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Malta

Family Law

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This country-specific Q&A provides an overview of family laws and regulations applicable in Malta.

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Malta: Family Law

1. What are the jurisdictional requirements for divorce and property division? How do the concepts of domicile, residence and nationality apply in relation to divorce and financial arrangements?

In cases of personal separation and divorce in Malta, it is the Civil Court (Family Section) that has jurisdiction over such matters. In order for such Court to be successfully seized in divorce suits, at least one of the spouses must be domiciled in Malta upon filing of such proceedings. It is worth noting in this context that, as a full member state of the European Union, Malta is a signatory to the Brussels II ter regulation.

The Maltese relevant Courts may also have jurisdiction over such matters if at least one of the spouses was ordinarily resident in Malta for a period of at least one year preceding filing.

Once jurisdiction is established, it is the mentioned Civil Court (Family Section) in Malta which oversees issues related to personal separation, divorce, and by consequence property division.

The manner with which the property of the parties is divided will differ on a case-by-case basis, and based on evidence often attributing fault, for instance, unless the parties pursue a voluntary and amicable procedure. This process will also be impacted by other factors such as the matrimonial regime applicable to the parties in question, in the absence of a decision excluding it prior to marriage, the default matrimonial regime applicable in Malta is the community of acquests.

2. What factors do local courts take into account when determining forum/jurisdiction issues? In what circumstances (if at all) would your jurisdiction stay divorce proceedings in favour of proceedings in another country?

In determining jurisdiction, the Court in Malta will evaluate issues related to domicile and residence as explained above. It may also result from the fact that either party would have submitted to jurisdiction in Malta, as Article 742 of Chapter 12 of the Laws of Malta (Code of Organization and Civil Procedure), states that;

"Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned: (g) any person who expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the court".

This materialized in the Sworn Application No. 130/2021JPG in the names MM vs CG in which the Court deemed that mediation proceedings in Malta, an essential pre-trial stage of family suits in Malta, during which the defendant had participated by engaging a lawyer throughout, was tantamount to the defendant's submission to the jurisdiction of the Maltese Court in a case regarding custody of a minor.

Once jurisdiction is established proceedings may be stayed in favor of proceedings being concurrently heard in another jurisdiction. There is an automatic stay of proceedings in the event that the concurrent proceedings are being heard in another member state of the European Union, in line with Brussels II ter regulation 2019/1111 which dictates that the second seized Court is to decline jurisdiction in favor of the first, provided there is confirmation of jurisdiction in the Court first seized.

For similar issues arising between Maltese Courts and countries not forming part of the European Union, different rules may apply depending on the jurisdiction. For example one must consider whether that jurisdiction is a signatory to the Hague Convention (1996) which applies the Court first seized principle in matters concerning parental responsibility issues, or whether other conventions apply. In the absence of any applicable convention, it is the local law that is applied in determining jurisdictional matters.

3. Is applicable law relevant in your jurisdiction – when and how would this apply?

Applicable law is indeed relevant in Malta, being also a signatory of the EU Regulation 1259/2010 (Rome III) implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

This regulation offers a guiding principle for international couples undergoing divorce/personal separation in Malta. Maltese Courts therefore, upon determining on the issue of competence in divorce or personal separation

cases, may apply foreign law if the circumstances allow it.

4. What are the grounds for divorce and are they fault-based? What is the broad procedure and timeline for divorce?

It must be stated here that personal separation and divorce in Malta, are not one and the same. Contentious proceedings for personal separation are indeed fault-based and rooted in evidence in most cases. There are currently discussions about an overhaul of these proceedings bringing into effect objective deadlines aimed at reducing the time one spends tied up in litigation. As it stands it is very difficult to provide an estimate for the length of the proceedings but in most cases, these proceedings tend to take multiple years in evidence gathering and submissions by the parties.

Divorce on the other hand is based on objective criteria. One needs to establish that there is no reasonable prospect for reconciliation and that there are no arrears in maintenance payable by the party requesting divorce. It must also be ascertained that the parties would have been living separate lives – one year in the case of applications filed by one party, or six months in the event that the parties choose to file a joint application.

Here again it is difficult to provide a timeline however seeing as the court will be dealing with objective criteria which need to be met, divorce is considered to be an expedited matter in Malta which does not usually exceed six months, with only the requirement to serve the defending party having a bearing on the time-frame of the proceedings. Provided the defendant is legally served in the case of a unilateral application filed for divorce, the Courts will verify that the relevant documentation is filed and more often than not, move to provide a judgment within one or two sittings.

5. What are the requirements for service of divorce proceedings in your jurisdiction? Can you make a joint application for a divorce in your jurisdiction?

As explained above, serving the defendant implies a physical handing of the documents filed in Court by the applicant, to defendant, by Court Marshals empowered to do so. Should the defendant fail to appear or engage a lawyer it is only the physical, stamped documents confirming service which would empower the Court to proceed in the absence of the defendant. There is of course the possibility of notifying by publication, in terms

of Article 187(3) of the Code of Organisation and Civil Procedure (Cap. 12 of the Laws of Malta) which essentially implies the affixation of notices upon the residence of the defendant, and noticeboards at Local Councils and Police Stations of the relevant locality where such residence is found. The process is completed by the publication of the application in the Government Gazette and a local newspaper.

All this will have a bearing on the time spent in notifying the defendant, which time is significantly abbreviated when the parties choose to file a joint application.

6. Are the following recognised in your jurisdiction? a. Foreign marriages; b. Foreign civil partnerships / civil unions; c. Customary marriages, or d. Religious marriages.

Foreign marriages

Article 18 of the Marriage Act, Chapter 255 of the Laws of Malta states that “a marriage whether celebrated in Malta or abroad, shall be valid for all purposes of law in Malta if (a) as regards the formalities thereof, the formalities required for its validity by the law of the country where the marriage is celebrated are observed; and (b) as regards the capacity of the parties, each of the persons to be married is, by the law of the country of his or her respective domicile, capable of contracting marriage”. The relevant law then lists instances where marriage is deemed to be null.

The Public Registry is required to register and for all legal intents and purposes, recognise foreign public documents such as marriage certificates. It is worth noting that marriage certificates issued within the European Union do not need to be apostilled or fully legalised by virtue of European Union Regulation 2016/1191 whereas Non-European Union documents need to be either apostilled or fully legalised. In principle foreign marriages are recognized, with certain procedural requirements varying depending on the Country issuing such certificate.

Foreign civil partnerships / civil unions

Article 4 of Chapter 530 of the Laws of Malta, the Civil Unions Act states that “save as provided in this act, civil union, once registered, shall mutatis mutandis have the corresponding effects and consequences in law of civil marriage contracted under the Act”. Article 6 goes on to say that a union of equivalent status celebrated abroad shall be valid for all purposes of law in Malta if (a) as regards the formalities thereof, the formalities required for its validity by the law of the country where the union of

equivalent status is celebrated are observed; and (b) as regards the capacity of the parties, each of the persons forming the union of equivalent status is, by the law of the country of his or her respective domicile, capable of entering into such a union of equivalent status.

Customary marriages

Customary Marriages do not exist in Malta, only Civil and Religious marriages are catered for in local legislation, favouring a formalistic approach. Recognition of foreign customary marriages then is largely dependent on the formalities of such marriages and whether they would satisfy the objective criteria set out in the Marriage Act. Should one satisfy the criteria of Article 18 of Chapter 255, avoiding also the circumstances which bring about nullity of marriage as outlined in Article 19(1) (a) to (h), then in theory the marriage is deemed to qualify for recognition.

Religious marriages

Yes, religious marriages are recognized in Malta. Catholic Roman marriages are recognized for Civil purposes under a Concordat between Malta and the Holy See, however it is also possible to have a marriage celebrated in the religious ceremony of another religion or church provided essential formalities are met.

7. Are same sex marriages / unions recognised in your jurisdiction and if so, how? Does your jurisdiction recognise same sex marriages / unions that have taken place in another jurisdiction?

Malta has a dedicated law recognizing Civil Unions, also colloquially known as same sex marriages. Chapter 530 of the laws of Malta makes Chapter 255 (Marriage Act) largely applicable to same sex marriages by means of article 18 which states that "Save as provided in this Act, a civil union, once registered, shall *mutatis mutandis* have the corresponding effects and consequences in law of civil marriage contracted under the Act". Same sex unions, legally celebrated in other jurisdictions, may also be formally recognized in Malta as marriages, not merely civil unions.

8. What are the substantive financial orders (e.g. capital, property, pensions and maintenance / alimony) the court can make?

Financial orders in Malta are decided either by means of a final judgment in a civil case, or by means of an

application filed by either party in a suit, requesting such orders *pendente lite*. Upon the filing of such a request the Court will take cognizance of the plea, order the notification of the defendant who is also granted the right to reply to the same in writing, prior to moving onto issuing a decree which will often accede to the request made, refuse it altogether or accede to it partially. The Court has a wide-ranging array of possibilities in issuing these orders aimed at restoring balance between the parties and their respective means/income, or in ordering the compensation of one party over the other for arrears in maintenance, for instance.

Interim decrees for maintenance may be issued *pendente lite* in favour of one party against another in respect of minors, for instance. There is also the possibility for the financially dependent spouse in Malta to request maintenance from the opposing party.

Such orders typically take into consideration the age of the person requesting it, employability and prior work-experience or lack thereof. The Court may also consider ordering such spousal maintenance for a determined period during which that spouse is then expected to make efforts move away from spousal dependency. There have also been instances where the Courts have ordered that pensions payable to either party are split between the parties with the relevant authorities in Malta being ordered to issue a portion of such payment to the other party.

These orders typically consider the means of the parties, including the means of the party making the request, the expenses of the parties and their quality of life/standard of living prior to issuing orders.

9. What are the guiding principles adopted in your jurisdiction in relation to the division of assets?

In a case of personal separation, the Courts in Malta will take cognizance of the assets which the evidence shows that the parties have accumulated within their marriage in determining how to go about dividing such assets into two portions to be assigned to each of the parties in its judgment. Unless it is excluded by the parties, the default matrimonial regime applicable is the community of acquests which implies that any income generated, wealth amassed and in general all that is acquired by the exercise of one's work or industry throughout marriage is deemed to be community property. This would, for example, exclude money and property derived from inheritance or donations given solely to one party.

Article 1333 of the Civil Code, Chapter 16 of the Laws of Malta states that "The partition of the community of acquets shall be made by assigning one-half of the assets and liabilities comprised in the community to each of the spouses". Evidence supporting a claim that either party would have given rise to the separation, for example, by being in an adulterous relationship, may have a bearing on the distribution of the assets of the parties since the Court may exercise its discretion in determining that such spouse would have forfeited certain rights in doing so (Articles 48, 51-61 of The Civil Code).

10. Can the court make interim financial provision during proceedings? (including for legal and interim maintenance / alimony costs) during the proceedings, and what factors are taken into account?

As stated above, yes. These are referred to as pendente lite decrees in Malta. Typically the person giving rise to the request would outline the reasons for doing so and plea the court to issue an order for maintenance. For example, a primary parent having the effective custody of a minor, would plea the Court to issue an order for monthly maintenance against the opposing party, a parent who would have periodic access to the child. In doing so, the applicant would outline his/her ordinary expenses in respect of the upbringing of the child, and request a determined amount in maintenance.

The Court will take cognizance of the request which is to be notified to the defendant who will have the right to reply, following which a written decision (decree) is issued to the parties. Article 20 (1) of the Civil Code states that "Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto."

The same article goes on to say that in examining the amount payable regard shall only be had to the defendant's earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust, while regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.

11. How is ongoing spousal maintenance / alimony dealt with – is it typically awarded for a fixed term or on an ongoing basis? Is there a

standard formula for calculating the amount and duration, or do judges retain discretion?

The judges have full discretion in awarding maintenance, be it spousal maintenance or maintenance due in respect of minors. There is currently no standard formula pre-determining the amount due in maintenance. In awarding maintenance, as explained above, the Courts will consider one's income and expenses in line with Article 20 (1) of the Civil Code states that "Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto."

The Courts will take cognizance of a plea for maintenance which should be motivated with the inclusion of details regarding any particular expenses incumbent on the person claiming maintenance, and a general overview of one's financial position. The Court will then order that such application is served on the opposing party against whom the claim is being made, who in turn will outline his own income and expenditure. The Court will then give a decree when that plea is made pendente lite, or during mediation in the pre-trial stages, or award maintenance in a final judgment in a separation suit.

A monthly amount awarded in maintenance can either be fixed *vita durante*, often granted when one would have no work experience and is of an advanced age, alternatively the Court may consider the fact that the person claiming maintenance is still of an employable age and grant maintenance for a determined amount of years, throughout which such person would be encouraged to seek financial independence.

12. What is the process for recognising and enforcing foreign financial orders? How is enforcement dealt with to ensure compliance with financial orders following divorce in your jurisdiction?

Subsidiary Legislation 460.25 implemented Council Regulation (EC) No 4/2009 of 18th December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations in Malta. This local legislation dictates that upon an application for recognition to the Civil Court (Family Section) in Malta the Court shall decide on enforceability or otherwise. In the event that such an order is deemed to be enforceable, a financial order given in any jurisdiction within the EU would be deemed as if it were given in Malta, and hence enforceable by means of all local remedies.

The procedure for foreign, Non-EU orders is similarly regulated by means of the 2007 Hague Maintenance Convention, to which Malta is a signatory. In both cases, the Maltese Central Authority is able to assist applicants navigating the requirements.

13. Can financial claims be made in your jurisdiction after an overseas divorce?

In examining whether the local Court would be able to entertain such a request it will first be required to assess issues related to jurisdiction. The Court may recognize a foreign judgment as we have seen, and in doing so, render it executable through all local legal remedies.

In determining that a foreign judgment is valid and enforceable in Malta, the Court will examine whether the claims being made have been adjudged upon by means of any foreign decision. While in certain cases the Court may choose to entertain maintenance orders in respect of minors the Court will not choose to disturb foreign judgments, once legally recognized as valid, judging upon the assets of the parties in a decision which has become *res judicata*.

14. Does your jurisdiction operate a marital property regime and if so, which? Is there a default matrimonial property regime? Are foreign property regimes recognised and if not, in what circumstances?

The property regime applicable to spouses married in Malta by default is the community of acquests. This means that unless the parties positively exclude this *a priori*, following their marriage the community shall be the property regime applicable to them. The parties may of course, choose to seize the effects of the community of acquests after their marriage has been celebrated. The law also renders applicable the community of acquests to persons who marry abroad, but subsequently establish themselves in Malta. There may be instances when circumstances demand it where a foreign law may be rendered applicable to the parties.

15. To what extent are pre-nuptial and post-nuptial agreements binding? Is it different if the prenuptial or post nuptial agreement was concluded in your jurisdiction (as opposed to another jurisdiction)?

It is possible to draw up a pre-nuptial contract, as well as

a post-nuptial altering the property regime applicable within an already celebrated marriage, in Malta. Such contracts are perfectly legal and binding when the formalities are met. Foreign contracts of the sort are also recognized through EU Regulation 2016/1103 on implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. The regulation ensures that a foreign marital agreement legally drawn up in another EU country is recognized and enforceable in other EU states such as Malta. Once recognized the pre-nuptial contract may be invoked to determine property rights and obligations arising therefrom. The process will differ for contracts drawn up in jurisdictions outside of the EU but should it be shown that the documents has been legally drawn and executed the Court will also recognize such documents.

16. How is maintenance for a child dealt with in your jurisdiction? What is the duration of a child maintenance order?

Article 20 (1) of the Civil Code states that "Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto." This is the applicable principle for quantum.

The same article goes on to say that in examining the amount payable regard shall only be had to the defendant's earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust, while regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.

Maintenance may be claimed in the mediation stage, a compulsory pre-trial stage in Malta, or during a trial where the Court may be asked to decide upon maintenance *pendente lite*, or in a final judgment which may also address arrears in maintenance being claimed.

Maintenance orders are applied until such time as minors become of age at 18, which is prolonged while such descendants are in full-time education, up to 23 years of age. This means that maintenance orders given in respect of minors who are in full-time education are valid until such time as such individuals remain in full-time education or until they attain 23 years of age, whichever occurs first.

In granting maintenance orders, the Court will often order that such amounts be increased yearly in accordance

with the rate of inflation.

17. With the exception of child maintenance, does the court have power to make any orders for financial provision for a child, e.g. housing and/or capital sums? If so, in what circumstances?

In litigation between parents of a minor in respect of maintenance the Court will award an ongoing sum to be paid on a monthly basis/every four weeks. Such maintenance may or may not include a fixed amount to be paid in respect of ongoing health and education related fees. More often than not, the Court will fix a sum to be paid in maintenance which would not include the payee's share of all health and education related fees which shall remain due by both parties in equal shares between them.

The Court may consider the disparity in means of the parties and order either parent to fully cover certain expenses, or for the financially stronger parent to pay a bigger share of certain expenses (for example, private school fees) than the other, financially weaker parent. The payment of a capital sum may be ordered in respect of both maintenance, in an effort to encourage the dependent party to gain financial independence, as well as in arrears of maintenance due which would not have been paid by a parent who, for instance, would have abandoned the child. In both instances, the award is executable by all local legal remedies upon the judgment becoming *res judicata*, including against any property which may be seized.

In separation cases the Court may also assign property in respect of maintenance due but this does not apply in respect of parents to children born out of wedlock where there is no property regime in effect.

18. Is cohabitation recognised and if so, how?

Cohabitation is formally recognized in Maltese Law through Chapter 614 of the Laws of Malta, the Cohabitation Act, which repealed the previous Cohabitation Act, Chapter 517 of the Laws of Malta. Parties may choose to formally establish a cohabitation by means of a public deed, executed between consenting adults who are not related, are not married or in a civil union or bound by another cohabitation contract. The older law recognized *De Facto* Cohabitation and Cohabitation by means of a unilateral declaration as well as cohabitation by means of a contract – with the first two being excluded in the newer legislation.

For a couple to start considering cohabitation, they are to provide their chosen notary with a 'free status certificate' issued by the Public Registry in Malta no more than ninety days prior to the publication of the relative deed.

There are a number of rights and benefits previously afforded to married couple one attains by means of Cohabitation, such as rights on the family home, rights related to pensions and social benefits and medical decision-making rights, for instance, but at present one cannot argue that they are one and the same at law.

19. What financial claims, if any, do cohabittees have when they separate and how are such claims determined i.e. what are the guiding principles?

In examining how claims are determined one must also note that the Law specifically deals with applicable law in stating that the law applicable to such cohabitation is the law of the State where the parties or one of them, habitually resides at the time that the public deed of cohabitation is concluded, the law of a State of citizenship of either one of the parties at the time the public deed of cohabitation is concluded, or the law of the State under whose law the public deed of cohabitation was constituted. Should the parties fail to make such a declaration, it shall be presumed that the applicable law is Maltese Law.

A cohabitation contract must also provide for the community of assets in an opt-in scenario with the parties making the choice of rendering it applicable between them, or not. Should the parties opt-in, the Civil Code provisions relative to the community of acquests are made applicable to such community between cohabitants.

The law further provides for the dissolution of such cohabitations, be it voluntary or unilateral – in which case, it is not necessary for the party proposing the dissolution to attribute fault to the other party, with the regulations relative to separation proceedings before the Civil Court (Family Section) being made applicable to cohabitations in so far as procedure is concerned.

20. What is the legal status of separated parents in relation to their children? Does it make a difference if the parents were never married?

The married or unmarried status of parents in Malta has no bearing on the legal standing in relation to their children. Parents to children born in or out of wedlock are

considered as equals in the law and there are no greater rights afforded to parents whose children were born within marriage.

In deciding on custody, access, the residence of the child, matters related to education and health the Court will take those decisions based on the best interest of the child. Whether married or unmarried, separated or divorced, parents to children have an obligation to financially assist their children, albeit not necessarily in an equal manner – depending on the parties' circumstances.

Care and custody and access decisions, equally, are not impacted by the parent's marital status or otherwise and the paramount consideration made is the best interest of the child.

There may be instances where a father to a child may be required to prove parenthood by the production of official documents such as the birth certificate but by and large, once the matter of parenthood is established, parents, whether married or unmarried, are seen as equals, both having legally enforceable rights in respect of minors.

21. What are the jurisdictional requirements for child arrangements/child custody proceedings?

Habitual residence of the child at the time the Court is seized, and the domicile/residence of the individual having parental responsibility, have a huge bearing in determining jurisdiction.

Jurisdiction can also be established by nationality of the child, although this is not a standard ground or when parents to children agree on jurisdiction – for example, when they nominate the Maltese Court as that having jurisdiction on a contract regulating care and custody, duly published in Malta.

Being a member state of the EU, Regulation 2201/2003 (Brussels II bis/ter) applies in matrimonial matters and in matters of parental responsibility regulate which Member State has jurisdiction when such matters arise between two member states. The guiding principle in Brussels II bis which dictates that jurisdiction lies with the Court of the country where the child is habitually resident of course applies to Malta.

22. What is the legal position in relation to contact following the breakdown of a relationship? What types of orders can the court

make in relation to child custody/a child's living arrangements and what are the guiding principles? What steps are followed to hear the voice of the child?

Following a breakdown in the relationship both parents, in theory, retain equal rights over the child. In most cases, there will be one parent having the effective, day-to-day custody, while the other parent shall have the right to contact/access in respect of the child.

Parents choosing to amicably regulate their rights and obligations in respect of a minor in Malta may do so. The process entails the initiation of mediation proceedings, throughout which an agreement is drawn up. The agreement is eventually read by a mediator who shall ensure that both parties are fully cognizant of the rights and obligations outlined in the draft deed. The draft is then seen by a judge who may or may not authorize it for publication.

Such contracts will need to comprehensively cater for matters such as residence, care and custody rights, access rights and maintenance and should all such matters be addressed accordingly, ensuring that the rights of the child are met and that the child is sufficiently provided for, judges will more often than not, uphold the agreement reached between the parties and authorize the parties to publish the contract.

While contact/access is seen as a right of the parent who does not act as the primary carer of the child, this right is not unfettered and may of course be subject to limitations if it is shown that such limitations or qualifications are required, in the best interest of the child. This is done by one party filing an application formally outlining the grievance to the Court who will be charged with deciding on the matter following the filing of a reply by the opposing party.

In reaching its decision the Court may consider the appointment of a child advocate or other professionals such as child psychologists, who may be appointed by the Court to hear children expressing their wishes in respect of access arrangements, for example, with the chief consideration being the best interest of the child.

23. What are the rules relating to the relocation of a child within and outside your jurisdiction and what are the guiding principles?

There are no specific rules regulating the process of internal relocation of a child within the jurisdiction of

Malta, mostly due to the size of the country. The situation can indeed still complicate itself between two parents however, since such a move may trigger other decisions as a consequence, related to schooling or access arrangements for instance. Therefore, while there is no specific formality required of parents wishing to relocate within Malta and its dependencies, such parents must also consider other matters related to the rights of the other parent, as well as schooling/child activities and court orders or contractual obligations which may be in effect, and may therefore have a bearing on the decision making process.

Relocating the child outside of Malta, on the other hand, requires the consent of both parents and one parent cannot unilaterally decide to extract the child from Malta against the wishes of the other. If such relocation is opposed the Court will be tasked with granting authorization or otherwise. Should one decide to relocate the child, despite the other parent's opposition naturally this will be seen as an abduction and in such instances, it is worth noting that Malta is signatory to the 1980 Hague Convention on International Child Abduction. In deciding upon these matters, once again, the Court will base itself on the best interest of the child – examining the proposing parent's motivations for relocation, welfare of the child, the child's right to maintain contact with his family in Malta, the child's opinions on the move when possible, and other related matters.

24. What is the process for recognising and enforcing foreign orders for contact/custody of children? Does your court operate a system of mirror orders?

The term mirror-orders is not specifically made use of in Maltese legal practice however there are legal avenues that may be made use of to produce the same effects. In practice, a foreign order given in another jurisdiction can be filed before the Maltese Court in an attempt to have it recognized as legal and enforceable in Malta. As we have seen previously, the legal route one is to make use of depends on the originating country of the document in question.

If the order in question originates from another EU member state, recognition will be based on the procedures outlined in Brussels II regulations. If the order comes from a country signatory to the 1996 Hague Child Protection Convention the rules on recognition, enforcement and central-authority co-operation found in the Convention shall apply. If there is no international document which governs the case in question, national

rules will apply.

25. What is the legal position on international abduction? Is your jurisdiction a signatory of The Hague Convention on the Civil Aspects of International Child Abduction 1980?

Malta is firmly aligned with international and EU frameworks against child abduction, with the paramount policy being the return of children to their country of habitual residence, unless it is shown that such return places them at risk of harm and therefore such decision is shown to go against the best interest of the child. Malta also has a Central Authority which often plays a key role in ensuring the Child's safe return.

Malta is signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction which is incorporated in domestic law by means of the Child Abduction and Custody Act, Chapter 410 of the Laws of Malta.

The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children also applies to the jurisdiction of Malta.

Naturally EU rules apply between member states and Malta is bound by Regulation (EU) 2019/1111 (Brussels IIb) on jurisdiction, recognition, and enforcement of judgments in parental duties and abduction cases between member states, streamlining return mechanisms within the Union.

26. What is the status of surrogacy arrangements and are surrogates permitted to be paid? Is surrogacy available to individuals and cohabiting couples (both heterosexual and same-sex)?

There is currently no legal avenue for legal surrogacy in Malta. In fact, surrogacy is prohibited and carries fines and prison time as a consequence both for medical practitioners who carry out such practices, as well as surrogate mothers albeit in less severe punishments. While commercial surrogacy is considered illegal, altruistic surrogacy has been discussed in principle in public debates but is so far, also illegal. Couples wishing to pursue surrogacy will have to consider accessing such services in foreign jurisdictions however this will undoubtedly be met with complications upon their return while attempting to register the child.

27. What is the legal position in relation to adoption? Is adoption available to individuals and cohabiting couples (both heterosexual and same-sex)?

Adoption in Malta is available and current legislation allows for adoptions by single persons, married couples and those in same-sex marriages referred to in Malta as Civil Unions as well as cohabitating couples. The latter will have to face more restriction and is a less than straightforward procedure.

In all cases there are criteria which need to be met, proving suitability. Here again, the paramount consideration is the best interest of the child.

28. What forms of non-court dispute resolution (including mediation) are available in your jurisdiction? Is non-court dispute resolution mandatory? What is the status of agreements reached via NCDR?

Separating couples choosing to amicably regulate their personal separation and asset division may do so by means of contract in Malta, which may or may not include clauses relative to their rights and obligations vis-à-vis their children in care and custody, access and maintenance clauses. This option is also available to parents of minors who are not married who may also choose to regulate their care and custody matters by means of a contract.

Contracts of personal separation, and contracts regulating care and custody require certain formalities and always require the Court's authorization to be considered legal and binding.

Mediation is available to parties and may either be initiated unilaterally by one party against another, or by both parties who voluntarily submit themselves to this process. Throughout mediation a draft contract is drawn up which is ultimately read and explained to the parties, in simple, lay terms, ensuring the parties are willingly submitting to the contract and understand the legal implications of their assumed obligations.

Following mediation, the draft deed is then submitted to a judge for authorization, and provided such authorization is granted, the deed will then be signed by the parties.

While a deed of personal separation must necessarily be a public deed, care and custody contracts may also be done by private writing, however, in both cases, such

documents must first be authorized by a judge for them to be considered legal and binding upon the parties.

When all the formalities are met, such contracts have the full strength of the law in binding the parties to the obligations assumed by them and are executable in Malta through different means, depending on the obligation assumed, and can only be altered either by subsequent contracts amending the initial document, or by subsequent Court judgements/decrees.

29. Which areas of family law are likely to see reform in the near future?

It is difficult to speculate which areas will see reform in the future however, there has been a growing call in public discourse to push fathers' rights further up on the agenda. While parents in Malta theoretically stand on equal footing, it is the impression of many who have been through the system that the traditional familial roles are assumed and favoured in the decision-making process.

This of course isn't the case across the board, but some have argued in favour of parents having equal rights and equal roles, favouring amendments codifying the position that unless there are valid reasons for either parent to be deprived of such right, children are to spend equal time with both of their parents, that is to say, that coparenting should be the rule, rather than the exception – which parents may either derogate from voluntarily, or either party will have to prove why the other party should be deprived of such right.

Altruistic surrogacy may also be an interesting topic the legislator may ignite once again.

30. Are family proceedings conducted in private? Is the press allowed to attend hearings? Are judgments made public?

Family related proceedings are held in Court but while other proceedings are held in courtrooms open to the public, such proceedings are held in a private with only the parties and professionals and witnesses being allowed in.

Judges hearing family cases will not allow anyone inside the courtroom unless they are either members of the legal profession, or are parties to a suit themselves and therefore, it is not only the press that is barred from attendance. Private recording devices are also barred from Court and anyone caught filming or taking photos inside the law courts in general can be arrested for up to

24 hours, expelled from the court, reprimanded or fined up to EUR1,164.

Judgments are published on the Court website for reference to members of the legal profession, however, they are redacted versions with no personal details or names being publicized ensuring anonymity of the parties.

31. How does relationship breakdown impact death and estate planning?

There are a number of issues and variables which impact estate planning in case of a relationship breakdown particularly within marriage or civil union.

The determining factor is general matrimonial property regime. Since it is the default property regime most couples in Malta are subject to the community of acquests which means assets and debts acquired within marriage are co-owned. Upon separation the community is terminated and property/debts assigned into two separate portions – one portion to each respective party. This in turn would impact what each party owns thereafter and what forms part of their personal estate on their death.

Inheritance is another element to consider. The surviving

spouse within marriage has statutory rights of inheritance over their spouse, even if they die intestate. The surviving spouse would retain a share in the estate and the right to live in the family home, which rights are naturally altered upon personal separation. In fact you will find that in all contracts of personal separation it is explicitly declared that the parties shall not inherit one another through wills predating the separation, or by the application of statutory clauses. Malta's inheritance laws also include reserved portions for spouses and children, which limit how much of one's will a person is entitled to dispose of through his will and for this reason it is always important to consider how your will and the matrimonial regime you are subject to impacts your personal estate planning.

For unmarried partners or cohabitants, rights are more limited and depend on registration under the Cohabitation Act, as seen above. Indeed without recognition in the required formalities, cohabiting partners may have no inheritance rights.

Seeing as the subject is very broad it is always advisable to seek specific legal counsel when finding oneself in this position. In general, it is crucial to review wills, property ownership and the implications of the applicable matrimonial regime in the process leading up to personal separation.

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