

(6) Il-Bord jista' wkoll, permezz ta' mandat ta' skorta, iġieghel dawk ix-xhieda biex jidhru għall-finijiet tal-ghoti ta' xhieda. Il-Bord jista' jitlob li l-uffiċjali tiegħu jkunu assistiti mill-uffiċjali eżekuttivi tal-Qrati jew mill-Pulizija waqt l-eżekuzzjoni tal-mandat ta' skorta.

(7) Jekk xi persuna debitament imħarrka tonqos milli tidher meta tkun giet notifikata, dik il-persuna tkun hatja ta' reat u tehel, meta tinstab hatja minn qorti kompetenti ta' ġurisdizzjoni kriminali, il-piena ta' multa ta' mitejn u ħamsin euro (€250) jew priġunerija għal żmien ta' tliet xhur jew dik il-multa u l-priġunerija flimkien.

(8) Id-disposizzjonijiet ta' dan il-Kodiċi li għandhom x'jaqsmu mad-disprezz tal-qorti għandhom, *mutatis mutandis*, jgħoddu għall-Bord.

(9) Meta l-Bord ikun tal-opinjoni li f'każ partikolari li jkun hemm ċirkostanzi li jiġġustifikaw li l-Bord jaġġixxi b'dan il-mod, il-Bord jista' jagħti dawk l-ordnijiet rigward il-ħlas ta' spejjeż fir-rigward tal-proċeduri quddiemu, kif il-Bord jidhirlu xieraq.

(10) Meta f'xi proċeduri il-Bord jagħmel ordni jew jagħti deċiżjoni, dak l-ordni jew dik id-deċiżjoni għandu jkun fihom raġunijiet u għandhom jiġu notifikati lil kull persuna kif jista' jkun speċifikat mill-Bord.

Hatra ta' esperti u talba għal informazzjoni.

519Ċ. (1) Il-Bord jista' jahtar kull persuna li jkollha l-għarfien xieraq biex tassistih waqt kull proċedura quddiemu.

(2) Il-Bord jista', waqt xi proċeduri, jitlob kull dipartiment tal-gvern, aġenzija jew entità, kunsill lokali, tutur jew xi persuna oħra biex jirrapportaw lill-Bord dwar kull haġa li għandha x'taqsam mal-imsemmija proċeduri u jista' wkoll jordna li dak ir-rapport jintbagħat lill-Bord fi perjodu ta' żmien kif jista' jiġi speċifikat.

Rikors għall-hatra ta' tutur.
Kap. 16.

519D. (1) Talba għall-hatra ta' tutur għandha ssir lill-Bord ta' Tutela skont l-artikolu 188A tal-Kodiċi Ċivili.

(2) Ir-rikors għandu jkun fih dikjarazzjoni tal-fatti li fuqhom hi bbażata t-talba u indikazzjoni tax-xhieda, jekk ikun hemm, dwar dawk il-fatti.

(3) Kull dokument li jappoġġa t-talba għandu jiġi pprezentat flimkien mar-rikors.

Eżami tal-persuni li dwarhom qed tintalab it-tutela u l-ħatra ta' tutur temporanju.

519E. Il-Bord ta' Tutela għandu jara li l-persuna li dwarha qed tintalab it-tutela tidher quddiemu, biex jagħmel mistoqsijiet lil dik il-persuna u/jew jara li tigi eżaminata minn espert indipendenti wiehed jew aktar, u l-Bord jista' fil-każijiet kollha, bla ħsara għal dawk il-kondizzjonijiet li jidhirlu xierqa, jaħtar tutur temporanju biex jagħxi bħala tutur għal dik il-persuna waqt li jkun hemm pendenti l-proċeduri quddiem il-Bord:

Izda l-ħatra temporanja ta' tutur ma għandhiex, fl-ebda każ, taqbeż il-perjodu ta' sitta w għoxrin ġimgħa f'liema perjodu il-Bord għandu jiddeċiedi jekk għandux isir Ordni ta' Tutela.

ħatra ta' tutur.

519F. (1) Jekk il-Bord ta' Tutela jidhirlu li hemm raġuni tajba għall-ħatra ta' tutur, il-Bord għandu jipproċedi biex jagħmel dik il-ħatra u l-persuna hekk maħtura bħala tutur għandha teżerċita l-funzjonijiet, l-obbligi u d-dmirijiet kollha previsti fir-rigward ta' tuturi skont is-Sub-titolu IA tat-Titolu VI tal-Ewwel Ktieb tal-Kodiċi Ċivili u skont dan it-Titolu.

Kap. 16.

(2) Fid-deċiżjoni jekk persuna għandhiex bżonn ta' tutur jew le, il-Bord għandu jikkonsidra jekk il-ħtiġiet tal-persuna li dwarha sar ir-rikors jistgħux jiġu osservati permezz ta' mezzi anqas restrittivi fuq il-libertà tal-volontà u l-azzjoni tal-persuna.

(3) Meta l-Bord jagħmel ordni li jaħtar tutur fir-rigward ta' persuna, l-ordni għandu jkun l-anqas restrittiv possibbli tal-libertà ta' deċiżjoni u azzjoni ta' dik il-persuna kemm jista' jkun possibbli fiċ-ċirkostanzi.

(4) Meta l-Bord jagħmel ordni biex jaħtar tutur, il-Bord għandu jordna wkoll li tinzamm seduta għar-revizjoni tal-ordni fi żmien speċifikat, li ma jkunx aktar minn tliet snin, kif jista' jkun stipulat fl-ordni:

Izda l-Bord jista' f'kull żmien jew fuq mozzjoni tiegħu stess jew wara rikors tal-persuna msemmija fl-artikolu 188A(3) tal-Kodiċi Ċivili jagħmel seduta għar-revizjoni tal-Ordni ta' Tutela.

Kap. 16.

(5) Il-Bord għandu permezz tar-Registratur tiegħu jinnotifika r-Registratur tal-Qorti ta' Ġurisdizzjoni Volontarja dwar l-Ordni ta' Tutela approvati jew revokati.

(6) Ir-Reġistratur tal-Bord għandu jżomm reġistru aġġornat tal-Ordnijiet kollha ta' Tutela approvati jew revokati u l-kondizzjonijiet dwarhom.

Persuni eliġibbli
biex jinhatru tuturi.

519G. (1) Il-Bord jista' jahtar kull persuna li tkun għalqet l-età ta' tmintax-il sena, tkun residenti ordinarjament f'Malta u tagħti l-kunsens tagħha biex taġixxi bħala tutor, jekk il-Bord ikun sodisfatt li dik il-persuna:

Kap. 16.

(a) hi f'pożizzjoni li twettaq il-funzjonijiet, l-obbligi u d-dmirijiet kollha previsti fir-rigward ta' tuturi skont is-Sub-titolu IA tat-Titolu VI tal-Ewwel Ktieb tal-Kodiċi Ċivili u skont dan it-Titolu; u

(b) ser taġixxi fl-aħjar interessi tal-persuna soġġetta għat-tutela; u

(ċ) ma tkunx f'pożizzjoni li l-interessi tagħha jkunu jew jistgħu jkunu konfliġġenti mal-interess tal-persuna soġġetta għat-tutela:

Iżda l-Bord jista' jahtar tuturi kongunti għat-tuteli, li kull wieħed minnhom għandu jwettaq dawk il-funzjonijiet, l-obbligi u d-dmirijiet kif il-Bord jista' jiddeċiedi.

(2) Fid-deċizzjoni jekk persuna hiex adatta biex taġixxi bħala tutor għal persuna soġġetta għat-tutela, il-Bord għandu jikkonsidra ix-xewqat tal-persuna li dwarha sar ir-rikors, ix-xewqa li jinżammu l-familja u r-relazzjonijiet soċjali eżistenti u l-kompatibilità tal-persuna proposta bħala tutor mal-persuna soġġetta għat-tutela.

(3) Tutor ma jistax jirċievi ebda miżata, rimunerazzjoni jew kontribuzzjoni oħra talli jaġixxi bħala tutor sakemm il-Bord ma jispeċifika mod ieħor fl-ordni tal-hatra tat-tutor.

(4) Meta l-Bord jidhirlu meta t-tutor propost jew persuna proposta biex taġixxi bħala tutor ma josservawx il-htigiet tas-subartikolu (1) biex jiġu mahtura bħala tuturi, il-Bord jista' jahtar kull persuna oħra xierqa biex taġixxi bħala tutor

(5) Il-Bord jista' wkoll jordna s-sostituzzjoni ta' tutor f'kull żmien waqt il-perjodu ta' Ordni ta' Tutela għal raġuni tajba u suffiċjenti.

Dmirijiet ta' tutur meta l-Ordni ta' Tutela jkun fih l-amministrazzjoni tal-proprjeta'.

519H. (1) Tutur li jkun awtorizzat f'Ordni ta' Tutela biex jamministra flejjes jew proprjeta' oħra tal-persuna soġġetta għat-tutela għandu fi żmien tlettax-il ġimgħa mill-hatra tiegħu jissottometti lill-Bord lista' tal-attiv u l-passiv tal-persuna soġġetta għat-tutela li jkun hemm fid-data tal-ħruġ tal-Ordni ta' Tutela.

(2) Tutur li jirċievi xi flejjes jew proprjeta' oħra dovuti lill-persuna soġġetta għat-tutela għandu jzomm kont u rekord separat ta' dawk il-flejjes jew proprjeta' oħra.

(3) Tutur għandu jinnotifika u jitlob l-approvazzjoni minn qabel tal-Bord fir-rigward ta' kull trasferiment jew impozizzjoni ta' piż fuq proprjeta' li tappartjeni lill-persuna soġġetta għat-tutela:

Izda kull trasferiment jew impozizzjoni ta' piż fuq xi proprjeta' li tappartjeni għal persuna soġġetta għat-tutela li jsiru bi ksur tad-dispożizzjonijiet ta' dak is-subartikolu għandhom ikunu nulli u bla effett:

Izda wkoll xejn f'dan is-subartikolu ma għandu jinftiehem li jillimita s-setgħat ta' tutur li jipprovdi għall-ħtiġiet personali ordinarji tal-persuna soġġetta għat-tutela.

(4) Tutur għandu wkoll jissottometti lill-Bord, rendikont tad-dħul u spejjeż fir-rigward tat-tutela:

(a) kull sena; u

(b) meta jkun hemm ir-revoka jew temm ieħor tat-tutela; jew

(ċ) mat-temm ta' Ordni ta' Tutela temporanja.

(5) Fi żmien tlettax-il ġimgħa mill-mewt tal-persuna soġġetta għat-tutela, it-tutor għandu jagħti lill-Bord kont xieraq tal-amministrazzjoni tiegħu tal-attiv tal-persuna soġġetta għat-tutela, inkluż id-dħul l-ispejjeż u l-amministrazzjoni tal-proprjeta' u, fejn rilevanti, l-ispejjeż tal-funeral u d-difna.

(6) Kull persuna interessata bhala kreditur, beneficijarju, membru tal-familja, jew mod ieħor f'xi flejjes jew proprjeta' ohra amministrata minn tutur jista' jagħmel rikors lill-Bord biex jintervjeni u jagħti l-parir tiegħu dwar kull ordni xieraq fiċ-ċirkostanzi li jirrigwarda kull haġa li toħroġ mill-amministrazzjoni tal-imsemmija flejjes jew proprjeta' min-naħa tat-tutor u l-Bord jista' jagħmel dak l-ordni fir-rigward ta' dak ir-rikors kif iċ-ċirkostanzi tal-każ jirrikjedu.

Tutor jista' jitlob parir.

519I. (1) Tutor jista' jitlob il-parir tal-Bord rigward kull haġa li għandha x'taqsam mal-kamp ta' applikazzjoni ta' Ordni ta' Tutela jew l-eżerċizzju tal-funzjonijiet, obbligi u dmirijiet tat-tutor skont l-Ordni ta' Tutela.

(2) Il-Bord jista' jordna li avviz tat-talba taħt is-subartikolu (1) jinbagħat lil kull persuna li l-Bord jiddeċiedi.

(3) Il-Bord jista' -

(a) japprova jew ma japprovax kull att propost biex isir mit-tutor;

(b) jagħti dak il-parir li hu jidhirlu xieraq;

(c) jagħmel dak l-ordni jew jagħti dik id-deċiżjoni li jidhirlu meħtieġa jew jemenda jew jirrevoka l-Ordni ta' Tutela.

(4) Ma jkun hemm l-ebda azzjoni kontra t-tutor fir-rigward ta' xi att jew xi haġa magħmula jew li ma tkunx saret mit-tutor skont xi ordni jew deċiżjoni fuq il-parir tal-Bord magħmul jew mogħti skont dan l-artikolu sakemm fil-prezentazzjoni tal-fatti lill-Bord it-tutor ma jkunx aġixxa b'mod frawdolenti, jew ikun xjentement heba jew fisser hażin il-fatti.

Revoka ta' tutela. Kap. 16.

519J. (1) Kull persuna msemmija fl-artikolu 188A(3) tal-Kodiċi Ċivili tista' titlob lill-Bord biex jirrevoka Ordni ta' Tutela u il-Bord, wara li jikkunsidra t-talba debitament, jista' jirrevoka t-tutela fir-rigward ta' kull persuna jekk il-Bord jiddeċiedi li:

(a) il-kawża li tat lok għat-tutela ma għadhiex teżisti; jew

(b) hemm raġuni tajba u bizżejjed biex it-tutela tiġi revokata.

(2) Meta persuna soġġetta għat-tutela tmut it-tutor għandu jirrapporta l-mewt lill-Bord fi żmien li m'għandux ikun aktar minn massimu ta' ġimgħatejn mill-mewt tal-persuna li kienet taht it-tutela tiegħu.

Setgħat speċjali tal-Bord.

519K. (1) Jekk il-Bord jirċievi informazzjoni konfermata bil-ġurament li persuna b'diżabilità jew b'diżordni mentali qiegħdha ssofri minn ħsara kbira għas-saħħa fiżika, emozjonali, jew mentali tagħha jew il-benesseri tagħha b'konsegwenza ta' trattament ħażin, abbuż jew traskuraġni, il-Bord jista' jahtar persuna jew aktar minn persuna waħda biex iżuru lill-persuna bid-diżabilità jew bid-diżordni mentali sabiex ihejju rapport lill-Bord dwar is-sitwazzjoni tal-imsemmija persuna b'diżabilità jew b'diżordni mentali. Dak ir-rapport għandu jinbagħat lill-Bord fi żmien erbat ijiem jew f'dak il-limitu ta' żmien kif jista' jkun stipulat fl-ordni.

(2) Meta persuna maħtura mill-Bord skont id-disposizzjonijiet tas-subartikolu (1) biex iżzur persuna b'diżabilità jew b'diżordni mentali tinforma lill-Bord li ma setgħetx twettaq dik il-funzjoni minħabba fi xkiel minn xi persuna, il-Bord jista' jitlob l-għajjnuna tal-pulizija u dik l-għajjnuna tal-pulizija għandha tingħata sabiex issir l-eżekuzzjoni tal-imsemmija funzjoni.

(3) Meta jirċievi r-rapport, il-Bord jista', wara li jagħti lil kull persuna interessata d-dritt li tagħti l-opinjoni tagħha, jitlob kull awtorità xierqa, biex tiegħu daww il-miżuri lill-imsemmija awtorità jista' jidhrilha meħtieġa sabiex jiġu ndirizzati kull trattament ħażin, abbuż jew traskuraġni jew il-konsegwenzi tagħhom.

(4) Sabiex tagħti dik l-għajjnuna kif meħtieġ skont id-dispożizzjonijiet tas-subartikolu (2), il-pulizija jkollha s-setgħa li tidhol f'kull post u tuża dik il-forza li tkun raġonevolment meħtieġa biex tippermetti li l-persuna jew persuni maħtura mill-Bord iżuru l-persuna b'diżabilità jew diżordni mentali skont id-disposizzjonijiet tas-subartikolu (1).

Immunità minn
proċeduri.

519L. Ebda haġa jew azzjoni magħmula minn xi membru tal-Bord, mir-Registratur jew minn xi persuna oħra li taġixxi taħt id-direzzjon tal-Bord b'bona fide fl-eżerċizzju jew li jidhru li huma fl-eżerċizzju ta' xi setgħa mogħtija jew dmir impost fuq il-Bord jew fuq xi membru tal-Bord, ir-Registratur jew kull persuna oħra hekk imsemmija skont jew taħt dan it-Titolu jew skont is-Sub-titolu IA tat-Titolu VI tal-Ewwel Ktieb tal-Kodiċi Ċivili, ma jagħmlu xi membru tal-Bord, ir-Registratur jew kull persuna oħra hekk imsemmija soġġetti personalment għal xi azzjoni, responsabbiltà, pretensjoni jew talba.

Kap. 16.

Appell mid-
deċiżjonijiet tal-
Bord.

519M. (1) Kull persuna li tħoss ruħha aggravata minn deċiżjoni tal-Bord tista' tappella minn dik id-deċiżjoni lill-Qorti ta' Ġurisdizzjoni Volontarja.

(2) Appell taħt is-subartikolu (1) għandu jiġi preżentat mhux aktar tard minn għoxrin ġurnata mid-data tad-deċiżjoni tal-Bord.

(3) Appell preżentat taħt dan l-artikolu ma għandux iwaqqaf l-eżekuzzjoni tad-deċiżjoni meħuda mill-Bord sakemm il-Qorti ta' Ġurisdizzjoni Volontarja, wara li jsir rikors mir-rikorrent, ma tiddeċidix mod ieħor.

Persuni soġġetti
għal interdizzjoni
jew inabilitazzjoni.
Kap. 16.

519N. (1) Kull persuna msemmija fl-artikolu 189(3) tal-Kodiċi Ċivili jew l-artikolu 521 ta' dan il-Kodiċi tista' titlob lill-Qorti ta' Ġurisdizzjoni Volontarja biex tibdel ordni ta' interdizzjoni jew ta' inabilitazzjoni f'Ordni ta' Tutela u l-imsemmija Qorti tista', wara li tikkunsidra r-rikors, tirreferi l-kwistjoni lill-Bord ta' Tutela għad-deċiżjoni tiegħu.

(2) Meta l-Bord jikkunsidra li ma jkunx hemm raġunijiet suffiċjenti biex tinbidel l-imsemmija ordni, il-Bord għandu javża b'dan lill-Qorti ta' Ġurisdizzjoni Volontarja u l-interdizzjoni jew l-inabilitazzjoni għandhom jibqgħu fis-seħħ.

(3) Meta l-Bord jikkunsidra li hemm raġunijiet suffiċjenti biex issir il-bidla msemmija fis-subartikolu (1) il-Bord għandu jorġni Ordni ta' Tutela u għandu javża b'dan lill-Qorti ta' Ġurisdizzjoni Volontarja.

(4) Meta tirċievi l-avviż tal-ħruġ tal-Ordni ta' Tutela kif previst fis-subartikolu (3) il-Qorti ta' Ġurisdizzjoni Volontarja għandha, bla ħsara għal dawk il-modalitajiet u kondizzjonijiet li jidhrilha xierqa, tirrevoka l-interdizzjoni jew l-inabilitazzjoni.

Setgħa biex isiru regolamenti.

519O. Il-Ministru responsabbli għall-Ġustizzja, flimkien mal-Ministru responsabbli għall-Politika Soċjali u l-Ministru responsabbli għas-Saħħa jista' jagħmel regolamenti għall-implimentazzjoni ahjar tad-dispożizzjonijiet ta' dan is-Sub-titolu u mingħajr hsara għall-generalità ta' dak li intqal qabel, dawn ir-regolamenti jistgħu:

(a) jippreskrivu materji fir-rigward tal-prassi u tal-proċeduri tal-Bord;

(b) jistabbilixxu l-proċedura għar-registrazzjoni u tħassir tar-registrazzjonijiet ta' Ordnijiet ta' Tutela u l-aċċess, inkluż aċċess elettroniku, għal dawk ir-registrazzjonijiet, u jippreskrivi l-format tar-registru li għandu jinżamm mir-Registatur skont dan it-Titolu;

(c) jippreskrivu l-formuli li għandhom jintużaw għall-finijiet ta' dan it-Titolu;

(d) jistabbilixxu reati kontra regolamenti magħmulin taht dan it-Titolu u jistabbilixxu firxa ta' multi li m'għandhomx jeċċedu massimu ta' multa ta' tlett elef euro (€3000) għal kull ksur ta' xi dispożizzjoni ta' regolamenti magħmula taht dan it-Titolu jew għan-nuqqas ta' osservanza ta' xi dispożizzjoni tagħhom jew ta' xi hteiega imposta b'dik id-dispożizzjoni;

(e) jippreskrivu d-drittijiet li għandhom jithallsu fir-rigward tal-amministrazzjoni ta' flejjes jew proprjeta' oħra li jkunu soġġetti għal Ordnijiet ta' Tutela."

Għanijiet u Ragunijiet

L-emendi proposti jintroduċu sistema ta' tutela għal dawk il-persuni b'diżabilità jew b'diżordni mentali li jkollhom bżonn appoġġ ta' ċerti limiti sabiex ikunu jistgħu jimmaniġġaw il-ħwejjeġ tagħhom stess u jagħtu tifsira għad-dispożizzjonijiet tal-Konvenzjoni tan-Nazzjonijiet Uniti dwar id-Drittijiet ta' Persuni b'Diżabilità li Malta bi hsiebha tirratifika.

**A BILL
entitled**

AN ACT to amend the Code of Organization and Civil Procedure and the Civil Code for the purpose of providing for Guardianship

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 short title of this Act is the Civil Code (Amendment No. 3) Act, 2012 and this Act shall be read and construed as one with the Civil Code, hereinafter referred to as "the Code". Short title.

2. The title "OF MAJORITY, INTERDICTION AND INCAPACITATION" of Title VI of Book First of the Code shall be substituted by the title "OF MAJORITY, GUARDIANSHIP, INTERDICTION AND INCAPACITATION". Amends Title VI of Book First of the Code.

3. Immediately after article 188 of the Code and immediately before Sub-title II there shall be added the following new Sub-title and articles: Amends article 188 of the Code.

**"Sub-title IA
OF GUARDIANSHIP**

Persons subject to guardianship.

188A. (1) Notwithstanding the provisions of Sub-title II on Interdiction and Incapacitation, a major who has a mental disorder or a disability, which renders him incapable of taking care of his own affairs may be subject to guardianship.

(2) The same shall apply in regard to a minor referred to in article 156.

Cap. 12.

(3) The demand for the appointment of a guardian may be made by any person who voluntarily wishes to be made subject to guardianship or by any person mentioned in article 189(3) of this Code or in article 521 of the Code of Organization and Civil Procedure

Cap. 12.

(4) If in any civil proceedings the Court considers that a party may need to be subject to guardianship, the Court shall refer the matter to the Guardianship Board established under Title IIIA of Part II of Book Second of the Code of Organization and Civil Procedure for its determination.

Cap. 413.

(5) For the purposes of this Sub-title unless the context otherwise requires:

"disability" shall have the same meaning as assigned to it in the Equal Opportunities (Persons with Disability) Act;

Cap. 262.

"mental disorder" shall have the same meaning as assigned to it in the Mental Health Act :

Provided that any reference in such definitions to "disability of mind" or to "arrested or incomplete development of mind" shall not be construed as a reference to a mental disorder for the purposes of this Sub-title.

Functions of Guardian.

188B. A guardian shall:

(a) be responsible to safeguard the personal and proprietary well being of the person to whose guardianship he is appointed;

(b) act instead of the person to whose guardianship he has been appointed in matters of a personal or of a proprietary nature during such time when the said person is considered as not being capable of doing any one or more acts of civil life as specified in the Guardianship Order;

(c) to do any other thing for or on behalf of the person to whose guardianship he is appointed as he may be ordered or authorised to do by the Guardianship Board established under Title IIIA of Part II of Book Second of the Code of Organization and Civil Procedure or by the Court of Voluntary Jurisdiction or as may be prescribed by regulations made under this Sub-title.

Obligations in respect of acts of guardianship.

188C. (1) The provisions of this Sub-title shall be construed and interpreted and every function, power, authority, discretion, duty or right conferred by this Sub-title or by any regulations made thereunder shall be exercised in such manner that:

(a) the will of the person subject to guardianship is respected and given effect to the maximum extent possible;

(b) the welfare of the person subject to guardianship is promoted and fostered;

(c) the means used for the purpose of guardianship shall be proportionate to the aims which they are intended to achieve; and

(d) the freedom of choice and action of the person subject to guardianship shall only be restricted when necessary and only to an extent that is proportionate to the aim pursued.

(2) In the exercise of his obligations the guardian shall act in the best interests of the person subject to guardianship and shall:

(a) take appropriate measures to provide the support that the person subject to guardianship may require in exercising his legal capacity himself insofar as this is possible;

(b) consult with the person subject to guardianship and take into account and respect the rights, will and preferences of the person insofar as this is possible;

(c) encourage the person subject to guardianship to participate as far as possible in the life of the community;

(d) encourage and assist the person subject to guardianship to become capable of caring for himself and for his property and of making responsible judgements in respect of matters relating to his person and property; and

(e) protect the person subject to guardianship from neglect, abuse or exploitation.

(f) provide to the person subject to guardianship, as far as possible, any assistive means as may be required for the proper fulfilment of the obligations provided in this sub-article.

(3) Subject to the limits imposed in the Guardianship Order or by any other decision which the Guardianship Board may give from time to time, a guardian may on behalf of a person subject to guardianship sign and do all such things as are necessary to give effect to any functions or obligations vested in the guardian.

Power to make regulations.

188D. The Minister responsible for Justice, in conjunction with the Minister responsible for Social Policy and the Minister responsible for Health may make regulations for the better implementation of the provisions of this Sub-title.

Consequential amendments to the Code of Organization and Civil Procedure. Cap. 12.

4. Immediately after Title III of Part II of Book Second of the Code of Organization and Civil Procedure there shall be added the following new Title:

"Title III A

OF GUARDIANSHIP

Guardianship Board.

519A. (1) There shall be a Guardianship Board (hereinafter in this Title referred to as the 'Board') which shall be appointed by the Minister responsible for Social Policy in conjunction with the Minister responsible for Justice and the Minister responsible for Health.

(2) The Guardianship Board shall be composed of three members as follows:

(a) a Judge or Magistrate or a person who has acted as a Judge or Magistrate who shall also be the President of the Board;

(b) one member appointed after consultation with the National Commission Persons with Disability;

(c) one member appointed after consultation with the relevant authority responsible for safeguarding the rights of persons with mental disorder.

(3) The President and the other members of the Board shall hold office for a period of three years and shall be eligible for re-appointment for further terms of office:

Provided that if a member of the Board is appointed at any time after the other members, the term of office of such member shall end on the same date as that of the other members.

(4) A person shall not be qualified to hold office as member of the Board if that person:-

(a) is a Minister, a Parliamentary Secretary or a member of the House of Representatives; or

(b) is legally incapacitated or interdicted;
or

(c) is subject to guardianship; or

(d) has been declared bankrupt; or

(e) has been convicted of a crime affecting public trust or of theft or fraud, or of knowingly receiving property obtained by theft or fraud, or of a crime affecting the good order of families.

(5) The office of a member of the Board shall become vacant:-

(a) at the expiration of the term of office;
or

(b) if any circumstances arise that, if that person were not a member of the Board, would cause that person not to qualify for appointment,
or

(c) on the resignation of that member.

(6) The appointment of any person as a member of the Board and the termination of office or resignation of any such person shall be notified in the Gazette:

Provided that the failure to publish any such appointment, termination or resignation as the case may be, shall not prejudice the validity of such appointment, termination or resignation.

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(7) The Board shall perform such functions as are assigned to it in this Title and in Sub-title IA of Title VI of Book First of the Civil Code and in any regulations as the Minister responsible for Social Policy, in conjunction with the Minister responsible for Justice and the Minister responsible for Health may from time to time make.

(8) Where in the course of the exercise of its functions the Board becomes aware of any fact which raises a reasonable suspicion of a breach of professional conduct it shall refer such fact to the appropriate authorities.

(9) Where in the course of the exercise of its functions the Board becomes aware of any fact which raises a reasonable suspicion of the commission of a criminal offence it shall refer such fact to the appropriate authorities.

(10) In the exercise of its functions the Board shall not be subject to the direction or control of any other person or authority.

(11) The Minister shall appoint a public officer to act as Registrar to the Board.

(12) Unless the Board otherwise determines the Board shall proceed with closed doors.

Procedures.

519B. (1) The Board, in the exercise of its functions, shall act within a reasonable time and shall observe the rules of natural justice.

(2) Without prejudice to what is stated in sub-article (1), the Board shall regulate its own procedure:

Provided that all members of the Board shall be present at the Board's sittings.

(3) Evidence before the Board may be given orally or in writing or partly orally and partly in writing or by any other suitable means of communication.

(4) The President of the Board may administer an oath, or take an affirmation.

(5) The Board may of its own motion, or on the application of any party to the proceedings before it, direct the Registrar of the Board to serve through an executive officer of the Courts or of the Board upon any person a summons to appear before it to give evidence and or to produce the documents specified in the summons.

(6) It shall also be lawful for the Board, by means of a warrant of escort, to compel such witnesses to attend for the purpose of giving evidence. The Board may request that its officers be assisted by the executive officers of the Courts or by Police in the execution of a warrant of escort.

(7) If any person duly summoned fails to appear when called, such person shall be guilty of an offence and shall upon conviction by the competent court of criminal jurisdiction be liable to a punishment of a fine (*multa*) of two hundred and fifty euro (€250) or to imprisonment for a period of three months or to both such fine and imprisonment.

(8) The provisions of this Code relating to contempt of court shall, *mutatis mutandis*, apply to the Board.

(9) Where the Board is of the opinion in a particular case that there are circumstances which justify it in doing so, the Board may make such orders as to the payment of costs in respect of proceedings before it as the Board sees fit.

(10) When in any proceedings the Board makes an order or a decision such order or decision shall include reasons and shall be served on any person as may be specified by the Board.

Appointment of experts and request for information.

519C. (1) The Board may appoint any person with appropriate expertise to assist it in the course of any proceedings before it.

(2) The Board may, in the course of any proceedings, require any government department, agency or entity, local council, guardian or other person, to report to the Board on any matter relating to the said proceedings and it may also order that such report be submitted to the Board within a period of time as may be specified.

Application for the appointment of a guardian.
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519D. (1) A demand for the appointment of a guardian shall be made to the Guardianship Board in accordance with article 188A of the Civil Code.

(2) The application shall contain a statement of the facts on which the demand is founded and an indication of the witnesses, if any to such facts.

(3) Any documents in support of the demand shall be filed together with the application.

Examination of persons in respect of whom guardianship is demanded and appointment of temporary guardian.

519E. The Guardianship Board shall cause the person in respect of whom guardianship is demanded to appear before it, to question such person and/or to cause him to be examined by one or more independent experts; and the Board may, in all cases, subject to such conditions as it considers appropriate, appoint a temporary guardian to act as a guardian to such person whilst proceedings before it are pending:

Provided that the appointment of a temporary guardian shall not in any case exceed the duration of twenty-six weeks during which period the Board shall determine whether a Guardianship Order should be made.

Appointment of guardian.

519F. (1) If the Guardianship Board finds that there is just cause for the appointment of a guardian it shall proceed to make such appointment and the person so appointed as guardian shall exercise all the functions, obligations and duties provided in respect of guardians under Sub-title IA of Title VI of Book First of the Civil Code and under this Title.

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(2) In determining whether or not a person is in need of a guardian, the Board must consider whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of will and action.

(3) Where the Board makes an order appointing a guardian in respect of a person, the order must be as least restrictive of that person's freedom of decision and action as possible in the circumstances.

(4) Where the Board makes an order appointing a guardian it shall also order that a hearing for the review of the order shall be held within a specified period, not being longer than three years, as may be stipulated in the order:

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Provided that the Board may at any time of its own motion or on the application of any person mentioned in article 188A(3) of the Civil Code hold a hearing to review the Guardianship Order.

(5) The Board shall through its Registrar notify the Registrar of the Court of Voluntary Jurisdiction of all Guardianship Orders approved or revoked.

(6) The Registrar of the Board shall keep an updated register of all Guardianship Orders approved or revoked and of the terms thereof.

Persons eligible as guardians.

519G. (1) The Board may appoint as a guardian any person who has attained the age of 18 years, is ordinarily resident in Malta and consents to act as such if the Board is satisfied that such person:

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(a) is in a position to be able to perform all the functions, obligations and duties provided in respect of guardians under Sub-title IA of Title VI of Book First of the Civil Code and under this Title; and

(b) will act in the best interests of the person subject to guardianship; and

(c) is not in a position where his interests conflict or may conflict with the interests of the person subject to guardianship:

Provided that the Board may appoint joint guardians of the person subject to guardianship each of whom shall perform such functions, obligations and duties as the Board may determine.

(2) In determining whether a person is suitable to act as the guardian of a person subject to guardianship, the Board shall take into account the wishes of the person in relation to whom an application for guardianship has been filed, the desirability of preserving existing family and social relationships and the compatibility of the person proposed as guardian with the person subject to guardianship.

(3) A guardian is not entitled to receive any fee, remuneration or other reward for acting as such unless the Board otherwise specifies in the order appointing the guardian.

(4) Where it appears to the Board that a proposed guardian or a person appointed to act as a guardian does not fulfil the requirements of sub-article (1) for appointment as guardian, it may appoint any other person suitable to act as guardian.

(5) The Board may also order the substitution of a guardian at any time during the term of a Guardianship Order for good and sufficient cause.

Duties of guardian when Guardianship Order includes administration of property.

519H. (1) A guardian who is authorised in a Guardianship Order to administer monies or other property of a person subject to guardianship shall within thirteen weeks of his appointment submit to the Board a list of assets and liabilities of the person subject to guardianship as at the date of issue of the Guardianship Order.

(2) A guardian who receives monies or other property due to the person subject to guardianship shall keep a separate account and record of such monies or other property.

(3) A guardian shall notify and seek the prior approval of the Board in respect of any transfer of or imposition of a burden upon property belonging to a person subject to guardianship:

Provided that any transfer of or imposition of a burden on any property belonging to the person subject to guardianship made in contravention of the provisions of this sub-article shall be null and void:

Provided further that nothing in this sub-article shall be construed as limiting the powers of the guardian to provide for the ordinary personal needs of the person subject to guardianship.

(4) A guardian shall also submit to the Board an income and expenditure account in respect of the guardianship:

(a) every year; and

(b) upon revocation or other termination of the guardianship; or

(c) upon the termination of a temporary Guardianship Order.

(5) Within thirteen weeks from the death of the person subject to guardianship, the guardian shall provide the Board with due account of his administration of the assets of the person subject to guardianship including, income, expenditure and administration of property and, where relevant, funeral and burial expenses.

(6) Any person interested as a creditor, beneficiary, family member, or otherwise in any monies or other property administered by a guardian may apply to the Board to intervene and give its advice or any order appropriate in the circumstances regarding any matter arising out of the administration of the said monies or property by the guardian and the Board may make such order in relation to such application as the circumstances of the case may require.

Guardian may seek advice.

519I. (1) A guardian may request the advice of the Board regarding any matter relating to the scope of the Guardianship Order or the exercise of any of the functions, obligations and duties of the guardian under the Guardianship Order.

(2) The Board may order that notice of a request under sub-article (1) be served on any person that it directs.

(3) The Board may:-

(a) approve or disapprove of any act proposed to be done by the guardian;

(b) give such advice as it considers appropriate;

(c) make any order or decision as it considers necessary or amend or revoke the Guardianship Order.

(4) No action shall lie against a guardian on account of an act or thing done or omitted by the guardian under any order or decision or on the advice of the Board made or given under this article unless in representing the facts to the Board the guardian shall have acted fraudulently, or shall have wilfully concealed or misrepresented facts.

Revocation of Guardianship. Cap. 16.

519J. (1) Any person mentioned in article 188A(3) of the Civil Code may request the Board to revoke a Guardianship Order and the Board, after due consideration, may revoke guardianship in respect of any person if the Board determines that:

(a) the cause which gave rise to the guardianship has ceased to exist; or

(b) there is good and sufficient cause to revoke such guardianship.

(2) When a person subject to guardianship dies the guardian shall report the death to the Board within a period that shall not exceed a maximum of two weeks from the demise of the person who was under his guardianship.

Special Powers of
the Board.

519K. (1) If the Board receives information confirmed on oath that a person with disability or mental disorder is suffering serious damage to his physical, emotional or mental health or well-being as a consequence of ill-treatment, abuse or neglect, the Board may appoint a person or more than one person to visit the person with disability or mental disorder for the purpose of preparing a report to the Board on the situation of the said person with disability or mental disorder. Such a report is to be made to the Board within four days or any other time limit as may be stipulated in the order.

(2) Where any person appointed by the Board in terms of sub-article (1) to visit a person with disability or mental disorder informs the Board that he was unable to carry out this function due to obstruction by any person, the Board may request the assistance of the police and such police assistance shall be provided for the purpose of the execution of the said function.

(3) On receipt of the report, the Board may, after granting any person concerned a right to be heard, request any appropriate authority to take such measures as the said authority may deem necessary for the purpose of addressing any ill-treatment, abuse or neglect or the consequences thereof.

(4) For the purpose of providing such assistance as may be required in terms of sub-article (2) the police shall have the power to enter any premises and to use such force as is reasonably necessary to enable the person or persons appointed by the Board to visit the person with disability or mental disorder in accordance with the provisions of sub-article (1).

Immunity from suit.

519L. No matter or thing done by any member of the Board, the Registrar or any other person acting under the direction of the Board in good faith in the exercise or purported exercise of any power or duty conferred or imposed upon the Board or upon any member of the Board, the Registrar or any said other person by or under this Title or under in Sub-title IA of Title VI of Book First of the Civil Code, shall make any member of the Board, the Registrar, or any said other person personally subject to any action, liability, claim or demand.

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Appeal from decisions of the Board.

519M. (1) Any person who feels aggrieved by a decision of the Board may appeal therefrom to the Court of Voluntary Jurisdiction.

(2) An appeal under sub-article (1) shall be filed not later than twenty days from the date of the decision of the Board.

(3) An appeal filed under this article shall not stay the execution of the decision taken by the Board unless the Court of Voluntary Jurisdiction, upon an application of the appellant, decides otherwise.

Persons subject to interdiction or incapacitation.
Cap. 16.

519N. (1) Any person mentioned in sub-article (3) of article 189 of the Civil Code or in article 521 of this Code may request the Court of Voluntary Jurisdiction to convert an interdiction or an incapacitation into a Guardianship Order and the said Court may, after considering the application, refer the matter to the Guardianship Board for its determination.

(2) When the Board considers that there are insufficient grounds for the said conversion to be made it shall notify the Court of Voluntary Jurisdiction accordingly and the interdiction or incapacitation shall remain in force.

(3) Where the Board considers that there are sufficient grounds for the conversion referred to in sub-article (1) to be made it shall issue a Guardianship Order and notify the Court of Voluntary Jurisdiction thereof.

(4) Upon receipt of notice of the issue of a Guardianship Order as provided for in sub-article (3) the Court of Voluntary Jurisdiction shall, subject to such modalities and conditions as it may deem appropriate, revoke the interdiction or incapacitation.

Power to make regulations.

519O. The Minister responsible for Justice, in conjunction with the Minister responsible for Social Policy and the Minister responsible for Health may make regulations for the better implementation of the provisions of this Sub-title and without prejudice to the generality of the foregoing such regulations may:

(a) prescribe matters in relation to the practice and procedures of the Board;

(b) establish the procedure for entry and removal of registrations of Guardianship Orders and access, including electronic access, to such registrations and prescribe the format of the register to be kept by the Registrar under this Title;

(c) prescribe forms to be used for the purposes of this Title;

(d) establish offences against regulations made under this Title and establish a range of fines which shall not exceed a maximum of a fine (*multa*) of three thousand euro (€3000) for any contravention of any provision of regulations made under this Title, or for non-compliance with any provision thereof or with any requirement imposed under such provision;

(e) prescribe the fees to be paid in respect of the administration of monies or other property which are the subject of Guardianship Orders."

Objects and Reasons

The proposed amendments introduce the system of guardianship for those persons with disability or a mental disorder needing support to various extents in order to manage their own affairs and give due account to the provisions of the UN Convention on the Rights of Persons with Disabilities which Malta intends to ratify.
