

MALTA

ATT Nru. XVIII ta' l-2004

ACT No. XVIII of 2004

ATT mahruġ b'ligi mill-Parlament ta' Malta.

AN ACT enacted by the Parliament of Malta.

ATT biex ikompli jemenda l-Kodiċi Ċivili, Kap. 16.

AN ACT to further amend the Civil Code, Cap. 16.

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

30th December, 2004

ACT No. XVIII of 2004

AN ACT to further amend the Civil Code, Cap. 16.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is an Act of 2004 to further amend the Civil Code. This Act shall be read and construed as one with the Civil Code, hereinafter referred to as “the Code”. Short title and commencement.
Cap. 16.

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes thereof.

2. The table entitled “Arrangement of Code” appearing immediately before article 1 of the Code shall be amended as follows:- Amendment to Table entitled “Arrangement of Code”.

(a) for the words appearing in the second column therein appearing in the second Column hereunder and the corresponding words, where any, appearing in the first and third column thereof appearing in the first and third Column hereunder there shall be substituted the words, where any, appearing in the fifth, fourth and sixth column hereunder, respectively:-

A 1006

First Column	Second Column	Third Column	Fourth Column	Fifth Column	Sixth Column
Sub-title II.	Of the Proof of Filiation of Legitimate Children	78-85	Sub-title II.	Of the Proof of Filiation of Children Conceived or Born in Wedlock	78-85
Sub-title III.	Of the Filiation of Illegitimate Children and of Legitimation	86-112	Sub-title III.	Of the Filiation of Children Conceived and Born out of Wedlock and of the Presumption that a Person was Conceived or Born in Wedlock	86-112
Sub-title §I	Of the Filiation of Illegitimate Children	86-110A	Sub-title §I	Of the Filiation of Children Conceived and Born out of Wedlock	86-110A
Sub-title §II	Of Legitimation	101-112	Sub-title §II	Of the Presumption that a Person was Conceived or Born in Wedlock	101-112
Sub-title II	Of Acts of Birth	272-292	Sub-title II.	Of Acts of Birth	272-292A
Sub-title I	Of the Nature of Community of Property and of the Rights of the Co-owners during the Community	489-495	Sub-title I.	Of the Nature of Community of Property and of the Rights of the Co-owners during the Community	489-495A
—	Of Legitimate and Disinherison	615-630	—	Of the Reserved Portion and Disinherison	615-630
—	Of the Rights of the Surviving Spouse and of Illegitimate Children	631-646	—	Of the Rights of the Surviving Spouse	631-646
Sub-title §I	Of Regular Successions	808-816	Sub-title §I	Of Succession by Descendants and the Surviving Spouse	808-811
Sub-title §II	Of Irregular Successions	817-830	Sub-title §II	Of Succession by Ascendants and Collaterals	812-815
—	Of the Rights of the Government	830	Sub-title §III	Of the Rights of the Government	816;

(b) The words appearing in the Second Column thereof shown hereunder and the corresponding words, whereany, appearing in first and Third Column thereof in respect thereof shall be deleted:-

Of Succession by Legitimate Descendants

Of Succession by Legitimate Ascendants

Of Succession by Legitimate Collaterals

Of the Rights of Illegitimate Children

Over the Property of their Parents, and of Succesion of Illegitimate Children dying without Issue

Of the Rights of the Surviving Spouse

Of Settlement of Dowry

Of the Rights of the Husband over the Dowry

Of the Inalienability of the Dowry

Of the Restitution of the Dowry

Of Dower (Dotarium).

3. Article 4 of the Code shall be amended as follows:

Amendment of
article 4 of the
Code.

(a) in subarticle (1) and (2) thereof the words “maiden surname” shall be substituted by the words “maiden surname or the surname of her predeceased spouse”;

(b) in subarticle (3), for the words “after which they may add the maiden surname of the mother” there shall be substituted the words “after which there may be added, in terms of article 292A, the maiden surname of the mother or the surname of her predeceased husband”; and

(c) immediately after subarticle (5) thereof there shall be inserted the following subarticle :

“(6) Where a wife intends to retain the surname of her predeceased husband after remarriage, she shall, before remarriage, so declare her intention when applying for the publication of the banns in accordance with the Marriage Act and in lieu of the declaration in the Act of Marriage referred to in subarticle (4) she shall subscribe to a declaration, in

Form R contained in Part II of the Schedule to the Code and containing the particulars therein indicated, such form shall be delivered to the Public Registry together with the Act of Marriage and shall be signed by the spouses and countersigned by all the other signatories in the Act of Marriage.”.

Amendment of articles 76 and 77 of the Code.

4. For the words “the legitimacy” in articles 76 and 77 of the Code, there shall be substituted the words “the filiation”.

Amendment of heading to Sub-title II of Title II of Book First of the Code.

5. For the heading to Sub-title II to Title II of Book First of the Code appearing before article 78 thereof, there shall be substituted the following:

“OF THE PROOF OF FILIATION OF CHILDREN CONCEIVED OR BORN IN WEDLOCK”.

Amendment of article 78 of the Code.

6. For the words “legitimate children” in article 78 of the Code, there shall be substituted the words “children conceived or born in wedlock”.

Amendment of articles 79, 81 and 84 of the Code.

7. In articles 79, 81 and 84 of the Code, and in the marginal note thereto, for the words “legitimate child” wherever they occur there shall be substituted the words “child conceived or born in wedlock”.

Substitution of heading of Sub-title III of Title II of Book First of the Code and deletion of sub-heading immediately before article 86.

8. For the heading of Sub-title III of Title II of Book First of the Code appearing immediately before article 86 thereof, there shall be substituted the heading “OF THE FILIATION OF CHILDREN CONCEIVED AND BORN OUT OF WEDLOCK AND OF THE PRESUMPTION THAT A PERSON WAS CONCEIVED OR BORN IN WEDLOCK”, and in the sub-heading immediately before article 86 for the words “ILLEGITIMATE CHILDREN” there shall be substituted the words “CHILDREN CONCEIVED AND BORN OUT OF WEDLOCK”.

Amendment of article 86 of the Code.

9. Article 86 of the Code shall be amended as follows:

(a) in the marginal note thereof for the words “illegitimate children” there shall be substituted the words “children conceived or born out of wedlock”;

(b) for the words “An illegitimate child”, there shall be substituted the words “A child conceived and born out of wedlock”;

(c) immediately after the proviso thereto there shall be added the following further proviso:

“Provided further that the acknowledgement of a child born out of wedlock by a person claiming to be the father of the child, made separately from the mother, shall not have effect and shall not be registered unless the mother of such child, or her heirs if she is dead, and the child himself if he is of age, shall have been served with a judicial letter by any person interested stating that such person intends to apply for the registration of such acknowledgement and the mother or her heirs as the case may be, and the child, shall not have within a period of two months from such service, by a note filed in the acts of the said judicial letter, agreed to such registration, in which case the said judicial letter and agreement note showing agreement shall be served upon the director of the Public Registry who shall register the said acknowledgement in the relative acts of civil status:

Provided further that where the mother or the child where he is of age does not as aforesaid agree to such registration, any person interested may proceed by application before the competent court against the person or persons who shall not have so agreed, for the court to declare that the person making the acknowledgement is the father of the child and to order the registration of such acknowledgement in the relative acts of civil status.”.

10. Article 87 of the Code shall be amended as follows:

Amendment of
article 87
of the Code.

(a) for the words “an illegitimate child” in subarticle (1) thereof, there shall be substituted the words “a child conceived and born out of wedlock”; and

(b) after the words “or by both” in subarticle (2) thereof, there shall be inserted the words “or made by a minor,”.

11. For article 89 of the Code, there shall be substituted the following:

Substitution
of article 89
of the Code.

“A child conceived and born out of wedlock of a spouse, born before or during a marriage.

89. A child conceived and born out of wedlock born to a spouse before or during the marriage, and acknowledged during a marriage may not be brought into the matrimonial home, except with the consent of the other spouse, unless such other spouse has already given his or her consent to the acknowledgement.”.

12. For the words “an illegitimate child” in article 90 of the Code and for the words “illegitimate child” in the marginal note thereto, there shall be substituted in each case the words “a child conceived and born out of wedlock”.

Amendment of
article 90
of the Code.

Amendment
of article 91
of the Code.

13. For the words “the illegitimate child” in article 91 of the Code, there shall be substituted the words “a child conceived and born out of wedlock”.

Amendment of
article 92
of the Code.

14. Article 92 of the Code shall be amended as follows:

(a) for the words “An illegitimate child” in subarticle (1) thereof there shall be substituted the words “A child conceived and born out of wedlock” and immediately at the end of the said subarticle there shall be added the following proviso:

“Provided that when the child born out of wedlock has been acknowledged jointly by both the father and the mother on the Act of Birth, the surname by which that child shall be known shall be determined in terms of article 292A.”;

(b) for the words “An illegitimate child” in subarticle (4) thereof, there shall be substituted the words “A child conceived and born out of wedlock”;

(c) for the words “illegitimate child” in the marginal note thereto, there shall be substituted the words “a child conceived and born out of wedlock”;

(d) for the words “a natural child” in subarticle (5) thereof, there shall be substituted the words “a child conceived and born out of wedlock”; and

(e) immediately after subarticle (5) thereof there shall be added the following subarticle:

“(6) Notwithstanding the previous provisions of this article or of any other article in this code, where the paternity of a person has been acknowledged the filiation of a person has been declared by the Court, or the presumption referred to in articles 101 to 112 has been made to apply, any person who in consequence of such acknowledgement, declaration or the application of the presumption is to assume a surname other than the surname used by such a person before such acknowledgement, filiation or application of the presumption, or his legitimate representative, may request the competent court by application against the Director of the Public Registry to be allowed to continue to use such other surname, and the Court if it is satisfied that third parties will not be prejudiced thereby and, where the application has been done on behalf of the minor, that such use shall be in the best interest of the

minor, shall accede to such request and order the Director to make an annotation of its decision on the relevant Acts of Birth of the person so acknowledged or whose filiation has been so declared or in relation to whom the said presumption is to apply.”.

- 15.** For articles 93, 94 and 95 of the Code there shall be substituted the following: Substitution of articles 93, 94 and 95 of the Code.

“Duty of parents and children conceived and born out of wedlock. **93.** Without prejudice to the provisions of article 89, parents of children conceived and born out of wedlock shall have in respect to such children and their descendants the same duty to maintain and educate them as they have with regard to children born or conceived in wedlock, and such children shall have in respect of their ascendants and other relatives the same rights and duties as children born or conceived in wedlock.”.

- 16.** In article 97 of the Code for the words “a legitimate child” there shall be substituted the words “a child conceived or born in wedlock”. Amendment of article 97 of the Code.

- 17.** Article 98 of the Code shall be repealed. Repeal of article 98 of the Code.

- 18.** In article 99 of the Code for the words “an illegitimate child” there shall be substituted the words “a child conceived and born out of wedlock”. Amendment of article 99 of the Code.

- 19.** In the sub-heading “§II. Of Legitimation” immediately after article 100A of the Code, for the words “Of Legitimation” there shall be substituted the words “Of the Presumption that a Person was Conceived or Born in Wedlock”. Substitution of Sub-Heading “Of Legitimation” immediately after article 100 A of the Code.

- 20.** For article 101 of the Code there shall be substituted the following: Substitution of article 101 Of the Code.

Where presumption arises. **101.** Where the parents of children conceived and born out of wedlock subsequently marry, or where the court of voluntary jurisdiction so decrees, such children shall be deemed *iuris et de iure* to have always been conceived or born in wedlock.”.

- 21.** In article 102 of the Code for the words “legitimation by subsequent marriage” there shall be substituted the words “ The presumption arising out of subsequent marriage in accordance with the Amendment of article 102 of the Code.

preceding article” and in the marginal note thereof the word “legitimation” shall be substituted by the word “presumption”.

Amendment of
article 103
of the Code.

22. Article 103 of the Code shall be amended as follows:

(a) in article 103 of the Code for the words “children legitimated by subsequent marriage” and “legitimate children” there shall be substituted the words “children deemed to have been conceived or born in wedlock by the subsequent marriage of their parents” and “children conceived or born in wedlock ” respectively; and

(b) the marginal note thereof shall be substituted by the following: “Effects of Presumption as a consequence of subsequent marriage”.

Amendment of
article 104
of the Code.

23. In article 104 of the Code for the words “legitimate children” there shall be substituted the words “children conceived or born in wedlock”.

Substitution of
article 105
of the Code.

24. Article 105 of the Code shall be substituted by the following:

“Descendants
of children
presumed to
be
conceived or
born in
wedlock in
consequence
of subsequent
marriage.

105. The marriage of the parents shall bring about the presumption that even their predeceased children were conceived or born in wedlock, and such presumption shall also operate in favour of the descendants of the latter, whether conceived or born in wedlock, or so presumed to be by subsequent marriage, provided such predeceased children shall have been acknowledged as provided in article 102, or their paternity or maternity shall have been declared by a judgement of the Court.”.

Amendment of
article 106
of the Code.

25. In article 106 of the Code , for the word “Legitimation by” wherever they occur even in the marginal note, there shall be substituted the words “The presumption in virtue of”.

Amendment of
article 107
of the Code.

26. Article 107 of the Code shall be amended as follows:

(a) for the word “legitimation referred” there shall be substituted the word “presumption referred”;

(b) for the word “legitimation by” in the marginal note there shall be substituted the words “presumption in virtue of”; and

(c) in paragraph (a) thereof for the word “legitimate” there shall be substituted the words “have such presumption apply to”.

27. For article 108 of the Code there shall be substituted by the following:

Substitution of
article 108
of the Code.

“Power of
Court to
refuse
presumption.

108. The Court shall have power, according to circumstances, to refuse to apply the presumption in virtue of a decree of the said court in accordance with article 102, where the applicant can make such presumption applicable in favour of his child by subsequent marriage, or has children who were conceived or born in wedlock, or so presumed by subsequent marriage, or descendants of such children.”.

28. In article 109 of the Code including in the marginal note thereof, for the word “legitimation”, there shall be substituted the word “presumption”.

Amendment to
article 109
of the Code.

29. Article 110 of the Code shall be amended as follows:

Amendment to
article 110
of the Code.

(a) for the words “legitimated by decree of Court” in the marginal note thereof there shall be substituted the words “presumed to have been conceived or born in wedlock in virtue of decree of Court”;

(b) sub-article (1) thereof shall be substituted by the following:

(1) “Subject to the provisions of sucarticle 92(6) a child in whose favour there is a presumption in virtue of a decree of the court shall assume the surname of the parent upon whose demand he shall have been so presumed.”; and

(c) in sub-article (2) thereof, for the word “legitimation” there shall be substituted the word “presumption”.

30. Article 111 of the Code shall be amended as follows:

Amendment of
article 111
of the Code.

(a) in the marginal note thereof for the words “legitimation by” there shall be substituted the words “presumption in virtue of”;

(b) in sub-article (1) thereof , for the words “Legitimated child” there shall be substituted the words “ the child in whose favour operates a presumption in virtue of article 102”, and for the words “a legitimate child” there shall be substituted the words “a child concieved or born in wedlock”.

31. For article 112 of the Code there shall be substituted the following:

Substitution of
article 112
of the Code.

“Child may demand presumption after death of parent.

112. Where one of the parents, has in a will or other public deed, declared his or her wish to have the presumption that a child was conceived or born in wedlock, applicable to a child born to him or her out of wedlock, such child, may after the death of such parent, make a demand to have such presumption applicable in his regard, saving the power of the court as provided in article 108, in case the deceased shall have left children, conceived or born in wedlock, or so presumed to be in virtue of a subsequent marriage.”.

Amendment of article 113 of the Code.

32. For paragraph (c) of subarticle (2) of article 113 of the Code, there shall be substituted the following:

“(c) “children conceived and born out of wedlock” means children so conceived and so born or such children in whose favour the presumption referred to in articles 101 to 112 of this Code does not apply, and who have not in either case been adopted;”.

Amendment of article 115 of the Code.

33. In article 115 of the Code the words “an illegitimate person:” wherever they occur shall be substituted by the words “a person conceived and born out of wedlock” .

Amendment of article 122 of the Code.

34. In article 122 of the Code, for the word “illegitimate”, wherever it appears, there shall be substituted the words “conceived and born out of wedlock”.

Amendment of article 126 of the Code.

35. Article 126 of the Code shall be amended as follows:

(a) in the marginal note thereof for the word “Legitimation ” there shall be substituted the words: “Presumption that a person was conceived or born in wedlock”; and

(b) in sub-article (1) thereof for the words “a legitimated person” there shall be substituted the words “a person presumed to have been conceived or born in wedlock”.

Amendment of article 227 of the Code.

36. The words “legitimate or illegitimate” in article 227 of the Code shall be deleted.

Addition of new article 257A to 257D to the Code.

37. Immediately after article 257 of the Code there shall be inserted the following new articles:

“Action for an annotation in the indication of sex particulars appearing in an act of birth.

257A. (1) It shall be lawful for any unmarried person domiciled in Malta to bring an action for an annotation regarding the particulars relating to sex which have been assigned to him or her in the act of birth.

(2) Before delivering judgement, the Court shall appoint experts to verify whether the person who has brought the action has, in fact, undergone an irreversible sex change from that indicated in the act of birth or has otherwise always belonged to such other sex.

(3) Any action shall be brought against the Director of Public Registry by way of writ of summons before the Civil Court First Hall or the Court of Magistrates (Gozo) (Superior Jurisdiction) as the case may be.

(4) The provisions of subarticle (1) of this article shall apply to foreign acts of birth registered in Malta.

(5) All expenses relating to such litigation including those incurred by the Director of Public Registry shall be borne by plaintiff.

Where court
shall
allow request.

257B. (1) The court shall allow the plaintiff's request if it is of the opinion that it has been sufficiently established that the plaintiff belongs to the sex claimed by him and that the plaintiff's condition can be considered as permanent.

(2) The court may also order an annotation in the name or names of the plaintiff if it has allowed the request.

Change in
act of birth.

257C. (1) The annotations in an act of birth, referred to in article 257B, shall be effective as from the day when the Director of Public Registry shall enter such modification in the act of birth.

(2) The annotation in the indication of the sex in the act of birth shall in no way affect the family relationships which exist at the date referred to in subarticle (1) of this article and any other obligations arising out of parenthood or any other cause.

(3) The provisions of paragraph (a) of subarticle (2A) of article 251 of this Code shall apply in the case of persons in relation to whom a declaration is made under article 257B who request an extract of their acts of birth. The extract shall indicate the particulars resulting from such annotations.

Consequential
correction of
identity card.

257D. (1) A person in respect of whom changes in particulars relating to his change of sex have been annotated in accordance with the preceding provisions of this Code shall,

Cap. 258.

without delay after the date referred to in subarticle (1) of article 257C of this Code, report the fact to the authorised officer under the Identity Card Act who shall issue a new identity card indicating the sex and name in accordance with the declaration made by the Court.

(2) A person whose change of sex has been annotated as aforesaid shall also, on the payment of such fee as may be prescribed, have the right, on the production of the relative Court judgement, to demand that any public authority, which has or may issue any certificate or document relative to him, provide him with a fresh certificate or document indicating the sex and name in accordance with the declaration made by the Court as aforesaid.”.

Amendment to
article 279
of the Code.

38. Article 279 of the Code shall be amended as follows:

(a) for the marginal note thereto there shall be substituted the following:

“Children conceived and born out of wedlock”;

(b) for the words “illegitimate child” in subarticle (1) thereof there shall be substituted the words “child conceived and born out of wedlock”; and

(c) for subarticle (2) thereof shall be substituted the following:

“(2) Where the child is not acknowledged jointly by both the father and the mother, the provisions of article 86 shall apply.”.

Amendment of
article 281
of the Code.

39. In article 281 of the Code, and in the marginal note thereto, for the words “an illegitimate child” and “of illegitimate child” wherever they appear, there shall be substituted the words “a child conceived and born out of wedlock” and the words “of a child conceived and born out of wedlock” respectively.

Amendment of
article 289
of the Code.

40. Article 289 of the Code shall be amended as follows:

(a) for the words “illegitimate child” in the marginal note thereto, there shall be substituted the words “a child conceived and born outside wedlock”;

(b) in subarticle (1) thereof:

(i) for the words “an illegitimate child” there shall be substituted the words “a child conceived and born out of wedlock”; and

(ii) for the words “illegitimate father” there shall be substituted the word “father”.

41. Article 290 of the Code shall be amended as follows:

Amendment
of article 290
of the Code.

(a) in the marginal note thereof for the word “legitimation” there shall be substituted the words “presumption that a person was conceived or born in wedlock”;

(b) in subarticle (1) thereof for the words “The legitimation of an illegitimate child” there shall be substituted the words “The presumption applicable to a person conceived and born out of wedlock in virtue of article 102,”;

(c) for subarticle (2) thereof there shall be substituted the following:

“(2) In the case of such presumption, it shall be stated in the note whether the presumption took place by subsequent marriage or by a decree of the competent court.”; and

(d) in sub-article (3) thereof for the word “legitimation” there shall be substituted the word “presumption”.

42. Article 291 shall be amended as follows:

Amendment of
article
291 of the Code.

(a) in sub-article (1) thereof for the words “or legitimation” there shall be substituted the words “or presumption in virtue of articles 101 to 112”; and

(b) in sub-article (2) thereof, for the word “legitimation by” there shall be substituted the word “presumption arising out of”.

43. For article 292 of the Code there shall be substituted the following:

Substitution of
article
292 of the Code.

“Presumption
in virtue of
subsequent
marriage.

292. Where a presumption arising out of subsequent marriage applies to a child conceived and born out of wedlock, and such marriage took place prior to the registration of the birth of such child, the act of birth of such child may be drawn up directly as in the case of a child conceived or born in wedlock.”.

44. Immediately after article 292 of the Code there shall be inserted the following article:

Addition of new
article 292A to
the Code.

“Surname
of the child.

292A. The person giving notice of the birth shall also deliver a declaration by the parents of the child indicating the surname to be used by the child in terms of subarticle (3) of article 4 or of article 92, and such surname shall be registered in the column under the heading “Name or names by which the child is to be called” in the act of birth immediately after such name or names. Where no such declaration is made in the case of a child conceived and born in wedlock the father’s surname shall be presumed to have been so declared and in the case of a child conceived and born out of wedlock the maiden surname of the mother shall be presumed to be the surname so declared.”.

Amendment
of article 495
of the Code.

45. Immediately after subarticle (2) of article 495 of the Code there shall be added the following new subarticle:

“(3) Where the heirs in an inheritance continue to hold in common, property deriving from the succession for more than ten years and no action has been instituted before a court or other tribunal for the partition of the property within ten years from the opening of the succession and the portions of the heirs in the said inheritance are the same in respect of all the assets of the inheritance, each co-owner shall be deemed to be co-owner of each and every item of property so held in common:

Provided that this subarticle shall not apply:

(i) when the property held in common is subject to any right of habitation, use or of usufruct, for such time during which such right is in force; or

(ii) when the property held in common consists of property which of its very kind has of necessity to be kept indivisible; or

(iii) when the persons who are holding the property deriving from the succession in common agree otherwise:

Provided further that the period of ten years referred to in this subarticle shall commence to run together with, and shall be deemed as one with, the period of ten years referred to in subarticle (1) of article 495A.”.

Addition of new
article 495A
to the Code.

46. Immediately after article 495 of the Code there shall be added the following new article 495A.

“Where co-owners fail to agree in respect of a sale of a thing held in common.

495A. (1) Except in cases of condominium or necessary community of property, where co-ownership has lasted for more than ten years and none of the owners has instituted an action before a court or other tribunal for the partition of the property held in common, and the co-owners fail to agree with regard to the sale of any particular property, the court shall if it is satisfied that none of the dissident co-owners are seriously prejudiced thereby, authorise the sale in accordance with the wish of the majority of the co-owners regard being had to the value of the shares held by each co-owner.

(2) The request to the court shall be made by application which shall be accompanied by a declaration of the owners who agree to the sale as well as a prospectus showing the number and value of the shares held by each of them as well as the terms and conditions under which the sale is to take place. The application shall also indicate the date on which the co-ownership arose and the circumstances thereof.

(3) The application shall be served on the co-owners who do not agree with the sale as well as on curators to be appointed by the court to represent such of the co-owners who are unknown or who cannot be traced. The registrar shall cause a copy of the application to be published in the Gazette and in one daily newspaper.

(4) A declaration that any co-owner is not known or cannot be traced shall be confirmed on oath by one of the applicants.

(5) The other co-owners as well as the curators may within twenty days from the service upon them of the application, or in the case of a co-owner who has not been served with the application within twenty days from the last publication referred to in subarticle (3) hereof, oppose the sale stating the serious prejudice that they or the co-owners represented by them may suffer because of the sale.

(6) In assessing whether there will be serious prejudice to any of the co-owners, the court shall take into consideration all relevant factors including the value of the property and the price of the sale, and may for this purpose order that the property be appraised in accordance with the provisions of article 306 of the Code of Organization and Civil Procedure.

(7) The court shall determine the application, and where it determines that the sale is to take place, it shall determine the price or other consideration for the sale and it shall further -

(a) determine the time, date and place, when and where the transfer is to take place;

(b) where the sale is to be effected by a public deed, appoint a notary to publish the deed;

(c) appoint a curator, even among the co-owners themselves, to represent any of the co-owners who fail to appear on the notarial deed or other instrument of transfer.

(8) The court may, on an application by any party interested change the date, time or place where the transfer is to take place.

(9) If more than one co-owner opposes the transfer or where the court rejects the application in terms of subarticle (7) of this article, the court may, notwithstanding the other provisions of this article, order the sale by licitation of the property in accordance with the provisions of articles 521 and 522 of the Code.”.

Amendment of
article 586
of the Code.

47. Article 586 of the Code shall be amended by deleting subarticle (2) thereof and by renumbering subarticle (1) thereof as article 586.

Amendment of
article 592
of the Code.

48. Immediately after subarticle (2) of article 592 of the Code, there shall be added the following new subarticles:

“(3) A will *unica charta* shall be drawn up in a manner that the provisions with regard to the estate of one of the testators are drawn up in a part separate from those containing the provisions of the other spouse.

(4) The non-observance of the provisions of subarticle (3) of this article shall not cause the nullity of any provision of the will if it is otherwise intelligible; but the notary drawing up the will shall be liable to a fine of one hundred liri to be imposed by the Court of Revision of Notarial Acts.”.

Substitution of
articles 593 and
594 of the Code.

49. For articles 593 and 594 of the Code there shall be substituted the following:

“Where a spouse revokes a will *unica charta*.”

593. (1) Where, by a will *unica carta*, the testators shall have bequeathed to each other the ownership of all their property or the greater part thereof with the express and specific condition that if one of the testators revokes such bequest he shall forfeit any right in his favour from such joint will, the survivor, who shall revoke the will with regard to such bequest, shall forfeit all rights which he or she may have had in virtue of such will on the estate of the predeceased spouse.

(2) The forfeiture mentioned in subarticle (1) can also be ordained in the case where, by his or her act, the said bequest cannot be effectual with regard to his or her estate.

(3) The notary drawing up a will *unica charta* is bound on pain of a fine of one hundred liri to be imposed by the Court of Revision of Notarial Acts to explain to the testators in a will *unica charta* the meaning and effect of this article and of article 594, and enter in the will a declaration to that effect.

Effects of revocation.

594. In the cases referred to in subarticles (1) and (2) of article 593 the ownership of the property bequeathed to the spouse incurring the forfeiture, shall, unless otherwise ordained by the other spouse, vest in the heirs instituted by such other spouse, or if no heirs are so instituted his heirs-at-law. The spouse who has forfeited the property as aforesaid shall, however, retain the usufruct over such property.”.

50. Article 596 shall be amended as follows:

Amendment of article 596 of the Code.

(a) for the words “Saving the provisions of the Mortmain Act, any person” there shall be substituted the words “Any person”; and the words “Cap. 201.” in the marginal note thereto shall be deleted;

(b) the present provision shall be renumbered subarticle (1) thereof; and

(c) immediately after subarticle (1) thereof as renumbered there shall be added the following new sub-article:

“(2) All children and descendants without any distinction are capable of receiving by will from the estate of their parents and other ascendants to the extent established by law.”.

51. Article 597 of the Code shall be amended as follows:

Amendment of article 597 of the Code.

(a) in paragraph (a) thereof, for the word “fourteenth” there shall be substituted the words “sixteenth”; and

(b) for paragraph (b) thereof there shall be substituted the following:

“(b) those, who, even if not interdicted are not capable of understanding and volition, or who, because of some defect or injury, are incapable even through interpreters of expressing their will:

Provided that a will can only be made through an interpreter if it is a public will and the notary receiving the will is satisfied after giving an oath to the interpreter that such interpreter can interpret the wishes of the testator correctly;”.

Substitution
of articles
602 to 604
of the Code.

52. For articles 602 to 604 of the Code there shall be substituted the following:

“All children
may receive
by will.

602. All the children of the testator whether born in wedlock, out of wedlock or adopted or whether or not the presumption referred to in articles 102 to 112 applies to them may receive by will from the testator.”.

