

Naghti l-kunsens tieghi.

(L.S.)

EDWARD FENECH ADAMI
President

26 ta' Lulju, 2005

ATT Nru. XI ta' l-2005

ATT biex jemenda l-Kodiċi Ċivili, Kap. 16.

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 ġejj:-

1. (1) It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2005 biex jemenda l-Kodiċi Ċivili, u għandu jinqara u jiftiehem haġa wahda mal-Kodiċi Ċivili, hawn iżjed 'il quddiem imsejjah "il-Kodiċi".

Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jidhol fis-sehh f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' b'avviż fil-Gazzetta jistabbilixxi, u jistgħu jiġu hekk stabbiliti dati differenti għal disposizzjonijiet differenti u għal għanijiet differenti ta' l-istess Att.

2. Fis-subartikolu (1) ta' l-artikolu 586 tal-Kodiċi minnufih wara l-kliem "Bla hsara tad-disposizzjonijiet dwar donazzjonijiet magħmulin f'kontemplazzjoni ta' żwieġ" għandhom jidhlu l-kliem "u ta' dawk li għandhom x'jaqsmu ma' kuntratti ta' assigurazzjoni fuq il-hajja".

Emenda ta' l-artikolu 586 tal-Kodiċi.

3. Fit-Taqsima II tat-Tieni Ktieb tal-Kodiċi, minnufih wara l-artikolu 1712, għandu jiżdied it-Titolu XIA ġdid bl-intestatura "Fuq Kuntratti ta' Assigurazzjoni fuq il-Hajja" b'dawn l-artikoli 1712A sa 1712M li ġejjin:

Żjieda ta' Titolu ġdid fil-Kodiċi.

“TITOLU XIA

“Fuq Kuntratti ta’ Assigurazzjoni fuq il-Hajja”

Sub-titolu 1 – Materji Kuntrattwali

L-ghan ta’
kuntratt ta’
assiguraz-
zjoni fuq il-
hajja.

1712A. (1) Kuntratt ta’ assigurazzjoni fuq il-hajja jista’ jiġi stipulat fuq il-hajja tad-detentur ta’ polza jew fuq dik ta’ terza persuna li dwarha d-detentur ta’ polza jkollu interess assigurabbli, li jkun legittimu, mal-bidu tal-kuntratt.

Interess
assigurabbli.

(2) Għall-finijiet ta’ dan l-artikolu:

(a) Persuna għandha interess assigurabbli fil-hajja tagħha stess u fil-hajja tal-konjuġi tagħha.

(b) Ġenitur ta’ persuna li tkun għadha ma għalqitx l-età ta’ 18-il sena, u tutur ta’ dik il-persuna għandhom interess assigurabbli fil-hajja ta’ dik il-persuna.

(ċ) Persuna li x’aktarx issofri telf finanzjarju bħala rizzultat tal-mewt ta’ xi persuna ohra għandha interess assigurabbli fil-hajja ta’ dik il-persuna l-ohra.

(d) Korp magħqud għandu interess assigurabbli fil-hajja ta’ xi ufficjal, azzjonist jew impjegat tal-korp magħqud u soċjetà għandha interess assigurabbli fil-hajja ta’ soċju jew impjegat tas-soċjetà.

(e) Prinċipal għandu interess assigurabbli fil-hajja ta’ l-impjegat tiegħu u impjegat għandu interess assigurabbli fil-hajja tal-prinċipal tiegħu.

(f) Persuna għandha interess assigurabbli fil-hajja ta’ persuna li jkun jiddependi minnha, jew għal kollox jew biss f’parti, għall-manteniment u s-sostenn tiegħu.

(g) Għall-finijiet ta’ dan titolu, il-frazi “assigurazzjoni fuq il-hajja” għandha tinkludi kull kuntratt ta’ assigurazzjoni li skond dak il-kuntratt jithallas xi benefiċċju mal-mewt.

(3) Bla hsara għal interess li jkun wiehed legittimu, il-ftehim minn assiguratatur li jagħmel kuntratt ta’ assigurazzjoni fuq il-hajja fuq hajjet persuna li ma tkunx dik tad-detentur ta’

polza, ikun prova suffiċjenti tal-fatt li l-assigurat ghandu interess assigurabbli fil-hajja tal-persuna li ghandha hajjitha assigurata.

(4) Hlief fil-każ imsemmi fis-subparagrafu (ċ) tas-subartikolu (2) ta' dan l-artikolu, meta persuna ghandha interess assigurabbli fil-hajja ta' xi persuna ohra ma jkunx hemm il-htieġa li d-detentur ta' polza jgħib prova li jkun għarrab xi telf jew li t-telf mgħarrab ikun b'xi mod relatat mas-somma assigurata.

Kunsens ta' terzi li jkollhom hajjithom assigurata.

1712B. (1) Meta l-kuntratt ta' assigurazzjoni jkun jirreferi għall-hajja ta' terza persuna, ikun mehtieġ għall-għemil tal-kuntratt u għas-somma assigurata, il-kunsens bil-miktub ta' dawk it-terzi jew, fil-każ ta' persuni li ma jkollhomx il-kapaċità legali, tar-rappreżentant legittimu tagħhom, hekk li jekk dak il-kunsens ma jinghatax il-kuntratt ikun null.

(2) Fin-nuqqas ta' kunsens kif hawn qabel provdut in-nullità tal-kuntratt tista' biss titqajjem mid-detentur ta' polza jew mill-persuna li ghandha hajjitha assigurata u f'dak il-każ kull premju mħallas lill-assigurat għandu jinghata lura lill-persuna li tkun hallsitu.

(3) Il-kunsens li jinghata minn terza persuna li jkollha hajjitha assigurata għandu jkun irrevokabbli kemm-il darba dan ma jiġix espressament dikjarat xort'ohra bil-miktub fil-polza.

(4) Meta kunsens ikun revokabbli kif stabbilit fis-subartikolu (3) u dan jiġi rtirat b'avviż bil-miktub li jinghata lid-detentur ta' polza u lill-assigurat, u sakemm ma jkunx hemm arrangamenti ohra bejn il-partijiet fil-kuntratt, il-kuntratt ta' assigurazzjoni jtemm milli jibqa' jsehh.

Kunsens ta' persuni li ma jkollhomx il-kapaċità legali.

(5) Fil-każ ta' persuni li ma jkollhomx il-kapaċità legali, meta rappreżentant legittimu jkun hu nnifsu d-detentur propost ta' polza, ikun mehtieġ il-kunsens bil-quddiem tal-Qorti Ċivili fil-ġurisdizzjoni volontarja tagħha:

Iżda meta r-rappreżentanti legittimi jkunu l-ġenituri ta' wild jew xi wiehed jew wahda minnhom, il-kunsens min minnhom ikun mill-ġenituri jkun suffiċjenti.

Iżda wkoll meta l-persuna li ghandha hajjitha assigurata tkun minuri, il-kopertura fuq il-hajja taht il-polza ma jkunx

jista' jeċċedi Lm20,000 jew xi somma oħra li l-Ministru responsabbli għall-gustizzja jista' jordna minn żmien għal żmien b'avviż fil-Gazzetta.

Kunsens presunt f'poloz ta' grupp taħt skemi.

(6) Dak il-kunsens ikun prezunt meta t-terza persuna tkun tagħmel parti minn klassi definita ta' persuni li hajjithom tkun assigurata skond pattijiet u kondizzjonijiet ta' ftehim ta' assigurazzjoni kopert b'polza ta' grupp li dik it-terza persuna tkun qabliet magħha jew issottoskriviet għaliha, inkluż kull arrangament li jagħmel parti mill-kundizzjonijiet tax-xogħol ta' persuna.

Terzi għandhom jagħtu kunsens għal kull rahan u assenjament ta' polza.

(7) Minkejja d-disposizzjonijiet ta' dan il-Kodiċi dwar l-assenjament u rahan ta' drittijiet:

(i) l-assenjament jew rahan ta' kuntratt ta' assigurazzjoni fuq il-hajja, u

(ii) kull tismija jew sostituzzjoni tal-benefiċjarju imsemmi f'kuntratt bħal dak, jew l-assenjament ta' benefiċċju bħal dak;

ma għandhomx ikunu validi mingħajr il-kunsens bil-miktub tat-terza persuna li jkollha hajjitha assigurata, salvi d-disposizzjonijiet ta' liġijiet speċjali li skondhom dak il-kunsens jista' ma jkunx meħtieġ għal dawk l-operazzjonijiet.

Kuntratt ta' assigurazzjoni favur benefiċjarji terzi.

1712C. (1) Id-detentur ta' polza jista' jagħzel li rikavat jew kull benefiċċju li joriġina minn kuntratt ta' assigurazzjoni fuq il-hajja, sew jekk dan jithallas f'data definita ta' maturazzjoni jew mal-mewt tal-persuna li jkollha hajjitha assigurata, inkluż kull valur ta' ċediment, jithallas lil xi benefiċjarju wiehed imsemmi jew iżjed minn benefiċjarju wiehed:

Iżda fil-każ ta' konjuġi jew ulied tad-detentur ta' polza, it-tismija ta' dawk il-persuni b'riferenza għall-klassi ta' persuni tkun suffiċjenti u f'dak il-każ, kemm-il darba ma jiġix dikjarat xort' oħra fil-polza, huma għandhom igawdu drittijiet mir-rikavat f'ishma indaqs u għandhom jibbenefikaw minn dik it-tismija ukoll jekk huma ma jaċettawx il-wirt:

Iżda wkoll ikun legittimu wkoll li tissemma' klassi ta' benefiċjarji fil-każ ta' kuntratti ta' assigurazzjoni favur persuni

li jipparteċipaw f'polza ta' grupp kif hemm imsemmi fis-subartikolu (6) ta' l-artikolu 1712B.

Tismija ta' beneficijarji.

(2) (a) It-tismija ta' beneficijarju jew klassi ta' beneficijarji ghandha ssir jew fil-kuntratt ta' assigurazzjoni fuq il-hajja jew polza oriġinali jew f'emenda sussegwenti tal-polza u dik it-tismija tista' tirreferi ghar-rikavat kollu jew parti minnu, u tista' tkun soġġetta għal kondizzjonijiet, sospensiva jew rizoluttiva.

(b) Meta l-għan tat-tismija jkun espressament biex jinghata manteniment tal-benefiċjarju jew bhala pensjoni, dik it-tismija tista' tkun soġġetta għal restrizzjoni fuq il-bejgħ jew kull operazzjoni legali ohra, bla hsara għal diminuzzjoni jew terminazzjoni fil-każ li l-benefiċjarju jiġi dikjarat fallut jew insolventi jew xi proprjetà tiegħu tkun tista' tinqabad għall-benefiċċju tal-kredituri tiegħu u ma tkunx tista' tiġi sekwestrata taht mandat ta' sekwestru mahruġ kontra l-assiguratur:

Izda dik l-immunità minn sekwestru tkun tapplika biss għal somom li jkunu raġonevolment mehtieġa għall-manteniment tal-benefiċjarju jew għal pensjoni u li ma jkunux iktar minn darbtejn l-ammont ta' l-oghla pensjoni statali f'Malta.

It-tismija tista' tiġi revokata.

(3) Bla hsara għad-disposizzjonijiet tas-subartikolu (4) ta' l-artikolu 1712D, id-detentur ta' polza jista' jirrevoka jew ivarja il-pattijiet ta' tismija ta' beneficijarju.

Ma tistax issir revoka b'testament jew mill-werrieta ta' detentur ta' polza.

(4) Ir-revoka jew il-modifika minn detentur ta' polza tat-tismija ta' beneficijarju ma tistax issir permezz ta' testament. Il-werrieta tad-detentur ta' polza ma jistgħux jirrevokaw it-tismija ta' beneficijarju wara l-mewt tad-detentur ta' polza.

Effetti legali ta' tismija.

1712D. (1) Bla hsara għad-dritt ta' revoka mid-detentur ta' polza skond kif provdut fis-subartikolu (3) ta' l-artikolu 1712C u d-disposizzjonijiet tas-subartikolu (7) ta' dan l-artikolu dwar poloz ta' grupp, meta jkunu jithallsu lil xi beneficijarju wiehed imsemmi jew iżjed minn beneficijarju wiehed, ir-rikavat u kull benefiċċju li joriġina minn kuntratt ta' assigurazzjoni, inkluż kull valur ta' ċediment, ikunu dovuti lill-benefiċjarju u jagħmlu parti mill-patrimonju tiegħu, kemm jekk dak il-benefiċjarju ikunx jaf jew le bit-tismija tiegħu.

(2) Il-benefiċjarju ma ghandu jgawdi ebda dritt iehor salv dawk li hemm fis-subartikolu (1) ta' dan l-artikolu ghar-rigward tal-polza u l-assiguratur ma ghandu jiżvela ebda informazzjoni dwar il-polza minghajr il-kunsens bil-miktub u bil-quddiem tad-detentur ta' polza, sa dak iż-żmien li d-detentur ta' polza jmut f'liema każ l-assiguratur, meta jsir jaf b'dak il-fatt, ghandu jinforma lill-benefiċjarju bil-jedd tiegħu:

Iżda l-assiguratur ghandu jinforma benefiċjarju li jkun aċċetta t-tismija, bir-raġunijiet li jistgħu jwasslu biex il-polza tiskadi, u dan fi żmien raġonevoli qabel ma ssehh skadenza bhal dik.

Irrevokabilità
tat-tismija.

(3) Wara li benefiċjarju jaċċetta,

(a) ir-revoka tat-tismija ta' benefiċjarju, jew

(b) il-modifika tas-somma li l-polza tkun inharġet għaliha, jew

(ċ) ir-raham jew l-assenjament tal-polza,

jistgħu jsiru biss bil-kunsens bil-miktub u bil-quddiem tal-benefiċjarju:

Iżda dak hawn qabel imsemmi ma ghandux ikun japplika għal polza ta' grupp li tkun regolata bil-pattijiet ta' xi skema applikabbli:

Iżda wkoll rahan jew assenjament li jsiru minghajr tali kunsens ikun validu imma jkun soġġett għad-drittijiet bil-quddiem ta' l-imsemmi benefiċjarju.

Aċċettazzjoni
u notifika tat-
tismija.

(4) Aċċettazzjoni ta' tismija minn benefiċjarju ai termini ta' dan l-artikolu ghandu jkun fiha data, firma tal-benefiċjarju kif ukoll firma ohra ta' xhud u għandha tiġi notifikata lill-assiguratur. Għall-finijiet ta' dan l-artikolu,

(a) "bil-miktub" ma għandhiex tinkludi mezzi elettronici, u

(b) talba bil-miktub lill-assiguratur mill-imsemmi benefiċjarju għandha titqies bhala aċċettazzjoni bil-miktub fejn jintalab ir-rikavat tal-polza.

Kull aċċettazzjoni bhal dik ghandha tiġi annotata bl-endorsjar tal-polza.

Avviż dwar it-tismija ta' benefiċjarju jista' jinghata wkoll wara l-mewt tad-detentur tal-polza jew tal-persuna li jkollha hajjitha assigurata sakemm avviż bhal dak jinghata fi żmien sebat ijiem tax-xoghol mill-mewt u wara dak il-perjodu t-tismija ghandha tiskadi u ma ghandu jkollha ebda effett legali.

(5) Bla hsara għall-frażijiet espressi tat-tismija, kull referenza għall-benefiċjarju f'dawn l-artikoli ghandha tiftiehem bhala li tinkludi lill-werrieta, il-legatarji, min jaghti b'rahan jew jassenja, skond il-każ, ta' l-imsemmi benefiċjarju.

(6) Kull operazzjoni msemmija f'dawn l-artikoli ghandu jkollha effetti legali biss meta l-assiguratur jirċievi avviż dwarhom jew xort'ohra jgħarraf li jkun irċieva avviż bil-miktub u fil-każijiet meta jiġi avżat iktar minn att bhal dak wiehed, dawk l-atti ghandhom jibdew isehhu bla hsara għal kull att li jkun qabel ġie avżat jew mgħarraf li jkun ġie riċevut.

Regoli
speċjali għal
poloz ta'
grupp.

(7) Dawn ir-regoli li ġejjin ghandhom japplikaw fil-każ ta' poloz ta' grupp imsemmija fis-subartikolu (6) ta' l-artikolu 1712B:

(a) il-jedd ta' dak il-benefiċjarju jkun skond il-pattijiet ta' dik l-iskema u jkun jista' jiġi provdut dwar kull kondizzjoni inkluża t-terminazzjoni ta' benefiċċju mat-tmiem ta' impjeg;

(b) sakemm il-pattijiet ta' l-iskema ma jkunux jipprovdu xort'ohra, il-parteciċipant fi skema ma jkollux jedd jassenja jew jirhan id-drittijiet tiegħu, lanqas ma jkollu jedd għall-valur ta' ċediment tal-polza mat-terminazzjoni tal-benefiċċju u l-arranġament għandu jipprovdi għal regoli fuq it-trasferibilità tal-benefiċċji kif mehtieg bil-liġi li tkun tapplika.

Sehem
riservat.

1712E. (1) Is-somom li jithallsu taht kuntratt ta' assigurazzjoni fuq il-hajja lil benefiċjarju msemmi ma jkunux soġġetti għar-regoli ta' riduzzjoni għall-ksur tas-sehem riservat tal-patrimonju. Lanqas ma ghandhom dawk ir-regoli japplikaw għas-somom imhallsin mid-detentur ta' polza bhala premju jew kontribuzzjonijiet addizzjonali mal-polza meta

dawk is-somom ikunu moderati, skond ma jitqies il-patrimonju tad-detentur ta' polza. Meta s-somma ma tkunx wahda moderata, id-dritt ghar-riduzzjoni ghall-ksur tas-sehem riservat tal-patrimonju jkun biss eżerċitabbli kontra l-benefiċjarju tar-rikavat tal-polza u ma jinkombi ebda dritt kontra l-assigurat.

Kollazzjoni
bejn il-
werrieta.

(2) Kemm-il darba d-detentur ta' polza ma jeżentax ir-rikavat ta' polza ta' l-assigurazzjoni li jithallas lil benefiċjarju msemmi li jkun werriet flimkien ma' l-ohrajn mill-kollazzjoni skond dan il-Kodiċi, is-somom li jithallsu ghandhom jiġu regolati bid-disposizzjonijiet li japplikaw ta' dan Kodiċi.

Konsolidazzjoni ta' interessi f'polza favur assigurati flimkien.

1712F. (a) Meta polza ta' assicurazzjoni fuq il-hajja ssir minn żewġ detenturi ta' polza jew aktar, ikun leġittimu li jiġi miftiehem li mal-mewt ta' detentur tal-polza wiehed, il-kuntratt ta' assicurazzjoni jkompli ghaddej ghar-rigward tad-detentur ta' polza li jibqa' haj u f'dak il-każ kull dritt u obligazzjoni taht dak il-kuntratt ta' assicurazzjoni fil-waqt tal-mewt tad-detentur ta' polza li jkun miet ghandhom jingemghu favur id-detentur ta' polza li jibqa' haj u ma ghandhomx ikunu jiffurmaw parti mill-patrimonju tad-detentur ta' polza li jkun miet.

(b) Meta polza kongunta tiġi dikjarata bhala li ttemm milli tibqa' ssehh mal-mewt ta' l-ewwel hajja, id-detentur ta' polza li jibqa' haj ikun jista' jiddeċiedi li jagħzel li jirċievi r-rikavat tal-polza jew li jkompli ghaddej bil-polza sal-mewt ta' dak l-istess detentur ta' polza.

Twarrub ta' interess u telf ta' benefiċċju minn benefiċjarju.

1712G. (1) Meta jsir it-twarrub minn benefiċjarju ta' benefiċċju taht kuntratt ta' assicurazzjoni, l-interess ta' dak il-benefiċjarju ghandu jvesti fid-detentur tal-polza jekk ma jkunx hemm benefiċjarji msemmija ohra. Fil-każ li jkun hemm benefiċjarji msemmija ohra dak l-interess ghandu jvesti fil-benefiċjarji l-ohra *pro rata* skond l-interess li jkollhom. Din id-disposizzjoni ma tapplikax ghal polza ta' grupp li ghandha tkun regolata bil-pattijiet espressi ta' l-iskema li tahtha tkun qiegħda tinhareġ.

(2) Il-kuntratt ta' assicurazzjoni fuq il-hajja ghandu jtemm milli jkollu effett dwar detentur ta' polza jew benefiċjarju msemmi li jkun ġie kundannat mill-qorti għal offiża gravi fuq il-persuna jew omiċidju volontarju tad-detentur ta' polza jew tal-hajja assicurata skond il-każ. Iktar

minn hekk, jekk il-benefiċjarju msemmi jkun ghamel tentattiv fuq il-hajja tad-detentur ta' polza jew fuq il-hajja assicurata, u fil-kazijiet imsemmija fl-artikolu 1787 tal-Kodiċi, bla hsara dejjem ghad-disposizzjonijiet ta' l-artikolu 1791, id-detentur ta' polza ikollu jedd jirrevoka t-tismija minghajr il-kunsens tal-benefiċjarju jew tas-suċċessuri tieghu fit-titolu, ukoll jekk il-benefiċjarju jkun aċċetta skond ma hemm fl-artikolu 1712D.

Il-liġijiet tas-suċċessjoni ma japplikawx.

1712H. Meta t-tismija ta' benefiċjarju tkun saret skond l-artikoli ta' qabel, id-disposizzjonijiet tat-*Titolu III* tat-*Taqsim*a II tat-*Tieni Ktieb* ta' dan Kodiċi dwar is-suċċessjonijiet ma ghandhomx japplikaw għall-polza jew għal xi drittijiet jew rikavat tahtom hlief kif espressament dikjarat fl-artikolu 1712E.

Il-liġi li tapplika.

1712I. (1) Bla hsara għas-subartikolu (3) ta' dan l-artikolu, il-validità u l-effetti ta' kuntratt ta' assicurazzjoni fuq il-hajja, l-obbligazzjonijiet ta' l-assicuratur, id-drittijiet tad-detentur ta' polza, tal-persuna li jkollha hajjitha assicurata, ta' kull benefiċjarju u dawk ta' terzi, għandhom ikunu regolati skond il-liġi proprja kif espressament magħzula mill-partijiet.

Regoli mandatorji.

(2) Fin-nuqqas ta' għażla espressa, il-liġi li tapplika skond prinċipji ġeneralment applikabbli tad-dritt internazzjonali privat u, jekk ikun hemm xi dubju, il-kuntratt, għandhom ikunu regolati mil-liġi tal-pajjiż fejn l-assicuratur ikun jiġġestixxi l-kummerċ tiegħu, u jekk l-assicuratur ikun jiġġestixxi l-kummerċ tiegħu f'żewġ pajjiżi jew iżjed, bil-liġi tal-pajjiż fejn ikun jinsab l-uffiċju prinċipali tiegħu.

(3) Minkejja l-għażla ta' liġi proprja barranija u l-pattijiet espressi tal-polza f'dak il-kaz:

(i) meta l-persuna li jkollha hajjitha assicurata tkun soltu residenti f'Malta fid-data tal-polza, għandu japplika l-artikolu 1712B; u

(ii) meta detentur ta' polza ikun domiciljat f'Malta, għandhom japplikaw id-disposizzjonijiet ta' l-artikolu 1712E.

Sub-titolu 2 – Materji dwar Persuni Miżżewġin

Kuntratti ta' assicurazzjoni fuq il-hajja mahruġin qabel iż-żwieġ.

1712J. (1) Kuntratt ta' assicurazzjoni fuq il-hajja mahruġ minn persuna li sussegwentement tiżżewweġ ma għandux jiffirma parti mill-komunjoni ta' l-akkwisti bla hsara,

madankollu, ghad-dritt tal-parti l-oħra fiż-żwieġ li tiġi lilha akkreditata somma li tkun daqs nofs kull premjum imħallas minn dik il-persuna matul iż-żwieġ meta dawk il-premja jkunu ġew imħallsa minn proprjetà tal-komunjoni.

Iżda dik il-persuna tista' tiddeċiedi li dik il-polza ssir parti mill-komunjoni ta' l-akkwisti f'liema każ l-artikoli li jiġu wara ghandhom jipprevalixxu.

(2) Il-hlasijiet ta' premja matul iż-żwieġ ghandu jitqies bhala li jkun sar mill-proprjetà tal-komunjoni kemm-il darba ma jkunx hemm provi kuntrarji.

(3) F'dawk il-każijiet id-detentur ta' polza ikollu jedd jagħmel l-attijiet kollha għar-rigward ta' polza bħal dik u li jirċievi kull rikavat relattiv, kemm meta dawn jimmaturow kemm jekk jiġu ċeduti qabel, mingħajr il-kunsens tal-konjuġi l-iehor jew l-oħra, u l-polza fuq il-hajja u kull rikavat relattiv ghandu jitqies bhala proprjetà parafernali.

Kuntratti ta' assigurazzjoni fuq il-hajja mahruġin minn persuni miżżewġin.

1712K. (1) Persuni miżżewġin jistgħu jagħmlu kuntratti ta' assigurazzjoni fuq il-hajja f'isimhom proprju jew flimkien.

Kuntratt li l-miżżewġin jagħmlu flimkien.

(2) Meta ssir polza fuq il-hajja minn miżżewġin flimkien, din tkun tista' biss tiġi ċeduta, mirhuna, assenjata jew modifikata, inkluż bit-tismija ta' benefiċjarju bis-sahha tagħha, flimkien miż-żewġ konjuġi kemm-il darba l-polza tkun espressament sottoskritta -

(a) taht kondizzjoni li kull parti mill-konjuġi tista' taġixxi mingħajr il-kunsens tal-parti l-oħra f'kull haġa jew f'xi affarijiet; jew

(b) taht il-kondizzjoni msemmija fl-artikolu 1712F, u mbagħad biss wara l-mewt tal-konjuġi l-iehor, f'liema każijiet kull konjuġi tista' taġixxi f'kull haġa.

Kuntratt meħud minn konjuġi wieħed biss.

(3) Meta kuntratt ta' assigurazzjoni fuq il-hajja jsir fl-isem uniku ta' persuna li tkun miżżewġa u li jkollha l-proprjetà matrimonjali soġġetta għar-regolamentazzjoni bil-komunjoni ta' l-akkwisti u minkejja kull disposizzjoni oħra tal-liġi:

(a) il-polza fuq il-hajja tkun tista' tigi ċeduta, mirhuna, assenjata jew modifikata, inkluż bit-tismija ta' beneficijarju taħtha, minn dik il-persuna waħidha u f'dak il-każ, meta dan isir

(i) għal finijiet li ma jkollhomx x'jaqsmu ma' l-interessi patrimonjali tal-konjuġi, jew

(ii) mingħajr il-kunsens bil-miktub tal-konjuġi l-iehor, għandu joriġina kreditu favur il-konjuġi l-iehor ekwivalenti għal nofs il-valur tal-premja kollha mhallsin mid-detentur ta' polza; u

(b) ir-rikavat tal-polza għandu jitqies bhala proprjetà parafernali ta' dak il-konjuġi soġġett għal kreditu favur il-konjuġi l-iehor ta' somma li tkun daqs nofs il-valur tal-premja kollha mhallsa mid-detentur ta' polza.

(4) Minkejja d-disposizzjonijiet ta' l-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*, l-Att dwar Segretezza Professjonali jew xi klawnsola espressa li tinsab fil-kuntratt, meta kuntratt ta' assigurazzjoni fuq il-hajja jsir minn persuni mizzewġa flimkien, iż-żewġ konjuġi jkollhom jedd għal informazzjoni shiħa dwar kull haġa li jkollha x'taqsam ma' dak il-kuntratt. Meta dan isir minn konjuġi wiehed, tkun biss dik il-persuna u oħrajn li jiġu espressament awtorizzati bil-miktub, li jkollhom il-jedd għal informazzjoni dwar il-polza.

(5) Il-kreditu msemmi fis-subparagrafi (a) u (b) tas-subartikolu (3) ta' dan l-artikolu għandu jgawdi privileġġ speċjali fuq ir-rikavat tal-polza f'idejn l-assiguratur fil-każ li s-sehem tal-proprjetà tal-komunjoni li jingabar favur id-detentur ta' polza fil-waqt tax-xoljiment tal-komunjoni ma jkunx suffiċjenti biex jithallas il-valur tal-kreditu lill-konjuġi l-iehor.

Sub-titolu 3 – Materji dwar l-awtorità tal-ġenituri

Kuntratti mahruġin għall-benefiċċju tal-patrimonju tal-wild.

1712L. (1) Il-ġenituri ta' wild jistgħu jagħmlu kuntratt ta' assigurazzjoni fuq il-hajja, għall-wild bhala detentur ta' polza, fl-amministrazzjoni tal-proprjetà tal-wild.

(2) Kuntratt bhal dak jista' jsir jew minn ġenitur wiehed jew l-iehor u għandu jiġi registrat fil-polza isem il-wild bhala d-detentur tal-polza.

(3) Kull hlas ta' xi rikavat taht il-polza, mal-maturazzjoni, matul iż-żmien bhala irtirar jew meta jsir ċediment iktar kmieni, jista' jsir biss lill-ġenituri flimkien jew f'kont bankarju msemmi bhala proprjetà tal-wild. Id-disposizzjonijiet ta' l-artikolu 136 għandhom japplikaw għal kull att rilevanti għar-rigward ta' l-assigurazzjoni fuq il-polza fuq il-hajja.

(4) Il-ġenituri ma jkunux jistgħu jsemmu lil xi terza persuna bhala benefiċjarju ta' kuntratt ta' assicurazzjoni fuq il-hajja magħmul għal wild bhala detentur ta' polza.

(5) Meta l-wild isir ta' età maġġuri huwa jkollu jedd jeżerċita d-drittijiet kollha għar-rigward tal-polza mingħajr il-htieġa ta' ebda formalità għajr li jagħti avviż lill-assiguratur filwaqt li jgħib prova dwar l-identità u l-età tiegħu.

Sub-Titolu 4 – Rahan ta' poloz ta' assicurazzjoni

Rahan ta' assicurazzjoni fuq il-polza fuq il-hajja.

1712M. (1) Id-drittijiet taht polza ta' l-assigurazzjoni jistgħu jiġu mirhuna mid-detentur ta' polza favur kull persuna bhala sigurtà għal kull obbligazzjoni. Polza tiġi mirhuna permezz ta' instrument bil-miktub li jsir bejn min jagħti r-raham u l-kreditur li favur tiegħu jsir ir-raham.

(2) Dak ir-raham għandu jkun jorbot lill-assiguratur u lil terzi u l-privileġġ skond kif provdut fit-Titolu XXIII għandu joriġina biss wara li jkun ingħata avviż tar-raham bil-miktub minn min jagħti r-raham, jew mill-kreditur li favur tiegħu jsir ir-raham, lill-assiguratur jew l-assiguratur ikun irrikonoxxa r-raham bil-miktub.

(3) Sakemm idum għaddej ir-raham, kull assenjament tal-polza jkun bla hsara għar-raham favur il-kreditur li favur tiegħu jsir ir-raham. Id-drittijiet tal-kreditur li favur tiegħu jsir ir-raham huma madankollu bla hsara għad-drittijiet ta' benefiċjarju msemmi li jkun aċċetta t-tismija qabel ir-raham. Meta jingħata rahan, l-assiguratur ikun marbut li jinforma lill-kreditur li favur tiegħu jsir ir-raham b'kull dritt preċedenti minkejja kull dmir ta' kunfidenzjalità.

(4) Bla hsara għal kull dritt preċedenti, il-kreditur li favur tiegħu jsir ir-raham ta' polza ta' l-assigurazzjoni għandu jgawdi d-drittijiet kollha tad-detentur ta' polza li jirċievi avvizi taht il-polza, li jirċievi kull rikavat tal-polza, meta dan ikun dovut, meta jimmatūra jew ma'

ċediment iktar kmieni u d-dritt li jeżerċita kull ghażla ta' min jagħti r-raham taht il-polza, hlief għat-tismija ta' beneficijarju, imma ma jkunx responsabbli għat-twettiq ta' obligazzjonijiet li d-detentur ta' polza jkollu lejn l-assiguratur kemm-il darba ma jiġix xort'ohra espressament miftiehem bil-miktub.

(5) Mingħajr preġudizzju għad-dritt li l-kreditur li favur tiegħu jsir ir-raham għandu li japplika għall-bejgħ b'irkant fil-qorti tal-polza u minkejja d-disposizzjonijiet tal-Kodiċi Ċivili, fil-każ ta' xi nuqqas taht il-ftehim bejn min jagħti r-raham u l-kreditur li favur tiegħu jsir ir-raham u meta jingħata avviż permezz ta' att ġudizzjarju lil min jagħti r-raham u lill-assiguratur, il-kreditur li favur tiegħu jsir ir-raham ikollu jedd li:

(i) jiddisponi mill-polza favur ta' terza persuna; jew

(ii) japproprja ruhu u jakkwista l-polza hu nnifsu, bi tpaċija tad-dejn dovut lilu jew ta' xi parti minnu, jew bl-aħjar prezz li jista' jintlahaq u li ma jkunx inqas mill-valur ġust.

(6) Għall-fini tas-subartikolu preċedenti, il-valur tal-polza jista' jiġi stabbilit bi ftehim bejn min jagħti r-raham u l-kreditur li favur tiegħu jsir ir-raham wara li jkun ingħata avviż ta' nuqqas minn min jagħti r-raham lill-kreditur li favur tiegħu jsir ir-raham u ebda ftehim preċedenti ma jkun validu.

Iżda, fil-każ ta' nuqqas ta' ftehim, il-valur ġust għall-bejgħ jew għall-appropriazzjoni tal-polza għandu jiġi stabbilit

(a) minn *accountant* pubbliku ċertifikat mahtur mill-Qorti jew minn arbitru, jekk il-partijiet hekk jaqblu bejniethom, wara li ssir talba mill-kreditur li favur tiegħu jsir ir-raham, jew

(b) b'kull mod iehor bħal dak skond ma jista' jiġi espressament miftiehem bejn il-partijiet.

Iżda jekk il-valur ġust ma jkunx jista' jinkiseb, il-kreditur li favur tiegħu jsir ir-raham ikun jista' jagħmel rikors fil-Qorti jew quddiem l-arbitru għall-approvazzjoni ta' bejgħ jew appropriazzjoni bi prezz li jkun inqas mill-valur ġust kif hawn qabel imsemmi, bla hsara għal dawk il-kondizzjonijiet li l-Qorti jew l-arbitru jistgħu jistabbilixxu.

(7) Fil-kazijiet meta jkun hemm valur ta' ċediment tal-polza, il-kreditur li favur tiegħu jsir ir-raham jista' wkoll jagħti avviż lil min jagħti r-raham u lill-assiguratur fejn jitlob iċ-ċediment tal-polza u l-hlas tal-valur ta' ċediment lill-kreditur li favur tiegħu jsir ir-raham. Il-valur ta' ċediment ikun dak stabbilit mill-assiguratur skond il-pattijiet tal-polza u avżat lill-partijiet.

(8) Għall-finijiet tas-subartikoli (7) u (8) ta' dan l-artikolu, il-valur tal-polza jkun dak fid-data meta jkun ser isir il-bejgħ, l-approprijazzjoni jew iċ-ċediment proposti.

(9) Kull rikavat tal-polza li jeċċedi d-dejn dovut lill-kreditur li favur tiegħu jsir ir-raham għandu jinghata lura lil min jagħti r-raham.

(10) Detentur ta' polza jista' jagħmel iktar minn ftehim ta' rahan wiehed għar-rigward ta' l-istess polza u r-regoli msemmija f'dan l-artikolu għandhom japplikaw għat-tieni polza u kull polza ulterjuri bl-istess mod bhalma japplikaw għall-ewwel polza imma rahan sussegwenti għandu jiggradwa bla hsara għal kull rahan preċedenti u drittijiet oħra preċedenti. F'dak il-kaz, rahan sussegwenti għandu jkun kondizzjonali fuq l-eżistenza ta' rahan preċedenti u ebda drittijiet ma għandhom ikunu eżerċitabbli mill-kreditur sussegwenti li favur tiegħu jsir ir-raham sakemm ikunu ġew sodisfatti d-drittijiet preċedenti tal-kreditur li favur tiegħu jsir ir-raham u, jew ikunu ġew mitmuma.

Emenda ta' l-artikolu 1717A tal-Kodiċi.

4. Fl-artikolu 1717A tal-Kodiċi, minnufih wara l-kliem “għal dak il-għan fil-kuntratt” għandhom jidhlu l-kliem “u lanqas minn kuntratt ta' assigurazzjoni”.

Transitorja.

5. Id-disposizzjonijiet ta' l-artikolu 3 ta' dan Att għandhom isehhu għar-rigward ta' kuntratti ta' assigurazzjoni magħmulin wara l-bidu fis-sehh ta' dan l-Att u ta' operazzjonijiet legali sussegwenti u rilevanti magħmulin taht jew għar-rigward ta' kuntratti ta' assigurazzjoni li kienu jeżistu f'dik id-data. Ebda haġa f'dak l-artikolu ma għandha tolqot il-validità ta' xi kuntratt ta' assigurazzjoni li jkun sar qabel dik id-data jew ta' xi haġa magħmula tahtu jew dwaru sa qabel dik id-data.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 292 tat-18 ta Lulju, 2005.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

26th July, 2005

ACT No. XI of 2005

AN ACT to amend the Civil Code, Cap 16

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled and by the authority of the same, as follows:-

Short title and commencement.

1. (1) The short title of this Act may be cited as the Civil Code (Amendment) Act, 2005 and it shall be read and construed as one with the Civil Code, hereinafter referred to as “the Code”.

(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 provisions and different purposes thereof.

Amendment of article 586 of the Code.

2. Sub-article (1) of Article 586 of the Code shall be amended by the insertion after the words “Saving the provisions relating to donations made in contemplation of marriage” of the words “and those relating to contracts of life insurance”.

Addition of new Title in the Code.

3. In Part II of Book Second of the Code, immediately after article 1712, there shall be added a new Title XIA with the heading “Of Life Insurance Contracts” and with the following articles 1712A to 1712M as follows:

“TITLE XIA

“Of Life Insurance Contracts”

Sub-title 1 – Contractual issues

Object of a
life insurance
contract.

1712A. (1) A contract of life insurance may be stipulated over the life of the policyholder or that of a third party in relation to which the policyholder has an insurable interest, which is lawful, at the commencement of the contract.

Insurable
interest.

(2) For the purposes of this article:

(a) A person has an insurable interest in his own life and in the life of his spouse;

(b) A parent of a person who has not attained the age of 18 years, and a guardian of such person has an insurable interest in the life of that person;

(c) A person who is likely to suffer financial loss as a result of the death of some other person has an insurable interest in the life of that other person;

(d) A body corporate has an insurable interest in the life of an officer, shareholder or employee of the body corporate and a partnership has an insurable interest in the life of a partner or employee of the partnership;

(e) An employer has an insurable interest in the life of his employee and an employee has an insurable interest in the life of his employer;

(f) A person has an insurable interest in the life of a person on whom he depends, either wholly or partly, for maintenance and support;

(g) For the purposes of this title, the term “life insurance” shall include any contract of insurance in terms of which any benefit is payable on death.

(3) Subject to the interest being lawful, the agreement by an insurer to enter into a contract of life insurance over the life of a person other than the policyholder shall be sufficient evidence of the fact that the assured has an insurable interest in the life of the life assured.

(4) Except in the case referred to in subparagraph (c) of sub-article (2) of this article, where a person has an insurable interest in the life of another person it shall not be necessary for the policyholder to prove that he has suffered any loss or that the loss suffered bears any relationship to the sum insured.

Consent of
third party
whose life is
insured.

1712B. (1) Where the contract of insurance refers to the life of a third party, the consent in writing of such third party, or in case of persons who lack legal capacity of their lawful representative, to the entering into of the contract and to the sum assured, shall be required on pain of nullity of the contract.

(2) In the absence of consent as above provided the nullity of the contract may only be raised by the policyholder or the person whose life is assured and in such event all premia paid to the insurer shall be returned to the person who paid them.

(3) Consent given by a third party whose life is insured shall be irrevocable unless expressly stated otherwise in writing in the policy.

(4) Where consent is revocable as established in sub-article (3) and it is withdrawn by notice in writing to the policyholder and the insurer, and barring other arrangements between the parties to the contract, the contract of insurance shall terminate.

Consent of
persons
without
legal
capacity.

(5) In case of persons who lack legal capacity, where the lawful representative is himself the proposed policyholder, the prior consent of the Civil Court in its voluntary jurisdiction shall be required:

Provided that where the lawful representatives are the parents of a child or any one of them, the consent of any one of the parents shall be sufficient.

Provided further that where the life assured is that of a minor it shall not be lawful for the life cover under the policy to exceed Lm20,000 or such other amount as the Minister responsible for Justice may prescribe from time to time by means of a notice in the Gazette.

Consent
presumed in
group
policies
under
schemes.

(6) Such consent shall be presumed where the third party forms part of a defined class of persons whose lives are insured in accordance with terms and conditions of an insurance arrangement covered by a group policy to which such third party has agreed or subscribed, including any arrangement forming part of a person's conditions of employment.

Third party
to consent to
pledges and
assignment of
policy.

(7) Notwithstanding the provisions of this Code relating to assignment and pledge of rights:

(i) the assignment or pledge of a contract of life insurance, and

(ii) any designation or substitution in the beneficiary designated in such contract, or the assignment of such benefit;

shall not be valid without the consent in writing of the third party whose life is insured, saving the provisions of any special laws in terms of which such consent may not be necessary for such transactions.

Contract of
insurance in
favour of
third party
beneficiaries.

1712C. (1) The policyholder may elect that the proceeds or any benefit arising from a contract of life insurance, whether payable on a definite maturity date or on the death of the life insured, including any surrender value, be payable to one or more named beneficiaries:

Provided that in case of a spouse or children of the policyholder the designation of such persons by reference to the class of persons shall be sufficient and in such case, unless otherwise stated in the policy, they shall enjoy rights to the proceeds in equal shares and shall benefit from such designation even if they do not accept the inheritance.

Provided further that it shall also be lawful to designate a class of beneficiaries in case of insurance contracts in favour of persons who participate in a group policy as is referred to in sub-article (6) of article 1712B.

Designation
of
beneficiaries.

(2) (a) The designation of a beneficiary or a class of beneficiaries shall be made either in the original contract of life insurance or policy or in any subsequent amendment of the policy and such designation may refer to

the full proceeds or part thereof, and may be subject to conditions, suspensive or resolute.

(b) When the purpose of the designation expressly to be for the provision of maintenance of the beneficiary or as a pension, the said designation may be subject to restriction on alienation or any other legal transaction, subject to diminution or termination in the event that the beneficiary becomes bankrupt or insolvent or any of his property becoming liable to seizure for the benefit of his creditors and shall not be liable to attachment under a garnishee order issued against the insurer:

Provided that the said immunity from garnishee shall only apply to sums reasonably required for maintenance of the beneficiary or for a pension being not more than twice the highest State pension in Malta.

Revocability
of
designation.

(3) Subject to the provisions of subarticle (4) of article 1712D, the policyholder may revoke or vary the terms of any designation of a beneficiary.

Revocation
by will or by
heirs of
policyholder
not permitted.

(4) The revocation or modification by a policyholder of a designation of a beneficiary may not be made by means of a will. The heirs of the policyholder may not revoke the designation of a beneficiary after the death of the policyholder.

Legal effects
of
designation.

1712D. (1) Subject to the right of revocation by the policyholder as provided in subarticle (3) of article 1712C and the provisions of subarticle (7) of this article relating to group policies, when made payable to one or more designated beneficiaries, the proceeds and any benefit arising from a contract of insurance, including any surrender value, are due to the beneficiary and form part of his estate, whether or not such beneficiary is aware of such designation.

(2) The beneficiary shall not enjoy any rights other than as stated in subarticle (1) of this article in relation to the policy and the insurer shall not disclose any information about the policy without the prior written consent of the policyholder, until such time as the policyholder dies in which case the insurer, upon becoming aware of such fact, shall inform the beneficiary of his entitlement:

Provided that the insurer shall inform a beneficiary who has accepted the designation, of the reasons which may

produce the lapse of the policy, and this within a reasonable time prior to such lapse taking effect.

Irrevocability
of
designation.

(3) After acceptance by a beneficiary,

(a) the revocation of the designation of a beneficiary, or

(b) the modification of the sum for which the policy has been taken out, or

(c) the pledge or assignment of the policy,

may only be made with the prior written consent of the beneficiary:

Provided that the above shall not apply to a group policy which shall be governed by the terms of any applicable scheme, and:

Provided further that a pledge or assignment made without such consent shall be valid but shall be subject to the prior rights of the designated beneficiary.

Acceptance
and notice of
designation.

(4) Acceptance by a beneficiary of a designation in terms of this provision shall be dated, signed by the beneficiary and countersigned by a witness and shall be notified to the insurer. For the purposes of this article,

(a) “written” shall not include electronic means, and

(b) a written demand claiming the proceeds under the policy to the insurer by the designated beneficiary shall be treated as acceptance in writing.

Any such acceptance shall be noted by an endorsement to the policy.

Notice of a designation of a beneficiary may be given even after the death of the policy holder or the life insured provided that any such notice is given within 7 working days of such death after which period the designation shall lapse and shall not have any legal effects.

(5) Subject to the express terms of the designation, all references to the beneficiary in these articles shall be construed as including the heirs, legatees, pledgees or assignees, as the case may be, of the designated beneficiary.

(6) All transactions referred to in these articles shall have legal effects only when the insurer receives notice thereof or otherwise acknowledges a written notice and in cases where more than one such act is notified, any such acts shall take effect subject to any previously notified or acknowledged acts.

Special rules
for group
policies.

(7) The following rules shall apply in the case of group policies referred to in sub-article (6) of article 1712B:

(a) the entitlement of such beneficiary shall be in accordance with the terms of such scheme and it shall be lawful to provide for any conditions including the termination of benefit on the termination of employment:

(b) subject to the terms of the scheme not providing otherwise, the participant in a scheme shall not be entitled to assign or pledge his rights nor shall he be entitled to the surrender value of the policy on termination of benefit and the arrangement shall provide rules on the transferability of the benefits as required by applicable law.

Reserved
portion.

1712E. (1) The sums payable under a contract of life insurance to a designated beneficiary shall not be subject to the rules of reduction for breach of the reserved portion of the estate. Neither shall such rules apply to the sums paid by the policyholder by way of premium or additional contributions to the policy where such sums are moderate, regard being had to the estate of the policyholder. Where the sum is not moderate, the right to reduction for breach of the reserved portion of the estate shall only be exercisable against the beneficiary of the proceeds of the policy and no rights shall lie against the insurer.

Collation
between co-
heirs.

(2) Unless the policyholder exempts the proceeds of an insurance policy payable to a designated beneficiary who is a co-heir from collation in terms of this Code, the sums payable shall be regulated by the applicable provisions of this Code.

Consolidation
of interests in
policy in
favour of co-
insured.

1712F. (a) Where a policy of life insurance is entered into by two or more policyholders, it shall be lawful to agree that on the death of one policyholder, the contract of insurance will continue in relation to the surviving policyholder and in such case all the rights and obligations under such contract of insurance at the time of death of the deceased policyholder shall accrue to the surviving policyholder and shall not form part of the estate of the deceased policyholder.

(b) Where a joint policy is stated to terminate on the death of the first life, it shall be lawful to grant the surviving policyholder an option to choose to receive the proceeds of the policy or to continue the policy until the said policyholder's death.

Waiver of
interest and
loss of
benefit by
beneficiary.

1712G. (1) Upon the waiver by a beneficiary of a benefit under a contract of insurance, such beneficiary's interest shall vest in the policyholder if there are no other designated beneficiaries. In the event that there are other designated beneficiaries such interest shall vest in the other beneficiaries *pro rata* to their interest. This provision shall not apply to a group policy which shall be governed by the express terms of the scheme under which it is issued.

(2) The contract of life insurance shall cease to have effect with regard to the policyholder or a designated beneficiary who has been sentenced by a court for the grievous bodily harm or wilful homicide of the policyholder or the life insured as the case may be. Furthermore, if the designated beneficiary has made an attempt on the life of the policyholder or the life insured, and in the cases referred to in article 1787 of the Code, subject always to the provisions of article 1791, the policyholder shall be entitled to revoke the designation without the consent of the beneficiary or his successors in title, even if the beneficiary has accepted in terms of article 1712D.

Non-
applicability
of the laws of
succession.

1712H. Where a designation of a beneficiary has been made in accordance with the preceding articles, the provisions of Title III of Part II of Book Second of this Code relating to successions shall not apply to the policy or any rights or proceeds thereunder except as expressly stated in article 1712E.

Applicable
law.

1712I. (1) Subject to sub-article (3) hereof, the validity and effects of a contract of life insurance, the

obligations of the insurer, the rights of the policyholder, the person whose life is assured, any beneficiaries and those of third parties, shall be governed by the proper law expressly chosen by the parties.

(2) In the absence of an express choice, the law applicable in accordance with generally applicable principles of private international law and, in case of doubt, the contract, shall be governed by the law of the country where the insurer carries on its business, and if it carries on its business in two or more countries, by the law of the country in which its head office is situated.

Mandatory rules.

(3) Notwithstanding the choice of a foreign proper law and the express terms of the policy in such case:

(i) when the person whose life is assured is habitually resident in Malta on the date of the policy, Article 1712B shall apply: and

(ii) where the policy holder is domiciled in Malta the provisions of article 1712E shall apply.

Sub-title 2 – Issues relating to Married Persons

Contracts of life insurance taken out before marriage.

1712J. (1) A contract of life insurance taken out by a person who subsequently contracts marriage shall not form part of the community of acquests subject, however, to the right of the other party to the marriage to be credited with a sum equal to half of the premia paid by such person during the marriage when such premia have been paid from community property.

Provided that that person may decide that such policy shall become part of the community of acquests in which case the subsequent articles shall prevail.

(2) Payments of premia during marriage shall be deemed to have been made from community property unless there is evidence to the contrary.

(3) In such cases the policyholder shall be entitled to carry out all acts in relation to such policy and to receive any proceeds thereof, whether on maturity or earlier surrender, without the consent of the other spouse, and the

life policy and all proceeds thereof shall be paraphernal property.

Contracts of life insurance taken out by married persons.

1712K. (1) Married persons may enter into contracts of life insurance in their own name or jointly.

Contract taken out jointly.

(2) When taken out jointly, the life policy may only be surrendered, pledged, assigned or modified, including by the designation of a beneficiary thereunder, jointly by both spouses unless the policy is expressly undertaken -

(a) under a condition that either spouse may act without the consent of the other in all or some matters: or

(b) under the condition stated in article 1712F, and then only after the demise of a spouse,

in which cases either spouse can act in all matters.

Contract taken out by one spouse.

(3) When any contract of life insurance is entered into in the sole name of a person who is married and whose matrimonial property is subject to the regime of community of acquests and notwithstanding any other provisions of law:

(a) the life policy may be surrendered, pledged, assigned or modified, including by the designation of a beneficiary thereunder, by such person alone and in such case, when effected

(i) for purposes unrelated to the patrimonial interests of the spouses, or

(ii) without the written consent of the other spouse, there shall arise a credit in favour of the other spouse equivalent to half the value of all premia paid by the policyholder; and

(b) the proceeds of the policy shall be deemed to be paraphernal property of that spouse subject to a credit in favour of the other spouse of a sum equal to half the value of all the premia paid by the policyholder.

(4) Notwithstanding the provisions of the Data Protection Act, the Professional Secrecy Act or any express clause in the contract, when a contract of life insurance is entered into by a married person jointly, both spouses shall be entitled to full information relating to all matters regarding the said contract. When entered into by one spouse, only such person and others expressly authorised in writing, shall be entitled to information about the policy.

(5) The credit referred to in sub-paragraphs (a) and (b) of sub-article (3) of this Article shall enjoy a special privilege over the proceeds of the policy in the hands of the insurer in the event that the share of the community property accruing to the policyholder at time of the dissolution of the community is not sufficient to pay the value of the credit to the other spouse.

Sub-title 3 – Issues relating to parental authority

Contracts taken out for the benefit of a child's estate.

1712L. (1) It shall be lawful for parents of a child to enter into a contract of life insurance, for the child as policyholder, in the administration of the child's property.

(2) Any such contract may be entered into by either parent and the name of the child as policyholder shall be recorded in the policy.

(3) Payments of any proceeds under the policy, at maturity, during the term by way of withdrawals or on earlier surrender, may only be made to the parents jointly or to a bank account designated as property of the child. The provisions of article 136 shall apply to any relevant acts in relation to the life insurance policy.

(4) It shall not be lawful for the parents to designate a third party as a beneficiary of a contract of life insurance entered into for a child as policyholder.

(5) On reaching maturity the child shall be entitled to exercise all rights in relation to the policy without the need to any formality other than giving notice to the insurer and providing him with evidence of his identity and age.

Sub-Title 4 – Pledge of Insurance Policies

Pledge of life
insurance
policy.

1712M. (1) Rights under an insurance policy may be pledged by the policyholder in favour of any person as security for any obligation. The pledge of a policy shall be constituted by means of an instrument in writing entered into between the pledgor and the pledgee.

(2) The said pledge shall be binding on the insurer and third parties and the privilege as provided in Title XXIII shall arise only after notice of the pledge shall have been given in writing by the pledgor or the pledgee to the insurer or the insurer shall have acknowledged the pledge in writing.

(3) During the existence of a pledge, any assignment of the policy shall be subject to the pledge in favour of the pledgee. The rights of a pledgee are however subject to the rights of a designated beneficiary who has accepted the designation prior to the pledge. When a pledge is granted, the insurer shall be bound to inform the pledgee of any prior rights notwithstanding any duty of confidentiality.

(4) Subject to any prior rights, the pledgee of an insurance policy shall enjoy all the rights of the policyholder to receive notices under the policy, to receive any proceeds of the policy, when due, on maturity or earlier surrender and the right to exercise all options of the pledgor under the policy, except the designation of a beneficiary, but shall not be liable for the performance of any obligations of the policyholder towards the insurer unless otherwise expressly agreed in writing.

(5) Without prejudice to the right of the pledgee to apply for the judicial sale of the policy and notwithstanding the provisions of the Civil Code, in the event of a default under the agreement between the pledgor and the pledgee and upon giving notice by judicial act to the pledgor and the insurer, the pledgee shall be entitled to:

(i) dispose of the policy to a third party; or

(ii) appropriate and acquire the policy himself, in settlement of the debt due to him or of part thereof, or at the best achievable price being not less than the fair value.

(6) For the purpose of the preceding sub-article, the value of the policy may be established by agreement between the pledgor and the pledgee after notice of default has been given by the pledgor to the pledgee and no prior agreement shall be valid.

Provided that, in case of disagreement, the fair value for the sale or appropriation of the policy shall be determined

(a) by a certified public accountant appointed by the Court or an arbitrator, if so agreed by the parties, on the application of the pledgee; or

(b) in such other manner as may be expressly agreed between the parties.

Provided that if the fair value cannot be obtained the pledgee can apply to the Court or the arbitrator for approval for a sale or appropriation at a price which is less than the fair value as aforesaid, subject to such conditions as the Court or arbitrator may determine.

(7) In cases where there is a surrender value of the policy, the pledgee may also give notice to the pledgor and insurer requesting the surrender of the policy and the payment of the surrender value to the pledgee. The surrender value shall be that established by the insurer in accordance with the terms of the policy and notified to the parties.

(8) For the purposes of sub-article (7) and (8) hereof, the value of the policy shall be that obtaining on the date of the proposed sale, appropriation or surrender.

(9) Any proceeds of the policy which exceed the debt due to the pledgee shall be returned to the pledgor.

(10) It shall be lawful for a policyholder to enter into more than one pledge agreement in relation to the same policy and the rules stated in this article shall apply to a second and further policy in the same way as they apply to the first policy but a subsequent pledge shall rank subject to previous pledges and other prior rights. In such case, a subsequent pledge shall be conditional on the existence of the prior pledge and no rights shall be exercisable by the subsequent pledgee until such time as the prior pledgee's rights have been satisfied and, or terminated.

4. Article 1717A of the Code shall be amended by the insertion of the words “nor any contract of insurance” immediately after the words “for such purpose in the contract)”. Amendment of article 1717A of the Code.

5. The provisions of article 3 of this Act shall have effect in relation to contracts of insurance entered into after the coming into force of this Act and to relevant subsequent legal transactions done under or in relation to contracts of insurance existing on such date. Nothing in the said article shall affect the validity of any contract of insurance entered into prior to such date or anything done thereunder or in relation thereto until such date. Transitory provision.

Passed by the House of Representatives at Sitting No. 292 of 18th July 2005.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

