

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

19th December, 2008

ACT No. XV of 2008

AN ACT to amend various laws relating to civil matters.

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 Various Laws (Civil Matters) (Amendment No. 2) Act, 2008.

(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.

PART I

Amendments to
the Civil Code.
Cap. 16.

2. This Part amends the Civil Code and it shall be read and construed as one with the Civil Code, hereinafter in this Part referred to as "the Code".

3. Subarticle (4) of article 1322 of the Code shall be substituted by the following new subarticle: Amendment of article 1322 of the Code.

Cap. 370. "(4) Any money deposited in a bank and any investment instrument, as defined in the Second Schedule of the Investment Services Act, to the credit of a married person may only be withdrawn by such married person and it shall not be enquired whether such money or investment instrument belongs to the community of acquests or not."

4. Article 2010 of the Code shall be amended as follows: Amendment of article 2010 of the Code.

(a) for the words "The privileged creditors over immovables are" there shall be substituted the words "The privileged creditors over immovables or movables are";

(b) in the third paragraph of paragraph (b) thereof, for the words "over the immovable of which he has been dispossessed, for the repairs and improvements made in or on such immovable" there shall be substituted the words "over the immovable or movable of which he has been dispossessed, for the repairs and improvements made in or on such immovable or movable"; and

(c) in the fourth paragraph of paragraph (b) thereof, for the words "for the preservation of the immovable extends to the whole amount of the debt; in any other case, it is limited to the sum corresponding to the increase in the value of the immovable" there shall be substituted the words "for the preservation of the immovable or movable extends to the whole amount of the debt; in any other case, it is limited to the sum corresponding to the increase in the value of the immovable or movable".

5. In article 2069 of the Code, for the words "retain over the immovables" there shall be substituted the words "retain over the immovables or movables", and for the words "into whosoever hands such immovables may pass" there shall be substituted the words "into whosoever hands such immovables or movables may pass". Amendment of article 2069 of the Code.

6. In article 2071 of the Code, for the words "the immovable charged with the hypothec" there shall be substituted the words "the immovable or movable charged with the hypothec". Amendment of article 2071 of the Code.

7. Subarticle (1) of article 2072 of the Code shall be amended as follows: Amendment of article 2072 of the Code.

(a) for the words "fails to surrender the immovable" there shall be substituted the words "fails to surrender the immovable or movable";

(b) for the words "to demand judicially the sale of the immovable" there shall be substituted the words "to demand judicially the sale of the immovable or movable"; and

(c) for the words "or to surrender the immovable" there shall be substituted the words "or to surrender the immovable or movable".

Amendment of
article 2073 of
the Code.

8. In article 2073 of the Code, for the words "oppose the sale of the immovable" there shall be substituted the words "oppose the sale of the immovable or movable".

Amendment of
article 2074 of
the Code.

9. In article 2074 of the Code, for the words "or special hypothec over the immovable" there shall be substituted the words "or special hypothec over the immovable or movable".

Amendment of
article 2075 of
the Code.

10. Article 2075 of the Code shall be amended as follows:

(a) for the words "made in or on the tenement" there shall be substituted the words "made in or on the tenement or movable";

(b) for the words "exceeds the actual value of the immovable" there shall be substituted the words "exceeds the actual value of the immovable or movable";

(c) for the words "to pay the actual value of the immovable" there shall be substituted the words "to pay the actual value of the immovable or movable"; and

(d) or the words "or to surrender the immovable" there shall be substituted the words "or to surrender the immovable or movable".

Amendment of
article 2076 of
the Code.

11. In article 2076 of the Code, for the words "The surrender of an immovable" there shall be substituted the words "The surrender of an immovable or of a movable".

Amendment of
article 2077 of
the Code.

12. In article 2077 of the Code, for the words "The surrender of the immovable" there shall be substituted the words "The surrender of the immovable or of the movable", and for the words "from taking back the immovable on paying the whole debt and the costs, even though the surrender" there shall be substituted the words "from taking back the immovable or the movable on paying the whole debt and the costs, even though the surrender".

13. In article 2078 of the Code, for the words "The surrender of the immovable" there shall be substituted the words "The surrender of the immovable or of the movable".

Amendment of article 2078 of the Code.

14. In article 2082 of the Code, for the words "over the immovable surrendered or sold" there shall be substituted the words "over the immovable or the movable surrendered or sold".

Amendment of article 2082 of the Code.

PART II

15. This Part amends the Code of Organization and Civil Procedure and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code".

Amendments to the Code of Organization and Civil Procedure. Cap. 12.

16. Immediately after subarticle (2) of article 166A of the Code there shall be added the following new subarticle:

Amendment of article 166A of the Code.

"(2A) Without prejudice to the provisions of subarticles (1) and (2), where an official letter in accordance with this article is not served or for a valid reason is not rendered enforceable and is not settled, the creditor may, within four months from the day of the filing of the official letter, by means of an application request the competent court according to the value that the matter be heard and decided upon as a cause in accordance with the provisions of this Code."

17. Paragraph (e) of subarticle (2) of article 376 of the Code shall be substituted by the following new paragraph:

Amendment of article 376 of the Code.

"(e) enjoin the garnishee to lodge, at the debtor's expense within nineteen 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."

18. In article 833 of the Code, immediately after the words "may be administered by the registrar" there shall be added the words "or by a legal procurator appointed as Commissioner for Oaths under the Commissioner for Oaths Ordinance".

Amendment of article 833 of the Code.

19. Immediately after article 833 of the Code, there shall be added the following new article:

Addition of new article to the Code.

"Filing of precautionary warrants with judicial letter.

833A. Where a 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), (c) and (e):

Provided that when such judicial letter is filed, the applicant shall file a sworn application or application or petition, as the case may be, within twenty days from the date of filing of a full or partial note of contestation or else within sixty days from the date of the issuing of a warrant, unless a note of contestation will have been filed, according to which date first occurs."

Amendment of article 875 of the Code.

20. In subarticle (3) of article 875 of the Code, immediately after the words "and confirmed on oath" there shall be added the words "and the parties have been duly notified".

PART III

Amendment of the Code of Organization and Civil Procedure (Amendment) Act, 2006. Act XIV of 2006.

21. This Part amends the Code of Organization and Civil Procedure (Amendment) Act, 2006, and it shall be read and construed as one with the Code of Organization and Civil Procedure (Amendment) Act, 2006, hereinafter in this Part referred to as "Act XIV of 2006".

Amendment of article 15 of Act XIV of 2006.

22. The second paragraph of subarticle (2) of article 304 of the Code of Organization and Civil Procedure, as this article is added by article 15 of Act XIV of 2006 shall be substituted by the following new proviso:

"Provided that the provisions of this article apply to ships or other vessels exceeding ten metres in length and such articles shall also be described in detail, including any rights and encumbrances thereon; and an appraisalment shall only be made if required by the creditor or by the debtor."

Amendment of article 25 of Act XIV of 2006.

23. At the end of subarticle (5) of article 319 of the Code of Organization and Civil Procedure, as the said subarticle is added by article 25 of Act XIV of 2006, there shall be added the following new proviso:

"Provided that if no offer is made which is at least equivalent to sixty per cent (60%) of the value at which the movable or immovable property or the going concern has been appraised, the creditor may request that the movable or immovable property or the going concern be placed again for public auction:

Provided that this subarticle shall not apply to ships and other vessels exceeding ten metres in length only."

24. Article 33 of Act XIV of 2006 shall be deleted.

Deletion of
article 33 of
Act XIV of
2006.

25. Article 57 of Act XIV of 2006 shall be amended as follows:

Amendment of
article 57 of Act
XIV of 2006.

(a) for the words "OF COURT APPROVED SALES FOR AIRCRAFT, SHIPS AND VESSELS", in the new Subtitle V thereof, there shall be substituted the words "OF COURT APPROVED SALES FOR SHIPS AND VESSELS";

(b) in article 358 for the words "a private sale of an aircraft, ship or vessel" there shall be substituted the words "a private sale of a ship or vessel";

(c) in article 359 for the words "confirming the value of the aircraft, ship or vessel" there shall be substituted the words "confirming the value of the ship or vessel", and the words ", which price must be more than sixty per cent of the highest appraised value," shall be deleted;

(d) in article 362 for the words "to transfer the aircraft, ship or vessel" there shall be substituted the words "to transfer the ship or vessel"; and

(e) in article 364 for the words "The sale of the aircraft, ship or vessel" there shall be substituted the words "The sale of the ship or vessel", and for the words "against the aircraft, ship or vessel" there shall be substituted the words "against the ship or vessel".

26. Article 74 of Act XIV of 2006 shall be amended as follows:

Amendment of
article 74 of Act
XIV of 2006.

(a) for the words "OF THE WARRANT OF EXECUTIVE ARREST OF SEA VESSELS" in the new Subtitle X thereof, there shall be substituted the words "OF THE EXECUTIVE WARRANT OF ARREST OF SEA VESSELS";

(b) in article 388C for the words "in terms of articles 858 and 860" there shall be substituted the words "in terms of articles 868 and 870";

(c) in subarticle (1) of article 388D for the words "a warrant of arrest" there shall be substituted the words "an executive warrant of arrest"; and

(d) in subarticle (3) of article 388D for the words "it

shall order the warrant" there shall be substituted the words "it shall order the executive warrant".

Amendment of
article 79 of Act
XIV of 2006.

27. Subarticle (1) of article 830 of the Code of Organization and Civil Procedure, as this article is substituted by article 79 of Act XIV of 2006 shall be amended as follows:

(a) paragraph (f) thereof shall be deleted; and

(b) paragraphs (g) and (h) thereof shall be renumbered as paragraphs (f) and (g) respectively.

Deletion of
article 82 of
Act XIV of
2006.

28. Article 82 of Act XIV of 2006 shall be deleted.

Amendment of
article 86 of
Act XIV of
2006.

29. Article 86 of Act XIV of 2006 shall be substituted by the following new article:

"Amendment
of article 837
of the Code.

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

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

"(1) It shall not be lawful for the Court of Magistrates (Malta), or the Court of Magistrates (Gozo) in its inferior jurisdiction to issue any warrant of description or impediment of departure for the purpose of a reference to the oath of the opposite party."; and

(b) in subarticle (3) thereof for the words "It shall not be lawful to issue any warrant of seizure, garnishee order, or warrant of impediment of departure in security of any right or claim" there shall be substituted the words "It shall not be lawful to issue any warrant of seizure or garnishee order, in security of any right or claim".

Amendment of
article 88 of Act
XIV of 2006.

30. Subarticle (2) of article 838B of the Code of Organization and Civil Procedure, as this article is amended by paragraph (c) of article 88 of Act XIV of 2006 shall be amended as follows:

(a) in paragraph (a) thereof, for the words "under article 830(1)(b), (c) and (d)" there shall be substituted the words

"under article 830(1)(b), (c), (d) and (f)"; and

(b) in paragraph (b) thereof, for the words "under article 830(1)(a), (e) and (f)" there shall be substituted the words "under article 830(1)(a) and (e)", and for the words "under the provisions of article 389" there shall be substituted the words "under the provisions of article 388E".

31. Article 100 of Act XIV of 2006 shall be amended as follows:

Amendment of
article 100 of
Act XIV of
2006.

(a) article 867 of the Code of Organization and Civil Procedure, as this article is added by the said article 100 of Act XIV of 2006, shall be amended as follows:

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

"(1) The authority which has in its hands or under its control the sea going vessel against which such warrant of arrest has been issued shall take all necessary measures to display the court order for the general attention of third parties.";

(ii) subarticle (2) thereof shall be deleted;

(iii) subarticle (3) thereof shall be renumbered as subarticle (2) and, immediately after the words "Malta Maritime Authority" there shall be added the words "or such other authority as may be designated from time to time by the Minister"; and

(iv) subarticles (4) and (5) thereof shall be renumbered as subarticles (3) and (4) respectively;

(b) article 869 of the Code of Organization and Civil Procedure, as this article is added by the said article 100 of Act XIV of 2006, shall be amended as follows:

(i) for the words "may be demanded and obtained" there shall be substituted the words "may be demanded and obtained before the Court of Magistrates (Malta) or before the Court of Magistrates (Gozo) in its inferior jurisdiction or before the First Hall of the Civil Court";

(ii) in the marginal note of the Maltese version of the said article, for the figures "€7000" there shall be

substituted the figures "€11,600"; and

(iii) for the words "ta' mhux anqas minn sebat elef euro" in the Maltese version of the said article, there shall be substituted the words "ta' mhux anqas minn ħdax-il elf u sitt mitt euro".

Addition of new article to Act XIV of 2006.

32. Immediately after article 107 of Act XIV of 2006, there shall be added the following new article:

"Power of Minister to renumber subtitles and articles.

108. The Minister may, by order, renumber articles and subtitles, as well as any reference therefor in other articles, as a result of amendments introduced to articles of the Code of Organization and Civil Procedure by this Act."

PART IV

Amendment of the Code of Organization and Civil Procedure (Amendment) Act, 2007. Act VII of 2007.

33. This Part amends the Code of Organization and Civil Procedure (Amendment) Act, 2007, and it shall be read and construed as one with the Code of Organization and Civil Procedure (Amendment) Act, 2007, hereinafter in this Part referred to as "Act VII of 2007".

Amendment of article 29 of Act VII of 2007.

34. Article 29 of Act VII of 2007 shall be amended as follows:

- (a) subarticle (1) thereof shall be deleted; and
- (b) subarticle (3)(b) thereof shall be deleted.

PART V

Amendments to the Refugees (Amendment) Act, 2005. Act XVII of 2005.

35. This Part amends the Refugees (Amendment) Act, 2005, and it shall be read and construed as one with the Refugees (Amendment) Act, 2005, hereinafter in this Part referred to as "the principal Act".

Deletion of articles 2, 5 and 6 of the principal Act.

36. Articles 2 to 6 (both inclusive) of the principal Act shall be deleted.

Amendment of article 7 of the principal Act.

37. Article 7 of the principal Act shall be amended as follows:

- (a) for the marginal note thereof, there shall be substituted the following new marginal note:

"Amendment of the Immigration Act. Cap. 217.";

(b) for the words "Immediately after article 19 of the principal Act there shall be inserted the following new article 19A", there shall be substituted the words "Immediately after subarticle (2) of article 34 of the Immigration Act there shall be added the following new subarticles";

(c) for the figure "19A" in the article to be added, as originally intended, there shall be substituted the figure "(3)"; and the said article shall now be added as subarticle (3) of article 34 of the Immigration Act; and

(d) immediately after the new subarticle (3), as added by paragraph (c) hereof, there shall be added the following new subarticle:

"(4) The Minister may also make regulations to establish a body corporate or unincorporate which shall be responsible for the accommodation in open reception centres of persons who qualify for such accommodation under the provisions of the Refugees Act, or regulations made thereunder, and without prejudice to the generality of the aforesaid, such regulations may make provision for any matter whatsoever concerning the functions, funding, staffing, organization and administration of such body as well as for any other matter deemed necessary or expedient by the Minister to enable that body to carry out its functions under the regulations and for any other purpose consequential or ancillary to the aforesaid."

Passed by the House of Representatives at Sitting No. 67 of the 15th December, 2008.

LOUIS GALEA
Speaker

PAULINE ABELA
Acting Clerk to the House of Representatives