

Nagħti l-kunsens tiegħi.

(L.S.)

EDWARD FENECH ADAMI
President

4 ta' Awissu, 2006

ATT Nru XIV ta' l-2006

ATT biex jimplimenta varji miżuri li għandhom x'jaqsmu ma' azzjonijiet ġudizzjarji.

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

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att ta' l-2006 li jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, u dan l-Att għandu jinqara u jftiehem haġa waħda mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawnkekk iżjed 'il quddiem imsejjah "il-Kodiċi".

Titolu fil-qosor
u bidu fis-sehh.

(2) Dan l-Att għandu jibda' jsehh b'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' b'avviż fil-Gazzetta jistabilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. It-Taqsim tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda tat-
Taqsim tal-
Kodiċi.

(a) fit-Tieni Ktieb, fit-Taqsima I, minflok il-kliem minn "Titolu VII" sa Artikoli "389-395" għandu jidhol dan li ġej:

"Titolu VII	Fuq l-Eżekuzzjoni tas-Sentenzi u ta' Titoli Eżekuttivi ohra	252-395
	Disposizzjonijiet generali	252-281

Sub-titolu I	Fuq il-Mandat ta' Qbid ta' hwejjeġ Mobbli	282-293
Sub-titolu II	Fuq il-Mandat ta' Qbid ta' hwejjeġ Immobbli	294-300
Sub-titolu III	Fuq il-Mandat ta' Qbid ta' Azjenda Kummerċjali	301-312
Sub-titolu IV	Fuq il-Bejgħ fl-Irkant bil-Qorti	313-357
Sub-titolu V	Fuq il-Bejgħ Approvat mill-Qorti għal Inġenji ta' l-Ajru, Vapuri u Bastimenti	358-364
Sub-titolu VI	Fuq il-Mandat ta' Sekwestru Eżekuttiv	375-383
Sub-titolu VII	Fuq il-Mandat ta' żgumbrament jew ta' Tkeċċija minn Beni Immobbli	384
Sub-titolu VIII	Fuq il-Mandat <i>In Factum</i>	385-388
Sub-titolu IX	Fuq il-Mandat ta' Detenzjoni ta' Inġenji ta' l-Ajru Eżekuttiv	388A-388B
Sub-titolu X	Fuq il-Mandat ta' Arrest Eżekuttiv ta' Bċejjeċ tal-Baħar	388Ċ-388D
Sub-titolu XI	Fuq il-Mandat <i>In Procinctu</i>	388E
Sub-titolu XII	Fuq ir-Rendikont u l-Likwidazzjoni ta' Frottijiet	389-395";

u

(b) fit-Tielet Ktieb, minflok il-kliem minn "Titolu VI" sa "Fuq il-Mandat ta' Arrest fuq Suspett ta' ħarba" għandu jidhrol dan li ġej:

"Titolu VI	Fuq l-Atti Kawtelatorji	829-877
	Disposizzjonijiet ġenerali	829-838B
Sub-titolu I	Fuq il-Mandat ta' Deskrizzjoni	839-845
Sub-titolu II	Fuq il-Mandat ta' Qbid	846-848
Sub-titolu III	Fuq il-Mandat ta' Qbid ta' Azjenda Kummerċjali	848A-848B
Sub-titolu IV	Fuq il-Mandat ta' Sekwestru	849-854
Sub-titolu V	Fuq il-Mandat ta' Detenzjoni ta' Inġenji ta' l-Ajru	855-864
Sub-titolu VI	Fuq il-Mandat ta' Arrest ta' Bċejjeċ tal-Baħar	865-872Ċ
Sub-titolu VII	Fuq il-Mandat ta' Inibizzjoni	873-877".

Thassir ta' intestatura fit-Titolu VII.

3. Fit-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi, il-kliem "Sub-titolu I", minnufih qabel il-kliem "Disposizzjonijiet Ġenerali", għandhom jithassru.

4. Minflok l-artikolu 273 tal-Kodiċi għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 273 tal-Kodiċi.

"Atti eżekuttivi.

273. L-atti illi bihom, skond ma jkun il-każ, tista' ssir l-eżekuzzjoni tat-titoli eżekuttivi msemmijin fl-artikolu 253 huma:

(a) il-mandat ta' qbid ta' hwejjeġ mobbli;

(b) il-mandat ta' qbid ta' hwejjeġ immobbli;

(ċ) mandat ta' qbid ta' azjendi kummerċjali;

(d) il-bejgħ fl-irkant bil-qorti ta' hwejjeġ mobbli jew immobbli jew ta' jeddijiet imghaqqdin ma' immobbli;

(e) il-mandat ta' sekwestru eżekuttiv;

(f) il-mandat ta' żgumbrament jew tkeċċija minn beni immobbli;

(g) il-mandat *in factum*;

(h) il-mandat ta' detenzjoni ta' ajruplani;

(i) il-mandat ta' arrest ta' bċejjeċ tal-baħar;

(j) il-mandat *in procinctu*."

5. L-artikolu 274 tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 274 tal-Kodiċi.

(a) fil-proviso mas-subartikolu (1) tiegħu, minflok il-kliem "għandu wkoll jżid il-firma" u "li jikseb minn qabel dik l-awtorizzazzjoni" għandhom jidhlu l-kliem "għandu jżid il-firma" u "li jikseb dik l-awtorizzazzjoni" rispettivament; u

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "il-ħaġa dovuta bis-saħħa tat-titolu" għandhom jidhlu l-kliem "u, jew il-ħaġa dovuta bis-saħħa tat-titolu, kif ukoll ir-rimedji u, jew il-provvedimenti mitluba".

6. L-artikolu 278 tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 275 tal-Kodiċi u jiġi emendat kif ġej:

Enumerazzjoni mill-ġdid u emenda ta' l-artikolu 278 tal-Kodiċi.

(a) fis-subartikolu (1) tiegħu, minflok il-kliem minn "Il-marixxall jista', sa "jiżgassa bibien" għandhom jidhlu l-kliem

"L-uffiċjal eżekuttiv tal-qorti jista', fl-eżekuzzjoni ta' mandat li bih ikun inkarigat, wara li jsejjaħ żewġ xhieda jagħmel dak kollu li huwa raġonevolment meħtieġ sabiex jeżegwixxi l-mandat, inkluż li jiżgassa bibien";

(b) minnufih wara s-subartikolu (1) tiegħu għandu jiżdied il-proviso ġdid li ġej:

"Iżda fil-każ ta' mandat ta' detenzjoni ta' inġenji ta' l-ajru, is-setgħat ta' l-uffiċjal eżekuttiv tal-qorti ma jinkludux is-setgħa li jiġu żgassati xi bibien esterni jew interni ta' l-inġenju ta' l-ajru jew li ssir xi ħsara oħra lill-inġenju ta' l-ajru.";

(ċ) fis-subartikolu (2) tiegħu, minflok il-kliem minn "Iżda," sa "il-marixxall" għandhom jidhlu l-kliem "F'każ ta' mandat ta' qbid ta' hwejjeġ tal-Gvern ta' Malta, l-uffiċjal eżekuttiv tal-qorti"; u

(d) minnufih wara s-subartikolu (2) tiegħu għandu jiżdied dan is-subartikolu ġdid li ġej:

"(3) Il-Prim Ministru jista' minn żmien għal żmien permezz ta' regolamenti jistabbilixxi elenku ta' beni ta' l-Istat li ma jistgħux ikunu suġġett ta' mandat eżekuttiv jew kawtelatorju.".

Enumerazzjoni mill-ġdid ta' l-artikolu 279 tal-Kodiċi.

7. L-artikolu 279 tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 276 tal-Kodiċi.

Enumerazzjoni mill-ġdid u sostituzzjoni ta' l-artikolu 280 tal-Kodiċi.

8. L-artikolu 280 tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 277 tal-Kodiċi u minflok jidhol dan l-artikolu ġdid li ġej:

"Żmien għall-eżekuzzjoni ta' mandati u ordnijiet.

277. (1) Mingħajr preġudizzju għall-eċċezzjonijiet stabbiliti f'dan il-Kodiċi, ebda mandat jew sekwestru ma għandu jiġi eżegwit jekk mhux matul dawk is-sigħat li jistgħu jiġu ordnati mill-Ministru responsabbli għall-ġustizzja permezz ta' regolamenti magħmula taħt dan l-artikolu.

(2) Ir-regolamenti magħmulin taħt dan l-artikolu jistgħu wkoll jipprovdu għall-każijiet li fihom l-eżekuzzjoni ta' mandat jew ordni hi permessa barra milli fis-siġhat ordnati, il-metodu ta' l-eżekuzzjoni u l-istqarrijiet li għandu jkun hemm fiċ-ċertifikat tan-notifika:

Izda, għal raġunijiet ta' urġenza li għandhom jiġu konfermati bil-ġurament mirrikorrent, il-qorti tista' tippermetti l-eżekuzzjoni ta' mandat jew ordni barra milli fis-siġhat ordnati."

9. L-artikolu 281 tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 278 tal-Kodiċi u jiġi emendat kif ġej:

Enumerazzjoni mill-ġdid u emenda ta' l-artikolu 281 tal-Kodiċi.

(a) fis-subartikolu (1), minflok il-kliem "Il-marixxall għandu jagħti kopja tal-mandat" għandhom jidhlu l-kliem "L-uffiċjal eżekuttiv tal-qorti għandu jagħti kopja tal-mandat fl-ewwel mument opportun"; u

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "Sakemm ma jiġix ordnat xort'ohra mill-qorti, il-marixxall" għandhom jidhlu l-kliem "Sakemm ma jiġix ordnat xort'ohra mill-qorti jew jiġi preskritt differenti mill-Ministru responsabbli għall-ġustizzja kif preskritt fl-artikolu 277(2), l-uffiċjal eżekuttiv tal-qorti".

10. L-artikolu 282 tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 279 tal-Kodiċi u jiġi emendat kif ġej:

Enumerazzjoni mill-ġdid u emenda ta' l-artikolu 282 tal-Kodiċi.

(a) minflok il-kliem "In-nullità" għandhom jidhlu l-kliem "Meta l-baži tan-nullità ma tkunx dik ta' natura gravi, in-nullità"; u

(b) minflok il-kelma "marixxal" kull fejn tidher, għandhom jidhlu l-kliem "uffiċjal eżekuttiv tal-qorti".

11. L-artikolu 283 tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 280 tal-Kodiċi.

Enumerazzjoni mill-ġdid ta' l-artikolu 283 tal-Kodiċi.

12. L-artikolu 283A tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 281 tal-Kodiċi u minfloku jidhol dan l-artikolu ġdid li

Enumerazzjoni mill-ġdid u sostituzzjoni ta' l-artikolu 283A tal-Kodiċi.

gej:

"Kif jistghu
l-atti
eżekuttivi
jiġu
attakkati.

281. (1) Mingħajr preġudizzju għal kull jedd iehor taht din il-liġi jew xi liġi oħra, persuna kontra min jinħareġ att eżekuttiv jew xi persuna oħra interessata, tista' tagħmel rikors li jkun fih is-sottomissjonijiet kollha li tista' tkun tixtieq tagħmel flimkien mad-dokumenti kollha li jsostnu r-rikors lil dik il-qorti li tkun harġet dak l-att fejn titlob li l-att eżekuttiv jithassar, sew għal kollox jew f'parti minnu biss, għal raġuni valida skond il-liġi.

(2) Ir-rikors għandu jiġi notifikat lill-parti opposta li, fi żmien għaxart ijiem, għandha tippreżenta risposta li jkun fiha s-sottomissjonijiet kollha li tista' tkun tixtieq tagħmel flimkien mad-dokumenti kollha li jsostnu r-risposta li tista' tippreżenta:

Izda l-qorti tista', f'każijiet urġenti, tirriduċi l-perjodu msemmi f'dan is-subartikolu. Fin-nuqqas ta' din l-oppożizzjoni, il-qorti għandha tilqa' t-talba.

(3) Il-qorti għandha tiddeċiedi dwar ir-rikors wara s-smiġh tal-partijiet, u kull xieħda li jidhrilha xierqa, jekk taħseb hekk, u dan mhux iktar tard minn perjodu ta' xahar mill-jum tal-preżentata.

Appell
minn digriet

(4) Appell minn digriet mogħti taht is-subartikolu (3) ta' dan l-artikolu jista' jsir b'rikors fi żmien sitt ijiem minn meta d-digriet jinqara fil-qorti bil-miftuħ. Il-Qorti ta' l-Appell għandha tappunta dan l-appell għas-smiġh fi żmien xahar minn meta d-digriet jinqara' fil-qorti bil-miftuħ u dan għandu jiġi deċiż fi żmien tliet xhur mid-data ta' l-appuntament għas-smiġh.

(5) Il-garanzija msemmija fl-artikolu 249 ma tinhtieġx fil-każijiet imsemmija fis-subartikolu ta' qabel dan."

Thassir ta' l-
artikoli 284 sa
304 tal-Kodiċi.

13. L-artikoli 284 sa 304 tal-Kodiċi għandhom jiġu mħassra.

14. Minnufih wara s-subintestatura "Sub-titolu I - Fuq il-Mandat ta' Qbid ta' Hwejjeġ Mobbli", għandhom jidhlu dawn l-artikoli 282 sa 293 ġodda fil-Kodiċi li ġejjin:

Jiżiedu l-artikoli 282 sa 293 ġodda fil-Kodiċi.

"Mandat ta' qbid fuq hwejjeġ mobbli.

282. (1) Il-mandat ta' qbid ta' hwejjeġ mobbli, barra l-partikolaritajiet imsemmijin fl-artikolu 274, għandu jkun fih l-ordnijiet tal-Qorti fejn:

(a) (i) għandu jiffissa l-jum, il-lok u l-hin tal-bejgħ fl-irkant bil-qorti u sussegwentement li jaqbad u kontestwalment jeleva l-oġġetti kollha mil-lok indikat mill-kreditur jew minn fuq il-persuna tad-debitur; jew

(ii) għandhom jinqabdu mil-lok li jiġi indikat mill-kreditur, inkluż minn fuq il-persuna tad-debitur, l-oġġetti kollha fil-pussess tad-debitur jew l-oġġett jew oġġetti msemmija fil-mandat; kif ukoll li wara l-eżekuzzjoni, l-uffiċjal eżekuttiv tal-qorti għandu jiġi ordnat sabiex jiffissa, flimkien ma' l-avukat jew prokuratur legali tal-kreditur, il-ġurnata tal-bejgħ fl-irkant bil-qorti wara konsultazzjoni ma' l-uffiċjal eżekuttiv inkarigat, u liema uffiċjal għandu jiffissa wkoll mal-kreditur il-jum li għandu jkun ta' l-inqas sebat ijiem qabel dak iffissat għall-bejgħ fl-irkant bil-qorti sabiex issir l-elevazzjoni ta' l-oġġetti li l-kreditur eżekutant jagħzel li jiġu elevati;

(b) għandu jiġi eżegwit il-mandat, jekk hekk mehtieg, wara s-siġhat legali u fil-Hdud u btajjel pubbliċi u jekk wara żewġ attentati ta' eżekuzzjoni l-uffiċjal eżekuttiv tal-qorti ma jirnexxilux jinnotifika, huwa jkun awtorizzat jiżgassa;

(ċ) għandhom jiġu trasportati l-ħwejjeġ maqbuda u elevati għall-postijiet uffiċjali tal-ħażna stabbiliti b'regolamenti magħmulin mill-Ministru responsabbli għall-ġustizzja u jittrasferixxi l-pussess tagħhom mid-debitur għall-kunsinnatarju uffiċjali mahtur skond dawk ir-regolamenti;

(d) għandu jintaxxa u jirċievi l-ħlas dovut lill-kunsinnatarju uffiċjali minghand il-kreditur għall-perjodu li l-oġġetti maqbuda u elevati ser jagħmlu f'idejn il-kunsinnatarju uffiċjali b'dan illi dan il-ħlas jista' jiġi maqsum fuq perjodi li jiffissa r-Registatur skond in-natura ta' l-oġġetti maqbuda u elevati. Dan il-ħlas isir bla ħsara tal-jedd tar-rigress kontra d-debitur meta hemm lok għal dan ir-rigress;

(e) għandhom jiġu mahtura esperti biex jivvalutaw il-ħwejjeġ miżmuma, jekk dan hu mehtieg bil-liġi, jew f'ċirkostanzi speċjali li l-qorti jidhrilha li hu xieraq, jew fuq talba ta' xi parti interessata jew tad-debitur;

(f) għandu jiġi mahtur irkantatur bi ħlas skond id-disposizzjonijiet ta' l-Att dwar l-Irkantaturi, jekk dan hu mehtieg bil-liġi;

(g) tordna l-bejgħ fl-irkant bil-qorti ta' dawk l-oġġetti maqbuda u elevati fil-jum stabbilit skond ir-regolamenti magħmulin mill-Ministru responsabbli għall-ġustizzja, u dan mingħajr il-bżonn ta' notifika oħra lid-debitur.

(2) Id-disposizzjonijiet ta' dan is-Sub-titolu m'ghandhomx japplikaw ghal vapuri jew bastimenti oħra ta' iktar minn għaxar metri tul u għall-ingenji ta' l-ajru li jithaddmu fit-trasport kummerċjali bl-ajru, sakemm ma jkunux mod ieħor eżenti bid-disposizzjonijiet ta' dan it-Titolu.

Deskrizzjoni tal-hwejjeġ maqbuda.

283.(1)(a) L-uffiċjal eżekuttiv tal-qorti għandu jehmeż mal-mandat, deskrizzjoni dettaljata tal-hwejjeġ maqbuda.

(b) Il-kreditur jew id-debitur jew xi parti interessata jistgħu jagħmlu talba lill-uffiċjal eżekuttiv tal-qorti sabiex jieħu ritratti jew filmat ta' l-oġġetti miżmuma b'mezzi elettronici jew bi kwalunkwe apparat ieħor, bi spejjeż fuq il-parti li tagħmel it-talba.

X' għandu jkun fiha rriferta meta ma jinstabux hwejjeġ mobbli, eċċ.

(2) Jekk l-uffiċjal eżekuttiv tal-qorti ma jsibx hwejjeġ mobbli, jew isib biss hwejjeġ minn dawk li m'humix suġġetti għal qbid, huwa għandu jagħmel riferenza ta' dan il-fatt u, meta jkun il-każ, jiddeskrivi x-xorta tal-hwejjeġ mobbli li ma jkunux suġġetti għall-qbid u għandu jwajhhal ir-rriferta mal-mandat.

Hlas ta' l-ammont dovut.

284. (1) Fl-eżekuzzjoni ta' mandat ta' qbid, huwa biss l-ammont sħiħ mitlub mill-kreditur li jista' jithallas mid-debitur f'idejn l-uffiċjal eżekuttiv tal-qorti.

(2) L-uffiċjal eżekuttiv tal-qorti għandu jiddeskrivi haġa b'haġa l-hwejjeġ maqbuda u jekk -

(a) fost il-hwejjeġ ikun hemm merkanzija, iqabbaq lil min jizinha, iqejjisha jew ikejilha skond il-każ;

(b) jaqbaq flus jew titoli li jissarrfu fi flus, haġar fin jew oġġetti ta' metall prezzjuż, għandu bir-reqqa jniżżel l-ammont jew il-valur nominali jew il-piż tagħhom u għandu fl-iqsar żmien possibbli jehodhom u jqegħdhem b'ċedola fir-reġistru;

(ċ) meta jiġu maqbuda karti, l-uffiċjal eżekuttiv tal-qorti għandu jwahaħhal fuqhom sigilli u jagħtihom f'idejn ir-Registratur, u dawn is-sigilli ma jistgħux jiġu mneħħija mingħajr l-awtorità tal-qorti.

Qbid ta' karti.

285. (1) Huma suġġetti għall-qbid ħwejjeġ mobbli, inklużi wkoll:

(a) azzjonijiet u ishma f'soċjetajiet kummerċjali;

(b) liċenzi mahruġa minn xi awtorità kompetenti kif jista' jiġi stabbilit b'regolamenti magħmulin mill-Ministru responsabbli għall-ġustizzja;

(ċ) poloz ta' assigurazzjoni;

(d) titoli ta' kreditu u kwalunkwe titolu ta' proprjetà intellettuali jew industrijali:

Iżda fuq dawn l-oġġetti, l-effett tal-mandat jibda jopera mill-ġurnata minn meta tiġi notifikata dik l-awtorità jew dik il-persuna li tkun ħarġet tali mobbli. Kull trasferiment jew piż li jsir minn jew fuq dawn il-mobbli wara dik il-ġurnata jkunu *ipso jure* nulli u dan b'effett mid-data tan-notifika tal-qbid lill-persuna jew lill-awtorità li tkun ħarġet l-istess.

(2) Fejn f'soċjetà kummerċjali l-istatut tagħha jagħti xi dritt ta' preferenza dwar it-trasferiment ta' azzjonijiet, dawk l-azzjonisti għandhom ikunu infurmati bil-ġurnata tal-bejgħ u jistgħu jeżerċitaw dan id-dritt fl-imsemmi bejgħ.

(3) F'kull bejgħ fl-irkant bil-qorti ta' polza ta' assigurazzjoni għandha tiġi notifikata d-ditta assiguratrici bid-data ta' dak il-bejgħ.

Kunsinnatarju
uffiċjali.

286. (1) Hwejjeġ elevati mill-pussess tad-debitur, skond id-disposizzjonijiet ta' l-artikolu 282(1)(ċ), bla ħsara għad-disposizzjonijiet ta' l-artikolu 293, għandhom ikunu minnufih trasferiti fil-pussess fiżiku tal-kunsinnatarju uffiċjali fil-preżenza ta' l-uffiċjal eżekuttiv tal-qorti, u l-kunsinnatarju uffiċjali għandu jirċievi u jżomm dawn il-hwejjeġ f'post tal-ħażna uffiċjali sakemm dawn il-hwejjeġ jiġu mibjugħa jew sakemm il-kunsinnatarju uffiċjali ma jingħatax ordnijiet oħra.

(2) Il-kunsinnatarju uffiċjali għandu joħroġ riċevuta ffirmata minnu għall-hwejjeġ li jkunu ġew maqbuda u elevati mill-pussess tad-debitur li jkunu ġew f'idejh:

Iżda l-kunsinnatarju uffiċjali jista', bil-kunsens bil-miktub tar-Registatur, iżomm dawk il-hwejjeġ f'postijiet oħra minflok il-post tal-ħażna uffiċjali u dan fejn, minħabba x-xorta jew id-daqs tal-beni maqbuda, ma jkunx possibbli li jsir mod ieħor.

(3) Il-Ministru responsabbli għall-gustizzja għandu jappunta għadd ta' kunsinnatarji uffiċjali biex jiehdu ħsieb il-hwejjeġ maqbuda u dan mill-ħin li l-hwejjeġ huma miżmuma mill-uffiċjal eżekuttiv tal-qorti sal-jum tal-bejgħ tagħhom:

Iżda jekk il-kunsinnatarju uffiċjali jkun kumpannija jew soċjetà, dik il-kumpannija jew soċjetà għandha taħtar persuna li fil-ħinijiet kollha tkun personalment responsabbli għall-eżekuzzjoni ta' l-obbligi tal-kunsinnatarju uffiċjali, u li tassumi r-responsabbiltà *in solidum* mal-kumpannija jew is-soċjetà:

Iżda wkoll il-Ministru responsabbli għall-ġustizzja jista' permezz ta' regolamenti jipprovdi għall-imposizzjoni ta' dawk il-kondizzjonijiet oħra li jista' jqis meħtieġa sabiex persuna tkun mahtura bhala kunsinnatarju uffiċjali jew bhala l-persuna responsabbli skond l-ewwel proviso ta' dan is-subartikolu.

(4) Il-Ministru responsabbli għall-ġustizzja għandu jindika postijiet uffiċjali għall-ħażna fejn il-ħwejjeġ miżmuma għandhom jinżammu minn kunsinnatarji uffiċjali mill-hin li l-ħwejjeġ huma miżmuma mill-uffiċjal eżekuttiv tal-qorti sal-jum tal-bejgħ tagħhom.

(5) Il-Ministru responsabbli għall-ġustizzja jista' jagħmel regolamenti biex jipprovdi għall-mod ta' konservazzjoni ta' dawn il-ħwejjeġ, għar-rilaxx tagħhom qabel il-bejgħ, għall-proċeduri konnessi mal-bejgħ tagħhom, għar-responsabbiltà tal-kunsinnatarju uffiċjali, għall-ħlas tad-drittijiet tiegħu u għal xi ħwejjeġ oħra konnessi mal-preservazzjoni, il-bejgħ, il-kunsinna u r-rilaxx tal-ħwejjeġ maqbuda.

Persuni li ma jistgħux ikunu kunsinnatarji uffiċjali.

287. Kunsinnatarju uffiċjali mahtur taht dan it-Titolu ma jistax jaġixxi meta jkun:

(a) il-kreditur li jitlob il-ħruġ tal-mandat;

(b) żewġ id-debitriċi jew il-kreditriċi jew mart id-debitur jew il-kreditur;

(ċ) il-missier jew l-omm tal-kreditur, bintu jew ibnu, jew huh jew oħtu, iz-ziju jew iz-zija tiegħu, missier jew omm martu jew żewġha jew żewġ bintu jew mart ibnu;

(d) fl-impjieġ dirett jew indirett tal-kreditur;

(e) tkun il-persuna li tippretendi li hija s-sid tal-ħwejjeġ maqbuda.

Attendenza tal-kunsinnatarju uffiċjali.

288. Fl-eżekuzzjoni tal-mandat ta' qbid taħt l-artikolu 282, il-kunsinnatarju uffiċjali għandu jattendi flimkien ma' l-uffiċjal eżekuttiv tal-qorti għall-eżekuzzjoni tal-mandat. L-uffiċjal eżekuttiv tal-qorti jista' jaqbad u jeleva mingħajr ma javża lill-kreditur.

Kunsinnatarju uffiċjali responsabbli għall-preservazzjoni tal-ħwejjeġ.

289. (1) Il-kunsinnatarju uffiċjali għandu jkun responsabbli għall-preservazzjoni xierqa tal-ħwejjeġ fdati lil u ma għandu la huwa u anqas iħalli lil ebda persuna oħra li tagħmel użu mill-ħwejjeġ sakemm mhux ordnat mod ieħor mill-qorti:

Izda d-debitur jista' jithalla juża jew jibqa' jżomm pussess ta' dawk l-oġġetti minn fost il-ħwejjeġ maqbuda li l-qorti tista' tawtorizza jekk tqis li dawk l-oġġetti huma normalment meħtieġa f'dar medja għal għajxien deċenti sabiex tinzamm id-dinjità umana tad-debitur u tal-familja tiegħu.

(2) Meta jinqabdu ħwejjeġ li jiddeterjoraw, ir-Registratur għandu, mingħajr bżonn ta' aktar awtorizzazzjoni, ibiegħ il-ħwejjeġ maqbuda u bir-rikavat minn dak il-bejgħ, jaġixxi skond id-disposizzjonijiet ta' l-artikolu 284.

Il-kunsinnatarju uffiċjali għandu jaġixxi bhal missier tajjeb.

290. Il-kunsinnatarju uffiċjali hu fid-dmir li juża, għaż-żamma fiż-żgur tal-hwejjeġ maqbuda, id-diligenza ta' missier tajjeb; jekk il-kunsinnatarju uffiċjali jonqos li jipprezenta dawk il-hwejjeġ meta jintalab li jagħmel dan, il-qorti għandha tordnalu jidher quddiemha biex jiġġustifika n-nuqqas tiegħu li jagħmel dan; il-kunsinnatarju uffiċjali jkun responsabbli għad-danni u l-imghax u l-qorti, wara li teżamina ċ-ċirkostanzi tal-każ, tista' tagħti dawk l-ordnijiet li jidhrilha xierqa, magħdud l-arrest personali tal-kunsinnatarju uffiċjali għal perjodu li ma jaqbiżx it-tliet xhur, sabiex huwa jiġi mgiegħel jipprezenta dawk il-hwejjeġ. In-nuqqas tal-kunsinnatarju uffiċjali li jipprezenta dwak il-hwejjeġ meta jiġi ordnat mill-qorti biex jagħmel dan, għandu jikkostitwixxi disprezz lejn l-awtorità tal-qorti skond id-disposizzjonijiet applikabbli taht dan il-Kodiċi.

