

# **Nru. 28**

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8. 10. 82

## **MALTA**

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### **KAMRA TAD-DEPUTATI**

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### **HOUSE OF REPRESENTATIVES**

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ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Brincat, M.P. u moqri għall-Ewwel darba fis-Seduta tal-5 ta' Ottubru, 1982.

A BILL introduced by the Honourable Joseph Brincat, M.P. and read the First time at the Sitting of the 5th October, 1982.

ATT biex jemenda l-Kodiċi ta' Organizazzjoni u Proċedura Ċivili (Kap. 15) sabiex kwistjonijiet jintbagħtu arbitraġġ.

AN ACT to amend the Code of Organization and Civil Procedure (Cap. 15) regarding the submission of disputes to arbitration.

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**C. MIFSUD**

*Skrivan tal-Kamra tad-Deputati*

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**C. MIFSUD**

*Clerk to the House of Representatives*

## ABBOZZ TA' LIĠI

### msejjah

*ATT biex jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (Kap. 15) sabiex kwistjonijiet jintbagħtu arbitraġġ.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, ħareġ b'liġi dan li ġej:—

Titolu fil-qosor.

1. Dan l-Att jista' jissejjaħ l-Att ta' l-1982 li jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, u għandu jinqara u jiftiehem haġa waħda mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawn-hekk iżjed 'il quddiem imsejjaħ "il-liġi prinċipali".

Sostituzzjoni ta' l-artikolu 969 tal-liġi prinċipali. ġej:

2. Minflok l-artikolu 969 tal-liġi prinċipali għandu jidhrol dan li

"969. (1) L-att ta' arbitraġġ jista' jsir sew b'att pubbliku kemm b'kitba privata jew skond id-disposizzjonijiet ta' dan l-artikolu.

(2) (a) Meta tkun diġà giet ipprezentata kawża quddiem Qorti ta' Ġustizzja dwar xi haġa li fuqha jkun hemm kwistjoni, il-partijiet jistgħu f'kull stadju jipprezentaw nota tagħhom flimkien fir-Registru ta' dik il-Qorti, iffirmata mill-partijiet jew mill-avukati tagħhom, fejn jitolbu lill-Qorti li tibgħat il-kawża lill-arbitru jew lill-arbitri li jkunu wrew l-aċċettazzjoni tagħhom biex hekk jaġixxu fl-istess nota.

(b) Il-Qorti għandha tordna li ssir fotokopja tal-proċess għas-spejjeż ta' l-attur, liema kopja tintbagħat lill-arbitri.

(c) Mal-prezentata tan-nota msemmija f'dan l-artikolu l-attijiet jitqiesu li ġew irtirati mill-ġurisdiżżjoni ta' dik il-Qorti; iżda ma jingabru ebda drittijiet tar-registru dwar dik il-kawża li ma tkomplitx.

(d) L-arbitri jkunu kompetenti li jisingħu u jiddeċiedu l-kwistjoni fil-limiti ta' l-att originali, ta' l-eċċezzjoni pprezentata u ta' kull rikonvenzjoni magħmula skond il-liġi.

(e) Minkejja d-disposizzjonijiet tal-paragrafu (a) ta' dan is-subartikolu, il-partijiet jistgħu fin-nota tagħhom flimkien jitolbu lill-Qorti li tinnomina l-arbitru jew l-arbitri, u dik in-nomina tibda sseħħ minn dak il-jum meta l-persuni hekk nominati juru l-kunsens tagħhom biex hekk jaġixxu.

(3) (a) Il-partijiet jistgħu fis-sottomissjoni jirriżervaw id-dritt li jappellaw mid-deċiżjoni finali lill-Qorti ta' l-Appell, bl-istess mod u skond il-formalitajiet stabbiliti għal appelli minn deċiżjonijiet tal-qrati tal-prim'istanza.

(b) Id-drittijiet li jithallsu lill-arbitri jkunu dawk stabbiliti għal esperti, kemm-il darba l-partijiet u l-arbitri ma jiftehmux bil-miktub xort'oħra dwar id-drittijiet li għandhom jiġu ntaxxati.

(4) Meta jintużaw mezzi elettromanjetiċi għar-registrazzjoni tax-xieħda, ma jkunx hemm għalfejn li x-xieħda li hekk tittieħed tiġi traskritta, kemm-il darba *t-tape* elettromanjetiku wżat jiġi esibit mad-deċiżjoni finali.

(5) L-arbitri jistgħu jzommu s-seduti f'kull post u f'kull ħin u f'kull jum, barra mill-Ħdud u btajjel pubbliċi.”.

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## Għanijiet u Raġunijiet

Dan l-Att emendat hu maħsub biex jiffaċilita li wieħed imur arbitraġġ, li qed ikun alternattiva utili biex jiġu deċiżi kwistjonijiet ċivili fil-biċċa l-kbira tal-pajjiżi progressivi. Il-vantaġġi ta' din is-sistema jkunu li jitnaqqsu l-ispejjeż għall-partijiet, biex jiġi evitat li l-qrati jitgħabbew b'kawżi li jista' jintlaħaq ftehim dwarhom jew jiġu deċiżi mingħajr proceduri tal-qorti. Barra minn dan, is-sistema tagħna mxiet ħafna 'l quddiem fil-ħatra ta' esperti li fil-fatt jiddeċiedu punti ta' fatt u ta' liġi li xi drabi, speċjalment fi kwistjonijiet li huma tekniċi ħafna, l-espert ikun f'qagħda aħjar minn imħallef biex jiddeċiedi. Għalhekk ikun iktar naturali li jkollok lil dawn in-nies arbitri.

Biex tiġi evitata l-possibilità ta' irregolarità, u biex jiġi żgurat li s-sistema tibqa' fil-limiti tal-prinċipji tal-liġi, il-partijiet jistgħu jirriżervaw id-dritt għal appell.

Hu mistenni li din l-emenda toħloq opportunità biex ħafna każi jmorru arbitraġġ għalkemm tkun diġà nbdiet il-kawża. Dwar dan l-Abbozz jipprovdi biex ikun hemm tnaqqis fl-ispejjeż.

**A BILL**

**entitled**

*AN ACT to amend the Code of Organization and Civil Procedure (Cap. 15) regarding the submission of disputes to arbitration.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Code of Organization and Civil Procedure (Amendment) Act, 1982, and shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as “the principal law”.

Substitution of section 969 of the principal law.

2. For section 969 of the principal law there shall be substituted the following:

“969. (1) the submission shall be made in writing, either by a public deed, or by a private writing, or in accordance with the provisions of this section.

(2) (a) Where an action about any matter in dispute has already been brought before a Court of Justice, the parties may at any stage file a joint note in the Registry of that Court, signed by the parties or their advocates, requesting the Court to transmit the cause to the arbitrator or arbitrators who shall have signified their acceptance so to act in the same note.

(b) The Court shall order that a photocopy of the records of the case be made at the expense of the party suing, which copy shall be transmitted to the arbitrators.

(c) The filing of the note mentioned in this section shall be deemed to be a withdrawal of the action from the jurisdiction of that Court; but no registry fees shall be levied for such discontinuance.

(d) The arbitrators shall be competent to hear and decide the matter in dispute within the limits of the original action, on the pleas filed and on any counterclaim made according to law.

(e) Notwithstanding the provisions of paragraph (a) of this subsection, the parties may in the joint note request the Court to appoint the arbitrator or arbitrators, and such appointment shall be effective from the day when the persons so appointed signify their consent so to act.

(3) (a) The parties may in submission reserve the right to appeal to the Court of Appeal on the final award, in the same manner and according to the formalities established for appeals from judgements of courts of first instance.

(b) The fees payable to the arbitrators shall be those established for referees, unless the parties and the arbitrators has otherwise agreed in writing about the fees that should be taxed.

(4) Where electromagnetic means are used for the recording of the evidence, it shall not be necessary to transcribe the evidence so taken, provided that the electromagnetic tape used is filed with the final award.

(5) The arbitrators may hold their sittings at any place and at any time or day, except on Sundays and on public holidays.”.

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## Objects and Reasons

This amending Act is intended to facilitate the recourse to arbitration, which is becoming a useful alternative to settling civil disputes in most progressive countries. The advantages of such a system would be to reduce costs for parties, to avoid burdening the courts with cases that could be settled or decided outside court procedures. Furthermore, our system has developed to a very great extent the appointment of referees, who in actual fact decide issues of fact and law. Sometimes, especially in highly technical matters, the expert is better equipped than the judge to decide. Consequently it is more natural to have these people arbitrate.

To avoid the possibility of an irregularity, and to assure that the system would remain within the established principles of law, the right of appeal may be reserved by the parties.

It is hoped that this amendment would give the opportunity to many cases being referred to arbitration, although proceedings have already been instituted. The Bill makes provision for the reduction of costs in this respect.