

Nru. 2

19. 2. 82.

MALTA

KAMRA TAD-DEPUTATI**HOUSE OF REPRESENTATIVES**

ABBOZZ ta' Ligi mressaq mill-Onorevoli Joseph Cassar, M.P., Deputat Prim Ministru Anzjan u Ministru tal-Ġustizzja u Affarijiet tal-Parlament u moqri għall-Ewwel darba fis-Seduta tas-16 ta' Frar, 1982.

ATT biex jipprovdi għall-kariga ta' Kuratur Pubbliku.

A BILL introduced by the Honourable Joseph Cassar, M.P., Senior Deputy Prime Minister and Minister of Justice and Parliamentary Affairs and read the First time at the Sitting of the 16th February, 1982.

AN ACT to provide for the establishment of the office of Public Curator.

C. MIFSUD

Skrivan tal-Kamra tad-Deputati

C. MIFSUD

Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjah

ATT biex jipprovi għall-kariga ta' Kuratur Pubbliku.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, ħareġ b'liġi dan li ġej:—

Titolu fil-qosor u bidu fis-seħh.

1. Dan l-Att jista' jissejjaħ l-Att ta' l-1982 dwar il-Kuratur Pubbliku, u għandu jibda jseħħ f'dik id-data li l-Ministru responsabbli għall-gustizzja, jista' jistabbilixxi b'avviż fil-Gazzetta.

Kariga ta' Kuratur Pubbliku.

2. (1) Għandu jkun hemm Kuratur Pubbliku li l-kariga tiegħu għandha tkun kariga uffiċjali, u li jkollu l-funzjonijiet li huma vestiti fih b'dan l-Att jew taħtu.

(2) Il-Kuratur Pubbliku jkun maħtur mill-Prim Ministru, għal dak iż-żmien u taħt dawk il-pattijiet u kondizzjonijiet, li l-Prim Ministru jista' jiddeċiedi.

(3) Ebda persuna ma tkun eliġibbli għall-ħatra ta' Kuratur Pubbliku, kemm-il darba —

(a) ma tkunx ċittadin ta' Malta;

(b) ma tkunx għalqet l-età ta' 25 sena; u

(ċ) ma tkunx uffiċjal pubbliku jew jekk għall-inqas sentejn qabel il-ħatra tagħha ma tkunx eżerċitat il-professjoni ta' *Accountant*, Avukat, Nutar Pubbliku jew Prokuratur Legali jew jekk ma tkunx għamlitha ta' manager f'bank kummerċjali għall-istess żmien.

(4) Il-Prim Ministru jista' jaħtar kull uffiċjal pubbliku jew dak in-numru ta' persuni li ma jkunux uffiċjali pubbliċi kif jista' jiddeċiedi biex ikunu uffiċjali tal-Kuratur Pubbliku għal dak iż-żmien u taħt dawk il-pattijiet u l-kondizzjonijiet li l-Prim Ministru jista' jiddeċiedi.

3. (1) Bla ħsara għal u skond id-disposizzjonijiet ta' dan l-Att, il-funzjonijiet hawn taħt imsemmija jistgħu jingħataw u jistgħu jsiru mill-Kuratur Pubbliku:

Funzjonijiet ta' Kuratur Pubbliku.

(a) l-amministrazzjoni ta' patrimonji;

(b) eżekuterija testamentarja;

(ċ) l-eżekuzzjoni ta' testmenti li għaliha jirreferi l-artikolu 816 tal-Kodiċi Ċivili;

(d) il-funzjoni ta' sekwestratarju għudizzjarju kif imsemmi fis-Sub-Titlu III tat-Titlu VI tat-Tielet Ktieb tal-Kodiċi ta' l-Organizzazzjoni u Proċedura Ċivili;

(e) kurazija ta' persuni nterdetti, inabilitati jew neqsin, u wirt battal;

(f) l-ispezzjoni ta' kontijiet ta' tuturi, kuraturi jew amministraturi oħra.

(2) Fl-eżerċizzju ta' dawk il-funzjonijiet il-Kuratur Pubbliku jkollu dawk il-jeddijiet kollha u jkun suġġett għal dawk l-obbligi kollha li taħt xi liġi huma inerenti għal dawk il-funzjonijiet:

Iżda l-Kuratur Pubbliku jkun eżentat milli jagħti xi garanzija jew assigurazzjoni oħra qabel jew malli tiġi vestita fih xi funzjoni taħt dan l-Att.

(3) (a) Il-Kuratur Pubbliku jista' jawtorizza bil-miktub lil kull wieħed mill-uffiċjali tiegħu biex f'ismu jaqdi xi funzjonijiet vestiti fih skond id-disposizzjonijiet ta' dan l-Att;

(b) Fl-eżerċizzju tal-jeddijiet u tal-funzjonijiet tagħhom l-uffiċjali tal-Kuratur Pubbliku jkunu taħt ir-responsabbiltà tal-Kuratur Pubbliku.

(4) Bla ħsara għal kull dritt li għandha taħt xi liġi, kull persuna aggravata b'xi għemil jew nuqqas tal-Kuratur Pubbliku fl-eżerċizzju tal-funzjoni tiegħu taħt dan l-Att, tista' b'rikors, tirreferi l-każ lis-Sekond'Awla tal-Qorti Ċivili, u l-Qorti wara li tisma' lill-Kuratur Pubbliku, għandha tagħti dak l-ordni u dak il-parir li fil-fehma tal-Qorti jwassal għal soluzzjoni Prattika u ekwa tal-każ.

4. Il-Kuratur Pubbliku għandu jiġi nominat, maħtur jew konfermat biex jaqdi l-funzjonijiet tiegħu bħala amministratur, eżekutur, sekwestratur jew kuratur dwar kull proprjetà msemmija fl-att tan-nomina, ħatra jew konferma, minn kull Qorti li jkollha ġurisdizzjoni jew minn kull persuna, skond il-każ, bl-istess mod kif, fid-disposizzjonijiet jew taħt id-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew ta' xi liġi oħra, huma applikabbli għal dik il-funzjoni, safejn dawk id-disposizzjonijiet ma jkunux ma jaqblux mad-disposizzjonijiet ta' dan l-Att.

Proċedura dwar il-ħatra ta' Kuratur Pubbliku bħala amministratur, eċċ.

5. (1) Bla ħsara għad-disposizzjonijiet ta' dan l-Att, il-Kuratur Pubbliku ma jistax jirrifjuta xi ħatra li taqa' taħt il-funzjoni tiegħu kemm-il darba s-Sekond'Awla tal-Qorti Ċivili, fuq rikors tal-Kuratur Pubbliku, meta tiġi mogħtija raġuni xierqa, ma tawtorizzax biex hekk jagħmel:

Il-Kuratur Pubbliku ma jistax jirrifjuta ħatra.

Iżda l-Kuratur Pubbliku ma jkunx hekk awtorizzat biss min-ħabba l-fatt li l-valur tal-patrimonju biex jiġi amministrat ikun żgħir.

(2) Is-Sekond'Awla tal-Qorti Ċivili tista', fuq rikors ta' kull persuna li jkollha nteress, jew fuq rikors tal-Kuratur Pubbliku f'kull żmien wara l-ħatra tiegħu, tissostitwixxi xi persuna oħra minflok, jew

taħtar lil xi persuna flimkien ma', il-Kuratur Pubbliku fil-qadi tal-funzjonijiet tiegħu kollha jew ta' wħud minnhom dwar kull proprjetà speċifikata fid-digriet tal-Qorti.

(3) Il-Kuratur Pubbliku m'għandux jaċċetta xi ħatra li tinvolvi t-tmexxija, jew it-komplija, ta' xi negozju, ħlief fil-każijiet li jkun awtorizzat għalihom taħt regolamenti magħmula taħt dan l-Att, lanqas ma għandu jaċċetta l-amministrazzjoni ta' xi patrimonju li hu jkollu raġun jaħseb li ma jkunx solvibbli.

(4) Il-Kuratur Pubbliku m'għandux jaċċetta l-amministrazzjoni ta' xi proprjetà li l-għanijiet tagħha jkunu esklużivament reliġjużi jew ta' karità.

Il-Kuratur Pubbliku jaġixxi fl-interess tal-patrimonju.

6. Fil-qadi tal-funzjonijiet tiegħu taħt dan l-Att, il-Kuratur Pubbliku għandu jaġixxi fl-aħjar interessi tal-persuni li jkollhom id-dritt fil-proprjetà jew fuq il-proprjetà mqiegħda taħt il-kontroll tiegħu skond id-disposizzjonijiet ta' dan l-Att.

Drittijiet li jiġihom lill Kuratur Pubbliku.

7. Il-Kuratur Pubbliku jkollu jedd li jirċievi dawk id-drittijiet li jistgħu jiġu preskritti b'regolamenti magħmula bis-saħħa ta' l-artikolu 15 ta' dan l-Att, u ma jistax jirċievi xi rimunerazzjoni oħra.

Amministrazzjoni ta' patrimonji żgħar.

8. (1) Kull persuna li jkollha ntress f'patrimonju, li l-valur kapitali gross tiegħu jkun inqas minn għaxart elef lira, tista' b'rikors titlob lis-Sekond'Awla tal-Qorti Ċivili biex tordna li l-amministrazzjoni ta' dak il-patrimonju tiġi vestita fil-Kuratur Pubbliku.

(2) Mar-rikors il-Qorti għandha tisma' lill-Kuratur Pubbliku, u, malli tkun sodisfatta li r-rikorrent ikun ta' mezz żgħar, għandha, wara li tqis l-interessi tal-persuni konċernati kollha, tinvesti fil-Kuratur Pubbliku l-amministrazzjoni tal-patrimonju.

(3) Is-Sekond'Awla tal-Qorti Ċivili tista', mingħajr ma jsiru proċedimenti ġudizzjarja, tagħti permess lill-Kuratur Pubbliku biex ibiegħ jew xort'oħra jittrasferixxi kull proprjetà amministrata minnu.

(4) Kull persuna li, kieku ma kienx hemm id-digriet tal-Qorti li bih ġiet vestita l-amministrazzjoni fil-Kuratur Pubbliku, kien ikollha jedd li tamministra l-patrimonju, tkun meħlusa mir-responsabbiltà kollha li toħroġ mill-amministrazzjoni ħlief dwar kull responsabbiltà li tkun dahlet għaliha qabel id-digriet.

Sostituzzjoni ta' kuratur testamentarju, eċċ.

9. Kull persuna li tkun qed taqdi xi funzjoni li tista', skond id-disposizzjonijiet ta' l-artikolu 3 ta' dan l-Att tingħata lill-Kuratur Pubbliku, minkejja li tkun aġixxiet fl-amministrazzjoni tal-patrimonju, tista', bl-approvazzjoni tal-Qorti, u wara li jkun ingħata dak l-avviż lill-persuni nteressati benefiċjarjament, kif il-Qorti tista' tordna, tittrasferixxi l-amministrazzjoni ta' dak il-patrimonju lill-Kuratur Pubbliku:

Iżda l-Qorti tista' tordna li dak il-patrimonju jiġi amministrat mill-Kuratur Pubbliku waħdu jew flimkien mar-rikorrent u/jew ma' persuna oħra.

Spezzjon ta' kontijiet mill-Kuratur Pubbliku.

10. Minkejja d-disposizzjonijiet ta' l-artikolu 511 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew ta' xi liġi oħra, is-Sekond'Awla tal-Qorti Ċivili, u kull qorti oħra li jkollha ġurisdizzjoni, tkun tista' tordna lill-Kuratur Pubbliku biex jaġmel l-ispezzjon tal-kontijiet ta' tuturi, kuraturi jew amministraturi oħra u li jirrapporta fuqhom lill-Qorti.

- 11.** Il-Kuratur Pubbliku jkollu l-jedd ta' aċċess għall-kotba tal-kontijiet u għal kull dokument ieħor li jkollu x'jaqsam ma' l-amministrazzjoni u jista' jeħtieġ mingħand kull tutur, kuratur jew amministratur ieħor dak it-tagħrif u dik l-ispejgazzjoni li jidhirlu meħtieġa għall-qadi tad-dmirijiet tiegħu. Kuratur Pubbliku jkollu aċċess għall-kotba.
- 12.** Jekk xi persuna jkollha l-kustodja ta' xi ktieb ta' kontijiet jew ta' dokumenti oħra li l-Kuratur Pubbliku jkollu jedd ta' aċċess għalihom taħt dan l-Att, tonqos li tipproduċi lil, jew tirrifjuta li tħalli, lill-Kuratur Pubbliku li jkollu aċċess għalihom jew li b'xi mod ieħor ittellef li jsir eżami, il-Kuratur Pubbliku jista' jagħmel rikors fis-Sekond'Awla tal-Qorti Ċivili, u ma' dan il-Qorti għandha tagħti dak l-ordni li jidhrilha xieraq. Nuqqas li jiġu prodotti dokumenti.
- 13.** Kull persuna li jkollha nteress f'xi proprjetà mqiegħda taħt il-kontroll tal-Kuratur Pubbliku jkollha jedd, bla ħsara għal kull regolament magħmul taħt dan l-Att, li fil-ħinijiet kollha raġonevoli tispezzjona u tiegħu kopji tal-kontijiet dwar dik il-proprjetà, u, mal-ħlas ta' dawk id-drittijiet li jistgħu jiġu preskritti, tingħata kopji tagħhom jew estratti minnu. Persuni interessati jkollhom jedd li jispezzjonaw kontijiet, eċċ.
- 14.** Kemm-il darba l-egħmil ma jikkostitwixxix reat akbar taħt xi liġi oħra, kull persuna li f'xi dokument, maħsub għall-Kuratur Pubbliku, xjentement tagħmel dikjarazzjoni jew stqarrija falza jew tagħti tagħrif falz tkun haġta ta' reat u teħel, meta tinsab haġta, prigunerija għal żmien ta' mhux iżjed minn sitt xhur jew multa. Reati u pieni.
- 15.** Il-Ministru responsabbli għall-gustizzja jista' jagħmel regolamenti biex jippreskrivu — Setgħa għall-egħmil ta' regolamenti.
- (a) id-drittijiet li għandhom jithallsu lill-Kuratur Pubbliku għal servizzi mogħtija taħt dan l-Att;
- (b) kull haġa li tista' tiġi preskritta taħt dan l-Att; u
- (ċ) b'mod ġenerali, biex jiżguraw it-tweġtieq aħjar ta' kull waħda mid-disposizzjonijiet ta' dan l-Att.

Għanijiet u Raġunijiet

L-Għan ta' dan l-Abbozz huwa li jipprovdi biex tiġi stabbilita l-kariga ta' Kuratur Pubbliku.

A BILL

entitled

AN ACT to provide for the establishment of the office of Public Curator.

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. This Act may be cited as the Public Curator Act, 1982, and shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint.

Office of
Public Curator.

2. (1) There shall be a Public Curator whose office shall be a public office, and who shall have the functions vested in him by or under this Act.

(2) The Public Curator shall be appointed by the Prime Minister, for such time and under such terms and conditions as the Prime Minister may determine.

(3) No person shall be eligible for appointment as Public Curator, unless —

(a) he is a citizen of Malta;

(b) he has attained the age of 25 years; and

(c) he is a public officer or he has for at least two years prior to his appointment exercised the profession of Accountant, Advocate, Notary Public or Legal Procurator or for the same period acted as a manager in a commercial bank.

(4) The Prime Minister may appoint any public officer or such number of persons not being public officers as he may determine, to be officers of the Public Curator for such time and under such terms and conditions as the Prime Minister may determine.

3. (1) Subject to and in accordance with the provisions of this Act, the functions hereinafter mentioned may be conferred on and may be performed by the Public Curator:

Functions of
Public Curator.

- (a) the administration of estates;
- (b) testamentary executorship;
- (c) the execution of wills to which section 816 of the Civil Code refers;
- (d) the function of judicial sequestrator referred to in Sub-Title III of Title VI of Book Third of the Code of Organization and Civil Procedure;
- (e) curatorship to interdicted or incapacitated persons, absentees and vacant inheritances;
- (f) the examination of accounts of tutors, curators and other administrators.

(2) In the exercise of such functions the Public Curator shall have all those rights and be subject to all those obligations which under any law are inherent to such functions:

Provided that the Public Curator shall be exempt from giving any bond or other security prior to or upon the vesting in him of any function under this Act.

(3) (a) The Public Curator may authorise in writing any of his officers to perform on his behalf any of the functions vested in him in accordance with the provisions of this Act;

(b) In the exercise of their duties and functions the officers of the Public Curator shall be responsible to the Public Curator.

(4) Without prejudice to any right competent to him under any law, any person aggrieved by any act or omission of the Public Curator in the exercise of his function under this Act, may, by application, refer the matter to the Civil Court, Second Hall, and the Court, after hearing the Public Curator, shall give such direction and advice as appears to the Court to be conducive to a practical and equitable solution to the matter.

4. The Public Curator shall be nominated, appointed or confirmed to perform his functions as administrator, executor, sequestrator or curator in relation to any property mentioned in the instrument of nomination, appointment or confirmation, by any Court having jurisdiction or by any person, as the case may be, in like manner as is, in or under the provisions of the Code of Organization and Civil Procedure or any other law, applicable to such function, in so far as such provisions are not incompatible with the provisions of this Act.

Procedure
relating to
appointment of
Public Curator
as administrator,
etc.

5. (1) Subject to the provisions of this Act, the Public Curator may not decline any appointment falling within his function unless the Civil Court, Second Hall, on the application by the Public Curator upon good cause being shown, shall authorise him so to do:

Public Curator
may not decline
appointment.

Provided that the Public Curator shall not be so authorised solely on the ground that the value of the estate to be administered is small.

(2) The Civil Court, Second Hall, may, on the application of any person having an interest, or on the application made by the Public Curator at any time after his appointment, substitute any person for, or appoint any person jointly with, the Public Curator in the discharge of

all or any of his functions in relation to any property specified in the decree of the Court.

(3) The Public Curator shall not accept any appointment which involves the management or carrying on of any business, except in the cases in which he may be authorised under the regulations made under this Act, nor shall he accept the administration of any estate which he has reasonable belief to be insolvent.

(4) The Public Curator shall not accept the administration of any property exclusively destined for religious or charitable purposes.

Public Curator to act in the interest of the estate.

6. In the exercise of his functions under this Act, the Public Curator shall act in the best interests of the persons having a right in or over the property placed under his control in accordance with the provisions of this Act.

Fees payable to Public Curator.

7. The Public Curator shall be entitled to receive such fees as may be prescribed by regulations made in virtue of section 15 of this Act, and may not receive any other remuneration.

Administration of small estate.

8. (1) Any person having an interest in an estate, the gross capital value of which is less than ten thousand pounds, may apply to the Civil Court, Second Hall, to direct that the administration of such estate be vested in the Public Curator.

(2) Upon such application the Court shall hear the Public Curator, and, being satisfied that the applicant is of small means, shall, after taking into consideration the interests of all persons concerned, vest the Public Curator with the administration of the estate.

(3) The Civil Court, Second Hall, may, without judicial proceedings, give leave to the Public Curator to sell or otherwise transfer any property administered by him.

(4) Any person who, but for the decree of the Court vesting the administration in the Public Curator, would have been entitled to administer the estate, shall be discharged from all liability attaching to the administration except in respect of any liability incurred prior to the decree.

Substitution of testamentary executor etc. by Public Curator.

9. Any person performing any function which may, in accordance with the provisions of section 3 of this Act be conferred on the Public Curator, notwithstanding that he has acted in the administration of the estate, may, with the sanction of the Court, and after such notice being given to the persons beneficially interested, as the Court may direct, transfer the administration of such estate to the Public Curator:

Provided that the Court may direct that such estate be administered by the Public Curator solely or jointly with the applicant and/or any other person.

Examination of accounts by the Public Curator.

10. Notwithstanding the provisions of section 511 of the Code of Organization and Civil Procedure or of any other law, it shall be lawful for the Civil Court, Second Hall, and for any other court having jurisdiction, to direct the Public Curator to carry out the examination of the accounts of tutors, curators or other administrators and to report thereon to the Court.

11. The Public Curator shall have the right of access to the books of account and any other document pertaining to the administration and may require from any tutor, curator or other administrator such information and explanation as may be necessary for the performance of his duties.

Public Curator shall have access to books.

12. If any person having the custody of any book of accounts or other documents to which the Public Curator has a right of access under this Act, fails to produce to, or refuses to allow, the Public Curator to have access thereto or in any other way hinders an examination, the Public Curator may apply to the Civil Court, Second Hall, and thereupon the Court shall make such order as it deems fit.

Failure to produce documents.

13. Any person having an interest in any property placed under the control of the Public Curator shall, subject to any regulation made under this Act, be entitled at all reasonable times to inspect and take copies of the accounts relating to such property, and, upon the payment of such fees as may be prescribed, to be furnished with copies thereof or extracts therefrom.

Interested persons have right to inspect accounts, etc.

14. Unless the act constitutes a graver offence under any other law, any person who in any document, intended for the Public Curator, knowingly makes a false declaration or statement, or gives false information shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine (*multa*).

Offences and penalties.

15. The Minister responsible for justice may make regulations for prescribing —

Power to make regulations.

(a) the fees payable to the Public Curator for services performed under this Act;

(b) anything that may be prescribed under this Act; and

(c) in general, for securing the better carrying out of any of the provisions of this Act.

Objects and Reasons

The Object of this Bill is to provide for the establishment of the office of Public Curator.