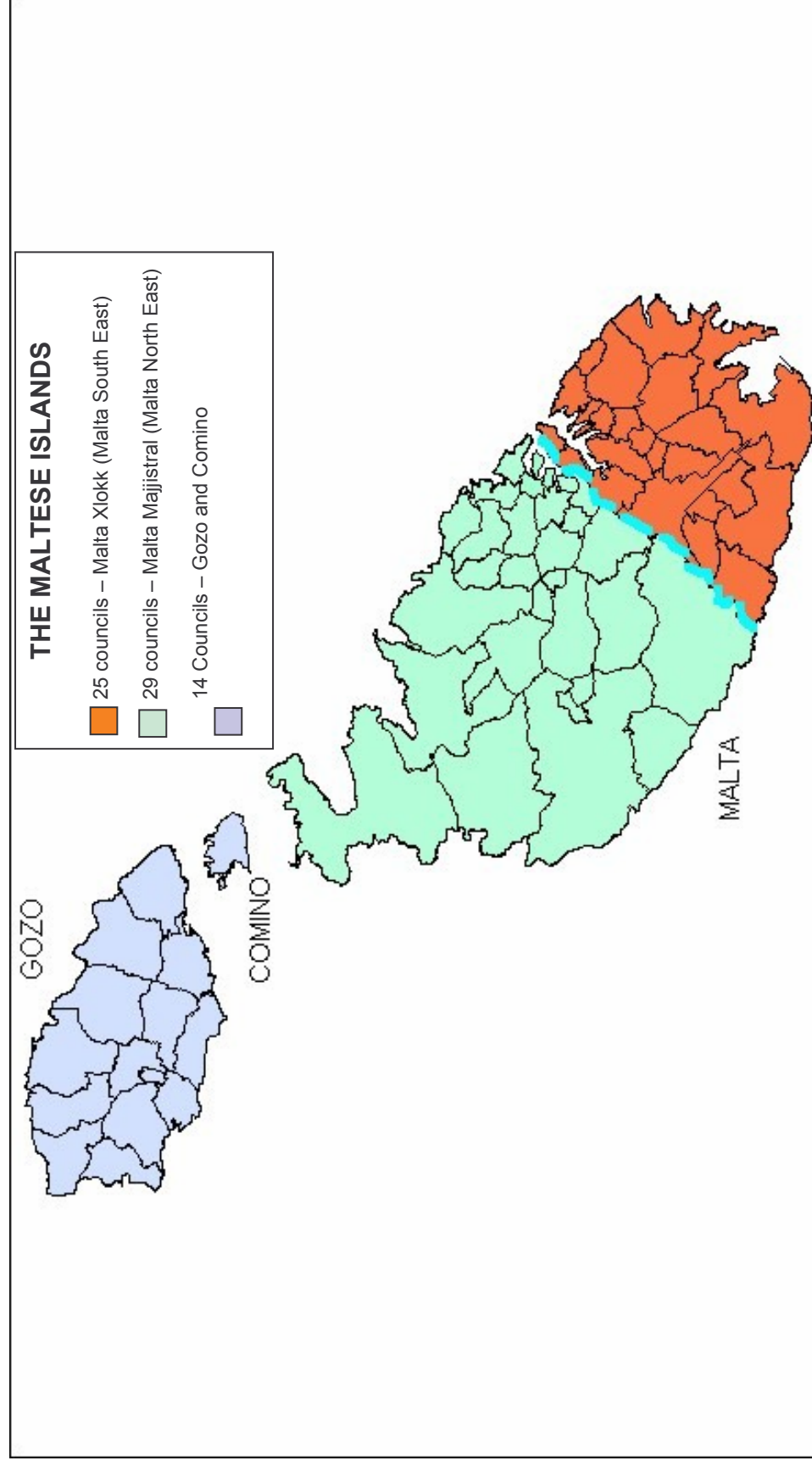


STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY

Malta

Malta
Territorial set-up



STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY

Malta

Situation in 2006

French edition:

Structure et fonctionnement de la démocratie locale et régionale : Malte

Studies appearing in the series “Structure and operation of local and regional democracy”:

1st edition

1992: *Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland.*

1993: *Czech Republic, Estonia, Hungary, Lithuania, Malta, Turkey, United Kingdom.*

2nd edition

The second edition of the files was started in 1996. It will include an individual file for each of the member states of the Council of Europe.

Already published: *Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, United Kingdom.*

3rd edition (brochure series)

The third edition of the files was started in 2004. Files on individual countries are no longer published with an ISBN.

2004: *Czech Republic; Hungary*

2006: *Belgium, Iceland, Latvia, Lithuania, Malta, Portugal*

For further information, please contact:

Directorate of Co-operation for Local and Regional Democracy

DG I – Legal Affairs

Council of Europe

F-67075 Strasbourg Cedex

Tel.: +33 (0)3 88 41 24 14

Fax: +33 (0)3 88 41 27 84

e-mail siobhan.montgomery@coe.int

Reproduction is authorised provided the source is mentioned.

Council of Europe

F-67075 Strasbourg Cedex

© Council of Europe, October 2006

Printed at the Council of Europe

TABLE OF CONTENTS

	Page
1. LEGAL BASIS	3
1.1. Constitutional provisions	3
1.2. Main legislative texts	3
2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES.....	5
2.1. Subdivisions	5
2.2. Statistical data	5
2.3. Regulations governing changes in structures	6
3. ORGANISATION OF LOCAL AUTHORITIES.....	6
3.1. Deliberative body.....	6
3.2. Executive body	6
3.3. Political head of the local/regional authority	7
3.4. Division of powers and responsibilities between Local Councils and regional authorities.....	8
3.5. Legal provisions concerning the internal structures of Local Councils.....	8
4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING.....	8
4.1. Local/regional referendums.....	8
4.2. Direct participation by the citizens.....	8
5. STATUS OF LOCAL ELECTED REPRESENTATIVES	9
5.1. Eligibility and term of office.....	9
5.2. Duties and responsibilities.....	10
5.3. Working conditions	11
6. DISTRIBUTION OF POWERS BETWEEN LOCAL AND CENTRAL AUTHORITIES ...	12
6.1. Functions and responsibilities of Local Councils.....	12
6.2. Participation of local/regional authorities in national economic and spatial planning	12
6.3. Functions delegated to Local Councils acting as agents of the central authority	13
6.4. Important legislation enacted which affect the distribution of powers between Local Councils and central government.....	13

7.	CO-OPERATION BETWEEN LOCAL AUTHORITIES	18
7.1.	Institutional co-operation (consortia) for the performance of tasks of common interest..	18
7.2.	Associations of Local Councils	18
7.3.	Co-operation between local authorities in different countries	18
8.	FINANCE	19
8.1.	Taxes.....	19
8.2.	Grants from higher authorities.....	19
8.3.	Fees/charges paid by users of Local Council services	19
8.4.	Borrowing	20
8.5.	Economic control by higher authorities	20
9.	CONTROLS OVER LOCAL AUTHORITIES	21
9.1.	Authority responsible for exercising general administrative supervision of the activities of local councils	21
9.2.	Measures available to redress illegal acts by Councils	22
9.3.	Auditing of local authorities' accounts	22
10.	REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL AUTHORITIES...	23
11.	LOCAL ADMINISTRATIVE PERSONNEL	23
12.	REFORMS ENVISAGED OR IN PROGRESS	24

1. LEGAL BASIS

1.1. Constitutional provisions

Act XIII of 2001 amended the Constitution of Malta (Chapter 1, Laws of Malta), to include a new Chapter (Chapter XA) which states that: “The State shall adopt a system of local government whereby the territory of Malta shall be divided into such number of localities as may by law be from time to time determined, each locality to be administered by a Local Council elected by the residents of the locality and established and operating in terms of such law as may from time to time be in force.”

