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Mediation Bill

Bill No. 37/2016.

Read the first time on 7 November 2016.

MEDIATION ACT 2016

(No. of 2016)

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A BILL

intituled

An Act to promote, encourage and facilitate the resolution of disputes by mediation and for connected purposes, and to make consequential and related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Mediation Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

General interpretation

2.—(1) In this Act, unless the context otherwise requires —

“approved certification scheme” means an accreditation or a certification scheme designated as an approved certification scheme under section 7;

“certified mediator” means a mediator who is certified under an approved certification scheme;

“designated mediation service provider” means a mediation service provider designated under section 7;

“mediated settlement agreement”, in relation to a mediation, means an agreement by some or all of the parties to the mediation settling the whole or part of the dispute to which the mediation relates;

“mediation agreement” means a mediation agreement described in section 4;

“mediation communication”, in relation to a mediation, means —

(a) anything said or done;

(b) any document prepared; or

(c) any information provided,

for the purposes of or in the course of the mediation, and includes a mediation agreement or mediated settlement agreement;

“mediation institution” means a body or an organisation that administers an accreditation or a certification scheme for mediators;

“mediation service provider” means a body or an organisation that provides services for the conduct of mediation and has in place procedures or rules to govern the conduct of mediation;

“mediator” means an individual who is appointed to be a mediator for a mediation;

“party to a mediation” means any party to the whole or part of a dispute that is referred for mediation, but does not include any mediator conducting the mediation; 5

“third party”, in relation to a mediation, means a person who is —

(a) not a party to the mediation;

(b) not a mediator for the mediation; and

(c) not a mediation service provider. 10

(2) Where more than one mediator is appointed for a mediation, a reference to a mediator under this Act is a reference to all the mediators for the mediation.

Meaning of “mediation”

3.—(1) In this Act, “mediation” means a process comprising one or more sessions in which one or more mediators assist the parties to a dispute to do all or any of the following with a view to facilitating the resolution of the whole or part of the dispute: 15

(a) identify the issues in dispute;

(b) explore and generate options; 20

(c) communicate with one another;

(d) voluntarily reach an agreement.

(2) For the purposes of subsection (1), a session is a meeting between the mediator, or one or more mediators (where more than one mediator is appointed for a mediation), and one or more of the parties to the dispute, and includes any activity undertaken (whether by a mediator, a party to the dispute or some other person) — 25

(a) to arrange or prepare for such a meeting, whether or not the meeting takes place; and

(b) to follow up on any matter or issue raised in such a meeting. 30

(3) For the purposes of subsection (2), a meeting includes a meeting conducted by electronic communication, video conferencing or other electronic means.

(4) In this section —

“data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“electronic communication” means any communication that is made by means of data messages.

Meaning and form of “mediation agreement”

4.—(1) In this Act, “mediation agreement” means an agreement by 2 or more persons to refer the whole or part of a dispute which has arisen, or which may arise, between them for mediation.

(2) A mediation agreement may be in the form of a clause in a contract or in the form of a separate agreement.

(3) A mediation agreement must be in writing.

(4) A mediation agreement is in writing if its content is recorded in any form, whether or not the mediation agreement has been concluded orally, by conduct or by other means.

(5) A reference in a contract to any document containing a mediation clause constitutes a mediation agreement in writing if the reference is such as to make that clause part of the contract.

(6) A reference in a bill of lading to a charterparty or any other document containing a mediation clause constitutes a mediation agreement in writing if the reference is such as to make that clause part of the bill of lading.

Act binds Government

5. This Act binds the Government.

Application of Act

6.—(1) Subject to subsections (2), (3) and (4), this Act applies to, or in relation to, any mediation conducted under a mediation agreement where —

- (a) the mediation is wholly or partly conducted in Singapore; or
- (b) the agreement provides that this Act or the law of Singapore is to apply to the mediation.

(2) This Act does not apply to, or in relation to, the following:

- (a) any mediation or conciliation proceeding, process, scheme or framework conducted under, or provided by or under, any written law;
- (b) unless otherwise provided in an order under subsection (3), any mediation conducted by, or under a direction by, a court;
- (c) subject to subsection (4), any mediation or conciliation proceeding, process, scheme or framework, or any class of mediation or conciliation proceedings, processes, schemes or frameworks, not falling under paragraph (a) or (b), which is excluded in an order under that subsection.

(3) The Minister may, after consulting the Chief Justice, by order in the *Gazette*, extend all or any of the provisions of this Act to apply to, or in relation to, any mediation described in subsection (2)(b), and in the order make such saving or transitional provisions consequent on the extension as may be necessary or expedient.

(4) The Minister may, by order in the *Gazette*, exclude from the application of all or any of the provisions of this Act —

- (a) the whole or any part of any mediation or conciliation proceeding, process, scheme or framework described in subsection (2)(c); or
- (b) any class of mediation or conciliation proceedings, processes, schemes or frameworks described in subsection (2)(c).

(5) All orders made under subsections (3) and (4) are to be presented to Parliament as soon as possible after publication in the *Gazette*.

Designation of mediation service provider and approved certification scheme

5 7.—(1) The Minister may, subject to such terms and conditions as the Minister thinks fit to impose —

(a) designate any mediation service provider to be a designated mediation service provider for the purposes of this Act; and

10 (b) designate any accreditation or certification scheme administered by a mediation institution to be an approved certification scheme for the purposes of this Act.

(2) Notice of every designation must be published in the *Gazette*.

Stay of court proceedings

15 8.—(1) Where any party to a mediation agreement institutes any proceedings before a court against any other party to that agreement in respect of any matter which is the subject of that agreement, any party to that agreement may apply to that court to stay the proceedings so far as the proceedings relate to that matter.

20 (2) The court hearing the application may make an order, upon such terms or conditions as the court thinks fit, staying the proceedings so far as the proceedings relate to the matter.

(3) The court may, in making an order under subsection (2), make such interim or supplementary orders as the court thinks fit for the purpose of preserving the rights of the parties.

25 (4) For the purposes of this section, a reference to a party includes a reference to any person claiming through or under such party.

Restrictions on disclosure

30 9.—(1) Subject to subsections (2) and (3), a person must not disclose any mediation communication relating to a mediation to any third party to the mediation.

(2) A person may disclose a mediation communication to a third party to the mediation if —

- (a) the disclosure is made with the consent of —
 - (i) all the parties to the mediation; and
 - (ii) for a mediation communication that is made by a person other than a party to the mediation, the maker of the mediation communication; 5
- (b) the content of the mediation communication is information that has already been made available to the public at the time of its disclosure, other than information that is only in the public domain due to an unlawful disclosure;
- (c) there are reasonable grounds to believe that the disclosure is 10
 - (i) the danger of injury to any person; or
 - (ii) the abuse, neglect, abandonment or exploitation of any child or young person (within the meaning of the Children and Young Persons Act (Cap. 38)); 15
- (d) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, whether directly or indirectly, the identity of the maker of the mediation communication or any person to whom the mediation communication relates; 20
- (e) the disclosure is made for the purpose of seeking legal advice;
- (f) the person disclosing the mediation communication is an arbitrator acting as a mediator under section 63(1) of the Arbitration Act (Cap. 10) or an arbitrator or umpire acting 25
 - as a conciliator under section 17(1) of the International Arbitration Act (Cap. 143A) and the disclosure is made in accordance with section 63(2) or (3) of the Arbitration Act or section 17(2) or (3) of the International Arbitration Act (as the case may be); 30
- (g) the disclosure is required by an order of court, or required or authorised by or under any written law;
- (h) the disclosure is made to assist a law enforcement agency in the investigation of any offence under any written law;

(i) the disclosure is in compliance with a request or requirement imposed by a regulatory authority and is necessary to enable the regulatory authority to perform its duties or discharge its functions; or

5 (j) the mediation communication relates to the commission of any offence under any written law or was made in furtherance of any illegal purpose.

