

Naghti l-kunsens tieghi.

(L.S.)

EDWARD FENECH ADAMI
President

25 ta' Lulju, 2006

ATT Nru. XI ta' l-2006

*ATT biex jinkorpora l-Konvenzjoni dwar il-Kuntratt għall-Ġarr
Stradali Internazzjonali ta' Merkanzija*

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. It-titolu ta' dan l-Att hu Att ta' l-2006 dwar il-Ġarr Stradali Internazzjonali ta' Merkanzija. Titolu fil-qosor.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx tehtiegħ xort'ohra:- Tifsir.

“l-Awtorità” tfisser l-Awtorità dwar it-Trasport ta' Malta kif imwaqqfa taht l-Att dwar l-Awtorità dwar it-Trasport ta' Malta; Kap. 332.

“jordna” tfisser jordna permezz ta' ordni jew b'regolamenti skond dan l-Att;

“Konvenzjoni CMR” tfisser il-Konvenzjoni dwar il-Kuntratt għall-Ġarr Stradali Internazzjonali ta' Merkanzija (CMR) iffirmata f'Ġinevra fid-19 ta' Mejju, 1956 kif emendata bil-Protokoll CMR ta' Ġinevra iffirmit fil-5 ta' Lulju, 1978.

“il-Ministru” tfisser il-Ministru responsabbli għat-trasport stradali.

Ratifika tal-Konvenzjoni CMR.

3. Il-Gvern ta' Malta hu b'dan awtorizzat jirratifika l-Konvenzjoni CMR.

Stati Kontraenti.

4. (1) Bla preġudizzju għall-applikabbiltà tal-Konvenzjoni CMR bejn Malta u l-Pajjiżi Kontraenti l-oħrajn kollha, il-Ministru jista', b'ordni fil-Gazzetta, minn żmien għal żmien jispeċifika liema jkunu l-Istati Kontraenti, minbarra Malta, għall-finijiet tal-Konvenzjoni CMR.

(2) Ordni bhal dak għandu jkun jispeċifika d-data tad-dhul fis-sehh tal-Konvenzjoni CMR bejn Malta u Stat li jkun speċifikat fl-ordni.

Il-Konvenzjoni CMR ikollha forza ta' liġi.

5. (1) Id-disposizzjonijiet tal-Konvenzjoni CMR għandu jkollhom, minkejja dak kollu li jista' jkun hemm kuntrarju f'kull liġi oħra iżda bla hsara għad-disposizzjonijiet ta' dan l-Att, forza ta' liġi ma' Malta kollha għar-rigward tal-ġarr stradali internazzjonali ta' merkanzija minn dik id-data u skond dawk il-kundizzjonijiet li l-Ministru jista' jordna.

(2) Il-Konvenzjoni CMR tinsab fl-Iskeda li tinsab ma' dan l-Att u l-imsemmija skeda tista' tiġi emendata minn żmien għal żmien skond ma jista' jiġi ordnat għall-fini li tinzamm aġġornata mat-test ufficjali tal-Konvenzjoni CMR.

(3) Il-Konvenzjoni CMR li tinsab fl-Iskeda li tinsab ma' dan l-Att qieghda tiġi riprodotta fl-ilsien Inġliż biss.

Poter tal-Ministru li jagħmel regolamenti.

6. (1) Il-Ministru jista' wara konsultazzjoni ma' l-Awtorità, jagħmel regolamenti biex jordna kull haġa li tkun mehtiega jew spedjenti għall-iskop li jiġu ratifikati jew imwettqa l-obbligazzjonijiet ta' Malta taht il-Konvenzjoni CMR u b'mod ġenerali għat-twettiq tad-disposizzjonijiet ta' dan l-Att u, bla preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi, jista' jagħmel regolamenti:

(a) dwar il-ġarr stradali ta' merkanzija, salvi d-disposizzjonijiet ta' kull liġi li tirregola t-trasport jew il-ġarr stradali ta' merkanzija; u

(b) biex jemenda l-Iskeda li tinsab ma' dan l-Att kollha kemm hi jew f'parti minnha.

(2) Il-Ministru jista' wkoll jipprovdi li kull regolament jew ordni taht dan l-Att inklużi r-riservi li jkunu magħmulin minn Malta għall-Konvenzjoni CRM jew kull dikjarazzjoni li tkun magħmula minn Malta waqt l-iffirmar jew ir-ratifika tal-Konvenzjoni CMR, għandhom jidhlu bhala skedi ma' dan l-Att.

SKEDA

(Artikolu 5)

Flok il-kliem “Contracting Party” għandhom jidhlu jew il-kelma “Malta” jew il-kliem “Contracting State” skond il-każ.

CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR) DONE AT GENEVA ON THE 19TH OF MAY, 1956, AS AMENDED BY THE CMR PROTOCOL DONE AT GENEVA ON THE 5TH OF JULY, 1978

Chapter 1 - Scope of Application

Chapter II - Persons for whom the Carrier is Responsible

Chapter III - Conclusion and Performance of the Contract of Carriage

Chapter IV - Liability of the Carrier

Chapter V - Claims and Actions

Chapter VI - Provisions Relating to Carriage Performed by Successive Carriers

Chapter VII - Nullity of Stipulation to the Convention

Chapter VIII - Final Provisions

PREAMBLE

The Contracting Parties,

Having recognized the desirability of standardizing the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability,

Have agreed as follows:

Chapter 1 - Scope of Application

Article 1

1. This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different

countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.

2. For the purpose of this Convention, “vehicles” means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19 September 1949.

3. This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.

4. This Convention shall not apply:

(a) to carriage performed under the terms of any international postal convention;

(b) to funeral consignments;

(c) to furniture removal.

5. The Contracting Parties agree not to vary any of the provisions of this Convention by special agreements between two or more of them, except to make it inapplicable to their frontier traffic or to authorize the use in transport operations entirely confined to their territory of consignment notes representing a title to the goods.

Article 2

1. Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only have occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.

2. If the carrier by road is also himself the carrier by the other means of transport, his liability shall also be determined in accordance with the provisions paragraph 1 of this article, but as if, in his capacities as carrier by road and carrier by the other means of transport, he were two separate persons.

Chapter II - Persons for whom the Carrier is Responsible

Article 3

For the purposes of this Convention the carrier shall be responsible for the acts of omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

Chapter III - Conclusion and Performance of the Contract of Carriage

Article 4

The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.

Article 5

1. The consignment note shall be made out in three original copies signed by the sender and by the carrier. These signatures may be printed or replaced by the stamps of the sender and the carrier if the law of the country in which the consignment note has been made out so permits. The first copy shall be handed to the sender, the second shall accompany the goods and the third shall be retained by the carrier.

2. When the goods which are to be carried have to be loaded in different vehicles, or are of different kinds or are divided into different lots, the sender or the carrier shall have the right to require a separate consignment note to be made out for each vehicle used, or for each kind or lot of goods.

Article 6

1. The consignment note shall contain the following particulars:
 - (a) the date of the consignment note and the place at which it is made out;
 - (b) the name and address of the sender;
 - (c) the name and address of the carrier;
 - (d) the place and the date of taking over of the goods and the place designated for delivery;
 - (e) the name and address of the consignee;

(f) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;

(g) the number of packages and their special marks and numbers;

(h) the gross weight of the goods or their quantity otherwise expressed;

(i) charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);

(j) the requisite instructions for Customs and other formalities;

(k) a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention.

2. Where applicable, the consignment note shall also contain the following particulars:

(a) a statement that transshipment is not allowed;

(b) the charges which the sender undertakes to pay;

(c) the amount of “cash on delivery” charges;

(d) a declaration of the value of the goods and the amount representing special interest in delivery;

(e) the sender’s instructions to the carrier regarding insurance of the goods;

(f) the agreed time limit within which the carriage is to be carried out;

(g) a list of the documents handed to the carrier.

3. The parties may enter in the consignment note any other particulars which they may deem useful.

Article 7

1. The sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of the inaccuracy or inadequacy of:

(a) The particulars specified in article 6, paragraph 1, (b), (d), (e), (f), (g), (h) and (j);

(b) The particulars specified in article 6, paragraph 2;

(c) Any other particulars or instructions given by him to enable the consignment note to be made out or for the purpose of their being entered therein.

2. If, at the request of the sender, the carrier enters in the consignment note the particulars referred to in paragraph 1 of this article, he shall be deemed, unless the contrary is proved, to have done so on behalf of the sender.

3. If the consignment note does not contain the statement specified in article 6, paragraph 1 (k), the carrier shall be liable for all expenses, loss and damage sustained through such omission by the person entitled to dispose of the goods.

Article 8

1. On taking over the goods, the carrier shall check:

(a) The accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and

(b) The apparent condition of the goods and their packaging.

2. Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.

3. The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking. The result of the checks shall be entered in the consignment note.

Article 9

1. The consignment note shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

2. If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note.

Article 10

The sender shall be liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

Article 11

1. For the purposes of the Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires.

2. The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier.

3. The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.

Article 12

1. The sender has the right to dispose of the goods, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.

2. This right shall cease to exist when the second copy of the consignment note is handed to the consignee or when the consignee exercises his right under article 13, paragraph 1; from that time onwards the carrier shall obey the orders of the consignee.

3. The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.

4. If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, that other person shall not be entitled to name other consignees.

5. The exercise of the right of disposal shall be subject to the following conditions:

(a) That the sender or, in the case referred to in paragraph 3 of this article, the consignee who wishes to exercise the right produces the first copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;

(b) That the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not either interfere with the normal working of the carriers' undertaking or prejudice the senders or consignees of other consignments;

(c) That the instructions do not result in a division of the consignment.

6. When, by reason of the provisions of paragraph 5 (b) of this article, the carrier cannot carry out the instructions which he receives, he shall immediately notify the person who gave him such instructions.

7. A carrier who has not carried out the instructions given under the conditions provided for in this article or who has carried them out without requiring the first copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

Article 13

1. After arrival of the goods at the place designated for delivery, the consignee shall be entitled to require the carrier to deliver to him, against a receipt, the second copy of the consignment note and the goods. If the loss of the goods is established or if the goods have not arrived after the expiry of the period provided for in article 19, the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage.

2. The consignee who avails himself of the rights granted to him under paragraph 1 of this article shall pay the charges shown to be due on the consignment note, but in the event of dispute on this matter the carrier shall not be required to deliver the goods unless security has been furnished by the consignee.

Article 14

1. If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with the provisions of article 12.

2. Nevertheless, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time the person entitled to

dispose of the goods in accordance with the provisions of article 12, he shall take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods.

Article 15

1. Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions. If the consignee refuses the goods the sender shall be entitled to dispose of them without being obliged to produce the first copy of the consignment note.

2. Even if he has refused the goods, the consignee may nevertheless require delivery so long as the carrier has not received instructions to the contrary from the sender.

3. When circumstances preventing delivery of the goods arise after the consignee, in exercise of his rights under article 12, paragraph 3, has given an order for the goods to be delivered to another person, paragraphs 1 and 2 of this article shall apply as if the consignee were the sender and that other person were the consignee.

Article 16

1. The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act or neglect of the carrier.

2. In the cases referred to in article 14, paragraph 1, and in article 15, the carrier may immediately unload the goods for account of the person entitled to dispose of them and thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person so entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.

3. The carrier may sell the goods, without awaiting instructions from the person entitled to dispose of them, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if after the expiry of a reasonable period he has not received from the person entitled to dispose of the goods instructions to the contrary which he may reasonably be required to carry out.

4. If the goods have been sold pursuant to this article, the proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the person entitled to dispose of the goods. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.

5. The procedure in the case of sale shall be determined by the law or custom of the place where the goods are situated.

Chapter IV - Liability of the Carrier

Article 17

1. The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.

2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or neglect of the person from whom he may have hired the vehicle or of the agents or servants of the latter.

4. Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one more of the following circumstances:

(a) Use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;

(b) The lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;

(c) Handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee;

(d) The nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;

(e) Insufficiency or inadequacy of marks or numbers on the packages;

(f) The carriage of livestock.

5. Where under this article the carrier is not under any liability in respect of some of the factors causing the loss, damage or delay, he shall only be liable the extent

that those factors for which he is liable under this article have contributed to the loss, damage or delay.

Article 18

1. The burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier.

2. When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks.

3. This presumption shall not apply in the circumstances set out in article 17, paragraph 4 (a), if there has been an abnormal shortage, or a loss of any package.

4. If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (d), unless he proves that all steps incumbent on him in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.

5. The carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (f), unless he proves that all steps normally incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him.

Article 19

Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time-limit or when, failing an agreed time-limit, the actual duration of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time it would be reasonable to allow a diligent carrier.

Article 20

1. The fact that goods have not been delivered within thirty days following the expiry of the agreed time-limit, or, if there is no agreed time-limit, within sixty days from the time when the carrier took over the goods, shall be conclusive evidence of the loss of the goods, and the person entitled to make a claim may thereupon treat them as lost.

2. The person so entitled may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered

in the course of the year following the payment of compensation. He shall be given a written acknowledgement of such request.

3. Within the thirty days following receipt of such notification, the person entitled as aforesaid may require the goods to be delivered to him against payment of the charges shown to be due on the consignment note and also against refund of the compensation he received less any charges included therein but without prejudice to any claims to compensation for delay in delivery under article 23 and where applicable, article 26.

4. In the absence of the request mentioned in paragraph 2 or of any instructions given within the period of thirty days specified in paragraph 3, or if the goods are not recovered until more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the law of the place where the goods are situated.

Article 21

Should the goods have been delivered to the consignee without collection of the “cash on delivery” charge which should have been collected by the carrier under the terms of the contract of carriage, the carrier shall be liable to the sender for compensation not exceeding the amount of such charge without prejudice to his right of action against the consignee.

Article 22

1. When the sender hands goods of a dangerous nature to the carrier, he shall inform the carrier of the exact nature of the danger and indicate if necessary, precautions to be taken. If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the sender or the consignee.

2. Goods of a dangerous nature which, in the circumstance referred to in paragraph 1 of this article, the carrier did not know were dangerous, may, at any time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation; further, the sender shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.

Article 23

1. When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

2. The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to normal value of goods of the same kind and quality.

3. Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short.

4. In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damage shall be payable.

5. In the case of delay if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.

6. Higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with articles 24 and 26.

7. The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in paragraph 3 of this article shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgement or the date agreed upon by the Parties. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by the State.

8. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 7 of this article may, at the time of ratification of or accession to the Protocol to the CMR or at any time thereafter, declare that the limit of liability provided for in paragraph 3 of this article to be applied in its territory shall be 25 monetary units. The monetary unit referred to in this paragraph corresponds to the 10/31 gram of gold of millesimal fineness nine hundred. The conversion shall be made according to the law of the State concerned.

9. The calculation mentioned in the last sentence of paragraph 7 of this article and the conversion mentioned in paragraph 8 of this article shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amount in paragraph 3 of this article as is expressed there in units of account. States shall communicate to the Secretary-General of the United Nations the manner of calculation pursuant to paragraph 7 of this article or the result of the

conversion in paragraph 8 of this article as the case may be, when depositing an instrument referred to in Article 3 of the Protocol to the CMR and whenever there is a change in either.

Article 24

The sender may, against payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid down in article 23, paragraph 3, and in that case the amount of the declared value shall be substituted for that limit.

Article 25

1. In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with article 23, paragraphs 1, 2 and 4.

2. The compensation may not, however, exceed:

(a) if the whole consignment has been damaged, the amount payable in the case of total loss;

(b) if part only of the consignment has been damaged, the amount payable in the case of loss of the part affected.

Article 26

1. The sender may, against payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss or damage or of the agreed time-limit being exceeded, by entering such amount in the consignment note

2. If a declaration of a special interest in delivery has been made, compensation for the additional loss or damage proved may be claimed, up to the total amount of the interest declared, independently of the compensation provided for in articles 23, 24 and 25.

Article 27

1. The claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per centum per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which legal proceedings were instituted.

2. When the amounts on which the calculation of the compensation is based are not expressed in the currency of the country in which payment is claimed, conversion

shall be at the rate of exchange applicable on the day and at the place of payment of compensation.

Article 28

1. In cases where, under the law applicable, loss, damage or delay arising out of carriage under this Convention gives rise to an extra-contractual claim, the carrier may avail himself of the provisions of this Convention which exclude his liability or which fix or limit the compensation due.

2. In cases where the extra-contractual liability for loss, damage or delay of one of the persons for whom the carrier is responsible under the terms of article 3 is in issue, such person may also avail himself of the provisions of this Convention which exclude the liability of the carrier or which fix or limit the compensation due.

Article 29

1. The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct.

2. The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment. Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph 1.

Chapter V - Claims and Actions

Article 30

1. If the consignee takes delivery of the goods without duly checking their condition with the carrier or without sending him reservations giving a general indication of the loss or damage, not later than the time of delivery in the case of apparent loss or damage and within seven days of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent, the fact of his taking delivery shall be prima facie, evidence that he has received the goods in the condition described in the consignment note. In the case of loss or damage which is not apparent the reservations referred to shall be made in writing.

2. When the condition of the goods has been duly checked by the consignee and the carrier, evidence contradicting the result of this checking shall only be admissible

in the case of loss or damage which is not apparent and provided that the consignee has duly sent reservations in writing to the carrier within seven days, Sundays and public holidays excepted, from the date of checking.

3. No compensation shall be payable for delay in delivery unless a reservation has been sent in writing to the carrier, within twenty-one days from the time that the goods were placed at the disposal of the consignee.

4. In calculating the time-limits provided for in this article the date of delivery, or the date of checking, or the date when the goods were placed at the disposal of the consignee, as the case may be, shall not be included.

5. The carrier and the consignee shall give each other every reasonable facility for making the requisite investigations and checks.

Article 31

1. In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

(a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or

(b) the place where the goods were taken over by the carrier or the place designated for delivery is situated.

2. Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgement has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

3. When a judgement entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

4. The provisions of paragraph 3 of this article shall apply to judgements after trial, judgements by default and settlements confirmed by an order of the court, but shall not apply to interim judgements or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

5. Security for costs shall not be required in proceedings arising out of carriage under this Convention from nationals of contracting countries resident or having their place of business in one of those countries.

Article 32

1. The period of limitation for an action arising out of carriage under this Convention shall be one year. Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years. The period of limitation shall begin to run:

(a) in the case of partial loss, damage or delay in delivery, from the date of delivery;

(b) in the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier;

(c) in all other cases, on the expiry of a period of three months after the making of the contract of carriage.

The day on which the period of limitation begins to run shall not be included in the period.

2. A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object.

3. Subject to the provisions of paragraph 2 above, the extension of the period of limitation shall be governed by the law of the court or tribunal seized of the case. That law shall also govern the fresh accrual of rights of action.

4. A right of action which has become barred by lapse of time may not be exercised by way of counterclaim or set-off.

Article 33

The contract of carriage may contain a clause conferring competence on an arbitration tribunal if the clause conferring competence on the tribunal provides that the tribunal shall apply this Convention.

Chapter VI - Provisions Relating to Carriage Performed by Successive Carriers

Article 34

If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note.

Article 35

1. A carrier accepting the goods from a previous carrier shall give the latter a dated and signed receipt. He shall enter his name and address on the second copy of the consignment note. Where applicable, he shall enter on the second copy of the consignment note and on the receipt reservations of the kind provided for in article 8, paragraph 2.

2. The provisions of article 9 shall apply to the relations between successive carriers.

Article 36

Except in the case of a counterclaim or a setoff raised in an action concerning a claim based on the same contract of carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the last carrier or the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred; an action may be brought at the same time against several of these carriers.

Article 37

A carrier who has paid compensation in compliance with the provisions of this Convention, shall be entitled to recover such compensation, together with interest thereon and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, subject to the following provisions:

(a) the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;

(b) when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;

(c) if it cannot be ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in (b) above.

Article 38

If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.

Article 39

1. No carrier against whom a claim is made under articles 37 and 38 shall be entitled to dispute the validity of the payment made by the carrier making the claim if the amount of the compensation was determined by judicial authority after the first mentioned carrier had been given due notice of the proceedings and afforded an opportunity of entering an appearance.

2. A carrier wishing to take proceedings to enforce his right of recovery may make his claim before the competent court or tribunal of the country in which one of the carriers concerned is ordinarily resident, or has his principal place of business or the branch or agency through which the contract of carriage was made. All the carriers concerned may be made defendants in the same action.

3. The provisions of article 31, paragraphs 3 and 4, shall apply to judgements entered in the proceedings referred to in articles 37 and 38.

4. The provisions of article 32 shall apply to claims between carriers. The period of limitation shall, however, begin to run either on the date of the final judicial decision fixing the amount of compensation payable under the provisions of this Convention, or, if there is no such judicial decision, from the actual date of payment.

Article 40

Carriers shall be free to agree among themselves on provisions other than those laid down in articles 37 and 38.

Chapter VII - Nullity of Stipulation to the Convention

Article 41

1. Subject to the provisions of article 40, any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.

2. In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.

Chapter VIII - Final Provisions

Article 42

1. This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.

2. Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.

3. The Convention shall be open for signature until 31 August 1956 inclusive. Thereafter, it shall be open for accession.

4. This Convention shall be ratified.

5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Article 43

1. This Convention shall come into force on the ninetieth day after five of the countries referred to in article 42, paragraph 1, have deposited their instruments of ratification or accession.

2. For any country ratifying or acceding to it after five countries have deposited their instruments of ratification or accession, this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.

Article 44

1. Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations.

2. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.

Article 45

If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date in which the last of such denunciations takes effect.

Article 46

1. Any country may, at the time of depositing its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. The Convention shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by the Secretary-General or, if on that day the Convention has not yet entered into force, at the time of its entry into force.

2. Any country which has made a declaration under the preceding paragraph extending this Convention to any territory for whose international relations it is responsible may denounce the Convention separately in respect of that territory in accordance with the provisions of article 44.

Article 47

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention, which the parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.

Article 48

1. Each Contracting Party may, at the time of signing, ratifying, or acceding to, this Convention, declare that it does not consider itself as bound by article 47 of the Convention. Other Contracting Parties shall not be bound by article 47 in respect of any Contracting Party which has entered such a reservation.

2. Any Contracting Party having entered a reservation as provided for in paragraph 1 may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.

3. No other reservation to this Convention shall be permitted.

Article 49

1. After this Convention has been in force for three years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing the Convention. The Secretary-

General shall notify all Contracting Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary General, not less than one-fourth of the Contracting Parties notify him of their concurrence with the request.

2. If a conference is convened in accordance with the preceding paragraph, the Secretary-General shall notify all the Contracting Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider. The Secretary-General shall circulate to all Contracting Parties the provisional agenda for the conference together with the texts of such proposals at least three months before the date on which the conference is to meet.

3. The Secretary-General shall invite to any conference convened in accordance with this article all countries referred to in article 42, paragraph 1, and countries which have become Contracting Parties under article 42, paragraph 2.

Article 50

In addition to the notifications provided for in article 49, the Secretary-General of the United Nations shall notify the countries referred to in article 42, paragraph 1, and the countries which have become Contracting Parties under article 42, paragraph 2, of:

- (a) ratification and accessions under article 42;
- (b) the dates of entry into force of this Convention in accordance with article 43;
- (c) denunciations under article 44;
- (d) the termination of this Convention in accordance with article 45;
- (e) notifications received in accordance with article 46;
- (f) declarations and notifications received in accordance with article 48, paragraphs 1 and 2.

Article 51

After 31 August 1956, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in article 42, paragraphs 1 and 2.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 421 tad-19 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-articles (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

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

25th July, 2006

ACT No. XI of 2006

*AN ACT to incorporate the Convention on the Contract for the
International Carriage of Goods by Road*

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. The title of this Act is the International Carriage of Goods by Road Act, 2006. Short title.

2. In this Act, unless the context otherwise requires:— Interpretation.

“the Authority” means the Malta Transport Authority as established under the Malta Transport Authority Act; Cap. 332.

“CMR Convention” means the Convention on the Contract for the International Carriage of Goods by Road (CMR) signed in Geneva on the 19th May, 1956 as amended by the CMR Protocol of Geneva signed on the 5th July, 1978;

“prescribe” means prescribe by order or by regulations in accordance with this Act;

“the Minister” means the Minister responsible for road transport.

Ratification of
CMR Convention.

3. The Government of Malta is hereby authorised to ratify the CMR Convention.

Contracting States.

4. (1) Without prejudice to the applicability of the CMR Convention between Malta and all other Contracting States, the Minister may, by order in the Gazette, from time to time specify the Contracting States, other than Malta, for the purposes of the CMR Convention.

(2) Such order shall specify the date of coming into force of the CMR Convention, as between Malta and any State specified in the order.

CMR Convention to
have force of law.

5. (1) The provisions of the CMR Convention shall, notwithstanding anything to the contrary in any other law but subject to the provisions of this Act, have force of law throughout Malta for the international carriage of goods by road as from such date and subject to such conditions as the Minister may prescribe.

(2) The CMR Convention is set out in the Schedule to this Act and the said schedule may from time to time be amended as may be prescribed for the purpose of being kept updated with the official text of the said CMR Convention.

(3) The CMR Convention set out in the Schedule to this Act shall be reproduced in the English language only.

Power of Minister
to make regulations.

6. (1) The Minister may, after consultation with the Authority, make regulations prescribing anything that is necessary or expedient for the purpose of ratifying or implementing the obligations of Malta under the CMR Convention and generally for the carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing may make regulations:

(a) in respect of the carriage of goods by road, saving the provisions of any law regulating the transport or carriage of goods by road; and

(b) to amend the Schedule to this Act in whole or in part.

(2) The Minister may also provide that any regulation or order under this Act including reservations made by Malta to the CMR Convention or declaration made by Malta upon the signing or ratification of the CMR Convention be scheduled to this Act.

SCHEDULE

(Article 5)

The term “Contracting Party” is to be substituted either with the term “Malta” or the term “Contracting State” as appropriate

CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR) DONE AT GENEVA ON THE 19TH OF MAY, 1956, AS AMENDED BY THE CMR PROTOCOL DONE AT GENEVA ON THE 5TH OF JULY, 1978

Chapter 1 - Scope of Application

Chapter II - Persons for whom the Carrier is Responsible

Chapter III - Conclusion and Performance of the Contract of Carriage

Chapter IV - Liability of the Carrier

Chapter V - Claims and Actions

Chapter VI - Provisions Relating to Carriage Performed by Successive Carriers

Chapter VII - Nullity of Stipulation to the Convention

Chapter VIII - Final Provisions

PREAMBLE

The Contracting Parties,

Having recognized the desirability of standardizing the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability,

Have agreed as follows:

Chapter 1 - Scope of Application

Article 1

1. This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different

countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.

2. For the purpose of this Convention, “vehicles” means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19 September 1949.

3. This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.

4. This Convention shall not apply:

(a) to carriage performed under the terms of any international postal convention;

(b) to funeral consignments;

(c) to furniture removal.

5. The Contracting Parties agree not to vary any of the provisions of this Convention by special agreements between two or more of them, except to make it inapplicable to their frontier traffic or to authorize the use in transport operations entirely confined to their territory of consignment notes representing a title to the goods.

Article 2

1. Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only have occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.

2. If the carrier by road is also himself the carrier by the other means of transport, his liability shall also be determined in accordance with the provisions paragraph 1 of this article, but as if, in his capacities as carrier by road and carrier by the other means of transport, he were two separate persons.

Chapter II - Persons for whom the Carrier is Responsible

Article 3

For the purposes of this Convention the carrier shall be responsible for the acts of omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

Chapter III - Conclusion and Performance of the Contract of Carriage

Article 4

The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.

Article 5

1. The consignment note shall be made out in three original copies signed by the sender and by the carrier. These signatures may be printed or replaced by the stamps of the sender and the carrier if the law of the country in which the consignment note has been made out so permits. The first copy shall be handed to the sender, the second shall accompany the goods and the third shall be retained by the carrier.

2. When the goods which are to be carried have to be loaded in different vehicles, or are of different kinds or are divided into different lots, the sender or the carrier shall have the right to require a separate consignment note to be made out for each vehicle used, or for each kind or lot of goods.

Article 6

1. The consignment note shall contain the following particulars:
 - (a) the date of the consignment note and the place at which it is made out;
 - (b) the name and address of the sender;
 - (c) the name and address of the carrier;
 - (d) the place and the date of taking over of the goods and the place designated for delivery;
 - (e) the name and address of the consignee;

(f) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;

(g) the number of packages and their special marks and numbers;

(h) the gross weight of the goods or their quantity otherwise expressed;

(i) charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);

(j) the requisite instructions for Customs and other formalities;

(k) a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention.

2. Where applicable, the consignment note shall also contain the following particulars:

(a) a statement that transshipment is not allowed;

(b) the charges which the sender undertakes to pay;

(c) the amount of "cash on delivery" charges;

(d) a declaration of the value of the goods and the amount representing special interest in delivery;

(e) the sender's instructions to the carrier regarding insurance of the goods;

(f) the agreed time limit within which the carriage is to be carried out;

(g) a list of the documents handed to the carrier.

3. The parties may enter in the consignment note any other particulars which they may deem useful.

Article 7

1. The sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of the inaccuracy or inadequacy of:

(a) The particulars specified in article 6, paragraph 1, (b), (d), (e), (f), (g), (h) and (j);

(b) The particulars specified in article 6, paragraph 2;

(c) Any other particulars or instructions given by him to enable the consignment note to be made out or for the purpose of their being entered therein.

2. If, at the request of the sender, the carrier enters in the consignment note the particulars referred to in paragraph 1 of this article, he shall be deemed, unless the contrary is proved, to have done so on behalf of the sender.

3. If the consignment note does not contain the statement specified in article 6, paragraph 1 (k), the carrier shall be liable for all expenses, loss and damage sustained through such omission by the person entitled to dispose of the goods.

Article 8

1. On taking over the goods, the carrier shall check:

(a) The accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and

(b) The apparent condition of the goods and their packaging.

2. Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.

3. The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking. The result of the checks shall be entered in the consignment note.

Article 9

1. The consignment note shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

2. If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note.

Article 10

The sender shall be liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

Article 11

1. For the purposes of the Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires.

2. The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier.

3. The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.

Article 12

1. The sender has the right to dispose of the goods, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.

2. This right shall cease to exist when the second copy of the consignment note is handed to the consignee or when the consignee exercises his right under article 13, paragraph 1; from that time onwards the carrier shall obey the orders of the consignee.

3. The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.

4. If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, that other person shall not be entitled to name other consignees.

5. The exercise of the right of disposal shall be subject to the following conditions:

(a) That the sender or, in the case referred to in paragraph 3 of this article, the consignee who wishes to exercise the right produces the first copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;

(b) That the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not either interfere with the normal working of the carriers' undertaking or prejudice the senders or consignees of other consignments;

(c) That the instructions do not result in a division of the consignment.

6. When, by reason of the provisions of paragraph 5 (b) of this article, the carrier cannot carry out the instructions which he receives, he shall immediately notify the person who gave him such instructions.

7. A carrier who has not carried out the instructions given under the conditions provided for in this article or who has carried them out without requiring the first copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

Article 13

1. After arrival of the goods at the place designated for delivery, the consignee shall be entitled to require the carrier to deliver to him, against a receipt, the second copy of the consignment note and the goods. If the loss of the goods is established or if the goods have not arrived after the expiry of the period provided for in article 19, the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage.

2. The consignee who avails himself of the rights granted to him under paragraph 1 of this article shall pay the charges shown to be due on the consignment note, but in the event of dispute on this matter the carrier shall not be required to deliver the goods unless security has been furnished by the consignee.

Article 14

1. If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with the provisions of article 12.

2. Nevertheless, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time the person entitled to

dispose of the goods in accordance with the provisions of article 12, he shall take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods.

Article 15

1. Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions. If the consignee refuses the goods the sender shall be entitled to dispose of them without being obliged to produce the first copy of the consignment note.

2. Even if he has refused the goods, the consignee may nevertheless require delivery so long as the carrier has not received instructions to the contrary from the sender.

3. When circumstances preventing delivery of the goods arise after the consignee, in exercise of his rights under article 12, paragraph 3, has given an order for the goods to be delivered to another person, paragraphs 1 and 2 of this article shall apply as if the consignee were the sender and that other person were the consignee.

Article 16

1. The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act or neglect of the carrier.

2. In the cases referred to in article 14, paragraph 1, and in article 15, the carrier may immediately unload the goods for account of the person entitled to dispose of them and thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person so entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.

3. The carrier may sell the goods, without awaiting instructions from the person entitled to dispose of them, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if after the expiry of a reasonable period he has not received from the person entitled to dispose of the goods instructions to the contrary which he may reasonably be required to carry out.

4. If the goods have been sold pursuant to this article, the proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the person entitled to dispose of the goods. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.

5. The procedure in the case of sale shall be determined by the law or custom of the place where the goods are situated.

Chapter IV - Liability of the Carrier

Article 17

1. The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.

2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or neglect of the person from whom he may have hired the vehicle or of the agents or servants of the latter.

4. Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one more of the following circumstances:

(a) Use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;

(b) The lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;

(c) Handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee;

(d) The nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;

(e) Insufficiency or inadequacy of marks or numbers on the packages;

(f) The carriage of livestock.

5. Where under this article the carrier is not under any liability in respect of some of the factors causing the loss, damage or delay, he shall only be liable the extent

that those factors for which he is liable under this article have contributed to the loss, damage or delay.

Article 18

1. The burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier.

2. When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of these risks.

3. This presumption shall not apply in the circumstances set out in article 17, paragraph 4 (a), if there has been an abnormal shortage, or a loss of any package.

4. If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (d), unless he proves that all steps incumbent on him in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.

5. The carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (f), unless he proves that all steps normally incumbent on him in the circumstances were taken and that he complied with any special instructions issued to him.

Article 19

Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time-limit or when, failing an agreed time-limit, the actual duration of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time it would be reasonable to allow a diligent carrier.

Article 20

1. The fact that goods have not been delivered within thirty days following the expiry of the agreed time-limit, or, if there is no agreed time-limit, within sixty days from the time when the carrier took over the goods, shall be conclusive evidence of the loss of the goods, and the person entitled to make a claim may thereupon treat them as lost.

2. The person so entitled may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered

in the course of the year following the payment of compensation. He shall be given a written acknowledgement of such request.

3. Within the thirty days following receipt of such notification, the person entitled as aforesaid may require the goods to be delivered to him against payment of the charges shown to be due on the consignment note and also against refund of the compensation he received less any charges included therein but without prejudice to any claims to compensation for delay in delivery under article 23 and where applicable, article 26.

4. In the absence of the request mentioned in paragraph 2 or of any instructions given within the period of thirty days specified in paragraph 3, or if the goods are not recovered until more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the law of the place where the goods are situated.

Article 21

Should the goods have been delivered to the consignee without collection of the “cash on delivery” charge which should have been collected by the carrier under the terms of the contract of carriage, the carrier shall be liable to the sender for compensation not exceeding the amount of such charge without prejudice to his right of action against the consignee.

Article 22

1. When the sender hands goods of a dangerous nature to the carrier, he shall inform the carrier of the exact nature of the danger and indicate if necessary, precautions to be taken. If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the sender or the consignee.

2. Goods of a dangerous nature which, in the circumstance referred to in paragraph 1 of this article, the carrier did not know were dangerous, may, at any time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation; further, the sender shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.

Article 23

1. When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

2. The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to normal value of goods of the same kind and quality.

3. Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short.

4. In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damage shall be payable.

5. In the case of delay if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.

6. Higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with articles 24 and 26.

7. The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in paragraph 3 of this article shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgement or the date agreed upon by the Parties. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by the State.

8. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 7 of this article may, at the time of ratification of or accession to the Protocol to the CMR or at any time thereafter, declare that the limit of liability provided for in paragraph 3 of this article to be applied in its territory shall be 25 monetary units. The monetary unit referred to in this paragraph corresponds to the 10/31 gram of gold of millesimal fineness nine hundred. The conversion shall be made according to the law of the State concerned.

9. The calculation mentioned in the last sentence of paragraph 7 of this article and the conversion mentioned in paragraph 8 of this article shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amount in paragraph 3 of this article as is expressed there in units of account. States shall communicate to the Secretary-General of the United Nations the manner of calculation pursuant to paragraph 7 of this article or the result of the

conversion in paragraph 8 of this article as the case may be, when depositing an instrument referred to in Article 3 of the Protocol to the CMR and whenever there is a change in either.

Article 24

The sender may, against payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid down in article 23, paragraph 3, and in that case the amount of the declared value shall be substituted for that limit.

Article 25

1. In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with article 23, paragraphs 1, 2 and 4.

2. The compensation may not, however, exceed:

(a) if the whole consignment has been damaged, the amount payable in the case of total loss;

(b) if part only of the consignment has been damaged, the amount payable in the case of loss of the part affected.

Article 26

1. The sender may, against payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss or damage or of the agreed time-limit being exceeded, by entering such amount in the consignment note

2. If a declaration of a special interest in delivery has been made, compensation for the additional loss or damage proved may be claimed, up to the total amount of the interest declared, independently of the compensation provided for in articles 23, 24 and 25.

Article 27

1. The claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per centum per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which legal proceedings were instituted.

2. When the amounts on which the calculation of the compensation is based are not expressed in the currency of the country in which payment is claimed, conversion

shall be at the rate of exchange applicable on the day and at the place of payment of compensation.

Article 28

1. In cases where, under the law applicable, loss, damage or delay arising out of carriage under this Convention gives rise to an extra-contractual claim, the carrier may avail himself of the provisions of this Convention which exclude his liability or which fix or limit the compensation due.

2. In cases where the extra-contractual liability for loss, damage or delay of one of the persons for whom the carrier is responsible under the terms of article 3 is in issue, such person may also avail himself of the provisions of this Convention which exclude the liability of the carrier or which fix or limit the compensation due.

Article 29

1. The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct.

2. The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment. Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph 1.

Chapter V - Claims and Actions

Article 30

1. If the consignee takes delivery of the goods without duly checking their condition with the carrier or without sending him reservations giving a general indication of the loss or damage, not later than the time of delivery in the case of apparent loss or damage and within seven days of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent, the fact of his taking delivery shall be prima facie, evidence that he has received the goods in the condition described in the consignment note. In the case of loss or damage which is not apparent the reservations referred to shall be made in writing.

2. When the condition of the goods has been duly checked by the consignee and the carrier, evidence contradicting the result of this checking shall only be admissible

in the case of loss or damage which is not apparent and provided that the consignee has duly sent reservations in writing to the carrier within seven days, Sundays and public holidays excepted, from the date of checking.

3. No compensation shall be payable for delay in delivery unless a reservation has been sent in writing to the carrier, within twenty-one days from the time that the goods were placed at the disposal of the consignee.

4. In calculating the time-limits provided for in this article the date of delivery, or the date of checking, or the date when the goods were placed at the disposal of the consignee, as the case may be, shall not be included.

5. The carrier and the consignee shall give each other every reasonable facility for making the requisite investigations and checks.

Article 31

1. In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

(a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or

(b) the place where the goods were taken over by the carrier or the place designated for delivery is situated.

2. Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgement has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

3. When a judgement entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

4. The provisions of paragraph 3 of this article shall apply to judgements after trial, judgements by default and settlements confirmed by an order of the court, but shall not apply to interim judgements or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

5. Security for costs shall not be required in proceedings arising out of carriage under this Convention from nationals of contracting countries resident or having their place of business in one of those countries.

Article 32

1. The period of limitation for an action arising out of carriage under this Convention shall be one year. Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years. The period of limitation shall begin to run:

(a) in the case of partial loss, damage or delay in delivery, from the date of delivery;

(b) in the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier;

(c) in all other cases, on the expiry of a period of three months after the making of the contract of carriage.

The day on which the period of limitation begins to run shall not be included in the period.

2. A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object.

3. Subject to the provisions of paragraph 2 above, the extension of the period of limitation shall be governed by the law of the court or tribunal seized of the case. That law shall also govern the fresh accrual of rights of action.

4. A right of action which has become barred by lapse of time may not be exercised by way of counterclaim or set-off.

Article 33

The contract of carriage may contain a clause conferring competence on an arbitration tribunal if the clause conferring competence on the tribunal provides that the tribunal shall apply this Convention.

Chapter VI - Provisions Relating to Carriage Performed by Successive Carriers

Article 34

If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note.

Article 35

1. A carrier accepting the goods from a previous carrier shall give the latter a dated and signed receipt. He shall enter his name and address on the second copy of the consignment note. Where applicable, he shall enter on the second copy of the consignment note and on the receipt reservations of the kind provided for in article 8, paragraph 2.

2. The provisions of article 9 shall apply to the relations between successive carriers.

Article 36

Except in the case of a counterclaim or a setoff raised in an action concerning a claim based on the same contract of carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the last carrier or the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred; an action may be brought at the same time against several of these carriers.

Article 37

A carrier who has paid compensation in compliance with the provisions of this Convention, shall be entitled to recover such compensation, together with interest thereon and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, subject to the following provisions:

(a) the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;

(b) when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;

(c) if it cannot be ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in (b) above.

Article 38

If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.

Article 39

1. No carrier against whom a claim is made under articles 37 and 38 shall be entitled to dispute the validity of the payment made by the carrier making the claim if the amount of the compensation was determined by judicial authority after the first mentioned carrier had been given due notice of the proceedings and afforded an opportunity of entering an appearance.

2. A carrier wishing to take proceedings to enforce his right of recovery may make his claim before the competent court or tribunal of the country in which one of the carriers concerned is ordinarily resident, or has his principal place of business or the branch or agency through which the contract of carriage was made. All the carriers concerned may be made defendants in the same action.

3. The provisions of article 31, paragraphs 3 and 4, shall apply to judgements entered in the proceedings referred to in articles 37 and 38.

4. The provisions of article 32 shall apply to claims between carriers. The period of limitation shall, however, begin to run either on the date of the final judicial decision fixing the amount of compensation payable under the provisions of this Convention, or, if there is no such judicial decision, from the actual date of payment.

Article 40

Carriers shall be free to agree among themselves on provisions other than those laid down in articles 37 and 38.

Chapter VII - Nullity of Stipulation to the Convention

Article 41

1. Subject to the provisions of article 40, any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.

2. In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.

Chapter VIII - Final Provisions

Article 42

1. This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.

2. Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.

3. The Convention shall be open for signature until 31 August 1956 inclusive. Thereafter, it shall be open for accession.

4. This Convention shall be ratified.

5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Article 43

1. This Convention shall come into force on the ninetieth day after five of the countries referred to in article 42, paragraph 1, have deposited their instruments of ratification or accession.

2. For any country ratifying or acceding to it after five countries have deposited their instruments of ratification or accession, this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.

Article 44

1. Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations.

2. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.

Article 45

If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date in which the last of such denunciations takes effect.

Article 46

1. Any country may, at the time of depositing its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. The Convention shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by the Secretary-General or, if on that day the Convention has not yet entered into force, at the time of its entry into force.

2. Any country which has made a declaration under the preceding paragraph extending this Convention to any territory for whose international relations it is responsible may denounce the Convention separately in respect of that territory in accordance with the provisions of article 44.

Article 47

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention, which the parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.

Article 48

1. Each Contracting Party may, at the time of signing, ratifying, or acceding to, this Convention, declare that it does not consider itself as bound by article 47 of the Convention. Other Contracting Parties shall not be bound by article 47 in respect of any Contracting Party which has entered such a reservation.

2. Any Contracting Party having entered a reservation as provided for in paragraph 1 may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.

3. No other reservation to this Convention shall be permitted.

Article 49

1. After this Convention has been in force for three years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing the Convention. The Secretary-

General shall notify all Contracting Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary General, not less than one-fourth of the Contracting Parties notify him of their concurrence with the request.

2. If a conference is convened in accordance with the preceding paragraph, the Secretary-General shall notify all the Contracting Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider. The Secretary-General shall circulate to all Contracting Parties the provisional agenda for the conference together with the texts of such proposals at least three months before the date on which the conference is to meet.

3. The Secretary-General shall invite to any conference convened in accordance with this article all countries referred to in article 42, paragraph 1, and countries which have become Contracting Parties under article 42, paragraph 2.

Article 50

In addition to the notifications provided for in article 49, the Secretary-General of the United Nations shall notify the countries referred to in article 42, paragraph 1, and the countries which have become Contracting Parties under article 42, paragraph 2, of:

- (a) ratification and accessions under article 42;
- (b) the dates of entry into force of this Convention in accordance with article 43;
- (c) denunciations under article 44;
- (d) the termination of this Convention in accordance with article 45;
- (e) notifications received in accordance with article 46;
- (f) declarations and notifications received in accordance with article 48, paragraphs 1 and 2.

Article 51

After 31 August 1956, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in article 42, paragraphs 1 and 2.

A 308

Passed by the House of Representatives at Sitting No. 421 of 19th July, 2006.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives