

[Home](#) > ... > [Taking Legal Action](#) > [Where and How](#) > [Which Country's Law Applies?](#) > Malta

# Which country's law applies?



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European Judicial Network  
(in civil and commercial  
matters)

## 1 Sources of the rules in force

### 1.1 National rules

National laws are statutory (i.e. written laws). These are freely accessible on the Laws of Malta [website](#). Having acceded to the European Union in 2004, the Maltese legal system also incorporates EU laws and regulations which are directly applicable or transposed into Maltese laws and which are likely to prevail over domestic legislation.

Although the principle of precedent is not rooted in the Maltese law and find not binding application in Malta, Maltese courts do generally tend to give weight to former judgements, particularly decisions delivered by the Court of Appeal and Constitutional Court (both Superior Courts in Malta).

### 1.2 Multilateral international conventions

- Convention of 5 October 1961 Abolishing the Requirement of Legislation for Foreign Public Documents
- Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters
- Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
- Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
- Convention of 25 October 1980 on International Access to Justice
- Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition
- Convention of 25 January 1988 on Mutual Administrative Assistance in Tax Matters
- Convention of 16 January 1992 on the Protection of Archaeological Heritage
- Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
- Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
- 1980 Rome Convention on the Law Applicable to Contractual Obligations
- Convention of 30 June 2005 on Choice of Court Agreements
- Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance
- Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

Malta ratified also a number of United Nations Treaties - the ratification status can be viewed [here](#).

### 1.3 Principal bilateral conventions

We are unaware of any bilateral conventions containing choice of law provisions to which Malta is a party to.

## 2 Implementation of conflict of law rules

### 2.1 Obligation of the judge to apply conflict of law rules on his own initiative

Conflict of law rules cannot be raised *ex officio* by the judge; such rules are only applicable if at least one of the parties to the suit has argued that there is conflict of laws. The party that raises such plea must prove to the satisfaction of the court the content of foreign law. In the absence of such plea, or in the absence of satisfactory proof, domestic courts are to adjudicate in accordance to Maltese law.

### 2.2 Renvoi

The Maltese position is unclear with regards to the application of the renvoi doctrine. Codified rules on choice of law are limited and therefore uncoded rules of Private International law must very often be applied by the courts in the determining which law should apply to a particular case. In fact, the Maltese Courts held that in the absence of legislation regulating private international law, Maltese Courts are to have recourse to the principles of English Common Law. In view of this, the English application of renvoi is adopted by the Maltese courts. It thus follows, that the doctrine of renvoi will be rejected when it comes to tort, insurance and contract. It however applies when it comes to validity of wills, claims of foreign immovable and family law issues.

### 2.3 Change of connecting factor

This is dealt with by specifying in each choice of law rule the relevant time at which the connecting factor is identified.

### 2.4 Exceptions to the normal application of conflict rules

Maltese Courts can refuse to apply a foreign law that goes contrary to Maltese public policy and if that foreign law can be characterised as being a foreign revenue law or characterised as being a penal law.

### 2.5 Proof of foreign law

The plea of foreign law is to be proved as a matter of fact and not as a point of law. Maltese Courts are empowered to interpret domestic legislation and are not permitted to interpret content of foreign law themselves. To be able to understand foreign law, experts on foreign law are appointed by the Court. The parties to the suit may also bring forward as part of their evidence, reports drawn up by different experts.

The burden of proof is on the party raising such plea, namely the defendant to the suit.

## 3 Conflict of law rules

### 3.1 Contractual obligations and legal acts

In cases concerning contractual obligations within non-EU countries, the Rome Convention 1980 applies, as a result of the Rome Convention on Contractual Obligations (Ratification) Act, Chapter 482 of the Laws of Malta. On the other hand, contractual obligations within EU countries are regulated by Rome I Regulation (Regulation (EC) 593/2008 on the law applicable to contractual obligations).

### 3.2 Non-contractual obligations

Conflict of law rules for non-contractual obligations is regulated by Regulation (EC) 864/2007 on the law applicable to non-contractual obligations (known as Rome II).

### 3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

Maltese citizenship is acquired upon birth, if his/her father or mother is a citizen of Malta.

Contrary to citizenship, habitual residence can be chosen by the individual when of age. Habitual residence is attributed according to the place where s/he resides together with the intention to reside in that relevant jurisdiction indefinitely or permanently.

Capacity to undertake particular obligations, such as to enter into marriage, to contract, to enter into commercial activity, to make a will, etc, is determined by rules specific to that area.

### 3.4 Establishment of parent-child relationship, including adoption

#### 3.4.1 Establishment of parent-child relationship

The responsibilities of a parent to a child is determined by the Maltese Civil Code, however parental authority cease *ipso jure* when the child attains the age of eighteen years. The Maltese court jurisdiction is determined by Regulation (EC) 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility (Brussels II bis). This is further discussed in the [relevant section](#).

#### 3.4.2 Adoption

Adoption is also regulated by the Maltese Civil Code and this is applied by Maltese Courts every time it has jurisdiction. Foreign adoptions are recognised under Maltese law in terms of Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.

### 3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

#### 3.5.1 Marriage

The formal validity of a marriage is governed by the law of the place where the marriage is being celebrated. In Malta, the formalities for marriage can be found under Chapter 255 of the Laws of Malta (the [Marriage Act](#)). The said Act regulates amongst others, restrictions on marriage. One of the restrictions therein mentioned is that 'a marriage contracted between persons either of whom is under the age of sixteen shall be void'.

The applicable law in Malta is the domicile of the spouses that is taken into account.

#### 3.5.2 Unmarried/Cohabiting couples and partnerships

Civil Unions are regulated by Chapter 530 of the Laws of Malta (the Civil Union Act), which in turn makes reference to Chapter 255. Thus the formalities and requisites required under Chapter 255 are to be satisfied as when it comes to civil unions.

#### 3.5.3 Divorce and judicial separation

A Maltese Court will only have jurisdiction over divorce proceedings pursuant to Regulation (EC) 2201/2003 concerning jurisdiction and the recognition of judgements in matrimonial matters and the matters of parental responsibility. This is discussed in further detail in the [relevant section](#).

#### 3.5.4 Maintenance obligations

Malta is bound by Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. This is discussed in further detail in the [relevant section](#).

### 3.6 Matrimonial property regimes

The applicable law in Malta is the law where the matrimonial home (lex situs) is situated. The Civil Code under Article 1316 provides that any marriage celebrated in Malta would give rise to community of acquests regime. Furthermore, a marriage celebrated outside Malta who subsequently establish themselves in Malta, the community of acquests will arise between them as soon as they establish their residence in Malta, unless they would have previously entered into an agreement excluding the community of acquests regime.

### 3.7 Wills and successions

In cases of wills and successions, the Maltese Courts have consistently adopted the common law. Thus 'in cases

of intestate succession (i.e. where there is no will), the law of the domicile of the testator at the time of death applies to the succession to movable property; the law of the jurisdiction in which the property is located applies to succession to immovable property. In cases involving wills, the capacity of the testator to make a will is determined by the law of the testator's domicile on the date of the will. A legatee will have capacity to receive movables if he has capacity under either the law of his own domicile or under the law of the domicile of the testator'. Furthermore, 'a will is formally valid if it complies with any of the following laws: the law of the place where the will was executed (i.e. usually where it is signed and witnessed) at the time it was executed; the law of the domicile, habitual residence or nationality of the testator at the time the will was executed; the law of the domicile, habitual residence or nationality of the testator at the time of death. A will will also be formally valid to pass immovable property if it complies with the law of the jurisdiction in which the property is situated.'

### 3.8 Real property

### 3.9 Insolvency

Malta is bound by Regulation (EC) 1346/2000 on insolvency proceedings, as amended. The said Regulation sets out, amongst others, the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor's main interests are in an EU Member State. In cases falling outside Regulation (EC) 1346/2000, Maltese law will be applied where the Maltese court has jurisdiction, namely when the company is registered in Malta.

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