VERŻJONI ELETTRONIKA

I assent.

(L.S.) **MARIE-LOUISE COLEIRO PRECA**
President

28th June, 2016

ACT No. XXXIIII of 2016

AN ACT to amend the Employment and Industrial Relations Act, Cap. 452.

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 Employment and Industrial Relations (Amendment) Act, 2016, and this Act shall be read and construed as one with the Employment and Industrial Relations Act, hereinafter referred to as "the principal Act".

Cap. 452.

Amendment of article 3 of the principal Act.

2. Sub-article (3) of article 3 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof, for the words "to the Board by the Minister." there shall be substituted the words "to the Board by the Minister;"; and

(b) immediately after paragraph (c) thereof there shall be added the following new paragraph:

"(d) to carry out the functions assigned to it by article 73 and any other function that may be assigned to it by law from time to time.".

Amendment of article 73 of the principal Act.

3. Article 73 of the principal Act shall be amended as follows:

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(a) paragraph (b) of sub-article (2) thereof shall be deleted;

(b) paragraph (c) of sub-article (2) thereof shall be renumbered as paragraph (b);

(c) in paragraph (b) of sub-article (3) thereof, for the words "to represent, so far as may be equally, the interests in dispute" there shall be substituted the words "so that due to their different experiences they shall bring to the Tribunal knowledge, so far as may be equally, of the interests in the dispute";

(d) for paragraph (c) of sub-article (5) thereof, there shall be substituted the following:

"(c) a member chosen by the Chairperson of the Tribunal from a list of persons appointed by the Minister from amongst persons nominated by entities in the public sector.";

(e) for sub-article (6) thereof there shall be substituted the following:

"(6) (a) The chairpersons of the Tribunal shall be appointed by the Prime Minister for a period of five years.

(b) The members of the Tribunal shall be appointed by the Minister for a period of five years;

(c) A person shall not be qualified to be appointed as chairperson or as member of the Tribunal, if such person:

(i) is a Member of the House of Representatives or of the European Parliament; or

(ii) is a Member of a Local Council; or

(iii) is an undischarged bankrupt; or

(iv) has been sentenced by any court to effective imprisonment for any term or has been found guilty by any court of any of the crimes listed in Titles III, V or VI of Part II of Book First of the Criminal Code.

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(d) The Prime Minister may, after consultation with the Employment Relations Board, remove a member from the list appointed in accordance with sub-article (2), for reasons of proved misbehaviour, manifest inefficiency, or inability to perform his or her functions whether due to an impairment of mind or body. The decision to remove such a member shall include reasons and shall be subject to a right of appeal on a point of law against the Prime Minister to the Court of Appeal by such member. The appeal shall be filed within twenty days from the date when the said member is notified of the decision. The rules of the Code of Organization and Civil Procedure regulating the hearing and determination of appeals from judgements of the First Hall of the Civil Court shall *mutatis mutandis* apply to such appeal.

(e) The Minister may, after consultation with the Employment Relations Board, remove a member from the list appointed in accordance with sub-article (3) (b), for reasons of proved misbehaviour, manifest inefficiency or inability to perform his or her functions whether due to an impairment of mind or body. The decision to remove such a member shall include reasons and shall be subject to a right of appeal on a point of law against the Minister to the Court of Appeal by such member. The appeal shall be filed within twenty days from the date when the said person is notified of the decision. The rules of the Code of Organization and Civil Procedure regulating the hearing and determination of appeals from judgements of the First Hall of the Civil Court shall *mutatis mutandis* apply to such appeal.

(f) The chairpersons and the members of the Tribunal may, when their term of office, whether it be the first one or otherwise, expires, be re-appointed for another term of five years:

Provided that such re-appointment, prior to being made, shall be proposed to the Employment Relations Board and:

(i) the re-appointment of a chairperson shall not be made if two thirds of the members of the Employment Relations Board are against such reappointment;

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(ii) the re-appointment of a member from the list of persons appointed by trade unions represented on the Malta Council for Economic and Social Development shall not be made if it does not receive the prior approval of at least fifty percent of all the members of the Employment Relations Board that have been nominated on such Board as representatives of the employees;

(iii) the re-appointment of a member from the list of persons appointed by employers' associations and other organisations that represent the employers shall not be made if it does not receive the prior approval of at least fifty percent of all the members of the Employment Relations Board that have been nominated on such Board as representatives of the employers.";

(f) for sub-article (7) thereof, there shall be substituted the following:

"(7) (a) The Prime Minister may, from time to time, if he thinks fit and after consultation as provided in sub-article (2) add to the list provided for it in the said sub-article.

(b) The Minister may, from time to time, if he thinks fit request new nominations from trade unions and associations and organisations of the employers mentioned in paragraph (b) of sub-article (3) for the purpose of increasing the lists mentioned in the said paragraph.";

(g) immediately after sub-article (9) there shall be added the following new sub-article:

"(10) (a) The chairpersons and the members of the Tribunal shall receive such remuneration as the Prime Minister may establish by notice in the Gazette. Such remuneration may be fixed at an amount per year or at an amount for every hearing held or at an amount for every decided case. Once the remuneration has been established it shall not be reduced but the change in criteria for calculating the remuneration between the criteria mentioned in this paragraph provided that it is made in regards to all the chairpersons and members shall not be deemed to constitute in itself a reduction in

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the remuneration.

(b) During their term of appointment the chairpersons and the members of the Tribunal shall not appear before the Tribunal in the exercise of their profession or to assist any parties.

(c) The chairpersons and the members of the Tribunal shall prior to the hearing of every case declare to the Secretary of the Tribunal any interest that they may have in the procedures and the Secretary shall, when in his opinion such interest may prejudice the independence of the chairperson or of the member concerned, appoint another chairperson or member in accordance with the lists mentioned in sub-articles (2) and (3) respectively:

Provided that nothing in this paragraph shall be construed as diminishing the right of the parties in a case before the Tribunal to request the challenge of a chairperson or of a member.

(d) Nothing in this Act shall be construed as exempting any person forming part of the Tribunal from the duty to act with independence and impartiality according to law and not to be subject to the direction or control of any other person or authority in the performance of his judicial duties on the Tribunal and this irrespective of the procedure according to which or the list from which such person shall have been appointed to form part of the Tribunal.".

Amendment of article 76 of the principal Act.

4. In sub-article (2) of article 76 of the principal Act the words ", in any case in which article 73(5)(c) applies, by another person appointed *ad hoc* by the Prime Minister" shall be substituted with the words "article 73(5)(c)".

Amendment of article 77 of the principal Act.

5**.** In sub-article (2) of article 77 of the principal Act, for the words "person to administer the oath for that purpose." there shall be substituted the words "person to administer the oath for that purpose:" and immediately thereafter there shall be added the following new proviso:

"Provided such witness, assessor, expert or any other person, as the case may be, shall be heard in evidence and shall be examined in a Tribunal hearing and the parties to the case shall have the right to ask questions.".

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Amendment of article 80 of the principal Act.

6. Article 80 of the principal Act shall be amended as follows:

(a) Sub-articles (1) and (2) thereof shall be substituted by the following:

"(1) In giving any award, decision or advice the Tribunal may give consideration to the social and economic policies and to the principles of social justice prevailing at the time of its pronouncement if it considers that these are relevant to the determination of the case before it.

(2) Where any matter before the Tribunal concerns or relates to public officers the Tribunal shall abstain from taking cognizance of any matter which is within the functions of the said Commission.".

(b) In sub-article (3) thereof for the words "shall endeavour to establish or maintain" there shall be substituted the words "shall, where the Tribunal considers that it is appropriate, take into account the maintenance of".

Transitory provision.

7. (1) The amendments made by this Act to the principal Act shall apply upon their enactment so however that, without prejudice to the provisions of sub-article (2) hereunder, any person who on the date of the coming into force of the said amendment is a member of a panel of chairpersons or members of the Tribunal shall be deemed to have been appointed for a period of five years commencing from the date of his last appointment.

(2) Any person who, although no longer forming part of the panels referred to in sub-articles (2) and (3) of article 73 of the principal Act, shall on the date of the coming into force of this Act be still forming part of the Tribunal for the hearing of particular cases, shall continue to so form part of the Tribunal in accordance with the provisions of the principal Act for a maximum period of one year from the coming into force of this Act.

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A 1034

Passed by the House of Representatives at Sitting No. 406 of the 22nd June, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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