

MALTA

ATT Nru. IX ta' l-2004

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

ATT biex jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, Kap. 12, u ligijiet oħra li jirrigwardaw il-proċedura ċivili.

ACT No. IX of 2004

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Code of Organization and Civil Procedure, Cap. 12, and other laws relating to civil procedure.

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

6th August, 2004

ACT No. IX of 2004

*AN ACT to amend the Code of Organization and Civil Procedure,
Cap. 12, and other laws relating to civil procedure.*

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:-

Part I

Short title
and
commencement.

1. (1) The short title of this Act is the Code of Organization
and Civil Procedure (Amendment) Act, 2004.

(2) The provisions of the various parts of this Act shall
come into force on such date as the Minister responsible for Justice
may by notice in the Gazette establish and different dates may be so
established for different provisions and different purposes thereof.

Part II

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

2. This Part amends, and shall be read and construed as one
with, the Code of Organization and Civil Procedure, hereinafter
referred to as “the Code”.

Amendment of
article 34 of the
Code.

3. Immediately at the end of article 34 of the Code, there shall
be added the following proviso:

“Provided that in cases where a cause commenced by writ of summons, and where no explicit decision has been requested and given as to the interpretation of the Constitution in terms of article 95(2)(d) of the said Constitution, is decided by the First Hall of the Civil Court by a judgement wherein points of law about fundamental human rights or references to the Constitution are discussed and decided as part of the merits of the cause, the Court of Appeal shall still be deemed to be competent and to have jurisdiction to decide an appeal from such judgement of the First Hall of the Civil Court.”.

4. Immediately after article 166 of the Code, there shall be added the following new articles:—

Addition of new articles 166A and 166B to the Code.

“Special procedures in respect of certain unopposed claims etc.

166A. (1) In actions for the recovery of a debt certain, liquidated and due not consisting in the performance of an act, and where the amount of the debt does not exceed five thousand liri, it shall be lawful for the creditor to proceed in accordance with the following subarticles of this article:

Provided that where the debt is not liquidated the creditor may proceed in accordance with this article if he limits his debt to an amount not exceeding five thousand liri and expressly renounces to any part of his claim that may upon liquidation exceed the said sum of five thousand liri:

Provided further that the creditor may only proceed according to this article if the debtor is present in Malta and is not a minor or a person incapacitated according to law or if the debt is not due by a vacant inheritance. The appointment of curators under Title XI of Book Third of this Code shall not apply to proceedings under this article:

Cap. 104.

Provided further that, without prejudice to the provisions of the Motor Vehicle Insurance (Third Party Risk) Ordinance, when a debt to which this article applies is covered by an insurance policy the insured shall, without prejudice to that stipulated in the insurance policy, within fifteen days from service upon him of the judicial letter made in accordance with this article, give to the insurer notice in writing of the said judicial letter and of any particulars of the claim of which he is aware. In default,

any executive title obtained in accordance with this article shall have no effect with regard to the insurer.

(2) The creditor shall proceed by filing a judicial letter which shall be drawn up in the form established by Legal Notice by the Minister responsible for Justice and the content of which shall be confirmed on oath by the creditor, to be served upon the debtor wherein shall be stated clearly, under pain of nullity, the cause of the claim, the reasons why the claim should be upheld, and a statement of facts in support of the claim:

Provided that subarticles (3), (5) and (6) of article 187 of this Code may not be availed of to effect the service of the aforesaid judicial letter.

(3) The judicial letter shall also on pain of nullity contain an intimation to the debtor that if he does not reply within thirty days from service upon him of the said judicial letter by presenting a note in the record of the said judicial letter rebutting the claim and which note may be signed and presented in court by the debtor himself without the signature of an Advocate or of a Legal Procurator being required, such official letter shall, constitute an executive title:

Provided that:

(a) the debtor may in such note admit the claim in part only and oppose it in other parts, and where the claim is opposed in part only it shall be deemed admitted to the extent that it has not been so opposed;

(b) where the debtor shall have opposed a claim or part of a claim which is subsequently upheld, the costs relative to the claim or part thereof opposed and subsequently upheld shall be borne by him;

(c) the costs of any claim or part thereof that is opposed and not subsequently upheld shall always be borne by the creditor;

(d) where the debtor has duly opposed the claim, the special procedure contained in this article may not be used again against the debtor as regards the same claim contained in the judicial letter served on the debtor; and

(e) where the claim arises under the Motor Vehicle Insurance (Third Party Risk) Ordinance the said judicial letter shall under pain of nullity be also notified to the authorised insurance which shall have the same rights under this article as though it were the debtor as aforesaid.

