

Seminar organised by the Hellenic Council of State and ACA-Europe

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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from Malta's Court of Appeal (Superior Jurisdiction)
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I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

- (A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
- (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act √

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers √



2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

Constitutional provision	<input type="checkbox"/>
General provision of a legislative nature	<input checked="" type="checkbox"/>
Specific legislation	<input checked="" type="checkbox"/>

General Provision of a Legislative Nature:

The Public Administration Act (Chapter 595) provides a general legal framework allowing the administration to engage non-civil servants (e.g. persons of trust, contractual staff, consultants) and regulates their role, duties, and accountability. Also, it sets out the values, ethical framework, and regulatory foundations of the public administration. Among its applications are employees of public bodies and those contracted or engaged under private-law arrangements, subject to ethical requirements and duties (e.g., conflict of interest provisions). Furthermore, this Act is generally applicable across public entities and also affects persons of trust who may come from the private sector and serve in advisory or managerial capacities.

Specific Legislation:

Various sector-specific laws (e.g., planning, environmental law) allow external experts, consultants, or representatives to participate in procedures to the extent provided by that specific law (e.g. public consultations, submission of evidence or expert reports). Although not codified in a general administrative procedure code, these exist across different regulatory regimes (e.g., appeal boards, licensing procedures). Malta's experience shows the absence of a single horizontal Administrative Procedure Act, and instead a functional mosaic of procedural norms dispersed in sectoral legislation.

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

Yes, Maltese law recognises criteria for delegating administrative tasks to private individuals, but there is no single general law listing them. The rules come from general principles (Judicial review provisions *as per* Article 469A *et seq* of Chapter 12 of the Laws of Malta and Court jurisprudence), sector-specific legislation (for example in relation to environment, planning, health, transport, financial, food safety) and case-law (mainly by the First Hall Civil Court and the Court of Appeal).

In simple terms, delegation is allowed only if:

1. There is a legal basis: A public authority may delegate tasks to private individuals only if a law allows it (expressly or clearly by implication). Otherwise, the delegation is unlawful (*ultra vires*);
2. Core decision-making cannot be delegated: Private individuals may carry out technical, preparatory or auxiliary tasks. The final administrative decision must remain with the public authority, unless the law clearly says otherwise.
3. Tasks must be clearly defined: The scope and limits of the delegated tasks must be specified. Open-ended or informal delegation is not allowed.
4. Public authority must keep control: The Administration must retain supervision, responsibility, and accountability. It remains legally responsible for the administrative act.
5. Delegation must respect general administrative law principles, i.e. legality, accountability and non-abdication of public power (*delegatus non potest delegare*).

Maltese courts enforce these principles mainly through judicial review, striking down administrative acts where powers were exercised by persons without proper legal authority. There is no clear Maltese judgments which deal specifically with “delegation to private individuals”. However, Maltese case-law affirms the limits of administrative powers (and from which the rules on delegation are inferred).

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- | | |
|--------------------------------|---|
| Directly by law | √ |
| By an administrative act | √ |
| By contract | √ |
| Other | □ |

Directly by Law: Some laws explicitly allow delegation to private persons, such as: (i) Food Safety (Official Controls) Regulations (S.L. 460.13) whereby it authorises official controls to be carried out by accredited private bodies; external inspectors; experts under strict conditions (competence, independence, supervision); and (ii) Public Procurement/Concession laws whereby authorities are allowed to outsource tasks (e.g., inspections, management functions) to private entities under statutory rules.

By an Administrative Act: An administrative authority may issue an internal administrative decision assigning a task to a private individual or entity. For instance, a regulatory authority may

issue an administrative decision appointing a private consultant to perform inspections, audits and/or technical assessments.

By a Contract: Many administrative tasks are delegated through contracts, especially where private expertise or services are needed. Examples of contractual delegation: (i) Public contracts for technical services (engineering, IT, audit); (ii) Service contracts for waste management, facility management; and (iii) Management contracts for public utilities or state-owned enterprises. The public authority enters into a contract with a private party, whereby the contract defines: (i) the tasks; (ii) deliverables; (iii) standards; (iv) supervision; and (v) liability.

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?

Please provide specific examples from legislation and case-law.

- | | |
|---|---|
| Preparation of the administrative act | √ |
| Issuance [adoption] of the administrative act | □ |
| Implementation of the administrative act | √ |
| Other | □ |

Preparation of the Administrative Act: This is widely allowed as private individuals can be entrusted with preparatory or technical tasks, such as: (i) inspections; (ii) audits; (iii) drafting reports; (iv) technical assessments; and (v) data collection. For instance *vide* the Food Safety (Officials Controls) Regulations (S.L. 460.13).

Issuance (adoption of the administrative act: This is generally not allowed - unless a specific law expressly authorises it, private individuals cannot adopt administrative acts because the principle *delegatus non potest delegare* applies.

Implementation of the Administrative Act: This is frequently allowed as private individuals can be entrusted with implementation tasks, such as carrying out works or services, enforcement support and executing decisions.

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?

Please provide specific examples from legislation and case-law.

- | | |
|---------------------------------|---|
| Advisory tasks | √ |
| Decision-making tasks | □ |
| Control and verification tasks: | |

- | | |
|--|---|
| Establishment of the facts | √ |
| Legal qualification of the facts | □ |
| Other | √ |

In Malta, private individuals may be involved in administrative proceedings mainly through advisory, preparatory, fact-finding and implementation tasks, but not through final decision-making or legal qualification of facts, unless a law expressly allows it. This is based on general administrative law principles (especially *delegatus non potest delegare*) and reinforced by case-law which confirm that administrative powers must be exercised only by legally authorised authorities. Sector-specific legislation explicitly allows private experts, accredited bodies, and consultants to perform inspections, sampling, technical studies, and environmental reports as part of the preparatory and control phases, while the final administrative act and legal determinations remain the responsibility of the public authority.

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

- | | |
|---------------------------|---|
| No | □ |
| Yes (please specify | √ |

If yes, which legal instrument provides for the corresponding prohibitions?

- | | |
|--------------------|---|
| Constitution | □ |
| Legislation | √ |
| Other | √ |

Please indicate any relevant case-law.

Yes, there are cases where private individuals are prohibited from participating in administrative proceedings, especially when their involvement would mean exercising public powers without legal authority, creating conflicts of interest or undermining fair procedure. These prohibitions mainly arise from legislation (e.g., the Public Administration Act, procurement rules, and sector-specific laws) and from internal administrative rules/ethics codes, while the Constitution does not contain explicit prohibitions. Relevant case-law includes **Police v. Borg** and **Pullicino v. Chairman of MEPA**, which confirm that administrative powers must be exercised only by authorised authorities and that unauthorised delegation is unlawful.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

- | | |
|-------------------------------------|---|
| Participation in examinations | √ |
|-------------------------------------|---|



- Selection based on criteria ✓
Other ✓

In Malta, the certification of private individuals involved in administrative tasks is provided for mainly through selection based on objective criteria (such as qualifications, competence, independence and absence of conflicts of interest), and in some sectors also through examinations or formal assessments. Additionally, legislation often requires accreditation or registration with a competent authority or professional body, as seen in areas such as food safety, planning and environment, and public procurement.

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

- Random selection from a list/register
Selection from a list/register based on criteria ✓
Absolute discretionary power of the Administration
Selection by the citizen [upon a declaration] ✓
Other ✓

In Malta, private individuals entrusted with administrative tasks are mainly selected from lists or registers based on objective criteria such as qualifications, competence, and independence, or through competitive procurement procedures under public procurement law. In certain sectors, particularly planning and environment, the citizen or applicant may choose a qualified expert (e.g. an architect or environmental consultant) subject to statutory requirements. Selection is not random, and the Administration does not enjoy absolute discretion, as all choices must comply with legality, transparency, and equality principles.

