

MALTA

ATT Nru XVI tal-2016

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT sabiex jitwaqqaf l-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji bis-setgħa li jimmedja, jinvestiga, u jiddeċiedi fuq ilmenti li jkunu tressqu minn xi klijent kontra provditur tas-servizzi finanzjarji, sabiex jitwaqqaf Bord tal-Immaniġġjar responsabbli għall-amministrazzjoni tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji, u sabiex jipprovdi għal finijiet oħra li jkollhom x'jaqsmu miegħu.

ACT No. XVI of 2016

AN ACT enacted by the Parliament of Malta.

AN ACT to set up the Office of the Arbiter for Financial Services with power to mediate, investigate, and adjudicate complaints filed by a customer against a financial services provider, to set up a Board of Management responsible for the administration of the Office of the Arbiter for Financial Services, and to provide for other purposes connected therewith.

Nagħti l-kunsens tiegħi.

(L.S.)

**MARIE LOUISE
COLEIRO PRECA
President**

22 ta' Marzu, 2016

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ATT sabiex jitwaqqaf l-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji bis-setgħa li jimmedja, jinvestiga, u jiddeċiedi fuq ilmenti li jkunu tressqu minn xi klijent kontra provditur tas-servizzi finanzjarji, sabiex jitwaqqaf Bord tal-Immaniġġjar responsabbli għall-amministrazzjoni tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji, u sabiex jipprovdi għal finijiet oħra li jkollhom x'jaqsmu miegħu.

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

TAQSIMA I
Preliminari

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2016 dwar l-Arbitru għas-Servizzi Finanzjarji. Titlu fil-qosor u bidu fis-sehħ.

(2) Dan l-Att għandu jidhol fis-sehħ fid-data li l-Ministru għall-Finanzi jista' b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew servizzi finanzjarji differenti provduti minn provditur tas-servizzi finanzjarji jew għal finijiet differenti ta' dan l-Att.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx Tifsir. tehtieg xort'oħra -

"Arbitru" tfisser Arbitru għas-Servizzi Finanzjarji maħtur taħt l-artikolu 14;

"Arbitru sostitut" tfisser Arbitru maħtur taħt l-artikolu 16;

"Bord" tfisser Bord tal-Immanigġjar u l-Amministrazzjoni stabbilit taħt l-artikolu 3;

"klijent" tfisser persuna fiżika, inkluż is-suċċessuri tagħha fit-titolu, jew mikrointrapriża;

"klijent eliġibbli" tfisser klijent li jkun konsumatur ta' provditur tas-servizzi finanzjarji, jew li lilu l-provditur tas-servizzi finanzjarji jkun offra li jipprova xi servizz finanzjarju, jew li talab il-provdiment ta' xi servizz finanzjarju minn provditur tas-servizzi finanzjarji. Tinkludi wkoll is-suċċessur legali fit-titolu għall-prodott finanzjarju li jkun soġġett għall-ilment rilevanti;

"membru tal-persunal tal-Uffiċċju" tfisser persuna maħtura taħt l-artikolu 19(4)(ċ);

"mezz durabbli" tfisser kull strument li jagħmel possibbli li l-ħażna ta' informazzjoni indirizzata personalment lil xi persuna partikolari b'mod li tkun aċċessibbli għal referenza futura u għal perjodu xieraq ta' żmien għall-finijiet tal-informazzjoni, u jippermetti r-riproduzzjoni mhux mibdula tal-informazzjoni maħżuna;

"mikrointrapriża" tfisser intrapriża li tħaddem inqas minn għaxar persuni u li l-qligħ annwali tagħha u, jew il-karta tal-bilanċ annwali ma tkunx iżjed minn żewġ miljun euro (€2,000,000);

"il-Ministru" tfisser il-Ministru responsabbli għall-Finanzi;

"partijiet", fir-rigward ta' ilment, tfisser il-parti li tkun qed tagħmel l-ilment, il-provditur tas-servizzi finanzjarji li kontribw ikun sar l-ilment, u kull persuna oħra li fil-fehma tal-Arbitru għandha tiġi trattata bħala parti fl-ilment;

"provditur tas-servizzi finanzjarji" tfisser provditur tas-servizzi finanzjarji li jkun jew li jkun gie liċenzjat jew awtorizzat xort'oħra mill-Awtorità għas-Servizzi Finanzjarji ta' Malta skont l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta jew kull liġi oħra tas-servizzi finanzjarji, inkluż iżda mhux limitat għal servizzi ta' investiment, ibbankjar, istituzzjonijiet finanzjarji, karti ta' kreditu, pensjonijiet u assigurazzjoni, li hu jew li kien residenti f'Malta jew li hu jew li kien residenti fi Stat Membru ieħor jew fi Stat ŻEE ieħor u li joffri jew li kien joffri s-servizzi finanzjarji tiegħu f'Malta. Provditur tas-servizzi finanzjarji li kellu l-liċenza sospiża jew irtirata mill-

awtorità kompetenti, iżda li kien liċenzjat matul il-perjodu li fih ikun sar l-ilment minn klient eliġibbli magħmul lill-Arbitru, għandu jitqies bhala li jaqa' taht it-tifsira ta' provdatur tas-servizzi finanzjarji;

"sena finanzjarja" tfisser perjodu ta' tnax-il xahar li jibda fl-ewwel jum ta' Jannar u jispicċa fil-wiehed u tletin jum ta' Diċembru tal-istess sena;

"l-Uffiċċju" tfisser l-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji stabbilit taht l-artikolu 10.

TAQSIMA II

Il-Bord tal-Immaniġġjar u l-Amministrazzjoni

3. (1) Għandu jkun hemm Bord, li jkun magħruf bhala l-Bord tal-Immaniġġjar u l-Amministrazzjoni, li għandu jkun responsabbli għall-immaniġġjar u l-amministrazzjoni tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji.

Twaqqif u għamla tal-Bord tal-Immaniġġjar u l-Amministrazzjoni.

(2) Il-Bord għandu jkun magħmul minn tliet membri, inkluż iċ-*Chairperson*, li jkun mahtur mill-Ministru, membru, li jkun ukoll mahtur mill-Ministru, u membru ieħor li jkun mahtur mill-Ministru responsabbli għall-Affarijiet tal-Konsumatur.

(3) Il-Ministru għandu jahtar *Chairperson* li jkollu għarfien jew esperjenza ta' materja li jirrigwardaw il-konsumatur li jkunu relatati mal-provdiment tas-servizzi finanzjarji.

(4) Il-Ministru għandu jagħzel il-membri tal-Bord minn fost persuni li jkunu jidhru lilu li jkunu kwalifikati li jkunu hekk magħzula.

(5) Il-membri tal-Bord għandhom iwettqu l-funzjonijiet tagħhom taht dan l-Att fil-ġudizzju individwali tagħhom u m'għandhomx ikunu soġġetti għall-ordnijiet jew kontroll ta' xi persuna jew awtorità oħra fil-qadi ta' dawk il-funzjonijiet.

4. (1) Il-membri tal-Bord għandhom iżommu l-kariga għal perjodu ta' hames snin, u membru għandu, meta jieqaf milli jkun membru, ikun eliġibbli għal hatra mill-ġdid.

Zamma ta' kariga tal-Bord.

(2) Il-membri tal-Bord ikunu intitolati għal dik ir-rimunerazzjoni kif il-Ministru jista' minn żmien għal żmien jiddeċiedi.

5. Iċ-*Chairperson* u kull membru tal-Bord jista' jitneħħa mill-Ministru minhabba f'inkapaċità ppruvata jekk ikompli jaqdi d-dmirijiet tiegħu jew fuq imġiba hażina bil-provi.

Tneħħija ta' membri mill-Bord.

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Riżenja.

6. (1) Kull membru tal-Bord jista' jirriżenja mill-kariga tiegħu b'ittra indirizzata lill-Ministru.

(2) Il-hatra, tmiem tal-kariga jew riżenja ta' kull persuna bhala membru tal-Bord, inkluż ir-raġunijiet għal dak it-tmiem jew riżenja kif ikun japplika, għandhom jiġu ppubblikati fil-Gazzetta.

Segretarju tal-Bord.

7. (1) Il-Bord għandu jahtar segretarju għal dak il-perjodu u taht dawk il-pattijiet kif il-Bord iqis li jkun xieraq.

(2) Għandu jkun id-dmir tas-Segretarju li jagħmel il-preparazzjonijiet meħtieġa għal-laqgħat tal-Bord u li jzomm minuti ta' dawk il-laqgħat.

(3) Is-Segretarju għandu wkoll iwettaq kull funzjoni li tista' tiġi delegata lilu bil-miktub mill-Bord minn żmien għal żmien.

Funzjonijiet tal-Bord.

8. (1) Għandha tkun il-funzjoni tal-Bord li:

(a) jagħti għajjnuna f'affarijiet amministrattivi lill-Arbitru fl-eżerċizzju tal-funzjonijiet tiegħu, meta l-Arbitru hekk jitlob;

(b) iżomm taht reviżjoni l-effiċjenza u l-effettività tal-Uffiċċju u sabiex jagħti parir lill-Ministru, jew fuq it-talba tal-Ministru jew fuq inizjattiva tiegħu, fuq kull kwistjoni rilevanti għat-thaddim tal-Uffiċċju;

(c) jassisti lill-Arbitru fuq kull kwistjoni li fuqha l-Arbitru jfittex parir;

(d) jirrakkomanda lill-Ministru fir-rigward ta' hłas tal-imposti u d-drittijiet li għandhom jithallsu għat-twettiq ta' servizzi provduti mill-Uffiċċju;

(e) jagħti parir lill-Ministru fuq l-ghemil ta' regoli fir-rigward ta' hłas ta' imposti u drittijiet li għandhom jithallsu lill-Uffiċċju minn kategoriji differenti ta' persuni, l-ammonti ta' imposti u drittijiet, il-perjodi li fihom imposti u drittijiet speċifikati għandhom jithallsu, u pieni li jkunu pagabbli minn persuna li tonqos milli jew li thallas fil-hin jew li ma thallasx l-ammont kollu dovut;

(f) jinżamm rekord ta' persuni li huma responsabbli li jhallsu imposta jew dritt speċifikat, u kull pagament riċevut mill-Uffiċċju;

(g) jingabru u jiġu rkuprati l-imposti u d-drittijiet dovuti;

(h) jagħti parir lill-Ministru fuq l-għemil ta' regoli, jew fuq inizjattiva tiegħu jew fuq it-talba tal-Arbitru, sabiex jiġi deċiż il-mod u r-rekwiżiti, inkluż kull tariffa pagabbli, għar-registrazzjoni ta' kull dokument taħt dan l-Att;

(i) jiddeċiedi dwar il-metodi tal-kontabilità li għandhom jiġu segwiti mill-Uffiċċju meta jinżammu rekords tal-kontabilità;

(j) jiddeċiedi dwar il-forma tar-rapport annwali li għandu jiġi mfassal mill-Bord fuq bażi annwali;

(k) jiddeċiedi dwar il-forma tar-rapport bl-estimi ta' dhul u nfiq li għandu jiġi mfassal mill-Bord fuq bażi annwali;

(l) jiddeċiedi dwar il-forma tar-rapport li għandu x'jaqsam ma' pjan strateġiku li għandu jiġi mfassal mill-Bord fuq bażi annwali;

(m) jaqdi dawk il-funzjonijiet jew attivitajiet kif huma assenjati lilu minn dan l-Att;

(n) jiddeċiedi dwar kull servizz li għandu jitqies bħala servizz finanzjarju addizzjonali li jista' jkun soġġett għal konsiderazzjoni mill-Arbitru; u

(o) jaqdi kull funzjoni oħra supplimentari jew ancillari għal dak imsemmi hawn qabel.

(2) Fil-qadi tal-funzjoni tiegħu taħt is-subartikolu (1)(f), il-Bord jista' jibda proċeduri quddiem il-Qorti Ċivili sabiex jiġbor kull dejn, ammont ta' imposta jew dritt dovut lill-Uffiċċju.

(3) Ir-rappreżentanza legali tal-Bord għandha tiġi vestita fiċ-*Chairperson*:

Izda l-Bord jista' jinnomina wieħed jew aktar mill-membri l-oħra tal-Bord li jidhru f'isem u għan-nom tal-Bord f'kull proċediment ġudizzjarju u biex jiffirmaw għal u għan-nom tiegħu, kull kitba jew dokument ieħor ikun xi jkun.

(4) M'għandhiex tkun il-funzjoni tal-Bord li jintervjeni bl-ebda mod fuq kif l-Arbitru jittratta l-merti ta' ilment partikolari.

9. (1) Il-Bord għandu jkun responsabbli lejn il-Ministru għall-qadi tad-dmirijiet tiegħu.

Responsabbiltà tal-Bord.

(2) (a) Fi żmien sitt xhur minnufih qabel il-bidu ta' kull

sena finanzjarja, il-Bord, b'konsultazzjoni mal-Arbitru, għandu jipprepara, fil-forma stabbilita mill-Bord, dikjarazzjoni bl-estimi ta' dhul u nfiq li jkollhom x'jaqsmu mal-Uffiċċju għas-sena finanzjarja li jkun imiss. Dawk l-estimi għandhom jiġu approvati mill-Bord.

(b) Id-dikjarazzjoni għandha tispeċifika:

(i) l-ammonti mistennija li jingabru u rkuprati matul is-sena finanzjarja kkonċernata mill-impożizzjoni ta' imposti u tariffi;

(ii) kull sors ieħor li minnu huma mistennija li jinkisbu fondi matul dik is-sena sabiex jiġu ffinanzjati l-attivitajiet tal-Uffiċċju u l-ammonti mistennija li jingabru minn dawk is-sorsi; u

(iii) l-attivitajiet li l-Uffiċċju jipproponi li jwettaq matul dik is-sena;

(ċ) Kopja tal-estimi għandha tintbagħat minnufih lill-Ministru.

(d) Il-Ministru għandu, mal-ewwel opportunità li jkollu u mhux iżjed tard minn sitt ġimgħat wara li jkun irċieva kopja tal-estimi mill-Bord, japprova l-istess bl-emendi jew mingħajr emendi.

(e) Dawk l-estimi approvati għandhom jitqiegħdu fuq il-Mejda tal-Kamra tad-Deputati.

(3) (a) Fi żmien sitt xhur qabel il-bidu ta' kull sena finanzjarja, il-Bord, b'konsultazzjoni mal-Arbitru, għandu jipprepara għal sena pjan strateġiku fil-forma ta' rapport stabbilit mill-Bord. Il-Bord għandu japprova dak il-pjan strateġiku.

(b) Ir-rapport għandu jispeċifika:

(i) l-għanijiet tal-attivitajiet tal-Uffiċċju għas-sena finanzjarja kkonċernata;

(ii) ix-xorta u l-iskop tal-attivitajiet li għandhom jitwettqu;

(iii) il-miri u l-kriterji sabiex tiġi evalwata l-prestazzjoni tal-Uffiċċju; u

(iv) kif ser ikunu utilizzati r-rizorsi tal-Uffiċċju.

(ċ) Kopja tal-pjan strateġiku għandha tintbagħat

minnufih lill-Ministru.

(d) Kopja ta' dak ir-rapport għandha titqiegħed fuq il-Mejda tal-Kamra tad-Deputati u għandha tkun disponibbli għall-pubbliku.

(4) Il-kontenut u materji oħra relatati mal-estimi kif ukoll il-pjan strateġiku msemmija fis-subartikoli (2) u (3) jistgħu jiġu preskritti b'regolamenti magħmula taħt dan l-Att.

(5) *Ic-Chairperson* tal-Bord għandu jipprovdi lill-Ministru dawk ir-rapporti li jkollhom x'jaqsmu mal-attivitajiet tal-Bord u tal-Uffiċċju kif il-Ministru jista' jitlob minn żmien għal żmien:

Izda r-rapporti m'għandhomx jiżvelaw dettalji jew kummenti dwar kull ilment li ma jkunx għadu ġie deċiż mill-Arbitru.

TAQSIMA III

L-Uffiċċju tal-Arbitru

10. (1) Għandu jitwaqqaf Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji.

L-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji.

(2) L-Uffiċċju għandu jkun kompost mill-Bord, l-Arbitru u l-Arbitru sostitut, jekk ikun hemm, u minn dawk l-uffiċjali u membri tal-persunal maħtura jew impjegati mill-Uffiċċju.

11. (1) Mingħajr preġudizzju għall-funzjonijiet tal-Arbitru taħt dan l-Att, għandha tkun il-funzjoni tal-Uffiċċju li:

Funzjonijiet tal-Uffiċċju.

(a) jittratta ilmenti li jkunu tressqu minn klijenti eliġibbli;

(b) javża lill-pubbliku permezz ta' mezzi elettronici u, meta jkun possibbli, b'linji gwida bil-miktub dwar il-funzjonijiet mwettqa mill-Uffiċċju, id-dettalji ta' kuntatt tal-Uffiċċju, il-proċedura segwita mill-Uffiċċju fir-rigward ta' ilmenti, u informazzjoni oħra li jkollha x'taqsam mal-Uffiċċju bil-għan li tinforma lill-pubbliku fuq is-servizzi offruti mill-Uffiċċju;

(c) jipprovdi lill-partijiet fi proċedimenti l-informazzjoni msemmija fis-subartikolu (2) b'mezz durabbli;

(d) jipprovdi l-mezzi sabiex jippermetti lil klijent jippreżenta l-ilment b'mezz elettroniku jew b'dokumentazzjoni mibgħuta rreġistrata permezz tas-servizz tal-posta jew kurrier;

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(e) jipprovdi l-mezzi sabiex jippermetti l-iskambju ta' informazzjoni bejn il-partijiet f'tilwima b' mezzi elettronici jew bil-konsenja rreġistrata permezz tas-servizz tal-posta jew kurrier;

Kap. 440.

(f) jiżgura li l-ipproċessar ta' *data* personali tkun konformi mar-regoli tal-protezzjoni ta' *data* personali kif stabbilit taht l-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*;

(g) jistabbilixxi regoli u linji gwida fir-rigward tal-implimentazzjoni tar-regolamenti magħmula skont l-artikolu 33; u

(h) jaqdi dawk il-funzjonijiet l-oħra kif huma assenjati lilu taht dan l-Att jew kull ligi oħra.

(2) L-Uffiċċju jista' jiddelega bil-miktub lil kull persuna impjegata mal-Uffiċċju, kull funzjoni tiegħu taht dan l-Att, hliet għal din is-setgħa ta' delegazzjoni.

Responsabbiltà tal-Uffiċċju.

12. (1) L-Uffiċċju għandu jkun responsabbli lejn il-Ministru għall-qadi tad-dmirijiet tiegħu.

(2) (a) L-Uffiċċju għandu jiżgura li jinżammu rekords ta' kontabilità xierqa, fil-forma stabbilita mill-Bord, li jkunu jirriflettu t-transazzjonijiet finanzjarji ta' jew li jkollhom x'jaqsmu mal-Uffiċċju.

(b) Il-kontijiet tal-Uffiċċju għandhom jiġu approvati mill-Bord.

(ċ) Rekords tal-kontijiet u ta' kull transazzjoni għandhom jinżammu għal perjodu ta' għaxar snin.

Kap. 174.

(d) Il-kontijiet u transazzjonijiet tal-Uffiċċju għandhom jiġu verifikati mill-Awditur Ġenerali, u l-Uffiċċju għandu jkun soġġett għall-Att dwar l-Amministrazzjoni Finanzjarja u l-Verifika.

(3) Il-kontenut u materjal ieħor li jkollhom x'jaqsmu mal-kontijiet imsemmija taht is-subartikolu (2) jistgħu jiġu preskritti b'regolamenti magħmulin taht dan l-Att.

Finanzjament tal-Uffiċċju.

13. Il-fondi tal-Uffiċċju għandhom jikkonsistu:

(a) fil-fondi provduti lill-Uffiċċju wara estimi preparati mill-Bord u approvati mill-Ministru skont l-artikolu 9(2)(d);

(b) fil-fondi li jakkumulaw lill-Uffiċċju minn kull sors ieħor.

14. (1) Il-Ministru għandu jahtar Arbitru minn fost persuni li jkun jidher lilu li jkunu kwalifikati li jaqdu din il-funzjoni.

Hatra ta' Arbitru.

(2) Persuna għandha tkun eliġibbli għall-hatra ta' Arbitru jekk ikollha l-kompetenza meħtieġa f'materji li jirrigwardaw il-konsumatur fir-rigward ta' servizzi finanzjarji, inkluż għarfien generali tal-liġi.

(3) Persuna ma tkunx eliġibbli għall-hatra bħala Arbitru jekk hi tkun:

(a) Membru tal-Kamra tad-Deputati jew Membru tal-Parlament Ewropew jew Sindku jew Kunsillier fuq Kunsill Lokali; jew

(b) uffiċjal pubbliku; jew

(ċ) membru jew impjegat ma' xi aġenzija, entità tal-Gvern jew awtorità lokali; jew

(d) persuna misjuba hatja ta' xi reat li jaffettwa l-fiduċja tal-pubbliku, jew ta' reat, ħlief għal reat involontarju, li jkun punibbli bi priġunerija għal żmien ta' mill-inqas sena.

(4) L-Arbitru m'għandu jkollu l-ebda kariga li ma tkunx kompatibbli mal-qadi korrett tad-dmirijiet uffiċjali tiegħu, bl-imparzjalità u l-indipendenza tiegħu, jew bil-fiduċja tal-pubbliku fih.

(5) L-Arbitru għandu jiddikjara li, u jfittex l-approvazzjoni tal-Ministru għal, kull kariga, *trusts* jew shubijiet li l-Arbitru jqis li ma jaffettwawx l-imparzjalità u l-indipendenza u l-fiduċja tal-pubbliku fil-qadi ta' dmirijietu taħt dan l-Att.

(6) Meta jinħatar, l-Arbitru għandu jieħu dan il-gurament tal-kariga:

"Jien naħlef / niddikjara solennement li ser inwettaq il-funzjonijiet ta' Arbitru onestament, imparzjalment, bid-diligenza dovuta, u mingħajr biża' jew favur skont il-liġi."

15. (1) L-Arbitru għandu jzomm il-kariga għal perjodu ta' seba' snin li warajh m'għandux ikun eliġibbli li jerga' jinħatar.

Il-perjodu tal-kariga.

(2) L-Arbitru jista' jirriżenja mill-kariga b'ittra indirizzata lill-Ministru.

(3) Il-hatra, it-tmiem tal-kariga jew ir-riżenja tal-Arbitru,

inkluż ir-raġunijiet għal dak it-tmiem jew rizenja kif ikun japplika, għandhom jiġu ppubblikati fil-Gazzetta.

Hatra ta' Arbitru sostitut.

16. (1) Il-Ministru jista' -

(a) f'kull hin matul marda jew assenza tal-Arbitru; jew

(b) għal kull fini temporanju meta l-Arbitru jqis li jkun meħtieġ li ma jimmedjax, ma jinvestigax, u ma jiddeċidix ilment/i minhabba ċirkustanzi li għalihom iqis li jkun xieraq li jastjeni,

jahtar Arbitru sostitut skont dan l-artikolu, u l-Arbitru sostitut għandu jithallas dik ir-rimunerazzjoni, kalkolata pro rata abbażi ta' hin fuq kemm jithallas l-Arbitru.

(2) Is-setgħa mogħtija bis-subartikolu (1)(b) għandha tiġi eżerċitata biss fuq dikjarazzjoni ffirmata mill-Arbitru bl-effett li, fil-fehma tiegħu, ikun meħtieġ għat-tmexxija xierqa tax-xogħol tal-Arbitru taħt dan l-Att li Arbitru sostitut għandu jinhatar temporanjament.

(3) Arbitru sostitut maħtur taħt dan l-artikolu minhabba fil-marda jew l-assenza tal-Arbitru għandu jzomm din il-kariga sakemm l-Arbitru jerga' jkun f'pożizzjoni li jassumi r-responsabbiltà ta' Arbitru, u kull Arbitru sostitut maħtur għal fini temporanju għandu jzomm dik il-kariga sakemm jaqdi l-funzjoni assenjata lilu.

(4) (a) Persuna ma tkunx kwalifikata li tiġi approvata bhala Arbitru sostitut taħt dan l-artikolu jekk tkun skwalifikata li tinhatar bhala Arbitru taħt l-artikolu 14.

(b) Id-dispożizzjonijiet tal-artikolu 14(4), (5) u (6) għandhom japplikaw għal persuna maħtura taħt dan l-artikolu.

Skwalifika jew tneħħija mill-kariga.

17. (1) Persuna għandha tiġi skwalifikata milli tibqa' bhala Arbitru u tista' titneħħa mill-kariga mill-Ministru minhabba f'inkapaċità ppruvata li taqdi l-funzjonijiet tal-kariga tagħha, kemm jekk għal mard korporali jew mentali jew imġiba hażina ppruvata:

Izda li fit-teħid ta' deċiżjoni biex titneħħa persuna mill-kariga ta' Arbitru taħt dan l-artikolu, il-Ministru għandu jaġixxi skont il-prinċipji ta' ġustizzja naturali.

(2) Id-deċiżjoni tal-Ministru biex persuna titneħħa mill-kariga ta' Arbitru tista' tiġi appellata lill-Qorti tal-Appell b'rikors illi għandu jiġi preżentat f'dik il-Qorti fi żmien għaxart ijiem mindu dik id-deċiżjoni tiġi notifikata lill-Arbitru.

(3) Il-Qorti tal-Appell għandha tordna n-notifika tar-rikors preżentat skont is-subartikolu (2) lill-Ministru li għandu jkollu għaxart ijiem biex jirrispondi.

(4) Appell intavolat taħt dan l-artikolu għandu jinstema' bl-urgenza u għandu jiġi determinat b'sentenza fi żmien erba' xhur mindu tkun giet preżentata r-risposta jew mindu jkun għalaq it-terminu għall-istess preżentata.

(5) Il-Qorti tal-Appell tista', fuq talba tal-Ministru jew tal-Arbitru, tqassar it-termini stabbiliti f'dan l-artikolu biex isiru l-appell u r-risposta.

18. (1) L-Arbitru hu eligibbli li jirċievi dak is-salarju u Rimunerazzjoni. konċessjonijiet kif il-Ministru jista' b'ordni fil-Gazzetta jistabbilixxi u dik ir-rimunerazzjoni għandha tiġi addebitata lill-Fond Konsolidat.

(2) Is-salarju u konċessjonijiet pagabbli lil Arbitru m'għandhomx ikunu mnaqqsa matul il-perjodu li l-Arbitru jibqa' jokkupa din il-kariga.

19. (1) Għandha tkun il-funzjoni primarja tal-Arbitru li jitratta ilmenti mressqa minn klijenti eligibbli permezz tal-mezzi ta' medjazzjoni skont l-artikolu 24, u fejn ikun meħtieġ, b'investigazzjoni u li jara li tingħata deċiżjoni fuq l-ilment imressaq. Il-funzjonijiet u s-setgħat tal-Arbitru għas-Servizzi Finanzjarji.

(2) B'żjieda mal-funzjonijiet taħt is-subartikolu (1), għandha tkun il-funzjoni tal-Arbitru li:

(a) jistabbilixxi regoli u linji gwida fir-rigward tal-implimentazzjoni tar-regolamenti magħmula skont l-artikolu 33;

(b) iwettaq dawk il-funzjonijiet kif jistgħu jiġu assenjati lilu taħt dan l-Att jew kull liġi oħra.

(3) Fil-qadi tal-funzjonijiet tiegħu taħt is-subartikolu (1), l-Arbitru għandu:

(a) jaġixxi indipendentement u imparzjalment, u m'għandux ikun soġġett għall-ordni jew kontroll ta' xi persuna jew awtorità oħra;

(b) jiddeċiedi u jaġti għidizzju fuq ilment b'referenza għal dak li, fil-fehma tiegħu, ikun ġust, ekwu u ragonevoli fiċ-ċirkustanzi partikolari u mertu sostantivi tal-każ;

(c) jikkunsidra u jieħu kont, b'dak il-mod u sakemm

huwa jidhiru xieraq, ta' ligijiet applikabbli u rilevanti, regoli u regolamenti, b'mod partikolari dawk li jirregolaw l-imġiba ta' provditur ta' servizz, inkluż linji gwida mahruġa mill-awtoritajiet superviżorji nazzjonali u tal-Unjoni Ewropea, il-prassi segwita f'oqsma finanzjarji u l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu sehhew il-fatti li jkunu taw lok għall-ilment;

(d) jittratta lment b'mod proċeduralment ġust, informali, ekonomiku u mhaffef;

(e) jittratta kull mistoqsija dwar preskrizzjoni skont il-ligi:

Izda l-provditur ta' servizzi finanzjarji jista' jqajjem l-eċċezzjoni tal-preskrizzjoni biss fl-ewwel sottomissjonijiet bil-miktub li huwa provdut dwarhom fl-artikolu 25(3)(b) sakemm ma jkunx awtorizzat mod ieħor mill-Arbitru li għandu jagħti r-raġunijiet għal dik l-awtorizzazzjoni:

Izda wkoll l-Arbitru ma jkunx intitolat li jqajjem il-kwistjoni tal-preskrizzjoni minn jeddu:

Izda wkoll xejn f'dan l-Att ma għandu jinftiehem bħala li qed jagħti xi setgħa lill-Arbitru li jagħti deċiżjoni dwar talba li tkun waqgħet bi preskrizzjoni skont il-ligi meta l-parti investigata tqajjem eċċezzjoni tal-preskrizzjoni.

(4) (a) Bla ħsara għal-limitazzjonijiet imposti minn dan l-Att jew kull liġi oħra, l-Arbitru għandu jkollu s-setgħat kollha li huma meħtieġa sabiex ikun jista' jaqdi l-funzjonijiet tiegħu b'mod xieraq inkluż is-setgħa li jharrek xhieda, li jagħti ġuramenti u li joħroġ ordnijiet interlokutorji, inkluż izda mhux limitat għal ordnijiet li jillimitaw it-trasferiment ta' proprjetà u assi ta' provditur tas-servizzi finanzjarji kif jista' jqis li jkun xieraq għall-qadi xieraq tal-funzjonijiet tal-kariga tiegħu. Arbitru jista' jastjeni u jista' jiġi kkontestat fl-istess ċirkustanzi bħal Imhalled tal-Qrati Superjuri:

Izda fil-ħruġ ta' ordnijiet interlokutorji taħt dan il-paragrafu, l-Arbitru għandu jimxi *mutatis mutandis* skont il-prinċipji li jirregolaw il-ħruġ ta' mandati kawtelatorji taħt il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

(b) (i) Arbitru jista' jahtar uffiċjal wiehed xieraq jew iżjed biex iwettqu funzjonijiet speċifiċi assenjati lilu taħt is-subartikolu (1).

(ii) Persuna titqies xierqa li tinhatar bħala

uffiċjal taht is-subparagrafu (i) jekk ikollha l-għarfien u l-kapaċità f'dawk l-oqsma li għalihom tkun giet mahtura.

(ċ) Arbitru jista', soġġett għad-disponibbiltà ta' rizzorsi, jahtar u jimpjega dak in-numru ta' membri ta' persunal tal-uffiċċju li jkunu mehtieġa għat-thaddim xieraq tal-Uffiċċju.

(d) Arbitru jista', kull meta jkun mehtieġ u soġġett għad-disponibbiltà ta' rizzorsi, jimpjega dawk il-konsulenti jew persuni li jagħtu parir sabiex jassistuh fit-twettiq tal-funzjonijiet tiegħu:

Izda dawk il-konsulenti jew persuni li jagħtu parir għandhom huma stess ikunu indipendenti minn, u imparzjali fir-rigward ta', il-partijiet fl-ilment jew ilmenti li dwarhom huma jkunu ġew ingaġġati.

(5) Kull persuna mahtura taht is-subartikolu (4) għandha:

(a) taqdi d-dmirijiet tagħha hielsa minn kull interferenza ġejja minn kwalsijasi persuna hlief għal kull ordni mogħtija mill-Arbitru;

(b) taġixxi b'heffa;

(ċ) ma tixxif kull informazzjoni miksuba minnha fit-twettiq tad-dmirijiet tagħha;

(d) tirrapporta perjodikament lill-Arbitru l-progress li jkun sar fir-rigward tal-ilmenti assenjati lilha u dwar kull kwistjoni oħra li taqa' fil-kompetenza tagħha.

(6) (a) Il-hatra, l-ingaġġ u l-impjeg tal-persuni msemmija taht is-subartikolu 4(b) sa (d) għandhom isiru mill-Arbitru, u l-pattijiet u l-kundizzjonijiet għandhom jiġu stabbiliti mill-Bord b'konsultazzjoni mal-Ministru.

(b) Il-Bord, meta jkun qed jistabbilixxi l-pattijiet u kundizzjonijiet, għandu jimxi mal-politika tal-Gvern li tkun qed tiġi osservata fir-rigward tar-rimunerazzjoni li tingħata lill-impjegati tas-settur pubbliku u kull ordni li l-Ministru jista' jagħti minn żmien għal żmien f'dan ir-rigward.

20. (1) (a) Arbitru għandu jizgura li fuq bażi annwali, l-Uffiċċju tiegħu jipprepara rapport annwali, fil-forma stabbilita mill-Bord, liema rapport għandu jinkludi l-attivitajiet magħmula mill-Uffiċċju matul dik is-sena, u għandu jipprezenta r-rapport fi żmien

Responsabbiltà tal-Arbitru.

sitt xhur mit-tmiem ta' kull sena lill-Bord għall-approvazzjoni tiegħu:

Iżda r-rapport m'għandux jiżvela d-dettalji jew kummenti fuq kull ilment li jkun għadu ma ġiex deċiż mill-Arbitru.

(b) Ir-rapport għandu jkollu sommarju tal-ilmenti kollha li jkunu saru u d-deċiżjonijiet meħuda mill-Arbitru matul is-sena finanzjarja preċedenti u tar-riżultati tal-investigazzjonijiet ta' dawk l-ilmenti, u tendenzi u xejriet fis-sottomissjoni ta' lmenti lill-Arbitru. Tista' tiġi inkluża f'dan ir-rapport statistika li tirreferi għall-isem ta' provdituri ta' servizz li kontra tagħhom ikunu ngħataw deċiżjonijiet li saru *res judicata*.

(c) Kopja tar-rapport annwali għandha titqiegħed fuq il-Mejda tal-Kamra tad-Deputati u għandha tkun aċċessibbli għall-pubbliku b'dak il-mod kif il-Bord jista' jiddeċiedi.

(2) Il-kontenut u materji li jkollhom x'jaqsmu mar-rapport imsemmi taht is-subartikolu (1) jistghu jiġu preskritti b'regolamenti magħmula taht dan l-Att.

TAQSIMA IV

Kompetenza

Kompetenza tal-Arbitru.

21. (1) (a) Xejn f'dan l-Att m'għandu jimplika li l-ilment relatat mal-imġiba ta' provditur tas-servizz finanzjarju għandu jkun regolat esklussivament bid-dispożizzjonijiet ta' dan l-Att:

Iżda riżultanzi u konklużjonijiet milhuqa minn Arbitru wara li jkun tressaq ilment skont dan l-Att għandhom jorbtu lill-partijiet, hliet għad-dritt ta' appell regolat bl-artikolu 27.

(b) Arbitru għandu jkollu l-kompetenza li jisma' lmenti skont il-funzjonijiet tiegħu taht l-artikolu 19(1) fir-rigward tal-imġiba ta' provditur tas-servizz finanzjarju li tkun seħħet fl-ewwel ta' Mejju 2004 jew wara:

Iżda lment dwar imġiba li tkun seħħet qabel id-dhul fis-seħħ ta' dan l-Att għandu jsir lill-Arbitru sa mhux aktar tard minn sentejn minn meta dan il-paragrafu jidhol fis-seħħ.

(ċ) Arbitru għandu jkollu wkoll il-kompetenza li jisma' lmenti skont il-funzjonijiet tiegħu taht l-artikolu 19(1) fir-rigward tal-imġiba ta' provditur tas-servizz finanzjarju li tkun seħħet wara l-bidu fis-seħħ ta' dan l-Att, jekk ilment jiġi registrat bil-miktub mal-provditur tas-servizz finanzjarju mhux iżjed tard minn sentejn wara l-ġurnata li fiha l-persuna li tkun qed tagħmel l-ilment l-ewwel kellha konnoxxenza tal-kwistjonijiet li lmentat dwarhom.

(d) Għall-fini ta' dan is-subartikolu, imġiba li tkompli fix-xorta għandha tiġi preżunta li tkun sehhet fiż-żmien meta tkun waqfet, u imġiba li tkun tikkonsisti minn serje ta' atti jew ommissjonijiet għandha tiġi preżunta li tkun sehhet meta l-aħħar minn dawk l-atti jew ommissjonijiet ikunu sehhu.

(2) Arbitru għandu jirrifjuta li jeżerċita s-setgħat tiegħu taht dan l-Att meta:

(a) l-imġiba li jkun sar l-ilment dwarha hi jew kienet soġġetta għal kawża quddiem qorti jew tribunal mibdija mill-istess persuna li tkun qed tagħmel l-ilment u li tkun dwar l-istess mertu:

Izda xejn minn dak li jinsab f'dan il-paragrafu m'għandu jinftiehem li jimpedixxi l-kompetenza tal-Arbitru li jikkunsidra lmenti li jkunu qegħdin jiġu trattati jew li jkunu ġew trattati mill-Awtorità għas-Servizzi Finanzjarji ta' Malta, u r-rakkomandazzjonijiet, direttivi jew deċiżjonijiet mogħtija minn dik l-Awtorità m'għandhomx jiġu kkunsidrati bhala li taw lok għal *res judicata* tal-kaz tal-persuna li tkun qed tagħmel l-ilment; jew

(b) ikun jirriżulta li l-klijent naqas milli jikkomunika s-sustanza tal-ilment lill-provditur tas-servizz finanzjarju involut u ma jkunx ta opporunità raġonevoli lill-provditur tas-servizz finanzjarju sabiex jittratta l-ilment qabel ma jkun ressaq l-ilment mal-Arbitru; jew

(ċ) l-ilment ikun, fil-fehma tal-Arbitru, frivolu jew vessatorju.

(3) (a) Arbitru ma jistax jagħti kumpens fi flus ta' iżjed minn mitejn u hamsin elf euro (€250,000), flimkien ma' kull somma addizzjonali għal imgħax dovut u spejjeż ohra, għal kull persuna li tkun qed tagħmel l-ilment għal pretensjonijiet li johrogu mill-istess imġiba.

(b) Arbitru jista', jekk iqis li kumpens ġust għandu jkun ikbar minn dak imsemmi fil-paragrafu (a), jirrakkomanda li l-provditur tas-servizzi finanzjarji jhallas lill-persuna li tkun għamlet l-ilment, il-bilanċ, iżda din ir-rakkomandazzjoni ma torbotx lill-provditur tas-servizz.

(ċ) Għall-fini li jiġi stabbilit l-ekwivalenti f'euro tal-pretensjonijiet għad-danni kontra provditur tas-servizz deċiż mill-Arbitru li jkun totalment jew parzjalment sostanzjat, kull valuta

barranija għandha tiġi konvertita għal euro bir-rata medja tal-kambju kif ppubblikata mill-Bank Ċentrali ta' Malta fid-data ta' meta l-ilment ikun ġie mressaq quddiem l-Uffiċċju tal-Arbitru.

TAQSIMA V
Proċedimenti

Proċedimenti
relatati ma'
lmenti.

Kap. 16.

22. (1) Persuna li tkun qed tagħmel l-ilment għandha tressaq ilment quddiem l-Arbitru bil-miktub fejn tidentifika l-parti li kontriha jkun sar l-ilment, ir-raġunijiet għall-ilment, u r-rimedju li jkun qed jintalab u l-artikoli 2131 u 2132 tal-Kodiċi Ċivili għandhom japplikaw *mutatis mutandis* għall-interruzzjoni tal-preskrizzjoni sa minn mindu l-Arbitru jirċievi l-ilment. Ir-referenza ta' kull haġa lill-Arbitru għandha, għal dak li għandu x'jaqsam mal-preskrizzjoni, ikollha l-istess effett ta' azzjoni ġudizzjarja quddiem qorti kompetenti u l-artikolu 2117A tal-Kodiċi Ċivili għandu japplika *mutatis mutandis*. Kull referenza għall-preskrizzjoni f'dan l-Att għandha tinftiehem bhala referenza għall-preskrizzjoni taht il-Kodiċi Ċivili.

(2) Malli jitressaq l-ilment, l-Arbitru għandu jiddeċiedi jekk l-ilment jaqax fil-kompetenza tiegħu.

(3) Arbitru m'għandux jipproċedi li jittratta lment sakemm l-Arbitru ma jkunx:

(a) avza lill-persuna li kontriha jkun qed isir l-ilment bl-ilment;

(b) iprovda lill-persuna li kontriha jkun qed isir l-ilment dawk id-dettalji li jkunu jippermettulha li tagħti risposta fuq l-ilment; u

(ċ) iprovda lill-persuna li kontriha jkun qed isir l-ilment opportunità li tipprezenta r-risposta għall-ilment. Dik ir-risposta għandha tintbagħat lill-Arbitru fi żmien għoxrin gurnata minn meta l-Arbitru jikkomunika l-ilment lill-persuna li kontriha jkun qed isir l-ilment.

Il-persuna li tkun qed tagħmel l-ilment u l-persuna li kontriha jkun qed isir l-ilment għandhom dritt li jkunu rappreżentati u assistiti minn persuna jew persuni tal-fiduċja tagħhom.

(4) Arbitru jista' jagħmel inkjesta preliminari għall-fini li jiddeċiedi jekk ilment għandux jiġi investigat taht din it-Taqsima, u jista' jitlob lill-persuna li tkun qed tagħmel l-ilment sabiex tippovdi informazzjoni ulterjuri f'perjodu ta' żmien speċifikat:

Izda l-Arbitru jista' jiddeċiedi li ma jkomplix jittratta l-

ilment jekk il-persuna li tkun qed tagħmel l-ilment tonqos milli tkun konformi ma' talba biex tagħti informazzjoni ulterjuri fiż-żmien speċifikat mill-Arbitru.

(5) Kemm jista' jkun malajr, wara li l-Arbitru jkun iddeċieda li l-ilment ma jaqax fil-kompetenza tiegħu, jew wara li jiddeċiedi li ma jkomplix bl-ilment, l-Arbitru għandu:

(a) javża lill-persuna li tkun qed tagħmel l-ilment bil-miktub bid-deċiżjoni u r-raġunijiet tiegħu;

(b) jipprovdi lill-Bord kopja tad-deċiżjoni.

(6) Meta jiġi pprezentat ilment mal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji, il-persuna li tkun qed tagħmel l-ilment għandha thallas tariffa kif preskritt taht dan l-Att, liema tariffa tingħata lura biss f'każ li l-persuna li tkun qed tagħmel l-ilment tiddeċiedi li tirtira l-ilment jew iż-żewġ partijiet jilhqqu ftehim għat-tilwima, u fiż-żewġ istanzi l-Arbitru jiġi notifikat bil-miktub bid-deċiżjoni, liema notifika għandha tilhaq lill-Uffiċċju tal-Arbitru qabel ma l-Arbitru jkun ha deċiżjoni dwar jekk l-ilment jaqax fil-kompetenza tiegħu jew le.

(7) Jekk -

(a) qabel l-Arbitru, jkun ha deċiżjoni, il-persuna li tkun qed tagħmel l-ilment tavża lill-Arbitru bil-miktub bl-irtirar tal-ilment tagħha; jew

(b) il-partijiet jilhqqu ftehim għat-tilwima, kemm jekk b'riżultat ta' medjazzjoni skont l-artikolu 24 jew xort'ohra; jew

(c) it-tkomplija tal-proċeduri tal-ilment għal xi raġuni ma jibqgħux meħtieġa jew possibbli,

l-Arbitru għandu:

(i) jew johroġ ordni għat-tmiem tal-proċedimenti tal-ilment; jew

(ii) jekk mitlub miż-żewġ partijiet u jiġi aċċettat mill-Arbitru, jirreġistra l-ftehim dwar it-termini miftiehma.

(8) Bla ħsara għad-dispożizzjonijiet ta' dan l-Att u ta' kull regola magħmula hawn taht kif imsemmi fl-artikolu 33, l-Arbitru għandu jirregola l-proċedimenti kif jidhirlu xieraq skont ir-regoli ta' ġustizzja naturali:

Iżda l-ebda proċedimenti quddiem l-Arbitru m'għandhom

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ikunu invalidi minħabba f'xi nuqqas ta' osservanza ta' xi formalitajiet jekk kien hemm konformità sostantiva mal-ligi.

Atti kawtelatorji.

Kap. 12.

23. (1) Sakemm ma jkunx miftiehem mod iehor mill-partijiet, kull parti tista' titlob lill-Qorti sabiex toħroġ kull att kawtelatorju msemmi fl-artikolu 830(1) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, bla ħsara għad-dispożizzjonijiet tas-subartikoli li ġejjin.

Kap. 12.

(2) Meta, skont is-subartikolu (1), ikun inhareġ att kawtelatorju, dak l-att għandu jibqa' fis-seħħ sa dak iż-żmien meta jiskadi jew jiġi revokat skont id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew sa dak iż-żmien kif l-Arbitru -

(a) ikun iddecieda li l-ilment ma jaqax taħt il-kompetenza tiegħu, jew wara li jkun iddecieda li ma jkomplix bl-ilment skont l-artikolu 27; jew

(b) wara li jkun ha deċiżjoni dwar l-ilment, ikun ordna lill-parti li tkun ħarġet l-att kawtelatorju li tirtira l-istess u toħroġ il-kontro-mandat relattiv.

Kap. 12.

(3) Minkejja dak kollu li jinsab fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, iż-żmien stabbilit li fih l-azzjoni għandha tiġi istitwita fir-rigward tad-dritt imsemmi fl-att kawtelatorju maħruġ, għandu jkun ta' għoxrin ġurnata minn meta l-att ġudizzjarju ġie preżentat fejn il-Qorti tkun mitluba li toħroġ l-att kawtelatorju. Id-dispożizzjonijiet tal-Kodiċi msemmi għall-estensjoni taż-żmien imsemmi għandu japplika wkoll.

(4) Azzjoni kif imsemmi fis-subartikolu (3) għandha titqies li tkun ittieħdet, u proċedimenti tal-ilment mal-Arbitru jkunu jitqiesu li nbdew, meta l-ilment bil-miktub jkun ġie ppreżentat mill-persuna li tkun qed tagħmel l-ilment lill-Arbitru skont l-artikolu 22(1).

(5) Il-parti li fuq talba tagħha att kawtelatorju jkun inhareġ skont dan l-artikolu għandha, fiż-żmien speċifikat fis-subartikolu (3), tippreżenta nota fl-atti tal-proċedimenti għall-ħruġ tal-imsemmi att kawtelatorju flimkien ma' ċertifikat maħruġ mill-Arbitru fejn ikun qiegħed jirrikonoxxi l-ilment tal-parti.

Kap. 12.

(6) Il-Bord stabbilit taħt l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jagħmel regoli li jkollhom x'jaqsmu ma' kwistjonijiet ta' atti kawtelatorji u ordnijiet bħal dawk meta jkollhom x'jaqsmu ma' proċedimenti tal-ilmenti ppreżentati lill-Arbitru.

Medjazzjoni.

24. (1) Ilment dwar l-imġiba ta' provditur tas-servizzi

finanzjarji għandu, fejn ikun possibbli, jiġi trattat primarjament b'medjazzjoni.

(2) Parteċipazzjoni fil-medjazzjoni mill-partijiet għal xi lment għandha tkun volontarja, u parti tista' tirtira mill-parteċipazzjoni f'kull hin.

(3) Il-proċess tal-medjazzjoni għandu jitwettaq mill-uffiċjali mahtura mill-Bord taht l-artikolu 8(1), liema funzjoni għandha tkun li jaġixxi ta' medjatur bejn il-persuna li tkun qed tagħmel l-ilment u l-provditur tas-servizzi finanzjarji. Lista ta' dawk l-uffiċjali għandha tinzamm mill-Bord:

Izda li l-medjatur jista' jabbanduna tentattiv biex isolvi lment b'medjazzjoni wara li jkun ifforma l-opinjoni li t-tentattiv x'aktarx li ma jirnexxi.

(4) Bla ħsara għad-dispożizzjonijiet ta' hawn qabel u għal kull regolament magħmul taht is-subartikolu (7), il-medjatur jista' jirregola l-proċeduri tiegħu.

(5) Il-proċeduri ta' medjazzjoni għandhom isiru fil-privat u kull riżoluzzjoni ta' tilwima li tirriżulta minn medjazzjoni m'għandux ikollha r-riżoluzzjoni tagħha ppublikata taht l-ebda format.

(6) Ma jista' jsir l-ebda appell skont l-artikolu 27 minn kull haġa magħmula minn xi uffiċjal li jkun qed jaġixxi fil-kapaċità tiegħu bhala medjatur.

(7) Il-Ministru jista', wara konsultazzjoni mal-Arbitru u l-Bord, jagħmel regolamenti sabiex jagħti effett aħjar lid-dispożizzjonijiet ta' dan l-artikolu u, mingħajr preġudizzju għall-generalità ta' dak imsemmi, huwa jista':

(a) jistabilixxi l-proċedura li għandha tiġi segwita mill-uffiċjal fil-kapaċità tiegħu bhala medjatur;

(b) jippreskrivi t-tipi ta' applikazzjonijiet li persuna li tkun qed tagħmel l-ilment tista' tirreferi lill-uffiċjal; u

(ċ) jippreskrivi l-proċedura li għandha tiġi segwita fil-formulazzjoni ta' rapport mill-uffiċjal.

25. (1) Meta l-proċess ta' medjazzjoni kif stipulat fl-artikolu 24 ikun mingħajr suċċess, l-Arbitru għandu jgħaddi biex jittratta l-investigazzjoni meħtieġa fil-privat. Investigazzjoni.

(2) (a) L-Arbitru għandu jipprovdi lill-partijiet opportunità

li jagħmlu s-sottomissjonijiet tagħhom b' mod orali u, jew bil-miktub fir-rigward tal-imgħiba li minnha jkun qiegħed isir l-ilment.

(b) Sottomissjonijiet bil-miktub għandhom jiġu pprezentati fi żmien għoxrin gurnata, u dak il-perjodu jibda jiddekorri mill-gurnata li fiha l-partijiet jircievu l-komunikazzjoni bil-miktub dwar l-investigazzjoni mill-Arbitru.

(ċ) Sottomissjonijiet bil-miktub magħmula minn waħda mill-partijiet lill-Arbitru għandhom jiġu notifikati lill-parti l-oħra jew lill-persuna li tkun qed tassisti jew tipprezenta lill-parti skont l-artikolu 22(3).

(d) Kull meta tintalab notifika jew komunikazzjoni lill-parti l-oħra taht dan l-Att, dik in-notifika jew komunikazzjoni għandha ssir bil-konsenja rreġistrata permezz tas-servizz tal-posta jew kurrier.

(3) (a) L-Arbitru għandu jżomm mill-inqas udjenza waħda għas-smiġh tal-ilment.

(b) L-Arbitru għandu jiddeciedi l-ammissibbiltà, ir-rilevanza, il-materjalità u l-piż tax-xhieda dokumentarja u orali.

(ċ) Is-smiġh għandu jsir fil-pubbliku sakemm l-Arbitru, b' deċiżjoni li tinkludi r-raġunijiet, ma jiddecidix mod ieħor.

(d) L-ebda waħda mill-partijiet m'għandha tintalab li tkun rappreżentata jew assistita għal seduti orali. Jekk parti waħda biss tkun rappreżentata jew assistita, l-Arbitru għandu jiżgura li s-smiġh jibqa' wieħed gust għaż-żewġ partijiet.

(4) Fil-proċess ta' investigazzjoni, l-Arbitru għandu javża lill-partijiet bil-progress li jkun sar.

(5) L-Arbitru jista' jitlob il-produzzjoni ta' informazzjoni jew dokumentazzjoni minn waħda mill-partijiet jew minn terza persuna, skont kif ikun il-każ, li l-Arbitru jqis meħtieġa jew rilevanti għad-deċiżjoni dwar l-ilment, liema informazzjoni jew dokumentazzjoni għandha tiġi provduta qabel it-tmiem ta' dak il-perjodu raġonevoli kif l-Arbitru għandu jispeċifika, u fil-każ ta' informazzjoni, b' dak il-mod jew forma kif jista' jiġi speċifikat mill-Arbitru:

Izda bil-ghan li jikseb dik l-informazzjoni jew dokumentazzjoni, l-Arbitru għandu jkollu s-setgħa li jharrek xhieda u jamministra ġurament lil kull xhud u lil kull persuna involuta fl-investigazzjoni, inkluż il-persuna li tkun qed tagħmel l-ilment u l-provditur tas-servizz, u sabiex jitlob persuni jagħtu xhieda, u r-regoli tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom japplikaw *mutatis mutandis* għall-produzzjoni ta' xhieda quddiem l-Arbitru: Kap. 12.

Izda wkoll kull persuna li tiġi mħarrka biex tidher quddiem l-Arbitru taħt dan l-artikolu għandu jkollha l-istess drittijiet u obbligi bħal xhud imħarrek li jidher quddiem il-Qorti ta' Ġurisdizzjoni Ċivili.

(6) (a) Informazzjoni miksuba mill-Arbitru jew minn kull uffiċjal jew persuna fl-Uffiċċju tiegħu matul jew għall-fini ta' xi investigazzjoni taħt dan l-Att m'għandhiex tiġi żvelata hlief għall-finijiet:

- (i) tal-investigazzjoni u ġudizzju;
- (ii) kull rapport magħmul taħt dan l-Att; jew
- (iii) kull proċedura li għandha x'taqsam ma' xi reat taħt dan l-Att.

(b) L-Arbitru, l-uffiċjali jew persuni fl-Uffiċċju tiegħu m'għandhomx jiġu msejja sabiex jagħtu xhieda fi proċedimenti, hlief għal kif imsemmi taħt il-paragrafu (a), fuq kwistjonijiet li ġew għall-konjizzjoni tagħhom matul l-investigazzjoni jew fl-eżekuzzjoni tad-dmirijiet imwettqa minnhom taħt dan l-Att.

(ċ) L-artikolu 133 tal-Kodiċi Kriminali għandu japplika għal u fir-rigward tal-Arbitru u kull uffiċjal jew persuna fl-Uffiċċju tiegħu kif japplikaw għal jew fir-rigward ta' xi uffiċjal pubbliku jew impjegat kif hemm fl-imsemmi artikolu tal-Kodiċi Kriminali. Kap. 9.

(7) Fil-proċess ta' investigazzjoni, l-Arbitru jista' jidhol u jispezzjona kull bini okkupat jew użat mill-provditur tas-servizzi finanzjarji jew minn kull persuna jew korp li fil-fehma tal-Arbitru jkun assoċjat mal-provditur tas-servizzi finanzjarji u jispezzjona kull dokument jew oġġett fil-bini.

26. (1) Wara t-tmiem tal-investigazzjoni tal-ilment taħt l-artikolu 25, l-Arbitru għandu jipproċedi biex jieħu deċiżjoni. Tehid ta' deċiżjoni.

(2) L-Arbitru għandu jipproċedi għal deċiżjoni fi zmien disghin ġurnata mid-data li fiha jkun wasal l-ilment:

Iżda meta l-ilment ikun kumpless fix-xorta tiegħu, l-Arbitru għandu jagħti r-riżultanzi tiegħu mal-ewwel opportunità li jkollu liema data ma tkunx aktar tard minn sena mid-data li fiha jkun wasal l-ilment u għandu javża lill-partijiet involuti bid-data tad-deċiżjoni mistennija:

Iżda wkoll in-nuqqas ta' tharis tat-termini stipulati f'dan is-subartikolu ma għandu jgħib ebda nullità.

(3) (a) Ir-riżultanzi u l-konkluzjonijiet milhuqa mill-Arbitru għandhom jiġu mfassla, bil-miktub, f'deċiżjoni li fiha jingħataw ir-raġunijiet tal-Arbitru għaliha li tinqara bil-miftuħ mill-Arbitru f'jum li jiġi debitament notifikat lill-partijiet.

(b) Id-deċiżjoni tista' tinkludi kull ordni mogħtija taht il-paragrafu (c).

(c) Jekk l-ilment jinstab totalment jew parzjalment sostanzjat, l-Arbitru jista' jordna lill-provditur tas-servizzi finanzjarji jagħmel waħda jew iżjed minn dawn li ġejjin:

(i) li jirrevedi, jirrettifika, jimmitiga jew ibbidel l-imġiba li fuqha jkun sar l-ilment jew il-konsegwenzi tagħha;

(ii) li jagħti raġunijiet jew spjegazzjonijiet għal dik l-imġiba;

(iii) li jbidel xi Prattika li jkollha x'taqsam ma' dik l-imġiba;

(iv) li jhallas ammont ta' kumpens għal kull telf ta' kapital jew dħul jew danni sofferti mill-persuna li tagħmel l-ilment minhabba fl-imġiba li fuqha jkun sar l-ilment, mingħajr imġħax jew bl-imġħax, b'dik ir-rata raġonevoli u fil-parametri stabbiliti bil-liġi kif l-Arbitru jista' jiddeċiedi, fuq il-flus kollha jew xi parti mill-flus, u fuq iż-żmien kollu jew xi parti mill-perjodu bejn id-data li fiha l-imġiba li fuqha jkun sar l-ilment tkun bdiet u d-data li fiha d-deċiżjoni tal-Arbitru tkun ittiehdet;

(v) li jispeċifika l-perjodu li fih l-ordni għandha titwettaq mill-provditur tas-servizzi finanzjarji.

(d) Fid-deċiżjoni tiegħu l-Arbitru għandu wkoll jiddeċiedi fuq l-ispejjeż tal-proċedimenti, minn min għandhom jiġihallu u, jekk ikun meħtieġ, f'liema proporzjon, skont iċ-ċirkustanzi tal-każ.

(e) Fil-każ li provditur ta' servizzi finanzjarji jsir

insolventi skont it-tifsira mogħtija lil dak it-terminu minn xi ligijiet jew regolamenti li jkunu jipprovdu għal skema ta' kumpens għall-investitur, skema ta' kumpens għal depożitanti, fond ta' protezzjoni u kumpens jew kull skema oħra ta' kumpens jew fond li jkunu applikabbli dwar is-settur tal-provdituri ta' servizzi finanzjarji li għalih dak il-provditur ta' servizzi finanzjarji jkun jappartjeni, u bħala konsegwenza tal-imsemmija insolvenza l-provditur ta' servizzi finanzjarji ma jkunx f'qagħda li jhallas il-kumpens li jkun ingħata b'deċiżjoni tal-Arbitru jew sussegwentement għaliha, min ikun għamel l-ilment għandu minkejja kull ligi oħra jithallas sa għoxrin elf euro mill-imsemmi fond jew skema li jkun jew tkun tapplika fis-settur ta' provdituri ta' servizzi finanzjarji li għalih ikun jappartjeni l-provditur ta' servizzi finanzjarji.

(4) Fi żmien hmistax-il gurnata mid-data meta d-deċiżjoni tal-Arbitru tiġi notifikata lill-partijiet, kull waħda mill-partijiet, b'notifika lill-parti l-oħra, tista' titlob lill-Arbitru jagħti kjarifika tal-għotja, jew titlob lill-Arbitru sabiex jikkoreġi xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili li jkunu jinsabu fid-deċiżjoni tal-Arbitru. L-Arbitru għandu jagħti dik il-kjarifika jew jagħmel kull korrezzjoni meħtieġa fi żmien hmistax-il gurnata mill-wasla tat-talba ta' parti.

27. (1) Id-deċiżjoni milħuqa mill-Arbitru inkluż kull deċiżjoni interlokutorja, tista' tkun soġġetta għal appell minn kull waħda mill-partijiet. Appell u infurzar.

(2) (a) L-appell mid-deċiżjoni kif imsemmi fis-subartikolu (1) għandu jsir quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) stabbilita skont l-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili. Kap. 12.

(b) Appelli minn deċiżjonijiet interlokutorji jistgħu jiġu ppreżentati biss wara d-deċiżjoni finali.

(3) Appell mill-Qorti tal-Appell (Kompetenza Inferjuri) skont l-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandu jiġi ppreżentat fir-reġistru tal-imsemmija Qorti fi żmien għoxrin gurnata mid-data meta d-deċiżjoni tal-Arbitru tkun giet notifikata lill-partijiet jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni ta' deċiżjoni skont l-artikolu 26(4), mid-data meta tkun saret dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni mill-Arbitru, għandha tiġi notifikata lill-partijiet, u dak l-appell għandu jiġi regolat bir-regoli tal-Qorti magħmula taħt l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili. Kap. 12.

(4) Meta l-ebda appell ma' jiġi ppreżentat minn ebda parti, id-deċiżjoni tal-Arbitru għandha ssir *res judicata*.

(5) Kopja ta' dik id-deċiżjoni għandha tinghata mill-Arbitru lill-Bord. Deċiżjonijiet bħal dawk għandhom jinżammu fir-Registru xieraq, liema Registru għandu jkun aċċessibbli fuq talba mill-pubbliku.

(6) Wara li d-deċiżjoni tal-Arbitru ssir *res judicata* kif imsemmi fis-subartikolu (4), jekk fil-fehma tal-Arbitru jkun hemm xhieda sostanzjali ta' xi ksur sinifikanti ta' dmir jew imġiba ħażina min-naħa tal-provditur tas-servizzi finanzjarji, jew kull imġiba kriminali minn kull waħda mill-partijiet, l-Arbitru għandu jirreferi l-kwistjoni lill-awtoritajiet kompetenti sabiex jieħdu kull azzjoni xierqa ulterjuri, jekk ikun hemm, skont il-liġi.

(7) Deċiżjoni tal-Arbitru li tkun saret *res judicata*, il-pattijiet tal-ftehim imniżzla mill-Arbitru skont l-artikolu 22(7)(ċ)(ii) u d-deċiżjoni tal-Qorti tal-Appell (Kompetenza Inferjuri), għandhom jikkostitwixxu titolu eżekuttiv skont l-artikolu 253 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

Proċedura
relatata ma'
talba għal
informazzjoni.

28. (1) Kull talba għal informazzjoni għandha ssir minn klijent eliġibbli jew provditur tas-servizzi finanzjarji lill-Uffiċċju b'mod orali jew bil-miktub.

(2) Kull talba għal informazzjoni taħt is-subartikolu (1) għandha ssir mill-uffiċjali maħtura mill-Arbitru taħt l-artikolu 19(4), mil-lista tal-uffiċjali miżmuma mill-Bord.

(3) Fil-qadi tal-funzjoni taħt is-subartikolu (2), l-uffiċjal għandu jirregola l-proċedura tiegħu.

(4) Ir-rizultanzi fuq it-talba għal informazzjoni mogħtija mill-uffiċjal għandhom jiġu notifikati lill-Bord, u komunikati lill-persuna li tkun talbet l-informazzjoni fi żmien tletin gurnata mid-data li l-Uffiċċju jirċevihom b'kull mezz li jkun, ukoll jekk mhux b'mod formali.

(5) Ir-rizultanzi fuq kull talba għal informazzjoni għandhom ikunu ta' natura informattiva biss u ma jistgħux jingiebu bħala prova f'kawża quddiem xi Qorti jew tribunal.

(6) Il-Ministru jista', wara konsultazzjoni mal-Arbitru u l-Bord, jagħmel regolamenti sabiex jagħti effett aħjar lid-dispożizzjonijiet ta' dan l-artikolu.

TAQSIMA VI

Mixxellanji

Delega ta'
funzjonijiet.

29. (1) L-Arbitru jista' jiddelega bil-miktub lil kull persuna

li jkollha kull kariga tahtu kull waħda mis-setgħat tiegħu taht dan l-Att, hliet din is-setgħa li jiddelega u s-setgħa li jiehu deċiżjonijiet u jiġġudika.

(2) Delega ta' funzjonijiet taht dan l-Att għandha tkun mingħajr preġudizzju għall-qadi ta' dawk il-funzjonijiet mill-Arbitru, u għandha tkun revokabbli mill-Arbitru skont kif jidhirlu hu.

30. L-Arbitru jista', jekk iqis li jkun xieraq, jittratta lmenti individwali magħmula mal-Uffiċċju flimkien, sakemm dawk l-ilmenti jkunu intrinsikament simili fix-xorta tagħhom. Konsiderazzjoni ta' lmenti simili.

31. Hliet kif iddikjarat mod ieħor f'dan l-Att, l-Uffiċċju tal-Arbitru u l-Arbitru għandhom igawdu immunità sħiħa minn kull azzjoni ċivili jew kriminali għal kull att jew ommissjoni fi jew li johorġu mill-eżekuzzjoni tad-dmirijiet uffiċjali tagħhom sakemm ma jintweriex li l-persuna involuta aġixxiet b'*mala fede*. Immunità.

32. (1) Kull persuna li: Reati u pieni.

(a) tonqos milli tkun konformi ma' xi ordni mogħtija mill-Arbitru tkun haġta ta' reat kontra dan l-Att u tehel, meta tinstab haġta, multa ta' mhux inqas minn ħames mitt euro (€500) u mhux iżjed minn elf euro (€1,000);

(b) tostakola l-Arbitru fl-eżerċizzju tas-setgħat mogħtija b'dan l-Att tkun haġta ta' reat kontra dan l-Att u tehel, meta tinstab haġta, multa ta' ħames mitt euro (€500);

(c) meta mharrka sabiex tagħti xhieda quddiem l-Arbitru jew kull uffiċjal taht dan l-Att, xjentement tagħti informazzjoni, liema informazzjoni tkun falza jew qarrieqa, tkun haġta ta' reat kontra dan l-Att u tehel, meta tinstab haġta, multa ta' ħames mitt euro (€500).

(2) Proċedimenti kontra kull persuna għal xi reat kif imsemmi fis-subartikolu (1) għandhom jiġu istitwiti quddiem il-Qorti tal-Maġistrati (Malta) jew quddiem il-Qorti tal-Maġistrati (Għawdex), skont kif ikun il-każ, bħala qrati ta' ġudikatura kriminali skont id-dispożizzjonijiet tal-Kodiċi Kriminali. Kap. 9.

33. Il-Ministru jista', b'konsultazzjoni mal-Arbitru u l-Bord, jagħmel regolamenti sabiex: Setgħa li jagħmel regolamenti.

(a) jistabbilixxi l-proċedura għall-preżentazzjoni u l-ġestjoni ta' lmenti;

(b) jistabbilixxi l-proċedura għall-investigazzjoni ta' lmenti;

(c) jistabbilixxi l-proċedura għad-deċiżjoni ta' lmenti;

(d) jistabbilixxi l-imposti u d-drittijiet pagabbli taht dan l-Att u tariffi dwar servizzi professjonali jew ta' konsulenza li jingħataw lill-klijenti dwar talbiet jew proċeduri skont dan l-Att;

(e) jistabbilixxi l-persuni jew il-korpi li għalihom dan l-Att ma jkunx japplika;

(f) jispeċifika è-ċirkustanzi li fihom l-Arbitru jista' jiddeċiedi li ma jittrattax ilment mingħajr ma jieħu konsiderazzjoni tal-merti;

(g) jistabbilixxi l-post jew il-postijiet li fihom l-Arbitru jiġi mitlub li jagħmel disponibbli kopji tar-riżultanzi, deċiżjonijiet u kull rapport li l-Arbitru jiġi mitlub li jipprepara; u

(h) jagħti effett aħjar lid-dispożizzjonijiet ta' dan l-Att, u għall-infurzar aħjar tagħhom.

34. L-artikolu 253 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandu jiġi emendat kif ġej:

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

(a) fil-paragrafu (g) tiegħu, minflok il-kliem "deċiżjonijiet tat-Tribunal għal Talbiet ta' Konsumaturi.", għandhom jidhlu l-kliem "deċiżjonijiet tat-Tribunal għal Talbiet ta' Konsumaturi;" u

(b) minnufih wara l-paragrafu (g) tiegħu, għandu jizdied il-paragrafu ġdid li ġej:

"(h) deċiżjonijiet u għotjiet tal-Arbitru għas-Servizzi Finanzjarji skont id-dispożizzjonijiet tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 369 tal-15 ta' Marzu, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

**MARIE LOUISE
COLEIRO PRECA
President**

22nd March, 2016

ACT No. XVI of 2016

AN ACT to set up the Office of the Arbiter for Financial Services with power to mediate, investigate, and adjudicate complaints filed by a customer against a financial services provider, to set up a Board of Management responsible for the administration of the Office of the Arbiter for Financial Services, and to provide for other purposes connected therewith.

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:-

PART I

Preliminary

Short title and commencement.

1. (1) The short title of this Act is the Arbiter for Financial Services Act, 2016.

(2) This Act shall come into force on such date as the Minister responsible for Finance may by notice in the Gazette establish, and different dates may be so established for different provisions or different financial services provided by a financial services provider or for different purposes of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires:

"Arbiter" means the Arbiter for Financial Services appointed under article 14 of this Act;

"Board" means the Board of Management and Administration

established under article 3;

"customer" means a natural person, including his successors in title, or a micro enterprise;

"durable medium" means any instrument which enables the storage of information addressed personally to a particular person in a way accessible for future reference and for a period of time adequate for the purposes of the information, and allows the unchanged reproduction of the information stored;

"eligible customer" means a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider. It includes the lawful successor in title to the financial product which is the subject of the relevant complaint;

"financial services provider" means a provider of financial services which is or has been licensed or otherwise authorized by the Malta Financial Services Authority in terms of the Malta Financial Services Authority Act or any other financial services law, including but not restricted to investment services, banking, financial institutions, credit cards, pensions and insurance, which is or has been resident in Malta or is or has been resident in another EU / EEA Member State and which offers or has offered its financial services in Malta. A provider of financial services which has had its licence suspended or withdrawn by the competent authority, but which was licensed during the period in relation to which a complaint by an eligible customer is made to the Arbiter, shall be considered as falling within the definition of a financial services provider; Cap. 330.

"financial year" means a period of twelve months beginning on the first day of January and ending on the thirty-first day of December of the same year;

"micro enterprises" means an enterprise which employs fewer than ten persons and whose annual turnover and, or annual balance sheet total does not exceed two million euro (€2,000,000);

"Minister" means the Minister responsible for Finance;

"Office" means the Office of the Arbiter for Financial Services established under article 10;

"Office staff member" means a person appointed under article 19(4)(c);

"parties" in relation to a complaint means the complainant, the financial services provider against whom the complaint is made, and any other person who in the opinion of the Arbiter should be treated as a party to the complaint;

"substitute Arbiter" means the Arbiter appointed under article 16.

PART II

The Board of Management and Administration

Establishment and composition of the Board of Management and Administration.

3. (1) There shall be established a Board, to be known as the Board of Management and Administration, which shall be responsible for the management and administration of the Office of the Arbiter for Financial Services.

(2) The Board shall be composed of three members, including the Chairperson, who shall be appointed by the Minister, a member, who shall also be appointed by the Minister, and another member who shall be appointed by the Minister responsible for Consumer Affairs.

(3) The Minister shall appoint a Chairperson who has knowledge or experience of consumer issues relating to the provision of financial services.

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

(5) The members of the Board shall exercise their functions under this Act in their individual judgement and they shall not be subject to the direction or control of any other person or authority in the exercise of such functions.

Duration of tenure of the Board.

4. (1) The members of the Board shall hold office for a period of up to five years, and a member shall, on ceasing to be a member, be eligible for reappointment.

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

Removal of members of the Board.

5. The Chairperson and any member of the Board may be removed by the Minister on the ground of proved inability to continue to perform his duties or on proved misbehaviour.

Resignation.

6. (1) Any member of the Board may resign from his office by letter addressed to the Minister.

(2) The appointment, termination of office or resignation of any person as a member of the Board, including the reasons for such

termination or resignation as applicable, shall be published in the Gazette.

7. (1) The Board shall appoint a secretary for such period and under such terms as the Board shall deem appropriate. Secretary to the Board.

(2) It shall be the duty of the Secretary to make the necessary preparations for the meetings of the Board and to keep minutes of these meetings.

(3) The Secretary shall also perform any function that may be delegated to him in writing by the Board from time to time.

8. (1) It shall be the function of the Board: Functions of the Board.

(a) to provide support in administrative matters to the Arbiter in the exercise of his functions when the Arbiter so requests;

(b) to keep under review the efficiency and effectiveness of the Office and to advise the Minister, either on the Minister's request or on its own initiative, on any matter relevant to the operation of the Office;

(c) to assist the Arbiter on any matter on which the Arbiter seeks advice;

(d) to recommend to the Minister the levies and charges to be payable for the performance of services provided by the Office;

(e) to advise the Minister on the making of rules regarding the payment of levies and charges to be paid by different categories of persons to the Office, the amounts of those levies and charges, the periods within which specified levies or charges are to be paid, and penalties that are payable by a person who fails to pay on time or pay in full the amount due;

(f) to keep a record of the persons who are liable to pay a specified levy or charge, and the returns actually received by the Office;

(g) to collect and recover the levies and charges due;

(h) to advise the Minister on the making of rules, either on its own initiative or at the request of the Arbiter, to determine the manner and requirements, including any fees payable

therefor, for registration of any document under this Act;

(i) to determine accounting policies which are to be followed by the Office when keeping accounting records;

(j) to determine the form of the annual report to be drawn by the Arbiter on an annual basis;

(k) to determine the form of the report with estimates of income and expenditure to be drawn by the Board on an annual basis;

(l) to determine the form of the report relating to the strategic plan to be drawn by the Board on an annual basis;

(m) to perform such functions or activities as are assigned to it by this Act;

(n) to determine any service which shall be deemed as an additional financial service that may be subject to consideration by the Arbiter; and

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

(2) In the discharge of its function under sub-article (1)(f), the Board may bring proceedings before the Civil Court to recover as a debt an amount of levy or charge due to the Office.

(3) The legal representation of the Board shall vest in the Chairperson:

Provided that the Board may designate any one or more of the other members of the Board to appear in the name and on behalf of the Board in any judicial proceedings and to sign for and on its behalf any other act, instrument or other document whatsoever.

(4) It shall not be the function of the Board to intervene in any way on the manner how the Arbiter deals with the merits of a particular complaint.

Accountability
of the Board.

9. (1) The Board shall be accountable to the Minister for the discharge of its duties.

(2) (a) Within a period of six months immediately preceding the beginning of each financial year, the Board, in consultation with the Arbiter, shall prepare, in the form established by the Board, a statement with estimates of income and expenditure

relating to the Office for the forthcoming financial year. Such estimates shall be approved by the Board.

(b) The statement shall specify:

(i) the amounts expected to be collected and recovered during the financial year concerned from the imposition of levies and fees;

(ii) any other sources from which funds are expected to be obtained during that year to finance the Office's activities and the amounts expected to be raised from those sources; and

(iii) the activities which the Office proposes to undertake during that year;

(c) A copy of the estimates shall be sent forthwith to the Minister.

(d) The Minister shall, at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Board, approve the same with or without amendments.

(e) Such estimates are to be laid on the Table of the House of Representatives.

(3) (a) Within six months before the beginning of each financial year, the Board, in consultation with the Arbiter, shall prepare for the year a strategic plan in the form of a report established by the Board. The Board shall approve such strategic plan.

(b) The report shall specify:

(i) the objectives of the activities of the Office for the financial year concerned;

(ii) the nature and scope of the activities to be undertaken;

(iii) the targets and criteria for assessing the performance of the Office; and

(iv) the uses for which it is proposed to apply the Office's resources.

(c) A copy of the strategic plan shall be sent forthwith to the Minister.

(d) A copy of such report shall be laid on the Table of the House of Representatives and shall be made available to the public.

(4) The content and other matters relating to the estimates and strategic plan mentioned in sub-articles (2) and (3) may be prescribed by regulations made under this Act.

(5) The Chairperson of the Board shall provide the Minister with such reports relating to the activities of the Board and the Office as the Minister may require from time to time:

Provided that the reports shall not disclose particulars or comments on any complaint that has not been determined by the Arbiter.

PART III

The Office of the Arbiter

Office of the
Arbiter for
Financial
Services.

10. (1) There shall be established an Office of the Arbiter for Financial Services.

(2) The Office shall consist of the Board, the Arbiter and the substitute Arbiter, if any, and of such officers and staff members appointed or employed with the Office.

Functions of the
Office.

11. (1) Without prejudice to the functions of the Arbiter under this Act, it shall be the function of the Office:

(a) to deal with complaints filed by eligible customers;

(b) to inform the public through electronic means and, where possible, by written guidelines on the functions carried out by the Office, the contact details of the Office, the procedure followed by the Office in relation to complaints, and other information concerning the Office aimed at informing the public on the services offered by the Office;

(c) to provide the parties to proceedings with the information referred to in sub-article (2) on a durable medium;

(d) to provide the means to enable the customer to submit a complaint electronically or by recorded delivery through the post or courier service;

(e) to provide the means to enable the exchange of information between the parties to a dispute via electronic means or by recorded delivery through the post or courier

service;

(f) to ensure that the processing of personal data complies with the rules on the protection of personal data as established under the Data Protection Act;

Cap. 440.

(g) to establish rules and guidelines in relation to the implementation of the regulations made in terms of article 33; and

(h) to carry out such other functions as are assigned to it under this Act or any other law.

(2) The Office may delegate in writing to any person engaged with the Office, any of its functions under this Act, except this power of delegation.

12. (1) The Office shall be accountable to the Minister for the discharge of its duties.

Accountability of the Office.

(2) (a) The Office shall ensure that proper accounting records, in the form established by the Board, are kept which reflect the financial transactions of or relating to the Office.

(b) The accounts of the Office shall be approved by the Board.

(c) Accounting records shall be retained for a period of ten years.

(d) The accounts of the Office shall be audited by the Auditor General, and the Office shall be subject to the Financial Administration and Audit Act.

Cap. 174.

(3) The content and other matter relating to the accounts mentioned under sub-article (2) may be prescribed by regulations made under this Act.

13. The funds of the Office shall consist of:

Funding of Office.

(a) the funds provided to the Office following estimates prepared by the Board and approved by the Minister in accordance with article 9(2)(d);

(b) the funds accruing to the Office from any other source.

14. (1) The Minister shall appoint an Arbiter from among persons who appear to him to be qualified and suitable to be so

Appointment of Arbiter.

appointed.

(2) A person shall be eligible for appointment as an Arbiter if he possesses the necessary expertise in consumer related issues in respect of financial services, including a general understanding of law.

(3) A person shall not be eligible for appointment as an Arbiter if he is:

(a) a Member of the House of Representatives or a Member of the European Parliament or a Mayor or a Councillor on a Local Council; or

(b) a public officer; or

(c) a member or employee of an agency, government entity or local authority; or

(d) a person convicted of any offence affecting public trust, or of an offence, other than an involuntary offence, which is punishable by imprisonment for a term of at least one year.

(4) The Arbiter shall not hold any position which is incompatible with the correct performance of his official duties, with his impartiality and independence, or with public confidence therein.

(5) The Arbiter shall declare to, and seek the approval of, the Minister to any positions, trusts or memberships which the Arbiter considers do not affect impartiality or independence and public confidence, and which it is desired to retain during his term of office.

(6) On appointment, an Arbiter shall take an oath of Oath of Office in the form hereunder:

"I swear/solemnly affirm that I shall perform my duties as Arbiter honestly, impartially, with due diligence, and without fear or favour according to law."

Term of office.

15. (1) The Arbiter shall hold office for a period of seven years after which he shall not be eligible for re-appointment.

(2) The Arbiter may resign his office by letter addressed to the Minister.

(3) The appointment, termination of office or resignation of the Arbiter, including the reasons for such termination and resignation as applicable, shall be published in the Gazette.

16. (1) The Minister may -

Appointment of
a substitute
Arbiter.

(a) at any time during the illness or absence of the Arbiter, or

(b) for any other temporary purpose where the Arbiter considers it necessary not to mediate, investigate and adjudicate complaint/s because of circumstances due to which he deems it appropriate to abstain,

appoint a substitute Arbiter in accordance with this article, and such substitute Arbiter shall be paid such remuneration, calculated pro rata on a time basis on the amount payable to the Arbiter.

(2) The power conferred by sub-article (1)(b) shall be exercised only on a declaration signed by the Arbiter to the effect that, in his opinion, it is necessary for the due conduct of the business of the Arbiter under this Act that a substitute Arbiter should be temporarily appointed.

(3) An Arbiter appointed under this article on account of the illness or absence of the Arbiter shall hold office until the resumption of office of the Arbiter, and every substitute Arbiter appointed for a temporary purpose shall hold office until he performs the function assigned to him.

(4) (a) A person shall not be qualified to be approved as Arbiter under this article if he is disqualified to be appointed as Arbiter under article 14.

(b) The provisions of article 14(4), (5) and (6) shall apply to a person appointed under this article.

17. (1) A person shall be disqualified from remaining as an Arbiter and may be removed from Office by the Minister on the ground of proved inability to perform the functions of his office, whether arising from inability of body or mind or on the ground of proved misbehaviour:

Disqualification
or removal from
office.

Provided that in taking a decision to remove any person from the office of Arbiter under this article, the Minister shall act in accordance with the principles of natural justice.

(2) The decision of the Minister to remove a person from the office of Arbiter shall be subject to appeal to the Court of Appeal by application to be filed in the said Court within ten days from the notification of the decision to the Arbiter.

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(3) The Court of Appeal shall order the service of the application filed in terms of sub-article (2) upon the Minister who shall have ten days within which to file a reply.

(4) An appeal filed in terms of this article shall be heard with urgency and shall be determined by judgement within four months from the filing of the reply or from the date when the period for the filing of the reply shall have lapsed.

(5) The Court of Appeal may, upon a demand of the Minister or of the Arbiter shorten the time limits provided for in this article for the filing of the appeal and the reply.

Remuneration.

18. (1) The Arbiter shall be entitled to such salary and allowances as the Minister may by order in the Gazette establish and such remuneration shall be a charge on the Consolidated Fund.

(2) The salary and allowances payable to an Arbiter shall not be diminished during the continuance of the Arbiter's appointment.

Functions and powers of Arbiter for Financial Services.

19. (1) It shall be the primary function of the Arbiter to deal with complaints filed by eligible customers through the means of mediation in accordance with article 24, and where necessary, by investigation and adjudication.

(2) In addition to the functions under sub-article (1), it shall be the function of the Arbiter:

(a) to establish rules and guidelines in relation to the implementation of the regulations made in terms of article 33;

(b) to carry out such other functions as may be assigned to him under this Act or any other law.

(3) In carrying out his functions under sub-article (1), the Arbiter shall:

(a) act independently and impartially, and shall not be subject to the direction or control of any other person or authority;

(b) determine and adjudge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case;

(c) consider and have due regard, in such manner and to such an extent as he deems appropriate, to applicable and relevant laws, rules and regulations, in particular those

governing the conduct of a service provider, including guidelines issued by national and European Union supervisory authorities, good industry practice and reasonable and legitimate expectations of consumers and this with reference to the time when it is alleged that the facts giving rise to the complaints occurred;

(d) deal with a complaint in a procedurally fair, informal, economical and expeditious manner;

(e) deal with any question of prescription in terms of law:

Provided that the financial services provider may only raise the plea of prescription in the first written submissions provided for by article 25(3)(b) unless otherwise authorised by the Arbiter giving reasons for that authorisation:

Provided further that the Arbiter shall not be entitled to raise the question of prescription of his own motion:

Provided further that nothing in this Act shall be interpreted as entitling the Arbiter to give a decision on any claim which is barred by prescription when the investigated party shall have raised the defense of prescription.

(4) (a) Subject to the limitations imposed by this Act or any other law, the Arbiter shall have all powers that are necessary to enable him to perform his functions properly including the power to summon witnesses, to administer oaths and to issue such interlocutory orders, including but not limited to orders restricting the transfer of property and assets of a financial services provider as he may deem necessary for the proper performance of the functions of his office. An Arbiter shall abstain and may be challenged in the same circumstances as a Judge of the Superior Courts:

Provided that in issuing interlocutory orders under this paragraph, the Arbiter shall act *mutatis mutandis* in accordance with the principles regulating the issuing of precautionary warrants under the Code of Organization and Civil Procedure.

(b) (i) An Arbiter may appoint one or more suitable officers to perform specific functions assigned to him under sub-article (1).

(ii) A person shall be suitable to be appointed as an officer under sub-paragraph (i) if he is knowledgeable and well

versed in those areas for which he shall be appointed.

(c) An Arbiter may, subject to availability of resources, appoint and employ such number of office staff members which are necessary for the proper functioning of the Office.

(d) An Arbiter may, whenever the occasion requires and subject to availability of resources, engage such consultants or advisers to assist him in the fulfilment of his functions:

Provided that such consultants or advisers shall themselves be independent and impartial of the parties to the complaint or complaints in respect of which they shall have been engaged.

(5) Any person appointed under sub-article (4) shall:

(a) carry out his duties free from any interference from any person except for any direction given by the Arbiter;

(b) act expeditiously;

(c) not divulge any information acquired by him in the course of his duties;

(d) periodically report to the Arbiter the progress made with regard to the complaints assigned to him and on any other matter which falls within his competence.

(6) (a) The appointment, engagement and employment of persons mentioned under sub-article 4(b) to (d) shall be made by the Arbiter, and the terms and conditions shall be established by the Board in consultation with the Minister.

(b) In establishing the terms and conditions, the Board shall have regard to the Government's policy with respect to the remuneration of public sector employees and any direction that the Minister may give from time to time for the purpose of giving effect to that policy.

Accountability
of Arbiter.

20. (1)(a) An Arbiter shall ensure that on a yearly basis his Office prepares an annual report, in the form established by the Board, specifying the activities of the Office during that year, and shall submit the report within six months from the end of each year to the Board for its approval:

Provided that the report shall not disclose particulars or comments on any complaint that has not been determined by the

Arbiter.

(b) The report shall contain a summary of all complaints made to, and decisions taken by, the Arbiter during the preceding financial year and of the results of the investigations into those complaints, and a review of the trends and patterns observed in the submission of complaints to the Arbiter. Statistical information referring to the name of service providers against whom *res judicata* decisions were given may be provided.

(c) A copy of the annual report is to be laid on the Table of the House of Representatives and shall be made accessible to the public in such a manner as the Board may determine.

(2) The content and other matters relating to the report mentioned under sub-article (1) may be prescribed by regulations made under this Act.

PART IV Competence

21. (1) (a) Nothing in this Act shall imply that a complaint relating to the conduct of a financial service provider is to be exclusively regulated by the provisions of this Act: Competence of Arbiter.

Provided that findings and conclusions reached by an Arbiter following a complaint filed in terms of this Act shall be binding on the parties, save for the right of appeal regulated by article 27.

(b) An Arbiter shall have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider which occurred on or after the first of May 2004:

Provided that a complaint about conduct which occurred before the entry into force of this Act shall be made by not later than two years from the date when this paragraph comes into force.

(c) An Arbiter shall also have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider occurring after the coming into force of this Act, if a complaint is registered in writing with the financial services provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.

(d) For the purpose of this sub-article, conduct that is

continuing in nature shall be presumed to have occurred at the time when it stopped, and conduct that consists of a series of acts or omissions shall be presumed to have occurred when the last of those acts or omissions occurred.

(2) An Arbiter shall decline to exercise his powers under this Act where:

(a) the conduct complained of is or has been the subject of a law suit before a court or tribunal initiated by the same complainant on the same subject matter;

Provided that nothing contained in this paragraph shall be construed as impeding the Arbiter's competence to consider complaints which are being dealt with or which have already been dealt with by the Malta Financial Services Authority, and the recommendations, rulings, directives or decisions of the said Authority shall not be considered as having given rise to a *res judicata* with respect to the complainant's claim; or

(b) it results that the customer failed to communicate the substance of the complaint to the financial service provider concerned and has not given that financial service provider a reasonable opportunity to deal with the complaint prior to filing a complaint with the Arbiter; or

(c) the complaint is, in the opinion of the Arbiter, frivolous or vexatious.

(3) (a) An Arbiter may not award monetary compensation in excess of two hundred and fifty thousand euro (€250,000), together with any additional sum for interest due and other costs, to each claimant for claims arising from the same conduct.

(b) An Arbiter may, if he considers that fair compensation requires payment for a larger compensation than that stipulated in paragraph (a), recommend that the financial service provider pay the complainant the balance, but such recommendation shall not be binding on the service provider.

(c) For the purpose of determining the euro equivalent of claims for damages against a service provider adjudged by the Arbiter to have been wholly or in part substantiated, any foreign currency shall be converted to euro at the middle rate of exchange published by the Central Bank of Malta on the date of when the complaint would have been filed with the Office of the Arbiter.

PART V
Proceedings

22. (1) A complainant shall complain to the Arbiter in writing identifying the party against whom the complaint is made, the reasons for the complaint, and the remedy that is being sought and articles 2131 and 2132 of the Civil Code shall apply *mutatis mutandis* for the interruption of prescription as from the receipt of such a complaint by the Arbiter. The referral of any matter to the Arbiter shall have the same effect with regard to prescription as a judicial action before a competent court and article 2117A of the Civil Code shall apply *mutatis mutandis*. Any reference in this Act to prescription shall be construed as a reference to prescription under the Civil Code.

Procedure relating to complaints.

Cap. 16.

(2) Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.

(3) An Arbiter shall not proceed to deal with a complaint unless the Arbiter has:

- (a) informed the respondent of the complaint;
- (b) provided the respondent with such particulars as will enable him to reply thereto; and
- (c) provided the respondent with an opportunity to submit a reply to the complaint. Such reply shall be forwarded to the Arbiter within twenty days from when the Arbiter communicates the complaint to the respondent.

The complainant and the respondent have a right to be represented and assisted by a person or persons of their trust.

(4) An Arbiter may make preliminary inquiries for the purpose of deciding whether a complaint should be investigated under this Part, and may request the complainant to provide further information within a specified period of time:

Provided that the Arbiter may decide not to continue to deal with the complaint if the complainant fails to comply with a request for further information within the period specified by the Arbiter.

(5) As soon as practicable after the Arbiter has determined that the complaint does not fall within his competence, or after deciding to discontinue with the complaint, the Arbiter shall:

- (a) inform the complainant in writing of the decision

and reasons for it; and

(b) provide the Board with a copy of the decision.

(6) On submitting a complaint with the Office of the Arbiter for Financial Services, the complainant shall pay a fee as prescribed under this Act, and which fee shall be reimbursed only in the case where the complainant decides to withdraw the complaint or if both parties agree on a settlement of the dispute, and in both instances the Arbiter is notified in writing of the decision, which notification shall reach the Arbiter's Office before the Arbiter shall have reached a decision that the complaint falls within his competence.

(7) If -

(a) before the Arbiter shall have reached a decision, the complainant notifies the Arbiter in writing of the withdrawal of its complaint; or

(b) the parties agree on a settlement of the dispute, whether as a result of mediation in terms of article 24 or otherwise; or

(c) the continuation of the complaint procedures becomes unnecessary or impossible for any reason,

the Arbiter shall:

(i) either issue an order for the termination of the complaint procedures; or

(ii) if requested by both parties and accepted by the Arbiter, record the settlement on the agreed terms.

(8) Subject to the provisions of this Act and of any rules made thereunder as stipulated by article 33, the Arbiter shall regulate the proceedings as he thinks fit and proper in accordance with the rules of natural justice:

Provided that no proceedings before the Arbiter shall be invalid because of any non-observance of any formalities if there has been substantive compliance with the law.

Precautionary
acts.

Cap. 12.

23. (1) Unless otherwise agreed by the parties, any party may request the court to issue any of the precautionary acts listed in article 830(1) of the Code of Organization and Civil Procedure, subject to the provisions of the following sub-articles.

(2) Where in accordance with sub-article (1) a precautionary act has been issued, such act shall remain in force until such time as it shall expire or be revoked in accordance with the provisions of the Code of Organization and Civil Procedure or until such time as the Arbiter - Cap. 12.

(a) shall have determined that the complaint does not fall within his competence, or after deciding to discontinue with the complaint in terms of article 22; or

(b) having adjudged the complaint, shall order the party issuing the precautionary act to withdraw the same and issue the relative counter-warrant.

(3) Notwithstanding anything contained in the Code of Organization and Civil Procedure the time established therein within which the action is to be instituted in respect of the right stated in the precautionary act issued shall be of twenty days from the filing of the judicial act whereby the court is requested to issue the precautionary act. The provisions of the said Code for the extension of the said time shall also apply. Cap. 12.

(4) Action as is referred to in sub-article (3) shall be deemed to have been taken, and complaint procedures with the Arbiter shall be deemed to have commenced, when the complaint in writing is submitted by the complainant to the Arbiter in terms of article 22(1).

(5) The party at whose request a precautionary act has been issued in accordance with this article shall, within the time specified in sub-article (3), file a note in the records of the proceedings for the issue of the said precautionary act together with a certificate issued by the Arbiter acknowledging the party's complaint.

(6) The Board established under article 29 of the Code of Organization and Civil Procedure may make rules concerning all matters relating to the issue of precautionary acts and other such orders when they relate to complaint procedures submitted to the Arbiter. Cap. 12.

24. (1) A complaint about the conduct of a financial services provider shall, as far as possible, be primarily dealt with by mediation. Mediation.

(2) Participation in the mediation by the parties to a complaint shall be voluntary, and a party may withdraw from participation at any time.

(3) The mediation process shall be carried out by the officers

appointed by the Board under article 8(1), whose function shall be to act as a mediator between the complainant and the financial services provider. A list of such officers shall be held by the Board:

Provided that the mediator may abandon an attempt to resolve a complaint by mediation on forming the view that the attempt is not likely to succeed.

(4) Subject to the foregoing provisions and to any regulations made under sub-article (7), the mediator may regulate his own proceedings.

(5) The mediation process shall proceed in private and any resolution of a dispute as a result of mediation shall not have the resolution thereof published under any format.

(6) No appeal shall lie in terms of article 27 from anything done by an officer acting in his capacity as mediator.

(7) The Minister may, after consultation with the Arbiter and the Board, make regulations to give better effect to the provisions of this article and, without prejudice to the generality of the foregoing, he may:

(a) establish the procedure to be followed by the officer in his capacity as mediator;

(b) prescribe the types of applications which a complainant may refer to the officer; and

(c) prescribe the procedure to be followed in the formulation of a report by the officer.

Investigation.

25. (1) Where the mediation process under article 24 proves unsuccessful, the Arbiter shall proceed to deal with the necessary investigations in private.

(2) (a) The Arbiter shall provide the parties with an opportunity to make oral and, or written submissions with respect to the conduct complained of.

(b) Written submissions shall be filed within twenty days, and such period shall commence to run from the day on which the parties receive communication in writing about the investigation from the Arbiter.

(c) Written submissions made by a party to the Arbiter shall be notified to the other party or to the person assisting or

representing the party in terms of article 22(3).

(d) Whenever a notification or communication to the other party shall be required under this Act, such notification or communication shall take place by recorded delivery through the post or courier service.

(3) (a) The Arbiter shall hold at least one sitting for the hearing of the complaint.

(b) The Arbiter shall determine the admissibility, relevance, materiality and weight of the documentary and oral evidence.

(c) Hearings are to be held in public unless the Arbiter, giving reasons, otherwise decides.

(d) Neither party shall be required to be represented or assisted for oral hearings. If only one party is represented or assisted, the Arbiter shall ensure the hearing remains fair to both parties.

(4) In the process of investigation, the Arbiter shall inform the parties of the progress made.

(5) The Arbiter may request the production of information or documentation from either of the parties or from a third party, as the case may be, which the Arbiter considers necessary or relevant for the determination of the complaint, which information or documentation is to be provided before the end of such reasonable period as the Arbiter shall specify, and in the case of information, in such manner or form as may be specified by the Arbiter:

Provided that for the purpose of obtaining such information or documentation, the Arbiter shall have the power to summon witnesses and to administer an oath to any witness and to any person concerned in the investigation, including the complainant and the service provider, and to require persons to give evidence, and the rules of the Code of Organization and Civil Procedure shall apply *mutatis mutandis* to the production of evidence before the Arbiter: Cap. 12.

Provided further that any person who is summoned to appear before the Arbiter under this article shall have the same rights and obligations as a witness summoned to appear before the court of civil jurisdiction.

(6) (a) Information obtained by the Arbiter or by any officer or person in his Office in the course of or for the purpose of an investigation under this Act shall not be disclosed except for the

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purposes of:

- (i) the investigation and adjudication;
- (ii) any report made under this Act; or
- (iii) any proceedings relating to an offence under this Act.

(b) The Arbiter, officers or persons in his Office shall not be called upon to give evidence in any proceedings, other than as mentioned under paragraph (a), on matters coming to their knowledge in the course of an investigation or of the execution of other duties carried out by them under this Act.

Cap. 9.

(c) Article 133 of the Criminal Code shall apply to and in relation to the Arbiter and any officer or person in his Office as they apply to or in relation to a public officer or servant referred to in the said article of the Criminal Code.

(7) In the process of an investigation, the Arbiter may enter and inspect any premises occupied or used by the financial services provider or by any person or body who in the opinion of the Arbiter is associated with the financial service provider and inspect any document or thing within the premises.

Adjudication.

26. (1) Following completion of an investigation of a complaint under article 25, the Arbiter shall proceed with adjudication.

(2) The Arbiter shall proceed to adjudication within ninety days from the date of receipt of the complaint:

Provided that where a complaint is complex in nature, the Arbiter shall deliver his findings at the earliest opportunity being a date not later than one year from the date of receipt of the complaint and shall inform the parties concerned of the expected adjudication date:

Provided further that no nullity shall ensue from failure to meet the time limits provided for in this sub-article.

(3) (a) The findings and conclusions reached by the Arbiter shall be drawn up, in writing, in a decision giving the Arbiter's reasons therefor that shall be read out in public on a day duly notified to the parties.

(b) The decision may include any direction given under

paragraph (c).

(c) If the complaint is found to be wholly or in part substantiated, the Arbiter may direct the financial services provider to do one or more of the following:

(i) to review, rectify, mitigate or change the conduct complained of or its consequences;

(ii) to provide reasons or explanations for that conduct;

(iii) to change a practice relating to that conduct;

(iv) to pay an amount of compensation for any loss of capital or income or damages suffered by the complainant as a result of the conduct complained of, without or with interest, at such reasonable rate and within the parameters established by law as the Arbiter may determine, on the whole or any part of the money, and for the whole or any part of the period between the date on which the conduct complained of had started and the date on which the Arbiter's decision is made;

(v) to specify the period within which the direction is to be carried out by the financial service provider.

(d) In his decision the Arbiter shall also adjudicate the costs of the proceedings, by whom they shall be borne and, if necessary, in what proportion, according to the circumstances of the case.

(e) In the event that a financial services provider becomes insolvent within the meaning attributed to that term by any laws or regulations providing for an investor compensation scheme, a depositor compensation scheme or a protection and compensation fund or any other compensation scheme or fund applicable in respect of the financial services provider sector to which that financial services provider belongs, and as a consequence of the said insolvency the financial services provider is not in a position to pay the compensation that has been awarded by or following a decision of the Arbiter, the complainant is notwithstanding any other law, to be paid up to twenty thousand euro from the said fund or scheme applicable in the financial services provider sector to which the financial services provider belongs.

(4) Within fifteen days from the date when the decision of the Arbiter is notified to the parties, either party, with notice to the other party, may request that the Arbiter give a clarification of the award, or

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request the Arbiter to correct any errors in computation or clerical or typographical errors or similar error contained in the decision of the Arbiter. The Arbiter shall give such clarification or make any necessary correction within fifteen days from the receipt of a party's request.

Appeal and enforceability.

27. (1) The decision reached by the Arbiter, including any interlocutory decisions, may be subject to appeal by either party.

Cap. 12.

(2) (a) The appeal from a decision as referred to in sub-article (1) shall lie to the Court of Appeal (Inferior Jurisdiction) constituted in terms of article 41(6) of the Code of Organization and Civil Procedure.

(b) Appeals from interlocutory decisions may only be entered after the final decision.

Cap. 12.

(3) An appeal to the Court of Appeal (Inferior Jurisdiction) in terms of article 41(6) of the Code of Organization and Civil Procedure shall be filed in the registry of the said Court within twenty days from the date when the decision of the Arbiter is notified to the parties or, in the event that a request for clarification or correction of a decision is requested in terms of article 26(4), from the date when such interpretation or clarification or correction made by the Arbiter shall be notified to the parties, and such an appeal shall be regulated by the rules of court made under article 29 of the Code of Organization and Civil Procedure.

(4) Where no appeal is filed by any party, the decision of the Arbiter shall become *res judicata*.

(5) A copy of such a decision shall be provided by the Arbiter to the Board. Such decisions shall be held in an appropriate Register, which Register shall be accessible to the public upon request.

(6) After the decision of the Arbiter becomes *res judicata* as stipulated in sub-article (4), if in the Arbiter's opinion there is substantial evidence of any significant breach of duty or misconduct on the part of a financial services provider, or any criminal conduct of any of the parties, the Arbiter shall refer the matter to the competent authorities to take any further appropriate action, if any, according to law.

Cap. 12.

(7) A decision of the Arbiter that has become *res judicata*, the terms of settlement recorded by the Arbiter in terms of article 22(7)(c)(ii) and a decision of the Court of Appeal (Inferior Jurisdiction), shall constitute an executive title in terms of article 253 of the Code of Organization and Civil Procedure.

28. (1) Any request for information shall be made by an eligible customer or financial services provider to the Office orally or in writing. Procedure relating to request for information.

(2) A request for information under sub-article (1) shall be carried out by the officers appointed by the Arbiter under article 19(4), from the list of officers held by the Board.

(3) In carrying out the function under sub-article (2), the officer shall regulate his own procedure.

(4) The findings on the request for information given by the officer shall be notified to the Board, and communicated to the person who lodged the request for information within thirty days from the date of its receipt by the Office by whatever means, even informally.

(5) The findings of any request for information shall only be informative in nature, and may not be brought as evidence in a law suit before any court or tribunal.

(6) The Minister may, after consultation with the Arbiter and the Board, make regulations to give better effect to the provisions of this article.

PART VI
Miscellaneous

29. (1) The Arbiter may delegate in writing to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to take decisions and adjudicate. Delegation of functions.

(2) A delegation of functions under this Act shall be without prejudice to the exercise of those functions by the Arbiter, and shall be revocable by the Arbiter at will.

30. The Arbiter may, if he thinks fit, treat individual complaints made with the Office together, provided that such complaints are intrinsically similar in nature. Consideration of similar complaints.

31. Except as otherwise stated in this Act, the Office of the Arbiter and the Arbiter shall enjoy full immunity from any civil or criminal action for any act or omission in or arising from the execution of their official duties unless it is shown that the person concerned acted in bad faith. Immunity.

32. (1) Any person who - Offences and penalties.

(a) fails to comply with any order given by the Arbiter

shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) of not less than five hundred euro (€500) and not more than one thousand euro (€1,000);

(b) obstructs the Arbiter in the exercise of the powers conferred by this Act shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of five hundred euro (€500);

(c) when summoned to give evidence before the Arbiter or any officer under this Act, gives information knowing that such information is false or misleading, shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of five hundred euro (€500).

(2) Proceedings against any person for any offence as is mentioned in sub-article (1) shall be instituted before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, as courts of criminal judicature in accordance with the provisions of the Criminal Code.

Cap. 9.

Power to make regulations.

33. The Minister may, in consultation with the Arbiter and the Board, make regulations:

(a) to establish the procedure for the filing and handling of complaints;

(b) to establish the procedure for the investigation of complaints;

(c) to establish the procedure for the adjudication of complaints;

(d) to establish the levies and charges payable under this Act and fees in respect of professional or consultancy services rendered to customers in relation to claims or proceedings under this Act;

(e) to establish the persons or bodies to whom this Act shall not apply;

(f) to specify circumstances in which the Arbiter may dismiss a complaint without considering its merits;

(g) to specify the place or places at which the Arbiter is required to make available copies of its findings, decisions and any report that the Arbiter is required to prepare; and

(h) to give better effect to any of the provisions of this Act, and for the better enforcement thereof.

34. Article 253 of the Code of Organization and Civil Procedure shall be amended as follows:

Consequential amendment to the Code of Organization and Civil Procedure. Cap. 12.

(a) in paragraph (g) thereof for the words "Consumer Claims Tribunal." there shall be substituted the words "Consumer Claims Tribunal;"; and

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

"(h) decisions and awards of the Arbiter for Financial Services in accordance with the provisions of the Arbiter for Financial Services Act."

Passed by the House of Representatives at Sitting No. 369 of the 15th March, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

