

I assent.

(L.S.)

GEORGE ABELA
President

29th July, 2011

ACT No. XIV of 2011

AN ACT to amend the Civil Code, Cap. 16.

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

1. (1) The short title of this Act is the Civil Code (Amendment) Act, 2011, and this Act shall be read and construed as one with the Civil Code, hereinafter referred to as "the Code":

Short title and commencement.

Cap. 16.

Provided that the provisions of article 11 and of article 12 of this Act shall not be included in the Code but shall continue to be in force as part of this Act provided however that they shall also be reproduced insofar as article 11 is concerned in a footnote at the end of Sub-Title IV of Title I of Book First of the Civil Code entitled 'Of Divorce' and insofar as article 12 is concerned in a footnote with reference to article 66B of the Code.

A 866

Amendment of
article 3B of the
Code.

(2) This Act shall come into force on 1st October 2011.

2. Article 3B of the Code shall be amended as follows:

(a) the whole article 3B shall be re-numbered as subarticle (1) thereof;

(b) immediately after sub-article (1) thereof as re-numbered, there shall be added the following new sub-articles:

"(2) The obligation of the parents to provide maintenance according to sub-article (1) also includes the obligation to continue to provide adequate maintenance to children, according to their means, and where it is not reasonably possible for the children, or any of them, to maintain themselves adequately, who:

(a) are students who are participating in full-time education, training or learning and are under the age of twenty-three; or

(b) have a disability, as defined in the Equal Opportunities (Persons with Disability) Act, whether such disability is physical or mental.

Cap. 413.

(3) The obligations provided in sub-article (1) also bind a person acting *in loco parentis* with regard to another person's child, by reason of the marriage of such person to a parent of that child, where the other parent of that child, shall have, at any time before or during the marriage, died or was declared as an absentee according to Title VII of Book First of this Code, or is unknown:

Provided that the provisions of this sub-article shall be without prejudice to the obligations of the natural parents of the child and shall in any case be without prejudice to the provisions of article 149."

Amendment of
article 54 of the
Code.

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

(a) sub-article (2) thereof shall be substituted by the following:

"(2) The amount of maintenance referred to in sub-article (1), and the maintenance due to children in the event of separation, shall be determined having regard to the means of the spouses, their ability to work and their needs, and regard shall also be had to all the other circumstances of the spouses and of the children, including the following:

(a) the needs of the children, after considering all their circumstances;

Cap. 413.

(b) any disability, as defined in the Equal Opportunities (Persons with Disability) Act, whether such disability is physical or mental;

(c) circumstances of illness which are of such seriousness and gravity as to compromise the ability of the spouses or of the children to maintain themselves;

(d) whether the ability of the party to whom maintenance is due to have earnings of whatever nature was diminished by reason of that party having, during the marriage, taken care of the household, the other party and the upbringing of the children of the marriage;

Cap. 318.

(e) every income or benefit which the spouses, or any of them, receive according to law, other than social assistance that is not contributory which is paid to them under the Social Security Act:

Cap. 318.

Provided that for the purposes of this paragraph the disability pension payable in terms of article 27 of the Social Security Act shall be taken into consideration;

(f) the accommodation requirements of the spouses and of the children;

(g) the amount which would have been due to each of the parties as a benefit, including, but not limited to, a benefit under a pension scheme, which by reason of the separation, that party will forfeit the opportunity or possibility of acquiring.";

(b) sub-articles (3), (4), (5), (6) and (7) thereof shall be renumbered as sub-articles (5), (6), (7), (8) and (9) respectively and immediately following sub-article (2) as amended, there shall be added the following:

Cap. 12. "(3) The provisions of article 381(2) of the Code of Organisation and Civil Procedure shall apply *mutatis mutandis* provided that the said article shall be construed to mean that, even where no demand is made by a party to whom maintenance is due, either for that party or for the children, for the application of the provisions of that article, the court may apply the said article out of its own motion.

(4) In granting maintenance, the court may also provide for the manner in which the same may increase from time to time."; and

(c) in sub-articles (6) and (8) thereof as renumbered, for the words "in sub-article (3)" there shall be substituted the words "in sub-article (5)".

Amendment of
article 55 of the
Code.

4. Article 55 shall be amended as follows:

(a) sub-articles (1), (2), and (3) thereof shall be renumbered as sub-articles (6), (7) and (8) respectively and immediately before sub-article (6) thereof as renumbered, there shall be added the following new sub-articles:

"(1) The court may, at any time during the cause for separation, upon the demand of any of the spouses, order the cessation of the community of acquests or of the community of residue under separate administration existing between the spouses.

(2) The order for the cessation of the community as provided in sub-article (1) shall be given by means of a judgement from which every party shall have a right of appeal, without requiring permission from the court for

this purpose.

(3) The order of cessation shall have effect between the spouses from the date of the judgement on appeal or, if no appeal is entered, from the date when the time allowed for the appeal lapses, and it shall remain valid even if the cause for separation is discontinued.

(4) Prior to ordering the cessation of the community as provided in this article, the court shall consider whether any of the parties shall suffer a disproportionate prejudice by reason of the cessation of the community before the judgement of separation.

(5) The order of cessation under this article shall, at the expense of the party who demanded such cessation, be notified to the Director of Public Registry and it shall have effect as if the cessation of the community of acquests or of the community of residue under separate administration were made by public deed.";

(b) for sub-article (6) thereof as renumbered, there shall be substituted the following:

"(6) Unless the court, in its discretion, upon the demand of one of the parties, shall have ordered the cessation of the community of acquests or of the community of residue under separate administration existing between the parties at the time of commencement of the cause for separation, on separation being pronounced, the court shall direct that the community of acquests or the community of residue under separate administration shall cease as from the day on which the judgement becomes *res judicata*."; and

(c) in sub-article (8) thereof as renumbered, for the words "of sub-article (2)", there shall be substituted the words "of sub-article (7)".

5. For sub-articles (1) and (2) of article 55A of the Code, there shall be substituted the following:

Amendment of
article 55A of
the Code.

"(1) In pronouncing the judgement of separation, the court shall on the demand of either of the parties, order, according to circumstances:

(a) that any one of the parties shall be entitled to reside in the matrimonial home, to the exclusion of the

A 870

other party, for the period and under those conditions as it considers appropriate; or

(b) that the matrimonial home is to be sold, where it is satisfied that the parties and their children shall have adequate alternative accommodation, and that the proceeds of the sale shall be assigned to the parties as it considers appropriate; or

(c) where the matrimonial home belongs to both parties, to assign the matrimonial home to any one of the parties, which party shall compensate the other party for the financial loss suffered:

Provided that, in every case, the court shall consider the following:

(a) the best interest of the minor children, including the impact that there may be on the minor children if the court were to grant a demand made according to this article;

(b) the welfare of the parties and of the children; and

(c) whether the parties have, or, whether their means and abilities permit them to have, another place where to reside.

(2) The court may, upon a demand of either party, vary a decision taken by it under paragraph (a) of sub-article (1), where there is a substantial change in circumstances."

Amendment of article 56 of the Code.

6. In sub-article (2) of article 56 of the Code, for the words "in the custody of third parties or in alternative forms of care" there shall be substituted the words "in the custody of persons *in loco parentis*, of third parties, or in alternative forms of care".

Addition of article 56A in the Code.

7. Immediately after article 56 of the Code, there shall be added the following new article:

"Exclusion of custody.

56A. The court may, for grave reasons, at any time during the cause for separation or when the parties are separated, upon the demand of one of the parties, declare that the other party is not fit to have the custody of the minor children of the parties, and where the court issues such a declaration, the party so declared, upon the death of the other party, shall not be entitled to assume the custody of the minor children without the authorisation of the court."

8. Article 57 of the Code shall be amended as follows:

Amendment of article 57 of the Code.

(a) in the marginal note thereof, for the words "Right of father and mother", there shall be substituted the words "Right of spouses";

(b) in sub-article (1) thereof, for the words "the children are entrusted, the father and mother shall maintain", there shall be substituted the words "the minor children are entrusted, the spouses shall maintain";

(c) in sub-article (2) thereof, for the words "in which the father and mother shall have access to the children", there shall be substituted the words "in which the spouses shall have access to the children"; and

(d) in sub-article (3) thereof, for the words "to forbid such access if it may be detrimental to the welfare of the children", there shall be substituted the words "to forbid such access to their minor children if it may be detrimental to the welfare of such minors".

9. Immediately after Sub-Title III of Title I of Book First of the Civil Code, there shall be added the following new sub-title:

Addition of new Sub-Title to the Code.

"Sub-title IV
OF DIVORCE

Divorce.

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.

A 872

(2) The divorce or dissolution of the marriage shall be granted by virtue of a judgement of the competent civil court, upon the demand of one or the other of the spouses, or by a decree of the same court where the spouses shall have agreed that their marriage should be dissolved.

(3) All demands for divorce shall be brought before the appropriate section of the civil court as established by regulations made by the Minister responsible for justice, and the provisions of article 37 shall apply *mutatis mutandis*. The decrees and judgements of divorce shall be pronounced in open court.

(4) The court shall, in the decree or judgement of divorce, order the Registrar of Courts to notify the divorce of the parties to the Director of Public Registry within the period allowed for this purpose by the same court, so that the same shall be registered in the Public Registry.

Conditions
required for
divorce.

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

(a) on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least four years out of the immediately preceding five years, or at least four years have lapsed from the date of legal separation; and

(b) there is no reasonable prospect of reconciliation between the spouses; and

(c) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:

Provided that the spouses may, at any time, renounce their right to maintenance:

Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law."

Pronouncement of divorce.

66C. After the court considers the requirements of article 66B to have been satisfied, the court shall hear and decide on the demands made by the parties as provided in this Sub-Title and it shall proceed to pronounce the divorce of the parties.

Divorce granted upon the application of one of the spouses.

66D. (1) Without prejudice to the other provisions of this Sub-Title, where an application for divorce is made by one of the spouses, it shall not be necessary for the spouse making the demand to impute to the other party any fault leading to the making of such demand.

(2) Where the spouses are already separated by means of a contract or a court judgement, the spouse making the demand for divorce may only demand the dissolution of the marriage. The other party may contest the demand either by proving that the time period provided in article 66B(a) has not yet lapsed or by proving that the spouse demanding the divorce has not paid maintenance that was due as ordered by the court or agreed to in the separation contract and that, if the demand for divorce were to be accepted, it would be more difficult for the said other party to obtain the payment of maintenance. The court shall not grant the demand for divorce where any of the said defences are shown to be valid.

(3) Where the spouses are not separated by means of a contract or a court judgement, the spouse making the demand for divorce may, together with the same demand, make all those demands that are permissible in a cause for separation in accordance with Sub-Title III of this Title. The court shall hear and determine these demands as provided in the said provisions *mutatis mutandis*. The other party may, in addition to the defences mentioned in previous sub-article, put forward all those defences which that party would have been entitled to make in a cause for separation.

(4) Where the spouses are not separated by means of a contract or a court judgement, the Court shall have *mutatis mutandis* all the powers granted to it under Sub-Title III of this Title with regard to orders which it is entitled to give *pendente lite*.

(5) Notwithstanding the other provisions of this article and only where the community of acquests or the community of residue under separate administration shall have ceased, the parties shall have a right, in any case, if they both agree, to divorce without liquidating the assets which they hold in common.

Consequences of
fault of spouse.