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

- No
If yes, ✓
General normative act (e.g. Code of Administrative Procedure)
Specific normative acts ✓
Codes of Conduct, good practices (soft law) ✓
Other ✓

In Malta, the conduct of private individuals performing administrative tasks is governed mainly by specific legislation, codes of conduct and professional ethics, and contracts or appointment

acts, rather than by a single general administrative procedure code. Hereunder one can find some specific Maltese provisions:

Specific normative acts (legislation): (i) Public Administration Act (Chapter 595) - Article 4 – Principles of public administration (legality, transparency, accountability); Articles 16–18 – Persons of trust and non-career personnel: duties, loyalty, conflicts of interest; Article 27 – Codes of ethics and standards of conduct applicable also to non-civil servants; (ii) Food Safety Act (Chapter 449) - Article 6 – Appointment of inspectors and authorised officers, including non-civil servants; (iii) Food Safety (Official Controls) Regulations (S.L. 460.13) - Regulations 4–7 – Designation of control bodies; requirements of competence, independence, supervision, and reporting; (iv) Environment and Planning Legislation (Chapter 646) - Provisions on Environmental Impact Assessment (EIA/EIS) requiring reports by qualified experts; Implicit regulation of conduct through qualification, responsibility, and oversight requirements.

Codes of conduct / good practices (soft law): (i) Public Service Code of Ethics - Issued under Article 27, Chapter 595 and applies to persons of trust, consultants, and contracted individuals; and regulates integrity, impartiality, conflicts of interest, and confidentiality; (ii) Professional codes of conduct - Architects, engineers, auditors, environmental consultants which govern professional behaviour when participating in administrative procedures

Other instruments: (i) Administrative acts of appointment which define scope of tasks, limits of authority, supervision, and reporting duties; and (ii) Public procurement and service contracts which include compliance clauses, performance standards, accountability, and termination provisions.

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

Incompatibilities	√
Impediments	√
Criminal or disciplinary liability	√
Other	√

In Malta, the impartiality and integrity of private individuals performing administrative tasks are guaranteed mainly by legislative incompatibilities, impediments, and liability rules. In particular, the Public Administration Act (Chapter 595) imposes duties of integrity, loyalty, and avoidance of conflicts of interest (Articles 4 and 16–18) and provides for compliance with codes of ethics issued under Article 27, which apply also to non-civil servants and persons of trust. Impediments and

recusal obligations arise where conflicts of interest exist, notably under the same Act and under public procurement legislation, which excludes conflicted operators. In addition, criminal liability for corruption and abuse of authority applies under the Criminal Code (Chapter 9), while disciplinary liability may be imposed under the Public Administration Act and professional regulatory laws (e.g. for architects, engineers, auditors). Further safeguards are provided through contracts and acts of appointment, which include integrity and supervision clauses, and through judicial review, allowing courts to annul administrative acts tainted by bias or lack of impartiality.

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

Withdrawal of the certification	√
Disbarment from the professional association	√
Imposition of a fine or other penalty	√
Personal liability of the private individual (civil, criminal, disciplinary)	√
Revocation of the administrative act in the issuance of which the private individual collaborated	√
Civil liability of the State	√
Other	√

By other one would understand: (i) termination of contracts or appointments; (ii) exclusion from future public contracts; and (iii) damages claims by affected third parties.

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

Yes	√
No	<input type="checkbox"/>

ii. If yes, at what stage are the checks carried out?

A priori	√
A posteriori	√
At any time	√

iii. How are checks activated?

Following a complaint/administrative appeal	√
Ex officio	√



iv. How extensive are the checks?

- Checks based on sampling
- Mandatory checks for all actions

v. What is the nature of the checks?

- Of legality
- Of the substance, of appropriateness

vi. What is the type of checks?

- On persons
- On actions

vii. Are the conclusions of private individuals binding on the Administration?

- Yes
- No

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

- No
- Yes

If yes, what is the scope of the judicial review?

Private individuals' actions are not usually reviewed directly by the courts. Instead, judicial review indirectly targets their actions through challenges to the final administrative act issued by the public authority. If the administrative act is unlawful because it relied on improper, biased, or unauthorised actions by a private individual (e.g., an illegal delegation or faulty expert report). Judicial review is provided for in Article 469A *et seq.* of the Code of Organisation and Civil Procedure (Chapter 12), which governs judicial review of administrative acts, and Administrative Justice Act (Chapter 490) which regulates administrative review procedures.

The review directly targets the action of the private individual (*per se*)

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration)

ii. What types of disputes arise when challenging the actions of private individuals?

administrative disputes

√

private disputes

√

B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

The main objective is to strengthen the administration's capacity by adding external expertise, improving efficiency, increasing flexibility and supporting reform, whilst enduring accountability and performance. This shall be in line with Chapter 595 (Public Administration Act), the Public Service Management Code, Public Procurement Regulations, and Sectoral Legislation.

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

Recruitment of non-civil-servant senior managers is permitted in Malta primarily in autonomous authorities, regulators, state-owned companies, and project units, because their enabling statutes and the Public Administration Act (Cap. 595) allow contractual appointments. Conversely, it is generally restricted in core civil service departments, police, armed forces, and judicial administration, where senior positions are governed by civil service rules and constitutional/legal provisions requiring career civil servants or specific statutory appointments.

iii. What criteria does the Administration use to select external senior managers?

The Administration selects external senior managers based on merit, competence, relevant experience, leadership skills, integrity, independence, and suitability for the role, applying principles of transparency and accountability under the Public Administration Act (Cap. 595) and sector-specific recruitment rules.

iv. What is the nature of the duties of external senior managers?



Decision-making	√
Advisory	√
Other	√

By other, one includes: supervisory and monitoring roles, representation of the authority, implementation and execution of projects, and contract and procurement oversight.

v. Does error on the part of a senior manager give rise to:

Civil liability of the State	√
Personal liability of the manager (civil, criminal, disciplinary)	√

2. Organisational models

- i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Malta applies a hybrid model combining New Public Management (NPM) through performance management, financial control, and managerial accountability (Public Administration Act, Public Service Management Code, Public Finance Management Code); Digital Era Governance (DEG) through e-government services and digital transformation (Digital Malta Strategy, e-ID systems); and New Public Governance (NPG) through public-private partnerships, co-regulation, and stakeholder participation (Public Administration Act and sectoral laws).

- ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

There is no single legal provision that explicitly organises the Administration according to NPM, DEG, or NPG. However, the Public Administration Act (Cap. 595), together with sectoral enabling laws, constitutional principles, and policy documents (e.g. Digital Malta Strategy) provide the legal and policy basis for organising the Administration in line with these models.

- iii. In which public services and agencies is this type of organisation used?

The Administration stricto sensu	√
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- | | |
|-----------------------|---|
| Public enterprises | √ |
| Other public entities | √ |

By other, one includes authorities' regulators, agencies and autonomous bodies (e.g. Malta Financial Services Authority (MFSA); Environment and Resources Authority (ERA); Transport Malta (TM); Planning Authority (PA); Malta Communications Authority (MCA)).

iv. Are the policies for achieving the objectives designed:

- | | |
|---|--------------------------|
| At national level | √ |
| At regional level | <input type="checkbox"/> |
| By subject-matter | √ |
| By taking into account specific public entities | √ |
| Other | <input type="checkbox"/> |

iv. Have specific objectives been set out for the action of the Administration? Please provide examples.

Yes, Malta sets specific administrative objectives in its legal framework. Examples include:

- efficiency, transparency, accountability, merit, ethics (Public Administration Act)
- budget discipline and financial transparency (Public Finance Management Code)
- performance management and career development (Public Service Management Code)
- digital transformation (Digital Malta Strategy)
- sector-specific goals like financial stability, environmental protection, and planning.

If yes, is their accomplishment:

- | | |
|-----------|--------------------------|
| Optional | <input type="checkbox"/> |
| Mandatory | √ |

Does failure to meet these objectives lead to:

- | | |
|--|---|
| Personal consequences for the senior managers | √ |
| Legal consequences for the assessed organisation | √ |
| Financial consequences for the assessed organisation | √ |

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved? √

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

Compliance with the regulatory framework	√
Effectiveness	√
Efficiency	√
Economy	√
Achievement of strategic objectives	√
Other	√

By other, one includes: citizen satisfaction indices, transparency and accountability measures, digital service uptake rates and staff training and development indicators.

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

Arbitration	<input type="checkbox"/>
Mediation	√
Other	√

By other, one includes conciliation, ombudsman procedures, internal administrative review, appeals to administrative tribunals.

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

* Please elaborate on your answer, citing any relevant legislation and/or case-law

Yes – in Maltese law and practice there are categories of administrative disputes that are generally excluded from ADR (such as mediation or arbitration) because they involve public law principles or mandatory judicial review, where private settlement procedures are not appropriate or are excluded by statute.

Here are the principal categories and the basis for their exclusion, supported by legal sources:

1. Disputes requiring judicial review of administrative acts:

These are not suitable for ADR because they involve the legality of administrative action, which must be reviewed by a court or tribunal under statutory procedures. For instance, Article 469A of the Code of Organisation and Civil Procedure (Cap. 12) provides for judicial review of administrative acts before the Civil Court and requires parties to seek legal redress through formal court processes rather than mediation or arbitration of the legality of the act itself. (

2. Disputes subject to specific statutory procedural rights:

Where special statutory appeal routes or tribunal procedures are established, those mechanisms generally must be exhausted before recourse to courts. For instance, appeals to the Administrative Review Tribunal under the Administrative Justice Act (Cap. 490) are mandatory where the law confers jurisdiction (i.e., review by appeal rather than ADR).

3. Disputes involving core public powers or public interest:

Disputes where the subject matter involves: (i) constitutional rights; (ii) interpretation of public law; or (iii) enforcement of regulatory frameworks, are generally excluded from ADR because of the public interest dimension, and the requirement for independent adjudication rather than negotiated settlements.

4. Disputes where a specific law prohibits ADR:

Some statutes explicitly require a particular procedure (e.g., mandatory appeal to a tribunal or direct court review) and do not allow alternative settlement mechanisms. The Mediation Act (Cap. 474) itself provides that mediation “shall not be conducted if a law or another statutory instrument provides for another procedure for conclusion of an agreement.”

2. Settlement and Mediation

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?



The option for the Administration and private parties to sign a settlement agreement is not generally spelled out in a specific constitutional or administrative law provision; it derives mainly from general legal principles (freedom of contract, administrative discretion, and civil law), and sometimes from sector-specific statutes that allow settlement in certain cases.

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

In Malta, settlement agreements can be used both to resolve disputes already in court and to prevent disputes from arising, as long as the matter does not involve the legality of administrative acts requiring judicial review or mandatory statutory procedures.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

In Malta, administrative disputes may be reviewed either through judicial review (annulment) or through an appeal on the merits, and the law clearly distinguishes between the two. Judicial review (Article 469A of the Code of Organisation and Civil Procedure, Cap. 12) is limited to legality and examines whether the administrative act was lawful, procedurally correct, and within the authority's powers. In contrast, appeals on the merits are provided by sector-specific legislation or administrative review bodies, allowing courts or tribunals to review both legality and substance, including factual findings and policy judgments, and potentially substitute their decision for that of the Administration. Therefore, Malta distinguishes between legality-only annulment and full judicial review on the merits, depending on the applicable legal framework.

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

Administrative matters in Malta are not subject to a discretionary arbitration procedure; any ADR that is permitted operates only within express legislative frameworks and under strict judicial and public-law constraints.

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes

No

If yes, by which court?



Generally no, court ratification is not required. Only in specific circumstances, especially when a case is already pending or involves protected interests, court approval may be necessary.

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

Yes, a judge may examine the legality of a settlement on an incidental basis, especially if it affects public law or is linked to a pending case. A settlement may be null and void if it violates public policy, exceeds administrative competence, involves fraud or coercion, lacks consent or capacity, violates rights, or fails to meet required formalities.

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

In Malta, a settlement agreement generally becomes legally binding and enforceable once it is validly concluded, but it only has the force of res judicata when it is recorded, confirmed, or incorporated into a court judgment or order. When a settlement is reached within ongoing court proceedings and is formally accepted by the court, it becomes final and binding like a judicial decision and can be enforced as such. If the settlement is concluded outside court, it does not automatically have res judicata effect, yet it remains a binding contract between the parties and may be enforced through ordinary civil remedies for breach (such as a claim for damages or specific performance).

Which court has jurisdiction over disputes concerning such enforcement?

Most enforcement actions arising from settlement agreements fall under the jurisdiction of the Civil Courts (First Hall), unless the matter is small in value and falls within the competence of inferior courts.

ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:

a legislative provision

a general principle of law



ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

Yes
No

ii.a. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Mediation in Malta is expressly regulated by the Mediation Act (Cap. 490) and may also be supported by general principles of party autonomy and settlement. It is not solely based on general principles.

Is it mandatory or optional?

Generally it is optional, unless it is stated by law to be mandatory in specific cases.

If it is optional, does it require:

The mutual agreement of the parties
Only the intention of the Administration
Only the intention of the private individual/legal entity

Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee
By the administrative authority involved in the dispute
Other

At what stage can a case be referred for mediation?



- Necessarily before the introduction of legal proceedings
- At any stage of the litigation proceedings
- Is there a specific piece of legislation governing the mediation process?
- Yes
- No

If yes, please specify:

The Mediation Act (Chapter 490)

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?)

In Maltese mediation, the formal principles of a court trial do not fully apply because mediation is a voluntary, confidential, and consensual process rather than an adversarial judicial procedure. However, key fairness principles such as hearing the parties and equality of arms generally apply, since both sides must be able to present their views and participate on equal terms. Representation by a lawyer is allowed but not mandatory, while the adversarial principle and publicity do not apply, as mediation is collaborative and private.

How is the impartiality of the mediator ensured?

Impartiality of the mediator in Malta is ensured through the Mediation Act (Cap. 490) and standard professional practice, which require the mediator to remain neutral and disclose any conflicts of interest before the process begins. If a conflict arises, the parties have the right to object and request the mediator's replacement, and the mediator may withdraw if impartiality is compromised. This framework is further reinforced by ethical rules and codes of conduct for professional mediators, ensuring fairness and neutrality throughout the mediation process.

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

Yes, interim relief such as stay of execution or injunctions can be granted during mediation in Malta, but these measures are not issued by the mediator; they must be requested from and granted by the competent court or tribunal handling the dispute. Typically, the Civil Court (First Hall) has jurisdiction for civil or contractual matters, while administrative or sectoral tribunals

may grant interim measures in disputes falling under their specific remit, depending on the legal framework and the nature of the case.

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

√

Other possibility (please specify)

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

If mediation ends without an agreement, Maltese law does not set a special time limit for bringing the dispute to court, although normal statutory deadlines (such as prescription or sector-specific procedural limits) still apply; if court proceedings were already underway, they generally continue unless the parties agree to suspend them or the court orders a stay.

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

In Malta, a document drawn up following mediation is treated as a settlement agreement, so the general rules governing settlements largely apply; however, there are important differences because mediation is a voluntary, confidential process and the resulting agreement is usually based on mutual consent rather than imposed terms. Specifically, mediation agreements are governed by the Mediation Act (Cap. 490), which imposes rules on confidentiality, mediator neutrality, and voluntary participation, and it allows the agreement to be enforceable as a contract or, if recorded in court, as a judgment. Therefore, while settlement rules (e.g., binding effect and enforceability) apply, mediation agreements additionally require compliance with mediation-specific requirements such as confidentiality and the formalities under the Mediation Act, which do not necessarily apply to ordinary settlements reached without mediation.

iiB. If no mediation process is provided for, is this exclusion provided for in:

a legislative provision

a general principle of law

√

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

Arbitration is not normally permitted for administrative disputes involving public law and legality, but it may be used for contractual disputes involving public authorities, provided an arbitration clause exists and the matter does not require judicial review.

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Arbitration in Malta is not expressly provided for in administrative law. It is allowed only when the dispute is civil/contractual in nature, based on the general Arbitration Act (Cap. 387) and the principle of party autonomy in civil law.

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

No, arbitration in Malta does not concern either the application for annulment (legality review) or the appeal on the merits (full review) in administrative disputes. Both remedies are public-law procedures requiring judicial review, and they cannot be replaced by private arbitration. Arbitration is only allowed when the dispute is civil/contractual in nature, such as contractual claims involving the State or public authorities, and therefore does not apply to judicial review of administrative acts. There are no general statutory exceptions allowing arbitration of administrative judicial review, and case-law generally confirms that public-law matters involving legality and public interest are non-arbitrable. The only exceptions are narrow and limited to private-law contractual disputes where arbitration is explicitly agreed by the parties.

Is it mandatory or optional?



In Malta, arbitration is optional, not mandatory, in disputes involving the Administration. Arbitration is only possible if both parties agree to it, typically through an arbitration clause in a contract or a separate arbitration agreement. It is not compulsory for administrative disputes, and it is not used for judicial review of administrative acts, which must be resolved through courts.

ib. If arbitration is not permitted, is this prohibition due to

- A legislative provision
- A general principle of law

ic. If arbitration is optional, does it require:

- The mutual agreement of the parties
- The sole intention of the Administration
- The sole intention of the private individual/legal entity

On the part of the State, is arbitration initiated:

- After approval by a special committee
- By the administrative authority involved in the dispute
- Other

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

For contractual disputes between private parties and the State in Malta, the general commercial arbitration regime applies, governed by the Arbitration Act (Cap. 387), and there is no separate special arbitration system specifically for the State. However, because the State is a public authority, arbitration may be subject to public procurement rules, internal approvals, and limitations on arbitrating public-law matters, meaning that only private-law contractual disputes

can be arbitrated and remedies requiring administrative or public-law action are generally excluded.

- iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

Yes — arbitration clauses can appear in contracts falling within the scope of EU Public Procurement Directives 2014/24/EU and 2014/25/EU (e.g., public works, goods or services contracts), but this relates only to the contractual dispute resolution mechanism and not to the remedies regime established by those Directives. Under Maltese law, arbitration clauses are valid in procurement contracts where the parties (including public authorities) agree to them, and such clauses are governed by the Arbitration Act (Cap. 387), which implements the UNCITRAL Model Law framework for both domestic and international arbitration in general contracts. For example, standard government contract templates in Malta may include a clause referring disputes to the Malta Arbitration Centre in accordance with the Arbitration Act as the dispute resolution method for contract performance issues.

However, arbitration does not replace the special remedies framework established by the Public Procurement Directives and transposed into Maltese law (notably the Public Procurement Regulations under S.L. 601.03), which provide for pre-contractual and post-contractual review mechanisms — in particular, review by the Public Contracts Review Board (PCRB) and judicial appeal routes for procurement challenges under the remedies regime.

Arbitration clauses in procurement contracts therefore apply only to purely civil or contractual disputes arising from contract performance (e.g., breach of contractual obligations) and do not govern the administrative remedies (such as challenging procurement procedures or contract awards), which are subject to EU law requirements for rapid and effective judicial review.

In practice, this means arbitration can be included in procurement contracts — and Maltese courts respect valid arbitration agreements — but it does not affect the availability of the statutory procurement remedies provided under EU law and Maltese implementing rules, and there is no binding Maltese case-law holding that arbitration can substitute for the EU-mandated remedies regime for procurement challenges.

- v. How are the independence and impartiality of the arbitrator ensured?



In Malta, the independence and impartiality of an arbitrator are ensured through the Arbitration Act (Cap. 387) and standard arbitration practice, which require the arbitrator to disclose any conflicts of interest before and during proceedings, allow parties to challenge or request removal of an arbitrator if impartiality is doubtful, and apply internationally recognized standards of neutrality and fairness; these safeguards are reinforced by institutional rules (e.g., Malta Arbitration Centre) and party agreements on qualifications and procedures, ensuring that arbitrators remain unbiased and independent throughout the process.

- vi. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

Yes, interim relief is possible when an administrative dispute is submitted to arbitration, but it is typically granted by the Civil Court (First Hall) rather than the arbitral tribunal, unless the arbitration agreement or applicable arbitration rules expressly empower the tribunal to issue such measures; courts can provide injunctions, stays, or protective orders to preserve rights or prevent harm during the arbitration process, while the tribunal may grant interim measures only if it is specifically authorized to do so.

- vi. In arbitration concerning administrative disputes:

yes / no

- | | |
|--|----------------------------|
| Is there an obligation to make publicly available the basic information and documents relating to the proceedings? | <input type="checkbox"/> ✓ |
| Is the participation of third parties permitted? | <input type="checkbox"/> ✓ |
| Is legal representation mandatory? | <input type="checkbox"/> ✓ |
| If yes, is legal aid available? | <input type="checkbox"/> ✓ |
| Is the hearing public? | <input type="checkbox"/> ✓ |
| Is the arbitral tribunal obliged to give reasons for its award? | <input type="checkbox"/> ✓ |
| Is the arbitral award made publicly available? | <input type="checkbox"/> ✓ |

- vii. During the proceedings, the applicable system is:

- | | |
|--------------------------|--------------------------|
| the adversarial system | ✓ |
| the inquisitorial system | <input type="checkbox"/> |

- viii. What powers does the arbitral tribunal have?

- | | |
|--|--------------------------|
| Reviews the legality of administrative acts of a non-pecuniary nature | <input type="checkbox"/> |
| Reviews the legality of an administrative act of a pecuniary nature (fine, etc.) | <input type="checkbox"/> |
| Annuls/amends an administrative act of a non-pecuniary nature | <input type="checkbox"/> |
| Annuls/amends an administrative act of a pecuniary nature | <input type="checkbox"/> |



Addresses only recommendations to the Administration
Restricts itself to awarding compensation for damages

Does the arbitral award have effect:

Erga omnes (with regard to all)
Inter partes (between the parties)

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

Yes
No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Arbitral awards do not constitute case-law and do not have precedential value in Malta; they are binding only between the parties who submitted to arbitration.

Is it possible to waive the right to judicial review?

Yes, it is possible to waive the right to judicial review only in disputes that are arbitrable, such as private-law contractual issues where the parties validly agree to arbitration; however, public-law matters involving the legality of administrative acts are generally not arbitrable, so judicial review cannot be waived in those cases, and courts may still intervene to assess the arbitration agreement, tribunal jurisdiction, or enforceability of the award when public policy or procedural fairness is at stake.

Which courts have jurisdiction?

In Malta, arbitration-related matters such as challenging an arbitration agreement, seeking interim measures, or enforcing or setting aside an arbitral award fall under the jurisdiction of the Civil Court (First Hall), while judicial review of administrative acts is generally handled by the Administrative Review Tribunal (ART), with the Civil or Constitutional Court having jurisdiction in specific cases involving constitutional rights or matters outside the ART's scope.

What is the scope of the judge's review according to case-law?

In Maltese case-law, the scope of the judge's review depends on whether the dispute is administrative (public law) or contractual (private law). For administrative disputes, the judge reviews the legality of the administrative act, focusing on whether the act was issued within legal authority, followed due process, and respected constitutional and administrative principles; the judge generally does not re-evaluate the merits or policy choices of the administration. For contractual disputes or arbitration-related matters, the judge may review the validity of the arbitration agreement, jurisdiction, procedural fairness, and compliance with public policy, and can set aside or enforce awards but does not substitute their own decision on the merits unless the arbitration award is annulled and the case is remitted. In short, judicial review is strictly limited to legality and procedural fairness in public law, while in arbitration it is limited to arbitrability, jurisdiction, and enforceability, not a full merits re-examination.

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

Yes, Maltese case-law treats public policy more strictly when the State or a public-law entity is a party to arbitration, meaning that courts are more willing to refuse enforcement or annul awards that conflict with constitutional principles, administrative legality, public procurement rules, or mandatory public-law safeguards; unlike private arbitration—where public policy is applied narrowly and parties may waive certain rights—arbitration involving the State cannot be used to bypass judicial review or override mandatory public-law obligations

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, *Eco Swiss China Time Ltd v Benetton International NV* and C-168/05 *Mostaza Claro v Centro Móvil Milenium SL*, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

In Malta, as in the EU generally, arbitration awards can be refused recognition or enforcement not only for conflicts with EU competition or consumer protection law, but also where they breach mandatory EU public policy rules, including fundamental rights and essential EU procedural safeguards; Maltese courts therefore apply EU public policy standards strictly when a State or public interest is involved, meaning awards that conflict with these core EU norms may be set aside or refused enforcement even if the arbitration agreement is otherwise valid.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award?
Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?

In Malta, the Civil Court (First Hall) has jurisdiction over enforcement of arbitral awards and related challenges, and although Maltese case-law is limited, courts have applied the general principle that arbitration cannot decide non-arbitrable administrative or public-law disputes, meaning enforcement may be refused or awards set aside when they conflict with public policy or the need for judicial review of administrative acts.