1.2. Main legislative texts

The Local Councils Act, 1993 (Chapter 363, Laws of Malta), hereinafter referred to as the Local Councils Act, 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 mainly 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 Local 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 the responsibility of Local Councils
5. Oath of office of Local Councillor/Mayor/Deputy mayor
6. Standing Orders
7. Election of Mayor and Deputy Mayor
8. Approved non-governmental organisations
9. Listed Hamlets and the plans delineating their boundaries and respective streets
10. Financial allocation to Local Councils

Act 1 of 2005 recently amended the Local Councils Act to include new provisions. The major amendments are as follows:

- (1) the designation of any group of persons contesting Local Council elections as being a “political party”;
- (2) the statutory requirement that any Government department or public corporation, authority or other agency must abide in its operations and administration by the boundaries of any locality as determined under the Local Councils Act;
- (3) the requirement that a person may only contest a Local Council election if he/she is registered as a voter in the (Malta) Electoral Register or the European Union Electoral Register;
- (4) no person may contest the election of more than one locality in any local election;
- (5) no Councillor shall remain in office if at any time during his term of office he is elected as Councillor of any other Local Council or any similar institution in any other member state;
- (6) a legal requirement that Mayors ensure that the Code of Ethics established by the Local Councils Association be observed by all Councillors and that any breach of such Code be reported both to the Council and to the Department for Local Government;
- (7) new provisions that determine the election of the Mayor and Deputy Mayor as Councillors who in the first count at the last local election obtained the highest number of votes and belong to the political party which obtained the absolute majority of Councillors;
- (8) a motion proposing a vote of no confidence in the Mayor or Deputy Mayor must be signed by at least one third of the Councillors in office; it must specify the reasons and propose another Councillor to be elected as Mayor or Deputy Mayor;
- (9) the possibility for half the Councillors to request a meeting, attaching a proposed meeting agenda. If the meeting is not held within one week from the receipt of the request, the Councillors concerned may summon the Council meeting themselves and fix the agenda, determining the date and time for the meeting;
- (10) the Mayor’s allowance is not deemed as earnings for the purposes of the Social Security Act;
- (11) the inclusion of three new statutory functions, namely: the administration of local libraries, the installation and maintenance of bus shelters and the enforcement of all laws under the jurisdiction of the Commissioners for Justice;
- (12) no Councillor of any locality may be appointed Executive Secretary of any Local Council;
- (13) the power of the Minister, after consulting the Local Council Association, to make regulations providing for the representation of Maltese Local Councillors on the Committee of the Regions of the EU and on any other international forum or institution requiring the representation of Local Councillors;
- (14) new provisions for the distribution of the voting document;
- (15) Mayors and Executive Secretaries are exempt from serving as Jurors in the criminal court;
- (16) Mayors are deemed Registrars of Marriage.

2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES

2.1. Subdivisions

The Act establishes sixty-eight 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-nine local councils
Malta <i>Xlokk</i> Region	–	twenty-five local councils

2.2. Statistical data

Region surface area and population

Regions	Surface area sq. km	Population
Gozo	65.55	35 892
Malta <i>Majjistral</i>	163.89	236 101
Malta <i>Xlokk</i>	64.14	145 543

Municipalities surface area and population data

	Surface area sq. km	Population
Largest local council	27 286.00	22 000
Smallest local council	0.16	304
Average	4.38	6 140

Municipalities according to surface area

Under 5 sq. km	59 localities
05 -10 sq. km	3 localities
10 -15 sq. km	1 locality
15 -20 sq. km	3 localities
Over 20 sq. km	2 localities

Municipalities according to population

Number of inhabitants	Number of localities	Percentage of total
Less than 1 000	4	5.88
1 000 - 5 000	33	48.53
5 000 - 10 000	16	23.53
10 000 - 50 000	15	22.06

A special provision in the Act stipulates that where a locality includes more than one town, village or hamlet, the council must 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. The committee must report regularly on the needs of the particular town, village or hamlet for which the committee is appointed. The chairman of the committee must be a Councillor but the other members need not be Council members. A new Schedule appended to the Local Councils Act lists 10 hamlets in terms of the aforementioned provision.

2.3. Regulations governing changes in structures

Changes in the boundaries of localities may be made only in exceptional circumstances and only by the Electoral Commission, after consultation with the Minister responsible for local government, 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 all cases the Council has to appoint a Mayor and a Deputy Mayor (see 3.3. below).

The Council is elected every three years by the inhabitants qualified to vote and registered as voters in the local councils' electoral register or the European Union Electoral Register. Elections are held under the system of proportional representation using the single transferable vote.

3.2. Executive body

The Executive Secretary, who is appointed by the Council, is the executive, administrative and financial head of the Council.

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

The Executive Secretary is appointed by the Council after consulting the Minister responsible for local government. The engagement is made either after the Council reviews applications and interviews applicants who are referred by the Employment and Training Corporation (which is the employment agency recognised 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 statutory duties of the Executive Secretary 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;
- to carry out any other administrative duties as may be detailed by the Mayor, in accordance with policies decided and delegated by the Council.

A Council may appoint a Deputy Executive Secretary to exercise the functions of Executive Secretary whenever the office of Executive Secretary is vacant or the Executive Secretary is unable to act. Such appointment is also made after consultations with the Minister responsible for local government, provided that the proposed candidate has the qualifications for the post of Executive Secretary as set out in the Human Resources Regulations.

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 2 500 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. The 2005 Local Councils Act amendments made provision for the election of Mayor and Deputy Mayor as follows: the Councillor obtaining the majority first count votes and belonging to the political party obtaining the majority of votes in the last local election is appointed Mayor and the Councillor obtaining the second highest votes is appointed Deputy Mayor.

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

The Mayor may only exercise functions which are delegated to Councils by virtue of the Local Councils Act. The Mayor may exercise "certain functions on behalf of the state" only 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. These functions may only be exercised under the direct supervision and responsibility of the competent authority and after obtaining approval from the Minister responsible for local government.

3.4. Division of powers and responsibilities between Local Councils and regional authorities

The sixty-eight 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 Part IV of the Local Councils Act.

These 3 “regions” do not have any administrative or executive set up. Each region consists of a number of Councils that are geographically contiguous and is solely used for the purpose of representation at Local Councils Association and international fora.

3.5. Legal provisions concerning the internal structures of Local Councils

The structure of Local Councils is regulated by the Local Councils Act and the relative subsidiary legislation (issued as 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

Act VIII of 1996 amended the Referenda Act to provide that in certain instances, citizens of a locality may demand a referendum in respect of Bye-laws enacted by any Local Council.

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 Local 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 Executive Secretary. In the case of complaints, the Council is obliged to give feedback on the status of the complaint;
- by attending the (annual) locality meeting held by the Local Council primarily to discuss the estimates for the forthcoming financial year. The Executive 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. This right is extended also to citizens of Member States of the European Union. The 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 they are:

- 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 are otherwise determined to be of unsound mind;
- persons serving a sentence exceeding twelve months and handed down by any court in Malta or serving a suspended sentence;
- members of the judiciary;
- persons disqualified from membership of the Council by the Local Councils Act or any other law for the time being in force in Malta;
- persons no longer appearing in the local councils' electoral register.

All Local Councillors are legally obliged to abide by the Code of Ethics published as part of the Local Councils' Association Regulations.

The whole Local Councils' election procedure is regulated by the Third Schedule of the Local Councils Act.

Under the provisions on payment of expenses, except where permitted by the local elections regulations, only the candidate may make payments, advances or deposits before, during or after an election for expenditure connected with the conduct and management of the election.

All money provided by any other person for expenses connected with the conduct or management of the election whether as a gift, loan, advance or deposit, must be paid directly to the candidate. This provision does not apply to sums paid by any person out of his/her own pocket for legally incurred expenses which do not exceed 250 Maltese liri (Lm250), and have not been reimbursed.

Every payment made by a candidate for expenses incurred in connection with the conduct or management of an election must, except where they are less than 25 Maltese liri (Lm25), 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 government shall declare a seat to be vacant if a Councillor fails to attend six consecutive council meetings or less than one third of the meetings called within a period of six months. If the absence is for just cause, the secretary, in informing the minister of the councillor's failure to attend, may also transmit the Council's recommendation for the minister not to declare the seat vacant. The Minister, however, has the discretion of whether to accept the justification.

5.2. Duties and responsibilities

Councillors are obliged to attend all Council meetings 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 considered, to disclose openly to the meeting the nature of his interest. He/she may not preside or take part in the discussion and must 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 Executive Secretary. Should the complaint not be dealt with to the complainant's satisfaction, he/she may seek administrative redress through the office of the (national) Ombudsman.

A member of the Council may at any time resign from his office by notice in writing, signed by him/her and delivered to the Executive Secretary. His resignation must take effect from the date of the receipt of the notice by the Executive Secretary and his office must become vacant as of this 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/she have acquired confidential information during his term of office as a Councillor, he/she is still expected not to divulge this information to third parties who are extraneous to the Council.

Since all Councillors serve on an honorary basis and retain their full-time employment during their term of office in the Council, no aid is required to assist their vocational reintegration if they are not re-elected.

5.3. Working conditions

Although they serve on an honorary basis, the Local Councils' (Financial) Regulations provide that Council members are entitled to claim reimbursement for expenses incurred in the performance of activities related to their office.

Training programmes for candidates and elected representatives are provided by the Department for Local Government. Since the setting up of the first Local Councils (1 December 1993), the department has organised several training programmes as well as information seminars. In most cases, these 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 given and explained during these training programmes. Detailed procedures on financial, tendering, audit and human resources have been prepared by the Department for Local Government.

The law 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. It is expected that the spirit of the law 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 duties pertaining to his/her job.

It is only the Mayor who is granted an "allowance". This is authorised by a 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 may not preside or participate in the discussion and the voting.

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 schemes.

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.

At present there are 69 women Councillors out of a total 431 Councillors (i.e.16% 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 government.

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 government. They may provide for all 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 in their localities.

The Local Councils Act defines by reference to maps attached to it in the Second Schedule, 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.

Participation by Local Councils in national spatial planning is limited as provided in the Local Councils Act. The act lays 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 provision for the delegation of other central government functions, where it is necessary to draw up an instrument of delegation after formal approval by the Minister responsible for local government.

Local Councils may also act as agents of the central authority. This can be done only when arrangements are made between the competent authority and a Local Council. In such cases, the Minister responsible for local government may authorise the Local Council to carry out central authority functions under the Minister's responsibility.

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, by means of Act XII of 1995 (amending the Commissioners for Justice Act), the Minister responsible for local government 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 are empowered to enforce delegated legislation (such as traffic and environment regulations). For example, failure by offenders to pay prescribed fines leads to their eventual summons before a Commissioner for Justice who presides the Local Tribunal. There are 9 Local Tribunals in Malta and Gozo, each Tribunal incorporating between 7 and 10 Councils. For the better administration of local enforcement, the Local Councils incorporated in each Local Tribunal have their own Local Enforcement System Joint Committee. A Local Enforcement System Management Committee meets on a regular basis to monitor the local enforcement system processes and make recommendations for improvement.

The competencies of local and regional authorities

14

MALTA

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	
General administration												
Security, police	•			•		•		•				
Fire protection	•			•		•		•				
Civil protection	•					•						
Justice	•			•		•		•				
Civil status register	•			•		•		•				
Statistical office	•			•		•		•				
Electoral register	•			•		•		•				
Education**												1
Pre-school education	•					•		•				
Primary education	•					•		•				2
Secondary education	•					•		•				
Vocational and technical	•					•		•				
Higher education	•					•		•				
Adult education	•						•	•				
Other												
Public Health												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

The competencies of local and regional authorities

15

MALTA

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	
Social Welfare												3
Kindergarten and nursery	●		●		●			●				
Family welfare services	●		●		●			●				
Welfare homes	●		●		●			●				
Social security	●			●				●				
Other												
Housing and town planning												4
Housing	●			●				●				5
Town planning	●		●		●				●			
Regional/spatial planning	●		●		●			●				
Environment, public sanitation												
Water & sewage	●			●				●				
Refuse collection & disposal	●		●		●			●				
Cemeteries & crematoria	●			●				●				
Slaughterhouses	●			●				●				
Environmental protection	●		●		●			●				
Consumer protection	●		●		●			●				
Culture, leisure & sports												
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	•		•		•							
Traffic, transport**												
Roads	•		•		•							6
Transport	•		•		•			•				
Urban road transport			•		•							
Urban rail transport												
Ports	•			•				•				
Airports	•			•				•				
Other traffic & transport												
Economic services												
Gas												
District heating												
Water supply	•		•		•			•				
Agriculture, forests, fishing	•			•				•				
Electricity	•		•		•							
Economic promotion	•			•				•				
Trade & industry	•			•				•				
Tourism	•		•	•				•				
Other economic services	•			•				•				
Other functions												
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

- | | |
|--|--|
| <ol style="list-style-type: none">1. As part of a national scheme, municipalities provide in conjunction with any competent authority for the establishment, upkeep and maintenance of crèches, 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. | <ol style="list-style-type: none">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 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”. Article 37(2) further provides 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 by fax, telephone and a Local Area computer network serviced by (central) Government’s IT services provider. Several Councils have also put up a website in order to promote their services and initiatives as well as furnish information about their locality.

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 to promote the common interests of local councils and to represent them in international associations of local government authorities. The Local Councils Regulations were amended in 2005 to make new provisions for the engagement of an Executive Secretary as well as for a statutory Code of Ethics for Local Councillors.

7.3. Co-operation between local authorities in different countries

The Local Councils (Association) Regulations make provision *inter alia* for arrangements on town-twinning between a Local Council and another locality in any other country.

The Local Councils Association is asked to give its opinion on proposed Twinning agreements.

Once all the necessary consultation is done, the final approval is given by the Minister responsible for local government under the terms of Article 79 of the Local Councils Act.

8. FINANCE

8.1. Taxes

Local Councils depend mainly on central Government for their financing. Councils can enact Bye-Laws which empower them to provide additional services for which fees would be payable to the Council.

Article 60 of the Local Councils Act provides 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”.

In all cases, however, bye-laws require the final endorsement of the Minister responsible for local government.

8.2. Grants from higher authorities

Municipalities receive yearly a financial allocation from central Government. This allocation is calculated on the basis of the formula provided for in the Tenth Schedule of the Local Councils Act.

Central Government’s financial allocation to Local Councils is paid in quarterly tranches. This ensures that Councils have the necessary cash flow to carry out their statutory functions.

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, a local council is empowered to “raise funds by means of any scheme designed to provide additional funds”.

Examples of bye-laws empowering Councils to raise fees include fees for advertisements on (Council) street furniture, administration of (Council) property and use of (Council) facilities, advertisements on (Council) Notice Boards, organisation of short courses, rent of property.

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

Councils have already been granted a percentage on the fees relating to collection of trading licences in respect of their respective locality.

8.4. Borrowing

Local Councils need written authorisation from the Minister responsible for local government and the Minister responsible for Finance in order to take a loan. 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. 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 government may, either of his own accord or at the request of the Minister responsible for Finance, by notice in writing, require the Executive 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 this request [article 64 of the Act]. The monitoring function by the Minister responsible for local government is exercised by the Director of Local Government, on his behalf;
- “local government auditors” are appointed each year by the Auditor General to audit the accounts of Local Councils. These auditors operate under the terms given to them by the Auditor General [article 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. They may also require any person holding or accountable for these books or documents to appear before them;

- the Minister responsible for local government 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 [article 66 of the Act]. 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 must be reported by the Auditor General to the Minister responsible for local government 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 Auditor General 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.

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 government, either of his own accord, or at the request of the Minister for Finance, to require the Executive 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.

The Department for Local Government within the Ministry for Justice and Home Affairs exercises general supervision of the functions and activities of Local Councils. Where it appears that such activities are not in accordance with the Act and subsidiary legislation, the Minister responsible for local government is alerted and the necessary action taken. For the purpose of proper monitoring a Monitoring Unit has been set up within the Department for Local Government.

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 government, issues guidelines and directives to ensure that Local Councils achieve a high level of effectiveness and ensures that Councils' activities conform with existing laws and regulations, particularly the provisions of the Local Councils Act.

9.2. Measures available to redress illegal acts by Councils

The Local Councils Act and relative subsidiary legislation make provision for monitoring and auditing Local Councils' financial activities.

- Audit by the “local government auditors” (see 8.5 above). The local government auditors' report is forwarded to the Auditor General, the Minister for Finance and the Local Council concerned. The Minister for Finance tables these reports before the House of Representatives.
- The Local Councils' (Audit) Regulations provide for an “interim audit” to be carried out by the local government auditors at the request of the Auditor General 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 Auditor General whether or not to request such interim audits.
- Where there are serious allegations of irregularities the Minister responsible for local government may also appoint an inquiring board (according to the terms of the Inquiries Act) to investigate the allegations and give its recommendations.
- By virtue of the Ombudsman Act any citizen who feels aggrieved by an administrative act of the Council may make a complaint to the (national) Ombudsman after having exhausted all available legal remedies. For complaints against maladministration, since there are no Administrative Tribunals, the citizen can apply directly to the Ombudsman.
- By virtue of a legal notice issued in January 2006, a council member or council official may be held personally responsible, and legal action for recovery of funds may be instituted against him/her, for any unlawful payment, fraud or misappropriation of funds or property he/she may have committed, brought to the notice of the Director (Local Government) following an investigation or inspection.

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 Auditor General who is obliged to forward copies of these reports to the Minister responsible for local government, 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 government 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 Auditor General 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 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 Executive 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.

Councils may also appoint full-time employees at the rate of one per 2 500 inhabitants. Where the population is less than 2 500 the appointment will be on a part-time basis.

The Local Council (Human Resources) Regulations and the Human Resources Procedures set out the qualifications required by Council employees for following remuneration and technical, administrative and office procedures. These regulations and procedures also include provisions for training and disciplinary proceedings.

12. REFORMS ENVISAGED OR IN PROGRESS

Great inroads have been registered since the introduction of local government in Malta in 2003. These include the decentralisation of services and devolution of functions (such as the administration of public libraries and public property), the devolution of local enforcement of traffic and environment regulations, and, more recently, the provision of local e-Government services for the benefit of the citizens of the respective localities.

Reforms are envisaged with respect to:

- the Local Enforcement System (in particular with respect to guaranteeing a more effective system based on the rule of law);
- decentralisation and devolution of more responsibilities and functions;
- streamlining of legislation with a view to reducing administrative bureaucracy;
- offering more front office services through Local Councils, including the provision of e-services;
- strengthening the administrative capacity of Local Councils (in particular through the deployment of public agency employees with Local Councils);
- ensuring more efficiency, effectiveness and cost-effectiveness through better monitoring;
- training of Local Council members and staff, including information seminars on specific topics related to local government issues and other issues related to the functions and operations of local government;
- local councils election procedures.