

I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

24 th February, 2017

ACT No. VIII of 2017

AN ACT to amend the Mediation Act, Cap. 474, and for other matters ancillary thereto or 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:-

Short title and
commencement.

Cap. 474.

1. (1) The short title of this Act is the Mediation (Amendment) Act, 2017, and this Act shall be read and construed as one with the Mediation Act, hereinafter referred to as "the principal Act".

(2) The provisions of clauses 2, 3, 4 and 5 shall come into force on such date as the Minister responsible for justice may by order in the Gazette establish and different dates may be established in respect of different provisions and different purposes of this Act.

2. Sub-article (3) of article 17A of the principal Act shall be substituted by the following:

Amendment of article 17A of the principal Act.

"(3) For the purposes of sub-articles (1) and (2), domicile shall be determined, amongst other provisions, in accordance with Articles 59 and 60 of Council Regulation (EC) 44/2001 and Articles 61, 62 and 63 of Council Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters."

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

Addition of new article to the principal Act.

"Video conference or other distance communication technology.

17C. Nothing in this Act shall restrict the mediator and the parties from holding oral hearings of the mediation through video conference or other distance communication technology if the technical means are available, and if the parties and the mediator so agree. All discourse made by way of such distance communication technology shall remain confidential in accordance with the provisions of article 27."

4. Article 28 of the principal Act shall be substituted by the following:

Substitution of article 28 of the principal Act.

"Termination of mediation.

28. A mediation ends when any one of the following conditions is satisfied:

(a) the parties to the mediation execute a written agreement that resolves the dispute in whole or in part;

(b) the mediator communicates a written notification which is signed by him to the parties stating that the mediation is terminated or words to that effect;

(c) if, in the opinion of the mediator, or of any of the parties, the parties cannot arrive at a solution to their dispute;

(d) if one of the parties elects not to continue with the mediation process, and notifies the other parties and the mediator of his intention; and

(e) if the period of one hundred and twenty days have elapsed from the registration of the compulsory mediation, or if the conditions as stipulated under article 34(7) have been satisfied, then such compulsory mediation shall be terminated *ipso jure*."

Addition of new articles to the principal Act.

5. Immediately after article 32 of the principal Act there shall be added the following new articles:

"Compulsory mediation.

33. (1) Mediation shall be compulsory before such Courts, Tribunals or Boards, or in respect of litigation of a particular nature, as the Minister may order and prescribe in the Gazette in accordance to article 17A(1)(c).

(2) The Minister may make regulations to implement and to give better effect to the provisions of this Act and may, without prejudice to the generality of the foregoing -

(a) make such amendments, alterations, deletions, repeals, corrections, additions, changes and modifications to any primary law or subsidiary law for the purpose of bringing such primary law or subsidiary law in conformity with the provisions of this Act; and

(b) establish the date of entry into force of the amendments, alterations, deletions, repeals, corrections, additions, changes and modifications referred to in paragraph (a) with regard to any Court, Tribunal or Board referred to in sub-article (1) that the Minister may by regulations specify.

Proceedings
before the Rent
Regulation
Board.
Cap. 69.

34. (1) Without prejudice to the provisions of article 16A of the Reletting of Urban Property (Regulation) Ordinance, any party wishing to proceed to initiate a suit before the Rent Regulation Board shall first request authority to proceed from the Rent Regulation Board (Malta) or the Rent Regulation Board (Gozo), as the case may be, to the Malta Mediation Centre, hereinafter referred to as "the Centre", by filing a letter to that effect in the Registry of the Board with his claims together with copies for the Registry of the Board to effect service upon the Centre and upon the respondent parties, so that the said mediation may be assigned to a mediator in terms of this Act.

(2) Until such compulsory mediation is terminated, the Court, Tribunal or Board mentioned in article 33(1) shall not take cognizance of that application.

(3) In furtherance of the provisions of article 5, a mediator shall be appointed within fifteen days from the filing of the letter in the records of the case. The mediator shall mediate with the parties within sixty days from receipt of the records, provided that by mutual consent the parties may agree to extend, even orally, the said period by a further sixty days. Should the period be extended, and one hundred and twenty days have elapsed from the registration of such compulsory mediation, then in such case the mediator shall terminate the mediation.

(4) Once a mediation under this article is unsuccessfully terminated in whole or in part by the mediator, it shall be lawful for a party to bring an application before the Rent Regulation Board (Malta) or the Rent Regulation Board (Gozo), as the case may be, on the grounds in dispute or on the outstanding grounds where no agreement has been reached, within sixty days from the date when such compulsory mediation is terminated under any of the circumstances mentioned in article 28.

(5) If an agreement has been reached before the mediator, the mediator shall, through the Registrar of the Centre, inform the Registrar of the Court, Tribunal or Board mentioned in article 33(1) accordingly, within twenty days from the conclusion of such an agreement that the parties have executed a written agreement that resolves in whole or in part the dispute. Such agreement shall remain confidential unless the parties agree otherwise.

(6) If recourse to mediation has already been resorted to by the parties before the actual filing of the application for the commencement of proceedings before the Board, the Board shall appoint the application for hearing without the need of a further mediation. The plaintiff shall inform the Board regarding the termination of the mediation by presenting a certificate certifying that the mediation has terminated.

(7) Without prejudice to the provisions of article 28, where any party during the compulsory mediation process, and after the first appointment has been held by the mediator, lodges a declaration or letter whereby he informs the mediator, the other party or parties to the mediation, as the case may be, the Registry to the Board and the Centre that there is no prospect for an agreement, such compulsory mediation shall be deemed terminated *ipso jure*. In such case, the parties to the mediation may then seek recourse by way of an application to the Rent Regulation Board (Malta) or the Rent Regulation Board (Gozo), as the case may be, within sixty days when such compulsory mediation is terminated.

(8) Should the parties require the assistance of an expert during the compulsory mediation process, the parties may appoint such expert. The expenses for the appointment of the expert shall be apportioned equally between the parties to the mediation, unless the parties agree otherwise. The report and conclusions of the expert shall remain confidential, as they form an integral part of the mediation process, subject to those exceptions indicated under article 27.

(9) In accordance to Council Directive 2002/8/EC, the parties may request legal aid counsel during the compulsory mediation process, so long as such parties are eligible according to law.

Regulations.

35. The Minister may from time to time make regulations providing for or allowing -

- (a) the making of mediation letters by means of electronic equipment;
- (b) the transmission and service by means of electronic equipment;
- (c) the fees that may be charged in connection with the use of such electronic means,

and for such other matters incidental or consequential thereto."

6. Article 647A of the Criminal Code shall be amended as follows:

Consequential amendment of the Criminal Code. Cap. 9.

(a) the current article shall be re-numbered as sub-article (1) thereof; and

(b) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(2) The Court may also allow for the testimony of any witness even if present in Malta to be given by video conference or by teleconference from such place as the Court may order and subject to such conditions and directions as the Court may deem necessary:

Provided that the Minister responsible for justice may, by regulations, provide for any procedures, formalities, modalities or restrictions which are to apply to the taking of evidence in Malta in respect of proceedings in Malta by video conference or by teleconference and where the Minister makes such regulations the said regulations shall apply and any conditions or directions given by the Court under this sub-article shall not conflict with such regulations."

7. The Code of Organization and Civil Procedure shall be amended as follows:

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

(a) immediately after article 171 thereof, there shall be

added the following new article:

"Mediation. 171A. On the day appointed for the first hearing, the Court shall examine *prima facie* whether, due to circumstances of the particular case, there are grounds to refer the issue to mediation, and the following provisions shall apply:

- Cap. 474.
- (a) the Court shall give a decree to the effect, *in camera*, on the appointed day itself;
 - (b) the provisions of article 18 of the Mediation Act shall apply when the Court decrees that an attempt should be made to resolve the dispute by means of mediation;
 - (c) no appeal shall lie against Court decree, delivered in terms of paragraph (a); and
 - (d) the provisions of this article shall not apply in instances when an obligation to resort to mediation arises under another law or in cases of judicial review under article 469A or in cases where the Civil Court acts in its constitutional jurisdiction.";

(b) immediately after article 468A thereof, there shall be added the following new article:

"Regulations. 468B. The Minister may make regulations and prescribe schemes which promote mediation and out of court settlement schemes which involve the Government, thereby also promoting principles in line with Commission Recommendations 2001/310/EC."; and

(c) article 622B thereof shall be amended as follows:

(i) the current article shall be re-numbered as sub-article (1) thereof; and

(ii) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(2) The Court may also allow for the testimony of any witness even if present in Malta to be given by video conference or by teleconference from such place as the court may order and subject to

such conditions and directions as the court may deem necessary:

Provided that the Minister responsible for justice may, by regulations, provide for any procedures, formalities, modalities or restrictions which are to apply to the taking of evidence in Malta in respect of proceedings in Malta by video conference or by teleconference and where the Minister makes such regulations the said regulations shall apply and any conditions or directions given by the Court under this sub-article shall not conflict with such regulations."; and

(d) immediately after article 833A thereof, there shall be added the following new article:

"Letter lodged in accordance with article 34 of the Mediation Act. Cap. 474.

833B. Where a letter has been lodged in accordance with article 34 of the Mediation Act, there may also thereupon be filed the precautionary warrants referred to in article 830(1)(a), (b) and (d):

Provided that when such letter is filed in accordance with article 34 of the Mediation Act, the applicant shall nonetheless attach a copy of such letter in the acts of the precautionary warrant, and such warrant shall conform with the provisions of Title VI of Book Third of this Code."

8. Article 2160 of the Civil Code shall be amended as follows:

Consequential amendment to the Civil Code. Cap. 16.

(a) in sub-article (3) thereof, the words "Where a party" shall be substituted with the words "In proceedings for the collection of debts referred to in the proviso to article 2156, where a party"; and

(b) sub-article (4) thereof shall be deleted.

Passed by the House of Representatives at Sitting No. 482 of the
14 th February, 2017.

ANGLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

