

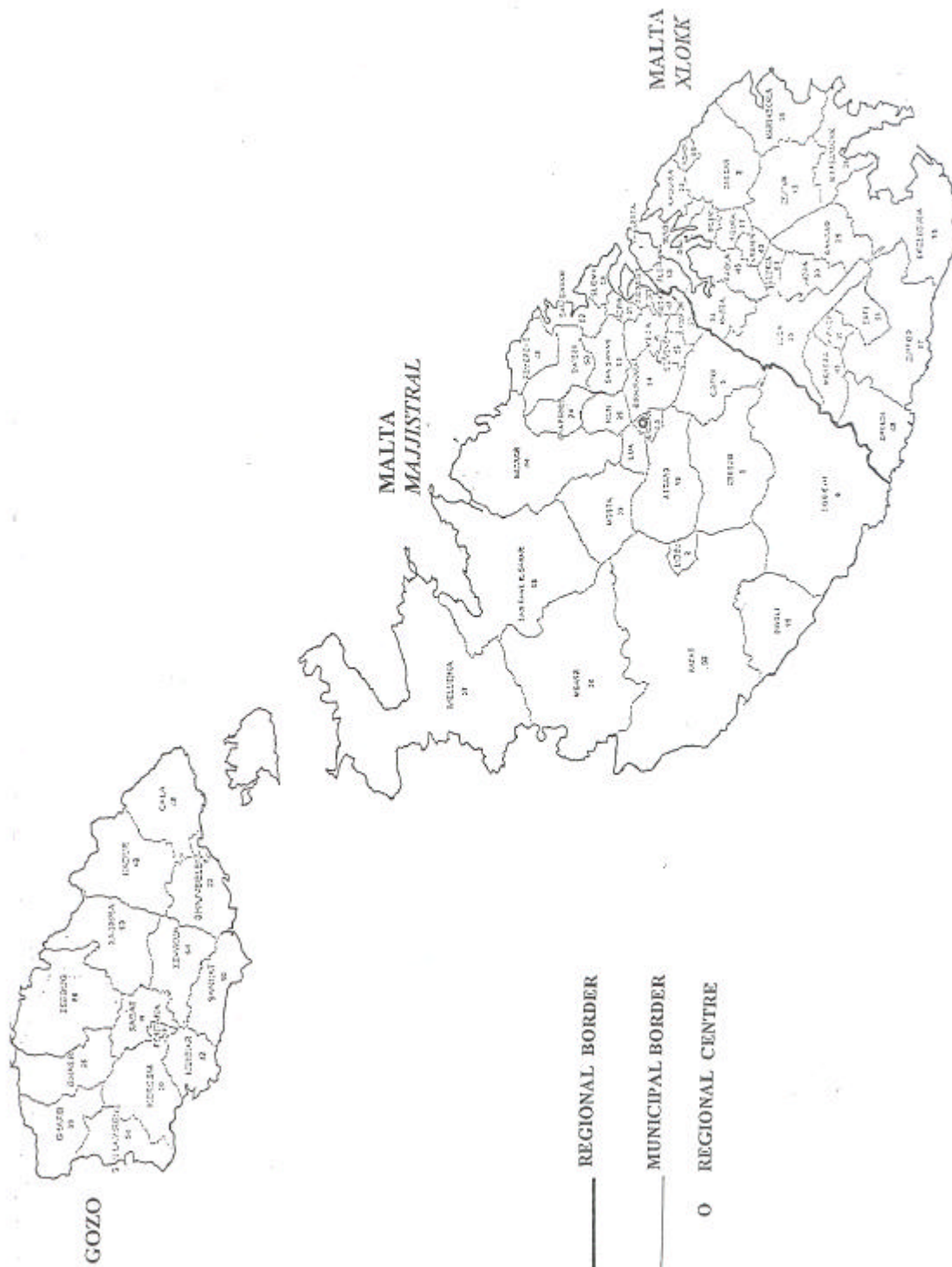
Council of Europe  
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## Structure and operation of local and regional democracy

Malta

### *Territorial Set-up*



# **Structure and operation of local and regional democracy**

## **Malta**

Situation in 1997

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## **1. LEGAL BASIS**

### **1.1. Constitutional provisions**

No constitutional provisions relating to local/regional authorities exist at present.

### **1.2. Main legislative texts**

The Local Councils' Act, 1993 (Act XV of 1993) which was published on 30 June 1993, stipulates that "The council shall be a statutory local government authority having a distinct legal personality and capable of entering into contracts, of suing and being sued, and of doing all such things and entering into such transactions as are incidental or conducive to the exercise and performance of its functions as are allowed under the Act."

The Act was modelled on the European Charter of Local Self-Government, which the Government, as the promoter of the initiative, has signed and ratified.

The Act is divided into seven parts and has ten schedules:

Part I	Title, commencement and interpretation
Part II	Constitution of councils
Part III	The office of mayor
Part IV	Functions of local councils, procedure and meetings
Part V	Officers and employees
Part VI	Finance
Part VII	Miscellaneous provisions

The ten schedules deal with:

1. Coats of arms
2. Localities and their boundaries
3. Local council (elections) regulations
4. Items excluded from responsibility of local councils
5. Oath of office of councillors/mayor/deputy mayor
6. Standing orders
7. Election of mayor and deputy mayor
8. Approved non-governmental organisations
9. List of member states of the Council of Europe whose nationals are entitled to vote in local council elections
10. Financial allocation to councils

Amendments to the Local Councils' Act, 1993, have been effected to articles 34, 36 and 72.

## 2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES

### 2.1. Subdivisions

The Act establishes sixty-seven localities. Legal Notice 153 of 1994 published on 15 March 1994 sets up three regions constituted as follows:

Gozo Region	–	fourteen local councils
Malta <i>Majjistral</i> Region	–	twenty-eight local councils
Malta <i>Xlokk</i> Region	–	twenty-five local councils

### 2.2. Statistical data

#### Region surface and population

Regions	Surface sq. km	Population
Gozo	65.55	30 485
Malta <i>Majjistral</i>	163.89	216 444
Malta <i>Xlokk</i>	64.14	135 577

#### Municipalities surface and population data

	Surface sq. km	Population
Largest local council	27 286.00	21 509
Smallest local council	0.16	382
Average	4.38	5 111

#### Municipalities according to surface

Under 5 sq. km	48 localities
05 -10 sq. km	03 localities
10 -15 sq. km	01 locality
15 -20 sq. km	03 localities
Over 20 sq. km	02 localities

#### Municipalities according to population

Number of inhabitants	Number of localities	Percentage of total
Less than 1 000	06	08.96
1 000-5 000	28	41.79
5 000-10 000	20	29.85
10 000-50 000	13	19.40



A special provision in the Act stipulates that where a locality includes more than one town, village or hamlet, the council shall appoint a committee for each town, village or hamlet having a population of more than one tenth but less than one half of the population of that locality to report regularly on the needs of the particular town, village or hamlet for which the committee is appointed. The chairman of the committee shall be a councillor and the other members need not be council members.

### **2.3. Regulations governing changes in structures**

Changes in the boundaries of localities shall be made only in exceptional circumstances and only by the Electoral Commission, after consultation with the Minister responsible for Local Councils, the local councils concerned, and, wherever possible, with the local residents. It must be pointed out that the Electoral Commission is an independent constitutional body appointed on the advice of the Prime Minister, after he has consulted the leader of the Opposition. The creation of new localities is the prerogative of the House of Representatives.

## **3. ORGANISATION OF LOCAL AUTHORITIES**

### **3.1. Deliberative body**

The deliberative body is the Council.

The number of councillors for each locality is determined as follows:

Under 5 000 inhabitants	–	five councillors
5 000-10 000 inhabitants	–	seven councillors
10 000-15 000 inhabitants	–	nine councillors
15 000-20 000 inhabitants	–	eleven councillors
Over 20 000 inhabitants	–	thirteen councillors

In the case where Council's composition is of seven councillors or more, a deputy mayor is to be elected from amongst the councillors.

The Council is elected every three years by the inhabitants with the necessary qualifications to vote and who are registered as voters in the local councils' electoral register which relates to the locality for which local councillors are to be elected. Elections are held by means of the system of proportional representation using the single transferable vote.

### **3.2. Executive body**

The secretary, who is appointed by the councils, is the executive, administrative and financial head of the Council.

The Council Secretary is appointed on a contract basis for a period of three years. This contract may be renewed for successive three-year periods.

The secretary is appointed by the Council after consulting the Minister responsible for Local Councils. The engagement is made after the council reviews applications and interviews applicants who are either referred by the Employment and Training Corporation (which is the employment agency recognized by the Constitution) or after the Council makes a public call for applications.

The same criteria apply in regard to the employment of all the other council employees.

The secretary's statutory duties are:

- to issue all notices, prepare the agenda in consultation with the mayor, and attend all meetings;
- to draw up the minutes of all council and committee meetings;
- to submit a detailed annual administrative report to the mayor;
- to ensure that the Council receives the annual estimates for the next financial year;
- to carry out any other duties that may be detailed or delegated to him by the mayor or council.

A council may appoint a deputy secretary to exercise the functions of secretary whenever the office of secretary is vacant or the secretary is unable to act.

The Council may also appoint other employees as it considers necessary for the efficient discharge of its functions, but it may not employ more than one person per 3 000 residents. Council employees are also appointed under a three-year renewable contract.

Councils may however contract out their service requirements (both administrative and functional).

### **3.3. Political head of the local/regional authority**

The mayor is the political head of the local council and he/she is elected at the first sitting after councillors have taken their oath of office. This sitting is to be held not later than a week from the first day when the councillors can hold office. The election of mayor is held from amongst the councillors, and is conducted by secret ballot.

The same procedure applies for the election of deputy mayor.

It is the mayor's duty to "supervise all functions of the Council" [section 26 (1) of the Local Councils' Act, 1993]. The mayor is also responsible "for the furtherance of the objects and provisions" of the said Act [section 26 (2)].

The mayor can only exercise those functions which are delegated to councils by virtue of the Local Councils' Act, 1993. He/she may only exercise "certain functions on behalf of the state" if an agreement is made with a particular government organisation/authority to perform functions which are exclusively the competence of the (central) government or pertaining to that particular authority. Such function can only be exercised under the direct supervision and responsibility of the competent authority and after obtaining approval from the minister responsible for local councils.

### **3.4. Division of powers and responsibilities between local councils and regional authorities**

The sixty-seven local councils are grouped into three regions as indicated in the Local Councils' (Association) Regulations, 1994. There exists, however, no actual division of powers and responsibilities between the two "authorities", since functions and responsibilities are statutorily assigned to local councils (by virtue of Part IV of the Act).

### **3.5. Legal provisions concerning the internal structures of local councils**

The structure of local councils is regulated by the provisions of the Local Councils' Act, 1993 and the relative Regulations (issued by Legal Notices).

The Local Councils' (Association) Regulations, 1994 (Legal Notice 153 of 1994) determine the structure of the three regions.

## **4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING**

### **4.1. Local/regional referendums**

By means of a recent amendment to the Referenda Act (effected through Act VIII of 1996), in certain instances, citizens of a locality may demand a referendum in respect of bye-laws enacted by local councils.

### **4.2. Direct participation by the citizens**

All council meetings are open to the public and facilities have to be provided for media coverage. Citizens may participate:

- through membership in committees/sub-committees of a local council;
- by attending public consultation meetings on issues which fall within the competence of councils, or on other issues which affect the locality (e.g. nuisance). Such meetings can be held either at the Council's own instance or at the request of at least one-fifth of the electorate in localities with more than 3 000 inhabitants, and by a quarter of the electorate in other localities;
- by putting forward suggestions/complaints to the Council Secretary;
- by attending the (annual) locality meeting held by the Council primarily to discuss the estimates for the forthcoming financial year. The secretary is bound to take note of all suggestions put forward by the citizens of the locality during these meetings.

## **5. STATUS OF LOCAL ELECTED REPRESENTATIVES**

### **5.1. Eligibility and term of office**

Citizens of Council of Europe member states who have resided in Malta for at least six months are allowed to contest elections provided the country of which they are nationals allows Maltese citizens, on a reciprocal basis, to contest local council elections in that country. (Currently this facility is extended to citizens of the United Kingdom and Northern Ireland). The minimum age limit is 18 years.

The following persons are disqualified to stand for local elections as a member of the Council or to remain a member thereof if:

- members of the House of Representatives;
- members of any disciplined force;
- persons employed by the Council for which elections are held;
- persons holding offices which involve any responsibility for or in connection with the conduct of any election of members of the Council or the compilation of or revision of any electoral register;
- persons declared bankrupt under any law in force in Malta;
- persons incapacitated for any mental infirmity or for prodigality by a court in Malta or is otherwise determined to be of unsound mind;
- persons serving a sentence of imprisonment exceeding twelve months imposed on them by any court in Malta or is under such a sentence of imprisonment the execution of which has been suspended;
- members of the judiciary;
- persons disqualified from membership of the Council by or under this Act or any other law for the time being in force in Malta; and
- persons no longer appearing in the local councils' electoral register.

A “Code of ethics for local councillors” has been issued by the Cabinet Office in July 1995. This, however, is not a legally binding document.

The whole local councils' election procedure is regulated by the third schedule of the Local Councils' Act, 1993.

The provisions for payment of expenses lay down that, except as permitted by or in pursuance of these regulations, no payment and no advance or deposit shall be made whether before, during or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election, otherwise than by the candidate. All money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as a gift, loan, advance or deposit, shall be paid to the candidate and not otherwise. This shall not be deemed to apply to any sum disbursed by any person out of his own pocket for any expense legally incurred by himself and not exceeding 250 Maltese liri, if such sum is not repaid to him.

Every payment made by a candidate in respect of any expenses incurred on account of or in respect of the conduct or management of an election shall, except where less than 25 Maltese liri, be vouched for by a bill stating the particulars and by a receipt.

Public authorities do not provide economic support for parties putting forward candidates at local elections.

An elected representative's term of office is for a period of three years.

A councillor is obliged to attend all meetings. The Minister responsible for Local Councils shall declare a seat to be vacant on failure of the councillor to attend six consecutive council meetings or in the aggregate less than one third of the meetings called within a period of six months, provided that where the absence is due to a justifiable cause, the secretary, in informing the minister of the councillor's failure, may also transmit the recommendation of the Council for the minister not to declare the seat vacant.

## **5.2. Duties and responsibilities**

Councillors are obliged to attend all meetings of councillors which are to be held at least once a month.

It is the duty of every councillor who has any pecuniary interest, direct or indirect, in any contract or proposed contract and is present at any meeting of the Council at which that contract or proposed contract is, or is to be, considered, to disclose openly to the meeting the nature of his interest and not to preside or take part in the discussion but to withdraw from the meeting.

Every councillor shall disclose to the Council in writing any relevant family relationship known to him to exist between himself and any person who he knows either holds, or is a candidate for appointment to any office under the Council.

As elected representatives, councillors are expected to put forward any complaints/recommendations received by the electorate. The Council is bound to inform a complainant of the action taken and keep him informed of developments.

The Local Councils' (Complaints) Regulations, 1993 (Legal Notice 159 of 1993) require that unlawful activities of councillors should first be reported to the Council Secretary. Should the complaint not be dealt with to complainant's satisfaction, he may seek administrative redress through the office of the ombudsman.

A member of the Council may at any time resign from his office by notice in writing, signed by him and delivered to the secretary. His resignation shall take effect from the date of the receipt of the notice by the secretary and his office shall become vacant as of such date.

There are no limitations on the duties or activities of an elected representative after the end of his term of office. However, should he have acquired confidential information during his term of office as a councillor, he is still expected not to divulge this information to third parties who are extraneous to the Council.

No aid is required to assist the vocational reintegration of elected representatives who are not re-elected, as all councillors serve on an honorary basis and retain their full-time employment during their office in council.

### **5.3. Working conditions**

Although they serve on a honorary basis, the Local Councils' (Financial) Regulations provide that council members are entitled to claim a refund of expenses incurred during activities related to the performance of their office.

Training programmes for candidates and elected representatives are provided on a regular basis by the Local Councils' Department. Since the setting up of the first local councils (1 December 1993), the department has organised ten training programmes in which 1 950 persons participated. Their training programmes are organised jointly with the Local Councils' Association.

During these training programmes, participants are provided with copies of the Local Councils' Act and the relative regulations and procedures. Handouts relating to topics discussed during these seminars (e.g. bye-laws, standing orders, financial management, explanatory notes on the regulations and procedures, etc.) are also distributed during these training programmes. Detailed procedures on financial, tendering, audit and human resources have been prepared by the Department of Local Councils with the assistance of MSU. consultants.

It is expected that the spirit of the law, which requires that councillors be afforded all such assistance by their employers as is reasonable to allow them to carry out their functions as elected representatives, be adhered to by all employers of local councillors. The central government, as a "model employer", issued instructions in March 1994, requesting heads of government departments, parastatal organisations and other bodies in which government has a controlling share, to allow local councillors within their employ to attend to official council business, including also training programmes organised for councillors. Such a concession is at the sole discretion of the head of section, and in giving the concession the underlying principle is that this would not be detrimental to the public service.

It is only the mayor who is granted an "allowance". This is authorised by council resolution, and cannot exceed 33% of the honorarium payable to members of the House of Representatives at the time. During the deliberation by council, the mayor cannot preside or participate in the discussion and the voting. There are no criteria for granting this allowance.

The mayor's allowance is subject to tax deductions under the Income Tax Act. It is not, however, subject to other deductions, such as contributions for health insurance and retirement pension scheme.

Councillors, as local politicians, are deemed to be the leading citizens in a locality. They are responsible for carrying out their function as policy-makers within the framework of the functions and responsibilities delegated to local councils by central government through the Local Councils' Act, 1993.

Only minor amendments to the Act are envisaged which will affect the status of councillors (such as their inclusion in the list of exempted jurors).

At present there are sixty-four women councillors out of a total of 425 councillors (i.e. 15% are women councillors).

The Constitution of Malta in the provisions dealing with the "Declaration of Principles" provides that: "The state shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise; the state shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men."

## **6. DISTRIBUTION OF POWERS BETWEEN LOCAL AND CENTRAL AUTHORITIES**

### **6.1. Functions and responsibilities of local councils**

The system of government is based on a two-tiered system: central government and local councils.

The following table includes the distribution of powers between the state and local authorities.

Local councils may also perform any other function which shall be delegated to them by the central government through the Minister responsible for Local Councils. They may provide for all such other works, things, matters and services which are not excluded from a council's competence by any law for the time being in force nor assigned to any other authority.

In addition, councils may make, amend or revoke bye-laws for the purpose of carrying out their functions and for the prevention and suppression of nuisances.

The Local Councils' Act defines by reference to maps attached to it in the second section, the legal boundaries of each locality. Arterial and distributor roads determined by the national structure plan, national monuments, national parks or gardens, industrial estates, ports, airports and other national territories, establishments, buildings and items listed in a section of the Act, are the responsibility of the central government and are totally excluded from the competence of local councils.

## **6.2. Participation of local/regional authorities in national economic and spatial planning**

Local councils do not participate directly in national economic planning. However, their share in national economic planning is reflected through councils' budgeting of their financial allocation. Councils' financial allocation is determined by the funding formula found in the tenth schedule of the Act. In addition, councils may also apply for additional "funds for special needs", which are approved by the House of Representatives.

Participation by local councils in national spatial planning is limited as provided in the Local Councils' Act, wherein it is laid down *inter alia* that it is part of a local council's functions to "make recommendations to any competent authority for or in relation to any planning or building scheme".

## **6.3. Functions delegated to local councils acting as agents of the central authority**

The functions indicated in Article 33 (1) of the Local Councils' Act have been delegated *in toto* to local councils. The same article makes a provision for the delegation of other functions pertaining to central government, where it is necessary to draw up an instrument of delegation after formal approval by the minister.

Local councils can, however, act as agents of the central authority only when arrangements are made between the competent authority and a local council. In such cases, a local council may be authorised by the Minister responsible for Local Government to carry out such function pertaining to the central authority under the responsibility of the latter.

## **6.4. Important legislation enacted which affect the distribution of powers between local councils and central government**

Through an amendment to the Local Councils' Act, effected by means of Act XII of 1995 (amending the Commissioners for Justice Act), the Minister responsible for Local Councils may make "... regulations of general application for the purposes for which a council may make bye-laws under this Act and such regulations shall, for the purposes of this Act and of any other law, be deemed to be bye-laws enacted by all the councils". Such regulations, however, may only make provisions of a general nature and shall be without prejudice to the making of further bye-laws by any council for the same purpose, by making special provision for its locality.

Another important legislation which affects the distribution of powers between the central government and local councils, is Act XIII of 1996 (Private Guards and Local Wardens' Act, 1996) published on 3 May 1996. This Act makes it possible *inter alia* for local councils to engage the services of licensed local wardens, who would be empowered (under certain statutory conditions) to stop any person whom they suspect to have committed a breach of any bye-laws and other delegated legislation and take his particulars. Failure by the offender to pay the prescribed fine would lead to his eventual summons before a commissioner for justice who sits in the Council's administrative offices.



Function	Competent authority			Type of competence				Exercise of the competence				Remarks ***
	State	Intermediate*	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
<b>General administration</b>												
Security, police	•			•		•		•				
Fire protection	•			•		•		•				
Civil protection	•					•						
Justice	•			•		•		•				
Civil status register	•			•		•		•				
Statistical office	•			•		•		•				
Electoral register	•			•		•		•				
<b>Education**</b>												1
Pre-school education	•					•		•				
Primary education	•					•		•				2
Secondary education	•					•		•				
Vocational and technical	•					•		•				
Higher education	•					•		•				
Adult education	•						•	•				
Other												
<b>Public Health</b>												3
Hospitals	•					•		•				
Health protection	•					•		•				

(\*) where several intermediate levels exist the competent local government is indicated

(\*\*) the competence refers to infrastructures (I) or to the staff(S)

(\*\*\*) in case there are any remarks see last page in this country's table

Function	Competent authority			Type of competence				Exercise of the competence				Remarks **
	State	Intermediate*	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
<b>Social Welfare</b>												3
Kindergarten and nursery	•		•		•			•				
Family welfare services	•		•		•			•				
Welfare homes	•		•		•			•				
Social security	•			•				•				
Other												
<b>Housing and town planning</b>												4
Housing	•			•				•				5
Town planning	•		•		•				•			
Regional/spatial planning	•		•		•			•				
<b>Environment, public sanitation</b>												
Water & sewage	•			•				•				
Refuse collection & disposal	•		•		•			•				
Cemeteries & crematoria	•			•				•				
Slaughterhouses	•			•				•				
Environmental protection	•		•		•			•				
Consumer protection	•		•		•			•				
<b>Culture, leisure &amp; sports</b>												
Theatres & concerts	•											
Museums & libraries	•		•		•			•				
Parks & open spaces	•		•		•			•				
Sports & leisure	•		•		•			•				

(\*) where several intermediate levels exist the competent local government is indicated

(\*\*) the competence refers to infrastructures (I) or to the staff(S)

(\*\*\*) in case there are any remarks see last page in this country's table

Function	Competent authority			Type of competence				Exercise of the competence				Remarks ***
	State	Intermediate	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
Religious facilities	•			•		•						
Other cultural facilities	•		•		•							
<b>Traffic, transport**</b>												
Roads	•		•		•							6
Transport	•		•		•			•				
Urban road transport			•		•							
Urban rail transport												
Ports	•			•				•				
Airports	•			•				•				
Other traffic & transport												
<b>Economic services</b>												
Gas												
District heating												
Water supply	•		•		•			•				
Agriculture, forests, fishing	•			•				•				
Electricity	•		•		•							
Economic promotion	•			•				•				
Trade & industry	•			•				•				
Tourism	•		•	•				•				
Other economic services	•			•				•				
<b>Other functions</b>												
Law enforcement (Certain Powers through Warden Services)	•		•		•							

(\*) where several intermediate levels exist the competent local government is indicated

(\*\*) the competence refers to infrastructures (I) or to the management (M)

(\*\*\*) in case there are any remarks see last page in this country's table

**REMARKS**

1. As part of a national scheme, municipalities provide in conjunction with any competent authority for the establishment, upkeep and maintenance of creches, kindergartens and other educational services or buildings.
2. Municipalities propose to the Minister responsible for Education persons to be appointed as presidents of primary school councils.
3. As part of a national scheme, municipalities provide in conjunction with any competent authority for the establishment, upkeep and maintenance of health and rehabilitation centres, government dispensaries, health district offices and homes for senior citizens;
4. Municipalities make recommendations to the competent authority for or in relation to any planning or building scheme.
5. Within the parameters of any national plan, to issue guidelines to be followed in the upkeep, restoration, design or alteration of the facade of any building or any part of a building normally visible from a street, including the type of lighting and materials used, advertisements and shop fronts.
6. Municipalities make proposals and are consulted by the competent authority prior to the competent authority making any changes in traffic schemes directly affecting the locality.

## **7. CO-OPERATION BETWEEN LOCAL AUTHORITIES**

### **7.1. Institutional co-operation (consortia) for the performance of tasks of common interest**

Article 37(1) of the Local Councils' Act, 1993 provides that: "Two or more local councils may discharge any of their functions jointly and they may also arrange for the discharge of these functions by a joint committee of theirs or by an officer of one of them". The said article, in number (2) provides also that "local councils having an arrangement as provided in number (1) may meet in joint session to discuss the discharge of the functions to which the arrangement relates and all councillors shall be entitled to participate and vote where required unless the arrangement otherwise provides".

Communication between the local councils is through fax, telephone and computer network. Several councils have also joined the Internet in order to promote their services and initiatives.

### **7.2. Associations of local councils**

The Local Councils' Act provides that local councils may form and belong to an association for the protection and promotion of their common interests as well as belong to international associations of local government authorities.

With the enactment of the Local Councils' (Association) Regulations, 1994 (Legal Notice 153 of 1994) published on 8 November 1994 – provisions were made for:

- the setting up of a Local Councils' Association, "with the aim of promoting the common interests of local councils and to represent local councils on international associations of local government authorities"; and
- the setting up of three regions: Gozo, Malta *Majjistral* and Malta *Xlokk*.

The main aim in the establishment of the Local Councils' Association is that it promotes the common interests of local councils and to represent them on international associations of local government authorities.

### **7.3. Co-operation between local authorities in different countries**

The Local Councils' (Association) Regulations make provisions *inter alia* for arrangements on town-twinning between a local council and another locality in any other country. This requires the approval of the Minister responsible for Local Councils after the Local Councils' Association has given the minister its opinion on such intended twinning.

In establishing the twinning of localities, consideration shall be given to the status of the localities due to be twinned (e.g. the capital or former capitals of Malta can only be twinned with a capital or former capitals of another country, and a city shall only be twinned with another city).

## **8. FINANCE**

### **8.1. Taxes**

Local councils are not entitled to collect their “own taxes”.

Article 60 of the Local Councils' Act provides, however, that a local council can “raise funds by means of any scheme designed to provide additional funds to those allocated to it under Article 55 provided that such schemes shall be instituted by bye-laws”.

However no such “schemes” have as yet been enacted by any council by means of bye-laws, and all bye-law require the final endorsement of the Minister responsible for Local Councils.

### **8.2. Grants from higher authorities**

Municipalities receive yearly a financial allocation by central Government.<sup>g</sup>This allocation is calculated on the basis of the formula provided for in the tenth schedule (section 55) of the Local Councils' Act.

In addition, councils can be allocated funds “for special needs of a locality or localities”. These funds are made available after a resolution to that effect has been carried by the House of Representatives.

Part of these funds are allocated automatically to those local councils which are at a disadvantage, compared to other councils, and to correct any socio-economic imbalances. The remaining “funds for special needs” are voted to cover certain criteria which also have to be approved by the House of Representatives. These concern mainly projects of a capital nature, such as projects for parks and gardens, beach facilities, construction or upgrading of playing-fields, road re-construction, etc.

The “funds for special needs” represented 1.65 million Maltese liri in 1996, and 2.5 million Maltese liri in 1997.

Councils which are granted funds for special needs in order to start off a project are expected to fork out an equivalent sum out of their surplus funds in order to complete the project covered by the fund. This is not, however, a statutory obligation.

### **8.3. Fees/charges paid by users of local council services**

Local councils may enact bye-laws to charge fees for use of municipal services. According to the terms of Article 60 of the Local Councils' Act, 1993, a local council is empowered to “raise funds by means of any scheme designed to provide additional funds”. It may only charge “administrative fees” (such as fees in respect of handling of forms, photocopies, copies of documents, etc.).

No council has, as yet, enacted bye-laws enabling it to charge rents.

Local councils may act as agents for any public body or government department, where certain functions (such as handling of licences) may be delegated from the latter to councils. This arrangement can only be made after a ministerial order is published in the Government Gazette.

Although no such arrangements have as yet been made, councils have already been granted a percentage on the fees relating to collection of trading licences in respect of their respective locality. [It is envisaged that in the near future these licences will actually be handled by the councils themselves, whilst retaining a percentage of the fees collected].

#### **8.4. Borrowing**

Local councils need written authorisation of the Minister responsible for Local Councils and of the Minister responsible for Finance in order to raise loans. There are no statutory criteria for such an approval, although certain legal safeguards have been adopted by way of administrative checks.

The local commercial banks are the main sources of council borrowing.

There exist no specific provisions regulating loans from foreign markets; therefore, borrowing by local authorities from foreign public or semi-public agencies is subject to the provisions already mentioned.

In addition, there are no provisions regarding guarantees given by the state or by other bodies.

Currently, it can be said that there is no access to foreign capital, including European institutions.

#### **8.5. Economic control by higher authorities**

The financial management of local councils is regulated by the following statutes: Part VI of the Local Councils' Act, 1993; the Local Councils' (Financial) Regulations, 1993 (Legal Notice 155 of 1993) and the Financial Procedures; the Local Councils (Audit) Regulations, 1993 (Legal Notice of 1993) and the Local Councils' Audit Procedures; and the Local Councils' (Tendering) Regulations, 1993 (Legal Notice of 1993) and the Local Councils' Tendering Procedures.

There are several means by which the "higher authorities" exercise economic control over local councils. These are:

- the Minister responsible for Local Councils may, either of his own accord or at the request of the Minister responsible for Finance, by notice in writing, require the secretary to produce such books of account, records and any other document as may appear to him to be necessary, without the need to give any reason for such a demand [section 64 of the Act];

- “local government auditors” are appointed each year by the Director of Audit to audit the accounts of local councils. These auditors operate within the terms and conditions given to them by the Director of Audit [section 65 of the Act]. In the exercise of their duties, local government auditors shall have access to all books, records, returns and other documents relating to the accounts of local councils, and they may also require any person holding or accountable for any such books or documents to appear before them;
- the Minister responsible for Local Councils shall, after consulting the Minister responsible for Finance, prescribe indicators to measure the performance of local council services. These indicators are meant to facilitate comparisons of cost, economy, efficiency and effectiveness between local councils over a period of time. In addition, local government auditors are required to satisfy themselves that a local council has made proper arrangements for securing economy, efficiency and effectiveness;
- persistent breach of financial responsibilities have to be reported by the Director of Audit to the Minister responsible for Local Councils, and such a breach constitutes a ground which may lead the Prime Minister to advise the President to dissolve the council concerned [section 22 (a) of the Act];
- the Director of Audit may also request the local government auditors of a particular council to carry out an “interim audit” in respect of that council, on a specific issue;
- in cases of serious allegations of financial mismanagement/irregularities, the Prime Minister may order an inquiry (according to the terms of the Inquiries Act) with the aim of investigating these allegations;
- serious allegations of corruption are referred for investigation to the Permanent Commission Against Corruption, which is empowered to investigate complaints regarding allegations of corruption made by persons in an official capacity.

## **9. CONTROLS OVER LOCAL AUTHORITIES**

### **9.1. Authority responsible for exercising general administrative supervision of the activities of local councils**

The Local Councils' Act empowers the Minister responsible for Local Councils, either of his own accord, or at the request of the Minister for Finance, to require the Secretary, by notice in writing, to produce such books of accounts, records and any other document as may appear to him to be necessary. The minister may make such a request without giving any reason for such a demand.

The Department of Local Councils has been set up within the Office of the Prime Minister with the aim of, *inter alia*, exercising general administrative supervision of the activities of local councils. Where it appears that such activities are not in order, the Minister responsible for Local Councils is alerted and the necessary action taken. For the purpose of proper monitoring and assistance to local councils, the department has set up a Co-ordination and Support Service Unit.



Through several means (such as regular memos to all local councils, seminars, training programmes, etc.) the department, on behalf of the Minister responsible for Local Councils, whilst giving guidelines on how councils can achieve a high level of effectiveness, ensures that councils' activities are conform with existing laws and regulations, particularly the provisions of the Local Councils' Act, 1993.

## **9.2. Measures available to redress illegal acts by councils**

The Local Councils' Act and relative regulations make provisions for monitoring and auditing of local councils' financial activities. These are the following:

- the Director of Audit appoints persons having the necessary qualifications as indicated in the Act, who are called “local government auditors” to audit the accounts of a local council. The local government auditors operate under the conditions laid down by the Director of Audit. In the exercise of their duties the local government auditors shall have access to all books, records, returns and other documents relating to the accounts of local councils and may require any person holding or accountable for such books or documents to appear before them. The local government auditors' report is forwarded to the Director of Audit, the Minister for Finance and the Council. The Minister for Finance tables these reports before the House of Representatives;
- the Local Councils' (Audit) Regulations, 1993 (Legal Notice 156 of 1993) makes provision for the conducting of an “interim audit” by the local government auditors to be made at the request of the Director of Audit on matters designated by him. “Interim audits” are usually requested to verify reports of financial irregularities conducted by a council. It is the sole discretion of the Director of Audit whether or not to request such interim audits;
- where there are serious allegations of irregularities the Minister responsible for Local Councils may also appoint an inquiring board (according to the terms of the Inquiries Act) in order to investigate the allegations and give its recommendations;
- by virtue of the recently introduced Ombudsman Act (Act XXI of 1995) any citizen who feels aggrieved by an administrative act of the Council may make a complaint to the ombudsman after having exhausted all the remedies available to him.

## **9.3. Auditing of local authorities' accounts**

Local government auditors are appointed from year to year to audit the accounts of local councils. Local government auditors submit their reports to the government auditor who is obliged to transmit copies of these reports to the Minister responsible for Local Councils, the Minister responsible for Finance, and to the respective Council. The Minister responsible for Finance shall cause a copy of each report to be laid before the House of Representatives.

The law also provides that the Minister responsible for Local Councils in consultation with the Minister responsible for Finance, shall prescribe indicators to measure the performance of local council services. These indicators should facilitate comparisons of cost, economy, efficiency and effectiveness between local councils over time. In addition to their normal auditing duties, local government auditors are required to satisfy themselves that a local council has made proper arrangements for securing economy, efficiency and effectiveness in carrying out its functions.

A report of the Director of Audit for persistent breach of financial responsibilities may lead to the dissolution of a council by the President of Malta, acting in accordance with the advice of the Prime Minister.

## **10. REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL AUTHORITIES**

Local councils have been given the right to challenge in court any decision which in any way interferes with the free exercise of their powers. On the other hand, since local councils are by law a statutory authority having a distinct legal personality, they may be sued by any interested party who feels aggrieved by the actions of a local council.

Citizens of any locality may seek redress against any decision taken by their respective local authority in several ways, such as:

- in terms of “ad hoc” statutory provisions, namely the Local Councils' (Complaints) Regulations, 1993. In this context, “complaint” means any concern, accusation, criticism, grievance, charge or protest or any other negative information addressed to or received by the Council or any council employee whether directly or indirectly.

The processing of such complaints is conducted in accordance with a prescribed set of procedures;

- by referring a complaint of an administrative nature against the Council to the ombudsman after having unsatisfactorily exhausted all the statutory remedies available;
- by suing the Council.

## **11. LOCAL ADMINISTRATIVE PERSONNEL**

The Secretary is the administrative, executive and financial head of the Council.

Local councils may also employ other employees in categories which they deem fit, provided these fall within the parameters of the law (Part V), the Human Resources Regulations and the Human Resources Procedures.

Council secretaries are appointed on a full-time basis where the population of the locality exceeds 2 000. By virtue of a recent amendment to the Local Councils' Act (effected through the Private Guards and Local Wardens' Act, 1996), local councils may also appoint full-time secretaries where the population of the locality is less than 2 000.

Councils may appoint also full-time employees at the rate of one per 3 000 inhabitants. Where the population is less than 3 000 the appointment will be on a part-time basis.

The qualifications required remuneration and technical, administrative and office procedures to be followed by council employees are provided by law (namely the Local Council (Human Resources) Regulations and the Human Resources Procedures), which also include provisions for disciplinary proceedings and training.

## **12. REFORMS ENVISAGED OR IN PROGRESS**

The central government intends to pursue the devolution process through the decentralisation of certain functions and the delegation of certain responsibilities to local councils.