

**A BILL
entitled**

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:-

1. (1) The short title of this Act is the Various Laws (Civil Matters) (Amendment) Act, 2009. Short title and commencement.

(2) The provisions 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 for different purposes of this Act.

PART I

2. 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.

3. In subarticle (1) of article 89 of the Code, for the words "and experts in the Courts of Malta and Gozo" there shall be substituted the words "and experts in the Courts of Malta and Gozo, and public auctioneers". Amendment of article 89 of the Code.

Amendment of article 258 of the Code.

4. In the English version of paragraph (a) of article 258 of the Code, for the words "in paragraph (a) of article 253" there shall be substituted the words "in paragraphs (a), (c) and (d) of article 253".

Addition of new article to the Code.

5. Immediately after article 304 of the Code, there shall be added the following new article:

"Procedure for the sale of movable property. 304A. The procedure for the sale of movable property shall follow the same procedure, *mutatis mutandis*, as that referred to in article 305."

Amendment of article 306 of the Code.

6. Subarticle (1) of article 306 of the Code shall be amended as follows:

(a) in paragraph (d) thereof, for the words "shall be accessible to the public.", there shall be substituted the words "shall be accessible to the public; and"; and

(b) immediately after paragraph (d) thereof, there shall be added the following new paragraph:

"(e) appoint a public auctioneer who shall receive a fee in terms of regulations made by the Minister under this article."

Amendment of article 314 of the Code.

7. In subarticle (3) of article 314 of the Code, for the words "listed securities in a recognised exchange", there shall be substituted the words "listed securities in a regulated market".

Amendment of article 333 of the Code.

8. In the English version of subarticle (1) of article 333 of the Code, for the words "may, by an application, bid *animo compensandi*.", there shall be substituted the words "may bid *animo compensandi*.";

Amendment of article 345 of the Code.

9. In article 345 of the Code, for the words "or by the official consignee", there shall be substituted the words "or by the consignee".

Amendment of article 378 of the Code.

10. In article 378 of the Code, immediately after the words "in order to force him to lodge such property" there shall be added the following new proviso:

"Provided that where the garnishee is a Bank, that Bank shall declare what fixed deposits or other bank books are in its possession, the property of the debtor, without having to deposit them; however the person responsible for the Bank's management shall always remain responsible in accordance with the provisions of this article."

11. In article 388C of the Code, for the words "in terms of articles 868 and 870" there shall be substituted the words "in terms of articles 858 and 860".

Amendment of article 388C of the Code.

12. Article 527 of the Code shall be amended as follows:

Amendment of article 527 of the Code.

(a) in subarticle (1) thereof, for the words "be published in the Government Gazette, and that an intimation of such interdiction or incapacitation be given, by means of a circular letter, to all notaries in Malta.", there shall be substituted the words "e published in the Government Gazette."; and

(b) in subarticle (2) thereof, the words "and the notary shall affix his own signature to the circular which shall be kept in the record of the proceedings relating to the interdiction or incapacitation" shall be deleted.

13. An article 833A of the Code shall be amended as follows:

Amendment of article 833A of the Code.

(a) for the words "referred to in article 830(1)(a), (b), (c) and (e)" there shall be substituted the words "referred to in article 830(1)(a), (b) and (d)"; and

(b) immediately after the words "according to which date first occurs" there shall be added the following new proviso:

"Provided also that no sworn application or application or petition, as the case may be, shall be required in the case where the precautionary warrant is converted to an executive warrant or it is removed by means of a counter-warrant."

14. In subarticle (7) of article 836 of the Code, for the words "in which latter case it shall order that the precautionary act be revoked" there shall be substituted the words "in which latter case it shall give such orders as it may deem appropriate, including, if the case so warrants, the giving of the security back to the debtor".

15. Article 838B of the Code shall be substituted by the following new article:

Substitution of article 838B of the Code.

"838B. (1) Unless rescinded by the court or withdrawn by the party suing out the warrant, all precautionary warrants shall remain in force for a period of fifteen days after the cause becomes *res judicata*."

(2) Notwithstanding the provisions of subarticle (1), 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), (d) and (f), the creditor shall file a note within fifteen days from the cause becoming *res judicata* 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) and (e), the creditor shall file an application under the provisions of article 388E within fifteen days from the cause becoming *res judicata*."

Amendment of article 859 of the Code.

16. Article 859 of the Code shall be amended as follows:

(a) in the marginal not thereof, for the figure "€11,600", there shall be substituted the figure "€7,000"; and

(b) for the words "amounting to not less than eleven thousand and six hundred euro", there shall be substituted the words "amounting to not less than seven thousand euro".

Amendment of article 874 of the Code.

17. In subarticle (3) of article 874 of the Code, for the words "be served by the Registrar within twenty-four hours on the Director of the Public Registry" there shall be substituted the words "be served by a notary public, appointed by the Court for the purpose, within twenty-four hours on the Director of the Public Registry".

Amendment of article 877 of the Code.

18. For subarticle (7) of article 877 of the Code, there shall be substituted the following new subarticles:

"(7) The warrant which has not ceased to be in force for other reasons, shall remain in force for one year to be reckoned from the day on which it was issued, unless within such time the person suing out the warrant shall have, upon an application to that effect, obtained an extension.

(8) Such extension may be granted more than once, but it may not be granted for more than one year each time.

(9) The decree allowing the extension shall state the date up to which the warrant shall remain in force.

(10) The decree allowing the extension shall be served on the persons mentioned in subsection (2) and (3) above.

(11) None of such persons shall incur any liability if, after the expiration of the said time, whether original or extended, and before the decree of any such extension has been served on him, he shall act as if the warrant had ceased to be in force.

(12) The absence of a demand for an extension shall not be a bar to the issue of a fresh warrant."

PART II

19. 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". Amendments to the Civil Code. Cap. 16.

20. In subarticle (4) of article 1322 of the Code, for the words "and any investment instrument" and "or investment instrument", there shall be substituted the words "any instrument" and "or instrument" respectively. Amendment of article 1322 of the Code.

PART III

21. This Part amends Act XIV of 2006 and it shall be read and construed as one with Act XIV of 2006, hereinafter in this Part referred to as "Act XIV of 2006". Amendments to Act XIV of 2006.

22. In article 14 of Act XIV of 2006, for articles 282 to 293 (both inclusive) contained therein, there shall be substituted the following new articles: Amendment of article 14 of Act XIV of 2006.

"Warrant of seizure on movable property.

282. 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 storage places indicated by the consignee, and about the transfer of their possession from the debtor to the consignee;

(d) the appointment of a consignee and the taxing and receipt of payment due to the consignee by the creditor for such period during which the articles seized and to be removed would be under the care of the 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;

(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.

Cap. 342.

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 unsuccessful 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 other movable property.

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.

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 consignee in the presence of the court executing officer, and the consignee shall receive and hold such property in a storage place authorised by the Registrar until such time as that property is sold or the consignee is ordered to do otherwise.

(2) The 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 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.

Persons who may not act as consignees.

287. A consignee may not be appointed under this Title 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 consignee.

288. At the time of execution of the warrant of seizure under article 282, the 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.

Consignee to preserve property seized.

289. (1) The 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 consignee to act as a *bonus paterfamilias*.

290. The consignee is bound to exercise for the safe keeping of the property seized, such care as is exercised by a *bonus paterfamilias*; if the 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 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 consignee for a period not exceeding three months, to compel him to present such property. The failure of the 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 a 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."

Objects and Reasons

The objects of this Bill are to further amend the Code of Organization and Civil Procedure, following the amendments introduced by Acts XIV of 2006, VII of 2007 and XV of 2008, and also to amend the Civil Code.