Amendment of
article 605
of the Code.

53. For paragraphs (a) and (b) of subarticle (1) of article 605 of the Code there shall be substituted the following:

“(a) wilfully killed or attempted to kill the testator or his or her spouse; or

(b) charged the testator, or the spouse, before a competent authority with a crime punishable with imprisonment, of which he knew the testator, or the spouse, to be innocent; or”.

Amendment of
article 608
of the Code.

54. In article 608 of the Code and in the marginal note thereto, for the words “the legitim” there shall be substituted the words “the reserved portion”.

Amendment of
article 612
of the Code.

55. In subarticle (1) of article 612 of the Code the words “602, 603, 604,” shall be deleted.

Substitution
of article 614
of the Code.

56. For article 614 of the Code there shall be substituted the following:

“Property which may be disposed of by will.

614. (1) Where the testator has no descendants or spouse, he may dispose by universal or singular title of the whole of his estate in favour of any person capable of receiving under a will.

(2) Where the testator has descendants or a spouse, the disposable portion of his estate shall be that which remains after deducting such share as is due to the said descendants or spouse under any of the provisions of articles 615 to 653.”.

57. For the heading “Of Legitim and Disherison” appearing after article 614 of the Code, there shall be substituted the heading “Of the Reserved Portion and Disherison”.

Substitution of heading appearing after article 614 of the Code.

58. For articles 615 and 616 of the Code there shall be substituted the following:

Substitution of articles 615 and 616 of the Code.

“Reserved portion.

615. (1) The reserved portion is the right on the estate of the deceased reserved by law in favour of the descendants and the surviving spouse of the deceased.

(2) The said right is a credit of the value of the reserved portion against the estate of the deceased. Interests at the rate established in article 1139 shall accrue to such credit from the date of the opening of succession if the reserved portion is claimed within two years from such date, or from the date of service of a judicial act if the claim is made after the expiration of the said period of two years.

Reserved portion due to children.

616. (1) The reserved portion due to all children whether conceived or born in wedlock or conceived and born out of wedlock or adopted shall be one-third of the value of the estate if such children are not more than four in number or one-half of such value if they are five or more.

(2) The reserved portion is divided in equal shares among the children who participate in it.

(3) Where there is only one child, he shall receive the whole of the aforesaid third part.”.

59. Article 618 of the Code shall be amended as follows:

Amendment of article 618 of the Code.

(a) for the words “regulating the legitim” in the marginal note and in subarticle (1) thereof there shall be substituted the words “regulating the reserved portion”;

(b) in subarticle (2) thereof, for the words “the legitim” there shall be substituted the words “the reserved portion”; and

(c) for subarticle (3) thereof, there shall be substituted the following:

“(3) A child or other descendant who has been instituted heir, who had he not been so instituted would have been entitled to share the reserved portion, shall also be entitled to share therein notwithstanding that he was so instituted.”.

Repeal of
article 619
of the Code.

60. Article 619 of the Code shall be deleted.

Amendment of
article 620
of the Code.

61. Article 620 of the Code shall be amended as follows:

(a) for the marginal note thereto there shall be substituted the marginal note “Reserved portion to be free from burdens or conditions.”;

(b) for subarticle (1) thereof there shall be substituted the following:

“(1) It shall not be lawful for the testator to encumber the reserved portion with any burden or condition.”;

(c) in subarticle (2) thereof, for the words “The legitim is computed” there shall be substituted the words “The reserved portion is calculated”;

(d) in subarticle (4) thereof, for the words “the legitim is due” there shall be substituted the words “the reserved portion is due”; and

(e) immediately after subarticle (4) thereof there shall be added the following new subarticle:

“(5) The person claiming the reserved portion shall take into account his share any property bequeathed to him by will and cannot renounce any testamentary disposition in his favour and claim the reserved portion, except when such testamentary disposition is made in usufruct or consists in the right of use or habitation, or consists of a life annuity or an annuity for a limited time.”.

62. Article 621 of the Code shall be amended as follows:Amendment
of article 621
of the Code.

(a) in subarticle (1) thereof, for the words “entitled to the legitim” there shall be substituted the words “entitled to the reserved portion”, and for the words “by way of legitim” there shall be substituted the words “by way of reserved portion”; and

(b) in subarticle (2) thereof, for the words “to legitim” there shall be substituted the words “to reserved portion”, and for the words “the legitim” there shall be substituted the words “the reserved portion”.

63. For the words “*legitima portio*” in article 622 of the Code, there shall be substituted the words “reserved portion”.Amendment
of article 622
of the Code.**64.** For paragraphs (f) and (g) of article 623 of the Code, there shall be substituted the following:Amendment
of article 623
of the Code.

“(f) if the descendant is a prostitute without the connivance of the testator;

(g) in any case in which the testator, by reason of the marriage of the descendant, shall have been, under the provisions of articles 27 to 29, declared free from the obligation of supplying maintenance to such descendant.”.

65. Article 624 of the Code is hereby repealed.Repeal of
article 624
of the Code.**66.** Article 626 of the Code shall be amended as follows:Amendment of
article 626
of the Code.

(a) in subarticle (1) thereof, for the words “the legitim” there shall be substituted the words “the reserved portion”; and

(b) in subarticle (2) thereof, for the words “over the legitim” there shall be substituted the words “over the reserved portion”.

67. In article 628 of the Code, for the words “by his legitim” there shall be substituted the words “by his reserved portion”, and for the words “of the legitim” there shall be substituted the words “of the reserved portion”.Amendment of
article 628
of the Code.**68.** In article 629 of the Code and in the marginal note thereto, for the word “legitim” there shall be substituted the words “reserved portion”.Amendment of
article 629
of the Code.

Substitution
of article 630
of the Code.

69. For article 630 of the Code there shall be substituted the following:

“Disherison
on
the ground of
prodigality.

630. Where the person entitled to the reserved portion is interdicted on the ground of prodigality, or is so burdened with debts that the reserved portion, or at least the greater part of it would be absorbed by such debts, it shall be lawful for the testator by an express declaration to disinherit such person, and to bequeath the reserved portion to the children or descendants of such person.”.

Amendment of
heading appearing
after article
630 of the Code.

70. The words “and of Illegitimate Children” appearing in the heading after article 630 of the Code shall be deleted.

Substitution of
articles 631 to
633 of the Code.

71. For articles 631 to 633 of the Code there shall be substituted the following:

“Right of
surviving
spouse, if
there is issue.

631. Where a deceased spouse is survived by children or other descendants, the surviving spouse shall be entitled to one-fourth of the value of the estate in full ownership.

Right of
surviving
spouse if
there is no
issue.

632. If there are no children or descendants as stated in article 631, the surviving spouse shall be entitled to one-third of the value of the estate in full ownership.”.

Amendment of
article 633A of
the Code.

72. Article 633A of the Code shall be amended as follows:

(a) the provision shall be renumbered as article 633;

(b) for subarticles (3) and (4) thereof there shall be substituted the following:

“(3) For the purposes of articles 631 and 632, the tenement subject to the right of habitation under this article shall be excluded from the estate of the deceased over which the surviving spouse has a reserved portion.

(4) The provisions of article 395 shall not apply to the right of habitation granted under this article.”; and

(c) in subarticle (5) thereof, for the words “legitim or any portion of the estate of the deceased spouse reserved to any other person” there shall be substituted the words “the reserved portion due to any other person”.

73. For articles 634 to 646 of the Code there shall be substituted the following:

Substitution
of articles
634 to 646.

“Partition
between heirs
and surviving
spouse.

634. Where the matrimonial home belongs in part to the surviving spouse, in any partition between the heirs of the deceased and the surviving spouse, the surviving spouse, or the said heirs, may demand that the property subject to the right of habitation be assigned to the surviving spouse upon a valuation which is to take account of such right of habitation over the property.

Use of
contents
of
matrimonial
home.

635. The surviving spouse shall also have the right of use over any of the furniture in the matrimonial home belonging to the deceased spouse.

Definition
of furniture.

636. The provisions of article 318 shall apply in relation to the right of use referred to in article 635.

Limitations
of
right of use.

637. The provisions of subarticles (3), (6), (7) and (8) of article 633 shall *mutatis mutandis* apply to the right of use granted by article 635.

Cases where
surviving
spouse
cannot claim
rights.

638. The provisions of articles 631, 632, 633 and 635 shall not apply in any of the following cases:

(a) if, at the time of the death of one of the spouses, the spouses were separated by a judgement of the competent civil court, and the surviving spouse had, in terms of articles 48, 51 and 52 of this Code, forfeited the rights referred to in those articles;

(b) where the predeceased spouse has, by his will, on any of the grounds mentioned in paragraphs (a), (b), (c), (d) and (e) of article 623, or on the grounds of adultery, expressly deprived the surviving spouse of the rights referred to in articles 631 to 633 and 635 and such ground, or where more grounds are stated, any of such grounds is proved;

(c) if, in regard to the surviving spouse, there exists any of the grounds on which such spouse would under article 605 be, as unworthy, incapable of receiving by will.

Application
of articles
633 and 635
in cases of
personal
separation.

639. The rights referred to in article 633 and article 635 shall also apply in cases where the spouses were personally separated and the surviving spouse was either in terms of article 55A or in terms of a public deed of consensual separation entitled to reside in the matrimonial home.”.

Amendment of
article 648
of the Code.

74. Article 648 of the Code shall be amended as follows:

(a) for paragraph (b) thereof there shall be substituted the following:

“(b) any property which has been disposed of by way of donation shall be then fictitiously added, such property being reckoned at its value at the time of the donation.”; and

(b) in paragraph (c) thereof for the words from “such persons” to the words “articles 615 to 646” there shall be substituted the words the surviving spouse in accordance with articles 615 to 639.”.

Repeal of
article 649
of the Code.

75. Article 649 of the Code shall be repealed.

Amendment of
article 656
of the Code.

76. In subarticle (1) of article 656 of the Code, for the words “written out” there shall be substituted the words “printed, type-written or written in ink”.

Amendment of
article 661
of the Code.

77. Article 661 of the Code shall be amended as follows:

(a) in subarticle (1) thereof for the words “five, nor exceeding fifty” there shall be substituted the words “one hundred, nor exceeding one thousand”; and

(b) subarticle (2) thereof shall be deleted and subarticle (3) thereof shall be renumbered as subarticle (2) thereof.

Amendment of
article 662
of the Code.

78. For the words “527” in article 662 of the Code, there shall be substituted the words “529”.

Amendment of
article 676
of the Code.

79. The word “male” in subarticle (3) of article 676 of the Code shall be deleted.

Amendment of
article 726
of the Code.

80. Article 726 of the Code shall be amended as follows:

(a) the present provision shall be renumbered as subarticle (1) thereof; and

(b) immediately after subarticle (1) thereof as renumbered, there shall be added the following subarticles:

“(2) In the case of immovable property the legatee may demand the grant of such possession be made by means of a public deed.

(3) Unless the testator shall have otherwise provided the expenses relative to the deed shall be borne by the legatee.”.

81. For articles 747 to 750 of the Code, there shall be substituted the following:

Substitution
of articles
747 to 750
of the Code.

“Testator can
make
provision for
the
existence or
birth
of children
etc.

747. It shall be lawful for a testator to make provision in his will for the existence or subsequent birth of children or descendants, and such provision may, without prejudice to any right to a share of the reserved portion, distinguish between such children or descendants in the same manner as he could lawfully distinguish between children or descendants of whose existence he is aware or who are already born.

Where
children
or
descendants
are passed
over.

748. Where provision is not made in accordance with article 747 and the testator makes disposition by universal or singular title and passes over any children or descendants, whether or not the testator was aware of their existence, and whether or not such children or descendants were born at the time of the making of the dispositions, such dispositions shall nonetheless be valid saving the right of the children or descendants so passed over to their share of the reserved portion to which they may be entitled under this Code.”.

82. Article 752 of the Code shall be amended as follows:

Amendment of
article 752
of the Code.

(a) in subarticle (1) thereof for the words “issue, legitimate, adopted or legitimated by subsequent marriage, before attaining the age of eighteen years” there shall be substituted the words “issue, before attaining the age of eighteen years”;

(b) in subarticle (2) thereof for the words “issue, legitimate, adopted or legitimated by a subsequent marriage” there shall be substituted the word “issue”; and

(c) in subarticle (3) thereof for the words “the legitim” there shall be substituted the words “a share of the reserved portion”.

Amendment of
article 758
of the Code.

83. Immediately after subarticle (2) of article 758 of the Code, there shall be added the following subarticles:

“(3) It shall also be lawful for a spouse to make in favour of the surviving spouse a bequest by universal or by singular title, substituting for him or her another beneficiary in the residue still existing at the time of the demise of the surviving spouse. In such case the surviving spouse shall only be restrained from disposing of any thing contained in the disposition, by will or by title of donation.

(4) For the purpose of this article “residue” means and includes only:-

(a) immovable property, whether immovable by its nature or by reason of the object to which it refers; and

(b) all certain and determinate movable property which can be identified, excluding liquid cash and things identified only by their species.

(5) An action contesting any disposal made by the surviving spouse in contravention of subarticle (3) may be instituted during the lifetime of the surviving spouse, and shall be barred by the lapse of five years from the opening of succession of the surviving spouse.

(6) A disposal made by the surviving spouse in contravention of subarticle (3) shall in the case of immovables be null. In the case of movable property nullity shall ensue only if the beneficiary was in bad faith. In any other case action shall only lie for damages against the surviving spouse or his or her estate.”.

Amendment of
article 789
Of the Code.

84. In article 789 of the Code the words “the illegitimate children” shall be deleted.

Repeal of
article 800 of the
Code.

85. Article 800 of the Code shall be repealed.

Substitution
of articles
808 to 830
of the Code.

86 For the heading “§I. Of Regular Successions”, and the subheading “OF SUCCESSION BY LEGITIMATE DESCENDANTS” appearing after article 807 of the Code, and for articles 808 to 830 of the Code and the headings and sub-headings appearing after articles 809, 813, 816, 824 and 829, there shall be substituted the following:

“§I. Of Succession by Descendants and Surviving Spouse”.

Where
deceased
is survived
by
descendants
and spouse.

808. (1) Where the deceased has left children or their descendants and a spouse, the succession devolves as to one moiety upon the children and other descendants and as to the other moiety upon the spouse.

(2) The provisions of subarticle (1) shall be without prejudice to the right of the surviving spouse under articles 633, 634 and 635.

Where
deceased
is survived
by
descendants
but not by
spouse.

809. Where the deceased has left children or other descendants but no spouse, the succession devolves upon the children and other descendants.

Where the
deceased
is not
survived
by
descendants
but is
survived
by spouse.

810. Where the deceased has left no children or other descendants but is survived by a spouse the succession devolves on the spouse.

Succession
by children
and
descendants.

811. (1) Saving the provisions of article 815, children or other descendants succeed to their father and mother or other ascendants without distinction of sex, and whether they are born or conceived in marriage or otherwise and whether they are of the same or of different marriages.

(2) They succeed per capita when they are all in the first degree; they succeed *per stirpes* when all, or some of them, take by representation.

§II. Of Succession by Ascendants and Collaterals

When
deceased
leaves no
descendants
nor a spouse.

812. Where the deceased has left no children or other descendants, nor a spouse, the succession shall devolve:

(a) if there be an ascendant or ascendants and no direct collaterals: to the nearest ascendant or ascendants;

(b) if there be an ascendant or ascendants and direct collaterals: one moiety to the nearest ascendant or ascendants and the other moiety to the direct collaterals;

(c) if there be no ascendant or ascendants but there be direct collaterals: to the direct collaterals; and

(d) if there be neither ascendant or ascendants nor direct collaterals: to the nearest collateral in whatever line such collateral may be.

Direct
collaterals.

813. (1) For the purpose of article 812 direct collaterals mean brothers and sisters, whether of the half or full blood or adopted and the descendants of predeceased brothers or sisters, of the half or full blood or adopted.

(2) The brothers and sisters shall succeed *per capita* and their descendants *per stirpes* in terms of articles 804 and 805.

Succession
by other
collaterals.

814. Succession between collaterals shall not extend beyond the twelfth degree.

Where
persons
conceived
and born out
of wedlock
succeed with
certain other
persons.

815. Where a person conceived and born out of wedlock succeeds *ab intestato* with adoptive children of the deceased or other children of the deceased who are not so conceived or born or the descendants of such children, or with the surviving spouse of the deceased the person conceived and born out of wedlock shall receive only three quarters of the share to which he would have been entitled if all the heirs of the deceased, including such person, had been conceived or born in wedlock, and the remaining quarter of the share to which he would have been so entitled shall devolve on the other heirs of the deceased to the exclusion of any of such heirs who is conceived and born out of wedlock as if it were a separate estate.

§III. Of the Rights of the Government

Rights of
succession
competent to
the
Government
of Malta.

816. Where the deceased is not survived by any of the persons entitled to succeed under the rules laid down in the foregoing articles, the inheritance shall devolve upon the Government of Malta.”.

87. For articles 832 to 835 of the Code, there shall be substituted the following article:

Substitution
of articles
832 to 835
of the Code.

“Where
people
die in a
common
calamity.

832. Where several persons die in a common calamity and it is impossible to determine who survived the other, they shall, where any one of them is called to the succession of the other, be presumed to have died at the same time.”.

88. For articles 839 to 844 of the Code there shall be substituted the following:

Substitution of
articles 839
to 844 of
the Code.

“Share due
to
person
conceived
and
born out of
wedlock
may be paid
in kind.

839. Where under testate or intestate succession a person conceived and born out of wedlock succeeds with adoptive children of the deceased or other children of the deceased who are not so conceived and born or descendants of such children, or with the surviving wife of the deceased, the other heirs of the deceased shall be entitled to pay the share due to the person conceived and born out of wedlock, either in cash or in movable or immovable property of the estate, if the latter does not object; and in case of opposition by the latter, the Civil Court – Voluntary Jurisdiction shall, following an application to that effect by any of the other heirs of the deceased, decide whether to allow such payment or assignment, after taking into account personal considerations and those relating to property.”.

89. In subarticle (1) of article 845 of the Code, for the words “or the legitim, or the portion of property granted to illegitimate children or to the spouse” there shall be substituted the words “or the reserved portion”.

Amendment of
article 845
of the Code.

90. Article 852 of the Code shall be amended as follows:

Amendment of
article 852
of the Code.

(a) the present provision shall be renumbered as subarticle (1) thereof; and

(b) immediately after subarticle (1) thereof as renumbered there shall be added the following new subarticle:

“(2) The provisions of subarticle (1) of this article shall also apply in the case of judicial proceedings in respect of possessory actions, in which case the person entitled to succeed shall be considered as *de jure* curator of the inheritance in terms of subarticle (2) of article 886.

(3) Subarticle (2) of this article shall only apply if the person entitled to succeed states in the action that he is acting in his capacity of *de jure* curator.”.

Amendment of
article 858
of the Code.

91. For the words “the legitim or other portion” in subarticle (2) of article 858 of the Code there shall be substituted the words “the reserved portion”.

Amendment of
article 861
of the Code.

92. For the words “the legitim or other portion” in article 861 of the Code there shall be substituted the words “the reserved portion”.

Amendment of
article 894
of the Code.

93. In article 894 of the Code, for the words “legitim or any other portion of the property would be due,” there shall be substituted the words “reserved portion would be due”.

Amendment of
article 910
of the Code.

94. Article 910 of the Code shall be amended as follows:

(a) subarticles (2) and (3) thereof shall be deleted; and

(b) subarticle (1) thereof shall be renumbered as the whole article, and the words “or bring into the mass” shall be deleted.

Amendment of
article 913
of the Code.

95. In subarticle (1) of article 913 of the Code for the words “shall bring into the mass, in the interest only of the other children or descendants, being their co-heirs, everything” there shall be substituted the words “shall impute, in the interests only of the other children or descendants, being co-heirs, the value of everything”.

Amendment of
article 916
of the Code.

96. In article 916 of the Code for the words “the legitim or other portion of property” there shall be substituted the words “the reserved portion”, and the words “and articles 634 and 643” shall be deleted.

Amendment of
articles 917
and 919 of
the Code.

97. In articles 917 and 919 of the Code, for the words “the things” wherever they appear, there shall be substituted the words “the value of the things”.

Repeal of
article 927
of the Code.

98. Article 927 of the Code shall be deleted.

Substitution
of article 931
of the Code.

99. For article 931 of the Code there shall be substituted the following:

“How
collation
is made.

931. (1) Subject to the provisions of the following subarticles collation is made by imputing to the share of the donee the value of the thing at the time of the opening of succession.

(2) Where the donated thing consists of movables consumable by use or articles of clothing or articles intended for the domestic use of the donee, no collation shall be due.

(3) Where the thing has been alienated by onerous title by the donee, the value to be collated shall be the consideration received by the donee for the thing alienated or the value of the thing at the time of alienation whichever value is higher.

(4) Where the thing has perished by a fortuitous event, without any fault of the donee and without the donee obtaining any compensation for the loss of the thing, no collation shall be made.”.

100. Article 933 and articles 935 to 937 of the Code shall be repealed. Repeal of articles 933, 935 to 937 of the Code.

101. Article 938 of the Code for the words “legitim, etc”, in the marginal note thereto, and for the words “legitim or other portion of property” and the words “legitim or portion” in subarticle (1) thereof; there shall be substituted in each case the words “reserved portion”. Amendment of article 938 of the Code.

102. In article 957 of the Code for the word “legitim“ there shall be substituted the words “reserved portion”. Amendment of article 957 of the Code.

103. In article 1743 of the Code for the words “Saving the provisions of the Mortmain Act, all persons”, there shall be substituted the words “All persons”, and the words “Cap. 201.” in the marginal note shall be deleted. Amendment of article 1743 of the Code.

104. Article 1748 of the Code shall be repealed. Repeal of article 1748 of the Code.

105. In article 1750 of the Code, for the words “in the foregoing articles, is null, in whole or in part, according to the extent of the incapacity” there shall be substituted the words “in article 1749 is null”. Amendment of article 1750 of the Code.

106. For article 1751 of the Code there shall be substituted the following: Substitution of article 1751 of the Code.

“Intermediaries. 1751. The father, the mother, the children, the descendants and the spouse of the person who is incapable of receiving by donation, shall, unless the contrary is proved, be considered to be intermediaries.”.

Repeal of article
1805 of the Code.

107. Article 1805 of the Code shall be repealed.

Amendment of
article 1810
of the Code.

108. In subarticle (2) of article 1810 the words “, subject to the provisions of article 1748” shall be deleted.

Amendment of
article 1812
of the Code.

109. In article 1812, the words “, saving, however, the provisions of article 639” shall be deleted.

Amendment of
article 2042
of the Code.

110. Article 2042 of the Code shall be amended as follows:—

(a) immediately after paragraph (a) thereof, there shall be inserted the following proviso:

“Provided that the Director of the Public Registry may, in his discretion, accept notes in instances where it is manifestly impossible to obtain some of or all details as required in paragraph (a).”; and

(b) immediately after paragraph (b) thereof there shall be inserted the following proviso:

“Provided that the Director of the Public Registry may, in his discretion, accept notes in instances where it is manifestly impossible to obtain some of or all details as required in paragraph (b).”.

Substitutes Form Q
in Part II of the
Schedule to the
Code.

111. Form Q in Part II of the Schedule to the Code shall be substituted by the Form Q appearing in the First Schedule to this Act.

Addition of Form R
to Part II of the
Schedule to the
Code.

112. Immediately after Form Q in Part II of the Schedule to the Code there shall be added Form R appearing in the Second Schedule to this Act.

Amendment
of the Code of
Organization and
Civil Procedure,
Cap. 12.

113. Article 253 of the Code of Organization and Civil Procedure shall be amended as follows:

(i) in the proviso to paragraph (e) of article 253 thereof, immediately after the words “the person opposing the execution of such bill of exchange or promissory note” there shall be inserted the words “, to be filed within twenty days from the service of the judicial letter sent for the purpose of rendering the same bill of exchange or promissory note executable.”; and

(ii) at the end of the proviso to paragraph (e) of article 253 thereof, there shall be added the following:

“The judicial letter referred to above in this proviso shall, under pain of nullity, notify the debtor of the right given to him by this proviso.”.

114. Subarticle (2) of article 68 of the Notarial Profession and Notarial Archives Act shall be substituted by the following:

Amendment of the Notarial Profession and Notarial Archives Act, Cap. 55.

“(2) The Notary who had drawn up a will *unica charta* or his keeper or delegate Notary shall, after the death of one of the testators and without the need of any further authorisation, have the authority to issue to any person an extract from such will which shall contain all the testamentary dispositions of the deceased testator.”.

115. Sub-paragraph (iii) of paragraph (d) of subarticle (4) of article 5 of the Housing (Decontrol) Ordinance shall be deleted.

Amendment of the Housing (Decontrol) Ordinance, Cap. 158.

116. (1) The provisions of articles (other than insofar as the said article amends subarticle (3) of article 4 of the Civil Code about the surname of a child) 1, 2, 3, 4, 5, 6, 7, 8, 9 (a) and (b), 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 (a) and (b), 39, 40, 41, 42, 43, 47, 50, 51, 52, 55, 56, 69, 70, 77, 78, 79, 80, 82, 84, 85, 88, 103, 106, 109, 112 and 116 shall, saving the provisions of subarticle (2) of article 1 of this Act, come into force with immediate effect.

Transitory provision.

(2) The provisions of articles 53, 54, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 71, 72, 73, 74, 75, 81, 86, 87, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 shall, saving the provisions of subarticle (2) of article 1 of this Act, apply to successions taking effect after the said articles are brought into force.

(3) The provisions of articles 48, 49, 64, 76 and 83 shall, saving the provisions of subarticle (2) of article 1 of this Act, apply to wills drawn up after the said articles are brought into force.

(4) The provisions of articles 104, 105, 107 and 108 shall, saving the provisions of subarticle (2) of article 1 of this Act, apply to donations made after the said articles are brought into force.

(5) The provisions of article 3 insofar as they amend subarticle (3) of article 4 of the Civil Code about the surname of a child, and of articles 44 and 111 of this Act shall, saving the provisions of subarticle (2) of article 1 of this Act, apply to children who were not born or who have not been registered on the date when the said articles of this Act are brought into force.

(6) The provisions of articles 9 (c) and 38 (c), shall, saving the provisions of subarticle (2) of article 1 of this Act, apply to acknowledgements of children made after the said articles of this Act are brought into force.

(7) The provisions of article 45 of this Act, shall, saving the provisions of subarticle (2) of article 1 of this Act, immediately apply to successions which on the date when the said article is brought into force would have taken effect less than nine years previously and shall apply after one year from when the said article is brought into force in the case of successions which would have taken effect at least nine years before the said article has been brought into force.

(8) The provisions of article 46 of this Act shall, saving the provisions of subarticle (2) of article 1 of this Act, immediately apply to property which has been held in common for less than nine years on the date when the said article is brought into force, and about property which on the said date would have been held in common for at least nine years the said provisions shall commence to apply one year after the said article 46 has been brought into force.

FIRST SCHEDULE

(Article 111)

FORM Q

(Article 4 (5))

DECLARATION ON USE OF NAME

Particulars respecting	Name and Surname	Age	Place of Birth	Name and Surname of Parents and spouse and whether living or dead
The husband		years		
The wife				

Particulars relating to present marriage

* No. of Act of Marriage		Date			Place of Birth
		Day	Month	Year	

** Particulars relating to previous marriage

Particulars respecting previous husband and date of previous marriage			
Name and surname	Age	Place of Birth	Name and surname of parents whether living or dead
* No. of Act of Marriage		* No. of Act of Death	
Date of Marriage		Date of Death	
Day	Month	Year	Day
			Month
			Year

Notes: * Where marriage or death is not registered in the Public Registry evidence to the satisfaction of the Director must be produced.

** To be filled only if wife opts to use surname of deceased husband.

*** Delete as necessary.

I the undersigned opt to use my maiden surname/the surname of my deceased husband ***

Signature of wife _____ Filed on _____ By _____

SECOND SCHEDULE

(Article 112)

FORM R

(Article 4 (6))

DECLARATION ON THE RETENTION OF USE OF FORMER HUSBAND'S
NAME

I the undersigned declare in the presence of my husband and of the hereunder-mentioned witnesses that I understand to retain the surname of my former husband.

Details of Present Marriage

Name and Surname of Husband	Name and Maiden Surname of Wife	Place and Date of Marriage

Details of Previous Marriage

Particulars of previous marriage			
Particulars respecting previous husband at date of previous marriage			
Name and Surname	Age	Place of Birth	Name and Surname of Parents and whether living or dead
* No. of Act of Marriage	* Date of Marriage		* <i>Note:</i> Where marriage or death is not registered in the Public Registry evidence to the satisfaction of the Director must be produced.
	Day Month Year		
* No. of Act of Death	* Date of Death		
	Day Month Year		

Signature of wife _____ Signature of Husband _____ Filed on _____

Signature of Witnesses _____ By _____

A 1041

Passed by the House of Representatives at Sitting No. 215 of 17th December, 2004.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives