

CHAPTER 308

PARTITION OF INHERITANCES ACT

To make new provisions for the liquidation and partition of inheritances and to provide for matters connected therewith and incidental thereto.

(27th July, 1984)*

Enacted by [ACT XIII of 1984](#), as amended by [Act XXIV of 1995](#).

1. This Act may be cited as the Partition of Inheritances Act. Short title.
2. In this Act, unless the context otherwise requires - Interpretation.
"Minister" means the Minister responsible for justice; Amended by:
"prescribed" means prescribed by regulations under this Act; XXIV.1995.362.
"property" means any thing or right as is referred to in Title I of Cap. 16.
Part I of Book Second of the [Civil Code](#);
"public officer" and "public service" have the same meaning as is assigned to them by article 124 of the [Constitution](#);
"Registrar" means the Registrar of Courts;
"Tribunal" means the Partition of Inheritances Tribunal established by article 4.
3. (1) Where two or more persons hold in common any Partition of
property deriving to them from an inheritance, such property may common property.
be subject to partition in accordance with the provisions of this Act on a demand made as provided in subarticle (2):
Provided that no such demand shall be made except after three years have elapsed from the opening of the succession.
(2) Such demand may be made by application to the Tribunal by one or more co-owners who at the time of the opening of the succession either own between them not less than fifty *per centum* of the shareholding of the property so held in common or together constitute not less than fifty *per centum* of the number of all the co-owners.
(3) The provisions of the foregoing subarticles shall be without prejudice to the provisions of article 906 of the [Civil Code](#). Cap. 16.
(4) Where however an action is brought before or referred to the Tribunal in accordance with the provisions of this Act the Tribunal shall so long as such action is pending before it have exclusive jurisdiction with respect to the subject matter thereof and no other action in respect of the same claim shall be brought before any court of first instance.
4. (1) There is hereby established a tribunal to be known as Arbitration
the Partition of Inheritances Tribunal. Tribunal.
(2) The Tribunal shall take cognizance of and decide on any

*See article 1(2) of the Act as originally enacted, which subarticle has been omitted under the [Statute Law Revision Act](#), 1980, and Legal Notice 34 of 1984.

demand brought before it in accordance with this Act and of any regulations made thereunder.

Constitution of
Tribunal.
Amended by:
XXIV.1995.362.

5. (1) The Tribunal shall consist of one or three arbitrators who shall be appointed and shall serve in accordance with the provisions of this Act. Except where all the co-owners agree that it shall consist of three arbitrators, the Tribunal shall consist of one arbitrator.

(2) An arbitrator shall be one of a panel of persons appointed by the President of the Republic acting in accordance with the advice of the Prime Minister from amongst persons who in the Prime Minister's opinion are qualified to carry out the duties and functions of arbitrators for the purposes of this Act.

(3) A person shall be disqualified from being appointed or serving as arbitrator so long as he is a member of the House of Representatives.

(4) The arbitrators shall sit in the Tribunal, either in turn or in accordance with such distribution of duties and subject to such provisions as to inability to serve and other circumstances, as the Minister may establish or as may be prescribed.

(5) Before taking cognizance of any application brought before the Tribunal, the arbitrator, if he does not hold judicial office, shall take an oath to examine and decide the application faithfully, impartially and in accordance with this Act; and such oath shall be taken before the Court of Appeal.

Cap. 12.

(6) The Minister shall designate a public officer to be Secretary of the Tribunal, and may also detail other public officers to assist the Secretary in the performance of his duties. The Secretary of the Tribunal shall have *mutatis mutandis* such powers and duties as are by the [Code of Organization and Civil Procedure](#) vested in the Registrar of Courts.

(7) The registry of the superior courts shall be the registry of the Tribunal, and all records of proceedings of the Tribunal shall be retained in such registry under the custody of the Registrar.

Functions of
arbitrators.

6. (1) A person appointed to the panel of arbitrators shall so serve for the period specified in his appointment being a period of not less than three years, and if no such period is specified he shall serve for a period of three years.

(2) An arbitrator may be removed from office during the period of his appointment only in the same circumstances and manner as a judge of the superior courts.

(3) An arbitrator actually serving as such in a particular case shall, notwithstanding the termination of his period of service, continue so to serve on the proceedings in which he is serving as arbitrator until the conclusion of those proceedings and thereafter for the purpose of the interpretation, correction and making good an omission in any award given therein.

Application for
arbitration.

7. An application to the Tribunal made as provided in article 3 shall be filed in the Registry of the Tribunal in such manner, on

the payment of such fees and together with such documents as may be prescribed.

8. (1) A copy of the application together with the documents and notes filed therewith shall be served on each of the respondent co-owners.

Service of application on respondents.

(2) The respondents shall within twenty working days of the service of the application file an answer thereto in which they state any points of disagreement with the contents of the application or with the documents filed therewith.

9. (1) Where an action for the partition of hereditary property is pending before a court of first instance, the party or parties who together could, if the case were not so pending, make an application in accordance with article 3, may by a note or by notes filed in the Registry of the court before which the case is pending request the court to transmit the cause to the Tribunal, and the court shall thereupon order that the records of the case be transmitted to the Tribunal.

Transmission of court records to the Tribunal.

(2) The filing of such note or notes, as the case may be, shall be deemed to be a withdrawal of the action from the jurisdiction of that court and an application to the Tribunal for a decision on the demand contained in the act commencing the proceedings before the court:

Provided that no registry fees shall be levied for such discontinuance of the action.

(3) The Tribunal shall hear and decide the matter transmitted to it as aforesaid within the limits of the demand, the pleas thereto and any counter-claim made, and on the evidence presented according to law, whether made or presented before the court or the Tribunal.

10. (1) The application, or the action transmitted to the Tribunal under article 9, shall be set down for hearing at an early date.

Proceedings before the Tribunal.

(2) The Tribunal shall hold its sittings and deliver its award, including any preliminary or partial award, in public unless all the parties agree otherwise.

(3) The Tribunal shall hear the applications in conformity with the rules laid down in the [Code of Organization and Civil Procedure](#) in so far as may be applicable to the proceedings before the Tribunal and not incompatible with this Act.

Cap. 12.

(4) The Tribunal shall decide any matter before it in accordance with the provisions of the [Civil Code](#) relating to the partition of an inheritance and of any other law in so far as applicable to the matter before the Tribunal, and shall award costs accordingly. Such costs shall include the costs incurred by any party before the court of first instance in any cause which is transmitted to the Tribunal in accordance with the provisions of this Act.

Cap. 16.

(5) Every award shall be signed by the arbitrator, and where the arbitrators are three by each arbitrator:

Provided that a dissenting arbitrator need not sign the award, but a mention of this fact shall be made by the other arbitrators.

(6) The award delivered by the Tribunal shall be final and conclusive.

(7) Notwithstanding the provisions of subarticle (6), the Tribunal shall have power to give at any time, at the request of any of the parties, an interpretation of the award or of any points determined therein, and to make good any error or omission in any award.

Appearance before
Tribunal.

11. The parties may appear before the Tribunal in person or may be duly represented by another person.

Time for delivery
of award.

12. (1) Unless all the parties to the arbitration proceedings agree otherwise, the Tribunal shall give the award not later than six months from the day the respondents have filed their answer or the day on which the time for the filing of the answer expires, whichever is the earlier.

(2) Where the award cannot be delivered within the time mentioned in the preceding subarticle, such time may be extended for further periods, each not exceeding six months, at the request of the applicants or by the Tribunal in exceptional circumstances which shall be expressly stated and entered in the records of the arbitration proceedings.

Cap. 12.

(3) Where any period referred to in the preceding subarticles is for any reason not extended as therein provided, the proceedings shall be deemed to have been adjourned to an unspecified date and the provisions of articles 964 and 965 of the [Code of Organization and Civil Procedure](#) shall, *mutatis mutandis*, apply to such proceedings; and in any such case the period mentioned in subarticle (1) shall commence on the date of the reappointment of the cause.

General powers of
the Tribunal.
Cap. 12.

13. (1) The Tribunal shall have such powers as are by the [Code of Organization and Civil Procedure](#) vested in the Civil Court, First Hall.

(2) Without prejudice to the foregoing provisions of this article, the Tribunal shall have the power to summon witnesses and to administer the oath, to appoint experts to report on matters of a technical nature involved in the dispute, and to require any person who appears to it to have special knowledge of any relevant matter, or of any of the matters to which the application referred to relates, or of the matter referred to it, to furnish in writing or otherwise, and to confirm on oath, such opinion and such particulars relating to the application, including the partition into shares of any things movable or immovable, as the Tribunal may require, and may authorise any person to administer the oath for that purpose.

Function of the
Tribunal.

14. (1) The Tribunal shall endeavour to bring about a compromise between the parties on the issues in dispute.

(2) Where a compromise is reached the Tribunal shall draw up a *procès-verbal* thereof and shall incorporate the compromise in an

award after such *procès-verbal* is signed by the parties or by their legal representatives or is otherwise accepted or adhered to by a signed instrument filed with a note in the Registry of the Tribunal.

15. The arbitrator may be challenged, or shall abstain, from sitting in the Tribunal in any of the circumstances set out in article 734 of the [Code of Organization and Civil Procedure](#); and in any such case the provisions of Sub-Title II of Title II of Book Third of that Code shall apply in so far as they are applicable and subject to the other provisions of this Act.

Abstention or challenge of arbitrators.
Cap. 12.

16. (1) The enforcement of the awards of the Tribunal shall be carried out in the manner prescribed in the [Code of Organization and Civil Procedure](#), and shall vest in the Tribunal itself.

Effects of awards of the Tribunal.
Cap. 12.

(2) Where the award requires a public deed, the Tribunal shall appoint a notary to publish the deed and curators to represent defaulters on the deed, and fix the place, date and time for the publication of the deed.

17. The fees payable to the arbitrators and to any experts appointed by them shall be those established for legal and other referees under the [Code of Organization and Civil Procedure](#), and the provisions of that Code applicable to referees shall apply to such arbitrators or experts:

Arbitrators' and experts' fees.
Cap.12.

Provided that no such fees shall be payable to the arbitrators who hold a judicial office or are selected from the public service.

18. The Minister may from time to time make regulations governing the procedure of the Tribunal and, without prejudice to the generality of the foregoing, may make regulations -

Power to make regulations.

- (a) prescribing the contents of an application to the Tribunal, the answer thereto, and any other written proceedings before the Tribunal, the manner of filing of any such act, and the documents which shall be filed therewith;
- (b) prescribing the procedure for the service of any act on the other party;
- (c) prescribing the procedure for the fixing by the Tribunal of the date of hearing of the application and for the giving notice of such date to the parties concerned;
- (d) prescribing the fees, other than those provided for in article 17, charges and expenses payable in connection with any proceeding before the Tribunal, including registry fees for the award or for the discontinuance of the cause;
- (e) prescribing the fees payable to a person in respect of the appearance or assistance on behalf of a party in the proceedings before the Tribunal;
- (f) prescribing the fee payable to the Registry in respect of the issue of any authentic copy of award or document in the records of the Tribunal;

- (g) prescribing any other matter that may be necessary for the better carrying out of the functions of the Tribunal.
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