

## ABBOZZ TA' LIĠI msejjah

*ATT biex jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, Kap. 12, fuq l-eżekuzzjoni ta' sentenzi u titoli eżekuttivi, fuq l-atti kawtelatorji u fuq proċeduri oħrajn li għandhom x'jaqsmu ma' dan.*

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

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

Titolu fil-qosor  
u bidu fis-sehh.

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

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

Emenda tat-  
Taqsim tal-Kodiċi.

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

	Artikoli
“Titolu VII. Fuq l-Eżekuzzjoni tas-Sentenzi u ta’ Titoli Eżekuttivi ohra .....	272-395
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<i>Sub-titolu I.</i> Fuq il-Mandat ta’ Qbid ta’ Hwejjeg Mobbli .....	282-293
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<i>Sub-titolu IX.</i> Fuq il-Mandat <i>In Procinctu</i> .....	388C
<i>Sub-titolu X.</i> Fuq ir-Rendikont u l-Likwidazzjoni ta’ Frottijiet .....	389-395”; u

(b) fit-Tielet Ktieb, minflok il-kliem minn “Titolu VI” sa “Fuq il-Mandat ta’ Arrest fuq Suspett ta’ Harba” ghandu jidhol dan li ġej:-

	Artikoli
“Titolu VI. Fuq l-Atti Kawtelatorji .....	829-876
Disposizzjonijiet Ġenerali.....	829-838B
<i>Sub-titolu I.</i> Fuq il-Mandat ta’ Deskrizzjoni .....	839-845

## Artikoli

<i>Sub-titolu II.</i>	Fuq il-Mandat ta' Qbid .....	846-848
<i>Sub-titolu III.</i>	Fuq il-Mandat ta' Qbid ta' Azjenda Kummerċjali .....	848B-848C
<i>Sub-titolu IV.</i>	Fuq il-Mandat ta' Sekwestru .....	849-854
<i>Sub-titolu V.</i>	Fuq il-Mandat ta' Arrest ta' Ajruplani jew Bċejjeċ tal-Baħar .....	855-863
<i>Sub-titolu VI.</i>	Fuq il-Mandat ta' Inibizzjoni .....	873-876".

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

Thassir ta' subintestatura fit-Titolu VII.

**4.** L-artikoli 252 sa 271 tal-Kodiċi għandhom jithassru.

Thassir ta' l-artikoli 252 sa 271 tal-Kodiċi.

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

Sostituzzjoni ta' l-artikolu 273 tal-Kodiċi.

"Atti eżekuttivi.

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

- (a) il-mandat ta' qbid ta' hwejjeġ mobbli;
- (b) il-mandat ta' qbid ta' hwejjeġ immobbli;
- (ċ) mandat ta' qbid ta' azjendi kummerċjali;
- (d) il-bejgħ fl-irkant bil-qorti ta' hwejjeġ mobbli jew immobbli jew ta' jeddijiet imghaqqdin ma' immobbli;
- (e) il-mandat ta' sekwestru eżekuttiv;
- (f) il-mandat ta' żgumbrament jew tkeċċija minn beni immobbli;
- (g) il-mandat *in factum*;
- (h) il-mandat ta' arrest ta' ajruplani jew bċejjeċ tal-baħar;
- (i) mandat *in procinctu*."

Emenda ta' l-  
artikolu  
274 tal-Kodiċi.

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

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

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

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

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

(a) fis-subartikolu (1) tiegħu, minflok il-kliem minn “Il-marixxall jista’,” sa “jiżgassa bibien” għandhom jidhlu l-kliem “L-uffiċjal eżekuttiv tal-qorti jista’, fl-eżekuzzjoni ta’ mandat li bih ikun inkarigat, wara li jsejjah żewġ xhieda jagħmel dak kollu li huwa raġonevolment meħtieġ sabiex jeżegwixxi l-mandat, inkluż li jiżgassa bibien”;

(b) fis-subartikolu (2) tiegħu, minflok il-kliem minn “Iżda,” sa “il-marixxall” għandhom jidhlu l-kliem “F’każ ta’ mandat ta’ qbid ta’ hwejjeġ tal-Gvern ta’ Malta, l-uffiċjal eżekuttiv tal-qorti”;

u

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

“(3) Il-Prim Ministru jista’ minn żmien għal żmien permezz ta’ avviż legali jistabilixxi elenku ta’ beni ta’ l-Istat li ma jistgħux ikunu suġġett ta’ mandat eżekuttiv jew kawtelatorju.”.

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

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

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

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

“Żmien għall-  
eżekuzzjoni  
ta’ mandati u  
ordnijiet.

**277.** (1) Hlief fil-każijiet imsemmija f’ dan il-Kodiċi, ebda mandat jew sekwestru ma għandu jiġi eżegwit jekk mhux matul dawk is-siġhat li jistgħu jiġu ordnati mill-Ministru responsabbli għall-ġustizzja permezz ta’ regolamenti magħmula taht dan l-artikolu.

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

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

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

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

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

(b) fis-subartikolu (2), minflok il-kliem “mill-qorti, il-marixxal” għandhom jidhlu l-kliem “jew jiġi preskritt differenti mill-Ministru responsabbli għall-ġustizzja kif ordnat fl-artikolu 277 (2), l-uffiċjal eżekuttiv tal-qorti”.

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

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

(a) minflok il-kliem “In-nullità” għandhom jidhlu l-kliem “Meta l-bażi tan-nullità ma tkunx dik ta' gravità, in-nullità”; u

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

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

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

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

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

“Kif jistgħu l-atti eżekuttivi jiġu attakkati.

Appell minn digriet.

281. (1) Mingħajr preġudizzju għal kull jedd iehor taht din il-liġi jew xi liġi ohra, persuna kontra min jinhareġ att eżekuttiv jew xi persuna ohra interessata, tista' tagħmel rikors li jkun fih is-sottomissjonijiet kollha li tista' tkun tixtieq tagħmel flimkien mad-dokumenti kollha li jsostnu r-rikors lil

dik il-qorti li tkun harġet dak l-att fejn titlob li l-att eżekuttiv jithassar, sew għal kollox jew f'parti minnu biss, għal raġuni valida skond il-liġi.

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

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

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

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

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

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

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

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

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

“Mandat ta' qbid fuq hwejjeġ mobbli.

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

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

(ii) għandhom jinqabdu mil-lok li jiġi indikat mill-kreditur, inkluż minn fuq il-persuna tad-debitur, l-oġġetti kollha fil-pussess tad-debitur jew l-oġġett jew oġġetti msemmija fil-mandat; kif ukoll li wara l-

eżekuzzjoni, l-uffiċjal eżekuttiv tal-qorti ghandu jiġi ordnat sabiex minnufih flimkien ma' l-avukat jew prokuratur legali tal-kreditur jiffissa l-ġurnata tal-bejgħ tas-subbasta ma' l-uffiċjal eżekuttiv inkarigat, u liema uffiċjal ghandu jiffissa wkoll mal-kreditur il-jum li ghandu jkun ta' l-inqas sebat ijiem qabel dak iffissat għall-bejgħ in subbasta sabiex issir l-elevazzjoni ta' l-oġġetti li l-kreditur eżekutant jagħzel li jiġu elevati;

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

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

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

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

(f) ghandu jiġi mahtur irkantatur bi ħlas ai termini ta' l-Att dwar l-Irkantaturi, jekk dan hu meħtieġ bil-liġi;

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

(2) Id-disposizzjonijiet ta' dan is-Sub-titolu m'għandhomx japplikaw għal vapuri jew bastimenti ohra ta' iktar minn għaxar metri tul u għall-inġenji ta' l-ajru.

Deskrizzjoni tal-hwejjeġ maqbuda.

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

(b) Il-kreditur jew id-debitur jew xi parti interessata jistgħu jagħmlu talba lill-uffiċjal eżekuttiv tal-qorti sabiex jiehu ritratti jew filmat ta' l-oġġetti miżmuma b'mezzi elettronici jew bi kwalunkwe apparat, u dan għas-spejjeż tiegħu.

X'għandu jkun fiha r-riferta meta ma jinstabux hwejjeġ mobbli, eċċ.

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

Hlas ta' l-ammont dovut.

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

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

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

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

(ċ) meta jiġu maqbuda karti, l-uffiċjal eżekuttiv tal-qorti għandu jwajjal fuqhom sigilli u jagħtihom f'idejn ir-Reġistratur. Is-sigilli ma jistgħux jiġu mnehhija mingħajr is-setgħa tal-qorti.

Qbid ta' karti.

285. (1) Huma sugġetti għall-qbid hwejjeġ mobbli, inklużi wkoll:



- (a) azzjonijiet u ishma f' soċjetajiet kummerċjali;
- (b) liċenzji mahruġa minn xi awtorità kompetenti kif jista' jiġi stabbilit b'avviż legali mill-Ministru responsabbli għall-ġustizzja;
- (ċ) poloz ta' assigurazzjoni;
- (d) titoli ta' kreditu u kwalunkwe titolu ta' proprjetà intellettuali jew industrijali:

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

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

(3) F'kull bejgħ ta' polza ta' assigurazzjoni għandha tigi notifikata d-ditta assiguratrici bid-data tas-subbasta.

Kunsinnatarju  
uffiċjali.

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

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

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

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

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

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

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

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

Persuni li  
ma jistgħux  
ikunu  
kunsinnatarji  
uffiċjali.

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

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

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

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

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

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

Attendenza tal-kunsinnatarju ufficjali. 288. Fl-eżekuzzjoni tal-mandat ta' qbid taht l-artikolu 282, il-kunsinnatarju ufficjali ghandu jattendi flimkien ma' l-ufficjal eżekuttiv tal-qorti ghall-eżekuzzjoni tal-mandat. L-ufficjal eżekuttiv tal-qorti jista' jaqbad u jeleva minghajr ma javża lill-kreditur.

Kunsinnatarju ufficjali responsabbli ghall-preservazzjoni tal-hwejjeġ. 289. (1) Il-kunsinnatarju ufficjali ghandu jkun responsabbli ghall-preservazzjoni xierqa tal-hwejjeġ fdati lili u ma ghandu la huwa u anqas ihalli lil ebda persuna ohra li tagħmel użu mill-hwejjeġ sakemm mhux ordnat mod iehor mill-qorti:

Iżda d-debitur jista' jithalla juża jew jibqa' jzomm pussess ta' dawk l-oġġetti minn fost il-hwejjeġ maqbuda li l-qorti tista' tawtorizza jekk tqis li dawk l-oġġetti huma normalment mehtieġa f'dar medja ghal ghajxien decenti sabiex tinzamm id-dinjità umana tad-debitur u tal-familja tieghu.

(2) Meta jinqabdu hwejjeġ li jiddeterjoraw, ir-Registatur ghandu, minghajr bżonn ta' aktar awtorizzazzjoni, ibiegh il-hwejjeġ maqbuda u bir-rikavat minn dak il-bejgh, jaġixxi skond id-disposizzjonijiet ta' l-artikolu 284.

Il-Kunsinnatarju ufficjali ghandu jaġixxi bhal missier tajjeb. 290. Il-kunsinnatarju ufficjali hu fid-dmir li juża, ghall-irfiegħ ta' hwejjeġ maqbuda, id-diligenza ta' missier tajjeb; jekk il-kunsinnatarju ufficjali jonqos li jipprezenta dawk il-hwejjeġ meta jintalab li jagħmel dan, il-qorti ghandha tordnalu jidher quddiemha biex jiġġustifika n-nuqqas tieghu u jagħmel dan; il-kunsinnatarju ufficjali jkun responsabbli ghad-danni u l-imghax u l-qorti, wara li teżamina ċ-ċirkostanzi tal-każ, tista' tagħti dawk l-ordnijiet li jidhrilha xierqa, magħdud l-arrest personali tal-kunsinnatarju ufficjali għal perjodu li ma jaqbiżx it-tlett xhur, sabiex huwa jiġi mgieghel jipprezenta dawk il-hwejjeġ. In-nuqqas tal-kunsinnatarju ufficjali li jipprezenta dik il-proprjetà meta jiġi ordnat mill-qorti biex jagħmel dan, ghandu jikkostitwixxi disprezz lejn l-awtorità tal-qorti skond il-provvedimenti applikabbli taht dan il-Kodiċi.

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

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

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

Ma għandhiex issir rikonjizzjoni ta' hwejjeg ġa maqbuda.

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

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

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

Hwejjeg li ma jistgħux jiġu maqbuda.

293. (1) M'humiex suġġetti għal qbid:

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

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

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

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

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

(f) inġenji ta' l-ajru u bastimenti mikrija għal kollox fis-servizz tal-Gvern ta' Malta;

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

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

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

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

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

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

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

**16.** Minnufih wara l-artikolu 293 fit-Tieni Ktieb tal-Kodiċi għandha tiżdied din is-subintestatura ġdida u dawn l-artikoli 294, 305, 307, 308 u 311 godda li ġejjin:-

Żjieda ta' Sub-titolu ġdid fit-Tieni Ktieb tal-Kodiċi u l-artikoli 294, 305, 307, 308 u 311 godda.

### “Sub-titolu II

#### FUQ IL-MANDAT TA' QBID TA' HWEJJEĠ IMMOBBLI

Talba għandha ssir b'rikors.

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

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

Id-disposizzjonijiet ta' dan l-artikolu japplikaw għall-vapuri jew bastimenti ohra ta' iktar minn għaxar metri tul u

ghall-inġenji ta' l-ajru, liema hwejjeġ ghandhom huma wkoll jiġu deskritti dettaljatament, inklużi wkoll il-privileġġi fuqhom.

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

Dmirijiet tal-Qorti.

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

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

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

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

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

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

Stima mid-debitur.

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

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

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

(4) Stima tal-hwejjeġ li ghandhom jiġu mibjugha ghandha dejjem issir qabel il-bejgħ iżda jekk stima, maghmula mhux iktar kmieni minn tmax-il xahar qabel is-sentenza infurzata, għet aċċettata mill-qorti fis-sentenza tagħha, il-qorti ghandha tiegħu kont ta' dik l-istima u ma tappuntax esperti godda biex iwettqu stima ġdida.

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

308. (1) L-espert hu mahtur mill-qorti *ex officio* skond l-elenku stabbilit fl-artikolu 89 u fuq bażi ta' rotazzjoni sakemm il-partijiet ma jkunux diġà ipprezentaw nota li fiha jipproponu l-isem ta' perit li jkunu jaqblu fuqu, jew għet aċċettata l-istima preżentata ai termini ta' l-artikolu 307.

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

(3) Id-debitur ghandu b'gurament jagħti dik l-informazzjoni li ghandha x'taqsam mal-hwejjeġ kif jista' jkun meħtieġ mir-Registratur jew l-esperti, u d-disposizzjonijiet li ghandhom x'jaqsmu max-xieħda ghandhom jghoddu għad-debitur.

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

Dritt tal-espert.

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

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

311. (1) Ir-rapport ta' l-istima ghandu jiġi pprezentat mill-espert fiż-żmien li jkun gie mogħti mill-qorti fid-digriet, skond iċ-ċirkostanzi, u ghandu jiġi mahluf mill-espert quddiem ir-Registratur.

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

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

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

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

Iżda fejn isir l-appell, il-kreditur għandu jiddepożita d-dritt intaxxat mir-Registratur u l-proċeduri tal-bejgħ għandhom jtkomplew u jiġu finalizzati.”.

Żjieda ta' Sub-titolu III ġdid fit-Tieni Ktieb tal-Kodiċi u l-artikoli 312 sa 312F godda.

**17.** Minnufih wara l-artikolu 311 tal-Kodiċi, għandha tizzied is-subintestatura ġdida u l-artikoli 312 sa 312F godda li ġejjin:

## “Sub-titolu II

### FUQ IL-MANDAT TA' QBID TA' AZJENDA KUMMERĊJALI

Digriet biex jiġi ffissat il-jum tal-bejgħ fl-irkant.

312. (1) Il-mobbli, l-immobbli jew azjendi kummerċjali maq'buda mill-pussess ta' debitur, għandhom jinbiegħu b'irkant pubbliku skond id-disposizzjonijiet ta' dan it-Titolu.

(2) L-irkanti għandhom jinżammu kull meta jkun hemm bżonn meta jkun hemm għadd suffiċjenti ta' hwejjeg biex jinbiegħu.

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

(4) Għall-ghanijiet ta' dan is-Sub-titolu t-tifsira ta' mobbli għandha tkun l-istess bħal dik mogħtija fis-Sub-titolu I ta' dan it-Titolu u dik ta' immobbli għandha tkun l-



istess bhal dik moghtija fis-Sub-titolu II ta' dan it-Titolu, salv fil-każ ta' azjenda kummerċjali dik fl-artikolu 312D iżda għal dan t-Titolu hija għandha titqies bhala immobbli.

312A. (1) It-talba għall-qbid ta' azjenda kummerċjali ssir permezz ta' rikors u dan għandu jiġi notifikat lid-debitur.

(2) Fid-digriet li fih il-qorti tilqa' t-talba tal-hruġ ta' mandat ta' qbid ta' azjenda kummerċjali, il-qorti -

(a) għandha tordna lir-Registratur jahtar dawk l-esperti ai termini ta' l-artikolu 89 li jistgħu jkunu mehtieġa sabiex:

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

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

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

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

312B. Wara li jiġu mahlufa l-istimi u r-rapporti, l-qorti għandha, fi żmien ġimgħa tiffissa r-rikors għas-smiegh u, wara li tisma' l-partijiet, tiddeċiedi jekk kemm-il darba għandux ikun hemm il-bejgħ in subbasta ta' l-azjenda kummerċjali jew li jiġi mahtur amministratur sabiex imexxi l-azjenda sakemm jithallas l-ammont dovut.

312Ċ. (1) Fejn il-qorti tiddeċiedi li għandu jkun hemm il-bejgħ, hija għandha tiffissa jum, lok u hin għall-bejgħ ta' l-assjem shih bhala azjenda kummerċjali.

(2) Il-qorti għandha tahtar amministratur sabiex ikompli jamministra l-azjenda sakemm din tinbiegħ:

Iżda fejn fl-atti tal-mandat kawtelatorju jkun hemm wiehed digà mahtur, dan ghandu jiġi konfermat.

312D. L-artikoli 308 u 311 ghandhom japplikaw *mutatis mutandis* għal dan il-mandat.

312E. (1) Fejn il-qorti tiddeċiedi li l-azjenda ghandha tibqa' tiġi amministrata sakemm din tithallas l-ammonti dovuta, hija ghandha tahtar amministratur u taghti dawk l-ordnijiet u provvedimenti li thoss xierqa, tenut kont id-debitu u n-natura u l-valur ta' l-azjenda kummerċjali.

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

(3) Minkejja dan, tul din il-hatra, l-amministratur, jekk jidhirlu li l-azjenda ser tiflew il-valur tagħha fis-suq, jista' jagħmel talba lill-qorti sabiex tawtorizzah li jbiegħ l-azjenda kollha jew partijiet minnha.

(4) L-amministratur mahtur taht din is-sezzjoni ghandu dritt għal dak il-hlas li l-qorti, fid-diskrezzjoni tagħha, jidhirlha li lilu jmiss tenut kont tal-valur ta' l-azjenda u tal-hidma marbuta mal-ġestjoni.

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

Emenda ta' subintestatura fit-Taqsima I fit-Tieni Ktieb tal-Kodiċi.

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

#### **"Sub-titolu IV**

#### **FUQ IL-BEJGH FL-IRKANT BIL-QORTI".**

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

**19.** L-artikoli 305 sa 312 tal-Kodiċi ghandhom jiġu mhassra.

Sostituzzjoni ta' l-artikolu 313 tal-Kodiċi.

**20.** Minflok l-artikolu 313 tal-Kodiċi ghandu jidhol dan li ġej:

“Forma ta’ l-avviż tal-bejgħ fl-irkant.

313. Ir-Reġistratur għandu jippubblika regolarment f’żewġ gazzetti, waħda bil-lingwa Maltija u l-oħra bil-lingwa Ingliża, listi tas-subbasta li jkunu ser isiru u jindika ċar il-proprjetà b’mod u manjiera li l-pubbliku jkun infurmat sew sabiex l-interessi tal-partijiet jiġu protetti:

Iżda d-debitur, il-kreditur jew persuni oħra interessati jistgħu jippubblikaw u jinfirmaw, għas-spejjeż tagħhom, b’bejgħ partikolari f’liema gazzetta jridu jew ixandru dan fi kwalunkwe mezz iehor ta’ xandir.”.

**21.** L-artikoli 314 u 315 tal-Kodiċi għandhom jithassru.

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

**22.** L-artikolu 316 tal-Kodiċi għandu jiġi enumerat mill-ġdid bhala l-artikolu 314.

Enumerazzjoni mill-ġdid ta’ l-artikolu 316 tal-Kodiċi.

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

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

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

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

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

(3) Stima magħmula skond id-disposizzjonijiet tal-artikoli 308, 311 u 312Ċ u li tkun qeghda fi proċess ta’ bejgħ fl-irkant għandha tiġi aċċettata mill-qorti li tkun l-istima li għandha ssir għall-finijiet ta’ dan l-artikolu.

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

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

**24.** Minflok l-artikolu 317 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġejj:

Sostituzzjoni ta’ l-artikolu 317 tal-Kodiċi.

“Ġarr tal-hwejjeg mobbli għal-lok ta’ l-irkant.

317. Il-kunsinnatarju uffiċjali għandu jieh u hsieb il-ġarr tal-hwejjeg mobbli fil-lok ta’ l-irkant, fil-jum ta’ l-irkant, hekk li mill-inqas sa għtejn qabel ma jinfetah l-irkant dawn ikun jista’ jarahom kulhadd.”.

Emenda ta’ l-artikolu 318 tal-Kodiċi.

**25.** Fl-artikolu 318 tal-Kodiċi, minflok il-kliem “l-irkant jista’ jsir” għandhom jidhlu l-kliem “l-irkant ta’ hwejjeg mobbli jista’ jsir”.

Emenda ta’ l-artikolu 319 tal-Kodiċi.

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

(a) minflok is-subartikolu (1) għandu jidhol dan l-artikolu ġdid li ġej:

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

(b) minnufih wara s-subartikolu (2) għandu jidded dan is-subartikolu (3) ġdid li ġej:

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

(ċ) is-subartikolu (3) għandu jiġi enumerat mill-ġdid bhala s-subartikolu (4) u għandu jiġi kancellat u sostitwit bis-subartikolu ġdid li ġej:

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

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

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

Sostituzzjoni ta’ l-artikolu 320 tal-Kodiċi.

**27.** Minflok l-artikolu 320 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

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

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

- 28.** L-artikolu 322 tal-Kodiċi ghandu jiġi mħassar. Thassir ta' l-artikolu 322 tal-Kodiċi.
- 29.** Minflok l-artikolu 323 tal-Kodiċi ghandu jidhol dan li ġej: Sostituzzjoni ta' l-artikolu 323 tal-Kodiċi.
- “Kemm ghandu jdum sejjir l-irkant. 323. Il-Ministru responsabbli għall-ġustizzja ghandu jistabbilixxi b'regolamenti ż-żmien li ghandu jdum għaddej bejgħ b'irkant.”.
- 30.** L-artikoli 324 u 325 tal-Kodiċi għandhom jiġu mħassra. Thassir ta' l-artikoli 324 u 325 tal-Kodiċi.
- 31.** L-artikolu 326 tal-Kodiċi għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 326 tal-Kodiċi.
- (a) fis-subartikolu (1), minnufih wara l-kliem “sabiex l-irkant jissokta” għandhom jidhlu l-kliem “f” jum iehor li jiġi stabbilit mir-Registatur fi żmien ġimghatejn”;
- (b) fis-subartikolu (3), minflok il-kliem “sitt ijiem” għandhom jidhlu l-kliem “sebat ijiem”; u
- (ċ) minnufih wara s-subartikolu (4) għandu jiżdied dan is-subartikolu (5) ġdid li ġej:
- “(5) Il-qorti għandha tisma' lill-partijiet fuq it-talba għas-sospensjoni, iżda ma għandhiex tiddekreta r-rikors relattiv qabel ma jkun sar depożitu ta' l-ispejjeż kollha tas-subbasta.”.
- 32.** L-artikolu 327 tal-Kodiċi għandu jiġi mħassar. Thassir ta' l-artikolu 327 tal-Kodiċi.
- 33.** Fl-artikolu 328 tal-Kodiċi, minnufih wara l-kliem “jew ta' bastimenti,” għandhom jiżdiedu l-kliem “jew ta' azjendi kummerċjali,”. Emenda ta' l-artikolu 328 tal-Kodiċi.
- 34.** Fis-subartikolu (1) ta' l-artikolu 329 tal-Kodiċi, minflok il-kliem “b'ċitazzjoni” għandhom jidhlu l-kliem “b'rikors”. Emenda ta' l-artikolu 329 tal-Kodiċi.
- 35.** Fis-subartikolu (1) ta' l-artikolu 331 tal-Kodiċi, minnufih wara l-kliem “imghaqdin ma' immobbli,” għandhom jiżdiedu l-kliem “jew ta' azjendi kummerċjali,”. Emenda ta' l-artikolu 331 tal-Kodiċi.
- 36.** Fl-artikolu 332 tal-Kodiċi, minflok il-kliem “jekk bil-permess tal-qorti jkun” għandhom jidhlu l-kliem “jekk ikun”. Emenda ta' l-artikolu 332 tal-Kodiċi.
- 37.** Minflok l-artikolu 333 tal-Kodiċi għandu jidhol dan li ġej: Sostituzzjoni ta' l-artikolu 333 tal-Kodiċi.

“Permess biex persuna toffri *animu compensandi*. 333. (1) Kull min ghandu kreditu likwidu li jkun ġej minn sentenza, titolu eżekuttiv, kuntratt, jew obligazzjoni bil-miktub ohra, jista’ joffri *animu compensandi*.

(2) Kull min irid joffri *animu compensandi* ghandu jirreġistra ruhu permezz ta’ nota qabel il-ftuh tal-bejgħ bl-irkant billi jagħmel dikjarazzjoni ġuramentata quddiem ir-Registratur fuq liema bażi jrid joffri *animu compensandi*.

(3) Kull min jista’ joffri *animu compensandi* jista’ jiġi notifikat minn kull min huwa interessat bil-bejgħ in subbasta għall-inqas ġimghatejn qabel il-ġurnata tal-bejgħ u min ma jiġix notifikat jew notifikat fit-terminu jista’ jeżerċita d-dritt taht l-artikolu 356.”.

Sostituzzjoni ta’ l-artikolu 334 tal-Kodiċi.

**38.** Minflok l-artikolu 334 tal-Kodiċi ghandu jidhol dan li ġej:

“*Offerta animu compensandi* taht kundizzjoni. 334. Kull offerta *animu compensandi* ssir taht il-kundizzjoni li l-offerent ghandu jobbliga ruhu li jiddepożita l-prezz jekk jiġi hekk deċiż mill-qorti.”.

Sostituzzjoni ta’ l-artikolu 335 tal-Kodiċi.

**39.** Minflok l-artikolu 335 tal-Kodiċi ghandu jidhol dan li ġej:

“*Oppożizzjoni għall-offerta animu compensandi*. 335. Kull oġġezzjoni għal talba għal offerta *animu compensandi* tista’ ssir biss wara l-bejgħ. Ma jistgħux isiru oġġezzjonijiet qabel jew waqt il-bejgħ.”.

Thassir ta’ l-artikolu 336 tal-Kodiċi.

**40.** L-artikolu 336 tal-Kodiċi ghandu jiġi mhassar.

Emenda ta’ l-artikolu 337 tal-Kodiċi.

**41.** L-artikolu 337 tal-Kodiċi ghandu jiġi emendat kif ġej:

(a) fis-subartikolu (1), minflok il-kliem “jitlob l-approvazzjoni tat-tpaċija u ghandu jiddepożita” ghandhom jidhlu l-kliem “jitlob permezz ta’ rikors u kontestwali ċedola, l-approvazzjoni tat-tpaċija u jiddepożita”; u

(b) fis-subartikolu (3), minflok il-kliem “u jiehu lura l-ispejjeż għall-kanonizzazzjoni” ghandhom jidhlu l-kliem “u jiehu lura l-ispejjeż legali u l-ispejjeż għall-kanonizzazzjoni”.

Emenda ta’ l-artikolu 338 tal-Kodiċi.

**42.** L-artikolu 338 tal-Kodiċi ghandu jiġi emendat kif ġej:

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

“(1) It-talba msemmija ghandha tiġi pubblikata fil-Gazzetta tal-Gvern u notifikata lid-debitur u lill-kredituri

kollha maghrufa, inklużi dawk li b'talba tagħhom ikunu saru mandati ta' qbid jew ta' sekwestru jew ta' impediment tas-safar kif ukoll dawk imsemmija fil-mandat ta' qbid li wassal għas-subbasta.”;

(b) fis-subartikolu (2), minflok il-kliem “Il-persuni hekk notifikati għandhom żmien tlett ijiem” għandhom jidhlu l-kliem “Kull min ikollu interess u l-persuni hekk notifikati għandhom żmien għoxrin ġurnata”; u

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

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

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

(5) Fejn il-Qorti ta' l-Appell tirrevoka d-deċiżjoni dwar *animus compensandi*, hija għandha tibghat l-atti lura lill-ewwel qorti.”.

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

Sostituzzjoni ta' l-artikolu 339 tal-Kodiċi.

“Konkors tal-kredituri. 339. Meta jkun hemm iktar minn kreditur wiehed li jkun għamel talba sabiex jithallas mir-rikavat b'mod li jkun hemm lok għall-konkors tal-kredituri, dik il-qorti għandha tiftaħ il-proċess quddiemha stess ai termini ta' l-artikoli 416 *et sequitur*.”.

**44.** Fis-subartikolu (1) ta' l-artikolu 340 tal-Kodiċi, il-kliem “jgħoddu d-disposizzjonijiet tas-subartikoli (2) u (3) ta' l-artikolu 329; Izda” għandhom jiġu kancellati u minflok il-kliem “kull min ikun għamel” u “fi żmien sitt ijiem” għandhom jidhlu l-kliem “kull min jagħmel” u “fi żmien sebat ijiem” rispettivament.

Emenda ta' l-artikolu 340 tal-Kodiċi.

**45.** Minflok l-artikolu 342 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 342 tal-Kodiċi.

“Hlas tal-bilanċ lid-debitur. 342. Jekk wara li jkunu thallsu l-kreditu u l-ispejjeż, ikun baqa’ bilanċ, il-qorti ghandha, fuq talba tad-debitur, tordna li dan il-bilanċ jiġi moghti lilu.”.

Sostituzzjoni ta’ l-artikolu 343 tal-Kodiċi.

**46.** Minflok l-artikolu 343 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġej:

“Twaqqif ta’ l-irkant u radd lid-debitur tal-hwejjeġ mhux mibjugha. 343. Jekk matul il-bejgh jinstab illi nġiebet somma biżżejjed għall-hlas tal-kreditu u għall-ispejjeż ta’ l-irkant, ir-Registatur ghandu jwaqqaf il-bejgh minnufih. Fuq talba verbali tad-debitur il-qorti ghandha tordna li huwa jinghata lura l-hwejjeġ mhux mibjugha.”.

Sostituzzjoni ta’ l-artikolu 345 tal-Kodiċi.

**47.** Minflok l-artikolu 345 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġej:

“Bejgh ta’ merkanzija li tista’ titihassar. 345. Fil-każ ta’ qbid ta’ merkanzija li tista’ titihassar jew ta’ hwejjeġ ohra fi stat li kull ma jmorru iżjed jithassru jew ta’ oġġetti li ser johorġu mill-moda jew li ser jispiċċaw jiġu teknoloġikament obsoliti, il-qorti tista’, fuq talba ta’ kull min huwa interessat jew tal-kunsinnatarju uffiċjali, tordna l-bejgh tagħhom bil-mod li jidhrilha xieraq, inkluż li dan isir minnufih mir-Registatur jew mill-kunsinnatarju uffiċjali.”.

Thassir ta’ l-artikolu 348 tal-Kodiċi.

**48.** L-artikolu 348 tal-Kodiċi ghandu jiġi mħassar.

Emenda ta’ l-artikolu 349 tal-Kodiċi.

**49.** Fl-artikolu 349 tal-Kodiċi, minflok il-kliem “il-marixxal” ghandhom jidhlu l-kliem “l-uffiċjal eżekuttiv tal-qorti”.

Emenda ta’ l-artikolu 350 tal-Kodiċi.

**50.** Fl-artikolu 350 tal-Kodiċi, minflok il-kliem “tal-marixxal” ghandhom jidhlu l-kliem “ta’ l-uffiċjal eżekuttiv tal-qorti”.

Emenda ta’ l-artikolu 352 tal-Kodiċi.

**51.** Fis-subartikolu (1) ta’ l-artikolu 352 tal-Kodiċi, minflok il-kliem “ġew moghtija.” ghandhom jidhlu l-kliem “ġew moghtija, f’liema każ il-qorti ghandha fuq talba b’rikors tghaddi sabiex wara li tisma’ l-partijiet tiddikjara null u minghajr effett dak it-trasferiment u taghti dawk il-provvedimenti li thoss opportuni.”.

Emenda ta’ l-artikolu 353 tal-Kodiċi.

**52.** L-artikolu 353 tal-Kodiċi ghandu jiġi emendat kif ġej:

(a) fis-subartikolu (1), minnufih wara l-kliem “l-irkant ta’ l-immobbli” ghandhom jiżdiedu l-kliem “jew ta’ azjenda kummerċjali”; u



(b) fis-subartikolu (2), minnufih wara l-kliem “l-irkant ta’ l-immobbli” ghandhom jizdiedu l-kliem “jew azjenda kummerċjali”.

**53.** Minflok l-artikolu 354 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġej: Sostituzzjoni ta’ l-artikolu 354 tal-Kodiċi.

“Eżekuzzjoni ta’ sentenza tal-Qorti tal-Maġistrati (Malta) fuq immobbli. 354. (1) Meta s-sentenza li taghha tintalab l-eżekuzzjoni tkun sentenza moghtija mill-Qorti tal-Maġistrati (Malta), l-eżekuzzjoni, kemm-il darba ghandha ssir fuq immobbli jew jeddijiet imgħaqdin ma’ immobbli, issir mill-Prim’ Awla tal-Qorti Ċivili.

(2) L-istess regola tghodd fil-każ li tintalab l-eżekuzzjoni ta’ żewġ sentenzi jew iżjed, li l-ammont tagħhom flimkien, minghajr ma jitqiesu l-ispejjeż, ikun jiskorri s-somma ta’ hamest elef lira.”.

**54.** L-artikolu 355 tal-Kodiċi ghandu jiġi emendat kif ġej: Emenda ta’ l-artikolu 355 tal-Kodiċi.

(a) fis-subartikolu (1) tiegħu, minnufih wara l-kliem “ta’ hwejjeġ immobbli” ghandhom jizdiedu l-kliem “u ta’ azjenda kummerċjali”; u

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

**55.** L-artikolu 356 tal-Kodiċi ghandu jiġi emendat kif ġej: Emenda ta’ l-artikolu 356 tal-Kodiċi.

(a) fis-subartikolu (3), minflok il-kliem “dak ta’ azjenda” ghandhom jidhlu l-kliem “dak ta’ azjenda kummerċjali”; u

(b) minflok is-subartikoli (7) sa (9), ghandu jidhol dan l-artikolu (7) ġdid li ġej:

“(7) Fejn din l-azzjoni tiġi eżerċitata u l-bejgħ isehh, it-terza persuna li tkun akkwistat il-pussess tal-haġa immobbli li favur tiegħu tkun ġiet oriġinarjament liberata l-proprjetà, li ma jkunx ukoll l-istess persuna li fit-tieni bejgħ ġiet liberata favur tiegħu, ghandu jithallas mir-rikavat tat-tieni bejgħ l-ammont tal-flus li jkun hareġ flimkien ma’ l-ispejjeż involuti qabel kull kreditur iehor.”.

**56.** Minflok l-artikolu 357 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġej: Sostituzzjoni ta’ l-artikolu 357 tal-Kodiċi.

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

Thassir tal-kliem ta’ subintestatura fil-Kodiċi.

**57.** Il-kliem tas-subintestatura “Sub-titolu III - Fuq il-Mandat ta’ Arrest tal-Persuna ta’ Debitur” li jinsabu minnufih wara l-artikolu 356 tal-Kodiċi, għandhom jithassru.

Sostituzzjoni ta’ subintestatura fil-Kodiċi.

**58.** Minflok il-kliem tas-subintestatura “Sub-titolu IV - Fuq il-Mandat ta’ Sekwestru Eżekuttiv” li jinsabu minnufih qabel l-artikolu 375 tal-Kodiċi, għandhom jidhlu l-kliem “Sub-titolu V - Fuq il-Mandat ta’ Sekwestru Eżekuttiv”.

Sostituzzjoni ta’ l-artikolu 376 tal-Kodiċi.

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

“X’għandu jkun fih il-mandat ta’ sekwestru.

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

(2) Il-mandat għandu:

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

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

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

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

(e) jordna lis-sekwestratarju biex jiddepożita, bi spejjeż tad-debitur fi żmien wiehed u ghoxrin jum min-

notifika tal-mandat, mar-Registratur xi flus jew hwejjeġ li jkunu proprjetà tad-debitur, issekwestrati bil-mandat.

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

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

Emenda ta’ l-artikolu 377 tal-Kodiċi.

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

Sostituzzjoni ta’ l-artikolu 378 tal-Kodiċi.

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

Żmien għal din id-deċiżjoni.

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

Sostituzzjoni ta’ l-artikolu 379 tal-Kodiċi.

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

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

**63.** L-artikolu 380 tal-Kodiċi għandu jiġi mħassar.

Thassir ta’ l-artikolu 380 tal-Kodiċi.

**64.** L-artikolu 381 tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda ta’ l-artikolu 381 tal-Kodiċi.

(a) fis-subartikolu (1), paragrafu (ċ), minnufih wara l-kelma “karità” għandhom jiżdiedu l-kliem “jew bħala donazzjoni”;

(b) fis-subartikolu (1), minflok il-paragrafu (f) ghandhom jidhlu dawn il-paragrafi li ġejjin:

“(f) fuq flus li jkunu tqiegħdu għad-disposizzjoni tas-sekwestrat b’kuntratt ta’ self għall-bini, kostruzzjoni u manteniment ta’ djar intenzjonati għall-abitazzjoni tas-sekwestrat;

(g) fuq faċilitajiet bankarji ta’ *overdraft* esklużi l-*credit cards* li jkunu qed joperaw bihom azjendi kummerċjali mmexxija mis-sekwestrat;

(h) fuq garanziji bankarji u ittri ta’ kreditu.”; u

(ċ) is-subartikolu (2) għandu jithassar, u s-subartikoli (3) u (4) għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (2) u (3) rispettivament.

Emenda ta’ l-artikolu 382 tal-Kodiċi.

**65.** Fis-subartikolu (1) ta’ l-artikolu 382 tal-Kodiċi, minflok il-kliem “il-qorti tista’, fuq rikors ta’ kreditur, tordna l-hruġ ta’ mandat ta’ sekwestru” għandhom jidhlu l-kliem “il-hruġ ta’ mandat ta’ sekwestru jkun jghodd”.

Sostituzzjoni ta’ l-artikolu 383 tal-Kodiċi.

**66.** Minflok l-artikolu 383 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

“Is-sekwestru eżekuttiv m’huwiex prorogabbli. 383. Il-mandat ta’ sekwestru m’huwiex prorogabbli u jibqa’ fis-seħh sakemm jiġi mħassar b’digriet tal-qorti.”.

Sostituzzjoni ta’ subintestatura fil-Kodiċi.

**67.** Minflok il-kliem tas-subintestatura “Sub-titolu V - Fuq il-Mandat ta’ Żgumbrament jew ta’ Tkeċċija minn Beni Immobbli” li jinsabu minnufih qabel l-artikolu 384 tal-Kodiċi, għandhom jidhlu l-kliem “Sub-titolu VI - Fuq il-Mandat ta’ Żgumbrament jew ta’ Tkeċċija minn Beni Immobbli”.

Emenda ta’ l-artikolu 384 tal-Kodiċi.

**68.** Fl-artikolu 384 tal-Kodiċi, minflok il-kliem “il-marixxall” kull fejn dawn jinsabu, għandhom jidhlu l-kliem “l-uffiċjal eżekuttiv tal-qorti”.

Sostituzzjoni ta’ subintestatura fil-Kodiċi.

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

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

Sostituzzjoni ta' l-artikolu 385 tal-Kodiċi.

“Mandat *in factum*.

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

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

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

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

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

Emenda ta' l-artikolu 387 tal-Kodiċi.

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

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

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

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

Żjeda ta' subintestatura ġdida fil-Kodiċi.

### “Sub-titolu VIII

FUQ IL-MANDAT TA' ARREST EŻEKUTTIV TA' AJRUPLANI JEW BĈEJJEĈ TAL-BAHAR”.

**73.** Minnufih wara s-subintestatura ġdida tas-Sub-titolu VIII, għandhom jiżdiedu dawn l-artikoli 388A u 388B ġodda li ġejjin:-

Żjeda ta' l-artikoli 388A u 388B mal-Kodiċi.

“Il-mandat isir b’rikors. 388A. Mandat ta’ arrest eżekuttiv ta’ ajruplan jew ta’ b’cejjeċ tal-baħar isir permezz ta’ rikors ai termini ta’ l-artikoli 858 u 860.

Il-qorti taqta’ dwar il-bejgħ jew li tiffissa terminu għall-hlas. 388B. (1) Il-qorti għandha, fuq talba ta’ mandat ta’ arrest, tistabbilixxi jekk għandhiex tordna l-bejgħ ta’ l-imsemmi oġġett inkella li tiffissa terminu li fih id-debitur għandu jhallas l-ammont dovut.

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

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

(4) Meta t-terminu msemmi jgħaddi inutilment, il-qorti għandha fuq talba ta’ parti interessata tordna l-bejgħ ai termini tas-subartikolu (2) ta’ dan l-artikolu.”.

Żjieda ta’ subintestatura ġdida fil-Kodiċi.

**74.** Minnufih wara l-artikolu 388B tal-Kodiċi, għandha tizzied din is-subintestatura ġdida li ġejja:-

#### “Sub-titolu IX

#### FUQ IL-MANDATI *IN PROCINCTU*”.

Żjieda ta’ l-artikolu 388ċ mal-Kodiċi.

**75.** Minnufih wara s-subintestatura ġdida tas-Sub-titolu IX, għandu jżied dan l-artikolu 388ċ ġdid li ġejja:-

“Il-qorti tista’ tohroġ ordnijiet ohra. 388ċ. (1) Bla hsara għal disposizzjonijiet ohra kontenenti fit-Titolu VII ta’ dan il-Kodiċi, il-qorti tista’ fuq talba tal-parti, tohroġ dawk l-ordnijiet lir-Registatur li hija tqis neċessarji sabiex jiġu eżegwiti l-ordnijiet kontenuti fis-sentenza:

Iżda dan il-mandat m’għandux jinhareġ hlief wara rikors mill-kreditur u wara li l-qorti tkun sodisfatta li l-kreditur ma għandu ebda mezz ta’ eżekuzzjoni iehor.

(2) Ir-rikors għandu jkun fih b’mod ċar għala hemm bżonn dawn l-ordnijiet u għandu jiġi dekretat wara li jiġi notifikat lid-debitur, li jkollu erbat ijiem żmien sabiex iwieġeb.”.

**76.** Minflok l-artikolu 830 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġejj:

Sostituzzjoni ta' l-artikolu 830 tal-Kodiċi.

“Atti kawtelatorji.

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

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

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

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

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

(3) Meta jkun inħareġ att kawtelatorju kontra xi persuna, jew b'mod jolqot xi proprjetà ta' dik il-persuna, sabiex titqieghed fiż-żgur talba għal danni, u kumpannija ta' l-assigurazzjoni reġistrata lokalment jew uffiċċju lokali, kif

imfisser fl-Ordinanza dwar l-Assigurazzjoni ta' Vetturi tal-Mutur ghar-Riskji ta' Terzi Persuni, hija ghandha permezz ta' att ġudizzjarju, ipprezentat fir-reġistru ta' l-istess qorti, fi żmien għaxart ijiem minn meta tiġi mitluba mill-assigurat tagħha, tiddikjara li qed taċċetta r-responsabbiltà biex thallas is-somom kollha li jistgħu jkunu dovuti għal dawk id-danni, rigward it-talba magħmula f'dak l-att jekk il-persuna tintalab li hi responsabbli għal dawk id-danni –

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

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

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

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

Sostituzzjoni ta' l-artikolu 831 tal-Kodiċi.

**77.** Minflok l-artikolu 831 tal-Kodiċi għandu jidhol dan l-artikolu ġdid li ġej:

“Rikors għall-hruġ ta' mandat.

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

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

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

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



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

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

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

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

**78.** L-artikolu 832 tal-Kodiċi għandu jiġi mhassar.

Thassir ta' l-artikolu 832 tal-Kodiċi.

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

Sostituzzjoni ta' l-artikolu 833 tal-Kodiċi.

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

833. (1) Meta tiġi ppreżentata u mahlufa ittra uffiċjali eżekuttiva ai termini ta' l-artikolu 166A jistgħu kontestwalment jinhalfu u jiġu preżentati l-mandati kawtelatorji msemmija fl-artikolu 830 (1) (a), (b) u (d).

(2) Iżda meta tiġi ppreżentata din l-ittra uffiċjali, ir-rikorrent għandu jagħmel kawża fi żmien ghoxrin jum minn meta tiġi ppreżentata n-nota ta' oppożizzjoni shiha jew parzjali jew fi żmien sittin jum mill-hruġ ta' mandat skond liema data tiġi qabel.

Sostituzzjoni ta' l-artikolu 834 tal-Kodiċi.

**80.** Minflok l-artikolu 834 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġejj:

“Avviż ta' l-eżekuzzjoni tal-mandat.

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

Thassir ta' l-artikolu 835 tal-Kodiċi.

**81.** L-artikolu 835 tal-Kodiċi ghandu jiġi mhassar.

Emenda ta' l-artikolu 836 tal-Kodiċi.

**82.** L-artikolu 836 tal-Kodiċi ghandu jiġi emendat kif ġejj:

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

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

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

(4) Il-qorti ghandha tiddeċiedi dwar ir-rikors b'urgenza jew *in camera* jew wara s-smiġħ ta' l-avukati tal-partijiet, jekk jidhrilha xieraq, iżda ma tiġix iffissata iktar minn seduta wahda għal dan il-ghan.”; u

(b) is-subartikolu (8) ghandu jiġi emendat kif ġejj:-

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

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

Emenda ta' l-artikolu 837 tal-Kodiċi.

**83.** L-artikolu 837 tal-Kodiċi ghandu jiġi emendat kif ġejj:

(a) fis-subartikolu (1), minflok il-kliem “ta' impediment ta' tluq ta' bastiment jew biċċa ohra tal-baħar, ma jistghux jiġu mahruġa mill-Qorti tal-Maġistrati (Malta), jew mill-Qorti tal-Maġistrati (Għawdex) fil-kompetenza tagħha inferjuri.”, ghandhom

jidhlu l-kliem “jistghu jiġu mahruġa mill-Qorti tal-Maġistrati (Malta), jew mill-Qorti tal-Maġistrati (Għawdex) fil-kompetenza tagħha inferjuri, iżda ma jistgħux jinħarġu mit-Tribunal għal Talbiet Żgħar:

Iżda l-mandat ta' impediment ta' tluq ta' bastiment jew ta' biċċa ohra tal-baħar, jew l-inġenji ta' l-ajru ma jistgħux jinħarġu la mill-Qorti tal-Maġistrati u lanqas mit-Tribunal għal Talbiet Żgħar.”;

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

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

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

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

Sostituzzjoni ta' l-artikolu 838 tal-Kodiċi.

“Atti kawtelatorji.

838. Il-qorti tista', malli jsirilha rikors ta' wahda mill-partijiet innotifikat lill-ohra, taghti kull ordni sabiex il-hwejjeġ deskritti fl-att kawtelatorju ma jithassrux jew ma jitgharrqux jew ma tiġrilhomx hsara.”.

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

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

(a) fin-nota marginali li hemm ma' l-artikolu, minflok il-kliem “tinqata' b'mod konkluziv” għandhom jidhlu l-kliem “il-kawża tghaddi in ġudikat”;

(b) l-artikolu kollu għandu jiġi enumerat mill-ġdid bhala s-subartikolu (1) u minflok il-kliem “tiġi maqtugħa b'mod konkluziv” għandhom jidhlu l-kliem “tghaddi in ġudikat”; u

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

“(2) Minkejja s-subartikolu (1) ta' dan l-artikolu, mandati kawtelatorji mahruġin ai termini ta' l-artikolu 830 (1) jsiru eżekuttivi wara li kawża tghaddi in ġudikat jew meta, ai termini ta' l-artikolu 166B, dik l-ittra uffiċjali ssir titolu eżekuttiv b'dan illi:-

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

(b) fil-każ ta' mandat mahruġ ai termini ta' l-artikolu 830 (1) (a), (e) u (f), il-kreditur ghandu jipprezenta rikors taht il-poteri mogħtija fl-artikolu 389 fi żmien ghoxrin ġurnata mis-sentenza.”.

Sostituzzjoni ta' l-artikolu 843 tal-Kodiċi.

**86.** Minflok l-artikolu 843 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġej:

“Żmien li fih ir-rikorrent ghandu jagħmel il-kawża.

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

Iżda fejn il-hruġ ta' mandat jintalab minn xi parti minn koppja kontra l-parti l-oħra u l-parti li tohroġ il-mandat tkun diġà għamlet rikors biex tibda l-kawża quddiem il-qorti, il-perjodu hawn fuq imsemmi jibda jghodd mill-ġurnata li fiha r-rikors jintlaqa' imma l-mandat jieqaf milli jkollu effett immedjatament jekk ir-rikors jiġi rtirat jew abbandunat.

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

Sostituzzjoni ta' l-artikolu 845 tal-Kodiċi.

**87.** Minflok l-artikolu 845 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġej:

“Applikabilità ta' l-artikoli 278, 279 u 282.

845. Id-disposizzjonijiet ta' l-artikoli 278, 279 u 282 għandhom jghoddu għall-eżekuzzjoni ta' mandat ta' deskrizzjoni.”.

Sostituzzjoni ta' l-artikolu 846 tal-Kodiċi.

**88.** Minflok l-artikolu 846 tal-Kodiċi ghandu jidhol dan l-artikolu ġdid li ġej:

“Mandat ta' qbid.

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

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

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

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

Emenda ta' l-artikolu 847 tal-Kodiċi.

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

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

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

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

Emenda ta' l-artikolu 848 tal-Kodiċi.

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

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

### “Sub Titolu III

#### FUQ IL-MANDAT TA' QBID TA' AZJENDA KUMMERĊJALI

Skop tal-mandat.

848B. (1) L-effett ta' mandat ta' qbid kawtelatorju ta' azjenda kummerċjali huwa li jippreserva l-assjem shih ta' l-assi ta' azjenda, inklużi l-liċenzji u l-avvjament, jordna li l-istess ma tiġix mibjugha in parti jew totalment u fl-istess hin iżommha għaddejja fin-negozju, iżda f'kull każ il-qorti ma għandhiex tilqa' talba għal mandat jekk tkun sodisfatta li hemm mezz oħra għall-kawtela ta' l-ammont pretiż.

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

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

Il-qorti għandha tahtar amministratur u espert.

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

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

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

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

(5) L-amministratur mahtur taht dan l-artikolu għandu dritt għal dak il-hlas li l-qorti fid-diskrezzjoni tagħha jidhirlha li lilu jmiss, tenut kont tal-valur ta' l-azjenda u tal-hidma marbuta mal-ġestjoni.”.

Sostituzzjoni ta' subintestatura fil-Kodiċi.

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

Emenda ta' l-artikolu 849 tal-Kodiċi.

**93.** Minflok il-proviso li hemm ma' l-artikolu 849 tal-Kodiċi għandu jidhol dan li ġej:

“Izda meta s-sekwestrarju huwa bank, mandat ta’ sekwestru kawtelatorju ma japplikax ghal flus li jkollhom jithallsu mill-bank fl-eżekuzzjoni ta’ xi garanzija moghtija mill-bank li huwa jhallas fuq it-talba tal-persuna li favur taghha tkun saret il-garanzija bankarja; u f’kull każ bhal dak, minkejja l-mandat ta’ sekwestru, il-bank ikollu s-setgħa li jhallas jew xort’ohra jiddisponi minn dawk il-flus bhala hielsa mill-mandat ta’ sekwestru u jkollu d-dritt ukoll li jirtira dawk il-flus minn kull qorti jew post iehor, jew minghand kull persuna, fejn, jew għand min, ikunu tqieghdu jew ġew depożitati, u jkun id-dmir tar-Registatur ta’ dik il-qorti jew tal-persuna ohra li jkollha fil-pussess taghha jew taht il-kontroll taghha dawk il-flus, li taghtihom lura minnufih lill-bank.”.

**94.** Fis-subartikolu (2) ta’ l-artikolu 851 tal-Kodiċi minflok il-kliem “fl-artikoli 831 u 832” għandhom jidhlu l-kliem “fis-subartikolu (2) ta’ l-artikolu 831”. Emenda ta’ l-artikolu 851 tal-Kodiċi.

**95.** Minflok is-subintestaturi “Sub-titolu IV” u “Fuq il-Mandat ta’ Impediment tas-Safar” fit-Titolu VI tat-Tielet Ktieb tal-Kodiċi, għandu jidhol dan li ġejj: Sostituzzjoni ta’ Sub-titolu fit-Tielet Ktieb tal-Kodiċi.

### “Sub-titolu V

#### FUQ IL-MANDAT TA’ ARREST TA’ AJRUPLANI U BĊEJJEĊ TAL-BAHAR”.

**96.** L-artikoli 855 sa 870 tal-Kodiċi għandhom jiġu mħassra. Thassir ta’ l-artikoli 855 sa 870 tal-Kodiċi.

**97.** Minnufih wara s-Sub-titolu V ġdid tal-Kodiċi għandhom jiżdiedu dawn l-artikoli 855 sa 863 ġodda li ġejjin:- Żjieda ta’ l-artikoli 855 sa 863 ġodda mal-Kodiċi.

“Skop tal-mandat.

855. Mandat ta’ arrest ta’ ajruplan jew bċejjeċ tal-bahar ’il fuq minn għaxar metri jista’ jinhareġ unikament biex jitqieghdu fiż-żgur dejn jew pretensjonijiet li bit-tluq ta’ l-imsemmija jistgħu jiġu skartati u ma jistax jinhareġ mandat iehor kontra taghhom jekk mhux dan, u dan fir-rigward ta’ biċċa tal-bahar sija jekk din tkunx fuq il-bahar jew le.

Il-mandat ikollu effett li kemm jaqbad kemm jissekwestra l-ingenju.

856. (1) Il-mandat ta’ arrest ikollu l-effett li jaqbad l-ajruplan jew il-biċċa tal-bahar ta’ ’il fuq minn għaxar metri mingħad id-debitur kif ukoll li jissekwestra l-istess għand l-awtorità li f’idejha jinsab jew tinsab, ukoll li jordna li l-istess awtorità ma tirrilaxxax l-ajruplan jew il-biċċa tal-bahar jew li tippermetti lid-debitur milli b’xi mod jiżvesti lilu nnifsu

mill-istess fis-shih jew in parti jew li jaghti jew icedi xi drittijiet fuq l-istess.

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

L-awtorità li jinsab f'idejha l-inġenju titqies bhala kunsinnatarju uffiċjali.

857. (1) L-awtorità li jinsab f'idejha jew taht il-kontroll tagħha jinsab jew tinsab l-ajruplan jew il-biċċa tal-baħar li kontra tagħha hareġ dan il-mandat ta' arrest hija, għall-finijiet kollha tal-liġi, meqjusa bhala kunsinnatarju uffiċjali ai termini ta' l-artikolu 286, 287, 288, 289 u 290.

(2) L-imsemmija awtorità għandha tiehu l-mizuri neċessarji sabiex titwahhal għall-attenzjoni ta' terzi, l-ordni tal-qorti.

Il-mandat jinhareġ b'rikors fuq formola.

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

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

859. Il-mandat ta' arrest jista' jintalab u jinghata biex jitqiegħed fiż-żgħur kreditu jew protezzjoni ohra ta' mhux anqas minn hamest elef lira.

X'għandu jkun fih ir-rikors.

860. Ir-rikors għall-hruġ ta' mandat għandu, taht piena ta' nullità, jindika b'mod ċar id-dettalji kollha, l-awtorità li f'idejha jinsab l-inġenju jew tinsab il-biċċa tal-baħar u l-lok fejn qiegħed jew qegħda.

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

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

Garanzija għall-hlas ta' penali, eċċ.

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



Vapuri jew bastimenti li kontribom ma jistax jinhareg mandat.

863. (1) Ebda mandat ma ghandu jinhareg kontra vapur jew bastiment mikrija ghal kollox fis-servizz tal-Gvern ta' Malta jew inkarigati mis-servizz postali jew mill-Gvern ta' Malta jew minn xi gvern iehor.

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

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

98. Minflok is-subintestaturi “Sub-titolu V” u “Fuq il-Mandat ta' Inibizzjoni” fit-Titolu VI tat-Tielet Ktieb tal-Kodiċi, ghandu jidhol dan li ġej:

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

### “Sub-titolu VI

#### FUQ IL-MANDAT TA' INIBIZZJONI”.

99. Minflok l-artikoli 873 sa 876 tal-Kodiċi ghandhom jidhlu dawn l-artikoli ġodda li ġejjin:-

Sostituzzjoni ta' l-artikoli 873 sa 876 tal-Kodiċi.

“Skop tal-mandat.

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

Eżami tal-qorti.

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

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

mandat ikun sproporzjonat meta mqabbel ma' l-istess pubbliku fl-ghemil tal-haġa li qed tintalab li tiġi miżmuma.

(4) Jekk jiġi ppruvat permezz ta' rikors ghas-sodisfazzjon tal-qorti li wara l-hruġ tal-mandat ta' inibizzjoni l-persuna inibita aġixxiet direttament jew indirettament bi ksur ta' l-ordni tal-qorti, il-qorti ghandha, minghajr preġudizzju dwar kull azzjoni lilha kompetenti, fuq talba tar-rikorrent, tikkundanna lill-persuna li kontriha jkun inhareġ il-mandat sabiex tirrimedja dak li ntgħamel bi ksur tiegħu u fin-nuqqas tawtorizza li l-qorti tista' tordnalu jagħmel bi spejjeż tal-persuna inibita.

“Mandat sabiex jiżgura dejn jew pretensjoni.

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

(2) Meta mandat jipprojbixxi l-bejgħ, it-trasferiment jew it-tnehhija ohra ta' proprjetà immobbli, ir-rikors għandu jkun fih il-partikolaritajiet kollha li għandhom x'jaqsmu mal-persuna li jinhareġ kontriha u li huma mehtieġa mil-liġi dwar ir-registrazzjoni ta' trasferiment ta' proprjetà immobbli minn dik il-persuna fir-Registru Pubbliku. Fejn il-mandat jirreferi għall-immobbli speċifiċi, dawn għandhom jiġu deskritti fir-rikors, bil-mod provdut fl-Att dwar ir-Registru Pubbliku, dwar noti ta' l-iskrizzjoni.

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

(4) Malli ssir ir-registrazzjoni tal-mandat kif imsemmi fis-subartikolu (2) mid-Direttur tar-Registru

Pubbliku, kull bejgh, trasferiment jew tnehhija sussegwenti ta' hwejjeg immobbli li ghalihom jirreferi l-mandat ikun null u bla ebda effett.

(5) Minghajr pregudizzju ghad-disposizzjonijiet ta' l-artikolu 836, il-mandat imsemmi fis-subartikolu (2) ghandu, kemm-il darba ma jigix revokat jew ma jibqax isehh iktar fi zmien qabel, jibqa' jsehħ ghal perjodu ta' sena mid-data meta tinghata s-sentenza finali favur il-kreditur fil-kawza tieghu biex jigbor lura d-debitu jew il-pretensjoni msemmija fis-subartikolu (1).

(6) Meta mandat jipprojbixxi l-bejgh jew trasferiment ta' ishma f'socjeta kummercjali ghandu jigi wkoll notifikat ir-Registratur tal-Kumpanniji u mid-data ta' l-imsemmija notifika kull trasferiment ta' ishma jkun null.

Ezekuzzjoni tal-mandat.

875. (1) Ir-rikors ghandu jigi notifikat lill-parti opposta li, fi zmien ghaxart ijiem, ghandha tipprezenta risposta:

Izda l-qorti tista', f'kazijiet urgenti, tirriduci l-perijodu msemmi f'dan is-subartikolu. Fin-nuqqas ta' oppozizzjoni, il-qorti tista' tilqa' t-talba.

(2) Il-qorti tista' għall-ewwel tohrog provizorjament mandat għal zmien qasir taht dawk il-pattijiet u kondizzjonijiet li jidhrilha li jkun jehtieg skond il-kaz u sussegwentement tipprovdi definittivament.

(3) Il-qorti ghandha, wara li tappunta għas-smigh, tiddeciedi dan ir-rikors, wara li tisma' kull xhieda li jidhrilha xierqa, u dan fl-iqsar zmien possibbli izda mhux aktar tard minn xahar mill-gurnata li gie prezentat u mahluf il-mandat.

Artikoli li jghoddu għal dan il-mandat.

876. Id-disposizzjonijiet ta' l-artikoli 829 u 844 jghoddu għall-mandat ta' inibizzjoni.”.

**100.** L- Att ta' l-2002 dwar il-Proceduri fil-Qrati u fit-Tribunali ghandu jigi emendat kif gejj:

Emenda ta' l-Att XXXI ta' l-2002.

(a) il-paragrafu (a) ta' l-artikolu 6, l-artikoli 20 sa 23, 54, 56, 61, 63, 65 sa 68, 71, 78 sa 83, 87, 164, 180, 181, 187 u 192 ghandhom jigu mhassra;

(b) l-artikoli 90, 93 sa 129, 137 sa 148, 165 sa 171, 173 sa 184 għandhom jiġu mhassra.

Emenda ġenerali ta' l-artikoli 291, 294, 297, 299, 301, 303, 312 u 345 tal-Kodiċi.

**101.** Fit-test Inġliż ta' l-artikoli 291, 294, 297, 299, 301, 303, 312 u 345 tal-Kodiċi, minflok il-kelma “consignatory” kull fejn tinsab għandha tidhol il-kelma “consignee”.

Disposizzjoni Transitorja

**102.** (1) L-effetti ta' din il-liġi jgħoddu għall-proċeduri ġodda li ser jidhru fis-sehħ permezz tagħha. Mandati kawtelatorji u eżekuttivi mibdija u li għadhom pendenti jibqgħu validi u tapplika l-liġi kif kienet qabel.

(2) Id-disposizzjonijiet ta' din it-Taqsima jkollhom effett fuq il-proċeduri l-ġodda li jiġu pprezentati. Mandati kawtelatorji u eżekuttivi mibdija u li għadhom pendenti jibqgħu validi.

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## Għanijiet u Raġunijiet

L-għan ewlieni ta' l-Abbozz hu sabiex ikun hemm riforma tal-mod ta' kif jaħdmu l-mandati eżekuttivi u kawtelatorji ġewwa l-Qorti, kif ukoll l-introduzzjoni ta' toroq u miżuri ġodda sabiex l-eżekuzzjoni tas-sentenzi u l-protezzjoni ta' l-interessi tal-partijiet fil-proċess ġudizzjarju jiġu protetti aħjar u sabiex jiġu introdotti strumenti u mezzi eħfef, iktar effiċjenti u effikaċi.

**A BILL  
entitled**

*AN ACT to amend the Code of Organization and Civil Procedure, Cap. 12, on the execution of judgements and executive titles, on precautionary acts and other procedures connected therewith.*

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

**1.** (1) The short title of this Act is the Code of Organization and Civil Procedure (Amendment) Act, 2005 and it shall be read and construed as one with the the Code of Organization and Civil Procedure, hereinafter referred to as “the Code”. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

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

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

	Articles
“Title VII.	Of the Enforcement of Judgments and other Executive Titles .....272-395
	General Provisions.....272-281
<i>Sub-title I.</i>	Of the Warrant of Seizure of Movable Property .....282-293
<i>Sub-title II.</i>	Of the Warrant of Seizure of Immovable Property.....294-311
<i>Sub-title III.</i>	Of the Warrant of Seizure of a Commercial Going Concern .....312-312F
<i>Sub-title IV.</i>	Of Judicial Sales by Auction .....313-357
<i>Sub-title V.</i>	Of the Executive Garnishee Order .....375-383
<i>Sub-title VI.</i>	Of the Warrant of Ejectment or Expulsion from Immovable Property ..... 384
<i>Sub-title VII.</i>	Of the Warrant <i>In Factum</i> ..... 385-388
<i>Sub-title VIII.</i>	Of the Warrant of Executive Arrest of Aircraft or Sea Vessels .....388A-388B
<i>Sub-title IX.</i>	Of the Warrant <i>In Procinctu</i> ..... 388C
<i>Sub-title X.</i>	Of the Rendering of Accounts and Liquidation of Fruits .....389-395”; and

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

	Articles
“Title VI.	Of Precautionary Acts .....829-876
	General Provisions ..... 829-838B
<i>Sub-title I.</i>	Of the Warrant of Description ..... 839-845

## Articles

<i>Sub-title II.</i>	Of the Warrant of Seizure .....	846-848
<i>Sub-title III.</i>	Of the Warrant of Seizure of a Commercial Going Concern.....	848B-848C
<i>Sub-title IV.</i>	Of the Garnishee Order .....	849-854
<i>Sub-title V.</i>	Of the Warrant of Executive Arrest of Aircraft or Sea Vessels .....	855-863
<i>Sub-title VI.</i>	Of the Warrant of Prohibitory Injunction .....	873-876”.

**3.** In Title VII of Part I of Book Second of the Code, the words “Sub-title I”, immediately before the words “General Provisions”, shall be deleted. Deletion of sub-heading in Title VII.

**4.** Articles 252 to 271 of the Code shall be deleted. Deletion of articles 252 to 271 of the Code.

**5.** For article 273 of the Code there shall be substituted the following:- Substitution of article 273 of the Code.

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

- (a) warrant of seizure of movable property;
- (b) warrant of seizure of immovable property;
- (c) warrant of seizure of a commercial going concern;
- (d) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;
- (e) executive garnishee order;
- (f) warrant of ejection or eviction from immovable property;
- (g) warrant *in factum*;

(h) warrant of arrest of aircraft or sea vessels;

(i) warrant *in procinctu*.”.

Amendment of  
article  
274 of the Code.

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

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

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

Renumbering and  
amendment  
of article 278 of the  
Code.

**7.** Article 278 of the Code shall be renumbered as article 275 of the Code and shall be amended as follows:

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

(b) in sub-article (2) thereof, for the words from “Nevertheless,” to “the marshal” there shall be substituted the words “In the case of any warrant for the seizure of any property of the Government of Malta, the court executing officer”;

(c) immediately after sub-article (2) there shall be added the following new sub-article:

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

Renumbering of  
article  
279 of the Code.

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

Renumbering and  
substitution  
of article 280 of the  
Code.

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



“Time for execution of warrants and orders.

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

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

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

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

Renumbering and amendment of article 281 of the Code.

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

(b) in sub-article (2), for the words “otherwise direct, the marshal” there shall be substituted the words “otherwise direct or the Minister responsible for justice may in terms of article 277 (2) in a different manner prescribe, the court executing officer”.

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

Renumbering and amendment of article 282 of the Code.

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

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

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

Renumbering of article 283 of the Code.

**13.** Article 283A of the Code shall be renumbered as article 281 of the Code and there shall be substituted the following new article therefor:

Renumbering and substitution of article 283A of the Code.

“How executive acts may be impugned.

Appeal from decree.

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

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

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

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

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

(5) The security referred to in article 249 shall not be required in the cases referred to in the previous sub-article.”.

Deletion of articles 284 to 304 of the Code.

**14.** Articles 284 to 304 of the Code shall be deleted.

Addition of new articles 282 to 293 in the Code.

**15.** Immediately after sub-heading “Sub-Title I - Of the Warrant of Seizure of Movable Property”, there shall be substituted the following new articles 282 to 293 in the Code:

“Warrant of seizure on movable property.

282. (1) The warrant for the seizure of movable property shall, besides the particulars stated in article 274, contain Court orders about:-

(a) (i) the appointment of the day, place and time for the judicial sale by auction and the subsequent seizure and removal thereupon of all such articles from the place which has been indicated by the creditor or from the person of the debtor; or

(ii) the seizure from the place indicated by the creditor, including from the person of the debtor, of any such article which the debtor may possess or such article or articles as may be mentioned in the warrant; and also that after the execution of the warrant, the court executing officer shall be ordered to fix, together with the advocate or the legal procurator of the creditor, the day when the judicial sale by auction is to be held in consultation with the executing officer responsible therefor, and such executing officer shall also fix with the creditor the date, which shall at least be seven days prior to the date of the judicial sale by auction, when the removal of the articles which the executing creditor selects to have removed shall take place;

(b) the execution of the warrant, if so required, after legal hours or on a Sunday or public holiday, and if after two attempts to execute the warrant the court executing officer fails to effect such execution, he shall be authorised to force open the place;

(c) the transport of the property seized and to be removed to the official storage places established by regulations made by the Minister responsible for justice, and about the transfer of their possession from the debtor to the official consignatory appointed in terms of such regulations;

(d) the taxing and receipt of payment due to the official consignatory by the creditor for such period during which the articles seized and to be removed would be under the care of the official consignatory, so however that such payment may be divided in proportion to the periods established by the Registrar depending on the nature of the articles seized and to be removed. Such payment is made subject to the right of regress against the debtor when such right exists;

(e) the appointment of experts to make a valuation of the property seized, if so required by law, either in

special circumstances which the court may deem appropriate, or on the demand of any interested party or of the debtor;

Cap. 342. (f) the appointment of an auctioneer who shall receive a fee in terms of the Auctioneers Act, if so required by law;

(g) an order for the judicial sale by auction of such articles as are seized and to be removed on the appointed day in terms of regulations to be made by the Minister responsible for justice, without further service of any notice to the debtor.

(2) The provisions of this Sub-title shall not apply to sea vessels or other craft having a length exceeding ten metres, and to aircraft.

Description of property seized. 283. (1) (a) The court executing officer shall attach to the said warrant a detailed description of the property seized.

(b) The creditor or the debtor or any interested party may demand the court executing officer to take any photograph or filmshot of the detained articles either by electronic or by any other means at the expense of the party making the demand.

Contents of certificate in case of unsuccessful execution. (2) If the court executing officer finds no movable property, or finds only such property as is not liable to seizure, he shall make a certificate to that effect, stating therein the nature of the movable property, if any, not liable to seizure, and he shall attach such certificate to the warrant.

Payment of the amount due. 284. (1) When a warrant of seizure is being executed, it is only the full amount claimed by the creditor that may be paid by the debtor to the court executing officer.

(2) The court executing officer shall describe in detail the property seized and -

(a) where the property includes any merchandise, he shall cause such merchandise to be weighed, measured or gauged, as the case may be;

(b) where money or securities for money, jewellery, or articles of precious metal are seized, he

shall accurately state the amount or nominal value or weight thereof and he shall within the shortest time possible take the same to the registry and lodge them therein by means of a schedule;

(c) where papers are seized, he shall seal them and deliver them to the Registrar, and such seals may not be removed except by the authority of the court.

Seizure of  
papers.

285. (1) Seizure may be effected on any movable property including:

(a) shares in commercial partnerships;

(b) licences issued by any competent authority as may be established by regulations made by the Minister responsible for justice;

(c) insurance policies;

(d) credit securities and any intellectual or industrial property right:

Provided that on such property the warrant shall have effect as from the date of the service on such authority or such person who would have issued such movable property. Any transfer made or burthen incumbent on such property after that date shall be *ipso jure* null as from the date of the service of the certificate of seizure to such person or authority issuing same.

(2) Where in any commercial partnership its statute attributes any right of preference with regard to the transfer of shares, the shareholders shall be informed of the date when such sale is due to take place and they may exercise the said right during that sale.

(3) When the judicial sale by auction of an insurance policy is due to take place, notice shall be given to the insurance company of the date of such sale.

Official  
consignatory.

286. (1) Such property as is removed from the possession of the debtor, in terms of articles 282 (1) (c) subject to the provisions of article 293, shall be transferred forthwith to be retained in the hands of the official consignatory in the presence of the court executing officer, and the official

consignatory shall receive and hold such property in an official storage place until such time as that property is sold or the official consignatory is ordered to do otherwise.

