

I assent.

(L.S.)

GUIDO DE MARCO
President

24th November, 1999

ACT No. XVIII of 1999

AN ACT to amend the Arbitration Act, 1996.

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 and
commencement.

Act II of 1996.

1. (1) This Act may be cited as the Arbitration (Amendment) Act, 1999, and shall be read and construed as one with the Arbitration Act, 1996, hereinafter referred to as “the principal Act”.

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Amendment of
section 2 of the
principal Act.

2. Immediately after the end of the definition of “arbitration agreement” in section 2 of the principal Act there shall be inserted the following proviso:

“Provided that:

(a) the provisions of Article 7 of the Model Law shall be deemed to have been complied with if the arbitration agreement is contained in a document transmitted from one party to the other party or by a third party to both parties and, if no objection was raised thereto within thirty days of the receipt of the document;

(b) the reference in a written contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract;

(c) an arbitration agreement is also concluded by the issuance of a bill of lading, if the latter contains an express reference to an arbitration clause in a charter party;”.

3. Immediately after subsection (3) of section 4 of the principal Act there shall be added the following new subsection: Amendment of section 4 of the principal Act.

“(4) In the exercise of their functions under this Act all the members of the Board shall exercise their functions in their individual judgement and shall not be subject to the direction or control of any other person or authority.”.

4. Section 6 of the principal Act there shall be amended as follows: Amendment of section 6 of the principal Act.

(a) the present provision shall be renumbered as subsection (1) thereof;

(b) the words “and on such terms and conditions as the Minister may deem appropriate” in subsection (1) thereof as renumbered shall be deleted; and

(c) immediately after subsection (1) as renumbered there shall be added the following new subsection:

“(2) The members of the Board shall be entitled to such remuneration and allowances as the Minister may from time to time determine.”.

5. Section 9 of the principal Act shall be amended as follows: Amendment of section 9 of the principal Act.

(a) immediately at the end of subsection (1) thereof there shall be added the following words “In connection with his functions under this Act, the Registrar shall have power to administer oaths, including without prejudice to the generality of the aforesaid the power to administer Oaths of Office that may be required to be taken by Arbitrators or any other person involved in arbitration proceedings under any rule made under this Act.”; and

(b) immediately after subsection (3) thereof there shall be added the following subsection:

“(4) The Registrar shall also perform any function that may be delegated to him in writing by the Board from time to time.”.

Amendment of
section 10 of the
principal Act.

6. Section 10 of the principal Act shall be amended as follows:

(a) in paragraph (ii) of subsection (1) thereof, the words “, with the concurrence of the Minister,” shall be deleted;

(b) in subparagraph (b) of paragraph (ii) of subsection (1) thereof immediately after the word “requirements” there shall be inserted the words “(including any fees payable therefor)”; and

(c) in subsection (4) thereof, for the words “of not more than five persons, including the Chairman of the Centre,” there shall be substituted the words “to be presided by the Chairman of the Centre,”.

Amendment of
section 13 of
the principal Act.

7. Immediately after subsection (3) of section 13 of the principal Act, there shall be added the following subsection:

“(4) Any excess of revenue over the expenditure of the Centre shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may 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; and, without prejudice to the generality of the powers given to the Minister by this subsection, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of such revenues.”.

Amendment of
section 14 of the
principal Act.

8. Section 14 of the principal Act shall be amended as follows:

(a) subsection (2) thereof shall be deleted; and

(b) subsection (1) thereof shall be renumbered as the whole provision.

Amendment of
section 15 of the
principal Act.

9. Section 15 of the principal Act shall be amended as follows:

(a) in subsection (1) thereof, for the words “under subsection (1) of section 14” there shall be substituted the words “under section 14”; and

(b) for subsection (2) thereof there shall be substituted the following:

“(2) For the purpose of this Act, a dispute shall include any controversy or claim arising out of or relating to the agreement, or the breach termination or invalidity thereof or failure to comply therewith.”.

10. In subsection (1) of section 16 of the principal Act, for the word “hibitual”, there shall be substituted the word “habitual”, for the words “it is so delivered.” there shall be substituted the words “it is so delivered:”, and immediately at the end thereof there shall be added the following proviso:

Amendment of section 16 of the principal Act.

“Provided that the Centre may by rules under this Act provide for other modes of service and make provision relating to when service is deemed to have been made.”.

11. Section 17 of the principal Act shall be amended as follows:

Amendment of section 17 of the principal Act.

(a) immediately after the words “(hereinafter called “the respondent”)” in subsection (1) thereof, there shall be added the words “, and any procedures and any award pursuant thereto in any arbitration to which this Part refers, shall be null and void and unenforcable if the relative notice of arbitration shall not have been filed with the Centre”;

(b) in subsection (2) thereof, for the words “by the respondent. “there shall be substituted the words “by the respondent:”, and immediately at the end thereof there shall be added the following proviso:

“Provided that for the purposes of sections 843, 846, 849, 867 and 875 of the Code of Organization and Civil Procedure, arbitral proceedings under this Part shall be deemed to commence upon the filing of the notice of arbitration with the Registrar.”.

12. Immediately after section 21 of the principal Act there shall be added the following new section:

Addition of new section 21A to the principal Act.

“Multiple parties.

21A. (1) Where there are multiple parties, whether as claimant or as respondent, the multiple claimants, jointly, and the multiple respondents, jointly, shall make a proposal to the other party for an arbitrator to be appointed pursuant to section 20 or shall appoint an arbitrator pursuant to section 21, as the case may be.

(2) Where the dispute is to be referred to a sole arbitrator and where there are multiple parties, whether as claimant or as respondent, the multiple claimants, jointly, and the multiple respondents, jointly, may reach an agreement with the other party on the choice of a single arbitrator to be appointed pursuant to section 20.

(3) In the absence of such joint nomination, where the dispute is to be referred to three arbitrators and where all parties are unable to agree to a method for the constitution of the Arbitral Tribunal, the Chairman may on the request of either of the parties appoint each member of the Arbitral Tribunal and shall designate one of them to act as presiding arbitrator.”.

Amendment of section 22 of the principal Act.

13. For the words “section 20 or 21” in subsection (1) of section 22 of the principal Act there shall be substituted the words “sections 20, 21 or 21A”.

Amendment of section 28 of the principal Act.

14. For subsection (1) of section 28 of the principal Act, there shall be substituted the following:

“(1) The language to be used in the proceedings shall, unless the parties agree otherwise, be Maltese.”.

Amendment of section 38 of the principal Act.

15. For the words “fifteen days” in subsection (3) of section 38 of the principal law, there shall be substituted the words “twenty days”.

Amendment of section 44 of the principal Act.

16. In subsection (2) of section 44 of the principal Act, for the words “and shall be made at the place of arbitration” there shall be substituted the words “and shall be deemed to be delivered at the place agreed by the parties as the place of arbitration, or, in the absence of agreement, determined by the Arbitral Tribunal”.

Substitution of section 51 of the principal Act.

17. For section 51 of the principal Act, there shall be substituted the following:

“Tariff of fees.

51. The arbitral tribunal shall determine fees and costs in accordance with such tariff of fees as shall be made by the Centre from time to time.”.

Amendment of section 53 of the principal Act.

18. In subsection (1) of section 53 of the principal Act, for the words “paragraphs (a), (b), (c) and (f)” there shall be substituted the words “paragraphs (a), (b) and (c)”.

19. For section 59 of the principal Act there shall be substituted the following: Substitution of section 59 of the principal Act.

"Chapter VIII of the Model Law not to apply." 59. Part VII of this Act on the Recognition and Enforcement of Foreign Awards shall apply to foreign arbitration awards and Chapter VIII of the Model Law shall not apply."

20. Section 60 of the principal Act shall be amended as follows: Amendment to section 60 of the principal Act.

(a) subsection (2) thereof shall be deleted and subsection (1) thereof shall be renumbered as the whole provision; and

(b) for the words from "than in accordance with the Model Law," to the words "shall apply.", there shall be substituted the following "than in accordance with the Model Law, and the parties have not chosen the rules that are to govern the arbitration, then the provisions of Part IV of this Act, shall apply."

21. For section 61 of the principal Act there shall be substituted the following new section: Deletion of section 61 of the principal Act.

"International awards under section 60 not to be registered with Centre." 61. Where in accordance with section 60, the provisions of Part IV of the Act apply, the requirement in subsection (1) of section 70 of this Act with regard to registration of the award with the Centre shall not apply."

22. In section 62 of the principal Act, for the words "Subject to the provisions of section 61," there shall be substituted the words "Notwithstanding the provisions of section 59," Amendment to section 62 of the principal Act.

23. Section 65 of the principal Act shall be amended as follows: Amendment of section 65 of the principal Act.

(a) in subsection (1) thereof, for the words "Unless the parties" there shall be substituted the words "Saving the provisions of section 80 of this Act, unless the parties"; and

(b) in subsection (2) thereof for the words "fourteen days" there shall be substituted the words "thirty days", and the words "the Registrar and" shall be deleted.

24. Section 70 of the principal Act shall be amended as follows: Amendment of section 70 of the principal Act.

(a) in subsection (3) thereof, for the words "shall only decree" there shall be substituted the words "shall only determine";

(b) in subsection (4) thereof, for the words “by judicial act of the registration” there shall be substituted the words “by judicial act of the request for registration”; and

(c) immediately after subsection (4) thereof, there shall be added the following subsections:

“(5) For the purposes of this section and sections 57 and 73 of this Act, the Court of Appeal shall be composed in the manner provided in subsection (6) of section 41 of the Code of Organization and Civil Procedure.

(6) All applications under this section shall be held *in camera* and only the parties thereto and their advocates and legal procurators shall be allowed in the court during the hearing.

(7) The judgement of the Court shall preserve the confidentiality of the arbitration and shall only reveal such facts as may be necessary to make the same intelligible and enforceable by the parties.

(8) The cost of the appeal shall be in the discretion of the Court of Appeal and shall be a sum fixed by the Registrar of the Courts.

(9) The Board established under section 29 of the Code of Organization and Civil Procedure may make rules concerning applications to the Court of Appeal under this section and under section 73 and prescribe the fees to be paid on such applications.”.

Substitution of
section 72 of the
principal Act.

25. For section 72 of the principal Act there shall be substituted the following:

“Registration
with and by
the Centre.

72. (1) Where the registration of any award or document under this Act is required to be made with the Centre, the award or document, or an authentic copy thereof, shall be deposited with the registrar together with such fee as may from time to time be prescribed for such registration.

(2) The registrar shall refuse to register an award or a document if the same does not comply with any of the provisions of this Act or of the rules made by the Centre relative to such Act.

(3) In the case of a domestic arbitration, conducted under Part IV of this Act, the provisions of subsections (2), (3), (4) and (5) of section 38, section 70 and section 71 shall only apply and the proceedings shall only be valid where prior to the commencement of the proceedings, the arbitration agreement is registered by the Centre in accordance with section 17 of this Act.

(4) (a) The registrar shall not register an award if, within fifteen days from the notice of the request for registration of that award on the other parties thereto, such parties shall have filed an objection against the registration of the said award with the Centre and have taken action in accordance with section 70 of this Act to challenge the validity of such an award.

(b) Where, following procedures in accordance with paragraph (a) hereof, the Court of Appeal does not uphold the challenge, such judgment shall be registered with the Centre together with a copy of the award upon the request of the person seeking registration.

(5) Upon its registration with the Centre the award shall be final and binding and may not be challenged.

(6) Any objection to the registration of an award which the Court of Appeal determines to be frivolous or vexatious shall render the party making such objection liable to pay the party requesting its registration a penalty of not less than one hundred liri and not more than five thousand liri, to be determined by the Court of Appeal.”.

26. For section 73 of the principal Act there shall be substituted the following:

Substitution of section 73 of the principal Act.

“Refusal to register document.

73. (1) Where the registrar refuses the registration of any document, whether upon an objection or otherwise, the party requesting registration may, within thirty days from such refusal, request the Court of Appeal, by application, to order the registrar to accept such registration, and the decision of the said court shall be final and binding. Such application shall be served on the other parties to the arbitration and on the registrar.

(2) The fact that a document has been accepted for registration by the Centre shall not preclude the challenge of the validity of such document under any provision of this Act.”.

27. In section 74 of the principal Act –

Amendment of section 74 of the principal Act.

(a) for the word “Scedule” in subsection (1) thereof, there shall be substituted the word “Schedule”, and immediately after the words “are applicable” therein, there shall be inserted the words “(subject to such reservations or declarations as may have been made by Malta on its becoming a party to such treaties and as are contained in the Second Schedule)”;

(b) subsection (4) thereof shall be deleted.

Amendment of
section 75 to the
principal Act.

28. In subsection (1) of section 75 of the principal Act, for the words “any question required to be determined” there shall be substituted the words “any dispute required to be determined”.

Addition of new
sections 80 and 81
to the principal Act.

29. Immediately after section 79 of the principal Act there shall be added the following new sections:

“Arbitration
Chambers.

80. (1) Notwithstanding any provision of this or any other law the provisions of this section shall have effect with regard to the matters regulated thereby.

Act XXV of
1995.

(2) Any individual, or individuals, whether considered to be resident in Malta or not for the purposes of any law, may constitute an Arbitration Chamber in the form of a limited liability company under the Companies Act, 1995: so however that the provisions of the said Act shall have effect in relation to an Arbitration Chamber as amended, modified or substituted by the provisions of this section. All such companies shall comprise as part of their name the words “Arbitration Chamber”.

(3) The objects of an Arbitration Chamber shall be limited to providing services of representation referred to in section 18 of this Act to parties in international commercial arbitration under Part V of this Act, and services as arbitrators in such arbitration: provided that such arbitrations are, notwithstanding that they are not domestic arbitrations, registered with the Centre in accordance with section 17 of this Act. An Arbitration Chamber shall not receive any gains, profits or income whatsoever except fees for services rendered as aforesaid, but the receipt of incidental income connected with the said services shall not be deemed to infringe this rule.

(4) Each member of an Arbitration Chamber shall also be a director thereof, and each director shall be responsible at law for the services rendered by the Arbitration Chamber pursuant to subsection (3) of this section. On the death of a member or when such member is disqualified from acting as a director of a company under the provisions of section 142 of the Companies Act, 1995, the share belonging to such member shall be redeemed, and if following such redemption the Arbitration Chamber fails to meet the requirements of the Companies Act, 1995 regarding the constitution of a company, then the Arbitration Chamber shall be liquidated.

(5) The Secretary of the Chamber shall be a person who, for an uninterrupted period of three years, has been any of the following:

(i) a person holding the warrant of advocate under the Code of Organization and Civil Procedure; or Cap. 12.

(ii) a person holding the warrant of a certified public accountant or a certified public accountant and auditor under the Accountancy Profession Act; or Cap. 281.

(iii) an associate, member, or fellow of a professional institute or similar body recognised by the Centre for the purposes of this section; or

(iv) is otherwise recognised by the Centre as a person comparable to any of the persons aforesaid.

(6) The liquidation of an Arbitration Chamber shall be carried out by its secretary under the supervision of the Centre, and the Centre shall be entitled to:

(a) nominate a secretary solely for the purpose of this subsection, where the Arbitration Chamber does not have a secretary or where the secretary of the Arbitration Chamber is not properly conducting the liquidation;

(b) declare that an Arbitration Chamber has been liquidated and fully wound up, whereupon the Arbitration Chamber shall be struck off the register by the Registrar of Companies without the need of any further formalities.

(7) An Arbitration Chamber shall be registered with the Centre in accordance with such rules as may be made by the Centre for the purposes of this subsection and may not commence its activities until it has been so registered. Registration shall be subject to such annual or other fees as may be established by the Centre.

(8) No duty shall be payable under the Duty on Documents and Transfers Act, 1993 on any document relating to any transaction in relation to any share in an Arbitration Chamber. Act XVII of 1993.

(9) The Exchange Control Act shall not apply to any matter relating to the constitution of an Arbitration Chamber, or to any transaction or operation whatsoever relating to an Arbitration Chamber or to its shares. Cap. 233.

Cap. 123.
Act XVIII of 1994.

(10) For the purposes of the Income Tax Act and the Income Tax Management Act, 1994, the rate of income tax chargeable upon any distributions made by an Arbitration Chamber shall be that contemplated in subsection (8) of section 56 of the Income Tax Act, and a member thereof if not resident in Malta receiving such a distribution shall be entitled to the benefit contemplated in paragraph (a) of subsection (4) of section 48 of the Income Tax Management Act, 1994.

(11) The Centre may make rules for the better carrying out of any of the provisions of this section and may, in particular, but without prejudice to the generality of the foregoing, by any such rules:

(a) provide for the registration of an Arbitration Chamber in accordance with subsection (7) hereof; and

(b) regulate the conduct, duties and obligations of an Arbitration Chamber.

Government
authorised
to accede to
Treaties.
Cap. 304.

81. For the purposes of the Ratification of Treaties Act, the Government is hereby authorised to accede to the treaties contained in the Second and Third Schedules to this Act.”.

Amendment of
First Schedule
to the principal Act.

30. The First Schedule to the principal Act shall be amended as follows:

(a) in paragraph (c) of Article 2 thereof for the word “count” there shall be substituted the word “court”; and

(b) immediately after paragraph (2) of article 34 thereof there shall be added the following paragraphs:

“(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the Arbitration Tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such action as in the arbitral tribunal’s opinion will eliminate the grounds for setting aside.”.

31. Immediately at the end of Article XVI in the Second Schedule to the principal Act there shall be added the following:

Amendment of
Second Schedule
to the principal Act.

**“Declaration made by Malta
on its becoming a member to the United Nations Convention
on the recognition and enforcement of Foreign Arbitral Awards
(New York 1958)**

1. In accordance with the relevant provisions of the Convention, Malta will apply the Convention only to the recognition and enforcement of awards made in the territory of another Contracting State.

2. The Convention only applies in regard to Malta with respect to arbitration agreements concluded after the date of Malta's accession to the Convention and awards pursuant thereto made after the date of Malta's accession to the Convention.”.

32. Subarticle (1) of Article 52 of the Third Schedule to the principal Act shall be amended as follows:

Amendment of the
Third Schedule to
the principal Act.

(a) paragraph (d) thereof shall be renumbered as paragraph (e); and

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

“(d) that there has been a serious departure from a fundamental rule of procedure; or”.

33. In the Fourth Schedule to the principal Act, items 1, 2 and 3 in the Second Column as corresponding to the Code of Organization and Civil Procedure (Cap. 12), in the First Column thereof shall be renumbered as items 2, 3 and 4 thereof respectively, and immediately before item 2 as renumbered there shall be inserted the following new item:—

Amendment of the
Fourth Schedule to
the principal Act.

“1. For paragraph (d) of section 253 there shall be substituted the following:—

(d) the awards of arbitrators registered in accordance with the Arbitration Act, 1996.”.”.

Passed by the House of Representatives at Sitting No. 184 of the 17th November, 1999.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives