Malta

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1. EXECUTIVE SUMMARY

1.1 What are the advantages and disadvantages relevant to arbitrating or bringing arbitration-related proceedings in your jurisdiction?

The choice of Malta as a seat of arbitration has become increasingly popular, mainly due to the following reasons:

- Malta's arbitration law is closely modeled on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985 ('Model Law'). As such, it will be familiar to experienced arbitration practitioners and corporate counsel alike;
- an arbitral award, once registered with the Malta Arbitration Centre ('MAC'), constitutes an executive title and can be very efficiently executed;
- the availability (and enforcement by the courts) of protective and interim measures similar to those available in leading arbitration venues;
- the MAC offers a panel of experienced arbitrators from whom the parties may choose, without limiting the choice of arbitrators by the parties;
- the geographical location of Malta may serve as an accessible, neutral location and is very often perceived as an ideal location for the settlement of disputes between European and Northern African companies;
- Malta is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and its provisions have been incorporated into domestic law. The courts have generally applied the Convention with a pro-enforcement bias; and
- as a seat of arbiration, Malta can be said to provide an exceptionally good cost to quality ratio.

However, Maltese arbitration law does not provide for discovery proceedings which may be perceived as a handicap by parties coming from a non-civil law jurisdiction.

2. GENERAL OVERVIEW AND NEW DEVELOPMENTS

2.1 How popular is arbitration as a method of settling disputes? What are the general trends and recent developments in your jurisdiction?

Arbitration is currently a widely used dispute resolution method in commercial matters. An ever-increasing number of disputes in insurance, maritime, building and construction and corporate claims are being resolved by way of arbitration. Although Malta as a seat of international arbitration has

become more popular, the jurisdiction is still struggling to promote itself as a preferred seat.

2.2 Are there any unique jurisdictional attributes or particular aspects of the approach to arbitration in your jurisdiction that bear special mention?

Chapter 387 of the Laws of Malta ('Arbitration Act') establishes the publicly funded MAC which acts as the default arbitration registry/secretariat in domestic arbitration and can be selected to perform such roles as the role of default appointing authority in international arbitrations having Malta as their seat of arbitration.

2.3 Principal laws and institutions

2.3.1 What are the principal sources of law and regulation relating to international and domestic arbitration in your jurisdiction?

The Arbitration Act and the Arbitration Rules (Subsidiary Legislation 387.01) are the principal legislative instruments regulating arbitration in Malta. The Arbitration Act is modelled on the Model Law and the Arbitration Rules are likewise modelled on the UNCITRAL Rules. The Arbitration Act also incorporates the New York Convention, the Geneva Convention 1923, the Geneva Convention on the Execution of Foreign Arbitral Award 1927 (Geneva Convention 1927) and the Washington Convention 1965.

2.3.2 Which are the principal institutions that are commonly used and/or government agencies that assist in the administration or oversight of international and domestic arbitrations?

The MAC is the principal institution that oversees the conduct of domestic arbitrations and international arbitrations having Malta as their seat of arbitration. It is run by a publicly-appointed board of governors that is responsible for the policy and general administration of the affairs and business of the MAC. The Centre offers not only the necessary facilities for the conduct of arbitration but also a choice of arbitrator/s from panels of professionals in different areas of law.

Naturally, Malta can and does serve as the seat of ad hoc international arbitrations as well as the seat of institutional arbitrations under the rules of leading arbitration institutions (International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), CIR etc).

2.3.3 Which courts or other bodies have judicial oversight or supervision of the arbitral process.

The superior courts (First Hall Civil Courts and the Court of Appeal as the case may be) are vested with the powers to stay arbitration proceedings, grant interim relief, hear procedural challenges and make recognition orders. The specific division of powers and jurisdiction of the particular courts depends on the nature of the relief sought and are regulated by the Arbitration Act and the Code of Organization and Civil Procedure (Ch.12 of the Laws of Malta) and will be addressed in more detail below.

3. ARBITRATION IN YOUR JURISDICTION—KEY FEATURES

3.1 The appointment of an arbitral tribunal

3.1.1 Are there any restrictions on the parties' freedom to choose arbitrators?

The parties' freedom of choice of arbitrators is safeguarded by the Arbitration Act both in domestic and international arbitration and is unlimited, subject to the traditional rules of independence and impartiality. The MAC offers various panels of arbitrators, however, there is no obligation or restriction to use them.

3.1.2 Are there specific provisions of law regulating the appointment of arbitrators?

In default of any agreement on the procedure for the appointment of arbitrators, the law provides that, for an arbitration with three arbitrators; each party will appoint one arbitrator and the two arbitrators will in turn appoint the third arbitrator who shall act as the chairman of the arbitration tribunal. However, if a party fails either to appoint the arbitrator within thirty days of receipt of a request to do so from the other party or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the Chairman of the MAC.

In an arbitration with a sole arbitrator, where the parties fail to agree on the arbitrator, s/he shall be appointed, upon request of a party, by the Chairman of the MAC.

In the context of international arbitration, the MAC Chairman fills the role of default appointing authority and the functions mentioned in arts 11(3)–(4), 13(3) and 14 of the Model Law.

3.1.3 Are there alternative procedures for appointing an arbitral tribunal in the absence of agreement by the parties?

As discussed in s.3.1.2 above, in case the parties do not agree on the arbitrator/s, at one of the parties' request, the Chairman shall appoint the arbitrator/s.

3.1.4 Are there requirements (including disclosure) for "impartiality' and/or 'independence', and do such requirements differ as between domestic and international arbitrations?

The Arbitration Act provides that arbitrators have to be independent and impartial, and any person who is approached as a prospective arbitrator is duty bound to disclose to those who approach him any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. This obligation stands from the time of his appointment and throughout the arbitral proceedings. These rules apply to both domestic and international arbitration.

3.1.5 Are there provisions of law governing the challenge or removal of arbitrators?

The grounds upon which an arbitrator may be challenged or removed are circumscribed. Challenge and removal of arbitrators is regulated by art.24 of the Arbitration Act and arts 12–13 of C.II of the Sch.1 to the Arbitration Act.

However, a party may only challenge his or her appointee on the arbitration tribunal for reasons which arise after the appointment has been made.

3.1.6 What role do national courts have in any such challenges?

Pursuant to the applicable statutory provisions, a challenge to one or more arbitrators is a matter to be decided upon by the arbitration tribunal. In fact, a party who intends to challenge an arbitrator shall send notice of their challenge within fifteen days after the appointment of the challenged arbitrator has been notified to that party or within fifteen days after the circumstances mentioned in arts 23–24 of the Arbitration Act became known to that party.

The challenge shall be notified to the registrar, to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal.

3.1.7 What principles of law apply to determine the liability of arbitrators for acts related to their decision-making function?

The arbitrator shall only be liable in respect of anything wilfully done or omitted to be done by him/her as arbitrator where his/her action or omission is attributable to malice or fraud on his/her part. This is not a principle of mandatory law and liability of arbitrators can be specifically dealt with in engagement documentation which can, for instance, set the arbitrator's duty to act diligently, without undue delay, and preserve confidentiality. In any case, arbitrators are bound to remain independent and impartial throughout the process.

3.2 Confidentiality of arbitration proceedings

3.2.1 Are arbitrations seated in your jurisdiction confidential? What are the relevant legal or institutional rules which apply?

There is an implied duty of confidentiality in arbitration and arbitration awards are neither published by the MAC nor are they publicly accessible through online databases or regular publications. However, it is advisable to reinforce this by including appropriate wording in the arbitration agreement or by adopting a set of procedural rules which make express provision for confidentiality. The duty of confidentiality is included as part of the Arbitration Rules.

3.2.2 To what matters does any duty of confidentiality extend (e.g. does it cover the existence of the arbitration, pleadings, documents produced, the hearing and/or the award)?

The Arbitration Rules clearly state that every person who participates in the arbitration proceedings in whatever capacity must maintain the confidentiality of the arbitration. Moreover, the existence of arbitration proceedings, the filing of the notice of arbitration and the award will not be published.

The hearings are to be held in a private setting and no person other than the parties and their assistants or representatives, and the registrar, will be permitted to attend except as otherwise directed by the tribunal.

Naturally, with respect to international arbitrations having Malta as their seat of arbitration, the duty of confidentiality will generally be regulated by the relevant institutional rules (ICC, LCIA, AAA etc).

Where the parties have chosen the Arbitration Rules to regulate their

arbitration proceedings then r.47 shall apply. This rule provides that every person who participates in the arbitration proceedings in whatever capacity must maintain the confidentiality of the arbitration. The existence of arbitration proceedings, the filing of the notice and the award will not be publicised or otherwise be publicly acknowledged by the MAC or the parties. The MAC shall treat all documents filed with it as confidential except to the extent authorised by the parties or otherwise necessary to implement the provisions of the Arbitration Act. Moreover, the hearings will be held in private chambers and no person other than the parties and their assistants or representatives, and the registrar, will be permitted to attend except in support of the proceedings as ordered by the arbitral tribunal.

3.2.3 Can documents or evidence disclosed in arbitration be used in other proceedings or contexts?

The use of any document disclosed in arbitration should be regulated by the arbitration agreement and institutional arbitration rules vary in this respect. The default position under Maltese law is that a party is not prohibited from producing documents exchanged in arbitration in other proceedings whether related or unrelated unless otherwise agreed to in the arbitration agreement.

3.2.4 When is confidentiality not available or lost?

Parties cannot claim the confidentiality of arbitration proceedings where the parties have agreed that the proceedings should not remain private and confidential. Where parties choose to regulate the arbitration through the Arbitration Rules, r.48 contains the following three exceptions to the otherwise applicable principle of confidentiality, namely:

(1) where the parties expressly consent to the publication of any of the events stated in r.47 of the Arbitration Rules (mentioned in s.3.2.2 above) and to such extent as may be consented to;
(2) if any party seeks recourse in terms of the arbitration agreement or the Arbitration Act and limitedly to such extent or otherwise requires divulging the information to protect his own interests; or
(3) in the case of mandatory arbitrations.

3.3 Role of (and interference by) the national courts and/or other authorities

3.3.1 Will national courts stay or dismiss court actions in favour of arbitration?

If any party to an arbitration agreement commences any legal proceedings in any court against any other party to the arbitration agreement, in respect of any matter agreed to be referred to arbitration, parties to such legal proceedings may at any time before delivering any pleadings or taking other steps in the proceedings apply to the court to stay the proceedings and the court or a judge thereof, unless satisfied that the arbitration agreement has become inoperative or cannot proceed, shall make an order staying the proceedings.

3.3.2 Are there any grounds on which the national courts will order a stay of arbitral proceedings?

The Maltese courts retain a residual jurisdiction on matters that are being heard in arbitration. There is no express provision enabling the courts to order a stay of arbitral proceedings but there have been cases where the courts have decided to reassert their jurisdiction in disputes that were being heard in domestic arbitration proceedings and where court jurisdiction had been previously stayed.

3.3.3 What is the approach of national courts to parties who commence court proceedings in your jurisdiction or elsewhere in breach of an agreement to arbitrate?

As described in ss.3.3.1 and 3.3.2 above, the court will stay proceedings if there is a valid arbitration clause. With a few exceptions, the approach of national courts has been positive in preserving the jurisdiction of the arbitrator.

3.3.4 Is there a presumption of arbitrability or policy in support of arbitration? Have national courts shown a willingness to interfere with arbitration proceedings on any other basis?

As a signatory of the New York Convention and having modelled the Arbitration Act on the Model Law, Malta is generally a jurisdiction which supports the arbitration process. National courts are less likely to interfere with international arbitrations having Malta as their seat of arbitration than they do with domestic arbitrations where they still have residual powers. In general, Maltese Courts cannot prevent a party from trying to frustrate arbitration proceedings through court actions but when this happens, with some few exceptions, Maltese Courts have shown themselves to be generally supportive of arbitration and unsympathetic to such claims.

3.3.5 Are there any other legal requirements for arbitral proceedings to be recognisable and enforceable?

No, there are no other legal requirements for arbitral proceedings to be recognisable and enforceable in the case of international arbitrations having Malta as the seat of arbitration. Recognition and enforcement proceedings are discussed further below in this chapter.

With respect to domestic arbitrations, the claimant has to file a notice of arbitration with the MAC. Such notice may be filed at any stage prior to the delivery of the award but is required *ad validitatem*. In other words, a domestic arbitration which is not accompanied by a notice of arbitration does not produce a legally enforceable award at law.

3.4 Procedural flexibility and control

3.4.1 Are specific procedures mandated in particular cases, or in general, which govern the procedure of arbitrations or the conduct of an arbitration hearing? To what extent can the parties determine the applicable procedures?

The parties are at liberty to determine the procedure to be followed by the arbitral tribunal in international arbitrations having Malta as their seat of arbitration. The Arbitration Act and the Arbitration Rules provide rules on procedure as default rules in case the parties do not agree on the procedure or

parties expressly adopt such rules in international arbitrations.

The general public policy provisions regulating fair trial (due process) naturally apply.

In domestic arbitrations, procedural flexibility is much more limited and is managed by the MAC.

3.4.2 Are there any requirements governing the place or seat of arbitration, or any requirement for arbitral hearings to be held at the seat?

The parties are at liberty to choose the place or seat of arbitration and there is no requirement that proceedings should physically take place at the seat of arbitration.

3.4.3 What procedural powers and obligations does national law give or impose on an arbitral tribunal?

In domestic arbitration and where in international arbitration the parties adopt the Arbitration Rules to regulate their arbitration, r.71 provides that the arbitral tribunal shall have all the necessary powers to issue orders to the parties. Moreover, the arbitral tribunal shall have the power to impose penalties for non-compliance with orders for failure to observe time limits and for failure to attend hearings or cancellation thereof without valid reasons.

3.4.4 Legal Arguments

3.4.4.1 What is the general approach to the presentation of legal arguments at the pleading and hearing stages?

As stated in s.3.4.1 above, the parties are at liberty to determine the procedure to be followed by the arbitral tribunal, however, it is common practice to have legal arguments presented either in written or oral form.

3.4.5 Evidence

3.4.5.1 What is the general approach to the gathering and tendering of written evidence at the pleading stage and at the hearing stage?

The parties to the arbitration are at liberty to decide how the gathering and tendering of evidence should be carried out. Generally, parties do so through the incorporation of institutional rules or the choice of the Arbitration Rules. In default of such a choice, the arbitration tribunal shall regulate the evidence before it to ensure compliance with the applicable law, generally the law of the seat of arbitration.

The evidence in arbitration may be produced either *viva voce* or by sworn witness statements and a documents-only arbitration is recognised under Maltese Law.

It has to be stated that the same rules regulating legal privilege, the use of witness statements etc, applicable to litigation apply to arbitration proceedings. The principle of discovery is unknown in the Maltese legal system.

3.4.5.2 Can parties agree the rules on disclosure? How does the disclosure in arbitration typically differ to that in litigation?

Yes, parties may agree on disclosure, however, please refer to the last preceding answer in connection with discovery.

3.4.5.3 What are the rules on oral (factual or expert witness) evidence? Is cross-examination used?

The Arbitration Rules provide that the arbitral tribunal shall regulate the production of evidence before it to ensure compliance with the provisions of the Arbitration Act.

The arbitral tribunal may administer oaths to persons called as witnesses or experts to give evidence before an arbitral tribunal.

Article 36 of the Arbitration Act provides that the evidence of witnesses in an arbitration shall be produced either viva voce or by affidavit, and the rules of the Code of Organization and Civil Procedure shall apply as they apply to the production of evidence before a court of civil jurisdiction. Where the evidence of any person is required, the registrar may issue writs of subpoena to compel the attendance of a witness to give evidence or produce documents before an arbitral tribunal.

3.4.5.4 If there is no express agreement, what powers of compulsion are there for arbitrators to require attendance of witness (factual or expert) or production of documents, either prior to or at the substantive hearing taking place within your jurisdiction? To what extent are national courts willing or able to assist? Are there differences between domestic and international arbitrations or as between orders sought as against parties and non-parties?

In domestic arbitration, each party may communicate to the arbitral tribunal and to the other party, the names and addresses of the witnesses that party intends to present, the subject upon which and the language(s) in which such witnesses will give their testimony.

Article 36 of the Arbitration Act provides that, where the evidence of any person is required, the registrar may issue writs of subpoena to compel the attendance of a witness to give evidence or produce documents before the arbitral tribunal. The application for the issue of the writ shall be countersigned by the sole arbitrator, or the presiding arbitrator, and shall be filed in the registry of the Maltese Courts, by the registrar. The court shall notify the writ or otherwise act on the application in the same manner as if such application or such writ had been issued or approved by the Maltese courts.

Moreover, where any person who has been regularly subpoenaed to appear before an arbitral tribunal fails to appear before the said tribunal without reasonable excuse, the tribunal may make a report thereon to the registrar who shall by application bring the report to the attention of the Maltese courts, requesting the courts to deal with the matter in the same manner as if the person concerned had failed to appear before the Maltese courts. Upon receiving such an application, the court shall deal with the matter in the same manner.

The provisions of art.36 are also applicable to the appointment of experts as provided in art.39 of the Arbitration Act.

3.4.5.5 Do special provisions in the local law exist for arbitrators appointed pursuant to international treaties (i.e. bilateral or multilateral investment treaties)?

No, specific provisions exist on this point.

3.4.6 Are there particular qualification requirements for representatives appearing on behalf of the parties in your jurisdiction?

Those appearing on behalf of parties to arbitration proceedings are not required to have any particular qualifications. However, representatives should be familiar with both the legal and procedural rules relating to the matter in dispute as well as arbitration law and procedure.

3.5 The Award

3.5.1 Are there provisions governing an arbitral tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to participate in the arbitral proceedings?

The failure by a party to enter an appearance or to contest an arbitration when validly served with notice does not prevent the arbitration tribunal from proceeding with the procedure and producing a default award.

3.5.2 Are there limits on arbitrators' powers to fashion appropriate remedies, e.g., punitive or exemplary damages, specific performance, rectification, injunctions, interest and costs?

The arbitrators' remedies should be based on the pleas of the parties and the law applicable to the arbitration, unless the parties expressly authorise the arbitrator to decide *ex aequo et bono* or as *amiable compositeur*. The remedies that can be fashioned by the arbitrator will be regulated by the law applicable to the merits of the dispute.

3.5.3 Must an award take any particular form or are there any other legal requirements, e.g. in writing, signed, dated, place stipulated, the need for reasons, method of delivery, etc?

The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated. The law does not require that the award is signed by all the arbitrators.

Moreover, the award shall include the date and the place of arbitration and shall state the reasons upon which the award is based (unless agreed otherwise by the parties).

3.6 Costs

3.6.1 Can an arbitral tribunal order the unsuccessful party to pay some or all of the costs of the dispute? Is an arbitral tribunal bound by any prior agreement by the parties as to costs?

The arbitral tribunal may, both in domestic and international arbitration, order the unsuccessful party to pay part or the full amount of the costs of the dispute. In both domestic and international arbitration, the Arbitration Act specifies that costs of arbitration shall in principle be borne by the unsuccessful party. However, it is in the discretion of the arbitral tribunal to apportion the costs, taking into account of the particular circumstances of the case.

3.6.2 What matters are included in the costs of the arbitration?

The Arbitration Act specifically provides that "costs" of arbitration includes:

(1) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself;

(2) the travel and other expenses incurred by the arbitrator(s);
(3) the costs of expert advice and of other assistance required by the arbitral tribunal;
(4) the travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
(5) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable; and
(6) any fees and expenses payable to the MAC.

3.6.3 Are there any practical or legal limitations on the recovery of costs in arbitration?

In both domestic and international arbitration, the MAC shall request each party to deposit with it an equal sum between them as an advance for costs referred to in s.3.5.5(1)-(c) above. During the course of the arbitral proceedings, the arbitral tribunal may request from the parties supplementary deposits to cover further costs. If the required deposits are not paid in full within thirty days from the receipt of the request, the arbitral tribunal shall so inform the parties in order that any one of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

This provision may unfortunately sometimes favour a recalcitrant party who wishes to prolong the arbitration. Nevertheless, a party interested in proceeding expeditiously to an arbitration award may pay the costs of arbitration and such payment would be recoverable together with the award and in terms of the cost order contained in the same award.

3.6.4 Are there any rules relating to the payment of taxes (including VAT) by foreign and domestic arbitrators? If taxes are payable, can these be included in the costs of arbitration?

There are no specific VAT rules applicable to the services granted by foreign and domestic arbitrators that single out such services from the VAT regulation on the provision of professional services. The general rules apply.

3.7 Arbitration agreements and jurisdiction

3.7.1 Are there form and/or content or other legal requirements for an enforceable agreement to arbitrate? How may they be satisfied? What additional elements is it advisable to include in an arbitration agreement where your jurisdiction is chosen as the seat of arbitration?

The arbitration agreement must be in writing and contained either in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. Such an agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The agreement by the parties shall include whether all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship will be settled by way of arbitration.

Additional elements such as the language of proceedings and the number of arbitrators to be appointed should also be included in an arbitration agreement.

3.7.2 Will the local courts enforce an arbitration agreement specifying your jurisdiction at the seat even where the underlying contract is invalid or unenforceable?

Yes, the arbitration clause can still be considered valid in such circumstances and does not automatically suffer the fate of the contract in which it is embedded. This applies both to domestic and international arbitration. Article 16 of the Model Law clearly states that, should a contract be considered null and void, this shall not entail *ipso jure* the invalidity of the arbitration clause.

3.7.3 In arbitrations conducted in your jurisdiction, does an arbitral tribunal determine "competence–competence"? If so, how does such a right interplay with the timing for national courts to determine jurisdiction of the arbitral tribunal? Must an arbitral tribunal suspend its proceedings if a party seeks to resolve the issue of jurisdiction before the national courts?

Yes, an arbitral tribunal may determine its own jurisdiction both in domestic and international arbitration. In the event that proceedings are filed before any court for a declaration relating to the jurisdiction of an arbitral tribunal, such proceedings shall be dismissed and the parties shall be referred to the arbitral tribunal for its decision on the issue, unless the court considers that any party will suffer irreparable harm unless it determines the issue. Article 32 of the Arbitration Act regulates in detail the procedure in the context of domestic arbitrations.

3.7.4 Is arbitration mandated for certain types of dispute? Is arbitration prohibited for certain types of dispute?

Arbitration is mandated by the Arbitration Act in: condominium disputes; motor traffic disputes; paying agency disputes; and disputes connected with the provision of certain utility services (electricity and water services).

However, the Arbitration Act sets certain limitations as to the specific issues which might be included or excluded by mandatory arbitration. Not all disputes are arbitrable, namely criminal law disputes, acts of civil status and public law disputes.

3.7.5 What, if any, are the local rules which prescribe the limitation periods for the commencement of arbitration proceedings in your jurisdiction and what are such periods?

The Arbitration Act does not stipulate any time limitations for the commencement of arbitration proceedings. However, art.17(2) of the Arbitration Act cross-refers to the provisions of the Maltese law statute of limitations and these rules apply equally to arbitration as they do to the Maltese courts.

3.7.6 Does national law enable an arbitral tribunal to assume jurisdiction over persons who are not signatories to an arbitration agreement?

With the exception of mandatory arbitrations, which are an exceptional institute in Maltese law, an arbitration agreement applies only to the parties signatory to that agreement and the arbitral tribunal may not assume

jurisdiction over persons who are not party to an arbitration agreement. The only exception to this rule is stated by the Arbitration Act in cases of mandatory arbitration where a third party may be joined to the proceedings.

3.8 Applicable Law

3.8.1 Are there provisions of law which give guidance or mandates to arbitrators with respect to the law applicable to the issues in dispute? How is the law governing the issues in dispute determined?

In international arbitration, the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.

Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable. In domestic arbitration, if the parties fail to identify a designated law, the arbitral tribunal shall apply Maltese law including the rules of Maltese law relative to the conflict of laws.

Even though EU Regulation 593/2008 on the law applicable to contractual obligations [2008] OJ L177/6 (Rome I Regulation) is a directly applicable EU instrument in Malta, and whilst it applies in proceedings before the Maltese Courts, its application in arbitral proceedings is less clear.

3.8.2 Are there any mandatory public policy or other laws which must be applied to arbitrations conducted in your jurisdiction?

In domestic arbitration, if the parties fail to identify a designated law, the arbitral tribunal shall apply Maltese law including the rules of Maltese law relative to the conflict of laws.

3.9 Third party Funding

3.9.1 Is third party funding of an arbitral claim permitted in your jurisdiction?

Third party funding of an arbitral claim is not contemplated by Maltese law and there is currently no market for the industry.

3.9.2 Are parties entitled to recover any costs associated with third party funding?

See s.3.9.1 above.

4. SEEKING INTERIM MEASURES IN SUPPORT OF ARBITRATION CLAIMS

4.1 Can an arbitral tribunal order interim relief? If so, in what circumstances? What forms of interim relief are available and what are the legal tests for qualifying for such relief?

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

Before or during arbitral proceedings, a party may request a court to grant an interim measure of protection. Such measures include: the warrant of

description; the warrant of seizure; the warrant of seizure of a commercial going concern; garnishee order; the warrant of arrest of sea vessels; the warrant of arrest of aircraft; and the warrant of prohibitory injunction.

4.2 Have national courts recognised and/or limited any power of an arbitral tribunal to grant interim relief?

The courts recognise the freedom of the parties to choose the venue from which to seek interim relief. They have not so far limited the powers of arbitral tribunal to grant interim measures. Where interim measures have been granted by the tribunal, the courts will recognise and enforce such measures upon the application of the party in whose favour the measure has been granted.

4.3 Will national courts grant interim relief in support of arbitration proceedings and, if so, in what circumstances?

The Arbitration Act stipulates that, both in international and domestic arbitration, unless otherwise agreed by the parties, any party may request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

4.4 Are national courts willing to grant interim relief in support of arbitration proceedings seated elsewhere?

Maltese courts grant interim measures in support of arbitral proceedings seated outside of Malta and they are generally supportive of arbitration proceedings and provide interim measures in support thereof.

5. CHALLENGING ARBITRATION AWARDS

5.1 Can an award be appealed to, challenged in or set aside by the national courts? If so, on what grounds?

Recourse to the national courts against an arbitral award may be had only by an application for setting aside in accordance with specific provisions provided in art.70 of the Arbitration Act.

If the party making the application furnishes proof that either:

(1) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Malta;

(2) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case;

(3) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(4) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the Arbitration Act from which the parties cannot derogate or, failing such agreement, was not in accordance

with the Arbitration Act;

The national courts find that either:

(1) the subject matter of the dispute is not capable of settlement by arbitration under the law of Malta; or

(2) the award is in conflict with the public policy of Malta.

However, an application for setting aside may not be made after the lapse of three months from the date on which the party making that application had received the award or, if a request had been made for an additional award, from the date on which that request had been disposed of by the arbitration tribunal.

Special rules on appeals from arbitration awards in domestic arbitrations apply.

Recourse against an arbitral award delivered under Pt V (international arbitration) may be made to the Court of Appeal by an appeal on a point of law only if the parties to the arbitration agreement have expressly agreed that such right of appeal is available to the parties in addition to the rights of recourse as contemplated in art.34 of the Model Law.

5.2 Can the parties exclude rights of appeal or challenge?

The parties may expressly by agreement exclude the right of appeal in domestic arbitrations either in the arbitration agreement or otherwise in document in writing.

5.3 What are the provisions governing modification, clarification or correction of an award (if any)?

The Arbitration Act provides that, within thirty days of receipt of the award, unless another period has been agreed upon by the parties:

(1) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature; and

(2) if so agreed by the parties, a party with notice to the other party may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction or an interpretation.

However, the arbitral tribunal also has the prerogative to correct any errors in computation, any clerical or typographical errors or any errors of similar nature on its own initiative within thirty days of the date of the award.

Moreover, unless otherwise agreed by the parties, a party with notice to the other party may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.

6. ENFORCEMENT

6.1 Has your jurisdiction ratified the New York Convention or any other regional conventions concerning the enforcement of arbitration awards? Has it made any reservations?

Malta has implemented the New York Convention. It has also implemented the Geneva Convention 1927. Both reservations applicable under the NYC have been adopted by Malta.

6.2 What are the procedures and standards for enforcing an award in your jurisdiction?

The procedure for enforcing an award in Malta is quite simple and requires only registration with the MAC, however, this process takes time due to the MAC's accumulated backlog.

6.3 Is there a difference between the rules for enforcement of 'domestic' awards and those for 'non–domestic' awards?

Enforcement instruments available to an award creditor are the same in both domestic and non-domestic awards. The latter class of awards would, however, have to pass through the recognition procedures stipulated in the Arbitration Act, including registration with the MAC referred to above, prior to the issuance of enforcement instruments in the form for example of executive warrants.

7. RECENT DEVELOPMENTS

7.1 What recent developments are particularly relevant to arbitrations conducted in your jurisdiction?

The recent European Court of Justice (ECJ) decision in *Slovak Republic v Achmea BV*, relating to an investor state arbitration and its incompatibility with EU law, will have a far-reaching effect, including Malta. The ECJ in its decision concluded that the bilateral investment treaty between Slovakia and the Netherlands established a mechanism for settling disputes which is not capable of guaranteeing that the disputes decided by that arbitration tribunal will ensure the full effectiveness of EU law. Similarly, Maltese investment bilateral treaties might be challenged in the future.