VERŻJONI ELETTRONIKA

L.N. 218 of 2012

CIVIL CODE AMENDMENT ACT, 2011 (ACT XIV OF 2011)

Divorce - Adaption of Various Laws Order, 2012

IN EXERCISE of the powers conferred by article 11(5) of the Civil Code (Amendment) Act, 2011, the Prime Minister has made the following Order:-

Citation.

1. The title of this Order is the Divorce - Adaption of Various Laws Order, 2012.

Scope.

2. The object of this Order is to effect amendments that have to be made to any law or regulation which, directly or indirectly, refers to personal separation between the spouses for the purpose of adapting the same to the introduction of divorce.

Date of coming into force.

3. This Order shall be deemed to have come into effect on 1st October 2011.

PART I

Amends the Code of Organization and Civil Procedure. Cap. 12.

4. 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".

Amends article 876 of the Code.

5. Article 876 of the Code shall be amended as follows:

(a) in the marginal note thereof, for the words "cases of personal separation", there shall be substituted the words "cases of personal separation or divorce"; and

(b) in sub-article (2) thereof, for the words "in any such action for separation", there shall be substituted the words "in any such action for separation or divorce".

Amends article 968 of the Code.

6. In sub-article (2) of article 968 of the Code, for the words "including those relating to separation or annulment of a marriage", there shall be substituted the words "including those relating to separation, divorce or annulment of a marriage".

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PART II

Amends the Civil Code. Cap. 16.

7. 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".

Amends article 37 of the Code.

8. In sub-article (6) of article 37 of the Code, for the words "provisions of article 381(3) of the Code" there shall be substituted the words "provisions of article 381 of the Code".

Amends article 295 of the Code.

9. Article 295 of the Code shall be amended as follows:

(a) in the proviso to sub-article (1) thereof, for the words "registered in accordance with article 66A(3)", there shall be substituted the words "registered in accordance with article 66A(4)"; and

(b) sub-article (3) thereof shall be substituted by the following new sub-article:

"(3) The Director shall also enter, by means of a note in the margin of an act in respect of a registered marriage, any declaration made by a married woman on the Form Q delivered by her in accordance with the provisions of sub-article (5) of article 4, as well as any revision to the maiden surname or any prohibition of use of the husband’s surname referred to:

(a) in a note of personal separation between the spouses enrolled in accordance with article 62A, and a reference to the date and place of marriage shall be made in any such note of enrolment; or

(b) in a judgment or decree of divorce registered in accordance with article 66A(4).".

Amends article 639 of the Code.

10. Article 639 of the Code shall be substituted by the following new article:

VERŻJONI ELETTRONIKA

"Application of articles 633 and 635 in cases of personal separation or divorce.

639. The rights referred to in article 633 and article 635 shall also apply in cases where:

(a) the spouses were personally separated and the surviving spouse was either in terms of article 55A or in terms of a public deed of consensual separation entitled to reside in the matrimonial home; or

(b) the person who died was divorced and his former spouse was, at the time of his death, entitled to reside in the matrimonial home by virtue of the applicability of the provisions of article 66(5) and article 55A.".

PART III

Amends the Judicial Proceedings (Regulation of Reports) Act. Cap. 60.

11. This Part amends the Judicial Proceedings (Regulation of Reports) Act and it shall be read and construed as one with the Judicial Proceedings (Regulation of Reports) Act, hereinafter in this Part referred to as "the principal Act".

Amends article 2 of the principal Act.

12. In paragraph (b) of article 2 of the principal Act, for the words "for nullity of marriage or for judicial separation, or touching the effects arising from such nullity of marriage or judicial separation", there shall be substituted the words "for nullity of marriage, for divorce or for judicial separation, or touching the effects arising from such nullity of marriage, divorce or judicial separation".

PART IV

Amends the Income Tax Act. Cap. 123.

13. This Part amends the Income Tax Act and it shall be read and construed as one with the Income Tax Act, hereinafter in this Part referred to as "the principal Act".

Amends article 5 of the principal Act.

14. In paragraph (e) of sub-article (5) of article 5 of the principal Act, for the words "a judicial or consensual separation", there shall be substituted the words "a judicial or consensual separation or a divorce".

Amends article 5A of the principal Act.

15. In paragraph (d) of sub-article (4) of article 5A of the principal Act, for the words "a judicial or consensual separation", there shall be substituted the words "a judicial or consensual separation or a divorce".

Amends article 12 of the principal Act.

16. In paragraph (t) of sub-article (1) of article 12 of the principal Act, for the words "a public deed of personal separation under the authority of the Courts of Malta or the Courts of another country as the Commissioner may approve", there shall be substituted the words "a public deed of personal separation under the authority of the Courts of Malta or the Courts of another country as the Commissioner may approve, or as ordered by the Courts of Malta in a divorce judgment or decree or by the Courts or other authorities of another country as the Commissioner may approve".

Amends article 14A of the principal Act.

17. In article 14A of the principal Act, for the words "a public deed of personal separation under the authority of the Courts of Malta or the Courts of another country as the Commissioner may approve", there shall be substituted the words "a public deed of personal separation under the authority of the Courts of Malta or the Courts or other authorities of another country as the Commissioner may approve, or as ordered by the Courts of Malta in a divorce judgment or decree or by the Courts of another country as the Commissioner may approve".

Amends article 56 of the principal Act.

18. In paragraph (a) of the proviso to sub-article (1) of article 56 of the principal Act, for the words "was a spouse separated *de jure* or *de facto*, the rates applicable", there shall be substituted the words "was a spouse separated *de jure* or *de facto*, or was divorced, the rates applicable".

PART V

Amends the Members of Parliament Pensions Act. Cap. 280.

19. This Part amends the Members of Parliament Pensions Act and it shall be read and construed as one with the Members of Parliament Pensions Act, hereinafter in this Part referred to as "the principal Act".

Amends article 2 of the principal Act.

20. Immediately after the definition "service pension" in article 2 of the principal Act, there shall be added the following new definition:

" "widow" and "actual widow" shall have the same meaning assigned to them in article 2 of the Social Security Act;". Cap. 318.

Amends article 4B of the principal Act.

21. Sub-article (4) of article 4B of the principal Act shall be amended as follows:

(a) for the words "The surviving widow or widower", there shall be substituted the words "The widow or widower"; and

(b) the proviso thereof shall be substituted by the

VERŻJONI ELETTRONIKA

following new proviso:

"Provided that where there are one or more widows who had been married to a person appointed as President of Malta at any time during his tenure of office, such widow's pension shall be apportioned in the manner provided in article 42A of the Social Security Act: Cap. 318.

Provided further that a person entitled to a pension under this sub-article who is also entitled to a pension under any other provisions of this Act shall only be entitled to receive the higher of such pensions.".

22. The proviso to sub-article (1) of article 7 of the principal Act shall be substituted by the following: Amends article 7 of the principal Act.

"Provided that where there are one or more widows who had been married to a member at any time during his tenure of office, such widow's pension shall be apportioned in the manner provided in article 42A of the Social Security Act: Cap. 318.

Provided further that a person entitled to a pension under this article who is also entitled to a pension under any other provision of this Act shall only be entitled to receive the higher of such pensions.".

PART VI

23. This Part amends the Social Security Act and it shall be read and construed as one with the Social Security Act, hereinafter in this Part referred to as "the principal Act". Amends the Social Security Act. Cap. 318.

24. In article 2 of the principal Act, for the definition "widow" there shall be substituted the following new definition: Amends article 2 of the principal Act.

" "widow" means the surviving spouse or surviving former spouse, whether a widow or a widower, of a married or divorced couple, and wherever it appears, husband shall include wife, former husband and former wife:

Provided that "actual widow" means the surviving spouse, whether a widow or a widower, of a married couple who immediately prior to widowhood was married to the deceased

spouse and had a legal right to be maintained by the other spouse, and in relation to an actual widow, wherever it appears, husband shall include wife.".

Amends article 16 of the principal Act.

25. Article 16 of the principal Act shall be amended as follows:

(a) in paragraph (a) of sub-article (2) thereof, for the words "a widow, where such widow is not gainfully occupied", there shall be substituted the words "an actual widow, where such actual widow is not gainfully occupied"; and

(b) in paragraph (a)(i) of sub-article (4) thereof, for the words "is a widow", there shall be substituted the words "is an actual widow".

Amends article 30 of the principal Act.

26. Sub-article (11) of article 30 of the principal Act shall be substituted by the following new sub-article:

"(11) The Director may, if he so deems fit in the circumstances of the case, take proceedings before the competent Civil Court against any of the following persons:

(a) any person by whom maintenance is due to any person in respect of whom Social Assistance is claimed or received under this article (other than sub-article (8) thereof); or

(b) such relatives being the spouse, father, mother, sons or daughters as the case may be, of any person in respect of whom Social Assistance is claimed or received under this article (other than sub-article (8) thereof),

to compel them to refund any such assistance that is paid to or on behalf of such person and the court shall order the refund of any sum paid as Social Assistance up to such sum as would have been due by such relatives or relative had the person to whom Social Assistance is paid had claimed maintenance from such relatives in accordance with the provisions of the Civil Code:

Provided that notwithstanding that the person in respect of whom Social Assistance has been paid by the Director may have in a contract of personal separation renounced to the right to maintenance from his or her spouse, the Director may still claim refund under this sub-article from the spouse of the person to whom Social Assistance has been paid, and such spouse shall be liable to refund such Social Assistance to the full extent as if

VERŻJONI ELETTRONIKA

such renunciation had not taken place, unless it is proved to the satisfaction of the Director that the party to whom Social Assistance has been paid has been guilty of adultery or has abandoned the other spouse as provided in articles 38 and 41 of the Civil Code".

Amends article 40 of the principal Act.

27. In sub-article (1) of article 40 of the principal Act, for the words "Widows Pension specified in the Twelfth Schedule, as was applicable in her case", there shall be substituted the words "Widows Pension specified in the Twelfth Schedule, or, in the case were the rate is assessed under article 42A, such rate as is apportioned under such article, as was applicable in her case".

Adds new article to the principal Act.

28. Immediately after article 42 of the principal Act, there shall be added the following new article:

"Apportionment of pension in respect of widowhood where there is more than one widow.

42A. (1) Where the deceased insured person, as a consequence of having been divorced, has one widow or more, the pension in respect of widowhood shall be apportioned. Each widow, with the exception of the actual widow, shall take a portion of the pension in respect of widowhood which shall be based on her respective period of marriage, meaning:

(a) in the case where there was a divorce, from the date of the marriage up to the date of divorce; and

(b) in the case where there was a personal separation, and where no legal right to maintenance existed in favour of the widow, from the date of marriage up to the date of death of the insured person.

(2) The portion of the pension in respect of widowhood due to the widow under sub-article (1):

(a) shall only be with respect to those years of the marriage, as defined in sub-article (1), during which the deceased husband was paying or was credited social security contributions under this Act; and

(b) shall be calculated on the period provided for in paragraph (a), which bears to the total period of contribution years on which the contribution average of the deceased husband is assessed for the purpose of establishing his retirement pension in accordance with this Act.

(3) The actual widow shall take such portion of the pension in respect of widowhood as shall remain following apportionment made in accordance with sub-articles (1) and (2).".

Adds new article to the principal Act.

29. Immediately after article 42A of the principal Act, there shall be added the following new article:

"Maximum rate of pension in respect of widowhood.

42B. In case of widows entitled to receive more than one pension in respect of widowhood by virtue of this Part, the aggregate amount payable as a pension in respect of widowhood shall in no case exceed the maximum pension payable under article 35.".

Amends article 46 of the principal Act.

30. In article 46 of the principal Act, for the words "credited to her for that year.", there shall be substituted the words "credited to her for that year:"; and immediately thereafter, there shall be added thereto the following new proviso:

"Provided that paragraph (a) of this article shall only apply to an actual widow and only with respect to those contributions as not already credited to any other widow.".

Amends article 108 of the principal Act.

31. In paragraph (b) of sub-article (1) of article 108 of the principal Act, for the words "by the widow or widower as the case may be", there shall be substituted the words "by the actual widow or actual widower as the case may be".

Amends article 109 of the principal Act.

32. In the proviso of sub-article (1) of article 109 of the principal Act, for the words "at the instance of the widow or widower, or the heirs", there shall be substituted the words "at the instance of the actual widow or actual widower, or the heirs".

Amends the First Schedule to the principal Act.

33. Article 8 of Part II of the First Schedule to the principal Act shall be amended as follows:

(a) in paragraph (b) thereof, for the words "employment

VERŻJONI ELETTRONIKA

of a widow", there shall be substituted the words "employment of an actual widow"; and

(b) in the proviso thereof, for the words "salary of such person or widow", there shall be substituted the words "salary of such person or actual widow".

Amends the Second Schedule to the principal Act.

34. The Second Schedule to the principal Act shall be amended as follows:

(a) article 5 of Part IV thereof shall be substituted by the following:

"(5) Where a person is divorced or is a married person who is legally or *de facto* separated from the other spouse proves to the satisfaction of the Director that any sum is being paid to that person's spouse or former spouse as an integral condition of their separation or divorce, that sum shall be deducted when calculating such person's means."; and

(b) article 5 of Part V thereof shall be substituted by the following:

"(5) Where a person is divorced or is a married person who is legally or *de facto* separated from the other spouse proves to the satisfaction of the Director that any sum is being paid to that person's spouse or former spouse as an integral condition of their separation or divorce, that sum shall be deducted when calculating such person's means.".

PART VII

Amends the Duty on Documents and Transfers Act and the Exemption from Payment of Duty on Documents and Transfers Order. Cap. 364. S.L.364.01

35. This Part amends the following:

(a) the Duty on Documents and Transfers Act and, where the context requires, it shall be read and construed as one with the Duty on Documents and Transfers Act, hereinafter in this Part referred to as "the principal Act"; and

(b) the Exemption from Payment of Duty on Documents and Transfers Order and, where the context requires, it shall be read and construed as one with the Exemption from Payment of Duty on Documents and Transfers Order, hereinafter in this Part referred to as "the principal Order".

VERŻJONI ELETTRONIKA

Amends article 32 of the principal Act.

36. Sub-article (3) of article 32 of the principal Act shall be substituted by the following new sub-article:

"(3) Notwithstanding any other provisions of this Act, no duty shall be charged on the assignment of immovable property and on the transfer of marketable securities between persons who are married or who were formerly married to each other, consequent to a consensual or judicial separation or to a divorce between such persons, or on the dissolution of the community of acquests existing between them or on any partition of any property held in common between spouses, being community property or otherwise on the death of one spouse between the surviving spouse and the heirs of the deceased spouse.".

Amends article 2 of the principal Order.

37. In paragraph (i) of article 2 of the principal Order, for the words "between spouses consequent to a consensual or judicial separation", there shall be substituted the words "between persons who are married or were formerly married to each other, consequent to a consensual or judicial separation or to a divorce between such persons".

PART VIII

Amends the Arbitration Act. Cap. 387.

38. This Part amends the Arbitration Act and it shall be read and construed as one with the Arbitration Act, hereinafter in this Part referred to as "the principal Act".

Amends article 15 of the principal Act.

39. In sub-article (6) of article 15 of the principal Act, for the words "relating to personal separation and annulment of marriage", there shall be substituted the words "relating to personal separation, divorce or annulment of marriage".

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