Nagħti l-kunsens tiegħi.

(L.S.) GEORGE ABELA
President

2 ta' Lulju, 2010

ATT Nru. IX tal-2010

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

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

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2010 li jemenda Liġijiet li jirrigwardaw Materji dwar l-Arbitraġġ u l-Medjazzjoni. Titolu fil-qosor.

TAQSIMA I

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

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

Emenda tal-artikolu 4 tal-Att prinċipali.

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

"(2) Il-Bord ikun jikkonsisti f'mhux anqas minn tliet membri u mhux aktar minn ħames membri, li jinħatru mill-President ta' Malta li jaġixxi fuq il-parir tal-Prim Ministru, u wieħed minnhom jinħatar mill-Prim Ministru bħala *Chairman*. Il-Prim Ministru jaħtar ukoll membru ieħor bħala *Deputy Chairman* u dak il-membru jkollu s-setgħat kollha u jwettaq il-funzjonijiet kollha taċ-*Chairman* meta dan ikun assenti, jew sakemm jinħatar *Chairman* ġdid wara r-riżenja, temm ta' ħatra, jew mewt taċ-*Chairman*.

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

Emenda tal-artikolu 6 tal-Att prinċipali.

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

Emenda tal-artikolu 8 tal-Att prinċipali.

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

Emenda tal-artikolu 10 tal-Att prinċipali.

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

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

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

(ċ) Tneħħija jew riżenja bħal dawk imsemmijin fil-paragrafi (a) u (b) ma għandhomx jitqiesu li jinkludu t-tneħħija jew ir-riżenja ta' dik il-persuna minn xi proċedimenti ta' arbitraġġ li hi tkun setgħet diġà ġiet maħtura fihom qabel it-tneħħija jew ir-riżenja tagħha ħlief kif jista jiġi espressament ordnat b'deċiżjoni taċ-Ċentru li tittieħed wara r-rakkomondazzjoni tal-Bord msemmija fil-paragrafu (a) jew fl-istess ittra ta' riżenja.".

Emenda tal-artikolu 15 tal-Att prinċipali.

7. L-artikolu 15 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minnufih wara s-subartikolu (11), għandu jiżdied is-subartikolu ġdid li ġej:

"(11A) Minkejja kull disposizzjoni oħra ta' dan l-Att, il-partijiet kollha f'arbitraġġ mandatorju għandu jkollhom, sakemm ma jkunux espressament ftiehmu mod ieħor bil-miktub, dritt ta' appell mid-deċiżjoni arbitrali kemm fuq fatti kif ukoll fuq punti ta' liġi quddiem il-Qorti ta' l-Appell kostitwita skond l-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili."; u

Kap. 12.

(b) minnufih wara s-subartikolu (15), għandu jidħol is-subartikolu ġdid li ġej:

"(16) Il-Ministru jista' minn żmien għal żmien jordna li ċerti klassijiet ta' tilwimiet imsemmija fil-Ħames Skeda tal-Att għandhom jiġu deċiżi b'arbitraġġ skond id-disposizzjonijiet tat-Taqsima IV u tar-Raba' Skeda u bla ħsara għal dawn il-kundizzjonijiet li ġejjin:

(a) li qabel ma tilwima tiġi riferita għall-arbitraġġ, waħda mill-partijiet għat-tilwima tkun innotifikat liċ-Ċentru permezz ta' avviż bil-miktub li tkun bi ħsiebha tirreferi t-tilwima għall-arbitraġġ; u

(b) li fl-avviż imsemmi fil-paragrafu (a) l-istess parti għandha tagħti deskrizzjoni tal-elementi tat-tilwima u tagħti l-isem u l-indirizz tal-parti jew

tal-partijiet l-oħra fit-tilwima; u

(ċ) li wara li jiġi riċevut l-avviż u l-informazzjoni msemmija fil-paragrafi (a) u (b), iċ-Ċentru għandu jgħarraf, b'posta reġistrata, lill-parti jew lill-partijiet l-oħra fit-tilwima bl-istess avviż u informazzjoni; u

(d) li l-parti jew il-partijiet l-oħra fit-tilwima għandhom jew javżaw liċ-Ċentru bl-aċċettazzjoni tagħhom li t-tilwima tiġi riferuta għall-arbitraġġ u dan fi żmien għoxrin ġurnata minn meta jiġu notifikati skond il-paragrafu (ċ) jew li fl-imsemmi perjodu jonqsu li jressqu l-oġġezzjoni tagħhom li t-tilwima tiġi riferuta għall-arbitraġġ:

Iżda jekk ikun hemm aktar minn żewġ partijiet fit-tilwima, it-tilwima ma għandhiex tiġi riferuta għall-arbitraġġ skond dan is-subartikolu jekk għall-inqas waħda minn dawk il-partijiet toġġezzjona li t-tilwima tiġi riferuta għall-arbitraġġ.".

Emenda tal-artikolu 20 tal-Att prinċipali.

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

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

Emenda tal-artikolu 69A tal-Att prinċipali.

9. Minflok is-subartikolu (2) ta' l-artikolu 69A tal-Att prinċipali għandu jidħol dan li ġej:

"(2) Jistgħu jinbdew proċedimenti kontra deċiżjoni arbitrali mogħtija taħt it-Taqsima IV quddiem il-Qorti ta' l-Appell permezz ta' rikors jew -

(a) b'talba li d-deċiżjoni titwarrab skond id-disposizzjonijiet ta' l-artikolu 70, jew

(b) b'appell fuq punt ta' liġi skond l-artikolu 70A ħlief fil-każ ta' arbitraġġi mandatorji, jew

(ċ) b'appell kemm fuq fatti kemm fuq punti ta' liġi skond l-artikolu 70Ċ.".

10. Minflok is-subartikolu (7) tal-artikolu 70 tal-Att prinċipali għandu jidħol dan li ġej: Emenda tal-artikolu 70 tal-Att prinċipali.

"(7) Il-Bord imwaqqaf taħt l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jagħmel regoli li jkunu jirrigwardaw rikorsi quddiem il-Qorti ta' l-Appell taħt dan l-artikolu, taħt l-artikolu 70A, l-artikolu 70Ċ u l-artikolu 73, u jistabbilixxi d-drittijiet li għandhom jitħallsu meta jsiru dawk ir-rikorsi.".

11. Minnufih wara l-artikolu 70B tal-Att prinċipali għandu jidħol dan l-artikolu ġdid li ġej: Żjieda tal-artikolu 70Ċ ġdid mal-Att prinċipali.

"Appell f'arbitraġġi mandatorji.

70Ċ. (1) Parti fil-proċedimenti ta' l-arbitraġġ mandatorju għandha d-dritt li tappella lill-Qorti ta' l-Appell kemm fuq fatti kif ukoll fuq punti ta' liġi li jitnisslu minn deċiżjoni finali magħmula fil-proċedimenti.

(2) Id-disposizzjonijiet tal-artikolu 70(3), (4), (5) u (6), tal-artikolu 70A(2), tal-artikolu 70B(2) u l-artikolu 71A għandhom jgħoddu għal appelli magħmulin taħt dan l-artikolu.".

12. Minflok is-subartikolu (2) tal-artikolu 71 tal-Att prinċipali għandu jidħol dan li ġej: Emenda tal-artikolu 71 tal-Att prinċipali.

"(2) Il-Qorti ta' l-Appell tista', dwar appell skond l-artikoli 70A u 70Ċ -

(a) tikkonferma d-deċiżjoni,

(b) tibdel id-deċiżjoni,

(ċ) tibgħat id-deċiżjoni lura lit-tribunal, kollha jew parti minnha, biex tiġi ttrattata mill-ġdid fid-dawl tad-deċiżjoni tal-Qorti, jew

(d) twarrab id-deċiżjoni kollha jew parti minnha u tiddeċiedi hi nnifisha l-kwistjoni.".

13. L-artikolu 71A tal-Att prinċipali għandu jiġi emendat kif ġej: Emenda tal-artikolu 71A tal-Att prinċipali.

(a) minflok is-subartikolu (1) tiegħu għandu jidħol dan li ġej:

"(1) Id-disposizzjonijiet li ġejjin għandhom

jgħoddu għal rikors għal twarrib jew appell taħt l-artikoli 70, 70A jew 70Ċ."; u

(b) minflok is-subartikolu (4) tiegħu għandu jidħol dan li ġej:

"(4) Id-drittijiet għall-proċeduri kif provdut fl-artikolu 70 jew 70A jew 70Ċ jeskludu lil xulxin u ma jistgħux it-tnejn jiġu eżerċitati fl-istess ħin u appell fuq punt ta' liġi jew ta' fatt għandu jeskludi d-dritt għal rikors biex id-deċiżjoni titwarrab: iżda meta parti tkun għamlet rikors lill-Qorti biex twarrab deċiżjoni dik il-parti tista', *in subsidium*, tappella fuq punti ta' liġi jew ta' fatt sakemm dan isir fl-istess rikors.".

Emenda tal-artikolu 72 tal-Att prinċipali.

14. L-artikolu 72 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok is-subartikolu (3) tiegħu għandu jidħol dan li ġej:

"(3) Fil-każ ta' arbitraġġ domestiku, li jsir skond it-Taqsima IV ta' dan l-Att, id-disposizzjonijiet ta' l-artikolu 38(2), (3), (4) u (5), l-artikolu 70, l-artikolu 70A, l-artikolu 70B, l-artikolu 70Ċ, l-artikolu 71 u l-artikolu 71A għandhom jgħoddu biss u l-proċedimenti għandhom ikunu validi biss meta f'kull żmien qabel in-notifika tad-deċiżjoni skond l-artikolu 44(4), avviż dwar l-arbitraġġ jiġi reġistrat maċ-Ċentru skond l-artikolu 17.";

(b) minflok il-paragrafu (b) tas-subartikolu (4) tiegħu għandu jidħol dan li ġej:

"(b) Meta, wara rikors skond l-artikolu 70 jew 70A jew 70Ċ, il-Qorti ma tilqax ir-rikors, is-sentenza tal-Qorti ta' l-Appell għandha tiġi reġistrata maċ-Ċentru flimkien mad-deċiżjoni li tkun qed tiġi reġistrata fuq talba tal-parti li titlob ir-reġistrazzjoni."; u

(ċ) minflok is-subartikolu (6) tiegħu għandu jidħol dan li ġej:

"(6) Kull rikors skond l-artikoli 70 jew 70A jew 70Ċ li l-Qorti ta' l-Appell tiddeċiedi li hu frivolu jew vessatorju tirrendi lill-parti li tagħmel dik il-kontestazzjoni jew dak l-appell responsabbli għall-ħlas lill-parti li tkun qed titlob ir-reġistrazzjoni, ta' penali ta' mhux inqas minn mitejn u tnejn u tletin euro u erbgħa u disgħin ċenteżmu

(232.94) u mhux iktar minn ħdax-il elf u sitt mija u sitta u erbgħin euro u sebgħa u tmenin ċenteżmu (11,646.87), hekk kif jiġi stabbilit mill-Qorti ta' l-Appell.".

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

16. Il-paragrafu (b) tas-subregola (6) tar-regola 72 tar-Regoli dwar l-Arbitraġġ għandu jitħassar. Emenda tar-regola 72 tar-Regoli dwar l-Arbitraġġ. L.S. 387.01

TAQSIMA II

17. (1) Din it-Taqsima temenda l-Att dwar il-Medjazzjoni, u għandha tinqara u tiftiehem ħaġa waħda mal-Att dwar il-Medjazzjoni, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali". Emenda tal-Att dwar il-Medjazzjoni. Kap.474.

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

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

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

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

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

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

(ċ) minnufih wara t-tifsira "medjazzjoni domestika"

għandha tiżdied din it-tifsira ġdida li ġejja:

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

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

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

Emenda tal-artikolu 5 tal-Att prinċipali.

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

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

Emenda tal-artikolu 6 tal-Att prinċipali.

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

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

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

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

Emenda tal-artikolu 15 tal-Att prinċipali.

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

"(3) Iċ-Ċentru għandu jkun eżentat minn kull

responsabbilta` ta' ħlas ta' taxxa fuq id-dħul u taxxa fuq id-dokumenti taħt kull liġi li tkun fis-seħħ f'dak iż-żmien.".

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

Żjieda ta' artikoli ġodda 17A u 17B mal-Att prinċipali.

"Tilwima transkonfini.

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

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

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

(ċ) jirriżulta obbligu biex tintuża l-medjazzjoni taħt il-liġi nazzjonali; jew

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

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

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

Infurzar ta' ftehim li jirriżulta minn medjazzjoni.

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

Kap. 12.

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

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

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

Emenda tal-artikolu 20 tal-Att prinċipali.

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

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

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

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

Emenda tal-artikolu 21 tal-Att prinċipali.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Iżda l-iżvelar tal-kontenut tal-ftehim li jirriżulta minn

medjazzjoni ikun permess -

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

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

Żjieda tal-artikolu 27A ġdid mal-Att prinċipali.

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

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

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

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

TAQSIMA III

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

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

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

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

31. Fil-paragrafu (e) tal-artikolu 253 tal-Kodici, minflok il-kliem "bid-dritt mogħti lilu minn dan il-proviso." għandhom jidħlu l-kliem "bid-dritt mogħti lilu minn dan il-proviso;", u minnufih wara

għandu jiżdied il-paragrafu ġdid li ġej:

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

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 246 tal-25 ta' Ġunju, 2010.

MICHAEL FRENDO
Speaker

PAULINE ABELA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.) GEORGE ABELA
President

2nd July, 2010

ACT No. IX of 2010

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

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. The short title of this Act is the Laws (Arbitration and Mediation Matters) (Amendment) Act, 2010.

PART I

Amendment of the Arbitration Act.
Cap. 387.

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

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

3. Subarticles (2) and (3) of article 4 of the principal Act shall be substituted by the following subarticles:

Amendment of article 4 of the principal Act.

"(2) The Board shall consist of not less than three and not more than five members, appointed by the President of Malta acting on the advice of the Prime Minister, one of whom shall be designated by the Prime Minister as chairman. The Prime Minister shall also designate another member as deputy chairman and such member shall have all the powers and perform all the functions of the chairman during his absence, or until a new chairman has been appointed following the resignation, termination of appointment, or death of the chairman.

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

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

Amendment of article 6 of the principal Act.

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

Amendment of article 8 of the principal Act.

6. Subarticle (6) of article 10 of the principal Act shall be substituted by the following subarticle:

Amendment of article 10 of the principal Act.

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

the said person be either removed from the arbitration proceedings in which he persisted in failing to fulfil his duties or functions or be removed from the group of arbitrators.

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

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

Amendment of the article 15 of the principal Act.

7. Article 15 of the principal Act shall be amended as follows:

(a) immediately after subarticle (11) there shall be added the following new subarticle:

"(11A) Notwithstanding any other provision of this Act, all parties to a mandatory arbitration shall, unless they have expressly agreed otherwise in writing, have a right of appeal from the arbiter award both on points of law and on points of fact to the Court of Appeal as constituted in terms of article 41(6) of the Code of Organization and Civil Procedure."; and

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(b) immediately after subarticle (15) there shall be added the following new subarticle:

"(16) The Minister may from time to time prescribe that certain classes of disputes included in the Fifth Schedule shall be determined by arbitration in accordance with the provisions of Part IV and of the Fourth Schedule subject to the following conditions:

(a) that prior to the dispute being referred to arbitration one of the parties to the dispute shall have notified the Centre by means of a notice in writing of its intention to refer the dispute to arbitration; and

(b) that in the notice referred to in paragraph (a) the said party shall describe the elements of the dispute and give the name and address of the other party or parties to the dispute; and

(c) that following receipt of the request and of the information referred to in paragraphs (a) and (b) above the Centre shall inform the other party or parties to the dispute by registered mail of the said request and information; and

(d) that the other party or parties to the dispute either notify the Centre of their acceptance to refer the dispute to arbitration within twenty days from when they are notified in accordance with paragraph (c) or that within the said period they fail to file a note with the Centre objecting to the dispute being referred to arbitration:

Provided that when more than two parties are involved in a dispute, the dispute shall not be referred to arbitration in accordance with this subarticle if at least one of the said parties objects to the referral of the dispute to arbitration.

8. Subarticle (3) of article 20 of the principal Act shall be substituted by the following subarticle:

Amendment of article 20 of the principal Act.

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

9. For subarticle (2) of article 69A of the principal Act there shall be substituted the following:

Amendment of article 69A of the principal Act.

"(2) Recourse against an arbitral award delivered under Part IV may be made to the Court of Appeal by application either -

(a) praying that the award be set aside in accordance with the provisions of article 70, or

(b) appealing on a point of law in accordance

with article 70A except in the case of mandatory arbitrations, or

(c) appealing both on points of fact and on points of law in accordance with article 70C.".

Amendment of article 70 of the principal Act.

10. For subarticle (7) of article 70 of the principal Act there shall be substituted the following:

"(7) The Board established under article 29 of the Code of Organization and Civil Procedure may make rules concerning applications to the Court of Appeal under this article, under article 70A, article 70C and article 73, and prescribe the fees to be paid on such applications.".

Addition of new article 70C to the principal Act.

11. Immediately after article 70B of the principal Act there shall be added the following new article:

"Appeal in mandatory arbitration proceedings.

70C. (1) A party to mandatory arbitration proceedings shall have a right of appeal to the Court of Appeal both on points of fact and on points of law arising out of a final award made in the proceedings.

(2) The provisions of article 70(3), (4), (5) and (6), of article 70A(2), article 70B(2) and article 71A shall apply to appeals made under this article.".

Amendment of article 71 of the principal Act.

12. For subarticle (2) of article 71 of the principal Act there shall be substituted the following:

"(2) The Court of Appeal may, on an appeal under articles 70A and 70C -

(a) confirm the award ,

(b) vary the award,

(c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the Court's determination, or

(d) set aside the award in whole or in part and itself determine the matter.".

Amendment of article 71A of the principal Act.

13. Article 71A of the principal Act shall be amended as follows:

(a) for subarticle (1) thereof there shall be substituted the following:

"(1) The following provisions shall apply to an application to set aside or an appeal under article 70, 70A or 70C."; and

(b) for subarticle (4) thereof there shall be substituted the following:

"(4) The rights of recourse as provided in article 70 or 70A or 70C are mutually exclusive and cannot both be exercised simultaneously and an appeal on a point of law or on a point of fact shall exclude the right to apply to set aside the award: provided that when a party has applied to the Court to set aside an award, he may, *in subsidium*, appeal on points of law or on point of fact provided he does so in the same application.".

14. Article 72 of the principal Act shall be amended as follows:

Amendment of article 72 of the principal Act.

(a) for subarticle (3) thereof there shall be substituted the following:

"(3) In the case of a domestic arbitration, conducted under Part IV of this Act, the provisions of article 38(2), (3), (4) and (5), article 70, article 70A, article 70B, article 70C, article 71 and article 71A shall only apply and the proceedings shall only be valid where at any time prior to the communication of the award in accordance with article 44(4), a notice of arbitration is registered with the Centre in accordance with article 17.";

(b) for paragraph (b) of subarticle (4) thereof there shall be substituted the following:

"(b) Where, following any application in accordance with article 70 or 70A or 70C, the Court does not uphold the application, the judgement of the Court of Appeal shall be registered with the Centre together with the award being registered on the request of the party seeking registration."; and

(c) for subarticle (6) thereof there shall be substituted the following:

"(6) Any application under articles 70 or 70A or

70C which the Court of Appeal determines to be frivolous or vexatious shall render the party making such challenge or appeal liable to pay the party requesting it a penalty of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) to be determined by the Court of Appeal.".

Amendment of Fourth Schedule to the principal Act.

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

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

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

PART II

Amendment of the Mediation Act.
Cap. 474.

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

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

Amendment of article 2 of the principal Act.

18. Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "financial period", there shall be inserted the following definition:

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

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

" "mediation" means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves to reach a voluntary agreement regarding their dispute with the assistance of a

mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by national legislation;";

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

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

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

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

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

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

20. Article 6 of the principal Act shall be amended as follows: Amendment of article 6 of the principal Act.

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

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

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

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

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

Addition of new articles 17A and 17B to the principal Act.

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

"Cross-border dispute.

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

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

(b) mediation is ordered by the court;

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

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

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

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

Enforceability of agreements resulting from mediation.

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

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

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

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

Amendment of article 20 of the principal Act.

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

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

(b) immediately after subarticle (2) thereof, there shall be8added the following new subarticle:

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

Amendment of article 21 of the principal Act.

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

(a) subarticle (2) thereof shall be substituted by the following new subarticle:

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

(b) immediately after subarticle (2) thereof, there shall be added the following new subarticles:

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

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

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

Amendment of article 22 of the principal Act.

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

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

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

Amendment of article 23 of the principal Act.

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

(a) in subarticle (1) thereof for the words “article 21” there shall be substituted the words “articles 21 or 22(2)”; and

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

Amendment of article 24 of the principal Act.

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

Amendment of article 27 of the principal Act.

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

"Provided that disclosure of the content of the agreement

resulting from mediation shall be permitted -

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

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

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

Addition of new article 27A to the principal Act.

"Effect of mediation on limitation and prescription periods.

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

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

PART III

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

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

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

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

Amendment of article 253 of the Code.

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

Passed by the House of Representatives at Sitting No. 246 of the 25th June, 2010.

MICHAEL FRENDO
Speaker

PAULINE ABELA
Clerk to the House of Representatives