

ANNEX 41

- Country Report MALTA

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AND SECURITY -**

**Study on the Transparency of Costs of Civil Judicial
Proceedings in the European Union**

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- COUNTRY REPORT -

- MALTA -

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COUNTRY REPORT

Preliminary notes

This report is based on the replies to a set of questionnaires dealing with the costs of justice involved in civil proceedings. As the provision of details with regards to tariffs and expenses payable to the various stakeholders in civil proceedings is central to this study the following points should be noted:

(1) As Malta has not yet adopted the Euro as its currency, the amounts prescribed in legislation are in Maltese Lira. However for the purposes of this study such amounts are being converted into Euros on the basis of the official exchange rate established by the Central Bank of Malta, namely 1LM = 0.4293 Euros. No account is taken of euro cents and so the resulting amounts are rounded up to the nearest Euro.

(2) A considerable amount of effort was made in order to give comprehensive and precise details with regards to all the stakeholders involved in civil proceedings and the amounts which would be due to such stakeholders, thus outlining the expenses involved. However the actual total of expenses involved in civil proceedings depends on a number of criteria which are case related. Thus in some cases an average amount was given based on experience and/or the minimum and maximum amounts stipulated by legislation. In other cases the incidence of particular stages

in proceedings depends on the circumstances of the case. Thus it had to be assumed that such stages would take place and the average number of occurrences of such incidences which was taken into consideration for the purposes of this study (such as the number of affidavits actually presented in court, or the number of acts to be notified by a bailiff) is indicated.

Introduction

This report contains the results of a study into the costs of justice in civil proceedings and the transparency of information on such costs in the Maltese legal system. The majority of the costs of justice are prescribed by law in the form of schedules to main legislation such as the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta), which is the code dealing with procedural law in general in civil jurisdiction, or to special legislation such as the Small Claims Tribunal Rules (Legal Notice 145 of 1995), the Consumer Claims Tribunal Rules (Legal Notice 8 of 1996), the Rent Regulation Board Regulations (Legal Notice 155 of 1996) and the Arbitration Rules (Legal Notice 421 of 2004). This study is meant to identify all the stakeholders involved in civil proceedings and the fees or expenses which would be incurred in such proceedings.

Executive Summary

1 Summary of the mains sources of costs

The main sources of costs of justice are three:

(1) the court fees which are payable together with the filing of the application initiating the legal action or the appeal. Such fees would generally amount to between 20% and 30% of the total cost of the proceedings depending on the type of lawsuit.

(2) lawyers' and legal procurators' fees which would be payable at the end of the proceedings by the party who is cast in costs by the Court in the definitive judgment. These fees would generally amount to between 30% and 40% of the total cost of the proceedings depending on the type of lawsuit, the value of the claim and the stages involved in the proceedings.

(3) experts' fees which are payable at the end of the proceedings by the party who is cast in costs by the Court in the definitive judgment. An expert is not always resorted to in the proceedings. It depends on whether either of the parties produces an expert witness or whether the Court in its discretion decides to appoint an expert to report on a particular issue within his competence. The cost of experts depends very much on the circumstances of the case but generally such cost would amount to between 20% and 30% of the total cost of the proceedings.

Such sources of costs are prescribed by law, in the Code of Organisation and Civil Procedure in the case of proceedings before the civil courts, or in special legislation in the case of proceedings before specialised tribunals or in the case of alternative dispute resolution.

Other sources of costs involved include bailiff fees due for the notification of acts of procedure or for the execution of precautionary or executive warrants, translation fees due to translators and interpretation fees due to interpreters where the services of either is required. However such costs do not constitute the main source of costs.

2 Level of transparency in the sources of costs

The main source of information on costs of justice is legislation which is published on the website of the Ministry of Justice. Such legislation includes the Code of Organisation and Civil Procedure Chapter 12 of the Laws of Malta, and other special legislation dealing with specialised tribunals, such as the Small Claims Tribunal Rules (Legal Notice 145 of 1995), the Consumer Claims Tribunal Rules (Legal Notice 8 of 1996), the Rent Regulation Board Regulations (Legal Notice 155 of 1996) and the Arbitration Rules (Legal Notice 421 of 2004) or special legislation dealing with specific costs such as the Witnesses (Fees) Ordinance, Chapter 108 of the Laws of Malta.

The Code of Organisation and Civil Procedure regulates most procedural aspects of civil proceedings and it also contains a Schedule containing the Tariffs which regulate the various costs involved in judicial proceedings before the Civil Courts of Malta of first instance and before the Court of Appeal. This Code is published on the website of the Ministry of Justice together with all the main and subsidiary legislation of Malta. The fact that most costs, both in the case of the court system and in the case of alternative dispute resolution, are prescribed by law, which law is published, means that there is a certain amount of transparency with regards to such fees and reduces arbitrariness in the calculation of such costs. However the resultant transparency in the costs of justice involved is reduced because as is

generally the case the public would not only not be aware that the costs of justice are regulated through provisions contained either in the Code of Organisation and Civil Procedure or in other special legislation, but a certain level of legal knowledge would be required in order to determine the costs which would may be involved in a particular case and the method of calculation of the total amount of such costs. This is due to the fact that some costs are related to specific steps in judicial proceedings which a layperson may not be aware of their existence. For this reason the assistance of a lawyer or a legal procurator or of staff at the Registry of Courts would be required in order to be able to obtain information regarding the costs which would arise should one decide to file a legal action.

3 Determination of the amounts of costs

As outlined above the costs arising from judicial proceedings are regulated by law. The amount of such costs may thus be determined by means of the rules prescribed in the applicable legislation. Such costs would either consist in a flat rate or in a fee the amount of which is dependent either on the value of the claim or on other factors or characteristics of the litigation (for instance in the case of the fee due to an architect appointed by the court to give a valuation of land would depend on the immovable to be valued). However the applicable legislation may not always be applied easily by persons who have no legal background.

In general, the average cost of judicial proceedings would amount to 2000 euros. The average income of the population in Malta amounts to 14,000 euros. This means that the proportion of the average costs of judicial proceedings to the average yearly income would amount to 14%.

4 Level of transparency in determining the actual costs

The level of transparency in the determination of the actual costs, that is the identification of the sources of costs involved, may even be lower than for the calculation of the amount of costs. This is due to the fact that a certain level of

legal knowledge would surely be required in order to be able to decipher what costs will arise in a particular litigation before actually starting to calculate the amount of costs. Legal knowledge is required in order to be able to classify one's litigation under certain categories which are given differential treatment when it comes to costs. For instance generally court fees are calculated on the basis of a fixed basic fee and another fee which may consist in a fixed fee if the value of the claim may not be determined, or in a fee consisting in a particular percentage of the value of the claim for different brackets of such value. However a 50% reduction applies to the fixed basic fee in the case of certain types of lawsuits, namely actions for personal separation, annulment, maintenance, filiation, paternity, child abduction or custody, relating to the civil status of a person, relating to human rights or relating to general elections and in actions of possession and jactitation suits or concerning personal injury, claims for the payment of wages or claims for unjust dismissal from employment. On the other hand lawyers' fees are calculated on the basis of fee consisting in a percentage of the value of the claim (where the value is determinable) applicable to different brackets of the of such value or on the basis of a fixed fee if the value of the claim cannot be determined. Added to such fee is a fixed fee prescribed for individual acts of procedure. The identification of these sources of costs depends both on the knowledge of which acts of procedure would be required in one's case and the frequency of such acts (for example the number of times that the lawyer would be required to attend before a judicial referee).

Legal knowledge of what other stakeholders are involved in proceedings is also necessary in order to be able to identify such sources of costs and eventually determine the rule by which their costs are regulated. This applies in the case of experts, bailiffs, witnesses, translators and interpreters. With regards to experts and translators and interpreters the relative rule sets down a minimum and a maximum fee to be awarded to such stakeholders for their services. In the case of certain experts such as architects and accountants a fee depending on the value of the object to be evaluated is established. In the case of bailiffs and witnesses the fee established by law is based on acts of procedure notified in the former case and on appearance in court in the latter case.

All sources of published information contain general information in the sense that the rules establishing the costs of justice involved are laid out from which one would have to extract those rules which are applicable to one's particular case. On

the basis of such rules one would then have to calculate the actual costs involved on the basis of some legal knowledge as to the acts of procedure involved in one's particular case. For these reasons generally case-specific information to be obtained from a lawyer or a legal procurator is often resorted to by the parties.

5 Proportion of each indentified cost on the overall cost of civil judicial proceedings

As illustrated in the sections of this report dealing with the costs of justice in detail, the majority of the costs involved generally consist of court fees, of lawyers' and legal procurators' fees and experts' fees where applicable. All the other costs depend on the contingencies of the case but are generally minimal when compared to court fees, lawyers' and legal procurators' fees and experts' fees. On average the proportion of each identified cost on the average cost of judicial proceedings is the following:

(a) Court fees: 20% - 30% (depending on the type of action)

(b) Lawyers' and legal procurators' fees: 30% - 40% (depending on the type of action, the value of the claim, the steps involved in the proceedings)

(c) Experts' fees: 20% - 30%

(d) Bailiffs' fees: 0.3% - 0.5%

(e) Witnesses' compensation: 0.3%

(f) Translation/Interpretation fees: 6% - 10%

6 Proportion of each indentified cost on the overall volume of activity

In general costs are not related to the volume of activity. Costs are calculated either on the basis of the value of the claim or through a flat rate prescribed by law. In practice in an average case the court would carry out 30% of the overall volume of activity, lawyers and legal procurators would carry out 50%, experts would carry out 10% while other stakeholders would carry out 10%. On the basis of this study, for the purposes of illustration, the costs involved may be said to be due as to 25% to the Court, 35% to lawyers and legal procurators, as to 25% to experts and as to the other 15% to other stakeholders involved. By dividing the percentage of the overall volume of activity by the percentage of the total fees, and taking the percentage of the amount achieved (the result of the said division) from the total of such amounts the following proportion of each identified cost on the overall volume of activity is achieved:

- (a) Court fees: 32%
- (b) Lawyers' and legal procurators' fees: 38%
- (c) Expert fees: 11%
- (d) Others: 19%

7 Proportion of each indentified cost on the value of disputed claim

The proportion of each identified cost on the value of disputed claim taking into consideration for the purposes of illustration a claim of 20,000 euros is the following:

- (a) Court fees: 3.27%
- (b) Lawyers' and legal procurators' fees: 5.1%
- (c) Expert fees: 2.5%

(d) Bailiff: 0.03%

(e) Witnesses compensation: 0.03%

(f) Translation/Interpretation: 0.8%

8 Specificities in relation to EU cross-border disputes

The applicable legislation does not distinguish between internal disputes and cross-border disputes. Thus the fees and costs applicable to internal disputes would equally apply to cross-border disputes. The only case where a specific cost for cross-border disputes is envisaged is in the case of arbitration, whereby the tariff of fees due specifically includes fees due in the case of international arbitration. Otherwise the extra costs which would arise in the case of cross-border disputes would consist of costs associated with the communication costs and with the costs associated with mobility from one Member State to another.

9 Recommendations for EU action/national action

One possible recommendation for action at national level could be the setting up of an online costs calculator which would be based on a questionnaire requiring the user to input certain characteristics of the lawsuit which would enable it to establish an indication of the main costs which would be involved namely court fees and lawyers' fees. At EU level, data collected around the EU may also be centralised in a common database possibly also with an online calculator facility.

10 Relationship between the costs of justice, the transparency in the costs of justice and access to justice

The perception that is formed through legal practice is that the costs of justice, the transparency in costs of justice and access to justice are related and in certain cases the relationship is greater than in others. Undoubtedly, the quantum of costs of justice is one of the most important factors that is taken into consideration before a decision is made as to whether to file a claim or not. Transparency in the costs of justice may also affect access to justice. As costs of justice are one of the factors that are taken into consideration in deciding whether to start judicial proceedings, the lack of clear, accurate and complete information regarding costs of justice tends to preclude the potential party in court proceedings from making an informed decision on whether to initiate court proceedings or not. High levels of costs or lack of transparency in the costs of justice may be a strong deterrent from access to justice particularly in the case of minor claims, where although one may not want to write off an economic damage one has suffered, one is discouraged from starting judicial proceedings due to such factors.

11 Conclusions and recommendations

The main source of information on the sources of costs in judicial proceedings, excluding lawyers and legal procurators, is the published legislation. This contains general as opposed to case-specific information regarding such costs. Thus though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to make any calculations as to the costs involved in one's particular case. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the costs involved in one's particular case.

Detailed Draft Report

1 General Questions

1.1 Level of information on the transparency of fees and costs of justice

Information on the fees and costs of justice in Malta is generally available from three main sources, namely, Schedule A to the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) and the other Schedules to specific legislation such as the Small Claims Tribunal Rules (Legal Notice 145 of 1995), the Consumer Claims Tribunal Rules (Legal Notice 8 of 1996), the Rent Regulation Board Regulations (Legal Notice 155 of 1996) and the Arbitration Rules (Legal Notice 421 of 2004), which are published online on the website of the Ministry of Justice, the Registries of the Respective Courts and case-specific information obtained from lawyers and legal procurators.

Schedule A to the Code of Organisation and Civil Procedure is made up of the following Tariffs:

Tariff A : Fees payable in the Registry of the Superior Courts of Justice, and in the Registry of the Court of Magistrates (Gozo) in its Superior Jurisdiction.

Tariff B : Fees payable in respect of Judicial Acts and Services not connected with the trial of causes in the Registries of the Superior Courts of Justice and the Courts of Magistrates in Malta and Gozo excluding the Court of Voluntary Jurisdiction.

Tariff C : Fees payable in respect of Acts filed in the Courts of Voluntary Jurisdiction.

Tariff D : Fees payable in respect of Precautionary and Executive Acts and Judicial Sales by Auction in the Registries of the Superior Courts of Justice and the Courts of Magistrates in Malta and Gozo excluding the Court of Voluntary Jurisdiction.

Tariff E : Fees payable to Advocates, Legal Procurators and Official Curators.

Tariff F : Deleted

Tariff G : Fees payable to Accountants and other Referees.

Tariff H : Deleted

Tariff I : Deleted

Tariff J : Fees payable in connection with Sea-protests or proceedings concerning average.

Tariff K : Fees payable to *Periti* (Architects and Civil Engineers appointed as experts)

Tariff L : Fees payable in respect of proceedings under section 257 of the Civil Code, Cap. 16 (Proceedings before the Court of Revision of Notarial Acts).

Tariff M : Deleted

The other Schedules to special legislation contain tariffs due with regards to proceedings before specialised tribunals or in alternative dispute resolution proceedings.

The legislation itself is the only source of published tariffs. No other private websites, brochures or information centres exist. The other source of information on court fees is the Registries of the respective Courts where one can obtain the said information through the assistance of court staff. However the general public would normally resort to a lawyer or a legal procurator in order to achieve this information. This is due to the fact that generally people would not be aware that the costs of justice are established in the said legislation. Even assuming such knowledge, the calculation of total amount of fees due requires a certain level of legal background.

Thus the level of transparency of the costs of justice generally is not very high.

As regards the expenses involved in order to obtain information on the applicable fees, access to the website of the Ministry of Justice is free. So is the assistance obtained through the Registries of the respective Courts. As regards lawyers and legal procurators the fee applicable, if any, depends on the lawyer or the legal procurator concerned. However this would generally be below 20 euros.

With regards to cross-border disputes, information concerning the costs of justice in another Member State is even less accessible. The level of difficulty in understanding the local judicial system and its costs and in the identification of the stakeholders involved and their fees may not be so high if the system in that other Member State is very similar to the local one or if a legal professional in that other Member State can give assistance with regards to the costs involved. Language problems would not exist if English is used in the other Member State. However there would still be some difficulty in determining what costs are involved without the assistance of a legal professional practicing in the other Member State who would thus be accustomed to the legal and judicial system in that other Member State. So cooperation with local legal professionals is essential in determining costs in cross-border disputes.

1.2 Transparency perception

The sources of information outlined above are the only ones available and there are no such specialised associations or organisations of lawyers who specialise in the defence of people who face difficulties in accessing justice due to the lack of information. There is the Advocate for Legal Aid whose function is that of administering the benefit of legal aid but in this case the Advocate of Legal Aid's specialisation is to assist people who face difficulties in accessing justice due to financial limitations and not a general function to facilitate access to justice through the provision of information generally on such issues as the costs involved and the formalities required.

The perception created by the lack of transparency on the costs of justice may deter people from exercising their rights due to the fact that it may generate a wrong perception of the costs involved. It may in fact create the impression that the costs involved would make their action worthless or that the costs involved are

unfair considering the low value of their claim. The lack of information in itself is not such as to put your financial situation in a difficult position as the applicable fees are regulated by law.

At the European level the lack of information on the costs of justice may deter trade and movement in Europe because the fear that claims would be more difficult to enforce in another Member State due to the costs involved is greater in a cross-border scenario than in a domestic one. It may also create the feeling that Europe is ineffective as it fails to provide European citizens with the necessary tools in order to enforce their claims efficiently such as comprehensive and accessible information regarding the costs of justice involved. A lack of information may also create the feeling that the Member States do not cooperate enough due to disparities in the costs of justice involved and the lack of dissemination of information concerning the costs of justice.

1.3 Solutions to improve transparency

National and European legislation which regulates the costs of justice may not always be sufficient for the purposes of transparency. Such legislation is not always clear and simple enough to achieve transparency and effective access to information on the costs of justice. The legislation prescribing the costs of justice is linked to procedural steps and sets tariffs either with reference to a particular procedural step or with reference to the participation of a stakeholder in the proceedings. More often than not a layperson would not be in a position to assess what kind of procedural acts would be necessary in his case and what parties would eventually be involved in his case such as experts, interpreters and so on. Thus it would be very difficult for such a person to be able to assess the costs of justice which he would incur should he decide to file a case before an adjudicating authority without the assistance of a lawyer or a legal procurator or of an official at the registry of the respective courts. So notwithstanding the fact that such laws are published they are not efficient in facilitating transparency and access to justice.

In Malta the centralisation of the information on the functioning and costs of justice may be the most appropriate solution. This means that comprehensive information would be available from one source. The publication of Schedules of costs online

is also an appropriate solution so long as such schedules are based on the principles of clarity, simplicity and comprehensiveness. The idea of uniformizing all procedures may not be so appropriate as some differentiation is needed in order to cater in a fair way for certain claims.

In the case of cross-border disputes, centralisation of the information on the operation and costs of justice is a very appropriate solution as one of the biggest problems in the case of cross-border disputes is the identification of the sources of information on costs of justice. If costs are published in a centralised manner, access to such information would be easier. Language differences may also be a barrier for the access to information and so requiring Member States to translate the presentation of their judicial system procedures and relevant costs may be a good idea to overcome this difficulty.

Another possible solution is imposing on the claimant the duty to provide the respondent with information on the judicial system of the country in which the litigation is brought as in this way the respondent would be assured access to such information. However this solution does not provide for access to information for the claimant. Yet another possible solution could be imposing on Member States the duty to pay for the translation of any documents that the court deems necessary as this would reduce all the translation costs which are necessarily involved in cross-border disputes.

Another appropriate solution, though more demanding, would be the creation of specific procedures for cross border litigations as this would surely reduce the difficulties arising from differences between different judicial procedures and applicable costs. Otherwise the dematerialisation of the proceedings, enabling multiple languages for the proceedings, the codification of European texts governing the proceedings and the creation of ad hoc European courts that would include judges from relevant countries to the litigation are considered as being less appropriate as a solution to improve transparency due to their impracticability.

1.4 Fairness of costs

The majority of costs are justified. However the system emphasises on the value involved in the litigation rather than the complexity and the amount of work

involved in the proceedings. This may result in litigants paying more than is fair in some cases.

It is also fair that the winning party is reimbursed costs by the losing party.

1.5 Conclusions and recommendations

As discussed above the main source of information on the sources of costs in judicial proceedings, excluding lawyers and legal procurators, is the published legislation. This contains general as opposed to case-specific information regarding such costs. Thus though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to make any calculations as to the costs involved in one's particular case. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the costs involved in one's particular case.

2 Court fees

2.1 General

A fee is always payable when a case is filed in court or before a tribunal. Court fees are provided for in Schedule A to the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta, in the Small Claims Tribunal Rules, Legal Notice 145 of 1995, in Tariff A of First Schedule to the Consumer Claims Tribunal Rules Legal Notice 8 of 1996 and in the Rent Regulation Board Regulations Legal Notice 155 of 1996 which are all accessible from the website of the Ministry of Justice.

Otherwise no private websites, brochures, information centres or organisations are available in order to provide information on the applicable court fees. One may however access such information by calling the registries of the respective courts or by asking a lawyer or a legal procurator. In the former case access to information is free. However in the case of lawyers or legal procurators a fee may be applicable which is generally under 20 euros.

The factors determining the amount of the court fees are generally the amount requested in the claim and the nature of the litigation. Because the value of the claim is often a very important element in order to calculate the applicable court fees, it is difficult to provide an average of court fees. On the basis of an average case with a value of 34,940 euros (equivalent to 15,000 Maltese Lira) court fees would amount to 914.28 euros. Thus on average the court fees range between 750 and 999 euros. Such amount may vary considerably depending on the characteristics of the case in issue. The amount of court fees would also be greatly reduced if the action falls within the competence of a tribunal rather than the civil courts. However the same rules for the calculation of the fees apply, namely, a fixed basic fee followed by an ad valorem fee where the value of the claim may be determined or a further fixed fee if the value of the claim cannot be determined.

As regards the time when payment is made, generally the fees have to be paid at the time a case is filed and such fee would cover the filing of all other acts of procedure and court services (including but not limited to filing of warrants for the examination of witnesses, the examination itself, recording fees, transcription and copies, the services of judicial assistants, the transmission of the records of the causes, taxed bill of costs and copies of the judgement) required following the initiation of the cause through the said act up to and including final judgement but excluding any fees due for the notification of acts and fees due to referees or experts appointed by the Court or any fees which the Court may be required to pay to third parties. Payment may be made by cash or cheque. However only cheques issued by lawyers or legal procurators are accepted.

The applicable court fees are determined by government in the sense that it is the Registrar of Courts, who is a government official, that determines all the costs involved in a case. The amount and calculation of these fees may be accessed through the website of the Ministry of Justice where the legislation establishing the court fees are published, by calling the Registries of the respective Courts or by calling a lawyer or a legal procurator. No Value Added Tax is applicable to court fees.

2.2 Cost of bringing an action to the courts

With regards to Family Law cases, both in the case of the children custody right, and in the case of alimony a filing fee of 58 euros is payable for the filing of the sworn application which is half the normal fee of 116 euros as in virtue of paragraph 1 of Tariff A of Schedule A to the Code of Organisation and Civil Procedure all the fees provided for in Tariff A, except for the fee provided in paragraph 3 (ad valorem or fixed fee) are reduced by half in certain cases among which are the children custody right cases and cases on alimony. Other such cases are actions for personal separation, annulment, filiation, paternity, child abduction, actions relating to civil status of a person, relating to human rights or relating to general elections and in actions of possession and jactitation suits or concerning personal injury, claims for the payment of wages or claims for unjust dismissal from employment. This fee is payable at the time of filing by the person who files the application. Another fixed fee of 116 euros would be payable by the person making the claim at the time of filing. Both these fees are provided for in paragraphs 2 and 3 of Tariff A of Schedule A to the Code of Organisation and Civil Procedure.

In the case of Labour law, in actions on work accidents and redundancies, a fee of 58 euros for the filing of the sworn application is paid at the time of filing by the person filing the application on the basis of paragraph 2 of Tariff A together with the reduction provided for in paragraph 1 to the same Tariff A. Another fixed fee of 116 euros is applicable in virtue of paragraph 3 of Tariff A.

In the case of Commercial Law, that is, with regards to actions for payment for a commercial or services agreement, in the case of goods not in accordance, in the case of litigation between associates and in the case of mandates and agents a filing fee of 116 euros is payable for the filing of the sworn application to be paid at the time of filing by the person filing the application. Another fee the amount of which depends on the value of the claim is payable, that is, up to a value of 6988 euros, per 233 euros or part thereof 8 euros, in respect of any value in excess of 6988 euros up to 11,647 euros, per 233 euros or part thereof 6 euros, in respect of any value in excess of 11,647 euros up to 23,294 euros, per 233 euros or part thereof 5 euros; in respect of any value in excess of 23,294 euros up to 116,469 euros, per 233 euros or part thereof 3 euros; in respect of any value in excess of 116,469 euros up to 232,937 euros, per 233 euros or part thereof 2 euros; in respect of any value in excess of 232,937 euros, per 233 euros or part thereof 2 euros, in virtue of paragraph 3 of Tariff A of Schedule A. However where the value of a

claim is uncertain or indeterminate the fee paid shall be 582 euros in virtue of paragraph 4 of Tariff A of Schedule A.

In the case of actions for payment for a commercial or services agreement and in the case of goods not in accordance, if the claim does not exceed 3494 euros then it would fall within the competence of the Small Claims Tribunal. The filing fee at the Small Claims Tribunal is of 23 euros while the fee for filing an appeal application from the Small Claims Tribunal amounts to 70 euros. In the case of the Small Claims Tribunal the ad valorem fee prescribed in the case of proceedings in the Civil Courts does not apply.

With regards to Civil Law, in the case of consumer protection, the filing fee of 116 euros and the fee depending on the value as above would also be applicable as provided in paragraphs 2 and 3 of Tariff A. Where the value of a claim is uncertain or indeterminate the fee paid shall be 582 euros as provided in paragraph 4 of Tariff A. If the value of the claim does not exceed 3494 euros, the action may be brought before the Consumer Claims Tribunal. In this case the fee applicable for the filing of any application or any act including the filing of any referee's report is of 2 euros. A further fee depending on the amount of the claim would be applicable as follows : if the amount does not exceed 582 euros 7 euros, if the amount does not exceed 1165 euros 12 euros, if the amount does not exceed 2329 euros 19 euros, if the amount exceeds 2329 euros 23 euros in virtue of Tariff A of the First Schedule to the Consumer Claims Tribunal Rules Legal Notice 8 of 1996.

In the case of liability (under Civil Law) and in the case of lease, ownership and co-ownership (under Property Law), the fee of 116 euros for the filing of the sworn application in virtue of paragraph 2 of Tariff A, and the fee depending on the amount of the claim as above in virtue of paragraph 3 of Tariff A would apply. Where the value of a claim is uncertain or indeterminate the fee paid shall be 582 euros in virtue of paragraph 4 of Tariff A. However with regards to leases which were created before 1995, claims to resume possession of the leased property or to change the conditions of the lease including the amount of rent are brought before the Rent Regulation Board. In this case the registry fee for the filing of any claim amounts to 35 euros as provided in the Rent Regulation Board Regulation Legal Notice 155 of 1996.

In cases concerning the civil status the filing fee is reduced by half in virtue of paragraph 1 of Tariff A thus amounting to 58 euros. A further fee of 582 euros would apply on the basis of paragraph 4 of Tariff A.

In other cases the general rule is that a fixed fee of 116 euros would apply together with a fee depending on the value of the claim as above or a fee of 582 euros if the value of the claim is uncertain or indeterminate, in virtue of paragraphs 2, 3 and 4 of Tariff A of Schedule A to the Code of Organisation and Civil Procedure.

The filing fee both in the case of the Courts and in the case of the Small Claims Tribunal and the Consumer Claims Tribunal includes the filing of all other acts of procedure and court services (including but not limited to filing of warrants for the examination of witnesses, the examination itself, recording fees, transcription and copies, the services of judicial assistants, the transmission of the records of the causes, taxed bill of costs and copies of the judgement) required following the initiation of the cause through the said act up to and including final judgement but excluding any fees due for the notification of acts and fees due to referees or experts appointed by the Court or any fees which the Court may be required to pay to third parties.

The same court fees apply both to domestic and to cross-border litigation.

2.3 Other proceedings costs

Another proceedings cost is the fee due for every notification of an act of procedure, including expenses incurred in the execution of such notification. Such fee amounts to 4 euros in the case of certain actions mentioned in paragraph 1 of Tariff A among which are actions concerning children custody right, alimony, work accidents, redundancies and civil status and to 7 euros in all other cases in virtue of paragraph 6 of Tariff A. If the service is to be effected outside normal working hours, the fees shall be increased by 100% and if such notification is made to the party's legal consultant within the Court building, the fee due shall be 2 euros for the full service. There is no specific cost in cross-border litigations.

In the case of an action brought before the Consumer Claims Tribunal there is a further fee for every definitive decision of the Tribunal: 9 euros for the 1st 1165 euros and 19 euros in respect of any value in excess of 1165 euros.

In cases regarding ownership and co-ownership, mandates and agents and actions regarding litigation between associates a further fee of 123 euros would apply for

the filing of a warrant of prohibitory injunction including the 7 euros due to the executive officer required to effect service, for each notification on the basis of Tariff D paragraph 1 of Schedule A to the Code of Organisation and Civil Procedure. In the case of a child custody right case a further fee of 91 euros may apply for the filing of a warrant of impediment of departure for children including the 3,5 euros fee due to the executive officer required to effect service for each notification on the basis of Tariff D paragraph 2 of Schedule A to the Code of Organisation and Civil Procedure. In actions for payment of a commercial or services agreement, in actions regarding goods or services not in accordance, in litigation between associates, in actions regarding mandates and agents, in actions for liability a further fee of 54 euros may be payable for the filing of any precautionary warrant including the 7 euros due to the executive officer required to effect service on the basis of Tariff D paragraph 3 of Schedule A to the Code of Organisation and Civil Procedure.

The same court fees apply both to domestic and to cross-border litigation.

Fees due to experts or referees appointed by the Court will be dealt with in the Section dealing with Expert fees.

2.4 Costs of Appeal

For the filing of an appeal application a filing fee of 175 euros is payable which includes the filing of all other acts of procedure and court services (including but not limited to filing of warrants for the examination of witnesses, the examination itself, recording fees, transcription and copies, the services of judicial assistants, the transmission of the records of the causes, taxed bill of costs and copies of the judgement) required following the initiation of the cause through the said act up to and including final judgement but excluding any fees due for the notification of acts and fees due to referees or experts appointed by the Court or any fees which the Court may be required to pay to third parties in virtue of paragraph 2 of Tariff A of Schedule A to the Code of Organisation and Civil Procedure.

The above fee is reduced to 88 euros in the case of actions for personal separation, annulment, maintenance, filiation, paternity, child abduction or custody, relating

to the civil status of a person, relating to human rights or relating to general elections and in actions of possession and jactitation suits or concerning personal injury, claims for the payment of wages or claims for unjust dismissal from employment, as provided in paragraph 1 of Tariff A to Schedule A to the Code of Organisation and Civil Procedure. A further fee the amount of which depends on the value of the claim as that applicable at first instance would also apply, namely, up to 6988 euros, per 233 euros or part thereof 8 euros; in respect of any value in excess of 6988 euros up to 11,647 euros, per 233 euros or part thereof 6 euros; in respect of any value in excess of 11,647 euros up to 23,294 euros, per 233 euros or part thereof 5 euros; in respect of any value in excess of 23,294 euros up to 116,469 euros, per 233 euros or part thereof 3 euros; in respect of any value in excess of 116,469 euros up to 232,937 euros, per 233 euros or part thereof 2 euros; in respect of any value in excess of 232,937 euros, per 233 euros or part thereof 2 euros, or a fixed fee of 116 euros (where the value of the claim may not be ascertained) increased by one third in virtue of paragraph 3 of Tariff A to Schedule A to the Code of Organisation and Civil Procedure.

In the case of an appeal from the consumer claims tribunal the fee is that of 35 euros while in the case of appeal from the Small Claims Tribunal the filing fee is that of 70 euros together with a further fee of 1 euro in virtue of Tariff A of Schedule 1 of the Consumer Claims Tribunal Rules Legal Notice 8 of 1996 and the Small Claims Tribunal Rules Legal Notice 145 of 1995. In the case of appeal from the Rent Regulation Board the filing fee is of 70 euros in virtue of the Rent Regulation Board Regulations Legal Notice 155 of 1996. The further fixed or ad valorem fee would not apply in the case of appeal from the consumer claims tribunal or from the small claims tribunal or from the Rent Regulation Board.

There is no specific cost for cross-border disputes.

2.5 Costs of ADR

In the case of domestic arbitration, where arbitration is optional, the fees applicable consist of 25% of the filing fees which would be applicable before the courts as outlined above, namely 116 euros together with a fee the amount of which depends on the value of the claim, i.e., up to 6988 euros, per 233 euros or part thereof 8 euros; in respect of any value in excess of 6988 euros up to 11,647

euros, per 233 euros or part thereof 6 euros; in respect of any value in excess of 11,647 euros up to 23,294 euros, per 233 euros or part thereof 5 euros; in respect of any value in excess of 23,294 euros up to 116,469 euros, per 233 euros or part thereof 3 euros; in respect of any value in excess of 116,469 euros up to 232,937 euros, per 233 euros or part thereof 2 euros; in respect of any value in excess of 232,937 euros, per 233 euros or part thereof 2 euros. However where the value of a claim is uncertain or indeterminate the fee paid shall be 582 euros, with a minimum fee of 116 euros. An arbitrator's fee would also apply as follows: for a value from 0 euros to 1,165 euros - 117 euros; 1,165 euros to 3,494 euros 280 euros; above 3,494 euros to 11,647 euros 419 euros; above 11,647 euros to 23,294 euros 699 euros; above 23,294 euros to 46,587 euros 1,048 euros; above 46,587 euros to 116,468 euros 1,863 euros; above 116,468 euros to 232,937 euros 2,912 euros; above 232,937 euros to 582,343 euros 4,659 euros; above 582,343 euros to 1,164,687 euros 8,153 euros; above 1,164,687 euros to 2,329,373 euros 11,647 euros; in excess of 2,329,373 euros 11,647 euros and 0.3% of any amount in excess of 2,329,373 (these fees apply in the absence of any agreement between the arbitral tribunal and the parties).

In the case of optional arbitration in the short form an additional discount of 25% on the fee applicable to normal optional proceedings applies with a minimum fee of 82 euros. Arbitrator's fee due in the absence of any agreement between the arbitral tribunal and the parties would amount to 128 euros. An extra 23 euros will be due per hour for any subsequent hearing of a duration of more than two hours in excess of one.

In the case of mandatory arbitration a fixed fee of 70 euros applies with an arbitrators' fees of 105 euros. Such fees shall be payable provisionally by claimant on the filing of the Notice but the arbitral tribunal may, in special circumstances, charge supplementary fees. In the case of motor claims if the claim is below 6988 euros a fee of 23 euros applies while if the claim exceeds 6988 euros a fee of 70 euros applies.

In the case of international arbitration the following fees apply : up to 7,400 euros - fee of 370 euros; above 7,400 euros up to 37,000 euros - fee of 555 euros; above 37,000 euros up to 74,000 euros - fee of 925 euros; above 74,000 euros up to 185,000 euros - fee of 1,488 euros above 185,000 euros up to 370,000 euros - fee of

2220 euros above 370,000 euros up to 740,000 euros - fee of 2,960 euros; above 740,000 euros up to 3,700,000 euros - fee of 4,440 euros; above 3,700,000 euros - the fee is negotiable. If there is no monetary amount a minimum fee of 925 euros applies. The minimum filing fee for any case having more than one arbitrator is 1110 euros. For each day of hearing held before a single arbitrator, an administrative fee of 111 euros is payable by each party to the Centre. For each day of hearing held before a three arbitrator panel, an administrative fee of 185 euros is payable by each party to the Centre. A fee of 148 euros is payable to the Centre by a party causing a postponement of any hearing before a single arbitrator. A fee of 259 euros is payable to the Centre by a party causing a postponement of any hearing before an arbitral tribunal composed of more than one arbitrator. An arbitrator's fee would also be due namely: from 0 euros to 1,165 euros - 117 euros; from 1,165 euros to 3,494 euros 280 euros; above 3,494 euros up to 11,647 euros 419 euros; above 11,647 euros to 23,294 euros 699 euros; above 23,294 euros to 46,587 euros 1,048 euros; above 46,587 euros to 116,468 euros 1,863 euros; above 116,468 euros to 232,937 euros 2,912 euros; above 232,937 euros to 582,343 euros 4,659 euros; above 582,343 euros to 1,164,687 euros 8,153 euros; above 1,164,687 euros to 2,329,373 euros 11,647 euros; in excess of 2,329,373 euros 11,647 euros and 0.3% of any amount in excess of 2,329,373 (these fees apply in the absence of any agreement between the arbitral tribunal and the parties).

A fee of 116 euros for the transfer of proceedings from the courts or another tribunal to arbitration applies both to domestic and to international arbitration.

The following service costs also apply both in case of domestic and international arbitration:

- (a) 8 euros per hour for secretarial services.
- (b) 5 euros per page for transcription of evidence
- (c) 2 euros each for cassettes for recording evidence
- (d) 0.23 euros per page for photocopies
- (e) 0.46 euro per page for authentic copies of the original.
- (f) postage expenses at cost
- (g) 12 euros per hour for use of the Malta Arbitration Centre
- (h) subpoena of witnesses according to the applicable court tariff
- (i) catering at cost

- (j) translation at cost
- (k) telecommunications at cost
- (l) administration fee for total deposits - 1% or 2 euros whichever is the greater
- (m) service of documents and other acts excluding the notice of arbitration - 12 euros per document or 5 euros if by electronic means.
- (n) registration of awards issued in accordance with Article 46(4) and (5) of the Act - Consent Awards - 50% of the filing fee of domestic optional arbitration with a minimum fee of 37 euros
- (o) registration of foreign arbitral awards - the registration fee for foreign arbitral awards shall be equal to that payable for the proceedings in the Courts of law for the same purpose (i.e. ad valorem if the foreign arbitral award has established a sum to be paid or 582 euros if no such amount is established) subject to a minimum fee of 37 euros
- (p) registration of an additional award 11 euros
- (q) registration of a partial award 9 euros
- (r) confirmation of documents on oath - 7 euros per document

These tariffs are based on the Arbitration Rules Legal Notice 421 of 2004 and are published on the Malta Arbitration Centre website on <http://www.mac.com.mt/>.

2.6 Costs of legal aid proceedings

Article 920 provides that the person admitted to proceed with the benefit of legal aid shall be exempt from the payment of all fees and from giving security for costs; but the plaintiff, or the defendant setting up a counter-claim, as the case may be, shall give a juratory caution to pay the costs, if able to do so, to the opposite party, in case it shall be so adjudged. It also provides that where the party proceeding with the benefit of legal aid is cast in costs, it shall in no case be lawful for the registrar to claim from the successful party the fees due to the registry. However in the case of cross-border disputes it is provided that legal aid shall also cover the costs of the opposing party had the recipient lost the case and would be so obliged to pay such costs if he were domiciled or habitually resident in the Member State in which the court is sitting.

2.7 Costs of fast track proceedings

Special summary proceedings are provided for under Article 167 of the Code of Organisation and Civil Procedure. It applies to an action within the jurisdiction of the superior courts where the demand is solely (a) for the recovery of a debt, certain, liquidated and due, not consisting in the performance of an act or (b) for the eviction of any person from any urban or rural tenement, with or without a claim for ground-rent, rent or any other consideration due or by way of damages for any compensation, up to the date of the surrender of the tenement. In these circumstances the plaintiff can request the court to give judgment without proceeding to trial. The defendant is notified and unless he makes an appearance and shows the court that he has good reason to object to the plaintiff's claim, the court will deliver judgment in favour of the plaintiff.

However in the case of special summary proceedings the same rules for the determination of costs and the same fees are applicable as normal proceedings.

2.8 Costs of group actions' proceedings

Maltese law of procedure does not provide for the possibility of filing a group action. However Article 161(3) of the Code of Organisation and Civil Procedure provides that two or more plaintiffs may bring their actions by one sworn application or by one not sworn application as the case may be, if the actions are connected in respect of the subject matter thereof or if the decision of one of the actions might affect the decision of the other action or actions and the evidence in support of one action is, generally, the same to be produced in the other action or actions. The cause and subject matter of the actions shall be clearly and specifically stated in respect of each plaintiff. In sub-article (4) of the said Article it is provided that any of the actions so brought together shall be tried separately at the request of a plaintiff with regard to his action; and the court may also order that any action be tried separately when it is not expedient that the actions of all the plaintiffs be tried together. Any such order may be made at any stage of the proceedings before final judgment.

The costs of such actions joined together are calculated on the basis of the same rules as if the actions were separate and so no difference in costs result.

2.9 Payment

The accepted methods of payment both for court proceedings and for arbitration proceedings are either by cash or by cheque. No VAT is applicable to these costs.

2.10 E-justice

There are no online court proceedings or ADR proceedings and e-mailing is not authorised either. Video conferences may be organised in certain cases at no extra cost.

2.11 Impact of the number of hearings on costs

There is no limited number of hearings. However the judge has the power to impose a limit on the number of hearings for the evidence to be produced. If these hearings are held in front of judicial referees, imposing a limit on the number of such hearings would reduce the costs as this is the only case where lawyers' fees are paid per hearing.

2.12 Transcription costs

Transcription costs are included in the filing fee and as such are payable when the action is filed as provided in paragraph 2 of Tariff A of Schedule A to the Code of Organisation and Civil Procedure. So no extra fee is charged irrespective of the amount of transcription which would be involved.

Transcription is carried out by court employees. Transcriptions are required for the testimony of witnesses and with regards to other court proceedings it depends on whether in the opinion of the court such proceeding should be transcribed.

2.13 Conclusions and recommendations

The main source of information on court fees, excluding lawyers and legal procurators, is the published legislation. No distinction is made between domestic and cross-border litigation and the same costs apply. Such costs may be reimbursed to the winning party by the losing party if the Court casts the latter in costs in the final judgment.

Legislation contains general as opposed to case-specific information regarding such costs. Though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to make any calculations as to the costs involved in one's particular case. Such costs may be dissuasive in themselves, particularly in the case of actions with a low value, but the lack of transparency makes them even more dissuasive as the public would not be in a position to determine to verify and quantify such costs due to lack of information. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the costs involved in one's particular case.

3 Lawyers' consulting and representation fees

3.1 General

Lawyers' consulting and representation fees are regulated by Tariff E of Schedule A to the Code of Organisation and Civil Procedure, by the Small Claims Tribunal Rules Legal Notice 145 of 1995 in the case of proceedings before the Small Claims Tribunal, by the Rent Regulation Board Regulation Legal Notice 155 of 1996 in the case of proceedings before the Rent Regulation Board and by the Arbitration Rules Legal Notice 421 of 2004 in the case of arbitration proceedings. The Code and the said Legal Notices are published on the website of the Ministry of Justice. Access to such website is free. Information on the said fees may also be accessed through the Registry of Courts for free or from a lawyer or a legal procurator, in which case a fee may be payable which is generally under 20 euros. Such information is not

published on private websites, brochures and is not available from information centres.

In all types of litigation before the Courts a lawyer is needed in virtue of Article 178 of the Code of Organisation and Civil Procedure which provides that the written pleadings and the applications whether sworn or not shall be signed by the advocate and also by the legal procurator, if any. Otherwise one can appear personally or be represented by a third party in the conduct of proceedings and for the making of submissions. However written pleadings before the Courts must be signed by an advocate and a legal procurator, if any.

In cases of cross-border litigation, parties must use lawyers who practice in the competent jurisdiction's country as Article 79 of the Code of Organisation and Civil Procedure provides that "No person may exercise the profession of advocate in the courts of justice in Malta without the authority of the President of Malta granted by warrant under the Public Seal of Malta".

With regards to lawyers' fees it is the Registrar of Courts who determines the lawyers' fees, who is a government official. As outlined above such fees are organised according to a Schedule to the Code of Organisation and Civil Procedure or to the other relevant special legislation mentioned above. Such fees are based on the value of the claim or on the basis of a fixed amount prescribed in the form of a maximum and a minimum amount to be charged. Lawyers' fees are also based on acts of procedure performed by them. However lawyers' fees do not depend on the outcome of the case (contingency fees) and agreements whereby lawyers' fees are calculated on the basis of a percentage of the outcome of a case are illegal. On an average lawyers' fees on a per hour basis range between 0 and 49 euros. Also on average lawyers' fees would amount to 600 euros though this amount may vary greatly depending on the circumstances of the case. VAT is applicable to such fees at the rate of 18%.

3.2 Fees depending on the nature of the litigation

There are some general rules with regards to the fees due to lawyers in virtue of Tariff E of Schedule A to the Code of Organisation and Civil Procedure.

(a) For the drafting of a judicial letter, whether filed or not - 23 euros

(b) Any judicial letter filed under articles 166A and 253 (b) and (e) of Chapter 12 of the Laws of Malta (amount must exceed 11,647 euros and it must be certain, liquidated and due) where such judicial letter becomes an executive title (if not contested within 30 days from filing), the fee shall be 40% of the amount fixed for a definitive judgement, however where a note of admission of a claim is filed such fee shall be reduced to 30%.

(b) For any application filed - fee of 12 to 59 euros.

(b) For every note of submission filed in court - fee of 47 to 233 euros.

(c) For the drafting of an affidavit - fee from 5 to 35 euros

(d) For each application for summoning of witnesses - fee of 7 euros.

(e) For every attendance before a referee or before a judicial assistant, if the attendance does not last more than one hour and a half 24 euros (28 euros if the attendance takes place outside Valletta), if it lasts more than one hour and a half, and provided this circumstance is expressly noted in the proces verbal signed by the referee, the judicial assistant or the deputy registrar, as the case may be, the fee shall be increased by 24 euros in respect of each additional hour or part thereof.

(f) If the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, there shall be payable in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros. Otherwise for any other necessary declaration containing the decision of any point of law or of fact a fee of 23 euros to 233 euros would be due. In the case of actions for alimony a fee of one half per centum on the amount of alimony payable under the judgement for a period of ten years is due, provided that if the order refers to provisional maintenance the fee shall be from 12 euros to 36 euros.

Another specific rule concerns the child custody right, which if included in an action relating to the separation of married persons, then irrespective of the number of declarations involved, there shall be allowed a fee from 83 euros to 178 euros.

For each decree in the cause a fee from 12 euros to 119 euros is payable. The fees concerning decisions on a point of law or on a point of fact and the fee for decrees are increased by one third in the case of appeal.

There would also be a fee for legal procurators who shall receive one third of the fees established for advocates as regards those judicial acts which bear their signature together with that of an advocate, and as regards attendance before a referee or before a judicial assistant. For those judicial acts which do not require also the signature of an advocate and which are signed only by a legal procurator, the fee shall be as that due to an advocate.

It is also provided that in every case where a fluctuating fee is established by a minimum and a maximum, the fee payable in a particular instance shall be established by the Registrar. Furthermore, it is also provided that the taxation of fees due to any lawyer who has rendered professional services to a person admitted to the benefit of legal aid the fee shall always be assessed at the minimum.

The fees established do not apply as between an advocate or a legal procurator and his client, where a fee, or the basis on which the fee is to be determined is agreed between them which is different from that established, so long as the basis is not one which is prohibited by law. This does not apply where the fees are to be paid by the other party. Nevertheless with regards to certain matters, among which is the children custody right, one may not fix by agreement the fees in an amount higher or lower than those established.

If the claim is below 3494 euros and the action is brought before the Small Claims Tribunal, the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed according to the Tariff in the Code of Organisation and Civil Procedure. In the case of appeal from the Small Claims Tribunal the fee due to lawyers and legal

procurators shall be that of 175 euros in virtue of the Small Claims Tribunal Rules Legal Notice 145 of 1995.

If the claim is below If the claim is below 3494 euros and the action is brought before the Consumer Claims Tribunal, the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed according to the Tariff in the Code of Organisation and Civil Procedure. In the case of appeal from the Small Claims Tribunal the fee due to lawyers and legal procurators shall be that of 175 euros in virtue of the Small Claims Tribunal Rules Legal Notice 145 of 1995.

Advocates and legal procurators, when required to appear before the Court of Magistrates (Malta), or before the Court of Magistrates (Gozo) in its inferior jurisdiction (the amount of the claim does not exceed 11,647 euros), are entitled to the following fees in virtue of paragraph 43 of Tariff E to Schedule A to the Code of Organisation and Civil Procedure:

(i) For every decision of any point of law or of fact contained in a judgement: where the amount in issue does not exceed 1,165 euros 47 euros or 10% whichever is the greater; in respect of any value in excess of 1,165 euros, per 233 euros 7 euros.

(ii) For the drawing up of an application or notice, the filing of which has not taken place 23 euros.

(iii) For each subpoena and relative application 7 euros.

(iv) For every warrant, counter-warrant, application or note of consent 12 euros.

(v) For a note of registration of a judgment or of any other executive title 12 euros

(vi) For each attendance before a referee or a judicial assistant and for each attendance in faciem loci 23 euros.

With regards to leases which were created before 1995, claims to resume possession of the leased property or to change the conditions of the lease including

the amount of rent are brought before the Rent Regulation Board in which case the following fees shall be due to lawyers and legal procurators in virtue of the Rent Regulation Board Regulations Legal Notice 155 of 1996:

(i) in the case of assessment of rent in respect of a dwelling-house let as unfurnished which is an old house within the meaning of article 2 of the Rent Restriction (Dwelling Houses) Ordinance, and in which no structural alteration and/or addition has been made after the 1st day of April, 1939, a fee of two euros;

(ii) in the case of assessment of rent in respect of any other tenement, a fee equal to one month's rent or a fee of 5 euros, whichever shall be the greater amount;

(iii) in any case for the resuming of possession of premises, a fee equal to one month's rent or a fee of 12 euros, whichever shall be the greater amount;

(iv) in respect of any act filed before the said Board, not being an application filed in accordance with articles 7, 8, 14 or 41, or a reply filed in accordance with article 29, a fee chargeable in accordance with Tariff E of Schedule A annexed to the Code of Organization and Civil Procedure shall apply, namely, if the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, there shall be payable in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros. Otherwise for any other necessary declaration containing the decision of any point of law or of fact 23 euros to 233 euros.

There is no specific cost in cross border litigation.

3.3 Fees depending on the type of lawsuit or proceedings

The same rules are applicable on the basis of the type of lawsuit or proceedings. There are some general rules with regards to the fees due to lawyers in virtue of Tariff E of Schedule A to the Code of Organisation and Civil Procedure:

(a) For the drafting of a judicial letter, whether filed or not - 23 euros

(b) Any judicial letter filed under articles 166A and 253 (b) and (e) of Chapter 12 of the Laws of Malta (amount must exceed 11,647 euros and it must be certain, liquidated and due) where such judicial letter becomes an executive title (if not contested within 30 days from filing), the fee shall be 40% of the amount fixed for a definitive judgement, however where a note of admission of a claim is filed such fee shall be reduced to 30%.

(b) For any application filed - fee of 12 to 59 euros.

(b) For every note of submission filed in court - fee of 47 to 233 euros.

(c) For the drafting of an affidavit - fee from 5 to 35 euros

(d) For each application for summoning of witnesses - fee of 7 euros.

(e) For every attendance before a referee or before a judicial assistant, if the attendance does not last more than one hour and a half 24 euros (28 euros if the attendance takes place outside Valletta), if it lasts more than one hour and a half, and provided this circumstance is expressly noted in the proces verbal signed by the referee, the judicial assistant or the deputy registrar, as the case may be, the fee shall be increased by 24 euros in respect of each additional hour or part thereof.

(f) If the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, there shall be payable in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros. Otherwise for any other necessary declaration containing the decision of any point of law or of fact a fee of 23 euros to 233 euros would be due. In the case of

actions for alimony a fee of one half per centum on the amount of alimony payable under the judgement for a period of ten years is due, provided that if the order refers to provisional maintenance the fee shall be from 12 euros to 36 euros. Another specific rule concerns the child custody right, which if included in an action relating to the separation of married persons, then irrespective of the number of declarations involved, there shall be allowed a fee from 83 euros to 178 euros.

For each decree in the cause a fee from 12 euros to 119 euros is payable. The fees concerning decisions on a point of law or on a point of fact and the fee for decrees are increased by one third in the case of appeal.

There would also be a fee for legal procurators who shall receive one third of the fees established for advocates as regards those judicial acts which bear their signature together with that of an advocate, and as regards attendance before a referee or before a judicial assistant. For those judicial acts which do not require also the signature of an advocate and which are signed only by a legal procurator, the fee shall be as that due to an advocate.

It is also provided that in every case where a fluctuating fee is established by a minimum and a maximum, the fee payable in a particular instance shall be established by the Registrar. Furthermore, it is also provided that the taxation of fees due to any lawyer who has rendered professional services to a person admitted to the benefit of legal aid the fee shall always be assessed at the minimum.

The fees established do not apply as between an advocate or a legal procurator and his client, where a fee, or the basis on which the fee is to be determined is agreed between them which is different from that established, so long as the basis is not one which is prohibited by law. This does not apply where the fees are to be paid by the other party. Nevertheless with regards to certain matters, among which is the children custody right, one may not fix by agreement the fees in an amount higher or lower than those established.

If the claim is below 3494 euros and the action is brought before the Small Claims Tribunal, the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed

according to the Tariff in the Code of Organisation and Civil Procedure. In the case of appeal from the Small Claims Tribunal the fee due to lawyers and legal procurators shall be that of 175 euros in virtue of the Small Claims Tribunal Rules Legal Notice 145 of 1995.

If the claim is below 3494 euros and the action is brought before the Consumer Claims Tribunal, the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed according to the Tariff in the Code of Organisation and Civil Procedure. In the case of appeal from the Small Claims Tribunal the fee due to lawyers and legal procurators shall be that of 175 euros in virtue of the Small Claims Tribunal Rules Legal Notice 145 of 1995.

Advocates and legal procurators, when required to appear before the Court of Magistrates (Malta), or before the Court of Magistrates (Gozo) in its inferior jurisdiction (the amount of the claim does not exceed 11,647 euros), are entitled to the following fees in virtue of paragraph 43 of Tariff E to Schedule A to the Code of Organisation and Civil Procedure:

- (i) For every decision of any point of law or of fact contained in a judgement: where the amount in issue does not exceed 1,165 euros 47 euros or 10% whichever is the greater; in respect of any value in excess of 1,165 euros, per 233 euros 7 euros.
- (ii) For the drawing up of an application or notice, the filing of which has not taken place 23 euros.
- (iii) For each subpoena and relative application 7 euros.
- (iv) For every warrant, counter-warrant, application or note of consent 12 euros.
- (v) For a note of registration of a judgment or of any other executive title 12 euros
- (vi) For each attendance before a referee or a judicial assistant and for each attendance in faciem loci 23 euros.

With regards to leases which were created before 1995, claims to resume possession of the leased property or to change the conditions of the lease including the amount of rent are brought before the Rent Regulation Board in which case the following fees shall be due to lawyers and legal procurators in virtue of the Rent Regulation Board Regulations Legal Notice 155 of 1996:

(i) in the case of assessment of rent in respect of a dwelling-house let as unfurnished which is an old house within the meaning of article 2 of the Rent Restriction (Dwelling Houses) Ordinance, and in which no structural alteration and/or addition has been made after the 1st day of April, 1939, a fee of two euros;

(ii) in the case of assessment of rent in respect of any other tenement, a fee equal to one month's rent or a fee of 5 euros, whichever shall be the greater amount;

(iii) in any case for the resuming of possession of premises, a fee equal to one month's rent or a fee of 12 euros, whichever shall be the greater amount;

(iv) in respect of any act filed before the said Board, not being an application filed in accordance with articles 7, 8, 14 or 41, or a reply filed in accordance with article 29, a fee chargeable in accordance with Tariff E of Schedule A annexed to the Code of Organization and Civil Procedure shall apply, namely, if the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, there shall be payable in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros. Otherwise for any other necessary declaration containing the decision of any point of law or of fact 23 euros to 233 euros.

There is no specific cost in cross border litigation.

3.4 Fees depending on the value of the claim

There are some general rules with regards to the fees due to lawyers in virtue of Tariff E of Schedule A to the Code of Organisation and Civil Procedure:

(a) For the drafting of a judicial letter, whether filed or not - 23 euros

(b) Any judicial letter filed under articles 166A and 253 (b) and (e) of Chapter 12 of the Laws of Malta (amount must exceed 11,647 euros and it must be certain, liquidated and due) where such judicial letter becomes an executive title (if not contested within 30 days from filing), the fee shall be 40% of the amount fixed for a definitive judgement, however where a note of admission of a claim is filed such fee shall be reduced to 30%.

(b) For any application filed - fee of 12 to 59 euros.

(b) For every note of submission filed in court - fee of 47 to 233 euros.

(c) For the drafting of an affidavit - fee from 5 to 35 euros

(d) For each application for summoning of witnesses - fee of 7 euros.

(e) For every attendance before a referee or before a judicial assistant, if the attendance does not last more than one hour and a half 24 euros (28 euros if the attendance takes place outside Valletta), if it lasts more than one hour and a half, and provided this circumstance is expressly noted in the proces verbal signed by the referee, the judicial assistant or the deputy registrar, as the case may be, the fee shall be increased by 24 euros in respect of each additional hour or part thereof.

(f) If the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, there shall be payable in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros. Otherwise for any other necessary declaration containing the decision of any point of law or of fact a fee of 23 euros to 233 euros would be due. In the case of actions for alimony a fee of one half per centum on the amount of alimony payable

under the judgement for a period of ten years is due, provided that if the order refers to provisional maintenance the fee shall be from 12 euros to 36 euros. Another specific rule concerns the child custody right, which if included in an action relating to the separation of married persons, then irrespective of the number of declarations involved, there shall be allowed a fee from 83 euros to 178 euros.

For each decree in the cause a fee from 12 euros to 119 euros is payable. The fees concerning decisions on a point of law or on a point of fact and the fee for decrees are increased by one third in the case of appeal.

There would also be a fee for legal procurators who shall receive one third of the fees established for advocates as regards those judicial acts which bear their signature together with that of an advocate, and as regards attendance before a referee or before a judicial assistant. For those judicial acts which do not require also the signature of an advocate and which are signed only by a legal procurator, the fee shall be as that due to an advocate.

It is also provided that in every case where a fluctuating fee is established by a minimum and a maximum, the fee payable in a particular instance shall be established by the Registrar. Furthermore, it is also provided that the taxation of fees due to any lawyer who has rendered professional services to a person admitted to the benefit of legal aid the fee shall always be assessed at the minimum.

The fees established do not apply as between an advocate or a legal procurator and his client, where a fee, or the basis on which the fee is to be determined is agreed between them which is different from that established, so long as the basis is not one which is prohibited by law. This does not apply where the fees are to be paid by the other party. Nevertheless with regards to certain matters, among which is the children custody right, one may not fix by agreement the fees in an amount higher or lower than those established.

If the claim is below 3494 euros and the action is brought before the Small Claims Tribunal, the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed according to the Tariff in the Code of Organisation and Civil Procedure. In the case

of appeal from the Small Claims Tribunal the fee due to lawyers and legal procurators shall be that of 175 euros in virtue of the Small Claims Tribunal Rules Legal Notice 145 of 1995.

If the claim is below 3494 euros and the action is brought before the Consumer Claims Tribunal, the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed according to the Tariff in the Code of Organisation and Civil Procedure. In the case of appeal from the Small Claims Tribunal the fee due to lawyers and legal procurators shall be that of 175 euros in virtue of the Small Claims Tribunal Rules Legal Notice 145 of 1995.

Advocates and legal procurators, when required to appear before the Court of Magistrates (Malta), or before the Court of Magistrates (Gozo) in its inferior jurisdiction (the amount of the claim does not exceed 11,647 euros), are entitled to the following fees in virtue of paragraph 43 of Tariff E to Schedule A to the Code of Organisation and Civil Procedure:

(i) For every decision of any point of law or of fact contained in a judgement: where the amount in issue does not exceed 1,165 euros 47 euros or 10% whichever is the greater; in respect of any value in excess of 1,165 euros, per 233 euros 7 euros.

(ii) For the drawing up of an application or notice, the filing of which has not taken place 23 euros.

(iii) For each subpoena and relative application 7 euros.

(iv) For every warrant, counter-warrant, application or note of consent 12 euros.

(v) For a note of registration of a judgment or of any other executive title 12 euros

(vi) For each attendance before a referee or a judicial assistant and for each attendance in faciem loci 23 euros.

With regards to leases which were created before 1995, claims to resume possession of the leased property or to change the conditions of the lease including the amount of rent are brought before the Rent Regulation Board in which case the following fees shall be due to lawyers and legal procurators in virtue of the Rent Regulation Board Regulations Legal Notice 155 of 1996:

(i) in the case of assessment of rent in respect of a dwelling-house let as unfurnished which is an old house within the meaning of article 2 of the Rent Restriction (Dwelling Houses) Ordinance, and in which no structural alteration and/or addition has been made after the 1st day of April, 1939, a fee of two euros;

(ii) in the case of assessment of rent in respect of any other tenement, a fee equal to one month's rent or a fee of 5 euros, whichever shall be the greater amount;

(iii) in any case for the resuming of possession of premises, a fee equal to one month's rent or a fee of 12 euros, whichever shall be the greater amount;

(iv) in respect of any act filed before the said Board, not being an application filed in accordance with articles 7, 8, 14 or 41, or a reply filed in accordance with article 29, a fee chargeable in accordance with Tariff E of Schedule A annexed to the Code of Organization and Civil Procedure shall apply, namely, if the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, there shall be payable in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros. Otherwise for any other necessary declaration containing the decision of any point of law or of fact 23 euros to 233 euros.

There is no specific cost in cross border litigation.

3.5 Fees depending on the jurisdiction

At first instance if the claim is below 3494 euros and the action is brought before the Small Claims Tribunal, the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed according to the Tariff in the Code of Organisation and Civil Procedure. In the case of appeal from the Small Claims Tribunal the fee due to lawyers and legal procurators shall be that of 175 euros in virtue of the Small Claims Tribunal Rules Legal Notice 145 of 1995.

If the claim is below 3494 euros and the action concerns a consumer claim, the action may be brought before the Consumer Claims Tribunal, in which case the fee for advocates and legal procurators is of 82 euros if the claim does not exceed 582 euros while if it exceeds 582 euros the fee shall be taxed according to the Tariff in the Code of Organisation and Civil Procedure. In the case of appeal from the Small Claims Tribunal the fee due to lawyers and legal procurators shall be that of 175 euros in virtue of the Consumer Claims Tribunal Rules Legal Notice 8 of 1996.

Advocates and legal procurators, when required to appear before the Court of Magistrates (Malta), or before the Court of Magistrates (Gozo) in its inferior jurisdiction (the amount of the claim does not exceed 11,647 euros), shall be entitled to the following fees:

- (i) For every decision of any point of law or of fact contained in a judgement: where the amount in issue does not exceed 1,165 euros 47 euros or 10% whichever is the greater; in respect of any value in excess of 1,165 euros, per 233 euros 7 euros.
- (ii) For the drawing up of an application or notice, the filing of which has not taken place 23 euros.
- (iii) For each subpoena and relative application 7 euros.
- (iv) For every warrant, counter-warrant, application or note of consent 12 euros.
- (v) For a note of registration of a judgment or of any other executive title 12 euros
- (vi) For each attendance before a referee or a judicial assistant and for each attendance in faciem loci 23 euros.

With regards to leases which were created before 1995, claims to resume possession of the leased property or to change the conditions of the lease including the amount of rent are brought before the Rent Regulation Board in which case the following fees shall be due to lawyers and legal procurators in virtue of the Rent Regulation Board Regulations Legal Notice 155 of 1996:

(i) in the case of assessment of rent in respect of a dwelling-house let as unfurnished which is an old house within the meaning of article 2 of the Rent Restriction (Dwelling Houses) Ordinance, and in which no structural alteration and/or addition has been made after the 1st day of April, 1939, a fee of two euros;

(ii) in the case of assessment of rent in respect of any other tenement, a fee equal to one month's rent or a fee of 5 euros, whichever shall be the greater amount;

(iii) in any case for the resuming of possession of premises, a fee equal to one month's rent or a fee of 12 euros, whichever shall be the greater amount;

(iv) in respect of any act filed before the said Board, not being an application filed in accordance with articles 7, 8, 14 or 41, or a reply filed in accordance with article 29, a fee chargeable in accordance with Tariff E of Schedule A annexed to the Code of Organization and Civil Procedure shall apply, namely, if the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, there shall be payable in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros. Otherwise for any other necessary declaration containing the decision of any point of law or of fact 23 euros to 233 euros.

There are some general costs applicable both to the **Civil Court** and the **Court of Appeal** in virtue of Tariff E to Schedule A to the Code of Organisation and Civil Procedure:

(a) For the drafting of a judicial letter, whether filed or not - 23 euros

(b) Any judicial letter filed under articles 166A and 253 (b) and (e) of Chapter 12 of the Laws of Malta (amount must exceed 11,647 euros and it must be certain, liquidated and due) where such judicial letter becomes an executive title (if not contested within 30 days from filing), the fee shall be 40% of the amount fixed for a definitive judgement, however where a note of admission of a claim is filed such fee shall be reduced to 30%.

(c) For the drafting of an affidavit - 5 euros to 35 euros

(d) For any application filed - from 12 to 59 euros.

(e) For every note of submission filed in court - from 47 euros to 233 euros.

(f) For each application for summoning of witnesses - 7 euros

(g) For every attendance before a referee or before a judicial assistant, if the attendance does not last more than one hour and a half 24 euros (28 euros if the attendance takes place outside Valletta), if it lasts more than one hour and a half, and provided this circumstance is expressly noted in the proces verbal signed by the referee, the judicial assistant or the deputy registrar, as the case may be, the fee shall be increased by 24 euros in respect of each additional hour or part thereof.

(h) For each decree in the cause from 12 euros to 119 euros.

For any necessary declaration containing the decision of any point of law or of fact in the Civil Court a fee of 23 euros to 233 euros is due or where the judgement contains a declaration containing a decision of any point of law or of fact which concerns a value determinate or determinable according to law or from the records of the proceedings, in respect of the first 1,185 euros or part thereof 47 euros minimum or 10% whichever is the greater; in respect of any value in excess of the first 1,185 euros up to 23,702 euros per 237 euros 7 euros; in respect of any value in excess of 23,702 euros per 237 euros 2 euros.

The fees concerning decisions on a point of law or on a point of fact and the fee for decrees applicable to the Civil Court are increased by one third in the case of appeal.

In the case of alternative dispute resolution the following fees are due to lawyers:

If the value of the claim does not exceed 2,329 euros - 151 euros;
if the claim exceeds 2,329 euros but does not exceed 3,494 euros - 186 euros;
if it exceeds 3,494 euros but does not exceed 4,659 euros 221 euros;
if it exceeds 4,659 euros but does not exceed 5,823 euros - 256 euros;
if it exceeds 5,823 euros but does not exceed 6,988 euros - 291 euros;
if it exceeds 6,988 euros but does not exceed 11,647 euros - 431 euros;
if it exceeds 11, 647 euros but does not exceed 18,635 euros - 641 euros;
if it exceeds 18,635 euros but does not exceed 23,294 euros - 780 euros;
if it exceeds 23,294 euros but does note exceed 46,587 euros - 1,013 euros;
if it exceeds 46,587 euros but does not exceed 69,881 euros - 1,246 euros;
if it exceeds 69,881 euros but does not exceed 93,175 euros - 1,712 euros;
if it exceeds 93,175 euros but does not exceed 232,937 euros - 2,877 euros;
if it exceeds 232,937 - 23,841 euros

In the case of ADR it is provided that legal representation or assistance fees may be agreed between the representative or assistant and the client and in the absence of any such agreement, the tariffs applicable shall be the ones prescribed. In the case of Short Form Arbitrations, representation or assistance fees that the unsuccessful party may be condemned to pay notwithstanding any agreement reached between the representative or assistant and his client will not exceed 116 euros. Provided that if in the opinion of the arbitral tribunal as stated in the award, there exist special circumstances which may merit a higher fee, the arbitral tribunal may exceed such sum in condemning the unsuccessful party to costs.

3.6 Legal aid cases

As regards the costs covered by legal aid Article 920 provides that the person admitted to proceed with the benefit of legal aid shall be exempt from the payment of all fees and from giving security for costs; but the plaintiff, or the defendant setting up a counter-claim, as the case may be, shall give a juratory caution to pay the costs, if able to do so, to the opposite party, in case it shall be so adjudged. It also provides that where the party proceeding with the benefit of legal aid is cast in costs, it shall in no case be lawful for the registrar to claim from

the successful party the fees due to the registry. However in the case of cross-border disputes it is provided that legal aid shall also cover the costs of the opposing party had the recipient lost the case and would be so obliged to pay such costs if he were domiciled or habitually resident in the Member State in which the court is sitting. Furthermore, it is also provided that with regards to the taxation of fees due to any lawyer who has rendered professional services to a person admitted to the benefit of legal aid the fee shall always be assessed at the minimum.

3.7 Contingency fees

Lawyers' fees do not depend on the outcome of the case (contingency fees) and agreements whereby lawyers' fees are calculated on the basis of a percentage of the outcome of a case are illegal.

3.8 Payment

Fees are generally payable following definitive judgment or following the withdrawal of the cause. Payment is made either by cash or by cheque.

3.8.1 Retainer

In the case of internal disputes it is customary for the lawyer to request advance payment of up to 50% of the fees which would eventually be taxed by the Court Registrar. On the other hand in the case of cross border disputes it is customary for the lawyer to request advance payment of all his fees.

If the lawyer is given a power of attorney to represent a foreign plaintiff before the Maltese courts it is also customary for the lawyer to request advance payment of costs which would be due to the opposing party should the case be lost. The reason for this is that if the case is lost, the lawyer as mandatory of the foreign plaintiff would become personally liable to pay costs to the winning defendant. The same applies in the case of a lawyer acting as mandatory of a foreign defendant who eventually loses the case with costs.

3.9 Conclusions and recommendations

The main source of information on lawyers' fees, excluding lawyers and legal procurators, is the published legislation. No distinction is made between domestic and cross-border litigation and the same costs apply. Such costs may be reimbursed to the winning party by the losing party if the Court casts the latter in costs in the final judgment.

Legislation contains general as opposed to case-specific information regarding such costs. Though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to make any calculations as to the costs involved in one's particular case. Such costs may be dissuasive in themselves, particularly in the case of actions with a low value, but the lack of transparency makes them even more dissuasive as the public would not be in a position to determine to verify and quantify such costs due to lack of information. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the costs involved in one's particular case.

4 Bailiff fees

4.1 General

Bailiff fees are regulated by paragraph 6 of Tariff A and by Tariff D of Schedule A to the Code of Organisation and Civil Procedure which is published on the website of the Ministry of Justice. This website may be accessed for free. Information regarding bailiff fees may also be obtained for free by calling at the Court Registry or by calling a lawyer or a legal procurator for a fee which generally does not exceed 20 euros. However there are no private websites, brochures or information centres which provide this information.

The fees due to bailiffs are generally paid by the person requiring notification of an act of procedure. Bailiffs are usually paid on a per act basis. No VAT is applicable to bailiff fees.

4.2 Ante Judgment

Prior to judicial proceedings the intervention of a bailiff is required for the notification of acts of procedure to the opposing party and to other parties involved. In the case of service and the execution of any judicial acts, warrants and other orders given by the Courts, Judges and Magistrates the fee due to the executive officer effecting the service is that of 1 euro. If outside normal working hours the fee is of 2 euros while if the service is made to the party's legal consultant within the Court building, the fee due shall be of 2 euros but in this case it would include the registry fee as well. In other cases if the notification of any act is to be executed personally by an executive officer of the Court, in cases where the law permits that service be effected otherwise, together with the above fees there shall be payable an additional fee of 7 euros for each notification. Such fees are regulated by paragraph 6 of Tariff A of Schedule A to the Code of Organisation and Civil Procedure. Payment is made by the party requesting the notification together with the notification of the judicial act. There is not specific cost for cross border litigations.

4.3 During proceedings

During judicial proceedings the intervention of a bailiff is required in the case of service and the execution of any judicial acts, warrants and other orders given by the Courts, Judges and Magistrates. In the case of service and the execution of any judicial acts, warrants and other orders given by the Courts, Judges and Magistrates the fee due to the executive officer effecting the service is that of 1 euro. If outside normal working hours the fee is of 2 euros while if the service is made to the party's legal consultant within the Court building, the fee due shall be of 2 euros but in this case it would include the registry fee as well. In other cases if the notification of any act is to be executed personally by an executive officer of the Court, in cases where the law permits that service be effected otherwise, together with the above fees there shall be payable an additional fee of 7 euros for each notification. Such fees are regulated by paragraph 6 of Tariff A of Schedule A to the Code of Organisation and Civil Procedure. Payment is made by the party requesting the notification together with the notification of the judicial act. There is not specific cost for cross border litigations.

4.4 Post proceedings

Once a final decision is rendered the intervention of a bailiff is required for the execution of executive warrants. The fee due is that of 7 euros for notification and 35 euros if the bailiff is required to effect service outside working hours. Payment is made by the party requesting the execution when the issue of the executive warrant is requested. Such fees are regulated by Tariff D of Schedule A to the Code of Organisation and Civil Procedure. There is no specific cost for cross border litigations.

4.5 Payment

Payment is made either in cash or by means of a cheque.

4.5.1 Retainer

A retainer is not applicable in the case of bailiffs fees.

4.6 Legal aid cases

As regards the costs covered by legal aid Article 920 provides that the person admitted to proceed with the benefit of legal aid shall be exempt from the payment of all fees and from giving security for costs; but the plaintiff, or the defendant setting up a counter-claim, as the case may be, shall give a juratory caution to pay the costs, if able to do so, to the opposite party, in case it shall be so adjudged. It also provides that where the party proceeding with the benefit of legal aid is cast in costs, it shall in no case be lawful for the registrar to claim from the successful party the fees due to the registry. However in the case of cross-border disputes it is provided that legal aid shall also cover the costs of the opposing party had the recipient lost the case and would be so obliged to pay such costs if he were domiciled or habitually resident in the Member State in which the court is sitting.

4.7 Conclusions and recommendations

The main source of information on bailiffs' fees, excluding lawyers and legal procurators, is the published legislation. This contains general as opposed to case-specific information regarding such costs. Thus though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to determine what services may be required from bailiffs in one's particular case and how to calculate the total bailiffs fees applicable. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the costs involved in one's particular case.

5 Expert

5.1 General

Information on expert assessment costs is available on the website of the Ministry of Justice where the Code of Organisation and Civil Procedure is published which regulates the fees due to experts in judicial proceedings. There are no private websites, brochures or information centres from where one can access the said information. Another source of such information is the Registry of Courts.

The list of experts is not readily available for clients. There is no national organization to contact in order to obtain a list of experts. Experts are generally appointed when the Court is of the opinion that expert evidence is required. The Court decides who is to be considered as an expert on a particular issue.

5.2 Fees

Experts and their fees are regulated by Schedule A to the Code of Organisation and Civil Procedure, in particular by Tariff G of such Schedule with regard to fees payable to accountants and other referees and Tariff K with regard to fees payable to architects.

The compensation due to experts is determined by the Registrar, who is a government official, on the basis of Tariff G and Tariff K of Schedule A to the Code of Organisation and Civil Procedure. Experts need not be accredited by the courts before they can act as experts in litigation.

5.3 Payment

VAT is applicable to expert fees at the rate of 18%. Payment may be made either by cash or by means of a cheque. There are no different expert compensation systems. The fees are calculated either on the basis of a flat fee, on the basis of a percentage or at an hourly rate in accordance with the applicable Tariffs of the Code of Organisation and Civil Procedure.

Paragraph 1 of Tariff G provides that the fees payable to accountants is of 1% on the amount of the subject matter of the references, subject to a minimum of 12 euros and a maximum of 2,329 euros.

Paragraph 2 of Tariff G provides that to other experts for any valuation the fee due is the following: on the first 1165 euros or part thereof 12 euros; on any further amount over 1165 euros, for every 233 euros or part thereof 2 euros. Provided that the fee shall in no case exceed 1165 euros.

Paragraph 3 of Tariff G provides that the fees prescribed above shall include the remuneration for making the report, accounts and statements, for holding sittings, and for attendance in court and elsewhere where necessary, but they shall not include the expense necessary for carrying out the reference.

Paragraph 4 of Tariff G provides that where, owing to the special circumstances of the case, it appears to be just that, besides the fees above established, an additional fee be allowed to the referee or expert, it shall be in the power of the court, upon hearing the parties interested, to allow such additional fee at its discretion. Any such additional fee may be determined beforehand by the court in the decree appointing the referee or expert or by separate decree, but in no case otherwise than by decree.

With regards to fees payable to architects:

- (a) Paragraphs 1-15 of Tariff K provide that with regard to the survey of land or the valuation of immovable property a fee is established on the basis of either the size of the land or the value of the property. A fee is also established for transportation costs to a site inspection (7 euros), typing and printing minutes in the records of a case, per A4 sheet, for the first copy thereof 0.7 euros and for each additional copy thereof 0.23 euros, for the issue of each notice of a sitting or sale or site inspection to lawyers and parties 1 euro. In cases where it is agreed between the architect and the client that the fee is to be on a time basis, the fee shall be of 3 euros per hour, but when the architect requires the help of an assistant, the fee shall be increased by 1 euro per hour. Travelling allowance from Malta to Gozo and vice versa or from Gozo to Malta and vice versa 7 euros.
- (b) Paragraph 16 of Tariff K provides that the fees taxable to architects who are appointed as Court Referees for each opinion dealt with in the report shall be up to a maximum of 116 euros for each legal point decided. Any calculation or computation of an amount to be awarded as damages or compensation by the Courts shall be deemed to be an opinion, and the maximum fee taxable for such an opinion shall be 233 euros. The criterion shall be that of the work involved and never the amount assessed by the Court Referee. Provided that there shall be paid a fee to an architect appointed as a Court Referee as follows: (a) for each sitting held, (i) for the first hour or part thereof 23 euros, (ii) for each additional hour or part thereof 23 euros, (b) for each site inspection held, (i) for the first hour or part thereof 31 euros, (ii) for each additional hour or part thereof 23 euros. Paragraph 17 Tariff K provides that architects, when ordered by a Court or required by a client to appear before any judicial assistance or a court referee, or for a site inspection, shall be entitled to the following fees: (a) for the first hour or part thereof 35 euro, (b) for each additional hour or part thereof 31 euros. Paragraph 18 of Tariff K provides that the fees set forth in this Tariff shall, in all cases, be exclusive of the cost of copies of documents, travelling expenses and all other disbursements not already provided for. Paragraph 19 Tariff K provides that the expert appointed by the court shall not be entitled to any fee for services in connection with the presentation of the report or the confirming of the same on oath, but if, after he has presented the report and confirmed the same on oath, he is required to attend

in court, he shall be allowed a fee for attendance in accordance with item (f) of Schedule A to the Witnesses (Fees) Ordinance, that is, 1 euro.

An average amount on the basis of the above rules is not easily established. As seen above the fees do not depend on the nature of the litigation. Fees depend on the circumstances of the case such as number of court sittings, value involved and compensation for disbursements.

If the appointment of an expert is necessary in view of the nature of the plaintiff's claim the expert is paid provisionally by the plaintiff. However in some cases the appointment of an expert may be requested by the defendant and in this case the defendant would have to pay for the expert provisionally. The expert must be paid prior to the submission of his report. Finally in the definitive judgment the Court would adjudge who is responsible to pay costs and this includes the provisional fees payable to the expert. The court never pays for any expert fees. They are provisionally paid by the party requesting the expert and then taken into consideration in the court's award of costs.

So for example if an expert is appointed following a request by the plaintiff, or if the Court decides that an expert is necessary in order to determine the plaintiff's claim, the expert's fees would have to provisionally be paid by the plaintiff. If the plaintiff eventually wins the case with costs, the sum paid in advance to the expert would have to be reimbursed by the defendant to the plaintiff.

VAT is taxed with regards to cross-border disputes and the applicable rate is 18%.

5.4 Legal aid cases

Article 671 of the Code of Organisation and Civil Procedure provides that where one of the parties to an action has been admitted to sue or to defend with the benefit of legal aid, the referee shall be entitled to such part of the fee as may have been paid by the party not appearing with such benefit: Provided that the referee shall be entitled to claim the other part of the fee if the party not appearing with the benefit

of legal aid is condemned in costs. Where both parties appear with the benefit of legal aid, the referee, if he belongs to the class of persons mentioned in article 658, shall publish his report, although he may not have been paid the fee; and in the case of other referees, the fee will be paid by Government.

The right for assistance occurs automatically once one qualifies for the benefit of legal aid.

5.5 Reimbursement of experts' fees

Article 223 (1) of the Code of Organisation and Civil Procedure provides that every definitive judgement shall award costs against the party cast. Article 223 (3) provides that in all cases, it shall be lawful for the court to order that the costs shall not be taxed as between party and party, when either party has been cast in some of the points at issue, or when the matter at issue involves difficult points of law, or where there is any other good cause.

5.6 Practical questions

Any expert can act before the Courts. The expert is appointed by the Court on a case by case basis when in its opinion an expert opinion is required. Such expert may also be an expert from another Member State. In Malta there is no system of accreditation of experts so accreditation in another Member State is not relevant in Malta. The expert must be appointed by the Court. Experts reports produced by experts not appointed by the Maltese court may be produced as evidence in a Maltese court and will be evaluated just like any other piece of evidence. However the report must be recent enough so its evidentiary value is not diminished.

5.7 Conclusions and recommendations

The main source of information on experts' fees, excluding lawyers and legal procurators, is the published legislation. This contains general as opposed to case-specific information regarding such costs. Thus though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to determine whether experts may be required in

one's particular case and to determine the costs which would be due to experts. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the costs involved in one's particular case.

6 Translation and interpretation

6.1 General

Information regarding translation costs is available also from the website of the Ministry of Justice where the Code of Organisation and Civil Procedure is published. It may also be accessed for free from the Registry of Courts. There are no private websites, brochures or information centres from where one can acquire such information. There is also no national organisation which can be contacted in order to obtain a list of accredited translators and thus clients do not have an easy access to any list of accredited translators' names. The same thing may be said with regard to interpretation costs. In fact information on such costs may only be accessed by calling at the Registry of Courts or by accessing the Code of Organisation and Civil Procedure on the website of the Ministry of Justice. Generally when the services of an interpreter are needed in court proceedings the interpreter takes the oath but there is no list of accredited interpreters.

6.2 Translation fees

There is no general dissemination of information on translation fees and conditions. One may access such information from the Ministry of Justice Website where one may find the Code of Organisation and Civil Procedure which contains the tariff for translation. Information on the tariff for translation as prescribed in the Code of Organisation and Civil Procedure may also be achieved from the Registries of the Courts. Otherwise one may conduct a search for websites of organizations which provide translation services. Since a system of accreditation of translators does not exist, there is no national organisation which keeps a record of accredited translators and there is no one source which can provide clients with names of accredited translators. Information on translators and documents to be certified is

not easily accessible as there is no one source which can provide comprehensive information.

The regulation which applies to translators' fees is paragraph 6 of Tariff B of Schedule A to the Code of Organisation and Civil Procedure which provides that "for every translation required by law or by the Court: registry fee 35 euros and fee due to the translator or interpreter from 12 euros to 58 euros". Such compensation is determined by the Registrar of Courts, who is a government official.

Documents to be used in court proceedings need not be translated by an accredited translator. Documents not in one of Maltese official languages (Maltese or English) have to be accompanied by a translation into Maltese or English. However there is no requirement to have a translation from an accredited translator because there is no system of accreditation of translators. So the translation may be challenged through cross-examination of the translator or by producing another translator who gives evidence as to the veracity of the translation produced in Court. It is up to the Court to decide on the evidential value of the translation. translations carried out by translators in a party's Member State which is different from that where the Court is located may still translate documents which may be presented in Court. However the Court may demand proof with regards to the exactness of the translation such as by demanding the translator to take an oath as to exactness of the translation and with regards to the qualifications possessed by him.

Translators need not be accredited by the courts though before appointing translators the court may demand proof as to their qualifications and their taking an oath following presentation of the translated document as to the exactness of the translation.

With regards to the calculation of fees the language of the translation, the nature of the translation and the nature of the litigation do not have an impact on the fees due though when determining the amount which is due to the translator the Registrar may take these facts into consideration. There may be different compensation systems in the case of translators. In the case translators are engaged by the parties, the fees may be agreed between the translator and his client. In this case such fees would not be determined by the Registrar. The

translator would send a bill to his client if the fees are not determined by the Registrar.

The average amount of translation fees would range between 10 and 19 euros per page, or between 0.1 and 0.49 euros per word, excluding value added tax.

6.3 Interpretation fees

The regulation which applies to interpreters' costs is paragraph 6 of Tariff B of Schedule A to the Code of Organisation and Civil Procedure which provides that "For every translation required by law or by the Court: registry fee 35 euros and fee due to the translator or interpreter from 12 euros to 58 euros". Such fee is determined by the Registrar of Court, who is a government official. Interpreters do not need to be accredited by the Courts before they can act as interpreters in litigation but as provided in Article 21 of the Code of Organisation and Civil Procedure the interpreter is required to take an oath before commencing his task. Article 21 provides that "The Maltese language shall be the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language. (2) Where any party does not understand the language in which the oral proceedings are conducted, such proceedings shall be interpreted to him either by the court or by a sworn interpreter".

The language of interpretation, the nature of the interpretation and the nature of the litigation do not have an impact on the fees due to the interpreter but the Registrar may take this into consideration when establishing the fees due to interpreters.

6.4 Payment

VAT applies both to translation and to interpretation fees at the rate of 18%. This applies also to cross-border disputes. Generally payment is made in cash or by means of cheque. There are no different compensation systems. The fees are established by the Registrar of Courts.

The translation fees are paid by the party who is cast in costs in the definitive judgment at the end of the proceedings.

6.5 Practical questions

Any translator may produce a certified translation but Article 21(3) provides that any evidence submitted by affidavit shall be drawn up in the language normally used by the person taking such affidavit. The affidavit, when not in Maltese is to be filed together with a translation in Maltese, which translation is furthermore to be confirmed on oath by the translator. Also Article 614 provides that where evidence of a person residing abroad is required, the party demanding the examination shall produce the interrogatories reduced into writing, and the court shall not receive such interrogatories if they are not accompanied by a translation in the language of the place where the witness is to be examined, unless it is made to appear to the satisfaction of the court that it is impracticable to prepare such translation; in which case, a note of such fact shall be entered in the record of the cause and mention thereof shall be made in the letters of request. Any such translation shall be signed, and its correctness verified on oath before the registrar, by the translator.

There is no difference between standard translation and certified translation and a certified translation produced by an accredited translator of another Member State is accepted in Malta provided it is confirmed on oath. There is no time-limit on the validity of a translation so long as the original remains valid and unchanged. A photocopy of a translation would also be acceptable in court so long as it is authenticated by an advocate or by a notary. The translation may even be carried out by the client himself/herself and it may also be carried out from a copy of the original. As regards the conditions for the translation such as timeframes these are set by the Court.

With regards to interpreters any interpreter may perform his functions before the court and they are not accredited by the courts. However an interpreter would be required to take the oath before performing his functions. An interpreter who is accredited or certified before the courts of another Member State may perform his function before the Court of Malta provided the interpreter takes the oath.

6.6 Legal aid

Article 920 of the Code of Organisation and Civil Procedure provides that the person admitted to proceed with the benefit of legal aid shall be exempt from the payment of all fees and from giving security for costs; but the plaintiff, or the defendant setting up a counter-claim, as the case may be, shall give a juratory caution to pay the costs, if able to do so, to the opposite party, in case it shall be so adjudged. Sub-article (2) also provides that where the party proceeding with the benefit of legal aid is cast in costs, it shall in no case be lawful for the registrar to claim from the successful party the fees due to the registry.

Article 921 provides that if the party admitted to proceed with the benefit of legal aid succeeds in the action, he shall, out of the amount obtained or out of the proceeds of the judicial sale by auction of the movable or immovable property effected in pursuance of the judgement, pay the fees due to the registry, advocate, legal procurator and to the curators and referees, if any, saving his right of reimbursement as against the party who may have been ordered to pay such fees.

These provisions should apply equally with regards to translation fees.

In the case of cross-border disputes Article 928F of the Code of Organisation and Civil Procedure provides that legal aid granted by the competent authority in Malta when it is acting as a receiving authority shall cover the costs of translation of documents required by the court or by the competent authority and presented to the recipient, which are necessary for the resolution of the case. It also provides that legal aid granted by the competent authority in Malta when it is acting as a transmitting authority shall cover the translation of the application and of the necessary supporting documents when the application is submitted to the authorities of that Member State where the court is sitting. However Article 928G provides that costs related to the translation of the application and supporting documents incurred by the competent authority following an application for legal aid by a person domiciled or habitually resident in Malta shall be repaid to the competent authority if the application is rejected by the competent authority of the Member State other than Malta where the Court is sitting.

6.7 Reimbursement

The party who has lost the case may be cast in costs by the Court in the definitive judgment which costs would include translation costs in virtue of Article 223 of the Code of Organisation and Civil Procedure referred to above.

6.8 Conclusions and recommendations

The main source of information on translation and interpretation fees, excluding lawyers and legal procurators, is the published legislation. This contains general as opposed to case-specific information regarding such costs. Thus though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to make any calculations as to the costs involved in one's particular case. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the costs involved in one's particular case.

7 Witness Compensation

7.1 General

Information regarding witness compensation may be accessed through the website of the Ministry of Justice where the Code of Organisation and Civil Procedure and the Witnesses (Fees) Ordinance are published or from the Registries of the Courts. In both cases the information may be acquired for free. There are no private websites, brochures or information centres from where one can access such information. There is neither any national organisation which may be referred to in order to acquire a list of the witnesses' rights. Thus information on witnesses' right is not easily accessible. In fact knowledge about the contents of the two pieces of legislation which regulate witnesses' rights may not be easily accessible for everyone. The fact that provisions regarding the fees of witnesses are provided in a separate piece of legislation may result in people not being aware of its existence.

7.2 Fees

In Malta witnesses have a right to be paid. However the fees provided in the relevant legislation are minimal and so, if they were to request compensation, witnesses would rarely be compensated for their time. Such compensation is determined by the Registrar of Courts. In practice, partly due to lack of awareness and mostly due to the trivial amount of compensation, witnesses never ask for compensation.

Witnesses are entitled to the fees prescribed in Schedule A to the Witnesses (Fees) Ordinance for attendance before a superior court and to the fees prescribed in Schedule B for attendance before any other court. It is provided that persons employed with the Government of Malta shall not be entitled to any fee when called to give evidence by the Government. Witnesses are also entitled to travelling expenses for going to and returning from the place where they are to give evidence and in the case of witnesses residing in Malta whose attendance is required before a court in Gozo and witnesses residing in Gozo whose attendance is required before a court in Malta such witnesses are also entitled to expenses for board and lodging actually incurred by them in staying in Gozo or in Malta as the case may be which expenses cannot exceed the limits laid down in Schedule C to the Ordinance. The prescribed expenses shall be due for each day the witness attends at the Court. At the request of any interested person, the registrar of the court under whose jurisdiction the witness gave evidence, shall issue a taxed bill of the prescribed fees and expenses due to the witness.

Schedule A provides that the following fees shall be allowed to witnesses before a superior court :

(a) Ecclesiastics, members of the legal and medical professions, civil engineers, professors of the University, members of the Higher Division of the Civil Service, first grade Secondary School teachers, military officers, merchants, manufacturers, Police officers above the rank of Inspector, merchant navy captains and chief engineers and other persons of equal rank 70 euro cents

(b) Commission agents, brokers, merchant navy officers below the rank of captain or chief engineer, Elementary School headmasters, Secondary School teachers

below the first grade, Police officers below the rank of Superintendent and other persons of equal rank..... 58 euro cents.

(c) Tradesmen, shopkeepers, inn-keepers, commercial travellers, Elementary School teachers, auctioneers, photographers, mechanics, Warrant and Noncommissioned officers in the Armed Forces of Malta and in the Police Force and other persons of equal rank 47 euro cents

(d) Labourers, farmers, Police constables, soldiers, shop assistants and other workmen..... 35 euro cents

(e) Male witnesses under 18 years of age and female witnesses, whatever their age, unless engaged in a profession or business .. 23 euro cents

(f) Witnesses called to give evidence on scientific matters 1 euro

(g) For each hour or part of an hour that a witness is kept to give evidence before a superior court after 1 p.m., the following additional fees shall be due:

(i) to witnesses mentioned in (a), (b) and (f) 12 euro cents

(ii) to other witnesses 6 euro cents

Schedule B to the Ordinance provides that witnesses who attend at a court other than a superior court shall be entitled to a fee of 6 euro cents, witnesses kept after 12 noon shall be entitled to an additional fee of 6 euro cents and witnesses called to give evidence on scientific matters shall be entitled to the fees specified in (f) in Schedule A.

Schedule C to the Ordinance provides that the following expenses for board and lodging shall be allowed in terms of section 5 for each day a witness attends at any court:

1. To witnesses mentioned in (a) and (b)
in Schedule A 1 euro (in Malta) 70 euro cents (in Gozo)

2. To witnesses mentioned in (c) in

Schedule A 93 euro cents (in Malta) 70 euro cents (in Gozo)

3. To witnesses mentioned in (d) in

Schedule A 58 euro cents (in Malta) 47 euro cents (in Gozo)

4. Married women and widows shall be entitled to expenses according to the status of their husbands or late husbands.

5. Unmarried women shall be allowed expenses according to the status of their parents.

6. Witnesses under 18 years of age shall be allowed two-thirds of the amount prescribed in paragraphs 1, 2 and 3 of this Schedule according to the status of their parents.

7.3 Legal Aid cases

As regards the costs covered by legal aid Article 920 provides that the person admitted to proceed with the benefit of legal aid shall be exempt from the payment of all fees and from giving security for costs; but the plaintiff, or the defendant setting up a counter-claim, as the case may be, shall give a juratory caution to pay the costs, if able to do so, to the opposite party, in case it shall be so adjudged. It also provides that where the party proceeding with the benefit of legal aid is cast in costs, it shall in no case be lawful for the registrar to claim from the successful party the fees due to the registry. However in the case of cross-border disputes it is provided that legal aid shall also cover the costs of the opposing party had the recipient lost the case and would be so obliged to pay such costs if he were domiciled or habitually resident in the Member State in which the court is sitting.

7.4 Payment

The methods of payment to witnesses is in cash or by means of a cheque and no VAT is applicable to this compensation. Where a party is granted legal aid this would also cover the witnesses' fees.

7.5 Practical questions

In the case of a cross-border litigation, Article 21(3) of the Code of Organisation and Civil Procedure provides that any evidence submitted by affidavit shall be drawn up in the language normally used by the person taking such affidavit. The affidavit, when not in Maltese is to be filed together with a translation in Maltese, which translation is furthermore to be confirmed on oath by the translator.

The applicable provisions of the Code of Organisation and Civil Procedure in the case of the proceedings for the collection of witness statements in cross-border litigations are the following:

Article 613 - “Where it is made to appear to the satisfaction of any of the superior courts, or of the Court of Magistrates (Gozo) in its superior jurisdiction, that the evidence of any person who is absent from Malta is indispensable for the determination of any cause pending before any of such courts, it shall be lawful for the court to make an order declaring the examination of such witness to be necessary and the court may stay the proceedings after having complied with the provisions of article 158 and adjourn the cause to a time within which such evidence is to be obtained”.

Article 614 - “(1) The demand for any such examination shall be by application if made at any time before the hearing of the cause, or oral if made during the hearing; and in either case, the party demanding the examination shall produce the interrogatories reduced into writing, and state the name and address of the person who is to represent him during the examination.

(2) The court shall not receive such interrogatories if they are not accompanied by a translation in the language of the place where the witness is to be examined, unless it is made to appear to the satisfaction of the court that it is impracticable to prepare such translation; in which case, a note of such fact shall be entered in the record of the cause and mention thereof shall be made in the letters of request referred to in article 618.

(3) Any such translation shall be signed, and its correctness verified on oath before the registrar, by the translator”.

Article 615 - “The party demanding the examination shall affirm upon oath that he knows, or, that he possesses information which he has sufficient reason to believe to be true, that the proposed witness is in the place stated by him and that such witness is in a position to certify the truth of the facts stated in the interrogatories”.

Article 616 - “If the demand referred to in article 614 is allowed, the opposite party shall have the right to appoint a person to represent him at the time of the examination, the name and address of such person being stated to the court within the time fixed in the decree”.

Article 617 - “A copy of the interrogatories reduced into writing shall be served on the opposite party or on his advocate”.

Article 618 - “On the expiration of the time referred to in article 616, the registrar, upon a decree to be made by the court for the purpose, shall draw up a letter of request addressed to one of the judges or magistrates of the place in which the request is to be executed, or to any other person or persons as stated in the decree, requesting such judge, magistrate or other person or persons to examine on oath the witness; a copy of the decree and of the interrogatories shall be annexed to the letter of request which shall contain the name and description of the persons appointed by the parties as their agents”.

Article 619 - “The letter of request referred to in the last preceding article, together with the accompanying documents, shall be transmitted by the registrar to the Minister responsible for justice, who shall forward it to the proper authorities with a request that it may be executed”.

Article 620 - “It shall be the duty of the party demanding the examination to solicit the authority or person requested to take the examination, to carry out such examination in accordance with the terms of the letter of request”.

Article 621 - “Before the authority or person requested to take the examination, the questions shall be put according to the interrogatories transmitted with the letter of request, and, in cross-examination, there shall be put such other questions as the agent of the opposite party may require; the examiner may also put any other questions which, as a result of the answers given, he may deem or the agent of the party demanding the examination may show to be necessary or expedient”.

Article 622 - (1) The agents of the contending parties duly informed by the authority or person requested to take the examination shall attend on the day and at the place appointed for the examination; and it shall be the duty of the agent of the party producing the evidence to bring with him the witness to be examined; the examination shall be reduced into writing, signed or marked by the witness and signed by the examiner.

(2) The provisions of sub-article (1) shall be duly stated in the letter of request, which shall also contain a request to the effect that the said authority or person will transmit the examination, when completed, to the Minister responsible for justice, who shall cause it to be forwarded to the court”.

Article 622A - “(1) Notwithstanding the provisions of articles 613 to 622, where the evidence of a witness residing outside Malta is required, and such person has made an affidavit about facts within his knowledge before an authority or other person who is by the law of the country where the witness resides empowered to administer oaths, or before a consular officer of Malta serving in the country where the witness resides, such affidavit duly authenticated may be produced in evidence before a court in Malta; and the provisions of articles 623, 624 and 625 shall apply to such affidavits.

(2) The affidavit so obtained shall be served on the opposite party or parties, and any party to the proceedings desiring to cross-examine such a witness shall apply to the court for the examination of such witness by letters of request not later than twenty days from the service of the affidavit; and the provisions of this Code relative to letters of request shall apply with such modifications and adaptations as may be necessary.

(3) If no application is made as aforesaid no cross-examination of the witness shall be allowed unless the court for a good reason otherwise directs; and the affidavit shall be taken into consideration notwithstanding the absence of cross-examination.

(4) Notwithstanding the foregoing provisions of this article, if the parties agree, and the court deems it proper so to act, the court may make such other provisions concerning the conduct of the cross-examination as may be appropriate according to circumstances”.

Article 622B - “Without prejudice to the provisions of article 622A, the court may, if it deems it proper so to act, allow for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe”.

Article 623 - “When the court shall have received the examination, or if the authority or person requested to take the examination shall have reported that it was not possible to take the same, either because the witness was not produced, or for any other cause, or if, in the opinion of the court, having regard to the distance of the place and to all other circumstances, sufficient time has elapsed without the examination having been received, it shall be lawful for the court, of its own motion or upon the application of the party interested, to order that the cause be set down for hearing, tried and determined”.

With regards to the issue of reimbursement, in the case of a favourable decision for the party that has paid compensation, the court can in its definitive judgement order that the losing party be cast in costs which include the compensation due to witnesses.

As regards capacity to be a witness, everyone who is of sound mind and who is old enough to understand that it is wrong to give false testimony is recognised as a witness.

The authenticity of a witness’ testimony is demonstrated through a declaration signed by a commissioner for oaths. In order to authenticate the testimony it is

given before the commissioner for oaths and is verified on oath before the same. Testimonies may be collected orally or in written form. If in written form they must be sworn before a commissioner for oaths. Referees and judicial assistants appointed by the court are authorised to collect testimonies. Testimonies collected by a foreign court are valid in the courts of Malta as long as they are authenticated.

7.6 Conclusions and recommendations

The main source of information on witnesses' fees, excluding lawyers and legal procurators, is specific legislation which is published on the Ministry of Justice website. Being regulated by a specific piece of legislation transparency on costs involved for witnesses compensation is even lower as the general public would generally be unaware of its existence. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database.

8 Pledges and security deposits

8.1 General

As provided in Article 249 of the Code of Organisation and Civil Procedure a security deposit is required in the case of an appeal. Security for costs is to be produced and deposited in court at least one day before the date of the hearing of such appeal. In the case of appeals from inferior courts the security deposit is not required. The law does not distinguish between litigations which are cross-border and those which are internal. The amounts of security deposits are determined on the basis of the fees due by the opposing party with regards to court fees, lawyers and legal procurators fees applicable to the court of first instance, as above, plus one third of such amount. No pledge is applicable. Only a security deposit is required.

No security deposit is requested by a party from another party. It may be offered by one party to avoid the consequences of precautionary or executive warrants.

The only means to avoid having to provide a security deposit by making a demand for admission to the benefit of juratory caution by showing prima facie that one has a probabilis causa litigandi and by swearing that one is unable to raise such security as required by law.

Where a party is granted the benefit of legal aid he is not required to pay the security deposit.

The court cannot order that the interest on the deposited amount be paid for by the losing party.

8.2 Fees

The amounts of security deposits are determined on the basis of the fees due by the opposing party with regards to court fees, lawyers and legal procurators fees applicable to the court of first instance, as above, plus one third of such amount.

8.3 Payment

Payment of the security deposit is made when filing the appeal application.

8.4 Conclusions and recommendations

The main source of information on security deposits, excluding lawyers and legal procurators, is the published legislation. This contains general as opposed to case-specific information regarding such costs. Thus though physically accessible to the general public such information may not be clear and simple enough for the general public to be aware of when such security deposit is payable, and how to determine the amount of such security deposit, particularly in view of the fact that it is calculated on the basis of the court fees and the fees due to lawyers and legal procurators in the particular case. A possible solution to this state of affairs is the centralisation of information on costs of justice in a database which provides easy rules on how to establish the amount of security deposit to be paid.

9 Court decisions

9.1 Cost of notification and authentication

The average cost of notification, of publication and of obtaining an authenticated copy of court decisions in Malta is between 0 and 19 euros. The average cost of notification of court decisions in the EU ranges between 50 and 99 euros. There is no requirement to have court decisions translated. It is up to the parties to obtain such translation if required.

9.2 Cost of enforcement

The costs for obtaining the enforcement of a decision consist in 7 euros as bailiff fees, 47 as seizure costs and 175 euros for compulsory sale of immovables and 58 euros for compulsory sale of movables. No costs apply for court hearings or for obtaining the support of public enforcement agencies (excluding bailiffs). No difference exists in the amount of fees to be paid between civil and commercial cases.

With regards to attachment (the pre-judgment proceeding whereby a plaintiff creditor seeks to seize the property of the debtor to ensure that such property will not disappear before the judgment is rendered), this is obtained through a request for the issue of a precautionary warrant. The costs involved consist in 7 euros due to the bailiff for the notification of the warrant, 47 euros for the notification of the warrant to the debtor. In the case of opposition by the debtor an application contesting the issue of the warrant is filed and the relative costs amount to 19 euros.

The costs of operating a seizure on debtors' assets (post-judgment proceeding whereby a plaintiff creditor seeks to reach the property of the debtor who is not willingly complying with the decision against him or her) consist of 7 euros due to the bailiff for the notification of the warrant, 47 euros for the application for the

issue of the warrant of seizure, 175 euros in the case of an application for the compulsory sale of immovables and 58 euros in the case of an application for compulsory sale of movables and 19 euros in the case an application of opposition is filed by the debtor.

The costs for obtaining a garnishee order (post-judgment proceeding whereby a plaintiff creditor seeks to reach the property of the debtor) consist of 7 euros due to the bailiff for notification of the garnishee order, 47 euros for the application for the issue of the garnishee order, 175 euros in the case of an application for the compulsory sale of immovables and 58 euros in the case of an application for compulsory sale of movables and 19 euros in the case an application of opposition is filed by the debtor.

10 Legal aid

10.1 General

Information on legal aid may be obtained from the website of the Ministry of Justice where the Code of Organisation and Civil Procedure is published, by calling at the Registries of the respective courts or by calling a lawyer or a legal procurator. Such information is obtained for free.

Title X - Of the Admission to sue or defend with the benefit of legal aid and Title XA - Of Legal Aid (Cross-Border Disputes) of Book Third to the Code of Organisation and Civil Procedure regulate legal aid. This regulation is available online on the website of the Ministry of Justice where the Code of Organisation and Civil Procedure is published. This Regulation is provided in Maltese and English which are both official languages in Malta.

10.2 Conditions of grant

There exist special forms for obtaining legal aid. Form No. 3 in Schedule B to the Code of Organisation and Civil Procedure where the applicant claims that he

qualifies for the benefit of legal aid and whereby the applicant “humbly prays the Court that he may be allowed to sue/defend with the benefit of legal aid, and the said applicant declares on oath that he believes that his aforesaid claim/defence is just, and that excluding the subject-matter of the proceedings, he does not possess property of any sort (not including wearing apparel) the net value whereof amounts to a sum of not more than three thousand liri not including everyday household items that are considered reasonably necessary for the use by applicant and his family, and that his yearly income is not more than the national minimum wage established for persons of eighteen years and over; and that in calculating the said net asset value, no account has been taken of the principal residence of the applicant or any other property, immovable or movable, which forms the subject matter of court proceedings, even though such other property is not the subject matter of the proceedings in respect of which legal id is being applied for; and that in calculating the income, the period of computation has been calculated at the twelve months’ period prior to the demand for the benefit of legal aid. It should be noted that the average yearly income in Malta is 14,000 euros.

For legal aid to be granted the applicant must confirm on oath:

- (a) that the applicant believes that he has reasonable grounds for taking or defending, continuing or being a party to proceedings; and
- (b) that excluding the subject-matter of the proceedings, he does not possess property of any sort (not including wearing apparel) the net value whereof amounts to, or exceeds, three thousand liri (6988 euros) not including everyday household items that are considered reasonably necessary for the use by applicant and his family, and that his yearly income is not more than the national minimum wage established for persons of eighteen years and over. Provided that in calculating the said net asset value, no account shall be taken of the principal residence of the applicant or any other property, immovable or movable, which forms the subject matter of court proceedings, even though such other property is not the subject matter of the proceedings in respect of which legal id is being applied for. Provided further that in calculating the income, the period of computation shall be the twelve months’ period prior to the demand for the benefit of legal aid.

The above does not apply to the granting of legal aid to any person for bringing an action for the correction or cancellation of any registration, or for the registration, of any act of birth, marriage or death. Where any such action is disallowed the court shall deprive of such benefit the person admitted to proceed with the benefit of legal aid and, unless it sees good cause to the contrary, order him to pay all costs of the suit.

Legal aid can only be granted to natural persons. In the case of cross-border litigations Article 928B(1) of the Code of Organisation and Civil Procedure provides that legal aid shall be granted to the applicants involved in a cross-border dispute who are, partially or totally, unable to meet the costs of the proceedings as a result of their economic situation. Article 928B (4) provides that legal aid shall be granted or refused by the competent authority (the Advocate for Legal Aid) when the Court is sitting in Malta and by the competent authority of the Member State other than Malta when the Court is sitting outside Malta though Article 928B(2) provides that applicants who have received legal aid in a Member State other than Malta in respect of proceedings before a court in that other Member State shall be entitled to receive legal aid in Malta if recognition or enforcement of the judgement is sought in Malta. It is also provided in Article 928B (5) that without prejudice to subarticle (4), legal aid applicants may not be prevented from legal aid if they prove that they are unable to pay the cost of the proceedings as a result of differences in the cost of living between the Member State of domicile or habitual residence and of the forum. Otherwise the same conditions for the granting of the benefit of legal aid applicable to internal litigation applies in the case of cross-border disputes.

10.3 Practical questions

The Advocate for legal aid is responsible to assist the applicant in ensuring that the application is accompanied by all the supporting documents known by such applicant to be required to enable the application to be determined.

It is the Advocate for Legal Aid who decides whether to grant legal aid. If the report of the Advocate for Legal Aid is in favour of the applicant, the latter shall be admitted to the benefit applied for but if the report is unfavourable, it shall be examined by the Civil Court, First Hall, which shall give the parties the opportunity

to make their submissions, before it decides on whether to accept the adverse report, or to reject the report and admit the demand as provided in Article 917 of the Code of Organisation and Civil Procedure.

There is no automatic right to legal aid and the procedure and conditions listed above must be adhered to. However if legal aid is granted it covers all subjects. Legal aid also covers the enforcement of court decisions. Legal aid does not cover ADR proceedings. However there is one exception in the case of cross-border disputes under Article 928B(3)(e) whereby extrajudicial procedures are covered by legal aid if there is a legal requirement for the parties to use them or if the parties to the dispute are ordered by the court to have recourse to them.

Legal aid originally granted continues to be valid if the case is appealed. However Article 923 provides that the Civil Court, First Hall, shall deprive of such benefit the person admitted to proceed with the benefit of legal aid if it is shown that he possesses capital or income exceeding that established for the grant of legal aid.

As regards the costs covered by legal aid Article 920 provides that the person admitted to proceed with the benefit of legal aid shall be exempt from the payment of all fees and from giving security for costs; but the plaintiff, or the defendant setting up a counter-claim, as the case may be, shall give a juratory caution to pay the costs, if able to do so, to the opposite party, in case it shall be so adjudged. It also provides that where the party proceeding with the benefit of legal aid is cast in costs, it shall in no case be lawful for the registrar to claim from the successful party the fees due to the registry. However in the case of cross-border disputes it is provided that legal aid shall also cover the costs of the opposing party had the recipient lost the case and would be so obliged to pay such costs if he were domiciled or habitually resident in the Member State in which the court is sitting.

As regards the refunding of legal aid Article 921 of the Code of Organisation and Civil Procedure provides that if the party admitted to proceed with the benefit of legal aid succeeds in the action, he shall, out of the amount obtained or out of the proceeds of the judicial sale by auction of movable or immovable property effected in pursuance of the judgement, pay the fees due to the registry, advocate, legal

procurator and to the curators and referees, if any saving his right of reimbursement as against the party who may have been ordered to pay such fees.

10.4 Conclusions and recommendations

The main source of information on legal aid, excluding lawyers and legal procurators, is the published legislation. This contains general as opposed to case-specific information regarding such costs. Thus though physically accessible to the general public such information may not be clear and simple enough for it to be processed in order to be able to determine whether one qualifies for the benefit of legal aid and what costs are covered by legal aid. A possible solution to this state of affairs is the centralisation of information on costs of justice including the conditions and the benefits of legal aid in a database which provides easy rules on how to establish whether one qualifies for legal aid and what benefits does legal aid give to the litigants.

11 Personal experience

In my career, I have not encountered cross-border issues where the costs of justice were too expensive for clients. Generally information on the costs of justice was obtained in advance from the lawyer appointed in the other Member State.

As regards legal aid, I have so far not been confronted with a cross-border issue in which I have tried to obtain legal aid for my client from a Member State from which my client is not a national.

I have been involved in cross-border trials needing cooperation with lawyers residing in a different another State. This cooperation generally takes place through e-mail and telephone. This would tend to increase the cost by 5-10%. In my opinion cross-border cases always require input from a lawyer practising in the country of the dispute and therefore such costs cannot be driven down.

Fixed costs which are unrelated to the value of the claim may be a deterrent to seeking justice in cross-border disputes particularly in the case of minor claims.

As regards best practices in terms of costs transparency would be clearer and simpler schedules of costs and their publication in a centralised database at EU level.

12 Case studies

12.1 Case study 1 - Family Law - Divorce (excluding division of matrimonial property)

The first case study concerns divorce which is not available in Malta and so this case study is not applicable.

Case n° __1__ - Divorce is not available in Malta

Case Study	Court			Appeals			ADR	
1 Family Law - Divorce	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	Divorce is not applicable in Malta							
Case B	Divorce is not applicable in Malta							

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	Divorce is not applicable in Malta						
Case B	Divorce is not applicable						

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
	in Malta						

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	Divorce is not applicable in Malta					
Case B	Divorce is not applicable in Malta					

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed ?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Divorce is not applicable in Malta						
Case B	Divorce is not applicable in Malta						

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	Divorce is not applicable in Malta					
Case B	Divorce is not applicable in Malta					

12.2 Case Study 2 - Family Law - Custody of the children (excluding alimony questions)

In the following Case Study please advise the suing party on litigation costs by completing the table below.

Case A - National situation: Two persons have lived together unmarried for a number of years. They have a three year old child when they separate. A court decision grants custody of the child to the mother and a right of access to the father. The mother sues to limit the father's right of access.

Case B - Transnational situation where you are a lawyer in Member State A: Two persons have lived together unmarried in a Member State (Member State B) for a number of years. They have a child together but separate immediately after the child's birth. A court decision in Member State B gives the child's custody to the mother with a right of access to the father. The mother and the child move to live in another Member State (Member State A) as authorized to do so by the Court

decision and the father remains in Member State B. A few years later, the mother sues in Member State A to change the father's right of access¹.

Case No. 2

Case Study	Court			Appeals			ADR	Costs
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	
Case A	174 euros	Included in the initial court fees	91 euros for the filing of a warrant of impediment of departure	244 euros	Included in the initial court fees		No	
Case B	174 euros	Included in the initial court fees	91 euros for the filing of a warrant of impediment of departure	244 euros	Included in the initial court fees		No	

Case Study	Lawyer	Average costs	Bailiff	Pre-judgment costs	Post-judgment costs	Expert	Cost
	Is representation compulsory ?		Is representation compulsory ?			Is use compulsory ?	
Case A	Yes	523 euros + 59 euros due to legal procurator These amounts are based on an average whenever the law provides a minimum	No	8 euros	N/A	No	500 euros

¹ N.B : Article 8 of Regulation EC n°2201/2003 provides that : “The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized.”

Case Study	Lawyer		Bailiff			Expert	
2 - Custody of Children	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
		and a maximum and it is for illustration purposes it is assumed that 3 witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant.					
Case B	Yes	523 euros + 59 euros due to legal procurator These amounts are based on an average whenever the law provides a minimum and a maximum and it is for illustration purposes it is assumed that 3	No	8 euros	N/A	No	500 euros

Case Study	Lawyer		Bailiff			Expert	
2 - Custody of Children	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
		witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant.					

Case	Witness compensation		Pledge or security		Other fees	
2 - Custody of Children	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	Yes	3 witnesses with an average of 2 euros each - total of 6 euros	Only in appeal	1008 euros		
Case B	Yes	3 witnesses with an average of 2 euros each - total of 6 euros	Only in Appeal	1008 euros		

Case	Legal Aid			Reimbursement			
2 - Custody of Children	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed ?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire dealing with legal aid.	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	No
Case B	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire dealing with legal aid.	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	No

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If the evidence to be produced is not in Maltese or in English a translation would be required.	Depends on the document to be translated but the law provides that 12 to 58 euros would be due for every translation though translators would usually charge a higher amount on average at 15 euros per page. There would also be a court registration fee of 35 euros	If a party or a witness does not understand English or Maltese	93 euros.	None	
Case B	If the evidence to be produced is not in Maltese or in English a translation would be required.	Depends on the document to be translated but the law provides that 58 euros would be due for	If a party or a witness does not understand English or Maltese	93 euros	None	

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
		every translation though translators would usually charge a higher amount on average at 15 euros per page. There would also be a court registration fee of 35 euros.				

12.3 Case Study 3 - Family law - Alimony

In the following Case Study please advise the suing party on litigation costs by completing the table below.

Case A - National situation: Two persons have lived together unmarried for a number of years. They have a three year old child when they separate. A court decision grants custody of the child to the mother. The only outstanding dispute relates to the amount of the alimony owed to the mother by the father for the support and education of the child. The mother sues on this.

Case B - Transnational situation where you are a lawyer in Member State A: Two persons have lived together unmarried in a Member State (State B). They have a

three year old child. They separate. A court decision in Member State B gives the child's custody to the mother. With the agreement of the father, the mother and the child move to live in another Member State (Member State A) where they establish their residence.

An outstanding dispute remains. This relates to the amount of the alimony owed to the mother by the father for the support and education of the child. The mother sues on this in Member State A².

Case No. 3

Case Study	Court			Appeals			ADR	
3 - Alimony	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	174 euros	Included in the initial court fees		244 euros	Included in the initial court fees		No	
Case B	174 euros	Included in the initial court fees		244 euros	Included in the initial court fees		No	

Case Study	Lawyer		Bailiff			Expert	
3 - Alimony	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	Yes	393 euros + ½% of amount of alimony for ten years + 59 euros due to legal procurator.	No	8 euros	If executive warrant is issued 7 euros	It is very unlikely that an expert is appointed in cases of alimony	500 euros

² NB Article 5 of COUNCIL REGULATION (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides that: "in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties"

Case Study	Lawyer		Bailiff			Expert	
3 - Alimony	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
		These amounts are based on an average whenever the law provides a minimum and a maximum and it is for illustration purposes it is assumed that 3 witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant.					
Case B	Yes	393 euros + ½ % of amount of alimony for ten years + 59 euros due to legal procurator. These amounts are based on an average	No	8 euros	If executive warrant is issued 7 euros	It is very unlikely that an expert is appointed in cases of alimony	500 euros

Case Study	Lawyer		Bailiff			Expert	
3 - Alimony	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
		whenever the law provides a minimum and a maximum and it is for illustration purposes it is assumed that 3 witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant.					

Case	Witness compensation		Pledge or security		Other fees	
3 - Alimony	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	Yes	3 witnesses with an average of 2 euros each - total of 6	In appeal	567 euros + 1/2% of amount of alimony for ten years		

Case	Witness compensation		Pledge or security		Other fees	
3 - Alimony	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
		euros		increased by one third		
Case B	Yes	3 witnesses with an average of 2 euros each - total of 6 euros	In appeal	567 euros + 1/2% of amount of alimony for ten years increased by one third		

Case	Legal Aid			Reimbursement			
3 - Alimony	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are the... instan... legal... be re... to the... organ...
Case A	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire dealing with legal aid.	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	When... part... obt... lega... awa... sum... mon... the... def... jud... he v... be... exp... to c... the...
Case B	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire dealing with legal aid.	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	When... part... obt... lega... awa... sum... mon... the... def... jud... he v... be... exp... to c... the...

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
3 - Alimony	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If the	Depends on	If a party or	93 euros	None	

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
3 - Alimony	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
	evidence to be produced is not in Maltese or in English a translation would be required.	the document to be translated but the law provides that 12 to 58 euros would be due for every translation though translators would usually charge a higher amount on average at 15 euros per page. There would also be a court registration fee of 35 euros	a witness does not understand English or Maltese			
Case B	If the evidence to be produced is not in Maltese or in English a translation would be required.	Depends on the document to be translated but the law provides that 12 to 58 euros would be due for every translation though	If a party or a witness does not understand English or Maltese	93 euros	None	

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
3 - Alimony	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
		translators would usually charge a higher amount on average at 15 euros per page. There would also be a court registration fee of 35 euros				

12.4 Case Study 4 - Commercial Law - Contract

In the following Case Study please advise the seller on litigation costs by completing the table below.

Case A - National situation: A company delivered goods worth 20.000 euros. The seller has not been paid because the buyer considers that the goods do not conform to what was agreed. The seller believes that the goods conform to what was agreed and asks for payment in full because he asserts that the goods were purpose made and he will not be able to sell them to someone else.

The seller decides to sue to obtain the full payment of the price.

Case B - Transnational situation: A company whose head office is located in Member State B delivers goods worth 20.000 euros to buyer in Member State A. The contract is subject to Member State B's law and written in Member State B's language. This seller has not been paid because the buyer located in Member State A considers that the goods do not conform to what was agreed. The seller believes that the goods conform to what was agreed and asks for payment in full because he

asserts that the goods were purpose made and he will not be able to sell them to someone else. The seller decides to sue in Member State A to obtain full payment of the price as provided under the contract with the buyer.

Case Study	Court			Appeals			ADR	
4 - Contract	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	654 euros	Included in the initial court fees	54 euros for the filing of a precautionary warrant	1050 euros	Included in the initial court fees		Yes	163.50 euros + 699 euros arbitrator's fee + administrative costs
Case B	541 euros	Included in the initial court fees	54 euros for the filing of a precautionary warrant	745 euros	Included in the initial court fees		Yes	555 euros + 699 euros arbitrator's fee + administrative costs

Case Study	Lawyer		Bailiff			Expert	
4 - Contract	Is representation compulsory?	Average costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?	Cost
Case A	Yes	953 euros + 67 due to the legal procurator. These amounts are based on an average whenever the law provides a minimum and a maximum and it is	No	7 euros for each notification of an act of procedure	Execution of executive warrant - 7 euros	No it depends on whether an expert is appointed by the court	500 euros

Case Study	Lawyer		Bailiff			Expert	
4 - Contract	Is representation compulsory?	Average costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?	Cost
		for illustration purposes it is assumed that a judicial letter is filed prior to the commencement of proceedings, that 3 witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant. In the case of ADR lawyer's fees amount 780 euros.					
Case B	Yes	953 euros + 67 due to the legal procurator. These	No	7 euros for each notification of an act of	Execution of executive warrant - 7 euros	No it depends on whether an expert	500 euros

Case Study	Lawyer		Bailiff			Expert	
4 - Contract	Is representation compulsory?	Average costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?	Cost
		<p>amounts are based on an average whenever the law provides a minimum and a maximum and it is for illustration purposes it is assumed that a judicial letter is filed prior to the commencement of proceedings, that 3 witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant.</p>		procedure		is appointed by the court	

Case Study	Lawyer		Bailiff			Expert	
4 - Contract	Is representation compulsory?	Average costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?	Cost
		In the case of ADR lawyer's fees amount 780 euros.					

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated?	Cost	Does this exist and when and how is it used?	Cost	Description	Cost
Case A	Yes	3 witnesses with an average of 2 euros each - total of 6 euros	In appeal	2232 euros		
Case B	Yes	3 witnesses with an average of 2 euros each - total of 6 euros	In appeal	2232 euros		

Case	Legal Aid			Reimbursement			
4 - Contract	When and under which conditions is it applicable?	When is support total?	Conditions?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation?
Case A	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	When the party who obtained legal aid is awarded a sum of money in the definitive judgement

Case	Legal Aid			Reimbursement			
4 - Contract	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
	re dealing with legal aid.						the would be expected to cover the costs
Case B	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire re dealing with legal aid.	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	When the party who obtained legal aid is awarded a sum of money in the definitive judgement the would be expected to cover the costs

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
4 - Contract	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If the evidence to be produced is not in Maltese or in English a translation would be required.	Depends on the document to be translated but the law provides that 12 to 58 euros would be due for every	If a party or a witness does not understand English or Maltese	93 euros	None	

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
4 - Contract	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
		translation though translators would usually charge a higher amount on average at 15 euros per page. There would also be a court registration fee of 35 euros				
Case B	If the evidence to be produced is not in Maltese or in English a translation would be required.	Depends on the document to be translated but the law provides that 12 to 58 euros would be due for every translation though translators would usually charge a higher amount on average at 15 euros per page. There would also	If a party or a witness does not understand English or Maltese	93 euros	None	

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
4 - Contract	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
		be a court registration fee of 35 euros				

12.5 Case Study 5 - Commercial Law - Responsibility

In the following Case Study please advise the customer on litigation costs by completing the table below.

Case A - National situation: A heating equipment manufacturer delivers a heater to an installer. The installer on-sells (and installs) the heater to a customer to equip his/her house. The house catches fire shortly thereafter. Every participant (heating equipment manufacturer, installer, end-customer) is insured. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to sue for full compensation the heating equipment manufacturer, the heating equipment installer and the insurance companies.

Case B - Transnational situation: A heating equipment manufacturer in a Member State B delivers heater to an installer in a Member State C. The installer on-sells the heater (and installs) the heater to a customer in Member State A to equip his/her house. The house catches fire shortly thereafter. Each participant (heating equipment manufacturer, installer, end-customer) is insured by an insurance company in its own Member State. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to sue in Member State A for full compensation the heating equipment manufacturer, the heating equipment installer and the insurance companies in Member State A.

Case Study	Court			Appeals			ADR	
5 - Responsibility	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	698 euros if the amount of the claim is indeterminate	Included in the initial court fees	54 euros for the filing of a precautionary warrant	954 euros	Included in the initial court fees		Yes	174 euros + arbitrator's fee depending on the amount liquidated + administrative fees
Case B	698 euros if the amount of the claim is indeterminate	Included in the initial court fees	54 euros for the filing of precautionary warrant	954 euros	Included in the initial court fees		Yes	925 euros + arbitrator's fee depending on the amount liquidated + administrative fees

Case Study	Lawyer		Bailiff			Expert	
5 - Responsibility	Is representation compulsory?	Average costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?	Cost
Case A	Yes	481 euros + 67 euros due to the legal procurator These amounts are based on an average whenever the law provides a minimum and a maximum and it is for illustration	No	7 euros for every notification of every judicial act	7 for the execution of executive warrant	It depends on whether the court appoints an expert	500 euros

Case Study	Lawyer		Bailiff			Expert	
5 - Responsibility	Is representation compulsory?	Average costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?	Cost
		<p>purposes it is assumed that a judicial letter is filed prior to the commencement of proceedings, that 3 witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant. In the case of ADR, lawyers' fees depend on the amount liquidated. If an amount of 20,000 euros is liquidated - lawyers' fees would amount to 780 euros.</p>					
Case B	Yes	<p>481 euros + 67 euros due to the legal procurator These amounts are based on an average whenever the law provides a minimum and a maximum and</p>	No	7 euros for every notification of every judicial act	7 euros for the execution of executive warrants	It depends on whether the court appoints an expert	500 euros

Case Study	Lawyer		Bailiff			Expert	
5 - Responsibility	Is representation compulsory?	Average costs	Is representation compulsory?	Pre-judgment costs	Post-judgment costs	Is use compulsory?	Cost
		it is for illustration purposes it is assumed that a judicial letter is filed prior to the commencement of proceedings, that 3 witnesses are subpoenaed, 3 affidavits are produced, one note of submissions is presented and there are three 1 hour attendances before a referee or a judicial assistant. In the case of ADR, lawyers' fees depend on the amount liquidated. If an amount of 20,000 euros is liquidated - lawyers' fees would amount to 780 euros.					

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated?	Cost	Does this exist and when and how is it used?	Cost	Description	Cost
Case A	Yes	3 witnesses with	In appeal	1661		

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
		an average of 2 euros each - total of 6 euros		euros		
Case B	Yes	3 witnesses with an average of 2 euros each - total of 6 euros	In appeal	1661 euros		

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire dealing with legal aid.	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	When the party who obtained legal aid is awarded a sum of money in the definitive judgement he would be expected to cover the costs
Case B	Where the party swears that he does not have the income to cover costs as outlined above under the questionnaire dealing with legal aid.	Always	Vide questionnaire dealing with legal aid	Yes if the court casts the losing party in costs in definitive judgement	50%	All costs are reimbursed	When the party who obtained legal aid is awarded a sum of money in the definitive judgement he would be expected

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
							to cover the costs

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If the evidence to be produced is not in Maltese or in English a translation would be required.	Depends on the document to be translated but the law provides that 12 to 58 euros would be due for every translation though translators would usually charge a higher amount on average at 15 euros per page. There would also be a court registration fee of 35 euros	If a party or a witness does not understand English or Maltese	93 euros	None	

Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case B	If the evidence to be produced is not in Maltese or in English a translation would be required.	Depends on the document to be translated but the law provides that 12 to 58 euros would be due for every translation though translators would usually charge a higher amount on average at 15 euros per page. There would also be a court registration fee of 35 euros	If a party or a witness does not understand English or Maltese	93 euros	None	

13 Insurance

13.1 Insurance

It is possible to purchase insurance to cover the risks of litigation in civil proceedings. On average the cost of the insurance would be around 1.5% of the limit of liability. So for example if the insurance covers liability up to 100 000 Euros, the premium payable would be around 1500 Euros. The insurance policy wording usually does not limit the cover to local proceedings only but to all court proceedings and would therefore work in cross-border disputes. Nevertheless a policy which covers local court costs only would generally be cheaper than a policy which covers cross-border disputes. These types of insurance would cover all court fees and legal fees (subject to the limits agreed).