

Diploma in Law

Lecture 5: Executive Titles & Executive Warrants

Lecturer: Dr. Désirée Attard
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**Diploma in Law
(Malta)**

Today's lecture:

- Understanding Executive Titles
- Enforcing Executive Titles
- Understanding Executive Warrants
- Filing Executive Warrants
- Execution of Executive Warrants
- The Executing Officer
- Challenging Executive Warrants
- Conversion of Precautionary Warrant to Executive



Understanding Executive Titles

Executive Title: the legal tool allowing practical execution of the claim or issue in question. Assumes that claim or issue can no longer be challenged.

Article 252 COCP: The following are executive titles:

- a. judgments & decrees from MT courts
- b. contracts received before a notary public in MT **where contract concerns a debt that is certain, liquidated, and due, not the performance of an act**
- c. taxed bills of judicial fees & disbursements
- d. arbitration awards
- e. bills of exchange & promissory notes
- f. mediation agreements made enforceable by the parties thereto
- g. decisions of the Consumer Claims Tribunal
- h. decisions of the Arbiter for Financial Services
- i. decisions of the Adjudicating Panel for Private Residential Leases
- j. uniform instrument permitting enforcement on mutual assistance for the recovery of claims relating to taxes, duties, and other measures



Judgments & decrees of the Courts of Justice of Malta

Final Judgment: Permanently decides on an issue between contending parties. For this to be an Executive title, it must be *res judicata* (i.e. not appealable). Preliminary judgments are as a rule not considered executive titles.

So judgments which can be appealed from (e.g. issued by the First Hall) need to wait for the appeal period to lapse to become an executive title. Appeals automatically suspend execution.

Decree: Any court pronouncement given pending proceedings in order to facilitate or regulate proceedings, eventually leading to final judgment.

Contracts

Deemed executive if:

- a. published by a notary public in Malta / a public officer equally authorised
- b. it concerns a debt that is certain, liquidated, and due

This also includes loan contracts & contracts of emphyteusis where the ground rent is stated.

Will usually contain the phrase:

A jikkostitwixxi ruħu bħala debitur veru, ċert, u likwidu a favur ta' B fl-ammont ta' €_____.

A constitutes himself as a true, certain, and liquid debtor in favour of B for the amount of €_____.

Can be executed without needing judicial acknowledgment of the debt. It is possible to still seek such acknowledgment, but being unnecessary, the plaintiff would usually bear the costs of the proceedings.

Contracts

The following contracts are **not** deemed executive titles:

a. Contracts on the performance of an act

Needs judicial acknowledgment to become executive.

b. Contracts of overdraft

These contracts will state the maximum amount the debtor may debit, but that is not necessarily the actual debt.

c. Private writings

They facilitate proof of debt but are not considered executive titles.



Taxed Bills, Judicial Fees, Disbursements



Taxxa ufficjali tad-drittijiet u spejjeż ta' Avviz Numru: _____ fi-ismijiet * I.
deciza fil-Qorti tal-Magistrati, Malta fi
relattivi u sussegwenti. _____ fi-atti

Rilaxxata fil-
Mahduma fil-

DATA	DETTALJI	ATTUR	KONVENUT
		€	€
21-Apr-23	Rikors	538.35	0.00
	Kopji - € 4.66	13.98	0.00
12-May-23	Risposta	0.00	320.71
	Kopji - € 4.66	0.00	4.66
02-Jun-23	Nota	21.60	0.00
02-Jun-23	Rikors	21.60	0.00
	Dritt avukat u pl	46.59	0.00
14-Jun-23	Risposta	0.00	0.00
	Dritt avukat u pl	0.00	46.59
24-Jul-23	Ingunzjoni	14.40	0.00
	Dritt avukat u pl	9.32	0.00
11-Oct-23	Ingunzjoni	28.80	0.00
	Dritt avukat u pl	9.32	0.00
08-Jul-24	Dritt registru sentenza	0.00	0.00
	Dritt avukat	432.53	432.53
	Dritt prokuratur legali	144.18	144.18
		€1,280.67	€948.67
	RIMBORS		
	TOTAL	€ 1,280.67	€ 948.67

Illum _____
Melissa Galea
Deputat Registratur

N.B. Din it-taxxa trid tkun iffirmata minn Deputat Registratur b'leż tkun ufficjali.

€8.38
 €77.86
 €25.95
€1,060.86

When a final judgment is issued, the Registrar of the Courts will issue a **taxxa** - a taxed bill of costs, and the judgment will decree on who is to bear which costs. This is a bill of fees incurred by each party, and constitutes an executive title.

Arbitration awards, decisions of the Consumer Claims Tribunal, decisions of the Arbiter for Financial Services, & of the Adjudicating Panel for Private Residential Leases

When issues referred to these fora are decided, that decision (if *res judicata*) will have the same effect of a final judgment and thus becomes an executive title.

Bills of Exchange & Promissory Notes

Bill of Exchange: a written order for payment, binding A to pay a fixed sum to B on demand or at a determined date.

Must be dated, must specify where it is drawn, the names of the parties, time and place of payment, and the value in any manner, and must be signed.

Promissory Note: a commitment to pay a specified amount on demand or at a determined date.

Must be dated, must specify the amount to be paid, the names of the parties, the time when payment is due, and the value supplied.

Usually are of a relatively small amount, but as an executive title they remain a powerful and effective tool as they avoid litigation.



Bills of Exchange & Promissory Notes

Can be partially challenged:

The debtor may request the competent court (depends on the value) to suspend the execution of the Bill or Note in whole or in part within 20 days from service of the judicial letter rendering it executable.

The application may be made where:

- a. the signature on the Bill / Note is not of the applicant / mandatory
- b. there are grave & valid reasons to oppose execution - in this case the creditor must file an action

Court's decision is made by means of a decree and is not subject to appeal.



Bills of Exchange & Promissory Notes

Grave & valid reasons to oppose execution:

The doctrinal and jurisprudential position is that the applicant must have a real and absolute right (e.g. a defect in the Bill / Note) or a personal and relative right (e.g. bad faith) in order to oppose execution.

This procedure is not intended to rescind the bill of exchange but merely to suspend its execution.



Mediation agreements

Mediation may be resorted to voluntarily, by law, or by order of a court / authority.

Where an agreement results from this process, it may become an executive title, **if there is explicit consent** of the parties to the mediation.



Uniform instrument permitting enforcement on mutual assistance for the recovery of claims relating to taxes, duties, and other measures

This is a European Union instrument based on Council Directive 2010/24/EU enabling the recovery and enforcement of cross-border claims for taxes, duties, and other measures levied by or on behalf of any EU MS or the EU as a whole.

The Uniform Notification Form is a standard instrument harmonising the process throughout the Union. In Malta it is regulated by Legal Notice 237 of 2025 & Subsidiary Legislation 460.08.

As it is now an executive title, no court proceedings are required to enforce the instrument.



Other Executive Titles

Although Art. 253 COCP may seem exhaustive, other executive titles are found throughout the laws of Malta:

- Mortgages in terms of the Merchant Shipping Act
- Judicial letters for the recovery of Government debt
- Judicial letter 166A

Enforcing Executive Titles

General Provisions

While the rest of the Executive Titles have particular procedures for enforcement, **judgments**, as the executive title par excellence, are directly and automatically enforceable.

Art. 256 COCP: The general rule is that judgments are enforceable after 2 days from the date of judgment. The following urgent judgments are made enforceable within 24hrs:

- judgments on collateral issues / interlocutory decrees if no time is stated;
- judgments rescinding warrants of impediment of departure of ships, or seizure or garnishee of ships / merchandise;
- judgments ordering payment of maintenance;
- arbitration awards

Court has discretion to order other timeframes depending on the urgency of the judgment.



Provisional Enforcement of Judgments

General Provisions - Art. 266 COCP

General rule: **only res judicata judgments are enforceable.**

However it is still possible to ask for provisional enforcement even before it becomes RJ. This may be sought by demand of the interested third party. Requested by means of an application, which is served on the opposite party, who has 2 days to reply, and is then heard by the court and decided with urgency.

- a. If the application is filed before delivery of judgment: application is decided as soon as may be after judgment is delivered
- b. if the application is filed after delivery but before an appeal is filed: it is the court of first instance which decides
- c. if the application is not decided before an appeal is lodged, the CoA will decide
- d. if the application is filed before the CoA, this may be filed at any time before the delivery of the appeal judgment.



Provisional Enforcement of Judgments

General Provisions

General rule: only res judicata judgments are enforceable - this is an exceptional remedy!

Provisional enforcement may be granted if the court is satisfied that a delay is likely to cause greater prejudice to the party requesting enforcement than to the other party.

The opposite party may, if the judgment is reversed or varied, be entitled to damages with interest.

The court granting such provisional enforcement may also order the party requesting it to provide sufficient security to the opposite party.



Provisional Enforcement of Judgments

General Provisions

The following judgments are always provisionally enforceable:

- judgments on maintenance
- judgments giving redress to the breach of one's right to life, or remedies against illegal arrest or forced labour (e.g. X, claiming he has been arrested illegally by government, cannot be kept in custody pending Government's appeal)
- any interlocutory decree (as they are necessary for the proper management of a case)



Provisional Enforcement of Judgments

General Provisions

The following judgments are never provisionally enforceable:

- judgments on the registration of hypothecs in the Public Registry (to avoid confusion in the Registry)
- judgments on the ratification / cancellation of the registration of an act of civil status (e.g. registration of marriage)
- judgments on industrial patents



Provisional Enforcement of Judgments

General Provisions

Final points:

- There is no appeal from a decision on the provisional enforcement of a judgment **if** the request has been refused, **but** the decision can be appealed from if it was given by the court of first instance and it had accepted such provisional enforcement.



Enforcing Executive Titles

General Provisions

For the enforcement of the other Executive Titles: **a judicial act against the debtor must be filed**, officially intimating the debtor to settle the debt.

E.g.: B defaults on a loan contract to A. A must file a judicial letter against B requesting payment. After 2 days from when B is notified, A can proceed to enforce.



Enforcing Executive Titles

General Provisions

Period to enforce executive titles:

15 YEARS: Judgments, taxed bills, & arbitration awards of the Superior Courts

10 YEARS: Judgments, taxed bills, & arbitration awards of the Inferior Courts

5 YEARS: Contracts, bills of exchange, promissory notes, 166A judicial letters

Once these periods lapse, an application must be filed before the competent court to request authorisation to enforce. Application must include confirmation on oath that the debt / claim sought is still due.

Period begins from the day the debt becomes due & so the executive title could have been enforced.



Enforcing Executive Titles

General Provisions

Where the debtor is deceased:

Here too, an application must be filed before the competent court to request authorisation to enforce against the debtor's heirs, even if the applicable period has not lapsed.

If there is no known heir or the heir has not declared his intention to accept the inheritance or otherwise, a curator is appointed.

Where the creditor is deceased:

His heirs / successors / assignees may file an application declaring they are the sole heirs, that the executive title is still valid, and the person against whom enforcement is sought is the debtor.



Enforcing Executive Titles

General Provisions

- Executive titles can be carried out against both movables and immovables of the debtor.
- A creditor of a debtor with more than one executive title against him within the jurisdiction of the same court may seek enforcement jointly in respect of all claims due.
- Payment of any part of the debt does not act as a waiver for the remaining debt.



Actio Surrogatoria - Art. 263 COCP

Enforcement by a creditor of the creditor

Scenario: A owes money to B, who in turn owes money to C. C can enforce B's executive title over A to collect that money that is then paid to him (C) to settle the debt between B and C.

This is the **Actio Surrogatoria**, where the creditor of the debtor/creditor steps into his shoes to exercise an action pertaining to him to collect what is due to him.

May be made by means of a sworn application which is served on both the debtor and creditor (debtor of the applicant).



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Executive Acts

Art. 273 COCP

Executive titles may be enforced by the following executive acts (warrants):

- a. seizure of movable property
- b. seizure of immovable property
- c. seizure of a commercial going concern
- d. judicial sale by auction of movable / immovable / rights annexed to immovable property
- e. executive garnishee order
- f. ejection / eviction from immovable property
- g. *in factum*
- h. arrest of sea vessels
- i. arrest of aircraft
- j *in procinctu*
- k. ejection / expulsion from seagoing vessels / aircraft



Preparation & Issue of Executive Acts

Art. 274 et seq. COCP

A warrant is always issued by the competent court on demand of the party who seeks it (i.e. the creditor).

Demand is made by means of an application (rikors) indicating the sum / item due and the remedies / provisions being demanded.

In the case of a:

- warrant of seizure of movable property; or
- garnishee order (executive)

the registrar has the discretion to issue that warrant / order if they believe the judge / magistrate's signature cannot be obtained in time, and such delay could be prejudicial. Verbal authorisation is still sought and as soon as possible, the signature is obtained.

Preparation & Issue of Executive Acts

Art. 274 et seq. COCP

Demand is made by means of an application (rikors) indicating the sum / item due and the remedies / provisions being demanded.

When the ET being sought is anything other than a judgment, a copy of that ET must be attached to the application. **NB:** a copy is not merely a photocopy, but a legal copy issued by the courts.

If judicial costs are also being sought, that amount is separately stated and the taxed bill of costs is also attached.



Preparation & Issue of Executive Acts

Art. 274 et seq. COCP

Procedure so far:

1. A is seeking to enforce a bill of exchange of €3000 against B.
2. A files a judicial letter demanding payment, with the BoE attached.
3. B is notified but does not reply and does not pay.
4. A begins the process to issue a warrant by i. obtaining a legal copy of the judicial letter, with proof of notification, and cost of judicial letter then ii. drafting the application.
5. A files the application to the Court requesting the issue of a warrant for the sum due, together with judicial costs.



Execution of Executive Acts

Time for Execution:

- Saving exceptions laid down by law, warrants may only be executed during the times prescribed by the Minister for Justice by means of regulations. In urgent cases (must be confirmed on oath by applicant), the court may allow different times.
- Warrants must be executed without delay by the court executing officer.

Opposition:

The execution of a warrant cannot be opposed / appealed until it has actually been effected.



Execution of Executive Acts

The Executing Officer

- The court executing officer first calls in 2 witnesses to begin the exercise of his powers in executing the warrant. This can include breaking open any outer / inner door / box where the movables to be seized are found.
- For warrants of seizure of government property, the executing officer must wait 4 days from the issue of the warrant before executing it.
- The executing officer must deliver a copy of the warrant at the first available opportunity to the party against whom it is issued / his lawful representative.
- Once executed, the warrant is returned to the registrar with a certificate of execution.



Execution of Executive Acts

Damages:

If a warrant or its execution are later deemed null, the party against whom it was issued / executed are entitled to start an action for damages with interest against the person suing out execution, if nullity arises from any act of such person; **or** against the court executing officer if the nullity arises from any act made by them.



Execution of Executive Acts

Procedure:

1. A is seeking to enforce a bill of exchange of €3000 against B.
2. A files a judicial letter demanding payment, with the BoE attached.
3. B is notified but does not reply and does not pay.
4. A begins the process to issue a warrant by i. obtaining a legal copy of the judicial letter, with proof of notification, and cost of judicial letter then ii. drafting the application.
5. A files the application to the Court requesting the issue of a warrant for the sum due, together with judicial costs.
6. Warrant is issued, and court executing officer begins their duties without delay.
7. Warrant is executed, a copy is served on B, the executing officer returns the warrant & certificate of execution to the registrar.



Challenging Executive Acts

Art.281 et seq. COCP

The person against whom an executive act was issued / any interested party may file an application to the court which issued that act requesting its revocation (total or partial) for any valid reason at law.

The application must contain all submissions and documents sustaining it.

Once served on the opposite party, that party shall have 10 days to reply (less in urgent cases as per the court's discretion). If no reply is filed, the court will accede to the request.

The court then hears the parties, receives evidence, and decides within 1 month from filing.

An appeal may be made within 6 days before the CoA. Appeals must be decided within 3 months from when they are appointed.



Converting Precautionary Warrants into Executive Warrants

Art. 838B COCP

Reminder: Unless rescinded / withdrawn, precautionary warrants remain in force for 15 days after the cause becomes res judicata.

Notwithstanding this, precautionary warrants become executive warrants after the cause becomes res judicata, or when a 166A judicial letter becomes an executive title.

For warrants of seizure; of seizure of a commercial going concern; garnishee orders; or arrests of sea vessels, the creditor must file a note within 15 days from res judicata requesting an extension / reduction in the warrant's effects to account for legal costs, interest, and any difference in the principal amount due in line with the judgment.





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