

**ABBOZZ TA' LIĠI**  
**msejjah**

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

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

**1.** It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2011 li jemenda l-Kodiċi Ċivili (Emenda Nru. 2), u dan l-Att għandu jinqara u jiftiehem ħaġa waħda mal-Kodiċi Ċivili, hawn iżjed 'il quddiem imsejjah "il-Kodiċi". Titolu fil-qosor.

**2.** Minnufih wara s-subartikolu (2) tal-artikolu 54 għandu jizdied il-kliem ", inkluż dawk imsemmija f'artikolu 70 (7) paragrafu (a) sa (g) u f'artikolu 70 (8) paragrafu (a) sa (g) ta' dan il-Kodiċi.". Emenda tal-artikolu 54 tal-Kodiċi.

**3.** Fil-bidu tas-subartikolu (1) tal-artikolu 55 għandhom jizdiedu l-kliem "Sakemm il-Qorti, fid-diskrezzjoni tagħha, fuq it-talba ta' wiehed mill-partijiet, ma tkunx ordnat il-waqfien tal-Komunjoni ta' l-Akkwisti jew tal-Komunjoni ta' Residwu Taħt Amministrazzjoni Separata li teżisti bejn il-partijiet, fil-bidu tal-kawża jew f'kull waqt ieħor ta' l-istess kawża,". Emenda tal-artikolu 55 tal-Kodiċi.

**4.** L-artikolu 57 għandu jiġi emendat kif ġej:

(a) F'subartikolu (1) tiegħu, il-kliem "t-tfal, il-missier u l-omm" għandhom jiġu sostitwiti bil-kliem "l-persuni dipendenti fuq il-familja, il-miżżewġin". Emenda tal-artikolu 57 tal-Kodiċi.

(b) Minnufih wara subartikolu (1) tiegħu, għandu jidhol il-proviso li ġej:

"Għall-finijiet ta' dan l-artikolu, "persuni dipendenti fuq il-familja" għandha l-istess tifsira mogħtija f'artikolu 66B(1) ta' dan il-Kodiċi."

(ċ) Fis-subartikolu (2) tiegħu, il-kliem "it-tfal" għandhom jiġu sostitwiti bil-kliem "lill-persuni dipendenti fuq il-familja li jkunu għandhom minorenni".

(d) Fis-subartikolu (3) tiegħu, il-kliem "it-tfal" għandhom jiġu sostitwiti bil-kliem "lill-persuni dipendenti fuq il-familja" u l-kliem "tat-tfal" għandhom jiġu sostitwiti bil-kliem "ta' dawn l-istess persuni dipendenti fuq il-familja."

**5.** Wara Subtitolu III - Fuq il-Firda Personali għandu jiżdied subtitolu ġdid imsejjaħ 'Subtitolu IV - Fuq id-Divorzju' taħt liema subtitolu għandom jiżdiedu it-titoli u l-artikoli ġodda kif ġejj:

#### "Subtitolu IV

#### FUQ ID-DIVORZJU

Id-divorzju.

66A. (1) Id-divorzju jingħata bis-setgħa ta' sentenza tal-qorti ċivili kompetenti, jew permezz ta' att pubbliku awtorizzat b'digriet tal-qorti ċivili kompetenti, liema digriet għandu jkollu l-istess effett ta' sentenza tal-qorti kompetenti:

Izda f'dan l-aħħar każ, il-miżżewġin għandhom jipprezentaw rikors kongunt, flimkien mal-ftehim milhuq bejniethom għall-awtorizzazzjoni tal-qorti kompetenti, liema qorti għandha tinkorpora dan il-ftehim fid-digriet tagħha.

(2) Il-kawzi kollha għad-divorzju għandhom jingiebu quddiem is-sezzjoni xierqa tal-Qorti Ċivili kif jiġi stabbilit b'regolamenti magħmulin mill-Ministru responsabbli għall-gustizzja, u f'dawn il-kawzi artikolu 37 ta' subtitolu III ta' dan it-Titolu japplikaw *mutatis mutandis*.

Kondizzjonijiet meħtieġa għad-divorzju.

66B. Bla ħsara għad-dispożizzjonijiet li ġejjin ta' dan l-artikolu, id-divorzju ma jistax isir ħlief b'talba ta' waħda mill-persuni miżżewġa flimkien kontra l-oħra, u sakemm il-qorti tkun sodisfatta li:

(a) Fid-data ta' teħid ta' azzjoni quddiem il-qorti, il-miżżewġin qed jgħixu mhux flimkien għal perjodu ta', jew perjodi jammontaw għal, mill-inqas erba' snin matul il-ħames snin preċedenti, jew ikunu għaddew mill-inqas erba' snin mid-data tas-separazzjoni legali;

(b) Ma hemm l-ebda prospett raġonevoli għal rikonċiljazzjoni bejn il-miżżewġin; u

(ċ) Il-miżżewġin u kull persuna dipendenti fuq il-familja qed jirċievu manteniment adegwat, skond iċ-ċirkostanzi partikolari tagħhom, kif hemm fl-artikolu 66D(4) ta' din il-Kodiċi.:

Iżda dan l-artikolu m'għandux jinftiehem li l-miżżewġin ma jistgħux jagħzlu li jwaqqfu d-dritt tagħhom għall-manteniment.

Iżda wkoll it-talba għad-divorzju ibbażata fuq is-separazzjoni legali tal-miżżewġin minn liema data jkunu għaddew mill-inqas erba' snin, m'għandhiex topera b'tali mod li tvarja jew timmodifika is-sentenza, digriet jew att pubbliku tas-separazzjoni personali bejn il-partijiet, u f'dan il-każ dak kollu li jingħad dwar il-manteniment tal-miżżewġin fl-istess sentenza, digriet jew att pubbliku tas-separazzjoni personali għandu jiġi meqjus bħala "manteniment adegwat" mingħajr riferenza għal artikolu ieħor f'din il-Kodiċi.

Iżda wkoll "persuni dipendenti fuq il-familja", b'rigward għal wieħed mill-miżżewġin, jew għall-miżżewġin, għandha tfigher kull tifel -

(i) taż-żewġ miżżewġin jew addottat miż-żewġ miżżewġin jew ma' min iż-żewġ miżżewġin huma *loco parentis*, jew

(ii) ta' wieħed mill-miżżewġin jew addottat minn wieħed mill-miżżewġin, jew ma' min wieħed mill-miżżewġin huwa *loco parentis*, u l-parti l-oħra tqis lit-tifel bħala membru tal-familja minkejja li taf li mhijiex ġenitur tat-tifel,

li huwa taht it-18-il sena, jew jekk it-tifel huwa ta' eta` magġuri -

(iii) qiegħed jew ser ikun qiegħed, jekk tinħareġ ordni skond din il-Kodiċi tipprowdi għall-manteniment tat-tifel, jirċievi edukazzjoni *full time*, jew tagħlim f'universita`, kulleġġ, skola jew dar ta' edukazzjoni, u huwa taht l-eta` ta' 23 sena, jew

(iv) għandu diżabilta` mentali jew fiżika u mhux raġunevolment possibbli li t-tifel imantni lill-nnifsu;

Għotja ta' digriet ta' divorzju.

66Ċ. Wara li l-qorti tkun sodisfatta li jkun għew osservati d-disposizzjonijiet kollha ta' artikolu 66B subartikolu (1), din l-istess qorti għandha tagħti d-digriet tad-divorzju għal dak iż-żwieġ, jew tawtorizza l-pubblikazzjoni għall-att ta' divorzju, kif ikun il-każ.

Id-divorzju mogħti fuq kondizzjonijiet neċessarji biss.

66D. (1) Mingħajr preġudizzju għall-artikoli l-oħra f'dan is-subartikolu, meta d-divorzju huwa mitlub u/jew mogħti biss fuq id-disposizzjonijiet ta' l-artikolu preċedenti u l-miżżewġin ma jkollhomx separazzjoni legali:

(a) Artikoli 46, 46A u 47 ta' subtitolu III tat-Titolu I ta' din il-Kodiċi għandhom japplikaw *mutatis mutandis* matul il-kawża;

(b) Il-qorti tista', fid-diskrezzjoni tagħha u wara li ssir talba minn mill-inqas wieħed mill-partijiet, tordna l-waqfien tal-komunjoni ta' l-akkwisti jew il-komunjoni ta' residwu taht amministrazzjoni separata tal-partijiet mill-ġurnata li fiha jkun għe preżentat ir-rikors, jew minn data oħra futura li l-qorti thoss xierqa wara li tkun ikkunsidrat iċ-ċirkostanzi tal-kawża.

(c) B'digriet tal-Qorti Ċivili kompetenti, jispiċċa, għall-effetti kollha ċivili, l-obbligu ta' bejniethom li jgħixu flimkien;

(d) Il-qorti tista' tagħti ordnijiet, kif jidhriha xieraq fl-aħjar interessi tat-tifel, rigward il-manteniment, il-ġid ta' l-ulied, il-kustodja u dritt ta' l-aċċess għal kull persuna dipendenti fuq il-familja, sew jekk ikun sar rikors u sew jekk le;

Iżda jekk il-qorti tagħti ordni favur digriet għad-divorzju, tista' tiddikjara wiehed mill-miżżewġin mhux tajjeb biex ikollu kustodja tal-persuni dipendenti fuq il-familja li m'humiex ta' eta` maġġuri u, jekk il-qorti tagħmel dan u l-parti għal min tapplika din l-ordni hija ġenitur tal-persuna dipendenti fuq il-familja li m'huwiex ta' eta` maġġuri, dak l-istess ġenitur ma jistax, mal-mewt tal-parti l-oħra, jieħu l-kustodja ta' dik il-persuna li mhix ta' eta` maġġuri.

(e) Id-drittijiet tal-miżżewġin għas-suċċessjoni ta' xulxin jieqfu japplikaw f'dik il-ġurnata meta s-sentenza tkun saret *res judicata*, minkejja d-disposizzjonijiet ta' kull liġi oħra; u

(f) Artikoli 62 u 62A ta' subtitolu III tat-titolu I ta' din il-Kodiċi għandhom japplikaw *mutatis mutandis*;

(2) Meta jiġi dikjarat id-divorzju, il-qorti fuq it-talba minn mill-inqas wiehed mill-partijiet għandha tordna skond iċ-ċirkostanzi tal-kawża:

(a) jekk wiehed mill-partijiet għandu dritt ta' residenza fid-dar taż-żwieġ għall-perjodu li l-qorti jidhriha xieraq, bl-esklużjoni tal-parti l-oħra mill-istess dar; jew

(b) jekk id-dar taż-żwieġ għandha tinbiegħ, u l-frottijiet tal-bejgħ jinqasmu bejn il-partijiet kif il-qorti jidhriha xieraq.

(3) Il-qorti, għall-finijiet imsemmija fl-artikolu 66D(2) ta' din il-Kodiċi, għandha tiegħu qies tal-ġid tal-miżżewġin u kull persuna oħra dipendenti fuq il-familja u, b'mod partikolari, għandha tiegħu qies li akkomodazzjoni xierqa u sigura għandha, fejn dan jista' jsir, tiġi provduta lill-parti miżżewġa li hija kompletament jew prinċipalment dipendenti fuq il-parti miżżewġa l-oħra, kif ukoll għal kull persuna dipendenti fuq il-familja.

(4) Meta d-dar taż-żwieġ, kollha kemm hi jew sehem minnha, tkun tappartjeni fi proprjeta` jew b'xi titolu ieħor, lil parti waħda mill-miżżewġin, u dik il-parti tkun il-parti eskluża mid-dar taż-żwieġ, dik il-parti tista', f'xi żmien wara l-ġhoti tad-digriet, tagħmel rikors il-qorti, titlob li d-dar taż-żwieġ tkun assennjata lilu, u li din titpartat ma' akkomodazzjoni xierqa u sigura għall-parti l-oħra u għal kull persuna dipendenti fuq il-familja, u dan għandu jikkonferma bil-ġurament ir-raġunijiet għal din it-talba, u jdaħħal mar-rikors kull dokument relevanti.

(5) Ir-rikors imsemmi fis-subartikolu preċedenti għandu jiġi prezentat lill-parti miżżewġa l-oħra, li tingħata għoxrin jum mid-data li fiha jkun gie minnha riċevut, biex tippreżenta risposta ikkonfermata bil-ġurament, tiddikjara jekk taqbel jew ma taqbilx mat-talba ta' l-applikant, u għandha ddaħħal mar-risposta kull dokument relevanti.

(6) Il-qorti, wara li tkun ikkunsidrat il-fatti tal-kawża prezentati lilha mill-attur u mill-konvenut, għandha tiddeċiedi l-każ, minn liema digriet jista' jsir appell.

Iżda meta t-talba ta' l-attur tintlaqa' u l-kawża ssir *res judicata*, il-konvenut ma jistax, permezz ta' rikors separat, jitlob li d-digriet jitregġa' lura u lanqas ma jista' jagħmel talba oħra li twassal għall-istess tregġiġh lura tad-digriet.

Iżda wkoll meta t-talba ta' l-attur ma tintlaqax, l-attur jista', wara li jkunu għaddew tmintax il-xahar mid-data tad-digriet, jippreżenta rikors ieħor bl-istess raġunijiet, jekk ikun seħħ tibdil sinifikanti fiċ-ċirkostanzi tal-miżżewġin.

(7) Il-qorti, mal-konferma tad-divorzju u fuq it-talba ta' mill-inqas wiehed mill-miżżewġin, għandha tiddeċiedi dwar manteniment adegwat għalihom u għall-persuni dipendenti fuq il-familja, wara li tqis il-paragrafi t'hawn taħt:

(a) dizabilita` fiżika jew mentali ta' xi wiehed mill-miżżewġin;

(b) kontribuzzjonijiet li kull wiehed mill-miżżewġin għamel jew li huwa probabbli li jagħmel fil-futur qarib għall-ġid tal-familja, inkluż kontribuzzjonijiet li kull wiehed mill-miżżewġin għamel għad-dhul, kapaċita` tal-qligh, propjeta` u rizorsi finanzjarji tal-parti l-oħra, u kontribuzzjonijiet li kull wiehed mill-miżżewġin għamel fid-dar jew bhala kontribut għall-htigijiet tal-familja;

(c) l-effett fuq il-kapaċita` tal-qligh ta' kull wiehed mill-miżżewġin fuq ir-responsabbiltajiet taż-żwieġ assunti minn kull parti matul il-perjodu ta' koabitazzjoni, u, b'mod partikolari, l-effett fuq il-kapaċita` tal-qligh tal-parti li tkun ċaħdet jew tilfet l-opportunita` għal qligh remunerattiv sabiex tiehu hsieb id-dar jew biex tikkontribwixxi għall-htigijiet tal-familja;

(d) kull qligh jew beneficiċċi li wiehed jew l-ieħor mill-miżżewġin huma intitolati għalih skont xi liġi;

(e) l-imġiba ta' kull wiehed mill-miżżewġin, jekk tali mġiba, skond il-qorti, hija waħda li fiċ-ċirkostanzi ma jkunx xieraq li tigi injorata;

(f) il-htieġa għall-akkomodazzjoni taż-żewġ partijiet;

(g) l-ammont dovut lejn iż-żewġ partijiet għal benefiċċju (inkluż benefiċċju ta' skema tal-pensjoni), liema benefiċċju jintilef ma' l-għotja tad-digriet tad-divorzju;

(8) Mingħajr ħsara għall-ġeneralità ta' subartikolu (7) ta' dan l-artikolu 66D, sabiex tiddeċiedi tagħtix l-ordni imsemmija f'subartikolu (7), il-qorti għandha tikkonsidra b'mod partikolari:

(a) il-bżonnijiet finanzjarji tal-membri

(b) il-qligħ, kapaċità tal-qligħ, propjeta` u rizorsi finanzjarji oħra tal-membri

(c) diżabilita` fizika jew mentali tal-membri

(d) qligħ jew benefiċċji dovuti b'liġi jew taħt xi liġi lill-membri

(e) il-mod kif il-partijiet antiċipaw li l-membri se jkun qed jiġi edukat, jew kif qiegħed jiġi edukat

(f) l-affarijiet imsemmija f'paragrafi (a), (b), u (c) ta' subartikolu (7)

(g) il-ħtieġa għall-akkomodazzjoni tal-membri.

(9) Il-qorti m'għandiex tordna fuq disposizzjonijiet imsemmija f'subartikolu (3), sakemm l-ordni ma tkunx fl-aħjar interess biex isseħħ ġustizzja.

(10) Subartikoli 54(3) sa 54(7) inklużivament japplikaw *mutatis mutandis* meta l-qorti thoss il-ħtieġa li tapplikahom wara li tkun ikkonsidrat ir-raġunijiet miġjuba lilha.

(11) Meta l-każ ikun diġa` pendenti f'każ ta' separazzjoni bejn il-partijiet, il-qorti għandha tordna li d-digriet għandu jiġi inkluż fl-atti tal-proċeduri pendenti tas-separazzjoni sa jumejn wara li d-digriet tad-divorzju isir *res judicata*.



Kondizzjonijiet addizzjonali u mhux obligatorji għad-divorzju, meta l-partijiet m'humiex separati.

66E. (1) Mingħajr ħsara għall-artikoli l-oħra f'dan is-subtitolu, meta l-miżżewġin m'humiex legalment separati fil-bidu tal-proċeduri legali għad-divorzju, id-divorzju jista' jiġi mogħti b'digriet fuq it-talba ta' wieħed mill-miżżewġin kontra l-ieħor, fuq ir-raġunijiet imsemmija f'artikoli 38, 40 u 41 ta' subtitolu III ta' dan it-titolu, jew għal raġuni oħra li maż-żmien tkun inkluża bħala raġuni valida għall-ksib tas-separazzjoni personali.

(2) Meta d-divorzju jiġi mitlub għar-raġunijiet imsemmija f'artikolu 66E(1), id-disposizzjonijiet rilevanti ta' din il-Kodiċi rigward separazzjoni personali tal-miżżewġin, bl-eċċezzjoni ta' artikolu 55A, japplikaw *mutatis mutandis*. Artikolu 66D(2) dwar id-dar taż-żwieġ, tapplika wkoll.

(3) Kull parti għal-kawża tas-separazzjoni, pendenti fil-ġurnata meta dan l-artikolu jidhol fis-seħħ, u li jkun ilu pendenti għal mill-inqas erbat ijiem, jista' jitlob l-qorti tiddikjara d-divorzju tal-partijiet, minflok separazzjoni personali.

(4) Talba ibbażata fuq is-subartikolu preċedenti għandha tingieb permezz ta' rikors, ikkonfermat bil-ġurament, u pprezentat sa tliet xhur mid-data ta' meta dan l-artikolu jidhol fis-seħħ, u għandhom jiġu speċifikati r-raġunijiet għalfejn qed issir it-talba għad-divorzju.

Iżda f'dawn il-każijiet imsemmija, il-qorti trid tkun sodisfatta li r-raġunijiet imsemmija f'artikolu 66B jissussistu għall-kontinwazzjoni tal-proċess legali.

Iżda wkoll artikolu 66B(1)(a) għandha titqies sodisfatta meta l-proċeduri għas-separazzjoni tal-miżżewġin kienu ġew istitwiti mill-inqas erba' snin qabel ma dan l-artikolu jkun daħal fis-seħħ, ukoll jekk il-miżżewġin ikunu għadhom jgħixu flimkien fid-dar taż-żwieġ.

(5) Ir-rikors imsemmi fis-subartikolu preċedenti għandu jiġi preżentat lill-parti l-oħra tas-separazzjoni, li tingħata għoxrin jum mid-data li fiha jkun ġie minnha riċevut, biex tippreżenta risposta ikkonfermata bil-ġurament, tiddikjara jekk taqbel jew ma taqbilx mat-talba ta' l-applikant għad-divorzju, u għandha tiddikjara r-raġunijiet tagħha skond dan l-artikolu.

Dmirijiet tal-avukat ta' l-attur.

66F. (1) Jekk l-avukat ikun qed jidher għall-attur, l-avukat għandu, qabel ma jistitwixxi l-proċeduri legali taht l-artikolu 66B ta' din il-Kodiċi, sakemm l-attur u l-parti l-oħra miżżewġa li huma separati -

(a) jiddiskuti ma' l-attur il-possibilita` ta' rikonċiljazzjoni u jagħti lill-ismijiet u l-indirizzi tal-persuni kwalifikati biex joffru l-għajjnuna li jwassal għar-rikonċiljazzjoni bejn il-miżżewġin li huma mifrudin;

(b) Jiddiskuti ma' l-attur il-possibilita` ta' medjazzjoni sabiex id-divorzju jingieb fuq qbil ta' l-attur u l-parti miżżewġa l-oħra, u jagħti lill-attur l-ismijiet u l-indirizzi tal-persuni kwalifikati biex joffru l-għajjnuna ta' medjazzjoni għall-miżżewġin li huma mifrudin; u

(ċ) L-avukat għandu jassigura li l-attur jaf li tista' tingieb is-separazzjoni personali bħala alternattiva għad-divorzju.

(2) L-applikazzjoni permezz ta' liema proċeduri jiġu istitwiti għandha:

(a) Jekk l-avukat qed jidher għall-attur, akkumpanjat b'ċertifikat, bil-mod muri f'Skeda B tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jikkonferma li ikkonforma mal-kondizzjonijiet ta' subartikolu (1) ta' dan l-artikolu, jew

(b) Jiġi akkumpanjat minn digriet ġuridiku ta' separazzjoni jew b'kuntratt ta' separazzjoni konsenswali, juri li l-attur u l-parti miżżewġa l-oħra ilhom separati għal mill-inqas erba' snin.

Iżda meta l-avukat li jkun qed jassisti l-klijent fil-każ ta' divorzju ma jkunx ippreżenta ċ-ċertifikat, digriet ġuridiku tas-separazzjoni jew kuntratt ta' separazzjoni konsenswali, kif ikun il-każ, l-avukat għandu jippreżenta dan flimkien ma' l-ewwel att li jiġi preżentat fir-Registru tal-Qorti Ċivili (Sezzjoni tal-Familja) rigward din il-kwistjoni:

Iżda wkoll f'dan l-artikolu "l-attur" tfisser persuna li applika, qed japplika, jew ser japplika l-qorti għal digriet tad-divorzju.

(3) Il-Ministru jista' jagħmel regolamenti li jistabbilixxu Registru ta' Organizzazzjonijiet Professjonali, li għandu jkollu membri kwalifikati biex jassistu l-partijiet involuti fil-proċess ta' rikonċiljazzjoni; dan ir-registru għandu jinkludi l-ismijiet tal-membri ta' l-organizzazzjonijiet u l-proċedura li għandha tiġi segwita biex l-organizzazzjonijiet ikunu jistgħu jagġornaw il-lista tal-membri b'mod regolari.

Dmirijiet tal-avukat tal-konvenut.

66G. (1) Jekk l-avukat ikun qed jidher għall-konvenut, l-avukat għandu, kemm jista' jkun malajr wara li jirċievi struzzjonijiet mill-konvenut dwar il-każ, jekk l-attur u l-parti miżżewġa l-oħra ma jkunux separati legalment -

(a) Jiddiskuti mal-konvenut il-possibilita` ta' rikonċiljazzjoni u jagħti l-ismijiet u l-indirizzi tal-persuni kwalifikati biex jgħinu fil-proċess ta' rikonċiljazzjoni bejn il-miżżewġin li huma mifrudin;

(b) Jiddiskuti mal-konvenut il-possibilita` ta' medjazzjoni sabiex id-divorzju jingieb fuq qbil ta' l-attur u l-parti miżżewġa l-oħra, u jagħti lill-attur l-ismijiet u l-indirizzi tal-persuni kwalifikati biex joffru l-għajnuna ta' medjazzjoni għall-miżżewġin li huma mifrudin; u

(2) Ir-risposta tal-konvenut għar-rikors għad-divorzju għandu, jekk l-avukat qed jidher għall-konvenut, ikun akkumpanjat b'ċertifikat bil-mod muri f'Skeda B tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jikkonferma li ikkonforma mal-kondizzjonijiet ta' subartikolu (1) ta' dan l-artikolu:

Iżda meta l-avukat li jkun qed jassisti l-klijent fil-każ ta' divorzju ma jkunx ippreżenta ċ-ċertifikat, l-avukat għandu jippreżenta dan flimkien ma' l-ewwel att li jiġi preżentat fir-Registru tal-Qorti Ċivili (Sezzjoni tal-Familja) rigward din il-kwistjoni.

Attentat ta' rikonċiljazzjoni mill-qorti.

66H. (1) Meta jsir rikors lill-qorti għad-digriet tad-divorzju, il-qorti għandha tikkonsidra l-possibilita` ta' rikonċiljazzjoni tal-miżżewġin u, kif ikun il-każ, tista' taġġorna s-smiġħ tal-każ f'kull hin, biex il-miżżewġin, bix-xewqa tagħhom u bl-assistenza jew mingħajr assistenza ta' terza persuna, jirrikonċiljaw.

(2) Meta, waqt il-proċedimenti legali, il-qorti jidhrilha li r-rikonċiljazzjoni tal-miżżewġin ma tistax tintlaħaq, din tista' taġġorna s-smiġħ tal-każ biex il-miżżewġin, bix-xewqa tagħhom u bl-assistenza jew mingħajr assistenza ta' terza persuna, jaslu għal ftehim dwar il-kundizzjonijiet kollha jew għal uħud mill-kundizzjonijiet tad-divorzju.

(3) Jekk il-proċeduri legali jiġu aġġornati permezz ta subartikolu (1) jew (2) ta' dan l-artikolu, mill-inqas wiehed mill-miżżewġin jista', f'kull hin, jitlob li s-smiġħ tal-kawża jitkompla kemm jista' jkun malajr, u jekk issir din it-talba, il-qorti għandha tkompli bis-smiġħ, mingħajr hsara għal setgħat oħra tal-qorti li taġġornaha.

(4) Is-setgħat mogħtija lill-qorti biex taġġorna s-smiġħ tal-każ permezz ta' dan l-artikolu huma addizzjonali għal kull setgħa oħra ta' l-istess qorti.

(5) Meta l-qorti taġġorna s-smiġħ tal-każ permezz ta' dan l-artikolu, tista', fid-diskrezzjoni tagħha, tagħti parir lill-miżżewġin biex ifittxu għajjnuna minn terza persuna għar-rikonċiljazzjoni tal-miżżewġin jew biex jilħqu ftehim bejniethom dwar il-kundizzjonijiet kollha jew għal uħud mill-kundizzjonijiet tad-divorzju.

Evidenza  
inammissibbli.

66I. Ebda prova ma tista' ssir jekk din hija komunikazzjoni verbali jew bil-miktub li saret jew giet imgiegħla ssir mill-miżżewġin jew minn terza persuna għall-fini ta' rikonċiljazzjoni jew biex jintlaħaq ftehim bejniethom dwar il-kundizzjonijiet kollha jew għal uħud mill-kundizzjonijiet tad-divorzju (jekk din saret fil-presenza u bl-għarfien tal-parti l-oħra, jew jekk din ma saritx fil-presenza u bl-għarfien tal-parti l-oħra).

Hall taż-żwieġ.

66J. (1) Meta l-qorti tordna d-digriet tad-divorzju, iż-żwieġ li għalih jirreferi d-digriet jiġi mahlul u l-partijiet għal dak iż-żwieġ għandhom id-dritt jerggħu jizzewġu.

(2) Digriet għad-divorzju tal-miżżewġin m'għandu l-ebda effett fuq id-drittijiet u d-dmirijiet tal-ġenituri attur u konvenut, fuq it-tfal jew fuq kull ftehim li jkun intlaħaq bejn il-miżżewġin għal kustodja kongunta tat-tfal.

L-effett ta' żwieġ  
mill-ġdid.

66K. Meta l-parti favur min tkun saret ordni għall-manteniment mill-qorti jew permezz ta' ftehim bejn il-partijiet jizzewweg mill-ġdid, din l-ordni ssir bla effett kontra dik l-parti, ħlief għal pagamenti dovuti fil-ġurnata ta' żwieġ mill-ġdid.

Iżda l-ordni għall-manteniment li tkun, minn dik il-ġurnata meta dan l-artikolu jidhol fis-seħħ, ordnata jew awtorizzata biex tiġi mħallsa bhala somma f'daqqa permezz ta' digriet tal-qorti jew permezz ta' att pubbliku ta' separazzjoni personali li gie ppubblikat, għandu jkollu l-istess effett, u s-somma tibqa' dovuta b'mod sħiħ jekk din tkun għadha ma thallsitx.

Iżda wkoll kull manteniment li huwa, minn dik il-ġurnata meta dan il-ftehim jidhol fis-seħħ, awtorizzat mill-qorti wara li jkun gie miftiehem mill-partijiet f'separazzjoni konsenswali permezz ta' att pubbliku, m'għandux ikun affettwat minn artikolu 66K(1), ukoll jekk il-partijiet jizzewgu mill-ġdid, jekk il-partijiet ikunu ftiehem li l-ftehim tas-separazzjoni għandu jibqa' validu u ma jistax jinbidel jekk il-miżżewġin igibu digriet għad-divorzju fil-futur.

Ġurisdizzjoni tal-qorti rigward id-divorzju.

66L. (1) Il-qorti tista' tagħti digriet għad-divorzju biss jekk mill-inqas wiehed mill kundizzjonijiet huma preżenti -

(a) Mill-inqas wiehed mill-partijiet huwa ċittadin Malti;

(b) Mill-inqas wiehed mill-partijiet għandu d-domicilju tiegħu f'Malta f'dik il-ġurnata meta jiġu istitwiti proċeduri legali;

(c) Mill-inqas wiehed mill-partijiet kellu r-residenza ordinarja tiegħu f'Malta għal sena sħiħa, sal-ġurnata meta jiġu istitwiti proċeduri legali.

(2) Meta l-proċeduri legali għall-ġhotja ta' separazzjoni legali jew għall-appell minn dan ir-rikors jkunu pendenti l-qorti, u l-qorti għandha jew kellha ġurisdizzjoni biex tiddeċiedi l-każ, il-qorti għandu jkollha, minkejja subartikolu (1), ġurisdizzjoni biex tiddetermina r-rikors għall-ġhotja tad-digriet għad-divorzju.

Provizjonijiet mixxellanji.

66M. Għall-fini ta' kull Kodiċi jew Att tal-Liġijiet ta' Malta, id-definizzjoni ta' "separazzjoni" jew kull forma oħra ta' l-istess "separazzjoni", għandha tinkludi "divorzju", jekk l-artikolu ma jipprovdix għall-kuntrarju, jew jekk dan imur kontra l-iskop ta' l-artikolu."

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### Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz ta' Liġi hu biex jippermetti l-introduzzjoni tal-istitut tad-divorzju fil-liġijiet ta' Malta, taħt il-kondizzjonijiet u skont il-htigiet hemjm stipulati, u biex jagħmel dispożizzjonijiet godda bħala konsegwenza tal-introduzzjoni ta' dak l-istitut.

**A BILL  
entitled**

*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.** The short title of this Act is the Civil Code (Amendment) (No. 2) Act, 2011, and this Act shall be read and construed as one with the Civil Code, hereinafter referred to as "the Code".

Short title.
- 2.** Immediately after subarticle (2) of article 54 there shall be added the words "including those mentioned under article 70(7) paragraph (a) to (g) and under article 70 (8) paragraph (a) to (g) of this Code".

Amendment of article 54 of the Code.
- 3.** At the beginning of article 55 subarticle (1) should be added the following words: "Unless the court has, at its discretion, at the beginning of the proceedings or at any other time during the course of the action provided for the cessation of the community of acquests or the community of residue under separate administration existing between the parties, on the request on any one of the spouses,".

Amendment of article 55 of the Code.
- 4.** Article 57 shall be amended as follows:-

Amendment of article 57 of the Code.

  - (a) In subarticle (1) thereof, the words "the children are entrusted, the father and the mother" shall be substituted by the words "the dependant members of the family are entrusted, the spouses"
  - (b) Immediately after subarticle (1) thereof, there shall be inserted the following proviso:

"Provided that for the purposes of article 57(1) "dependent members of the family" shall have the same meaning as that given to it under article 66B(1) of this Code."

(c) In subarticle (2) the words "the children" are to be substituted with the words "dependent members of the family who have not attained majority."

(d) In subarticle (3) the word "children" is to be substituted by the words "said members."

5. After Subtitle III - On Separation a new subtitle entitled "Subtitle IV – On Divorce" should be added under which subtitle are to be added the titles and articles as follows:

"Sub-title IV  
OF DIVORCE

Divorce.

66A. (1) Divorce may be pronounced by a judgment of the competent Civil Court or effected by means of a public deed duly authorized by a decree of the competent Civil Court, which decree shall have the same effect as a judgement given by the same court.

Provided that, in the latter case, the spouses shall file a joint application, submitting the agreement reached between them for the authorization of the competent court, which court shall incorporate such agreement in its decree.

(2) All suits for divorce shall be brought before the appropriate section of the Civil Court as may be established by regulations made by the Minister responsible for justice and in such cases article 37 of Subtitle III of this Title shall *mutatis mutandis* apply.

Necessary grounds  
for divorce.

66B. Subject to the following provisions, divorce may not take place except on the demand by either of the spouses concerned and unless the court is satisfied that:



(a) at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years, or have been legally personally separated for at least four years;

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

(c) the spouses and any dependent members of the family, are adequately maintained, according to their particular circumstances, as provided in 66D(4) of this Code.

Provided that nothing in this article shall be construed as meaning that the spouses may not choose to forfeit their right to maintenance.

Provided further that the demand for divorce on the ground that the spouses have been legally separated for a period of four years or more, shall not operate so as to vary or modify any judgment, decree or public deed of personal separation between the parties and in such cases the provisions relating to the maintenance of the spouses in the said judgment, decree or public deed of personal separation, shall be considered as providing for "adequate maintenance" without further reference to any other article of this Code.

Provided further that "dependent member of the family", in relation to a spouse, or the spouses, concerned, shall mean any child -

(i) of both spouses or adopted by both spouses or in relation to whom both spouses are in *loco parentis*, or

(ii) of either spouse or adopted by either spouse, or in relation to whom either spouse is in *loco parentis*, where the other spouse, being aware that he or she is not the parent of the child, has treated the child as a member of the family,

who is under the age of 18 years or if the child has attained that age -

(iii) is or will be or, if an order were made under this Code providing for maintenance for the child, would be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of 23 years, or

(iv) has a mental or physical disability to such extent that it is not reasonably possible for the child to maintain himself or herself fully;

Granting of  
divorce decree.

66C. On being satisfied that the requirements under section 66B have been met, the court shall grant a decree of divorce in respect of the marriage concerned or authorise the publication of the deed of divorce, as the case may be.

Divorce solely on  
necessary  
grounds.

66D. (1) Without prejudice to any other article in this Subtitle when divorce is demanded and/or granted solely on the grounds of the previous article and the spouses are not legally separated:

(a) Articles 46, 46A and 47 of Subtitle III of Title I of this Code shall, where appropriate, *mutatis mutandis* apply during the pendency of the action;

(b) the court may, where appropriate and in its discretion, following a request by any one of the parties, or both, direct that the community of acquests or the community of residue under separate administration existing between the parties shall cease as from the day on which the application was filed or any other future date as it may deem fit taking into consideration all the circumstances of the case.

(c) the obligation of cohabitation of the spouses shall cease for all civil effects on the day the judgement becomes *res judicata*;

(d) the court may, where appropriate and in the best interest of the child, give such directions as it considers proper regarding the maintenance, welfare, custody of, or right of access to, any dependent member of the family concerned, whether or not an application had been made to it in that regard;

Provided that where the court makes an order for the grant of a decree of divorce, it may declare either of the spouses concerned to be unfit to have custody of any dependent member of the family who is a minor and, if it does so and the spouse to whom the declaration relates is a parent of any dependent member of the family who is a minor, that spouse shall not, on the death of the other spouse, be entitled as of right to the custody of that minor.

(e) the mutual rights of succession of the spouses shall cease on the day the judgement becomes *res judicata*, notwithstanding the provisions of any other law; and

(f) Articles 62 and 62A of Subtitle III of Title I of this Code shall *mutatis mutandis* apply;

(2) On divorce being pronounced, the court shall on the demand of either of the spouses, decide according to circumstances whether

(a) any one of them shall be entitled to reside in the matrimonial home, definitely or for such period as the court may deem fit, to the exclusion of the other spouse or

(b) whether the matrimonial home should be sold and the proceeds of the sale be disposed of between the parties as the court deems fit.

(3) The court in exercising its jurisdiction under article 66D(2) shall have regard to the welfare of the spouses and any dependent member of the family and, in particular shall take into consideration that proper and secure accommodation should, where practicable, be provided for a spouse who is wholly or mainly dependent on the other spouse and for any dependent member of the family.

(4) Where the matrimonial home is wholly or in part owned or otherwise held under any title by one of the spouses and such spouse happens to be the spouse excluded from the matrimonial home, the said spouse may, at any time after the judgment becomes *res judicata*, apply to the court to demand that the matrimonial home be assigned to him or her in exchange of proper and secure accommodation for the other spouse and any dependent member of the family, confirming under oath his or her reasons for the same and annexing to the said application any relevant documentation.

(5) The application mentioned in the previous sub-article shall be served on the other party to the separation proceedings, who shall, within twenty days from receipt of same, file a reply, duly confirmed on oath, stating whether he or she adheres to the applicant's request and annexing to the said reply any relevant documentation.

(6) After having seen all the circumstances of the case presented to it by both applicant and respondent, the court shall pronounce its judgment on the matter which judgment shall be subject to appeal.

Provided that where the applicant's request is granted and the matter becomes *res judicata*, the respondent would neither be able, by a separate application to ask for the reversal of the judgment nor make any other request that would be tantamount to the same.

Provided further that where the applicant's request is not granted, he or she may at a later stage, but not sooner than eighteen months from the day the judgment of the previous application became *res judicata*, file another application on the same grounds, if there are any significant changes in circumstances.

(7) On divorce being pronounced, the court shall on the demand of either or both of the spouses, decide on an adequate maintenance for them and the dependent members of their family, according to the following paragraphs:

(a) any physical or mental disability of either of the spouses,

(b) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family,

(c) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,

(d) any income or benefits to which either of the spouses is entitled by or under any law;

(e) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,

(f) the accommodation needs of either of the spouses,

(g) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring,

(8) Without prejudice to the generality of subarticle (7) of this article, in deciding whether to make an order referred to in that subarticle in favour of a spouse concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:

(a) the financial needs of the member,

(b) the income, earning capacity (if any), property and other financial resources of the member,

(c) any physical or mental disability of the member,

(d) any income or benefits to which the member is entitled by or under any law,

(e) the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained,

(f) the matters specified in paragraphs (a), (b) and (c) of subsection (7),

(g) the accommodation needs of the member.

(9) The court shall not make an order under a provision referred to in subarticle (3) with regards any one of the spouses, unless it would be in the interests of justice to do so.

(10) Subarticles 54(3) to 54(7), both subarticles included shall *mutatis mutandis* apply in cases where for the reasons mentioned therein, the court deems it fit to apply them.

(11) Where any issue in the subarticles of this article is already pending in a separation suit between the parties, the court shall order that the judgement be filed in the acts of the pending separation suit within two days from it having become *res judicata*.

Additional,  
optional grounds  
for divorce when  
the parties are not  
legally separated.

66E. (1) Without prejudice to any other article in this Subtitle when the spouses are not legally separated at the commencement of the divorce proceedings, divorce may be pronounced by a judgment given on the demand of one spouse against the other on any of the grounds stated in articles 38, 40 and 41 of Subtitle III of this Title or on any other grounds which may, in the future be valid grounds for the obtainment of personal separation.

(2) When divorce is demanded on the grounds stated in article 66E(1), the relevant provisions of this Code relating to personal separation of the spouses, except article 55A, shall *mutatis mutandis* apply. Article 66D(2) regarding the matrimonial home, shall also apply.

(3) Any party to separation proceedings which are pending on the date of the entering into force of this article, and which have been so pending for at least four years, may request that the court pronounce divorce between the parties, instead of personal separation.

(4) A request in terms of the previous subarticle shall be made by means of an application, duly confirmed on oath and filed within three months from the date of the coming into force of this article, specifying the ground or grounds on the basis of which the demand for divorce is made.

Provided that in such cases, the court still has to be satisfied that the grounds mentioned in article 66B subsist in order to proceed.

Provided further that article 66B(a) shall be deemed to be satisfied where the separation proceedings between the spouses were instituted at least four years prior to the coming into force of this article even though the said spouses still share the matrimonial home.

(5) The application mentioned in the previous subarticle shall be served on the other party to the separation proceedings, who shall, within twenty days from receipt of same, file a reply, duly confirmed on oath, stating whether he or she adheres to the request that the court pronounce the divorce, and specifying any applicable ground or grounds in terms of this article.

Duties of  
applicant's lawyer.

66F. (1) If a lawyer is acting for the applicant, the lawyer shall, prior to the institution of the proceedings concerned under article 68 of this Code, unless the applicant and his or her spouse have been legally separated -

(a) discuss with the applicant the possibility of a reconciliation and give to him or her the names and addresses of persons qualified to help to effect a reconciliation between spouses who have become estranged,

(b) discuss with the applicant the possibility of engaging in mediation to help to effect a divorce on a basis agreed between the applicant and the other spouse and give to the applicant the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged, and

(c) such a lawyer shall also ensure that the applicant is aware of personal separation as an alternative to divorce.

(2) The application by which the proceedings are instituted shall:



(a) If a lawyer is acting for the applicant, be accompanied by a certificate, in the form prescribed in Schedule B of the Code of Organisation and Civil Procedure confirming that he or she has complied with the requirements of subarticle (1) of this article, or

(b) be accompanied by the judicial decree of separation or by the contract of consensual separation showing that the applicant and his or her spouse have been legally separated for more than four years.

Provided that where the lawyer assisting the client in a matter of divorce has not filed the said certificate, judicial decree of separation or contract of consensual separation, as the case may be, he or she shall file the same contemporaneously with the first act to be filed in the Registry of the Civil Court (Family Section) in relation to the same matter.

Provided that in this section "the applicant" means a person who has applied, is applying or proposes to apply to the court for the grant of a decree of divorce.

(3) The Minister may make regulations to allow for the establishment of a Register of Professional Organisations whose members are qualified to assist the parties involved in effecting reconciliation, such register to show the names of members of those organisations and procedures to be put in place for the organisations involved to regularly update the membership lists.

Duties of  
respondent's  
lawyer.

66G. (1) If a lawyer is acting for the respondent, the lawyer shall, as soon as may be after receiving instructions from the respondent in relation to the proceedings concerned, unless the applicant and his or her spouse have been legally separated -

(a) discuss with the respondent the possibility of a reconciliation and give to him or her the names and addresses of persons qualified to help to effect a reconciliation between spouses who have become estranged,

(b) discuss with the respondent the possibility of engaging in mediation to help to effect a divorce on a basis agreed between the applicant and the other spouse and give to the applicant the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged, and

(2) The respondent's reply to the application of divorce shall, if a lawyer is acting for the respondent, be accompanied by a certificate, in the form prescribed in Schedule B of the Code of Organisation and Civil Procedure confirming that he or she has complied with the requirements of subarticle (1) of this article:

Provided that where the lawyer assisting the client in a matter of divorce has not filed the said certificate he or she shall file the same contemporaneously with the next act to be filed in the Registry of the Civil Court (Family Section) in relation to the same matter..

Reconciliation  
attempts by the  
court.

66H. (1) Where an application is made to the court for the grant of a decree of divorce, the court shall give consideration to the possibility of a reconciliation between the spouses concerned and, accordingly, may adjourn the proceedings at any time for the purpose of enabling attempts to be made by the spouses, if they both so wish, to effect such a reconciliation with or without the assistance of a third party.

(2) Where, during the proceedings, it appears to the court that a reconciliation between the spouses cannot be effected, it may adjourn or further adjourn the proceedings for the purpose of enabling attempts to be made by the spouses, if they both so wish, to reach agreement, with or without the assistance of a third party, on some or all of the terms of the proposed divorce.

(3) If proceedings are adjourned pursuant to subsection (1) or (2) of this section, either or both of the spouses may at any time request that the hearing of the proceedings be resumed as soon as may be and, if such a request is made, the court shall, subject to any other power of the court to adjourn proceedings, resume the hearing.

(4) The powers conferred by this section are additional to any other power of the court to adjourn proceedings.

(5) Where the court adjourns proceedings under this section, it may, at its discretion, advise the spouses concerned to seek the assistance of a third party in relation to the effecting of a reconciliation between the spouses or the reaching of agreement between them on some or all of the terms of the proposed divorce.

Inadmissible  
evidence.

66I. An oral or written communication between either of the spouses concerned and a third party for the purpose of seeking assistance to effect a reconciliation or to reach agreement between them on some or all of the terms of a divorce (whether or not made in the presence or with the knowledge of the other spouse), and any record of such a communication, made or caused to be made by either of the spouses concerned or such a third party, shall not be admissible as evidence in any court.

Dissolution of  
marriage.

66J. (1) Where the court grants a decree of divorce, the marriage, the subject of the decree, is thereby dissolved and a party to that marriage may marry again.

(2) For the avoidance of doubt, it is hereby declared that the grant of a decree of divorce shall not affect the parental rights and duties, of the applicant and the respondent, over their children or any agreement between the spouses regarding joint custody of their children.

Effects of remarriage.

66K. (1) Upon the remarriage of the spouse in whose favour a maintenance order has been or is made or authorized by the court after having been agreed to by the parties, the order shall, to the extent that it applies to that spouse, cease to have effect, except as respects payments due under it on the date of the remarriage.

Provided that any maintenance order that has, on the date of the coming into force of this article, been ordered or authorized to be paid in a lump sum by the court in a judgement that has become *res judicata* or in a public deed of personal separation that has been duly published shall remain unaffected and such sum shall be deemed to be due in full if it has not already been paid.

Provided further that any maintenance that has, on the date of the coming into force of this agreement, been authorized by the court after having been agreed to by the parties in a consensual separation by public deed shall remain unaffected by 66K(1), even upon remarriage of the parties, if the parties had agreed that such separation agreement would remain valid and unalterable in the event of divorce being obtained by the spouses in the future.

Exercise of jurisdiction by the court in relation to divorce.

66L. (1) The court may grant a decree of divorce if, but only if, at least one of the following requirements is satisfied -

(a) either of the spouses concerned was a citizen of Malta;

(b) either of the spouses concerned was domiciled in Malta on the date of the institution of the proceedings concerned,

(c) either of the spouses was ordinarily resident in Malta throughout the period of one year ending on that date.

(2) Where proceedings are pending in a court in respect of an application for the grant of a decree of legal personal separation or in respect of an appeal from the determination of such an application and the court has or had jurisdiction to determine the application, the court shall, notwithstanding sub article (1), have jurisdiction to determine an application for the grant of a decree of divorce in respect of the marriage concerned.

Miscellaneous provisions.

66M. Where under any other code or act of the Laws of Malta there is the mentioning of the word 'separation' or any other form of the same word it shall be taken to include 'divorce' unless the article in question specifically mentions otherwise or where such meaning would go against the spirit of the article in question if it were to be so interpreted."

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### **Objects and Reasons**

The objects of this Bill are to allow for the introduction of the institute of divorce in the laws of Malta, under conditions and requirements therein stipulated, and to make provision in consequence thereof.

