

The Structure

1. Public Service consisting of Ministries and government departments. Recruitment, discipline and promotions are decided by the Public Service Commission (PSC) which make a binding recommendation to the Prime Minister. Employees in the public service are considered to be public officers.
2. Bodies corporate established **BY** law (Public Corporations). These possess a distinct legal personality from Government and their business and activities are managed by a Governing Board e.g. the Board of Governors of the Central Bank. The body corporate has to be established by a law or subsidiary legislation eg. Education Act established University of Malta and Identity Malta is set up by a Legal Notice (sub. legislation)
3. Government Companies . These are mostly limited liability companies in which the government has majority shareholding e.g. Air Malta.

Employees of (2) and (3) are not public officers even though these entities are funded by public funds.

The Separation of Powers Doctrine

The three organs of the State should be kept separate as far as possible. In the parliamentary system however Executive and Legislature are very close. Governments usually have a majority in the legislature .

Some Acts of parliament delegate to the Executive the law making function of issuing subsidiary or delegated legislation usually dealing with details to implement the Act of Parliament which is called an “enabling” or “parent “ Act.

This delegation does not run counter to the separation of powers doctrine since it is Parliament which authorises the Executive to issue regulations having the force of law.

Parliamentary Control

All subsidiary legislation has to be submitted to Parliament and within 21 days any member of Parliament may move a resolution to negative such regulations.

Judicial Control

Any person may challenge the regulations as **ultra vires** ie that the Executive exceeded its authority in issuing regulations beyond its powers .

Creation of Primary and Subsidiary Legislation

Primary: An Act of Parliament is created as follows: a Bill is presented by a member of Parliament usually a Government Minister for a first reading.(vote) After the first reading where only the title of the Bill is read , the Bill is then published in the Government Gazette.

The Bill is then discussed at Second Reading. Here the Minister will explain why he is proposing the Bill and the Opposition Spokesman will make his first comments in reaction. Only the **general** scope and purposes of the Bill are discussed and not details. No amendments can be proposed at this stage.(vote)

Then the Bill goes to Committee stage. There is a special Committee of the House which examines the Bill clause by clause. Amendments may be proposed by Govt or Opposition at this stage .

When the Bill passes through Committee with or without amendments,(vote) the Chairman of the special Committee reports to the Speaker .

The final version of the Bill as amended is then submitted to a Third Reading.(vote)

Following its approval, it is sent to the President of Malta for his assent.

Then it is published a second time in the Govt. Gazette this time in its final version.

Subsidiary Legislation

The minister publishes the subsidiary legislation without any intervention by Parliament though he is obliged to lay a copy of the regulations (Legal Notice) at the first opportunity on the Table of the House.

Administrative Tribunals

Tribunals have been set up by law which decide cases rather than a court of law.

One of the first examples in Malta was the Rent Regulation Board.

These tribunals are obliged to decide cases according to law and the rules of procedural fairness . Sometimes an appeal lies from such decision e.g. The **Administrative Review Tribunal** , in other cases there is no such appeal e.g. the Industrial Tribunal.

This Tribunal was originally set up under the Administration of Justice Act in order to absorb the several tribunals into one centralized tribunal. The process started e.g. fiscal disputes but then stopped. Today the Tribunal serves as a court of appeal from decisions of public entities.

Today, therefore, most laws provide for an appeal from a decision of a public authority such as the Authority for Transport and the Lands Authority, to a **Administrative Review Tribunal** presided over by a serving or former member of the judiciary with a further right of appeal on a point.

A public authority, whether a tribunal or a public officer or entity, cannot impose hefty fines even if considered “administrative”. Only a court of law may do so. There are 6 constitutional cases pending challenging the right of FIAU to impose such fines.

When an administrative fine is hefty it is considered to be criminal in nature and according to article 39 of the Constitution, only a **court of law** can decide cases of a criminal nature. In non-criminal cases a court or an adjudicating authority such as an administrative tribunal can decide such cases but never a criminal case.