article, in causes for maintenance, the court may, either in the judgment or in a subsequent decree upon an application to that effect by the creditor suing for maintenance, where such creditor is the spouse, or a minor or an incapacitated child, or an ascendant of the debtor, order that a specified portion of the salary, allowance or bequest mentioned in sub-article (1)(a), (b) and (d) or of the salary of any person, be paid directly to the creditor; the service of any such order on the person by whom the said salary, allowance or bequest is payable shall have the same effect as a garnishee order; and the person so served shall pay directly to the creditor the portion of the salary, allowance or bequest specified in the order.

[...]

382. (1) In the case of any salary, wage benefit, pension or allowance mentioned in article 381(1) (a) and (b) when the same exceed six hundred and ninety-eight euros and eighty one cents (698.81) per month or such amount as may from time to time be established by order made by the Minister responsible for justice, the issue of a garnishee order shall be applicable on that part in excess of the amount aforesaid:

Provided that if the debtor, upon an application shows to the satisfaction of the court that he needs such excess or part thereof for his maintenance or for the maintenance of his family, or such part thereof, whereupon the said order shall be deemed to be and to have been without effect to the extent to which it had been revoked:

Provided further that this article shall not apply to the pay of an officer or man of the regular force of Malta.

(2) The court may, at any time, vary the order given under subarticle (1), on a demand by application of the creditor or the debtor, if there be any change in the material circumstances of the debtor.

Additionally, Article 255 of Chapter 12 of the Laws of Malta, *inter alia*, states:

The following may be enforced after the lapse of twenty four hours from delivery:



(a) any judgment on any collateral issue or any interlocutory decree, provided the time for enforcement is not stated in the judgment or decree itself;

[...]

(c) any judgment ordering the supply of maintenance;

[...]

The Penal remedies to such non-fulfilment stem from Article 338 (z) of Chapter 9 of the Laws of Malta:

Every person is guilty of a contravention against public order, who -

(z) when so ordered by a court or so bound by contract fails to give to his or her spouse the sum fixed by that court or laid down in the contract as maintenance for the spouse and, or, the children, within fifteen days from the day on which, according to such order or contract, such sum should be paid:

Provided that, notwithstanding any other provision of this Code, the criminal action for an offence under this paragraph is barred by the lapse of six months;

As has been previously stated in the reply to question 4 hereabove, the Executive Police, may, generally upon the demand of the maintenance creditor, take such action and prosecute a person who, when so ordered by a court or so bound by contract fails to give to his/her spouse the sum fixed by that court or laid down in the contract as maintenance for the spouse and, or, the children, within fifteen days from the day on which, according to such order or contract, such sum should be paid. Such person, if found guilty will not only be punished according to law, but also ordered to fulfill his/her obligation thereunder.

Interestingly, the above-quoted provision refers solely to that maintenance due to one's spouse and to the children born in lawful wedlock.



Q9. In which cases, according to domestic law, the beneficiary may lose his right to maintenance?

It is important to know whether under domestic law and/or case law the beneficiary of maintenance obligation may lose his right of maintenance and, in the affirmative, in which cases.

Furthermore, we wish to know whether the ex-spouse may lose his/her right in case he/she starts to live with a new partner.

Please provide all necessary documents and information to this regard.

Cessation of maintenance obligations under Maltese Law is regulated by the following provisions of Chapter 16 of the Laws of Malta:

6. The duty of one spouse to maintain the other shall cease if the latter, having left the matrimonial home, without reasonable cause refuses to return thereto.

27. (1) The obligation of any person to supply maintenance to another shall cease if the person in whose favour such obligation is established, shall contract marriage, notwithstanding the opposition of the person liable as aforesaid, provided such opposition be made on good grounds, and the demand from the release from such obligation be made by the person objecting within the time of six months following the celebration of the marriage.

[...]

28. For the purposes of the last preceding article, the want of the necessary means of subsistence, having regard to the position of the party to whom the opposition refers, or the bad character of the other party, shall be deemed to be a good ground of opposition to the proposed marriage.

29. Where the marriage has been celebrated with a total or partial dispensation from the previous publication of banns, and it is not shown that the person subject to the obligation mentioned in article 27, was aware of the proposed marriage at least fifteen days prior to its celebration, it shall be lawful for such person, even in default of the opposition referred to in that article, to demand, within the time of six months following the marriage, his release from the said obligation on any of the grounds on which such opposition would have been effectual.



32. Besides the ground referred to in article 27, parents or other ascendants may refuse maintenance to children or other descendants on any of the grounds on which an ascendant may disinherit a descendant.

33. It shall be lawful for any person to refuse maintenance to a brother or sister, on the ground of any grievous injury committed to his detriment or to the detriment of his or her wife or husband or of any other relative up to the degree of uncle or aunt, and nephew or niece, inclusively.

34. Nevertheless, in none of the cases referred to in the last two preceding articles can maintenance be refused where the injury, or other ground of refusal therein mentioned, has taken place very long before the claim for maintenance is made.

48. (1) The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit -

[...]

(d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.

[...]

52. It shall also be in the discretion of the court to determine, according to circumstances, whether the provisions of article 48 shall be applied, wholly or in part, in regard to both spouses or to one of them, or whether they shall not be applied at all in regard to either of them, if both spouses shall have been guilty of acts constituting good grounds for separation.

54. (1) The spouse against whom the separation is pronounced shall not, as a result of such separation, be relieved from the obligation of supplying maintenance to the other spouse, where, according to the provisions of Sub-title I of this Title, such maintenance is due.

[...]

In connection to Article 32 of Chapter 16 of the Laws of Malta quoted hereabove, reference need also be made to Articles 623 and 630 of the same Chapter of the Laws of Malta:

623. Saving the provisions of article 630, the grounds on which a descendant may be disinherited are the following only:

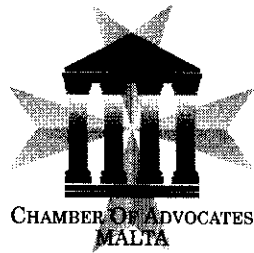


- (a) if the descendant has without reason refused maintenance to the testator;*
- (b) if, where the testator has become insane, the descendant has abandoned him without in any manner providing for his care;*
- (c) if, where the descendant could release the testator from prison, he has without reasonable ground failed to do so;*
- (d) if the descendant has struck the testator, or has otherwise been guilty of cruelty towards him;*
- (e) if the descendant has been guilty of grievous injury against the testator;*
- (f) if the descendant is a prostitute without the connivance of the testator;*
- (g) in any case in which the testator, by reason of the marriage of the descendant, shall have been, under the provisions of articles 27 to 29, declared free from the obligation of supplying maintenance to such descendant.*

630. Where the person entitled to the reserved portion is interdicted on the ground of prodigality, or is so burdened with debts that the reserved portion, or at least the greater part of it, would be absorbed by such debts, it shall be lawful for the testator by an express declaration to disinherit such person, and to bequeath the reserved portion to the children or descendants of such person.

It is also regulated by Article 20 (5) provisions of Chapter 255 of the Laws of Malta:

Notwithstanding any other provision, the spouse who was responsible for the nullity of the marriage, is bound to pay maintenance to the other spouse in good faith for a period of five years, which duty shall cease if the party in good faith marries during such period.



Q10. Maintenance/alimentary obligations and private international law matters (applicable law, competent judge, recognition and enforcement of judgments/decisions).

It is necessary to know the relevant legislation on private international law matters.

Please indicate:

- (i) in which cases the law of your Country is applicable (i.e. indicate the conflict of law rules that determine the law applicable to the settlement of an international dispute);*
- (ii) which law is to be applied when your Country law is not applicable;*
- (iii) in which cases your judges are competent to take decisions on maintenance obligations;*
- (iv) what conditions need to be satisfied for the recognition and execution of a foreign decision/judgment;*
- (v) whether a foreign decision/judgment establishing right and duty of maintenance between partners living together or "registered partners" may be recognised and enforced or not.*

Please provide all necessary documents and information to this regard.

Article 742 of Chapter 12 of the Laws of Malta reads:

742. (1) Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:

- (a) citizens of Malta, provided they have not fixed their domicile elsewhere;*
- (b) any person as long as he is either domiciled or resident or present in Malta;*
- (c) any person, in matters relating to property situate or existing in Malta;*
- (d) any person who has contracted any obligation in Malta, but only in regard to actions touching such obligation and provided such person is present in Malta;*
- (e) any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out such obligation in Malta, or who has contracted any obligation which must necessarily be carried into effect in Malta, provided in either case such person is present in Malta;*
- (f) any person, in regard to any obligation contracted in favour of a citizen or resident of Malta or of a body having a distinct legal personality or association of persons incorporated or operating in Malta, if the judgment can be enforced in Malta;*
- (g) any person who expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the court.*



(2) *The jurisdiction of the courts of civil jurisdiction is not excluded by the fact that a foreign court is seized with the same cause or with a cause connected with it. Where a foreign court has a concurrent jurisdiction, the courts may in their discretion, declare defendant to be non-suited or stay proceedings on the ground that if an action were to continue in Malta it would be vexatious, oppressive or unjust to the defendant.*

(3) *The jurisdiction of the courts of civil jurisdiction is not excluded by the fact that there exists among the parties any arbitration agreement, whether the arbitration proceedings have commenced or not, in which case the court, saving the provisions of any law governing arbitration, shall stay proceedings without prejudice to the provisions of sub-article (4) and to the right of the court to give any order of direction.*

(4) *On the demand by any person being a party to an arbitration agreement, the courts may issue any precautionary act, in which case, if such party has not yet brought forward his claim before an arbitrator, the time limits prescribed in this Code for bringing the action in respect of the claim shall be twenty days from the date of issue of the precautionary act.*

(5) *A precautionary act issued in terms of the preceding subarticle shall be rescinded:*

(a) if the party against whom it is issued makes such deposit or gives such security sufficient to secure the rights or claims stated in the act; or

(b) if the applicant fails to bring forward his claim, whether before the arbitrator or before the court, within the said time limit of twenty days; or

(c) on the expiration of the duration, original or extended, of the particular act in terms of this Code; or

(d) for just cause on the application of the debtor as the court may deem proper in the circumstances.

(6) *Where provision is made under any other law, or, in any regulation of the European Union making provision different from that contained in this article, the provisions of this article shall not apply with regard to the matters covered by such other provision and shall only apply to matters to which such other provision does not apply.*

Maltese Courts will be prepared to recognise a foreign choice of jurisdiction provided that it can be classified as a proper choice. Hence, even though jurisdiction is a public policy notion, freedom of choice of jurisdiction is not prohibited as long as the jurisdiction chosen is not malicious or improper. Furthermore, Maltese Courts will not recognise a status that is unknown in our jurisdiction.



The question of jurisdiction is also linked to the question of enforcement of foreign judgments. It is actually the other side of the coin of the jurisdictional issue because it implies the recognition of the jurisdiction of a foreign Court. Thus, if an English Court attempts to enforce a judgment obtained in Malta, such Court would see whether in terms of its law the Maltese Court exercised the proper jurisdiction. The question of enforcement of foreign judgments is also part and parcel of Treaty Law that provides to a certain extent automatic enforcements.

In Malta choice of law rules are determined by what by what *Falconbridge* has called *connecting factors*. A *connecting factor* constitutes an outstanding fact that establishes a natural connection between the cause of action and a particular system of law. Thus, for example, if a Maltese citizen dies intestate, domiciled in France, leaving movables in Malta and property in Spain, the movables will be distributed according to French law due to the connecting factor of domicile, whilst the succession to the land will be determined according to Spanish law due to the connecting factor of the *situs* of the land. Hence, the domicile of the deceased connects the movable property to French law, whereas the *situs* of the land connects it to Spanish law. Maltese Courts can regulate their decisions on the basis of a set of pre-existing norms or pointers. Thus, the norm lays down that movable property is disposed of according to law of the place of domicile - *lex domiciliae* of the deceased. Likewise, there is a norm which lays down that proprietary interest in immovable property is determined according to the *lex situs* of the said property. One must first classify the matter at hand to decide into which legal compartment the matter falls. Having decided this issue, the Court will then apply the appropriate choice of law rule to the case, in order to determine which law to apply. Thus, if the Court decides that the cause of action is proprietary interest in immovable property, then it will apply the choice of law rule which lays down that this type of cause of action should be regulated by the *lex situs* of the property. Hence, the Court will apply the law of place of *situs* of the property. In this particular case, the connecting factor between the cause of action and the applicable law was the *situs* of the property. It appears evident that the question of classification is fundamental for the determination of the applicable law. The Court cannot make the proper choice of law unless it classifies in a proper manner. Indeed, a defective classification will lead the Court to the wrong application of an inapplicable law, and this will surely destroy the scope of Private International Law.

In Malta, Courts are competent to take decisions with regard to maintenance obligations whenever they have jurisdiction so to do, whether directly or through the workings of European Union Law and/or Private International Law.



With regard to the enforcement of judgments of tribunals of countries outside Malta, Chapter 12 of the Laws of Malta premises:

825A. Where regulations of the European Union provide, with regard to the matters regulations under this title, in any manner different than in this title, the said regulations shall prevail, and the provisions of this Title shall only apply where they are not inconsistent with the provisions of such regulations or in matters not falling within the ambit of such regulations.

826. Saving the provisions of the British Judgments (Reciprocal Enforcement) Act, any judgment delivered by a competent court outside Malta and constituting a res judicata may be enforced by the competent court in Malta, in the same manner as judgments delivered in Malta, upon an application containing a demand that the enforcement of such judgment be ordered.

827. (1) The provisions of the last preceding article shall not have effect:

(a) if the judgment sought to be enforced may be set aside on any of the grounds mentioned in article 811;

(b) in the case of a judgment by default, if the parties were not contumacious according to foreign law;

(c) if the judgment contains any disposition contrary to public policy or to the internal public law of Malta.

(2) For the purposes of this article, the plea to the jurisdiction of the court by which the judgment was delivered, may be raised in terms of article 811(d), even though that court may have adjudged upon a plea to its jurisdiction, in the case of any action brought against any person not subject to the jurisdiction of that court by reason of domicile or residence, unless such person had voluntarily submitted to the jurisdiction thereof.

828. The judgment ordering the enforcement of another judgment delivered by a court outside Malta, upon being registered in the Public Registry Office, shall create as from the day of registration a hypothec in regard to the debt judicially acknowledged by the judgment the enforcement of which is ordered.

With regard to Article 827 (1) (c) of Chapter 12 of the Laws of Malta quoted hereabove, it must be said that the area within which public policy was mainly involved in Malta was that concerning marriage cases. For example, for many years, it was held that divorce is absolutely contrary to Malta's public policy. Indeed, prior to 1975, the whole structure of Maltese Private International Law concerning marriage was so strongly linked with Canon Law that when cases



arose in which one of the parties was a Roman Catholic, then Canon Law was applied as an overriding principle of public order. In Fenech Adami v. Beattie a divorce decree was granted in Scotland and the wife was granted Lm5 a week as maintenance for the child. The Maltese Court of Appeal refused to recognise the maintenance decree on the ground that the divorce decree was contrary to Maltese public policy. In this connection, Chapter 255 of the Laws of Malta provides what may perhaps be termed as the most direct method of enforcement in Malta. Article 21 thereof provides:

(1) A marriage celebrated in Malta after the coming into force of this article, in accordance with the norms and formalities established by Canon Law shall as from the moment of its celebration, be recognised and have the same civil effects as a marriage celebrated in accordance with the norms and formalities of this Act.

(2) The provisions of sub-article (1) shall apply only where:

(a) the banns required by this Act have been either published or dispensed with in accordance with articles 7 to 10 and the Registrar has issued a certificate attesting such publication or dispensation;

(b) the parish priest who in accordance with Canon Law has jurisdiction in the place where the marriage was celebrated transmits to the Director of the Public Registry an act of marriage in the form as may be prescribed duly signed by such authority as is provided for in the Agreement; and

(c) no impediment to the marriage as is referred to in articles 3, 4, 5 and 6, subsists. So however that the competent organs of the Catholic Church may for the purpose of catholic marriages under this Act grant authorisations or dispense from the restrictions in article 3(2) and article 5(1)(c) and (d).

(3) The certificate referred to in sub-article (2)(a) hereof shall constitute definite and conclusive proof of its contents.

From a historical perspective, the above-quoted Article is very important, because it substantially changed Maltese public policy with regard to the recognition of foreign divorces. Prior to 1975, there were a string of judgments that denied recognition of foreign divorces and the status of a divorcee. After 1975, starting with Cacciatolo v. Cacciatolo, a number of judgments were delivered which recognised foreign divorce and its effects. These judgments even claimed that the foreign divorce had the effect of terminating the marriage with all the related obligations, including that of maintenance. Naturally, such a stance can create hardship, but it appears to be the correct situation at Maltese Law in the light of more recent decisions.



At this stage, it is important to distinguish between cases of recognition of foreign judgments and actual matrimonial causes arising in Malta. As far as matrimonial causes arising in Malta are concerned, divorce is not possible within the Maltese jurisdiction. Indeed, the matrimonial causes that can arise under local law are those of nullity, separation, maintenance suits and suits for the custody of children. It is only in the Private International Law sector that divorces are recognised, and only if they are divorce judgments issued by a competent foreign Court according to the provisions of Article 21 of Chapter 255 of the Laws of Malta.

Regard must also be given to the following:

- Chapter 48 of the Laws of Malta, the Maintenance Orders (Facilities for Enforcement) Ordinance

The aim of this Ordinance is to facilitate the enforcement in Malta of Maintenance Orders made in England or Northern Ireland or in other parts of Her Majesty's Dominions and vice versa.

It must be noted that by Article 18 of Chapter 242 of the Laws of Malta, this Ordinance was repealed. Such Article, however, was to come into force on a date or dates to be fixed by notice in the Government Gazette. By three separate notices (L.N. 48 of 1975, L.N. 153 of 1977, and L.N. 44 of 1978) the said Article was brought into force but only with respect to the United Kingdom of Great Britain and Northern Ireland, the Commonwealth of Australia and Gibraltar. The Ordinance is therefore still in force with respect to Bermuda. Although, therefore, the Ordinance is still reproduced in its original form, as amended, and still includes references to England, Northern Ireland and other parts of Her Majesty's Dominions, such references are now to be construed as limited only to Bermuda.

- Chapter 52 of the Laws of Malta, the British Judgments (Reciprocal Enforcement) Act

The aim of this Act is to make provisions for the enforcement in Malta of judgments obtained in the United Kingdom and in the British dominions.

- Chapter 242 of the Laws of Malta, the Maintenance Orders (Reciprocal Enforcement) Act



The aim of this Act is to make new provision in place of the Chapter 48 of the Laws of Malta; to make provision with a view to the accession by Malta to international conventions relating to maintenance; to make other provision for facilitating the recovery of maintenance by or from persons in Malta from or by persons in other countries; and for purposes connected with the matters aforesaid.

This Act offers another type of direct enforcement in Malta. This Act basically provides for the obtaining of maintenance against spouses, and for the maintenance for minor children. Effectively, it is different from other types of enforcement because it contemplates a procedure that starts in one country and finishes in another. Indeed, through the operation of this Act, there is a joint effort of two Courts, rather than a judgment of one single Court. It is therefore a very specialised form of enforcement of a foreign judgment.

To date, "registered partnerships" are not provided for under Maltese Law and therefore, it still remains to be seen whether the same shall be recognized in any way. Having said this, Chapter 318 of the Laws of Malta grants Social Assistance to the head of household; as such one could argue that for the purposes of the said Chapter and of the right to claim assistance thereunder, the Director for Social Security could consider two persons living together as a family, therefore granting Social Assistance to the head of the same household.