

MALTA

ATT Nru. XVI ta' l-2004

ATT mahrug b'ligi mill-Parlament ta' Malta.

ATT biex jinkoraggixxi 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.

ACT No. XVI of 2004

AN ACT enacted by the Parliament of Malta.

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.

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

21st December, 2004

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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 subarticle (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 subarticle (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 a court or other adjudicating authority; or
- (c) by law.

18. (1) Parties to any proceeding may, by a joint note, request the court or other adjudicating authority 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.

Selection of mediator.

20. (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.

21. (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 becomes aware of any fact described under subarticle (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 20.

Challenge of mediator.

22. (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.

23. (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 21 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 20 shall be followed for the appointment of the challenged mediator.

24. 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.

25. 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 may be assisted by an advocate.

26. (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 mediation.

(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.

(4) The proceedings may be held in public should both parties agree.

Confidentiality.

27. (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 subarticle (4) hereof, a mediator may not submit to any court or adjudicatory body any evidence, 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.

28. 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;

(d) if one of the parties elects not to continue with the mediation process.

Records of mediation process.

29. (1) Subject to article 28, 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

30. 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.

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

32. 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

33. 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 subarticle (1), immediately after the words “or to expedite” there shall be added the words “or facilitate or”; and

(ii) in subarticle (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 subarticle (4) thereof there shall be added the following new subarticle:

“(5) Subject to subarticle (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.”.

Passed by the House of Representatives at Sitting No. 215 of the 17th December, 2004.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives