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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Tonio Borg, M.P., Viċi Prim Ministru u Ministru tal-Ġustizzja u l-Intern u moqri għall-Ewwel darba fis-Seduta tas-26 ta' Lulju, 2004.

ATT biex jinkoraġġixxi u jiffaċilita r-risolwiment ta' tilwimiet f'Malta permezz tal-medjazzjoni, biex jistabbilixxi Ċentru tal-Medjazzjoni għal Malta bħala ċentru għall-medjazzjoni domestika u internazzjonali, u biex jagħmel provvedimenti li jkunu jirregolaw kif għandu jimxi l-proċess ta' medjazzjoni.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Tonio Borg, M.P., Deputy Prime Minister and Minister for Justice and Home Affairs, and read the First time at the Sitting of the 26th July, 2004.

AN ACT to encourage and facilitate the settlement of disputes in Malta through mediation, to establish a Malta Mediation Centre as a centre for domestic and international mediation, and to make provisions regulating the conduct of the mediation process.

RICHARD J. CAUCHI
Clerk of the House of Representatives

ABBOZZ TA' LIĠI msejjaħ

ATT biex jinkoraġġixxi u jiffacilita r-risolviment ta' tilwimiet f' Malta permezz tal-medjazzjoni, biex jistabbilixxi Ċentru tal-Medjazzjoni għal Malta bħala ċentru għall-medjazzjoni domestika u internazzjonali, u biex jagħmel provvedimenti li jkunu jirregolaw kif għandu jimxi l-proċess ta' medjazzjoni.

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

TAQSIMA I Preliminari

1. It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2004 dwar il-Medjazzjoni. Titolu fil-qosor.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx tehtieġ Tifsiriet. xort'ohra -

“il-Bord” tfisser il-Bord tal-Gvernaturi taċ-Ċentru mwaqqaf bl-artikolu 6;

“iċ-Ċentru” tfisser iċ-Ċentru tal-Medjazzjoni għal Malta mwaqqaf bl-artikolu 3;

“*chairman*” tfisser il-president tal-Bord;

“medjatur” tfisser persuna newtrali, kwalifikata u imparzjali li tmexxi medjazzjoni;

“medjazzjoni” tfisser proċess li bih medjatur jiffaċilita t-trattattivi bejn il-partijiet sabiex jgħinjom jaslu għal kunsens volontarju bejniethom dwar it-tilwima li jkollhom;

“medjazzjoni domestika” tfisser medjazzjoni ta’ xorta ċivili, familjari, soċjali, kummerċjali u industrijali;

“il-Ministru” tfisser il-Ministru responsabbli għall-gustizzja;

“ordnat” tfisser ordnat b’regolamenti maghmula taht dan l-Att;

“il-parti fil-medjazzjoni” tfisser min jipparteċipa f’medjazzjoni u jkun mehtieg il-kunsens tiegħu biex jirrisolvi t-tilwima;

“perjodu finanzjarju” tfisser perjodu ta’ hames snin li jibda għaddej fl-ewwel ta’ Jannar ta’ xi sena partikolari u jtemm fil-wiehed u tletin ta’ Diċembru tal-hames sena li tiġi wara:

Izda l-ewwel perjodu finanzjarju taċ-Ċentru jkun il-perjodu li jibda għaddej mad-dhul fis-sehh tat-Taqsima III ta’ dan l-Att u jtemm fil-wiehed u tletin ta’ Diċembru tas-sena li tahbat minnufih wara s-sena meta tkun dahlet fis-sehh dik it-Taqsima III;

“proċedimenti” tfisser proċeduri ġudizzjarji, amministrattivi, ta’ arbitraġġ jew oħrajn ta’ aġġudikazzjoni;

“ir-registratur” tfisser ir-registratur tal-Bord kif imfisser taht l-artikolu 13.

TAQSIMA II

Twaqqif u Funzjonijiet taċ-Ċentru

Twaqqif taċ-Ċentru.

3. (1) Jitwaqqaf Ċentru li jkun magħruf bhala ċ-Ċentru tal-Medjazzjoni għal Malta, li jkollu l-ghan u l-funzjonijiet tiegħu assenjati lilu b’dan l-Att.

(2) Iċ-Ċentru jkun korp magħqud li jkollu personalità ġuridika distinta u li jista’, konformement mal-funzjonijiet li jkollu:

(a) jagħmel kuntratti, jakkwista, ikollu fil-pussess tiegħu jew jiddisponi minn proprjetà reali u personali;

(b) iharrek u jiġi mharrek; u

(ċ) jagħmel dak kollu li jkun incidentali jew li jirrizulta fit-twettiq tal-funzjonijiet tiegħu.

4. Iċ-Ċentru għandu jipprovdi forum fejn jistgħu jmorru, jew jintbagħtu, il-partijiet fil-medjazzjoni sabiex jirrisolvu t-tilwima li jkollhom billi jkollhom l-għajnuna ta' medjatur. Għan taċ-Ċentru.

5. Il-funzjonijiet taċ-Ċentru jkunu:

Funzjonijiet taċ-Ċentru.

(a) li jippromwovi l-medjazzjoni domestika u internazzjonali bħala mezz ta' risolviment ta' tilwimiet;

(b) li jipprovdi dwar kif għandha titmexxa l-medjazzjoni domestika u dik internazzjonali;

(ċ) li jipprovdi l-faċilitajiet meħtieġa biex tkun tista' ssir il-medjazzjoni;

(d) li jistabbilixxi l-kriterji għall-hatra ta' medjaturi ;

(e) li jiffirma elenku ta' medjaturi biex jassistu fil-medjazzjoni domestika u dik internazzjonali;

(f) li japprova lill-medjaturi nominati;

(g) li jzomm reġistri u *records* tal-medjaturi nominati;

(h) li jneħhi medjaturi mill-elenu fiċ-ċirkostanzi mnizzla taht l-artikolu 11;

(i) li jipprovdi l-proċeduri li jaddotta hu nnifsu biex jimmaniġġa t-tilwimiet;

(j) li jipprovdi kodiċi ta' etika li l-medjaturi għandhom isegwu matul il-proċedimenti ta' medjazzjoni;

(k) li jistabbilixxi t-tariffa ta' drittijiet li għandhom jithallsu għas-servizzi provduti miċ-Ċentru;

(l) li jiffaċilita dħul ahjar għall-proċedura ta' medjazzjoni billi jippubblika informazzjoni, linji direttivi u dokumentazzjoni simili;

(m) li jifformola u jippubblika rapport ta' kull sena fuq il-progress taċ-Ċentru;

(n) li jaghti pariri jew jaghmel rakkomandazzjonijiet lill-Ministru fuq affarijiet li, fil-fehma tal-Bord, il-Ministru jkun jehtieg;

(o) li jwettaq dawk il-funzjonijiet l-ohra li jiġu assenjati liċ-Ċentru b'dan l-Att jew b'kull liġi ohra;

(p) li jwettaq kull funzjoni ohra supplementari jew ancillari ghal dak kollu hawn qabel imsemmi.

Twaqqif ta' Bord.

6. Ikun hemm Bord li jkun responsabbli ghall-*policy* u l-amministrazzjoni generali ta' l-affarijiet u x-xoghol taċ-Ċentru.

Ghamla tal-Bord.

7. (1) Il-Bord ikun maghmul minn mhux inqas minn tliet membri u mhux iżjed minn hamsa.

(2) Il-Bord ghandu jinhatar mill-Ministru.

(3) Il-Bord ikollu bhala membri tieghu:

(a) *chairman* li jkun avukat li eżercita l-professjoni matul it-tnax-il sena ta' qabel;

(b) viċi *chairman* li jkun ukoll avukat li eżercita l-professjoni matul it-tnax-il sena ta' qabel u li jippresjedi meta ċ-*chairman* ikun assenti, sakemm jiġi mahtur *chairman* ġdid, jew meta jmut iċ-*chairman*;

(ċ) membri li jkunu jafu u jkollhom esperjenza fir-risolviment ta' tilwimiet, affarijiet kummerjali, jew li, fil-fehma tal-Ministru, ikunu kwalifikati sabiex iwettqu d-dmirijiet ta' membru.

Kemm iddum il-kariga.

8. (1) Il-membri tal-Bord ghandhom jibqghu fil-kariga ghal perjodu ta' erba' snin.

(2) Membru tal-Bord ikun jista' jinhatar mill-ġdid.

Riżenja mill-kariga.

9. Membru tal-Bord jista' jirriżenja mill-kariga permezz ta' ittra ffirmata minnu li tintbaghat lill-Ministru.

Karigi konkorrenti.

10. Membru tal-Bord jista' jkollu dik il-kariga konkurrentement ma' kull kariga ohra.

Tnehhija mill-kariga.

11. (1) Persuna ma jistax ikollha l-kariga, jew membru ghandu jitneħħa mill-kariga, ghal kull wahda mir-raġunijiet fis-subartikolu (2) ta' dan l-artikolu.

(2) Membru jkun skwalifikat jekk:

(a) ikun legalment inkapaċitat;

(b) ikun ġie dikjarat fallut;

(ċ) ikun insab hati ta' reat kriminali li jolqot il-fiduċja pubblika, serq jew frodi;

(d) ikollu xi interess finanzjarju jew interess iehor f'xi intrapriża jew attività li x'aktarx tolgot it-twettiq tal-funzjonijiet tiegħu bhala membru tal-Bord; jew

(e) fuq rakkomandazzjoni tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja mwaqqfa taht l-artikolu 101A tal-Kostituzzjoni ta' Malta, li tinghata lill-Ministru:

(i) ma jkunx aktar idoneu biex jibqa' fil-kariga bhala membru, jew

(ii) ikun inkapaċi milli jwettaq dmirijietu sew bhala membru tal-Bord.

12. Il-kariga ta' membru ssir vakanti meta:

Kariga vakanti.

(a) il-membru jmut;

(b) jiskadi l-perjodu ta' kariga tal-membru;

(ċ) il-membru jirriżenja kif speċifikat taht l-artikolu 9; jew

(d) il-membru jkun skwalifikat kif speċifikat taht is-subartikolu (2) ta' l-artikolu 11.

13. (1) Iċ-Ċentru għandu jkollu registratur, li jkun ukoll is-segretarju tal-Bord. Ir-registratur.

(2) Ir-registratur jinhatar mill-Bord taht dawk it-termini u l-kondizzjonijiet li l-Bord jista' jqis li jkunu adatti.

(3) Ir-rappreżentazzjoni ġuridika taċ-Ċentru tkun vestita fir-registratur, jew f'kull persuna ohra li tkun hekk awtorizzata mill-Bord.

(4) Ir-registratur għandu jwettaq dawk il-funzjonijiet li jistgħu jinghatawlu bil-miktub mill-Bord minn żmien għal żmien, inkluż id-dmir li jagħti ġuramenti ta' kariga lill-medjaturi skond ma jistgħu jkunu meħtieġa li jieħdu, jew lil kull persuna ohra involuta fil-proċedimenti ta' medjazzjoni.

TAQSIMA III Finanzi

Estimi taċ-Ċentru.

14. (1) Iċ-Ċentru ghandu jara li jiġu mhejjija f'kull perjodu finanzjarju, u ghandu mhux iżjed tard minn sitt xhur qabel tmiem kull perjodu finanzjarju jadotta, estimi tal-qligh u l-infieq taċ-Ċentru għall-perjodu finanzjarju li jahbat minnufih wara.

(2) L-estimi ghandhom jiġu abbozzati fil-format preskritt, u ghandu jkun fihom dik l-informazzjoni u dawk il-paraguni ma' perjodi finanzjarji ta' qabel skond ma l-Ministru jista' jordna.

(3) L-estimi ghandhom iqisu l-kontribuzzjonijiet li jsiru mill-gvern, jekk ikun il-każ, lejn kull dhul li jagħmel iċ-Ċentru skond ma l-Ministru jista' jindika liċ-Ċentru li jkun se jirrakkomanda lill-Kamra tar-Rappreżentanti għas-sena finanzjarja li tkun qeghda tiġi kkunsidrata, skond l-artikolu 16.

(4) Kopja ta' l-estimi taċ-Ċentru ghandha tintbaghat, meta dawn jiġu adottati miċ-Ċentru, mill-Bord lill-Ministru.

Id-dhul li ċ-Ċentru jagħmel.

15. (1) Kull dhul taċ-Ċentru ghandu jkun jikkonsisti fid-drittijiet li jithallsu għal servizzi provduti minnu taht dan l-Att jew minn kull kontribuzzjoni ohra li l-gvern jista' jagħmel skond l-artikolu 16.

(2) Il-Ministru jista', wara konsultazzjoni maċ-Ċentru, jordna xi jkunu d-drittijiet li ghandhom jithallsu miċ-Ċentru għal servizzi, faċilitajiet jew kull haġa ohra li ċ-Ċentru jipprovdi skond dan l-Att jew konformement ma' l-eżercizzju tal-funzjonijiet tiegħu taht dan l-Att.

Kontribuzzjonijiet li l-Gvern jagħmel.

16. (1) Il-Ministru jista', wara konsultazzjoni maċ-Ċentru, kull persuna jew awtorità oħrajn, u bi ftehim mal-Ministru responsabbli għal finanzi, jindika bil-miktub liċ-Ċentru l-ammont ta' kontribuzzjoni tal-gvern li ghandha ssir għaċ-Ċentru, u dak l-ammont ghandu jkun inkluz fl-estimi taċ-Ċentru għall-perjodu finanzjarju li jmiss.

(2) L-indikazzjoni li ssir mill-Ministru taht is-subartikolu (1) ta' dan l-artikolu ghandha tkun mehmuża ma' l-estimi taċ-Ċentru li ghandu jintbaghat lill-Ministru.

(3) Meta l-estimi jiġu approvati bl-emendi jew mingħajrhom kif provdut f'dan l-Att, is-somma approvata fl-estimi bhala l-kontribuzzjoni tal-gvern ghandha tithallas liċ-Ċentru mill-Fond Konsolidat mingħajr ebda awtorità ohra hlief dan l-Att.

(4) Kull dhul żejjed fuq in-nefqa taċ-Ċentru ghandu, bla hsara ghal dawk l-ordnijiet li l-Ministru jista' minn żmien għal żmien jagħti wara konsultazzjoni mal-Ministru responsabbli għall-finanzi, jiġi applikat miċ-Ċentru għall-formazzjoni ta' fondi ta' riserva li għandhom jintużaw għall-ghanijiet taċ-Ċentru.

(5) Minghajr preġudizzju għall-ġeneralità tas-setgħat mogħtija lill-Ministru bis-subartikolu (5) ta' dan ir-regolament, kull ordni mogħtija mill-Ministru kif hawn qabel imsemmi tista' tordna t-trasferiment lill-Gvern, jew l-applikazzjoni b'kull tali mod kif jista' jiġi speċifikat fl-ordni, ta' kull dhul bhal dak.

TAQSIMA IV

Proċess ta' medjazzjoni

17. Il-proċedimenti ta' medjazzjoni jistgħu jiġu użati mill-partijiet fil-medjazzjoni:

Meta jsir użu minn proċedimenti ta' medjazzjoni.

(a) volontarjament; jew

(b) wara li jingħata digriet jew ordni minn korp ta' aġġudikazzjoni;

(ċ) skond il-liġi.

18. (1) Il-partijiet fi proċediment jistgħu, b'nota li jagħmlu flimkien, jitolbu lill-korp ta' aġġudikazzjoni jissospendi il-proċedimenti filwaqt li l-partijiet jippruvaw jaslu għal risolviment tat-tilwima quddiem medjatur.

Korp ta' aġġudikazzjoni jissospendi l-proċedimenti.

(2) Il-korp ta' aġġudikazzjoni ghandu –

(a) fuq talba li ssir taht is-subartikolu (1) ta' dan ir-regolament; jew

(b) fuq inizjattiva tiegħu stess, u meta jqis li jkun hekk adatt li t-tilwima tista' tiġi risolta bl-assistenza ta' medjatur,

(ċ) jordna li l-proċedimenti jistgħu jiġu sospizi għal kemm idum il-proċess.

(3) Il-korp ta' aġġudikazzjoni jista' jistabbilixxi għal kemm żmien ikun se jdum il-perjodu ta' aġġudikazzjoni u jestendi dak il-perjodu sa dik id-data, jew għal dawk il-perjodi speċifikati, li jista' jqis li jkunu adatti.

(4) Meta l-korp ta' aġġudikazzjoni jissospendi l-proċedimenti taht din ir-regola, il-partijiet ghandhom jgharrfu lill-korp ta' aġġudikazzjoni jekk sadanittant ikun intlaħaq risolviment.

(5) Jekk il-partijiet ma jgharrfux lill-korp ta' aġġudikazzjoni sa tmiem il-perjodu ta' sospensjoni li jkun intlaħaq risolviment, il-korp ta' aġġudikazzjoni ghandu jaghti dawk l-ordnijiet dwar kif ghandu jitmexxa l-każ skond ma l-korp iqis li jkun adatt.

Elenku ta' medjaturi.

19. (1) Skond id-disposizzjonijiet tas-subparagrafu (e) ta' l-artikolu 5, iċ-Ċentru ghandu jiffirma elenku ta' medjaturi li jassistu fil-medjazzjoni domestika u dik internazzjonali.

(2) Elenku jkun magħmul minn persuni li fil-fehma taċ-Ċentru jkunu kwalifikati biex iwettqu d-dmirijiet u l-funzjonijiet ta' medjatur f'xi qasam tekniku partikolari.

Għażla ta' medjatur.

22. (1) Jekk il-partijiet ma jaqblux fuq medjatur li jkun aċċettat reċiprokament minn elenku ta' medjaturi msemmija fl-artikolu 19, il-partijiet, jew xi wahda minnhom, tista' tapplika għand ir-registratur għall-ħatra ta' medjatur, u r-registratur mbagħad jissuġġerixxi lill-Bord l-isem tal-medjatur li jkun imiss fl-elenku.

(2) Medjatur jista' jirrifjuta kull talba mingħajr ma jaghti ebda raġuni.

Medjatur għandu jiżvela kull interess konfliġġenti.

23. (1) Qabel ma jaċċetta medjazzjoni, medjatur għandu –

(a) jistabbilixxi, skond ma jkun raġonevolment possibbli, jekk ikunx hemm fatti magħrufa li persuna raġonevoli kieku tqis bħala li x'aktarx jolqtu l-imparzjalità tiegħu bħala medjatur;

(b) jiżvela fatti magħrufa bħal dawk lill-partijiet fil-medjazzjoni kemm jista' jkun malajr.

(2) Jekk medjatur isir jaf b'xi fatt minn dawk deskritti taht is-subartikolu (1)(b) wara li jaċċetta l-medjazzjoni, il-medjatur għandu jiżvela dan lill-partijiet kemm jista' jkun malajr u sew parti sew l-oħra jkollhom dritt li jirrifjutaw milli jidhru quddiem dak il-medjatur, f'liema każ għandu jinhatar medjatur ġdid u tiġi segwita l-proċedura li hemm provdut dwarha taht l-artikolu 21.

Rikuża ta' medjatur.

24. (1) Medjatur jista' jiġi rikuzat jekk ikun hemm ċirkostanzi li jagħtu lok għal dubbju ġustifikabbli dwar l-imparzjalità tal-medjatur jew l-indipendenza tiegħu.

(2) Tista' biss parti fil-medjazzjoni tirrikuża lil medjatur li jkun ġie maħtur minnha, minhabba f'raġunijiet li ssir taf bihom wara li tkun saret il-hatra.

(3) Jekk il-parti l-oħra ma tkunx taqbel mar-rikuża u l-medjatur rikuzat ma jirtirax, id-deċiżjoni fuq ir-rikuża għandha ssir miċ-*chairman* u d-deċiżjoni tiegħu tkun wahda finali u li torbot.

(4) Meta *ċ-chairman* jikkonferma r-rikuża, ir-reġistratur għandu jahtar medjatur sostitut.

25. (1) Parti li tkun bi hsiebha tirrikuża medjatur, għandha tagħti avviż tar-rikuża tagħha fi żmien hmistax-il ġurnata wara li l-hatra tal-medjatur rikuzat tkun ġiet notifikata lil dik il-parti, jew fi żmien hmistax-il ġurnata wara li dik il-parti tkun saret taf biċ-ċirkostanzi msemmija fl-artikolu 23. Avviż ta' rikuża.

(2) Ir-rikuża għandha tiġi avzata lir-reġistratur, lill-parti l-oħra u lill-medjatur li jkun qed jiġi rikuzat.

(3) Ir-rikuża għandha ssir bil-miktub u fiha għandhom jissemmew ir-raġunijiet tar-rikuża.

(4) Il-proċedura li hemm provdut dwarha fl-artikolu 21 għandha tiġi segwita fil-hatra tal-medjatur rikuzat.

26. Jekk medjatur imut jew jirriżenja waqt li jkun għaddej il-proċess ta' medjazzjoni, għandu jinhatar jew jiġi magħżul medjatur sostitut konformement mal-proċedura li hemm provdut dwarha fl-artikolu 21. Sostituzzjoni ta' medjatur.

27. Parti fil-medjazzjoni tista' tkun mgħejjuna, matul il-proedimenti ta' medjazzjoni, minn avukat, prokuratur legali jew xi persuna msemmija minnu qabel jew Parteċipazzjoni fil-medjazzjoni.

Izda l-medjazzjoni ssir bis-sahha ta' digriet mogħti minn qorti superjuri ta' ġurisdizzjoni superjuri, ċivili jew kummerċjali, il-parti fil-medjazzjoni għandha tkun assistita minn avukat.

28. (1) Meta jkun qed imexxi l-proċess ta' medjazzjoni, il-medjatur għandu jsegwi il-kodiċi ta' etika kif provdut miċ-Ċentru u għandu jassisti lill-partijiet fil-medjazzjoni sabiex jintlahaq risolviment fil-hin opportun u li jkun ġust u effettiv fin-nefqa. Kif titmexxa l-medjazzjoni.

(2) Il-medjatur għandu jkollu l-fiduċja tal-partijiet f'kull waqt tal-proċess ta' medjazzjoni.

(3) Il-medjatur jista' b'kunsens iqassar jew itawwal il-proċess ta' medjazzjoni.

Konfidenzjalità.

29. (1) Ebda xieħda dwar kliem li jkun intqal jew dwar xi ammissjoni li tkun saret bil-ghan ta' medjazzjoni, matulha jew konformement magħha, ma għandha tkun ammissibbli fi proċedimenti, u la għandu u lanqas jista' jiġi mġieghel li jsir l-iżvelar ta' dik ix-xieħda f'ebda proċedimenti.

(2) Kull komunikazzjoni jew diskussjoni dwar risolviment li ssir minn u bejn il-partecipanti filwaqt li tkun għaddejja l-medjazzjoni, għandha tibqa' konfidenzjali.

(3) Hlief kif inhu meħtieġ taħt is-subartikolu (4) ta' dan l-artikolu, medjatur ma jista' jippreżenta lil xi qorti jew korp ta' aġġudikazzjoni ebda rapport, stima, valutazzjoni, jew riżultanza ta' ebda xorta li jkun jirrigwarda l-medjazzjoni li huwa jkun qed imexxi għajr rapport li jkun awtorizzat li jsir mill-Qorti jew korp ta' aġġudikazzjoni, u li fih ikun hemm biss imsemmi jekk ikunx intlahaq kunsens jew le.

(4) Medjatur jista' biss jagħti dik l-informazzjoni skond ma tiġi stabbilita taħt is-subartikolu (3) lil xi Qorti jew korp ta' aġġudikazzjoni sakemm il-partijiet kollha fil-medjazzjoni jkun u espressament jaqblu bil-miktub dwar dan.

Terminazzjoni tal-medjazzjoni.

30. Medjazzjoni tintemm meta titwettaq xi waħda minn dawn il-kondizzjonijiet li ġejjin:-

(a) il-partijiet fil-medjazzjoni jeżegwixxu ftehim bil-miktub li jkun jirrisolvi għal kollox it-tilwima;

(b) il-medjatur jipprovdi lill-partijiet fil-medjazzjoni b'dokument iffirmit mill-medjatur li jkun jgħid li l-medjazzjoni tkun intemmet, jew kliem bħal dak;

(ċ) jekk, fil-fehma tal-medjatur, il-partijiet ma jkunux jistgħu jaslu biex isolvu t-tilwima li jkollhom.

Records tal-proċess ta' medjazzjoni.

31. (1) Bla hsara għall-artikolu 29, fi tmiem il-medjazzjoni d-dokumenti kollha li jkollhom x'jaqsmu mal-proċess ta' medjazzjoni għandhom jinżammu mill-medjatur u jistgħu jinqerdu biss wara sentejn minn dik il-konklużjoni.

(2) Iċ-Ċentru jista', madankollu, jinkludi informazzjoni dwar il-medjazzjoni permezz ta' ġbir ta' statistika li tiġi pubblikata minn żmien għal żmien dwar l-attivitajiet tagħha, sakemm dik l-informazzjoni la tkun tikxef l-identità tal-partijiet u lanqas ma tagħmilha possibbli li ċ-ċirkostanzi partikolari tat-tilwima jkun u jistgħu jiġu identifikati.

TAQSIMA V Mixxellanji

32. Il-Ministru jista' minn żmien għal żmien jagħmel regolamenti generalment għat-twettiq tad-disposizzjonijiet ta' dan l-Att u dwar dak kollu li jista' jkun awtorizzat bl-Att bhala li għandu jiġi ordnat.

Setgħa ta' għemil ta' regolamenti.

33. L-ilsien li għandu jintuża fil-proċess ta' medjazzjoni għandu jkun, sakemm il-partijiet ma jaqblux xort'ohra, il-Malti.

Ilsien.

34. Iċ-Ċentru għandu jistabbilixxi d-drittijiet u l-ispejjeż skond dik it-tariffa ta' drittijiet li tista' tiġi ordnata mill-Ministru taht l-artikolu 15(2).

Tariffa ta' drittijiet.

Taqsim VI Emendi fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili

35. Il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawn iżjed 'il quddiem imsejjah "il-Kodiċi", għandu jiġi emendat kif ġej:

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

(a) fl-artikolu 173 tal-Kodiċi–

(i) fis-subartikolu (1), minflok il-kliem "jithaffu l-proċeduri" għandhom jiżdiedu l-kliem "jithaffu jew jiġu faċilitati l-proċeduri"; u

(ii) fis-subartikolu (2) tiegħu, minnufih wara l-paragrafu (b) għandu jiżdied dan il-paragrafu ġdid li ġej:

“(ċ) sew minn jeddha jew għax tiġi pprezentata nota minn xi parti fil-proċedimenti, tordna li l-proċedimenti jiġu sospiżi għal dak il-perjodu li tista' tqis li jkun adatt, u tirreferi lill-partijiet għand medjatur skond l-Att dwar il-Medjazzjoni.”; u

(b) fl-artikolu 223 tal-Kodiċi, minnufih wara s-subartikolu (4) tiegħu għandu jiżdied dan is-subartikolu ġdid li ġej:

“(5) Bla hsara għas-subartikolu (2)(ċ) ta' l-artikolu 173, meta xi parti mingħajr ebda raġuni ġusta tirrifjuta jew tonqos milli tipparteċipa quddiem medjatur jew tikkollabora miegħu, il-Qorti tista' tordna l-hlas ta' spejjeż doppji favur il-parti l-oħra minhabba f'dak ir-rifjut jew nuqqas.”.

Għanijiet u Raġunijiet

Att li permezz tiegħu jiġi mwaqqaf Ċentru tal-Medjazzjoni għal Malta li jiehu hsieb jistabilixxi u jirregola s-settur tal-medjazzjoni sija dik domestika kif ukoll internazzjonali, u li jivverifika u jikkontrolla l-kwalifiki neċessarji u l-aġir tal-medjaturi. Għan iehor ta' dan l-Att huwa sabiex jagħti għodda ġdida lis-settur legali li permezz tagħha jistgħu jinhelsu kwistjonijiet sija dawk li hemm diġà pendent fil-Qrati tagħna kif ukoll dawk futuri.

**A BILL
entitled**

AN ACT to encourage and facilitate the settlement of disputes in Malta through mediation, to establish a Malta Mediation Centre as a centre for domestic and international mediation, and to make provisions regulating the conduct of the mediation process.

**PART I
Preliminary**

1. The short title of this Act is the Mediation Act, 2004. Short title.

2. In this Act, unless the context otherwise requires - Definitions.
 - “the Board” means the Board of Governors of the Centre established by article 6;

 - “the Centre” means the Malta Mediation Centre established by article 3;

 - “chairman” means the chairman of the Board;

 - “domestic mediation” means any mediation of a civil, family, social, commercial and industrial nature;

 - “financial period” means a period of five years commencing on the first January of one year and ending on the thirty-first day of December of the fifth year thereafter:

Provided that the first financial period of the Centre shall be the period commencing with the coming into force of Part III of this Act and ending on the thirty-first day of December of the year next following that on which the said Part III shall have come into force;

“mediation” means a process in which a mediator facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute;

“mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute;

“mediator” means a neutral, qualified and impartial individual who conducts a mediation;

“the Minister” means the Minister responsible for justice;

“prescribed” means prescribed by regulations made under this Act;

“proceedings” means a judicial, administrative, arbitral or other adjudicatory process;

“registrar” means the registrar of the Board as defined under article 13.

PART II

Establishment and Functions of the Centre

Establishment of the Centre.

3. (1) There shall be a Centre to be known as the Malta Mediation Centre, whose purpose and functions are assigned by this Act.

(2) The Centre shall be a body corporate having distinct legal personality and may, in pursuance of its functions:

(a) enter into contracts, acquire, hold or dispose of real and personal property;

(b) sue and be sued; and

(c) do all such things as are incidental or conducive to the fulfilment of its functions.

4. The Centre shall provide a forum where mediation parties may refer, or be referred to, in order to resolve their dispute through the assistance of a mediator.

Purpose of the Centre.

5. The functions of the Centre shall be:

Functions of the Centre.

(a) to promote domestic and international mediation as a means of settling disputes;

(b) to provide for the conduct of domestic and international mediation;

(c) to provide the necessary facilities for the conduct of mediation;

(d) to set up the criteria for the appointment of mediators;

(e) to draw up a list of mediators to assist in domestic and international mediation;

(f) to approve the nominated mediators;

(g) to keep registers and records of the nominated mediators;

(h) to remove mediators from the list in the circumstances listed under article 11;

(i) to provide its own procedure for the handling of disputes;

(j) to provide a code of ethics to be followed by mediators during mediation proceedings;

(k) to determine the tariff of fees to be charged for the services provided by the Centre;

(l) to facilitate better access to mediation procedure through the publication of information, guidelines and related documentation;

(m) to draw up and publish an annual report on the progress of the Centre;

(n) to advise or make recommendations to the Minister on any matter which, in the opinion of the Board, is sought by the Minister;

(o) to perform such other functions which are assigned to the Centre by this Act or by any other law;

(p) to perform any other function supplementary or ancillary to the above.

Establishment of Board.

6. There shall be a Board which shall be responsible for the policy and general administration of the affairs and business of the Centre.

Composition of the Board.

7. (1) The Board shall consist of not less than three and not more than five members.

(2) The Board shall be appointed by the Minister.

(3) The Board shall have as its members:

(a) a chairman who shall be an advocate who has practised law for the previous twelve years;

(b) a deputy chairman who shall also be an advocate who has practised for the previous twelve years and who shall preside during the chairman's absence, until a new chairman has been appointed, or on death of the chairman;

(c) members who shall have knowledge and experience in dispute resolution, commercial matters, or who, in the opinion of the Minister, are qualified to perform the duties of a member.

Duration of office.

8. (1) The members of the Board shall hold office for a period of four years.

(2) A member of the Board may be eligible for re-appointment.

Resignation from office.

9. A member of the Board may resign his office by letter signed by him and delivered to the Minister.

Concurrent holding of offices.

10. A member of the Board may hold such office concurrently with any other office.

Removal from office.

11. (1) A person shall not be eligible to hold office, or a member shall be removed from office, for any of the reasons in subarticle (2) hereof.

(2) A member shall be disqualified if:

- (a) he is legally incapacitated;
- (b) he has been adjudged bankrupt;
- (c) he has been convicted with a criminal offence affecting public trust, theft or fraud;
- (d) he has any financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Board; or
- (e) on the recommendation by the Commission for the Administration of Justice established under article 101A of the Constitution of Malta, given to the Minister:
 - (i) he is unfit to continue in office as a member, or
 - (ii) he has become incapable of properly performing his duties as a member of the Board.

12. The office of a member shall become vacant if:

Vacancy of office.

- (a) the member dies;
- (b) the member's term of office expires;
- (c) the member resigns as specified under article 9; or
- (d) the member is disqualified as specified under sub-article (2) of article 11.

13. (1) The Centre shall have a registrar, who shall also be the secretary of the Board. Registrar.

(2) The registrar shall be appointed by the Board under such terms and conditions as the Board may deem appropriate.

(3) The legal representation of the Centre shall be vested in the registrar, or in any other person so authorised by the Board.

(4) The registrar shall perform such functions as may be delegated to him in writing by the Board from time to time, including the duty to administer oaths of office that may be required to be taken by the mediators, or by any other person involved in the mediation proceedings.

PART III
Finances

Estimates of the Centre.

14. (1) The Centre shall cause to be prepared in every financial period, and shall not later than six months before the end of each financial period adopt, estimates of the income and expenditure of the Centre for the next following financial period.

(2) The estimates shall be made out in the prescribed form, and shall contain such information and comparisons with previous financial periods as the Minister may prescribe.

(3) The estimates shall take into account the government contributions, if any, to the revenues of the Centre as the Minister may indicate to the Centre that he will recommend to the House of Representatives for the financial year in consideration, in accordance with article 16.

(4) A copy of the estimates of the Centre shall, upon their adoption by the Centre, be sent by the Board to the Minister.

Revenue of the Centre.

15. (1) The revenues of the Centre shall consist of the fees charged for the services provided by it under this Act or of any other government contribution made in accordance with article 16.

(2) The Minister may, after consultation with the Centre, prescribe the fees to be charged by the Centre for any services, facilities or any other matter provided by it in accordance with this Act or in pursuance of the exercise of its functions under this Act.

Government contributions.

16. (1) The Minister may, after consultation with the Centre, any other person or authority, and with the concurrence of the Minister responsible for finance, indicate in writing to the Centre the amount of government contribution to be made to the Centre, and such amount is to be included in its estimates for the next financial period.

(2) The indication made by the Minister under sub-article (1) hereof shall be attached to the estimates of the Centre to be forwarded to the Minister.

(3) Upon the approval of the estimates with or without amendments as provided in this Act, the sum approved in the estimates as the government contribution shall be paid to the Centre out of the Consolidated Fund without any further authority other than this Act.

(4) Any excess of revenue over the expenditure of the Centre shall, subject to such directives as the Minister may, after consultation with the Minister responsible for finance, from time to time give, be applied by the Centre to the formation of reserve funds to be used for the purposes of the Centre.

(5) Without prejudice to the generality of the powers given to the Minister by sub-article (5) hereof, any direction given by the Minister as aforesaid may order the transfer to Government, or the application in such manner as may be specified in the direction, of any of such revenues.

PART IV

Mediation process

17. Mediation proceedings may be resorted to by the mediation parties: Recourse to mediation proceedings.

- (a) voluntarily; or
- (b) following a decree or order by an adjudicatory body;
- (c) by law.

18. (1) Parties to any proceeding may, by a joint note, request the adjudicatory body to stay proceedings while the parties attempt at settling the dispute before a mediator. An adjudicatory body to stay proceedings.

(2) The adjudicatory body shall –

- (a) on a request made under sub-article (1) hereof; or
- (b) on its own initiative, and where it considers it appropriate that the dispute may be resolved through the assistance of a mediator, direct that proceedings be stayed for the duration of the process.

(3) The adjudicatory body may establish the time of the adjudication period and extend such period until such date, or for such specified periods, as it considers appropriate.

(4) Where the adjudicatory body stays the proceedings under this rule, the parties shall inform the adjudicatory body if a settlement is reached.

(5) If the parties do not inform the adjudicatory body by the end of the period of stay that a settlement has been reached, the adjudicatory body shall give such directions as to the management of the case as it considers appropriate.

List of mediators.

19. (1) In accordance with the provisions of sub-paragraph (e) of article 5, the Centre shall draw up a list of mediators to assist in domestic and international mediation.

(2) The list shall be composed of persons who in the opinion of the Centre are qualified to carry out the duties and functions of a mediator in a particular field of expertise.

Selection of mediator.

22. (1) If the parties do not agree on a mutually acceptable mediator from the list of mediators referred to in article 19, the parties, or any one of them, may apply to the registrar for the appointment of a mediator, and the registrar shall then suggest to the Board the name of the mediator who is next on the list.

(2) A mediator may decline a request without giving any reason.

Mediator's disclosure of conflict of interest.

23. (1) Prior to accepting a mediation, a mediator shall –

(a) determine, as is reasonably possible, whether there are any known facts that a reasonable individual would consider likely to affect his impartiality as a mediator;

(b) disclose any such known facts to the mediation parties as soon as is possible.

(2) If a mediator learns any fact described under sub-article (1)(b) after accepting a mediation, the mediator shall disclose it to the parties at his earliest convenience and either party shall have a right to refuse to appear before such mediator, in which case a new mediator shall be appointed and there shall be followed the procedure provided for under article 21.

Challenge of mediator.

24. (1) Any mediator may be challenged if circumstances exist that give rise to justifiable doubt as to the mediator's impartiality or independence.

(2) A mediation party may challenge the mediator appointed by him only for reasons of which he becomes aware after the appointment has been made.

(3) If the other party does not agree on the challenge and the challenged mediator does not withdraw, the decision on the challenge shall be made by the chairman and his decision shall be final and binding.

(4) When the chairman sustains the challenge, the registrar shall appoint a substitute mediator.

25. (1) A party who intends to challenge a mediator, shall send notice of his challenge within fifteen days after the appointment of the challenged mediator has been notified to such party, or within fifteen days after the circumstances mentioned in article 23 have become known to such party. Notification of challenge.

(2) The challenge shall be notified to the registrar, to the other party and to the mediator who is challenged.

(3) The challenge shall be in writing and there shall be stated the reasons of the challenge.

(4) The procedure provided for in article 21 shall be followed for the appointment of the challenged mediator.

26. In the event of the death or resignation of a mediator during the course of the mediation process, a substitute mediator shall be appointed or chosen pursuant to the procedure provided for in article 21. Replacement of mediator.

27. A mediation party may, during mediation proceedings, be assisted by an advocate, legal procurator or any individual designated by him before or during the mediation: Participation in mediation.

Provided that when recourse to mediation follows a decree from a superior court of civil or commercial jurisdiction, the mediation party shall be assisted by an advocate.

28. (1) In the conduct of the mediation process, the mediator shall follow the code of ethics as provided by the Centre and shall assist the mediation parties to reach a resolution that is timely, fair and cost-effective. Conduct of a mediator.

(2) The mediator shall hold the trust of the parties at all time of the mediation process.

(3) The mediator may shorten or extend the mediation process by agreement.

Confidentiality.

29. (1) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, mediation is admissible in any proceedings, and disclosure of such evidence shall not and may not be compelled in any proceedings.

(2) All communications or settlement discussions by and between participants in the course of mediation shall remain confidential.

(3) Except as required under sub-article (4) hereof, a mediator may not submit to any court or adjudicatory body any report, assessment, evaluation, or finding of any kind concerning a mediation conducted by him other than a report that is mandated by the Court or adjudicatory body, and which only states whether an agreement was reached.

(4) A mediator may only divulge such information as established under sub-article (3) to a Court or adjudicatory body as long as all parties to the mediation expressly agree in writing.

Termination of mediation.

30. A mediation ends when either one of the following conditions is satisfied:-

(a) the mediation parties execute a written agreement that fully resolves the dispute;

(b) the mediator provides the mediation parties with a writing signed by the mediator that states that the mediation is terminated, or words to that effect;

(c) if, in the opinion of the mediator, the parties cannot arrive at a solution to their dispute.

Records of mediation process.

31. (1) Subject to article 29, at the termination of a mediation all documentation relating to the mediation process shall be retained by the mediator and may only be destroyed after two years therefrom.

(2) The Centre may, however, include information concerning the mediation in any aggregate statistical data that is published from time to time concerning its activities, provided that such information does not reveal the identity of the parties or does not enable the particular circumstances of the dispute to be identified.

PART V
Miscellaneous

32. The Minister may from time to time make regulations generally for the carrying out of the provisions of this Act and for such matters as may be authorised by the Act to be prescribed. Power to make regulations.

33. The language to be used in the mediation process shall, unless the parties agree otherwise, be Maltese. Language.

34. The Centre shall determine fees and costs in accordance with such tariff of fees as shall be prescribed by the Minister under article 15(2). Tariff of fees.

Part VI
Amendments to the Code of Organization and Civil Procedure

35. The Code of Organization and Civil Procedure, hereinafter referred to as “the Code”, shall be amended as follows: Amendment of the Code of Organization and Civil Procedure, Cap. 12.

(a) in article 173 of the Code –

(i) in sub-article (1), immediately after the words “or to expedite” there shall be added the words “or facilitate or”; and

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

“(c) either on its own motion or on a note filed by any party to the proceedings, direct that proceedings be stayed for such period as it considers appropriate, and refer the parties to a mediator in accordance with the Mediation Act.”; and

(b) in article 223 of the Code, immediately after sub-article (4) thereof there shall be added the following new sub-article:

“(5) Subject to sub-article (2)(c) of article 173, when a party without just cause refuses or fails to participate before or collaborate with a mediator, the Court may award double costs in the other party’s favour due to such refusal or failure.”.

Objects and Reasons

An Act to provide for the establishment of a Malta Mediation Centre to regulate the domestic and international mediation sector and to audit and control the required qualifications of mediators and their behaviour. This Act also caters for the provision of new tools to the legal sector that would enable settlement of already existing and future disputes.

