

**A BILL  
entitled**

*An act to enable the institution of collective proceedings for  
infringements of the Competition Act and the Consumer  
Affairs Act.*

1. The short title of this Act is the Collective Proceedings Act. Short title.

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

“class member” means a person falling within the class specified in the collective proceedings decree;

“class representative” means the plaintiff, that is, a person who is authorised to bring the claims in collective proceedings and includes a sub-class representative;

“collective proceedings” means proceedings which are brought by a class representative on behalf of persons whose claims raise common issues and which may be instituted as a group action or a representative action;

“collective proceedings decree” means a decree authorising the action to proceed as a collective proceedings;

“common issues” means,

(i) common but not necessarily identical issues of fact, or

(ii) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

“group action” means proceedings that are brought on behalf of a number of individual class members and whose class representative satisfies the criteria mentioned in sub-article (2) of article 12.

“opt-in proceedings” means collective proceedings brought on behalf of class members who notify the class representative in accordance with this Act that their claim should be included in the collective proceedings;

Cap. 378.

“registered consumer association” means a registered consumer association as defined in the Consumer Affairs Act and any other consumer association that has been officially recognised in any other country;

“representative action” means proceedings that are brought on behalf of a number of class members by a representative body;

“represented person” means a class member who has opted into the collective proceedings;

“TFEU” means the Treaty on the Functioning of the European Union.

Application of the Act.

**3.** Collective proceedings may be instituted where an infringement of the:

(a) Competition Act, and, or articles 101 or 102 of the TFEU; or

Cap. 379.

(b) Consumer Affairs Act and, or those Acts mentioned in article 111 of the Consumer Affairs Act,

is alleged to have occurred or where a decision finding an infringement has become *res judicata*.

Provided that such proceedings may also be instituted where an investigation or proceedings are pending before the Office for

Competition or the Office for Consumer Affairs or under Council Regulation (EC) No. 1/2003 or where proceedings are pending before a tribunal or court of civil jurisdiction.

4. Where the class representative files a claim for damages arising from an infringement of the Competition Act and, or Articles 101 or 102 of the TFEU, the provisions of article 27A of the Competition Act shall be applied.

Filing of collective proceedings for an infringement of the Competition Act.

5. (1) Collective proceedings shall be instituted by means of a sworn application, in the Civil Court First Hall or the Court of Magistrates (Gozo) in its superior jurisdiction or by means of an application in the inferior Courts.

Contents of application.

Provided that article 56A of the Code of Organization and Civil Procedure shall also apply.

Cap 12.

(2) The plaintiff shall therein request that the Court declare that the collective proceedings procedure is the most appropriate procedure in the circumstances.

(3) The application shall–

(a) state the name of the class representative;

(b) state the name of the defendant;

(c) provide a description of the class;

(d) describe the common issues for the claims which the class representative has brought in the collective proceedings;

(e) state the claim or claims being requested and, if applicable, attach a breakdown of the relative amounts due to the class members;

(f) provide all evidence on which the plaintiff intends to rely to satisfy the criteria for declaration and approval according to articles 9 and 12 of the Act; and

(g) provide, where applicable, the Court with a collective proceedings agreement showing that the class members consented to their inclusion in the

collective proceedings and to the appointment of the class representative.

Cap 12. Provided that the provisions of article 156 of the Code of Organisation and Civil Procedure shall, where applicable, also apply to the sworn application in collective proceedings.

Provided further that the Court shall order the amendment of the application where other class members opt-in within the period mentioned in article 7(2) or following the permission of the Court in terms of article 8(1).

Pre-trial hearing.

**6.** The Court shall hold a pre-trial hearing and —

(a) either issue a decree ordering the continuation of the proceedings together with other orders as it may deem fit,

(b) or issue a decree to stay the proceedings if the parties agree, during the hearing, to attempt to compromise the lawsuit by alternative dispute resolution or other means.

Decree ordering continuation of proceedings.

**7.** (1) The Court shall decree the continuation of proceedings if:

(a) it declares the proceedings as appropriate for collective proceedings in accordance with article 9;

(b) it approves the plaintiff to act as the class representative in accordance with article 12; and

(c) it is satisfied that the claims are pursuant to article 3 of the Act.

(2) The decree shall include-

(a) the name and address of the class representative;

(b) the name of the defendant;

(c) a description of the class;

(d) the common issues for the claims which the class representative has brought in the collective proceedings;

(e) the claims sought; and

(f) the legal effects of a judgment delivered on the basis of collective proceedings.

Provided that the decree may also contain such conditions as the Court may deem fit and the Court shall also order that such decree is to be published in the Government Gazette and in a local English and Maltese newspaper and in any other media if the Court deems it fit, and shall state that any other third parties who desire to be class members, may do so within a specified date not exceeding three months from the date of the decree, by registering their claim with the class representative.

**8.** (1) A class member who does not opt-in in accordance with article 7 may not do so after the specified date, except with the permission of the Court. The Court may grant such permission if it is satisfied that the delay was not caused by the fault of that class member and the defendant would not suffer substantial prejudice if permission were granted. Class members.

(2) A class member who has already brought a claim that raises the common issues set out in the collective proceedings decree may not be a represented person unless, before the pre-trial hearing, the class member discontinues or applies to stay that claim.

(3) A class member may also not be a represented person where:

(a) he has already reached an out of court settlement on the common issues set out in the collective proceedings decree with the defendant; or

(b) an arbitration decision between the class member and the defendant has already been issued on the remedies sought by the class member; or

(c) a decision on the common issues set out in the collective proceedings decree has already become *res judicata* before a tribunal or court of civil jurisdiction and the said tribunal or court has already decided on the remedies sought by the class member.

Declaration of proceedings as appropriate for collective proceedings.

**9.** (1) The Court shall decree the proceedings as appropriate for collective proceedings when-

(a) it is satisfied by the class representative that the claims in the proceedings—

(i) are brought on behalf of an identified class of two or more persons; and

(ii) raise common issues; and

(b) it is satisfied by the class representative that the collective proceedings are the most appropriate means for the fair and efficient resolution of the common issues.

(2) In determining whether the collective proceedings are the most appropriate means for the fair and efficient resolution of the common issues for the purposes of sub-article (1)(b), the Court will take into account, amongst other things—

(a) the benefits of the proposed collective proceedings; and

(b) the nature of the class.

Certain matters not to bar issue of decree.

**10.** The court shall not refuse to decree proceedings as collective proceedings solely on any of the following grounds:

(a) the claim requires individual assessment after determination of the common issues;

(b) the claim relates to separate contracts involving different class members;

(c) the amount and nature of the damages sought vary among the different class members.

Where Court does not decree proceedings as collective proceedings.

**11.** Where the Court does not decree the proceedings as collective proceedings, the Court may permit the proceedings to continue as one or more proceedings between different parties and, for the purpose, the Court may,

(a) order the addition, deletion or substitution of parties;

(b) order the amendment of the application; and

(c) make any further order that it considers appropriate.

**12.** (1) In a representative action, the Court shall-

Approval of plaintiff  
to act as class  
representative.

(a) approve a registered consumer association to act as a class representative;

(b) approve a constituted body recognised by law to act as a class representative.

Provided that the class representative satisfies the Court that it would fairly and adequately act in the interests of the class members and does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of the class members.

(2) In a group action, the Court may approve the plaintiff to act as the class representative if it is satisfied by the plaintiff that he-

(a) has a claim which falls within the proposed collective proceedings;

(b) would fairly and adequately act in the interests of the class members;

(c) does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of the class members; and

(d) will be able to pay the defendant's recoverable costs if ordered to do so.

**13.** (1) The class representative shall act in the best interests of the class members.

Duties of class  
representative.

(2) The class representative shall explain to the class members the nature of the collective proceedings and shall also keep them informed on the progress of the proceedings including any judgment or decree that is binding on those class members or sub-class members.

(3) The class representative shall keep and maintain a register on which he will record the identity and claims of those class members who are part of the collective proceedings and shall, on request, make such register available to the defendant.

Substitution.

(4) If at any time after the Court's decree ordering the continuation of proceedings, it appears to the Court that the class representative is not fairly or adequately representing the interests of the represented persons, the Court may, either of its own initiative or on the application of a class member —

(a) substitute the class representative by another person who satisfies the criteria for approval in article 12 as the class representative; and, or

(b) make any other order it considers appropriate.

Withdrawal.

(5) A class representative may only withdraw as a party to the collective proceedings if the Court gives permission for the withdrawal. The Court will only give permission for the withdrawal if it is satisfied that the class representative —

(a) has given notice of the application to withdraw to the class members in a form and manner approved by the Court; and

(b) provides such conditions as to costs that the Court considers just.

(6) If the Court gives permission for the class representative to withdraw from the proceedings and no substitute class representative is approved, the Court will give directions for the future conduct of the proceedings which may include provision that the proceedings should continue as one or more proceedings between different parties.

Sub-classes.

**14.** If the represented persons include a sub-class of persons whose claims raise common issues that are not shared by all the represented persons, the Court shall approve a person who satisfies the criteria for approval in article 12 to act as the class representative for that sub-class.

Stages of collective proceedings.

**15.** (1) Subject to article 16, in collective proceedings —

(a) common issues for a class shall be determined together;

(b) common issues for a sub-class shall be determined together; and

(c) issues that are relevant only to certain individual represented persons (“individual issues”) shall be determined in further hearings.

(2) If the Court directs that the participation of individual represented persons is necessary in order to determine individual issues, the class representative shall give notice of the further hearings to those individual represented persons as directed by the Court.

(3) The Court may give directions for the procedures to follow in the further hearings referred to in sub-article (1) (c) including setting a time within which individual represented persons may make claims in respect of the individual issues.

(4) The Court may give judgment in respect of the common issues and separate judgments in respect of any other issue. Separate judgments.

**16.** The Court, on the application of a party or class member, may issue any decree it considers appropriate with respect to the conduct of collective proceedings to ensure its fair and expeditious determination and, for this purpose, may impose such terms on the parties as it considers appropriate. Court may determine conduct of proceedings.

**17.** The Court, on its own initiative or on the application of a party or class member, may stay any proceeding related to the collective proceedings before it, on such terms as it considers appropriate. Court may stay any other proceedings.

**18.** (1) Further to the provisions of Book Third, Title I, Sub-Title III of the Code of Organization and Civil Procedure, the Court may give those orders which it may deem fit to ensure that any document containing business secrets or other confidential information pertaining to that undertaking producing such document, be kept sealed under its authority. Evidence.

(2) In collective proceedings for damages arising from an infringement of article 5 of the Competition Act and, or article 101 of the TFEU, where the defendant had filed a leniency application to the Office for Competition or to the European Commission or to other authorities having responsibility in

competition matters and where the class representative has requested the production of documents relating to the leniency procedure, the Court is required to determine the conditions under which such access is to be permitted or refused by weighing the interests protected by law.

Judgments and decrees.

**19.** (1) A judgment on the common issues for the represented persons or a sub-class of represented persons will bind the represented persons, or those within the sub-class, as the case may be.

(2) The class representative shall give notice of any judgment or decree to those represented persons who are bound by it in a form and manner approved by the Court.

Compromise or discontinuance.

**20.** (1) A class representative may not compromise or discontinue all or part of a claim in collective proceedings without the permission of the Court.

(2) The application for permission made under sub-article (1) shall—

(a) set out the form and manner by which the class representative proposes to give notice to the represented persons of the intention to compromise or discontinue all or part of a claim in the collective proceedings; and

(b) in the case of an application to compromise, set out the terms of the proposed compromise.

(3) On receipt of an application made under sub-article (1), the Court will—

(a) set a date for a hearing to determine whether to approve the compromise or discontinuance; and

(b) issue a decree for the giving of the notice referred to in sub-article (2)(a).

Hearing to determine approval of compromise or discontinuance.

**21.** (1) A represented person who objects to the compromise may, with the permission of the Court, be omitted from the compromise.

(2) At the hearing to determine the application for permission to compromise or withdrawal, the Court may—

(a) approve the compromise or discontinuance on terms it considers to be appropriate;

(b) refuse to approve a compromise unless the compromise provides an opportunity for represented persons to notify the class representative that they are to be omitted from it and sets out the manner and time by which that notification is to be made; or

(c) order that represented persons be given an opportunity to notify the class representative that they are to be omitted from a compromise and the manner and time by which that notification is to be made.

(3) A compromise approved by the Court binds every represented person, or every represented person within the subclass, as the case may be, except—

(a) those who have obtained permission of the Court under sub-article (1) to be omitted from it; and

(b) those who have notified the class representative, in accordance with sub-article 2(b) or (c), that they are to be omitted from it.

(4) If the Court approves the compromise or discontinuance, the class representative shall give notice of its approval, in a form and manner approved by the Court, to the represented persons.

(5) If one or more of the represented persons are to be omitted from the compromise, the Court may permit the proceedings to continue as one or more claims between different parties and, for that purpose—

(a) order the addition, removal or substitution of parties;

(b) order the amendment of the application; or

(c) make any other order that it considers appropriate.

**22.** (1) A party may appeal to the Court of Appeal from a decree refusing to declare the proceedings as collective proceedings Appeals.

and from a decree that declares the proceedings as no longer being collective proceedings.

(2) A party may appeal to the Court of Appeal from a decree declaring the proceedings as collective proceedings only with leave of the Court.

(3) An appeal from a judgment relating to the common issues for a class or sub-class may only be made by a class representative or a defendant.

(4) If a class representative does not appeal or seek leave to appeal as permitted by sub-article (1) or (2), or if a class representative abandons an appeal filed under sub-article (1) or (2), any class member may file an application to the Court of Appeal for leave to act as the class representative for the purposes of the relevant sub-article.

(5) If a class representative does not appeal as permitted by sub-article (3), or if a class representative abandons an appeal under sub-article (4), any class member may make an application to the Court of Appeal for leave to act as the class representative for the purposes of sub-article (3).

Provided that the provisions of article 229 of the Code of Organization and Civil Procedure shall apply where applicable.

Prescription.

**23.** The period of prescription applicable to a claim for damages is suspended in favour of a class member on the commencement of the collective proceedings and resumes running against the class member when he no longer forms part of the collective proceedings.

Costs.

**24.** (1) Subject to sub-article (2), costs may be awarded in favour or against the class representative, but may not be awarded in favour or against a represented person who is not the class representative.

(2) If the Court has approved the appointment of a class representative for a sub-class, costs associated with the determination of the common issues for the sub-class may be awarded in favour or against that person, and not the class representative for the whole class.

(3) If the Court varies the collective proceedings

decree so as to substitute the class representative by another person, costs associated with the collective proceedings incurred before the date of substitution may not be awarded in favour or against that person, unless the Court orders otherwise.

(4) Costs associated with the determination of individual issues in accordance with article 15 may be awarded in favour or against the relevant individual represented persons.

(5) A registered consumer association is exempted from the payment of Court registry fees according to Schedule A, Tariff A of the Code of Organization and Civil Procedure upon the filing of collective proceedings.

(6) In the event that the Court finds against the class representative that is a registered consumer association, the Court shall reduce costs against the class representative by between one tenth and one half of the costs normally due, taking into account the economic standing of the class representative and the legal reasons for finding against the class representative.

(7) Where the Court finds that the collective proceedings are frivolous or vexatious, the Court may award double costs against the class representative:

Provided that where the class representative is a registered consumer association, it may only be ordered to pay the full costs.

(8) The defendant shall in all cases, be liable to the provisions of Schedule A of the Code of Organization and Civil Procedure.

**25.** The Prime Minister may from time to time make regulations for the better carrying out of the provisions of this Act and may, in particular -

Power to make regulations.

- (a) extend the application of this Act to other laws; and
- (b) extend the application of article 12(1) to other bodies representing the interests of consumers or undertakings under those conditions that he deems fit.