

Legalisation of Public Documents within the EU Member States

MALTA

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PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

OVERVIEW OF PART I

PART I.A. General

I.A.1. European Community Law

I.A.1.1. Introduction

The notion of document under Maltese Law

Article 3(1) of the Interpretation Act define a document as '*any matter expressed or described on any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter*'.¹ Thus as soon as any matter is expressed by means of 'letters, figures or marks' whatever the substance bearing such content, the document subsists. From this definition, two elements emerge which together constitutes a document:

- (1) a matter which is being expressed, and
- (2) a substance containing such matter expressed in the form of letters, figures or marks, or a combination of them.

The object of the documentary representation of the document can be any fact. There are no limitations, nor can there be established categories of things to be proved by a document, and therefore it is useless to attempt to enumerate the objects which could possibly be the subject of a document. In fact Article 2 of the Duty on Documents and Transfers Act,² one may note how contrasting the content and nature of a document may be. It says a document includes '*a policy of insurance, bill of sale, a banking credit card, a notarial deed and a schedule of redemption of ground rent filed in court*'. Clearly this Article is only referring to those documents which fall within the ambit of this fiscal legislation. Notwithstanding such limitation, one may observe the diversity in nature between one document and another. Needless to say, even in the case of notarial acts alone, the content of such document can be striving to create one or several of the

¹ Chapter 249, Laws of Malta

² Chapter 364 of the Laws of Malta

numerous *negotia*, which the Civil Code or any other Law establishes.

From the definition given in the Interpretation Act, it follows that the document must be expressed in a physical form. The matter must be reduced to letters, figures or marks or a combination of these. Clearly such symbols must be intelligible and capable of meaning something. In order for these to be expressed on a 'substance', this must be physical in form. In practice the most common means which is used is that of writing or printing. However, writing, whether it is long hand, typed or printed, is only one of the ways in which this may take place. In fact Article 3 of the Interpretation Act says that the term 'writing' 'includes printing, lithography, typewriting, photography and any other mode of representing or reproducing words in a visible form'. Furthermore this is not even an exhaustive list since the term 'includes' is sued. Thus other means of reducing such symbols onto a material object are possible, as for instance carving, sculpting, scratching and any other means that cause such marks. With regard to the medium which may amount to a document, not only does the law not impose any limitations, but uses the term 'on any substance'. Thus the medium is not limited to paper, but can be any material, whether it is paper, wood stone or any other material surface.

A document has two main functions. In the case where the *negotium* must be concluded in writing (whether a private or public writing), the writing is the instrument that creates the contract (legal relationship), and without the use of this written instrument, no contract would have been concluded, even if the will of the parties had concurred. This would be the case of a writing *ad solemnitatem* or *ad validitatem*. The second function is evident in the case of those contracts which can be concluded in the free form. As soon as the offer is made and this is accepted without the offer having been withdrawn, the contract is concluded. In such a case, if the parties deem appropriate, they must put the contract down to writing. When this happens, this is merely for probatory purposes and/or convenience. This would be the case of *ad probationem*.

In order for a document to be valid at Civil Law, and thus give rise to the desired juridical effects, the form in which the *negotium* is concluded is not the only consideration which must be observed. Rather, particular attention must be given that the writing contains all the essential requisites which are indispensable for the *negotium* being concluded. In fact in *Victor Camilleri v. Frank Littleton* it was held that it is expected that in the writing or act of sale or purchase have to contain all the essential requisites that regulate the contract of sale/purchase.³

Having said this, it is important to understand what such content must be composed of in order for the document to bring about the desired effects. Local jurisprudence has generally accepted that certain factors related to the agreement found in the document may be proved in court after the execution of the writing has taken place, whereas other constituents of the agreement, had to result from the agreement itself and may not be proved later. Thus the question arises as to what would happen if part of the agreement were not included in the document. In general, the starting point of Maltese courts have been that if the writing is clear as to what is being said, no form of proof can be produces to prove something different to what is contained in the writing. His has been laid down

³ Commercial Court 25/01/1990, Vol LXXIV PtIII-V;

⁴ Court of appeal 20/01/1930

⁵ see *Victor Camilleri v. Frank Littleton*

⁶ Court of Appeal 5/10/1998, Vol LXXXII 1998 Pt Sez. I (Pt. III).

⁷ Chapter 12 of the Laws of Malta

in Rizzo v Anastasi.⁴

On the other hand if a part of the agreement was not included in the writing, this may be proved later on in court, depending on the nature of such omitted part. Thus it was held in various judgements that an essential requisite of a contract which did not result from the deed could not be proved at a later stage.⁵ Also the courts have generally held that, if an ancillary element was not included in the writing, this can be proved to the contrary at later stage by resorting to other forms of evidence. This was confirmed in Joseph Baldacchino et noe vs. Carmelo Camilleri et.⁶

National case law relevant to the enumerated rules of Community law

There are no specific reported case law during the first two years of membership that deal specifically with the provisions mentioned in the area of judicial cooperation in civil matters or in the free movement of goods. Unless the procedure itself regarding the authenticity of the foreign document is the main issue of the case, issues involving evidence are dealt with by interlocutory decrees and are not reported in the final judgement on the merits of the case. However a look at the Code of Organisation and Civil Procedure⁷, which is the Maltese law of civil procedure, one finds that Maltese law adequately provides how a foreign document is to be used before the Courts and there have been no case law specifically reported dealing with these issues.

Article 628 of the said Code provides that a document of a foreign government has (i) either to be authenticated by the diplomatic representative of the Maltese Government in the country of origin, or (ii) authenticated by the representative of the foreign service of that country present in Malta or, (iii) or authenticated by a competent authority of the country from which the document emanates.

Below please find Article 628 reproduced:

628. The acts of any foreign Government, or of any department of a foreign Government, or of foreign courts of justice, or of any foreign establishment, authenticated by the diplomatic or consular representative of the Government of Malta in the country from which they emanate, or by a person serving in a diplomatic, consular or other foreign service of any country which by arrangement with the Government of Malta has undertaken to represent this Government's interests in that country, or by any other competent authority in the country from which they emanate, shall also be admissible as evidence in the same manner as the documents mentioned in the last preceding article.

Also Article 630 of the said code provides:

630. The acts and registers of notaries public of other countries, authenticated in the manner provided in article 628, shall be admissible and shall be evidence of their contents, in the same manner as the acts mentioned in article 627

I.A.1.2. Implementation of specific measures

Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)

Article 19 of Regulation (EC) No 1346/2000

Article 4(4) of Regulation (EC) No 1348/2000

Article 56 of Regulation (EC) No 44/2001

Article 57 of Regulation (EC) No 44/2001

Article 58 of Regulation (EC) No 44/2001

Article 46 Regulation (EC) No 2201/2003

Article 52 of Regulation (EC) No 2201/2003

Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42)

Article 27 of Regulation (EC) No 805/2004

ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004

Article 13(5) of Directive 2002/8/EC

Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92

Free movement of workers - social security (Article 42 EC)

Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72

I.A.1.3. Judicial control

I.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

I.A.2.1. Status

I.A.2.2. Scope

The scope of the Apostille Convention has not been extended beyond the states party to the Convention. For the countries that are not member of the convention, only

legalisation of the documents is made. The legalisation process is very similar to the Apostille and contains the same information in a different format. The legalisation is made by the same competent authority as the Apostille.

I.A.2.3. Legislative implementation

Malta is part of the Convention and there is no specific national law that deals with the legislation. However a new legislation was introduced in 2002. This is the Legal Procedures (Ratifications of Conventions) Act.⁸ This Act enables Malta to ratify the international conventions on the service abroad of judicial and extrajudicial documents, on the taking of evidence abroad in civil or commercial matters, on international access to justice, and on the enforcement of judgments in civil and commercial matters. A copy of this law is provided in Annex 1.

I.A.2.4. Practical implementation

1. An Apostille can only be requested by a person who takes the document with him to the office of the competent authority
2. The authority has a database of all signatories on the island capable of signing a particular document. They could be, Notary Public, lawyers, civil servant employed in certain departments, for example the Public Registry etc. The Competent authority will check that the person signing on the document is registered in the database, and then will physically compare the signature on the document with the signature on the database. Thus in this way the authenticity of the signature is confirmed and fraud is reduced.
3. The Apostille certificate is in a ten point form document. It contains 1. the name of the country, 2. the name of the person signing the document, 3. the capacity of the person signing the document, 4. the seal/stamp of the same person, 5. The place where the Apostille is done i.e. at the Ministry of Foreign Affairs, 6. the date, 7. the name of the legalisation officer, 8. the number of the Apostille, 9. the Seal/stamp and 10. the Signature. A copy of the form the Apostille used is provided in Annex 2.
4. The Apostille is normally placed on the public document itself where there is the signature to be certified.
5. If the document is of multiple pages, the Apostille is always placed on the page where there is the signature to be legalised. If there are more than one Apostilles, then more Apostilles may be needed.
6. The language of the Apostille is the English language.
7. The system is now electronically. The database consists of scanned signature whereby the officer can compare the signature on the document with the signature in the database.
8. Those who have been described in answer 2. Mainly all persons whose signature can be authenticated have to give a sample signature to the competent authority which is scanned and saved in an electronic database. The authority will only authenticate the signatures of the persons who have supplied a sample signature and not merely by the authority of their office.
9. There are no plans to modernize the system.
10. The total process takes about 5 minutes.
11. The fee is Lm 7 (17 Euros) for general documents while it goes down to Lm5 (12 Euros) for University certificates and Public Registry documents. The fee is set by the Government as part of the fees set by for services offered by the Government. There is no specific method to determine the level of the fees and they are more aimed to bring revenue than simply to cover the costs.
12. Malta has ratified the Convention on 12 June 1967 and the Convention entered into force on 3 March 1968.

⁸ Chapter 443 of the Laws of Malta

13. There are currently no plans to modernize the system used.

14. The register or card can be consulted by a demand made in person at the office of the competent authority.

In Malta, there is only one competent authority. The Authority is:

The Minister of Foreign Affairs
Address: Palazzo Parisio
Merchant Street Valletta CMR 02
Malta
Tel +356 21242853
Fax +356 21235032
Email info.mfa@gov.mt
General website www.foreign.gov.mt
Contact Person Mr. Kenneth Burnell

I.A.2.5. Judicial control

There is no significant case law relevant to the functioning of the Convention in Malta.

I.A.2.6. Empirical analysis

I.A.3. Parallel international agreements

I.A.3.1. Status

Malta has signed but not ratified the 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular Officers.

Malta is not a party to these Conventions with the exception of the Hague Convention on Civil Aspects of International Child Abduction (1980).

I.A.3.2. Scope

I.A.3.3. Legislative implementation

I.A.3.4. Practical implementation

I.A.3.5. Judicial control

I.A.4. National Law

I.A.4.1. Legislative framework

Documents admissible in Court

Article 627 of the Code of Organisation and Civil Procedure provides that the following documents shall be admissible in evidence without the necessity of any proof of their authenticity other than that which appears on the face of them, and shall, until the contrary is proved, be evidence of their contents:

- (a) the acts of the Government of Malta, signed by the Minister or by the head of the department from which they emanate, or in his absence, by the deputy, assistant, or other officer next in rank, authorized to sign such acts;
- (b) the registers of any department of the Government of Malta;
- (c) all public acts signed by the competent authorities, and contained in the Government

Gazette;

(d) the acts of the Government of Malta printed under the authority of the Government and duly published;

(e) the acts and registers of the courts of justice and of the ecclesiastical courts, in Malta;

(f) the certificates issued from the Public Registry Office and the Land Registry;

(g) the sea-protest made under the authority of the Civil Court, First Hall;

Cap. 234.

(h) the documents relating to the Merchant Shipping Act, as provided in the said Act.

Article 628 lays down the procedure by which similar foreign documents would be admissible in Malta.

Private document

Even though, in several section of the law, it is provided that a private writing is a valid instrument for concluding particular contracts, Maltese law persists in not defining the private writing. The law only establishes one formality which is necessary for a private writing to be valid. Article 1233(2) of the Civil Code says that where a private writing is not signed by each of the parties thereto, it must be attested in the manner prescribed in Article 634 of the Code of Organisation and Civil Procedure.⁹ Such signature or mark may be attested by an advocate or notary or a legal procurator.

Article 634(3) says that for the purpose of Article 1233(1)(g) of the Civil code, any signature or mark attested by a parish priest in the manner provided in sub article 2 of this article shall also, unless the contrary is proved, be deemed to be genuine.

Public Document and Notarial Acts

Maltese Law refers to the notarial act in numerous Articles especially in the Notarial Profession and Notarial Archives Act¹⁰ as well as in certain Articles of the Civil Code¹¹ but fails to give an adequate definition. However, Notarial Law describes the form, constituents and formalities which must be observed in order for the notarial act to be validly made. Although the notarial law gives a very good idea what the notarial act is all about, no such Article expressly states that a notarial act is a public deed. In fact it would be desirable for the sake of clarity to have a concise definition included in the Notarial Law stating such a fact. Thus, even though the law fails to simply state that the notarial act is a Public Deed, it is reasonable for us to infer that, by the term 'notarial act', the legislator is referring to those public deeds which are published by a Notary Public.

In order to understand what a public deed is, one must refer to Article 1232(2) of the Civil Code which defines a public deed as 'an instrument drawn up or received, with the requisite formalities by a notary public officer lawfully authorized to attribute public faith thereto'. The law uses the word 'instrument' so a public deed must be in writing. However, it cannot be any writing, since an authority appointed by the State must receive it and it must take the form specified by law. Thus in the case of the notarial act, the Notarial Profession and Notarial Archives Act lays down the procedure and form to be used when drawing up this instrument.

⁹ Chapter 12 of the Laws of Malta

¹⁰ Chapter 55 of the Laws of Malta

¹¹ Articles 782(2), Article 1182(2) and Article 1597(2) of Chapter 16 of the Laws of Malta

I.A.4.2. Scope

The above applies only to documents that are produced in Malta and do not apply to foreign documents. Foreign documents are excepted at par with the Maltese documents provided that they have gone through the process of legalisation or Apostille abroad. However for certain genre of documents such as notarial acts, only those produced by local notaries will be considered as valid if they satisfy the requirements posed by law.

I.A.4.3. Practical implementation

1. The authority responsible for legalisation is the same office responsible for the 'Apostilles'.

The Minister of Foreign Affairs
Address: Palazzo Parisio
Merchant Street Valletta CMR 02
Malta
Tel +356 21242853
Fax +356 21235032
Email info.mfa@gov.mt
General website www.foreign.gov.mt
Contact Person Mr. Kenneth Burnell

2. The procedure is also similar to the above. One has to go in person to the above office taking the necessary documents which are going to be legalised.
3. The same procedure applies to all States.
4. The documents that have to be provided are the signed documents that have to be legalised. No other specific documents are required.
5. The process of legalisation is done in a very similar way to that of the 'Apostille'. Basically, the office is in possession of an electronic database of persons capable of signing documents that could be legalized. The office in charge will check the signature on the document with the signature in the database. If there is a match, a Legalisation Certificate is issued.

The total process takes about 5 minutes. The fee is Lm 7 (17 Euros) for general documents while it goes down to Lm5 (12 Euros) for University certificates and Pubic Registry documents. The fee is set by the Government as part of the fees set by for services offered by the Government.

I.A.4.4. Judicial control

There are no cases to report on this matter.

PART I.B. Specific

I.B.1. Introduction

I.B.2. Specific documents

1. Documents proving involuntary unemployment

The authority dealing with employment issues is the:

Employment & Training Corporation (ETC)

Head Office

Hal Far BBG 06,

Malta

Telephone: +356 22201100

E-mail: etc@gov.mt

The ETC can provide a copy of your employment history (work entries) from the Employment Services Division of the ETC, Hal Far, or from one of the Job centres on presenting your ID card. This document though not strictly a certificate of involuntary unemployment could serve similar purposes in case of involuntary unemployment. This document costs Lm1.50 or 4 Euros

If your are unemployed, one can register for work at this centre. The following documents are needed:

- The Identity Card
- Termination form from your last employer. This must be signed and fully completed
- Any certificate of qualification you possess as well as your CV.
- Certificate that cancels your VAT registration, should it be the case.

Ater registering for work, the Centre would assist the applicant in finding new work and could require the applicant to undergo some training exercise. For social benefits one would have to apply at the Social Security Department.

The Employment and Training Corporation is a public corporation set up by an act of parliament in 1990. It is a body corporate with a distinct legal personality. It is primarily responsible for providing a public employment service, managing state-financed vocational training schemes and maintaining labour market information. The Corporation has been actively involved in the development of employment policy for Malta and in the implementation of active labour market policies. The Corporation is a member of the World Association of Public Employment Services and has a representative on the Governing Board of the European Training Foundation.

Empowered by the provisions of the Employment and Training Services Act, 1990, it maintains a database of all persons in employment and provides national labour market administrative statistics to the National Statistics Office for publication. Market research is undertaken both to understand how the market is operating and to determine the labour and skills needs of employers.

The Corporation is responsible for the processing of work permits issued to foreigners.

2. Documents proving a family relationship or other durable relationship

The Public Registry provides 3 kinds of civil status certificates:

Birth Certificates
Death Certificates
Marriage Certificates

These could be either in an abridged form and cost Lm1 or 2.5 EUR or full certificates that cost Lm 4 or 10 EUR.

Thus any relationship has to be proven by means of the above document. If one would like to have information about family issues, the following may help.

Genealogy, or family history as it is more commonly known, is becoming increasingly popular. The National Archives holds various funds that can be used for the building up of family trees, or to trace information about one's ancestors. Particular funds that can be used for such a purpose are:-

- Passport applications from 1815 onwards (photos for each applicant exists for the post-1915 period)
- A searchable computerised database is available listing passport applications for the years 1921 - 1938
- Customs department records - in particular the lists of passengers leaving or reaching Malta

However, the National Archives of Malta is not the sole repository where one can find records related to family history. Due to Malta's history, and the important role which the Roman Catholic Church has played in Maltese society, most records of a genealogical nature are owned by the Church.

For records listing baptisms, marriages, and deaths dating back to the 16th century one has to consult the following repositories

- Curia Archives, Floriana
- Cathedral Museum Archives, Mdina
- Parish Archives in each town or village

For the post-1863 period, the same type of records can be traced at the Public Registry in Valletta. For more information please consult the Public Registry e-mail civil.registration@gov.mt.

Legal Basis

The Public Registry forms part of the Directorate General, Land and Public Registry. It has two distinct sets of functions, namely:-

Those emanating from the Public Registry Act, Cap. 56, that is functions connected with registration of notarial deeds and other judicial acts, and

Those connected with the Civil Code and the Marriage Act Cap. 255. These two functions deal with Civil Status.

Main areas of Responsibility:-

Hypothecation Section:- This section maintains records of all credits secured in certain causes of preference, the benefit of separation of estates inasmuch

as it affects immovable property, as well as renewals of privileges and hypothecations and notes of reference.

Enrolment of Deeds "Insinwa":- This section caters for the registration of transfers of immovable property and real rights thereon, partitions, transfers "Causa Mortis" and wills and marriage settlements.

Civil Status Section:- This section deals with the registration and issue of copies of acts of birth, marriage and death. All annotations to these acts are dealt with by this section. Statistical data is also regularly supplied to government departments especially the Central Office of Statistics.

Marriage Registry:- This section receives applications, not later than 6 weeks and not more than 3 months prior to the marriages, for the publication of banns for forthcoming marriages from the couple themselves as required by the Marriage Act 1975. It publishes the banns and issues the relative documentation for the said marriages. It also provides the services of the actual officiating of civil marriages by its staff. Foreign marriages (one of the parties being a Maltese citizen) are accepted for registration in this section, as is also the case with those religious marriages celebrated locally prior to 1975 which were not registered then. The Marriage Registry also enters annotations to marriages where the wife would have reverted to her maiden surname consequent to a deed of personal separation or by a court judgment.

3. Documents proving or contesting a parent-child relationship

The information given under 2 would also be applicable in this case. The official document to prove the above is the above mentioned Birth Certificate.

4. Documents proving the name and forenames of a child or adult

The information given under 2 would also be applicable in this case. The official document to prove the above is the above mentioned Birth Certificate. Also one should not forget the various Parish Archives in each town or village from where one could obtain Baptism certificates to prove the above. The rate of Baptism was very close to 100% a few years ago and today it is still relatively very high so parish certificates could also be useful.

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

In Malta, the only durable relationship is marriage. In Malta there is no divorce, so a marriage can only be terminated if an annulment. This means that there was never a marriage in the first place. A separation is usually indicated in the certificate. Please see 2. for further information.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

Most of the major professions are regulated. The competent authority would issue a 'warrant certificate' that would enable the holder to practice that particular profession in Malta. Each profession will have a different competent authority and different procedures and requirements to obtain the 'warrant'. Below please find a detailed description of the main professions.

Lawyers: The profession of advocate in Malta is regulated by the Code of Organisation and Civil Procedure (Cap. 12). The Code lays down that advocates need to be in possession of the necessary academic qualifications obtained from the University of Malta or the equivalent. A one-year training period with a warrant holder is required before being granted a warrant. A warrant is then issued following an examination by a board composed of two judges.

Amendments to the Code of Organisation and Civil Procedure have been made to ensure that Maltese legislation is in line with Directive 77/249/EEC (effective exercise by lawyers of freedom to provide services) and Directive 98/5/EC (facilitating the practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained). These EU access amendments removed the Maltese nationality requirement as well as the necessity that training is done only at the University of Malta.

On accession, EU nationals who are qualified to practice as lawyers in another EU member state are able to opt to exercise their profession in Malta under the title of the home member state or that of the host member state in line with the provisions of Directive 98/5/EEC.

Architects: The Architecture and Civil Engineering Professionals (*Periti*) Act (Cap. 390) regulates the profession of *perit* in Malta. A warrant to practice the profession of *perit* is granted upon the recommendation of a warrants board based on criteria laid down by the Act. The two amendments required to bring the Act in line with Directive 85/384/EEC (mutual recognition of qualifications in architecture, and measures to facilitate the effective exercise of the right of establishment and freedom to provide services) were made by accession dates. These amendments allowed the two-year period of training required by the Act to be undertaken in another EU member state as well as remove discrimination on the grounds of nationality.

Medical and Paramedical: The requirements for health care professionals to exercise their profession in Malta were laid down in the Medical and Kindred Professions Ordinance (Cap. 31). A Health Care Professions Act to partly replace the Medical and Kindred Professions Ordinance was adopted by Parliament and was in force by accession. This Health Care Professions Act regulates all health care professions, with the exception of veterinary surgeons, and aligns Maltese legislation with Directive 93/16/EEC (free movement of doctors and the mutual recognition of their qualifications), Directive 78/686/EEC (mutual recognition of the formal qualifications of practitioners of dentistry), Directive 78/687/EEC (co-ordination of provisions in respect of the activities of dental practitioners), Directive 85/432/EEC (co-ordination of provisions in respect of the activities in the field of pharmacy), Directive

85/433/EEC (mutual recognition of the formal qualifications in the field of pharmacy), Directive 80/154/EEC (mutual recognition of the formal midwifery qualifications), Directive 80/155 (co-ordination of provisions in respect of the activities of midwives), Directive 77/452/EEC (mutual recognition of the formal qualifications of nurses responsible for general care) and Directive 77/453/EEC (co-ordination of provisions in respect of the activities of nurses responsible for general care).

All health care professionals in Malta are required to be registered with one of the four professional regulatory bodies: the Medical Council, the Nursing and Midwifery Board, the Pharmacy Board and the Board for the Professions Supplementary to Medicine. Doctors, dentists, pharmacists, midwives and pharmacy technicians are required to hold a warrant to practice their profession in Malta. These regulatory bodies are set up by the Health Care Professions Act which regulates the composition of these bodies.

Academic training requirements for health care professions, currently laid down by the Education Act (Cap. 327) and its subsidiary legislation are in line with the *acquis*, except for the practical training period required for doctors and pharmacists. The training requirements for all health care professions will be regulated by the Health Care Professions Act. Local training requirements, commencing after the fourth quarter of 2002, for undergraduate and post-graduate levels provided by the Faculty of Medicine and Surgery, the Faculty of Dentistry and the Institute of Health Care within the University of Malta will be conducted in line with the *acquis*. The Health Care Professions Act will also provide for the recognition by the University of Malta of the one-year pre-registration practical training period (horsemanship) for doctors in line with Directive 93/16/EEC and for a mandatory six-month in-service training period for pharmacists in line with Directive 85/433/EEC.

The necessary structures and systems for accreditation of post-graduate qualifications and training obtained both in Malta and overseas will be provided for by the Health Care Professions Act. Administrative measures to recognise specialist training and qualifications are in place. Specialist Accreditation Committees have been set up for the formal recognition of training. Medical and paramedical professional qualifications will be certified for equivalence by one of the four regulatory bodies. All health care professionals whose training was completed or commenced prior to the date of accession will be guaranteed acquired rights. Such persons will include health care professionals who have had to interrupt their career prior to accession.

Maltese veterinary surgeons receive their training overseas, as training in veterinary surgery is not available in Malta. Veterinary surgeons are required to hold a warrant to practice their profession in Malta. The Medical and Kindred Professions Ordinance (Cap. 31) currently regulates the profession of veterinary surgeon. Practitioners are required to register with the Medical Council. A new Veterinary Services Act will be adopted by Parliament by the first quarter of 2001 to regulate this profession. The new Act will also transpose Directive 78/1026/EEC (mutual recognition of the formal qualifications in veterinary medicine) and Directive 78/1027/EEC (co-ordination of provisions in respect of the activities of veterinary surgeons).

7. Documents proving a person's professional qualifications (diplomas)

The documents are mainly the degree/diploma certificates issued by the University of Malta or the equivalent institutions abroad.

8. Documents proving a person's death

This is done by means of a Death Certificate issued by the Public Registry as explained in Question 2.

9. Documents proving a person's date of birth

This is done by means of a Birth Certificate issued by the Public Registry as explained in Question 2.

10. Documents proving the establishment by incorporation of a company

The Malta Financial Services Authority (MFSA) is an autonomous body with a distinct legal personality to regulate financial services in Malta and those offered from Malta. As the primary Regulator of the financial services sector, the principal activities of the Authority are:

- The supervision and monitoring of international commercial and financial activities as well as registration of trusts;
- The regulation and supervision of banks, insurance and investment services.

The Regulatory Unit of the MFSA is central to the whole set-up and a director heads a specialised unit dealing with each sector. The Unit is further supported by expert resources providing services of a legal, corporate, and investigative nature. The Regulatory Unit issues licenses, directives and guidelines as provided for in the relative legislation. The International Tax Unit (ITU) draws its staff from the Inland Revenue Department but forms an integral part of the MFSA's overall structure and is housed within its premises. This ensures that all tax related matters with respect to international operations are dealt with efficiently and effectively. The ITU has, as part of its responsibilities, the issuing of Advance Revenue Rulings.

These rulings provide certainty on the tax treatment of any international undertaking. The MFSA also houses the Registrar of Companies thereby ensuring that the international business community will find within the same set-up all company incorporation services as would be required. Moreover, the MFSA assists new promoters in setting up their operations in Malta and is committed to provide such companies with services of the highest standard.

Contact Information

Director,
Company Compliance Unit,
Malta Financial Services Authority,
Attard,
Malta
Telephone: (+356) 2144 1155

Fax: (+356) 2144 1188
Email: registry@mfsa.com.mt

To establish a company under the Companies Act¹² the founders of the company are required to deposit at the above Registry of Companies.

1. The Memorandum of Association
2. The Articles of Association

If the application is in compliance with the requirements, the Registrar of Companies would issue the Certificate of Incorporation which proves the establishment of the company as a separate juridical person.

11. Documents proving the constitution of a company, including any official translation thereof

1. These are The Memorandum of Association
2. The Articles of Association

12. Documents proving the latest banking accounts of a company

In Malta, a copy issued by the respective bank showing the balances of the accounts on a particular date would be considered as enough. The banks could also issue bank references on behalf of their clients. This takes the form of a letter signed by the respective branch manager.

13. Documents proving the deposit of cash or certificates of deposit

The information given under point 12 would also apply in this case. However one must also add the various deposit slips provided by the local banks and other financial institutions.

PART II – Incoming documents: Effects in the Member State’s legal order

OVERVIEW OF PART II

II.A.1. European Community Law

In the Maltese legal system, any foreign documents which satisfies the criteria of Article 628 of the Code of Organisation and Civil Procedure mentioned earlier on in this report is considered to be equal to a Maltese public document with regards to evidence as presented in Court.

For the purposes as evidence they have the same value as a Maltese document. I

¹² Chapter 386 of the Laws of Malta

believe that Malta fulfils its obligations under each of the Community instrument referred to.

No distinction is made between documents that originate in different Member States.

As such no distinction is made between the different documents. However in the case of wills and transfer of property deeds which have to take place in Malta, no equivalent is recognised. So if you want to sell property in Malta you have to go to a Maltese notary and the legalisation rules or 'apostilles' do not apply. In fact Article 629 explicitly mentions the documents to which Article 628 applies.

As explained above a foreign document in conformity with Article 628 is equally admissible in Court.

With regards to administrative matters, the same would apply.

II.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention);

II.A.3. Parallel international agreements; and II.A.4. National Law

As it was described in the previous section, Maltese law is very general and does not distinguish between Member States or other third countries. Once the criteria of Article 628 is satisfied, it applies to all documents irrespective of their country of origin. Thus the answers under II.A1 would apply to the above sections as well.

PART III – Incoming documents: Difficulties

Once again, in terms of Maltese law, it makes sense to tackle Part III as a whole rather than distinguish between parallel legal agreements or national law.

In Malta no major difficulties can be reported vis-à-vis incoming documents. In fact there is no published case law that deals with this matter. Whenever an issue of the validity of a foreign document crops up, this is dealt with during the actual procedure in the proceedings and not in the final judgement. The problems that do crop up in practice are more of a practical than of a legal nature. Legally speaking, if the document satisfies the procedure of Article 628 mentioned previously, then no serious problem crops up.

From practice, sometimes it happens that a respondent to a writ of summons tries to bring up the arguments that a particular foreign document is not admissible, not on the basis of the above law but on the basis that the legalisation of the document or the translation if applicable do not satisfy the standards required by law. These problems are often disposed of during the course of the proceedings and very often, these could be merely time delay tactics on the part of the defendant or respondent. The problems raised up of relate to the manner and procedure and not the actual law itself.

Often the main difficulties with regards to the foreign documents relates to the accessibility of the documents, the cost in obtaining the document and probably the cost of getting a certified translation to Maltese or English. Besides the cost, one has to mention time. If there is a prescriptive period during which one must file an action, and

needing such documents as proof, there is always the danger that the evidence is not ready by the time it elapses.

PART IV – Outgoing documents: Difficulties

Once again, in terms of Maltese law, it makes sense to tackle Part IV as a whole rather than distinguish between parallel legal agreements or national law.

As regards outgoing documents, there is no case law to report and from practice there have been no legal or practical problems to report from the outgoing Maltese side.

The database at the legalisation section of the Ministry of Affairs contains a database of signatures not only of notaries/lawyers or particular civil servants but also those of managers of particular private companies who sign documents which in certain circumstances would require an apostille or a legalisation in case of those countries who are not parties to the Apostille Convention.

This is meant to make it easier for private companies who would need their documents to be legalised for some reason. There are no problems to report for outgoing documents from Malta.

PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I

1. There is no discrimination between Malta and other Member States or between other Member States themselves.
2. The requirements and procedures or effect rules are not discriminatory.
3. The requirements and procedure are as good as they should be baring any lack of harmonisation in these matters.
4. Not applicable.
5. The requirements and procedures are not irrational.
6. The requirements that are in place are effective as they do guarantee that their aims are achieved. In fact that is why one can say there are almost no problems to report.
7. No.
8. The requirement and procedures are not burdensome.
9. The rules are proportionate to their objectives.
10. Not applicable
11. No
12. There have been no developments

PART VI – Suggested action

OVERVIEW OF PART VI

VI.1. European

The best system to avoid any potential problems within the European sphere is to standardise the format and method of certain public documents. I am particularly referring to certificates concerning civil status of natural persons, corporate and tax certificates and even education certificates. Standardisation would mean that authorities of different Member States would be familiar with the format of other Member States and would eliminate certain difficulties. Translation requirements could also be reduced by having the standard format drawn up in the national language and one of the working languages of the EU.

As regards legalisation, it would be an asset if all databases are electronic and shared between the Member States. This would make it possible for a Maltese birth certificate to be legalised in Spain and vice-versa. A European system could mean greater efficiency and better control.

A unified system for certain European public documents would be ideal. In the absence of unification, standardisation of the systems and harmonisation of specific legislation could be very helpful.

With regards to the relationship between certain Member States and third countries it might be helpful if the Community would gain external powers to bind the Member States in international conventions concerning the free movement of documents.

VI.2. Intergovernmental

The best course of action would be at European/Community level as these actions are necessary in the interest of the internal market. In the absence of Community action, the Member States' governments could seek to establish a cooperation structure that would lead to standardization.

VI.3. National

National action is limited to making legislation and practical requirements easy to accept for public documents that are coming from other Member States. This could also be extended to outgoing documents. I believe that vis-à-vis Malta little else could be done at national level. More action is required at national level.