Il-kredituri l-oħra ma jistgħu jagħmlu ebda oppożizzjoni għall-mandat.

291. Il-kredituri tal-parti li kontra tagħha jkun sar il-qbid ta' hwejjiġha, ma jistgħu għall-ebda raġuni jagħmlu oppożizzjoni għall-eżekuzzjoni tal-mandat jew għall-bejgħ tal-hwejjeġ:

Izda dawk il-kredituri jistgħu jeżerċitaw il-jeddijiet tagħhom fuq il-prezz li jgħibu l-hwejjeġ maqbuda.

Ma għandhiex issir rikonzjizzjoni ta' hwejjeġ ġa maqbuda.

292. (1) Meta l-uffiċjal eżekuttiv tal-qorti jsir jaf li sar mandat ieħor u l-oġġetti ma ġewx elevati, huwa għandu xorta waħda jerġa' jeżegwixxi l-mandat fil-post lilu indikat mill-kreditur. Ir-rikonzjizzjoni ma hijiex aktar permessa. L-uffiċjal eżekuttiv tal-Qorti għandu, għas-spejjeż tal-kreditur, jinforma lill-kredituri li fuq talba tagħhom kienu ġew eżegwiti mandati oħra bil-mandat l-ieħor.

Il-mandat jista' jiġi eżegwit fuq l-oġġetti oħrajn minbarra l-oġġetti diġà maqbuda.

(2) Meta jkun diġà nħatar kunsinnatarju uffiċjali, u l-oġġetti elevati, mandati oħrajn ma jistgħux jiġu eżegwiti fuq dawk l-oġġetti.

Hwejjeġ li ma jistgħux jiġu maqbuda.

293. (1) M'humiex suġġetti għal qbid:

(a) l-ilbies ta' kuljum, is-sodda u dawk l-affarijiet tal-kċina u l-ghamara li jitqiesu raġonevolment meħtieġa għall-ghajxien b'mod deċenti tad-debitur u tal-familja tiegħu;

(b) il-karti personali u l-kotba li għandhom x'jaqsmu mal-professjoni tad-debitur, tal-mara tiegħu jew tat-tfal tiegħu;

(ċ) ir-reġistri u l-minutarji tan-nutara pubbliċi;

(d) il-magni u l-ghodda meħtieġa għat-tagħlim jew l-eżerċizzju ta' xi xjenza jew ta' xi arti tad-debitur, tal-mara tiegħu jew tat-tfal tiegħu;

(e) il-bhejjem u l-ghodod meħtieġa għall-biedja u xi frott kemm jekk imqacċta jew mhux imqacċta mill-art;

(f) inġenji ta' l-ajru, approprijati b'mod esklużiv għas-servizz ta' l-istat, inkluż is-servizz postali, iżda eskluż servizz kummerċjali;

(g) bastimenti mikrija għal kollox fis-servizz tal-Gvern ta' Malta;

(h) ilbies sagru u kontenituri wżati fi knisja konsagrata jew ta' proprjetà ta' qassis, ta' ordni reliġjuża jew ta' membru tagħha;

(i) kull proprjetà ta' kull membru tal-Korp tal-Pulizija jew tal-Forzi Armati ta' Malta li tkun armi, munizzjon, tagħmir, strumenti jew ilbies użati minnu fil-qadi ta' dmirijietu:

Iżda l-hwejjeġ imsemmija fil-paragrafi (a) sa (g) jistgħu jiġu maqbuda -

(i) meta l-mandat ta' qbid jintalab għall-prezz ta' dawk il-hwejjeġ;

(ii) meta l-mandat ta' qbid jintalab għall-kera jew għal ċnus tal-fond fejn dawk il-hwejjeġ kienu jinżammu;

(iii) jekk it-titolu eżekuttiv li fuqu l-mandat inħareġ jikkundanna lid-debitur b'mod speċifiku biex jagħti lura dawk il-hwejjeġ.

(2) Jistgħu jiġu maqbuda hwejjeġ mobbli mhux maqsuma bejn id-debitur u terza persuna, iżda ma jistax isir il-bejgħ ta' dawn il-hwejjeġ jekk mhux wara l-qasma tagħhom."

Żieda ta' Subintestatura ġdida u artikoli ġodda fit-Tieni Ktieb tal-Kodiċi.

15. Minnufih wara l-artikolu 293 fit-Tieni Ktieb tal-Kodiċi għandha tiżdied din is-subintestatura ġdida u dawn l-artikoli 294 sa 300 ġodda li ġejjin:

"Sub-titolu II

FUQ IL-MANDAT TA' QBID TA' HWEJJEĠ IMMOBBLI

Talba għandha ssir b'rikors.

294. (1) It-talba għall-qbid ta' beni immobbli ssir permezz ta' rikors.

(2) Fir-rikors għandu jkun hemm indikat deskrizzjoni dettaljata tal-hwejjeġ li tagħhom jintalab il-bejgħ fl-irkant, inkluża l-provenjenza u kull piż fuq l-istess art u pjanta li turi b'mod ċar fejn hija l-art.

Id-disposizzjonijiet ta' dan l-artikolu japplikaw għall-vapuri jew bastimenti oħra ta' iktar minn għaxar metri tul u għall-inġenji ta' l-ajru, liema hwejjeġ għandhom huma wkoll jiġu deskritti dettaljatament, inklużi wkoll il-privileġġi fuqhom.

(3) Fil-każ ta' digriet kif provdut fil-proviso li hemm mas-subartikolu (2), il-proċedura li għandha tithaddem tkun dik stabbilita f'dan is-Sub-titolu għall-bejgħ fl-irkant bil-qorti ta' proprjetà immobbli.

Dmirijiet tal-qorti.

295. (1) Fid-digriet li fih il-qorti tilqa' t-talba tal-hruġ ta' mandat ta' qbid ta' hwejjeġ immobbli hija għandha:

(a) tordna lir-Registratur li jahtar dawk l-esperti skond id-disposizzjonijiet ta' l-artikolu 89 li jistgħu jkunu mehtieġa u li tiffissa żmien qasir u perentorju meta dawn l-istimi għandhom jiġu preżentati u li tagħti dawk l-ordnijiet li huma neċessarji għall-adempiment ta' dan l-inkargu

(b) tiffissa l-jum, il-hin u l-lok tal-bejgħ;

(c) tordna lir-Registratur li jinforma lid-Direttur tar-Registru Pubbliku u lir-Registratur ta' l-Artijiet jew xi awtorità kompetenti li tista' tiġi appuntata skond regolamenti li jistgħu jsiru mill-Ministru responsabbli għall-gustizzja, bid-digriet u dan fl-ewwel ġurnata utli;

(d) tordna lid-Direttur tar-Registru Pubbliku biex jirreġistra minnufih id-digriet fi ktieb li għandu jinżamm għal dak l-għan fir-Registru Pubbliku u li jkun aċċessibbli għall-pubbliku.

(2) Dan id-digriet għandu jkun notifikat lid-debitur.

Stima tad-debitur.

296. (1) Fi żmien għoxrin ġurnata minn meta d-debitur jiġi notifikat bid-digriet tal-qorti, huwa jkun jista' jippreżenta stima separata u jitlob li ma ssirx stima ġdida, b'dan li din l-istima għandha tkun ġuramentata.

(2) L-istima ġuramentata preżentata mid-debitur għandha, fi żmien hamest ijiem, tiġi notifikata lill-kreditur li jkollu għoxrin ġurnata żmien biex jopponi għaliha.

(3) Meta kreditur jopponi għall-istima preżentata mid-debitur, il-qorti għandha, wara li tisma' l-partijiet, tiddeċiedi jekk għandhiex tahtar espert ġdid jew le.

(4) Stima tal-hwejjeġ li għandhom jiġu mibjugħa għandha dejjem issir qabel il-bejgħ iżda jekk stima, magħmula mhux iktar kmieni minn tmax-il xahar qabel is-sentenza li qed tiġi nfurzata, għiet aċċettata mill-qorti fis-sentenza tagħha, il-qorti għandha tieħu kont ta' dik l-istima u ma tappuntax esperti għodda biex iwettqu stima għdida.

Hatra ta' l-espert mill-qorti kemm-il darba l-partijiet ma jaqblux.

297. (1) L-espert hu dejjem maħtur mill-qorti *ex officio* skond l-elenku stabbilit fl-artikolu 89 u fuq bażi ta' rotazzjoni sakemm il-partijiet ma jkunux diġà ippreżentaw nota li fiha jipproponu l-isem ta' espert li jkunu jaqblu fuqu, jew għiet aċċettata l-istima preżentata skond id-disposizzjonijiet ta' l-artikolu 296.

(2) Espert għandu jfassal valutazzjoni tal-hwejjeġ flimkien mad-deskrizzjoni dettaljata tagħhom, inklużi aggravji u piżijiet, u jissottometti l-istess b'għurament lir-Registratur.

(3) Id-debitur għandu b'għurament jagħti dik l-informazzjoni li għandha x'taqsam mal-hwejjeġ kif jista' jkun meħtieġ mir-Registratur jew l-esperti, u d-disposizzjonijiet li għandhom x'jaqsmu max-xieħda għandhom jgħoddu għad-debitur.

(4) L-istima ma tistax tiġi attakkata imma l-qorti tista', permezz ta' rikors, tordna l-korrezzjoni ta' kull żball li jkun ittieħed fid-deskrizzjoni jew valutazzjoni.

(5) L-espert nominat taħt dan it-Titolu jithallas skond tariffa li tiġi stabbilita skond regolamenti li jsiru mill-Ministru responsabbli għall-gustizzja.

L-istima ta' oġġetti tad-deheb jew tal-fidda għandha turi kemm jiswa l-materjal tal-ħaġa, eċċ.

298. F'kull stima ta' hwejjeġ tad-deheb jew tal-fidda, l-espert għandu jniżżel il-valur tal-materjal tal-ħaġa u l-prezz tal-fattura, kull wieħed għalih kif ukoll it-total.

L-istima ta' l-immobbli għandu jkun fiha deskrizzjoni tal-fond, eċċ.

299. (1) F'kull stima ta' immobbli, l-espert għandu jagħmel deskrizzjoni tal-fond, u jfisser il-piżijiet, kirjiet u jeddijiet oħra sew reali kemm personali, jekk ikun hemm, li għalihom dan il-fond ikun suġġett, kif ukoll l-aħħar trasferiment tiegħu, skond l-informazzjoni li jkun ha mill-kreditur jew mid-debitur.

Id-debitur jista' jkun imġieghel jagħti l-informazzjoni-nijiet meħtieġa għall-istima.

(2) Id-debitur jista' jiġi mġieghel, fuq talba bil-miktub jew bil-fomm ta' l-espert jew tal-kreditur, biex iwettaq bil-ġurament, mogħti lill-mill-qorti jew mir-reġistratur, l-informazzjoni mogħtija lill-espert jew li dan ikun talab.

Id-debitur jiġi msejjah b'ittra tar-reġistratur.

(3) Id-debitur jiġi msejjah b'ittra mingħand ir-reġistratur, biex jagħti l-informazzjoni hawn fuq imsemmija.

Disposizzjoni-nijiet dwar ix-xhieda jghoddu għad-debitur.

(4) Id-disposizzjonijiet dwar ix-xhieda jghoddu għad-debitur imsejjah kif jingħad hawn fuq.

Ir-rapport ta' l-istima għandu jiġi mahluf mill-espert.

300. (1) Ir-rapport li jkun fih il-valutazzjoni jew l-istima għandu jiġi pprezentat mill-espert fiż-żmien li jkun ġie mogħti mill-qorti fid-digriet, skond iċ-ċirkostanzi, u għandu jiġi mahluf mill-espert quddiem ir-Registratur.

(2) Meta l-bejgħ fl-irkant ta' fond, jew ta' jeddijiet imgħaqqdin ma' fond, illi jkun qieghed fil-Gżira ta' Ghawdex jew ta' Kemmuna, jiġi ordnat minn waħda mill-qorti superjuri, din il-qorti tista' tordna li l-espert jahlef ir-rapport tiegħu fil-Qorti tal-Maġistrati (Ghawdex), quddiem wiehed mill-uffiċjali msemmija fl-artikolu 57(2)(a) sa (è), u li jagħti dan ir-rapport, hekk mahluf, f'idejn l-uffiċjal fuq imsemmi, sabiex dan jibgħatu lill-qorti superjuri li tkun harġet l-ordni msemmija.

(3) Meta l-irkant ta' fond, jew ta' jeddijiet imghaqdin ma' fond, illi jkun qiegħed fil-Gżira ta' Malta, jiġi ordnat mill-Qorti tal-Maġistrati (Għawdex), dik il-qorti tista' tordna li l-espert jahlef ir-rapport tiegħu quddiem ir-Registratur, u li jagħti dak ir-rapport, hekk maħluf, f'idejn ir-Registratur fuq imsemmi, sabiex dan jintbagħat minnu lill-Qorti tal-Maġistrati (Għawdex).

Taxxa u hlas tad-dritt ta' l-espert.

(4) Id-dritt ta' l-espert jiġi intaxxat mir-Registratur, bla ħsara tal-jedd ta' appell lill-qorti. Dan l-appell isir b'rikors minn kull min huwa interessat fi żmien xahar min-notifika tat-taxxa. Dan id-dritt għandu jithallas dejjem mill-kreditur, bla ħsara tal-jedd tiegħu kontra d-debitur għall-ħlas lura ta' dan id-dritt flimkien ma' l-ispejjeż l-oħra tal-bejgħ:

Izda fejn isir l-appell, il-kreditur għandu jiddepożita d-dritt intaxxat mir-Registratur u l-proċeduri tal-bejgħ għandhom jitkoplew u jiġu finalizzati."

Thassir ta' l-artikoli 305 sa 312 tal-Kodiċi.

16. L-artikoli 305 sa 312 tal-Kodiċi għandhom jiġu mħassra.

Żieda ta' Subintestatura ġdida u artikoli ġodda fit-Tieni Ktieb tal-Kodiċi.

17. Minnufih wara l-artikolu 300 tal-Kodiċi għandha tiżdied din is-subintestatura ġdida u dawn l-artikoli 301 sa 312 ġodda li ġejjin:

"Sub-titolu III

FUQ IL-MANDAT TA' QBID TA' AZJENDA KUMMERĊJALI

Bejgħ fl-irkant ta' mobbli, immobbli u azjendi kummerċjali.

301. Il-mobbli, l-immobbli jew azjendi kummerċjali maqbuda mill-pussess ta' debitur, għandhom jinbiegħu b'irkant pubbliku skond id-disposizzjonijiet ta' dan it-Titolu.

L-irkanti jinżammu meta jkun hemm bżonn.

302. L-irkanti għandhom jinżammu kull meta jkun hemm bżonn meta jkun hemm għadd suffiċjenti ta' hwejjeġ biex jinbiegħu.

Disposizzjonijiet jghoddu għall-proprjetà kemm mobbli jew immobbli jew azjendi kummerċjali.

303. (1) Id-disposizzjonijiet ta' dan is-Sub-titolu għandhom jghoddu għall-proprjetà kemm mobbli jew immobbli jew azjendi kummerċjali. Xejn ma għandu jwaqqaf lir-Reġistratur u l-irkantatur pubbliku milli jbiegħu proprjetà mobbli, immobbli jew azjenda kummerċjali fl-istess irkant.

(2) Għall-għanijiet ta' dan is-Sub-titolu t-tifsira ta' mobbli għandha tkun l-istess bħal dik mogħtija fis-Sub-titolu I ta' dan it-Titolu u dik ta' immobbli għandha tkun l-istess bħal dik mogħtija fis-Sub-titolu II ta' dan it-Titolu, salv li fil-każ ta' azjenda kummerċjali t-tifsira hija dik mogħtija fl-artikolu 309 iżda għall-finijiet ta' dan it-Titolu azjenda kummerċjali għandha titqies bħala immobbli.

Talba għall-qbid ta' azjenda kummerċjali.

304. It-talba għall-qbid ta' azjenda kummerċjali ssir permezz ta' rikors u dan għandu jiġi notifikat lid-debitur.

Digriet li fih il-qorti tilqa' t-talba tal-ħruġ tal-mandat.

305. F'digriet li fih il-qorti tilqa' t-talba tal-ħruġ ta' mandat ta' qbid ta' azjenda kummerċjali, il-qorti -

(a) għandha tordna lir-Reġistratur jahtar dawk l-esperti skond l-artikolu 89 li jistgħu jkunu meħtieġa sabiex:

(i) jelenkaw u jistmaw l-assi kollha ta' l-istess azjenda;

(ii) jipprezentaw rapport jekk, meta jitqies id-debitu ta' l-azjenda, l-azjenda għandhiex tiġi mibjugħa jew inkella amministrata għal perjodu ta' żmien li fih tista' thallas lura dan id-debitu; u

(b) tiffissa żmien qasir u perentorju meta dawn l-istimi u dan ir-rapport għandhom jiġu pprezentati u li tagħti dawk l-ordnijiet li huma neċessarji għall-adempiment ta' dawn l-inkariġi:

Iżda fejn l-elenku u l-istima ta' l-assjem shiħ ikun diġà sar fl-atti tal-mandat kawtelatorju ta' qbid ta' azjenda kummerċjali, il-qorti għandha tadottah u tahtar biss esperti sabiex jipprezentaw rapport jekk l-azjenda għandhiex tiġi mibjugħa jew amministrata.

Iffissar tar-rikors għas-smiġh.

306. Wara li jiġu mahlufa l-istimi u r-rapporti, l-qorti għandha, fi żmien ġimgħa tiffissa r-rikors għas-smiġh u, wara li tisma' l-partijiet, tiddeċiedi jekk kemm-il darba għandux ikun hemm il-bejgħ fl-irkant bil-qorti ta' l-azjenda kummerċjali jew li jiġi maħtur amministratur sabiex imexxi l-azjenda sakemm jithallas l-ammont dovut.

Iffissar tal-jum, lok u hin għall-bejgħ.

307. Fejn il-qorti tiddeċiedi li għandu jkun hemm il-bejgħ, hija għandha tiffissa jum, lok u hin għall-bejgħ ta' l-assjem shiħ bhala azjenda kummerċjali.

Hatra ta' amministratur.

308. Il-qorti għandha tahtar amministratur sabiex ikompli jamministra l-azjenda sakemm din tinbiegħ:

Iżda fejn fl-atti tal-mandat kawtelatorju jkun hemm amministratur diġà maħtur, dan għandu jiġi konfermat.

Applikabilità ta' l-artikoli 297 u 300.

309. L-artikoli 297 u 300 għandhom japplikaw *mutatis mutandis* għal dan il-mandat.

Fejn il-qorti tiddeċiedi li l-azjenda għandha tibqa' tiġi amministrata.

310. (1) Fejn il-qorti tiddeċiedi li l-azjenda għandha tibqa' tiġi amministrata sakemm isir il-hlas ta' l-ammonti dovuti, hija għandha tahtar amministratur u tagħti dawk l-ordnijiet u provvedimenti li thoss xierqa, meta jitqiesu d-debitu, u n-natura u l-valur ta' l-azjenda kummerċjali.

(2) L-amministratur maħtur għandu jieħu f'idejha l-azjenda u jkollu d-dritt li jbiegħ u jinnegozja fil-ġestjoni ordinarja, iżda għal kull deċiżjoni ta' natura straordinarja huwa għandu jagħmel talba għall-awtorizzazzjoni tal-qorti:

Iżda bank kummerċjali ma' jistax jiġi mahtur bhala amministratur.

Talba għall-bejgħ ta' l-azjenda.

311. (1) Minkejja d-disposizzjonijiet ta' l-artikolu 310, tul din il-hatra, l-amministratur, jekk jidhirlu li l-azjenda ser titlef il-valur tagħha fis-suq, jista' jagħmel talba lill-qorti sabiex tawtorizzah li jbiegħ l-azjenda kollha jew partijiet minnha.

(2) L-amministratur mahtur skond l-artikolu 310 għandu dritt għal dak il-hlas li l-qorti, fid-diskrezzjoni tagħha, jidhrilha li lill-jmiss meta jitqies il-valur ta' l-azjenda u l-hidma marbuta mal-ġestjoni tan-negozju.

Tifsira ta' azjenda kummerċjali.

312. Għall-finijiet ta' dan it-Titolu, il-frazi "azjenda kummerċjali" tfisser impriża kummerċjali ta' kull tip li tkun qed topera fil-kummerċ u tinkludi makkinarju, tagħmir, merkanzija, drittijiet tanġibbli u intanġibbli, mobbli, immobbli, liċenzi, drittijiet ta' l-awtur u l-avvjament."

18. Minnufih qabel l-artikolu 313, fit-Taqsima I fit-Tieni Ktieb tal-Kodiċi, minflok is-subintestatura "Sub-titolu II - Fuq il-Bejgħ fl-Irkant bil-Qorti" għandha tidhol din is-subintestatura li ġeja:

Sostituzzjoni ta' intestatura fit-Tieni Ktieb tal-Kodiċi.

"Sub-titolu IV - FUQ IL-BEJGH FL-IRKANT BIL-QORTI."

19. Minflok l-artikolu 313 tal-Kodiċi għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 313 tal-Kodiċi.

"Forma ta' l-avviż tal-bejgħ fl-irkant.

313. Ir-Registratur għandu jippubblika regolarment f'zewġ gazzetti, waħda bil-lingwa Maltija u l-oħra bil-lingwa Ingliża, listi tal-bejgħ fl-irkant li jkunu ser isiru u fihom jindika b'mod ċar il-hwejjeġ b'dak il-mod li l-pubbliku jkun infurmat sew sabiex l-interessi tal-partijiet jiġu protetti:

Iżda d-debitur, il-kreditur jew persuni oħra interessati jistgħu jippubblikaw u jinfurmaw, bi spejjeż tagħhom, kull bejgħ partikolari f'liema gazzetta jridu jew ixandru dan fi kwalunkwe mezz ieħor ta' xandir."

20. L-artikoli 314 u 315 tal-Kodiċi għandhom jithassru.

Thassir ta' l-artikoli 314 u 315 tal-Kodiċi.

Emenda ta' l-artikolu 316 tal-Kodiċi.

21. L-artikolu 316 tal-Kodiċi għandu jiġi enumerat mill-ġdid bħala l-artikolu 314, u s-subartikolu (3) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(3) Fil-każ ta' bejgħ fl-irkant ta' titoli elenkati f'*exchanges* ta' investiment rikonoxxuti, l-irkant għandu jsir skond il-proċeduri preskritti fir-regoli u *bye-laws* magħmulin skond l-artikoli 4(2) u 28(2) ta' l-Att dwar is-Swieq Finanzjarji."

Żjieda ta' l-artikoli 315 u 316 godda mal-Kodiċi.

22. Minnufih wara l-artikolu 314 tal-Kodiċi kif enumerat mill-ġdid, għandhom jiżdiedu dawn l-artikoli godda 315 u 316 li ġejjin:

"Stima tal-hwejjeġ li għandhom jinbiegħu fl-irkant.

315. (1) Qabel il-bejgħ fl-irkant ta' immobbli jew ta' jeddijiet imgħaqqdin ma' immobbli, jew ta' hwejjeġ mobbli tad-deheb jew tal-fidda, ta' ġawhar jew haġar fin jew ta' oġġetti prezzjużi oħra, u azjendi kummerċjali għandha dejjem issir stima.

(2) Għal hwejjeġ mobbli oħra, l-istima ssir biss meta hija mitluba mill-kreditur jew mid-debitur.

(3) Stima magħmula skond id-disposizzjonijiet ta' l-artikoli 297, 300 u 307 u li tkun qegħda fi proċess ta' bejgħ fl-irkant għandha tiġi aċċettata mill-qorti li tkun l-istima li għandha ssir għall-finijiet ta' dan l-artikolu.

L-istima ta' oġġetti tad-deheb jew tal-fidda għandha turi kemm jiswa l-materjal tal-haġa.

316. F'kull stima ta' hwejjeġ tad-deheb jew tal-fidda, ta' ġawhar jew haġar fin jew ta' oġġetti prezzjużi oħra, l-espert għandu jikkunsidra l-valur tal-materjal tal-haġa, u l-prezz tal-fattura, flimkien ma' kull karatteristika distintiva ta' l-imsemmi oġġett u jistima l-valur komplessiv tiegħu."

Sostituzzjoni ta' l-artikolu 317 tal-Kodiċi.

23. Minflok l-artikolu 317 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

"Ġarr tal-hwejjeġ mobbli għal-lok ta' l-irkant.

317. Il-kunsinnatarju uffiċjali għandu jiehru hsieb il-ġarr tal-hwejjeġ mobbli fil-lok ta' l-irkant, fil-jum ta' l-irkant, hekk li mill-inqas saġhtejn qabel ma jinfetax l-irkant dawn ikun jista' jarahom kulhadd."

24. Fl-artikolu 318 tal-Kodiċi, minflok il-kliem "l-irkant jista' jsir" għandhom jidhlu l-kliem "l-irkant ta' hwejjeg mobbli jista' jsir".

Emenda ta' l-artikolu 318 tal-Kodiċi.

25. L-artikolu 319 tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 319 tal-Kodiċi.

(a) minflok is-subartikolu (1) tiegħu għandu jidhlo dan is-subartikolu ġdid li ġej:

"(1) L-irkant għandu, salv l-eċċezzjonijiet previsti fl-artikoli preċedenti, jsir minn irkantatur pubbliku fil-preżenza tar-Reġistratur."; u

(b) minflok is-subartikolu (3) tiegħu għandhom jidhlu dawn is-subartikoli ġodda li ġejjin:

"(3) Offerta ma tibqax issehh malli tiġi aċċettata offerta oghla, għalkemm dik l-offerta oghla, wara, tiġi dikjarata nulla.

(4) L-irkantatur pubbliku jew *broker* ikollhom jedd għal dritt li jiġi ntaxxat mir-Reġistratur skond tariffa li tiġi stabbilita mill-Ministru responsabbli għall-ġustizzja.

(5) L-ebda offerta ma tista' tiġi aċċettata jekk tkun inqas minn sittin fil-mija (60%) tal-valur li bih l-oġġett mobbli, l-immobbli jew l-azjenda kummerċjali jkun ġie stmat.

(6) L-irkantatur pubbliku jkollu d-dritt jitlob li min ikun ser jagħmel offerta jkollu l-garanziji meħtieġa."

26. Minflok l-artikolu 320 tal-Kodiċi għandu jidhlo dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 320 tal-Kodiċi.

"Ma jistgħux jiġu aċċettati offerti *pro persona nominanda*, eċċ.

320. L-irkantatur għandu jieħu hsieb li ebda offerta ma tiġi aċċettata li ssir jew *pro persona nominanda* inkella minn persuni li huma notorjament inkapaċi li jwettqu l-obbligi mnissla mill-aġġudikazzjoni."

27. L-artikolu 322 tal-Kodiċi għandu jiġi mħassar.

Thassir ta' l-artikolu 322 tal-Kodiċi.

Sostituzzjoni ta' l-artikolu 323 tal-Kodiċi.

28. Minflok l-artikolu 323 tal-Kodiċi għandu jidhol dan li ġej:

"Kemm għandu jdum sejjer l-irkant.

323. Il-Ministru responsabbli għall-gustizzja għandu jistabbilixxi b'regolamenti ż-żmien li għandu jdum għaddej bejgħ b'irkant."

Thassir ta' l-artikoli 324 u 325 tal-Kodiċi.

29. L-artikoli 324 u 325 tal-Kodiċi għandhom jiġu mhassra.

Emenda ta' l-artikolu 326 tal-Kodiċi.

30. L-artikolu 326 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1), minnufih wara l-kliem "sabiex l-irkant jissokta" għandhom jidhlu l-kliem "f'jum ieħor li jiġi stabbilit mir-Registatur fi żmien ġimghatejn";

(b) fis-subartikolu (3), minflok il-kliem "sitt ijiem" għandhom jidhlu l-kliem "sebat ijiem"; u

(ċ) minnufih wara s-subartikolu (4) għandu jiżdied dan is-subartikolu (5) ġdid li ġej:

"(5) Il-qorti għandha tisma' lill-partijiet fuq it-talba għas-sospensjoni, iżda ma għandhiex tiddekreta r-rikors relattiv qabel ma jkun sar depożitu ta' l-ispejjeż kollha tal-bejgħ fl-irkant bil-qorti."

Thassir ta' l-artikolu 327 tal-Kodiċi.

31. L-artikolu 327 tal-Kodiċi għandu jiġi mhassar.

Emenda ta' l-artikolu 328 tal-Kodiċi.

32. Fl-artikolu 328 tal-Kodiċi, minnufih wara l-kliem "jew ta' bastimenti," għandhom jidhdu l-kliem "jew ta' azjendi kummerċjali,".

Emenda ta' l-artikolu 329 tal-Kodiċi.

33. Fis-subartikolu (1) ta' l-artikolu 329 tal-Kodiċi, minflok il-kliem "b'ċitazzjoni" għandhom jidhlu l-kliem "b'rikors".

Emenda ta' l-artikolu 331 tal-Kodiċi.

34. Fis-subartikolu (1) ta' l-artikolu 331 tal-Kodiċi, minnufih wara l-kliem "imgħaqdin ma' immobbli," għandhom jidhdu l-kliem "jew ta' azjendi kummerċjali,".

Emenda ta' l-artikolu 332 tal-Kodiċi.

35. Fl-artikolu 332 tal-Kodiċi, minflok il-kliem "jekk bil-permess tal-qorti jkun" għandhom jidhlu l-kliem "jekk ikun".

Sostituzzjoni ta' l-artikolu 333 tal-Kodiċi.

36. Minflok l-artikolu 333 tal-Kodiċi għandu jidhol dan l-

artikolu ġdid li ġejj:

"Offerta
animo
compensandi."

333. (1) Kull min għandu kreditu likwidu li jkun ġej minn sentenza, titolu eżekuttiv, kuntratt, jew obbligazzjoni bil-miktub ohra, jista' joffri *animo compensandi*.

(2) Kull min irid joffri *animo compensandi* għandu jirreġistra ruħu permezz ta' nota qabel il-ftuħ tal-bejgħ bl-irkant billi jagħmel dikjarazzjoni ġuramentata quddiem ir-Registratur fuq liema bażi jrid joffri *animo compensandi*.

(3) Kull min jista' joffri *animo compensandi* jista' jiġi notifikat minn kull min huwa interessat bil-bejgħ fl-irkant bil-qorti għall-inqas ġimghatejn qabel il-ġurnata tal-bejgħ u min ma jiġix notifikat jew ma jiġix notifikat fit-terminu jista' jeżerċita d-dritt taht l-artikolu 356."

37. Minflok l-artikolu 334 tal-Kodiċi għandu jidhol dan li ġejj:

Sostituzzjoni ta' l-artikolu 334 tal-Kodiċi.

"Offerta
animo
compensandi
taht
kondizzjoni."

334. Kull offerta *animo compensandi* ssir taht il-kondizzjoni li l-offerent għandu jobbliga ruħu li jiddepożita l-prezz jekk jiġi hekk deċiż mill-qorti."

38. Minflok l-artikolu 335 tal-Kodiċi għandu jidhol dan li ġejj:

Sostituzzjoni ta' l-artikolu 335 tal-Kodiċi.

"Oppozizzjoni
għall-offerta
animo
compensandi."

335. Kull oġġezzjoni għal talba għal offerta *animo compensandi* tista' ssir biss wara l-bejgħ. Ma jistgħux isiru oġġezzjonijiet qabel jew waqt il-bejgħ."

39. L-artikolu 336 tal-Kodiċi għandu jiġi mħassar.

Thassir ta' l-artikolu 336 tal-Kodiċi.

40. L-artikolu 337 tal-Kodiċi għandu jiġi emendat kif ġejj:

Emenda ta' l-artikolu 337 tal-Kodiċi.

(a) fis-subartikolu (1), minflok il-kliem "jitlob l-approvazzjoni tat-tpaċija u għandu jiddepożita" għandhom jidhlu l-kliem "jitlob permezz ta' rikors u kontestwali ċedola, l-approvazzjoni tat-tpaċija u jiddepożita"; u

(b) fis-subartikolu (3), minflok il-kliem "u jieħu lura l-ispejjeż għall-kanonizzazzjoni" għandhom jidhlu l-kliem "u

jieħu lura l-ispejjeż legali u l-ispejjeż għall-kanonizzazzjoni".

Emenda ta' l-artikolu 338 tal-Kodiċi.

41. L-artikolu 338 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) minflok is-subartikolu (1), għandu jidhol dan li ġej:

"(1) It-talba msemmija għandha tiġi pubblikata fil-Gazzetta tal-Gvern u notifikata lid-debitur u lill-kredituri kollha magħrufa, inklużi dawk li b'talba tagħhom ikunu saru mandati ta' qbid jew ta' sekwestru jew ta' impediment tas-safar kif ukoll dawk imsemmija fil-mandat ta' qbid li wassal għall-bejgħ fl-irkant bil-qorti.";

(b) fis-subartikolu (2), minflok il-kliem "Il-persuni hekk notifikati għandhom żmien tliet ijiem" għandhom jidhlu l-kliem "Kull min jista' jkollu interess u l-persuni hekk notifikati għandhom żmien għoxrin ġurnata"; u

(ċ) minflok is-subartikoli (3) sa (7), għandhom jidhlu dawn is-subartikoli li ġejjin:

"Kondizzjoni li tista' tagħmel il-qorti meta tapprova t-tpaċija.

(3) Il-qorti, meta tapprova t-tpaċija, tista' tordna lix-xerrej li jagħti garanzija tajba li jiddepożita fil-qorti l-prezz flimkien ma' l-imghaxijiet, jekk jiġi hekk deċiż.

(4) Meta l-qorti tilqa' t-talba, kull min għandu interess jikkontesta jista', fi żmien għoxrin ġurnata, jippreżenta appell permezz ta' rikors, liema appell għandu jiġi appuntat u deċiż fi żmien tliet xhur mid-data tad-digriet.

(5) Fejn il-Qorti ta' l-Appell tirrevoka d-deċiżjoni dwar li ssir offerta *animò compensandi*, hija għandha tibgħat l-atti lura lill-ewwel qorti."

Sostituzzjoni ta' l-artikolu 339 tal-Kodiċi.

42. Minflok l-artikolu 339 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

"Konkurs tal-kredituri.

339. Meta jkun hemm iktar minn kreditur wieħed li jkun għamel talba sabiex jithallas mir-rikavat b'mod li jkun hemm lok għall-konkurs tal-kredituri, dik il-qorti għandha tiftaħ il-proċess quddiemha stess skond id-disposizzjonijiet ta' l-artikoli 416 *et sequitur*."

- 43.** Fl-ewwel proviso tas-subartikolu (1) ta' l-artikolu 340 tal-Kodiċi, minflok il-kliem "kull min ikun għamel" u "fi żmien sitt ijiem" għandhom jidhlu l-kliem "kull min jagħmel" u "fi żmien sebat ijiem" rispettivament. Emenda ta' l-artikolu 338 tal-Kodiċi.
- 44.** Minflok l-artikolu 342 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej: Sostituzzjoni ta' l-artikolu 342 tal-Kodiċi.
- 342.** Jekk wara li jkunu thallsu l-kreditu u l-ispejjeż, ikun baqa' bilanċ, il-qorti għandha, fuq talba tad-debitur, tordna li dan il-bilanċ jiġi mogħti lilu." "Hlas tal-bilanċ lid-debitur."
- 45.** Minflok l-artikolu 343 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej: Sostituzzjoni ta' l-artikolu 343 tal-Kodiċi.
- 343.** Jekk matul il-bejgħ jinstab illi nġiebet somma biżżejjed għall-hlas tal-kreditu u għall-ispejjeż ta' l-irkant, ir-Registratur għandu jwaqqaf il-bejgħ minnufih. Fuq talba verbali tad-debitur il-qorti għandha tordna li huwa jingħata lura l-hwejjeġ mhux mibjugħa." "Twaqqif ta' l-irkant u radd lid-debitur tal-hwejjeġ mhux mibjugħa."
- 46.** Minflok l-artikolu 345 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej: Sostituzzjoni ta' l-artikolu 345 tal-Kodiċi.
- 345.** Fil-każ ta' qbid ta' merkanzija li tista' tithassar jew ta' hwejjeġ oħra fi stat li kull ma jmorru iżjed jithassru jew ta' oġġetti li ser johorġu mill-moda jew li ser jispiċċaw jiġu teknoloġikament ta' mingħajr użu, il-qorti tista', fuq talba ta' kull min huwa interessat jew tal-kunsinnatarju uffiċjali, tordna l-bejgħ ta' dik il-merkanzija jew oġġetti oħra b'dak il-mod li jidhrilha xieraq, inkluż li dan isir minnufih mir-Registratur jew mill-kunsinnatarju uffiċjali." "Bejgħ ta' merkanzija li tista' tithassar."
- 47.** L-artikolu 348 tal-Kodiċi għandu jiġi mħassar. Thassir ta' l-artikolu 348 tal-Kodiċi.
- 48.** Fl-artikolu 349 tal-Kodiċi, minflok il-kliem "il-marixxal" għandhom jidhlu l-kliem "l-uffiċjal ehekuttiv tal-qorti". Emenda ta' l-artikolu 349 tal-Kodiċi.
- 49.** Fl-artikolu 350 tal-Kodiċi, minflok il-kliem "tal-marixxal" għandhom jidhlu l-kliem "ta' l-uffiċjal eżekuttiv tal-qorti". Emenda ta' l-artikolu 350 tal-Kodiċi.

Emenda ta' l-artikolu 352 tal-Kodiċi.

50. Fis-subartikolu (1) ta' l-artikolu 352 tal-Kodiċi, minflok il-kliem "għew mogħtija." għandhom jidhlu l-kliem "għew mogħtija, f'liema każ il-qorti għandha fuq talba b'rikors tgħaddi sabiex wara li tisma' l-partijiet tiddikjara null u mingħajr effett dak it-trasferiment u tagħti dawk il-provvedimenti li thoss opportuni."

Emenda ta' l-artikolu 353 tal-Kodiċi.

51. L-artikolu 353 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1), minnufih wara l-kliem "l-irkant ta' l-immobbli" għandhom jidhdu l-kliem "jew ta' azjenda kummerċjali"; u

(b) fis-subartikolu (2), minnufih wara l-kliem "l-irkant ta' l-immobbli" għandhom jidhdu l-kliem "jew azjenda kummerċjali".

Sostituzzjoni ta' l-artikolu 354 tal-Kodiċi.

52. Minflok l-artikolu 354 tal-Kodiċi għandu jidhol dan l-artikolu għdid li ġej:

"Eżekuzzjoni ta' sentenza tal-Qorti tal-Maġistrati (Malta) fuq immobbli.

354. (1) Meta s-sentenza li tagħha tintalab l-eżekuzzjoni tkun sentenza mogħtija mill-Qorti tal-Maġistrati (Malta), l-eżekuzzjoni, kemm-il darba għandha ssir fuq immobbli jew jeddijiet imgħaqqdin ma' immobbli, issir mill-Prim'Awla tal-Qorti Ċivili.

(2) L-istess regola tgħodd fil-każ li tintalab l-eżekuzzjoni ta' żewġ sentenzi jew iżjed, li l-ammont tagħhom flimkien, mingħajr ma jitqiesu l-ispejjeż, ikun jiskorri ssomma ta' hamest elef lira."

Emenda ta' l-artikolu 355 tal-Kodiċi.

53. L-artikolu 355 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minnufih wara l-kliem "ta' hwejjeġ immobbli" għandhom jidhdu l-kliem "u ta' azjenda kummerċjali"; u

(b) is-subartikolu (2) għandu jithassar u s-subartikolu (3) għandu jiġi enumerat mill-għdid bhala s-subartikolu (2).

Emenda ta' l-artikolu 356 tal-Kodiċi.

54. L-artikolu 356 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (3), minflok il-kliem "dak ta' azjenda" għandhom jidhlu l-kliem "dak ta' azjenda kummerċjali"; u

(b) minnufih wara s-subartikolu (7) tiegħu għandu

jidhol is-subartikolu (7A) ġdid li ġej:

"(7A) Fejn din l-azzjoni tiġi eżerċitata u l-bejgħ iseħħ, it-terza persuna li tkun akkwistat il-pussess tal-ħaġa immobbli li favur tiegħu tkun ġiet oriġinarjament liberata l-proprjetà, li ma jkunx ukoll l-istess persuna li fit-tieni bejgħ ġiet liberata favur tiegħu, għandu jithallas mir-rikavat tat-tieni bejgħ l-ammont tal-flus li jkun hareġ flimkien ma' l-ispejjeż involuti qabel kull kreditur ieħor:

Iżda meta t-terza persuna li tkun akkwistat il-pussess tal-ħaġa immobbli fit-tieni bejgħ bi prezz oghla tkun l-istess persuna li favur tiegħu tkun ġiet oriġinarjament liberata l-proprjetà, dik it-tielet persuna tkun meħtieġa li tiddepożita fil-qorti d-differenza fil-prezz biss, u mhux il-prezz sħiħ."

55. Minnufih wara l-artikolu 356 tal-Kodiċi għandu jiżdied l-artikolu ġdid li ġej:

Żieda ta' artikolu 357 ġdid fil-Kodiċi.

"Żgumbrament wara l-liberazzjoni.

357. Il-liberazzjoni ta' l-immobbli tikkostitwixxi minnha nnifisha titolu eżekuttiv u jekk id-debitur eżekutat jew terza persuna li qed tokkupa l-fond bla titolu jonqos milli jivvaka l-fond liberat, ix-xerrej ikollu l-jedd, fi żmien erba' xhur mil-liberazzjoni, li jitlob il-ħruġ ta' mandat ta' żgumbrament abbażi ta' l-imsemmi titolu ta' liberazzjoni."

56. Il-kliem tas-subintestatura "Sub-titolu III - Fuq il-Mandat ta' Arrest tal-Persuna ta' Debitur" li jinsabu minnufih wara l-artikolu 357 tal-Kodiċi, kif miżjud b'dan l-Att, għandhom jithassru.

Thassir ta' kliem ta' subintestatura fil-Kodiċi.

57. Minnufih wara l-artikolu 357 tal-Kodiċi, kif miżjud b'dan l-Att, għandha tidhol din is-subintestatura ġdida u dawn l-artikoli ġodda li ġejjin:

Żjieda ta' Sub-titolu ġdid u l-artikoli 358 sa 364 ġodda fil-Kodiċi.

"Sub-titolu V

FUQ IL-BEJGH APPROVAT MILL-QORTI
GĦAL INĠENJI TA' L-AJRU, VAPURI
U BASTIMENTI

Bejgh privat ta' ingenji ta' l-ajru, vapuri u bastimenti.

358. Minkejja kull disposizzjoni ohra ta' dan il-Kodiċi, il-Qorti tista', wara rikors ta' kull kreditur b'titolu eżekuttiv, tapprova l-bejgh privat ta' ingenju ta' l-ajru, vapur jew bastiment, favur xerrej identifikat u bil-hlas ta' prezz determinat.

Stimi minn stimaturi indipendenti u ta' fama tajba.

359. Ir-rikorrent għandu flimkien mar-rikors jissottometti stimi minn żewġ stimaturi indipendenti u ta' fama tajba li jikkonfermaw il-valur ta' l-ingenju ta' l-ajru, vapur jew bastiment; ir-rikorrent għandu wkoll iġib quddiem il-Qorti xiedha li dak il-bejgh privat huwa fl-interess tal-kredituri kollha magħrufin u li l-prezz offrut mix-xerrej propost, liema prezz għandu jkun oghla minn sittin fil-mija ta' l-oghla valur smat, huwa raġonevoli fiċ-ċirkostanzi tal-każ.

Persuni mitlubin jagħmlu sottomissjonijiet.

360. Ma jingħata l-ebda ordni mill-Qorti qabel ma r-rikors jiġi notifikat lil dawk il-persuni li l-Qorti, fiċ-ċirkostanzi u skond l-informazzjoni mogħtija mir-rikorrent, jidhrilha li huwa xieraq li jagħmlu s-sottomissjonijiet tagħhom.

Smigh.

361. Il-Qorti għandha tappunta r-rikors għas-smigh fi żmien għaxart ijiem mill-preżentata.

Meta l-Qorti tilqa' t-talba fir-rikors.

362. Jekk il-Qorti tilqa' it-talba fir-rikors u tapprova li jsir bejgh privat skond id-disposizzjonijiet ta' dan is-Sub-titolu, il-Qorti għandha fid-digriet tagħha ta' approvazzjoni tahtar persuna li b'hekk tkun intitolata tittrasferixxi l-ingenju ta' l-ajru, il-vapur jew il-bastiment skond il-pattijiet u l-kondizzjonijiet approvati mill-Qorti, bħallikieku kien is-sid reġistrat tagħhom.

Depozitu tal-prezz fil-Qorti.

363. Il-persuna hekk mahtura mill-Qorti għandha tiddepożita l-prezz fil-Qorti fi żmien sebat ijiem mid-data ta' meta l-bejgh jiġi finalizzat.

Titolu li ma jkunx aggravat minn xi privileġġ jew piż.

364. Il-bejgħ ta' l-ingenju ta' l-ajru, tal-vapur jew tal-bastiment skond id-disposizzjonijiet ta' dan is-Sub-titolu jagħti lix-xerrej titolu li ma jkunx aggravat minn kull privileġġ jew piż, u wara l-bejgħ il-pretensjonijiet jew talbiet kollha kontra l-ingenju ta' l-ajru, il-vapur jew il-bastiment jistgħu jiġu eżegwiti kontra ir-rikavat tal-bejgħ biss."

58. Minflok il-kliem tas-subintestatura "Sub-titolu IV - Fuq il-Mandat ta' Sekwestru Eżekuttiv" li jinsabu minnufih qabel l-artikolu 375 tal-Kodiċi, għandhom jidhlu l-kliem "Sub-titolu VI - Fuq il-Mandat ta' Sekwestru Eżekuttiv".

Sostituzzjoni ta' subintestatura fil-Kodiċi.

59. Minflok l-artikolu 376 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 376 tal-Kodiċi.

"X" għandu jkun fih il-mandat ta' sekwestru.

376. (1) Il-kreditur għandu, fir-rikors għall-ħruġ ta' mandat ta' sekwestru, jindika sew l-isem u l-kunjom tad-debitur, u dettalji oħra dwar id-debitur kif jista' jkun ordnat mill-Ministru responsabbli għall-ġustizzja sabiex id-debitur ikun jista' jiġi identifikat mis-sekwestratarju.

(2) Il-mandat għandu:

(a) jindika l-isem u l-kunjom tad-debitur u xi dettalji oħra mniżżlin fir-rikors għall-identifikazzjoni tad-debitur, inkluża fejn huwa possibbli, n-numru tal-karta ta' l-identità jew in-numru tar-reġistrazzjoni tal-kumpannija;

(b) jindika s-somma jew il-ħaġa dovuta;

(ċ) jindika t-titolu li bis-saħħa tiegħu l-kreditur jitlob l-eżekuzzjoni;

(d) jordna lis-sekwestratarju li ma jhallasx jew ma jagħtix lid-debitur, jew lil xi persuna oħra, il-flus jew il-ħwejjeg li jistgħu jinsabu għandu u li huma tad-debitur, taħt piena ta' hłas tad-danni u l-imghax; u

(e) jordna lis-sekwestratarju biex jiddepożita, bi spejjeż tad-debitur fi żmien wiehed u ghoxrin jum min-notifika tal-mandat, mar-Registatur xi flus jew hwejjeġ li jkunu proprjetà tad-debitur, issekwestrati bil-mandat.

(3) Jekk is-sekwestru ma jkunx fih dawn id-dettalji, ikun *ipso jure* null."

Emenda ta' l-artikolu 377 tal-Kodiċi.

60. Fis-subartikolu (1) ta' l-artikolu 377 tal-Kodiċi, minflok il-kliem "bil-mezz tal-marixxall, lis-sekwestratarju" għandhom jidhlu l-kliem "permezz ta' l-uffiċjal eżekuttiv tal-qorti, lis-sekwestratarju jew bil-mezzi elettronici li jiġu ordnati mill-Ministru responsabbli għall-ġustizzja".

Sostituzzjoni ta' l-artikolu 378 tal-Kodiċi.

61. Minflok l-artikolu 378 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

"Dikjarazzjoni tas-sekwestratarju. Żmien għal din id-deċiżjoni.

378. Sekwestratarju li, għalkemm ikun fil-pussess ta' flus jew hwejjeġ oħra, ta' proprjetà tad-debitur, jew dovuti lid-debitur, li setgħu ġew issekwestrati bil-mandat, u li ma jagħmilx id-depożitu msemmi fl-artikolu 376 fi żmien il-perjodu hemm stipulat, ikun responsabbli għad-danni u l-imghax favur il-kreditur u l-qorti tista', wara rikors magħmul għal dak il-għan mill-kreditur, toħroġ dawk l-ordinijiet li jistgħu jkunu meħtieġa, inkluż l-arrest personali tal-persuna għal perjodu li ma jaqbiżx it-tliet xhur, biex iġġieghlu jiddepożita dawk il-beni."

Sostituzzjoni ta' l-artikolu 379 tal-Kodiċi.

62. Minflok l-artikolu 379 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

"Sejha lis-sekwestratarju biex jiddepożita.

379. (1) Fil-każ ta' sekwestru ta' flus, is-sekwestratarju jista', qabel ma jqiegħed fil-qorti dawk il-flus, iżomm l-ispejjeż ta' dak id-depożitu u, fil-każ ta' sekwestru ta' hwejjeġ mobbli oħra, hu jista' jitlob lura dawk l-ispejjeż bi privileġġ fuq il-hwejjeġ depożitati.

(2) Fil-każijiet kollha, is-sekwestrant u s-sekwestrat għandhom jiġu notifikati bid-depożitu."

- 63.** L-artikolu 380 tal-Kodiċi għandu jiġi mħassar. Thassir ta' l-artikolu 380 tal-Kodiċi.
- 64.** L-artikolu 381 tal-Kodiċi għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 381 tal-Kodiċi.
- (a) fis-subartikolu (1), paragrafu (ċ), minnufih wara l-kelma "karità" għandhom jiżdiedu l-kliem "jew bħala donazzjoni";
- (b) fis-subartikolu (1), minflok il-paragrafu (f) għandhom jidhlu dawn il-paragrafi li ġejjin:
- "(f) fuq flus li jkunu tqiegħdu għad-disposizzjoni tas-sekwestrat b'kuntratt ta' self għall-bini, kostruzzjoni u manteniment ta' djar intenzjonati għall-abitazzjoni tas-sekwestrat;
- (g) fuq faċilitajiet bankarji ta' *overdraft* esklużi *l-credit cards* li jkunu qed joperaw bihom azjendi kummerċjali mmexxija mis-sekwestrat;
- (h) fuq garanziji bankarji u ittri ta' kreditu."; u
- (ċ) is-subartikolu (2) għandu jithassar, u s-subartikoli (3) u (4) għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (2) u (3) rispettivament.
- 65.** Fis-subartikolu (1) ta' l-artikolu 382 tal-Kodiċi, minflok il-kliem "il-qorti tista', fuq rikors ta' kreditur, tordna l-ħruġ ta' mandat ta' sekwestru" għandhom jidhlu l-kliem "il-ħruġ ta' mandat ta' sekwestru jkun jghodd". Emenda ta' l-artikolu 382 tal-Kodiċi.
- 66.** Minflok l-artikolu 383 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej: Sostituzzjoni ta' l-artikolu 383 tal-Kodiċi.
- "Is-sekwestru eżekuttiv m'huwiex prorogabbli. **383.** Il-mandat ta' sekwestru m'huwiex prorogabbli u jibqa' fis-seħh sakemm jiġi mħassar b'digriet tal-qorti."
- 67.** Minflok il-kliem tas-subintestatura "Sub-titolu V - Fuq il-Mandat ta' Żgumbrament jew ta' Tkeċċija minn Beni Immobili" li jinsabu minnufih qabel l-artikolu 384 tal-Kodiċi, għandhom jidhlu l-kliem "Sub-titolu VII - Fuq il-Mandat ta' Żgumbrament jew ta' Tkeċċija minn Beni Immobili". Sostituzzjoni ta' subintestatura fil-Kodiċi.
- 68.** Fl-artikolu 384 tal-Kodiċi, minflok il-kliem "il-marixxall" kull fejn dawn jinsabu, għandhom jidhlu l-kliem "l-uffiċjal eżekuttiv tal-qorti". Emenda ta' l-artikolu 384 tal-Kodiċi.

Sostituzzjoni ta' subintestatura fil-Kodiċi.

69. Minflok il-kliem tas-subintestatura "Sub-titolu VI - Fuq il-Mandat *In Factum*" li jinsabu minnufih qabel l-artikolu 385 tal-Kodiċi, għandhom jidhlu l-kliem "Sub-titolu VIII - Fuq il-Mandat *In Factum*".

Sostituzzjoni ta' l-artikolu 385 tal-Kodiċi.

70. Minflok l-artikolu 385 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

"Mandat *in factum*."

385. (1) Fl-eżekuzzjoni tal-mandati *in factum*, l-uffiċjal eżekuttiv tal-qorti għandu jimxi bħal ma jkun ġie ordnat fil-mandat.

(2) Il-mandat għandu jkun fih l-ordni li l-eżekutat għandu jiġi meħud il-habs, sabiex hemm jinżamm bi spejjeż tiegħu nnifsu, sakemm ma jagħmilx il-fatt ordnat b'sentenza, jew sakemm il-qorti jidhrilha li hu meħtieġ sabiex tiżgura l-eżekuzzjoni ta' dak il-fatt.

(3) Il-mandat m'għandux jinhareg hlief b'ordni espressa tal-qorti mogħtija fuq talba magħmula b'rikors mill-kreditur.

(4) Il-qorti għandha biss toħroġ il-mandat jekk tkun sodisfatta li l-kreditur ma għandux mezz ieħor ta' eżekuzzjoni."

Emenda ta' l-artikolu 387 tal-Kodiċi.

71. L-artikolu 387 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1), minflok il-kliem "il-marixxal" u "ta' sebat ijiem" għandhom jidhlu l-kliem "l-uffiċjal eżekuttiv tal-qorti" u "ta' erbat ijiem" rispettivament;

(b) fis-subartikolu (2), minflok il-kliem "sebat ijiem" għandhom jidhlu l-kliem "erbat ijiem"; u

(ċ) fis-subartikolu (3), minflok il-kliem "Il-marixxal" għandhom jidhlu l-kliem "L-uffiċjal eżekuttiv tal-qorti".

Żjieda ta' subintestatura ġdida fil-Kodiċi.

72. Minnufih wara l-artikolu 388 tal-Kodiċi, għandha tidhol din is-subintestatura ġdida li ġejja:

"Sub-titolu IX

FUQ IL-MANDAT TA' DETENZJONI
TA' INĠENJI TA' L-AJRU EŻEKUTTIV".

Żjieda ta' l-artikoli 388A u 388B fil-Kodiċi.

73. Minnufih wara s-subintestatura ġdida tas-Sub-titolu VIII,

għandhom jiziedu dawn l-artikoli 388A u 388B li ġejjin:

"Il-mandat
isir b'rikors.

388A. Mandat ta' detenzjoni ta' inġenji ta' l-ajru eżekuttiv isir permezz ta' rikors skond id-disposizzjonijiet ta' l-artikoli 858 u 860:

Izda r-rikors għandu jkun fih deskrizzjoni dettaljata ta' l-inġenju ta' l-ajru li tiegħu qed jintalab il-bejgħ fl-irkant, inkluż il-mod li bih ġie akkwistat u kull dritt u piż li hemm fuqu.

Il-qorti
taqta' dwar
il-bejgħ jew
tiffissa
terminu
għall-hlas.

388B. (1) Il-qorti għandha, fuq talba ta' mandat ta' detenzjoni, tistabbilixxi jekk għandhiex tordna l-bejgħ ta' l-imsemmi oġġett inkella li tiffissa terminu li fih id-debitur għandu jhallas l-ammont dovut.

(2) Meta l-qorti tordna dak il-bejgħ, hija għandha ssegwi l-proċeduri stabbiliti fl-artikoli dwar il-bejgħ fl-irkant bil-qorti.

(3) Meta l-qorti tiffissa terminu għall-hlas mid-debitur, hija għandha tordna li l-mandat jibqa' definittivament isehh sakemm dan isir.

(4) Meta t-terminu msemmi jgħaddi inutilment, il-qorti għandha fuq talba ta' parti interessata tordna l-bejgħ skond id-disposizzjonijiet tas-subartikolu (2)."

74. Minnufih wara l-artikolu 388B tal-Kodiċi għandha tiżdied is-subintestatura ġdida u l-artikoli 388Ċ u 388D ġodda li ġejjin:

Żjieda ta'
subintestatura u
l-artikoli 388Ċ u
388D ġodda fil-
Kodiċi.

"Sub-titolu X

FUQ IL-MANDAT TA' ARREST EŻEKUTTIV
TA' BĊEJJEĊ TAL-BAĦAR

"Il-mandat
isir b'rikors.

388Ċ. Mandat ta' arrest eżekuttiv ta' bċejjeċ tal-baħar isir permezz ta' rikors skond id-disposizzjonijiet ta' l-artikoli 858 u 860.

Il-qorti taqta' dwar il-bejgħ jew tiffissa terminu għall-hlas.

388D. (1) Il-qorti għandha, fuq talba ta' mandat ta' arrest, tistabbilixxi jekk għandhiex tordna l-bejgħ ta' l-imsemmi oġġett inkella li tiffissa terminu li fih id-debitur għandu jhallas l-ammont dovut.

(2) Meta l-qorti tordna dak il-bejgħ, hija għandha ssegwi l-proċeduri stabbiliti fl-artikoli dwar il-bejgħ fl-irkant bil-qorti.

(3) Meta l-qorti tiffissa terminu għall-hlas mid-debitur, hija għandha tordna li l-mandat jibqa' definittivament isehh sakemm dan isir.

(4) Meta t-terminu msemmi jgħaddi inutilment, il-qorti għandha fuq talba ta' parti interessata tordna l-bejgħ skond id-disposizzjonijiet tas-subartikolu (2).".

Żjieda ta' subintestatura ġdida fil-Kodiċi.

75. Minnufih wara l-artikolu 388D tal-Kodiċi, għandha tiżdied din is-subintestatura ġdida li ġejja:

"Sub-titolu XI

FUQ IL-MANDATI *IN PROCINCTU*".

Żjieda ta' l-artikolu 388E ġdid fil-Kodiċi.

76. Minnufih wara s-subintestatura ġdida tas-Sub-Titolu XI, għandu jiżdied dan l-artikolu 388E ġdid li ġej:

"Il-qorti tista' tohroġ ordnijiet oħra.

388E. (1) Bla ħsara għal disposizzjonijiet oħra li jinsabu fit-Titolu VII ta' dan il-Kodiċi, il-qorti tista' fuq talba tal-parti, tohroġ dawk l-ordnijiet lir-Registatur li hija tqis neċessarji sabiex jiġu eżegwiti l-ordnijiet li hemm fis-sentenza:

Iżda dan il-mandat m'għandux jinħareġ hlief wara rikors mill-kreditur għal dan il-għan u wara li l-qorti tkun sodisfatta li l-kreditur ma għandu ebda mezz ta' eżekuzzjoni ieħor.

(2) Ir-rikors għandu jkun fih b'mod ċar ir-raġuni għaliex hemm bżonn ta' dawn l-ordnijiet u għandu jiġi dekretat dwar dan wara li jiġi notifikat lid-debitur, li jkollu erbat ijiem żmien sabiex iwieġeb.".

77. Minflok il-kliem tas-subintestatura "Sub-titolu VII - Fuq ir-Rendikont u l-Likwidazzjoni ta' Frottijiet" li jinsabu minnufih qabel l-artikolu 389 tal-Kodiċi, għandhom jidhlu l-kliem "Sub-titolu XII - Fuq ir-Rendikont u l-Likwidazzjoni ta' Frottijiet".

Sostituzzjoni ta' subintestatura fil-Kodiċi.

78. Minnufih wara l-artikolu 742A tal-Kodiċi għandhom jiżdiedu dawn l-artikoli 742B sa 742D ġodda li ġejjin:

Żieda ta' l-artikoli 742B sa 742D ġodda mal-Kodiċi.

"Ġurisdizzjoni *in rem* kontra vapuri jew bastimenti.

742B. Bla ħsara ta' fejn il-liġi espressament tiddisponi xort'oħra, il-qrati ċivili f'Malta għandhom ġurisdizzjoni *in rem* kontra vapuri jew bastimenti fit-talbiet marittimi li ġejjin:

(a) kull pretensjoni għall-pussess, l-proprjetà jew it-titolu għal jew ta' vapur jew għall-proprjetà ta' xi sehem fih;

(b) kull kwistjoni li tinħoloq bejn komproprjetarji ta' vapur dwar l-proprjetà, il-pussess, it-thaddim jew id-dhul ta' dak il-vapur;

(ċ) kull pretensjoni rigward ipoteka navali, ipoteka jew piż fuq vapur jew fuq xi sehem fih;

(d) kull pretensjoni li tinħoloq mill-kuntratt tal-bejgħ tal-vapur;

(e) kull pretensjoni għal ħsara li tkun saret lil vapur;

(f) kull pretensjoni dwar ħsara magħmula jew ikkawżata minn vapur, kemm f'kollizzjoni kif ukoll xort'oħra;

(g) kull pretensjoni għal telf ta' ħajja jew korriment tal-persuna magħmulin, kemm fuq l-art kif ukoll fil-baħar, minn vapur jew li jiġru f'konnessjoni mat-thaddim ta' xi vapur jew li jiġu sofferti bħala konsegwenza ta' xi difett f'vapur jew fit-tagħmir jew apparat tiegħu jew bħala konsegwenza ta' xi ghemil ħażin, negligenza jew ommissjoni ta' -

(i) is-sidien, in-noleġġaturi jew il-persuni li jkollhom il-pussess jew il-kontroll ta' vapur; jew

(ii) il-kaptan jew l-ekwipaġġ ta' vapur, jew kull persuna oħra li s-sidien, in-noleġġaturi jew il-persuni li jkollhom il-pussess jew il-kontroll ta' vapur huma responsabbli għall-għemil hażin, negliġenza jew ommissjoni ta' dik il-persuna,

li jkun għemil, att ta' negliġenza jew ommissjoni fin-navigazzjoni jew immaniġġar tal-vapur, fit-tagħbija, ġarr jew hatt ta' merkanzija, fi jew mill-vapur, jew fl-imbark, ġarr jew żbark ta' persuni fuq, fi jew mill-vapur;

(h) kull pretensjoni għat-telf ta' jew hsara lill-merkanzija, inklużi l-bagalji, li tingarr fuq vapur;

(i) kull pretensjoni li tinholoq minn xi ftehim li jirrigwarda l-ġarr ta' merkanzija abbord jew l-użu jew il-kiri ta' vapur, kemm permezz ta' *charter party* jew xort'oħra;

(j) kull pretensjoni ta' natura ta' operazzjonijiet ta' salvataġġ jew xi ftehim ta' salvataġġ inkluż, jekk ikun applikabbli, l-kumpens speċjali li għandu x'jaqsam ma' operazzjonijiet ta' salvataġġ rigward vapur li bih innifsu jew bil-merkanzija tiegħu hedded li jagħmel hsara lill-ambjent;

(k) kull pretensjoni dwar -

(i) hsara jew theddida ta' hsara kkawżata mill-vapur lill-ambjent, il-linja tal-kosta jew interessi relatati;

(ii) miżuri li jittieħdu biex jipprevjenu, inaqqsu jew ineħħu dik il-ħsara; u għall-kumpens għal dik il-ħsara;

(iii) l-ispejjeż, li jkunu fil-fatt saru jew li jkunu ser isiru, għall-miżuri raġonevoli biex l-ambjent jerġa' jingieħ kif kien;

(iv) telf li jkunu sofrew jew li x'aktarx ser isofru terzi f'konnessjoni ma' dik il-ħsara; u

(v) għall-ħsara, spejjeż jew telf ta' għamla simili għal dawk elenkati fis-subparagrafi (i) sa (iv);

(l) kull pretensjoni dwar in-nefqa jew l-ispejjeż li għandhom x'jaqsmu mat-tluġħ, it-tneħħija, l-irkuprar, il-qirda ta' vapur jew l-operazzjoni biex ma jkunx ta' ħsara, liema vapur jkun għereq, innawfraga, inkalja jew ġie abbandunat, inkluża kull haġa li tkun qieghda jew kienet abbord dak il-vapur, u n-nefqa jew l-ispejjeż li għandhom x'jaqsmu maż-żamma ta' vapur abbandunat u l-manteniment ta' l-ekwipaġġ tiegħu;

(m) kull pretensjoni li għandha x'taqsam ma' rmonk rigward vapur;

(n) kull pretensjoni li għandha x'taqsam ma' pilutaġġ rigward vapur;

(o) kull pretensjoni rigward merkanzija, materjal, proviżjonijiet, *bunkers*, provvisti u neċessitajiet forniti lil vapur għat-tħaddim, immaniġġar, żamma u manutenzjoni tiegħu;

(p) kull pretensjoni rigward il-kostruzzjoni, il-kostruzzjoni mill-ġdid, it-tiswija, il-konversjoni jew l-ekwipaġġar ta' vapur;

(q) kull pretensjoni rigward drittijiet u spejjeż tal-port, tal-baċir jew drittijiet ohra portwali;

(r) kull pretensjoni mill-kaptan, mill-uffiċjali, jew minn membru ta' l-ekwipaġġ, jew mill-ekwipaġġ ta' vapur, għas-salarji u flejjes ohra dovuti lilhom rigward l-impjieġ tagħhom fuq il-vapur inklużi l-ispejjeż ta' rimpatrijazzjoni u kontribuzzjonijiet tas-sigurtà soċjali li jithallsu f'isimhom;

(s) kull pretensjoni magħmula mill-kaptan, mill-persuna li timbarka l-merkanzija, min-noleġġatur jew mill-aġent rigward infieq magħmul minnhom għall-vapur jew għas-sidien tiegħu;

(t) kull pretensjoni dwar kummissjonijiet, sensarija, jew drittijiet ta' aġenzija li jithallsu rigward il-vapur, minn jew f'isem is-sid tal-vapur jew id-*demise charterer*;

(u) kull pretensjoni li tinholoq minn att li hu jew li hu pretiż li hu att ta' avarija ġenerali;

(v) kull pretensjoni li tinholoq minn kambju marittimu;

(w) kull pretensjoni dwar il-konfiska jew il-kundanna ta' vapur jew ta' merkanzija li qed tingarr jew ingarret jew li jkun sar attentat biex tingarr f'vapur jew biex jingħata lura vapur jew merkanzija bħal dik wara li jkunu nqabdu;

(x) kull pretensjoni dwar *premia* ta' l-assigurazzjoni, inklużi *mutual insurance calls*, rigward il-vapur li jithallsu minn jew f'isem is-sid tal-vapur jew id-*demise charterer*;

Kap. 234. (y) kull pretensjoni għal drittijiet u spejjeż oħra dovuti lir-Registratur Ġenerali ta' Bastimenti u Bahrin li jinholqu skond id-disposizzjonijiet ta' l-Att dwar il-Bastimenti Merkantili, u kull pretensjoni għal drittijiet ta' tunnellaġġ.

Azzjoni *in rem* fil-każijiet imsemmijin fl-artikolu 742B(a) sa (ċ). **742Ċ.** Fil-każijiet imsemmijin fl-artikolu 742B(a) sa (ċ), l-azzjoni *in rem* tista' ssir fil-qrati ċivili ta' Malta kontra l-vapur li dwaru titqajjem il-pretensjoni jew il-kwistjoni.

Azzjoni *in rem* fil-każijiet imsemmijin fl-artikolu 742B(d) sa (y). Kap. 234. **742D.** Hlief għal dawk il-każijiet li jiġbdu fuqhom privileġġ speċjali skond l-artikolu 50 ta' l-Att dwar il-Bastimenti Merkantili, u li, skond l-artikolu 37D(3) ta' l-istess Att, jibqgħu jseħhu l-bejgħ volontarju ta' bastiment sa sena wara l-bejgħ, fil-każijiet imsemmijin fl-artikolu 742B(d) sa (y), azzjoni *in rem* tista' ssir fil-qrati ċivili ta' Malta kontra -

(a) dak il-vapur jew bastiment, fejn il-persuna li tkun responsabbli fi pretensjoni għal azzjoni *in personam* ("il-persuna rilevanti") kienet, meta nholqot il-kawża għall-azzjoni, sid jew noleggatur ta', jew kellha fil-pussess jew taħt il-kontroll tagħha, il-vapur jew il-bastiment, jekk fiż-żmien meta tingieb l-azzjoni l-persuna rilevanti tkun sid jew sid benefiċjarju ta' dak il-vapur jew in-noleggatur taħt *bareboat charter* ta' dak il-vapur;

(b) kull bastiment ieħor li tiegħu, fiż-żmien meta tingieb l-azzjoni, il-persuna rilevanti tkun is-sid jew is-sid benefiċjarju rigward l-ishma kollha f'dak il-bastiment."

79. Minflok l-artikolu 830 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 830 tal-Kodiċi.

"Atti kawtelatorji.

830. (1) L-atti kawtelatorji msemmin fl-aħħar artikolu qabel dan huma:

- (a) il-mandat ta' deskrizzjoni;
- (b) il-mandat ta' qbid;
- (ċ) il-mandat ta' qbid fuq azjenda kummerċjali;
- (d) il-mandat ta' sekwestru;
- (e) il-mandat ta' impediment tas-safar;
- (f) il-mandat ta' detenzjoni ta' inġenji ta' l-ajru;
- (g) il-mandat ta' arrest ta' bċejjeċ tal-baħar;
- (h) il-mandat ta' inibizzjoni.

Kap. 234.

(2) (a) Bla ħsara għad-disposizzjonijiet ta' l-artikolu 870 ta' dan il-Kodiċi u ta' l-artikolu 357 ta' l-Att dwar il-Bastimenti Merkantili, dawk l-atti msemmijin fis-subartikolu (1) jiġu mhassra, kemm-il darba l-parti li kontra tagħha l-att ikun ġie mahruġ, tagħmel depożitu jew tagħti garanzija illi, fl-opinjoni tal-qorti, skond iċ-ċirkostanzi tal-każ, ikunu biżżejjed biex iqieghdu fiż-żgur il-jeddijiet jew il-pretensjonijiet imsemmija fl-att, jew jekk jintwera li l-att ġudizzjarju li bih tiġi aċċettata r-responsabbiltà kif imsemmi fis-subartikolu (3) ġie preżentat fir-reġistru xieraq.

(b) Minkejja li jkun sar depożitu jew inġhatat garanzija kif imsemmi qabel, it-termini stabbiliti f'dan it-Titolu fuq il-kreditur sabiex iressaq l-azzjoni tiegħu għandhom jibqgħu jgħoddu.

(ċ) Dawk it-termini għandhom jibdew għaddejjin minn meta jinħareġ att kawtelatorju, u nuqqas tal-kreditur li jagħmel kawża fit-termini mogħtija jagħti jedd lid-debitur li jiżbanka d-depożitu jew iħassar il-garanzija.

Kap. 104.

(3) Meta jkun inhareġ att kawtelatorju kontra xi persuna, jew b'mod jolqot xi proprjetà ta' dik il-persuna, sabiex titqiegħed fiż-żgur talba għal danni, u kumpannija ta' l-assigurazzjoni registrata lokalment jew *bureau* lokali, kif imfisser fl-Ordinanza dwar l-Assigurazzjoni ta' Vetturi tal-Mutur għar-Riskji ta' Terzi Persuni, dik il-persuna jew dik il-kumpannija għandha permezz ta' att gudizzjarju, ipprezentat fir-reġistru ta' l-istess qorti, fi żmien għaxart ijiem minn meta tiġi mitluba mill-assigurat tagħha, tiddikjara li qed taċċetta r-responsabbiltà biex tħallas is-somom kollha li jistgħu jkunu dovuti għal dawk id-danni, rigward it-talba magħmula f'dak l-att jekk il-persuna tinsab li hi responsabbli għal dawk id-danni -

(a) l-assigurat jew l-uffiċċju lokali, kif ikun il-każ, ikunu responsabbli li jhallsu s-somom kollha li jistgħu jkunu dovuti għal danni li jiġu kaġunati kif imsemmi;

(b) it-talba għal dawk id-danni tista' titmexxa kontra l-assigurat jew l-uffiċċju lokali direttament; u

(ċ) l-att kawtelatorju kontra l-persuna jkun rexiss.

(4) Ebda att kawtelatorju kif provdut fis-subartikolu (3) ma jinhareġ kontra l-assigurat jekk il-persuna li bi hsiebha toħroġ il-mandat tkun taf li l-assigurat jew l-uffiċċju lokali jkun hareġ għall-assigurat ċertifikat ta' l-assigurazzjoni validu li jaċċetta r-responsabbiltà għall-hlas tad-danni; u f'dak il-każ it-talba għal dawn id-danni tista' titmexxa kontra l-assigurat jew l-uffiċċju lokali jew l-aġent, skond il-każ, direttament."

80. Minflok l-artikolu 831 tal-Kodiċi għandu jidhol dan l-

Sostituzzjoni ta' l-artikolu 831 tal-Kodiċi.

artikolu ġdid li ġej:

"Rikors
għall-hruġ
ta' mandat.

831. (1) It-talba għall-hruġ ta' xi wiehed mill-atti msemmija għandha ssir b'rikors imħejji mir-rikorrenti u għandu jkun fiha, taht il-piena tan-nullità ta' l-att, minbarra partikolaritajiet oħra li jistgħu jkunu ordnati b'regolamenti:

(a) l-oriġini u x-xorta tad-debitu jew il-pretensjoni li wiehed ikun irid iqiegħed fiż-żgur; u

(b) fejn id-dritt imfittex li jkun assikurat bl-att huwa dejn, jew talba li tista' tkun sodisfatta bil-hlas ta' ammont ta' flus, l-ammont li għalih tammonta t-talba.

Jekk il-kawża tkun diġà giet ipprezentata fil-qorti, dik it-talba tista' tispeċifika u tinkludi l-ispejjeż ġudizzjarji kollha.

(2) Ir-rikors għandu jiġi konfermat mir-rikorrent bil-ġurament:

Iżda meta f'rikors ikun hemm iktar minn rikorrent wiehed li jkun qiegħed jitlob il-hruġ ta' xi wiehed mill-atti kawtelatorji msemmija fl-artikolu 830(1) kontra l-istess intimat, il-ġurament għandu jittiehed minn għall-inqas wiehed mir-rikorrenti.

(3) Il-mandati mahruġin jew l-ordnijiet imsemmijin fl-artikolu 830 għandhom jinħarġu mill-qorti:

Iżda meta fil-fehma tar-Registatur, il-firma ta' l-imhalled jew tal-maġistrat li għandu s-setgħa li johroġ mandat ta' qbid jew mandat ta' sekwestru jew mandat ta' impediment tas-safar ma tistax tinkiseb fi żmien raġonevoli u illi d-dewmien jista' jkun ta' preġudizzju, l-imsemmi mandat jew ordni jistgħu jiġu mahruġa bil-firma tar-Registatur personalment wara li qabel ikun gie awtorizzat verbalment jagħmel hekk mill-imhalled jew mill-maġistrat. F'dan il-każ, l-imhalled jew il-maġistrat għandu jżid il-firma tiegħu stess taht dik tar-Registatur malli jkun jista' biex jikkonferma li jkun ta l-awtorizzazzjoni verbali tiegħu msemmija jew, jekk ma huwiex possibbli għar-Registatur li jikseb dik l-awtorizzazzjoni verbali, ir-Registatur għandu taht l-awtorità tiegħu johroġ dak il-mandat jew dik l-ordni bil-firma tiegħu, b'dan illi dak il-hruġ għandu jiġi ratifikat mill-imhalled jew mill-maġistrat kemm jista' jkun malajr."

81. L-artikolu 832 tal-Kodiċi għandu jiġi mħassar.

Thassir ta' l-artikolu 832 tal-Kodiċi.

82. Minflok l-artikolu 833 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 833 tal-Kodiċi.

"Talba għall-hruġ ta' mandat taht l-artikolu 166A.

833. Meta tiġi pprezentata u mahlufa ittra uffiċjali eżekuttiva skond id-disposizzjonijiet ta' l-artikolu 166A, jistgħu kontestwalment jinhalfu u jiġu prezentati l-mandati kawtelatorji msemmija fl-artikolu 830(1)(a), (b) u (d):

Iżda meta tiġi pprezentata din l-ittra uffiċjali, ir-rikorrent għandu jagħmel kawża fi żmien għoxrin jum minn meta tiġi pprezentata n-nota ta' oppożizzjoni shiħa jew parzjali jew fi żmien sittin jum mill-hruġ ta' mandat skond liema data tiġi qabel."

83. Minflok l-artikolu 834 tal-Kodiċi għandu jidhol dan l-

Sostituzzjoni ta' l-artikolu 834 tal-Kodiċi.

artikolu ġdid li ġejj:

"Avviż ta' l-eżekuzzjoni tal-mandat.

834. L-uffiċjal eżekutur għandu, minnufih malli jkun jista', jagħti lir-rikorrent, lill-avukat jew prokuratur legali li l-firma tiegħu tkun tidher fuq ir-rikors, avviż bil-miktub li l-mandat ikun ġie eżegwit."

Thassir ta' l-artikolu 835 tal-Kodiċi.

84. L-artikolu 835 tal-Kodiċi għandu jiġi mhassar.

Emenda ta' l-artikolu 836 tal-Kodiċi.

85. L-artikolu 836 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) minflok is-subartikoli (2), (3) u (4), għandhom jidhlu dawn is-subartikoli li ġejjin:

"(2) Il-persuna li tagħmel ir-rikors skond is-subartikolu (1) għandha, flimkien mar-rikors, tippreżenta bil-miktub is-sottomissjonijiet kollha li tkun trid tagħmel flimkien mad-dokumenti kollha li jsostnu t-talba li tkun trid tippreżenta.

(3) Ir-rikors, hlief għal xi rikors skond is-subartikolu (1)(a), għandu jiġi notifikat lill-parti kontra li tista', fi żmien sebat ijiem min-notifika, tippreżenta nota li jkun fiha s-sottomissjonijiet kollha li tixtieq tagħmel flimkien mad-dokumenti kollha li jsostnu t-talba li tkun trid tippreżenta.

(4) Il-qorti għandha tiddeċiedi dwar ir-rikors b'urġenja jew *in camera* jew wara s-smiġħ ta' l-avukati tal-partijiet, jekk jidhriha xieraq, iżda ma tiġix iffissata iktar minn seduta waħda għal dan il-għan."; u

(b) is-subartikolu (8) għandu jiġi emendat kif ġej:

(i) fil-paragrafu (a) tiegħu, minnufih wara l-kliem "jekk ir-rikorrent" għandhom jiżdiedu l-kliem ", mingħajr raġuni valida,"; u

(ii) fil-paragrafu (b) tiegħu, minflok il-kliem "jekk, fuq it-talba" għandhom jidhlu l-kliem "jekk, fit-talba".

Emenda ta' l-artikolu 837 tal-Kodiċi.

86. L-artikolu 837 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Il-mandati ta' deskrizzjoni u ta' arrest ta' bastiment jew ta' biċċa oħra tal-baħar sabiex tittiehed is-subizzjoni tal-parti kuntrarja inkella biex jassigura l-eżekuzzjoni ta' sentenza li ma tkunx għall-ħlas ta' ammont kanonizzat, jistgħu jiġu mahruġa mill-Qorti tal-Maġistrati (Malta), jew mill-Qorti tal-Maġistrati (Għawdex) fil-kompetenza tagħha inferjuri, iżda ma jistgħux jinħarġu mit-Tribunal għal Talbiet Żgħar:

Izda l-mandat ta' arrest ta' bastiment jew ta' biċċa oħra tal-baħar ma jistgħux jinħarġu la mill-Qorti tal-Maġistrati u lanqas mit-Tribunal għal Talbiet Żgħar.";

(b) fil-paragrafu (b) tas-subartikolu (4), minflok il-kliem "tas-safar; u" għandhom jidhlu l-kliem "tas-safar.";

(ċ) il-paragrafu (ċ) tas-subartikolu (4) għandu jithassar; u

(d) fil-paragrafu (b) tas-subartikolu (5), minnufih wara l-kliem "li fuqu l-persuna tkun ingaġġata" għandhom jidhlu l-kliem "jew mill-uffiċjal kmandant tal-bastiment li fuqu l-persuna tkun ingaġġata,".

87. Minflok l-artikolu 838 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 838 tal-Kodiċi.

"Atti kawtelatorji.

838. Il-qorti tista', malli jsirilha rikors ta' waħda mill-partijiet innotifikat lill-oħra, tagħti kull ordni kif ikun meħtieġ sabiex il-ħwejjeġ deskritti fl-att kawtelatorju ma jithassrux jew ma jitgħarrqux jew ma tiġrilhomx ħsara.".

88. L-artikolu 838B tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 838B tal-Kodiċi.

(a) fin-nota marginali li hemm ma' l-artikolu, minflok il-kliem "tinqata' b'mod konkluziv" għandhom jidhlu l-kliem "il-kawża tgħaddi f'gudikat";

(b) l-artikolu kollu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1) u minflok il-kliem "tiġi maqtugħa b'mod konkluziv" għandhom jidhlu l-kliem "tgħaddi f'gudikat"; u

(ċ) minnufih wara s-subartikolu (1) kif enumerat mill-ġdid, għandu jizdied dan is-subartikolu ġdid li ġej:

"(2) Minkejja d-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, mandati kawtelatorji mahruġin skond

l-artikolu 830(1) isiru eżekuttivi wara li kawża tghaddi f'gudikat jew meta, skond l-artikolu 166B, dik l-ittra uffiċjali ssir titolu eżekuttiv b'dan illi:

(a) fil-każ ta' mandat mahruġ skond l-artikolu 830(1)(b), (ċ) u (d), il-kreditur għandu jippreżenta nota fi żmien għoxrin ġurnata fl-atti ta' l-istess mandat u jitlob li jestendi jew inaqqas l-effetti tal-mandat għas-somma ekwivalenti għall-ispejjeż legali, l-imghaxijiet u d-differenza fis-sorta skond is-sentenza, liema nota għandha tiġi notifikata lid-debitur, u dawk kollha li għandhom interess;

(b) fil-każ ta' mandat mahruġ skond l-artikolu 830(1)(a), (e), (f) u (g), il-kreditur għandu jippreżenta rikors skond id-disposizzjonijiet ta' l-artikolu 389 fi żmien għoxrin ġurnata mis-sentenza."

Sostituzzjoni ta' l-artikolu 843 tal-Kodiċi.

89. Minflok l-artikolu 843 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

"Żmien li fih ir-rikorrent għandu jagħmel il-kawża.

843. (1) Ir-rikorrent għandu jagħmel il-kawża għall-jedd imsemmi fil-mandat fi żmien għoxrin jum mill-hruġ tal-mandat:

Iżda fejn il-hruġ ta' mandat jintalab minn xi parti minn koppja kontra l-parti l-oħra u l-parti li toħroġ il-mandat tkun bdiet il-proċeduri quddiem il-qorti, il-perjodu hawn fuq imsemmi jibda' jgħodd mill-ġurnata li fiha tiġi awtorizzata tipproċedi mill-qorti imma l-mandat jieqaf milli jkollu effett immedjatament jekk il-proċeduri jiġu rtirati jew abbandunati.

(2) Jekk ir-rikorrent jonqos milli jagħmel il-kawża mingħajr raġuni tajba, l-effetti tal-mandat jieqfu u huwa jkun responsabbli għad-danni u l-imghaxijiet kollha."

Sostituzzjoni ta' l-artikolu 845 tal-Kodiċi.

90. Minflok l-artikolu 845 tal-Kodiċi għandu jidhol dan l-

artikolu ġdid li ġej:

"Applikabilità ta' l-artikoli 278, 279 u 282. **845.** (1) Id-disposizzjonijiet ta' l-artikoli 278, 279 u 282 għandhom jgħoddu għall-eżekuzzjoni ta' mandat ta' deskrizzjoni."

91. Minflok l-artikolu 846 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej: Sostituzzjoni ta' l-artikolu 846 tal-Kodiċi.

"Mandat ta' qbid. **846.** (1) Il-mandat ta' qbid ta' hwejjeġ mobbli, barra mill-partikolaritajiet imsemmija fl-artikolu 276, għandu jkun fih ordni lir-Registatur li jaqbad minghand id-debitur l-oġġetti jew l-oġġett imsemmi mil-lok hemm indikat.

Kunsinnatarju Uffiċjali. (2) Fuq talba għall-elevazzjoni ta' l-oġġetti maqbuda l-qorti għandha tahtar kunsinnatarju uffiċjali.

Applikabilità ta' l-artikoli 278 sa 304, 842 sa 844. (3) Id-disposizzjonijiet ta' l-artikoli minn 278 sa 304 u ta' l-artikoli 842, 843 u 844, jgħoddu għall-mandat ta' qbid."

92. L-artikolu 847 tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 847 tal-Kodiċi.

(a) minflok il-kliem "jiġu kkanonizzati b'sentenza:" għandhom jidhlu l-kliem "jiġu kanonizzati b'sentenza jew b'titolu eżekuttiv:";

(b) fil-proviso li hemm ma' l-artikolu minflok il-kliem "Izda fil-każ ta' bastimenti, biċċiet oħra tal-baħar, inġenji ta' l-ajru, oġġetti li jithassru" għandhom jidhlu l-kliem "Izda fil-każ ta' oġġetti li jithassru"; u

(ċ) fl-istess proviso, il-kliem "ta' l-attur, l-eċċezzjonijiet miġjuba kontra din il-pretensjoni" għandhom jithassru.

93. Fl-artikolu 848 tal-Kodiċi minflok il-kliem minn "jekk, meta l-kreditu" sa "jiġu kanonizzati b'sentenza." għandhom jidhlu l-kliem "kemm-il darba l-mandat ma jsirx flimkien ma' talba sabiex il-kreditu jew il-pretensjoni jiġu kanonizzati b'sentenza u sakemm il-kreditu jew il-pretensjoni ma jkunux iktar minn hames mitt lira, jew it-talba għall-ħruġ ta' dak il-mandat hi għal xi haġa li, kif jingħad, hi l-proprjetà tal-persuna li tkun qed tohroġ il-mandat." Emenda ta' l-artikolu 848 tal-Kodiċi.

Żjieda ta' Sub-
titolu ġdid fit-
Tielet Ktieb tal-
Kodiċi u l-
artikoli 848A u
848B ġodda.

94. Minnufih wara l-artikolu 848 fit-Tielet Ktieb tal-Kodiċi għandha tiżdied din is-subintestatura ġdida u jiżdiedu dawn l-artikoli 848A u 848B ġodda li ġejjin:

"Sub Titolu III

FUQ IL-MANDAT TA' QBID TA' AZJENDA
KUMMERĊJALI

Skop tal-
mandat.

848A. (1) Mandat ta' qbid kawtelatorju ta' azjenda kummerċjali jista' jinhareġ unikament biex jitqieghdu fiż-żgur dejn jew pretensjonijiet li bil-bejgħ in parti jew totali ta' l-azjenda msemmija jistgħu jiġu skartatati u, għal dan il-ghan, ma jistax jinhareġ mandat ieħor kontra l-azjenda, jekk mhux dan il-mandat.

(2) L-effett ta' mandat ta' qbid kawtelatorju ta' azjenda kummerċjali huwa li jippreserva l-assjem sħiħ ta' l-assi ta' azjenda, inkluzi l-liċenzi u l-avvjament, jordna li l-istess ma tiġix mibjugħa in parti jew totalment u fl-istess hin iżommha għaddejja fin-negozju, iżda f'kull każ il-qorti ma għandhiex tilqa' talba għal mandat jekk tkun sodisfatta li hemm mezzi oħra għall-kawtela ta' l-ammont pretiż.

(3) Il-qorti m'għandhiex tohroġ mandat bħal dak jekk ma tkunx sodisfatta li dak il-mandat huwa meħtieġ sabiex jitharsu l-jeddijiet tar-rikorrent, u li dak ir-rikorrent *prima facie* jidher li għandu daww il-jeddijiet.

(4) Id-disposizzjonijiet ta' l-artikoli 840, 842, 843, 844 u 848 jgħoddu għal dan il-mandat.

Il-qorti
għandha
taħtar
amministratur
u espert.

848B. (1) Fuq talba għall-ħruġ ta' dan il-mandat il-qorti għandha, wara li tisma' l-partijiet, taħtar amministratur u biex tagħmel dan għandha tqis jekk għandhiex tippermetti li l-azjenda tibqa' tiġi ġestita mid-debitur jew mill-persuni inkarigati mid-debitur bl-assistenza ta' amministratur, inkella li jiġi nominat amministratur li fl-opinjoni tal-qorti jkollu l-kwalifiki meħtieġa sabiex imexxi u jamministra l-azjenda waħdu.

(2) Il-qorti għandha tinkariga espert skond l-artikolu 89 u tippreviġi terminu qasir u perentorju li fih huwa għandu jippreżenta lista ġuramentata tal-valur ta' l-assjem kollu, haġa b'haġa, li jikkomponi l-azjenda kummerċjali.

(3) L-amministratur nominat għandu jiehu f'idejh l-azjenda kummerċjali u jkollu d-dritt li jbiegħ u jinnegozja fil-ġestjoni ordinarja, iżda għal kull deċiżjoni ta' natura straordinarja huwa għandu jagħmel talba għall-awtorizzazzjoni tal-qorti.

(4) L-amministratur, jekk jidhirlu li l-azjenda ser tiflew fil-valur tagħha fis-suq, jista' jagħmel talba lill-qorti sabiex jew tawtorizzah li jbiegħ l-azjenda kollha jew partijiet minnha.

(5) L-amministratur mahtur taht dan l-artikolu għandu dritt għal dak il-ħlas li l-qorti fid-diskrezzjoni tagħha jidhirlha li lilu jmiss, meta jitqiesu l-valur ta' l-azjenda u l-ħidma marbuta mal-ġestjoni tan-negozju."

95. Minflok il-kliem tas-subintestatura "Sub-titolu III" li jinsabu fit-Titolu VI tat-Tielet Ktieb minnufih qabel l-artikolu 849 tal-Kodiċi, għandha tidhol is-subintestatura "Sub-titolu IV".

Sostituzzjoni ta' subintestatura fil-Kodiċi.

96. L-artikolu 849 tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 849 tal-Kodiċi.

(a) il-kliem "l-artikoli 842, 844" għandhom jiġu sostitwiti bil-kliem "l-artikoli 842, 843, 844"; u

(b) minflok il-proviso tiegħu għandu jidhol dan li ġej:

"Izda meta s-sekwestrarju huwa bank, mandat ta' sekwestru kawtelatorju ma japplikax għal flus li jkollhom jithallsu mill-bank fl-eżekuzzjoni ta' xi garanzija mogħtija mill-bank li huwa jhallas fuq it-talba tal-persuna li favur tagħha tkun saret il-garanzija bankarja; u f'kull każ bħal dak, minkejja l-mandat ta' sekwestru, il-bank ikollu s-setgħa li jhallas jew xort'ohra jiddisponi minn daww il-flus bħala hielsa mill-mandat ta' sekwestru u jkollu d-dritt ukoll li jirtira daww il-flus minn kull qorti jew post ieħor, jew mingħand kull persuna, fejn, jew għand min, ikunu tqiegħdu jew ġew depożitati, u jkun id-dmir tar-Registatur ta' dik il-qorti jew tal-persuna oħra li jkollha fil-pussess tagħha jew taht il-kontroll tagħha daww il-flus, li

tagħtihom lura minnufih lill-bank."

Emenda ta' l-
artikolu 851 tal-
Kodiċi.

97. Fis-subartikolu (2) ta' l-artikolu 851 tal-Kodiċi minflok il-kliem "fl-artikoli 831 u 832" għandhom jidhlu l-kliem "fis-subartikolu (2) ta' l-artikolu 831".

Sostituzzjoni ta'
Sub-titolu fit-
Tielet Ktieb tal-
Kodiċi.

98. Minflok is-subintestaturi "Sub-titolu IV" u "Fuq il-Mandat ta' Impediment tas-Safar" fit-Titolu VI tat-Tielet Ktieb tal-Kodiċi, għandu jidhol dan li ġejj:

"Sub-titolu V

FUQ IL-MANDAT TA' DETENZJONI TA' INĠENJI TA' L-AJRU".

Thassir ta' l-
artikoli 855 sa
870 tal-Kodiċi.

99. L-artikoli 855 sa 870 tal-Kodiċi għandhom jiġu mhassra.

Żjieda ta' l-
artikoli 855 sa
872A godda
mal-Kodiċi.

100. Minnufih wara s-Sub-titolu V ġdid tal-Kodiċi għandhom jiżiedu dawn l-artikoli 855 sa 872Ċ godda li ġejjin:

"Skop tal-
mandat.

855. (1) Għall-finijiet ta' dan is-Sub-titolu u għall-artikoli 358 sa 364, it-tnejn inklużi, inġenju ta' l-ajru għandu jitqies bhala oġġett ta' natura li tista' tithassar skond id-disposizzjonijiet ta' dan il-Kodiċi.

(2) Id-disposizzjonijiet ta' l-artikolu 843 jgħoddu għal dan il-mandat.

(3) Mandat ta' detenzjoni ta' inġenju ta' l-ajru jista' jinhareġ unikament biex jitqieghdu fiż-żgur dejn jew pretensjoni skond -

(a) regolamenti jew ordnijiet mahruġin skond l-artikolu 19 ta' l-Att dwar l-Avjazzjoni Ċivili rigward:

Kap. 232.

(i) drittijiet ta' l-ajruport dovuti f'ajruporti Maltin; u

(ii) drittijiet dwar in-navigazzjoni bl-ajru dovuti lill-Malta Air Traffic Services Limited jew dik il-kumpannija li l-Ministru jista', minn żmien għal żmien, b'ordni fil-Gazzetta, jistabbilixxi; jew

Kap. 333.

(b) regolamenti maħruġin skond l-artikolu 6 ta' l-Att dwar l-Eurocontrol rigward drittijiet dwar in-navigazzjoni bl-ajru dovuti lill-European Organisation for the Safety of Air Navigation (EUROCONTROL),

u ma jista' jinhareġ ebda mandat ieħor kontra inġenju ta' l-ajru sakemm ma jkunx mandat ta' detenzjoni.

Il-mandat ikollu effett li kemm jaqbad kif ukoll jissekwestra l-inġenju ta' l-ajru.

856. (1) Il-mandat ta' detenzjoni jkollu l-effett li jaqbad l-inġenju ta' l-ajru minghand id-debitur kif ukoll li jissekwestra l-istess għand il-persuna jew il-korp li f'dak il-ħin tkun jew ikun responsabbli għall-ġestjoni ta' l-ajruport jew tal-post fejn ikun l-inġenju ta' l-ajru, kif ukoll li jordna li l-istess persuna jew korp biex ma jirrilaxxawx l-inġenju ta' l-ajru jew li jippermettu lid-debitur milli b'xi mod jitlaq mill-pussess tiegħu l-istess fis-shiħ jew in parti jew li jagħti jew iċedi xi drittijiet fuq l-istess.

(2) Il-mandat huwa eżegwit għall-effetti kollha tal-liġi man-notifika lill-persuna jew lill-korp imsemmijin fis-subartikolu (1).

L-ordni tal-Qorti għandha tingiebb għall-attenzjoni ta' terzi.

857. Il-persuna jew il-korp imsemmijin fl-artikolu 856(1) għandhom jieħdu l-miżuri neċessarji kollha sabiex l-ordni tal-qorti tingiebb għall-attenzjoni ġenerali ta' terzi biżżejjed qabel il-ħruġ tal-mandat:

Izda l-iżbark ta' passiġġieri u l-hatt ta' merkanzija u bagalji abbord m'għandhomx jiġu mwaqqfa, u l-operatur ta' l-inġenju ta' l-ajru għandu jingħata aċċess għall-inġenju ta' l-ajru għal raġunijiet ta' manutenzjoni.

Il-mandat jinhareġ fuq formula xierqa.

858. Mandat ta' arrest jinhareġ b'rikors fuq il-formola preskritta mill-Ministru responsabbli għal-ġustizzja, liema formola għandu jkun fiha digriet tal-qorti li permezz tiegħu jingħataw u jinħarġu l-ordnijiet neċessarji.

Il-mandat
jista'
jintalab għal
kreditu
mhux anqas
minn
Lm400,000.

859. Il-mandat ta' arrest jista' jintalab u jinghata biex jitqiegħed fiż-żgħur kreditu jew pretensjoni oħra elenkata fl-artikolu 855 ta' mhux anqas minn erba' mitt elf lira.

X'għandu
jkun fih ir-
rikors.

860. Ir-rikors għall-ħruġ ta' mandat għandu, taħt piena ta' nullità, jindika b'mod ċar id-dettalji kollha, l-awtorità li f'idejha jinsab l-inġenju ta' l-ajru u l-lok fejn qiegħed.

Penali għal
min
jagħmel it-
talba għall-
mandat bil-
qerq.

861. Jekk jinsab li l-mandat ġie miksub mir-rikorrent fuq talba magħmula b'qerq, il-penali skond l-artikolu 836(8) ma għandhiex tkun ta' inqas minn erba' mitt elf lira.

Garanzija
għall-hlas
ta' penali,
eċċ.

862. Il-qorti tista', meta tingieb raġuni tajba, fuq talba b'rikors magħmula mill-persuna li kontra l-inġenju ta' l-ajru tagħha ġie maħruġ il-mandat, mill-kaptan jew minn persuna oħra li jkollha l-inkarigu tiegħu jew interess fih, tordna lill-parti li titlob il-ħruġ tal-mandat li ġġib, fiż-żmien li jiġi mogħti mill-qorti, garanzija tajba f'ammont ta' mhux inqas minn erba' mitt elf lira, għall-hlas tal-penali, id-danni u l-imghaxijiet u, fin-nuqqas ta' dan, tħassar il-mandat.

Garanzija
għar-rilaxx
ta' l-inġenji
ta' l-ajru.

863. Minkejja d-disposizzjonijiet ta' l-artikolu 830(2)(a), il-qorti għandha tordna r-rilaxx minnufih ta' l-inġenji ta' l-ajru meta tiġi depożitata fil-qorti garanzija suffiċjenti mill-operatur ta' l-inġenji ta' l-ajru jew kull persuna li jkollha interess fih, f'ammont li hu daqs il-valur tal-kreditu u l-ispejjeż, jew li jkopri l-valur ta' l-inġenji ta' l-ajru, jekk il-valur tiegħu huwa inqas mill-ammont tal-kreditu u l-ispejjeż:

Iżda l-garanzija għandha tiġi approprijata esklużivament biex jithallas il-kreditur:

Iżda wkoll kull talba għar-rilaxx ta' l-inġenji ta' l-ajru għandha tiġi ttrattata bil-proċedura sommarja u rapida.

Inġenji ta' l-
ajru li
kontribom
ma jistax
jinhareġ
mandat.

864. (1) Ebda mandat ma għandu jinhareġ kontra -

(a) inġenju ta' l-ajru approprijat esklużivament għal servizz ta' l-Istat, inkluż is-servizz tal-posta, kemm privati kif ukoll ta' l-istat, iżda eskluż servizz kummerċjali;

(b) kull inġenju ta' l-ajru ieħor approprijat għall-ġarr ta' persuni jew merkanzija għal rimunerazzjoni, meta dak l-inġenju ta' l-ajru jkun ser jibda dak il-ġarr, sakemm id-detenzjoni ma tkunx rigward kreditu kuntrattwali, li wiehed ikun daħal għalih għall-finijiet tal-vjaġġ li l-inġenju ta' l-ajru jkun ser jibda, jew rigward pretensjoni li tkun qamet matul il-vjaġġ.

(2) Id-disposizzjonijiet tas-subartikolu (1) ma jgħoddux għal mandat li jkun ġie mitlub li jinhareġ minn sid ta' inġenju ta' l-ajru li jkun ġie mċaħħad minnu b'xi att illegali.

(3) Ebda mandat ma jista' jinhareġ kontra xi inġenju ta' l-ajru użat minn forzi militari.

(4) Jekk issir detenzjoni fuq inġenju ta' l-ajru li huwa eżenti mid-detenzjoni skond dan l-artikolu, jew jekk l-operatur jew parti oħra interessata ġiet imġieghla toħroġ garanzija biex tipprevjeni d-detenzjoni jew biex tikseb ir-rilaxx ta' dak l-inġenju ta' l-ajru, il-persuna li tkun wettqet id-detenzjoni tkun responsabbli għad-danni kollha li jirriżultaw minn dik id-detenzjoni li jkunu batew l-operatur jew is-sid ta' l-inġenju ta' l-ajru.

(5) Mandat ta' arrest ta' inġenju ta' l-ajru għandu, meta jsir rikors minn xi parti interessata, jithassar jekk il-qorti hi sodisfatta li minhabba fix-xorta tal-vjaġġ jew tal-merkanzija jew ċirkostanzi oħra li jolqtu s-sigurtà, in-navigazzjoni jew manuvrar fl-ajruport, ikun jaqbel li l-inġenju ta' l-ajru jitlaq mingħajr dewmien.

Sub-titolu VI

DWAR IL-MANDAT TA' ARREST TA'
BĊEJJEĊ TAL-BAĦAR

Skop tal-
mandat.

865. (1) Mandat ta' arrest ta' bċejjeċ tal-baħar 'il fuq minn għaxar metri jista' jinħareġ unikament biex jitqieghdu fiż-żgur dejn jew pretensjonijiet, kemm *in personam* kif ukoll *in rem*, li bit-tluq ta' l-imsemmija biċċa tal-baħar jistgħu jiġu skartati u ma jistax jinħareġ mandat ieħor kontra biċċa tal-baħar jekk mhux mandat ta' arrest, u kemm jekk din il-biċċa tal-baħar tkun fuq il-baħar kemm jekk le.

(2) Id-disposizzjonijiet ta' l-artikolu 843 jgħoddu għal dan il-mandat.

Il-mandat
ikollu effett
li kemm
jaqbad kif
ukoll
jissekwestra
l-biċċa tal-
baħar.

866. (1) Il-mandat ta' arrest ikollu l-effett li jaqbad il-biċċa tal-baħar ta' 'il fuq minn għaxar metri mingħand id-debitur kif ukoll li jissekwestra l-istess għand l-awtorità li f'idejha tinsab, kif ukoll li jordna li l-istess awtorità ma tirrilaxxax il-biċċa tal-baħar jew li tippermetti lid-debitur milli b'xi mod jitlaq mill-pussess tiegħu l-istess fis-shih jew in parti jew li jagħti jew iċċedi xi drittijiet fuq l-istess.

(2) Il-mandat huwa eżegwit għall-effetti kollha tal-liġi man-notifika ta' l-uffiċjal eżekuttiv lill-awtorità li f'idejha tinsab il-biċċa tal-baħar.

(3) Kopja tal-mandat ta' arrest għandha tiġi notifikata lill-persuna li l-vapur jew il-bastiment tagħha jkun ġie arrestat, il-kaptan jew persuna oħra li tkun responsabbli għal dak il-vapur jew bastiment, jew l-aġent ta' dak il-vapur jew bastiment.

L-awtorità
li tinsab
f'idejha l-
biċċa ta-
baħar titqies
bħala
kunsinnatar-
ju uffieċjali.

867. (1) L-awtorità li tinsab f'idejha jew taħt il-kontroll tagħha tinsab il-biċċa tal-baħar li kontra tagħha ħareġ dan il-mandat ta' arrest hija, għall-finijiet kollha tal-liġi, meqjusa bħala kunsinnatarju uffieċjali skond id-disposizzjonijiet ta' l-artikoli 286, 287, 288, 289 u 290.

(2) L-imsemmija awtorità għandha tiegħu l-miżuri neċessarji sabiex l-ordni tal-qorti tingieb għall-attenzjoni ta' terzi.

(3) Għall-finijiet ta' dan il-mandat l-Awtorità Marittima ta' Malta titqies bħala l-awtorità li jkollha f'idejha jew taħt is-setgħa jew kontroll tagħha l-vapur jew il-bastiment arrestat.

(4) Bastiment jitqies li jkun taħt is-setgħa u l-kontroll ta' l-Awtorità Marittima ta' Malta hekk kif dak il-bastiment jidhol fl-ibħra territorjali ta' Malta.

(5) L-ispejjeż kollha li jkunu meħtieġa għall-preservazzjoni tal-vapur jew bastiment arrestat għandhom jithallsu mill-parti li toħroġ il-mandat, minghajr hsara għad-dritt li tiġbor lura dawk l-ispejjeż flimkien mal-pretensjoni tiegħu.

Il-mandat
jinhareġ fuq
il-formula
xierqa.

868. (1) Mandat ta' arrest jinhareġ b'rikors fuq il-formula preskritta mill-Ministru responsabbli għal-gustizzja, liema formula għandu jkun fiha digriet tal-qorti li permezz tiegħu jingħataw u jinħarġu l-ordnijiet neċessarji.

(2) L-uffiċjal eżekuttiv tal-qorti jkollu s-setgħa li jieħu, minghajr preġudizzju għal dawk id-direttivi li jistgħu jingħataw mill-Qorti jew mir-Reġistratur tal-Qrati, dawk il-miżuri kollha li jistgħu jitqiesu meħtieġa għall-eżekuzzjoni tal-mandat ta' arrest.

Il-mandat
jista'
jintalab għal
kreditu ta'
mhux inqas
minn
Lm5,000.

869. Il-mandat ta' arrest jista' jintalab u jingħataw biex jitqieghed fiż-żgħur kreditu jew pretensjoni oħra ta' mhux anqas minn ħamest elef lira.

X'għandu jkun fih ir-rikors.

870. Ir-rikors għall-hruġ ta' mandat ta' arrest għandu, taht piena ta' nullità, jindika b'mod ċar dawk id-dettalji li jistgħu jgħinu fl-identifikazzjoni tal-vapur jew bastiment, l-awtorità li f'idejha jew taht is-setgħa jew kontroll tagħha l-vapur jew il-bastiment arrestat jinsab, kif ukoll il-lok fejn qiegħed il-vapur jew bastiment.

Penali għal min jagħmel it-talba għall-mandat bil-qerq.

871. Jekk jinsab li l-mandat ġie miksub mir-rikorrent fuq talba magħmula b'qerq, il-penali skond l-artikolu 836(8) ma għandhiex tkun ta' inqas minn hamest elef lira.

Garanzija għall-hlas ta' penali, eċċ.

872. Il-qorti tista', meta tingieb raġuni tajba, fuq talba b'rikors magħmula mill-persuna li kontra l-vapur jew il-bastiment tagħha ġie maħruġ il-mandat, mill-kaptan tal-vapur jew tal-bastiment, jew minn persuna oħra li jkollha l-inkarigu tiegħu, jew mill-aġent, tordna lill-parti li titlob il-hruġ tal-mandat li ġġib, fiż-żmien li jiġi mogħti mill-qorti, garanzija tajba f'ammont ta' mhux inqas minn hamest elef lira, għall-hlas tal-penali, id-danni u l-imġaxijiet u, fin-nuqqas ta' dan, tħassar il-mandat.

Vapuri jew bastimenti li kontribom ma jistax jinħareġ mandat.

872A. (1) Ebda mandat ma għandu jinħareġ kontra vapur jew bastiment mikrija għal kollox fis-servizz tal-Gvern ta' Malta jew inkarigati mis-servizz postali jew mill-Gvern ta' Malta jew minn xi gvern ieħor.

(2) Ebda mandat ma jista' jinħareġ kontra xi vapur tal-gwerra.

(3) Mandat ta' arrest ta' vapur jew bastiment għandu, meta jsir rikors mill-Awtorità Marittima ta' Malta, jithassar jekk il-qorti hi sodisfatta li minħabba fix-xorta tal-merkanzija jew it-tul jew il-pixka tiegħu jew ċirkostanzi oħra li jolqtu s-sigurtà, in-navigazzjoni jew manuvrar fil-port, ikun jaqbel li l-vapur jew il-bastiment jitlaq mill-port mingħajr dewmien.

(4) Wara l-arrest ta' vapur jew bastiment f'xi port jew fl-ibhra territorjali ta' Malta, u wara li jsir rikors mill-Awtorità Marittima ta' Malta, qorti tista', jekk tkun sodisfatta li minhabba fix-xorta tal-merkanzija tal-vapur jew bastiment u, jew ċirkostanzi oħra li jolqtu s-sigurtà jew it-tniġġiż, ikun jaqbel li l-vapur jew il-bastiment jitlaq mill-port u, jew mill-ibhra territorjali ta' Malta, tħassar il-mandat ta' arrest u tordna li l-vapur jew bastiment għandu jitlaq minn Malta u l-ibhra territorjali tagħha mingħajr dewmien.

Ordni għall-bejgħ ta' vapur jew bastiment *pendente lite*.

872B. Il-qorti tista' tordna l-bejgħ ta' vapur jew bastiment arrestat *pendente lite* jekk il-qorti jidhrilha, wara li jsir rikors mill-kreditur, li d-debitur huwa fallut jew inkella li huwa improbabbli li ser ikompli fil-kummerċ u jżomm dak l-attiv. Sabiex il-qorti tasal għall-konklużjoni tagħha hija għandha tqis iċ-ċirkostanzi kollha marbutin mal-każ, magħduda x-xorta ta' pretensjoni ta' l-attur, l-eċċezzjonijiet miġjuba kontra din il-pretensjoni, jekk ikun hemm, u dawk l-azzjonijiet l-oħra kollha meħuda mid-debitur biex jiżgura l-pretensjoni tiegħu, jew inkella sabiex iżomm sħiħ dak l-attiv.

Responsabbiltà *in solidum*.

872Ċ. (1) Jekk, minkejja l-ħruġ u l-eżekuzzjoni ta' mandat ta' arrest kawtelatorju, vapur jew bastiment jitneħħa mill-ġurisdizzjoni tal-qorti bi ksur tal-mandat ta' arrest, is-sid, innoleġġatur taħt *bareboat charter* jew persuna oħra li jkollha l-pussess tal-vapur jew bastiment meta jsir dak il-ksur ikunu responsabbli *in solidum* għal penali ta' ħamsin elf lira li titħallas lill-parti li toħroġ il-mandat.

(2) Ir-responsabbiltà għall-ħlas tal-penali taħt dan l-artikolu hija mingħajr preġudizzju għal kull sanzjoni oħra possibbli taħt id-disposizzjonijiet tat-Titolu XVII tat-Tielet Ktieb ta' dan il-Kodiċi."

101. Minflok is-subintestaturi "Sub-titolu IV" u "Fuq il-Mandat ta' Impediment tas-Safar" fit-Titolu VI tat-Tielet Ktieb tal-Kodiċi, għandu jidhol dan li ġej:

Sostituzzjoni ta' Sub-titolu fit-Tielet Ktieb tal-Kodiċi.

"Sub-titolu VII

FUQ IL-MANDAT TA' INIBIZZJONI".

Sostituzzjoni ta'
l-artikoli 873 sa
875 tal-Kodiċi.

102. (1) Minflok l-artikoli 873 sa 875 tal-Kodiċi għandhom jidhlu dawn l-artikoli godda li ġejjin:

"Skop tal-
mandat.

873. (1) L-iskop tal-mandat ta' inibizzjoni hu dak li jżomm persuna milli tagħmel kwalunkwe haġa li tkun li tista' tkun ta' preġudizzju għall-persuna li qed titlob il-mandat.

Ezami tal-
qorti.

(2) Il-qorti m'għandhiex tohroġ tali mandat jekk ma tkunx sodisfatta li dak il-mandat huwa mehtieg sabiex jitharsu l-jeddijiet tar-rikorrent, u li dak ir-rikorrent *prima facie* jidher li għandu dawk il-jeddijiet.

(3) Il-qorti m'għandha tohroġ ebda mandat bħal dak kontra l-Gvern jew awtorità mwaqqfa bil-Kostituzzjoni jew xi persuna li jkollha kariga pubblika fil-kariga uffiċjali tagħha kemm-il darba l-awtorità jew il-persuna li kontra tagħha jintalab il-mandat ma tikkonfermax fil-qorti bil-miftuħ li l-haġa li qed tintalab li tiġi miżmuma tkun fil-fatt maħsuba li ssir, u l-qorti tkun sodisfatta, wara li tisma' l-ispjegazzjonijiet mogħtija, li kemm-il darba ma jinħariġx il-mandat, il-preġudizzju li jinholoq lil min ikun qed jitlob il-mandat ikun sproporzjonat meta mqabbel ma' l-istess ghemil tal-haġa li qed tintalab li tiġi miżmuma.

(4) Jekk jiġi ppruvat permezz ta' rikors għas-sodisfazzjon tal-qorti li wara l-hruġ tal-mandat ta' inibizzjoni l-persuna inibita aġixxiet direttament jew indirettament bi ksur ta' l-ordni tal-qorti, il-qorti għandha, mingħajr preġudizzju dwar kull azzjoni lilha kompetenti, fuq talba tar-rikorrent, tikkundanna lill-persuna li kontriha jkun inħareġ il-mandat sabiex tirrimedja dak li jkun sar bi ksur tiegħu u fin-nuqqas tawtorizza lir-rikorrent biex jagħmel dawk ix-xogħlijiet kollha rimedjali li l-qorti tista' tordnalu jagħmel bi spejjeż tal-persuna inibita.

Mandat
sabiex
jiżgura dejn
jew
pretensjoni.

874. (1) Mandat ta' inibizzjoni jista' jintalab ukoll minn kreditur biex jiżgura dejn, jew kull pretensjoni oħra li tkun tammonta għal mhux inqas minn hamest elef lira. L-iskop ta' dan il-mandat hu biex iżomm lid-debitur milli jbigħ, jittrasferixxi jew jiddisponi *inter vivos* mill-proprjetà li tiġi indikata fir-rikors b'titolu oneruż jew gratuwitu jew b'xi mod johloq piż jew drittijiet reali u, jew personali; iżda dak il-mandat ma jgħoddx għall-kostituzzjoni ta' xi dritt fuq, jew trasferiment ta', proprjetà li jsir skond ordni tal-qorti, jew fuq garanziji bankarji u ittri ta' kreditu.

(2) Meta mandat jipprojbixxi l-bejgħ, it-trasferiment jew it-tneħħija oħra ta' proprjetà immobbli, ir-rikors għandu jkun fih il-partikolaritajiet kollha li għandhom x'jaqsmu mal-persuna li jinħareġ kontriha u li huma meħtieġa mil-liġi dwar ir-registrazzjoni ta' trasferiment ta' proprjetà immobbli minn dik il-persuna fir-Registru Pubbliku. Fejn il-mandat jirreferi għall-immobbli speċifiċi, dawn għandhom jiġu deskritti fir-rikors, bil-mod provdut fl-Att dwar ir-Registru Pubbliku, dwar noti ta' l-iskrizzjoni, jiġifieri li din għandha sseħħ b'referenza għad-*data* ġeografika inkwistjoni.

Kap. 56.

(3) Il-mandat imsemmi fis-subartikolu (2) għandu, meta jinħareġ u bi spejjeż tar-rikorrent, jiġi notifikat mir-Registratur fi żmien erbgħa u għoxrin siegħa lid-Direttur tar-Registru Pubbliku u lir-Registratur ta' l-Artijiet jew lill-awtorità li tiġi desinjata mill-Ministru responsabbli għall-ġustizzja li għandhom minnufih jiktub f'registru li jzommu għaldaqshekk. Dawn ir-registri għandu jkollhom indiċi u jista' jarahom kulhadd. Dan il-mandat għandu jiġi notifikat ukoll lil kull min hekk jitniżżel mir-rikorrent.

(4) Malli ssir ir-reġistrazzjoni tal-mandat kif imsemmi fis-subartikolu (2) mid-Direttur tar-Reġistru Pubbliku, kull bejgħ, trasferiment jew tneħħija sussegwenti ta' hwejjeġ immobbli li għalihom jirreferi l-mandat ikun null u bla ebda effett.

(5) Mingħajr preġudizzju għad-disposizzjonijiet ta' l-artikolu 836, il-mandat imsemmi fis-subartikolu (2) għandu, kemm-il darba ma jiġix revokat jew ma jibqax isehh iktar fi żmien qabel, jibqa' jsehħ għal perjodu ta' sena mid-data meta tinghata s-sentenza finali favur il-kreditur fil-kawża tiegħu biex jiġbor lura d-debitu jew il-pretensjoni msemmija fis-subartikolu (1).

(6) Meta mandat jipprojbixxi l-bejgħ jew trasferiment ta' ishma f'soċjetà kummerċjali għandu jiġi wkoll notifikat ir-Reġistratur tal-Kumpanniji u mid-data ta' l-imsemmija notifika kull trasferiment ta' ishma jkun null.

Eżekuzzjoni tal-mandat.

875. (1) Ir-rikors għandu jiġi notifikat lill-parti opposta li, fi żmien għaxart ijiem, għandha tippreżenta risposta:

Iżda l-qorti tista', f'każijiet urġenti, tirriduċi l-perijodu msemmi f'dan is-subartikolu. Fin-nuqqas ta' oppożizzjoni, il-qorti tista' tilqa' t-talba.

(2) Il-qorti tista' għall-ewwel toħroġ proviżorjament mandat għal żmien qasir taht dawk il-pattijiet u kondizzjonijiet li jidhrilha li jkun jehtieġ skond il-każ u sussegwentement tipprovdi definittivament.

(3) Il-qorti għandha, wara li tappunta għas-smiġħ, tiddeċiedi dan ir-rikors, wara li tisma' kull xhieda li jidhrilha xierqa, u dan fl-iqasar hmien possibbli iżda mhux aktar tard minn xahar mill-ġurnata li ġie preżentat u mahluf il-mandat."

(2) Minnufih wara l-artikolu 876 tal-Kodiċi għandu jiżdied

dan l-artikolu ġdid li ġejj:

"Artikoli li jghoddu ghal dan il-mandat. **876A.** Id-disposizzjonijiet ta' l-artikoli 829 u 844 jghoddu għall-mandat ta' inibizzjoni."

103. L-artikoli 54, 56, 61, 90, 93 sa 129, 137 sa 148, 165 sa 171, 173 sa 178, u 180 sa 184 ta' l-Att ta' l-2002 dwar il-Proċeduri fil-Qrati u fit-Tribunali għandhom jiġu mħassra. Emenda ta' l-Att XXXI ta' l-2002.

104. (1) L-artikolu 370 ta' l-Att dar il-Bastimenti Merkantili għandu jithassar. Emenda konsegwenzjali għall-Att dwar il-Bastimenti Merkantili. Kap. 234.

(2) Minkejja d-disposizzjonijiet tas-subartikolu (1), il-proċeduri li nbdeu quddiem il-qorti skond l-artikolu 370 ta' l-Att dwar il-Bastimenti Merkantili qabel ma jibda' jsehh dan l-artikolu għandhom jkomplu jiġu regolati bl-imsemmi artikolu 370 sakemm jghaddu f'ġudikat.

105. Minnufih wara t-tieni proviso ta' l-artikolu 2 ta' l-Ordinanza dwar il-Kummissarju ta' l-Artijiet, għandu jizdied dan l-artikolu ġdid li ġejj: Emenda għall-Ordinanza dwar il-Kummissarju ta' l-Artijiet. Kap. 169.

"Assenjament ta' dmirijiet. **3.** (1) Il-Ministru responsabbli għall-artijiet jista', b'seħħ minn dik id-data li hu jista', b'avviż fil-Gazzetta, jistabbilixxi, jghaddi kull dmir fit-twettieq tad-drittijiet u responsabbiltajiet tal-Kummissarju ta' l-Artijiet skond l-artikolu 2, lil kull persuna msemmija f'dak l-avviż, liema dmirijiet għandhom jiġu msemmija speċifikament f'dak l-avviż.

(2) Minkejja d-disposizzjonijiet tas-subartikolu (1), id-drittijiet u r-responsabbiltajiet kollha li għandhom x'jaqsmu mad-dmirijiet mghoddija skond isubartikolu (1) għandhom, bis-saħħa ta' l-artikolu 2, jibqgħu tal-Kummissarju ta' l-Artijiet."

106. Fis-subartikolu (11) ta' l-artikolu 4 ta' l-Att kontra *Money Laundering* minflok il-kliem "mid-data li fiha jkun sar; u l-qorti ma tagħmilx ordni ieħor" għandhom jidhlu l-kliem "mid-data li fiha jkun sar, f'liema każ l-Avukat Ġenerali għandu, b'avviż bil-miktub, jinforma lill-persuna suspettata u lis-sekwestrarji bil-mod provdut fis-subartikolu (9), u l-qorti ma tagħmilx ordni ieħor". Emenda għall-Att kontra *Money Laundering*. Kap. 373.

Disposizzjoni
transitorja.

107. Id-disposizzjonijiet ta' dan l-Att jghoddu għal proċeduri l-godda li jiġu ppreżentati jew jinbdew wara l-bidu fis-sehħ ta' l-imsemmija disposizzjonijiet. Mandati kawtelatorji u eżekuttivi mibdija u li għadhom pendenti jibqgħu validi u tapplika dwarhom il-liġi kif kienet qabel:

Iżda kull mandat kawtelatorju li jkun għadu pendenti meta jidhrol fis-sehħ dan l-Att għandu, mid-data ta' dak il-bidu fis-sehħ, jiġi regolat bid-disposizzjonijiet ta' dan l-Att.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 427 tas-26 ta' Lulju, 2006.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

4th August, 2006

ACT No. XIV of 2006

AN ACT to to implement various measures relating to judicial proceedings.

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 Code of Organization and Civil Procedure (Amendment) Act, 2006, and this Act shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as "the Code".

Short title and commencement.

(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.

2. The Arrangement of Code shall be amended as follows:

Amendment of arrangement of Code.

(a) in Book Second, in Part I, for the words from "Title VII" to Articles "389-395" there shall be substituted the following:

"Title VII	Of the Enforcement of Judgments and other Executive Titles	252-395
	General Provisions	252-281

Sub-title I	Of the Warrant of Seizure of Movable Property	282-293
Sub-title II	Of the Warrant of Seizure of Immovable Property	294-300
Sub-title III	Of the Warrant of Seizure of a Commercial Going Concern	301-312
Sub-title IV	Of Judicial Sales by Auction	313-357
Sub-title V	Of Court Approved Sales for Aircraft, Ships and Vessels	358-364
Sub-title VI	Of the Executive Garnishee Order	375-383
Sub-title VII	Of the Warrant of Ejection or Expulsion from Immovable Property	384
Sub-title VIII	Of the Warrant <i>In Factum</i>	385-388
Sub-title IX	Of the Warrant of Executive Detention of Aircraft	388A-388B
Sub-title X	Of the Warrant of Executive Arrest of Sea Vessels	388C-388D
Sub-title XI	Of the Warrant <i>In Procinctu</i>	388E
Sub-title XII	Of the Rendering of Accounts and Liquidation of Fruits	389-395";

and

(b) in Book Third, for the words from "Title VI" to "Of the *Meditatio Fugae* Warrant" there shall be substituted the following:

"Title VI	Of Precautionary Acts	829-877
	General Provisions	829-838B
Sub-title I	Of the Warrant of Description	839-845
Sub-title II	Of the Warrant of Seizure	846-848
Sub-title III	Of the Warrant of Seizure of a Commercial Going Concern	848A-848B
Sub-title IV	Of the Garnishee Order	849-854
Sub-title V	Of the Warrant of Detention of Aircraft	855-864
Sub-title VI	Of the Warrant of Arrest of Sea Vessels	865-872C
Sub-title VII	Of the Warrant of Prohibitory Injunction	873-877".

Deletion of sub-heading in Title VII.

3. In Title VII of Part I of Book Second of the Code, the words "Sub-title I", immediately before the words "General Provisions", shall be deleted.

4. For article 273 of the Code there shall be substituted the following: Substitution of article 273 of the Code.

"Executive acts.

273. The executive titles mentioned in article 253 may, according to circumstances, be enforced by any of the following executive acts:

(a) warrant of seizure of movable property;

(b) warrant of seizure of immovable property;

(c) warrant of seizure of a commercial going concern;

(d) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;

(e) executive garnishee order;

(f) warrant of ejection or eviction from immovable property;

(g) warrant *in factum*;

(h) warrant of detention of aircraft;

(i) warrant of arrest of sea vessels;

(j) warrant *in procinctu*."

5. Article 274 of the Code shall be amended as follows:

Amendment of article 274 of the Code.

(a) in the proviso to subarticle (1) thereof, for the words "is also to append his own signature" and "to obtain beforehand such authorisation" there shall be substituted the words "shall append his own signature" and "to obtain such authorisation" respectively; and

(b) in subarticle (2) thereof, for the words "or the thing due in virtue of the title" there shall be substituted the words "and, or the article due in virtue of the title, and also such remedies and, or provisions that are being demanded".

6. Article 278 of the Code shall be renumbered as article 275 of the Code and shall be amended as follows: Renumbering and amendment of article 278 of the Code.

(a) in subarticle (1) thereof, for the words from "The marshal may," to "break open" there shall be substituted the words "The court executing officer may, in connection with the execution of any warrant committed to him, after calling in two witnesses, exercise all such powers as are reasonably required of him to execute the warrant, which includes the breaking open of";

(b) immediately after subarticle (1) thereof there shall be added the following new proviso:

"Provided that in the case of a warrant of detention of aircraft, the powers of the court executing officer shall not include the breaking open of any external or internal aircraft doors or any other damage to the aircraft.";

(c) in subarticle (2) thereof, for the words from "Nevertheless," to "the marshal" there shall be substituted the words "In the case of any warrant for the seizure of any property of the Government of Malta, the court executing officer"; and

(d) immediately after subarticle (2) there shall be added the following new subarticle:

"(3) The Prime Minister may from time to time by regulations establish a list of property pertaining to the State which may not be the subject of an executive or a precautionary warrant.".

Renumbering of article 279 of the Code.

7. Article 279 of the Code shall be renumbered as article 276 of the Code.

Renumbering and substitution of article 280 of the Code.

8. Article 280 of the Code shall be renumbered as article 277 of the Code and there shall be substituted the following new article therefor:

"Time for execution of warrants and orders.

277. (1) Saving the exceptions laid down in this Code, no warrant or garnishee order may be executed other than during such time as may be prescribed by the Minister responsible for justice by regulations made under this article.

(2) Regulations made under this article may also provide for such cases in which the execution of a warrant or an order is allowed to take place other than during the prescribed time, the method of execution and the statements which have to be included in the certificate of service:

Provided that, for reasons of urgency to be confirmed on oath by the applicant, the court may allow the execution of any warrant or order other than during the prescribed time."

9. Article 281 of the Code shall be renumbered as article 278 of the Code and shall be amended as follows:

Renumbering and amendment of article 280 of the Code.

(a) in subarticle (1), for the words "The marshal shall deliver a copy of the warrant or order" there shall be substituted the words "The court executing officer shall deliver a copy of the warrant or order at the first available opportunity"; and

(b) in subarticle (2) thereof, for the words "Unless the court shall otherwise direct, the marshal" there shall be substituted the words "Unless the court shall otherwise direct, or unless otherwise prescribed by the Minister responsible for justice as prescribed in article 277(2), the court executive officer".

10. Article 282 of the Code shall be renumbered as article 279 of the Code and shall be amended as follows:

Renumbering and amendment of article 282 of the Code.

(a) for the words "The nullity" there shall be substituted the words "Where the basis of nullity is not of a grievous nature, the nullity"; and

(b) for the word "marshal" wherever it appears, there shall be substituted the words "court executing officer".

11. Article 283 of the Code shall be renumbered as article 280 of the Code.

Renumbering of article 283 of the Code.

12. Article 283A of the Code shall be renumbered as article 281 of the Code and there shall be substituted the following new

Renumbering and substitution of article 283A of the Code.

article therefor:

"How executive acts may be impugned.

281. (1) Without prejudice to any other right under this or any other law, the person against whom an executive act has been issued or any other person who has an interest may make an application, containing all desired submissions together with all documents sustaining such application, to the court issuing the executive act praying that the executive act be revoked, either totally or partially, for any reason valid at law.

(2) The application shall be served on the opponent who shall, within ten days, file a reply containing all submissions which such opposite party may wish to make together with all documents sustaining the reply which are within its ability to file:

Provided that the court may, in urgent cases, reduce the period referred to in this subarticle. In default of such opposition the court shall accede to the demand.

(3) The court shall decide on the application after hearing the parties and receiving such evidence as it may deem fit, if it so considers, within a period not later than one month from the filing of the said application.

Appeal from decree.

(4) An appeal from a decree delivered under subarticle (3) of this article may be entered by application within six days from the date on which the decree is read out in open court. The Court of Appeal shall appoint such appeal for hearing within one month from the date when the decree is read out in open court, and the appeal shall be decided within three months from the date when it has been appointed for hearing.

(5) The security referred to in article 249 shall not be required in the cases referred to in the previous subarticle."

Deletion of articles 284 to 304 of the Code.

13. Articles 284 to 304 of the Code shall be deleted.

14. Immediately after sub-heading "Sub-Title I - Of the Warrant of Seizure of Movable Property", there shall be added the following new articles 282 to 293 in the Code:

Addition of new articles 282 to 293 in the Code.

"Warrant of seizure on movable property.

282. (1) 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 official storage places established by regulations made by the Minister responsible for justice, and about the transfer of their possession from the debtor to the official consignee appointed in terms of such regulations;

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

(2) The provisions of this Sub-title shall not apply to sea vessels or other craft having a length exceeding ten metres, and to aircraft engaged in commercial air transport, unless otherwise exempt by the provisions of this Title.

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
unsuccess-ful
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 papers.

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.

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

(2) The official 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 official 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.

(3) The Minister responsible for justice shall appoint a number of official consignees to safeguard the property seized as from such time as the property is held in the hands of the court executing officer to the day when they are sold:

Provided that where the official consignee is a company or partnership, such company or partnership is to appoint a person who shall at all times be personally responsible to fulfil the obligations of the official consignee, and to assume joint responsibility with the company or partnership:

Provided further that the Minister responsible for justice may by regulations provide for the making of any other such conditions as he may deem necessary relating to the appointment of a person as an official consignee or to be personally responsible in terms of the first proviso to this subarticle.

(4) The Minister responsible for justice shall indicate the official storage places where the seized property is to be stored by official consignees from the time when the property is removed by the court executing officer up to the day when it is sold.

(5) The Minister responsible for justice may by regulations provide in relation to the preservation of such property, its release prior to sale, the procedures connected with the sale thereof, the responsibility pertaining to the official consignee for the payment of his fees, and in relation to any other matter connected with the preservation, sale, consignment and release of the property seized.

Persons who may not act as official consignees.

287. An official consignee who is appointed under this Title may not act 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 official consignee.

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

Official consignee to preserve property seized.

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

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

15. Immediately after article 293 in Book Second of the Code there shall be added the following new sub-title and the following new articles 294 to 300:

Addition of new Sub-title and new articles in Book Second of the Code.

"Sub-title II

OF THE WARRANT OF SEIZURE OF IMMOVABLE PROPERTY

Form of demand by application.

294. (1) The demand for the seizure of immovable property is made by an application.

(2) The application shall contain a detailed description of the property of which the sale by auction is demanded, including the mode in which the property has been acquired and any burthen attached to the same land and a plan clearly indicating the site.

The provisions of this article apply to ships or other vessels exceeding ten metres in length and to aircraft and such articles shall also be described in detail, including any rights and encumbrances thereon.

(3) In the event of a decree as provided in the proviso to subarticle (2), the procedure to be followed shall be that laid down in this Sub-title for the judicial sale by auction of immovable property.

Duties of the court.

295. (1) In the court decree ordering the issue of a warrant of seizure of immovable property, the court shall:

(a) order the Registrar to appoint experts in terms of article 89 as may be required and to fix a short and peremptory time within which such appraisments have to be filed and give any such order as may be necessary for the better execution of such appointment;

(b) appoint a day, time and place for the judicial sale;

(c) order the Registrar to inform the Director of the Public Registry and the Registrar of Lands or any competent authority which may be appointed according to regulations made by the Minister responsible for justice, about the issuing of the decree on the first working day thereafter;

(d) order the Registrar of the Public Registry to register forthwith the decree in a book kept for the purpose at the Public Registry, which book shall be accessible to the public.

(2) Such decree shall be served on the debtor.

Appraisalment
by debtor.

296. (1) Within twenty days from the time notice of the court decree is served on the debtor, he may file a separate appraisalment and demand that a new appraisalment need not be effected, provided that such appraisalment be a sworn appraisalment.

(2) The sworn appraisalment filed by the debtor shall, within five days, be served on the creditor who shall then have twenty days to lodge an opposition to it.

(3) When a creditor lodges such opposition to the appraisalment filed by the debtor, the court shall, after hearing both parties, decide whether it shall appoint a new expert or not.

(4) An appraisalment of the property to be sold shall always be made before the sale takes place provided that if an appraisalment, made not earlier than twelve months before the judgement that is being executed, has been accepted by the court in its judgement, the court shall take cognizance of such appraisalment and it shall not appoint new experts to effect a new appraisalment.

Expert to be
appointed by
court, unless
agreed on by
parties.

297. (1) The expert shall always be appointed by the court *ex officio*, according to the panel established in article 89 and on a rota system, unless the parties shall have already filed a note submitting the name of an expert agreed on between them, or the appraisalment filed in terms of article 296 has been accepted.

(2) The expert shall draft a valuation of the property together with a detailed description thereof, including encumbrances and burthens, and file same under oath with the Registrar.

(3) The debtor shall under oath give such information relating to the property as may be required by the Registrar or by the experts, and the provisions relating to evidence shall apply to the debtor.

(4) The appraisalment may not be contested but the court may, by way of an application, order the correction of any mistake made in the description or appraisalment.

(5) The expert appointed under this Title shall be remunerated in terms of a tariff to be established according to regulations made by the Minister responsible for justice.

Appraisalment of gold or silver articles to show intrinsic value, etc.

298. In any appraisalment of gold or silver articles, the expert shall state separately the intrinsic value thereof and the cost of manufacture, as well as the total.

Valuation of immovable property to contain description of property, etc.

299. (1) In the valuation of immovable property, the experts shall include a description of the property stating the burdens, leases and other rights whether real or personal, if any, to which the property is subject, as well as the last transfer of such property according to the information obtained from the creditor or the debtor.

Debtor may be compelled to give information required for the purposes of the valuation.

(2) It shall be lawful, at the written or verbal request of the expert or the creditor, to compel the debtor to confirm on oath, to be administered by the court or the registrar, the information given to or required by the expert.

Debtor to be called upon by letter from registrar.

(3) The debtor shall be called upon to give the above information by means of a letter from the registrar.

Applicability to debtor of provisions relating to witnesses.

(4) The provisions relating to witnesses shall apply to any debtor called upon as aforesaid.

Valuation or appraisalment to be sworn by expert.

300. (1) The report containing the valuation or appraisalment shall be filed by the expert within the time allowed in the decree of the court according to circumstances, and be sworn by him in the presence of the Registrar.

(2) Where a sale by auction of immovable property or of rights annexed to immovable property situated in the Island of Gozo or of Comino, is ordered by any of the superior courts, it shall be lawful for such court to order the expert to swear his report at the Court of Magistrates (Gozo) in the presence of any of the officers mentioned in article 57(2)(a) to (c), and to deliver the said report, so sworn, to the said officer, to be by him transmitted to the superior court which made the aforesaid order.

(3) When a sale by auction of immovable property or of rights annexed to immovable property situated in the Island of Malta, is ordered by the Court of Magistrates (Gozo), it shall be lawful for such court to order the expert to swear his report in the presence of the Registrar and to deliver the said report, so sworn, to the said Registrar, to be by him transmitted to the Court of Magistrates (Gozo).

Taxation and payment of expert's fee.

(4) The fee payable to the expert shall be taxed by the Registrar, subject to appeal to the court. Such appeal shall be made by application by any interested party within one month from the service of the taxed fee. Such fee shall always be paid by the creditor, saving his right against the debtor for the reimbursement of such fee together with the other expenses of the sale:

Provided that when an appeal is lodged, the creditor shall deposit the fee taxed by the Registrar and the proceedings for sale shall be further proceeded with and brought to a conclusion."

16. Articles 305 to 312 of the Code shall be deleted.

Deletion of articles 305 to 312 of the Code.

17. Immediately after article 300 of the Code there shall be added the following new sub-heading and the following new articles 301 to 312:

Addition of new Sub-title and new articles in Book Second of the Code.

"Sub-title III

OF THE WARRANT OF SEIZURE OF A COMMERCIAL GOING CONCERN

Sale by auction of movable or immovable property and going concerns.

301. The movable or immovable property or the going concerns which are seized from the possession of the debtor, shall be sold by public auction according to the provisions of this Title.

Auctions to be held whenever the need arises.

302. Such auctions shall be held whenever the need arises, there being a sufficient amount of property to be sold.

Provisions apply both to movable and immovable property and to going concerns.

303. (1) The provisions of this Sub-title shall apply both to movable and immovable property and to going concerns. The Registrar and the public auctioneer shall not in any way be impeded from selling movable property, immovable property or a going concern during the same auction.

(2) For the purposes of this Sub-title, the meaning of movable property shall be the same as that given in Sub-title I of this Title and the meaning of immovable property shall be the same as that given in Sub-title II of this Title, saving that in the case of a going concern the meaning is that given in article 309 but for the purposes of this Title a going concern shall be deemed to be immovable property.

Demand for seizure of a going concern.

304. The demand for the seizure of a going concern shall be made by means of an application to be served on the debtor.

Decree upholding the demand for the issue of the warrant.

305. In a decree upholding the demand for the issue of a warrant of seizure of a going concern, the court -

(a) shall order the Registrar to appoint such experts according to article 89 who may be required to:

(i) enlist and evaluate all the assets of the going concern;

(ii) file a report whether or not, considering the debt of the going concern, such going concern should be sold or put under administration for a period of time during which it could pay back its debts; and

(b) appoint a short and peremptory time for the filing of such appraisements and report and give such orders as may be necessary for the carrying out of these instructions:

Provided that where the enlisting and the appraisal of the whole complex would have already been made in the proceedings of a precautionary warrant of seizure of a going concern, the court shall adopt same and only appoint experts to file a report whether the going concern should be sold or put under administration.

Appointment of application for hearing.

306. Following the confirmation on oath of the appraisements and reports, the court shall within one week appoint the application for hearing and, after hearing the parties, it shall decide whether the judicial sale by auction of the going concern is nevertheless to be proceeded with or an administrator is to be appointed to manage the going concern until the amount due is paid.

Appointment of date, place and time for the sale.

307. Where the court decides about the holding of a sale, it shall appoint a date, place and time for the sale of the whole complex as a going concern.

Appointment of administrator.

308. The court shall appoint an administrator to carry on with the administration of the going concern until it is sold:

Provided that where in the proceedings of a precautionary warrant an administrator would have already been appointed, he shall be confirmed as such.

Applicability of articles 297 and 300.

309. Articles 297 and 300 shall apply *mutatis mutandis* to this warrant.

Where court decides that going concern shall continue to be administered.

310. (1) Where the court decides that the going concern shall continue to be administered until payment of the amount due is effected, it shall appoint an administrator and give such orders and make such provisions which it deems appropriate, taking into consideration the debt, nature and value of the going concern.

(2) The appointed administrator shall take control of the going concern and he shall have the right to sell and carry on trade in its day to day business, provided that with regard to any decision of an extraordinary nature he shall be bound to demand the court for its authorisation:

Provided that a commercial bank cannot be appointed as administrator.

Demand for the sale of the going concern.

311. (1) Notwithstanding the provisions of article 310, if during his appointment the administrator is of the opinion that the going concern is about to lose its market value, he may demand the court to authorise him to sell the going concern in whole or in part.

(2) The appointed administrator under article 310 shall be entitled to such payment as the court, in its discretion, may deem fit that he should receive considering the value of the going concern and the work done in connection with the running of the business.

Definition of going concern.

312. For the purposes of this Title, the term "going concern" means any kind of commercial enterprise conducting a business activity and includes machinery, apparatus, goods, corporeal and incorporeal rights, movable property, immovable property, licences, copyright and good-will."

Substitution of heading in Book Second of the Code.

18. Immediately before article 313, in Part I in Book Second of the Code, for sub-heading "Sub-title II - Of Judicial Sale by Auction" there shall be substituted the following sub-heading:

"Sub-title IV - OF JUDICIAL SALES BY AUCTION".

19. For article 313 of the Code there shall be substituted the following:

Substitution of article 313 of the Code.

"Form of advertisement of sale by auction.

313. The Registrar shall publish regularly in two newspapers, one being in Maltese and the other in the English language, lists of the judicial sales by auctions which are about to be held and he shall indicate clearly therein the property in such manner that the public is well informed in order to safeguard the parties' interests:

Provided that the debtor, creditor or any other interested person may publish and inform, at their own expense, any particular sale in any newspaper of their choice or broadcast same over any other broadcasting medium."

20. Articles 314 and 315 of the Code shall be deleted.

Deletion of articles 314 and 315 of the Code.

21. Article 316 of the Code shall be renumbered as article 314, and subarticle (3) thereof shall be substituted by the following new subarticle:

Amendment of article 316 of the Code.

"(3) In the case of a judicial sale by auction of listed securities in a recognised exchange, the auction shall be held in accordance with the procedures prescribed in rules and bye-laws made under articles 4(2) and 28(2) of the Financial Markets Act."

22. Immediately after article 314 of the Code as renumbered, there shall be added the following new articles 315 and 316:

Addition of new articles 315 and 316 to the Code.

"Valuation of property to be sold by auction.

315. (1) Immovable property or rights annexed to such property, or movable property consisting of gold or silver articles, pearls or precious stones or of other precious articles, and commercial going concerns, shall always be appraised before the sale thereof by auction.

(2) With regard to other movable property, an appraisal shall only be made if required by the creditor or by the debtor.

(3) An appraisal made in conformity with the provisions of articles 297, 300 and 307 and existing in the records of a sale by auction shall be accepted by the court to be the appraisal for the purpose of this article.

Appraisal of gold or silver articles to show intrinsic value.

316. In any appraisal of gold or silver articles, of pearls or precious stones or of other precious articles the expert shall consider the intrinsic value thereof and the cost of manufacture, together with any distinctive characteristic of the said article and appraise the total value thereof."

Substitution of article 317 of the Code.

23. For article 317 of the Code there shall be substituted the following new article:

"Removal of movable property to place of sale.

317. The official consignee shall cause the movable property to be removed to the place of sale on the day of the sale where such property shall be exposed to public view at least two hours before the auction begins."

Amendment of article 318 of the Code.

24. In article 318 of the Code, for the words "property may be sold by auction" there shall be substituted the words "movable property may be sold by auction".

Amendment of article 319 of the Code.

25. Article 319 of the Code shall be amended as follows:

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

"(1) The auction shall be, save the exceptions mentioned in the preceding articles, conducted by a public auctioneer in the presence of the Registrar."; and

(b) for subarticle (3) thereof there shall be substituted the following new subarticles:

"(3) An offer shall no longer be valid immediately when a higher offer is accepted, even though such higher offer is later declared to be null.

(4) The public auctioneer or broker shall be entitled to a fee which is taxed by the Registrar in accordance with a tariff to be established by the Minister responsible for justice.

(5) No offer may be accepted if such offer is less than sixty per cent (60%) of the value at which the movable or immovable property or the going concern has been appraised.

(6) The public auctioneer shall have the right to demand that a person submitting an offer should be in possession of the necessary guarantees."

26. For article 320 of the Code there shall be substituted the following new article: Substitution of article 320 of the Code.

"Bids *pro persona nominanda*, etc., not to be accepted. **320.** The auctioneer shall cause that no bid shall be accepted if it is either made *pro persona nominanda* or by any person who is notoriously incapable of fulfilling the obligations arising out of the adjudication."

27. Article 322 of the Code shall be deleted. Deletion of article 322 of the Code.

28. For article 323 of the Code there shall be substituted the following: Substitution of article 323 of the Code.

"Duration of auction. **323.** The Minister responsible for justice shall by regulations establish the duration of the auction."

29. Articles 324 and 325 of the Code shall be deleted. Deletion of articles 324 and 325 of the Code.

30. Article 326 of the Code shall be amended as follows: Amendment of article 326 of the Code.

(a) in subarticle (1), immediately after the words "for the continuation of the auction" there shall be added the words "on another day which shall be appointed by the Registrar within two weeks";

(b) in subarticle (3), for the words "six days" there shall be substituted the words "seven days"; and

(c) immediately after subarticle (4) there shall be added the following new subarticle (5):

"(5) The court shall hear the parties about the demand for suspension, and it shall not give its decree relating to such application prior to a deposit having been made of all the expenses with regard to the judicial sale by

auction."

Deletion of article 327 of the Code.

31. Article 327 of the Code shall be deleted.

Amendment of article 328 of the Code.

32. In article 328 of the Code, immediately after the words "or of ships" there shall be added the words ", or of commercial going concerns".

Amendment of article 329 of the Code.

33. In subarticle (1) of article 329 of the Code, for the words "by writ of summons" there shall be substituted the words "by application".

Amendment of article 331 of the Code.

34. In subarticle (1) of article 331 of the Code, immediately after the words "annexed to such property" there shall be added the words ", or of commercial going concerns,".

Amendment of article 332 of the Code.

35. In article 332 of the Code, for the words "if by leave of court previously obtained he shall" there shall be substituted the words "if he shall".

Substitution of article 333 of the Code.

36. For article 333 of the Code there shall be substituted the following new article:

"*Animo compensandi* bid.

333. (1) Any person to whom a liquidated debt is owing under any judgement or executive title or deed or other obligatory writing may, by an application, bid *animo compensandi*.

(2) Any person who is intent on bidding *animo compensandi* shall register his name by means of a note before the commencement of the sale by auction by making a sworn declaration before the Registrar about the reason why he wishes to bid *animo compensandi*.

(3) Any person bidding *animo compensandi* may be served notice by any person having an interest in the judicial sale by auction at least two weeks before the date of the sale and whosoever is not served such notice or is not served notice within such time may exercise the right under article 356."

Substitution of article 334 of the Code.

37. For article 334 of the Code there shall be substituted the

following:

"Conditional
leave to bid
*animo
compensandi*."

334. Any bid *animo compensandi* is made on condition that the bidder shall bind himself to pay the price into court in case it shall be so adjudged by the court."

38. For article 335 of the Code there shall be substituted the following:

Substitution of
article 335 of
the Code.

"Opposition
to bids *animo
compensandi*."

335. Any opposition to an application to bid *animo compensandi* may only be made after the sale. No opposition may be made before or during the sale."

39. Article 336 of the Code shall be deleted.

Deletion of
article 336 of
the Code.

40. Article 337 of the Code shall be amended as follows:

Amendment of
article 337 of
the Code.

(a) in subarticle (1), for the words "demand the approval of the proposed set-off, and shall pay into court" there shall be substituted the words "demand by means of an application accompanied by a lodgment schedule, the approval of the proposed set-off, and he shall pay into court"; and

(b) in subarticle (3), for the words "and shall recover the costs of the judicial recognition" there shall be substituted the words "and shall recover the legal fees and the costs of the judicial recognition".

41. Article 338 of the Code shall be amended as follows:

Amendment of
article 338 of
the Code.

(a) for subarticle (1), there shall be substituted the following:

"(1) The aforementioned demand shall be published in the Government Gazette and served on the debtor and all known creditors, including such persons who shall have sued out any warrant of seizure or garnishee order or impediment of departure, and such persons as are mentioned in the warrant of seizure which preceded the judicial sale by auction.";

(b) in subarticle (2), for the words "The persons so served shall be allowed the time of three days" there shall be substituted the words "Any person who may have an interest and the persons so served shall be allowed the time of twenty

days"; and

(c) for subarticles (3) to (7), there shall be substituted the following subarticles:

"Condition which may be imposed by court on approval of set-off.

(3) It shall be lawful for the court, in approving the set-off, to require the purchaser to give sufficient security to pay into court the price together with interest, in case it shall be so adjudged.

(4) When the court upholds the demand, any person who may have an interest to enter suit may within twenty days file an appeal by application, which appeal shall be appointed and decided within three months from the date of the decree.

(5) When the Court of Appeal revokes a decision to grant a bid *animo compensandi*, it shall remit the judicial proceedings to the first court."

Substitution of article 339 of the Code.

42. For article 339 of the Code there shall be substituted the following new article:

"Competition of creditors.

339. When there are more than one creditor filing a demand for payment from the proceeds in such manner that a competition of creditors would have to take place, it shall be the same court to commence such proceedings in terms of articles 416 *et sequitur*."

Amendment of article 340 of the Code.

43. In the first proviso to subarticle (1) of article 340 of the Code, for the words "any person who has made" and "within six days" there shall be substituted the words "whosoever makes" and "within seven days" respectively.

Substitution of article 342 of the Code.

44. For article 342 of the Code there shall be substituted the following new article:

"Restoration of balance of deposit to debtor.

342. If after payment of the claims of the creditors and of the costs, there still remains a balance, the court shall, upon the demand of the debtor, order such balance to be restored to him."

45. For article 343 of the Code there shall be substituted the following new article: Substitution of article 343 of the Code.

"Discontinuance of sale by auction and restoration of unsold property to debtor.

343. If it appears during the sale that a sufficient sum to meet the debts and the costs of the auction has been obtained, the Registrar shall order the auction to be immediately discontinued. Upon a verbal demand by the debtor, the court shall order that the unsold property is to be restored to the debtor."

46. For article 345 of the Code there shall be substituted the following new article: Substitution of article 345 of the Code.

"Sale of perishable articles.

345. In the case of seizure of perishable merchandise or other articles which are in a state of progressive deterioration or of articles which are about to go out of fashion or become technologically obsolete, it shall be lawful for the court, upon the demand of any person having an interest or of the official consignee, to order such merchandise or other articles to be sold in such manner as the court shall deem proper, including the sale to be effected forthwith by the Registrar or by the official consignee."

47. Article 348 of the Code shall be deleted. Deletion of article 348 of the Code.

48. In article 349 of the Code, for the word "marshal" there shall be substituted the words "court executing officer". Amendment of article 349 of the Code.

49. In article 350 of the Code, for the word "marshal" there shall be substituted the words "court executing officer". Amendment of article 350 of the Code.

50. In subarticle (1) of article 352 of the Code, for the words "was obtained." there shall be substituted the words "was obtained, in which case the court shall on a demand made by application proceed, after hearing the parties, to declare such transfer as null and void and to adopt such measures as it may deem necessary." Amendment of article 352 of the Code.

51. Article 353 of the Code shall be amended as follows: Amendment of article 353 of the Code.

(a) in subarticle (1), immediately after the words "the auction of the immovable property" there shall be added the words "or of a commercial going concern"; and

(b) in subarticle (2), immediately after the words "The auction of the immovable property" there shall be added the words "or commercial going concern".

Substitution of article 354 of the Code.

52. For article 354 of the Code there shall be substituted the following new article:

"Execution of a judgement of the Court of Magistrates (Malta) on immovable property.

354. (1) When the judgement the execution of which is sought is a judgement given by the Court of Magistrates (Malta), its execution, insofar as it has to be executed on immovable property or rights attached to immovable property, is to be effected by the Civil Court, First Hall.

(2) The same rule applies when a demand is made for the execution of two or more judgements, whose total joint amount, not taking into account any expenses, exceeds the sum of five thousand liri."

Amendment of article 355 of the Code.

53. Article 355 of the Code shall be amended as follows:

(a) in subarticle (1) thereof, immediately after the words "his immovable property" there shall be added the words "and of a commercial going concern"; and

(b) subarticle (2) shall be deleted and subarticle (3) shall be renumbered as subarticle (2) thereof.

Amendment of article 356 of the Code.

54. Article 356 of the Code shall be amended as follows:

(a) in subarticle (3), for the words "is of a going concern" there shall be substituted the words "is of a commercial going concern"; and

(b) immediately after subarticle (7) thereof there shall be added the following new subarticle:

"(7A) When such action is exercised and the sale is effected, the third party which has acquired possession of the immovable thing in whose favour the property would have been originally adjudicated, who shall not also be the same person in whose favour during the second sale the property has been adjudicated, shall be paid from the proceeds of the second sale the sum of money which he would have defrayed together with all expenses made before any other creditor:

Provided that where the third party which has acquired possession of the immovable thing during the second sale at a higher price is also the same person in whose favour the property had been originally adjudicated, such third party shall be required to deposit in court only the difference in price, and not the full price."

55. Immediately after article 356 of the Code there shall be added the following new article:

Addition of new article 357 to the Code.

"Eviction after adjudication.

357. The adjudication of immovable property as of itself constitutes an executive title and if either the debtor against whom execution is being sought or a third party occupying the premises without title fails to vacate the premises so adjudicated, the purchaser shall be entitled, within four months from the adjudication, to seek the issue of a warrant of eviction on the basis of the said title of adjudication."

56. The words of the sub-heading "Sub-title III - Of the Warrant of Imprisonment for Debt" occurring immediately after article 357 of the Code, as added by this Act, shall be deleted.

Deletion of words of sub-heading in the Code.

57. Immediately after article 357 of the Code, as added by this Act, there shall be added the following new sub-heading and new articles:

Addition of new Sub-title and new articles 358 to 364 in the Code.

"Sub-title V

OF COURT APPROVED SALES FOR AIRCRAFT, SHIPS AND VESSELS

Private sale of an aircraft, ship or vessel.

358. Notwithstanding any other provision of this Code, the Court may, on the application of any creditor with an executive title, approve a private sale of an aircraft, ship or vessel, in favour of an identified buyer and in consideration of a determined price.

Appraisements by independent and reputable valuers.

359. The applicant shall together with the application submit appraisements by two independent and reputable valuers confirming the value of the aircraft, ship or vessel; it shall also be incumbent on the applicant to adduce to the Court evidence that such private sale is in the interest of all known creditors and that the price offered by the proposed buyer, which price must be more than sixty per cent of the highest appraised value, is reasonable in the circumstances of the case.

Persons called upon to make submissions.

360. No order shall be made by the Court before the application has been served on such persons as the Court, in the circumstances and upon information given by the applicant, deems it appropriate to call upon to make their submissions.

Hearing.

361. The Court shall appoint the application for hearing within ten days of its filing.

Where Court accedes to application.

362. If the Court accedes to the application and approves a private sale in accordance with the provisions of this Sub-title, the Court shall in its decree of approval nominate a person who shall thereupon be entitled to transfer the aircraft, ship or vessel in accordance with the terms and conditions approved by the Court, and as if he were the registered owner thereof.

Deposit of price in Court.

363. The person so appointed by the Court shall deposit the price in Court within seven days from the date of the completion of the sale.

Title which is free from all privileges and encumbrances.

364. The sale of the aircraft, ship or vessel in accordance with the provisions of this Sub-title gives the purchaser a title which is free from all privileges and encumbrances, and after the sale all claims or demands against the aircraft, ship or vessel may be enforced only against the proceeds of the sale."

Substitution of sub-heading in the Code.

58. For the words of Sub-heading "Sub-title IV - Of the Executive Garnishee Order" occurring immediately before article 375

of the Code, there shall be substituted the words "Sub-title VI - Of the Executive Garnishee Order".

59. For article 376 of the Code there shall be substituted the following new article:

Substitution of article 376 of the Code.

"Contents of garnishee order.

376. (1) The creditor shall, in the application for the issue of a garnishee order, correctly state the name and surname of the debtor, giving other particulars concerning the debtor as may be ordered by the Minister responsible for justice for the purpose of the identification of the debtor by the garnishee.

(2) The order shall:

(a) state the name and surname of the debtor and other particulars included in the application for the purpose of identification of the debtor, including, where possible, the identity card number or the company registration number;

(b) state the amount or thing due;

(c) state the title under which the creditor sues out execution;

(d) enjoin the garnishee not to pay or deliver up to the debtor, or any other person, such moneys or things as may be in his hands but which belong to the debtor, under penalty of payment of damages and interest; and

(e) enjoin the garnishee to lodge, at the debtor's expense within twenty-one 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.

(3) The lack of any of these particulars in the garnishee order shall render the said order to be *ipso jure* null."

60. In subarticle (1) of article 377 of the Code, for the words article "by the marshal of a copy thereof to the garnishee" there shall be substituted the words "of a copy thereof, by the court executing officer, to the garnishee or by such electronic means as may be

Amendment of article 377 of the Code.

prescribed by the Minister responsible for justice".

Substitution of article 378 of the Code.

61. For article 378 of the Code there shall be substituted the following new article:

"Declaration by garnishee.

Time for such declaration.

378. A garnishee who, although being in possession of moneys or other articles, belonging to the debtor, or which are due to the debtor, which may have been attached by means of the order, and who does not effect the deposit referred to in article 376 within such time as may be laid down in the order, shall be responsible for ensuing damages and interest in favour of the creditor and the court may, upon application being made for that purpose by the creditor, issue such orders as may be required, including his personal arrest for a period not exceeding three months, in order to force him to lodge such property."

Substitution of article 379 of the Code.

62. For article 379 of the Code there shall be substituted the following new article:

"Garnishee may be enjoined to deposit.

379. (1) In the case of attachment of moneys, the garnishee may before lodging such moneys in court retain the costs in respect of such lodgment and, in the case of attachment of other movable property, the garnishee shall have a privileged claim over the property so lodged in respect of such costs.

(2) In all cases, the execution creditor and the debtor shall be notified of any such lodgment into court."

Deletion of article 380 of the Code.

63. Article 380 of the Code shall be deleted.

Amendment of article 381 of the Code.

64. Article 381 of the Code shall be amended as follows:

(a) in subarticle (1), paragraph (c), immediately after the word "charitable grant" there shall be added the words "or donation";

(b) in subarticle (1), for paragraph (f) there shall be substituted the following paragraphs:

"(f) moneys which have been made available to

the debtor by deed of loan for the building, construction and maintenance of houses intended as a main dwelling place for the debtor;

(g) overdraft banking facilities excluding credit cards by means of which commercial going concerns run by the debtor are being operated;

(h) bank guarantees and letters of credit."; and

(c) subarticle (2) shall be deleted, and sub-rticles (3) and (4) shall be renumbered as subarticles (2) and (3) respectively.

65. In subarticle (1) of article 382 of the Code, for the words "the court may, on the application by any creditor, allow the issue of a garnishee order" there shall be substituted the words "the issue of a garnishee order shall be applicable".

Amendment of article 382 of the Code.

66. For article 383 of the Code there shall be substituted the following new article:

Substitution of article 383 of the Code.

"Garnishee order may not be extended. **383.** A garnishee order may not be extended and shall remain in force up to such time as it is revoked by a decree issued by the court."

67. For the words of sub-heading "Sub-title V - Of the Warrant of Ejectment or Expulsion from Immovable Property" occurring immediately before article 384 of the Code, there shall be substituted the words "Sub-title VII - Of the Warrant of Ejectment or Expulsion from Immovable Property".

Substitution of sub-heading in the Code.

68. In article 384 of the Code, for the words "the marshal" wherever they occur, there shall be substituted the words "the court executing officer".

Amendment of article 384 of the Code.

69. For the words of Sub-heading "Sub-title VI - Of the Warrant *In Factum*" occurring immediately before article 385 of the Code, there shall be substituted the words "Sub-title VIII - Of the Warrant *In Factum*".

Substitution of sub-heading in the Code.

70. For article 385 of the Code there shall be substituted the

Substitution of article 385 of the Code.

following new article:

"Warrant *in factum*."

385. (1) In the execution of a warrant *in factum*, the court executing officer shall proceed in such manner as ordered in the warrant.

(2) The warrant *in factum* shall contain the order that the party against whom the warrant is issued is to be conveyed to prison, in order to be therein kept at his own expense, until the performance of the act ordered by a judgment or until such time as the court may deem necessary to ensure such performance.

(3) The warrant may not be issued other than by an explicit order of the court to be issued on a demand made by application by the creditor.

(4) The court shall only issue the warrant if it is satisfied that the creditor does not have any other means of execution available."

Amendment of article 387 of the Code.

71. Article 387 of the Code shall be amended as follows:

(a) in subarticle (1), for the words "the marshal" and "for seven days" there shall be substituted the words "the court executing officer" and "for four days" respectively;

(b) in subarticle (2), for the words "seven days" there shall be substituted the words "four days"; and

(c) in subarticle (3), for the words "The marshal" there shall be substituted the words "The court executing officer".

Addition of new sub-heading in the Code.

72. Immediately after article 388 of the Code, there shall be added the following new sub-heading:

"Sub-title IX

OF THE WARRANT OF EXECUTIVE DETENTION
OF AIRCRAFT".

Addition of new articles 388A and 388B to the Code.

73. Immediately after the new sub-heading of Sub-title VIII,

there shall be added the following new articles 388A and 388B:

"Application for the issue of a warrant.

388A. An executive warrant of detention of aircraft is effected by application in terms of articles 858 and 860:

Provided that the application shall contain a detailed description of the aircraft of which the sale by auction is demanded, including the mode in which it has been acquired and any rights and encumbrances thereon.

Court to decide about the sale or to fix time-limit for payment.

388B. (1) The court shall, when a demand is made for the issue of a warrant of detention, establish whether it shall order the sale of the said article or to fix a time-limit within which the debtor is to pay the amount due.

(2) When the court orders such sale, it shall proceed according to the procedures laid down in the provisions relating to judicial sale by auction.

(3) When the court fixes a time limit within which the debtor is to pay, it shall order the warrant to be definitely in force until payment of the amount due is effected.

(4) When the said time limit passes without any effect the court shall, on a demand to be made by the interested party, order the sale to take place according to the provisions of subarticle (2)."

74. Immediately after article 388B of the Code, there shall be added the following new sub-heading and the following new articles 388C and 388D:

Addition of new sub-heading and articles 388C and 388D to the Code.

"Sub-title X

OF THE WARRANT OF EXECUTIVE ARREST
OF SEA VESSELS

"Application for the issue of a warrant.

388C. An executive warrant of arrest of sea vessels is effected by application in terms of articles 858 and 860.

Court to decide about the sale or to fix time-limit for payment.

388D. (1) The court shall, when a demand is made for the issue of a warrant of arrest, establish whether it shall order the sale of the said article or fix a time-limit within which the debtor is to pay the amount due.

(2) When the court orders such sale, it shall proceed according to the procedures laid down in the provisions relating to judicial sale by auction.

(3) When the court fixes a time limit within which the debtor is to pay, it shall order the warrant to be definitely in force until payment of the amount due is effected.

(4) When the said time limit passes without any effect the court shall, on a demand to be made by the interested party, order the sale to take place according to the provisions of subarticle (2)."

Addition of new sub-heading in the Code.

75. Immediately after article 388D of the Code, there shall be added the following new sub-heading:

"Sub-title XI

OF THE WARRANT IN PROCINCTU".

Addition of new article 388E to the Code.

76. Immediately after the new sub-heading of Sub-title XI, there shall be added the following new article 388E:

"Court may issue other orders.

388E. (1) Subject to the other provisions contained in Title VII of this Code, the court may on demand of the party, issue such orders to the Registrar as it may deem necessary for the orders contained in the judgement to be executed:

Provided that this warrant shall not be issued except after an application has been made to this effect by the creditor and after the court is satisfied that the creditor does not have any other means of execution.

(2) There shall be clearly indicated in the application the reason for the necessity of such orders and a decree shall be given thereon after that the debtor has been served notice thereof, to which he may file a reply within four days."

77. For the words of sub-heading "Sub-title VII - Of the Rendering of Accounts and Liquidation of Fruits" occurring immediately before article 389 of the Code, there shall be substituted the words "Sub-title XII - Of the Rendering of Accounts and Liquidation of Fruits".

Substitution of sub-heading in the Code.

78. Immediately after article 742A of the Code, there shall be added the following new articles 742B to 742D:

Addition of new articles 742B to 742D to the Code.

"Jurisdiction
in rem
against ships
or vessels.

742B. Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction *in rem* against ships or vessels in the following maritime claims:

(a) any claim to the possession, ownership or title to or of a ship or to the ownership of any share therein;

(b) any question arising between the co-owners of a ship as to the ownership, possession, employment or earnings of that ship;

(c) any claim in respect of a mortgage, hypothec or charge on a ship or on any share therein;

(d) any claim arising out of the contract for the sale of the ship;

(e) any claim for damage received by a ship;

(f) any claim for damage done or caused by a ship, either in collision or otherwise;

(g) any claim for loss of life or personal injury caused, whether on land or on water, by any ship or occurring in connection with the operation of any ship or sustained in consequence of any defect in a ship or in her apparel or equipment or in consequence of the wrongful act, neglect or default of -

(i) the owners, charterers or persons in possession or control of a ship; or

(ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,

being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods in, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(h) any claim for loss of or damage to goods, including baggage, carried in a ship;

(i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship, whether by charter party or otherwise;

(j) any claim in the nature of salvage operations or any salvage agreement including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(k) any claim for -

(i) damage or threat of damage caused by the ship to the environment, coastline or related interests;

(ii) measures taken to prevent, minimize or remove such damage; and for compensation for such damage;

(iii) costs of reasonable measures of reinstatement to the environment actually undertaken or to be undertaken;

(iv) loss incurred or likely to be incurred by third parties in connection with such damage; and

(v) for damage, costs or loss of a similar nature to those listed in subparagraphs (i) to (iv);

(l) any claims regarding costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of her crew;

(m) any claim in the nature of towage in respect of a ship;

(n) any claim in the nature of pilotage in respect of a ship;

(o) any claim in respect of goods, materials, provisions, bunkers, supplies and necessaries supplied or services rendered to a ship for her operation, management, preservation or maintenance;

(p) any claim in respect of the construction, re-construction, repair, conversion or equipping of a ship;

(q) any claim in respect of port, dock or harbour dues and charges;

(r) any claim by the master, officers, or member of the crew, or complement of a ship, for wages and other sums due to them in respect of their employment on the ship including costs of repatriation, and social security contributions payable on their behalf;

(s) any claim by a master, shipper, charterer or agent in respect of disbursements made by them on account of a ship or her owners;

(t) any claim for commissions, brokerages, or agency fees payable in respect of the ship, by or on behalf of the ship owner or demise charterer;

(u) any claim arising out of an act which is or is claimed to be a general average act;

(v) any claim arising out of bottomry;

(w) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried or have been attempted to be carried in a ship or for the restoration of a ship or any such goods after seizure;

(x) any claim for insurance premia, including mutual insurance calls, in respect of the ship payable by or on behalf of the ship owner or demise charterer;

Cap. 234. (y) any claim for fees and other charges due to the Registrar-General of Shipping and Seamen arising under the provisions of the Merchant Shipping Act, and any claim for tonnage dues.

Action *in rem* in cases mentioned in article 742B(a) to (c). **742C.** In the cases mentioned in article 742B(a) to (c), an action *in rem* may be brought before the civil courts of Malta against the ship in connection with which the claim or question arises.

Action *in rem* in cases mentioned in article 742B(d) to (y). Cap. 234. **742D.** Save for those claims which attract a special privilege in accordance with article 50 of the Merchant Shipping Act, and which, in terms of article 37D(3) of the said Act, survive the voluntary sale of a vessel by up to one year, in the cases mentioned in article 742B(d) to (y), an action *in rem* may be brought before the civil courts of Malta against -

(a) that ship or vessel, where the person who would be liable on the claim for an action *in personam* ("the relevant person") was, when the cause of action arose, an owner or charterer of, or in possession or in control of, the ship or vessel, if at the time when the action is brought the relevant person is either an owner or beneficial owner of that ship or the bareboat charterer of it;

(b) any other vessel of which, at the time when the action is brought, the relevant person is the owner or beneficial owner as respects all shares in it."

79. For article 830 of the Code there shall be substituted the following new article:

Substitution of article 830 of the Code.

"Precautionary acts. **830.** (1) The precautionary acts referred to in the last preceding article are the following:

(a) warrant of description;

(b) warrant of seizure;

(c) warrant of seizure of a commercial going concern;

(d) garnishee order;

(e) warrant of impediment of departure;

(f) warrant of detention of aircraft;

(g) warrant of arrest of sea vessels;

(h) warrant of prohibitory injunction.

Cap. 234.

(2) (a) Saving the provisions of article 870 of this Code and of article 357 of the Merchant Shipping Act, such acts mentioned in subarticle (1) shall be rescinded, if the party against whom the act is issued makes such deposit or gives such security as, in the court's opinion, according to the circumstances of the case, may be sufficient to safeguard the rights or claims stated in the act, or if it is shown that a judicial act accepting liability as provided in subarticle (3) has been filed in the proper registry.

(b) Notwithstanding that a deposit is made or security is given as aforesaid, the time limits established in this Title on the creditor to bring forward his action shall continue to apply.

(c) Such time limits shall run from the date of the issue of the precautionary act, and failure by the creditor to institute proceedings within the said time limits shall entitle the debtor to withdraw the deposit or cancel the security.

Cap. 104.

(3) Where a precautionary act has been issued against any person, or such as to affect any property of such person, to secure a claim for damages, and a locally registered insurance company or local bureau thereof, as established in the Motor Vehicles (Third Party Risks) Ordinance, such person or company shall by means of a judicial act, filed in the registry of the said court, within ten days from the date of the insured person's demand, declare that he or the company is accepting liability to pay all sums that may be due for such damages, in connection with the claim contained in that act if such insured person is found to be responsible for such damages -

(a) the insurer or local bureau, as the case may be, shall be liable to pay all sums that may be due for damages arising as aforesaid;

(b) the claim for such damages may be pursued against the insurer or the local bureau directly; and

(c) the precautionary act against such person shall be rescinded.

(4) No precautionary act as provided in subarticle (3) shall be issued against the insured if the person intending to sue out the warrant is cognizant that the insurer or the local bureau has issued to the insured a valid insurance certificate accepting liability for the payment of damages; and in such case the claim for such damages may be pursued against the insurer or the local bureau or agent, as the case may be, directly."

80. For article 831 of the Code there shall be substituted the Substitution of article 831 of the Code.

following new article:

"Application
for issue of
warrant.

831. (1) The demand for the issue of any of the said acts shall be made by an application prepared by the applicant and containing, under pain of nullity of the act, other than further details which may be prescribed by regulations:

(a) the origin and nature of the debt or claim sought to be secured; and

(b) when the right sought to be secured by the act is a debt, or a demand which may be satisfied by the payment of a sum of money, the amount of such demand.

If the case has already been filed in court, such demand may specify and include all judicial costs.

(2) The application shall be confirmed on oath by the applicant:

Provided that where in an application there is more than one applicant demanding the issue of any of the precautionary acts mentioned in article 830(1) against the same respondent, the oath shall be taken by at least one of the applicants.

(3) Any of the warrants or order mentioned in article 830 shall be issued by the court:

Provided that, where in the opinion of the Registrar the signature of a judge or magistrate empowered to issue a warrant of seizure or a garnishee order or a warrant of impediment of departure cannot be obtained within a reasonable time and that delay may be prejudicial, the said warrants or order may be issued over the signature of the Registrar personally after having first obtained verbal authorisation from the judge or magistrate to do so. In this case, the judge or magistrate is to append his own signature under that of the Registrar at the earliest opportunity to confirm that he had given the said verbal authority or, if it is not possible for the Registrar to obtain such verbal authority, the Registrar shall under his authority issue the said warrant or order over his signature, subject to the ratification of such action by a judge or magistrate at the earliest opportunity."

81. Article 832 of the Code shall be deleted.

Deletion of article 832 of the Code.

82. For article 833 of the Code there shall be substituted the following new article:

Substitution of article 833 of the Code.

"Request for the issue of a warrant under article 166A.

833. (1) Where an executive 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) and (d):

Provided that when such executive judicial letter is filed, the applicant shall file a cause within twenty days from the date of filing of a full or partial note of contestation or within sixty days from the date of the issuing of a warrant according to which date first occurs."

83. For article 834 of the Code there shall be substituted the

Substitution of article 834 of the Code.

following new article:

"Notice of execution of warrant.

834. The court executing officer shall, at the earliest time possible, serve notice in writing to the applicant, the lawyer or the legal procurator whose signature is subscribed on the application, of the execution of the warrant or order."

Deletion of article 835 of the Code.

84. Article 835 of the Code shall be deleted.

Amendment of article 836 of the Code.

85. Article 836 of the Code shall be amended as follows:

(a) for subarticles (2), (3) and (4), there shall be substituted the following subarticles:

"(2) The person making the application according to subarticle (1) shall, together with the application, file in writing all submissions to be made together with all documents in support of the demand that is being filed.

(3) The application, except for any application in terms of subarticle (1)(a), shall be served on the opposite party who may, within seven days from the service, file a note containing all submissions to be made together with all documents in support of the demand that is being filed.

(4) The court shall decide the application with urgency either *in camera* or after hearing the advocates of the parties, if it deems fit, provided that not more than one sitting may be fixed for such purpose."; and

(b) subarticle (8) shall be amended as follows:

(i) in paragraph (a) thereof, immediately after the words "if the applicant" there shall be added the words ", without any valid reason,"; and

(ii) in paragraph (b) thereof, for the words "if, on the demand" there shall be substituted the words "if, on demand".

Amendment of article 837 of the Code.

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

(a) for subarticle (1) there shall be substituted the following:

"(1) The warrants of description and of arrest of a vessel or of any other sea going craft for the purpose of a reference to the oath of the opposite party or for the purpose of securing the enforcement of a judgment not being for the payment of an acknowledged amount, may be issued by the Court of Magistrates (Malta), or the Court of Magistrates (Gozo) in its inferior jurisdiction, but may not be issued by the Small Claims Tribunal:

Provided that the warrant of arrest of a vessel or of any other sea going craft may neither be issued by the Court of Magistrates nor by the Small Claims Tribunal.";

(b) in paragraph (b) of subarticle (4), for the words "her clearance; and" there shall be substituted the words "her clearance.";

(c) paragraph (c) of subarticle (4) shall be deleted; and

(d) in paragraph (b) of subarticle (5), immediately after the words "on which such person is enrolled" there shall be added the words "or by the officer commanding the vessel on which such person is enrolled,".

87. For article 838 of the Code there shall be substituted the following new article:

Substitution of article 838 of the Code.

"Precautionary acts.

838. The court may, when any party makes an application before it which is served on the other party, give any order as may be required so as to prevent any damage or deterioration being caused to the things described in the precautionary act."

88. Article 838B of the Code shall be amended as follows:

Amendment of article 838B of the Code.

(a) in the marginal note to the article, for the words "until final determination" there shall be substituted the words "until the cause becomes *res judicata*";

(b) the whole article shall be renumbered as subarticle (1) thereof and for the words "until the final determination of the cause" there shall be substituted the words "until the cause becomes *res judicata*."; and

(c) immediately after subarticle (1) as renumbered, there shall be added the following new subarticle:

"(2) Notwithstanding the provisions of subarticle (1) of this article, 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) and (d), the creditor shall file a note within twenty days 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), (e) and (f), the creditor shall file an application under the provisions of article 389 within twenty days from the judgement."

Substitution of article 843 of the Code.

89. For article 843 of the Code there shall be substituted the following new article:

"Time within which to bring action.

843. (1) The applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of the warrant:

Provided that where the issue of the warrant is demanded by any spouse against the other spouse, and the spouse issuing the warrant has commenced proceedings in court, the time limit herebefore mentioned shall commence running from such date when that spouse is authorised to proceed by the court, provided that the warrant shall cease having its effect immediately upon the proceedings being withdrawn or abandoned.

(2) If the applicant fails, without just cause, to bring such action, the effects of the warrant shall cease and he shall be liable for all damages and interest."

Substitution of article 845 of the Code.

90. For article 845 of the Code there shall be substituted the

following new article:

"Applicability
of articles 278,
279 and 282.

845. The provisions of articles 278, 279 and 282, shall apply to the execution of a warrant of description."

91. For article 846 of the Code there shall be substituted the following new article:

Substitution of
article 846 of
the Code.

"Warrant of
seizure.

846. (1) The warrant of seizure of movable property shall, other than the details referred to in article 276, also contain an order to the Registrar to seize from the debtor such articles or article from the place therein indicated.

Official
consignee.

(2) When a demand is made for the removal of the seized articles the court shall appoint an official consignee.

Applicability
of articles 278
to 304, 842 to
844.

(3) The provisions of articles 278 to 304 and articles 842, 843 and 844, shall apply to warrants of seizure."

92. Article 847 of the Code shall be amended as follows:

Amendment of
article 847 of
the Code.

(a) for the words "without a previous judicial acknowledgment of the debt or claim:" there shall be substituted the words "without a previous judicial acknowledgment or rendering as an executive title of the debt or claim:";

(b) in the proviso thereto, for the words "Provided that in the case of ships, other vessels, aircraft, perishable goods or other deteriorating assets," there shall be substituted the words "Provided that in the case of perishable goods or other deteriorating assets,"; and

(c) in the said proviso, the words "plaintiff's claim, the defence raised against such" shall be deleted.

93. In article 848 of the Code for the words from "unless, where the debt" to "such debt or claim." there shall be substituted the words "unless the warrant is sued out accompanied by a demand that the credit or claim are judicially acknowledged and the debt or claim exceeds five hundred liri, or the demand for such warrant is for an article which, as stated, is property belonging to the person suing out the warrant."

Amendment of
article 848 of
the Code.

Addition of new Sub-title in Book Third of the Code and new articles 848A and 848B.

94. Immediately after article 848 in Book Third of the Code, there shall be added the following new sub-heading and the following new articles 848A and 848B:

"Sub-Title III

OF THE WARRANT OF SEIZURE OF A
COMMERCIAL GOING CONCERN

Scope of
warrant.

848A. (1) A precautionary warrant of seizure of a commercial going concern may solely be issued to secure a debt or claims which could be frustrated by the sale in part or in whole of the said going concern and, for this purpose, no other warrant may be issued against the going concern, unless it is this warrant of seizure.

(2) The effect of a precautionary warrant of seizure of a commercial going concern is to preserve the totality of the assets of the going concern, including licences and good-will, to order that same is not sold in part or in whole and are to be concurrently kept in business, provided that in any case the court shall not accept a demand for the issuing of a warrant if it is satisfied that there are other means to safeguard the amount due.

(3) The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to protect the rights belonging to applicant who, *prima facie*, appears to have such rights.

(4) The provisions of articles 840, 842, 843, 844 and 848 shall apply to this warrant.

Court to
appoint
administrator
and expert.

848B. (1) When a demand is made for the issue of this warrant the court shall, after hearing the parties, appoint an administrator and in order to effect such action it shall consider whether to allow the going concern to continue being run by the debtor or by such persons as may be entrusted by the debtor with the assistance of the administrator, or that an administrator is appointed who in the opinion of the court has the necessary qualifications to run and administer the going concern on his own.

(2) The court shall appoint an expert under article 89 and establish a short and peremptory time within which there shall be filed an itemized list, to be confirmed on oath, of the value of the whole property forming the capital of the commercial going concern.

(3) The appointed administrator shall be responsible for the commercial going concern and shall have the right to sell and administer the ordinary running of the concern provided that for any decision of an extraordinary nature he shall file a demand in court for the granting of such authorisation.

(4) The administrator may, if he is of the opinion that the going concern will incur a market loss in its value, demand the court either to authorise him to sell the whole going concern or any part thereof.

(5) The administrator appointed under this article shall have the right to such payment as the court may, in its discretion, be of the opinion that is due to him in consideration of the value of the going concern and of the activity undertaken with regard to the running of the business."

95. For the words of the sub-heading "Sub-title III" occurring in Title VI of Book Third immediately before article 849 of the Code, there shall be substituted the sub-heading "Sub-title IV".

Substitution of
sub-heading in
the Code.

96. Article 849 of the Code shall be amended as follows:

Amendment of
article 849 of
the Code.

(a) the words "articles 842, 844" shall be substituted by the words "articles 842, 843, 844" and

(b) the proviso thereto shall be substituted by the following:

"Provided that where the garnishee is a bank, a precautionary garnishee order shall not apply to money payable by the bank in execution of any guarantee given by the bank that it will effect payment on the demand of the person in whose favour the banker's guarantee is made out; and in any such case, notwithstanding the garnishee order, the bank shall have power to pay out or otherwise dispose of any such money as free from any garnishee order and shall also be entitled to withdraw any such money from any court or other place, or from any person, into which, or with whom, it may have been lodged or deposited, and it shall be the duty of the Registrar of such court or other person in possession or having control over such money to return it forthwith to the bank."

Amendment of article 851 of the Code.

97. In subarticle (2) of article 851 of the Code for the words "in articles 831 and 832" there shall be substituted the words "in subarticle (2) of article 831".

Substitution of sub-heading in Book Third of the Code.

98. For the sub-headings "Sub-title IV" and "Of the Warrant of Impediment of Departure" in Title VI of Book Third of the Code, there shall be substituted the following:

"Sub-title V

OF THE WARRANT OF DETENTION OF AIRCRAFT".

Deletion of articles 855 to 870 of the Code.

99. Articles 855 to 870 of the Code shall be deleted.

Addition of new articles 855 to 872A to the Code.

100. Immediately after the new Sub-title V of the Code, there shall be added the following new articles 855 to 872C:

"Object of warrant.

855. (1) For the purposes of this Sub-title and of articles 358 to 364, both inclusive, an aircraft shall be considered to be an object of a perishable nature in accordance with the provisions of this Code.

(2) The provisions of Article 843 shall apply to this warrant.

(3) A warrant of detention of any aircraft may solely be issued to secure a debt or claim pursuant to -

Cap. 232. (a) regulations or orders issued in accordance with article 19 of the Civil Aviation Act in relation to:

(i) airport charges owed at Maltese airports; and

(ii) air navigation charges owed to the Malta Air Traffic Services Limited or such company as the Minister may, from time to time, by order in the Gazette, establish; or

Cap. 333. (b) regulations issued pursuant to article 6 of the Eurocontrol Act in relation to air navigation charges owed to the European Organisation for the Safety of Air Navigation (EUROCONTROL),

and no other warrant may be issued against an aircraft unless it is a warrant of detention.

Warrant to have effect both to seize and to attach aircraft.

856. (1) The warrant of detention shall have the effect to seize the aircraft from the debtor and also to attach it in the hands of the person or body at the time responsible for the management of the airport or of the place where the aircraft is situate, and also to order that the said person or body shall not release such aircraft or allow the debtor to divest himself in any way from the same in whole or in part or to give or surrender to any person any rights on the same.

(2) The warrant is executed for all effects of the law when notice is served on the person or body referred to in subarticle (1).

Display of court order.

857. The person or body referred to in article 856(1) shall take all necessary measures to display the court order sufficiently in advance of the issue of the warrant for the general attention of third parties:

Provided that the disembarkation of passengers and the unloading of cargo and luggage on board shall not be restricted, and the operator of the aircraft shall be allowed access to it for maintenance purposes.

Warrant to be sued out on appropriate form.

858. A warrant of detention shall be issued by means of an application on a form to be prescribed by the Minister responsible for justice, on which form there shall be included a court decree by virtue of which the necessary orders are given and issued.

Warrant available where claim is not less than Lm400,000.

859. A warrant may be demanded and obtained in security of a debt or any other claim listed in article 855 amounting to not less than four hundred thousand liri.

Statement to be contained in application.

860. The application for the issue of a warrant shall, under pain of nullity, state in a clear manner all particulars, the name of the authority in whose hands the aircraft is and the place where the aircraft is to be found.

Penalty in case of malicious demand for warrant.

861. Where it is found that the warrant was obtained upon a demand maliciously made, the penalty in terms of article 836(8) shall not be less than four hundred thousand liri.

Security for payment of penalty, etc.

862. It shall be lawful for the court, on good cause being shown, upon the demand by application by a person whose aircraft is detained, by the captain of the aircraft or by any person being in charge thereof or having an interest therein, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security, in an amount not less than four hundred thousand liri, for the payment of the penalty, damages and interest and, in default, to rescind the warrant.

Security for
release of
aircraft.

863. Notwithstanding the provisions of article 830(2)(a), the court shall order the immediate release of the aircraft where sufficient security is deposited in court by the operator of the aircraft or any person having an interest therein, amounting to the value of the debt and costs, or covering the value of the aircraft, if its value is lower than the amount of the debt and costs:

Provided that the security shall be appropriated exclusively to the payment of the creditor:

Provided further that all claims for the release of aircraft shall be dealt with by summary and rapid procedure.

Aircraft not
subject to the
issue of a
warrant.

864. (1) No warrant shall be issued against -

(a) any aircraft exclusively appropriated to a State service, including the postal service, both private and state owned, but excluding commercial service;

(b) every other aircraft appropriated to the carriage of persons or goods for reward, where such aircraft is ready to start on such carriage, unless the detention is in respect of a contract debt incurred for the purposes of the journey which the aircraft is about to make, or of a claim which has arisen in the course of the journey.

(2) The provisions of subarticle (1) do not apply to a warrant sought out by an owner dispossessed of an aircraft by an unlawful act.

(3) No warrant shall be issued against any aircraft used by military forces.

(4) If an aircraft which is exempt from detention under this article has been detained, or if the operator or other interested party has been compelled to give security in order to prevent detention or to obtain a release of such aircraft, the person effecting the detention shall be liable for any damage which results therefrom on the operator or the owner of the aircraft.

(5) A warrant of detention of an aircraft shall, on an application by any interested party, be rescinded if the court is satisfied that because of the nature of the journey or the cargo or other circumstances concerning safety, navigation or airport operation, it is advisable that the aircraft should leave without delay.

Sub-title VI

OF THE WARRANT OF ARREST
OF SEA VESSELS

Object of
warrant.

865. (1) A warrant of arrest of any sea-going vessel having a length exceeding ten metres may solely be issued to secure a debt or claims, whether *in personam* or *in rem*, which could be frustrated by the departure of the said ship, and no other warrant may be issued against a sea-going vessel unless it is a warrant of arrest, and whether such vessel is at sea or at some other place.

(2) The provisions of article 843 shall apply to the warrant.

Warrant to
have effect
both to seize
and to attach
the vessel.

866. (1) The warrant of arrest shall have the effect to seize the sea vessel, having a length exceeding ten metres, from the debtor and also to attach the same in the hands of the authority where the property is, and also to order that the said authority shall not release such sea vessel or allow the debtor to divest himself in any way from the same in whole or in part or to give or surrender to any person any rights on the same.

(2) The warrant is executed for all effects of the law when notice is served on the executive officer of the authority who has in his hands the sea vessel.

(3) A copy of the warrant of arrest shall also be served on the person whose ship or vessel is arrested, the master or other person in charge of such ship or vessel, or the agent of such ship or vessel.

The authority in charge of the vessel to be considered official consignee.

867. (1) The authority who has in its hands or under its control the sea going vessel against which such warrant of arrest has been issued shall, for all purposes of the law, be considered to be the official consignee according to the provisions of articles 286, 287, 288, 289 and 290.

(2) The said authority shall take all necessary measures to display the court order for the general attention of third parties.

(3) For the purposes of this warrant the Malta Maritime Authority shall be deemed to be the authority having in its hands or under its power or control the arrested ship or vessel.

(4) A vessel is deemed to be in the power or control of the Malta Maritime Authority as soon as the vessel enters Maltese territorial waters.

(5) All expenses as may be necessary for the preservation of the arrested ship or vessel shall be borne by the party issuing the warrant, saving his right to recover such expenses together with his claim.

Warrant to be sued out on appropriate form.

868. (1) A warrant of arrest shall be sued out by means of an application on a form to be prescribed by the Minister responsible for justice, on which form there shall be included a court decree by virtue of which the necessary orders are given and issued.

(2) The court executive officer shall have the power to adopt, subject to such directives as may be given by the Court or the Registrar of Courts, all such measures as may be deemed necessary for the execution of the warrant of arrest.

Warrant available where claim is not less than Lm3,000.

869. A warrant may be demanded and obtained in security of a debt or any other claim whatsoever amounting to not less than three thousand liri.

Statement to be contained in application.

870. The application for the issue of a warrant of arrest shall, under pain of nullity, state in a clear manner such particulars as may enable the identification of the ship or vessel, the name of the authority in whose hands or under whose power or control the arrested ship or vessel may be, as well as the place where the ship or vessel is to be found.

Penalty in case of malicious demand for warrant.

871. Where it is found that the warrant was obtained upon a demand maliciously made, the penalty in terms of article 836(8) shall not be less than five thousand liri.

Security for payment of penalty, etc.

872. It shall be lawful for the court, on good cause being shown, upon the demand by application by a person whose ship or vessel is detained, by the master of the ship or vessel, or by any person being in charge thereof or by its agent, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security, in an amount not less than five thousand liri, for the payment of the penalty, damages and interest and, in default, to rescind the warrant.

Ships or vessels not subject to the issue of a warrant.

872A. (1) No warrant shall be issued against any ship or vessel wholly chartered in the service of the Government of Malta or employed in any postal service either by the Government of Malta or by any other government.

(2) No warrant shall be issued against any ship of war.

(3) A warrant of arrest of a ship or vessel shall, on an application by the Malta Maritime Authority, be rescinded if the court is satisfied that because of the nature of its cargo or of its length or draught or other circumstances concerning safety, navigation or port operation, it is advisable that the ship or vessel should leave port without delay.

(4) Following the arrest of a ship or vessel in any port or harbour or in the territorial waters of Malta, and on an application of the Malta Maritime Authority, a court may, if it is satisfied that because of the nature of its cargo and, or other circumstances concerning safety or pollution it is advisable that the ship or vessel should leave port and, or Maltese territorial waters, rescind the warrant of arrest and order that the ship or vessel should leave Malta and its territorial waters without delay.

Order for the sale of a ship or vessel *pendente lite*.

872B. The court may order the sale of an arrested ship or vessel *pendente lite* if it appears to the court upon the application of a creditor that the debtor is insolvent or otherwise unlikely to be able to continue trading and maintaining the asset. In reaching its conclusion the court shall consider all the circumstances connected therewith, including the nature of the plaintiff's claim, the defence raised against such claim, if any, and such other steps which the debtor has taken to secure the claim, or otherwise to preserve the asset.

Joint and several liability.

872C. (1) If, notwithstanding the issue and execution of a precautionary warrant of arrest, a ship or vessel is removed from the jurisdiction of the court in breach of the warrant of arrest, the owner, bareboat charterer or other person being in possession of the ship or vessel at the time of such breach shall be jointly and severally liable to a penalty of fifty thousand liri payable to the party issuing the warrant.

(2) The liability for the payment of a penalty arising under this article shall be without prejudice to any other possible sanction arising under the provisions of Title XVII of Book Third of this Code."

Substitution of sub-heading in Book Third of the Code.

101. For the sub-headings "Sub-title IV" and "Of the Warrant of Impediment of Departure" in Title VI of Book Third of the Code, there shall be substituted the following:

"Sub-title VII

OF THE WARRANT OF PROHIBITORY INJUNCTION".

Substitution of articles 873 to 875 of the Code.

102. (1) For articles 873 to 875 of the Code, there shall be substituted the following new articles:

"Object of warrant.

873. (1) The object of a warrant of prohibitory injunction is to restrain a person from doing anything whatsoever which might be prejudicial to the person suing out the warrant.

Inquiry of court.

(2) The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant, and that *prima facie* such person appears to possess such right.

(3) The court shall not issue any such warrant against the Government or authority established by the Constitution or any person holding a public office in his official capacity unless the authority or person against whom the warrant is demanded confirms in open court that the thing sought to be restrained is in fact intended to be done and the court is satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the actual doing of the thing sought to be restrained.

(4) If on an application, it is proved to the satisfaction of the court that subsequent to the issue of the warrant of prohibitory injunction the person restrained has acted directly or indirectly in breach of the court's order, the court shall, without prejudice to any other action competent to it at law, at a request of applicant, condemn the person against whom the warrant had been issued to remedy what was committed in breach of its order and to authorise in default the applicant to carry out such remedial works as the court may direct at the expense of the person restrained.

Warrant to secure debt or claim.

874. (1) A warrant of prohibitory injunction may also be demanded by a creditor to secure a debt or any other claim amounting to not less than five thousand liri. The object of such a warrant is to restrain the debtor from selling, alienating, transferring or disposing *inter vivos* such property as may be indicated in the application by onerous or gratuitous title or in any manner creating a burthen or real and, or personal rights; provided that such a warrant shall not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to a court order, or over bank guarantees and letters of credit.

(2) Where a warrant prohibits the sale, alienation, transfer or other disposal of immovable property the application shall contain all the particulars relating to the person against whom it is directed that are required by law in respect of the registration of a transfer of immovable property by such person in the Public Registry. Where the warrant refers to specific immovables, the application shall describe them in the manner provided for in the Public Registry Act, in respect of notes of enrolment, namely it shall apply with reference to the geographical data in question.

Cap. 56.

(3) The warrant referred to in subarticle (2) shall upon its issue and at the expense of the applicant, be served by the Registrar within twenty-four hours on the Director of the Public Registry and the Land Registrar or on such authority as may be nominated by the Minister responsible for justice, who shall forthwith register the same in books kept for the purpose. Such books shall be indexed and accessible to the public. It shall also be served upon any person indicated by the applicant.

(4) Upon registration of the warrant referred to in subarticle (2) by the Director of the Public Registry, any future sale, alienation, transfer or disposal of immovable property to which the warrant refers shall be void and to no effect.

(5) Without prejudice to the provisions of article 836, the warrant referred to in subarticle (2) shall, unless previously revoked or otherwise ceasing to be in force, continue to have effect for a period of one year from the date of final judgment in favour of the creditor in his action for the recovery of the debt or claim referred to in subarticle (1).

(6) Where a warrant prohibits the sale or transfer of the shares in a commercial partnership, notice shall also be served on the Registrar of Companies and from the date of such service any transfer of shares shall be null.

Execution of
warrant.

875. (1) The application shall be served on the party against whom it is issued who shall file a reply thereto within ten days:

Provided that the court may, in urgent cases, reduce the said period in this subarticle. In default of opposition, the court may accede to the demand.

(2) The court may initially issue provisionally a warrant for a short period under such terms and conditions as it may deem necessary according to the case, and subsequently decide about the matter in a definitive manner.

(3) The court shall, after appointing the application for hearing, decide on its merits after receiving any evidence it deems fit, within the shortest time possible but not any later than one month from the day when the warrant had been filed and confirmed on oath."

(2) Immediately after article 876 of the Code there shall be added the following new article:

"Applicability of certain articles.

876A. The provisions of articles 829 and 844 shall apply to the warrant of prohibitory injunction."

103. Articles 54, 56, 61, 90, 93 to 129, 137 to 148, 165 to 171, 173 to 178, and 180 to 184 of the Courts and Tribunals Procedures Act, 2002 shall be deleted.

Amendment of Act XXXI of 2002.

104. (1) Article 370 of the Merchant Shipping Act shall be deleted.

Consequential amendment to the Merchant Shipping Act. Cap. 234.

(2) Notwithstanding the provisions of subarticle (1), proceedings commenced before the court in accordance with article 370 of the Merchant Shipping Act before the coming into force of this article shall continue to be regulated by the said article 370 until they become *res judicata*.

105. Immediately after the second proviso to article 2 of the Commissioner of Land Ordinance, there shall be added the following new article:

Amendment of the Commissioner of Land Ordinance. Cap. 169.

"Assignment of duties.

3. (1) The Minister responsible for land may, with effect from such date as he may, by notice in the Gazette, appoint, assign any of the duties in the exercise of the rights and responsibilities of the Commissioner of Land in accordance with article 2, to any other person to be designated in such notice, which duties shall be specifically designated in such notice.

(2) Notwithstanding the provisions of subarticle (1), all rights and responsibilities to which the duties assigned in accordance with subarticle (1) relate shall, by virtue of article 2, remain vested in the Commissioner of Land."

Amendment to
the Prevention
of Money
Laundering Act.
Cap. 373.

106. In subarticle (11) of article 4 of the Prevention of Money Laundering Act for the words "from the date on which it is made; and the court shall not make another attachment order" there shall be substituted the words "from the date on which it is made, in which case the Attorney General shall, by notice in writing, inform the suspect and the garnishees in the manner provided for in subarticle (9), and the court shall not make another attachment order".

Transitory
provision.

107. The provisions of this Act shall apply to new proceedings which will be filed or commenced after the coming into force of the said provisions. Precautionary and executive warrants which have been commenced and which are still pending shall continue to be valid and there shall apply in their regard the law as herebefore applicable:

Provided that any precautionary warrant which shall still be pending on its date of commencement of this Act shall, as from such commencement date, be regulated by the provisions of this Act.

Passed by the House of Representatives at Sitting No. 427 of the 26th July, 2006.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives