

TAKING  
**MEDIATION**  
TO THE NEXT STEP








# TAKING MEDIATION TO THE NEXT STEP

MINISTRY FOR JUSTICE,  
CULTURE AND LOCAL GOVERNMENT

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Act XVI of 2004 presented Malta with the first introduction of the mediation process into our national legislation, providing us with an alternative, innovative, and swift method of formal dispute resolution.

This legislative novelty achieved mixed success. Disputes in the sphere of Family Law made significant, and generally successful, use of this method. Unfortunately, the response in many other sectors was lukewarm, at best with relatively few cases being brought forward or successfully resolved.

A careful review of Malta's experience in this field, together with an analysis of similar legislation among our European neighbours, provided the momentum for a comprehensive updating of Maltese mediation law.

These amendments provide the basis for a more amenable and accessible Act, which will facilitate the path by which parties may seek recourse to an inexpensive process that shall aim for the achievement of the amicable settling of disputes. This would ideally avoid the sometimes long and tortuous road of litigation, thereby avoiding the sometimes years-long processes that Courts of Law around the world are notorious for. One notable amendment is the addition of mediation as a compulsory system, with opt-outs, to Malta's dispute resolution arsenal.

## MEDIATION TO HELP SOLVING DISPUTES IN LEASES

The first assignment for this new legislation shall be a pilot project to regulate disputes in leases. The methodology for the application of the mediation route in such cases has been set up, and this shall provide parties in dispute with a pre-emptive alternative to the Rent Regulation Board, which would previously have been the point of immediate recourse.

In this way, all disputes (with the exception of the provisions of Article 16A of Chapter 69 – the special summary proceedings recourse) that are brought before the Rent Regulation Board shall be immediately referred to the Mediation Centre. A mediator shall be appointed within 15 days, who shall make every effort to resolve the mediation process: 60 days at maximum. In line with the ethos of providing a forum for amicable agreement, the parties shall be given the option to extend this deadline by a further 60 days; provided there is mutual consent.

The parties may appoint an expert in the mediation process if this is required, with all expenses being apportioned equally between them (unless the parties agree otherwise). Such experts' conclusions shall remain confidential, subject to the exceptions listed in Article 27 of the Act.

## PROVISION OF LEGAL AID AND THE USE OF COMMUNICATION TECHNOLOGY

The amendments also allow for the provision of legal aid to the parties if this is requested during the mediation process. Regulations have also come into place whereby it is also possible to have mediation sittings held by distance communication technology, thereby making the process easier for parties to meet up, discuss and negotiate rather than actually having all parties physically present, within the same room.

## SUCCESSFUL RESOLUTION OF THE DISPUTE

In the happy event of the successful resolution of the dispute, the Registrar of the Malta Mediation Centre shall inform the Registrar of the competent Court or Tribunal within 20 days. The parties may wish to keep the contents of the agreement confidential: this legislation allows them to do so.

## UNSUCCESSFUL RESOLUTION OF THE DISPUTE

Should the mediation prove to be unsuccessful in whole or in part, or if 120 days have elapsed from the registration of the compulsory mediation, the mediator shall terminate the mediation, allowing the 'traditional' dispute resolution process to continue.

## VOLUNTARY NATURE OF MEDIATION

Mediation should be strictly voluntary. Any party may therefore opt out from the mediation process, if any party feels that the mediation process is proving futile.

## FURTHER AMENDMENTS TO THE MEDIATION ACT

The amendments to the Mediation Act also include a revised definition for the operative word here, which is now defined as *'a process in which a mediator facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute.'*

These revisions also grant the Mediation Centre the right to draw up a list of mediators to assist in international and domestic mediation, but it also allows the parties to nominate persons of their mutual trust to act as their mediator.

The tariffs are also set out in these set of amendments, and the fees payable to advocates, legal procurators and other professionals who provide their services during mediation sessions are now better defined. Various procedural issues are addressed in these amendments, particularly in the relationship between the Mediation Centre and the Courts of Law, and the various methodologies that are to be followed throughout the process itself.

Significantly, the amendments also cater for the use of mediation in matters that involve the Government itself, promoting principles in line with EU legislation and recommendations.

## CONCLUSION

In brief, therefore, the amendments have provided Maltese legislation with significant improvements in the facilitation of the use of mediation in conflict resolution, define how and where it may be used, and certainly augur for a swifter means by which disagreements can be solved, with the added hope that this will alleviate the burden currently borne by the Courts of Justice alone.

Practitioners and the general public are invited to send feedback on **info@mediationmalta.org.mt** until the 30th of September, 2016 at noon.

## PROPOSED AMENDMENTS

### **A Bill entitled**

*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. Cap. 474.

**1.** The short title of this Act is the Mediation (Amendment) Act, 2016, and this Act shall be read and construed as one with the Mediation Act, hereinafter referred to as “the principal Act”.

Amendment of article 5 of the principal Act

**2.** In paragraph (e) of article 5 of the principal Act, for the words “and international mediation;” there shall be substituted the words “and international mediation:”; and immediately thereafter there shall be added the following new proviso:

“Provided that, on the recommendation of the parties to the suit, if the parties so agree, the parties may nominate a mediator or mediators, person or persons not included in the list mentioned in this paragraph, even if the dispute is pending before a Court or Tribunal;”

Amendment of article 17A of the principal Act

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

“(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.”



Addition of new article to the principal Act.

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

Substitution of article 28 of the principal Act.

**5.** Article 28 of the principal Act shall be substituted by the following:  
“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.”

“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 provides a writing to the parties signed by the mediator, 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;
- (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.

**6.** 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.

34. (1) Without prejudice to the provisions of article 16A of the Letting 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 or Tribunal 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 or Tribunal 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 before the Court or Tribunal, the Court or Tribunal aforesaid shall appoint the application for hearing without any need of a further mediation. The plaintiff shall inform the Court or Tribunal of such a fact *ab initio*, together with the certificate that 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 applications 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."

Consequential amendments to the Code of Organization and Civil Procedure.

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

(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:

- (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);

(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) 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.”.

## OBJECTS AND REASONS

The main object of this Bill is to amend the Mediation Act in order to introduce provisions aimed at widening the instances relating to recourse to out-of-court settlement.

## **L.N. of 2016**

### **RELETTING OF URBAN PROPERTY (REGULATION) ACT (CAP. 69)**

#### **Rent Regulation Board (Mediation) Regulations, 2016**

IN EXERCISE of the powers conferred by article 45 of the Reletting of Urban Property (Regulation) Ordinance and by 193A of the Code of Organization and Civil Procedure, the Minister for Justice, Culture and Local Government has made the following regulations:

Citation. **1.** The title of these regulations is the Rent Regulation Board (Mediation) Regulations, 2016.

**2.** (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, in accordance with the provisions of the Mediation Act, 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 the Mediation Act.

(2) Only after the mediation is unsuccessfully terminated in accordance with article 28 of the Mediation Act, may the parties to the mediation proceed with an application before the Rent Regulation Board (Malta) or the Rent Regulation Board (Gozo).

**L.N. of 2016  
MEDIATION ACT  
(CAP. 474)**

**Mediation Act (Tariff of Fees) (Amendment) Regulations, 2016**

IN EXERCISE of the powers conferred by article 30 of the Mediation Act, the Minister for Justice, Culture and Local Government, after consultation with the Malta Mediation Centre, has made the following regulations:

Citation.  
S.L. 474.01

**1.** The title of these regulations is the Mediation Act (Tariff of Fees) (Amendment) Regulations, 2016, and these regulations shall be read and construed as one with the Mediation Act (Tariff of Fees) Regulations, hereinafter referred to as “the principal regulations”.

Substitutes regulation 4 of the principal regulations.

**2.** Regulation 4 of the principal regulations shall be substituted by the following:

“4. (1) Mediators shall be entitled to receive such fees for services rendered for conducting the mediation sessions between the parties, as agreed in writing between the parties and the mediator prior to the commencement of proceedings.

(2) In the absence of an agreement in writing as aforesaid, mediators shall be entitled to a minimum comprehensive fee of twenty-five euro (€25) per hour exclusive of VAT, payable by the parties.”

## **L.N. of 2016**

### **MEDIATION ACT (CAP. 474)**

#### **Mediation Act (Tariff of Fees for Professional Counsel) Regulations, 2016**

IN EXERCISE of the powers conferred by article 30 of the Mediation Act, the Minister for Justice, Culture and Local Government, after consultation with the Malta Mediation Centre, has made the following regulations:

**1.** The title of these regulations is the Mediation Act (Tariff of Citation. Fees for Professional Counsel) Regulations, 2016.

Tariff of fees for professional counsel.

**2.** The minimum professional fees due to advocates, legal procurators or other professionals who provide their services during the mediation process shall be the following:.

(a) twenty-five euro (€25) per hour excluding VAT, for every mediation session attended whether such mediation is a compulsory mediation or otherwise;

(b) in the case of a successful outcome of the mediation process, whereby the parties reach an agreement in toto to the dispute, and enter into a private writing or public deed, the tariff stipulated under Tariff E to the Code of Organization and Civil Procedure shall apply, and the professional counsel shall receive the equivalent of such fees as stipulated under the said tariff;

(c) in the case of a successful outcome to the mediation process, whereby the parties reach an agreement in parte to the dispute, and enter into a private writing or public deed, the fees which regulate judgments in parte, set out under Tariff E to the Code of Organization and Civil Procedure shall apply, and the professional counsel shall receive the equivalent of such fees as stipulated under the said tariff;

(d) in mediation disputes regarding titles of lease, the fees due to such professional counsel shall be regulated in accordance with article 39 of the Reletting of Urban Property (Regulation) Ordinance.







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