(2) The official consignatory shall issue a receipt, to be signed by him, for such property as would have been seized and removed from the possession of the debtor and which he would have received:

Provided that the official consignatory may, with the written consent of the Registrar, retain such property in any place other than the official storage place in such circumstances where, due to the nature or the size of the articles seized, it would not be feasible to dispose otherwise.

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

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

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

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

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

relation to any other matter connected with the preservation, sale, consignment and release of the property seized.

Persons who may not act as official consignatories.

287. An official consignatory who is appointed under this Title may not act when he is either:

- (a) the execution creditor;
- (b) the husband or wife of the debtor or of the creditor;
- (c) the father or mother of the creditor, his daughter or son, or his brother or sister, his uncle or aunt, his father-in-law or mother-in-law or her husband or his son-in-law or daughter-in-law;
- (d) directly or indirectly employed with the creditor;
- (e) the person who claims to be the owner of the property seized.

Attendance of the official consignatory.

288. At the time of execution of the warrant of seizure under article 282, the official consignatory shall attend together with the court executing officer to execute the warrant. The court executing officer may seize and remove property without informing the creditor.

Official consignatory to preserve property seized.

289. (1) The official consignatory shall be responsible for the proper preservation of the property entrusted to him and he shall not use, nor shall he allow any person to use, such property unless otherwise ordered by the court:

Provided that the debtor may be allowed to use or retain in possession such articles of the property seized as the court may authorise if the court considers that such articles are normally required by an average household for decent living to maintain the human dignity of the debtor and his family.

(2) Where the property seized is of a perishable nature, the Registrar shall, without further authorisation, sell the goods seized and with the profit made from that sale, he shall proceed according to the provisions of article 284.

The official consignatory to act as a *bonus paterfamilias*.

290. The official consignatory is bound to exercise for the safe keeping of the property seized, such care as is exercised by a *bonus paterfamilias*; if the official consignatory fails to present such property when called upon to do so, the court shall order him to appear before it to explain his failure to do so; the official consignatory shall be responsible for damages and interest and the court, after examining the circumstances of the case, may issue such orders as appear to be appropriate, including the personal arrest of the official consignatory for a period not exceeding three months, to compel him to present such property. The failure of the official consignatory to present such property when ordered by the court shall of itself constitute contempt of court in terms of the applicable provisions under this Code.

Other creditors may not oppose execution.

291. The creditors of any person, whose property has been seized, may not, for any cause whatsoever, make any opposition to the execution of the warrant or to the sale of the property:

Provided that it shall be lawful for such creditors to enforce their claim on the proceeds of the sale of the property seized.

No identification is to be made of property already seized.

292. (1) If, when executing a warrant of seizure, the court executing officer finds that another warrant has already taken place and that the articles have not been removed, he shall likewise execute the warrant again at the place indicated to him by the creditor. Identification of the property so seized shall no longer be permitted. The court executing officer shall, at the creditor's expense, inform the creditors that on their demand other warrants had been executed by means of the first warrant.

The warrant may be executed on new articles other than those already seized.

(2) When an official consignatory has already been appointed, and the articles have been removed, no other warrant may be executed on such articles.

Property not subject to seizure.

293. (1) The property mentioned hereunder is not subject to seizure:

- (a) such clothes for daily wear, bedding and such utensils and furniture as are considered reasonably



necessary for the decent living of the debtor and his family;

(b) personal documents and books relating to the profession of the debtor, of his wife or of his children;

(c) the registers and minute-books of notaries public;

(d) tools and implements necessary for the instruction in or the exercise of any science or of any art of the debtor, of his wife or of his children;

(e) animals and tools required for agriculture and any fruit either cut or not yet separated from the ground;

(f) aircraft and sea vessels wholly chartered in the service of the Government of Malta;

(g) sacred vestments and vessels which are used in a consecrated church, or belonging to a priest, a religious order or any member thereof;

(h) any property of any member of the Police Force or of the Armed Forces of Malta being arms, ammunition, equipment, instruments or clothing used by him in the discharge of his duties:

Provided that any such property as is mentioned in paragraphs (a) to (g) may be seized –

(i) if the execution is demanded in respect of the price of such property;

(ii) if the execution is demanded in respect of rent or ground-rent of the tenement in which such property is kept;

(iii) if the executive title by virtue of which the warrant has been issued specifically condemns the debtor to effect the return of such property.

(2) The seizure may be effected of unseparated movable property belonging to both debtor and a third party, insofar as no sale of such property may take place except after their separation.”.

Addition of new Sub-title in Book Second of the Code and new articles 294, 305, 307, 308 and 311.

**16.** Immediately after article 293 in Book Second of the Code there shall be added the following new sub-heading and the following new articles 294, 305, 307, 308 and 311:-

**Sub-title II**

**OF THE WARRANT OF SEIZURE  
OF IMMOVABLE PROPERTY**

Form of demand by application.

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

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

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

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

Duties of the court.

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

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

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

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

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

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

Appraisal by  
debtor.

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

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

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

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

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

308. (1) The expert shall always be appointed by the court *ex officio*, according to the panel established in article 89 and on a rota system, unless the parties shall have already filed a note submitting the name of an expert agreed on between them, or the appraisal filed in terms of article 307 has been accepted.

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

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

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

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

Valuation or appraisalment to be sworn by expert.

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

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

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

Taxation and payment of expert's fee.

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

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

17. Immediately after article 311 of the Code, there shall be added the following new sub-heading and articles 312 to 312F:

Addition of new Sub-title III in Book Second of the Code and new articles 312 to 312F.

**“Sub-title II**

**OF THE WARRANT OF SEIZURE  
OF A COMMERCIAL GOING CONCERN**

Appointment  
of day  
of sale by  
auction.

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

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

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

(4) For the purposes of this Sub-title, the meaning of movable property shall be the same as that given in Sub-title I of this Title and the meaning of immovable property shall be the same as that given in Sub-title II of this Title, saving that in the case of a going concern the meaning is that given in article 312D but for the purposes of this Title a going concern shall be deemed to be immovable property.

312A. (1) The demand for the seizure of a going concern shall be made by means of an application to be served on the debtor.

(2) In a decree upholding the demand for the issue of a warrant of seizure of a going concern, the court -

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

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

(ii) file a report whether or not, considering the debt of the going concern, such going concern

should be sold or put under administration for a period of time during which it could pay back its debts; and

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

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

312B. Following the confirmation on oath of the appraisements and reports, the court shall within a week appoint the application for hearing and, after hearing the parties, it shall decide whether the judicial sale by auction of the going concern is nevertheless to be proceeded with or an administrator is to be appointed to manage the going concern until the amount due is paid.

312C. (1) Where the court decides about the holding of a sale, it shall appoint a date, place and time for the sale of the whole complex as a going concern.

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

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

312D. Articles 308 and 311 shall apply *mutatis mutandis* to this warrant.

312E. (1) Where the court decides that the going concern shall continue to be administered until payment of the amount due is effected, it shall appoint an administrator and give such orders and make such provisions which it deems appropriate, taking into consideration the debt, nature and value of the going concern.

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

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

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

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

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

Amendment of sub-heading in Part I in Book Second of the Code.

**“Sub-title IV**

**OF JUDICIAL SALES BY AUCTION”.**

**19.** Articles 305 to 312 of the Code shall be deleted.

Deletion of articles 305 to 312 of the Code.

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

Substitution of article 313 of the Code.

“Form of advertisement of sale by auction.

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

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

Deletion of articles 314 and 315 of the Code.

**21.** Articles 314 and 315 of the Code shall be deleted.

Renumbering of article 316 of the Code.

**22.** Article 316 of the Code shall be renumbered as article 314.

Addition of new articles 315 and 316 to the Code.

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

“Valuation of property to be sold by auction.

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

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

(3) An appraisal made in conformity with the provisions of articles 308, 311 and 312C and existing in the records of a sale by auction shall be accepted by the court to be the appraisal for the purpose of this article.

Appraisal of gold or silver articles to show intrinsic value.

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

Substitution of article 317 of the Code.

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

“Removal of movable property to place of sale.

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



**25.** In article 318 of the Code, for the words “property may be sold by auction” there shall be substituted the words “movable property may be sold by auction”. Amendment of article 318 of the Code.

**26.** Article 319 of the Code shall be amended as follows: Amendment of article 319 of the Code.

(a) for sub-article (1) there shall be substituted the following new article:

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

(b) immediately after sub-article (2) there shall be added the following new sub-article (3):

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

(c) sub-article (3) shall be renumbered as sub-article (4) and there shall be substituted therefor the following new sub-article:

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

(d) immediately after sub-article (4), there shall be added the following new sub-article (5):

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

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

“Bids *pro persona nominanda* etc., not to be accepted.

320. The auctioneer shall cause that no bid shall be accepted if it is either made *pro persona nominanda* or by any person who is notoriously incapable of fulfilling the obligations arising out of the adjudication.”.

Deletion of article 322 of the Code.

**28.** Article 322 of the Code shall be deleted.

Substitution of article 323 of the Code.

**29.** For article 323 of the Code there shall be substituted the following:

“Duration of auction.

323. The Minister responsible for justice shall by regulations establish the duration of the auction.”.

Deletion of articles 324 and 325 of the Code.

**30.** Articles 324 and 325 of the Code shall be deleted.

Amendment of article 326 of the Code.

**31.** Article 326 of the Code shall be amended as follows:

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

(b) in sub-article (3), for the words “six days” there shall be substituted the words “seven days”; and

(c) immediately after sub-article (4) there shall be added the following new sub-article (5):

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

Deletion of article 327 of the Code.

**32.** Article 327 of the Code shall be deleted.

Amendment of article 328 of the Code.

**33.** In article 328 of the Code, immediately after the words “or of ships” there shall be added the words “, or of commercial going concerns”.

Amendment of article 329 of the Code.

**34.** In sub-article (1) of article 329 of the Code, for the words “by writ of summons” there shall be substituted the words “by application”.

Amendment of article 331 of the Code.

**35.** In sub-article (1) of article 331 of the Code, immediately after the words “annexed to such property” there shall be added the words “, or of commercial going concerns,”.

Amendment of article 332 of the Code.

**36.** In article 332 of the Code, for the words “if by leave of court previously obtained he shall” there shall be substituted the words “if he shall”.

**37.** For article 333 of the Code there shall be substituted the following: Substitution of article 333 of the Code.

“Leave to bid *animo compensandi*. 333. (1) Any person to whom a liquidated debt is owing under any judgment or executive title or deed or other obligatory writing, may, by an application, apply to the court for leave to bid *animo compensandi*.

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

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

**38.** For article 334 of the Code there shall be substituted the following: Substitution of article 334 of the Code.

“Conditional leave to bid *animo compensandi*. 334. (1) Any bid *animo compensandi* is made on condition that the bidder shall bind himself to pay the price into court in case it shall be so adjudged by the court.”.

**39.** For article 335 of the Code there shall be substituted the following: Substitution of article 335 of the Code.

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

**40.** Article 336 of the Code shall be deleted. Deletion of article 336 of the Code.

**41.** Article 337 of the Code shall be amended as follows: Amendment of article 337 of the Code.

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

(b) in sub-article (3), for the words “and shall recover the costs of the judicial recognition” there shall be substituted the words “and shall recover the legal fees and the costs of the judicial recognition”.

Amendment of article 338 of the Code.

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

(a) for sub-article (1), there shall be substituted the following:

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

(b) in sub-article (2), for the words “The persons so served shall be allowed the time of three days” there shall be substituted the words “Any person who may have an interest and the persons so served shall be allowed the time of twenty days”; and

(c) for sub-articles (3) to (7), there shall be substituted the following sub-articles:

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

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

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

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

Substitution of article 339 of the Code.

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

“Competition  
of creditors.

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

**44.** In the first proviso to sub-article (1) of article 340 of the Code, for the words “any person who has made” and “within six days” there shall be substituted the words “whosoever makes” and “within seven days ” respectively.

Amendment of  
article  
340 of the Code.

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

Substitution of  
article  
342 of the Code.

“Restoration  
of balance  
of deposit to  
debtor.

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

**46.** For article 343 of the Code there shall be substituted the following new article:

Substitution of  
article  
343 of the Code.

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

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

**47.** For article 345 of the Code there shall be substituted the following new article:

Substitution of  
article  
345 of the Code.

“Sale of  
perishable  
articles.

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

**48.** Article 348 of the Code shall be deleted.

Deletion of article  
348 of the Code.

Amendment of  
article  
349 of the Code.

**49.** In article 349 of the Code, for the word “marshal” there shall be substituted the words “court executing officer”.

Amendment of  
article  
350 of the Code.

**50.** In article 350 of the Code, for the word “marshal” there shall be substituted the words “court executing officer”.

Amendment of  
article  
352 of the Code.

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

Amendment of  
article  
353 of the Code.

**52.** Article 353 of the Code shall be amended as follows:

(a) in sub-article (1), immediately after the words “the auction of the immovable property” there shall be added the words “or of a commercial going concern”; and

(b) in sub-article (2), immediately after the words “The auction of the immovable property” there shall be added the words “or commercial going concern”.

Substitution of  
article  
354 of the Code.

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

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

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

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

Amendment of  
article  
355 of the Code.

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

(a) in sub-article (1) thereof, immediately after the words “his immovable property” there shall be added the words “and of a commercial going concern”; and

(b) sub-article (2) shall be deleted and sub-article (3) shall be renumbered as sub-article (2) thereof.

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

Amendment of  
article  
356 of the Code.

(a) in sub-article (3), for the words “is of a going concern” there shall be substituted the words “is of a commercial going concern”; and

(b) for sub-articles (7) to (9), there shall be substituted the following new article (7):

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

**56.** For article 357 of the Code there shall be substituted the following new article:

Substitution of  
article  
357 of the Code.

“Eviction  
after  
adjudication.

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

**57.** The words of the sub-heading “Sub-title III - Of the Warrant of Imprisonment for Debt” occurring immediately after article 356 of the Code, shall be deleted.

Deletion of words  
of sub-heading  
in the Code.

**58.** For the words of sub-heading “Sub-title IV - Of the Executive Garnishee Order” occurring immediately before article 375 of the Code, there shall be substituted the words “Sub-title V - Of the Executive Garnishee Order”.

Substitution of  
sub-heading  
in the Code.

**59.** For article 376 of the Code there shall be substituted the following new article:

Substitution of  
article  
376 of the Code.

“Contents of  
garnishee  
order.

376. (1) The creditor shall, in the application for the issue of a garnishee order, correctly state the name and surname of the debtor, giving other particulars concerning the debtor as may be ordered by the Minister responsible for

justice for the purpose of the identification of the debtor by the garnishee.

(2) The order shall:

(a) state the name and surname of the debtor and other particulars included in the application for the purpose of identification of the debtor, including, where possible, the identity card number or the company registration number;

(b) state the amount or thing due;

(c) state the title under which the creditor sues out execution;

(d) enjoin the garnishee not to pay or deliver up to the debtor, or any other person, such moneys or things as may be in his hands but which belong to the debtor, under penalty of payment of damages and interest; and

(e) enjoin the garnishee to lodge, at the debtor's expense within twenty-one days from the date of service of the warrant, through the Registrar any moneys or things belonging to the debtor, as attached by the order.

(3) The lack of any of these particulars in the garnishee order, shall render the said order to be *ipso jure* null.”.

Amendment of article 377 of the Code.

**60.** In sub-article (1) of article 377 of the Code, for the words “by the marshal of a copy thereof to the garnishee” there shall be substituted the words “of a copy thereof, by the court executing officer, to the garnishee or by such electronic means as may be prescribed by the Minister responsible for justice”.

Substitution of article 378 of the Code.

**61.** For article 378 of the Code there shall be substituted the following new article:

“Declaration by garnishee.

Time for such declaration.

378. A garnishee who, although being in possession of moneys or other articles, belonging to the debtor, or which are due to the debtor, which may have been attached by means of the order, and who does not effect the deposit referred to in article 376 within such time as may be laid down in the order, shall be responsible for ensuing damages and interest in favour of the creditor and the court may, upon application



being made for that purpose by the creditor, issue such orders as may be required, including his personal arrest for a period not exceeding three months, in order to force him to lodge such property.”.

- 62.** For article 379 of the Code there shall be substituted the following new article: Substitution of article 379 of the Code.

“Garnishee may be enjoined to deposit.

379. (1) In the case of attachment of moneys, the garnishee may before lodging such moneys in court retain the costs in respect of such lodgment and, in the case of attachment of other movable property, the garnishee shall have a privileged claim over the property so lodged in respect of such costs.

(2) In all cases, the execution creditor and the debtor shall be notified of any such lodgment into court.”.

- 63.** Article 380 of the Code shall be deleted. Deletion of article 380 of the Code.

- 64.** Article 381 of the Code shall be amended as follows: Amendment of article 381 of the Code.

(a) in sub-article (1), paragraph (c), immediately after the word “charitable grant” there shall be added the words “or donation”;

(b) in sub-article (1), for paragraph (f) there shall be substituted the following paragraphs:

“(f) moneys which have been made available to the debtor by deed of loan for the building, construction and maintenance of houses intended as a main dwelling place for the debtor;

(g) overdraft banking facilities excluding credit cards by means of which commercial going concerns run by the debtor are being operated;

(h) bank guarantees and letters of credit.”; and

(c) sub-article (2) shall be deleted, and sub-articles (3) and (4) shall be renumbered as sub-articles (2) and (3) respectively.

Amendment of article 382 of the Code.

**65.** In sub-article (1) of article 382 of the Code, for the words “the court may, on the application by any creditor, allow the issue of a garnishee order” there shall be substituted the words “the issue of a garnishee order shall be applicable”.

Substitution of article 383 of the Code.

**66.** For article 383 of the Code there shall be substituted the following new article:

“Garnishee order may not be extended.

383. A garnishee order may not be extended and shall remain in force up to such time as it is revoked by a decree issued by the court.”.

Substitution of sub-heading in the Code.

**67.** For the words of sub-heading “Sub-title V - Of the Warrant of Ejectment or Expulsion from Immovable Property” occurring immediately before article 384 of the Code, there shall be substituted the words “Sub-title VI - Of the Warrant of Ejectment or Expulsion from Immovable Property”.

Amendment of article 384 of the Code.

**68.** In article 384 of the Code, for the words “the marshal” wherever they occur, there shall be substituted the words “the court executing officer”.

Substitution of sub-heading in the Code.

**69.** For the words of sub-heading “Sub-title VI - Of the Warrant *In Factum*” occurring immediately before article 385 of the Code, there shall be substituted the words “Sub-title VII - Of the Warrant *In Factum*”.

Substitution of article 385 of the Code.

**70.** For article 385 of the Code there shall be substituted the following new article:

“Warrant *in factum*.

385. (1) In the execution of a warrant *in factum*, the court executing officer shall proceed in such manner as ordered in the warrant.

(2) The warrant *in factum* shall contain the order that the party against whom the warrant is issued is to be conveyed to prison, in order to be therein kept at his own expense, until the performance of the act ordered by a judgment or until such time as the court may deem necessary to ensure such performance.

(3) The warrant may not be issued other than by an explicit order of the court to be issued on a demand made by application by the creditor.

(4) The court shall only issue the warrant if it is satisfied that the creditor does not have any other means of execution available.”.

71. Article 387 of the Code shall be amended as follows:

Amendment of  
article  
387 of the Code.

(a) in sub-article (1), for the words “the marshal” and “for seven days” there shall be substituted the words “the court executing officer” and “for four days” respectively;

(b) in sub-article (2), for the words “seven days” there shall be substituted the words “four days”; and

(c) in sub-article (3), for the words “The marshal” there shall be substituted the words “The court executing officer”.

72. Immediately after article 388 of the Code, there shall be substituted the following new sub-heading:-

Addition of new  
sub-heading in  
the Code.

### “Sub-title VIII

#### OF THE WARRANT OF EXECUTIVE ARREST OF AIRCRAFT OR SEA VESSELS”.

73. Immediately after the new sub-heading of Sub-title VIII, there shall be added the following new articles 388A and 388B:-

Addition of articles  
388A  
and 388B to the  
Code.

“Application  
for the  
issue of a  
warrant.

388A. An executive warrant of arrest of aircraft or sea vessels is effected by application in terms of articles 858 and 860.

Court to  
decide about  
the sale  
or fixes time-  
limit for  
payment.

388B. (1) The court shall, when a demand is made for the issue of a warrant of arrest, establish whether it shall order the sale of the said article or to fix a time limit within which the debtor is to pay the amount due.

(2) When the court orders such sale, it shall proceed according to the procedures laid down in the provisions relating to sale.

(3) When the court fixes a time limit within which the debtor is to pay, it shall order the warrant to be definitely in force until payment of the amount due is effected.

(4) When the said time limit passes without any effect the court shall, on a demand to be made by the interested party, order the sale to take place according to the provisions of sub-article (2) of this article.”.

Addition of new sub-heading in the Code.

**74.** Immediately after article 388B of the Code, there shall be added the following new sub-heading:-

**“Sub-title IX**

**OF THE WARRANT *IN PROCINCTU*”.**

Addition of article 388C to the Code.

**75.** Immediately after the new sub-heading of sub-title IX, there shall be added the following new article 388C:-

“Court may issue other orders.

**388C.** (1) Subject to the other provisions contained in Title VII of this Code, the court may on demand of the party, issue such orders to the Registrar as it may deem necessary for the orders contained in the judgement to be executed:

Provided that this warrant shall not be issued except after an application has been made to this effect by the creditor and after the court is satisfied that the creditor does not have any other means of execution.

(2) There shall be clearly indicated in the application the reason for the necessity of such orders and a decree shall be given thereon after that the debtor has been served notice thereof, to which he may file a reply within four days.”.

Substitution of article 830 of the Code.

**76.** For article 830 of the Code there shall be substituted the following new article:

“Precautionary acts.

**830.** (1) The precautionary acts referred to in the last preceding article are the following:

- (a) warrant of description;
- (b) warrant of seizure;
- (c) warrant of seizure of a commercial going concern;
- (d) garnishee order;
- (e) warrant of impediment of departure;
- (f) warrant of arrest of aircraft and sea vessels;
- (g) warrant of prohibitory injunction.

(2) (a) Saving the provisions of article 870 of this Code and of article 357 of the Merchant Shipping Act, such acts mentioned in sub-article (1) shall be rescinded, if the party against whom the act is issued makes such deposit or gives such security as, in the court's opinion, according to the circumstances of the case, may be sufficient to safeguard the rights or claims stated in the act, or if it is shown that a judicial act accepting liability as provided in sub-article (3) has been filed in the proper registry.

(b) Notwithstanding that a deposit is made or security is given as aforesaid, the time limits established in this Title on the creditor to bring forward his action shall continue to apply.

(c) Such time limits shall run from the date of the issue of the precautionary act, and failure by the creditor to institute proceedings within the said time limits shall entitle the debtor to withdraw the deposit or cancel the security.

(3) Where a precautionary act has been issued against any person, or such as to affect any property of such person, to secure a claim for damages, and a locally registered insurance company or local bureau thereof, as established in the Motor Vehicles (Third Party Risks) Ordinance, such person or company shall by means of a judicial act, filed in the registry of the said court, within ten days from the date of the insured person's demand, declare that he or the company is accepting liability to pay all sums that may be due for such damages, in connection with the claim contained in that act if such insured person is found to be responsible for such damages –

(a) the insurer or local bureau, as the case may be, shall be liable to pay all sums that may be due for damages arising as aforesaid;

(b) the claim for such damages may be pursued against the insurer or the local bureau directly; and

(c) the precautionary act against such person shall be rescinded.

(4) No precautionary act as provided in sub-article (3) shall be issued against the insured if the person intending to sue out the warrant is cognizant that the insurer or the local

bureau has issued to the insured a valid insurance certificate accepting liability for the payment of damages; and in such case the claim for such damages may be pursued against the insurer or the local bureau or agent, as the case may be, directly.”.

Substitution of  
article  
831 of the Code.

**77.** For article 831 of the Code there shall be substituted the following new article:

“Application  
for  
issue of  
warrant.

831. (1) The demand for the issue of any of the said acts shall be made by an application prepared by the applicant and containing, under pain of nullity of the act, other than further details which may be prescribed by regulations:-

(a) the origin and nature of the debt or claim sought to be secured; and

(b) when the right sought to be secured by the act is a debt, or a demand which may be satisfied by the payment of a sum of money, the amount of such demand.

If the case has already been filed in court, such demand may specify and include all judicial costs.

(2) The application shall be confirmed on oath by the applicant:

Provided that where in an application there is more than one applicant demanding the issue of any of the precautionary acts mentioned in sub-article (1) of article 830 against the same respondent, the oath shall be taken by at least one of the applicants.

(3) Any of the warrants or order mentioned in article 830 shall be issued by the court:

Provided that, where in the opinion of the Registrar the signature of a judge or magistrate empowered to issue a warrant of seizure or a garnishee order or a warrant of impediment of departure cannot be obtained within a reasonable time and that delay may be prejudicial, the said warrants or order may be issued over the signature of the Registrar personally after having first obtained verbal authorisation from the judge or magistrate to do so. In this case, the judge or magistrate is to append his own signature under that of the Registrar at the earliest opportunity to confirm

that he had given the said verbal authority or, if it is not possible for the Registrar to obtain such verbal authority, the Registrar shall under his authority issue the said warrant or order over his signature, subject to the ratification of such action by a judge or magistrate at the earliest opportunity.”.

**78.** Article 832 of the Code shall be deleted.

Deletion of article 832 of the Code.

**79.** For article 833 of the Code there shall be substituted the following new article:

Substitution of article 833 of the Code.

“Demand for the issue of a warrant under article 166A.

833. (1) Where an executive judicial letter is filed and sworn according to article 166A, there may also thereupon be sworn and filed the precautionary warrants referred to in article 830 (1) (a), (b) and (d).

(2) So however that when such executive judicial letter is filed, the applicant shall file a cause within twenty days from the date of filing of a full or partial note of contestation or within sixty days from the date of the issuing of a warrant according to which date first occurs.”.

**80.** For article 834 of the Code there shall be substituted the following new article:

Substitution of article 834 of the Code.

“Notice of execution of warrant.

834. The court executing officer shall, at the earliest time possible, serve notice in writing to the applicant, the lawyer or the legal procurator whose signature is subscribed on the application, of the execution of the warrant or order.”.

**81.** Article 835 of the Code shall be deleted.

Deletion of article 835 of the Code.

**82.** Article 836 of the Code shall be amended as follows:

Amendment of article 836 of the Code.

(a) for sub-articles (2), (3) and (4), there shall be substituted the following sub-articles:-

(2) The person making the application according to sub-article (1) shall, together with the application, file in writing all submissions to be made together with all documents in support of the demand that is being filed.

(3) The application, except for any application in terms of sub-article (1)(a), shall be served on the opposite party who may, within seven days from the service, file a note

containing all submissions to be made together with all documents in support of the demand that is being filed.

(4) The court shall decide the application with urgency or *in camera* or after hearing the advocates of the parties, if it deems fit, provided that not more than one sitting may be fixed for such purpose.”; and

(b) sub-article (8) shall be amended as follows:-

(i) in paragraph (a) thereof, immediately after the words “if the applicant” there shall be added the words “, without any valid reason,”; and

(ii) in paragraph (b) thereof, for the words “if, on the demand” there shall be substituted the words “if, on demand”.

Amendment of  
article  
837 of the Code.

**83.** Article 837 of the Code shall be amended as follows:

(a) for sub-article (1), there shall be substituted the following:

“(1) The warrants of description, and impediment of departure for the purpose of a reference to the oath of the opposite party or for the purpose of securing the enforcement of a judgment not being for the payment of an acknowledged amount, may be issued by the Court of Magistrates (Malta), or the Court of Magistrates (Gozo) in its inferior jurisdiction, but may not be issued by the Small Claims Tribunal:

Provided that the warrant of impediment of departure of a vessel or of any other sea going craft, or of aircraft, may neither be issued by the Court of Magistrates nor by the Small Claims Tribunal.”;

(b) in paragraph (b) of sub-article (4), for the words “her clearance; and” there shall be substituted the words “her clearance.”;

(c) paragraph (c) of sub-article (4) shall be deleted; and

(d) in paragraph (b) of sub-article (5), immediately after the words “on which such person is enrolled” there shall be added the words “or by the officer commanding the vessel on which such person is enrolled.”.



**84.** For article 838 of the Code there shall be substituted the following new article: Substitution of article 838 of the Code.

“Precautionary acts. 838. The court may, when any party makes an application before it which is served on the other party, give any order as may be required so as to prevent any damage or deterioration being caused to the things described in the precautionary act.”.

**85.** Article 838B of the Code shall be amended as follows: Amendment of article 838B of the Code.

(a) in the marginal note to article, for the words “until final determination” there shall be substituted the words “until the cause becomes *res judicata*”;

(b) the whole article shall be renumbered as sub-article (1) thereof and for the words “until the final determination of the cause” there shall be substituted the words “until the cause becomes *res judicata*.”; and

(c) immediately after sub-article (1) as renumbered, there shall be added the following new sub-article:

“(2) Notwithstanding the provisions of sub-article (1) of this article, precautionary warrants issued under article 830 (1) become executive warrants after that the cause becomes *res judicata* or when in accordance with article 166B such judicial letter constitutes an executive title, so however that:-

(a) in the case of a warrant issued under article 830 (1) (b) (c) and (d), the creditor shall file a note within twenty days in the acts of the same warrant and demand an extension or reduction of the effects of the warrant to an amount equivalent to the legal costs, interest and the difference in the principal amount due in terms of the judgement, and such note is to be served upon the debtor and such persons as may have any interest therein;

(b) in the case of a warrant issued under article 830 (1) (a), (e) and (f), the creditor shall file an application under the provisions of article 389 within twenty days from the judgement.”.

**86.** For article 843 of the Code there shall be substituted the following new article: Substitution of article 843 of the Code.

“Time within which to bring action.

843. (1) The applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of the warrant:

Provided that where the issue of the warrant is demanded by any spouse against the other spouse, and the spouse issuing the warrant has already filed an application to institute the cause before the court, the time limit herebefore mentioned shall commence running from such date when the application is upheld, provided that the warrant shall cease having its effect immediately upon the application being withdrawn or abandoned.

(2) If the applicant fails, without just cause, to bring such action, the effects of the warrant shall cease and he shall be liable for all damages and interest.”.

Substitution of article 845 of the Code.

87. For article 845 of the Code there shall be substituted the following new article:

“Applicability of articles 278, 279 and 282.

845. The provisions of articles 278, 279 and 282, shall apply to the execution of a warrant of description.”.

Substitution of article 846 of the Code.

88. For article 846 of the Code there shall be substituted the following new article:

“Warrant of seizure.

846. (1) The warrant of seizure of movable property shall, other than the details referred to in article 276, also contain an order to the Registrar to seize from the debtor such articles or article from the place therein indicated.

Official consignatory.

(2) When a demand is made for the removal of the seized articles the court shall appoint an official consignatory.

Applicability of articles 278 to 304, 842 to 844.

(3) The provisions of articles 278 to 304 and articles 842, 843 and 844, shall apply to warrants of seizure.”.

Amendment of article 847 of the Code.

89. Article 847 of the Code shall be amended as follows:

(a) for the words “without a previous judicial acknowledgment of the debt or claim:” there shall be substituted the words “without a previous judicial acknowledgment or rendering as an executive title of the debt or claim:”;

(b) in the proviso thereto, for the words “Provided that in the case of ships, other vessels, aircraft, perishable goods or other deteriorating assets,” there shall be substituted the words “Provided that in the case of perishable goods or other deteriorating assets,”; and

(c) in the said proviso, the words “plaintiff’s claim, the defence raised against such” shall be deleted.

**90.** In article 848 of the Code for the words from “unless, where the debt” to “such debt or claim.” there shall be substituted the words “unless the warrant is sued out accompanied by a demand that the credit or claim are judicially acknowledged and the debt or claim exceeds five hundred liri, or the demand for such warrant is for an article which, as stated, is property belonging to the person suing out the warrant.”.

Amendment of article 848 of the Code.

**91.** Immediately after article 848 in Book Third of the Code, there shall be added the following new sub-heading and the following new articles 848B and 848C:-

Addition of New Sub-title in Book Third of the Code and new articles 848B and 848C.

### “Sub Title III

#### OF THE WARRANT OF SEIZURE OF A COMMERCIAL GOING CONCERN

“Scope of warrant.

848B. (1) The effect of a precautionary warrant of seizure of a commercial going concern is to preserve the totality of the assets of the going concern, including licences and good-will, to order that same is not sold in part or in whole and are to be concurrently kept in business, provided that in any case the court shall not accept a demand for the issuing of a warrant if it is satisfied that there are other means to safeguard the amount due.

(2) The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to protect the rights belonging to applicant who, *prima facie*, appears to have such rights.

(3) The provisions of articles 840, 842, 844 and 848 shall apply to this warrant.

Court to appoint administrator and expert.

848C. (1) When a demand is made for the issue of this warrant the court shall, after hearing the parties, appoint an administrator and in order to effect such action it shall consider whether to allow the going concern to continue being

run by the debtor or by such persons as may be entrusted by the debtor with the assistance of the administrator, or that an administrator is appointed who in the opinion of the court has the necessary qualifications to run and administer the going concern on his own.

(2) The court shall appoint an expert under article 89 and establish a short and peremptory time within which there shall be filed an itemized list, to be confirmed on oath, of the value of the whole property forming the capital of the commercial going concern.

(3) The appointed administrator shall be responsible for the commercial going concern and shall have the right to sell and administer the ordinary running of the concern provided that for any decision of an extraordinary nature he shall file a demand in court for the granting of such authorisation.

(4) The administrator may, if he is of the opinion that the going concern will incur a market loss in its value, demand the court either to authorise him to sell the whole going concern or any part thereof.

(5) The administrator appointed under this article shall have the right to such payment as the court may, in its discretion, be of the opinion that is due to him in consideration of the value of the going concern and of the activity undertaken with regard to the running of the business.”.

Substitution of sub-heading in the Code.

**92.** For the words of the sub-heading “Sub-title III” occurring in Title VI of Book Third immediately before article 849 of the Code, there shall be substituted the sub-heading “Sub-title IV”.

Amendment of article 849 of the Code.

**93.** For the proviso to article 849 of the Code there shall be substituted the following:

“Provided that where the garnishee is a bank, a precautionary garnishee order shall not apply to money payable by the bank in execution of any guarantee given by the bank that it will effect payment on the demand of the person in whose favour the banker’s guarantee is made out; and in any such case, notwithstanding the garnishee order, the bank shall have power to pay out or otherwise dispose of any such money as free from any garnishee order and shall also be entitled to withdraw any such money from any court or other place, or from any person, into which, or with whom, it

may have been lodged or deposited, and it shall be the duty of the Registrar of such court or other person in possession or having control over such money to return it forthwith to the bank.”.

**94.** In sub-article (2) of article 851 of the Code for the words “in articles 831 and 832” there shall be substituted the words “in sub-article (2) of article 831”.

Amendment of article 851 of the Code.

**95.** For the sub-headings “Sub-title IV” and “Of the Warrant of Impediment of Departure” in Title VI of Book Third of the Code, there shall be substituted the following:

Substitution of sub-headings in Book Third of the Code.

### “Sub-title V

#### OF THE WARRANT OF EXECUTIVE ARREST OF AIRCRAFT OR SEA VESSELS”.

**96.** Articles 855 to 870 of the Code shall be deleted.

Deletion of articles 855 to 870 of the Code.

**97.** Immediately after new Sub-title V of the Code there shall be added the following new articles 855 to 863:-

Addition of new articles 855 to 863 to the Code.

“Warrant of arrest of aircraft and sea vessels.

**855.** A warrant of arrest of any aircraft or of any sea going vessels having a length exceeding ten metres may solely be issued to secure a debt or claims which could be frustrated by the departure of the said ship or aircraft and no other warrant may be issued against them unless it is a warrant of arrest, and as regards a sea vessel whether such vessel is at sea or at some other place.

Warrant to have effect both to seize and to attach the craft.

**856.** (1) The warrant of arrest shall have the effect to seize the aircraft or sea vessel, having a length exceeding ten metres, from the debtor and also to attach the same in the hands of the authority where the property is, and also to order that the same shall not release such aircraft or sea vessel or allow the debtor to divest himself in any way from the same in whole or in part or to give or surrender to any person any rights on the same.

(2) The warrant is executed for all effects of the law when notice is served on the executive officer of the authority who has in his hands the aircraft or the sea vessel.

The authority in charge of the craft to be considered official consignatory. 857. (1) The authority who has in its hands or under its control the aircraft or the sea going vessel against which such warrant of arrest has been issued shall, for all purposes of the law, be considered to be the official consignatory according to the provisions of articles 286, 287, 288, 289 and 290.

(2) The said authority shall take all necessary measures to display the court order for the general attention of third parties.

Warrant to be sued out on appropriate form. 858. A warrant of arrest shall be sued out by means of an application on a form to be prescribed by the Minister responsible for justice, on which form there shall be included a court decree by virtue of which the necessary orders are given and issued.

Warrant available where claim is not less than Lm 5,000. 859. A warrant may be demanded and obtained in security of a debt or any other claim whatsoever amounting to not less than five thousand liri.

Statement to be contained in application. 860. The application for the issue of a warrant shall, under pain of nullity, state in a clear manner all particulars, the name of the authority in whose hands the craft is and the place where the craft is to be found.

Penalty in case of malicious demand for warrant. 861. Where it is found that the warrant was obtained upon a demand maliciously made, the penalty in terms of sub-article (8) of article 836 shall not be less than five thousand liri.

Security for payment of penalty, etc. 862. It shall be lawful for the court, on good cause being shown, upon the demand by application by a person whose ship, vessel or aircraft is detained, by the master of the ship or vessel, by the captain of the aircraft or by any person being in charge thereof or by its agent, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security, in an amount not less than five thousand liri, for the payment of the penalty, damages and interest and, in default, to rescind the warrant.

Ships or vessels not subject to the issue of a warrant. 863. (1) No warrant shall be issued against any ship or vessel wholly chartered in the service of the Government of Malta or employed in any postal service either by the Government of Malta or by any other government.

(2) No warrant shall be issued against any ship of war.

(3) A warrant of arrest of a ship or vessel shall, on an application by the Malta Maritime Authority, be rescinded if the court is satisfied that because of the nature of its cargo or of its length or draught or other circumstances concerning safety, navigation or port operation, it is advisable that the ship or vessel should leave port without delay.”.

**98.** For the sub-headings “Sub-title V” and “Of the Warrant of Prohibitory Injunction” in Title VI of Book Third of the Code, there shall be substituted the following:

Substitution of Sub-title in Book Third of the Code.

### “Sub-title VI

#### OF THE WARRANT OF PROHIBITORY INJUNCTION”.

**99.** For articles 873 to 876 of the Code, there shall be substituted the following new articles:-

Substitution of articles 873 to 876 of the Code.

“Object of warrant.

873. (1) The object of a warrant of prohibitory injunction is to restrain a person from doing anything whatsoever which might be prejudicial to the person suing out the warrant.

Inquiry of court.

(2) The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant, and that *prima facie* such person appears to possess such right.

(3) The court shall not issue any such warrant against the Government or authority established by the Constitution or any person holding a public office in his official capacity unless the authority or person against whom the warrant is demanded confirms in open court that the thing sought to be restrained is in fact intended to be done and the court is satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the public doing the thing sought to be restrained.

(4) If on an application, it is proved to the satisfaction of the court that subsequent to the issue of the

warrant of prohibitory injunction the person restrained has acted directly or indirectly in breach of the court's order, the court shall, without prejudice to any other action competent to it at law, at a request of applicant, condemn the person against whom the warrant had been issued to remedy what was committed in breach of its order and to authorise in default the applicant to carry out such remedial works as the court may direct at the expense of the person restrained.

Warrant to  
secure  
debt or claim.

874. (1) A warrant of prohibitory injunction may also be demanded by a creditor to secure a debt or any other claim amounting to not less than five thousand liri. The object of such a warrant is to restrain the debtor from selling, alienating, transferring or disposing *inter vivos* such property as may be indicated in the application by onerous or gratuitous title or in any manner creates a burthen or real and, or personal rights; provided that such a warrant shall not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to a court order, or over bank guarantees and letters of credit.

(2) Where a warrant prohibits the sale, alienation, transfer or other disposal of immovable property the application shall contain all the particulars relating to the person against whom it is directed that are required by law in respect of the registration of a transfer of immovable property by such person in the Public Registry. Where the warrant refers to specific immovables, the application shall describe them in the manner provided for in the Public Registry Act, in respect of notes of enrolment.

(3) The warrant referred to in sub-article (2) shall upon its issue and at the expense of the applicant, be served by the Registrar within twenty-four hours on the Director of the Public Registry and the Land Registrar or on such authority as may be nominated by the Minister responsible for justice, who shall forthwith register the same in books kept for the purpose. Such books shall be indexed and accessible to the public. It shall also be served upon any person indicated by the applicant.

(4) Upon registration of the warrant referred to in sub-article (2) by the Director of the Public Registry, any future sale, alienation, transfer or disposal of immovable property to which the warrant refers shall be void and to no effect.



(5) Without prejudice to the provisions of article 836, the warrant referred to in sub-article (2) shall unless previously revoked or otherwise ceases to be in force, continue to have effect for a period of one year from the date of final judgment in favour of the creditor in his action for the recovery of the debt or claim referred to in sub-article (1).

(6) Where a warrant prohibits the sale or transfer of the shares in a commercial partnership, notice shall also be served on the Registrar of Companies and from the date of such service any transfer of shares shall be null.

Execution of  
warrant.

875. (1) The application shall be served on the party against whom it is issued who shall file a reply thereto within ten days:

Provided that the court may, in urgent cases, reduce the said period in this sub-article. In default of opposition, the court may accede to the demand.

(2) The court may initially issue provisionally a warrant for a short period under such terms and conditions as it may deem necessary according to the case, and subsequently decide about the matter in a definitive manner.

(3) The court shall, after appointing the application for hearing, decide on its merits after receiving any evidence it deems fit, within the shortest time possible but not any later than one month from the day when the warrant had been filed and confirmed on oath.

Applicability  
of  
certain  
articles.

876. The provisions of articles 829 and 844 shall apply to the warrant of prohibitory injunction.”.

**100.** The Court and Tribunals Procedures Act, 2002 shall be amended as follows:

Amendment of Act  
XXXI of 2002.

(a) paragraph (a) of article 6, articles 20 to 23, 54, 56, 61, 63, 65 to 68, 71, 78 to 83, 87, 164, 180, 181, 187 and 192 shall be deleted;

(b) articles 90, 93 to 129, 137 to 148, 165 to 171 and 173 to 184 shall be deleted.

General amendment  
of articles  
291, 294, 297, 299,  
301, 303, 312  
and 345 of the  
Code.

**101.** In the English text of articles 291, 294, 297, 299, 301, 303, 312 and 345 of the Code, for the word “consignatory” wherever it appears there shall be substituted the word “consignee”.

Transitory  
provision.

**102.** (1) The effects of this law apply to new proceedings which shall come into force by virtue of the same law. Precautionary and executive warrants which have been commenced and which are still pending shall remain to be valid and there shall apply in their regard the law as herebefore applicable.

(2) The provisions of this Part shall have effect on new proceedings to be filed. Precautionary and executive warrants which have been commenced and which are still pending shall remain to be valid.

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## Objects and Reasons

The main object of the Bill is to reform the operative way of executive and precautionary warrants in Court and to introduce novel methods and measures in order to have the execution of judgments and the protection of the rights of the parties in the judicial process better protected and so as to introduce simpler instruments and means which are more efficient and efficacious.