I assent.

(L.S.) EDWARD FENECH ADAMI
President

4th August, 2006

ACT No. XIV of 2006

AN ACT to to implement various measures relating to judicial proceedings.

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:

Short title and commencement.

1. (1) The short title of this Act is the Code of Organization and Civil Procedure (Amendment) Act, 2006, and this Act shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as "the Code".

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

Amendment of arrangement of Code.

2. The Arrangement of Code shall be amended as follows:

(a) in Book Second, in Part I, for the words from "Title VII" to Articles "389-395" there shall be substituted the following:

"Title VII	Of the Enforcement of Judgments and other Executive Titles	252-395
	General Provisions	252-281

Sub-title I	Of the Warrant of Seizure of Movable Property	282-293
Sub-title II	Of the Warrant of Seizure of Immovable Property	294-300
Sub-title III	Of the Warrant of Seizure of a Commercial Going Concern	301-312
Sub-title IV	Of Judicial Sales by Auction	313-357
Sub-title V	Of Court Approved Sales for Aircraft, Ships and Vessels	358-364
Sub-title VI	Of the Executive Garnishee Order	375-383
Sub-title VII	Of the Warrant of Ejectment or Expulsion from Immovable Property	384
Sub-title VIII	Of the Warrant *In Factum*	385-388
Sub-title IX	Of the Warrant of Executive Detention of Aircraft	388A-388B
Sub-title X	Of the Warrant of Executive Arrest of Sea Vessels	388C-388D
Sub-title XI	Of the Warrant *In Procinctu*	388E
Sub-title XII	Of the Rendering of Accounts and Liquidation of Fruits	389-395";

and

(b) in Book Third, for the words from "Title VI" to "Of the *Meditatio Fugae* Warrant" there shall be substituted the following:

"Title VI	Of Precautionary Acts	829-877
	General Provisions	829-838B
Sub-title I	Of the Warrant of Description	839-845
Sub-title II	Of the Warrant of Seizure	846-848
Sub-title III	Of the Warrant of Seizure of a Commercial Going Concern	848A-848B
Sub-title IV	Of the Garnishee Order	849-854
Sub-title V	Of the Warrant of Detention of Aircraft	855-864
Sub-title VI	Of the Warrant of Arrest of Sea Vessels	865-872C
Sub-title VII	Of the Warrant of Prohibitory Injunction	873-877".

Deletion of sub-heading in Title VII.

3. In Title VII of Part I of Book Second of the Code, the words "Sub-title I", immediately before the words "General Provisions", shall be deleted.

4. For article 273 of the Code there shall be substituted the following: Substitution of article 273 of the Code.

"Executive acts.

273. The executive titles mentioned in article 253 may, according to circumstances, be enforced by any of the following executive acts:

(a) warrant of seizure of movable property;

(b) warrant of seizure of immovable property;

(c) warrant of seizure of a commercial going concern;

(d) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;

(e) executive garnishee order;

(f) warrant of ejection or eviction from immovable property;

(g) warrant *in factum*;

(h) warrant of detention of aircraft;

(i) warrant of arrest of sea vessels;

(j) warrant *in procinctu*."

5. Article 274 of the Code shall be amended as follows: Amendment of article 274 of the Code.

(a) in the proviso to subarticle (1) thereof, for the words "is also to append his own signature" and "to obtain beforehand such authorisation" there shall be substituted the words "shall append his own signature" and "to obtain such authorisation" respectively; and

(b) in subarticle (2) thereof, for the words "or the thing due in virtue of the title" there shall be substituted the words "and, or the article due in virtue of the title, and also such remedies and, or provisions that are being demanded".

6. Article 278 of the Code shall be renumbered as article 275 of the Code and shall be amended as follows: Renumbering and amendment of article 278 of the Code.

(a) in subarticle (1) thereof, for the words from "The marshal may," to "break open" there shall be substituted the words "The court executing officer may, in connection with the execution of any warrant committed to him, after calling in two witnesses, exercise all such powers as are reasonably required of him to execute the warrant, which includes the breaking open of";

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

"Provided that in the case of a warrant of detention of aircraft, the powers of the court executing officer shall not include the breaking open of any external or internal aircraft doors or any other damage to the aircraft.";

(c) in subarticle (2) thereof, for the words from "Nevertheless," to "the marshal" there shall be substituted the words "In the case of any warrant for the seizure of any property of the Government of Malta, the court executing officer"; and

(d) immediately after subarticle (2) there shall be added the following new subarticle:

"(3) The Prime Minister may from time to time by regulations establish a list of property pertaining to the State which may not be the subject of an executive or a precautionary warrant.".

Renumbering of article 279 of the Code.

7. Article 279 of the Code shall be renumbered as article 276 of the Code.

Renumbering and substitution of article 280 of the Code.

8. Article 280 of the Code shall be renumbered as article 277 of the Code and there shall be substituted the following new article therefor:

"Time for execution of warrants and orders.

277. (1) Saving the exceptions laid down in this Code, no warrant or garnishee order may be executed other than during such time as may be prescribed by the Minister responsible for justice by regulations made under this article.

(2) Regulations made under this article may also provide for such cases in which the execution of a warrant or an order is allowed to take place other than during the prescribed time, the method of execution and the statements which have to be included in the certificate of service:

Provided that, for reasons of urgency to be confirmed on oath by the applicant, the court may allow the execution of any warrant or order other than during the prescribed time.".

Renumbering and amendment of article 280 of the Code.

9. Article 281 of the Code shall be renumbered as article 278 of the Code and shall be amended as follows:

(a) in subarticle (1), for the words "The marshal shall deliver a copy of the warrant or order" there shall be substituted the words "The court executing officer shall deliver a copy of the warrant or order at the first available opportunity"; and

(b) in subarticle (2) thereof, for the words "Unless the court shall otherwise direct, the marshal" there shall be substituted the words "Unless the court shall otherwise direct, or unless otherwise prescribed by the Minister responsible for justice as prescribed in article 277(2), the court executive officer".

Renumbering and amendment of article 282 of the Code.

10. Article 282 of the Code shall be renumbered as article 279 of the Code and shall be amended as follows:

(a) for the words "The nullity" there shall be substituted the words "Where the basis of nullity is not of a grievous nature, the nullity"; and

(b) for the word "marshal" wherever it appears, there shall be substituted the words "court executing officer".

Renumbering of article 283 of the Code.

11. Article 283 of the Code shall be renumbered as article 280 of the Code.

Renumbering and substitution of article 283A of the Code.

12. Article 283A of the Code shall be renumbered as article 281 of the Code and there shall be substituted the following new

article therefor:

"How executive acts may be impugned.

281. (1) Without prejudice to any other right under this or any other law, the person against whom an executive act has been issued or any other person who has an interest may make an application, containing all desired submissions together with all documents sustaining such application, to the court issuing the executive act praying that the executive act be revoked, either totally or partially, for any reason valid at law.

(2) The application shall be served on the opponent who shall, within ten days, file a reply containing all submissions which such opposite party may wish to make together with all documents sustaining the reply which are within its ability to file:

Provided that the court may, in urgent cases, reduce the period referred to in this subarticle. In default of such opposition the court shall accede to the demand.

(3) The court shall decide on the application after hearing the parties and receiving such evidence as it may deem fit, if it so considers, within a period not later than one month from the filing of the said application.

Appeal from decree.

(4) An appeal from a decree delivered under subarticle (3) of this article may be entered by application within six days from the date on which the decree is read out in open court. The Court of Appeal shall appoint such appeal for hearing within one month from the date when the decree is read out in open court, and the appeal shall be decided within three months from the date when it has been appointed for hearing.

(5) The security referred to in article 249 shall not be required in the cases referred to in the previous subarticle.".

Deletion of articles 284 to 304 of the Code.

13. Articles 284 to 304 of the Code shall be deleted.

14. Immediately after sub-heading "Sub-Title I - Of the Warrant of Seizure of Movable Property", there shall be added the following new articles 282 to 293 in the Code: Addition of new articles 282 to 293 in the Code.

"Warrant of seizure on movable property.

282. (1) The warrant for the seizure of movable property shall, besides the particulars stated in article 274, contain Court orders about:

(a) (i) the appointment of the day, place and time for the judicial sale by auction and the subsequent seizure and removal thereupon of all such articles from the place which has been indicated by the creditor or from the person of the debtor; or

(ii) the seizure from the place indicated by the creditor, including from the person of the debtor, of any such article which the debtor may possess or such article or articles as may be mentioned in the warrant; and also that after the execution of the warrant, the court executing officer shall be ordered to fix, together with the advocate or the legal procurator of the creditor, the day when the judicial sale by auction is to be held in consultation with the executing officer responsible therefor, and such executing officer shall also fix with the creditor the date, which shall at least be seven days prior to the date of the judicial sale by auction, when the removal of the articles which the executing creditor selects to have removed shall take place;

(b) the execution of the warrant, if so required, after legal hours or on a Sunday or public holiday, and if after two attempts to execute the warrant the court executing officer fails to effect such execution, he shall be authorised to force open the place;

(c) the transport of the property seized and to be removed to the official storage places established by regulations made by the Minister responsible for justice, and about the transfer of their possession from the debtor to the official consignee appointed in terms of such regulations;

(d) the taxing and receipt of payment due to the official consignee by the creditor for such period during which the articles seized and to be removed would be under the care of the official consignee, so however that such payment may be divided in proportion to the periods established by the Registrar depending on the nature of the articles seized and to be removed. Such payment is made subject to the right of regress against the debtor when such right exists;

(e) the appointment of experts to make a valuation of the property seized, if so required by law, either in special circumstances which the court may deem appropriate, or on the demand of any interested party or of the debtor;

(f) the appointment of an auctioneer who shall receive a fee in terms of the Auctioneers Act, if so required by law;

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(g) an order for the judicial sale by auction of such articles as are seized and to be removed on the appointed day in terms of regulations to be made by the Minister responsible for justice, without further service of any notice to the debtor.

(2) The provisions of this Sub-title shall not apply to sea vessels or other craft having a length exceeding ten metres, and to aircraft engaged in commercial air transport, unless otherwise exempt by the provisions of this Title.

Description of property seized.

283.(1) (a) The court executing officer shall attach to the said warrant a detailed description of the property seized.

(b) The creditor or the debtor or any interested party may demand the court executing officer to take any photograph or filmshot of the detained articles either by electronic or by any other means at the expense of the party making the demand.

Contents of certificate in case of unsuccess-ful execution.

(2) If the court executing officer finds no movable property, or finds only such property as is not liable to seizure, he shall make a certificate to that effect, stating therein the nature of the movable property, if any, not liable to seizure, and he shall attach such certificate to the warrant.

Payment of the amount due.

284. (1) When a warrant of seizure is being executed, it is only the full amount claimed by the creditor that may be paid by the debtor to the court executing officer.

(2) The court executing officer shall describe in detail the property seized and -

(a) where the property includes any merchandise, he shall cause such merchandise to be weighed, measured or gauged, as the case may be;

(b) where money or securities for money, jewellery, or articles of precious metal are seized, he shall accurately state the amount or nominal value or weight thereof and he shall within the shortest time possible take the same to the registry and lodge them therein by means of a schedule;

(c) where papers are seized, he shall seal them and deliver them to the Registrar, and such seals may not be removed except by the authority of the court.

Seizure of papers.

285. (1) Seizure may be effected on any movable property including:

(a) shares in commercial partnerships;

(b) licences issued by any competent authority as may be established by regulations made by the Minister responsible for justice;

(c) insurance policies;

(d) credit securities and any intellectual or industrial property right:

Provided that on such property the warrant shall have effect as from the date of the service on such authority or such person who would have issued such movable property. Any transfer made or burthen incumbent on such property after that date shall be *ipso jure* null as from the date of the service of the certificate of seizure to such person or authority issuing same.

(2) Where in any commercial partnership its statute attributes any right of preference with regard to the transfer of shares, the shareholders shall be informed of the date when such sale is due to take place and they may exercise the said right during that sale.

(3) When the judicial sale by auction of an insurance policy is due to take place, notice shall be given to the insurance company of the date of such sale.

Official consignee.

286. (1) Such property as is removed from the possession of the debtor, in terms of article 282(1)(c) subject to the provisions of article 293, shall be transferred forthwith to be retained in the hands of the official consignee in the presence of the court executing officer, and the official consignee shall receive and hold such property in an official storage place until such time as that property is sold or the official consignee is ordered to do otherwise.

(2) The official consignee shall issue a receipt, to be signed by him, for such property as would have been seized and removed from the possession of the debtor and which he would have received:

Provided that the official consignee may, with the written consent of the Registrar, retain such property in any place other than the official storage place in such circumstances where, due to the nature or the size of the articles seized, it would not be feasible to dispose otherwise.

(3) The Minister responsible for justice shall appoint a number of official consignees to safeguard the property seized as from such time as the property is held in the hands of the court executing officer to the day when they are sold:

Provided that where the official consignee is a company or partnership, such company or partnership is to appoint a person who shall at all times be personally responsible to fulfil the obligations of the official consignee, and to assume joint responsibility with the company or partnership:

Provided further that the Minister responsible for justice may by regulations provide for the making of any other such conditions as he may deem necessary relating to the appointment of a person as an official consignee or to be personally responsible in terms of the first proviso to this subarticle.

(4) The Minister responsible for justice shall indicate the official storage places where the seized property is to be stored by official consignees from the time when the property is removed by the court executing officer up to the day when it is sold.

(5) The Minister responsible for justice may by regulations provide in relation to the preservation of such property, its release prior to sale, the procedures connected with the sale thereof, the responsibility pertaining to the official consignee for the payment of his fees, and in relation to any other matter connected with the preservation, sale, consignment and release of the property seized.

Persons who may not act as official consignees.

287. An official consignee who is appointed under this Title may not act when he is either:

(a) the execution creditor;

(b) the husband or wife of the debtor or of the creditor;

(c) the father or mother of the creditor, his daughter or son, or his brother or sister, his uncle or aunt, his father-in-law or mother-in-law or her husband or his son-in-law or daughter-in-law;

(d) directly or indirectly employed with the creditor;

(e) the person who claims to be the owner of the property seized.

Attendance of the official consignee.

288. At the time of execution of the warrant of seizure under article 282, the official consignee shall attend together with the court executing officer to execute the warrant. The court executing officer may seize and remove property without informing the creditor.

Official consignee to preserve property seized.

289. (1) The official consignee shall be responsible for the proper preservation of the property entrusted to him and he shall not use, nor shall he allow any person to use, such property unless otherwise ordered by the court:

Provided that the debtor may be allowed to use or retain in possession such articles of the property seized as the court may authorise if the court considers that such articles are normally required by an average household for decent living to maintain the human dignity of the debtor and his family.

(2) Where the property seized is of a perishable nature, the Registrar shall, without further authorisation, sell the goods seized and with the profit made from that sale, he shall proceed according to the provisions of article 284.

The official consignee to act as a *bonus paterfamilias.*

290. The official consignee is bound to exercise for the safe keeping of the property seized, such care as is exercised by a *bonus paterfamilias*; if the official consignee fails to present such property when called upon to do so, the court shall order him to appear before it to explain his failure to do so; the official consignee shall be responsible for damages and interest and the court, after examining the circumstances of the case, may issue such orders as appear to be appropriate, including the personal arrest of the official consignee for a period not exceeding three months, to compel him to present such property. The failure of the official consignee to present such property when ordered by the court shall of itself constitute contempt of court in terms of the applicable provisions under this Code.

Other creditors may not oppose execution.

291. The creditors of any person, whose property has been seized, may not, for any cause whatsoever, make any opposition to the execution of the warrant or to the sale of the property:

Provided that it shall be lawful for such creditors to enforce their claim on the proceeds of the sale of the property seized.

No identification is to be made of property already seized.

292. (1) If, when executing a warrant of seizure, the court executing officer finds that another warrant has already taken place and that the articles have not been removed, he shall likewise execute the warrant again at the place indicated to him by the creditor. Identification of the property so seized shall no longer be permitted. The court executing officer shall, at the creditor's expense, inform the creditors that on their demand other warrants had been executed by means of the first warrant.

The warrant may be executed on new articles other than those already seized.

(2) When an official consignee has already been appointed, and the articles have been removed, no other warrant may be executed on such articles.

Property not subject to seizure.

293. (1) The property mentioned hereunder is not subject to seizure:

(a) such clothes for daily wear, bedding and such utensils and furniture as are considered reasonably necessary for the decent living of the debtor and his family;

(b) personal documents and books relating to the profession of the debtor, of his wife or of his children;

(c) the registers and minute-books of notaries public;

(d) tools and implements necessary for the instruction in or the exercise of any science or of any art of the debtor, of his wife or of his children;

(e) animals and tools required for agriculture and any fruit either cut or not yet separated from the ground;

(f) aircraft, exclusively appropriated to a state service, including the postal service, but excluding commercial service;

(g) sea vessels wholly chartered in the service of the Government of Malta

(h) sacred vestments and vessels which are used in a consecrated church, or belonging to a priest, a religious order or any member thereof;

(i) any property of any member of the Police Force or of the Armed Forces of Malta being arms, ammunition, equipment, instruments or clothing used by him in the discharge of his duties:

Provided that any such property as is mentioned in paragraphs (a) to (g) may be seized -

(i) if the execution is demanded in respect of the price of such property;

(ii) if the execution is demanded in respect of rent or ground-rent of the tenement in which such property is kept;

(iii) if the executive title by virtue of which the warrant has been issued specifically condemns the debtor to effect the return of such property.

(2) The seizure may be effected of unseparated movable property belonging to both debtor and a third party, insofar as no sale of such property may take place except after their separation.".

Addition of new Sub-title and new articles in Book Second of the Code.

15. Immediately after article 293 in Book Second of the Code there shall be added the following new sub-title and the following new articles 294 to 300:

"Sub-title II

OF THE WARRANT Of SEIZURE OF IMMOVABLE PROPERTY

Form of demand by application.

294. (1) The demand for the seizure of immovable property is made by an application.

(2) The application shall contain a detailed description of the property of which the sale by auction is demanded, including the mode in which the property has been acquired and any burthen attached to the same land and a plan clearly indicating the site.

The provisions of this article apply to ships or other vessels exceeding ten metres in length and to aircraft and such articles shall also be described in detail, including any rights and encumbrances thereon.

(3) In the event of a decree as provided in the proviso to subarticle (2), the procedure to be followed shall be that laid down in this Sub-title for the judicial sale by auction of immovable property.

Duties of the court.

295. (1) In the court decree ordering the issue of a warrant of seizure of immovable property, the court shall:

(a) order the Registrar to appoint experts in terms of article 89 as may be required and to fix a short and peremptory time within which such appraisments have to be filed and give any such order as may be necessary for the better execution of such appointment;

(b) appoint a day, time and place for the judicial sale;

(c) order the Registrar to inform the Director of the Public Registry and the Registrar of Lands or any competent authority which may be appointed according to regulations made by the Minister responsible for justice, about the issuing of the decree on the first working day thereafter;

(d) order the Registrar of the Public Registry to register forthwith the decree in a book kept for the purpose at the Public Registry, which book shall be accessible to the public.

(2) Such decree shall be served on the debtor.

Appraisement by debtor.

296. (1) Within twenty days from the time notice of the court decree is served on the debtor, he may file a separate appraisment and demand that a new appraisment need not be effected, provided that such appraisement be a sworn appraisement.

(2) The sworn appraisement filed by the debtor shall, within five days, be served on the creditor who shall then have twenty days to lodge an opposition to it.

(3) When a creditor lodges such opposition to the appraisement filed by the debtor, the court shall, after hearing both parties, decide whether it shall appoint a new expert or not.

(4) An appraisement of the property to be sold shall always be made before the sale takes place provided that if an appraisement, made not earlier than twelve months before the judgement that is being executed, has been accepted by the court in its judgement, the court shall take cognizance of such appraisement and it shall not appoint new experts to effect a new appraisement.

Expert to be appointed by court, unless agreed on by parties.

297. (1) The expert shall always be appointed by the court *ex officio*, according to the panel established in article 89 and on a rota system, unless the parties shall have already filed a note submitting the name of an expert agreed on between them, or the appraisement filed in terms of article 296 has been accepted.

(2) The expert shall draft a valuation of the property together with a detailed description thereof, including encumbrances and burthens, and file same under oath with the Registrar.

(3) The debtor shall under oath give such information relating to the property as may be required by the Registrar or by the experts, and the provisions relating to evidence shall apply to the debtor.

(4) The appraisement may not be contested but the court may, by way of an application, order the correction of any mistake made in the description or appraisement.

(5) The expert appointed under this Title shall be remunerated in terms of a tariff to be established according to regulations made by the Minister responsible for justice.

Appraisement of gold or silver articles to show intrinsic value, etc.

298. In any appraisement of gold or silver articles, the expert shall state separately the intrinsic value thereof and the cost of manufacture, as well as the total.

Valuation of immovable property to contain description of property, etc.

299. (1) In the valuation of immovable property, the experts shall include a description of the property stating the burdens, leases and other rights whether real or personal, if any, to which the property is subject, as well as the last transfer of such property according to the information obtained from the creditor or the debtor.

Debtor may be compelled to give information required for the purposes of the valuation.

(2) It shall be lawful, at the written or verbal request of the expert or the creditor, to compel the debtor to confirm on oath, to be administered by the court or the registrar, the information given to or required by the expert.

Debtor to be called upon by letter from registrar.

(3) The debtor shall be called upon to give the above information by means of a letter from the registrar.

Applicability to debtor of provisions relating to witnesses.

(4) The provisions relating to witnesses shall apply to any debtor called upon as aforesaid.

Valuation or appraisement to be sworn by expert.

300. (1) The report containing the valuation or appraisement shall be filed by the expert within the time allowed in the decree of the court according to circumstances, and be sworn by him in the presence of the Registrar.

(2) Where a sale by auction of immovable property or of rights annexed to immovable property situated in the Island of Gozo or of Comino, is ordered by any of the superior courts, it shall be lawful for such court to order the expert to swear his report at the Court of Magistrates (Gozo) in the presence of any of the officers mentioned in article 57(2)(a) to (c), and to deliver the said report, so sworn, to the said officer, to be by him transmitted to the superior court which made the aforesaid order.

(3) When a sale by auction of immovable property or of rights annexed to immovable property situated in the Island of Malta, is ordered by the Court of Magistrates (Gozo), it shall be lawful for such court to order the expert to swear his report in the presence of the Registrar and to deliver the said report, so sworn, to the said Registrar, to be by him transmitted to the Court of Magistrates (Gozo).

Taxation and payment of expert's fee.

(4) The fee payable to the expert shall be taxed by the Registrar, subject to appeal to the court. Such appeal shall be made by application by any interested party within one month from the service of the taxed fee. Such fee shall always be paid by the creditor, saving his right against the debtor for the reimbursement of such fee together with the other expenses of the sale:

Provided that when an appeal is lodged, the creditor shall deposit the fee taxed by the Registrar and the procedings for sale shall be further proceeded with and brought to a conclusion.".

Deletion of articles 305 to 312 of the Code.

16. Articles 305 to 312 of the Code shall be deleted.

Addition of new Sub-title and new articles in Book Second of the Code.

17. Immediately after article 300 of the Code there shall be added the following new sub-heading and the following new articles 301 to 312:

"Sub-title III

OF THE WARRANT Of SEIZURE OF A COMMERCIAL GOING CONCERN

Sale by auction of movable or immovable property and going concerns.

301. The movable or immovable property or the going concerns which are seized from the possession of the debtor, shall be sold by public auction according to the provisions of this Title.

Auctions to be held whenever the need arises.

302. Such auctions shall be held whenever the need arises, there being a sufficient amount of property to be sold.

Provisions apply both to movable and immovable property and to going concerns.

303. (1) The provisions of this Sub-title shall apply both to movable and immovable property and to going concerns. The Registrar and the public auctioneer shall not in any way be impeded from selling movable property, immovable property or a going concern during the same auction.

(2) For the purposes of this Sub-title, the meaning of movable property shall be the same as that given in Sub-title I of this Title and the meaning of immovable property shall be the same as that given in Sub-title II of this Title, saving that in the case of a going concern the meaning is that given in article 309 but for the purposes of this Title a going concern shall be deemed to be immovable property.

Demand for seizure of a going concern.

304. The demand for the seizure of a going concern shall be made by means of an application to be served on the debtor.

Decree upholding the demand for the issue of the warrant.

305. In a decree upholding the demand for the issue of a warrant of seizure of a going concern, the court -

(a) shall order the Registrar to appoint such experts according to article 89 who may be required to:

(i) enlist and evaluate all the assets of the going concern;

(ii) file a report whether or not, considering the debt of the going concern, such going concern should be sold or put under administration for a period of time during which it could pay back its debts; and

(b) appoint a short and peremptory time for the filing of such appraisements and report and give such orders as may be necessary for the carrying out of these instructions:

Provided that where the enlisting and the appraisement of the whole complex would have already been made in the proceedings of a precautionary warrant of seizure of a going concern, the court shall adopt same and only appoint experts to file a report whether the going concern should be sold or put under administration.

Appointment of application for hearing.

306. Following the confirmation on oath of the appraisements and reports, the court shall within one week appoint the application for hearing and, after hearing the parties, it shall decide whether the judicial sale by auction of the going concern is nevertheless to be proceeded with or an administrator is to be appointed to manage the going concern until the amount due is paid.

Appointment of date, place and time for the sale.

307. Where the court decides about the holding of a sale, it shall appoint a date, place and time for the sale of the whole complex as a going concern.

Appointment of administrator.

308. The court shall appoint an administrator to carry on with the administration of the going concern until it is sold:

Provided that where in the proceedings of a precautionary warrant an administrator would have already been appointed, he shall be confirmed as such.

Applicability of articles 297 and 300.

309. Articles 297 and 300 shall apply *mutatis mutandis* to this warrant.

Where court decides that going concern shall continue to be administered.

310. (1) Where the court decides that the going concern shall continue to be administered until payment of the amount due is effected, it shall appoint an administrator and give such orders and make such provisions which it deems appropriate, taking into consideration the debt, nature and value of the going concern.

(2) The appointed administrator shall take control of the going concern and he shall have the right to sell and carry on trade in its day to day business, provided that with regard to any decision of an extraordinary nature he shall be bound to demand the court for its authorisation:

Provided that a commercial bank cannot be appointed as administrator.

Demand for the sale of the going concern.

311. (1) Nothwithstanding the provisions of article 310, if during his appointment the administrator is of the opinion that the going concern is about to lose its market value, he may demand the court to authorise him to sell the going concern in whole or in part.

(2) The appointed administrator under article 310 shall be entitled to such payment as the court, in its discretion, may deem fit that he should receive considering the value of the going concern and the work done in connection with the running of the business.

Definition of going concern.

312. For the purposes of this Title, the term "going concern" means any kind of commercial enterprise conducting a business activity and includes machinery, apparatus, goods, corporeal and incorporeal rights, movable property, immovable property, licences, copyright and good-will.".

Substitution of heading in Book Second of the Code.

18. Immediately before article 313, in Part I in Book Second of the Code, for sub-heading "Sub-title II - Of Judicial Sale by Auction" there shall be substituted the following sub-heading:

"Sub-title IV - OF JUDICIAL SALES BY AUCTION".

Substitution of article 313 of the Code.

19. For article 313 of the Code there shall be substituted the following:

"Form of advertisement of sale by auction.

313. The Registrar shall publish regularly in two newspapers, one being in Maltese and the other in the English language, lists of the judicial sales by auctions which are about to be held and he shall indicate clearly therein the property in such manner that the public is well informed in order to safeguard the parties' interests:

Provided that the debtor, creditor or any other interested person may publish and inform, at their own expense, any particular sale in any newspaper of their choice or broadcast same over any other broadcasting medium.".

Deletion of articles 314 and 315 of the Code.

20. Articles 314 and 315 of the Code shall be deleted.

Amendment of article 316 of the Code.

21. Article 316 of the Code shall be renumbered as article 314, and subarticle (3) thereof shall be substituted by the following new subarticle:

"(3) In the case of a judicial sale by auction of listed securities in a recognised exchange, the auction shall be held in accordance with the procedures prescribed in rules and bye-laws made under articles 4(2) and 28(2) of the Financial Markets Act.".

Addition of new articles 315 and 316 to the Code.

22. Immediately after article 314 of the Code as renumbered, there shall be added the following new articles 315 and 316:

"Valuation of property to be sold by auction.

315. (1) Immovable property or rights annexed to such property, or movable property consisting of gold or silver articles, pearls or precious stones or of other precious articles, and commercial going concerns, shall always be appraised before the sale thereof by auction.

(2) With regard to other movable property, an appraisement shall only be made if required by the creditor or by the debtor.

(3) An appraisal made in conformity with the provisions of articles 297, 300 and 307 and existing in the records of a sale by auction shall be accepted by the court to be the appraisement for the purpose of this article.

Appraisement of gold or silver articles to show intrinsic value.

316. In any appraisement of gold or silver articles, of pearls or precious stones or of other precious articles the expert shall consider the intrinsic value thereof and the cost of manufacture, together with any distinctive characteristic of the said article and appraise the total value thereof.".

Substitution of article 317 of the Code.

23. For article 317 of the Code there shall be substituted the following new article:

"Removal of movable property to place of sale.

317. The official consignee shall cause the movable property to be removed to the place of sale on the day of the sale where such property shall be exposed to public view at least two hours before the auction begins.".

Amendment of article 318 of the Code.

24. In article 318 of the Code, for the words "property may be sold by auction" there shall be substituted the words "movable property may be sold by auction".

Amendment of article 319 of the Code.

25. Article 319 of the Code shall be amended as follows:

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

"(1) The auction shall be, save the exceptions mentioned in the preceding articles, conducted by a public auctioneer in the presence of the Registrar."; and

(b) for subarticle (3) thereof there shall be substituted the following new subarticles:

"(3) An offer shall no longer be valid immediately when a higher offer is accepted, even though such higher offer is later declared to be null.

(4) The public auctioneer or broker shall be entitled to a fee which is taxed by the Registrar in accordance with a tariff to be established by the Minister responsible for justice.

(5) No offer may be accepted if such offer is less than sixty per cent (60%) of the value at which the movable or immovable property or the going concern has been appraised.

(6) The public auctioneer shall have the right to demand that a person submitting an offer should be in possession of the necessary guarantees.".

26. For article 320 of the Code there shall be substituted the following new article: Substitution of article 320 of the Code.

"Bids *pro persona nominanda*, etc., not to be accepted.

320. The auctioneer shall cause that no bid shall be accepted if it is either made *pro persona nominanda* or by any person who is notoriously incapable of fulfilling the obligations arising out of the adjudication.".

27. Article 322 of the Code shall be deleted. Deletion of article 322 of the Code.

28. For article 323 of the Code there shall be substituted the following: Substitution of article 323 of the Code.

"Duration of auction.

323. The Minister responsible for justice shall by regulations establish the duration of the auction.".

29. Articles 324 and 325 of the Code shall be deleted. Deletion of articles 324 and 325 of the Code.

30. Article 326 of the Code shall be amended as follows: Amendment of article 326 of the Code.

(a) in subarticle (1), immediately after the words "for the continuation of the auction" there shall be added the words "on another day which shall be appointed by the Registrar within two weeks";

(b) in subarticle (3), for the words "six days" there shall be substituted the words "seven days"; and

(c) immediately after subarticle (4) there shall be added the following new subarticle (5):

"(5) The court shall hear the parties about the demand for suspension, and it shall not give its decree relating to such application prior to a deposit having been made of all the expenses with regard to the judicial sale by

auction.".

Deletion of article 327 of the Code.

31. Article 327 of the Code shall be deleted.

Amendment of article 328 of the Code.

32. In article 328 of the Code, immediately after the words "or of ships" there shall be added the words ", or of commercial going concerns".

Amendment of article 329 of the Code.

33. In subarticle (1) of article 329 of the Code, for the words "by writ of summons" there shall be substituted the words "by application".

Amendment of article 331 of the Code.

34. In subarticle (1) of article 331 of the Code, immediately after the words "annexed to such property" there shall be added the words ", or of commercial going concerns,".

Amendment of article 332 of the Code.

35. In article 332 of the Code, for the words "if by leave of court previously obtained he shall" there shall be substituted the words "if he shall".

Substitution of article 333 of the Code.

36. For article 333 of the Code there shall be substituted the following new article:

"*Animo compensandi* bid.

333. (1) Any person to whom a liquidated debt is owing under any judgement or executive title or deed or other obligatory writing may, by an application, bid *animo compensandi*.

(2) Any person who is intent on bidding *animo compensandi* shall register his name by means of a note before the commencement of the sale by auction by making a sworn declaration before the Registrar about the reason why he wishes to bid *animo compensandi*.

(3) Any person bidding *animo compensandi* may be served notice by any person having an interest in the judicial sale by auction at least two weeks before the date of the sale and whosoever is not served such notice or is not served notice within such time may exercise the right under article 356.".

Substitution of article 334 of the Code.

37. For article 334 of the Code there shall be substituted the

following:

"Conditional leave to bid *animo compensandi*.

334. Any bid *animo compensandi* is made on condition that the bidder shall bind himself to pay the price into court in case it shall be so adjudged by the court.".

Substitution of article 335 of the Code.

38. For article 335 of the Code there shall be substituted the following:

"Opposition to bids *animo compensandi*.

335. Any opposition to an application to bid *animo compensandi* may only be made after the sale. No opposition may be made before or during the sale.".

Deletion of article 336 of the Code.

39. Article 336 of the Code shall be deleted.

Amendment of article 337 of the Code.

40. Article 337 of the Code shall be amended as follows:

(a) in subarticle (1), for the words "demand the approval of the proposed set-off, and shall pay into court" there shall be substituted the words "demand by means of an application accompanied by a lodgment schedule, the approval of the proposed set-off, and he shall pay into court"; and

(b) in subarticle (3), for the words "and shall recover the costs of the judicial recognition" there shall be substituted the words "and shall recover the legal fees and the costs of the judicial recognition".

Amendment of article 338 of the Code.

41. Article 338 of the Code shall be amended as follows:

(a) for subarticle (1), there shall be substituted the following:

"(1) The aforementioned demand shall be published in the Government Gazette and served on the debtor and all known creditors, including such persons who shall have sued out any warrant of seizure or garnishee order or impediment of departure, and such persons as are mentioned in the warrant of seizure which preceded the judicial sale by auction.";

(b) in subarticle (2), for the words "The persons so served shall be allowed the time of three days" there shall be substituted the words "Any person who may have an interest and the persons so served shall be allowed the time of twenty

days"; and

(c) for subarticles (3) to (7), there shall be substituted the following subarticles:

"Condition which may be imposed by court on approval of set-off.

(3) It shall be lawful for the court, in approving the set-off, to require the purchaser to give sufficient security to pay into court the price together with interest, in case it shall be so adjudged.

(4) When the court upholds the demand, any person who may have an interest to enter suit may within twenty days file an appeal by application, which appeal shall be appointed and decided within three months from the date of the decree.

(5) When the Court of Appeal revokes a decision to grant a bid *animo compensandi*, it shall remit the judicial proceedings to the first court.".

Substitution of article 339 of the Code.

42. For article 339 of the Code there shall be substituted the following new article:

"Competition of creditors.

339. When there are more than one creditor filing a demand for payment from the proceeds in such manner that a competition of creditors would have to take place, it shall be the same court to commence such proceedings in terms of articles 416 *et sequitur*.".

Amendment of article 340 of the Code.

43. In the first proviso to subarticle (1) of article 340 of the Code, for the words "any person who has made" and "within six days" there shall be substituted the words "whosoever makes" and "within seven days" respectively.

Substitution of article 342 of the Code.

44. For article 342 of the Code there shall be substituted the following new article:

"Restoration of balance of deposit to debtor.

342. If after payment of the claims of the creditors and of the costs, there still remains a balance, the court shall, upon the demand of the debtor, order such balance to be restored to him.".

45. For article 343 of the Code there shall be substituted the following new article: Substitution of article 343 of the Code.

"Discontinuance of sale by auction and restoration of unsold property to debtor.

343. If it appears during the sale that a sufficient sum to meet the debts and the costs of the auction has been obtained, the Registrar shall order the auction to be immediately discontinued. Upon a verbal demand by the debtor, the court shall order that the unsold property is to be restored to the debtor.".

46. For article 345 of the Code there shall be substituted the following new article: Substitution of article 345 of the Code.

"Sale of perishable articles.

345. In the case of seizure of perishable merchandise or other articles which are in a state of progressive deterioration or of articles which are about to go out of fashion or become technologically obsolete, it shall be lawful for the court, upon the demand of any person having an interest or of the official consignee, to order such merchandise or other articles to be sold in such manner as the court shall deem proper, including the sale to be effected forthwith by the Registrar or by the official consignee.".

47. Article 348 of the Code shall be deleted. Deletion of article 348 of the Code.

48. In article 349 of the Code, for the word "marshal" there shall be substituted the words "court executing officer". Amendment of article 349 of the Code.

49. In article 350 of the Code, for the word "marshal" there shall be substituted the words "court executing officer". Amendment of article 350 of the Code.

50. In subarticle (1) of article 352 of the Code, for the words "was obtained." there shall be substituted the words "was obtained, in which case the court shall on a demand made by application proceed, after hearing the parties, to declare such transfer as null and void and to adopt such measures as it may deem necessary.". Amendment of article 352 of the Code.

51. Article 353 of the Code shall be amended as follows: Amendment of article 353 of the Code.

(a) in subarticle (1), immediately after the words "the auction of the immovable property" there shall be added the words "or of a commercial going concern"; and

(b) in subarticle (2), immediately after the words "The auction of the immovable property" there shall be added the words "or commercial going concern".

Substitution of article 354 of the Code.

52. For article 354 of the Code there shall be substituted the following new article:

"Execution of a judgement of the Court of Magistrates (Malta) on immovable property.

354. (1) When the judgement the execution of which is sought is a judgement given by the Court of Magistrates (Malta), its execution, insofar as it has to be executed on immovable property or rights attached to immovable property, is to be effected by the Civil Court, First Hall.

(2) The same rule applies when a demand is made for the execution of two or more judgements, whose total joint amount, not taking into account any expenses, exceeds the sum of five thousand liri.".

Amendment of article 355 of the Code.

53. Article 355 of the Code shall be amended as follows:

(a) in subarticle (1) thereof, immediately after the words "his immovable property" there shall be added the words "and of a commercial going concern"; and

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

Amendment of article 356 of the Code.

54. Article 356 of the Code shall be amended as follows:

(a) in subarticle (3), for the words "is of a going concern" there shall be substituted the words "is of a commercial going concern"; and

(b) immediately after subarticle (7) thereof there shall be added the following new subarticle:

"(7A) When such action is exercised and the sale is effected, the third party which has acquired possession of the immovable thing in whose favour the property would have been originally adjudicated, who shall not also be the same person in whose favour during the second sale the property has been adjudicated, shall be paid from the proceeds of the second sale the sum of money which he would have defrayed together with all expenses made before any other creditor:

Provided that where the third party which has acquired possession of the immovable thing during the second sale at a higher price is also the same person in whose favour the property had been originally adjudicated, such third party shall be required to deposit in court only the difference in price, and not the full price.".

Addition of new article 357 to the Code.

55. Immediately after article 356 of the Code there shall be added the following new article:

"Eviction after adjudication.

357. The adjudication of immovable property as of itself constitutes an executive title and if either the debtor against whom execution is being sought or a third party occupying the premises without title fails to vacate the premises so adjudicated, the purchaser shall be entitled, within four months from the adjudication, to seek the issue of a warrant of eviction on the basis of the said title of adjudication.".

Deletion of words of sub-heading in the Code.

56. The words of the sub-heading "Sub-title III - Of the Warrant of Imprisonment for Debt" occurring immediately after article 357 of the Code, as added by this Act, shall be deleted.

Addition of new Sub-title and new articles 358 to 364 in the Code.

57. Immediately after article 357 of the Code, as added by this Act, there shall be added the following new sub-heading and new articles:

"Sub-title V

OF COURT APPROVED SALES FOR AIRCRAFT, SHIPS AND VESSELS

Private sale of an aircraft, ship or vessel.

358. Notwithstanding any other provision of this Code, the Court may, on the application of any creditor with an executive title, approve a private sale of an aircraft, ship or vessel, in favour of an identified buyer and in consideration of a determined price.

Appraise-ments by independent and reputable valuers.

359. The applicant shall together with the application submit appraisements by two independent and reputable valuers confirming the value of the aircraft, ship or vessel; it shall also be incumbent on the applicant to adduce to the Court evidence that such private sale is in the interest of all known creditors and that the price offered by the proposed buyer, which price must be more than sixty per cent of the highest appraised value, is reasonable in the circumstances of the case.

Persons called upon to make submissions.

360. No order shall be made by the Court before the application has been served on such persons as the Court, in the circumstances and upon information given by the applicant, deems it appropriate to call upon to make their submissions.

Hearing.

361. The Court shall appoint the application for hearing within ten days of its filing.

Where Court accedes to application.

362. If the Court accedes to the application and approves a private sale in accordance with the provisions of this Sub-title, the Court shall in its decree of approval nominate a person who shall thereupon be entitled to transfer the aircraft, ship or vessel in accordance with the terms and conditions approved by the Court, and as if he were the registered owner thereof.

Deposit of price in Court.

363. The person so appointed by the Court shall deposit the price in Court within seven days from the date of the completion of the sale.

Title which is free from all privileges and encumbrances.

364. The sale of the aircraft, ship or vessel in accordance with the provisions of this Sub-title gives the purchaser a title which is free from all privileges and encumbrances, and after the sale all claims or demands against the aircraft, ship or vessel may be enforced only against the proceeds of the sale.".

Substitution of sub-heading in the Code.

58. For the words of Sub-heading "Sub-title IV - Of the Executive Garnishee Order" occurring immediately before article 375

of the Code, there shall be substituted the words "Sub-title VI - Of the Executive Garnishee Order".

Substitution of article 376 of the Code.

59. For article 376 of the Code there shall be substituted the following new article:

"Contents of garnishee order.

376. (1) The creditor shall, in the application for the issue of a garnishee order, correctly state the name and surname of the debtor, giving other particulars concerning the debtor as may be ordered by the Minister responsible for justice for the purpose of the identification of the debtor by the garnishee.

(2) The order shall:

(a) state the name and surname of the debtor and other particulars included in the application for the purpose of identification of the debtor, including, where possible, the identity card number or the company registration number;

(b) state the amount or thing due;

(c) state the title under which the creditor sues out execution;

(d) enjoin the garnishee not to pay or deliver up to the debtor, or any other person, such moneys or things as may be in his hands but which belong to the debtor, under penalty of payment of damages and interest; and

(e) enjoin the garnishee to lodge, at the debtor’s expense within twenty-one days from the date of service of the warrant, through the Registrar any moneys or things belonging to the debtor, as attached by the order.

(3) The lack of any of these particulars in the garnishee order shall render the said order to be *ipso jure* null.".

Amendment of article 377 of the Code.

60. In subarticle (1) of article 377 of the Code, for the words article "by the marshal of a copy thereof to the garnishee" there shall be substituted the words "of a copy thereof, by the court executing officer, to the garnishee or by such electronic means as may be

prescribed by the Minister responsible for justice".

Substitution of article 378 of the Code.

61. For article 378 of the Code there shall be substituted the following new article:

"Declaration by garnishee.

Time for such declaration.

378. A garnishee who, although being in possession of moneys or other articles, belonging to the debtor, or which are due to the debtor, which may have been attached by means of the order, and who does not effect the deposit referred to in article 376 within such time as may be laid down in the order, shall be responsible for ensuing damages and interest in favour of the creditor and the court may, upon application being made for that purpose by the creditor, issue such orders as may be required, including his personal arrest for a period not exceeding three months, in order to force him to lodge such property.".

Substitution of article 379 of the Code.

62. For article 379 of the Code there shall be substituted the following new article:

"Garnishee may be enjoined to deposit.

379. (1) In the case of attachment of moneys, the garnishee may before lodging such moneys in court retain the costs in respect of such lodgment and, in the case of attachment of other movable property, the garnishee shall have a privileged claim over the property so lodged in respect of such costs.

(2) In all cases, the execution creditor and the debtor shall be notified of any such lodgment into court.".

Deletion of article 380 of the Code.

63. Article 380 of the Code shall be deleted.

Amendment of article 381 of the Code.

64. Article 381 of the Code shall be amended as follows:

(a) in subarticle (1), paragraph (c), immediately after the word "charitable grant" there shall be added the words "or donation";

(b) in subarticle (1), for paragraph (f) there shall be substituted the following paragraphs:

"(f) moneys which have been made available to

the debtor by deed of loan for the building, construction and maintenance of houses intended as a main dwelling place for the debtor;

(g) overdraft banking facilities excluding credit cards by means of which commercial going concerns run by the debtor are being operated;

(h) bank guarantees and letters of credit."; and

(c) subarticle (2) shall be deleted, and sub-rticles (3) and (4) shall be renumbered as subarticles (2) and (3) respectively.

Amendment of article 382 of the Code.

65. In subarticle (1) of article 382 of the Code, for the words "the court may, on the application by any creditor, allow the issue of a garnishee order" there shall be substituted the words "the issue of a garnishee order shall be applicable".

Substitution of article 383 of the Code.

66. For article 383 of the Code there shall be substituted the following new article:

"Garnishee order may not be extended.

383. A garnishee order may not be extended and shall remain in force up to such time as it is revoked by a decree issued by the court.".

Substitution of sub-heading in the Code.

67. For the words of sub-heading "Sub-title V - Of the Warrant of Ejectment or Expulsion from Immovable Property" occurring immediately before article 384 of the Code, there shall be substituted the words "Sub-title VII - Of the Warrant of Ejectment or Expulsion from Immovable Property".

Amendment of article 384 of the Code.

68. In article 384 of the Code, for the words "the marshal" wherever they occur, there shall be substituted the words "the court executing officer".

Substitution of sub-heading in the Code.

69. For the words of Sub-heading "Sub-title VI - Of the Warrant *In Factum*" occurring immediately before article 385 of the Code, there shall be substituted the words "Sub-title VIII - Of the Warrant *In Factum*".

Substitution of article 385 of the Code.

70. For article 385 of the Code there shall be substituted the

following new article:

"Warrant *in factum*.

385. (1) In the execution of a warrant *in factum*, the court executing officer shall proceed in such manner as ordered in the warrant.

(2) The warrant *in factum* shall contain the order that the party against whom the warrant is issued is to be conveyed to prison, in order to be therein kept at his own expense, until the performance of the act ordered by a judgment or until such time as the court may deem necessary to ensure such performance.

(3) The warrant may not be issued other than by an explicit order of the court to be issued on a demand made by application by the creditor.

(4) The court shall only issue the warrant if it is satisfied that the creditor does not have any other means of execution available.".

Amendment of article 387 of the Code.

71. Article 387 of the Code shall be amended as follows:

(a) in subarticle (1), for the words "the marshal" and "for seven days" there shall be substituted the words "the court executing officer" and "for four days" respectively;

(b) in subarticle (2), for the words "seven days" there shall be substituted the words "four days"; and

(c) in subarticle (3), for the words "The marshal" there shall be substituted the words "The court executing officer".

Addition of new sub-heading in the Code.

72. Immediately after article 388 of the Code, there shall be added the following new sub-heading:

"Sub-title IX

OF THE WARRANT OF EXECUTIVE DETENTION OF AIRCRAFT".

Addition of new articles 388A and 388B to the Code.

73. Immediately after the new sub-heading of Sub-title VIII,

there shall be added the following new articles 388A and 388B:

"Application for the issue of a warrant.

388A. An executive warrant of detention of aircraft is effected by application in terms of articles 858 and 860:

Provided that the application shall contain a detailed description of the aircraft of which the sale by auction is demanded, including the mode in which it has been acquired and any rights and encumbrances thereon.

Court to decide about the sale or to fix time-limit for payment.

388B. (1) The court shall, when a demand is made for the issue of a warrant of detention, establish whether it shall order the sale of the said article or to fix a time-limit within which the debtor is to pay the amount due.

(2) When the court orders such sale, it shall proceed according to the procedures laid down in the provisions relating to judicial sale by auction.

(3) When the court fixes a time limit within which the debtor is to pay, it shall order the warrant to be definitely in force until payment of the amount due is effected.

(4) When the said time limit passes without any effect the court shall, on a demand to be made by the interested party, order the sale to take place according to the provisions of subarticle (2).".

Addition of new sub-heading and articles 388C and 388D to the Code.

74. Immediately after article 388B of the Code, there shall be added the following new sub-heading and the following new articles 388C and 388D:

"Sub-title X

OF THE WARRANT OF EXECUTIVE ARREST OF SEA VESSELS

"Application for the issue of a warrant.

388C. An executive warrant of arrest of sea vessels is effected by application in terms of articles 858 and 860.

Court to decide about the sale or to fix time-limit for payment.

388D. (1) The court shall, when a demand is made for the issue of a warrant of arrest, establish whether it shall order the sale of the said article or fix a time-limit within which the debtor is to pay the amount due.

(2) When the court orders such sale, it shall proceed according to the procedures laid down in the provisions relating to judicial sale by auction.

(3) When the court fixes a time limit within which the debtor is to pay, it shall order the warrant to be definitely in force until payment of the amount due is effected.

(4) When the said time limit passes without any effect the court shall, on a demand to be made by the interested party, order the sale to take place according to the provisions of subarticle (2).".

Addition of new sub-heading in the Code.

75. Immediately after article 388D of the Code, there shall be added the following new sub-heading:

"Sub-title XI

OF THE WARRANT IN PROCINCTU".

Addition of new article 388E to the Code.

76. Immediately after the new sub-heading of Sub-title XI, there shall be added the following new article 388E:

"Court may issue other orders.

388E. (1) Subject to the other provisions contained in Title VII of this Code, the court may on demand of the party, issue such orders to the Registrar as it may deem necessary for the orders contained in the judgement to be executed:

Provided that this warrant shall not be issued except after an application has been made to this effect by the creditor and after the court is satisfied that the creditor does not have any other means of execution.

(2) There shall be clearly indicated in the application the reason for the necessity of such orders and a decree shall be given thereon after that the debtor has been served notice thereof, to which he may file a reply within four days.".

Substitution of sub-heading in the Code.

77. For the words of sub-heading "Sub-title VII - Of the Rendering of Accounts and Liquidation of Fruits" occurring immediately before article 389 of the Code, there shall be substituted the words "Sub-title XII - Of the Rendering of Accounts and Liquidation of Fruits".

Addition of new articles 742B to 742D to the Code.

78. Immediately after article 742A of the Code, there shall be added the following new articles 742B to 742D:

"Jurisdiction *in rem* against ships or vessels.

724B. Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction *in rem* against ships or vessels in the following maritime claims:

(a) any claim to the possession, ownership or title to or of a ship or to the ownership of any share therein;

(b) any question arising between the co-owners of a ship as to the ownership, possession, employment or earnings of that ship;

(c) any claim in respect of a mortgage, hypothec or charge on a ship or on any share therein;

(d) any claim arising out of the contract for the sale of the ship;

(e) any claim for damage received by a ship;

(f) any claim for damage done or caused by a ship, either in collision or otherwise;

(g) any claim for loss of life or personal injury caused, whether on land or on water, by any ship or occurring in connection with the operation of any ship or sustained in consequence of any defect in a ship or in her apparel or equipment or in consequence of the wrongful act, neglect or default of -

(i) the owners, charterers or persons in possession or control of a ship; or

(ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,

being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods in, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(h) any claim for loss of or damage to goods, including baggage, carried in a ship;

(i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship, whether by charter party or otherwise;

(j) any claim in the nature of salvage operations or any salvage agreement including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(k) any claim for -

(i) damage or threat of damage caused by the ship to the environment, coastline or related interests;

(ii) measures taken to prevent, minimize or remove such damage; and for compensation for such damage;

(iii) costs of reasonable measures of reinstatement to the environment actually undertaken or to be undertaken;

(iv) loss incurred or likely to be incurred by third parties in connection with such damage; and

(v) for damage, costs or loss of a similar nature to those listed in subparagraphs (i) to (iv);

(l) any claims regarding costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of her crew;

(m) any claim in the nature of towage in respect of a ship;

(n) any claim in the nature of pilotage in respect of a ship;

(o) any claim in respect of goods, materials, provisions, bunkers, supplies and necessaries supplied or services rendered to a ship for her operation, management, preservation or maintenance;

(p) any claim in respect of the construction, re-construction, repair, conversion or equipping of a ship;

(q) any claim in respect of port, dock or harbour dues and charges;

(r) any claim by the master, officers, or member of the crew, or complement of a ship, for wages and other sums due to them in respect of their employment on the ship including costs of repatriation, and social security contributions payable on their behalf;

(s) any claim by a master, shipper, charterer or agent in respect of disbursements made by them on account of a ship or her owners;

(t) any claim for commissions, brokerages, or agency fees payable in respect of the ship, by or on behalf of the ship owner or demise charterer;

(u) any claim arising out of an act which is or is claimed to be a general average act;

(v) any claim arising out of bottomry;

(w) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried or have been attempted to be carried in a ship or for the restoration of a ship or any such goods after seizure;

(x) any claim for insurance premia, including mutual insurance calls, in respect of the ship payable by or on behalf of the ship owner or demise charterer;

(y) any claim for fees and other charges due to the Registrar-General of Shipping and Seamen arising under the provisions of the Merchant Shipping Act, and any claim for tonnage dues.

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Action *in rem* in cases mentioned in article 742B(a) to (c).

742C. In the cases mentioned in article 742B(a) to (c), an action *in rem* may be brought before the civil courts of Malta against the ship in connection with which the claim or question arises.

Action *in rem* in cases mentioned in article 742B(d) to (y). Cap. 234.

742D. Save for those claims which attract a special privilege in accordance with article 50 of the Merchant Shipping Act, and which, in terms of article 37D(3) of the said Act, survive the voluntary sale of a vessel by up to one year, in the cases mentioned in article 742B(d) to (y), an action *in rem* may be brought before the civil courts of Malta against -

(a) that ship or vessel, where the person who would be liable on the claim for an action *in personam* ("the relevant person") was, when the cause of action arose, an owner or charterer of, or in possession or in control of, the ship or vessel, if at the time when the action is brought the relevant person is either an owner or beneficial owner of that ship or the bareboat charterer of it;

(b) any other vessel of which, at the time when the action is brought, the relevant person is the owner or beneficial owner as respects all shares in it.".

Substitution of article 830 of the Code.

79. For article 830 of the Code there shall be substituted the following new article:

"Precautionary acts.

830. (1) The precautionary acts referred to in the last preceding article are the following:

(a) warrant of description;

(b) warrant of seizure;

(c) warrant of seizure of a commercial going concern;

(d) garnishee order;

(e) warrant of impediment of departure;

(f) warrant of detention of aircraft;

(g) warrant of arrest of sea vessels;

(h) warrant of prohibitory injunction.

(2) (a) Saving the provisions of article 870 of this Code and of article 357 of the Merchant Shipping Act, such acts mentioned in subarticle (1) shall be rescinded, if the party against whom the act is issued makes such deposit or gives such security as, in the court's opinion, according to the circumstances of the case, may be sufficient to safeguard the rights or claims stated in the act, or if it is shown that a judicial act accepting liability as provided in subarticle (3) has been filed in the proper registry.

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(b) Notwithstanding that a deposit is made or security is given as aforesaid, the time limits established in this Title on the creditor to bring forward his action shall continue to apply.

(c) Such time limits shall run from the date of the issue of the precautionary act, and failure by the creditor to institute proceedings within the said time limits shall entitle the debtor to withdraw the deposit or cancel the security.

(3) Where a precautionary act has been issued against any person, or such as to affect any property of such person, to secure a claim for damages, and a locally registered insurance company or local bureau thereof, as established in the Motor Vehicles (Third Party Risks) Ordinance, such person or company shall by means of a judicial act, filed in the registry of the said court, within ten days from the date of the insured person's demand, declare that he or the company is accepting liability to pay all sums that may be due for such damages, in connection with the claim contained in that act if such insured person is found to be responsible for such damages -

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(a) the insurer or local bureau, as the case may be, shall be liable to pay all sums that may be due for damages arising as aforesaid;

(b) the claim for such damages may be pursued against the insurer or the local bureau directly; and

(c) the precautionary act against such person shall be rescinded.

(4) No precautionary act as provided in subarticle (3) shall be issued against the insured if the person intending to sue out the warrant is cognizant that the insurer or the local bureau has issued to the insured a valid insurance certificate accepting liability for the payment of damages; and in such case the claim for such damages may be pursued against the insurer or the local bureau or agent, as the case may be, directly.".

80. For article 831 of the Code there shall be substituted the

Substitution of article 831 of the Code.

following new article:

"Application for issue of warrant.

831. (1) The demand for the issue of any of the said acts shall be made by an application prepared by the applicant and containing, under pain of nullity of the act, other than further details which may be prescribed by regulations:

(a) the origin and nature of the debt or claim sought to be secured; and

(b) when the right sought to be secured by the act is a debt, or a demand which may be satisfied by the payment of a sum of money, the amount of such demand.

If the case has already been filed in court, such demand may specify and include all judicial costs.

(2) The application shall be confirmed on oath by the applicant:

Provided that where in an application there is more than one applicant demanding the issue of any of the precautionary acts mentioned in article 830(1) against the same respondent, the oath shall be taken by at least one of the applicants.

(3) Any of the warrants or order mentioned in article 830 shall be issued by the court:

Provided that, where in the opinion of the Registrar the signature of a judge or magistrate empowered to issue a warrant of seizure or a garnishee order or a warrant of impediment of departure cannot be obtained within a reasonable time and that delay may be prejudicial, the said warrants or order may be issued over the signature of the Registrar personally after having first obtained verbal authorisation from the judge or magistrate to do so. In this case, the judge or magistrate is to append his own signature under that of the Registrar at the earliest opportunity to confirm that he had given the said verbal authority or, if it is not possible for the Registrar to obtain such verbal authority, the Registrar shall under his authority issue the said warrant or order over his signature, subject to the ratification of such action by a judge or magistrate at the earliest opportunity.".

Deletion of article 832 of the Code.

81. Article 832 of the Code shall be deleted.

Substitution of article 833 of the Code.

82. For article 833 of the Code there shall be substituted the following new article:

"Request for the issue of a warrant under article 166A.

833. (1) Where an executive judicial letter is filed and sworn according to article 166A, there may also thereupon be sworn and filed the precautionary warrants referred to in article 830(1)(a), (b) and (d):

Provided that when such executive judicial letter is filed, the applicant shall file a cause within twenty days from the date of filing of a full or partial note of contestation or within sixty days from the date of the issuing of a warrant according to which date first occurs.".

Substitution of article 834 of the Code.

83. For article 834 of the Code there shall be substituted the

following new article:

"Notice of execution of warrant.

834. The court executing officer shall, at the earliest time possible, serve notice in writing to the applicant, the lawyer or the legal procurator whose signature is subscribed on the application, of the execution of the warrant or order.".

Deletion of article 835 of the Code.

84. Article 835 of the Code shall be deleted.

Amendment of article 836 of the Code.

85. Article 836 of the Code shall be amended as follows:

(a) for subarticles (2), (3) and (4), there shall be substituted the following subarticles:

"(2) The person making the application according to subarticle (1) shall, together with the application, file in writing all submissions to be made together with all documents in support of the demand that is being filed.

(3) The application, except for any application in terms of subarticle (1)(a), shall be served on the opposite party who may, within seven days from the service, file a note containing all submissions to be made together with all documents in support of the demand that is being filed.

(4) The court shall decide the application with urgency either *in camera* or after hearing the advocates of the parties, if it deems fit, provided that not more than one sitting may be fixed for such purpose."; and

(b) subarticle (8) shall be amended as follows:

(i) in paragraph (a) thereof, immediately after the words "if the applicant" there shall be added the words ", without any valid reason,"; and

(ii) in paragraph (b) thereof, for the words "if, on the demand" there shall be substituted the words "if, on demand".

Amendment of article 837 of the Code.

86. Article 837 of the Code shall be amended as follows:

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

"(1) The warrants of description and of arrest of a vessel or of any other sea going craft for the purpose of a reference to the oath of the opposite party or for the purpose of securing the enforcement of a judgment not being for the payment of an acknowledged amount, may be issued by the Court of Magistrates (Malta), or the Court of Magistrates (Gozo) in its inferior jurisdiction, but may not be issued by the Small Claims Tribunal:

Provided that the warrant of arrest of a vessel or of any other sea going craft may neither be issued by the Court of Magistrates nor by the Small Claims Tribunal.";

(b) in paragraph (b) of subarticle (4), for the words "her clearance; and" there shall be substituted the words "her clearance.";

(c) paragraph (c) of subarticle (4) shall be deleted; and

(d) in paragraph (b) of subarticle (5), immediately after the words "on which such person is enrolled" there shall be added the words "or by the officer commanding the vessel on which such person is enrolled,".

Substitution of article 838 of the Code.

87. For article 838 of the Code there shall be substituted the following new article:

"Precautionary acts.

838. The court may, when any party makes an application before it which is served on the other party, give any order as may be required so as to prevent any damage or deterioration being caused to the things described in the precautionary act.".

Amendment of article 838B of the Code.

88. Article 838B of the Code shall be amended as follows:

(a) in the marginal note to the article, for the words "until final determination" there shall be substituted the words "until the cause becomes *res judicata*";

(b) the whole article shall be renumbered as subarticle (1) thereof and for the words "until the final determination of the cause" there shall be substituted the words "until the cause becomes *res judicata*."; and

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

"(2) Notwithstanding the provisions of subarticle (1) of this article, precautionary warrants issued under article 830(1) become executive warrants after that the cause becomes *res judicata* or when in accordance with article 166B such judicial letter constitutes an executive title, so however that:

(a) in the case of a warrant issued under article 830(1)(b), (c) and (d), the creditor shall file a note within twenty days in the acts of the same warrant and demand an extension or reduction of the effects of the warrant to an amount equivalent to the legal costs, interest and the difference in the principal amount due in terms of the judgement, and such note is to be served upon the debtor and such persons as may have any interest therein;

(b) in the case of a warrant issued under article 830(1)(a), (e) and (f), the creditor shall file an application under the provisions of article 389 within twenty days from the judgement.".

Substitution of article 843 of the Code.

89. For article 843 of the Code there shall be substituted the following new article:

"Time within which to bring action.

843. (1) The applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of the warrant:

Provided that where the issue of the warrant is demanded by any spouse against the other spouse, and the spouse issuing the warrant has commenced proceedings in court, the time limit herebefore mentioned shall commence running from such date when that spouse is authorised to proceed by the court, provided that the warrant shall cease having its effect immediately upon the proceedings being withdrawn or abandoned.

(2) If the applicant fails, without just cause, to bring such action, the effects of the warrant shall cease and he shall be liable for all damages and interest.".

Substitution of article 845 of the Code.

90. For article 845 of the Code there shall be substituted the

following new article:

"Applicability of articles 278, 279 and 282.

845. The provisions of articles 278, 279 and 282, shall apply to the execution of a warrant of description.".

Substitution of article 846 of the Code.

91. For article 846 of the Code there shall be substituted the following new article:

"Warrant of seizure.

846. (1) The warrant of seizure of movable property shall, other than the details referred to in article 276, also contain an order to the Registrar to seize from the debtor such articles or article from the place therein indicated.

Official consignee.

(2) When a demand is made for the removal of the seized articles the court shall appoint an official consignee.

Applicability of articles 278 to 304, 842 to 844.

(3) The provisions of articles 278 to 304 and articles 842, 843 and 844, shall apply to warrants of seizure.".

Amendment of article 847 of the Code.

92. Article 847 of the Code shall be amended as follows:

(a) for the words "without a previous judicial acknowledgment of the debt or claim:" there shall be substituted the words "without a previous judicial acknowledgment or rendering as an executive title of the debt or claim:";

(b) in the proviso thereto, for the words "Provided that in the case of ships, other vessels, aircraft, perishable goods or other deteriorating assets," there shall be substituted the words "Provided that in the case of perishable goods or other deteriorating assets,"; and

(c) in the said proviso, the words "plaintiff’s claim, the defence raised against such" shall be deleted.

Amendment of article 848 of the Code.

93. In article 848 of the Code for the words from "unless, where the debt" to "such debt or claim." there shall be substituted the words "unless the warrant is sued out accompanied by a demand that the credit or claim are judicially acknowledged and the debt or claim exceeds five hundred liri, or the demand for such warrant is for an article which, as stated, is property belonging to the person suing out the warrant.".

Addition of new Sub-title in Book Third of the Code and new articles 848A and 848B.

94. Immediately after article 848 in Book Third of the Code, there shall be added the following new sub-heading and the following new articles 848A and 848B:

"Sub-Title III

OF THE WARRANT OF SEIZURE OF A COMMERCIAL GOING CONCERN

Scope of warrant.

848A. (1) A precautionary warrant of seizure of a commercial going concern may solely be issued to secure a debt or claims which could be frustrated by the sale in part or in whole of the said going concern and, for this purpose, no other warrant may be issued against the going concern, unless it is this warrant of seizure.

(2) The effect of a precautionary warrant of seizure of a commercial going concern is to preserve the totality of the assets of the going concern, including licences and good-will, to order that same is not sold in part or in whole and are to be concurrently kept in business, provided that in any case the court shall not accept a demand for the issuing of a warrant if it is satisfied that there are other means to safeguard the amount due.

(3) The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to protect the rights belonging to applicant who, *prima facie*, appears to have such rights.

(4) The provisions of articles 840, 842, 843, 844 and 848 shall apply to this warrant.

Court to appoint administrator and expert.

848B. (1) When a demand is made for the issue of this warrant the court shall, after hearing the parties, appoint an administrator and in order to effect such action it shall consider whether to allow the going concern to continue being run by the debtor or by such persons as may be entrusted by the debtor with the assistence of the administrator, or that an administrator is appointed who in the opinion of the court has the necessary qualifications to run and administer the going concern on his own.

(2) The court shall appoint an expert under article 89 and establish a short and peremptory time within which there shall be filed an itemized list, to be confirmed on oath, of the value of the whole property forming the capital of the commercial going concern.

(3) The appointed administrator shall be responsible for the commercial going concern and shall have the right to sell and administer the ordinary running of the concern provided that for any decision of an extraordinary nature he shall file a demand in court for the granting of such authorisation.

(4) The administrator may, if he is of the opinion that the going concern will incur a market loss in its value, demand the court either to authorise him to sell the whole going concern or any part thereof.

(5) The administrator appointed under this article shall have the right to such payment as the court may, in its discretion, be of the opinion that is due to him in consideration of the value of the going concern and of the activity undertaken with regard to the running of the business.".

Substitution of sub-heading in the Code.

95. For the words of the sub-heading "Sub-title III" occurring in Title VI of Book Third immediately before article 849 of the Code, there shall be substituted the sub-heading "Sub-title IV".

Amendment of article 849 of the Code.

96. Article 849 of the Code shall be amended as follows:

(a) the words "articles 842, 844" shall be substituted by the words "articles 842, 843, 844" and

(b) the proviso thereto shall be substituted by the following:

"Provided that where the garnishee is a bank, a precautionary garnishee order shall not apply to money payable by the bank in execution of any guarantee given by the bank that it will effect payment on the demand of the person in whose favour the banker's guarantee is made out; and in any such case, notwithstanding the garnishee order, the bank shall have power to pay out or otherwise dispose of any such money as free from any garnishee order and shall also be entitled to withdraw any such money from any court or other place, or from any person, into which, or with whom, it may have been lodged or deposited, and it shall be the duty of the Registrar of such court or other person in possession or having control over such money to return it forthwith to the bank.".

Amendment of article 851 of the Code.

97. In subarticle (2) of article 851 of the Code for the words "in articles 831 and 832" there shall be substituted the words "in subarticle (2) of article 831".

Substitution of sub-heading in Book Third of the Code.

98. For the sub-headings "Sub-title IV" and "Of the Warrant of Impediment of Departure" in Title VI of Book Third of the Code, there shall be substituted the following:

"Sub-title V

OF THE WARRANT OF DETENTION OF AIRCRAFT".

Deletion of articles 855 to 870 of the Code.

99. Articles 855 to 870 of the Code shall be deleted.

Addition of new articles 855 to 872A to the Code.

100. Immediately after the new Sub-title V of the Code, there shall be added the following new articles 855 to 872C:

"Object of warrant.

855. (1) For the purposes of this Sub-title and of articles 358 to 364, both inclusive, an aircraft shall be considered to be an object of a perishable nature in accordance with the provisions of this Code.

(2) The provisions of Article 843 shall apply to this warrant.

(3) A warrant of detention of any aircraft may solely be issued to secure a debt or claim pursuant to -

(a) regulations or orders issued in accordance with article 19 of the Civil Aviation Act in relation to: Cap. 232.

(i) airport charges owed at Maltese airports; and

(ii) air navigation charges owed to the Malta Air Traffic Services Limited or such company as the Minister may, from time to time, by order in the Gazette, establish; or

(b) regulations issued pursuant to article 6 of the Eurocontrol Act in relation to air navigation charges owed to the European Organisation for the Safety of Air Navigation (EUROCONTROL), Cap. 333.

and no other warrant may be issued against an aircraft unless it is a warrant of detention.

Warrant to have effect both to seize and to attach aircraft.

856. (1) The warrant of detention shall have the effect to seize the aircraft from the debtor and also to attach it in the hands of the person or body at the time responsible for the management of the airport or of the place where the aircraft is situate, and also to order that the said person or body shall not release such aircraft or allow the debtor to divest himself in any way from the same in whole or in part or to give or surrender to any person any rights on the same.

(2) The warrant is executed for all effects of the law when notice is served on the person or body referred to in subarticle (1).

Display of court order.

857. The person or body referred to in article 856(1) shall take all necessary measures to display the court order sufficiently in advance of the issue of the warrant for the general attention of third parties:

Provided that the disembarkation of passengers and the unloading of cargo and luggage on board shall not be restricted, and the operator of the aircraft shall be allowed access to it for maintenance purposes.

Warrant to be sued out on appropriate form.

858. A warrant of detention shall be issued by means of an application on a form to be prescribed by the Minister responsible for justice, on which form there shall be included a court decree by virtue of which the necessary orders are given and issued.

Warrant available where claim is not less than Lm400,000.

859. A warrant may be demanded and obtained in security of a debt or any other claim listed in article 855 amounting to not less than four hundred thousand liri.

Statement to be contained in application.

860. The application for the issue of a warrant shall, under pain of nullity, state in a clear manner all particulars, the name of the authority in whose hands the aircraft is and the place where the aircraft is to be found.

Penalty in case of malicious demand for warrant.

861. Where it is found that the warrant was obtained upon a demand maliciously made, the penalty in terms of article 836(8) shall not be less than four hundred thousand liri.

Security for payment of penalty, etc.

862. It shall be lawful for the court, on good cause being shown, upon the demand by application by a person whose aircraft is detained, by the captain of the aircraft or by any person being in charge thereof or having an interest therein, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security, in an amount not less than four hundred thousand liri, for the payment of the penalty, damages and interest and, in default, to rescind the warrant.

Security for release of aircraft.

863. Notwithstanding the provisions of article 830(2)(a), the court shall order the immediate release of the aircraft where sufficient security is deposited in court by the operator of the aircraft or any person having an interest therein, amounting to the value of the debt and costs, or covering the value of the aircraft, if its value is lower than the amount of the debt and costs:

Provided that the security shall be appropriated exclusively to the payment of the creditor:

Provided further that all claims for the release of aircraft shall be dealt with by summary and rapid procedure.

Aircraft not subject to the issue of a warrant.

864. (1) No warrant shall be issued against -

(a) any aircraft exclusively appropriated to a State service, including the postal service, both private and state owned, but excluding commercial service;

(b) every other aircraft appropriated to the carriage of persons or goods for reward, where such aircraft is ready to start on such carriage, unless the detention is in respect of a contract debt incurred for the purposes of the journey which the aircraft is about to make, or of a claim which has arisen in the course of the journey.

(2) The provisions of subarticle (1) do not apply to a warrant sought out by an owner dispossessed of an aircraft by an unlawful act.

(3) No warrant shall be issued against any aircraft used by military forces.

(4) If an aircraft which is exempt from detention under this article has been detained, or if the operator or other interested party has been compelled to give security in order to prevent detention or to obtain a release of such aircraft, the person effecting the detention shall be liable for any damage which results therefrom on the operator or the owner of the aircraft.

(5) A warrant of detention of an aircraft shall, on an application by any interested party, be rescinded if the court is satisfied that because of the nature of the journey or the cargo or other circumstances concerning safety, navigation or airport operation, it is advisable that the aircraft should leave without delay.

Sub-title VI

OF THE WARRANT OF ARREST OF SEA VESSELS

Object of warrant.

865. (1) A warrant of arrest of any sea-going vessel having a length exceeding ten metres may solely be issued to secure a debt or claims, whether *in personam* or *in rem*, which could be frustrated by the departure of the said ship, and no other warrant may be issued against a sea-going vessel unless it is a warrant of arrest, and whether such vessel is at sea or at some other place.

(2) The provisions of article 843 shall apply to the warrant.

Warrant to have effect both to seize and to attach the vessel.

866. (1) The warrant of arrest shall have the effect to seize the sea vessel, having a length exceeding ten metres, from the debtor and also to attach the same in the hands of the authority where the property is, and also to order that the said authority shall not release such sea vessel or allow the debtor to divest himself in any way from the same in whole or in part or to give or surrender to any person any rights on the same.

(2) The warrant is executed for all effects of the law when notice is served on the executive officer of the authority who has in his hands the sea vessel.

(3) A copy of the warrant of arrest shall also be served on the person whose ship or vessel is arrested, the master or other person in charge of such ship or vessel, or the agent of such ship or vessel.

The authority in charge of the vessel to be considered official consignee.

867. (1) The authority who has in its hands or under its control the sea going vessel against which such warrant of arrest has been issued shall, for all purposes of the law, be considered to be the official consignee according to the provisions of articles 286, 287, 288, 289 and 290.

(2) The said authority shall take all necessary measures to display the court order for the general attention of third parties.

(3) For the purposes of this warrant the Malta Maritime Authority shall be deemed to be the authority having in its hands or under its power or control the arrested ship or vessel.

(4) A vessel is deemed to be in the power or control of the Malta Maritime Authority as soon as the vessel enters Maltese territorial waters.

(5) All expenses as may be necessary for the preservation of the arrested ship or vessel shall be borne by the party issuing the warrant, saving his right to recover such expenses together with his claim.

Warrant to be sued out on appropriate form.

868. (1) A warrant of arrest shall be sued out by means of an application on a form to be prescribed by the Minister responsible for justice, on which form there shall be included a court decree by virtue of which the necessary orders are given and issued.

(2) The court executive officer shall have the power to adopt, subject to such directives as may be given by the Court or the Registrar of Courts, all such measures as may be deemed necessary for the execution of the warrant of arrest.

Warrant available where claim is not less than Lm3,000.

869. A warrant may be demanded and obtained in security of a debt or any other claim whatsoever amounting to not less than three thousand liri.

Statement to be contained in application.

870. The application for the issue of a warrant of arrest shall, under pain of nullity, state in a clear manner such particulars as may enable the identification of the ship or vessel, the name of the authority in whose hands or under whose power or control the arrested ship or vessel may be, as well as the place where the ship or vessel is to be found.

Penalty in case of malicious demand for warrant.

871. Where it is found that the warrant was obtained upon a demand maliciously made, the penalty in terms of article 836(8) shall not be less than five thousand liri.

Security for payment of penalty, etc.

872. It shall be lawful for the court, on good cause being shown, upon the demand by application by a person whose ship or vessel is detained, by the master of the ship or vessel, or by any person being in charge thereof or by its agent, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security, in an amount not less than five thousand liri, for the payment of the penalty, damages and interest and, in default, to rescind the warrant.

Ships or vessels not subject to the issue of a warrant.

872A. (1) No warrant shall be issued against any ship or vessel wholly chartered in the service of the Government of Malta or employed in any postal service either by the Government of Malta or by any other government.

(2) No warrant shall be issued against any ship of war.

(3) A warrant of arrest of a ship or vessel shall, on an application by the Malta Maritime Authority, be rescinded if the court is satisfied that because of the nature of its cargo or of its length or draught or other circumstances concerning safety, navigation or port operation, it is advisable that the ship or vessel should leave port without delay.

(4) Following the arrest of a ship or vessel in any port or harbour or in the territorial waters of Malta, and on an application of the Malta Maritime Authority, a court may, if it is satisfied that because of the nature of its cargo and, or other circumstances concerning safety or pollution it is advisable that the ship or vessel should leave port and, or Maltese territorial waters, rescind the warrant of arrest and order that the ship or vessel should leave Malta and its territorial waters without delay.

Order for the sale of a ship or vessel *pendente lite*.

872B. The court may order the sale of an arrested ship or vessel p*endente lite* if it appears to the court upon the application of a creditor that the debtor is insolvent or otherwise unlikely to be able to continue trading and maintaining the asset. In reaching its conclusion the court shall consider all the circumstances connected therewith, including the nature of the plaintiff's claim, the defence raised against such claim, if any, and such other steps which the debtor has taken to secure the claim, or otherwise to preserve the asset.

Joint and several liability.

872C. (1) If, notwithstanding the issue and execution of a precautionary warrant of arrest, a ship or vessel is removed from the jurisdiction of the court in breach of the warrant of arrest, the owner, bareboat charterer or other person being in possession of the ship or vessel at the time of such breach shall be jointly and severally liable to a penalty of fifty thousand liri payable to the party issuing the warrant.

(2) The liability for the payment of a penalty arising under this article shall be without prejudice to any other possible sanction arising under the provisions of Title XVII of Book Third of this Code.".

Substitution of sub-heading in Book Third of the Code.

101. For the sub-headings "Sub-title IV" and "Of the Warrant of Impediment of Departure" in Title VI of Book Third of the Code, there shall be substituted the following:

"Sub-title VII

OF THE WARRANT OF PROHIBITORY INJUNCTION".

Substitution of articles 873 to 875 of the Code.

102. (1) For articles 873 to 875 of the Code, there shall be substituted the following new articles:

"Object of warrant.

873. (1) The object of a warrant of prohibitory injunction is to restrain a person from doing anything whatsoever which might be prejudicial to the person suing out the warrant.

Inquiry of court.

(2) The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant, and that *prima facie* such person appears to possess such right.

(3) The court shall not issue any such warrant against the Government or authority established by the Constitution or any person holding a public office in his official capacity unless the authority or person against whom the warrant is demanded confirms in open court that the thing sought to be restrained is in fact intended to be done and the court is satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the actual doing of the thing sought to be restrained.

(4) If on an application, it is proved to the satisfaction of the court that subsequent to the issue of the warrant of prohibitory injunction the person restrained has acted directly or indirectly in breach of the court's order, the court shall, without prejudice to any other action competent to it at law, at a request of applicant, condemn the person against whom the warrant had been issued to remedy what was committed in breach of its order and to authorise in default the applicant to carry out such remedial works as the court may direct at the expense of the person restrained.

Warrant to secure debt or claim.

874. (1) A warrant of prohibitory injunction may also be demanded by a creditor to secure a debt or any other claim amounting to not less than five thousand liri. The object of such a warrant is to restrain the debtor from selling, alienating, transferring or disposing *inter vivos* such property as may be indicated in the application by onerous or gratuitous title or in any manner creating a burthen or real and, or personal rights; provided that such a warrant shall not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to a court order, or over bank guarantees and letters of credit.

(2) Where a warrant prohibits the sale, alienation, transfer or other disposal of immovable property the application shall contain all the particulars relating to the person against whom it is directed that are required by law in respect of the registration of a transfer of immovable property by such person in the Public Registry. Where the warrant refers to specific immovables, the application shall describe them in the manner provided for in the Public Registry Act, in respect of notes of enrolment, namely it shall apply with reference to the geographical data in question.

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(3) The warrant referred to in subarticle (2) shall upon its issue and at the expense of the applicant, be served by the Registrar within twenty-four hours on the Director of the Public Registry and the Land Registrar or on such authority as may be nominated by the Minister responsible for justice, who shall forthwith register the same in books kept for the purpose. Such books shall be indexed and accessible to the public. It shall also be served upon any person indicated by the applicant.

(4) Upon registration of the warrant referred to in subarticle (2) by the Director of the Public Registry, any future sale, alienation, transfer or disposal of immovable property to which the warrant refers shall be void and to no effect.

(5) Without prejudice to the provisions of article 836, the warrant referred to in subarticle (2) shall, unless previously revoked or otherwise ceasing to be in force, continue to have effect for a period of one year from the date of final judgment in favour of the creditor in his action for the recovery of the debt or claim referred to in subarticle (1).

(6) Where a warrant prohibits the sale or transfer of the shares in a commercial partnership, notice shall also be served on the Registrar of Companies and from the date of such service any transfer of shares shall be null.

Execution of warrant.

875. (1) The application shall be served on the party against whom it is issued who shall file a reply thereto within ten days:

Provided that the court may, in urgent cases, reduce the said period in this subarticle. In default of opposition, the court may accede to the demand.

(2) The court may initially issue provisionally a warrant for a short period under such terms and conditions as it may deem necessary according to the case, and subsequently decide about the matter in a definitive manner.

(3) The court shall, after appointing the application for hearing, decide on its merits after receiving any evidence it deems fit, within the shortest time possible but not any later than one month from the day when the warrant had been filed and confirmed on oath.".

(2) Immediately after article 876 of the Code there shall be added the following new article:

"Applicability of certain articles.

876A. The provisions of articles 829 and 844 shall apply to the warrant of prohibitory injunction.".

Amendment of Act XXXI of 2002.

103. Articles 54, 56, 61, 90, 93 to 129, 137 to 148, 165 to 171, 173 to 178, and 180 to 184 of the Courts and Tribunals Procedures Act, 2002 shall be deleted.

Consequential amendment to the Merchant Shipping Act. Cap. 234.

104. (1) Article 370 of the Merchant Shipping Act shall be deleted.

(2) Notwithstanding the provisions of subarticle (1), proceedings commenced before the court in accordance with article 370 of the Merchant Shipping Act before the coming into force of this article shall continue to be regulated by the said article 370 until they become *res judicata*.

Amendment of the Commissioner of Land Ordinance. Cap. 169.

105. Immediately after the second proviso to article 2 of the Commissioner of Land Ordinance, there shall be added the following new article:

"Assignment of duties.

3. (1) The Minister responsible for land may, with effect from such date as he may, by notice in the Gazette, appoint, assign any of the duties in the exercise of the rights and responsibilities of the Commissioner of Land in accordance with article 2, to any other person to be designated in such notice, which duties shall be specifically designated in such notice.

(2) Notwithstanding the provisions of subarticle (1), all rights and responsibilities to which the duties assigned in accordance with subarticle (1) relate shall, by virtue of article 2, remain vested in the Commissioner of Land.".

Amendment to the Prevention of Money Laundering Act. Cap. 373.

106. In subarticle (11) of article 4 of the Prevention of Money Laundering Act for the words "from the date on which it is made; and the court shall not make another attachment order" there shall be substituted the words "from the date on which it is made, in which case the Attorney General shall, by notice in writing, inform the suspect and the garnishees in the manner provided for in subarticle (9), and the court shall not make another attachment order".

Transitory provision.

107. The provisions of this Act shall apply to new proceedings which will be filed or commenced after the coming into force of the said provisions. Precautionary and executive warrants which have been commenced and which are still pending shall continue to be valid and there shall apply in their regard the law as herebefore applicable:

Provided that any precautionary warrant which shall still be pending on its date of commencement of this Act shall, as from such commencement date, be regulated by the provisions of this Act.

Passed by the House of Representatives at Sitting No. 427 of the 26th July, 2006.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives