

CHAPTER 555

ARBITER FOR FINANCIAL SERVICES 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.

18th April, 2016*

ACT XVI of 2016, as amended by Acts XVI of 2017 and VII of 2018.

PART I

Preliminary

1. The short title of this Act is the Arbiter for Financial Services Act. Short title.
2. In this Act, unless the context otherwise requires: Interpretation.
Amended by:
XVI. 2017.87.
- "Arbiter" means the Arbiter for Financial Services appointed under article 14;
- "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 and, or from 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 A provider of financial services which has had its licence suspended or withdrawn by the competent authority, but which was licensed during the period in relation to Cap. 330.

* see article 1(2) of this Act as originally enacted, and Legal Notice 132 of 2016.

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;

"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.

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

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

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.

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

Functions 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](#);
- (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.

Cap. 586.

(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.

Accountability of the Office.

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

- (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 [Public Finance Management Act](#).

Cap. 601.

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

Funding of Office.

13. The funds of the Office shall consist of:

- (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 appointed.

Appointment of Arbiter.

(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."

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

Term of office.

(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.

Disqualification or removal from office.

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:

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.

(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.

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.

Functions and powers of Arbiter for Financial Services.
Amended by: VII.2018.94.

(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 22(3)(c) 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](#).

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- (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.

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:

Accountability of Arbiter.

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.

20A. Without prejudice to article 113 of the Constitution of Malta, the holder of the office of Arbiter for Financial Services shall be entitled to a pension equivalent to the pension given to Members of the Judiciary under the [Members of the Judiciary \(Pensions\) Act](#):

Pension.
Added by
VII.2018.95.

Cap. 564

Provided that the holder of the office of Arbiter for Financial Services shall be eligible to receive the pension referred to herein only on reaching retirement age and on condition that the said individual would have served a full term of office:

Provided further that the Arbiter for Financial Services shall forfeit the right to a pension if he or she is removed from office in accordance with the provisions of Chapter VIII or Chapter VII, respectively, of the Constitution of Malta due to proved misbehaviour.

20B. There shall be charged on and paid out of the Consolidated Fund all such sums of money as may from time to time be granted by way of pension to the holder of the office of Arbiter for Financial Services.

Pension to be charged on the revenues of Malta.
Added by
VII.2018.95.

PART IV

Competence

Competence of
Arbiter.

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:

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 Arbitrer; or
- (c) the complaint is, in the opinion of the Arbitrer, frivolous or vexatious.
- (3) (a) An Arbitrer 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 Arbitrer 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 Arbitrer 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 Arbitrer.

PART V

Proceedings

22. (1) A complainant shall complain to the Arbitrer 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 Arbitrer. The referral of any matter to the Arbitrer 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 Arbitrer shall determine whether the complaint falls within his competence.

(3) An Arbitrer shall not proceed to deal with a complaint unless the Arbitrer 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 Arbitrer within twenty days from when the Arbitrer 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.

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.

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(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.

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(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.

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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:

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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 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.

(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](#).

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(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.

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

Adjudication.
Amended by:
XVI. 2017.88.

(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 until the date of payment;
 - (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 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.

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

(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(9) of the [Code of Organization and Civil Procedure](#). Cap. 12.

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

(3) An appeal to the Court of Appeal (Inferior Jurisdiction) in terms of article 41(9) 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](#). Cap. 12.

(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.

(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](#). Cap. 12.

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

Delegation of functions.

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.

(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.

Consideration of similar complaints.

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.

Immunity.

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.

Offences and penalties.

32. (1) Any person who -

- (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.

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

Power to make regulations.
Amended by:
XVI. 2017.89.

- (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;
- (h) to give better effect to any of the provisions of this Act, and for the better enforcement thereof; and
- (i) to make regulations to transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder.

34. The Minister shall be vested with authority for the purposes of [Directive 2013/11/EU](#) of the European Parliament and of the Council on alternative dispute resolution for consumer disputes to appoint the ADR entity for financial services as defined therein.

Designation of authority for the purposes of Directive 2013/11/EU.
Added by:
XVI. 2017.90