

CHAPTER 520

COLLECTIVE PROCEEDINGS ACT

To enable the institution of collective proceedings for infringements of laws as may from time to time be designated in accordance with the provisions of the said Act and to provide for matters connected therewith or incidental thereto.

1st August, 2012*

ACT VI of 2012.

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" means a group of persons who have suffered or are suffering harm and whose claims arise from common issues;
- "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 agreement" means an agreement entered into between the class member and the class representative whereby the class member consents to his inclusion in the collective proceedings and to the appointment of the class representative and includes the claim of the class member and may also include provision for the pre-payment and, or reimbursement of any judicial costs incurred by the class representative:
- Provided that every class member shall only be liable for costs in proportion to his claim;
- "collective proceedings decree" means a decree authorising the action to proceed as 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;
- "constituted body" means a body which is purposely set up to act in the interests of its members and includes also any body recognised as a constituted body under the [Malta Council for Economic and Social Development Act](#), as well as any other body of a similar nature recognised as a constituted body under any other

Cap. 431.

*see article 1(2) of this Act as originally enacted, and Legal Notice 256 of 2012.

law or in accordance with established administrative practice;

"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 article 12(2);

"individual issues" means issues that are relevant only to certain individual represented persons;

"opt-in proceedings" means collective proceedings brought on behalf of class members who inform the class representative as provided in this Act that their claim should be included in the collective proceedings;

Cap. 510. "public authority" shall have the same meaning as defined in the [Malta Competition and Consumer Affairs Authority Act](#);

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 according to article 12(1);

"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 this Act.

3. Collective proceedings may be instituted to seek the cessation of an infringement, the rectification of the consequences of an infringement and, or compensation for harm where:

- (a) an infringement of the Acts listed in Schedule A or of any regulations made thereunder, unless these regulations are expressly excluded in the said Schedule, and of any regulations as may be listed in the Schedule is alleged to have occurred;
- (b) an investigation before a public authority or proceedings before a tribunal or similar body or court of civil jurisdiction concerning an infringement of the laws mentioned in paragraph (a) is or are still pending; or
- (c) a decision or judgement establishing a breach of the said laws in relation to the same facts has become *res judicata*.

Filing of collective proceedings for an infringement of the Competition Act.
Cap. 379.

4. (1) 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 *mutatis mutandis* apply.

Cap. 378.

(2) Notwithstanding the provisions of article 7(1)(c), collective proceedings may also be instituted with respect to damages caused by defective products under Part VIII of the [Consumer Affairs 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 independently of the amount of the claim, and the provisions of the [Code of Organisation and Civil Procedure](#), insofar as they are consistent with the provisions of this Act, shall apply to proceedings under this Act.

Contents of sworn application.

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 sworn 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 sufficient evidence for the satisfaction of the criteria for declaration and approval according to articles 9 and 12; and
- (g) provide the Court with a collective proceedings agreement:

Provided that the provisions of article 156 of the [Code of Organization and Civil Procedure](#) shall, where applicable, also apply to the sworn application in collective proceedings:

Cap. 12.

Provided further that the Court shall order the amendment of the sworn 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) and, or where a class representative for a sub-class has been appointed in terms of article 14.

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

Pre-trial hearing.

- (a) either issue a decree ordering the continuation of the proceedings together with other orders as it may deem fit; or
- (b) 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.

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

Decree ordering continuation of proceedings.

- (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.

(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) information on the legal effect of a judgment in the collective proceedings:

Provided that the decree may also contain such conditions as the Court may deem fit and the Court shall order that such decree is to be published in the Gazette and in a local English and Maltese newspaper and in any other media if the Court deems it fit, provisionally at the expense of the class representative, and shall state that any other third parties who desire to be class members, may do so within a specified date as determined by the Court, which date may not exceed five months from the date of the decree, by registering their claim with the class representative and entering into a collective proceedings agreement.

Class members.

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 continuation of the proceedings would not suffer substantial prejudice if permission were granted.

(2) A class member who has already filed a cause that raises the common issues in the collective proceedings may not be a represented person unless he discontinues or applies to stay that cause before opting-in the collective proceedings.

(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 similar body or court of civil jurisdiction and the said tribunal or similar body or court has already decided on the remedies sought by the class member.

- 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.

Declaration of proceedings as appropriate for collective proceedings.

(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.

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.

Certain matters not to bar issue of decree.

11. Where the Court does not decree the proceedings as collective proceedings, the Court shall dismiss the action.

Where Court does not decree proceedings as collective proceedings.

12. (1) In a representative action, the Court shall approve a registered consumer association or a constituted body to act as a class representative, if it is satisfied that the class representative -

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

Approval of plaintiff to act as class representative.

Provided that when a representative action is brought by a registered consumer association, only consumers qualifying within the definition of 'consumer' in article 2 of the [Consumer Affairs Act](#) shall be eligible to be class members.

Cap. 378.

(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; and
- (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.

Duties of class representative.

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

(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 and, if applicable, on whether he shall appeal from the judgement delivered by the Court.

(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 no longer satisfies the criteria mentioned in article 12 or is no longer, for any other reason, in a position to represent 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 that is approved by the Court; and
- (b) has satisfied the conditions that the Court may have imposed.

(6) If the Court gives permission for the class representative to withdraw from the proceedings and no substitute class representative is approved, the Court shall give directions for the future conduct of the proceedings which may include provision that the proceedings shall 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 may approve a person who satisfies the criteria for approval in article 12 to act as the class representative for that sub-class if it considers that this shall be conducive for the efficient management of the claims.

- 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) 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.
- 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.
- 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.
- 18.** (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 that is approved by the Court.
- (3) Where in its judgement, the Court orders the defendant to pay compensation, it may order the defendant to credit the amount due to a specific account held by the class representative and may give such orders, as it deems necessary, to the class representative for the effective distribution of that compensation among the class members.
- 19.** (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 subarticle (1) shall -
- (a) set out the form and manner by which the class representative proposes to give notice to the

Stages of collective proceedings.

Separate judgments.

Court may determine conduct of proceedings.

Court may stay any other proceedings.

Judgments and decrees.

Compromise or discontinuance.

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 subarticle (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.

20. (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 that is 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 shall give directions for the future conduct of the proceedings which may include provision that the proceedings shall continue as one or more proceedings between different parties and, for that purpose -

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

(b) order the amendment of the sworn application; or

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

21. (1) The provisions of the Code of Organization and Civil Procedure relating to appeals from judgements and decrees of the Civil Court, First Hall shall *mutatis mutandis* apply to appeals from judgements and decrees delivered under this Act. Appeals. Cap. 12.

(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 and article 229(3) of the [Code of Organization and Civil Procedure](#) shall apply in respect thereof. Cap. 12.

(3) An appeal from a judgement of the Court on behalf of the class or sub-class may only be filed by a class representative:

Provided that if a class representative does not appeal, any class member may file an application to the Court of Appeal, either during the time-limit allowed for the appeal or within ten days following the lapse of the said time-limit, for leave to act as the class representative to file an appeal.

22. The period of prescription applicable to a claim for damages is interrupted in favour of a class member on the commencement of the collective proceedings but that interruption shall be deemed inoperative if he withdraws from the collective proceedings. Prescription.

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

(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 of or against that person, and not the class representative for the whole class.

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

(4) 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. Cap. 12.

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

(6) Where the Court finds that the collective proceedings are frivolous or vexatious, the Court may award increased registry costs up to a maximum of two thousand five hundred euro (€2,500) 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.

Cap. 12. (7) Without prejudice to the provisions of this Act, the parties shall be subject to the provisions of Schedule A of the [Code of Organization and Civil Procedure](#).

Power to make regulations.

24. 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 -

- (a) extend the application of this Act to other laws by amending Schedule A to this Act; and
- (b) extend the application of article 12(1) to other representative bodies.

Schedule A

In accordance with article 3, the following constitutes the list of Acts whereby collective proceedings may be instituted:

- Cap. 379. I. [Competition Act](#), and Articles 101 or 102 of the TFEU.
 - Cap. 378. II. [Consumer Affairs Act](#) () and those Acts mentioned in article 111 of the Consumer Affairs Act.
 - Cap. 427. III. [Product Safety Act](#).
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