(4) Where the debtor does not oppose the claim, within thirty days from the notification thereof to the debtor, or where the debtor only opposes the claim in part within the aforesaid term, the judicial letter shall for the purposes of any law in respect of the claim so unopposed or the part therein so unopposed, constitute an executive title as if such judicial letter were included in article 253(a) of this Code.

(5) Any executive title obtained according to the provisions of this article in the absence of any opposition on the part of the debtor shall be rescinded and declared null and void if upon a request by application in the Court of Magistrates (Malta) or in the Court of Magistrates (Gozo), as the case may be, to be filed by the debtor within twenty days from the first service upon him of any executive warrant or other judicial act based on the said title, the court is satisfied that:

(i) the debtor was unaware of the said judicial letter because he was not duly notified; or

(ii) the judicial letter did not contain the requirements laid down in subarticles (1), (2) or (3) of this article.

(6) No opposition other than that specifically provided for in subarticle (5) shall stay the issue or execution of any executive act obtained thereunder or the paying out of the proceeds of any warrant or sale by auction carried out in pursuance thereof.

Registration
of Executive
Titles
obtained
pursuant to
article 166A.

166B (1) A judicial letter issued in terms of article 166A shall not constitute an executive title unless it is registered according to the provisions of this article which shall apply to the registration of such judicial letters as executive titles.

(2) The applicant for the registration of a judicial letter which qualifies as an executive title shall present to the Registrar of the Court a legal copy of the judicial letter, including evidence of service, and a copy of any response received thereto, if any.

(3) Upon receipt of the documents described in subarticle (2) of this article the Registrar shall examine the documents presented and shall verify whether the debtor has filed a note of reply within the stipulated time and if he is satisfied that the conditions for the registration of the judicial letter as an executive title subsist he shall proceed to register the documents presented in a register to be known as the Register of Judicial Letters as Executive Titles which shall be maintained by the Registrar for the purposes of article 166A.”.

Amendment of article 195 of the Code.

5. In subarticle (4) of article 195 of the Code, immediately after the words “provided that the court may decide,” there shall be inserted the words “either where it deems to be appropriate or”.

Amendment of article 229 of the Code.

6. In subarticle (3) of article 229 of the Code, the words “within six days” shall be substituted by the words “within ten days” and at the end of the said subarticle (3) of article 229 immediately after the words “before the Court of Appeal before the definitive judgement” there shall be added the words “and the time limit for the filing of such an appeal shall commence to run from the date of the said decree”.

Amendment of article 253 of the Code.

7. Immediately after paragraph (d) in article 253 of the Code, there shall be added the following paragraph (e):

“(e) bills of exchange and promissory notes issued in terms of the Commercial Code:

Provided that the court which is competent according to the value of the bill of exchange or promissory note may, by decree which shall not be subject to appeal, suspend the execution of such a bill of exchange or promissory note in whole or in part and with or without security, upon an application of the person opposing the execution of such bill of exchange or promissory note on the grounds that the signature on the said bill of exchange or promissory note is not that of the said person or of his mandatory or where such person brings forward grave and valid reasons to oppose the said execution and in such case any person demanding the payment of the bill of exchange or

promissory note shall file an action according to the provisions of the Commercial Code.”.

- 8.** Immediately after sub-article (4) of article 306 of the Code, there shall be added the following sub-article: Amendment of article 306 of the Code.

Cap. 56. “(5) The provisions of article 8 of the Public Registry Act shall *mutatis mutandi* apply to the registrations made under this article.”.

- 9.** In subarticle (1) of article 911 of the Code, immediately after the words “in any court mentioned in articles 3 and 4” there shall be added the words “, in any arbitration which is compulsory by law”. Amendment of article 911 of the Code.

- 10.** Article 915 of the Code shall be repealed. Repeal of article 915 of the Code.

- 11.** The words “Civil Court, Second Hall,” shall be substituted by the words “court of voluntary jurisdiction” in the Arrangement of Code, wherever they occur, and in article 35 and the marginal note thereto, article 121(1), the title of Part II of Book Second, articles 499, 512, 518, 520(1), 536, 540, 541, 549, Title VIII of Part II of Book Second, the marginal note to article 552 and article 734(2). Substitution of title “Civil Court, Second Hall” wherever it occurs.

Part III

- 12.** This Part amends and shall be read and construed as one with the Civil Code hereinafter referred to as “the Code”. Amendment of the Civil Code, Cap. 16.

- 13.** Article 2042 of the Code shall be amended as follows: Amendment of article 2042 of the Code.

(i) in paragraph (a) thereof for the words “the name and surname of the creditor” there shall be substituted the words “the name and surname of the creditor and his identity card number written in figures only and where the person is not eligible to hold an identity card, the number as appearing in another document of identification,”; and

(ii) in paragraph (b) thereof for the words “the name and surname of the debtor” there shall be substituted the words “the name and surname of the debtor and his identity card number written in figures only and where the person is not eligible to hold an identity card, the number as appearing in another document of identification,”.

Substitution of title “court of voluntary jurisdiction” wherever it occurs.

14. (1) The words “court of voluntary jurisdiction”, in articles 3A(2)(b), 6A(1), 101, in the marginal note to article 107, articles 114(1), 126(1), 128(4), 133(1), 175(2), 194, 205, 208, 216(1), 223, 253(4) and 666 of the Code, shall be substituted by the words “the competent court”.

(2) The words “Civil Court, First Hall, or the Court of Magistrates (Gozo), as the case may be,” in articles 92(2)(b) and 253(4) of the Code, shall be substituted by the words “competent court”.

(3) The words “court of voluntary or contentious jurisdiction, as the case may be,” in the proviso to article 523 of the Code, shall be substituted by the words “competent court”.

(4) The words “Civil Court, Second Hall,” in article 679(1) of the Code, shall be substituted by the words “court of voluntary jurisdiction”.

(5) The words “competent court of contentious jurisdiction” in articles 1323(1) and 1325(1) of the Code, shall be substituted by the words “competent court”.

(6) The words “Registry of the First Hall of the Civil Court” in article 1340(7) of the Code, shall be substituted by the words “registry of the competent court”.

(7) The words “REGISTRY OF THE CIVIL COURT, SECOND HALL” and the words “Civil Court, Second Hall” in Form A of the Code shall be respectively substituted by the words “REGISTRY OF THE CIVIL COURT (VOLUNTARY JURISDICTION SECTION)” and “Civil Court (Voluntary Jurisdiction Section)”.

Part IV

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

15. This Part amends the Notarial Profession and Notarial Archives Act hereinafter referred to as “the principal Act”.

Amendment of article 2 of the principal Act.

16. The full stop (.) at the end of paragraph (i) of article 2(2) of the principal Act, shall be replaced with a semicolon (;) and immediately after the said paragraph (i) of article 2(2) there shall be added the following:

“(j) to act as mediators.”.

Part V

17. This Part amends and shall be read and construed as one with the Motor Vehicles (Third Party Risks) Ordinance, hereinafter in this Part referred to as “the Ordinance”.

Amendment of the Motor Vehicle Insurance (Third Party Risks) Ordinance, Cap. 104.

18. Immediately after subarticle (4) of article 10 of the Ordinance, there shall be added the following sub-article (5):

Amendment of article 10 of the Ordinance.

“(5) Any reference in this article to a judgement or a sentence shall be deemed to include a reference to an arbitral award made under the Arbitration Act, Cap. 387, and one obtained under article 166A of the Code of Organization and Civil Procedure, and any reference to an action or to proceedings shall be deemed to include reference to arbitration proceedings and to the said article 166A under the said Act.”.

Cap. 12.

Part VI

19. This Part amends the Marriage Act, hereinafter referred to as “the principal Act”.

Amendment of the Marriage Act, Cap. 255.

20. Immediately after article 37 of the principal Act, there shall be added the following:

Addition of article 38 to the principal Act.

“Marriages of convenience. **38.** (1) Any person who contracts a marriage with the sole purpose of obtaining:

- (a) Maltese citizenship; or
- (b) freedom of movement in Malta; or
- (c) a work or residence permit in Malta; or
- (d) the right to enter Malta; or
- (e) the right to obtain medical care in Malta,

shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding two years.

(2) Any right or benefit obtained by a person convicted of an offence under subarticle (1) on the basis

of the marriage referred to in that subarticle (1) may be rescinded or annulled by the public authority from which it was obtained.

(3) Any person who contracts a marriage with another person knowing that the sole purpose of such other person in contracting the marriage is one or more of the purposes referred to in subarticle (1) shall be guilty of an offence and shall on conviction be liable for the same punishment laid down in subarticle (1).”.

Part VII

Amendments
to the
Arbitration Act,
Cap. 387.

21. This Part amends, and shall be read and construed as one with, the Arbitration Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of
article 15 of the
principal Act.

22. Article 15 of the principal Act shall be amended as follows:

(a) in sub-article (3) thereof the words “or that in fact there is no dispute between the parties with regard to the matter agreed to be referred,” shall be deleted;

(b) sub-article (7) thereof shall be deleted and substituted by the following new sub-article:

“(7) Any submission to arbitration of a dispute by an administrator, agent or attorney shall not be valid unless –

(a) such person is authorised to submit disputes to arbitration; and

(b) the submission refers to an issue which falls within the powers of such person.”; and

(c) immediately after sub-article (10) thereof there shall be added the following sub-articles:

“(11) In addition to those designated by other laws, the classes of disputes referred to in the Fourth Schedule to this Act are subject to mandatory arbitration and in such cases the parties shall be deemed to be bound by an arbitration agreement in relation to such disputes.

(12) The Centre shall have the power to issue rules in accordance with article 10 relating to the procedures to be adopted in mandatory arbitrations.

(13) The Minister shall have the power by regulations to add, remove or substitute and amend the classes of disputes referred to in the Fourth Schedule and the conditions applicable thereto. Such regulation may determine the conditions applicable in such cases, including:

- (i) the specific nature of the disputes;
- (ii) the maximum monetary value of such disputes;
- (iii) the remedies sought and awardable in relation to such disputes; and
- (iv) the manner in which an arbitrator or arbitrators are to be appointed.

(14) Any rules or regulations referred to in the preceding sub-articles shall come into force with effect from the date designated by the Minister and shall not affect any disputes at the time already pending before any court or tribunal.

(15) Saving the grounds allowing for the press and the public to be excluded from all or part of the proceedings provided for in paragraph 1 of Article 6 of the European Convention on Human Rights, the proceedings in a compulsory arbitration shall be conducted and the decision shall be delivered in public.”.

23. Article 44 of the principal Act shall be amended as follows: Amendment of article 44 of the principal Act.

(a) immediately at the end of sub-article (3) thereof there shall be added the following new proviso:

“Provided that in the case of interlocutory awards relating to the procedures of the arbitration, no reasons are to be given.”;

(b) in subarticle (8) thereof the words “with all partial, interim and interlocutory awards not already registered” shall be substituted by the words “with all partial and interim awards not already registered”; and

(c) immediately after subarticle (9) there shall be added the following subarticle:

“(10) Interlocutory awards are not subject to registration, no recourse may be taken against them and they are binding on the parties to the proceedings immediately on their notification to the parties who shall carry them on without delay.”.

Substitution of article 51 of the principal Act.

24. Article 51 of the principal Act shall be deleted and substituted by the following new article 51:

“Arbitral tribunal to determine fees and costs.

51. (1) The arbitral tribunal shall determine fees and costs in accordance with such rules and guidelines which may be made by the Minister responsible for justice with the concurrence of the Centre from time to time and such determinations on fees and costs shall be subject to review as may be prescribed in such rules or guidelines.

(2) The Centre may be delegated the function of determining fees and costs, by applicable law or by the parties, in specific cases or classes of cases under such conditions as may be stated in such law, in any rules or guidelines issued by the Minister responsible for justice with the concurrence of the Centre or in the arbitration agreement.”.

Amendment of article 71B of the principal Act.

25. In article 71B of the principal Act, for subarticle (3) there shall be substituted the following:

“(3) Recourse may not be taken against interlocutory awards.”.

Addition of new Fourth Schedule to the principal Act.

26. Immediately after the Third Schedule to the principal Act, there shall be added the following Fourth Schedule:

“FOURTH SCHEDULE

(Article 15)

Mandatory Arbitration

The disputes hereunder stated in Part A shall be settled by arbitration and shall be referred to arbitration under the rules stated in Part B in addition to such rules as may be issued by the Centre from time to time.

Part A

1.1 Condominium Disputes.

All disputes regarding a condominium which according to the Condominium Act (Cap. 398) are to be submitted to for arbitration.

1.2 Motor Traffic Disputes

Any civil or commercial disputes, not being one in connection with a claim for damages for personal injuries, being a dispute arising from:

- (a) any collision between vehicles, or
- (b) any involuntary damage to property involving vehicles, or
- (c) any such claim against an authorized insurer, an assurance company, an underwriter approved by the Minister responsible for transport or other person who in accordance with the Motor Vehicles Insurance (Third-Party Risks) Ordinance (Cap. 104) or any policy of insurance may be liable therefor, and
- (d) the value whereof does not exceed five thousand liri.

Part B

1. The arbitration, being domestic arbitration, shall be governed by Part IV of the Act.

2. The arbitral tribunal shall be composed of one arbitrator unless the parties agree that it shall be composed of three arbitrators

and notify the Centre within 15 days of the receipt by the respondent of the notice of arbitration;

3. The sole arbitrator, or any of the members of the arbitral tribunal in case it is composed of three arbitrators, shall be appointed by the Chairman of the Centre in accordance with the provisions of the Act unless the Centre is notified of the appointment of an arbitral tribunal within 15 days of the receipt by the respondent of the notice of arbitration;

4. Unless the parties expressly agree otherwise, there shall be a right of appeal from a final award as provided by the Act;

5. The rules on confidentiality, including those stated in articles 37 and 70 of the Act shall not apply to mandatory arbitrations unless the parties expressly agree to such rules and notify the arbitrator and the Centre accordingly.”.

Part VIII

Amendment of the
Condominium Act,
Cap. 398.

27. This Part amends and shall be read and construed as one with the Condominium Act hereafter in this Part referred to as “the principal Act”.

Amendment of
article 26 of the
principal Act.

28. In article 26 of the principal Act, for the words from “the parties to the dispute” to the words “of the Malta Arbitration Centre.” there shall be substituted the following “the rules contained in the Arbitration Act or made thereunder relating to mandatory arbitration shall apply.”.

Repeal of
article 27 of the
principal Act.

29. Article 27 of the principal Act shall be repealed.

Amendment of
article 28 of the
principal Act.

30. In article 28 of the principal Act, for the words from “be conducted under the authority” to the words “no one is prejudiced” there shall be substituted the words “be conducted in such rules contained in the Arbitration Act or made thereunder.” and for the words “as envisaged in section 27” there shall be substituted the words “as envisaged in article 26”.

Part IX

31. (1) This Part amends the Courts and Tribunals Procedures Act, 2002, hereinafter in this Part referred to as “the principal Act”.

Amendment of Courts and Tribunals Procedures Act, 2002, Act XXXI of 2002.

(2) The provisions of this Part shall come into force on the same date as the provisions of paragraph (b) of article 21 of the principal Act.

32. Immediately after article 197 of the principal Act, there shall be inserted the following new article 197B:-

Addition of new article 197B to the principal Act.

“Courts of Magistrates to continue hearing cases pending before them.

197B. All cases pending before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) (Inferior Jurisdiction) which relate to any claim for the ejectment or eviction from immovable property, whether urban or rural, before the coming into force of paragraph (b) or article 21 of this Act, shall continue to be heard by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) (Inferior Jurisdiction), as the case may be, notwithstanding the provisions of article 47(3) of the Code of Organization and Civil Procedure as substituted by article 21 of this Act, and an appeal shall lie from the decision of such courts in the same manner and before the same court as lies from any other decision thereof.”.

Part X

33. Notwithstanding the provisions of Part VII of this Act, where on the coming into force of that article a case is pending before any court, such case shall continue to be heard by that Court.

Transitory Provisions.

34. (1) Saving the following provisions of this article, cases pending before the Civil Court before the coming into force of this article where the value of the claim or of any counter-claim:

Cases pending before the Civil Court.

- (i) does not exceed five thousand liri; or
- (ii) is not declared; or
- (iii) is declared not to exceed five thousand liri,

shall continue to be heard by that court and shall be taxed as if the value of the claim and counter-claim were over five thousand liri.

(2) When a party of a case as is referred to in subarticle (1) by note filed within sixty days from the coming into force of this article elects that the lawsuit be decided by the Court of Magistrates, then the record of the case shall be transmitted to the competent Court of Magistrates to be decided by it and that case shall be taxed and shall for all effects and purposes of law be considered as if it were a case which was as from its commencement introduced in the Court of Magistrates.

(3) Cases the record of which is transmitted to the competent Court of Magistrates in accordance with subarticle (2) shall be distributed amongst the Magistrates who preside over the hearing of civil cases in the competent Court of Magistrates as though they were new cases which were introduced in that Court of Magistrates on the day when their record was transmitted to that Court.

(4) This article shall not apply to:

(i) cases which stand adjourned for judgement in the Civil Court on the date of coming into force of this article; and

(ii) cases regarding contestations which according to a provision of a special law are specifically assigned to the competence of the First Hall of the Civil Court irrespective of their value.

Passed by the House of Representatives at Sitting No. 163 of the 27th July, 2004.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives