

ABBOZZ TA' LIĠI
msejjah

ATT li jemenda liġijiet li għandhom x'jaqsmu ma' materji dwar l-arbitraġġ u l-medjazzjoni.

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

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2009 li jemenda Liġijiet li jirrigwardaw Materji dwar l-Arbitraġġ u l-Medjazzjoni. Titolu fil-qosor.

TAQSIMA I

2. (1) Din it-Taqsima temenda l-Att dwar l-Arbitraġġ u għandha tinqara u tiftichem haġa waħda mal-Att dwar l-Arbitraġġ, hawn iżjed 'il quddiem f'din it-Taqsima msejjah "l-Att prinċipali". Emenda tal-Att dwar l-Arbitraġġ. Kap. 387.

(2) Id-dispożizzjonijiet ta' din it-Taqsima għandhom jidhlu fis-seħh f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista', b'avviż fil-Gazzetta jstabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

3. Is-subartikoli (2) u (3) ta' l-artikolu 4 ta' Att prinċipali għandhom jiġu sostitwiti bis-subartikoli li ġejjin: Emenda tal-artikolu 4 tal-Att prinċipali.

"(2) Il-Bord ikun jikkonsisti f'mhux anqas minn tliet membri u mhux aktar minn hames membri, li jinhatru mill-President ta' Malta li jaġixxi fuq il-parir tal-Prim Ministru, u wiehed minnhom jinhatar mill-Prim Ministru bħala *Chairman*.

Il-Prim Ministru jahtar ukoll membru ieħor bħala *Deputy Chairman* u dak il-membru jkollu s-setgħat kollha u jwettaq il-funzjonijiet kollha taç-*Chairman* meta dan ikun assenti, jew sakemm jinħatar *Chairman* għdid wara r-riżenja, temm ta' ħatra, jew mewt taç-*Chairman*.

(3) Il-Prim Ministru jagħzel il-membri tal-Bord minn fost persuni li jidhirlu li jkunu kwalifikati li jkunu hekk magħżula."

Emenda tal-artikolu 6 tal-Att prinċipali.

4. Fil-proviso għas-subartikolu (1) u fis-subartikolu (2) ta' l-artikolu 6 ta' l-Att prinċipali, minflok il-kelma "Ministru", kull fejn tinsab, għandhom jidhlu l-kliem "Prim Ministru".

Emenda tal-artikolu 8 tal-Att prinċipali.

5. Fis-subartikolu (1) ta' l-artikolu 8 ta' l-Att prinċipali, minflok il-kliem "lill-Ministru" għandhom jidhlu l-kliem "lill-Prim Ministru".

Emenda tal-artikolu 10 tal-Att prinċipali.

6. Is-subartikolu (6) ta' l-artikolu 10 ta' l-Att prinċipali għandu jiġi sostitwit bis-subartikolu li ġej:

"(6) (a) Persuna li, fl-opinjoni taç-Ċentru, ma tkunx qegħda taqdi d-dmirijiet u l-funzjonijiet tagħha fil-proċeduri ta' arbitraġġ għandha tiġi mwissija mir-Registratur biex taqdi dawk id-dmirijiet u funzjonijiet, u jekk dik il-persuna, fl-opinjoni taç-Ċentru, tibqa' tippersisti f'li ma taqdux dawk id-dmirijiet u l-funzjonijiet tagħha msemmija, iç-Ċentru għandu jgħaddi l-każ lill-bord li jkun magħmul minn tliet arbitri liema bord għandu, wara li jikkunsidra l-każ, jiddeċiedi jekk ikunx hemm nuqqas ta' twettieq ta' dmirijiet jew funzjonijiet fi proċeduri ta' arbitraġġ u, fejn il-bord isib illi jkun hemm dan in-nuqqas, il-bord għandu johroġ dawn id-direttivi li jidhirlu xierqa sabiex dik il-persuna twettaq dawk id-dmirijiet jew il-funzjonijiet tagħha. Jekk il-persuna msemmija tkompli tippersisti f'li ma twettaqx id-dmirijiet u l-funzjonijiet tagħha fi proċeduri ta' arbitraġġ, il-bord hekk maħtur għandu, wara li jikkonsidra l-każ, jirakkomanda liç-Ċentru li dik il-persuna, jew titneħħa mill-proċeduri ta' arbitraġġ li fihom qieghdha tippersisti li tonqos milli taqdi d-dmirijiet u l-funzjonijiet tagħha jew li titneħħa mill-grupp ta' arbitri.

(b) Persuna tista' f'kull żmien tirriżenja permezz ta' ittra li tiġi indirizzata lir-Registratur.

(ç) Tneħħija jew riżenja bħal dawk imsemmijin fil-paragrafi (a) u (b) ma għandhomx jitqiesu li jinkludu t-tneħħija jew ir-riżenja ta' dik il-persuna minn xi proċedimenti ta' arbitraġġ li hi tkun setgħet diġà għet maħtura fihom qabel it-

tnehhija jew ir-rizenja tagħha hlief kif jista jiġi espressament ordnat b'deċiżjoni taċ-Ċentru li tittiehed wara r-rakkomondazzjoni tal-Bord msemmija fil-paragrafu (a) jew fl-istess ittra ta' rizenja."

7. Is-subartikolu (3) ta' l-artikolu 20 ta' l-Att prinċipali għandu jiġi sostitwit bis-subartikolu li ġej:

Emenda tal-artikolu 20 tal-Att prinċipali.

"(3) Iċ-*Chairman* għandu, fuq talba ta' xi parti, jahtar l-uniku arbitru kemm jista' jkun malajr u għal dan il-għan għandu jsejjah laqgħa bejn il-partijiet biex isir tentattiv biex jintgħażel arbitru flimkien mal-partijiet u wara li jkun sejjah il-laqgħa msemmija, iċ-*Chairman* għandu jipproċedi biex jahtar l-uniku arbitru u d-deċiżjoni tiegħu għandha tkun finali u konkluziva."

8. Minnufih wara s-subartikolu (11) tal-artikolu 15 tal-Att prinċipali għandu jiżdied is-subartikolu ġdid li ġej:

Emenda tal-artikolu 15 tal-Att prinċipali.

"(11A) .Minkejja kull disposizzjoni oħra ta' dan l-Att, il-partijiet kollha f'arbitraġġ mandatorju għandu jkollhom, sakemm ma jkunux espressament ftiehem mod ieħor bil-miktub, dritt ta' appell mid-deċiżjoni arbitrali kemm fuq fatti kif ukoll fuq punti ta' liġi quddiem il-Qorti ta' l-Appell kostitwita skond l-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, u d-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għal dak li jirrigwarda appelli minn deċiżjonijiet tal-Qorti tal-Maġistrati (Malta) u l-Qorti tal-Maġistrati (Għawdex) għandhom *mutatis mutandis* jgħoddu għal appelli bħal dawn."

Kap. 12.

9. Fil-paragrafu 4 tat-Taqsima B tar-Raba' Skeda mal-Att prinċipali, minflok il-kliem "skond ma hemm provdut bl-Att" għandhom jidhlu l-kliem "skont ma hemm provdut fis-subartikolu (11A) tal-artikolu 15".

Fil-Emenda tar-Raba' Skeda mal-att prinċipali.

10. Il-paragrafu (b) tas-subregola (6) tar-regola 72 tar-Regoli dwar l-Arbitraġġ għandu jithassar.

Emenda tar-regola 72 tar-Regoli dwar l-Arbitraġġ. L.S. 398.01

TAQSIMA II

11. (1) Din it-Taqsima temenda l-Att dwar il-Medjazzjoni, u għandha tinqara u tiftiehem haġa waħda mal-Att dwar il-Medjazzjoni, hawn iżjed 'il quddiem imsejjah "l-Att prinċipali".

Emenda tal-Att dwar il-Medjazzjoni. Kap.474.

(2) Id-dispożizzjonijiet ta' din it-Taqsima għandhom jidhlu

fis-seħħ f' dik id-data li l-Ministru responsabbli għall-gustizzja jista', b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

Emenda tal-
artikolu 2 tal-
Att prinċipali.

12. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok it-tifsira "medjatur", għandha tidhol it-tifsira li ġejja:

" "medjatur" tfisser kull terza persuna li tiġi mitluba tagħmel medjazzjoni b'mod effettiv, imparzjali u kompetenti, irrispettivament mid-denominazzjoni jew professjoni ta' dik it-terza persuna fl-Istat Membru konċernat u mill-mod ta' kif dik it-terza persuna tkun ġiet maħtura jew mitluba tagħmel il-medjazzjoni;"

(b) minflok it-tifsira "medjazzjoni", għandha tidhol it-tifsira li ġejja:

" "medjazzjoni" tfisser proċess strutturat, irrispettivament minn kif ikun imsemmi jew minn kif issir riferenza għalih, li permezz tiegħu żewġ partijiet jew aktar f'tilwima, jippruvaw bejniethom jilhqg ftehim volontarju dwar it-tilwima tagħhom bl-assistenza tal-medjatur. Dan il-proċess jista' jinbeda mill-partijiet jew jiġi sugġerit jew ordnat mill-qorti jew kif preskritt mil-liġi nazzjonali;"

(ċ) minnufih wara t-tifsira "medjazzjoni domestika" għandha tiżdied din it-tifsira ġdida li ġejja:

" "medjazzjoni internazzjonali" għandha tinkludi tilwim transkonfini fuq materji ċivili u kummerċjali hlief fir-rigward ta' drittijiet u obbligi li mhumiex għaddisposizzjoni tal-partijiet taħt il-liġi applikabbli rilevanti, u tilwim ieħor li l-leġislazzjoni nazzjonali tista' tipprovdi minn żmien għal żmien. M'għandhiex tiġi estiża b'mod partikolari, għal kwistjonijiet tal-erarju, dawk doganali jew amministrattivi jew għar-responsabbiltà tal-Istat għall-atti u ommissjonijiet fl-eżerċizzju tal-awtorità tal-Istat (*acta iure imperii*);" u

(d) minnufih wara t-tifsira "ir-registratur", għandha tidhol it-tifsira li ġejja:

" "Stat Membru" tfisser kull Stat Membru tal-Unjoni Ewropea hlief d-Danimarka."

13. Minflok il-paragrafu (j) tal-artikolu 5 tal-Att prinċipali għandu jidhol il-paragrafu li ġej:

Emenda tal-artikolu 5 tal-Att prinċipali.

"(j) li jinkuraġġixxi, b'kull mezz li huwa jikkunsidra xieraq, l-iżvilupp ta', u l-konformita` ma', kodiċijiet ta' kondotta volontarji minn medjaturi u organizzazzjonijiet li jipprovdu servizzi ta' medjazzjoni, kif ukoll mekkaniżmi effettivi oħra għall-kontroll tal-kwalita` li għandhom x'jaqsmu mal-ghoti ta' servizzi ta' medjazzjoni; iktar minn hekk għandu jinkuraġġixxi t-tahriġ inizjali u ulterjuri tal-medjaturi sabiex jiġi żgurat illi l-medjazzjoni tkun mmexxija b'mod effikaċi, imparzjali u kompetenti fir-rigward tal-partijiet;"

14. L-artikolu 6 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 6 tal-Att prinċipali.

(a) l-artikolu preżenti għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1); u

(b) minnufih wara s-subartikolu (1), kif enumerat mill-ġdid, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(2) Il-Bord m'għandux jieħu deċiżjonijiet sakemm ma jkunx hemm preżenti kworum li jkun jikkonsisti f'ta' l-inqas tlett membri."

15. Minnufih wara s-subartikolu (2) tal-artikolu 15 tal-Att prinċipali, għandu jiżdied dan is-subartikolu ġdid li ġej:

Emenda tal-artikolu 15 tal-Att prinċipali.

"(3) Iċ-Ċentru għandu jkun eżentat minn kull responsabbilta` ta' hlas ta' taxxa fuq id-dhul u taxxa fuq id-dokumenti taht kull liġi li tkun fis-seħh f'dak iż-żmien."

16. Minnufih wara l-artikolu 17 tal-Att prinċipali, għandhom jiżdiedu dawn l-artikoli ġodda li ġejjin:

Żjieda ta' artikoli ġodda mal-Att prinċipali.

"Tilwima transkonfini.

17A. (1) Tilwima transkonfini għandha tkun waħda li fiha għall-inqas waħda mill-partijiet tkun domiciljata jew residenti abitwali f'Malta u l-parti l-oħra tkun domiciljata jew residenti abitwali fi Stat Membru ieħor, fid-data li fiha:

(a) il-partijiet jaqblu li jużaw il-medjazzjoni wara li tirriżulta t-tilwima;

(b) il-medjazzjoni tiġi ordnata mill-qorti;

(c) jirriżulta obbligu biex tintuża l-medjazzjoni taht il-liġi nazzjonali; jew

(d) għall-finijiet tal-artikolu 17(b) jinhareġ digriet jew ordni mill-qorti jew minn awtorità ġudikanti oħra lill-partijiet.

(2) Minkejja d-disposizzjonijiet tas-subartikolu (1), għall-finijiet ta' kunfidenzjalità u perjodi ta' limitazzjoni u preskrizzjoni, tilwima transkonfini għandha tkun ukoll waħda li fiha proċedimenti ġudizzjarji jew ta' arbitraġġ wara medjazzjoni bejn il-partijiet jinbdew f'Malta jew fi Stat Membru ieħor li mhuwiex dak l-Istat Membru li fih il-partijiet kienu domiciljati jew residenti abitwalment fid-data msemmija fis-subartikolu (1)(a), (b) jew (ċ).

(3) Għall-finijiet tas-subartikoli (1) u (2), id-domicilju għandu jiġi determinat skond l-Artikoli 59 u 60 tar-Regolament tal-Kunsill (KE) Nru. 44/2001 dwar ġurisdizzjoni u rikonossiment u eżekuzzjoni ta' sentenzi f'materji ċivili u kummerċjali.

Infurzar ta' ftehim li jirriżulta minn medjazzjoni.

17B.(1) (a) Il-partijiet, jew waħda minnhom bil-kunsens esplicitu tal-parti l-oħra, jistgħu jitolbu illi l-kontenut ta' ftehim bil-miktub li jirriżulta minn medjazzjoni jsir eżegwibbli bla ħsara għad-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

(b) il-kontenut tal-ftehim għandu jkun eżegwibbli sakemm, f'dak il-każ fil-kwistjoni, il-kontenut ma jkunx kontra l-liġi nazzjonali.

(2) Il-kontenut tal-ftehim jista' jiġi infurzat minn qorti jew awtorità oħra kompetenti permezz ta' sentenza jew deċiżjoni jew strument awtentiku skont il-liġi tal-Istat Membru fejn issir it-talba.

(3) Xejn f'dan l-artikolu m'għandu jaffettwa r-regoli applikabbli għar-rikonossiment u l-infurzar fi Stat Membru ieħor ta' ftehim li sar eżegwibbli skond is-subartikolu (1)."

Emenda tal-artikolu 20 tal-Att prinċipali.

ġej:

17. L-artikolu 20 tal-Att prinċipali għandu jkun emendat kif

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "tista' tapplika għand ir-reġistratur" għandhom jidhlu l-kliem "għandha tapplika għand ir-reġistratur"; u

(b) minnufih wara s-subartikolu (2) tiegħu, għandu jiżdied dan is-subartikolu ġdid li ġej:

"(3) Meta medjatur jirrifjuta talba huwa għandu jinnotifika lir-reġistratur kif imiss fi żmien ħmistax-il jum mid-data tat-talba."

18. L-artikolu 21 tal-Att prinċipali għandu jkun emendat kif ġej:

Emenda tal-artikolu 21 tal-Att prinċipali.

(a) minflok is-subartikolu (2) tiegħu, għandu jidhol dan is-subartikolu ġdid li ġej:

"(2) Jekk medjatur isir jaf b'xi fatt minn dawk deskritti taht is-subartikolu (1)(a) wara li jaċċetta il-medjazzjoni, il-medjatur għandu jiżvela dan lill-partijiet kemm jista' jkun malajr u prattikabbli."; u

(b) minnufih wara s-subartikolu (2) tiegħu, għandhom jiżdiedu dawn s-subartikoli ġodda li ġejjin:

"(3) Wara li jiġi żvelat xi fatt taht is-subartikolu (1) jew (2), medjatur għandu jirrifjuta li jkompli l-medjazzjoni sakemm il-partijiet ma jesprimux il-kunsens tagħhom li jipproċedi bil-medjazzjoni.

(4) Meta medjatur iqis illi ikun hemm xi kunflitt ta' interess li jqajjem l-iċken dubju raġonevoli dwar l-integrità tal-proċess, il-medjatur għandu jirrifjuta illi jipproċedi irrispettivament mill-kunsens tal-partijiet għall-kuntrarju.

(5) Meta medjatur jirrifjuta li jkompli l-medjazzjoni, għandu jinhatar jew jingħażel medjatur ġdid jew sostitut skont il-proċedura stabbilita fl-artikolu 20."

19. L-artikolu 22 tal-Att prinċipali għandu jkun emendat kif ġej:

Emenda tal-artikolu 22 tal-Att prinċipali.

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "Medjatur jista' jiġi rikuzat" għandhom jidhlu l-kliem "Medjatur jista' jiġi rikuzat minn kull parti għall-medjazzjoni"; u

(b) is-subartikolu (4) tiegħu għandu jithassar.

Emenda tal-artikolu 23 tal-Att prinċipali.

20. L-artikolu 23 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "fl-artikolu 21" għandhom jidhlu l-kliem "fl-artikoli 21 jew 22(2)"; u

(b) fis-subartikolu (4) tiegħu, minflok il-kliem "tal-medjatur rikuzat" għandhom jidhlu l-kliem "ta' medjatur minflok l-medjatur rikuzat".

Emenda tal-artikolu 24 tal-Att prinċipali.

21. Fl-artikolu 24 tal-Att prinċipali, minflok il-kliem "artikolu 21" għandhom jidhlu il-kliem "artikolu 20".

Emenda tal-artikolu 27 tal-Att prinċipali.

22. Fis-subartikolu (1) tal-artikolu 27 tal-Att prinċipali minflok il-kliem "dik ix-xieħda f'ebda proċedimenti." għandhom jidhlu l-kliem "dik ix-xieħda f'ebda proċedimenti.", u minnufih wara għandu jiżdied il-proviso li ġej:

"Iżda l-iżvelar tal-kontenut tal-ftehim li jirriżulta minn medjazzjoni ikun permess -

(a) fejn dan ikun meħtieġ għal konsiderazzjonijiet prevalenti ta' politika pubblika tal-Istat Membru konċernat, b'mod partikolari meta jkun meħtieġ li tiġi żgurata l-protezzjoni ta' l-aħjar interessi tat-tfal jew għall-prevenzjoni ta' ħsara fuq l-integrità fiżika jew psikoloġika ta' persuna; jew

(b) fejn dan l-iżvelar ikun meħtieġ għall-implimentazzjoni jew għall-infurzar ta' dak il-ftehim."

Żjieda ta' artikolu ġdid mal-Att prinċipali.

23. Minnufih wara l-artikolu 27 tal-Att prinċipali għandu jiżdied l-artikolu ġdid li ġej:

"L-effett tal-medjazzjoni fuq il-perjodi ta' limitazzjoni u preskrizzjoni

27A. (1) Il-partijiet li jagħzlu l-medjazzjoni biex jippruvaw isolvu tilwima m'għandhomx sussegwentement jitwaqqfu milli jibdew proċedimenti ġudizzjarji jew ta' arbitraġġ fir-rigward ta' dik it-tilwima minhabba l-iskadenza tal-perjodi ta' limitazzjoni jew ta' preskrizzjoni matul il-proċess tal-medjazzjoni.

(2) Id-disposizzjonijiet tas-subartikolu (1) għandhom ikunu bla ħsara għad-disposizzjonijiet dwar perjodi ta' limitazzjoni jew ta' preskrizzjoni fi ftehim internazzjonali li għalihom Malta u l-Istat Membru l-iehor jistgħu ikunu parti."

TAQSIMA III

24. (1) Din it-Taqsima temenda l-Kodici ta' Organizzazzjoni u Proċedura Ċivili, u għandha tinqara u tiftiehem haġa waħda mal-Kodici ta' Organizzazzjoni u Proċedura Ċivili, hawn iżjed 'il quddiem imsejjaħ "il-Kodici".

Emenda tal-Kodici ta' Organizzazzjoni u Proċedura Ċivili.
Kap. 12.

(2) Id-dispożizzjonijiet ta' din it-Taqsima għandhom jidhlu fis-seħħ f'dik id-data li l-Ministru responsabbli għall-gustizzja jista', b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

25. Fil-paragrafu (e) tal-artikolu 253 tal-Kodici, minflok il-kliem "bid-dritt mogħti lilu minn dan il-proviso." għandhom jidhlu l-kliem "bid-dritt mogħti lilu minn dan il-proviso;", u minnufih wara għandu jiżdied il-paragrafu ġdid li ġej:

Emenda ta' l-artikolu 253 tal-Kodici.
Kap.12.

"(f) ftehim ta' medjazzjoni magħmulin eżegwibbli mill-partijiet għall-medjazzjoni skont id-disposizzjonijiet tal-Att dwar il-Medjazzjoni."

Għanijiet u Raġunijiet

L-għanijiet ta' dan l-Abbozz huma illi jaġġornaw d-disposizzjonijiet tal-Att dwar l-Arbitraġġ, rigward it-tneħħija ta' arbitri u d-dritt ta' appell f'arbitraġġi mandatorji, illi jaġġornaw id-disposizzjonijiet tal-Att dwar il-Medjazzjoni, biex ikun hemm lok għall-iżjed trasparenza fil-proċess ta' medjazzjoni, u biex jittrasponu fil-leġislazzjoni nazzjonali id-disposizzjonijiet tad-Direttiva tal-Kunsill 2008/52/EC ta' 21 ta' Mejju 2008 li tirrigwarda il-medjazzjoni f'materji ċivili u kummerċjali transkonfini.

**A BILL
entitled**

AN ACT to amend the Laws relating to arbitration and mediation matters.

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. The short title of this Act is the Laws (Arbitration and Mediation Matters) (Amendment) Act, 2009.

PART I

Amendment of
the Arbitration
Act.
Cap. 387.

2. (1) This Part amends the Arbitration Act, and it shall be read and construed as one with the Arbitration Act, hereinafter in this Part referred to as "the principal Act".

(2) The provisions of this Part shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of
article 4 of the
principal Act.

3. Sub-articles (2) and (3) of article 4 of the principal Act shall be substituted by the following sub-articles:

"(2) The Board shall consist of not less than three and not more than five members, appointed by the President of Malta acting on the advice of the Prime Minister, one of whom shall be designated by the Prime Minister as chairman. The Prime Minister shall also designate another member as deputy chairman and such member shall have all the powers and

perform all the functions of the chairman during his absence, or until a new chairman has been appointed following the resignation, termination of appointment, or death of the chairman.

(3) The Prime Minister shall select the members of the Board from among persons who appear to him to be qualified to be so selected."

4. In the proviso to sub-article (1) and in sub-article (2) of article 6 of the principal Act, for the word "Minister", wherever it occurs, there shall be substituted the words "Prime Minister".

Amendment of article 6 of the principal Act.

5. In sub-article (1) of article 8 of the principal Act, for the words "to the Minister" there shall be substituted the words "to the Prime Minister".

Amendment of article 8 of the principal Act.

6. Sub-article (6) of article 10 of the principal Act shall be substituted by the following sub-article:

Amendment of article 10 of the principal Act.

(6) (a) A person who, in the opinion of the Centre, does not fulfil his duties or functions in arbitration proceedings shall be admonished by the Registrar in order to fulfil those duties or functions, and if that person in the opinion of the Centre persists in not fulfilling his said duties or functions the Centre shall refer the case to a board to be composed of three arbitrators which shall, after considering the case, decide whether there is failure to fulfil duties or functions in arbitration proceedings and, where it finds that there is such failure, the board shall issue such directives as it may deem appropriate so that the said person will fulfil his said duties or functions. If the said person further persists in not fulfilling his duties or functions in arbitration proceedings the board so appointed shall, after considering the case, recommend to the Centre that the said person be either removed from the arbitration proceedings in which he persisted in failing to fulfil his duties or functions or be removed from the group of arbitrators.

(b) A person may at any time resign by letter addressed to the Registrar.

(c) A removal or resignation as referred to in paragraphs (a) and (b) shall not be deemed to include the removal or resignation of the person concerned from any arbitration proceedings in which he may have already been appointed before his removal or resignation except as may be expressly provided in a decision of the Centre taken upon the recommendation of the board referred to in paragraph (a) or in

the letter of resignation itself."

Amendment of article 20 of the principal Act.

7. Sub-article (3) of article 20 of the principal Act shall be substituted by the following sub-article:

"(3) The chairman shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible and for this purpose he shall call a meeting between the parties for the purpose of attempting to select the arbitrator together with the parties and after he has called the said meeting the chairman shall proceed to appoint the sole arbitrator and his decision shall be final and binding."

Amendment of the article 15 of the principal Act.

8. Immediately after sub-article (11) of article 15 of the principal Act there shall be added the following new sub-article:

"(11A) Notwithstanding any other provision of this Act, all parties to a mandatory arbitration shall, unless they have expressly agreed otherwise in writing, have a right of appeal from the arbiter award both on points of law and on points of fact to the Court of Appeal as constituted in terms of article 41(6) of the Code of Organization and Civil Procedure, and the provisions of the Code of Organization and Civil Procedure with regard to appeals from judgments of the Court of Magistrates (Malta) and the Court of Magistrates (Gozo) shall *mutatis mutandis* apply to such appeals."

Cap. 12.

Amendment of Fourth Schedule to the principal Act.

9. In paragraph 4 of Part B of the Fourth Schedule to the principal Act the words "as provided by the Act" shall be substituted by the words "as provided in sub-article (11A) of article 15".

Amendment of rule 72 of the Arbitration Rules.
S.L. 387.01

10. Paragraph (b) of sub-rule (6) of rule 72 of the Arbitration Rules shall be repealed.

PART II

Amendment of the Mediation Act.
Cap. 474.

11. (1) This Part amends the Mediation Act, and it shall be read and construed as one with the Mediation Act, hereinafter in this Part referred to as "the principal Act".

(2) The provisions of this Part shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes thereof.

- 12.** Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.
- (a) immediately after the definition "financial period", there shall be inserted the following definition:

" "international mediation" shall include cross-border disputes of a civil and commercial nature except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law, and other disputes which national legislation may provide from time to time. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*);";

- (b) for the definition "mediation", there shall be substituted the following definition:

" "mediation" means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves to reach a voluntary agreement regarding their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by national legislation;";

- (c) for the definition "mediator", there shall be substituted the following definition:

" "mediator" means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation;";
and

- (d) immediately after the definition "mediator", there shall be inserted the following definition:

" "Member State" means any one of the Member States of the European Union with the exception of Denmark;".

- 13.** Paragraph (j) of article 5 of the principal Act shall be substituted by the following paragraph: Amendment of article 5 of the principal Act.

"(j) to encourage, by any means which it considers

appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organizations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services; moreover it shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties;"

Amendment of article 6 of the principal Act.

14. Article 6 of the principal Act shall be amended as follows:

(a) the present article shall be re-numbered as sub-article (1) thereof; and

(b) immediately after sub-article (1) thereof, as re-numbered, there shall be added the following new sub-article:

"(2) The Board shall not act unless a quorum consisting of not less than three members is present."

Amendment of article 15 of the principal Act.

15. Immediately after sub-article (2) of article 15 of the principal Act, there shall be added the following new sub-article:

"(3) The Centre shall be exempted from any liability for the payment of income tax and duty on documents under any law for the time being in force."

Addition of new articles to the principal Act.

16. Immediately after article 17 of the principal Act there shall be added the following new articles:

"Cross-border dispute.

17A. (1) A cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in Malta and the other party is domiciled or habitually resident in another Member State on the date on which:

(a) the parties agree to use mediation after the dispute has arisen;

(b) mediation is ordered by the court;

(c) an obligation to use mediation arises under national law; or

(d) for the purposes of article 17(b) a decree or order by a court or other adjudicating authority is made to the parties.

(2) Notwithstanding the provisions of sub-article (1), for the purposes of confidentiality and limitation and prescription periods, a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in Malta or another Member State other than the Member State in which the parties were domiciled or habitually resident on the date referred in sub-article (1)(a), (b) or (c).

(3) For the purposes of sub-articles (1) and (2), domicile shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Enforceability of agreements resulting from mediation.

17B.(1) (a) The parties, or one of them with the explicit consent of the other, may request that the content of a written agreement resulting from mediation be made enforceable subject to the provisions of the Code of Organization and Civil Procedure.

Cap. 12.

(b) The content of such an agreement shall be enforceable unless, in the case in question, the content of that agreement is contrary to national law.

(2) The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.

(3) Nothing in this article shall affect the rules applicable to the recognition and enforcement in another Member State of an agreement made enforceable in accordance with sub-article (1)."

17. Article 20 of the principal Act shall be amended as follows:

Amendment of article 20 of the principal Act.

(a) in sub-article (1) thereof, for the words "may apply to the registrar" there shall be substituted the words "shall apply to the registrar"; and

(b) immediately after sub-article (2) thereof, there shall be added the following new sub-article:

"(3) If a mediator declines a request he shall notify the registrar accordingly within fifteen days from the date of the request."

Amendment of article 21 of the principal Act.

18. Article 21 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be substituted by the following new sub-article:

"(2) If a mediator becomes aware of any fact described under sub-article (1)(a) after accepting a mediation, the mediator shall disclose it to the parties as quickly as practicable."; and

(b) immediately after sub-article (2) thereof, there shall be added the following new sub-articles:

"(3) After the disclosure of any fact under sub-articles (1) or (2), a mediator shall decline to mediate unless all the parties give him their express consent to proceed with the mediation.

(4) Where a mediator deems that there is a conflict of interest giving rise to the slightest reasonable doubt as to the integrity of the process, the mediator shall decline to proceed regardless of the consent of the parties to the contrary.

(5) If a mediator declines to mediate, a new or substitute mediator shall be appointed or chosen pursuant to the procedure provided for in article 20."

Amendment of article 22 of the principal Act.

19. Article 22 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "Any mediator may be challenged" there shall be substituted the words "A mediator may be challenged by any mediation party"; and

(b) sub-article (4) thereof shall be deleted.

Amendment of article 23 of the principal Act.

20. Article 23 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof for the words "article 21" there shall be substituted the words "articles 21 or 22(2)"; and

(b) in sub-article (4) thereof, for the words "the challenged mediator" there shall be substituted the words "a mediator in substitution of the challenged mediator".

21. In article 24 of the principal Act, for the words "article 21" there shall be substituted the words "article 20".

Amendment of article 24 of the principal Act.

22. In sub-article (1) of article 27 of the principal Act, for the words "and may not be compelled in any proceedings." there shall be substituted the words "and may not be compelled in any proceedings:", and immediately thereafter there shall be added the following proviso:

Amendment of article 27 of the principal Act.

"Provided that disclosure of the content of the agreement resulting from mediation shall be permitted -

(a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

(b) where such disclosure is necessary in order to implement or enforce that agreement."

23. Immediately after article 27 of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Effect of mediation on limitation and prescription periods.

27A. (1) The parties who choose mediation in an attempt to settle a dispute shall not subsequently be prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.

(2) The provisions of sub-article (1) shall be without prejudice to provisions on limitation or prescription periods in international agreements to which Malta and the other Member State concerned may be party."

PART III

Amendment of
the Code of
Organization
and Civil
Procedure.
Cap. 12.

24. (1) This Part amends the Code of Organization and Civil Procedure, and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code".

(2) The provisions of this Part shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of
article 253 of
the Code.

25. In paragraph (e) of article 253 of the Code, for the words "the right given to him by this proviso." there shall be substituted the words "the right given to him by this proviso;", and immediately thereafter there shall be added the following new paragraph:

"(f) mediation agreements made enforceable by the parties thereto in accordance with the provisions of the Mediation Act."

Objects and Reasons

The objects of this Bill are to update the provisions of the Arbitration Act, to allow for the removal of arbitrators and the right of appeal in mandatory arbitrations, to update the provisions of the Mediation Act, to allow for more transparency in the mediation process, and to transpose into national legislation the provisions of Council Directive 2008/52/EC of 21 May 2008 regarding mediation in cross-border civil and commercial matters.