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Service of documents: official transmission of legal documents

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European Judicial Network
(in civil and commercial matters)



Malta

1 What does the legal term "service of documents" mean in practical terms? Why are there specific rules regarding the "service of documents"?

Service of documents means the delivery of court documents to a legal or physical person. The mode of service is specifically regulated by the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).

Specific rules regarding the service of documents were inserted in national law to create a standard procedure of how documents are served and to ensure that all concerned parties receive legal documents relating to them or their action. Furthermore the said rules create certainty, for the benefit of the court and the parties, that documents have reached the addressee.

2 Which documents need to be served formally?

All documents filed in court have to be formally served. These include judicial letters, judicial protests, applications, writs of summons, appeal applications, replies, precautionary and executive warrants, and orders given by the Courts.

3 Who is responsible for serving a document?

Upon filing of a document in court, it is the court and the court marshals which are responsible for serving documents. The party filing a document in court must indicate the person on whom the document is to be served and the address of service. In case of more than one addressee, the party filing the document must ensure that there are enough copies for all addressees.

4 Address enquiries

4.1 Does the requested authority in this Member State on its own initiative, try and establish the whereabouts of the addressee of the documents to be served if the address indicated is not correct? See also notification under Article 7(2)(c) of the Service of Documents Regulation

No.

4.2 Do foreign judicial authorities and/or parties to judicial proceedings have access to registers or services in this Member State enabling the establishment of the person's current address? If yes, which registers or services exist and what procedure must be followed? What fee, if any,

should be paid?

Yes, they do exist.

The registered address of a legal person can be found by searching the register online on the website of the Maltese Business Register at:

https://registry.mbr.mt/ROC/companySearch.do?action=companyDetails&_=1576703936233

The online system enables any natural person wishing to obtain information on companies, foundations and associations to access the Register. The information contained in the Register includes information which is free of charge and for general use (public information). This includes company names and registration numbers, their registered address, their date of incorporation, etc. Any person can search for a company either by its registration number or its name or part of its name.

When it comes to establishing a physical person's address, the Electoral Register is free and accessible to the general public via computers at the Courts of Malta. The most recent Electoral Register is accessible to everyone via <https://electoral.gov.mt/Register/Enquiry>. However, to search the register, one needs to know the locality and the street.

4.3 What type of assistance in address enquiries from other Member States do the authorities of this Member State provide under Article 7(1) of the Service of Documents Regulation? See also notification under Article 7(1) of the Service of Documents Regulation

The assistance which the authorities in this Member State provide is that stipulated under Article 7(1)(c).

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For the addresses of natural persons, the foreign transmitting agency may send a request to the Maltese receiving agency to determine the address for service purposes, via the following email address: info@stateadvocate.mt

Such requests should include the personal ID number, first name and surname of the person to be served.

5 How is the document normally served in practice? Are there alternative methods which may be used (other than substituted service referred to in point 7 below)?

Judicial documents which do not form part of a court case are served by registered post whereby a 'pink card' showing either the signature of the receiver or that the document is unclaimed or otherwise not served is submitted to the Court by court marshals. The 'pink card' would be attached to the original document (for instance, with the judicial letter). Other documents filed in the context of legal proceedings are served through the Court marshal.

The receiving agency shall cause the document to be served by attaching the document to a judicial letter filed in the Registry of the Civil Court, First Hall, in the case of documents to be served in the Island of Malta, and in the Registry of the Court of Magistrates (Gozo) in its superior jurisdiction, in the case of documents to be served in the Islands of Gozo and Comino. These documents, together with the judicial letter will be served by the Court Marshal on the person addressed. According to Article 187 of the Code of Organisation and Civil Procedure

documents may be served in the following manner:

(a) Service shall be effected by the delivery of a copy of the document to the person on whom the document is to be served or by leaving such copy at the place of residence or business or place of work or postal address of such person with some member of his family or household or with some person in his service or his attorney or person authorised to receive his mail: provided that it shall not be lawful to leave such copy with any person under the age of fourteen years, or with any person who, on account of infirmity of mind, is unable to give evidence of such service. A person shall be presumed to be able to give such evidence unless the contrary is proved; and no objection may be raised on the ground of irregularity of the service for any of those reasons, if it is shown that the copy has actually reached the person to be served therewith;

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

(c) In the case of a body having a distinct legal personality, service on such body shall be effected by leaving a copy of the document: (i) at its registered office, principal office, or place of business or postal address with a person/s vested with the legal or judicial representation thereof or with the company secretary or with an employee of such body or (ii) with any of the aforementioned persons in the manner provided for in paragraph (a).

6 Is electronic service of documents (service of judicial or extrajudicial documents through remote means of electronic communication, such as e-mail, internet based secured application, fax, sms etc.) permitted in civil proceedings? If so, for which types of proceedings is this method provided for? Are there restrictions with regard to the availability/access of this method of service of documents depending on who the addressee is (legal professional, legal person, company or other business actor, etc.)?

Documents cannot be served electronically in civil proceedings.

6.1 What type of electronic service within the meaning of Article 19(1) of the Service of Documents Regulation are available in this Member State where service is to be effected directly on a person, who has a known address for service in another Member State?

No electronic service is permissible under Maltese national law.

6.2 Has this Member State in accordance with Article 19(2) of the Service of Documents Regulation specified additional conditions under which it will accept electronic service via e-mail referred to in Article 19(1)(b) of that Regulation? See also notification under Article 19(2) of the Service of Documents Regulation.

No.

7 'Substituted' service

7.1 Does the law of this Member State allow for other methods of service in cases where it has not been possible to serve the documents to the addressee (e.g. notification to the home address, to the bailiff office, by postal service, or by poster advertising)?

No. The method of service is explained exhaustively in question 5 above.

7.2 If other methods are applied, when are the documents deemed to have been served?

Not applicable.

7.3 If another method of service is the deposit of the documents in a particular place (e.g. at a post office) how is the addressee informed of that deposit?

Not applicable.

7.4 If the addressee refuses to accept service of the documents, what are the consequences? Are the documents regarded as effectively served if the refusal wasn't legitimate?

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

Furthermore, if a person knowingly avoids, obstructs or refuses service of any act or court order or execution of any warrant or order by a court marshal, s/he shall be guilty of contempt of court and shall be liable, on conviction to (a) reprimand, (b) expulsion from the court, (c) arrest for a period of twenty-four hours in a place within the building in which the court sits, or (d) a fine.

8 Postal service from abroad (Article 18 of the Service of Documents Regulation)

8.1 If the postal service delivers a document sent from abroad to an addressee in this Member State in a situation where acknowledgment of receipt is required (Article 18 of the Service of Documents Regulation), does the postal service deliver the document only to the addressee himself/herself or may it, in accordance with national rules of postal delivery, deliver the document also to another person at the same address?

The Maltese postal service delivers mail to any individual found at the address who is ready to accept the mail, provided that he is of sound mind and not a child. There is a presumption that once an individual is found in the premises of the address and accepts the mail, then one is authorised to do so by the addressee. If one is not authorised, then one should not accept the mail, and if accepted, one then assumes the responsibility to forward it to the addressee. The recipient will sign upon delivery. This procedure is in accordance with Regulation 33 of the Postal Services (General) Regulations 2005.

8.2 Under the rules of postal delivery in this Member State how can the service of documents from abroad, under Article 18 of the Service of Documents Regulation, be effected if neither the addressee nor any other person authorised to receive the delivery (if possible under national rules of postal delivery – see above) has been reached at the address of delivery?

If nobody is available to receive the mail, where there is a requirement of signature upon delivery, a notice is left at the address in question, advising the addressee of the attempt of delivery. The mail would be available for collection from the nearest Post Office. If the mail remains uncollected, the postal service provider at its discretion posts a final notice to the addressee, advising that the mail item is still awaiting collection. Generally, this is done following 5 days for local registered mail and 10 days for foreign registered mail. If such mail remains uncollected following these periods of time, then following a further 5 day wait, the mail is sent back to sender accordingly marked as 'unclaimed'. If the mail is refused by the addressee or his representative, then this is returned to sender forthwith marked as 'refused'.

8.3 Does the post office allow a specific period of time for collection of the documents before

sending the documents back as undelivered? If yes, how is the addressee informed that there is mail for him to collect at the post office?

If nobody is available at the address to receive the mail, a notice is left at the address in question advising the addressee of the attempt, and also informing him/her that the mail item would be available for collection at the nearest Post Office. If the mail remains uncollected, the postal service provider at its discretion posts a final notice to the addressee, advising that the mail item is still awaiting collection. Generally, this is done following 5 days for local registered mail and 10 days for foreign registered mail. If such mail remains uncollected following these periods of time, then following a further 5 day wait, the mail is sent back to sender accordingly marked as 'unclaimed'. Collection of mail item/s from the Post Office is only delivered to the addressee or an authorised representative upon presentation of the notice together with an identification document (passport or identification card) of the addressee.

9 Is there any written proof that the document has been served?

A certificate of service or non-service is issued by the receiving agency on the basis of the information indicated by the Court Marshal as stated below.

The original documents served by registered post will have a 'pink card' attached to them. Once returned to Court, the original documents are stamped in either black ink or red ink. Black ink is used to indicate that service has taken place, indicating also to whom the document was delivered. If the document was not served, the stamp would be in red ink, and it would also bear the reason why it was not served.

Documents which are served by the court marshal are stamped either in black ink if service is in the affirmative or red ink if service is in the negative, and will bear the signature of the Court marshal who was in charge of carrying out the service.

10 What happens if something goes wrong and the addressee does not receive the document or the service is effected in violation of the law (e.g. the document is served on a third person)? Can the service of the document nevertheless be valid (e.g. can violations of the law be remedied) or must a new effort to serve the document be made?

If the addressee does not receive the documents but the documents have been validly served by leaving a copy at the address, home or place of work of the addressee, service is deemed to be complete and valid. If a third party receives the documents, they may return such documents by filing a responsive judicial letter to the judicial letter issued and by which the documents were served. In the latter responsive judicial letter, the third party must explain the reason why he is not the correct addressee and if the reason is deemed valid, such service is deemed to have been unsuccessful. Service effected in violation of the law can be impugned by court action. If in default of a valid service the party to be served files a reply in court or makes an appearance in court, the service is taken to have been valid.

11 If the addressee refuses to accept a document based on the language used (Article 12 of the Service of Documents Regulation) and the court or authority seised of the legal proceedings decides upon verification that the refusal was not justified, is there a specific legal remedy to challenge that decision?

No.

12 Do I have to pay for service of a document, and if so, how much? Is

there a difference where the document is to be served under domestic law and where the request for service originates from another Member State? See also notification under Article 15 of the Service of Documents Regulation, concerning service of a document from another Member State

The Laws of Malta set a fixed fee of €50 for each and every document to be served in Malta. This fee must be paid prior service. Payment of fees shall be made by bank transfer payable to the Office of the State Advocate, at the following bank account details:

Bank Name: Central Bank of Malta

A/c name: The Office of the State Advocate - Service of documents/Legal fees

A/c number: 40127EUR-CMG5-000-Y

IBAN: MT24MALT011000040127EURCMG5000Y

Swift Code: MALTMTMT

There is a difference in fee when documents are served under domestic law and when documents originate from another Member State and need to be served in Malta. When documents need to be served in Malta, documents are filed in court and there is a fee to file these documents. The fee varies according to the document being filed in court. There are also legal fees and expenses for the printing documents. On the other hand, documents to be served in Malta from another Member States have a fixed fee of 50 euro.

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