10 (3) Despite subsection (2), a person may, with leave of a court or an arbitral tribunal under section 11, disclose a mediation communication to a third party to the mediation —

(a) for the purpose of enforcing or disputing a mediated settlement agreement;

15 (b) for the purpose of establishing or disputing an allegation or a complaint of professional misconduct against a mediator or any other person who participated in the mediation in a professional capacity;

20 (c) for the purpose of discovery or other similar procedures in any court proceedings or arbitral proceedings (as the case may be) which have been instituted, where the person who is a party to those proceedings is required to disclose documents in the person's possession, custody or power; or

(d) for any other purpose that the court or arbitral tribunal (as the case may be) considers justifiable in the circumstances of the case.

25 (4) In this section —

“disclosure”, in relation to information, includes permitting access to the information;

30 “law enforcement agency” means any authority or person charged with the duty of investigating offences or charging offenders under any written law;

“regulatory authority” means any body or organisation in Singapore charged with the public function of regulating entities or individuals, whether under any written law or otherwise.

Admissibility of mediation communication in evidence

10. A mediation communication is not to be admitted in evidence in any court, arbitral or disciplinary proceedings except with the leave of a court or an arbitral tribunal under section 11.

Leave of court or arbitral tribunal for disclosure or admission in evidence

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11.—(1) A court or an arbitral tribunal may, on application by any person, grant leave for a mediation communication to be disclosed under section 9(3) or admitted in evidence under section 10.

(2) For the purposes of subsection (1), the court or arbitral tribunal (as the case may be) must take into account all of the following matters in deciding whether to grant leave:

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- (a)** whether the mediation communication may be or has been disclosed under section 9(2);
- (b)** whether it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence;
- (c)** any other circumstances or matters that the court or arbitral tribunal (as the case may be) considers relevant.

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(3) Where the mediation communication is sought to be disclosed or admitted in evidence in proceedings —

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- (a)** before a court, the application must be made to the court before which the proceedings are heard;
- (b)** before an arbitral tribunal, the application must be made to the arbitral tribunal before which the proceedings are heard; and
- (c)** in any other case, the application must be made to the High Court.

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Recording of mediated settlement agreement as order of court

12.—(1) Where a mediated settlement agreement has been made in a mediation in relation to a dispute for which no proceedings have been commenced in a court, any party to the agreement may, with the

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consent of all the other parties to that agreement, apply to a court to record the agreement as an order of court.

(2) The application must be made within —

(a) 8 weeks after the mediated settlement agreement is made;

or

(b) such longer period as the court may allow.

(3) Subject to subsection (4), a court may record a mediated settlement agreement as an order of court if —

(a) the mediation is administered by a designated mediation service provider or conducted by a certified mediator;

(b) the agreement is in writing and signed by or on behalf of all the parties to the agreement; and

(c) the agreement contains such information as may be prescribed.

(4) The court may refuse to record a mediated settlement agreement as an order of court if —

(a) the agreement is void or voidable because of incapacity, fraud, misrepresentation, duress, coercion, mistake or any other ground for invalidating a contract;

(b) the subject matter of the agreement is not capable of settlement;

(c) any term of the agreement is not capable of enforcement as an order of court;

(d) where the subject matter of the dispute to which the agreement relates involves the welfare or custody of a child, one or more of the terms of the agreement is not in the best interest of the child; or

(e) the recording of the agreement as an order of court is contrary to public policy.

(5) A mediated settlement agreement that is recorded under this section as an order of court may be enforced in the same manner as a judgment given or an order made by a court.

(6) For the purposes of this section —

- (a) where the subject matter of the dispute to which a mediated settlement agreement relates is within the jurisdiction of a Family Justice Court, a reference to a mediated settlement agreement is a reference to a mediated settlement agreement falling within one or more of the classes of mediated settlement agreements prescribed in the Family Justice Rules made under section 14 that may be recorded as orders of that court; and 5
- (b) where the subject matter of the dispute to which a mediated settlement agreement relates is within the jurisdiction of a State Court, a Family Justice Court or the High Court, a reference to a court is a reference to a State Court, a Family Justice Court or the High Court, respectively. 10

Rules of Court

13.—(1) The Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court regulating the practice and procedure of the Court of Appeal, the High Court and the State Courts in respect of any matter under this Act. 15 20

(2) All Rules of Court made under this section are to be presented to Parliament as soon as possible after publication in the *Gazette*.

Family Justice Rules

14.—(1) The Family Justice Rules Committee constituted under section 46(1) of the Family Justice Act 2014 (Act 27 of 2014) may make Family Justice Rules — 25

- (a) prescribing the classes of mediated settlement agreements that may be recorded as orders of the Family Justice Courts under section 12; and
- (b) regulating the practice and procedure of the Family Justice Courts in respect of any matter under this Act. 30

(2) All Family Justice Rules made under this section are to be presented to Parliament as soon as possible after publication in the *Gazette*.

Rules

5 **15.**—(1) The Minister may make rules prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The power conferred by subsection (1) does not extend to any matter for which Rules of Court or Family Justice Rules mentioned in
10 section 13 or 14 (as the case may be) may be made.

Consequential amendment to Family Justice Act 2014

16. Section 22(1) of the Family Justice Act 2014 (Act 27 of 2014) is amended by deleting the words “17(a), (d), (e) and (f)” in paragraph (a) and substituting the words “17(1)(a), (d), (e), (f)
15 and (g)”.

Related amendment to Legal Profession Act

17. The Legal Profession Act (Cap. 161, 2009 Ed.) is amended by inserting, immediately after section 35A, the following section:

“Sections 32 and 33 not to extend to mediation

20 **35B.**—(1) Sections 32 and 33 do not extend to —

- (a) any certified mediator conducting any mediation;
- (b) any mediator conducting any mediation which is administered by a designated mediation service provider;
- 25 (c) any foreign lawyer representing any party in any mediation that —
 - (i) is conducted by a certified mediator or administered by a designated mediation service provider; and

(ii) relates to a dispute involving a cross-border agreement where Singapore is the venue for the mediation; or

(d) any foreign lawyer registered under section 36P and representing any party in any mediation that relates to a dispute in respect of which an action has commenced in the Singapore International Commercial Court.

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(2) In this section —

“certified mediator”, “designated mediation service provider”, “mediation” and “mediator” have the same meanings as in the Mediation Act 2016;

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“cross-border agreement” means an agreement in respect of which any one or more of the following circumstances exist:

(a) at least one party to the agreement is incorporated, resident or has its place of business outside Singapore;

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(b) the subject matter of the agreement —

(i) is most closely connected to a place located outside Singapore; or

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(ii) has no physical connection to Singapore;

(c) the obligations under the agreement are to be performed entirely outside Singapore.

(3) This section applies in relation to any mediation conducted on or after the date of commencement of the Mediation Act 2016, whether the mediation commences before, on or after that date.

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(4) For the purposes of subsection (3), a mediation to resolve the whole or part of a dispute commences on the day on which all the parties agree to refer any part of that dispute for mediation.”.

Consequential and related amendments to Supreme Court of Judicature Act

18. The Supreme Court of Judicature Act (Cap. 322, 2007 Ed.) is amended —

- (a) by deleting the word “and” at the end of section 17(e);
- (b) by deleting the full-stop at the end of paragraph (f) of section 17 and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(g) jurisdiction under the Mediation Act 2016 to record a mediated settlement agreement made in a mediation, in relation to a dispute for which no proceedings have been commenced in a court, as an order of court.”;

- (c) by renumbering section 17 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) In this section, “mediated settlement agreement” and “mediation” have the same meanings as in the Mediation Act 2016.”; and

- (d) by deleting the words “section 17(b) or (c)” in section 28A(2)(a)(ii) and substituting the words “section 17(1)(b) or (c)”.

Transitional provisions

19.—(1) Except as provided in subsection (2), this Act does not apply to, or in relation to, any mediation which commences before the appointed day.

(2) This Act or any provision of this Act may apply to, or in relation to, a mediation which commences before the appointed day if —

- (a) that mediation is not completed or terminated, and no mediated settlement agreement is made, as at that day; and
- (b) all the parties to that mediation agree that this Act or the provision is to apply to, or in relation to, that mediation.

(3) For the purposes of subsections (1) and (2), a mediation to resolve the whole or part of a dispute commences on the day on which all the parties agree to refer any part of that dispute for mediation.

(4) For a period of 2 years after the appointed day, the Minister may, by rules, prescribe such additional provisions of a transitional nature consequent on the enactment of this Act as the Minister may consider necessary or expedient.

(5) In this section, “appointed day” means the date of commencement of this Act.

EXPLANATORY STATEMENT

This Bill seeks to promote, encourage and facilitate the resolution of disputes by mediation and for connected purposes.

The Bill also makes a consequential amendment to the Family Justice Act 2014 (Act 27 of 2014), a related amendment to the Legal Profession Act (Cap. 161), and consequential and related amendments to the Supreme Court of Judicature Act (Cap. 322).

Clause 1 relates to the short title and commencement.

Clause 2 is a general interpretation provision. It defines certain terms used in the Bill.

Clause 3 defines the term “mediation”.

Clause 4 defines the term “mediation agreement”. The clause also provides for the form of a mediation agreement and provides that a mediation agreement must be in writing. In the case of a mediation agreement in electronic form, the requirement for writing is defined in section 7 of the Electronic Transactions Act (Cap. 88).

Clause 5 provides that the Bill binds the Government.

Clause 6 provides for the application of the Bill.

The clause provides for the application of the Bill to, and in relation to, a mediation conducted under a mediation agreement where —

- (a) the mediation is wholly or partly conducted in Singapore; or
- (b) the agreement provides that the Bill or the law of Singapore is to apply to the mediation.

The clause also provides for the following exclusions from the Bill:

- (a) any mediation or conciliation proceeding, process, scheme or framework conducted under, or provided by or under, any written law (as provided in clause 6(2)(a));
- (b) any mediation conducted by, or under a direction by, a court, unless otherwise provided in an order in the *Gazette* (as provided in clause 6(2)(b));
- (c) any mediation or conciliation proceeding, process, scheme or framework, not falling under clause 6(2)(a) or (b), which is excluded in an order in the *Gazette* (as provided in clause 6(2)(c)).

The clause allows the Minister to make orders in the *Gazette* to extend the Bill or any of its provisions to apply to a mediation conducted by or under a direction by a court, which is not conducted under, or provided by or under, any written law (as described in clause 6(2)(b)). Such an order may only be made after consulting the Chief Justice.

In addition, the clause allows the Minister to make orders in the *Gazette* to exclude mediation or conciliation proceedings, processes, schemes or frameworks described in clause 6(2)(c) from the application of all or any of the provisions of the Bill. Such an exclusion may be in respect of the whole or any part of a mediation or conciliation proceeding, process, scheme or framework, or a class of mediation or conciliation proceedings, processes, schemes or frameworks.

The clause further provides for the presentation to Parliament of all orders made under the clause as soon as possible after publication in the *Gazette*.

Clause 7 allows the Minister to designate designated mediation service providers and approved certification schemes for the purposes of the Bill.

Clause 8 empowers a court to make an order staying any proceedings before the court which have been instituted by a party to a mediation agreement against any other party to that agreement in respect of a matter which is the subject of that agreement. The court may make such an order upon an application by any party to that agreement for a stay of the proceedings. The clause also empowers the court, in making an order for the stay of the proceedings, to make interim or supplementary orders to preserve the rights of the parties.

Clause 9(1) imposes restrictions on the disclosure of mediation communications. Generally, a person must not disclose any mediation communication relating to a mediation to any third party to the mediation. “Third party”, in relation to a mediation, is defined in clause 2 to mean a person who is not a party to the mediation, not a mediator for the mediation and not a mediation service provider.

However, a person may disclose a mediation communication to a third party to the mediation —

- (a) in certain circumstances set out in clause 9(2); or
- (b) for certain purposes set out in clause 9(3), but with leave of the court or arbitral tribunal under clause 11.

Clause 10 provides for the admissibility of a mediation communication in evidence in any court, arbitral or disciplinary proceedings only with leave of a court or an arbitral tribunal under clause 11.

Clause 11 empowers a court or an arbitral tribunal to grant leave for a mediation communication to be disclosed under clause 9(3) or admitted in evidence under clause 10.

Clause 12 provides for the recording of a mediated settlement agreement as an order of court, where the mediated settlement agreement has been reached at a mediation in relation to a dispute for which no proceedings have been commenced in a court; the making of an application to a court for such recording; and the circumstances in which a court may refuse to record a mediated settlement agreement as an order of court. The clause also provides for the enforcement of a mediated settlement agreement that is recorded as an order of court in the same manner as a judgment given or an order made by a court. The clause does not alter or restrict the existing powers of a court to make consent orders in the course of court proceedings.

Clause 13 empowers the Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act to make Rules of Court regulating the practice and procedure of the Court of Appeal, the High Court and the State Courts in respect of any matter under the Bill.

The clause further provides for the presentation to Parliament of the Rules of Court made under the clause as soon as possible after publication in the *Gazette*.

Clause 14 empowers the Family Justice Rules Committee constituted under section 46(1) of the Family Justice Act 2014 to make Family Justice Rules prescribing the classes of mediated settlement agreements that may be recorded as orders of the Family Justice Courts under clause 12 and regulating the practice and procedure of the Family Justice Courts in respect of any matter under the Bill.

The clause further provides for the presentation to Parliament of the Family Justice Rules made under the clause as soon as possible after publication in the *Gazette*.

Clause 15 gives the Minister the power to make rules. However, the Minister's rule-making power does not extend to any matter for which Rules of Court or Family Justice Rules may be made under clauses 13 and 14, respectively.

Clause 16 makes a consequential amendment to section 22(1)(a) of the Family Justice Act 2014, arising from the renumbering of section 17 of the Supreme Court of Judicature Act and insertion of a new section 17(1)(g) into the Supreme Court of Judicature Act in clause 18. The reference to the new section 17(1)(g) of the Supreme Court of Judicature Act in section 22(1)(a) of the Family Justice Act 2014 makes it clear that the Family Division of the High Court has the same civil jurisdiction as conferred on the High Court under the new section 17(1)(g) of the Supreme Court of Judicature Act.

Clause 17 makes a related amendment to the Legal Profession Act by inserting a new section 35B to exclude the following persons from the requirements for practice under sections 32 and 33 of the Legal Profession Act in certain circumstances:

- (a) certified mediators;
- (b) mediators conducting mediation administered by a designated mediation service provider;
- (c) foreign lawyers representing a party in a mediation which is either conducted by a certified mediator or administered by a designated mediation service provider, and which relates to a dispute involving a cross-border agreement where Singapore is the venue for the mediation;
- (d) foreign lawyers representing a party in a mediation that relates to a dispute in respect of which an action has commenced in the Singapore International Commercial Court, where the foreign lawyers are registered under section 36P of the Legal Profession Act.

Clause 18 makes a related amendment to section 17 of the Supreme Court of Judicature Act by inserting a new subsection (1)(g) to confer on the High Court jurisdiction under the Bill to record a mediated settlement agreement made in a mediation, in relation to a dispute for which no proceedings have been commenced in a court, as an order of court. The clause also makes a consequential amendment to section 28A(2)(a)(ii) of that Act, arising from the renumbering of section 17 in paragraph (c) of the clause.

Clause 19 is a transitional provision, where the Minister is further given the power to make rules of a transitional nature.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