66E. Without prejudice to the other provisions of this Sub-Title, where the court, on the demand of one of the parties, finds the other party responsible for causing the breakdown of the marriage for the reasons provided in articles 38, 40 and 41, the court may apply *mutatis mutandis* the provisions of article 48 against that party.

Conversion of
separation
proceedings into
divorce
proceedings.

66F. (1) Each party in a cause for separation may, at any time during the cause, but not after the cause has been adjourned for judgement, demand, by means of an application, that the demand for separation made in that cause be instead considered as a demand for the pronouncement of divorce. When such a claim is made, the court shall hear the parties in order to verify that the conditions stipulated in article 66B for the filing of a demand for divorce are satisfied. The court shall decide upon the said claim in a judgement given in open court which shall not be subject to appeal except together with the final judgement.

(2) Any witnesses declared and documents presented with the cause for separation shall apply *mutatis mutandis* when the said cause is converted into divorce proceedings. This without prejudice to the possibility that either party may produce further documents and witnesses during the divorce proceedings which are related to the demand for divorce.

(3) Where neither party elects to proceed as provided in sub-article (1) and where a demand for separation has already been made in accordance with Sub-Title III of this Title and at least one of the parties, after the making of that demand, makes a demand for divorce, the demands for separation and for divorce shall, in any case, be heard and decided together by the same court in such a manner that the connection of causes shall be applied by the court without the necessity of any demand by the parties.

(4) Either party, upon making a demand for divorce, shall declare on oath whether either that party or the other party have already made a demand for separation under Sub-Title III of this Title.

Duties of applicant's advocate.

66G. (1) The advocate assisting the applicant shall, before commencing proceedings according to article 66B, where the spouses are not separated by means of a contract or a court judgement:

(a) discuss the possibility of reconciliation with the applicant and give the applicant the names and addresses of persons qualified to offer assistance in the process of reconciliation between spouses; and

(b) ensure that the applicant is aware of the option of personal separation as an alternative to divorce.

(2) The application for the commencement of divorce proceedings shall:

(a) where the spouses are not separated by means of a contract or a court judgement, be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1); or

(b) where the spouses are separated by means of a court judgement, be accompanied by a legal copy of the judgement of separation or, where the spouses are separated by means of a contract, be accompanied by a legal copy of the contract of consensual separation which shows that the applicant and the other party have been legally separated for at least four years:

Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the copy of the judgement of separation or of the contract of consensual separation, as the case may be, the advocate shall present these documents not later than, or during, the first sitting in the cause:

Provided further that, for purposes of this article, "the applicant" means a person who makes an application, who is preparing an application or who intends making an application to the court in order to obtain a divorce.

Duties of respondent's advocate.

66H. (1) The advocate assisting the respondent shall, without delay after receiving instructions from the respondent about the case, where the spouses are not separated by means of a contract or a court judgement, discuss the possibility of reconciliation with the respondent and give the respondent the names and addresses of persons qualified to offer assistance in the process of reconciliation between spouses.

(2) Where the spouses are not separated by means of a contract or a court judgement, the respondent's reply to the application for divorce shall be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1):

Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the advocate shall present that note not later than, or during, the first sitting in the cause.

Powers of the court.

66I. (1) Where a demand for divorce is made to the competent civil court by either of the spouses, or by both spouses after having agreed that their marriage is to be dissolved, and where the spouses are not separated by means of a contract or a court judgement, before granting leave to the spouses to proceed for divorce, the court shall summon the parties to appear before a mediator, either appointed by it or with the mutual consent of the parties, and this for the purpose of attempting reconciliation between the spouses, and where that reconciliation is not achieved, and where the spouses have not already agreed on the terms of the divorce, for the purpose of enabling the parties to conclude the divorce on the basis of an agreement. The said agreement shall be made on some or all or of the following terms:

A 878

(a) the care and the custody of the children;

(b) the access of the two parties to the children;

(c) the maintenance of the spouses or of one of them and of each child;

(d) residence in the matrimonial home;

(e) the division of the community of acquests or the community of residue under separate administration.

(2) Where a demand for divorce is made to the competent civil court by either of the spouses, or by both spouses after having agreed that their marriage is to be dissolved, also where the spouses are separated by means of a contract or a court judgement, the court may, where it considers it necessary to do so, either on its own initiative or upon the request of the mediator or of one of the spouses:

(a) appoint a children's advocate to represent the interests of the minor children of the parties, or of any of them; and

(b) hear the minor children of the parties, or any of them, where it considers it to be in their best interest to do so:

Provided that in any divorce proceedings before the competent civil court as referred to in this article, the court may order the parties to present information about the payment of children's maintenance.

(3) The court may, in the judgement accepting the demand for divorce, and upon a demand of that party to whom, during the hearing of the cause, maintenance was due for the party or for the children, from the other party, order that the payment of maintenance from the other party be safeguarded by means of an appropriate and reasonable guarantee, in accordance with the circumstances of the parties. That guarantee shall not be of an amount exceeding the amount of maintenance for five years. The court shall grant the said order only where, from the evidence in the cause, it results that during the hearing or prior to the commencement of the cause, the party from whom the guarantee is demanded was in default in its obligation to pay maintenance, or where there are serious objective circumstances which demonstrate the necessity of the said guarantee. A demand as provided for in this sub-article may also be made at any time after the said judgement, when maintenance is due.

Powers of the Minister.

66J. (1) The Minister may make regulations establishing a register of persons qualified to assist the parties involved in the process of reconciliation.

(2) The Minister may make regulations to establish the procedure related to the mediation between the parties as provided in this Sub-Title.

Inadmissible evidence.

66K. Any verbal or written communication made between the spouses or made by a third party in the course of an attempt at reconciliation or for the purpose of an agreement being reached between the spouses on some or all the terms mentioned in article 66I(1), or any reference thereto, shall not be admissible as evidence during divorce proceedings.

Effects of dissolution of marriage.

66L. (1) When the competent civil court pronounces a divorce between the spouses, they shall have the right to remarry.

(2) The pronouncement of divorce shall have no effect upon the rights and obligations of the parties as parents in respect of their children or upon any agreement reached between the parties in respect of the custody of their children, without prejudice to the provisions of article 56A.

(3) The pronouncement of divorce shall have no effect upon the rights of third parties arising out of any agreement or obligation already concluded, or still to be concluded, by the divorced parties.

(4) The pronouncement of divorce as provided in sub-article (1) has the following effects:

(a) the obligation of cohabitation of the parties shall, for all civil effects, cease;

(b) article 62 shall apply *mutatis mutandis*; and

(c) the rights of the spouses to the succession of each other shall cease with effect from the day when the decree or judgement of divorce becomes *res judicata*.

(5) The provisions of articles 54(7), 55A and 56A shall apply *mutatis mutandis* where the court considers it necessary to apply them after having considered the reasons brought before it.

(6) Without prejudice to the provisions of article 66D(5), sub-articles (4) to (10) of article 1332 and articles 1334, 1335, 1336, 1337 and 1340 shall apply *mutatis mutandis* to the partition of property between the spouses.

The effects of remarriage.

66M. When the party receiving maintenance, whether by virtue of an order of the court or by virtue of a contract of separation, remarries or enters into a personal relationship which brings about an obligation of maintenance by a third party in favour of that party, the same party shall forfeit the right to receive maintenance payable in respect of that party by the other party in the divorce, with effect from the date of the remarriage or of the commencement of the aforesaid other relationship. This article shall also apply in the case where the parties had agreed in a contract of separation that the agreement regarding maintenance of the parties, or of either of them, shall continue to have effect and cannot be altered in the event of remarriage or of another relationship as aforesaid of the party receiving maintenance:

Provided that an order for maintenance that has been made or authorised by the court to be paid by means of a lump sum in favour of the party who remarries or who enters into another relationship as provided in this article shall retain its effect notwithstanding that the party in whose favour it is made remarries or enters into another relationship as aforesaid.

Jurisdiction of the court regarding divorce.

66N. (1) Notwithstanding the provisions of any other law, the courts of civil jurisdiction shall have jurisdiction to hear and determine a demand for divorce only if at least one of the following requirements is satisfied:

(a) at least one of the spouses was domiciled in Malta on the date of the filing of the demand for divorce before the competent civil court;

(b) at least one of the spouses was ordinarily resident in Malta for a period of one year immediately preceding the filing of the demand for divorce.

A 882

(2) Notwithstanding the provisions of sub-article (1), where a cause for personal separation in accordance with Sub-Title III of this Title is pending before a court of civil jurisdiction in Malta, including a cause being heard at appeal stage, and the court has jurisdiction to hear and determine that cause, the courts of civil jurisdiction in Malta shall also have jurisdiction to hear and determine a demand for divorce between the same parties."

Amendment of article 295 of the Code.

10. In sub-article (1) of article 295 of the Code, for the words "in the margin." there shall be substituted the words "in the margin:" and immediately thereafter there shall be added the following proviso:

"Provided that where a judgement or a decree of divorce are given by the competent civil court, these shall be registered in accordance with article 66A(3)."

Adaptation of laws.

11. (1) There shall be a Committee to be known as "the Committee for the Adaptation of Laws due to the introduction of Divorce".

(2) The Committee shall consist of a representative of the Minister responsible for Justice, who shall be the Chairperson, and of two other members one of whom shall be a representative of the Minister responsible for Social Policy and the other shall be a representative of the Minister responsible for Finance.

(3) The Committee shall have the function of advising the Prime Minister on any amendments that have to be made to any law or regulation which, directly or indirectly, refers to personal separation between the spouses for the purpose of adapting the same to the introduction of divorce.

(4) The Committee shall until the 29th February 2012 make a report of its recommendations to the Prime Minister.

(5) Without prejudice to the powers of the Parliament of Malta, the Prime Minister may, by means of an order made until the 30th June 2012 make any amendments to any law or regulation as indicated in sub-article (3) as may appear to him to be necessary or expedient and those amendments may be given retroactive effect as from the 1st October 2011, saving any acquired rights.

(6) Any order made in accordance with the provisions of sub-article (5) shall as soon as may be after it is made, be laid on the Table

of the House and shall have effect upon the lapse of the period of twenty-eight days after it is so laid, unless the House within that period resolves that the order be annulled or amended, whereupon that order shall have no effect or shall have effect as amended, as the case may be.

(7) In reckoning for the purposes of sub-article (6) any period of twenty-eight days therein referred to, no account shall be taken of any time during which the House is not in session or during which it is adjourned for more than seven days.

12. A bill for an Act of Parliament amending, deleting or substituting the provisions of paragraphs (a), (b) and (c) of article 66B as provided in clause 9 of this Act shall not be presented to the President for his assent unless, not less than three nor more than six months after its passage through the House, it has been submitted to the electors qualified to vote for the election of members of the House of Representatives and the majority of electors voting have approved the bill:

Special procedure to amend, repeal or substitute paragraphs (a), (b) and (c) of article 66B in clause 9 of this Act.

Provided that it shall not be required to submit the bill to the electors qualified to vote for the election of members of the House of Representatives after its passage through the House as provided in this article, if not less than three months and not more than six months after the publication of the Bill in the Government Gazette after the approval of its First Reading in the House of Representatives, the bill was submitted to the electors qualified to vote for the election of members of the House of Representatives and the majority of electors voting have approved the bill.

Passed by the House of Representatives at Sitting No. 386 of the 25th July, 2011.

MICHAEL FRENDU

Speaker

PAULINE ABELA
Clerk to the House of Representatives