

## Maintenance claims - Malta

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### **1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?**

In Malta the term ‘maintenance’ refers to the amount due to a creditor by a debtor in regards to maintenance arrangement arising from a family relationship. When relationships are formalised by marriage or civil union then one party in that relationship is bound to maintain the other party.

The term ‘maintenance obligation’ refers to the obligation to pay an amount of maintenance, which maintenance has to be given by the creditor to the debtor in the circumstances described. A maintenance obligation exists independent on whether the quantum of maintenance has been fixed and also independent from whether maintenance is being paid.

Article 3B of the Civil Code provides that spouses and former spouses are obliged to maintain each other and holds that parents are bound to maintain their children. Article 4 of the Civil Unions Act holds that parties in a civil union enjoy the same rights and obligations as those who are married and therefore they are bound to maintain each other even after their relationship ends, unless there is a just cause for not paying this maintenance. Children are, in exceptional circumstances, bound by Article 8 of the Civil Code to maintain their parents or other ascendant that are indigent.

### **2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?**

Generally speaking a child will benefit from maintenance until the age of sixteen. However Article 3B(2) of the Civil Code qualifies that parents will also be bound to provide adequate maintenance for their children if they are still students and are participating in full-time education, training or learning until they reach the age of twenty-three. The same article also provides that parents have to maintain their children if they suffer from a physical or mental impairment, as defined in the Equal Opportunities (Persons with Disability).

### **3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?**

In order to receive a decree establishing out the amount of maintenance that is to be paid and the frequency of such payment an application before the Civil Court (Family Section) must be filed.

In such case the procedure will start off by the court appointing a mediator who will then invite the parties (or their representatives) for a meeting at the law courts. During this meeting the mediator will assist the parties in reaching an amicable settlement. If the parties agree on the text of an agreement for maintenance the mediator will send a copy of the draft agreement to the judge presiding over the Family Court. The court will review the agreement and if it believes that none of the parties, including the person for whom maintenance is due, will be prejudiced by such agreement the court will decree in favour of that draft decision and the parties may proceed before the notary to sign such agreement.

When parties fail to agree on a draft agreement on maintenance during the mediation process, the mediator will report the matter back to the judge presiding over the Family Court so that court proceedings will commence. In such case the Family Court will hear the submissions made by the lawyers of both parties and will deliver a judgment on the matter.

Proceedings before the mediator are without cost and the parties need not be assisted by a lawyer, however it is always advisable to seek legal assistance before entering into such agreements. On the other hand, proceedings before the court involve lawyers and will incur legal fees, unless the parties apply and qualify for legal aid.

### **4 Can a request be made on behalf of a relative (if yes, what grade), or a child?**

Requests may be made by the creditor, a representative thereof, or the child’s curator. Maintenance for a child can be requested by the person having the care and custody of the said child.

### **5 If I plan to bring the case to court, how do I know which court has jurisdiction?**

Through Legal Notice 396 of 2003 (☞ Subsidiary Legislation 12.19) the competent court to decide issues dealing with family matters is the Civil Court (Family Section). Thus, it is the Civil Court (Family Section) that will decide the amount of maintenance that is to be paid (unless an agreement before the mediator has been reached).

Should a debtor fail to pay maintenance the creditor may file a complaint with the police who may institute criminal proceedings accordingly against the debtor. Such proceedings would be instituted before the Court of Magistrates (Criminal Judicature).

**6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?**

In order to institute a case on maintenance from abroad through the application of Regulation (EC) 4/2009 one must contact the Malta Central Authority which will then initiate the process accordingly before the mediator and before the Civil Court (Family Section), if it deems it necessary.

The Malta Central Authority will also assist the creditor in filing the relative complaints with the police so that criminal proceedings will be instituted if the need arises.

**7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?**

In accordance with Regulation (EC) 4/2009 proceedings relating to child support will be instituted without costs by the Central Authority.

In respect of maintenance relating to spousal support the Central Authority will assist the spouse in proceedings that are free of charge, such as mediation before the Family Court. Should mediation fail the creditor will be required to seek the assistance of a private lawyer who will assist the applicant before the Maltese courts. Fees relating to Courts and lawyers are provided in Schedule A of the ☞ Code of Organization and Civil Procedure (Chapter 12 of the Law of Malta). Should an applicant for spousal support qualify for legal aid, in accordance with Maltese law, the Central Authority will assist such person accordingly.

**8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?**

The calculation of the amount of maintenance that may be awarded varies by the court as it depends on a number of criteria. Notwithstanding the fact that there is no formula for calculation of maintenance, the Civil Court (Family Section) takes into account the following factors:

- i. standard of living of the debtor and that of the creditor and/or children;
- ii. whether the child require any additional monies due to an impairment or a requirement they may have; and
- iii. whether the debtor is exercising access to children.

A court's decision may be revisited however it is difficult to amend a decision regarding maintenance that is to be paid especially if the circumstances remain unchanged. Should there be a change in circumstances (e.g. minor will require more maintenance due to a long-term sickness or there is a significantly change in debtor's wage) the courts may change the terms of the maintenance.

The Family Court usually requires that the amount of maintenance is increased each year according to the national rate of inflation. Likewise a clause for increase in maintenance due to rate of inflation is usually inserted in the maintenance agreement reached upon during the mediation process.

**9 How and to whom will the maintenance be paid?**

Maintenance can be paid either directly by the debtor to the creditor by means of cash, cheque or bank transfer. The court may decide that the amount due in maintenance is to be deducted from the debtors income and the amount deducted is sent directly to the creditor. The latter option usually occurs when the debtor fails repeatedly to pay maintenance.

If the Malta Central Authority is instructed to initiate proceedings on behalf of the creditor, the said authority will take steps to encourage the debtor to send the money directly to the creditor. Should the debtor refuse to pay, the matter will be brought before the Court.

In such case the Malta Central Authority will ask the court to issue the necessary injunction so that the debtor's bank accounts are ceased and money is remitted to the creditor.

**10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?**

The Central Authority will make use of all remedies available according to Maltese law. In particular the Malta Central Authority will first send a letter stating that court proceedings will be instituted against such person. Upon failing to adhere to such letter the Malta Central Authority will ask the creditor to make an affidavit and the matter will be referred to the Maltese police so that they proceed against the debtor in accordance with the provisions of the Criminal Code.

Where necessary the Malta Central Authority will assist the applicant so that lawyers, either from legal aid unit or from the Central Authority, will initiate civil proceedings against the debtor so that arrears are paid. In such case if the debtor has an income a request can be made to the Court so that part of the income is seized and transferred directly to the creditor. If the debtor has valuable assets yet has no income, the Court may liquidate the assets and direct the money to the Central Authority which in turn will send it to the creditor.

**11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system**

The prescriptive period for criminal action following failure to pay maintenance is six (6) months. A criminal action would fail if the debtor failed to file a complaint with the police within 6 months from the day maintenance becomes due.

Article 2156 of the Civil Code states that actions for the payment of maintenance are barred by a 5 year period.

**12 Is there an organisation or an authority which can help me to recover maintenance?**

The Central Authority in Malta will assist:

- a. Creditors living out of Malta, when they need to sue a debtor in Malta, namely by searching for the debtor and facilitate proceedings against the debtor (such requests are treated as 'incoming cases');
- b. Creditors living in Malta, when they need to sue a debtor who is living outside of Malta by sending an application to another Central Authority so they search and sue the debtor.

**13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?**

No, this is not possible.

**14 If I am in this Member State and the debtor has his/her residence in another country:**

**14.1 Can I obtain the assistance of an authority or private organisation in this Member State?**

If the creditor is residing in Malta and the debtor is residing in another Member State such creditor may request the Central Authority of Malta to work with the Central Authority in that other Member State so that the debtor is located, contacted and informed about the obligation to pay maintenance.

Should there be no decision regarding the amount of maintenance that is due the Malta Central Authority should liaise with the Central Authority in the other Member State and seek assistance so that the courts or administrative authorities of that Member State will deliver a decision establishing the amount of maintenance that is to be received from the debtor.

Following that the Malta Central Authority should liaise with the foreign Central Authority so as to receive information on the best ways possible to ensure that such maintenance decision is enforced, unless the debtor cooperates voluntarily.

**14.2 If so, how can that authority or private organisation be contacted?**

The Central Authority of Malta has its contact details published in the Judicial Atlas website of the EU.

**15 If I am in another country and the debtor is in this Member State:**

**15.1 Can I address a request directly to such an authority or private organisation in this Member State?**

In cross-border cases relating to maintenance the Malta Central Authority will assist the creditor from abroad to secure the maintenance obligation. In such case the Malta Central Authority will represent the creditor before all other administrative authorities or before the law courts in accordance with the circumstances of the case. The Malta Central Authority would require the necessary forms to be filled in and may also require authorisation from the creditor before it initiates any legal proceedings.

Where the creditor is seeking to retrieve from the debtor maintenance in the form of spousal support, free legal aid to assist such creditor before the law courts would only be provided if such creditor would fit the same criteria for free legal aid provided to persons resident in Malta.

**15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?**

The contact details of the Malta Central Authority may be found on the Judicial Atlas of the EU. The Central Authority will carry out the functions as described in further details in Question 21, functions (i) to (j) which namely are to locate the debtor, ensure that there is a decision enforceable against the debtor (and if not assist the creditor in obtaining one) and assist the debtor in the enforcing such decision.

**16 Is this Member State bound by the 2007 Hague Protocol?**

Yes, Malta is bound by the 2007 Hague Protocol.

**17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?**

N/a

**18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?**

The Central Authority will offer free guidance to persons who approaches the Central Authority on cross-border maintenance cases. Whenever the request is made by a person living abroad the Malta Central Authority will ensure that the person is being provided with the support that individual needs, according to the nature of the claim made. In particular, should the claim be made for personal support the Malta Central Authority will provide the applicant with advice and general guidance.

Should the claim for maintenance relate to children then the Malta Central Authority will ensure that legal proceedings against the debtor are instituted without any cost.

Where the Malta Central Authority is requested by a creditor living in Malta to assist in recovering maintenance from abroad the Malta Central Authority will assist that person in filing the case before the law courts and keeps in contact with the foreign Central Authority, on the outcome of the case and to discuss the possibility of recovery of such maintenance due.

**19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?**

Officers are assigned for each case in order to ensure that the Malta Central Authority transmits applications, receives applications, keeps in contact with the debtor and creditor's request and keeps the foreign Central Authority updated about the developments in each case. The case officer will be assisted by lawyers who have years of experience in family and administrative procedure.

In outgoing cases the case officer will correspond directly to the contact person in Malta and the Central Authority abroad. Usually communication is send via email and / or ordinary post. However in certain situations telephone calls are made to the foreign Central Authority or the person who is requesting the services of the Malta Central Authority. In incoming cases the Malta Central Authority endeavours to keep the client involved in all correspondence between the Central Authorities.

The following are some of the measures taken in the following circumstances:

- (a) where the circumstances require, to provide or facilitate the provision of legal aid: where necessary and required the Central Authority may engage a lawyer so as to represent the client or it may direct that the client will be assisted by legal aid lawyers or other attorneys, according to the circumstances of the case;
- (b) to help locate the debtor or the creditor, in particular pursuant to Articles 61, 62 and 63 of the Regulation: in such circumstances the Central Authority will first conduct preliminary searches in public databases for the registered addresses and contact information of that individual. Where more information is provided to the Malta Central Authority searches will be made accordingly and other government entities will be contacted to provide information on the debtor's assets;
- (c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets, in particular pursuant to Articles 61, 62 and 63 of the Regulation: the Central Authority will contact the national employment office and determine whether such person is currently employed or not. If a court case is instituted against the debtor the Central Authority will suggest that the lawyer who is representing the creditor to ask the court to summon other government departments such as the Inland Revenue, the Transport Authority and the local banks or any other relevant entity, so as to give evidence about the earnings and assets of the debtor;
- (d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes: before initiating any form of legal proceedings the Malta Central Authority will contact

the debtor and encourage an amicable agreement, explaining why this is always in one's best interest to do so. Where the chances of mediation are high the Malta Central Authority will refer the matter to professional mediators, however if there is no prospect that parties will resolve the dispute amicably then court proceedings are instituted;

(e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears: the Malta Central Authority may initiate proceedings or suggest that court proceedings are initiated against the individual debtor so as that the court liquidates any assets of the debtor or receives a court order to cease part of the wages;

(f) to facilitate the collection and expeditious transfer of maintenance payments: the Malta Central Authority will institute court proceedings asking the court to order the debtor to pay directly the creditor. Should the debtor fail to issue such payments the Malta Central Authority will, in the case of child support, require the law courts to issue the necessary injunction so that the assets of the debtor are seized and the proceeds thereof will be sent to the creditor. In the case of spousal support the Malta Central Authority will assist the applicant in achieving the said either through private lawyers or through the legal aid system;

(g) to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001: if the documents or information required is already in the public domain the Malta Central Authority will collect that information and provide it to the creditor. If the information is not in the public domain a special request will be made to the authority or entity that is holding such information. If such information cannot be made available the Central Authority may ask the Court to order that such information be made available, according to the circumstances of the case;

(h) to provide assistance in establishing parentage where necessary for the recovery of maintenance: the Malta Central Authority will guide the applicant through the legal process of establishing parentage and will provide the applicant with information about the private services required for such process, in particular those relating to DNA tests, where applicable;

Where necessary the Central Authority will assist the foreigner in obtaining a representative who could appear in Malta on his or her behalf in the relative public deed. Alternatively the issue of parentage may have to be decided by the law courts and therefore the Malta Central Authority will only ensure that the matter gets before a court so that the court will be able to decide on the matter;

(i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application: should the Malta Central Authority suspect that a debtor is taking measures so as to worsen his or her economic position the Malta Central Authority will ensure that the necessary court injunctions are requested so that the debtor is prohibited from dissipating the estate against the interest of the creditor;

(j) to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007: where further information on the debtor is required and such information can lawfully be gathered and transmitted by any private person in Malta, the Maltese Central Authority will direct its staff to collect such information. Such information may be collected from public or private entities.

Whenever necessary the Malta Central Authority shall liaise with the transmitting and receiving agencies designated under the Regulation (EC) 1393/2007 in order to ensure that certain documents are duly served.

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