

DEBT RECOVERY AND CREDIT MANAGEMENT

Dr Theresienne Mifsud
Session 10

OVERVIEW

- Elements required to ensure effective debt recovery
- Due Diligence/Know your Customer
- Credit Reference Agencies/Credit Scoring
- Late Payment in Commercial Transactions
- Credit Instruments
- Consumer Credit
- Constitution of Debt/Debt Recovery through the Courts

**ELEMENTS REQUIRED TO ENSURE
EFFECTIVE DEBT RECOVERY**



ELEMENTS REQUIRED TO ENSURE EFFECTIVE DEBT RECOVERY

- Effective credit management starts before your client becomes a client
- Know your customer
- Have a well-drafted contract outlining the terms of your agreement
 - Written terms of payment
 - Interest rates (where applicable)
 - Consequences of non-payment (VIMP)
 - Will you interrupt the service? Or maybe cease completely?
 - Retention of title
 - Include a process for dispute resolution
 - Choice of law/Forum



CREDIT MANAGEMENT
UNDERSTANDING YOUR CUSTOMER



CREDIT MANAGEMENT

Credit demands



profitability

liquidity

CREDIT MANAGEMENT

UNDERSTANDING YOUR CUSTOMER

When selling on credit, late payment occurs

Best way to deal with this, is by knowing your customer by categorising the customer and take appropriate action per category

Prompt Payer (pay within the agreed credit terms)

Overdue Customer (those who don't honour their credit terms)

Type I
Not organised
Short-term financing tactic

Type II
Ongoing dispute
Short-term cash flow difficulty
Have financial difficulties which
may lead to bankruptcy

Type III
Fraudulent debtors
Seeking to avoid payment

CREDIT MANAGEMENT

UNDERSTANDING YOUR CUSTOMER

Know your customer: Name, Address, Details (not only for administrative purposes)

Who is the client? If it is a legal person, what is the company? What is their business, how long has it been in operation? Ask for AFS (where relevant) – non-filing can be a major red flag.

Assess the risk (size/turnover/value)

Credit application form can be used outlining the credit terms. You may also have a credit policy which is part of the contract with your customer. State the consequences tied to late payment and other conditions (retention of title).



CREDIT MANAGEMENT

UNDERSTANDING YOUR CUSTOMER



The more you know the better (within remit of GDPR)

There are tools that help the business in obtaining more information about the customer, which is relevant to assess credit worthiness

The use of credit reference agencies can assist you in this

Credit scoring - risk management tool that assesses the credit worthiness of a credit applicant by estimating her probability of default based on historical data. It uses numerical tools to rank order cases using data integrated into a single value that attempts to measure risk or credit worthiness

CREDIT MANAGEMENT

UNDERSTANDING YOUR CUSTOMER

MACM provides an effective and efficient Credit Information Management System

Based on reciprocity among its members

Includes data available to the public from other sources, such as the Law Courts, The Registry of Companies, VAT Department and other official sources

This data should trigger actions and help credit managers to act proactively

CreditInfo offers a database accessible by subscription

Generates individual reports updated and compiled from various public and private sources including the Electoral Registry and Law Courts

- ID Numbers: to prevent ID fraud
- Addresses: Verify the official residential address
- VAT Numbers: Verify the VAT number
- Defaulting Debts: Paying habits
- Involvements: Check if they holds equity in locally registered companies
- Inquiries: Displays number of inquiries made on an individual during last 6 months

LATE PAYMENT IN COMMERCIAL TRANSACTIONS

LATE PAYMENT IN COMMERCIAL TRANSACTIONS

The Average DSO – Days Sales Outstanding or ‘the payment collection ratio’ across all the Maltese business sectors as at 31st December 2020 was 79.68 days (MACM)

Late payment effects cash flow, limits investment and competition

Directive 2011/07/EU on late payments transposed in Commercial Code (Cap. 13)

Directive is meant to be a deterrent and change the commercial culture of paying late

It applies on all commercial transactions between undertakings, and also between undertakings and public authorities



LATE PAYMENT IN COMMERCIAL TRANSACTIONS

- General Rule – both public and private entities have to pay their bills within 30 days
- In B2B transactions, credit can be extended up to 60 days if both parties agree.
- Extending this period beyond 60 days only if “expressly agreed” and only if it is **not** grossly unfair (aimed at protecting SMEs)
- In defining what is “grossly unfair” to the creditor, the following circumstances of the cases should be considered:
 - a. any gross deviation from good commercial practice, contrary to good faith and fair dealing;
 - b. the nature of the product or the service; and
 - c. whether the debtor has any objective reasons to deviate from the payment period.

LATE PAYMENT IN COMMERCIAL TRANSACTIONS

- Suppliers of goods and services (creditors) have the right to charge interest on late payment equivalent to 8% plus the ECB reference rate from the day following the date or the end of term for payment agreed in the contract of sale.
- If the contract does not mention the period of payment, then payment is due within 30 days following thirty calendar days from the date of receipt of goods or services or from the date of invoice.



LATE PAYMENT IN COMMERCIAL TRANSACTIONS

- The supplier of goods and services (creditor) may proceed with the claim for late payment against the client (debtor) without reminding the client (debtor) that the amount is due.
- In addition to the interest charges, the supplier (creditor) is entitled to reasonable compensation for the supplier's own recovery costs at a minimum of €40.
- When the contract of sale provides for the retention of title, the seller is entitled to retain title over the goods until the price has been paid in full by the buyer. (applied within local scope)

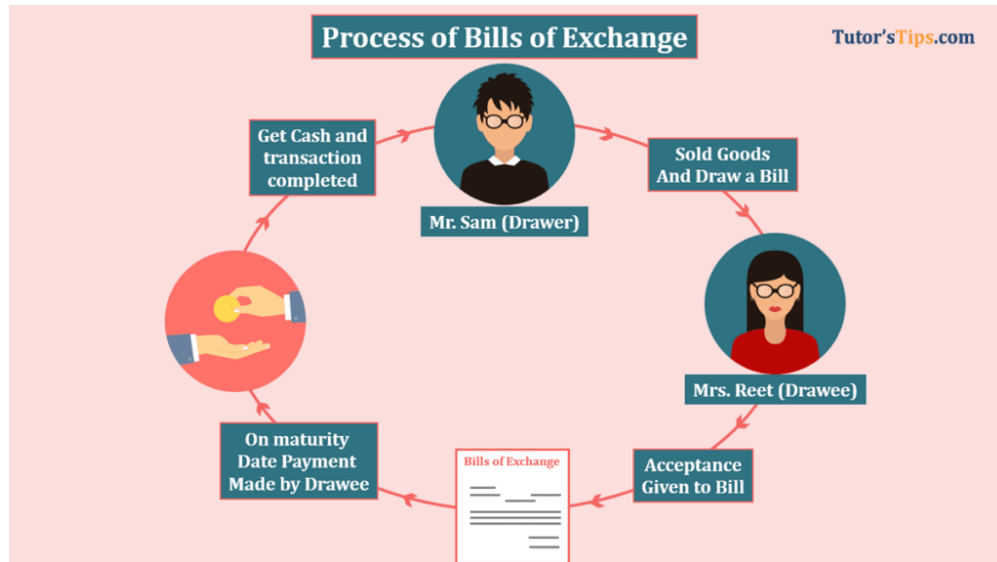


CREDIT INSTRUMENTS



CREDIT INSTRUMENTS

BILL OF EXCHANGE



A.123 - A bill of exchange must be **dated**, and must specify the **place** where it is drawn, the **sum** to be paid, the name of the person **who is to pay**, and the name of the **person to whom or to whose order payment is to be made**, the time and **place of payment**, and the **value** given, whether in cash, in goods, in account, or in any other manner; and must be **signed** by the drawer.

CREDIT INSTRUMENTS

BILL OF EXCHANGE

Drawer: This is the individual or entity (company) that issues the bill and gives order to pay the sum of money. Name and address must be mentioned.

Drawee: This is the person upon whom the bill of exchange is drawn and who accepts and pays the bill. Name and address are generally requested.

Payee: This is the person to whom the payment is made. Name and address are generally requested. The Drawer and the Payee is usually the same person.

Place of issue	Date of issue
Pay against this Bill of Exchange	Maturity date
To the order of <i>Payee's Name</i>	Currency and Amount in figures
Currency and Amount in words	
Drawee's name and address	Drawer's name, address and signature
Accepted	Date of acceptance

A bill of exchange which has not been honoured can be enforced by means of a summary procedure by Judicial Letter. (action cambiaria)

CREDIT INSTRUMENTS

CHEQUES & DRAFTS & PROMISSORY NOTES

A. 262 - Drafts or cheques on bankers or cashiers shall be **dated**, and shall specify the **sum** to be paid, and shall be made **payable to a person therein named**, or to his order, or to bearer.

They shall be payable on **presentment**.

A. 261 – A promissory note shall state the **date**, the **amount** to be paid, the **person** in whose favour or to whose order such note is signed, the time **when payment is due**, and the **value** supplied in cash, goods, in account or in any other manner.

(2) It may also be drawn payable to **bearer**.



CONSUMER CREDIT



CONSUMER CREDIT

WHY DO WE REGULATE IT?

- Credit has its advantages for both consumers (who can acquire goods immediately) and sellers (who can sell goods to buyers who do not have immediate financial means).
- Credit is no longer a product of luxury, but one of necessity.
- Over-promotion of credit targeting the vulnerable.
- Credit is a complex product, about which consumers are easily confused.
- If unregulated, it could lead to abuse.



CONSUMER CREDIT

CONSUMER CREDIT REGULATIONS

- Consumer Credit Regulations S.L. 378.12. The rights granted by the Regulations cannot be waived.

■ What falls within the scope of the Regulations?

- An agreement whereby a creditor grants or promises to grant a consumer credit in the form of deferred payment, loan or other similar financial accommodation.

■ What falls outside the scope?

- credit agreements entered into before 1.1.2010 (except for open-ended agreements)
- credit agreements secured by hypothec or right over an immovable property
- credit agreements of <€200 and >€75,000
- credit which is free of interest and without other charges
- hiring/leasing agreements (except where title passes to hirer)
- court settlement/deferred payment of an existing debt
- credit granted by an employer free of interest or at an APR lower than market rates

CONSUMER CREDIT

CONSUMER CREDIT REGULATIONS

- When advertising credit with an interest rate or other figure, the advert needs to include standard information by means of a representative example.
- In good time before a credit agreement is concluded, a creditor shall provide information to the consumer to assist the consumer in comparing different offers and reaching an informed decision on whether to conclude a credit agreement to the creditor.
- Regulation 7 (1) (a) to (u) lists the information to be provided: type of credit, identity of creditor, total amount of credit, borrowing rate, APR by means of an example, amount of payments, charges, right of withdrawal, etc.
- Standard European Consumer Credit Information sheet in First Schedule

CONSUMER CREDIT

CONSUMER CREDIT REGULATIONS

- Responsible lending
- Before conclusion of a credit agreement, the creditor shall assess the creditworthiness of the consumer on the basis of sufficient information, obtained from the consumer and where necessary on consultation of relevant database.
- Re-assessment if credit amount changes



CONSUMER CREDIT

CONSUMER CREDIT REGULATIONS

- A credit agreement needs to be in writing , signed by both parties.
- The consumer needs to receive a (free) copy of the agreement (draft and final).
- The agreement needs to be in writing or a “durable medium”.
- It needs to include all requirements of Regulation 12 (1) (a) to (m)
- The ‘APR’ (annual percentage rate of charge) is a pre-contractual tool
- The ‘APR’ expresses the total cost of the credit to consumers, based on assumptions
- All costs + taxes + interest + charges + commissions known to the creditor (including ancillary costs where compulsory)
- Charges not included in APR must be disclosed separately

CONSUMER CREDIT

CONSUMER CREDIT REGULATIONS

- A consumer can withdraw from a credit agreement without giving reasons.
- It must be exercised within 14 (running) days from day of conclusion of the contract or from the day when the consumer receives all terms and conditions and information of Reg. 12 (1) to (3), if it is later than the day of the contract.
- Where credit is given by a bank, which require a letter of acceptance, the agreement is deemed concluded on the date the consumer accepts the credit facility (sanction letter).
- Where a consumer has withdrawn from the sale of an item he is no longer bound by a *linked credit agreement*.
- The consumer is entitled to repay the credit (in part or in full) before the time established by the agreement in which case he shall be entitled to a proportional reduction of the total cost of the credit.

DEBT RECOVERY



DEBT RECOVERY

What happens when all fails?

How do recover what is due?

What do you do?

- Credit Control Function
- Legal Function



DEBT RECOVERY

1. Keep track of payment history
2. Be proactive, and take note of signs that may effect your debt recovery prospects
3. Look at your contract (agreed terms)
4. if there are agreed terms, follow them

Extra-judicial
Process

Judicial Process

DEBT RECOVERY

NON-JUDICIAL PROCESS

This first step is to write a letter/notice/email/SMS requesting payment

Sometimes, this first letter is sent by the credit control department. Some companies may start off with a soft reminder, escalating to a serious warning

When this fails, then this would be escalated to the legal team

A legal letter would call upon the debtor to pay the debt in question within a number of days and warn that should they remain in default within the time-frame stipulated, legal proceedings would be initiated. The lawyer would also warn the debtor that should any legal proceedings be initiated, the right to take out precautionary warrants.

DEBT RECOVERY

NON-JUDICIAL PROCESS

- If the Debtor is unable to pay the debt immediately, a **Constitution of Debt** agreement may be signed by both parties, whereby the Debtor acknowledges the amount owed.
- Ideally it should be published by a Notary Public.
- A public deed is registered in the Public Registry and will show up if any searches are carried out to discover whether the Debtor has any registered liabilities.
- Should the Debtor be in default of the provisions of the Constitution of Debt, said deed would be considered to be an **executive title**, once a judicial letter is sent granting the Debtor 3 days to pay, and would have the same effect as a judgment.
- This type of agreement will still be valid if it is signed between the parties, instead of being published by a public notary but will not have the same advantages.

DEBT RECOVERY

JUDICIAL PROCESS

If these options are not successful, then one would have to resort to judicial means to recover the amounts due.

Judicial proceedings tend to be lengthy and costly.

But there are alternatives, which can be used, which tend to be quicker and more effective.



DEBT RECOVERY

JUDICIAL PROCESS

TIMES OF MALTA

MONDAY, AUGUST 24, 2020 | 11

FROM THE BENCH

'Letter 166A': a potent tool

CARLOS BUGEJA

Legal tradition has conceived many elaborate terms to describe legal institutes or procedural instruments. These ostensibly complex words often have historical connotations – take 'subhasta' for example, which derives out of the term 'sub hasta', meaning the spot at the bottom of a spear fixed to the ground, where in Roman times, auctioning of enemy loot took place.

Occasionally however, legal instruments are simply known by the article at law where they are found. Ask any lawyer worth his salt and he will know exactly what you are referring to if you cite article 469A (judicial review against an administrative act), article 485 (forcing a sale among co-owners) or article 1357 (executing a promise of sale).

In terms of popularity, article 166A of the Code of Organisation and Civil Procedure (COCOP) reigns atop all of these, for indeed, it gives rise to a prominent procedural tool which is literally known by the moniker 'letter 166A', and by no other name.

Where someone is a creditor of a debt that does not exceed €25,000, he can file a judicial letter against the debtor under this article at law, informing him clearly that if he does not

the respondent of his right to oppose it.

Moreover, subarticle (5) provides that any executive title obtained according to the provisions of this article may be rescinded and declared null and void if upon a request by application in the Court of Magistrates (Malta) or in the Court of Magistrates (Gozo), as the case may be, to be filed within 20 days from the first service upon him of any executive warrant or other judicial act based on the said title, the court is satisfied that he was not properly notified or that the judicial letter did not contain one of the requisites in the law.

The exclusivity of the applicability of subarticle (5) was the matter in the case decided by the Civil Court, First Hall on July 9, in the names of 'Frank Azzopardi v Carmen Pace'.

The attentive reader would have immediately started to ask a pertinent question: why was the case decided by the Civil Court, First Hall, when subarticle (5) directs the complainant to the Court of Magistrates?

Indeed, that before the court was not an application

under article 166A(5) but a proper lawsuit filed before the superior courts.

The respondent had in the past filed a judicial letter under article 166A, claiming that the plaintiff owed him €15,471.20 in connection with the purchase of a car. The plaintiff failed to reply within 20 days and, as a result, the respondent had obtained an executive title.

Eventually, the plaintiff filed a lawsuit, he claimed (i) that the car taken by the creditor on the judicial letter was erroneous and untruthful; (ii) that the amount claimed had already been paid; and (iii) that as a result, the court ought to invalidate the executive title and order

"The letter has to follow a certain form, it has to be confirmed on oath and it shall inform the respondent of his right to oppose it"



the debtor to refund what was paid in excess.

Admittedly, the debtor was in a bit of a pickle. Let us assume for a moment that it was true that the sum mentioned in the judicial letter was not due; article 166A(5) allows the debtor to act within a certain time frame only (within 20 days from the first service upon him of any executive warrant or other judicial act based on the said title) and only to obtain a declaration that the executive title obtained through article 166A is null and void and not to demand a refund of any sum (plus interest) that the creditor would have managed to receive irregularly. That would have to be requested in a separate lawsuit.

However, this does not seem to be the reason why the plaintiff filed the case this way. Originally, the debtor had already proceeded before the Civil Court, First Hall, only to later withdraw the lawsuit. Then he filed an application in terms of article 166A(5) before the Court of Magistrates but

his application was rejected. He had appealed but the appeal was declared as being procedurally inadmissible.

This was his fourth attempt at contesting the judicial letter, in what was clearly a strenuous pursuit against the myriad procedural barriers he had to face. The idea was that the court's margin of powers is wide and ample and, as a result, it could decide this case, no matter what.

However, the court stated that the action could not be accepted to. An executive title obtained under article 166A may only be contested as provided by law and the court's general powers are not sufficient to oust the limits the law placed on it.

Moreover, the plaintiff had already done the procedure in terms of subarticle (5) and he now could not replicate the same causes before another court, not to mention that the decision of the Court of Magistrates previously undertaken had reached finality and could no longer be contested. The court stated that the procedure allowing one to contest an executive title obtained through article 166A had been exhausted and there was nothing else to be done.

It further quoted article

Fil-Qorti tal-Magistrati [Malta]

Din l-Itra Ufficjali qed tintbaghat taht l-artikolu 166A tal-Kapitolu 12 u jekk ma twegħibx fi zmien tletin [30] jum, din issir titolu eżekuttiv. Għalhekk huwa fl-interess tiegħek li tkellem avukat jew prokuratur legali

Illum,

ta' Marzu 2021

Lil: xxxxxxxxxx [Cxxxxxxxx]
xxxxxxxxxx
xxxxxx

Permezz tal-preżenti, is-socijeta' xxxx tinterpellak sabiex thallas is-sonma ta' seba' mija u sittin Euro u hmistax-il ċenteżmu [€769.15/Lm330.108] rappresentanti bilanċ dovut minni



DEBT RECOVERY

JUDICIAL PROCESS

A. 166A - Code of Organisation and Civil Procedure (COCP) (Cap.12)

A new procedure in order to avoid costly and lengthy litigation.

Where a debt is certain, liquid and due and does not exceed the sum of **€25,000**, then the Creditor of the said debt is able to file a Judicial Letter before the civil courts, claiming that the amount is due and confirming the claim under oath.

If the Debtor does not oppose the debt within 30 days from its **notification**, the Letter becomes an Executive Title and therefore, will have the same effect as a court judgment and the Creditor may proceed to recover what is claimed in the Letter as though a judgment has been obtained, and may file executive warrants in order to collect what is due together with interest and costs.

DEBT RECOVERY

JUDICIAL PROCESS

- A creditor can file judicial proceedings before the Maltese Courts to obtain judicial confirmation by means of a judgment that the debt is due.
 - Up to €5,000 – Small Claims Tribunal (Arbiter)
 - €5,000 - €15,000 – Court of Magistrates (Magistrate)
 - More than €15,000 OR the amount is not certain and liquid but may exceed €15,000 – First Hall Civil Court (Judge)
- Special summary proceedings are also possible before the First Hall Civil Court if the debt (exceeding €15,000) is certain, liquid and due and does not require any additional performance by the debtor for the debt to be crystallised. If the debtor has no valid defence at law and he is unable to convince the Court otherwise, judgment is given at the first hearing.

DEBT RECOVERY

JUDICIAL PROCESS

- Once the application (rikors) is filed, a sitting is appointed and the process to notify the Debtor is initiated.
- If normal notification fails, court can order notification by publication or affixing
- The Debtor is normally given 20 days from notification in order to file a reply.
 - Should the Debtor fail to file a reply within the timeframe permitted by law, he or she will not be allowed to provide any evidence during the course of the lawsuit and will only be allowed to file a final note of submissions before the lawsuit is put off for judgment.
 - On the other hand, if the Debtor files the reply, both parties are allowed to produce evidence and the Creditor's claims are decided on the basis of probabilities. Following this process, the adjudicating body will then move on to pass judgment.

DEBT RECOVERY

JUDICIAL PROCESS

Judgement can be appealed (20 days)

If no appeal is filed, then you have a *Res Judicata*, and judgment becomes an Executive Title.

What is an executive title?

An executive title gives you a title which can be enforced by means of:

- **Executive Warrants** issued to collect what is owed with judicial costs and interest.
 - The judicial costs are calculated by the court officials and a taxed bill of costs is issued in relation to each and every judgment, with the quantum depending on the amount being claimed.

DEBT RECOVERY

JUDICIAL PROCESS — EXECUTIVE TITLES

- judgments and decrees of the courts of Malta;
- 166A judicial letter.
- contracts received by a notary public in Malta, or before any other public officer authorised to receive the same, where the contract is in respect of a debt certain, liquidated and due, and not consisting in the performance of an act;
- taxed bills of judicial fees and disbursements, issued in favour of an advocate, a legal procurator, a notary public, a court expert or other judicial referee or a witness, unless such taxed bills are impugned according to law;
- awards of arbitrators registered with the Malta Arbitration Centre;
- bills of exchange and promissory notes;
- mediation agreements made enforceable by the parties in the mediation;
- decisions of the Consumer Claims Tribunal.
- decisions and awards of the Arbiter for Financial Services in accordance with the provisions of the Arbiter for Financial Services Act.
- decisions of the Adjudicating Panel for Private Residential Leases

DEBT RECOVERY

JUDICIAL PROCESS — EXECUTIVE WARRANTS

- warrant of seizure of movable property;
- warrant of seizure of immovable property;
- warrant of seizure of a commercial going concern;
- judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;
- executive garnishee order;
- warrant of ejection or eviction from immovable property;
- warrant *in factum*;
- warrant of arrest of sea vessels;
- warrant of arrest of aircraft;
- warrant *in procinctu*.

DEBT RECOVERY

JUDICIAL PROCESS — EXECUTIVE WARRANTS

Therefore you may enforce a claim on movables, immovable, aircraft, sea vessels, stocks, shares, insurance policies, IPRs, etc.

BUT NOT ON OTHER THINGS LIKE:

- any salary, or wages (reserved amount);
- any benefit, pension, allowance or assistance mentioned in the Social Security Act or other allowance
- any charitable grant or donation made by the Government;
- moneys which have been made available to the debtor by deed of loan for the building, construction and maintenance of houses intended as a main dwelling place for the debtor;

DEBT RECOVERY

JUDICIAL PROCESS — EXECUTIVE WARRANTS

Precautionary warrant (Mandat Kawtelatorju)

Prior to filing proceedings for recovery, it may be advisable in certain circumstances to file a precautionary warrant.

- With a **precautionary garnishee order**, the debtor's bank accounts, and other known receivables can be ordered to be deposited in court to secure the creditor's claim. The creditor is obliged to file proceedings within a period of 20 days. Funds frozen will remain so until a final judgment is delivered, unless the debtor provides satisfactory evidence to the court that the precautionary garnishee order is unwarranted or if adequate security to cover the claim has already been deposited in court.
- If the debtor does not have any liquid funds or receivables but is aware of the existence of other assets in Malta, it may be advisable to file a **precautionary warrant of seizure** (movables only).
- If amount due exceeds €11,647 and the debtor has no liquid funds but owns immovable property, the creditor may file a **warrant of prohibitory injunction** to ensure that the property is not transferred to the creditor's detriment.

DEBT RECOVERY

JUDICIAL PROCESS – EXECUTIVE WARRANTS

The two most popular warrants in Malta are:

-the **Garnishee Order (*Mandat ta' Sekwestru*)**

- used by the creditor to ask the Court to order any person indicated the warrant not to hand over any assets held which belong to the debtor but to deposit the assets in Court instead.
- typically issued ordering local banks to freeze the bank account/s of the debtor for the amount due, and ordering them to deposit the funds in Court within nineteen days of being notified, which are later released in favour of the creditor.

-the **Warrant of Seizure (*Mandat ta' Qbid*)**

- consists of the seizure of an asset belonging to the debtor, which is brought under court authority, with the object of selling the same by judicial auction.
- the proceeds then go towards the satisfaction of the amount due, costs and interest.
- both movables and immovables may be seized by virtue of an executive warrant of seizure.

DEBT RECOVERY

JUDICIAL PROCESS – EXECUTIVE WARRANTS

Judicial Sale by Auction (Subbasta)

Basic value of the seized goods is determined by an expert who assesses the value (in the case of immovables).

In the case of movables, the value is determined by the person making the highest bid during the sale since bids start from 0. If a valuation of movables is requested, bids do not start from 0 but from 60 % of the estimated price.

Before any sale of an immovable, a court expert prepares a report on the state of the immovable and this report is public. In the case of movables, interested persons may view them two hours before the commencement of the sale.

Regarding immovables, the whole amount must be deposited in court within seven days from the date of sale, while in the case of movables, the whole price shall be deposited within 24 hours from the sale.

DEBT RECOVERY

SEBASTIANO AND RITA GUCCIONE - INTERNATIONAL PLASTERING COMPANY LTD

Sebastiano and Rita Guccione and International Plastering Company Limited had borrowed €905,300 in loans and overdrafts from Bank of Valletta.

The debtors had been unable to repay the debt, which by that point also included money owed to Meli Bugeja Trading Limited. The latter company had started proceedings for a judicial sale by auction of the block of flats which the Guccione's Ibragg home formed part of. The property was valued by an auctioneer at €590,000.

Bank of Valletta had offered to bid *animo compensandi* to set off the amounts due to it. The bank won the auction as sole bidder with a bid of €410,000. It went on to file additional proceedings to recover the remaining amounts.



DEBT RECOVERY

SEBASTIANO AND RITA GUCCIONE - INTERNATIONAL PLASTERING COMPANY LTD

While the bank had acted according to the law, which allowed sales by auction where at least 60% of the debt had been reached, the plaintiffs argued that the auction had put them in an impossible situation where they could not repay the debt.

The Court decided that it must adequately protect not only the rights of the creditor but also those of the debtor.

Court ordered monetary compensation (€76,880) that represented the difference between the estimated price at 60% and at 80%, which value had been adjudged by the ECHR as the minimum value permitted in the forced sale of the property of a debtor.

DEBT RECOVERY

BELLA CLAUDIA NICOLETTA CASSAR V. ANTHONY CASSAR (95/2012/JD)

BC tried both a **garnishee order** and a **warrant of seizure** without success.

The parties had leased a property in Fontana from the Department of Lands and for some time they had failed to pay the rent due. The Department of Lands was going to terminate the lease, until the applicant paid the rent owed and started to operate the business again by herself.

For these reasons the applicant requested the court to order the assignment of the rights of the respondent under the lease onto her in consideration of the debt owed.

The **Warrant in procinctu (Mandat In Procinctu)** is a warrant whereby a creditor would ask the court for instructions as to what measures may be resorted to in order to execute a judgment **when no other remedy is available**.

Introduced into our law in 2006 through Article 388G and given effect in 2009.

DEBT RECOVERY

CROSS-BORDER DEBT

Recovering debt across borders is difficult and expensive

The European Small Claims Procedure (except Denmark) can be used

- Claims of up to €5000. An alternative to court procedures, done online.

The European Account Preservation Order (2014) – creditors are allowed to uphold the amount owed in a debtor's bank account under the same conditions in all Member States (except Denmark).

This order will prevent debtors from withdrawing their assets while procedures are underway.

DEBT RECOVERY

ISSUES

*Malta ranks **last** in Europe on the ease of resolving insolvency and ranks in the 121st place worldwide. The recovery rate expected for insolvencies in Malta is of 39.2 cents on the dollar, which is in stark contrast to the best performing countries in Europe (such as Netherlands, where the expected recovery rate is of 90.1 cents on the dollar).*

- World Bank's "Doing Business 2020"

Why?

Recovering debt is costly (lawyers/costs)

Recovering debt is time consuming

Creditor might not have any assets

Creditor may have assets but your debt ranks low as compared to other higher ranked debt (ex: banks)

Privileged creditors are paid first (by order) before the hypothetical creditors (by date)

ASSESSMENT



COURSE ASSESSMENT

A software development company (InvSoft Limited) has been engaged by a client (CliCo Limited) to supply an inventory management software for a value of €1.2 million, involving several project deliverables over 18 months, with staggered payment. Half way through the project, CliCo Limited stopped paying the payments within the stipulated due dates.

- a) Outline the various elements of the document to be signed by the parties, and any specific clauses which need to be included. Take into consideration that COVID restrictions are still in place, and that in person signing might be restricted.*
- b) Outline the remedies available to InvSoft Limited to obtain redress against CliCo Limited, and obtain payment.*