

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**
No. 3863 of 7 July, 2011

LEGAL NOTICE NO. 105 OF 2011.

INTERPRETATION AND GENERAL CLAUSES ACT

SUPREME COURT ACT (AMENDMENT) REGULATIONS 2011

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers, and in order to partly transpose into the law of Gibraltar Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspect of mediation in civil and commercial matters, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Supreme Court Act (Amendment) Regulations 2011 and come into operation on the day of publication.

Amendments to the Supreme Court Act.

2. The Supreme Court Act is amended by inserting the following Part after Part XI—

**“PART XIA
CROSS-BORDER MEDIATION**

Application of Part XIA.

72A.(1) This Part shall apply in cross-border disputes to civil and commercial matters except as regards rights and obligations which are not at the parties’ disposal under any provisions of law.

(2) This Part shall not apply to revenue, customs or administrative matters or to the liability of the Government for acts or omissions in the exercise of its public authority.

Interpretation under Part XIA.

72B.(1) In this Part–

“Civil Procedure Rules” means the Civil Procedure Rules of the United Kingdom which apply to Gibraltar by virtue of section 38A;

“court” means the Supreme Court;

“cross-border dispute” has the meaning given to it by section 72C;

“mediation” means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator and this process may be initiated by the parties, or suggested or ordered by the court or prescribed by any provisions of law;

“Mediation Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspect of mediation in civil and commercial matters, as amended from time to time;

“mediation evidence” means evidence arising out of or in connection with a mediation process;

“mediation settlement” means the content of a written agreement resulting from mediation of a relevant dispute;

“mediation settlement agreement” means a written agreement resulting from mediation of a relevant dispute;

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

“Member State” means a Member State of the European Union with the exception of Denmark;

“relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

- (2) The definition of “mediation” in subsection (1)–
- (a) includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question; and
 - (b) excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question.

Cross-border disputes.

72C.(1) For the purposes of this Part a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in Gibraltar other than that of any other party on the date on which–

- (a) the parties agree to use mediation after the dispute has arisen;
 - (b) mediation is ordered by a court;
 - (c) an obligation to use mediation that arises under any provisions of the law of Gibraltar; or
 - (d) for the purposes of section 72D an invitation is made to the parties.
- (2) Notwithstanding subsection (1), for the purposes of Article 7 and Article 8 of the Mediation Directive, a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in Gibraltar or in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph (a), (b) or (c) of subsection (1).

- (3) For the purposes of subsections (1) and (2), domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time.

Recourse to mediation.

72D. Where a judicial proceedings or arbitration is brought before the court, it may, when appropriate and having regard to all the circumstances of the case, invite the parties to—

- (a) use mediation in order to settle the dispute; and
- (b) attend an information session on the use of mediation if such sessions are held and are easily available.

Making a mediation settlement enforceable.

72E.(1) Where the parties, or one of them with the explicit consent of the others, wish to apply for a mediation settlement to be made enforceable, the parties or a party may apply to the court in accordance with the Civil Procedure Rules.

- (2) Where an application is made under subsection (1), the mediation settlement agreement must be annexed to the application notice or claim form when it is filed in accordance with the Civil Procedure Rules.
- (3) Except to the extent that subsection (6) applies, the parties must file any evidence of explicit consent to the application under subsection (1) when the parties file the application or claim form in accordance with the Civil Procedure Rules.
- (4) Subject to subsection (5), where an application is made under subsection (1), the court shall make an order making the mediation settlement enforceable.
- (5) The court shall not make an order under subsection (4)—

- (a) if the content of the mediation settlement agreement is contrary to the law of Gibraltar;
 - (b) unless the court has evidence that each of the parties to the mediation settlement agreement has given explicit consent to the application for the order.
- (6) Where a party to the mediation settlement agreement–
- (a) has agreed in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement;
 - (b) is a party to the application under subsection (1); or
 - (c) has written to the court consenting to the application for the mediation settlement enforcement order,
- that party is deemed to have given explicit consent to the application for the mediation settlement enforcement order.
- (7) An application under subsection (1) shall be dealt with without a hearing, unless the court otherwise directs.

Mediation Evidence.

- 72F.(1) Subject to subsection (2), a mediator has the right to withhold mediation evidence in civil and commercial judicial proceedings and arbitration.
- (2) The court may order that a mediator must give or disclose mediation evidence where–
- (a) all parties to the mediation agree to the giving or disclosure of the mediation evidence;
 - (b) the giving or disclosure of the mediation evidence is necessary for overriding considerations of public policy, in accordance with Article 7(1)(a) of the Mediation Directive; or

- (c) the giving or disclosure of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

Competent authority.

72G.(1) The Minister of Justice shall be the competent authority for the purpose of Article 6(3) of the Mediation Directive.

- (2) The Government shall ensure that the European Commission is informed that the Minister of Justice is the competent authority for the purpose of Article 6(3) of the Mediation Directive.”

Dated 7th July, 2011.

P R CARUANA,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Supreme Court Act in order to transpose Articles 1 to 7 of Directive 2005/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspect of mediation in civil and commercial matters.

