



COMMITTEE OF EXPERTS ON THE
EVALUATION OF ANTI-MONEY
LAUNDERING MEASURES AND THE
FINANCING OF TERRORISM
(MONEYVAL)

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Report on Fourth Assessment Visit - Annexes

Anti-Money Laundering and Combating the
Financing of Terrorism

MALTA

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ANNEX I

ANNEX I

DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION – MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS

- Accountancy Board
- Attorney General's Office
- Central Bank of Malta
- Chamber of Advocates
- College of Notaries
- Commissioner of Voluntary Organisations
- Customs Department
- Federation of Real Estate Agents
- Financial Intelligence Analysis Unit
- Judiciary
- Lotteries and Gaming Authority
- Malta Bankers' Association
- Malta Financial Services Authority
- Malta Institute of Accountants
- Malta Insurance Association
- Malta Police Force
- Malta Stock Exchange
- Representatives of the banking sector
- Representatives of casinos
- Representatives of financial services practitioners
- Representatives of the insurance sector
- Representatives of investment services providers
- Representatives of payment institutions
- Representatives of trust and company service providers
- Sanctions Monitoring Board

ANNEX II

CHAPTER 373**PREVENTION OF MONEY LAUNDERING ACT**

To make provision for the prevention and prohibition of the laundering of money in Malta.

23rd September, 1994

ACT XIX of 1994 as amended by: Act II of 1998; Legal Notice 71 of 1999; Acts XXXI of 2001, III of 2002, and III and XIII of 2004; Legal Notice 176 of 2005; Acts VI of 2005 and XIV of 2006; Legal Notice 425 of 2007; Act XXXI of 2007; Legal Notice 105 of 2008; and Act VII of 2010.

1. The short title of this Act is the Prevention of Money Laundering Act. Short title.

2. (1) In this Act, unless the context otherwise requires -
"criminal activity" means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to: Interpretation.
Amended by:
XXXI. 2001.2;
III. 2004.79;
L.N. 425 of 2007;
XXXI. 2007.43;
VII. 2010.59.

(a) a crime or crimes specified in Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna reproduced (in the English language only) in the First Schedule to this Act; or

(b) one of the offences listed in the Second Schedule to this Act;

"Minister" means the Minister responsible for finance;

"money laundering" means -

- (i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in

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- criminal activity;
- (iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the [Criminal Code](#);
- (vi) acting as an accomplice within the meaning of article 42 of the [Criminal Code](#) in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v);

"prescribed" means prescribed by regulations made under this Act;

"property" means property of every kind, nature and description, whether movable or immovable, tangible or intangible and, without derogation from the generality of the foregoing, shall include -

- (a) any currency, whether or not the same is legal tender in Malta, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including one payable to bearer or endorsed payable to bearer whether expressed in euro or any other foreign currency;
- (b) cash or currency deposits or accounts with any bank, credit or other institution as may be prescribed which carries or has carried on business in Malta;
- (c) cash or items of value including but not limited to works of art or jewellery or precious metals; and
- (d) land or any interest therein;

"the Unit" means the unit established by article 15.

- (2) (a) A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity.
- (b) A person can be separately charged and convicted of both a money laundering offence under this Act and of an underlying criminal activity from which the property or the proceeds, in respect of which he is charged with money laundering, derived.
- (c) For the purposes of this subarticle, "underlying criminal activity" refers to the criminal activity from

which the property or other proceeds, which are involved in a money laundering offence under this Act have been directly or indirectly derived.

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Added by:
XXXI. 2001.3.

INVESTIGATION AND PROSECUTION OF OFFENCES

3. (1) Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40), or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment.

Offences.
Amended by:
III. 2002.166;
L.N. 425 of 2007;
XXXI. 2007.44;
L.N. 105 of 2008.

(2) Where an offence against the provisions of this Act is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2A) (a) Every person charged with an offence against this Act shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall be liable -

Direction by the
Attorney General.

- (i) on conviction by the Criminal Court to the punishment of imprisonment for a term of not less than three years but not exceeding fourteen years, or to a fine (*multa*) of not less than twenty-three thousand two hundred and ninety-three euro and seventy-three cents (23,293.73) but not exceeding two million three hundred and twenty-nine thousand three hundred and seventy-three euro and forty cents (2,329,373.40), or to both such fine and imprisonment; or
- (ii) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) to the punishment of imprisonment for a term of not less than six months but not exceeding nine years, or to a fine (*multa*) of not less than two thousand three hundred and twenty-nine euro and thirty-seven cents (2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (116,468.67), or to both such fine and imprisonment.

(b) Notwithstanding that the Attorney General has directed in accordance with the provisions of paragraph (a) that a person be tried in the Criminal

Court, he may, at any time before the filing of the bill of indictment or at any time after filing the bill of indictment before the jury is empanelled, and with the consent of the accused, direct that that person be tried before the Court of Magistrates, and upon such direction the Court of Magistrates as a court of criminal judicature shall become competent to try that person as if no previous direction had been given. Where the Attorney General has given such new direction after the filing of the bill of indictment, the registrar of the Criminal Court shall cause the record to be transmitted to the Court of Magistrates, and shall cause a copy of the Attorney General's direction to be served on the Commissioner of Police.

- Cap. 9. (c) Notwithstanding the provisions of article 370 of the [Criminal Code](#) and without prejudice to the provisions of subarticle (2), the Court of Magistrates shall be competent to try all offences against this Act as directed by the Attorney General in accordance with the provisions of subarticle (1).
- Cap. 101. (3) In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the [Dangerous Drugs Ordinance](#) shall *mutatis mutandis* apply.
- Cap. 9. (4) Where the person found guilty of an offence of money laundering under this Act is an officer of a body corporate as is referred to in article 121D of the [Criminal Code](#) or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).
- Cap. 9. (5) (a) Without prejudice to the provisions of article 23 of the [Criminal Code](#) the court shall, in addition to any punishment to which the person convicted of an offence of money laundering under this Act may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of subarticle (4), order the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said subarticle (4) and any property of or in the possession or under the control of any person found guilty as aforesaid or of a body corporate as mentioned in this subarticle shall, unless proved to the contrary, be deemed to be derived from the offence

the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for such material.

(2) Where an investigation order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

(3) An investigation order -

- (a) shall not confer any right to production of, access to, or search for communications between an advocate or legal procurator and his client, and between a clergyman and a person making a confession to him, which would in legal proceedings be protected from disclosure by article 642(1) of the [Criminal Code](#) or by article 588(1) of the [Code of Organization and Civil Procedure](#);
- (b) shall, without prejudice to the provisions of the foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and
- (c) may be made in relation to material in the possession of any government department.

(4) Where the material to which an application under subarticle (1) relates consists of information contained in a computer, the investigation order shall have effect as an order to produce the material or give access to such material in a form in which it can be taken away and in which it is visible and legible.

(5) Any person who, having been ordered to produce or grant access to material as provided in subarticle (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

(6) Together with or separately from an application for an investigation order, the Attorney General may, in the circumstances mentioned in subarticle (1), apply to the Criminal Court for an

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order (hereinafter referred to as an "attachment order") -

- (a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;
- (b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and
- (c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

(6A) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.

(7) Before making an investigation order or an attachment order, the court may require to hear the Attorney General in chambers and shall not make such order -

- (a) unless it concurs with the Attorney General that there is reasonable cause as provided in subarticle (1); and
- (b) in the case of an investigation order, unless the court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates -
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of communications referred to in subarticle (3)(a).

(8) The provisions of article 381(1)(a), (b) and (e) and of article 382(1) of the [Code of Organization and Civil Procedure](#) shall, *mutatis mutandis*, apply to the attachment order.

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(9) An attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police not below the rank of inspector.

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be

liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other movable property attached as provided in subarticle (6)(a) or in the transfer or disposal by the suspect of any movable or immovable property in contravention of subarticle (6)(c), the fine shall always be at least twice the value of the money or property in question:

Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

(11) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in subarticle (9), cease to be operative on the expiration of thirty days from the date on which it is made; and the court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regards to the offence mentioned in article 3 is available:

Provided that the said period of thirty days shall be held in abeyance for such time as the suspect is away from these Islands and the Attorney General informs of this fact the garnishee by notice in writing served in the manner provided for in subarticle (9).

(12) In the course of any investigation of an offence against article 3, the Executive Police may request a magistrate to hear on oath any person who they believe may have information regarding such offence; and the magistrate shall forthwith hear that person on oath.

(13) For the purpose of hearing on oath a person as provided in subarticle (12) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a court of criminal inquiry as well as the powers mentioned in article 554 of the [Criminal Code](#); provided that such hearing shall always take place behind closed doors.

(14) It shall not be lawful for any court to issue a warrant of prohibitory injunction to stop the execution of an investigation order.

4A. The provisions of article 30B of the [Dangerous Drugs Ordinance](#) shall apply *mutatis mutandis* to proceeds within the meaning of article 3(5).

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Applicability of
Dangerous Drugs
Ordinance.
Added by:
III. 2002.166.
Cap. 101.

4B. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in article 3, he may apply to the Criminal Court for an order (hereinafter referred to as a "monitoring order") requiring a bank to monitor for a specified period the transactions or banking operations being carried out through one or more accounts in the name of the suspect, or through one or more accounts suspected to have been used in the commission of the offence or which could provide information about the offence or the circumstances thereof, whether before, during or after the commission of the offence, including any such accounts in the name of legal persons. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring and, once the information is collated, the person or authority receiving the information shall transmit that information to the Attorney General.

Monitoring order.
Added by:
VII. 2010.60.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

5. (1) Where a person is charged under article 3, the court shall at the request of the prosecution make an order -

Freezing of
property of person
accused.
Amended by:
L.N. 425 of 2007.

- (a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and
- (b) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the court may also -

- (a) authorise the payment of debts which are due by the accused to bona fide creditors and which were contracted before such order was made; and

(b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and

(b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The court may for particular circumstances vary such order, and the provisions of the foregoing subarticles shall apply to such order as so varied.

(4) Every such order shall contain the name and surname of the accused, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and the number of his identity card or other identification document, if any.

(5) Where any money is or becomes due to the accused from any person while such order is in force such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the accused.

(6) When such order ceases to be in force as provided in subarticle (2)(b) the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

Penalty for
contravening court
order.
Amended by:
L.N. 425 of 2007;
XXXI. 2007.46.

6. Any person who acts in contravention of a court order mentioned in article 5 shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the person charged the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

Special court
proceedings.
Amended by:
XXXI. 2007.47.

7. (1) Where an order of forfeiture is made under article 3(5), the person found guilty and any other person having an interest may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of an offence under article 3 or is otherwise involved in the offence of money laundering, nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

(2) Such action shall be brought not later than three months

from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

(3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.

(6) The court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

(7) Saving the preceding provisions of this article, the provisions of the [Code of Organization and Civil Procedure](#) relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.

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(8) Any decision revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

8. When the court allows the demand for a declaration as provided in article 7(1) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period of its forfeiture.

Reversion of property ceasing to be forfeited.

9. (1) Where the Attorney General receives a request made by the judicial or prosecuting authority of any place outside Malta for investigations to take place in Malta in respect of a person (hereinafter referred to as "the suspect") suspected by that authority of an act or omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence under article 3, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A of the [Dangerous Drugs Ordinance](#) shall *mutatis mutandis* apply to that application and to the suspect and to any investigation or attachment order made by the court as a result of that application.

Powers of investigation in connection with offences cognizable by courts outside Malta.
Added by:
II. 1998.9.

Cap. 101.

(2) The words "investigation order" in subarticles (2) and (5) of the same article 24A shall be read and construed as including an investigation order made under the provisions of this article.

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(3) The words "attachment order" in article 24A(6A) of the [Dangerous Drugs Ordinance](#) shall be read and construed as including an attachment order made under the provisions of this article.

Transactions or banking operations carried out through one or more accounts.
Added by:
VII. 2010.61.

9A. Where the request referred to in the preceding article is made for the purpose of monitoring the transactions or banking operations being carried out through one or more accounts of a suspect, the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 4B shall apply *mutatis mutandis*.

Freezing of property of person accused with offences cognizable by courts outside Malta.
Added by:
II. 1998.9.

10. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused") charged or accused in proceedings before the courts of that place of an offence consisting in an act or an omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence under article 3, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") having the same effect as an order as is referred to in article 22A(1) of the [Dangerous Drugs Ordinance](#), and the provisions of the said article 22A shall, subject to the provisions of subarticle (2) of this article, apply *mutatis mutandis* to that order.

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(2) The provisions of article 24C(2) to (5) of the [Dangerous Drugs Ordinance](#) shall apply to an order made under this article as if it were an order made under the said article 24C.

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(3) Article 22B of the Dangerous Drugs Ordinance shall also apply to any person who acts in contravention of a freezing order under this article.

Enforcement of confiscation orders made by courts outside Malta following conviction for offences cognizable by those courts.
Added by:
II. 1998.9.
Cap. 101.

11. (1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person convicted of a relevant offence shall be enforceable in Malta in accordance with the provisions of article 24D(2) to (11) of the [Dangerous Drugs Ordinance](#).

(2) For the purposes of this article "confiscation order" includes any judgment, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property as is described in subarticle (1).

(3) For the purposes of this article "relevant offence" means any offence consisting in any act which if committed in these Islands, or in corresponding circumstances, would constitute the offence mentioned in article 3.

12. (1) The Minister may make rules or regulations generally for the better carrying out of the provisions of this Act and in particular may by such rules or regulations provide for the regulation and control of banks, credit and other financial institutions to provide *inter alia* for procedures and systems for training, identification, record-keeping, internal reporting and reporting to supervisory authorities for the prevention of money laundering and funding of terrorism.

Rules and regulations.
Amended by:
VI. 2005.5;
L.N. 425 of 2007.

(2) The Minister may by regulations extend the provisions of this Act in whole or in part and of any regulations made thereunder to categories of undertakings and to professions which engage in activities which, in the opinion of the Minister, are particularly likely to be used for money laundering purposes or funding of terrorism.

(3) Rules or regulations made under this article may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (€46,587.47) or imprisonment for a term not exceeding two years or both such fine and imprisonment.

13. Saving the provisions of article 12, the Minister may, in consultation with the Minister responsible for justice -

Matters to be prescribed by regulations.

- (a) prescribe by regulation any matter required to be prescribed by this Act;
- (b) by regulation amend, alter or add to the list of offences specified in the Second Schedule to this Act.

PART II

FINANCIAL INTELLIGENCE ANALYSIS UNIT

14. In this Part, unless the context otherwise requires:

Definitions.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

"subject person" means any person required to maintain internal reporting procedures and to report transactions suspected to involve money laundering or funding of terrorism under regulations in force from time to time under this Act or as may be prescribed under this Act;

"supervisory authority" shall have the same meaning assigned to it by regulations in force from time to time under this Act or as may be prescribed under this Act;

"the Board" means the Board of Governors referred to in article 18;

"the Chairman" means the Chairman of the Board appointed under article 20;

"the Deputy Chairman" means the Deputy Chairman of the Board appointed under article 20;

"the Director" means the Director of the Unit appointed or recruited under article 23.

Establishment of
the Unit.
Added by:
XXXI. 2001.4.

15. (1) There shall be a government agency, to be known as the Financial Intelligence Analysis Unit.

(2) The Unit shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of concluding memoranda of understanding or other agreements with any foreign body, authority or agency as is referred to in article 16(1)(k), of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the borrowing of money.

(3) The Unit shall enter into an agency performance agreement with the Minister which agreement shall determine the funding of the agency and, without prejudice to the generality of article 16(1), any specific tasks within the scope of the functions of the Unit which are to be addressed and achieved by the Unit.

(4) The members of the Unit and all its employees shall abide by any Code of ethics applicable to public officers and shall, subject to any law to the contrary, have the same obligations thereunder:

Provided that the Unit may, with the concurrence of the Minister, draw up service values and a Code of Ethics to supplement any public service Code of Ethics in respect of the Unit.

Functions of the
Unit.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

16. (1) Subject to the other provisions of this Act and without prejudice to any other power or function conferred on it by this Act or by any other law, the Unit shall be responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism and without prejudice to the generality of the aforesaid shall in particular have the following functions:

- (a) to receive reports of transactions suspected to involve money laundering or funding of terrorism made by any subject person in pursuance of any regulation made under article 12, to supplement such reports with such additional information as may be available to it or as it may demand, to analyse the report together with such additional information and to draw up an analytical report on the result of such analysis;
- (b) to send any analytical report as is referred to in paragraph (a) to the Commissioner of Police for further investigation if having considered the suspicious transaction report, the Unit also has reasonable grounds to suspect that the transaction is suspicious and could involve money laundering or funding of terrorism;
- (c) to monitor compliance by subject persons and to co-operate and liaise with supervisory authorities to ensure such compliance;

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- (d) to send to the Commissioner of Police together with any analytical report sent in accordance with paragraph (b) or at any time thereafter any information, document, analysis or other material in support of the report;
 - (e) to instruct any subject person to take such steps as it may deem appropriate to facilitate any money-laundering or funding of terrorism investigation in general or the investigation of any particular suspicious transaction report;
 - (f) to gather information on the financial and commercial activities in the country for analytical purposes with a view to detecting areas of activity which may be vulnerable to money laundering or funding of terrorism;
 - (g) to compile statistics and records, disseminate information, make recommendations, issue guidelines and advise the Minister on all matters and issues relevant to the prevention, detection, investigation, prosecution and punishment of money laundering or funding of terrorism offences;
 - (h) to promote the training of, and to provide training for, personnel employed with any subject person in respect of any matter, obligation or activity relevant to the prevention of money laundering or funding of terrorism;
 - (i) to consult with any person, institution or organization as may be appropriate for the purpose of discharging any of its functions;
 - (j) to advise and assist persons, whether physical or legal, to put in place and develop effective measures and programmes for the prevention of money laundering and funding of terrorism;
 - (k) upon request or on its own motion, to exchange information with any foreign body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in this subarticle and with any supervisory authority in Malta or with any supervisory authority outside Malta which it deems to have equivalent or analogous functions as a supervisory authority in Malta, subject to such conditions and restrictions as it may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or other agreement, to regulate any such exchange of information, where that information may be relevant to the processing or analysis of information or to investigations regarding financial transactions related to money laundering or funding of terrorism and the natural or legal persons involved;
 - (l) to report to the Commissioner of Police any activity

which it suspects involves money laundering or funding of terrorism and of which it may become aware in the course of the discharge of any of its functions.

(2) The Unit shall at least once a year prepare a report on its activities in general to the Minister and shall afford to the Minister facilities for obtaining information with respect to its property and its activities in general and furnish him with returns, accounts and other information with respect thereto.

Liability for damages.
Added by:
XXXI. 2001.4.

17. The Unit, its Board, officers and employees shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Act, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

Distribution of duties of the Unit.
Added by:
XXXI. 2001.4.

18. (1) The Unit shall consist of a Board and a Director.

(2) The Board shall be responsible for the policy to be adopted by the Unit and to be executed and pursued by the Director and to ensure that the Director carries out that policy accordingly. The Board shall also be responsible for advising the Minister as provided in article 16(1)(g).

(3) The Director shall be responsible for the execution of the policy established by the Board and for carrying out all the functions of the Unit not attributed by this Act to the Board in accordance with the policy and subject to the general supervision of the Board.

(4) The Board may appoint any officer or any member of the staff of the Unit to act as director when the Director is absent, unable to act or on vacation or during any vacancy in the office of the Director.

Composition of the Board.
Added by:
XXXI. 2001.4.

19. (1) The Board shall consist of:

- (a) four members appointed by the Minister in the manner provided in subarticle (2);
- (b) not more than two other members, as may be requested by the Board, appointed by the Minister in the manner provided in subarticle (3).

(2) The Minister shall appoint the four members referred to in subarticle (1)(a) by selecting one member from each of four panels, each of at least three persons, nominated respectively by the Attorney General, the Governor of the Central Bank, the Chairman of the Malta Financial Services Authority and the Commissioner of Police.

(3) The Minister shall appoint each additional member as may be requested by the Board in pursuance of the provisions of subarticle (1)(b) from a panel of not less than three persons nominated by the authority to be indicated by the Board with respect to each additional member.

(4) The members of the Board shall be appointed for a term of three years against such remuneration as the Minister may

determine and may be re-appointed in the manner laid down in subarticles (2) or (3), as the case may be, on the expiration of their term of office.

(5) The members of the Board shall discharge their duties in their own individual judgement and shall not be subject to the direction or control of any other person or authority.

(6) A person shall not be qualified to be appointed, or to hold office, as a member of the Board if he:

- (a) is legally incapacitated; or
- (b) has been declared bankrupt or has made a composition or scheme of arrangement with his creditors; or
- (c) has been convicted of an offence against this Act or of an offence listed in the First Schedule or in the Second Schedule or of an offence of money laundering against the provisions of the [Dangerous Drugs Ordinance](#) or of the [Medical and Kindred Professions Ordinance](#); or
- (d) is not a salaried official on the permanent staff in the service of the official by whom he is to be or has been recommended for appointment; or
- (e) is a salaried official of or is otherwise employed with or in the service of a subject person or is in any other manner professionally connected to a subject person.

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(7) A member of the Board may be relieved of office by the Minister, after consultation with the official by whom the member was recommended, on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or to any other cause, or of misbehaviour; and, for the purposes of this subarticle, repeated unjustified non-attendance of Board meetings may be deemed to amount to misbehaviour.

(8) A member of the Board may also resign from office by letter addressed to the Minister.

(9) Where any vacancy occurs in the membership of the Board for any reason other than the lapse of the term of office that vacancy shall, for the remainder of the term of office which has become vacant, be filled by another member appointed by the Minister from among a panel of not less than three persons nominated by the official who nominated the panel from among whom the member who vacated office had been appointed.

20. A Chairman and Deputy Chairman shall be appointed by the Prime Minister after consultation with the Minister from among the members of the Board. The Chairman shall be the Head of the Unit and the Deputy Chairman shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or while he is on vacation or during any vacancy in the office of chairman.

Chairman and
Deputy Chairman
of the Board.
Added by:
XXXI. 2001.4.

21. (1) The Board shall meet within one month from its constitution and as often as may be necessary or expedient thereafter, but in no case less frequently than ten times in each year.

Meetings of the
Board.
Added by:
XXXI. 2001.4.

The meetings of the Board shall be called by the Chairman on his own initiative or at the request of any two of the other members or at the request of the Director.

(2) The Board shall not act unless a quorum consisting of the Chairman or Deputy Chairman and not less than two other members is present.

(3) The meetings of the Board shall be chaired by the Chairman, or in his absence, by the Deputy Chairman.

(4) The decisions of the Board shall be adopted by a simple majority of the votes of the members present and voting and in the event of an equality of votes the member presiding at the meeting shall have and exercise a second or casting vote.

(5) The Director shall be entitled to attend the meetings of the Board and to take part in the discussions, but shall have no vote. Saving the provisions of subarticle (2) the absence of the Director from any meeting shall not invalidate the proceedings of the meeting.

(6) Any vacancy among the members of the Board, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the Board.

(7) Subject to the provisions of this Act, the Board may regulate its own procedure.

(8) All acts done by any person acting in good faith as a member of the Unit shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered.

Decisions in case
of emergency.
Added by:
XXXI. 2001.4.

22. In case of emergency, decisions shall be taken by at least two members of the Board one of whom shall be the Chairman or Deputy Chairman.

The Executive and
other staff of the
Unit.
Added by:
XXXI. 2001.4.

23. The Director and the other officers and staff of the Unit shall be appointed or recruited by the Board according to such procedures and on such terms and conditions and in such numbers as the Board may determine.

The police liaison
officer.
Added by:
XXXI. 2001.4.

24. (1) The Commissioner of Police shall detail a police officer not below the rank of Inspector to act as a liaison officer to liaise with the Unit.

(2) Notwithstanding anything to the contrary in any other law the police liaison officer detailed as aforesaid shall be bound to keep secret and confidential any information that may come to his knowledge as a result of his duties as a liaison officer with the Unit and shall not disclose such information to any person other than a member of the Unit or any of its staff in the course of the exercise of his functions as a liaison officer with the Unit.

Provided that where the Unit has submitted a report to the Police in accordance with the provisions of this Act the Unit may, without prejudice to the provisions of article 31(4), authorise the police liaison officer to disclose to the Police, or to any other competent authority identified by the Unit as having an interest in

the investigation of the report, any information relevant to the said report that may have come or may come to the knowledge of the police liaison officer in the course of his assignment with the Unit.

(3) The police liaison officer shall, subject to complying with any internal requirements of the police force, make available to the Unit or to any member of its staff any information at the disposal of the police or which is part of police records to the extent that such information is relevant to the exercise of the functions of the Unit.

(4) The police liaison officer shall assist the Unit in the analysis and processing of suspicious transaction reports and of information and intelligence data collected by the Unit in the exercise of its functions and shall advise the Unit on investigative techniques and on all law enforcement issues.

25. (1) The legal and judicial representation of the Unit shall vest in the Chairman and in his absence in the Deputy Chairman:

Legal and judicial representation of the Unit.

Added by:
XXXI. 2001.4.

Provided that the Unit may appoint any one or more of its other members or of its officers or employees to appear in the name and on behalf of the Unit in any judicial proceedings and in any act, contract, instrument or other document whatsoever.

(2) Any document purporting to be an instrument made or issued by the Unit and to be signed by the Chairman or by the Deputy Chairman on behalf of the Unit shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Unit.

26. (1) The Unit shall be responsible to ensure that subject persons comply with the provisions of this Act and any regulations made thereunder in so far as these are applicable to them.

Compliance.
Added by:
XXXI. 2001.4.

(2) If the Unit so considers necessary it may:

- (a) authorise any of its officers, employees or agents, on producing evidence of his authority, to require any subject person to provide him forthwith with such information or documents relating to that subject person's internal procedures for compliance with the provisions of this Act and any regulation made thereunder and to answer any questions as the Unit may reasonably require for the performance of its functions under subarticle (1);
- (b) by notice in writing served on a subject person require that person to produce, within the time and at the place as may be specified in that notice, any documents as may be so specified in the notice provided such documents are reasonably required by the Unit for the performance of its functions under this Act.

(3) Where the documents required under subarticle (2) are produced, the Unit may make notes and take copies of the whole or any part of such documents.

(4) Where the documents required under subarticle (2) are not produced, the Unit may require the subject person who was

required to produce them to state, in writing, why such documents could not be produced.

(5) Subject to the provisions of article 27, a supervisory authority is, for the purposes of subarticle (2)(a), considered to be an agent of the Unit.

Co-operation with
supervisory
authorities.
Added by:
XXXI. 2001.4.

27. (1) Without prejudice to the generality of the provisions of this Act, the Unit shall co-operate with the supervisory authorities to ensure that the financial and other systems are not used for criminal purposes and thus safeguard their integrity.

(2) Without prejudice to the special provisions of any other law applicable to them, the supervisory authorities shall extend all assistance and co-operation to the Unit in the fulfilment of its responsibilities under this Act.

(3) In pursuance of its responsibilities under the provisions of article 26, the Unit may request a supervisory authority to do all or any of the following and the supervisory authority shall not unreasonably withhold its assistance:

(a) to provide the Unit with such information of which the supervisory authority may become aware of in the course of its supervisory functions and which indicates that a subject person falling under the competence of the supervisory authority may not be in compliance with any requirements under this Act or any regulations made thereunder;

(b) to carry out, on behalf of the Unit, on-site examinations on subject persons falling under the competence of the supervisory authority with the aim of establishing that person's compliance with the provisions of this Act and any regulations made thereunder and to report to the Unit accordingly.

(4) The Unit may authorise any of its officers or employees to accompany the supervisory authority in any on-site examination as may be required by the Unit under subarticle (3)(b) and any such officer or employee shall be entitled, on producing, if requested, evidence of his authority, to enter any premises of the subject person on whom an examination is being undertaken.

Delay of execution
of a suspicious
transaction.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

28. (1) Where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering or funding of terrorism that subject person shall inform the Unit before executing the transaction giving all the information concerning the transaction including the period within which it is to be executed. Such information may be given by telephone but shall be forthwith confirmed by fax or by any other written means and the Unit shall promptly acknowledge the receipt of the information.

(2) Where the matter is serious or urgent and it considers such action necessary, the Unit may oppose the execution of a transaction before the expiration of the period referred to in subarticle (1) and notice of such opposition shall be immediately notified by fax or by any other written means.

(3) The opposition by the Unit shall halt the execution of the transaction for twenty-four hours from the time of the notification referred to in subarticle (1) unless the Unit shall authorise earlier, by fax or otherwise in writing, the execution of the transaction.

(4) Where within the period referred to in subarticle (1) no opposition has been made by the Unit as provided in subarticle (2) the subject person concerned may proceed to the execution of the transaction in question and where opposition has been made as provided aforesaid the subject person concerned may proceed to the execution of the transaction in question upon the lapse of the period referred to in subarticle (3) unless in the meantime an attachment order has been served on the subject person.

29. Where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering or funding of terrorism but it is unable to inform the Unit before the transaction is executed, either because it is not possible to delay executing the transaction due to its nature, or because delay in executing the transaction could prevent the prosecution of the individuals benefiting from the suspected money laundering or funding of terrorism, the subject person shall inform the Unit immediately after executing the transaction giving the reason why the Unit was not so informed before executing the transaction.

Action after execution of suspicious transaction which could not be delayed.
Added by: XXXI. 2001.4.
Amended by: VI. 2005.5.

30. (1) When the Unit receives a report as is referred to in article 16(1)(a) or when from information in its possession the Unit suspects that any subject person may have been used for any transaction suspected to involve money laundering or funding of terrorism the Unit may demand from the subject person making the report or from the subject person which is suspected of having been used for any transaction suspected to involve money laundering or funding of terrorism as well as from any other subject person, the police, any Government Ministry, department, agency or other public authority, or any other person, physical or legal, and from any supervisory authority, any additional information that it deems useful for the purpose of integrating and analysing the report or information in its possession.

Power of the Unit to demand information.
Added by: XXXI. 2001.4.
Amended by: VI. 2005.5.

(2) Notwithstanding anything contained in the [Professional Secrecy Act](#) and any obligation of secrecy or confidentiality under any other law the subject person or any other person, physical or legal, and any authority or entity from whom information is demanded by the Unit in pursuance of the provisions of subarticle (1) shall communicate the information requested to the Unit and for the purposes of article 257 of the [Criminal Code](#) any such disclosure shall be deemed to be a disclosure of information to a public authority compelled by law:

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Provided that nothing in this subarticle shall imply any obligation on the Attorney General to communicate to the Unit any information which in any way relates to or is connected with or came into his possession as a result of the exercise by him of any powers referred to in article 91(3) of the Constitution or any obligation on any person to communicate to the Unit any information which would in legal proceedings be protected from disclosure by article 642(1) of the [Criminal Code](#) or by article 588(1) of the [Code of Organization and Civil Procedure](#).

Cap. 9.
Cap. 12.

Power of Unit to
demand
information under
article 16.
Added by:
XIII. 2004.126.

30A. (1) Notwithstanding anything contained in any other law, the Unit may likewise demand from any person, authority or entity, as is referred to in article 30, any information it deems relevant and useful for the purpose of pursuing its functions under article 16.

(2) The provisions of article 30(2) shall *mutatis mutandis* apply where any information is demanded by the Unit under this article.

Unit may require
the subject person
to monitor
transactions or
banking
operations.
Added by:
VII. 2010.62.

30B. (1) When the Unit receives a report as is referred to in article 16(1)(a) or when from information in its possession the Unit suspects that any subject person may have been used for any transaction suspected to involve money laundering or funding of terrorism or that property is being held by a subject person that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity or from an act or acts of participation in criminal activity, the Unit may require the subject person to monitor for a specified period the transactions or banking operations being carried out through one or more accounts in the name of any person suspected of the said offences, or through one or more accounts suspected to have been used in the commission of any of the said offences or which could provide information about the offences or the circumstances thereof, whether before, during or after the commission of the offences, including any such accounts in the name of legal persons. The subject person shall communicate to the Unit the information resulting from the monitoring and the Unit may use that information for the purpose of carrying out its analysis and reporting functions under this Act.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

(3) The provisions of article 30(2) shall *mutatis mutandis* apply where any information is demanded by the Unit under this article.

31. (1) Where following an analysis of a suspicious transaction report and of the information in its possession relevant to the report the Unit is of the opinion that a reasonable suspicion of money laundering or funding of terrorism persists the report together with any relevant information in its possession and the results and conclusions of any analysis carried out by the Unit shall be transmitted to the Police for further investigation.

Transmission of information to police for investigation.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

(2) The provisions of subarticle (1) shall also apply *mutatis mutandis* to any suspicion of money laundering or funding of terrorism which the Unit may have formed on the basis of information in its possession without any suspicious transaction report having been made to the Unit or independently of any such report.

(3) Where the Unit transmits information to the Police in pursuance of the provisions of subarticles (1) and (2) and a subject person over which another authority or agency has supervisory or regulatory functions is involved the Unit shall inform the said authority or agency of action taken.

(4) Where the Unit transmits information to the Police in pursuance of subarticles (1) and (2) it shall thereafter transmit to the Police any further relevant information in respect of the suspicion communicated to the Police as aforesaid.

32. The Unit shall, at the request of the subject person, give to the subject person which reports any transaction suspected to involve money laundering or funding of terrorism such information as the Unit considers to be of interest to the subject person in order to enable that subject person to regulate its affairs and to assist it to carry out its duties under this Act or any regulation made thereunder.

Information.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

33. Any official or employee of the Unit who, in any circumstances other than those provided for in the proviso to article 24(2), discloses to the person concerned or to a third party that an investigation is being carried out by the Unit, or that information has been transmitted to the Unit by a subject person, or that the Unit has transmitted information to the police for investigation, shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67) or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Tipping off by the officials or employees of the Unit.
Added by:
XXXI. 2001.4.
Amended by:
L.N. 425 of 2007.

34. (1) The Unit, and its officers, employees and agents, whether still in the service of the Unit or not, shall not disclose any information relating to the affairs of the Unit or of any person, physical or legal, which they have acquired in the performance of their duties or the exercise of their functions under this Act except:

Confidentiality and permissible disclosure of information.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

- (a) when authorised to do so under any of the provisions of this Act;
- (b) for the purpose of the performance of their duties or the exercise of their functions under this Act;
- (c) when specifically and expressly required to do so

under a provision of any law.

(2) The Unit may disclose any document or information referred to in subarticle (1) to an organization outside Malta which in the opinion of the Unit has functions similar to those of the Unit and which has similar duties of secrecy and confidentiality as those of the Unit or to a supervisory authority in Malta or to a supervisory authority outside Malta which in the opinion of the Unit has duties similar to those of a supervisory authority in Malta.

(3) The Unit may, in particular, refuse to disclose any document or information if:

- (a) in its opinion such disclosure could lead to causing prejudice to a criminal investigation in course in Malta; or
- (b) due to exceptional circumstances, such disclosure would be clearly disproportionate to the legitimate interests of Malta or of a natural or legal person; or
- (c) such disclosure would not be in accordance with fundamental principles of Maltese law:

Provided that any refusal under this subarticle shall be clearly explained to the body or authority requesting the disclosure of the document or information.

(4) The Unit may also disclose any document or information referred to in subarticle (1) to a competent authority in Malta or outside Malta investigating any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute:

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- (a) any of the offences referred to in article 22(2)(a)(1) of the [Dangerous Drugs Ordinance](#); or

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- (b) any of the offences referred to in article 120A(2)(a)(1) of the [Medical and Kindred Professions Ordinance](#); or
- (c) any offence of money laundering within the meaning of this Act; or
- (d) any offence of funding of terrorism:

Provided that such disclosure shall be subject to the condition that the information or document disclosed shall not, without the express consent of the Unit, be used for any other purpose other than that of the investigation or for any subsequent prosecution for the offence which is the subject of the investigation or for any proceedings which may lead to the confiscation of any proceeds from the said offence or of funds, assets or other property used for the purpose of funding of terrorism.

Revenue of the
Unit.
Added by:
XXXI. 2001.4.

35. The revenue of the Unit shall consist of:

- (a) fees payable to the Unit for services rendered by it;
- (b) rents, interests and profits accruing from property, deposits and other assets of the Unit;
- (c) any monies advanced to it by the Minister;

(d) any other money receivable or received by the Unit.

36. (1) The Unit may:

Powers of the Unit.
Added by:
XXXI. 2001.4.

- (a) hold accounts with any bank;
- (b) invest any of its liquid assets in short and medium term first class securities as approved by the Board;
- (c) acquire, purchase, lease or dispose of any movable or immovable property required for the conduct of its business or for any purposes ancillary or incidental to the performance of its functions under this Act.

(2) For the purpose of carrying out any of its functions under this Act, the Unit may, with the approval in writing of the Minister, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister may in writing approve.

37. The Minister may make advances to the Unit of such sums as the Minister may consider to be required by the Unit for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as the Minister may deem appropriate. Any such advances may be made by the Minister out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advances.

Advances by the
Government.
Added by:
XXXI. 2001.4.

38. (1) The Director shall, not later than six weeks before the end of each financial year, submit to the Board estimates of the income and expenditure of the Unit for the following financial year:

Estimates and
expenditure.
Added by:
XXXI. 2001.4.

Provided that the estimates for the first financial year of the Unit shall be prepared and adopted within such time as the Minister may by notice in writing to the Unit specify.

(2) In the preparation of such estimates the Unit shall endeavour to ensure that the total revenues of the Unit are at least sufficient to meet all sums properly chargeable to its Income and Expenditure Account, including but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Board may direct.

(4) Before the end of each financial year the Board shall consider and adopt, with or without amendments as the case may be, the estimates submitted to it for the following financial year.

(5) If in respect of any financial year it is found that the amount approved by the Board is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Director may cause supplementary estimates to be prepared and sent forthwith to the Board for adoption and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to supplementary estimates.

Determination and
allocation of
profits.
Added by:
XXXI. 2001.4.

39. All profits realised by the Unit shall be put to a reserve fund which shall be used for such purposes as the Unit may deem to be required to meet the objects of the Unit, including the repayment of any liabilities.

Financial year.
Added by:
XXXI. 2001.4.

40. The financial year of the Unit shall begin on the first day of January and end on the thirty-first day of December:

Provided that the first financial year shall begin at the date of commencement of this article and shall end on the thirty-first day of December of the following year.

Audit.
Added by:
XXXI. 2001.4.

41. The Unit shall keep proper books of account in such manner as the Minister may from time to time direct. Such accounts shall be audited by auditors appointed by the Board with the concurrence of the Minister from among persons qualified to be appointed as auditors of a company under the law for the time being in force in Malta, as if the Unit were such a company, and shall moreover be subject to audit by the Auditor General.

Annual accounts.
Added by:
XXXI. 2001.4.

42. (1) The Board shall, as soon as may be but not later than three months after the close of each financial year, transmit to the Minister:

- (a) a copy of the annual accounts certified by the auditors;
- (b) a report on the operations of the Unit during the year.

(2) The report referred to in subarticle (1) shall be laid on the Table of the House by the Minister not later than six weeks after its receipt, or where the House is during the period not in session not later than the second week after the House resumes its sittings.

Exemption from
taxes.
Added by:
XXXI. 2001.4.

43. The Unit shall be exempted from any liability for the payment of income tax and duty on documents and transfers under any law for the time being in force.

FIRST SCHEDULE

(Article 2)

Article 3 (1) (a) of the United Nations Convention

Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

- (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
 - (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
 - (iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
 - (iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs, or psychotropic substances;
 - (v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above.
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SECOND SCHEDULE

(Article 2)

*Amended by:
L.N. 71 of 1999.
Substituted by:
L.N. 176 of 2005.*

Any criminal offence.

ANNEX III

SUBSIDIARY LEGISLATION 373.01

**PREVENTION OF MONEY LAUNDERING AND
FUNDING OF TERRORISM REGULATIONS**

31st July, 2008

LEGAL NOTICE 180 of 2008, as amended by Legal Notice 328 of 2009.

1. (1) The title of these regulations is the Prevention of Money Laundering and Funding of Terrorism Regulations. Title and scope.

(2) The objective of these regulations is to implement the provisions of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, including Directive 2006/70/EC of the European Commission of 1 August 2006 laying down implementing measures for Directive 2005/60/EC as regards the definition of politically exposed persons and as regards the technical criteria for simplified customer due diligence and for the exemption on grounds of a financial activity being conducted on an occasional or very limited basis, as may be amended from time to time, and any further implementing measures that may be issued thereunder.

2. (1) In these regulations, unless the context otherwise requires - Interpretation and application.

"the Act" means the Prevention of Money Laundering Act;

"applicant for business" means a legal or natural person, whether acting as principal or agent, who seeks to form a business relationship, or carry out an occasional transaction with a person who is acting in the course of either relevant financial business or relevant activity;

"beneficial owner" means the natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction is being conducted, and:

(a) in the case of a body corporate or a body of persons, the beneficial owner includes any natural person or persons who -

(i) ultimately own or control, whether through direct or indirect ownership or control, including, where applicable, through bearer share holdings, more than 25% of the shares or voting rights in that body corporate or body of persons other than a company that is listed on a regulated market which is subject to disclosure requirements consistent with Community legislation or equivalent international standards; or

(ii) otherwise exercise control over the management

Amended by:
L.N. 328 of 2009.
Cap. 373.

- of that body corporate or body of persons; and
- (b) in the case of any other legal entity or legal arrangement which administers and distributes funds, the beneficial owner includes:
 - (i) where the beneficiaries have been determined, a natural person who is the beneficiary of at least 25% of the property of the legal entity or arrangement;
 - (ii) where the beneficiaries have not yet been determined, the class of persons in whose main interest the legal entity or arrangement is set up or operates;
 - (iii) a natural person who controls at least 25% of the property of the legal entity or arrangement; and
 - (c) in the case of long term insurance business, the beneficial owner shall be construed to be the beneficiary under the policy;

"business relationship" means a business, professional or commercial relationship, which is expected to have an element of duration, between two or more persons, at least one of which is acting in the course of either relevant financial business or relevant activity;

"Case 1" (negotiations) means any case where negotiations take place between the parties with a view to the formation of a business relationship between them;

"Case 2" (suspicion) means any case where, regardless of any exemption or threshold, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business may have been, is, or may be engaged in money laundering or the funding of terrorism, or that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in money laundering or the funding of terrorism;

"Case 3" (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of fifteen thousand euro (€15,000) or more, and, where an occasional transaction involves a money transfer or remittance in accordance with regulation 7(11), the payment amount is one thousand euro (€1,000) or more;

"Case 4" (series of transactions) means any case where, in respect of two or more transactions -

- (a) it appears at the outset to a person dealing with any of the transactions that -
 - (i) the transactions are carried out by the same person and are of a similar character, and
 - (ii) the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is fifteen thousand euro (€15,000) or more; or
- (b) at any later stage it appears to such a person that the

provisions of paragraph (a)(i) and (ii) are satisfied;

"casino" shall have the same meaning as is assigned to it by article 2 of the Gaming Act and "casino licensee" in these regulations shall be construed accordingly; Cap. 400.

"collective investment scheme", "participants" and "units" have the same meanings as are assigned to these terms respectively in the Investment Services Act; Cap. 370.

"the Community" shall mean the European Community and, for the purposes of these regulations, shall include EEA States;

"company" has the same meaning as is assigned to it in the Companies Act; Cap. 386.

"criminal activity" has the same meaning as is assigned to the term in the Act;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2 May, 1992 as amended by the Protocol signed at Brussels on the 17 March, 1993 and as may be amended by any subsequent acts;

"established business relationship" means a business relationship formed by a person acting in the course of either relevant financial business or relevant activity where that person has carried out customer due diligence under procedures maintained by him, in accordance with the provisions of these regulations in relation to the formation of that business relationship;

"Financial Intelligence Analysis Unit" has the same meaning as is assigned to the term in the Act;

"funding of terrorism" means the conduct described in articles 328F and 328I both inclusive, of the Criminal Code; Cap. 9.

"group of companies" has the same meaning as is assigned to the term "group company" by the Companies Act so however that, for the purposes of these regulations, it shall include also any other body corporate registered or operating in a reputable jurisdiction and forming part of the group of companies and which is further licensed or otherwise authorised under the laws of that jurisdiction to carry out any activity equivalent either to relevant financial business or to relevant activity;

"long term insurance business" means the business of insurance of any of the classes specified in the Second Schedule to the Insurance Business Act; Cap. 403.

"money laundering" means the doing of any act which constitutes an offence under the Act, or in the case of an act committed otherwise than in Malta, would constitute such an offence if done in Malta;

"occasional transaction" means any transaction other than a transaction carried out in the exercise of an established business relationship formed by a person acting either in the course of relevant financial business or in the course of relevant activity;

"politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and shall

include their immediate family members or persons known to be close associates of such persons, but shall not include middle ranking or more junior officials;

"relevant activity" means the activity of the following legal or natural persons when acting in the exercise of their professional activities:

- (a) auditors, external accountants and tax advisors, including when acting as provided for in paragraph (c);
- (b) real estate agents;
- (c) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or execution of transactions for their clients concerning the -
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies;
 - (v) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider;
- (d) trust and company service providers not already covered under paragraphs (a), (c), (e) and (f);
- (e) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act;
- (f) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act;
- (g) casino licensee;
- (h) other natural or legal persons trading in goods whenever payment is made in cash in an amount equal to fifteen thousand euro (€15,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked; and
- (i) any activity which is associated with an activity falling within paragraphs (a) to (h);

"relevant financial business" means -

- (a) any business of banking or any business of an electronic money institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act; Cap. 371.
- (b) any activity of a financial institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Financial Institutions Act; Cap. 376.
- (c) long term insurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act or enrolled or required to be enrolled under the provisions of the Insurance Intermediaries Act, any affiliated insurance business carried on by a person in accordance with the Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations, and any business of insurance carried on by a cell company in accordance with the provisions of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations; S.L. 403.11
S.L. 386.10
- (d) investment services carried on by a person or institution licensed or required to be licensed under the provisions of the Investment Services Act; Cap. 370.
- (e) administration services to collective investment schemes carried on by a person or institution recognised or required to be recognised under the provisions of the Investment Services Act; Cap. 370.
- (f) a collective investment scheme marketing its units or shares, licensed or recognised, or required to be licensed or recognised, under the provisions of the Investment Services Act; Cap. 370.
- (g) any activity other than that of a scheme or a retirement fund, carried on in relation to a scheme, by a person or institution registered or required to be registered under the provisions of the Special Funds (Regulation) Act and for the purpose of this paragraph, "scheme" and "retirement fund" shall have the same meaning as is assigned to them in the said Act; Cap. 450
- (h) any activity of a regulated market and that of a central securities depository authorised or required to be authorised under the provisions of the Financial Markets Act; Cap. 345.
- (i) any activity under paragraphs (a) to (h) carried out by branches established in Malta and whose head offices are located inside or outside the Community;
- (j) any activity which is associated with a business falling within paragraphs (a) to (i);

"reputable jurisdiction" means any country having appropriate

legislative measures for the prevention of money laundering and the funding of terrorism, taking into account that country's membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism, and which supervises natural and legal persons subject to such legislative measures for compliance therewith;

"shell bank" means a credit institution or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is not affiliated with a regulated financial group;

"subject person" means any legal or natural person carrying out either relevant financial business or relevant activity;

"supervisory authority" means -

- (a) the Central Bank of Malta;
- (b) the Malta Financial Services Authority;
- Cap. 386. (c) the Registrar of Companies acting under articles 403 to 423 of the Companies Act;
- Cap. 386. (d) a person appointed by the Registrar of Companies under articles 403 to 423 of the Companies Act;
- Cap. 403. (e) an inspector appointed under article 30 of the Insurance Business Act, including when such inspector exercises his functions for the purposes of the Insurance Intermediaries Act by virtue of article 54 thereof;
- Cap. 487. (f) a person appointed under article 20 or article 22 of the Banking Act;
- Cap. 371. (g) a person appointed under article 14 or article 15 of the Financial Institutions Act;
- Cap. 376. (h) a person appointed under article 13 or article 14 of the Investment Services Act;
- Cap. 370. (i) the Lotteries and Gaming Authority acting under the Lotteries and Other Games Act and the Gaming Act, and any regulations issued thereunder;
- Cap. 438. (j) a person appointed under article 17 of the Lotteries and Other Games Act;
- Cap. 400. (k) the Comptroller of Customs when carrying out duties under any regulations that may be issued or are in force from time to time relating to the cross border movement of cash and other financial instruments;
- Cap. 438.

Cap. 9. "terrorism" means any act of terrorism as defined in article 328A of the Criminal Code<

"trust and company service providers" means any natural or legal person who, by way of business, provides any of the following services to third parties:

- (a) forming companies or other legal persons;
- (b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (c) providing a registered office, business address and other related services for a company, a partnership or any other legal person or arrangement;
- (d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
- (e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards. Cap. 345.

(2) Where these regulations are extended to professions and other categories of undertakings other than those referred to in this regulation and whose activities are particularly likely to be used for the purposes of money laundering or the funding of terrorism, these regulations shall apply in full or in part as may be established by such extension in accordance with the provisions of the Act, and the Financial Intelligence Analysis Unit shall inform the European Union Commission accordingly through the established appropriate channels.

(3) These regulations shall also apply where any 'relevant financial business' or any 'relevant activity' as defined in this regulation is undertaken or performed through the Internet or other electronic means.

(4) Where the Financial Intelligence Analysis Unit determines, or is otherwise informed, that a particular jurisdiction meets the criteria of a 'reputable jurisdiction' as defined in this regulation, it shall inform the relevant authorities of other Member States of the Community and the European Union Commission through the established appropriate channels.

3. (1) The Financial Intelligence Analysis Unit may determine that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or the funding of terrorism occurring, do not fall within the scope of relevant financial business as defined for the purposes of these regulations.

Relevant financial business on an occasional or very limited basis.

(2) In making a determination under subregulation (1) the Financial Intelligence Analysis Unit shall, subject to subregulation (3), apply all the following criteria:

- (a) the total turnover of the financial activity does not exceed fifteen thousand euro (€15,000), and the Financial Intelligence Analysis Unit may establish different thresholds not exceeding this amount depending on the type of financial activity;

- (b) each transaction per customer does not exceed five hundred euro (€500) whether the transaction is carried out in a single operation or in several operations which appear to be linked, and the Financial Intelligence Analysis Unit may establish different thresholds not exceeding this amount depending on the type of financial activity;
- (c) the financial activity is not the main activity and in absolute terms does not exceed five per centum (5%) of the total turnover of the legal or natural person concerned;
- (d) the financial activity is ancillary and not directly related to the main activity;
- (e) with the exception of paragraph (i) of the definition of 'relevant activity', the main activity is not an activity falling within the definition of relevant financial business or relevant activity; and
- (f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.

(3) In assessing the risk of money laundering or the funding of terrorism for the purposes of subregulation (1), the Financial Intelligence Analysis Unit shall pay particular attention to, and examine any financial activity which, is particularly likely, by its very nature, to be used or abused for money laundering or the funding of terrorism and the Financial Intelligence Analysis Unit shall not consider that financial activity as representing a low risk of money laundering or funding of terrorism if the information available suggests otherwise.

(4) In making a determination under subregulation (1) the Financial Intelligence Analysis Unit shall further state the reasons underlying the decision and shall revoke such determination should circumstances change.

(5) The Financial Intelligence Analysis Unit shall establish risk-based monitoring mechanisms or other adequate measures as is practicable to ensure that determinations under subregulation (1) are not abused for money laundering or the funding of terrorism.

Systems and training to prevent money laundering and the funding of terrorism.

4. (1) No subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless that subject person -

- (a) maintains the following measures and procedures established in relation to that business in accordance with the provisions of these regulations:
 - (i) customer due diligence measures;
 - (ii) record-keeping procedures; and
 - (iii) internal reporting procedures;
- (b) applies the measures and procedures established under paragraph (a) including when entering into or

undertaking non face-to-face relationships or transactions;

- (c) establishes policies and procedures on internal control, risk assessment, risk management, compliance management and communications that are adequate and appropriate to prevent the carrying out of operations that may be related to money laundering or the funding of terrorism;
- (d) takes appropriate measures from time to time for the purpose of making employees aware of -
 - (i) the measures and procedures under the provisions of paragraph (a) and paragraph (c), and any other relevant policies that are maintained by him; and
 - (ii) the provisions of the Prevention of Money Laundering Act; of the Sub-Title, Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences of Title IVA of Part II of Book First of the Criminal Code; and of these regulations; and
- (e) provides employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who may have been, is, or appears to be engaged in money laundering or the funding of terrorism.

Cap. 373.

Cap. 9.

(2) Subject persons shall ensure that they have in place appropriate procedures for due diligence when hiring employees.

(3) In this regulation, the term "employees" means those employees whose duties include the handling of either relevant financial business or relevant activity.

(4) Where a natural person undertakes any of the professional activities as defined under 'relevant activity' in regulation 2 as an employee of a legal person, the obligations under this regulation shall apply to that legal person.

(5) Any subject person who contravenes the provisions of this regulation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(6) In determining whether a subject person has complied with any of the requirements of subregulation (1), a court shall consider:

- (a) any relevant guidance or procedures issued, approved or adopted by the Financial Intelligence Analysis Unit with the concurrence of the relevant supervisory authority, and which applies to that subject person; and
- (b) in a case where no guidance or procedures falling within the provisions of paragraph (a) apply, any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that subject person.

(7) In proceedings against any subject person for an offence against this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

Offences by bodies corporate and unincorporated associations.

5. (1) Where an offence against the provisions of regulation 4 is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2) Without prejudice to subregulation (1), where the offence is committed by a body or other association of persons, be it corporate or unincorporate, or by a person within and for the benefit of that body or other association of persons consequent to the lack of supervision or control that should have been exercised on him by a person referred to in subregulation (1), such body or association shall be liable to an administrative penalty of not less than one thousand two hundred euro (€1,200) and not more than five thousand euro (€5,000).

(3) Administrative penalties under subregulation (2) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance provided that in the latter case the accumulated penalty shall not exceed fifty thousand euro (€50,000).

Branches and majority owned subsidiaries.

6. (1) Subject persons carrying out relevant financial business shall not establish or acquire branches or majority owned subsidiaries in a jurisdiction that does not meet the criteria for a reputable jurisdiction as defined in regulation 2.

(2) In relation to their branches and majority owned subsidiaries situated in a reputable jurisdiction, subject persons carrying out relevant financial business shall:

- (a) communicate to such branches and majority owned subsidiaries the relevant policies and procedures established in accordance with regulation 4;
- (b) apply in such branches and majority owned subsidiaries, where applicable, measures that, as a minimum, are equivalent to those under these regulations regarding customer due diligence and record keeping,

and where the legislation of that reputable jurisdiction does not permit the application of such equivalent measures, subject persons under this regulation shall immediately inform the Financial Intelligence Analysis Unit and shall further take additional measures to effectively handle the risk of money laundering or the funding of terrorism.

(3) Where the Financial Intelligence Analysis Unit is in possession of information in accordance with subregulation (2)(b) it shall immediately inform the relevant domestic supervisory authority, the relevant authorities of the other Member States of the Community, and the European Union Commission accordingly.

(4) Where a subject person under this regulation is unable to apply additional measures as required under subregulation (2) to effectively handle the risk of money laundering or the funding of terrorism, that subject person shall immediately inform the Financial Intelligence Analysis Unit who, in collaboration with the relevant supervisory authority, may require the closure of the branch or majority owned subsidiary in accordance with the applicable law.

7. (1) Customer due diligence measures in accordance with regulation 4(1)(a) shall comprise - Customer due diligence.

- (a) the identification of the applicant for business and the verification of the identity of the applicant for business on the basis of documents, data or information obtained from a reliable and independent source;
- (b) the identification, where applicable and in accordance with subregulation (3), of the beneficial owner and the taking of reasonable measures to verify the identity such that the subject person is satisfied of knowing who the beneficial owner is, including, in the case of a body corporate, trusts and similar legal arrangement, reasonable measures to understand its ownership and control structure;
- (c) obtaining information on the purpose and intended nature of the business relationship, such that a subject person is able to establish the business and risk profile of the customer;
- (d) conducting ongoing monitoring of the business relationship,

and where the applicant for business or the beneficial owner is subsequently found to be or becomes a politically exposed person as defined in regulation 2, customer due diligence shall proceed in accordance with regulation 11(6) and (7).

(2) The ongoing monitoring of a business relationship for the purposes of subregulation (1) shall include:

- (a) the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and
- (b) ensuring that the documents, data or information held by the subject person are kept up to date.

(3) Where an applicant for business is or appears to be acting otherwise than as principal, in addition to the identification and the

verification of the identity of the applicant for business:

- (a) subject persons shall ensure that the applicant for business is duly authorised in writing by the principal;
- (b) subject persons shall establish and verify the identity of the person on whose behalf the applicant for business is acting;
- (c) where the principal is a body corporate, a body of persons, or any other form of legal entity or arrangement, subject persons shall, in addition to verifying the legal status of the principal, identify all directors and, where such principal does not have directors, all such other persons vested with its administration and representation, and establish the ownership and control structure;
- (d) in addition to the requirements under paragraph (c), where the principal is a body corporate, a body of persons, trust or any other form of legal entity or arrangement in which there is a shareholding, or any other form of ownership interest or assets held under a trustee or any other fiduciary arrangement, a subject person shall not undertake any business with or provide any service to the applicant for business unless that applicant for business discloses the identity of the beneficial owners, his principal, and the trust settlor, as the case may be, and produces the relevant authenticated identification documentation, and such disclosure procedures shall also apply where there are changes in beneficial ownership, or principal;
- (e) where the applicant for business is acting as a trustee or under any other fiduciary arrangement, a subject person shall not undertake any business with or provide any service to the applicant for business unless that applicant for business discloses the identity of the beneficial owners, his principal, and the trust settlor, as the case may be, and produces the relevant authenticated identification documentation, and such disclosure procedures shall also apply where there are changes in beneficial ownership, or principal.

(4) Subject persons shall not keep anonymous accounts or accounts in fictitious names.

(5) Without prejudice to the provisions of regulation 8, customer due diligence measures maintained by a subject person shall be deemed to be in accordance with the provisions of these regulations if, in Cases 1 to 4, that subject person requires their application to all new applicants for business when contact is first made between that subject person and the applicant for business concerning any particular business relationship or occasional transaction.

(6) Customer due diligence measures under this regulation shall be applied to all new customers and, at appropriate times, to

existing customers on a risk-sensitive basis.

(7) Where, following the application of the customer due diligence measures under these regulations, in an established business relationship doubts have arisen about the veracity or adequacy of the previously obtained customer identification information, or changes have occurred in the circumstances surrounding that established business relationship, then the customer due diligence measures shall be repeated in accordance with these regulations.

(8) Without prejudice to subregulation (1), subject persons may determine the extent of the application of customer due diligence requirements on a risk sensitive basis depending on the type of customer, business relationship, product or transaction:

Provided that subject persons are able to demonstrate to the Financial Intelligence Analysis Unit, or to any other supervisory authority acting on behalf of the Financial Intelligence Analysis Unit in ensuring compliance with these regulations, that the extent of the application on a risk-sensitive basis is appropriate in view of the risks of money laundering and the funding of terrorism.

(9) For the purposes of this regulation, subject persons shall develop and establish effective customer acceptance policies and procedures that are not restrictive in allowing the provision of financial and other services to the public in general but that are conducive to determine, on a risk based approach, whether an applicant for business is a politically exposed person and that, as a minimum, include:

- (a) a description of the type of customer that is likely to pose higher than average risk;
- (b) the identification of risk indicators such as the customer background, country of origin, business activities, products, linked accounts or activities and public or other high profile positions; and
- (c) the requirement for an enhanced customer due diligence for higher risk customers in accordance with regulation 11.

(10) An applicant for business who makes a false declaration or a false representation or who produces false documentation for the purposes of this regulation shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(11) Subject persons who carry out a financial activity under 'relevant financial business' that involves the transfer of funds both domestically and cross-border shall comply with the provisions of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds, as may be in force from time to time.

(12) A subject person who contravenes the provisions of this regulation or of Regulation (EC) No 1781/2006 of the European

Parliament and of the Council of 15 November 2006 on information on the payee accompanying transfers of funds shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500) which shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing.

Verification of
identification.

8. (1) Subject persons shall verify the identity of the applicant for business and, where applicable, the identity of the beneficial owner, before the establishment of a business relationship or the carrying out of an occasional transaction.

(2) Notwithstanding subregulation (1), subject persons may complete the verification during the establishment of a business relationship where this is necessary for the continued normal conduct of business provided that the risk of money laundering or the funding of terrorism is low and, provided further, that the verification procedures be completed as soon as is reasonably practicable after the initial contact.

(3) Notwithstanding subregulations (1) and (2), in relation to life insurance, subject persons may complete the verification of the identity of the beneficiary under the policy after the business relationship has been established but prior to or at the time of payout or at or before the time the beneficiary intends to exercise any of his rights vested under the policy.

(4) Notwithstanding subregulations (1) and (2), subject persons may open a bank account as may be required by the applicant for business provided that adequate measures are put in place such that no transactions are carried out through the account until the verification procedures in accordance with subregulation (1) have been satisfactorily completed.

(5) Where a subject person is unable to comply with regulation 7(1)(a), (b) and (c), the customer due diligence procedures shall require that subject person not to carry out any transaction through the account, not to establish the business relationship or carry out any occasional transaction, or to terminate the business relationship and to consider making a suspicious transaction report to the Financial Intelligence Analysis Unit in accordance with these regulations:

Provided that, where to refrain in such manner is impossible or is likely to frustrate efforts of investigating a suspected money laundering or the funding of terrorism operation that business shall proceed on condition that a disclosure is immediately lodged with the Financial Intelligence Analysis Unit in accordance with regulation 15(6):

Provided further that subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of this subregulation if those subject persons are acting in the course of ascertaining the legal position for their client or performing their responsibilities of defending or representing that client in, or concerning, judicial procedures, including advice on instituting or

avoiding procedures.

9. (1) In addition to complying with the provisions of regulation 7 and regulation 8, a casino licensee shall:

Additional customer due diligence requirements for casino licensees.

Cap. 400.

- (a) not allow any person to enter the casino unless such person has been satisfactorily identified pursuant to the provisions of article 25 of the Gaming Act;
- (b) identify, and verify by the production of an identification document, any person who, whilst in the casino exchanges cash, a cheque or bank draft, whether such is drawn on a local or a foreign credit institution, or who otherwise makes a credit or a debit card payment in exchange for chips or tokens for an amount of two thousand euro (€2,000) or more for use in the casino;
- (c) identify, and verify by the production of an identification document, any person who, whilst in the casino exchanges cash, exchanges chips or tokens after playing a game or games, for an amount of two thousand euro (€2,000) or more;
- (d) ensure that the particulars relating to the identity of a person exchanging chips or tokens to the value of two thousand euro (€2,000) or more is matched with, and cross referred to, the particulars relating to the identity of the person exchanging cash, cheques or bank drafts, or making a credit or debit card payment in exchange for those chips or tokens, and shall further ensure that chips or tokens are derived from winnings made whilst playing a game or games at the casino; and
- (e) ensure that the provisions of paragraphs (b) to (d) are also applied in cases where in any one gaming session a person carries out transactions which are individually for an amount of less than two thousand euro (€2,000) but which in aggregate equal or exceed such amount.

(2) Notwithstanding the provisions of subregulation (1) and without prejudice to the provisions of regulation 15(6) and (7), the casino licensee shall further record the particulars relating to the identity of a person playing a game or games in the casino where the casino licensee or any casino employee has any knowledge or suspicion that such person may have been, is, or may be, engaging in money laundering or the funding of terrorism.

10. (1) Without prejudice to the provisions of subregulation (5) and subregulation (6), subject persons shall not apply customer due diligence measures in accordance with regulation 7 and regulation 8(1), but shall gather sufficient information to establish that the applicant for business qualifies accordingly -

Simplified Customer Due Diligence.
Amended by:
L.N. 328 of 2009.

- (a) where the applicant for business is a person who is authorised to undertake relevant financial business or is a person who is licensed or otherwise authorised in another Member State of the Community or under the

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laws of a reputable jurisdiction to carry out an activity which is equivalent to relevant financial business;

- (b) in the case of legal persons listed on a regulated market authorised in accordance with the provisions of the Financial Markets Act or on an equivalent regulated market within the Community, and legal persons otherwise listed on an equivalent regulated market in a reputable jurisdiction and which are subject to equivalent public disclosure requirements;
- (c) with respect to beneficial owners of pooled accounts held by persons carrying out a relevant activity under paragraph (c) of the definition of "relevant activity" domestically, from within the Community or from a reputable jurisdiction, provided that the subject person shall ensure that supporting identification documentation is available, or may be made available, on request, to the institution that is acting as the depository for the pooled accounts;
- (d) in the case of domestic public authorities or public bodies which fulfill all the following criteria:
 - (i) the applicant for business has been entrusted with a public function pursuant to the Treaty on the European Union, the Treaties on the Communities or other Community legislation;
 - (ii) the identification of the applicant for business is publicly available, transparent and verified;
 - (iii) the applicant for business undertakes activities that are transparent, including any accounting practices; and
 - (iv) the applicant for business is either accountable to a Community institution or to a domestic relevant authority or to an authority of another member of the Community or, where appropriate and effective procedures are in place to control the activity of the applicant;
- (e) to any other applicant for business who is a legal person and who represents a low risk of money laundering or the funding of terrorism in accordance with subregulation (2).

(2) For the purposes of subregulation (1)(e), an applicant for business who is a legal person and who does not have the status as provided for under subregulation (1)(d) shall be considered as representing a low risk of money laundering or the funding of terrorism where -

- (a) the applicant for business undertakes a financial activity outside the scope of relevant financial business as defined in these regulations, provided that the applicant for business is also subject to these regulations independently, even if the applicant for business forms part of a group of companies;

- (b) the identity of the applicant for business is publicly available, transparent and verified;
- (c) the applicant for business is subject to the full licensing requirements under domestic law for undertaking those financial activities, is supervised for those activities by a relevant competent authority, and is further subject to supervision on compliance with these regulations in accordance with the relevant provisions of the Act; and
- (d) the applicant for business is subject to all sanctions and administrative measures provided for under these regulations for non-compliance.

(3) Without prejudice to the provisions of subregulation (5) and subregulation (6), subject persons shall not apply customer due diligence measures in accordance with regulation 7 and regulation 8(1) in relation to -

- (a) insurance policies in respect of which a premium is payable in one installment of an amount not exceeding two thousand five hundred euro (€2,500);
- (b) insurance policies in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand euro (€1,000);
- (c) insurance policies in respect of pension schemes provided that such policies contain no surrender clause and may not be used as collateral for a loan;
- (d) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are effected through deductions from wages and where the scheme regulations prohibit members from assigning their interests under the scheme;
- (e) electronic money as defined under the Banking Act where, if the electronic device cannot be recharged the maximum amount stored is one hundred and fifty euro (€150) or less, or where, if the electronic device can be recharged, a limit of two thousand five hundred euro (€2,500) is imposed on the total amount that can be transacted in a calendar year, except where an amount of one thousand euro (€1,000) or more is redeemed in that calendar year; and Cap. 371.
- (f) any other product or transaction that represents a low risk of money laundering or the funding of terrorism in accordance with subregulation (4).

(4) Subject persons shall consider products that fulfill all the following criteria, or transactions related to them, as representing a low risk of money laundering or funding of terrorism for the purposes of subregulation (3)(f) where:

- (a) the product is subject to a written contractual agreement;

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- (b) the related transactions are carried out through an account in the name of the applicant for business held with a credit institution authorised under the Banking Act or so authorised in another Member State of the Community or otherwise so authorised under the laws of a reputable jurisdiction;
- (c) the product or related transactions are not anonymous and they allow for the application of the customer due diligence measures in accordance with these regulations under Case 2 (suspicion) or similar regulations in another Member State of the Community or a reputable jurisdiction;
- (d) the product is subject to a predetermined maximum threshold and -
 - (i) where the product constitutes an insurance policy or savings product of a similar nature, the maximum threshold does not exceed that laid down in subregulation (3)(a) and (b);
 - (ii) in all other cases, the maximum threshold does not exceed fifteen thousand euro (€15,000), whether the transaction is carried out under Case 3 (single transaction) or Case 4 (series of transactions);
- (e) third parties cannot enjoy the benefits of the product or related transactions, except in the case of death, disablement, survival to a predetermined age, or similar events;
- (f) where the products or related transactions allow for the investment of funds in financial assets or claims, including insurance or other kind of contingent claims, provided that -
 - (i) the benefits of the product or related transactions are only realisable in the long term;
 - (ii) the product or related transactions cannot be used as collateral;
 - (iii) there are no accelerated payments, no surrender clauses are used and no early termination takes place during the contractual relationship.

(5) Nothing in this regulation contained shall apply in circumstances falling within Case 2 (suspicion).

(6) For the purposes of this regulation, in determining whether an applicant for business or a product or related transactions represent a low risk of money laundering or the funding of terrorism, subject persons shall pay special attention to the activities of that applicant for business or to any type of product or transaction that, by its nature, may be used or abused for money laundering or the funding of terrorism, and, where there is information that suggests that this risk may not be low, that applicant for business or that product and related transactions shall not be considered as representing a low risk of money laundering or

the funding of terrorism.

(7) Where the Financial Intelligence Analysis Unit determines that a particular jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2, or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions for simplified customer due diligence under this regulation to all business relationships and transactions from that particular jurisdiction.

11. (1) In Cases 1 to 4, in addition to the requirements under regulation 7, subject persons shall apply, on a risk-sensitive basis, enhanced customer due diligence measures in accordance with this regulation and in situations which, by their nature, can present a higher risk of money laundering or the funding of terrorism.

Enhanced
Customer Due
Diligence.

(2) Subject persons shall apply one or more of the following additional measures to compensate for the higher risk where the applicant for business has not been physically present for identification purposes:

- (a) establish the identity of the applicant for business using additional documentation and information;
- (b) verify or certify the documentation supplied using supplementary measures;
- (c) require certified confirmation of the documentation supplied by a person carrying out a relevant financial activity;
- (d) ensure that the first payment or transaction into the account is carried out through an account held by the applicant for business in his name with a credit institution authorised under the Banking Act or otherwise so authorised in another Member State of the Community or in a reputable jurisdiction.

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(3) In establishing cross-border correspondent banking and other similar relationships with respondent institutions from a country other than a Member State of the Community, subject persons carrying out relevant financial business under paragraph (a) of the definition in regulation 2 shall ensure that -

- (a) they fully understand and document the nature of the business activities of their respondent institution, including, from publicly available information, the reputation of and the quality of supervision on that institution and whether that institution has been subject to a money laundering or funding of terrorism investigation or regulatory measures;
- (b) they assess the adequacy and effectiveness of their internal controls for the prevention of money laundering and the funding of terrorism;
- (c) the prior approval of senior management for the

establishment of new correspondent banking relationships is obtained;

- (d) they document their respective responsibilities for the prevention of money laundering and the funding of terrorism;
- (e) with respect to payable-through accounts, they are satisfied that the respondent credit institution has verified the identity of and performed on-going due diligence on the customers having direct access to the accounts of the respondent institution and that it is able to provide relevant customer due diligence data to that subject person upon request.

(4) Subject persons carrying out relevant financial business under paragraph (a) of the definition in regulation 2 shall -

- (a) not enter into, or continue, a correspondent banking relationship with a shell bank;
- (b) take appropriate measures to ensure that they do not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

(5) Subject persons shall pay special attention to any threat of money laundering or funding of terrorism that may arise from new or developing technologies, or from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use in money laundering or funding of terrorism.

(6) In accordance with subregulation (7) and subject to subregulation (8), subject persons undertaking transactions or establishing business relationships with politically exposed persons residing in another Member State of the Community or in any other jurisdiction shall -

- (a) require the approval of senior management for establishing such business relationships;
- (b) ensure that the internal procedures include adequate measures to establish the source of wealth and funds that are involved in these business relationships or transactions;
- (c) conduct enhanced ongoing monitoring of the business relationships.

(7) For the purposes of the definition of 'politically exposed persons' in regulation 2 -

- (a) the term 'natural persons who are or have been entrusted with prominent public functions' shall include the following:
 - (i) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries;
 - (ii) Members of Parliament;
 - (iii) members of the Courts or of other high-level

judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

- (iv) members of courts of auditors, Audit Committees or of the boards of central banks;
- (v) ambassadors, *charges d'affaires* and other high ranking officers in the armed forces;
- (vi) members of the administrative, management or boards of State-owned corporations,

and where applicable, for the purposes of subparagraphs (i) to (v), shall include positions held at the Community or international level;

- (b) the term 'immediate family members' shall include the following:
 - (i) the spouse, or any partner recognised by national law as equivalent to the spouse;
 - (ii) the children and their spouses or partners; and
 - (iii) the parents;
- (c) the term 'persons known to be close associates' shall include the following:
 - (i) a natural person known to have joint beneficial ownership of a body corporate or any other form of legal arrangement, or any other close business relations with that politically exposed person;
 - (ii) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that politically exposed person.

(8) Without prejudice to the application of enhanced customer due diligence measures on a risk sensitive basis, where a person as mentioned in subregulation (6) has ceased to be entrusted with a prominent public function for a period of at least twelve months such person shall no longer be considered as a politically exposed person.

12. (1) In accordance with the provisions of this regulation, subject persons may rely on a third party or another subject person to fulfill the customer due diligence requirements provided for under regulation 7(1)(a) to (c), provided that, notwithstanding the reliance on a third party or other subject person, the relevant subject person remains responsible for compliance with the requirements under regulation 7(1)(a) to (c).

Reliance on
performance by
third parties.

(2) For the purposes of this regulation, and without prejudice to subregulation (11), a third party shall mean a person undertaking activities equivalent to 'relevant financial business' or 'relevant activity' who is situated in a Member State of the Community other than Malta or in a reputable jurisdiction and who is subject to authorisation or to mandatory professional registration recognised by law.

(3) Subject persons relying on a third party or another subject person shall ensure that the third party or other subject person shall make the information required in accordance with the provisions under regulation 7(1)(a) to (c) immediately available to them.

(4) Subject persons relying on a third party or another subject person shall further ensure that, upon request, the third party or other subject person shall immediately forward to them relevant copies of the identification and verification data and other relevant documentation of the applicant for business or the beneficial owner as required under these regulations.

(5) For the purposes of fulfilling the requirements under regulation 7(1)(a) to (c), and in accordance with this regulation, subject persons may rely on subject persons carrying out relevant financial business as defined in these regulations.

(6) In accordance with the provisions of this regulation, subject persons may, for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a third party who undertakes activities equivalent to those falling within the scope of the definition of 'relevant financial business' under regulation 2(1), with the exception of those persons whose main business is currency exchange or money transmission or remittance services as defined under paragraph (b) of that definition or their equivalent, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(7) Subject persons carrying out an activity falling within the scope of paragraph (b) of the definition of 'relevant financial business' and whose main business is currency exchange or money transmission or remittance services may, in accordance with the provisions of this regulation and for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a third party who undertakes currency exchange or money transmission or remittance services, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(8) For the purposes of fulfilling the requirements under regulation 7(1)(a) to (c), and in accordance with this regulation, subject persons may rely on those subject persons carrying out a relevant activity under paragraphs (a), (c), or (f) of the definition of 'relevant activity' under regulation 2.

(9) Further to subregulation (8) subject persons carrying out a relevant activity under paragraphs (a), (c) or (f) of the definition of 'relevant activity' under regulation 2 may, in accordance with the provisions of this regulation and for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a

third party who undertakes an activity equivalent to any of those in paragraph (a), (c) or (f) of the definition of 'relevant activity' under regulation 2, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(10) This regulation shall not apply -

- (a) to outsourcing or agency relationships where, on the basis of a contractual agreement, the outsourcing service provider or agent is to be regarded as part of the subject person; and
- (b) for reliance on subject persons under paragraph (i) in the definition of 'relevant activity' and subject persons under paragraph (j) of the definition of 'relevant financial business' in regulation 2(1).

(11) Where the Financial Intelligence Analysis Unit determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2 and the criteria for a third party as established under subregulation (2), or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction as defined in regulation 2 and that for a third party as established under subregulation (2), it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from relying on persons and institutions from that particular jurisdiction for the performance of customer due diligence requirements under this regulation.

13. (1) Subject persons shall retain the documents and information specified in this regulation for use in any investigation into, or an analysis of, possible money laundering or the funding of terrorism activities by the Financial Intelligence Analysis Unit or by other relevant competent authorities in accordance with the provisions of applicable law.

Record keeping
procedures.

(2) Record-keeping procedures maintained by a subject person shall be deemed to be in accordance with the provisions of this regulation if they make provision for the keeping, for the prescribed period, of the following records:

- (a) in relation to any business relationship that is formed or an occasional transaction that is carried out, a record indicating the nature of the evidence of the customer due diligence documents required and obtained under procedures maintained in accordance with these regulations, comprising a copy of or the reference to the evidence required for the identity and providing sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained;
- (b) a record containing details relating to the business relationship and to all transactions carried out by that person in the course of an established business relationship or occasional transaction which shall

include the original documents or other copies which are admissible in court proceedings;

- (c) in relation to regulations 15(1) and 15(2) a record of the findings of the examination of the background and purpose of the relationships and transactions therein.

(3) For the purposes of subregulation (2), the prescribed period shall be the period of at least five years commencing with -

- (a) in relation to such records as are described in paragraph (a), the date on which the relevant financial business or relevant activity was completed; and
- (b) in relation to such records as are described in paragraphs (b) and (c), the date on which all dealings taking place in the course of the transaction in question were completed:

Provided that, in relation to records relating to an occasional transaction or a series of occasional transactions, the aforesaid period of at least five years shall commence with the date on which the occasional transaction or the last of a series of occasional transactions took place.

(4) For the purposes of subregulation (3)(a) the date on which relevant financial business or relevant activity is completed shall, as the case may be, be deemed to be the date of -

- (a) in circumstances falling within Case 1 (negotiations), the ending of the business relationship in respect of whose formation the record under this regulation was compiled;
- (b) in circumstances falling within Case 2 (suspicion), the reporting of the suspicious transaction in accordance with regulation 15, provided that the period of five years may be extended as may be required by the Financial Intelligence Analysis Unit;
- (c) in the circumstances falling within Case 3 (single large transaction), the carrying out of the transaction or the last of a series of single large transactions in respect of which the record under this regulation was compiled; and
- (d) in circumstances falling within Case 4 (series of transactions), the carrying out of the last transaction in a series of transactions in respect of which the record under this regulation was compiled,

and where the formalities necessary to end a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of that transaction shall be treated as the date on which the relevant financial business or relevant activity was completed, provided that the business relationship is immediately formally terminated.

(5) Without prejudice to subregulations (2) to (4), a casino licensee shall also maintain records in relation to all identification processes under regulation 9 in accordance with the relevant provisions of the Gaming Act.

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(6) Subject persons shall ensure that, upon request, all customer identification, due diligence records and transaction records and other relevant information are made available on a timely basis to the Financial Intelligence Analysis Unit and, as may be allowed by law, to other relevant competent authorities, for the purposes of the prevention of money laundering and the funding of terrorism.

(7) Subject persons carrying out relevant financial business shall establish systems that enable them to respond efficiently to enquiries from the Financial Intelligence Analysis Unit or from supervisory or other relevant competent authorities, in accordance with applicable law, as to -

- (a) whether they maintain or have maintained during the previous five years a business relationship with a specified natural or legal person or persons; and
- (b) the nature of that relationship.

14. (1) The Financial Intelligence Analysis Unit, subject persons and supervisory and other competent authorities responsible for combating money laundering or the funding of terrorism, shall maintain comprehensive statistical data, as applicable, in accordance with subregulation (2) and, upon request, such subject persons and supervisory and other competent authorities, shall make this statistical data available to the Financial Intelligence Analysis Unit to enable it to review the effectiveness of the national systems.

Statistical data.

(2) Comprehensive statistical data on matters relevant to the effectiveness of national systems to combat money laundering and the funding of terrorism maintained under subregulation (1) shall, as a minimum, include:

- (a) the number of suspicious transaction reports made to the Financial Intelligence Analysis Unit;
- (b) the number of suspicious transaction reports forwarded by the Financial Intelligence Analysis Unit for further investigation by the law enforcement agencies;
- (c) the follow up given to these reports;
- (d) the number of cases investigated;
- (e) the number of persons prosecuted;
- (f) the number of persons convicted for the offence of money laundering or the funding of terrorism;
- (g) details and value of property that has been frozen, seized or confiscated;

Cap. 373. (h) any other relevant statistical data as may justifiably be required by the Financial Intelligence Analysis Unit in order for it to fulfill its obligations under this regulation and the Prevention of Money Laundering Act.

(3) The Financial Intelligence Analysis Unit shall publish consolidated reviews of the statistical data gathered in accordance with this regulation.

(4) The Financial Intelligence Analysis Unit shall, wherever practicable and as may be allowed by the provisions of the Act within the provisions of law, provide subject persons and, where applicable, supervisory authorities with timely feedback on the effectiveness of the suspicious transaction reports, other information it receives under regulation 15, and the effectiveness of the statistical data gathered under this regulation.

Reporting
procedures and
obligations.

15. (1) Subject persons shall examine with special attention, and to the extent possible, the background and purpose of any complex or large transactions, including unusual patterns of transactions, which have no apparent economic or visible lawful purpose, and any other transactions which are particularly likely, by their nature, to be related to money laundering or the funding of terrorism, establish their findings in writing, and make such findings available to the Financial Intelligence Analysis Unit and to the relevant supervisory authority in accordance with applicable law.

(2) Subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings, including those carrying out relevant financial business or a relevant activity, from a jurisdiction that does not meet the criteria of a reputable jurisdiction as defined in regulation 2, and, where the provisions of subregulation (1) apply to such transactions, subject persons shall proceed as provided for in subregulation (1).

(3) Where a jurisdiction, as is mentioned in subregulation (2), continues not to apply measures equivalent to those laid down by these regulations, subject persons shall inform the Financial Intelligence Analysis Unit which, in collaboration with the relevant supervisory authority, may require such business relationship not to continue or a transaction not to be undertaken or apply any other counter-measures as may be adequate under the respective circumstances.

(4) Internal reporting procedures maintained by a subject person, shall be deemed to be in accordance with the provisions of these regulations if they provide for -

(a) the appointment by the subject person of one of its officers of sufficient seniority and command as the reporting officer, to whom a report is to be made of any information or other matter which gives rise to a knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the

funding of terrorism or that a transaction may be related to money laundering or the funding of terrorism;

- (b) consideration of such report by the reporting officer or by another designated employee of the subject person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to a knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the funding of terrorism;
- (c) reasonable access for the reporting officer or other designated employee to any information held by the subject person which may be of assistance for the purposes of considering the report;
- (d) a procedure whereby any knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the funding of terrorism determined by the reporting officer or other designated employee is reported in accordance with subregulation (6);
- (e) notifying the Financial Intelligence Analysis Unit and the relevant supervisory authority, where applicable, of the details of the appointed reporting officer and any subsequent changes thereto and the appointment of a designated employee for the purposes of paragraphs (b) to (d); and
- (f) any employee designated by the subject person for the purposes of paragraphs (b) to (d) shall be approved by the reporting officer and shall work under his direction.

(5) A supervisory authority shall maintain internal reporting procedures in accordance with the provisions of subregulation (4), although the failure of a supervisory authority to maintain such procedures in accordance with the provisions of this regulation shall not constitute an offence but may be the subject of internal disciplinary proceedings against the officials or employees concerned.

(6) Where a subject person knows, suspects or has reasonable grounds to suspect that a transaction may be related to money laundering or the funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism, or that money laundering or the funding of terrorism has been, is being or may be committed or attempted, that subject person shall, as soon as is reasonably practicable, but not later than five working days from when the suspicion first arose, disclose that information, supported by the relevant identification and other documentation, to the Financial Intelligence Analysis Unit.

(7) Subject persons shall refrain from carrying out a transaction that is suspected or known to be related to money laundering or the funding of terrorism until they have informed the Financial

Intelligence Analysis Unit in accordance with this regulation and, where to refrain in such a manner is not possible or is likely to frustrate efforts of investigating or pursuing the beneficiaries of the suspected money laundering or funding of terrorism operations, subject persons shall accordingly inform the Financial Intelligence Analysis Unit immediately the transaction is effected.

(8) Where, following the consideration of an internal report, the reporting officer or other designated employee determines not to report in accordance with this subregulation for justifiable reasons in accordance with subregulation (4)(b), the reporting officer shall record the reasons for such determination in writing and, upon request, shall make it available to the Financial Intelligence Analysis Unit or a supervisory authority acting on behalf of the Financial Intelligence Analysis Unit in monitoring compliance with these regulations.

(9) Where a supervisory authority, either in the course of its supervisory work or in any other way, discovers facts or obtains any information that could be related to money laundering or the funding of terrorism, that supervisory authority shall, as soon as is reasonably practicable, but not later than five working days from when facts are discovered or information obtained, disclose those facts or that information, supported by the relevant documentation that may be available, to the Financial Intelligence Analysis Unit.

(10) Subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of subregulation (6) or subregulation (7) if such information is received or obtained in the course of ascertaining the legal position for their client or performing their responsibility of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(11) Where, following a submission of a disclosure as in subregulation (6) or subregulation (7), or for any other reason as is allowed by law, the Financial Intelligence Analysis Unit demands information from the disclosing or any other subject person, that subject person shall comply as soon as is reasonably practicable but not later than five working days from when the demand is first made unless that subject person makes representations justifying why the requested information cannot be submitted within the said time and the Financial Intelligence Analysis Unit, at its discretion and after having considered such representations, extends such time as is reasonably necessary to obtain the information, whereupon the subject person shall submit the information requested within the time as extended.

(12) Any *bona fide* communication or disclosure made by a supervisory authority or by a subject person or by an employee or director of such a supervisory authority or subject person in accordance with these regulations shall not be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information

and shall not involve that supervisory authority or subject person or the directors or employees of such supervisory authority or subject person in any liability of any kind.

(13) Any information disclosed under these regulations shall be used only in connection with investigations of money laundering and, or funding of terrorism activities.

(14) Any investigating, prosecuting, judicial or administrative authority and subject persons shall protect and keep confidential the identity of persons and employees who report suspicions of money laundering or the funding of terrorism either internally or to the Financial Intelligence Analysis Unit.

(15) A subject person who contravenes the provisions of this regulation, or who fails to disclose information as is required by subregulation (6) or subregulation (7) or who fails to submit information demanded under subregulation (11), shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500).

(16) Administrative penalties under subregulation (15) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed twelve thousand five hundred euro (€12,500).

16. (1) A subject person, a supervisory authority or any official or employee of a subject person or a supervisory authority who discloses to the person concerned or to a third party, other than as provided for in this regulation, that an investigation is being or may be carried out, or that information has been or may be transmitted to the Financial Intelligence Analysis Unit pursuant to these regulations shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Prohibition of disclosure.

(2) Without prejudice to subregulation (1), disclosures made under the following circumstances shall not constitute a breach of that subregulation:

- (a) disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law;
- (b) disclosures by the reporting officer of a subject person who undertakes relevant financial business to the reporting officer of another person or persons undertaking equivalent activities and who form part of the same group of companies of the former subject person, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction;
- (c) disclosures by the reporting officer of a subject person who undertakes activities under paragraph (a) or

paragraph (c) of the definition of ‘relevant activity’ to the reporting officer of another person or persons undertaking equivalent activities, who perform their professional activities whether as employees or not, but within the same legal person or within a larger structure to which the subject person belongs and which shares common ownership, management or compliance control, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction;

- (d) disclosures between the same professional category of subject persons referred to in paragraph (b) and paragraph (c) in cases related to the same customer and the same transaction that involves two or more institutions or persons, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction, provided that such subject persons are subject to equivalent obligations as regards professional secrecy and personal data protection and, provided further that the information exchanged shall only be used for the purposes of the prevention of money laundering or the funding of terrorism.

(3) The fact that a subject person as referred to in subregulation (2)(c) is seeking to dissuade a client from engaging in an illegal activity shall not constitute a disclosure in breach of subregulation (1).

(4) Where the Financial Intelligence Analysis Unit determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2, or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions of subregulation (2) with persons and institutions from that jurisdiction.

Implementing
procedures.
Amended by:
L.N. 328 of 2009.

17. (1) The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority, may issue procedures and guidance as may be required for the carrying into effect of the provisions of these regulations, and which shall be binding on persons carrying out relevant financial business or relevant activity.

(2) A subject person who fails to comply with the provisions of any procedures and guidance established in accordance with subregulation (1) shall be liable to the administrative penalties as provided for under regulation 15(15) and (16).

Cap. 373.

(3) In fulfilling its compliance supervisory responsibilities under the Prevention of Money Laundering Act, the Financial Intelligence Analysis Unit may monitor persons carrying out a ‘relevant activity’, with the exception of those under paragraph (g) and paragraph (i), on a risk-sensitive basis.

18. The revocation of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2003* shall not -

Revocation of
Legal Notice 199
of 2003.

- (a) affect the previous operation of the regulations so revoked or anything done or suffered under those regulations;
 - (b) affect the institution, continuation or enforcement of any inquiry, investigation or legal proceeding under the regulations so revoked or the imposition of any penalty or punishment under the provisions of those regulations.
-

*Revoked by these regulations.

ANNEX IV



IMPLEMENTING PROCEDURES

*ISSUED BY THE FINANCIAL INTELLIGENCE ANALYSIS UNIT
IN TERMS OF THE PROVISIONS OF THE PREVENTION OF
MONEY LAUNDERING AND FUNDING OF TERRORISM
REGULATIONS*

PART I

Issued: 20th May 2011

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ABBREVIATIONS

3rd AML Directive	European Union Directive 2005/60/EC
AML/CFT	Anti-money laundering/combating funding of terrorism
CDD	Customer due diligence
EDD	Enhanced customer due diligence
EU	European Union
FATF	Financial Action Task Force
FSRB	FATF-Style Regional Body
FIAU	Financial Intelligence Analysis Unit
FIU	Financial Intelligence Unit
JMLSG	Joint Money Laundering Steering Group
MFSA	Malta Financial Services Authority
ML/FT	Money laundering and funding of terrorism
MLRO	Money Laundering Reporting Officer
MONEYVAL	The Council of Europe Select Committee of Experts on the Evaluation of anti-Money Laundering Measures and the Financing of Terrorism
PEP	Politically exposed person
PMLA	Prevention of Money Laundering Act
PMLFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
RBA	Risk-Based Approach
SDD	Simplified customer due diligence
STR	Suspicious transaction report
UN	United Nations

CHAPTER 1 – INTRODUCTION

1.1 To whom do the Implementing Procedures apply?

The Procedures Implementing the Provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations, hereinafter referred to as 'Implementing Procedures', are intended for those persons, whether natural or legal, referred to in the PMLA¹ and the PMLFTR² as 'subject persons'.³

The PMLFTR define subject persons as those persons carrying out relevant activity or relevant financial business.

'Relevant activity'⁴ is defined in the PMLFTR as:

"... the activity of the following legal or natural persons when acting in the exercise of their professional activities:

- (a) auditors, external accountants and tax advisors, including when acting as provided for in paragraph (c);
- (b) real estate agents;
- (c) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or execution of transactions for their clients concerning the -
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies;
 - (v) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider;
- (d) trust and company service providers not already covered under paragraphs (a), (c), (e) and (f);
- (e) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act;
- (f) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act;
- (g) casino licensee;

¹ Act XIX of 1994 as amended, Cap. 373 of the Laws of Malta.

² Legal Notice 180 of 2008 as amended, issued on 31st July 2008.

³ Article 14 of the PMLA and Regulation 2 of the PMLFTR respectively.

⁴ Regulation 2 of the PMLFTR.

- (h) other natural or legal persons trading in goods whenever payment is made in cash in an amount equal to fifteen thousand euro (€15,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked; and
- (i) any activity which is associated with an activity falling within paragraphs (a) to (h)".

'Relevant financial business'⁵ is defined in the PMLFTR as:

- “(a) any business of banking or any business of an electronic money institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act;
- (b) any activity of a financial institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Financial Institutions Act;
- (c) long term insurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act or enrolled or required to be enrolled under the provisions of the Insurance Intermediaries Act, any affiliated insurance business carried on by a person in accordance with the Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations, and any business of insurance carried on by a cell company in accordance with the provisions of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations;
- (d) investment services carried on by a person or institution licensed or required to be licensed under the provisions of the Investment Services Act;
- (e) administration services to collective investment schemes carried on by a person or institution recognised or required to be recognised under the provisions of the Investment Services Act;
- (f) a collective investment scheme, marketing its units or shares, licensed or recognised, or required to be licensed or recognised, under the provisions of the Investment Services Act;
- (g) any activity other than that of a scheme or a retirement fund, carried on in relation to a scheme, by a person or institution registered or required to be registered under the provisions of the Special Funds (Regulation) Act and for the purpose of this paragraph, "scheme" and "retirement fund" shall have the same meaning as is assigned to them in the said Act;
- (h) any activity of a regulated market and that of a central securities depository authorised or required to be authorised under the provisions of the Financial Markets Act;
- (i) any activity under paragraphs (a) to (h) carried out by branches established in Malta and whose head offices are located inside or outside the Community;⁶
- (j) any activity which is associated with a business falling within paragraphs (a) to (i)".

⁵ Regulation 2 of the PMLFTR.

⁶ In accordance with Regulation 2 of the PMLFTR, 'Community' shall mean the European Community and, for the purposes of the PMLFTR, shall include EEA States. Reference in these Implementing Procedures to 'Community' shall be construed in accordance with the definition provided in the PMLFTR.

1.2 Purpose of the Implementing Procedures

The purpose of these Implementing Procedures is to assist subject persons in understanding and fulfilling their obligations under the PMLFTR, thus ensuring an effective implementation of the provisions of the PMLFTR.

In essence, the Implementing Procedures are being issued in order to achieve the following purposes:

- to outline the requirements set out in the PMLFTR and other obligations emanating from the PMLA;
- to interpret the requirements of the above-mentioned laws and regulations and provide measures as to how these should be effectively implemented in practice;
- to assist subject persons in designing and implementing systems and controls for the prevention and detection of ML/FT;
- to provide industry-specific good practice guidance and direction on AML/CFT procedures; and
- to promote the use of a proportionate risk-based approach to customer due diligence measures.

From time to time the Implementing Procedures may be amended to ensure that they remain harmonised with amendments to legislation and other material developments originating from changes in international standards, especially those emanating from the Financial Action Task Force.⁷ Subject persons should therefore ensure that when reference is made to the Implementing Procedures such reference is made to the most recent version.

1.3 How should the Implementing Procedures be used?

The Implementing Procedures recognise the principle of proportionality in their application. Consequently, subject persons are allowed a degree of flexibility in the application of certain AML/CFT measures in relation to their individual size and business activity. The manner in which this flexibility is to be exercised is explained in detail in different parts of these Implementing Procedures.

The primary consideration in applying AML/CFT measures should be the ML/FT risks to which the subject person may be vulnerable. As a general rule subject persons are required to manage their ML/FT risks in the most appropriate and proportionate manner in accordance with the risks

⁷ The FATF was established by the G7 Summit that was held in Paris in 1989 in response to mounting concern over the money laundering phenomenon. It is an inter-governmental body, consisting of thirty-five members, whose purpose is the development and promotion of policies and to monitor members' progress in implementing necessary measures to combat ML/FT. The FATF issued the Forty Recommendations in April 1990 to provide a comprehensive set of standards to be followed in a plan for a coordinated global fight against money laundering. These recommendations were revised in 1996 and 2003. A new set of special recommendations, known as the Nine Special Recommendations, were issued in 2001 in response to the emerging threat of financing of terrorism. The Forty Recommendations, together with the Nine Special Recommendations, are intended to be of universal application and are widely accepted as the blue print for most national legislation in this area. Further information may be obtained on the FATF website at the following link: http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1,00.html.

identified pursuant to the carrying out of a risk assessment. The Implementing Procedures assist subject persons in achieving this objective within the parameters of the law.

The Implementing Procedures are divided into two parts. Part I is applicable to all sectors falling within the definition of ‘relevant activity’ and ‘relevant financial business’. Part II, which applies to each sector specifically, is incomplete on its own and must be read in conjunction with Part I of the Implementing Procedures. The Implementing Procedures shall be binding on subject persons as from the date on which they are issued.

A reading of the Implementing Procedures should not be construed as a substitute for a reading of the PMLFTR. Moreover, this document should not be used as an internal procedures manual or as a checklist of steps to be taken when complying with AML/CFT obligations.

1.4 Status of the Implementing Procedures

These Implementing Procedures are being issued under Regulation 17 of the PMLFTR, which empowers the FIAU to issue such Implementing Procedures for the carrying into effect of the provisions of the PMLFTR. In accordance with this Regulation, these Implementing Procedures **are binding on all subject persons** and failure to comply with such procedures shall render subject persons liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500).⁸ Penalties imposed under Regulation 17 shall be imposed by the FIAU without recourse to a court hearing and may be imposed either as a one time penalty or a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed twelve thousand five hundred euro (€12,500).⁹

In view of the fact that the Implementing Procedures provide an interpretation of the provisions of the PMLFTR and measures as to how the PMLFTR are to be effectively implemented in practice, in a vast majority of cases a breach of the Implementing Procedures will also constitute a breach of the PMLFTR. In such cases the FIAU will impose the penalty contemplated under the relevant provision of the PMLFTR which has been breached. Any other breach of the Implementing Procedures shall warrant an administrative penalty in terms of Regulation 17(2). The FIAU shall not impose a penalty for a breach of the Implementing Procedures where a subject person has already been sanctioned for the same act or omission in terms of the PMLFTR.

It should also be noted that Regulation 4(6)(a) of the PMLFTR states that a court shall take into consideration these Implementing Procedures in determining whether a subject person has complied with the obligations emanating from the PMLFTR.

⁸ Regulation 15(15) of the PMLFTR.

⁹ Regulation 15(16) of the PMLFTR.

CHAPTER 2 – OVERVIEW

2.1 What is money laundering?

Generally, money laundering is described as the process by which the illegal nature of criminal proceeds is concealed or disguised in order to lend a legitimate appearance to such proceeds. This process is of crucial importance for criminals as it enables the perpetrators to make legitimate economic use of the criminal proceeds. When a criminal activity generates substantial income, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or to the persons involved. Criminals do this by disguising the sources, changing the form or moving the funds to a place where they are less likely to attract attention.

Traditionally, three stages were identified for the process of money laundering – the placement stage, the layering stage and the integration stage. In the placement stage money derived from illegal activities is often initially introduced into the financial system by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments that are then collected and deposited into accounts at another location. This is the point at which the proceeds of crime are most apparent and most easily detected. Once the money has been placed in the financial system, the launderer engages in a series of conversions or movements of the funds to distance them from the source. For instance the launderer may transfer the funds to a series of bank accounts situated in different jurisdictions. The launderer would then integrate the funds by investing such funds into, for instance, real estate, luxury goods, or business ventures thereby enabling the funds to enter the economy in a legitimate manner.

It should be noted that the three-stage model is rather simplistic and does not accurately reflect every type of money laundering operation. In fact, a modern explanation of money laundering moves away from the traditional three-stage concept and focuses more on the concealment or disguise of the origin of the illicit money.

The definition of money laundering¹⁰ in the PMLA goes beyond generically expounding the notion of money laundering and the three traditional stages identified above. In fact, passive possession of criminal property is also considered to amount to the offence of money laundering. The definition provides an exhaustive list of acts which constitute money laundering under Maltese law, which are the following:

- “(i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

¹⁰ The definition provided in Article 2 of the PMLA transposes Article 1(2) of the EU Third Money Laundering Directive (2005/60/EC). This definition also reflects the definition of money laundering provided in Article 9 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) to which Malta is a party.

- (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;
- (vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v)".

2.2 What is funding of terrorism?

Funding of terrorism is the process by which terrorist organisations or individual terrorists are funded in order to be able to carry out acts of terrorism.¹¹ This process is defined in Article 328F of the Criminal Code (Cap. 9 of the Laws of Malta) as the process by which a person "receives, provides or invites another person to provide, money or other property intending it to be used, or which he has reasonable cause to suspect that it may be used, for the purposes of terrorism".

The funding of terrorist activity, terrorist organisations or individual terrorists may take place through funds deriving from legitimate sources or from a combination of lawful and unlawful sources. Indeed, funding from legal sources is a key difference between terrorist organisations and traditional criminal organisations involved in money laundering operations. Another difference is that while the money launderer generates income by obscuring the link between the crime and the generated funds, the terrorist's ultimate aim is not to generate income from the fund-raising mechanisms but to obtain resources to support terrorist operations.¹²

Although it would seem logical that funding from legitimate sources would not need to be laundered, there is nevertheless often a need for terrorists to obscure or disguise links between the organisation or the individual terrorist and its or his legitimate funding sources. Therefore, terrorists must similarly find ways to process these funds in order to be able to use them without drawing the attention of authorities.¹³

Some of the specific methods detected with respect to various terrorist organisations include cash smuggling, structured deposits to or withdrawals from bank accounts, purchases of various types of monetary instruments, use of credit or debit cards and wire transfers.¹⁴

¹¹ Article 328A of the Criminal Code (Cap. 9 of the Laws of Malta) provides a definition of acts of terrorism.

¹² FATF, *Guidance for Financial Institutions in Detecting Terrorist Financing*, April 2002, pp. 4-5, paragraph 12, 13 and 16.

¹³ *Ibid*, p.5, paragraph 15.

¹⁴ *Ibid*, p.5, paragraph 15.

2.3 Legislation on money laundering and funding of terrorism

The first legislative initiative to introduce an anti-money laundering regime in Malta dates back to February 1994, when Article 22 (1C) of the Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta) was amended to introduce the offence of money laundering in relation to the proceeds of certain drug-related offences. Eventually, the PMLA was enacted in September of the same year, together with the original regulations issued thereunder, which introduced a comprehensive regime for the criminalisation of money laundering in relation to predicate offences which are not merely drug-related, as well as the prevention, investigation and prosecution of money laundering. Concurrently with the enactment of the PMLA, an amendment to Article 120A of the Medical and Kindred Professions Ordinance (Cap. 31 of the Laws of Malta) was made to introduce the offence of money laundering in relation to proceeds of offences related to other illegal substances beyond the scope of those provided for under the Dangerous Drugs Ordinance.

After its enactment the PMLA was amended to extend the remit of the FIAU to the area of funding of terrorism which was criminalised through amendments to the Criminal Code. The regulations were consequently repealed and replaced by the PMLFTR, which now cover the emerging threat of funding of terrorism as well as other developments in the field of AML/CFT. The PMLA and the PMLFTR contain provisions which were introduced in pursuance to Malta's ongoing commitment to comply with international standards in the AML/CFT field, as well as to honour its obligations as a member of the European Union.

2.3.1 The Prevention of Money Laundering Act

The PMLA was enacted on 23rd September 1994 and was subject to a number of amendments thereafter. The more important legislative developments include the legal provisions establishing the FIAU through the amending Act XXXI of 2001, the extension of the provisions of the PMLA to include the offence of funding of terrorism by means of the amending Act VI of 2005 and the implementation of the provisions of the Council of Europe Convention No. 198 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism through the enactment of Act XXXI of 2007.

The first part of the PMLA provides a definition of money laundering (refer to Section 2.1) and criminalises the act of money laundering.¹⁵ The maximum penalty for the offence of money laundering is a fine amounting to two million, three hundred twenty nine thousand, three hundred seventy three euro and forty euro cents (€2,329,373.40) or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment.¹⁶ The PMLA provides that the offence of money laundering may be committed by a natural person as well as a body of persons, whether corporate or unincorporated.¹⁷ The PMLA also provides a definition of criminal activity¹⁸

¹⁵ Article 3(1) of the PMLA.

¹⁶ Article 3(1) of the PMLA. The amount of two million, three hundred twenty nine thousand, and three hundred seventy three euro and forty euro cents (€2,329,373.40) corresponds to the sum of one million Maltese liri (Lm 1,000,000) at the fixed Maltese lira/Euro exchange rate of 0.4293.

¹⁷ Article 3(2) of the PMLA.

¹⁸ Article 2(1) of the PMLA.

and property.¹⁹ Originally, the PMLA only applied to a limited list of predicate offences,²⁰ however since 31st May 2005, with the coming into effect of Legal Notice 176 of 2005, Malta has shifted from having a restricted list of predicate offences to an 'all crimes' regime, meaning that 'any criminal offence', whenever or wherever it is carried out, may constitute the basis for the offence of money laundering.²¹

The PMLA lays down the procedures for the prosecution of a money laundering offence²² as well as the measures for the confiscation of property upon a conviction of money laundering,²³ measures for the freezing of assets when a person is charged with an offence of money laundering²⁴ and measures for the issuance of an investigation and/or attachment order when a person is suspected of having committed an offence of money laundering.²⁵ Additionally, by virtue of article 435AA of the Criminal Code, which is applicable to the PMLA, the Criminal Court may now order a bank to monitor the banking operations being carried out through one or more accounts of a person suspected of having committed an offence of money laundering for a specified period. Provisions are also provided for international mutual assistance in the implementation of measures relating to confiscation, freezing, and other court orders related to the investigation of an offence of money laundering.

The second part of the PMLA establishes the FIAU, a Government agency purposely set up to perform the functions set out in Article 16 of the PMLA. The functions and remit of the FIAU are dealt with in more detail in Section 2.4.

2.3.2 The Prevention of Money Laundering and Funding of Terrorism Regulations

The PMLFTR, which were issued by virtue of Legal Notice 180 of 2008, have repealed and replaced the 2003 Regulations. The various amendments to the Regulations since 1994 reflect the corresponding international developments and legislative developments within the European Union. In fact the PMLFTR transpose the 3rd AML Directive which, in turn, is modelled on the FATF Forty Recommendations and the Nine Special Recommendations.²⁶

The PMLFTR set out the obligations and procedures that subject persons are required to fulfil and to implement, without which an AML/CFT regime cannot be effective. These procedures mainly consist of the following measures:

¹⁹ Article 2(1) of the PMLA.

²⁰ The predicate offence is the underlying criminal activity from which the illegal funds originate.

²¹ Article 2(1) of the PMLA.

²² Article 3(2A), (3), (4), (6) and (7) of the PMLA.

²³ Article 3(5) of the PMLA.

²⁴ Article 5 of the PMLA.

²⁵ Article 4 of the PMLA.

²⁶ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing – *OJ L 309, 25.11.2005, page 15*. The transposition into Maltese law include the Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC as regards the definition of 'politically exposed person' and the technical criteria for simplified due diligence procedures and for exemptions on grounds of a financial activity conducted on an occasional or very limited basis – also referred to as the Implementation Directive – *OJ L 214, 04.08.2006, page 29*.

- customer due diligence;
- record keeping;
- internal reporting;
- training; and
- procedures on internal control, risk assessment, risk management, compliance management and communications.

2.4 The Financial Intelligence Analysis Unit

The FIAU was set up in 2001 by virtue of Act XXXI of 2001, through the inclusion in the PMLA of a number of provisions which provide for the establishment of the FIAU and defines its powers and functions. The FIAU is a government agency having a distinct legal personality which is responsible for the implementation of the AML/CFT regime in Malta. The model adopted by the Maltese legislator is an administrative model, meaning that the investigative and law enforcement powers are vested in the Police.

Being the entity responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating ML/FT, the core function of the FIAU is the receipt and analysis of financial reports made by subject persons on transactions suspected of involving ML/FT. The FIAU is given additional powers for co-operating and exchanging information with local and foreign supervisory authorities and foreign FIUs. Another core function of the FIAU, discussed in more detail in Section 2.4.1 below, is its responsibility to monitor and ensure compliance by subject persons with their obligations under the PMLFTR.

The Unit has a wide-ranging power to demand information. In fact, in carrying out its functions according to the PMLA the FIAU may demand information deemed to be relevant and useful for the purposes of pursuing its functions from subject persons, the Police, any government ministry, department, agency or other public authority, any supervisory authority, and any other natural or legal person who, in the opinion of the FIAU, may hold such information. The FIAU also has the power to impose administrative penalties on subject persons in cases of failure to comply with the provisions of the PMLFTR and may require the closure of branches of subject persons in certain particular circumstances.

The PMLA specifically mentions two main organs of the Unit: the Board of Governors and the Director, together with the permanent staff of the FIAU. The members of the Board are appointed by the Minister responsible for finance from four panels each consisting of at least three persons, nominated respectively by the Attorney General, the Governor of the Central Bank of Malta, the Chairman of the Malta Financial Services Authority and the Commissioner of Police. All Board members discharge their duties in their personal capacity and are not subject to the direction of any person or authority. The main responsibility of the Board is to lay down the policy to be followed by the FIAU, and which is to be executed and pursued by the Director. The Board of Governors remains responsible to ensure that the Director carries out that policy accordingly. Additionally, the Board is responsible for advising the Minister responsible for finance on all matters and issues relevant to the prevention, detection, investigation, prosecution and punishment of ML/FT offences.

2.4.1 The FIAU's compliance monitoring function

The FIAU is responsible for monitoring compliance by subject persons with the obligations set out under the PMLFTR. In the fulfilment of such responsibility the FIAU conducts both off-site and on-site monitoring as explained below.

Off-site monitoring is carried out on the basis of a desk-review of information received from the subject person. Such information would include the procedures manual of the subject person, as well as any other documentation held by the subject person that would be deemed relevant by the FIAU in carrying out its compliance assessment. Additionally, in order to further assist the FIAU in carrying out its off-site compliance monitoring function, subject persons are required to submit an annual compliance report containing information and data on the activities of the subject person (for further details refer to Section 6.11).

After carrying out a degree of off-site monitoring, the FIAU may also carry out on-site examinations at the premises of the subject persons to determine the extent to which the provisions of the PMLFTR are being implemented in practice. In the course of on-site examinations the MLRO is expected to provide a detailed explanation of the internal procedures of the subject person and to produce a number of customer files for inspection, selected randomly in advance by the officers carrying out the examination. It is important to note that the PMLA enables the FIAU to request a supervisory authority, having supervisory powers over certain categories of subject persons, to carry out on-site examinations on behalf of the FIAU. In fact, the MFSA conducts AML/CFT on-site examinations on behalf of the FIAU in relation to subject persons carrying out relevant financial business and authorised trustees. Notwithstanding the fact that the FIAU may request the MFSA to carry out on-site examinations on its behalf, the officers of the FIAU often participate in such on-site examinations. In all cases where on-site examinations are conducted by the MFSA the findings of the examination are reported to the FIAU and the FIAU determines whether any action is necessary to rectify breaches of the PMLFTR which are detected during the on-site examinations.

CHAPTER 3 – CUSTOMER DUE DILIGENCE

This chapter provides implementing procedures in relation to Regulations 7, 8, 10, 11 and 12 of the PMLFTR, which set out measures related to customer due diligence.

The purpose of the requirement of CDD measures is to ensure that subject persons have adequate mechanisms in place in order to be in a position to determine who the applicant for business, the customer or any beneficial owner is, to verify whether such person is the person he purports to be, to determine whether such person is acting on behalf of another person, to establish the purpose and intended nature of the business relationship and to monitor such business relationship on an ongoing basis.

CDD measures assist subject persons in determining whether a customer falls within their risk parameters and to understand the business profile of the customer with sufficient clarity in order to identify those transactions that fall outside this profile and thus to be able to form an opinion on ML/FT suspicions when necessary. Additionally, CDD measures enable subject persons to assist the FIAU by providing timely and precise information on customers and/or their activities when a request is made according to law.

The PMLFTR also provide for the application of simplified and enhanced CDD measures in certain specific circumstances, as well as reliance by subject persons on the CDD measures carried out by other subject persons or third parties.

3.1 Application of CDD measures

The CDD measures that subject persons are required to carry out are the following:

- identification and verification of the applicant for business (refer to Section 3.1.1);
- identification and verification of the beneficial owner, where applicable (refer to Section 3.1.2);
- identification and verification when the applicant for business does not act as principal (refer to Section 3.1.3);
- obtaining information on the purpose and intended nature of the business relationship (refer to Section 3.1.4);
- conducting ongoing monitoring of the business relationship (refer to Section 3.1.5);
- establishing the source of wealth and source of funds (refer to Section 3.1.6);
- setting up of a customer acceptance policy and ensuring that the applicant for business meets the requirements set out in such policy (refer to Section 4.1.1.1).

It is to be noted that the PMLFTR prohibit subject persons from keeping anonymous accounts or accounts in fictitious names.²⁷

For the purposes of fulfilling the obligation imposed on subject persons to combat the funding of terrorism, subject persons should, *inter alia*, have a system in place which detects whether an

²⁷ Regulation 7(4) of the PMLFTR.

applicant for business is subject to any financial sanctions issued by the UN Security Council or the EU in relation to persons known to be involved in terrorism. Such system should be sufficiently adequate for subject persons to keep themselves updated with all sanctions that might have an impact on their business operations. A useful source in this regard is the 'Sanctions Implementation' section on the website of the MFSA²⁸ which is however neither authoritative nor complete. In fact, the use of such source should not be considered to be a substitute for the subject person's own independent research for such purposes.

3.1.1 Identification and verification of the applicant for business

Subject persons are required to establish systematic procedures for identifying an applicant for business and ensuring that such identity is verified on the basis of documents, data or information obtained from a reliable and independent source.

3.1.1.1 Who is the applicant for business?

The PMLFTR define an applicant for business as a legal or natural person, whether acting as principal or agent, who seeks to form a business relationship, or carry out an occasional transaction with a subject person.²⁹

The applicant for business may either be a legal or a natural person. This notion is important as the application of CDD measures varies to some extent when applied to legal entities and other arrangements and natural persons. It is also important to distinguish between the situation where an applicant for business is acting as principal and where the applicant for business is acting as agent. The latter situation entails the subject person to carry out additional measures as set out in Sections 3.1.3.2 to 3.1.3.6.

Two types of prospective customers emerge from the definition of applicant for business:

The first is the applicant for business who seeks to form a **business relationship**. A business relationship, in accordance with the definition contained in the PMLFTR,³⁰ must comprise three important cumulative elements, which are the following:

- (a) the relationship must be of a business, professional or commercial nature;
- (b) the relationship must subsist for a period of time; and
- (c) one of the persons involved in the relationship must be a subject person.

The second type of applicant for business is the prospective customer who carries out an **occasional transaction** with a subject person. The PMLFTR define an occasional transaction as any transaction other than a transaction carried out in the exercise of an established business relationship. An established business relationship is defined as a relationship which is formed once the subject person carries out customer due diligence measures in accordance with the provisions of the PMLFTR in relation to the applicant for business.³¹

²⁸ <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=105>.

²⁹ Regulation 2 of the PMLFTR.

³⁰ *Ibid.*

³¹ *Ibid.*

However, it should be noted that not every transaction that a customer carries out with a subject person outside an established business relationship automatically necessitates the application of CDD measures. In fact, CDD measures shall only be applied when an occasional transaction involves:

- a payment of fifteen thousand euro (€15,000) or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- a transaction which involves a money transfer or remittance, within the meaning of Regulation (EC) No 1781/2006, amounting to one thousand euro (€1,000) or more; and
- a transaction amounting to two thousand euro (€2,000) or more referred to in Regulation 9 of the PMLFTR.³²

It is worth noting that the PMLFTR do not define 'customer'. The meaning of this word, therefore, has to be inferred from the context in which it is used in the PMLFTR and its ordinary dictionary meaning.

3.1.1.2 The nature of identification and verification of a natural person

The subject person must first identify the applicant for business and then verify such identity, which are two separate and distinct procedures.

(i) Identification

Identification takes place by obtaining the personal details and other relevant information in relation to that person.

With respect to a **natural person** the following information should be obtained:

- (a) official full name;
- (b) place and date of birth;
- (c) permanent residential address;
- (d) identity reference number, where available; and
- (e) nationality.

This procedure should apply in the same manner with respect to both a resident and a non-resident applicant for business.

(ii) Verification

Verification takes place by making reference to documents, data or information obtained by the applicant for business from a reliable and independent source. For the purposes of this obligation, a reliable and independent source includes, *inter alia*, a government authority, department or agency, a regulated utility company or a subject person carrying out relevant financial business in Malta, in a Member State of the EU³³ or in a reputable jurisdiction, since these entities would have already checked the existence and characteristics of the persons concerned.

³² This obligation only applies to casino licensees.

³³ For the purpose of this document, references to an EU Member State include reference to an EEA State.

(a) Where the applicant for business is present for verification purposes:

- (1) the verification of the details provided by the person on his identity shall be carried out by making reference to any one of the government-issued documents containing photographic evidence of identity listed below:
 - a valid unexpired passport;
 - a valid unexpired national identity card; or
 - a valid unexpired driving licence.
- (2) the verification of the residential address shall be carried out by making reference to any one of the following documents:
 - a recent statement from a recognised credit institution;
 - a recent utility bill or any similar document as may be specified in sectoral implementing procedures issued by the FIAU;
 - a correspondence from a central or local government authority, department or agency;
 - a record of a visit to the address by a senior official of the subject person; or
 - any government-issued document listed in paragraph (1) above, where a clear indication of residential address is provided.

Documents, other than official government issued documents, must not be more than six months old.

Subject persons are required to view the above documents and keep a true copy of the original document on file. Such copy should be signed and dated by the officers of the subject person. Particular care should be taken to ensure that the documents obtained have not been forged or tampered with. Additionally, any documentation which is in a language not understood by the subject person should be translated. The translation should be dated, signed and certified by an independent person of proven competence confirming that it is a faithful translation of the original.

Where the applicant for business is a minor the above procedures should still be followed to the fullest extent possible. Where it is impossible to refer to an identification document of the minor because this does not exist, subject persons are required to identify and verify the identity of the parents or legal guardians in accordance with the procedures set out above and obtain proof of parenthood or legal guardianship.

(b) Where the applicant for business is not present for verification purposes:

Where the applicant for business is not present subject persons would only be in a position to obtain a copy of the original documents listed under paragraph (a)(1) above. Therefore, apart from obtaining a copy of such original documents, subject persons are also required to apply one of the enhanced due diligence measures set out in Section 3.5.1. With respect to the documents listed under paragraph (a)(2) above subject persons should obtain the original document.

Alternatively, subject persons may wish to verify the identification details and residential address of the applicant for business **by electronic means**. This is possible where the verification of the identity of a person is done electronically through recognised commercial electronic data providers set up specifically for that purpose.

Since there are no commercial electronic data providers in Malta, this method of verification may not be used for the verification of the identity of persons resident in Malta, unless such persons are registered with a foreign electronic data provider. In the event that a subject person is required to verify the identity of a person resident in a country where such electronic data providers may be legally set up, the subject person may make use of such electronic data providers for the purposes of verification of identity.

Subject persons would only be in a position to make use of such services if the provider satisfies all of the following criteria:

- it is recognised, through registration with the data protection authority of the country where it is set up, to store personal data;
- it uses a range of positive information sources that can be called upon to link an applicant to both current and previous circumstances;
- it accesses negative information sources, such as databases relating to identity fraud and deceased persons;
- it accesses a wide range of alert data sources; and
- it has transparent processes that enable the subject person to know what checks were carried out, what the results of these checks were and the level of certainty they provide as to the identity of the subject.

It is important to note that when conducting electronic verification, the standard level of confirmation should at least comprise the following:

- (a) one match on an individual's full name and current address; **and**
- (b) a second match on an individual's full name and **either** his current address **or** his date of birth.

Where the identity of an applicant for business is verified by electronic means, subject persons are also required to apply one of the enhanced due diligence measures set out in Section 3.5.1.

3.1.1.3 The nature of identification and verification of a legal person

For the application of CDD measures in relation to a legal person, subject persons should refer to Sections 3.1.3.2 to 3.1.3.5 further below.

3.1.2 Identification and verification of the beneficial owner

Subject persons are required to identify the beneficial owner, where applicable,³⁴ taking reasonable measures to verify the identity such that the subject person is satisfied of knowing who the beneficial owner is and, in the case of a body corporate, trust or similar legal arrangement, reasonable measures are to be taken to understand its ownership and control structure.³⁵ The requirements set out in sub-section (i) of Section 3.1.1.2 shall apply to the identification of a beneficial owner.

3.1.2.1 Who is the beneficial owner?

Regulation 2 defines a beneficial owner as a:

- **natural** person who ultimately owns or controls the customer; and/or
- **natural** person on whose behalf or for the benefit of whom a transaction is being conducted.

The key element in this definition is the notion of a ‘natural person’. A beneficial owner is the ultimate owner of the assets subject to a business relationship or an occasional transaction.³⁶ The definition in Regulation 2 further clarifies who shall be considered a beneficial owner in certain determinate situations. This is illustrated in Table 1 below.

(a) Body corporate or body of persons	(i) A natural person/s that has: • Direct ownership of more than 25% (including bearer shares); or • Direct ownership of more than 25% voting rights; or • Direct control of more than 25% (including bearer shares); or • Direct control of more than 25% voting rights; or • Indirect ownership of more than 25% shares (including bearer shares) ; or • Indirect ownership of more than 25% voting rights; or • Indirect control of more than 25% shares (including bearer shares); or • Indirect control of more than 25% voting rights. (ii) A natural person who otherwise exercises control over the management of that body corporate or body of persons.
(b) Legal entity or legal arrangement which administers and distributes funds	(i) Determined beneficiaries – natural persons who are the beneficiaries of at least 25% of the property (ii) Non-determined beneficiaries – the class of persons in whose main interest the legal entity or arrangement is set up or operates (iii) A natural person who controls at least 25% of the property of the legal entity or arrangements

³⁴ The phrase ‘where applicable’ is being used in view of the fact that business relationships or occasional transactions do not always involve a beneficial owner.

³⁵ Regulation 7(1)(b) of the PMLFTR.

³⁶ This does not apply in the context of trusts.

(c) Long term insurance business	The beneficial owner shall be construed to be the beneficiary under the policy.
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Table 1 – Definition of a beneficial owner

The contents of Table 1 are explained in further detail below.

- (a) (i) *the beneficial owner of a body corporate or a body of persons includes all natural persons who ultimately own or control, whether through direct or indirect ownership or control, including, where applicable, through bearer shareholdings, more than 25% of the shares or voting rights in that body corporate or body of persons.*

NOTE: *Natural persons who ultimately own or control a **company that is listed on a regulated market** which is subject to disclosure requirements consistent with Community legislation or equivalent international standards **shall not be considered to be beneficial owners** for the purposes of the PMLFTR and therefore the obligation under Regulation 7 does not apply.*

In order to determine who ultimately owns or controls more than 25% of the shares or voting rights in the body corporate or body of persons, reference may be made to the examples in Figure 1 and Figure 2 below.

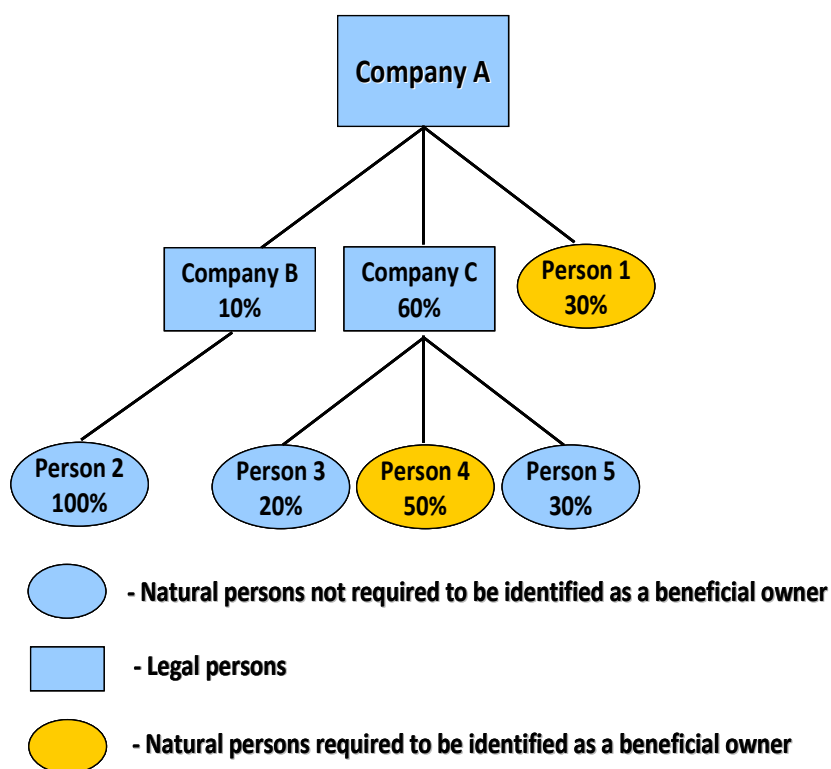


Figure 1 – Illustration I of beneficial owner

In Figure 1 subject persons are required to determine the natural persons who ultimately own more than 25% of the shares in Company A. At the first layer, natural person 1 holds 30% of the shares in

Company A and therefore qualifies as a beneficial owner for the purposes of the PMLFTR. At the second layer, only natural person 4 qualifies as a beneficial owner for the purposes of the PMLFTR as he ultimately holds 30% of the shares in Company A through a 50% shareholding in Company C, which in turn holds 60% of the shares in Company A. Natural persons 2, 3 and 5 ultimately hold 10%, 12% and 18% of the shares in Company A respectively and therefore do not qualify as a beneficial owner for the purposes of the PMLFTR.

In Figure 2 subject persons are required to identify the natural persons who ultimately own more than 25% of the shares in Company V. At the first layer, natural person 1 holds 30% of the shares in Company V and therefore qualifies as a beneficial owner for the purposes of the PMLFTR. At the second layer only natural person 3 qualifies as a beneficial owner for the purposes of the PMLFTR as he ultimately holds 26% of the shares in Company V through Company X. Natural person 2 ultimately holds 10.4% of the shares in Company V and therefore does not qualify as a beneficial owner for the purposes of the PMLFTR. At the third layer natural person 4 qualifies as a beneficial owner for the purposes of the PMLFTR as he ultimately owns 33.6% of the shares in Company V, due to the fact that he owns 18% of the shares in Company V through Company Y and Company W and 15.6% of the shares in Company V through Company Z and Company X.

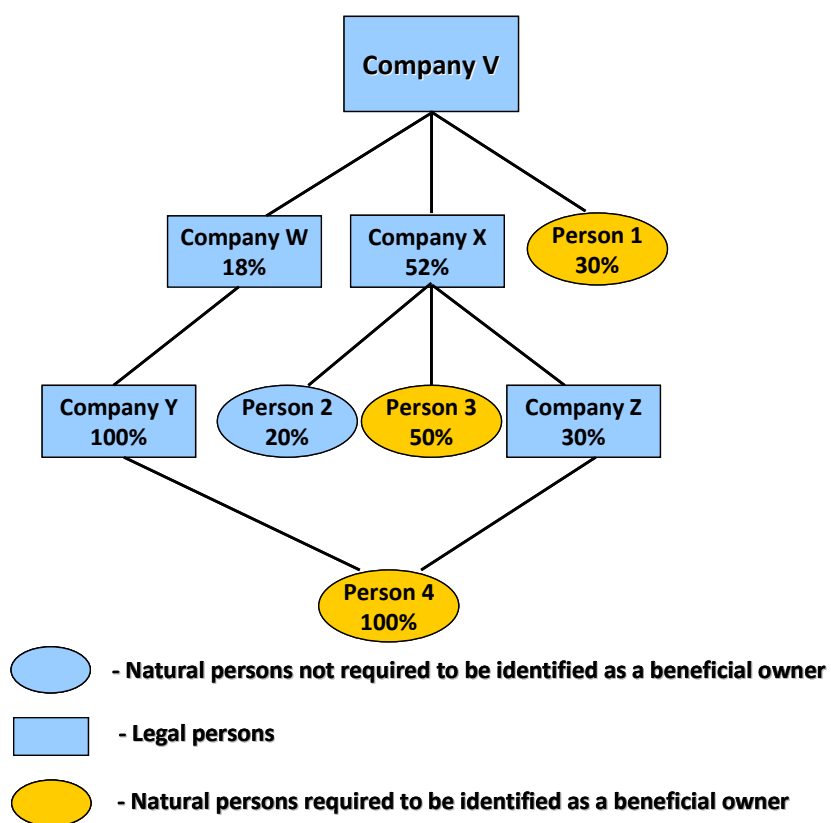


Figure 2 – Illustration II of beneficial owner

- (ii) A natural person who otherwise exercises control over the management of that body corporate or body of persons.

This provision refers to those natural persons who, notwithstanding the fact that they own or control 25% or less of the shares or voting rights in the body corporate or body of persons, still exercise control over the management of that body corporate or body of persons. Since it is impossible to provide an exhaustive list of persons who fall within this category, subject persons must make a determination on a case-by-case basis. However, certain circumstances by their very nature would indicate that a person is exercising control over the management of a body corporate or body of persons. For instance, reference may be made to the Companies Act (Cap. 386 of the Laws of Malta) which refers to the notion of shadow directors. Article 316(5) of the Companies Act defines shadow directors as “person[s] in accordance with whose directions the directors of the company are accustomed to act”. Such persons would therefore also be considered to be exercising control over the management of a company and would qualify as beneficial owners for the purposes of the PMLFTR.

In practice, it may prove to be difficult for subject persons to determine whether a person who is not officially appointed to act as a director is exercising control over the management of a company. In those cases where a subject person is aware or has reason to believe that a person is exercising control without holding any official appointment, such subject person should request more information directly from the applicant for business, and where the applicant for business confirms that such person exists, a written declaration signed by the applicant for business and the person exercising control over the management of the company must be provided to the subject person.

(b) *the beneficial owner of any other legal entity or legal arrangement which administers and distributes funds includes:*

(In this case the term ‘legal entity’ refers to entities such as foundations and associations,³⁷ while the term ‘legal arrangement’ refers to trusts and other similar arrangements)

(i) *where the beneficiaries have been determined, a natural person(s) who is the beneficiary of at least 25% of the property of the legal entity or arrangement;*

For instance, in order to determine who the beneficiary of at least 25% of the property of a trust is, subject persons are required to request the trustee of the trust to produce the trust deed, an extract thereof or a signed declaration by the trustee clearly showing the extent of the beneficial interest in the trust property that each beneficiary holds.

The same would apply in the case where it is necessary to determine who the beneficiary of at least 25% of the property of a foundation is. Subject persons are required to request the administrator of the foundation to produce the deed of foundation, an extract thereof or any other written document drawn up in accordance with the law which clearly states the extent of the rights that each beneficiary holds with respect to the property endowed in the foundation.

(ii) *where the beneficiaries have not yet been determined, the class of persons in whose main interest the legal entity or arrangement is set up or operates;*

³⁷ In certain jurisdictions a trust is considered by law to have a legal personality separate from that of the trustee.

In order to determine the class of persons in whose main interest the legal entity or legal arrangement, such as a trust, is set up or operates, subject persons are required to request the trustee of the trust in question to produce the trust deed, an extract thereof or a signed declaration by the trustee clearly setting out such information.

(iii) a natural person(s) who controls at least 25% of the property of the legal entity or arrangement.

In this case reference is being made to those instances where a person controls at least 25% of the property of the legal entity or arrangement, notwithstanding the fact that such person does not appear to be a beneficiary in an official manner. For instance, a person may not appear on the trust deed as a beneficiary of a trust but may still be exercising control over the property settled on trust and would therefore be the beneficial owner for the purposes of this sub-regulation.

It is difficult for subject persons to determine whether a beneficiary is actually exercising control or whether this control is being exercised by another person on whose behalf he is acting. Therefore, where the subject person is a trustee, the trustee shall require the beneficiary to sign a declaration stating that control over the property of the trust is not being exercised by a person other than the beneficiary appearing on the trust deed. In those cases where the beneficiary informs the trustee of the existence of a person exercising control over the property settled on trust other than the beneficiary appearing on the trust deed, the trustee shall require the beneficiary to identify the person exercising such control.

Where the subject person is a person or entity other than a trustee, the subject person shall require the trustee to sign a declaration confirming that he is not aware of the existence of a person exercising control over the property settled on trust other than the beneficiary appearing in the trust deed. In those cases where the trustee has been informed by the beneficiary of the existence of a person exercising control over the property settled on trust other than the beneficiary appearing on the trust deed, the subject person shall request the trustee to confirm the identity of such person.

(c) in the case of long-term insurance business, the beneficial owner shall be construed to be the beneficiary under the policy.

The PMLFTR are clear in specifying who the beneficial owner is in the circumstances under this subparagraph.

Without prejudice to the provisions of Regulation 8(5) of the PMLFTR, in those cases where it is not possible for the subject person to determine **with certainty** who the beneficial owner is on the basis of documentation available to him, subject persons should consider requesting the applicant for business to provide a written statement or declaration of beneficial ownership signed by the applicant for business and the beneficial owner.

3.1.2.2 Verification of the identity of the beneficial owner

The verification of identity of the beneficial owner, where applicable, should be carried out in accordance with the relevant sub-Sections of Section 3.1.3.

3.1.3 Applicant for business not acting as principal

Subject persons must determine whether the applicant for business is acting on behalf of somebody else by requesting such information directly from the applicant for business. Where the applicant for business is acting on behalf of someone else, subject persons must not only identify and verify the applicant for business but they are also required to apply additional measures.

The type of additional measures to be applied will depend on whether the person on whose behalf the applicant for business is acting is a natural person or a body corporate, a body of persons, or any other form of legal entity or arrangement. The additional measures to be applied with respect to a natural person are dealt with in Section 3.1.3.1, whereas the additional measures to be applied with respect to a body corporate, body of persons or any other form of legal entity or arrangement are dealt with in Sections 3.1.3.2 to 3.1.3.6.³⁸ **In either case, the subject person must ensure that the applicant for business is duly authorised in writing to act on behalf of such other person.**

In the event that the applicant for business qualifies for the application of simplified due diligence, as laid out in Section 3.4, then such additional measures need not be applied.

3.1.3.1 When the principal is a natural person

Where the applicant for business is not acting as the principal and the principal is a natural person, subject persons should, in addition to identifying and verifying the identity of the applicant for business, identify and verify the identity of the principal. The identification and verification procedures to be applied with respect to the principal are those laid out in Section 3.1.1.2.

3.1.3.2 When the principal is a public company

Public companies may be listed or unlisted on a regulated exchange. In the case of public listed companies, subject persons may apply simplified CDD measures in accordance with Section 3.4 in view of the fact that these companies are subject to market regulation and a high level of public disclosure in relation to their ownership and business activities.

Where the public company is not listed, however, simplified CDD shall not be applied. In this case the subject person must first identify the public company by gathering the following information:

- (a) official full name;
- (b) registration number;
- (c) date of incorporation or registration; and

³⁸ The list provided in Sections 3.1.3.2 to 3.1.3.6 is not exhaustive since there may be other legal persons or arrangements acting as principals, but are intended to provide an indication of the measures to be applied in similar circumstances.

- (d) registered address or principal place of business.

The subject person must then verify the above information as well as the legal status of the company by viewing one or more of the following documents, as the case may be:

- the certificate of incorporation;
- a company registry search, including confirmation that the public company has not been, and is not in the process of being dissolved, struck off, wound up or terminated;
- the most recent version of the Memorandum and Articles of Association or other statutory document.

In relation to the documents above, subject persons are required to view the original document, a certified copy of the original or a downloaded copy from the official registry website. Certification should be carried out by the company secretary, a director or an officer occupying an equivalent position or by the Registrar of Companies or a person occupying an equivalent position in a foreign jurisdiction. Alternatively, certification may be carried out by any of the persons referred to under Section 3.5.1(b). Where an original document is viewed, subject persons are required to keep a true copy of the document on file, which should be signed and dated by an officer of the subject person. Where a downloaded version is obtained by the subject person, documentary evidence of the download should be maintained clearly indicating the date when such document was obtained.

Once the verification is complete, the subject person must identify all the directors. In the case of directors who are natural persons, identification should be carried out by referring to the list of directors contained in the most recent version of the Memorandum and Articles of Association, by performing a company registry search provided that the officers of the company are listed therein or by obtaining a copy of the directors' register of the company. In the case of corporate directors, subject persons are required to obtain details of the corporate director's official full name, registration number, date of incorporation or registration and registered address or principal place of business. It is important to note that the PMLFTR do not require subject persons to verify the identity of the directors but merely to identify them.

Another requirement under the PMLFTR is the establishment of the ownership and control structure of the company. In order to comply with such obligation subject persons should obtain and maintain on file an explanation of the ownership and control structure of the company from the applicant for business, as well as a corporate structure chart showing the ownership structure to the extent that would be required to determine who the beneficial owner is. Once these are obtained, subject persons should then conduct independent research to verify the information on such corporate structure by consulting online commercial databases, company registries, relevant audited accounts or by obtaining certification by any of the persons referred to under Section 3.5.1(b).

In order for the subject person to undertake any business or provide any services to the applicant for business it must ensure that the applicant for business discloses the identity of the beneficial owners and produces the relevant authenticated identification documentation in respect of the beneficial owners (refer to Section 3.1.2.1). The subject person must also take all reasonable measures to ensure that the applicant for business keeps the subject person informed of any changes in the beneficial ownership.

The procedure outlined above should apply in the same manner with respect to legal persons registered or established in Malta or in any other jurisdiction. However, subject persons should be aware that the type of documentation issued by company registries may vary between different countries. Therefore attention should be paid to the jurisdiction the documents originate from.

It is also important for subject persons to keep in mind that the systems in certain jurisdictions may be less transparent than in others and the documentation emanating from registries situated in such jurisdictions may not be sufficient to fulfil the identification and verification requirements laid out in the PMLFTR. In such situations, additional measures such as those listed in the following paragraph may be considered.

Where appropriate, subject persons should obtain further documentation on a risk-sensitive basis in accordance with the framework adopted by the subject person. Such additional information may include the following:

- a copy of the Shareholders' Register;
- information from independent sources such as, for instance, business information services; and
- a copy of the latest audited financial statements, where applicable.

It should also be pointed out that any documentation which is in a language not understood by the subject person should be translated. The translation should be dated, signed and certified by an independent person of proven competence, confirming that it is a faithful translation of the original.

3.1.3.3 When the principal is a private company

The subject person is required to first identify the private company by gathering the following information:

- (a) the company's official full name;
- (b) the company's registration number;
- (c) the company's date of incorporation or registration; and
- (d) the company's registered address or principal place of business.

The subject person must then verify the above information as well as the legal status of the company by viewing one or more of the following documents, as the case may be:

- the certificate of incorporation;
- a company registry search, including confirmation that the private company has not been, and is not in the process of being dissolved, struck off, wound up or terminated;
- the most recent version of the Memorandum and Articles of Association or other statutory document.

In relation to the documents above, subject persons are required to view the original document, a certified copy of the original or a downloaded copy from the official registry website. Certification

should be carried out by the company secretary, a director or an officer occupying an equivalent position or by the Registrar of Companies or a person occupying an equivalent position in a foreign jurisdiction. Alternatively, certification may be carried out by any of the persons referred to under Section 3.5.1(b). Where an original document is viewed, subject persons are required to keep a true copy of the document on file, which should be signed and dated by an officer of the subject person. Where a downloaded version is obtained by the subject person, documentary evidence of the download should be maintained clearly indicating the date when such document was obtained.

Once the verification is complete, the subject person must identify all the directors. In the case of directors who are natural persons identification should be carried out by referring to the list of directors contained in the most recent version of the Memorandum and Articles of Association, by performing a company registry search provided that the officers of the company are listed therein or by obtaining a copy of the directors' register of the company. In the case of corporate directors, subject persons are required to obtain details of the corporate director's official full name, registration number, date of incorporation or registration and registered address or principal place of business. It is important to note that the PMLFTR do not require subject persons to verify the identity of the directors but merely to identify them.

Another requirement under the PMLFTR is the establishment of the ownership and control structure of the company. In order to comply with such obligation subject persons should obtain and maintain on file an explanation of the ownership and control structure of the company from the applicant for business, as well as a corporate structure chart showing the ownership structure to the extent that would be required to determine who the beneficial owner is. Once these are obtained subject persons should then conduct independent research to verify the information on such corporate structure by consulting online commercial databases, company registries, relevant audited accounts or by obtaining certification by any of the persons referred under Section 3.5.1(b).

In order for the subject person to undertake any business or provide any services to the applicant for business it must ensure that the applicant for business discloses the identity of the beneficial owners and produces the relevant authenticated identification documentation in respect of the beneficial owners (refer to Section 3.1.2.1). The subject person must also take all reasonable measures to ensure that the applicant for business keeps the subject person informed of any changes in the beneficial ownership.

The procedure outlined above should apply in the same manner with respect to legal persons registered or established in Malta or in any other jurisdiction. However, subject persons should be aware that the type of documentation issued by company registries may vary between different countries. Therefore attention should be paid to the jurisdiction the documents originate from.

It is also important for subject persons to keep in mind that the systems in certain jurisdictions may be less transparent than in others and the documentation emanating from registries situated in such jurisdictions may not be sufficient to fulfil the identification and verification requirements laid out in the PMLFTR. In such situations, additional measures such as those listed in the following paragraph may be considered.

Where appropriate, subject persons should obtain further documentation on a risk-sensitive basis in accordance with the framework adopted by the subject person. Such additional information may include the following:

- a copy of the Shareholders' Register;
- information from independent sources such as, for instance, business information services; and
- a copy of the latest audited financial statements, where applicable.

It should also be pointed out that any documentation obtained by the subject person which is in a language not understood by the subject person should be translated. The translation should be translated, dated, signed and certified by an independent person of proven competence, confirming that it is a faithful translation of the original.

3.1.3.4 When the principal is a commercial partnership

The same procedure applicable to a private company more or less applies to a commercial partnership. The subject person is required to first identify the partnership by gathering the following information, where applicable:

- (a) the partnership's official full name;
- (b) the partnership's registration number;
- (c) the partnership's date of incorporation or registration; and
- (d) the partnership's registered address or principal place of business.

The subject person must then verify the above information as well as the legal status of the partnership by viewing one or more of the following documents, as the case may be:

- the certificate of incorporation;
- a registry search, including confirmation that the partnership has not been, and is not in the process of being, dissolved, struck off, wound up or terminated;
- the most recent version of the partnership agreement or other statutory document.

In relation to the documents above, subject persons are required to view the original document, a certified copy of the original or a downloaded copy from the official registry website. Certification should be carried out by one of the general partners or an officer occupying an equivalent position or by the Registrar of Companies or a person occupying an equivalent position in a foreign jurisdiction. Alternatively, certification may be carried out by any of the persons referred to under Section 3.5.1(b). Where an original document is viewed, subject persons are required to keep a true copy of the document on file which should be signed and dated by an officer of the subject person. Where a downloaded version is obtained by the subject person, documentary evidence of the download should be maintained clearly indicating the date when such document was obtained.

Once the verification is complete, the subject person must identify all the persons vested with the partnership's administration and representation. In the case of partners who are natural persons, identification should be carried out by either referring to the list of partners contained in the most recent version of the partnership agreement or by performing a registry search provided that the partners are listed therein. In the case of corporate partners, subject persons are required to obtain

details of the corporate partner's official full name, registration number, date of incorporation or registration and registered address or principal place of business. It is important to note that the PMLFTR do not require subject persons to verify the identity of the partners but merely to identify them.

Another requirement under the PMLFTR is the establishment of the ownership and control structure of the partnership. In order to comply with such obligation subject persons should obtain and maintain on file an explanation of the ownership and control structure of the partnership from the applicant for business, as well as a corporate structure chart showing the ownership structure to the extent that would be required to determine who the beneficial owner is. Once these are obtained subject persons should then conduct independent research to verify the information on such corporate structure by consulting online commercial databases, company registries, relevant audited accounts or by obtaining certification by any of the persons referred to under Section 3.5.1(b).

In order for the subject person to undertake any business or provide any services to the applicant for business it must ensure that the applicant for business discloses the identity of the beneficial owners and produces the relevant authenticated identification documentation in respect of the beneficial owners (refer to Section 3.1.2.1). The subject person must also take all reasonable measures to ensure that the applicant for business keeps the subject person informed of any changes in the beneficial ownership.

The procedure outlined above should apply in the same manner with respect to partnerships registered or established in Malta or in any other jurisdiction. However, subject persons should be aware that the type of documentation issued by company registries may vary between different countries. Therefore attention should be paid to the jurisdiction the documents originate from.

It is also important for subject persons to keep in mind that the systems in certain jurisdictions may be less transparent than in others and the documentation emanating from registries situated in such jurisdictions may not be sufficient to fulfil the identification and verification requirements laid out in the PMLFTR. In such situations additional measures such as those listed in the following paragraph may be considered.

Where appropriate, subject persons should obtain further documentation on a risk-sensitive basis in accordance with the framework adopted by the subject person. Such additional information may include the following:

- information from independent sources such as, for instance, business information services; and
- a copy of the latest audited financial statements, where applicable.

It should also be pointed out that any documentation obtained by the subject person which is in a language not understood by the subject person should be translated. The translation should be dated, signed and certified by an independent person of proven competence, confirming that it is a faithful translation of the original.

3.1.3.5 When the principal is a foundation or association

The same procedure applicable to a partnership more or less applies to a foundation or association. The subject person is required to first identify the foundation or association by gathering the following information:

- (a) the foundation or association's official full name;
- (b) the foundation or association's registration number, if applicable;
- (c) the foundation or association's date of registration; and
- (d) the foundation or association's registered address.

The subject person must then verify the above information as well as the legal status of the foundation or association by viewing one or more of the following documents, as the case may be:

- the certificate of registration;
- the most recent version of the constitutive document.

In relation to the documents above, subject persons are required to view either the original document or a certified copy of the original. Certification should be carried out by one of the founders or associates. Alternatively, certification may be carried out by any of the persons referred to under Section 3.5.1(b). Where an original document is viewed, subject persons are required to keep a true copy of the document on file. Such copy should be signed and dated by an officer of the subject person.

Once the verification is complete, the subject person must identify all the persons vested with the administration and representation of the foundation or association. This should be done by referring to the constitutive document. It is important to note that the PMLFTR do not require subject persons to verify the identity of the administrators but merely to identify them.

Another requirement under the PMLFTR is the establishment of the ownership and control structure of the foundation or association. In order to comply with such obligation subject persons should obtain and maintain on file an explanation of the ownership and control structure of the foundation or association from the applicant for business and verify such information by requesting the appropriate documentation. In the case of a foundation, subject persons are required to identify the founder, a person (other than the founder of the foundation) who has endowed the foundation, and, if any rights a founder of the foundation had in respect of the foundation and its assets have been assigned to some other person, that person.

In order for the subject person to undertake any business or provide any services to the applicant for business it must identify the class of persons in whose main interest the foundation or association is set up or operates (refer to Section 3.1.2.1). The subject person must also take all reasonable measures to ensure that the applicant for business keeps the subject person informed of any changes.

The procedure outlined above should apply in the same manner with respect to foundations or associations registered or established in Malta or in any other jurisdiction. However, subject persons should be aware that the type of documentation issued by the appropriate authorities may

vary between different countries. Therefore attention should be paid to the jurisdiction the documents originate from.

It is also important for subject persons to keep in mind that the systems in certain jurisdictions may be less transparent than in others and the documentation emanating from public authorities situated in such jurisdictions may not be sufficient to fulfil the identification and verification requirements laid out in the PMLFTR. Therefore subject persons should consider alternative ways of conducting their identification and verification procedures.

It should also be pointed out that any documentation obtained by the subject person which is in a language not understood by the subject person, should be translated. The translation should be dated, signed and certified by an independent person of proven competence, confirming that it is a faithful translation of the original.

3.1.3.6 When the principal is a trustee of a trust

Where the applicant for business is a trustee acting in the interest or for the benefit of a beneficiary of a trust, the subject person must apply a number of measures to verify and identify all the persons involved in the trust.

First, the subject person is required to identify and verify the identity of the trustee and the protector, where applicable, in accordance with Section 3.1.1.2. The subject person must then verify the existence of the trust and ascertain that the trustee/protector is acting for the trust.

In respect of trusts the subject person should obtain the following information:

- (a) the full name of the trust;
- (b) the nature and purpose of the trust; and
- (c) the country of establishment.

This information should be obtained by requesting a copy of the trust deed from the trustee. In the event that the trustee is not able to provide the full copy of the trust deed, an authenticated relevant extract of the trust deed or a signed declaration by the trustee containing the information listed in (a) to (c) above would suffice.

The subject person may also consider obtaining a copy of the authorisation issued by the relevant authority for that person to act as a trustee. Alternatively, the subject person may obtain information from the website of the relevant authority and keep a record of such information.

In addition to the above procedures, the subject person shall not undertake any business with or provide any service to the trustee unless the trustee discloses the identity of the beneficial owners (refer to Section 3.1.2.1) and the identity of the trust settlor as well as producing the authenticated identification documentation of such persons. The subject person must take all reasonable measures to ensure that the trustee keeps the subject person informed of any changes in the beneficial ownership.

In the case where the beneficiaries of the trust have not yet been determined, the PMLFTR stipulate that the beneficial owners shall be the class of persons in whose main interest the trust is set up or

operates. In such a case, subject persons are merely required to verify that such class of persons is known (refer to Section 3.1.2.1(b)(ii)).

3.1.4 Information on the purpose and intended nature of the business relationship

Once the applicant for business and the beneficial owner(s), where applicable, have been identified and their identity verified, subject persons shall obtain information on the purpose and intended nature of the business relationship in order to be in a position to establish the business and risk profile of the applicant for business. This obligation does not apply in the context where the applicant for business seeks to carry out an occasional transaction.

Information that is relevant for this purpose should at least include the following:

- (a) the nature and details of the business/occupation/employment of the applicant for business;
- (b) the source(s) of wealth (refer to Section 3.1.6);
- (c) the expected source and origin of the funds to be used in the business relationship (refer to Section 3.1.6); and
- (d) the anticipated level and nature of the activity that is to be undertaken through the relationship.

Where the services of the subject person are being provided in relation to a business activity, the subject person should consider reviewing copies of recent and current financial statements, where applicable and on a risk-sensitive basis.

3.1.5 Ongoing monitoring of the business relationship

Subject persons are required to monitor the business relationships with their customers on an ongoing basis. Once the business profile of a customer has been established, ongoing monitoring enables subject persons to identify any unusual transactions which may involve ML/FT. This gives greater assurance that the activities of the subject person are not being misused for the purposes of ML/FT.

Ongoing monitoring of a business relationship includes:³⁹

- (a) the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's knowledge of the customer, his business and risk profile, including where necessary, the source of funds; and
- (b) ensuring that the documents, data or information held by the subject person are kept up to date.

Paragraph (a) above requires subject persons to collect the necessary information to ensure that the customer's business corresponds to the information disclosed by the customer at the beginning of the business relationship and that the business patterns of the customer are consistent with the risk profile established by the subject person. Where it is revealed that the customer's business and

³⁹ Regulation 7(2) of the PMLFTR.

risk profiles have significantly diverged from the established patterns or for no apparent economic or lawful purpose, action should be taken in accordance with the internal procedures of the subject person. This should be conducive to reviewing the risk profile of the customer and considering whether reporting is necessary in accordance with the procedures set out in Section 6.4.

Thus, as a result of the introduction of systems and procedures to ensure ongoing monitoring, activities which do not conform with the established business and risk profiles of the customer are immediately brought to the attention of the MLRO. The MLRO would then be in a position to assess whether there is a suspicion of ML/FT and whether that suspicion warrants a report to the FIAU in terms of Regulation 15 of the PMLFTR (refer to Section 6.4).

In order to fulfil the obligation set out in paragraph (b) above, subject persons are required to have a system in place to keep up-to-date documents, data or information held in the fulfilment of their CDD obligations, including information and documents obtained by the subject persons in order to fulfil the obligation set out under Regulation 7(1)(a)(b) and (c). This should include the updating of expired documentation mentioned under Section 3.1.1.2(ii)(a)(1). This ensures that in the event of an analysis or investigation of ML/FT the subject person is in a position to provide accurate and updated information to the FIAU or the Police.

The PMLFTR further require that in monitoring a business relationship subject persons should pay special attention to any large or complex transactions, including unusual patterns of transactions which have no apparent or visible economic or lawful purpose and business relationships and transactions with persons from a non-reputable jurisdiction (refer to Section 3.1.5.1 and Section 3.1.5.2 respectively).

3.1.5.1 Complex or large transactions

Regulation 15(1) requires subject persons to examine with special attention, and to the largest extent possible, the background and purpose of any complex or large transactions, including unusual patterns of transactions, which have no apparent economic or visible lawful purpose, and any other transactions which are particularly likely, by their nature, to be related to ML/FT.

This obligation requires subject persons to pay special attention to the following transactions:

- (a) complex transactions that have no apparent economic or visible lawful purpose;
- (b) large transactions that have no apparent economic or visible lawful purpose;
- (c) unusual patterns of transactions that have no apparent economic or visible lawful purpose; and
- (d) transactions which are particularly likely, by their nature, to be related to ML/FT.

Subject persons shall examine as far as possible the background and purpose of such transactions and establish their findings in writing. This requirement goes beyond the normal ongoing monitoring or the identification procedures of suspicious transactions. Subject persons are therefore required to also implement specific procedures for this purpose. The findings from the assessment of these transactions should serve as an additional element to be taken into consideration in assessing the customer's risk profile. The findings established by subject persons should not be automatically reported to the FIAU but should be made available to the FIAU and the

relevant supervisory authority if and when the subject person is requested to do so. However, in the event that the findings of the subject person indicate a suspicion or knowledge of ML/FT, a report should be filed with the FIAU in accordance with Section 6.4.

3.1.5.2 Business relationships and transactions with persons from a non-reputable jurisdiction

Subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings, including those carrying out relevant financial business or a relevant activity, from a jurisdiction that does not meet the criteria of a reputable jurisdiction (refer to Section 8.1). If those transactions have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be made available to the FIAU and to the relevant supervisory authority to the extent required by Section 3.1.5.1.

If such jurisdictions continue not to apply measures equivalent to the PMLFTR, **subject persons are merely required to inform the FIAU** which, in collaboration with the relevant authority, may require the subject person not to continue such business relationship, not to undertake a transaction or to apply any other counter-measures as may be adequate under the circumstances.

3.1.6 Source of wealth and source of funds

The **source of funds** is the activity, event, business, occupation or employment from which the funds used in a particular transaction are generated. On the other hand, **source of wealth** refers to the economic activity which generates the total net worth of the customer. Whereas the source of wealth is usually identified at the beginning of the business relationship and the information thereon is updated from time to time where new material developments arise in the course of the business relationship, subject persons are required to identify the source of funds of individual transactions in accordance with the obligation of ongoing monitoring as set out above.

Within the context of the ongoing monitoring of a business relationship subject persons are required to obtain information on the source of funds both at the establishment of the business relationship and on an ongoing basis thereafter. The subject person should not be satisfied with a generic description when questioning the customer about the origin of the funds used in the context of a business relationship. For instance, an explanation by the customer stating that the funds consist of the proceeds generated by a business would not be sufficient and the subject person is required to request the customer to provide more detailed information on the business concerned as well as producing documents, such as copies of invoices or contracts, to substantiate such explanation.

Depending on circumstances surrounding that transaction, the scrutiny of transactions may take place either in real time as the transaction is being carried out or after the event, through a review of the transactions or activities that the customer has carried out. Monitoring may be carried out in response to specific types of transactions, on the basis of the profile of the customer, through a comparison of the activities or the profile of the customer with that of a similar peer group of customers, or through a combination of these approaches.

It should be noted that notwithstanding the fact that the PMLFTR require subject persons to identify the source of funds within the context of a business relationship, subject persons should also consider ensuring that the source of funds utilised by the applicant for business to carry out an occasional transaction are also identified.

Irrespective of whether the transaction is carried out within an established business relationship or as an occasional transaction and regardless of any exemption or threshold, subject persons should invariably identify the source of funds when there is knowledge or suspicion that the applicant for business, or a person on whose behalf the applicant of business is acting, may have been, is, or may be engaged in ML/FT.

3.2 Timing of CDD procedures

This part of the Implementing Procedures deals with the various scenarios where the subject person is required to carry out CDD and specifies the moment in time when the CDD is to be carried out.

The PMLFTR require CDD measures to be applied in the following cases:⁴⁰

- to all applicants for business when seeking to establish a business relationship;
- to existing customers when appropriate or when the subject person becomes aware that changes have occurred in the circumstances surrounding the established business relationship;
- to all applicants for business when seeking to carry out an occasional transaction;
- when the subject person suspects that a transaction may involve ML/FT; or
- when the subject person doubts the veracity or adequacy of previously obtained customer identification information, for the purpose of identification or verification.

3.2.1 Timing of CDD when establishing a business relationship

When an applicant for business seeks to establish a business relationship, subject persons are required to apply CDD procedures when contact is first made, as stated in Regulation 7(5) of the PMLFTR. In practice, requiring the applicant for business to provide documentation for the purposes of verification in the context of a preliminary meeting or where initial enquiries are still being made may not always be realistic and reasonable. For instance, it would still be premature for the requirement of verification procedures to apply in the case of a preliminary business meeting or telephone call with a prospective customer for the purposes of exploring the legal position in Malta with a view of establishing a business relationship. However, the moment the prospective customer takes active steps that show that he intends to establish a business relationship, that subject person is required to complete the identification and verification procedures. In fact, during a preliminary meeting it may be advisable to inform prospective customers that in the event that a decision is taken to establish a business relationship, the prospective customer would be expected to provide the necessary CDD documentation immediately, prior to the establishment of that business relationship.

⁴⁰ Regulation 7(5) to (7) of the PMLFTR.

3.2.1.1 Exceptions when CDD may be carried out after the establishment of a business relationship

(i) Specific exceptions in relation to certain circumstances

Notwithstanding the obligation to complete verification procedures **prior to** the establishment of a business relationship, the PMLFTR provide that verification procedures may be completed **during** the establishment of a business relationship where it is necessary for the continued normal conduct of business provided that:

- (a) the risk of ML/FT is low; and provided further that
- (b) the verification procedures be completed as soon as is reasonably practicable after the initial contact.⁴¹

This derogation from the general principle envisages those situations where it is impossible to require the completion of verification procedures before establishing a business relationship. In the event that CDD measures are applied after the establishment of a business relationship, subject persons should record the reasons for deferring the application of CDD measures. A determination on whether the risk of ML/FT is low should be based on the mandatory risk procedures described in Section 4.1.

(ii) Specific exceptions applicable in relation to life insurance business

Notwithstanding the general principle and the exception under paragraph (i) above, in relation to life insurance, subject persons carrying out any activity under paragraph (c) of the definition of 'relevant financial business' in the PMLFTR may complete the verification of the identity of the beneficiary under the policy after the establishment of a business relationship. Verification must however take place:

- at or before the time of payout; or
- at or before the time the beneficiary intends to exercise any of his rights vested under the policy.

(iii) Specific exceptions in relation to the opening of bank accounts

Notwithstanding the general principle and the exception under paragraph (i) above, subject persons carrying on the business of banking or the business of electronic money institutions under the provisions of the Banking Act may open a bank account prior to the completion of the verification process. This exception is subject to the condition that adequate measures are put in place such that no transactions, apart from the initial transfer of funds to open the account, are to be carried out through the account until the verification procedures have been satisfactorily completed.

⁴¹ Regulation 8(2) of the PMLFTR.

(iv) Specific exceptions in relation to certain legal entities and legal arrangements which administer and distribute funds

There may be other situations, particularly in the area of trusts and similar legal arrangements, where it is not possible to identify and verify the identity of the beneficiary at the time that contact is first made since such persons have not yet been named as a beneficiary or otherwise informed of the existence of the trust. In these cases, the PMLFTR provide that subject persons have to identify the class of persons in whose main interest the legal entity or arrangement is set up or operates. However, subject persons are required to identify and verify the identity of the beneficiaries as soon as they are named or otherwise informed of the existence of the trust.

3.2.2 Timing of CDD in relation to existing customers

The PMLFTR require subject persons to apply CDD measures to existing customers at appropriate times on a risk-sensitive basis and when the subject person becomes aware that changes have occurred in the circumstances surrounding the established business relationship.

Regulation 7(6) of the PMLFTR sets out an obligation on subject persons to review all customer files on a risk-sensitive basis upon the entry into force of the PMLFTR. Subject persons are allowed to do so “at appropriate times”, meaning that the PMLFTR do not impose an obligation on subject persons to update all CDD documentation of all existing customers prior to 31st July 2008 when the PMLFTR came into force. However, since the PMLFTR require subject persons to update documentation of existing clients at appropriate times on a risk-sensitive basis, subject persons are required to update the documentation of customers posing a higher risk, determined on the basis of the subject persons’ procedures for risk-assessment and risk-management referred to in Section 4.1, as soon as reasonably practicable. With respect to other customers, subject persons should update CDD documentation when certain trigger events occur, such as when an existing customer applies to open a new bank account or to establish a new relationship, or where an existing relationship changes. Moreover, it should be noted that ongoing monitoring obligations should assist subject persons in identifying the instances where additional or updated CDD documentation is needed.

Furthermore, if a lower risk customer wishes to acquire a high-risk product, his risk-profile will change accordingly. In such circumstances, the subject person would be required to obtain additional documentation or to update the CDD documentation maintained in relation to that customer to cater for the higher risk posed by the acquisition of a high-risk product.

3.2.3 Timing of CDD when an occasional transaction is carried out

As already stated in Section 3.2.1, the PMLFTR require the application of CDD measures when contact is first made between the subject person and the applicant for business. This time-frame also applies in the case of occasional transactions.

However, occasional transactions may vary in nature. For instance, in the case of an occasional transaction where the service is to be provided immediately, CDD documentation must be provided when contact is first made. This would apply for example in a case involving the transfer of money

through a money remittance provider. On the other hand, where an applicant for business merely seeks to obtain information from the subject person, such as for instance general information on the legal position in Malta with respect to a particular occasional transaction, the subject person would not be required to verify the identity of the applicant for business at that stage. Such obligation would only arise when the applicant for business actually takes active steps to engage the subject person to carry out the occasional transaction.

Subject persons are required to carry out CDD measures when a person knows or suspects that the applicant for business may have been, is, or may be engaged in ML/FT, or that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in ML/FT, regardless of any exemption or threshold.

3.2.4 When the subject person doubts the veracity or adequacy of CDD documentation

Subject persons must repeat CDD measures immediately when doubts have arisen regarding the veracity or adequacy of previously obtained customer identification information.

3.2.5 Acquisition of the business of one subject person by another

Where a subject person acquires the business of another subject person, in whole or in part, it is not necessary for all existing customers to be re-identified, provided that the records of all customers are acquired with the business and that the subject person is satisfied that the procedures adopted by the previous subject person were in line with the provisions of the PMLFTR and the Implementing Procedures. In the event that the records of the customers are not all obtained or the procedures adopted by the previous subject person were not in line with the provisions of the PMLFTR and the Implementing Procedures, CDD measures must be undertaken on a risk sensitive-basis, as soon as reasonably practicable.

3.3 Failure to complete CDD measures laid out in Regulation 7(1)(a) to (c)

Where a subject person is unable to comply with paragraphs (a) to (c) of Regulation 7(1), the subject person shall:

- (a) not carry out any transaction through the account;
- (b) not establish the business relationship or carry out an occasional transaction; or
- (c) terminate the business relationship with the customer.

In addition to the action taken under paragraphs (a), (b) or (c) above the subject person shall consider filing a STR with the FIAU.

When a subject person is unable to complete the identification and verification procedures, before opting to apply one of the measures above, it should first consider whether the inability to complete such procedures is due to a deliberate avoidance or reluctance by the applicant for business to provide the necessary documents, data or information or simply because the required information does not exist, such as for instance in the case where a person does not have either an identity card, a passport or a driving licence. In the latter circumstances, subject persons should

obtain alternative documents which are sufficient for the applicant for business or the beneficial owner to be identified and for their identity to be verified in accordance with the PMLFTR. Such alternative documents may include documents obtained from a government or other official source, such as a public registry, which is vested with the powers to provide official information on the details of the identity of a person.

Moreover, in deciding whether to opt for one of the measures under paragraphs (a), (b) and (c) indicated above, the subject person should consider whether such action may frustrate efforts of an investigation of a suspected operation of ML/FT. In that event the subject person should carry on with the business and immediately inform the FIAU of the circumstances.

Where the subject person receives funds prior to the completion of verification measures in accordance with Section 3.2.1 and the subject person is unable to complete such verification measures or decides not to establish a business relationship with an applicant for business, the funds in question should only be released to the original remitter of the funds using the same financial channels through which the funds were delivered.

It is to be noted that the PMLFTR provide that subject persons carrying out a relevant activity under paragraph (a) and (c) of the definition of 'relevant activity', which refer to members of the accountancy profession, auditors, tax consultants, notaries and other independent legal professions, shall not be bound to apply the measures indicated above provided that such subject persons are acting in the course of ascertaining the legal position of their client or performing their responsibilities of defending or representing their customer in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings.

3.4 Simplified Due Diligence

Regulation 10 of the PMLFTR provides for the application of simplified due diligence. This Regulation states that CDD measures shall not be applied in certain specific circumstances mentioned in the Regulation itself. This means that in these specific circumstances, subject persons need not identify or verify the applicant for business or beneficial owner, need not obtain information relating to the purpose or intended nature of the business relationship and need not carry out ongoing monitoring of that relationship. Subject persons are only required to maintain a minimal amount of information about the applicant for business or the beneficial owner as explained hereunder.

3.4.1 Categories of applicants for business qualifying for SDD

In applying SDD in accordance with Regulation 10, subject persons are required to gather sufficient information to determine that the applicant for business falls within one of the following categories:

- (a) Applicants for business, which are authorised to undertake relevant financial business, including regulated entities in the financial sector such as credit institutions, companies carrying on long-term insurance business, investment firms, etc. The rationale behind this provision is that such persons are subject to mandatory licensing and supervision and would have therefore gone through the 'fit and proper' test. This provision also

- applies to applicants for business which are licensed or authorised to carry out activities equivalent to relevant financial business in another Member State of the European Community or in a reputable jurisdiction;
- (b) Legal persons listed on a regulated market and which are subject to public disclosure requirements. These entities may either be authorised under the Financial Markets Act,⁴² an equivalent regulated market within the Community, or in a reputable jurisdiction. Legal entities which are listed on a regulated market undergo a very rigorous listing procedure and are subject to public disclosure requirements;
 - (c) Beneficial owners of pooled accounts held by notaries or independent legal professionals. Since notaries and independent legal professionals are subject to AML/CFT measures they would have already carried out CDD measures in respect of the beneficial owners. Notaries and independent legal professionals falling within the scope of this provision are those members of these professions who are situated in Malta, in the Community or in a reputable jurisdiction. The notaries and independent legal professionals shall ensure that supporting identification documentation is available, or may be made available on request, to the credit institution that is acting as the depository of the pooled accounts;
 - (d) Certain domestic and foreign public authorities or bodies which fulfil all of the criteria set out in Regulation 10(1)(d)(i) to (iv);
 - (e) Legal persons who present a low risk of ML/FT, which fulfil the criteria set out in Regulation 10(2).

It should be noted that SDD may also be applied in those situations where the applicant for business is fully owned by a legal person falling within paragraphs (a) and (b) above and in such cases the subject person shall only gather sufficient information to determine that such legal person fully owns the applicant for business and that it qualifies under paragraphs (a) and (b).

The PMLFTR also provide an exhaustive list of products or transactions in respect of which SDD may be applied. The list includes certain insurance policies with one instalment premium or periodic payable premiums which do not exceed certain amounts; certain insurance policies in respect of pension schemes; pensions or similar retirement schemes to employees where contributions are made by way of deductions from an employee's wages and where the scheme prohibits members from assigning their interest under the scheme; electronic money products; and certain other product or transaction that represents a low risk of ML/FT which are specified in Regulation 10(3) and (4) of the PMLFTR.

3.4.2 Circumstances where SDD shall not apply

The PMLFTR prohibit the application of SDD where the subject person knows or suspects that the applicant for business may have been, is, or may be engaged in ML/FT, or that the transactions carried out on behalf of another person who may have been, is, or may be related to ML/FT. In such circumstances, even though the applicant for business or the product qualifies for SDD, the simplified procedure would not be able to be applied.

⁴² Cap. 345 of the Laws of Malta.

Additionally, the PMLFTR state that notwithstanding the fact that an applicant for business or a product or transaction falls within one of the categories listed in Section 3.4.1, the subject person shall in any case pay special attention to the activities of that applicant for business or to any type of product or transaction that, by its nature, may be used or abused for ML/FT, and where there is information that suggests that this risk may not be low, the applicant for business or that product or related transactions shall not be considered as representing a low risk of ML/FT and SDD shall not be applied. In order to be able to adhere to the provisions of Regulation 10(6), subject persons should conduct periodic monitoring of the business relationship.

It should also be noted that the PMLFTR empower the FIAU, in collaboration with the relevant supervisory authorities, to determine that a particular jurisdiction does not meet the criteria of a reputable jurisdiction (refer to Section 8.1), where the circumstances so necessitate. In the event that such a determination is reached subject persons may be prohibited from applying the provisions dealing with SDD.

3.5 Enhanced Due Diligence

Subject persons must apply enhanced due diligence on a risk-sensitive basis in situations, which by their nature, represent a higher risk of ML/FT (refer to Section 4.1.1.2). In essence, EDD measures are **additional measures** to the CDD measures set out in Regulation 7, which are to be applied in order to ensure that the higher risks presented by certain customers, products or transactions are better monitored and managed to avoid even inadvertent involvement in ML/FT. Whereas the PMLFTR provides for SDD measures to be applied on an optional basis, it is mandatory for EDD measures to be applied whenever there is a higher risk of ML/FT.

The PMLFTR refer to three specific types of relationships in respect of which EDD measures must necessarily be applied:

- where the applicant for business has not been physically present for identification purposes;
- in relation to cross-border correspondent banking relationships;
- in relation to a business relationship or occasional transaction with a PEP.

While the enhanced due diligence measures to be carried out in the three relationships mentioned above are specifically set out, the PMLFTR does not specify which enhanced due diligence measures are to be applied in other situations which, by their nature, can present a higher risk of ML/FT. Subject persons are therefore required to use their discretion in applying enhanced due diligence measures in such situations. However, it should be noted that such measures must be applied on a risk-sensitive basis and should be appropriate in view of the higher risk of ML/FT.

3.5.1 Non face-to-face applicants for business

Where the applicant for business has not been physically present for identification purposes, the subject person is not in a position to establish that the applicant for business is actually the person he purports to be without resorting to adequate measures to compensate for the higher risk. Therefore, in addition to the identification and verification of identity measures to be carried out in

accordance with Section 3.1.1.2, subject persons are required to apply **one or more** of the following measures:

- (a) *establish the identity of the applicant for business by using additional documentation and information;*

The applicant for business must provide the subject person with additional documentation containing identification details which would have been obtained by the applicant for business in the jurisdiction where he holds citizenship after producing an identification document containing a photograph. Alternatively, a bank reference may also be provided which confirms the identity details of the applicant for business. Where such additional documentation does not contain reference to the residential address of the applicant for business, a utility bill or a bank statement containing the residential address of the applicant for business should also be produced.

- (b) *verify or certify the documentation supplied using supplementary measures;*

This measure consists in the certification of the documentation used for the purposes of the verification of identity by a legal professional, accountancy professional, a notary, a person undertaking relevant financial business or a person undertaking an activity equivalent to relevant financial business carried out in another jurisdiction.

Such certification is evidenced by a written statement stating that:

- the document is a true copy of the original document;
- the document has been seen and verified by the certifier; and
- the photo is a true likeness of the applicant for business or the beneficial owner, as the case may be.

The certifier must sign and date the copy document (indicating his name clearly beneath the signature) and clearly indicate his profession, designation or capacity on it and provide his contact details. Where doubts have arisen about the existence of the certifier, subject persons should make independent checks to verify the existence of such certifier and document such checks.

Subject persons must exercise caution when accepting certified copy documents, especially where such documents originate from a country or territory perceived to represent a higher risk.

- (c) *require certified confirmation of the documentation supplied by a person carrying out a relevant financial activity;*

Subject persons may consider alternative ways, other than the measures set out under paragraph (b) above, for the purposes of obtaining certification of the documentation provided by the applicant for business. In fact, under this paragraph the PMLFTR provide for the possibility of obtaining certified confirmation of the documentation by any entity carrying out relevant financial business.

- (d) *ensure that the first payment or transaction into the account is carried out through an account held by the applicant for business in his name with a credit institution*

authorised under the Banking Act⁴³ or otherwise authorised in another Member State of the Community or in a reputable jurisdiction.

This is an important measure in the EDD process as it will entail a bank to bank transfer from an existing account through which the customer would have already been identified.

3.5.2 Correspondent banking relationships

The second instance specified in the PMLFTR where EDD should be applied refers to those circumstances where credit institutions seek to establish a cross-border correspondent banking, or other similar relationship, with respondent institutions situated in a country other than a Member State of the Community.⁴⁴

Where a credit institution seeks to establish such correspondent banking relationship, in addition to the obligations set out under Regulation 7, it has to ensure that:

- (a) *it fully understands and documents the nature of the business activities of its respondent institution, including from publicly available information:*
 - (1) *the reputation of the institution;*
 - (2) *the quality of supervision of that institution; and*
 - (3) *whether that institution has been subject to a ML/FT investigation or regulatory measure.*

Subject persons are not required to obtain information from private commercial sources but may make use of publicly available information to understand the nature of the business of the respondent institution.

- (b) *it assesses the adequacy and effectiveness of the internal controls of the institution for the prevention of ML/FT;*

There are various measures which can be carried out to fulfil this requirement. These measures, which can either be applied independently of each other or cumulatively, are the following:

- (1) The credit institution obtains a copy of the procedures manual of the respondent institution and assesses the adequacy and effectiveness of the respondent institution's internal controls on the basis of the measures set out in the PMLFTR; or
- (2) The credit institution develops a brief questionnaire with specific questions covering the legal obligations and the internal procedures applied by the respondent institution to meet these obligations; or

⁴³ Cap. 371 of the Laws of Malta.

⁴⁴ For further guidance on the establishment and maintenance of correspondent banking relationships credit institutions may refer to the *Wolfsberg AML Principles for Correspondent Banking*. (<http://www.wolfsberg-principles.com/corresp-banking.html>).

- (3) The credit institution requests a declaration from the respondent institution on the adequacy of its internal controls, possibly certified by its supervisory authority.

(c) *it obtains prior approval of senior management;*

In accordance with preamble 26 of the 3rd AML Directive, the approval of senior management means approval by a person occupying the immediate higher level of the hierarchy of the person seeking such approval. The approval, therefore, need not necessarily be obtained from the board of directors, where applicable. However, it should be ensured that a request for approval is always made by a person occupying a managerial position within the structure of the subject person. The approval of senior management should be in writing and available for inspection.

(d) *it documents the respective responsibilities for the prevention of ML/FT;*

The credit institution seeking to establish the correspondent relationship must ensure that the AML/CFT measures that each institution is to carry out and the responsibilities of each institution are clearly set out and documented. Thus, although it is not necessary that the two institutions reduce their respective responsibilities into a detailed formal document, there must be some form of documentation clearly setting out the responsibilities of the respective institutions.

(e) *it is satisfied that, with respect to payable-through accounts, the respondent credit institution has verified the identity of and performed ongoing due diligence of the customers having direct access to the accounts of the respondent institution and that it is able to provide relevant CDD data upon request.*

Where accounts of a respondent institution can be used by third parties, credit institutions should either refuse to open such accounts due to the higher ML/FT risks posed or, if accepted, obtain written confirmation from the respondent institution that it will assume responsibilities for CDD on such persons. One way of ensuring that the measures required to be carried out in accordance with this obligation are being fulfilled by the respondent institution, is for the credit institution to carry out random and spontaneous checks.

Credit institutions are also prohibited from entering into, or continuing, correspondent banking relationships with shell banks. The PMLFTR require credit institutions to take appropriate measures to ensure that they do not enter into, or continue, a correspondent banking relationship with banks which are known to permit shell banks to use their accounts. In this regard, it is pertinent to keep in mind that credit institutions need to make adequate checks to assess the extent to which credit institutions with which a correspondent banking relationship is entered into, permit shell banks to use their account and maintain a record of such verifications.

3.5.3 Politically Exposed Persons

Subject persons are required to apply EDD measures to PEPs as defined in the PMLFTR.

3.5.3.1 Who qualifies as a PEP?

Regulation 2 defines a PEP as a natural person who is or has been entrusted with prominent public functions and includes his immediate family members or persons known to be close associates of such persons, but shall not include middle ranking or more junior officials. For the purposes of their customer acceptance process, subject persons are required to apply EDD in relation to PEPs residing in another Member State of the Community or in any other jurisdiction. Although the PMLFTR are clear regarding the application of EDD to PEPs, domestic persons who are or have been entrusted with prominent public functions may still pose a higher risk of ML/FT and subject persons should therefore consider applying EDD likewise to PEPs residing in Malta, even though this is not a mandatory requirement.

The term ‘politically exposed persons’ is broad and generally includes all persons who fulfil a prominent public function. In fact Regulation 11(7) states that a natural person who is or has been entrusted with a prominent public function shall include:

- (a) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries;
- (b) Members of Parliament;
- (c) Members of the Courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
- (d) Members of courts of auditors, Audit Committees or of the boards of central banks;
- (e) Ambassadors, *charge d'affaires* and other high ranking officers in the armed forces;
- (f) Members of the administration, management or boards of State-owned corporations;

and where applicable, for the purposes of (a) to (e), shall include positions held at the Community or international level.

With respect to the term ‘immediate family members’ of PEPs, the PMLFTR provide that the term shall include:

- (a) the spouse, or any partner recognised by national law as equivalent to the spouse;
- (b) the children and their spouses or partners; and
- (c) the parents.

With respect to the term ‘persons known to be close associates’, the PMLFTR provide that the term shall include:

- (a) a natural person known to have:
 - (1) joint beneficial ownership of a body corporate or any other form of legal arrangement;
 - (2) or any other close business relations with that PEP.
- (b) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that PEP.

In determining whether the applicant for business or a beneficial owner is a PEP, subject persons are required to obtain such information directly from the applicant for business. This information

may be obtained from the applicant for business' response to a question posed in the application form where this forms part of the subject person's procedures. Alternatively, subject persons may develop a questionnaire with specific reference to criteria that identify PEPs and which would be required to be completed accordingly by the applicant for business and the beneficial owner, where applicable. This questionnaire should be signed by the applicant for business and the beneficial owner, where applicable. On the basis of the mandatory risk procedures referred to in Section 4.1, subject persons should determine whether the use of commercial databases to confirm the information provided by the applicant for business is necessary.

3.5.3.2 EDD measures to be applied in relation to PEPs

Subject persons are required to apply the following additional measures in relation to PEPs:

- (a) *obtaining senior management approval;*

In accordance with preamble 26 of the 3rd AML Directive, the approval of senior management means approval by a person occupying the immediate higher level of the hierarchy of the person seeking such approval. The approval, therefore, need not necessarily be obtained from the board of directors, where applicable. However, it should be ensured that a request for approval is always made by a person occupying a managerial position within the structure of the subject person. The approval of senior management should be in writing and available for inspection.

- (b) *taking adequate measures to establish the source of wealth and funds involved:*

For further information reference should be made to Section 3.1.6.

- (c) *conducting enhanced ongoing monitoring.*

Such monitoring should be conducted more regularly and more thoroughly, and a closer analysis should be undertaken on the transactions and their origin. For further information on ongoing monitoring reference should be made to Section 3.1.5.

3.5.4 New or developing technologies and products and transactions that might favour anonymity

Subject persons should pay special attention to any threat of ML/FT that may arise from new or developing technologies or from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use in ML/FT. To this effect the mandatory risk procedures referred to in Section 4.1 should assist subject persons in identifying and establishing the extent of risk of ML/FT presented through technological innovations and products or transactions that might favour anonymity and to document findings and adopt measures to mitigate and contain such risk.

3.6 Reliance on other subject persons or third parties

The PMLFTR permit subject persons to rely on the CDD measures carried out by other subject persons or third parties, subject to a number of conditions.

3.6.1 CDD measures that may be relied on

Subject persons may only rely on CDD measures undertaken by other subject persons or third parties in relation to:

- (a) the identification and verification of an applicant for business;
- (b) the identification and verification of a beneficial owner, where applicable; and
- (c) information on the purpose and intended nature of the business relationship.

It is very important to note that subject persons may not rely on the ongoing monitoring measures carried out by another subject person or third party.

The subject persons placing reliance should immediately obtain from the entity being relied on the information required under Regulation 7(1)(a) to (c). Therefore, notwithstanding the fact that the subject person is placing reliance on another entity, that subject person must obtain the details of the identity of the applicant for business, the identity of the beneficial owner, where applicable, and information on the purposes and intended nature of the business relationship.

Where reliance in accordance with Regulation 12 is being made, it is not necessary for the subject person placing reliance to receive copies of the identification and verification data and other relevant documentation obtained by the entity being relied on for the above-mentioned purposes, unless the subject person requests the entity being relied on to do so. Should the subject person require such documentation it must be forwarded by the entity being relied on immediately upon request.

In order to ensure that such documentation is available upon request, the subject person placing reliance and the entity being relied on should have a written agreement in place which regulates the procedure to be followed in such circumstances. Such an agreement should not necessarily be reduced into a detailed formal agreement but an exchange of letters would suffice. Subject persons should consider making occasional tests of the system to ensure that the entity being relied upon would provide the necessary documentation if a request is made and that it would adhere to the requirement of the immediacy stipulated in the PMLFTR.

The provisions under Regulation 12 dealing with reliance do not apply where the applicant for business involved falls within any one of the categories which qualify for the application of SDD.

3.6.2 Who qualifies as a third party?

The PMLFTR define a third party as a person:

- (a) carrying out activities which are equivalent to 'relevant financial business' or 'relevant activity' in a Member State of the Community other than Malta or in a reputable jurisdiction; and

- (b) subject to authorisation or to mandatory professional registration recognised by law.

The two criteria mentioned above are cumulative and therefore in order for reliance to be allowed it is necessary for both criteria to be satisfied.

3.6.3 Responsibility for compliance with CDD measures

Notwithstanding the fact that it is possible for a subject person to rely on another subject person or a third party, the subject person placing reliance remains responsible for compliance with CDD requirements referred to in Section 3.6.1.

Additionally, the subject person relying on another subject person or a third party is still required to carry out a risk-assessment (refer to Section 4.1.1) of the applicant for business or the beneficial owner, whenever applicable. In fact, the subject person must be in a position to determine whether the applicant for business or the beneficial owner falls within the risk appetite of the subject person and whether the application of customer EDD is necessary in accordance with Section 3.5.

3.6.4 Reliance on persons carrying on relevant financial business or equivalent activities

All subject persons may rely on other subject persons carrying on activities falling under the definition of relevant financial business.

Additionally, all subject persons may recognise and accept the outcome of the relevant CDD measures carried out in accordance with provisions equivalent to the PMLFTR, by third parties as explained in Section 3.6.2, carrying on activities equivalent to those falling within the scope of 'relevant financial business', even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

3.6.4.1 Exception

Financial institutions whose main business is currency exchange or money transmission or remittance services or their equivalent, may only be relied upon in limited circumstances in accordance with Section 3.6.5 below.

3.6.5 Reliance on third parties carrying out currency exchange and money transmission/remittance services

Subject persons whose main business is currency exchange or money transmission or remittance services may recognise and accept the outcome of the relevant CDD measures carried out in accordance with provisions equivalent to the PMLFTR by third parties who undertake currency exchange or money transmission or remittance services, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

3.6.6 Reliance on auditors, external accountants, tax advisors, notaries, independent legal professionals, trustees and other fiduciaries

All subject persons may rely on auditors, external accountants, tax advisors, notaries, independent legal professionals, trustees and other fiduciaries, when these are subject to the PMLFTR.

3.6.7 Reliance on third parties carrying out activities equivalent to those referred to in Section 3.6.6

Only auditors, external accountants, tax advisors, notaries, independent legal professionals, trustees and other fiduciaries when these are subject to the PMLFTR, may recognise and accept the outcome of the requirements referred to in Section 3.6.1, when such requirements are carried out by third parties who undertake activities equivalent to those referred to in Section 3.6.6 in accordance with provisions equivalent to the PMLFTR even if the documentation or data upon which these requirements have been based are different to those under domestic requirements. This means that only these categories of subject persons, in terms of the PMLFTR, may rely on their counterparts situated in third countries.

3.6.8 When reliance is not applicable

The provisions of reliance in the PMLFTR shall not apply:

- (i) to outsourcing or agency relationships where, on the basis of a contractual agreement, the outsourcing service provider or agent is to be regarded as part of the subject person, such as for instance agents of financial institutions as defined under the Financial Institutions Act.⁴⁵ This provision does not refer to outsourcing of CDD measures but to the outsourcing of certain operational activities of the subject person. In such a case, for the purposes of CDD, the outsourced entity would be regarded as part of the subject person and would not be required to carry out CDD measures separately. Therefore, the provisions of reliance would not apply in any case;
- (ii) to reliance on subject persons under paragraph (i) in the definition of 'relevant activity' and subject persons under paragraph (j) in the definition of 'relevant financial business' in Regulation 2(1). These two paragraphs refer to any activity which is associated with an activity falling within the definition of relevant activity and relevant financial business.

3.6.9 When reliance is not permitted

Where the FIAU determines or is informed that a jurisdiction does not meet the criteria of a reputable jurisdiction, and the criteria for a third party, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from relying on persons or institutions from that particular jurisdiction for the performance of CDD requirements. For further information on the notion of a 'reputable jurisdiction' subject persons should refer to Section 8.1.

⁴⁵ Cap. 376 of the Laws of Malta.

CHAPTER 4 – MANDATORY RISK PROCEDURES AND THE RISK-BASED APPROACH

4.1 Mandatory risk procedures

Subject persons are required to have in place procedures to manage the ML/FT risks posed by their customers,⁴⁶ products and services. This requirement is found under Regulation 4(1)(c) which stipulates that subject persons are to establish procedures on, *inter alia*, **risk assessment** and **risk management** that are adequate and appropriate to prevent the carrying out of operations that may be related to ML/FT.

The risk-assessment and risk-management procedures should be contained in the procedures manual of the subject person referred to in Section 8.3.

4.1.1 Risk-assessment procedures

Risk-assessment procedures which are adequate and appropriate to prevent ML/FT should at least include identification and assessment of customer risk, product/service risk, interface risk and geographical risk, in accordance with Section 4.1.1.2 below, in relation to every business relationship or occasional transaction.

4.1.1.1 Purpose of risk-assessment procedures

The purpose of the risk-assessment procedures is to enable the subject person to be in a position to identify and assess the ML/FT risks that the subject person is or may become exposed to and thereby determine:

- (a) whether the application of EDD in accordance with Section 3.5 is necessary;
- (b) the point in time when the application of CDD in accordance with the PMLFTR to existing customers is to be carried out (for further details refer to Section 3.2.2); and
- (c) whether a customer presents a low risk of ML/FT for the purposes of Section 3.2.1.1.(i), where applicable.

With respect to paragraph (a) above, Regulation 7(9) specifically requires subject persons to develop and establish effective customer acceptance policies to determine whether an applicant for business or a beneficial owner is a politically exposed person or is likely to pose a higher risk of ML/FT. A customer acceptance policy therefore, as a minimum, should include:

- (a) a description of the type of customer that is likely to pose higher than average risk;
- (b) the identification of risk indicators such as the customer background, country of origin, business activities, products, linked accounts or activities and public or other high profile positions, which should be carried out in accordance with Section 4.1.1.2 below; and

⁴⁶ For the purposes of Chapter 4 the term 'customer' shall be construed to include both the applicant for business and the beneficial owner, whenever applicable.

- (c) the requirement for the application of EDD measures for higher risk customers and in the case of PEPs the measures set out in Section 3.5.3.

4.1.1.2 Identifying and assessing the risks

Notwithstanding the fact that there is no established set of risk categories, it is suggested that the four main risk areas which the subject person should take into consideration when identifying and assessing its ML/FT risks, should be:

- (i) customer risk;
- (ii) product/service risk;
- (iii) interface risk;
- (iv) geographical risk.

(i) Customer risk

The risk of ML/FT may vary in accordance with the type of customer. The assessment of the risk posed by a natural person is generally based on the person's economic activity and/or source of wealth. For instance, the risks posed by a pensioner, whose only source of income is his monthly pension, are much lower than the risks posed by a person whose transactions are mainly cash-based with no discernable source of his activity or a person whose commercial operations comprise complex business structures.

With respect to legal entities, subject persons should be aware that corporate structures, trusts, foundations, associations and commercial partnerships may be used as a vehicle to obscure the link between a criminal activity and the persons benefitting from the proceeds of such criminal activity.

The FATF⁴⁷ provides a list of categories of customers whose activities may pose a higher risk. This list includes:

- Customers conducting their business relationship or transactions in unusual circumstances, such as:
 - significant or unexplained geographical distance between the entity and the location of the customer.
 - frequent and unexplained movement of accounts to different entities.
 - frequent and unexplained movement of funds between entities in various geographical locations.
- Customers where the structure or nature of the entity or relationship makes it difficult to identify the true owner or controlling interests.
- Cash (and cash equivalent) intensive business.
- Charities and other 'not for profit' organisations which are not subject to monitoring or supervision (especially those operating on a 'cross-border' basis).
- Use of intermediaries within the relationship who are not subject to adequate AML/CFT laws and measures and who are not adequately supervised.
- Customers that are politically exposed persons.

⁴⁷ FATF, *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing – High Level Principles and Procedures*, June 2007 (hereinafter referred to as 'FATF RBA Guidance'), pp. 23-24, paragraph 3.6.

In determining the risk that a customer poses, subject persons should also be aware of the customer's behaviour. The following situations should be taken into consideration:

- Situations where there is no commercial rationale for the customer buying the product he seeks;
- Requests for a complex or unusually large transaction which has no apparent economic or lawful purpose;
- Requests to associate undue levels of secrecy with a transaction;
- Situations where the origin of wealth and/or source of funds cannot be easily verified or where the audit trail has been deliberately broken and/or unnecessarily layered; and
- The unwillingness of customers who are not private individuals to give the names of their real owners and controllers.⁴⁸

Irrespective of all the above considerations, a customer should automatically be classified as a high-risk customer if he is subject to sanctions or other economic measures. In this case subject persons should exercise caution in providing certain services depending on the measures that the person is subject to, especially where the risk of ML/FT is higher. In this respect subject persons should consult a number of open sources, including the sources listed in Appendix I and any commercial databases to which the subject person may choose to subscribe.

(ii) Product/service risk

Some products/services are inherently more risky than others and are therefore more attractive to criminals. The FATF⁴⁹ lists a number of factors which should be taken into consideration when determining the risks of products and services:

- Services identified by competent authorities or other credible sources, such as the FATF itself, FSRBs, the International Monetary Fund, the World Bank and the Egmont Group,⁵⁰ as being potentially higher risk, including the following examples:
 - International correspondent banking services involving transactions such as commercial payments for non-customers (for example, acting as an intermediary bank) and pouch activities.
 - International private banking services.
- Services involving banknote and precious metal trading and delivery.
- Services that inherently provide more anonymity or can readily cross international borders, such as online banking (where the client is not present for identification and verification purposes), stored value cards, international wire transfers, private investment companies and trusts.

(iii) Interface risk

The channels through which a subject person establishes a business relationship and through which transactions are carried out may also have a bearing on the risk profile of a business relationship or

⁴⁸ This part of the Implementing Procedures is based on Chapter 4 of JMLSG Guidance.

⁴⁹ FATF RBA Guidance, p. 24, paragraph 3.7.

⁵⁰ The information provided by these entities does not have the effect of law and should not be viewed as an automatic determination that a particular factor on its own poses a higher risk of ML/FT.

a transaction. It is recognised that the use of internet for the provision of services may exacerbate the risk of ML/FT, in view of the rapidity with which online transactions may be conducted and the level of anonymity that such transactions may offer.

(iv) Geographical risk

The geographical risk is the risk posed to the subject person by the geographical location of the business/economic activity and the source of wealth/funds of the business relationship.

The FATF⁵¹ lists a number of factors that should be assessed in determining when a country poses a higher risk. These include:

- Countries subject to sanctions, embargoes or similar measures issued by international organisations such as the United Nations Security Council.⁵² In addition, in some circumstances, countries subject to sanctions or measures which may not be universally recognised may be given credence by the subject person because of the standing of the issuer and the nature of the measures.
- Countries identified by credible sources as lacking appropriate AML/CFT laws, regulations and other measures.
- Countries identified by credible sources as providing funding or support for terrorist activities that have designated terrorist organisations operating within them.
- Countries identified by credible sources as having significant levels of corruption, or other criminal activity.

In this context reference should be made to the notion of ‘reputable jurisdictions’ explained in Section 8.1.

4.1.2 Risk-management procedures

Risk-management procedures should be introduced to control and mitigate higher risk situations. These procedures should, as a minimum, provide for the following measures:

- (a) the implementation of a programme which sets out the additional measures to be applied by the subject person in higher risk situations;
- (b) requiring a higher standard in relation to the quality of documents obtained; and
- (c) monitoring transactions/activities to a higher degree where the risk warrants such additional measures.

4.2 The Risk-Based Approach

While the risk-assessment and risk-management procedures specified in Section 4.1 above are mandatory, the application of a RBA is optional. The possibility for the application of the RBA is laid out in Regulation 7(8) of the PMLFTR which stipulates that subject persons may determine the extent of the application of CDD requirements on a risk-sensitive basis, depending on the type of

⁵¹ FATF RBA Guidance, p. 23, paragraph 3.5.

⁵² Reference should also be made to sanctions, embargoes or similar measures issued by the EU.

customer, business relationship, product or transaction. The possibility to apply different measures on the basis of the particular ML/FT risks is a novel concept within the ambit of AML/CFT which was introduced by virtue of the 3rd AML Directive.

4.2.1 The purpose of the RBA

The principle behind the RBA is that resources should be directed proportionately in accordance with the extent of the ML/FT risks posed, so that the business, products and customers posing the highest risks receive the highest attention. Prior to the introduction of the RBA, subject persons were required to manage and control their risks solely on the basis of a rules-based approach. Such an approach meant that subject persons applied their resources evenly, so that all customers, products, etc, received equal attention. Such an approach may still be applied, in view of the fact that the RBA is not mandatory. However, while the application of the rules-based approach may lead to a ‘tick box’ approach with the focus being placed on meeting regulatory needs rather than on effectively combating ML/FT, the application of a risk-based approach ensures that measures to prevent or mitigate ML/FT are commensurate with the risks identified and that resources are allocated in the most efficient ways.⁵³

Subject persons should be aware that where a decision to apply the RBA is taken, a framework should be implemented. The model⁵⁴ to be adopted to implement such framework may be simple or sophisticated depending on the size and nature of the business and services offered, the customer base and the geographical area of operation of the subject person. The implementation of the RBA, therefore, need not involve a complex set of procedures, provided that the procedures in place are based on a set of objective criteria.

An effective RBA involves the identification, recognition, assessment, categorisation and ranking of ML/FT risks and the establishment of reasonable controls for the prevention and management of such risks. The subject person should be able to show that reasonable business judgement has been exercised with respect to its customers and the determinations reached in the application of the RBA are justified in the light of the ML/FT risks identified. In fact, Regulation 7(8) states that subject persons may apply a RBA provided that they are **able to demonstrate that the extent of the application on a risk-sensitive basis is appropriate in view of the risks of ML/FT**.

The identification and assessment of risks is an ongoing procedure, since risks change over time depending on how circumstances develop and how threats evolve. Once the subject person has a clear understanding of the ML/FT risks that are a threat to the organisation, the subject person should then develop strategies to manage and mitigate those risks.

⁵³ FATF RBA Guidance, p. 2, paragraph 1.7.

⁵⁴ The term “model” when used in this paragraph should in no way be construed to mean that a sophisticated approach, such as the building of a matrix, is necessary in all circumstances. At times, where the size and nature of the business so warrant, a simple procedure commensurate to that business, capable of, as a minimum, enabling the identification of higher risk customers, would suffice.

Before going into a detailed explanation on the application of a risk-based approach, it is important to point out that the rationale behind the RBA is not to exempt subject persons from CDD measures where the risk of ML/FT is low, but rather to provide subject persons with the possibility to vary the extent of the application of CDD measures depending on the level of risks identified. The CDD process comprises a number of steps that need to be taken in all cases – identification and verification of identity of customers and beneficial owners, obtaining information on the purposes and intended nature of the business relationships and conducting ongoing monitoring. All of these steps which make up the CDD process must be completed regardless of the RBA. However, within the conduct of each and every one of these steps, the implementation of the RBA may allow for a determination of the extent and quantity of information required and the mechanisms to be used to meet the minimum standards set out in the PMLFTR.

Finally, it should be clear that the manner in which the RBA is applied by subject persons should not be designed in a way that it simply prohibits subject persons from undertaking certain transactions or establishing certain business relationships with potential customers, but it is expected to assist subject persons in managing potential ML/FT risks in an effective manner. Nevertheless, it is recognised that regardless of the strength and effectiveness of AML/CFT controls, criminals will continue to attempt to move illicit funds through the financial sector undetected and will, from time to time, succeed. This factor will be taken into account by the FIAU when assessing subject persons' compliance with the PMLFTR.⁵⁵

4.2.2 The application of the RBA

As mentioned earlier, the application of the RBA entails the implementation of a framework. This framework consists of a number of steps:

- (a) identifying and assessing risks;
- (b) managing and controlling risks;
- (c) monitoring controls; and
- (d) recording the actions taken.

The manner in which these steps are to be applied shall depend on the circumstances of each individual subject person.

4.2.2.1 Identifying and assessing the risks

The first step in the application of the RBA is the identification and assessment of ML/FT risks, which is a mandatory procedure required by the PMLFTR. Reference should be made to Section 4.1.1.2 above for detailed information on the manner in which such procedure should be implemented.

⁵⁵ FATF RBA Guidance, p. 2-3, paragraph 1.12 and 1.13.

In the RBA, the four risk elements in Section 4.1.1.2 should be combined to produce a risk profile of the applicant for business or the beneficial owner. It is the result of the risk profile and the subject person's risk appetite that will determine the extent and the intensity of the documentation and other processes that will need to be fulfilled at the commencement of a business relationship or as an ongoing requirement.

While a risk assessment should always be performed at the inception of a business relationship, a comprehensive risk profile may only become evident once the customer has begun his planned operations or has begun transacting through an account, depending on the type of business, making monitoring of customer transactions and ongoing reviews of the activities of the customer a fundamental component of a risk-based approach.⁵⁶

4.2.2.2 Obtaining a risk profile

Once the subject person has identified and assessed the particular risks of a prospective business relationship, such information should be collated so as to obtain a risk profile which will determine whether the prospective business relationship falls within the risk appetite of the subject person. There is no one single accepted methodology that should be applied to the risk categories discussed above. The following is an example of a methodology that may be used in practice. This methodology is merely being provided as a guide, it is not exhaustive and consequently should not be considered to be mandatory.

The methodology that is being provided is based on a scoring system. The different risk variables within each of the four risk categories outlined above are each awarded a score on a scale from 1 to 10, where a score of 1 is awarded to the variable which poses the lowest risk and a score of 10 is awarded to the variable which poses the highest risk.

Table 2 below illustrates how this system might work in practice.

⁵⁶ FATF RBA Guidance p. 22, paragraph 3.2.

	Scoring	Type of Customer	Product/ Service	Interface	Geographical
EXTREME	9 – 10	• PEPs • Sanctioned individuals or entities	• Services intended to render the customer anonymous	• Internet transactions	• Country subject to sanctions, embargoes
HIGH	6 – 8	• Non face-to-face • NPOs • Correspondent bank • Fiduciary arrangements	• Internet-based product • Services identified by FATF	• Internet transactions	• Non-reputable jurisdiction
MEDIUM	3 – 5	• Employees • Public figures • General public	• Normal products	• Non face-to-face	• Reputable jurisdiction • Equivalent country • Domestic
LOW	1 – 2	• Other individuals (e.g. pensioners)	• None	• Face-to-face	• EU Member State • Domestic

Table 2 – Risk scoring grid

Once the subject person establishes the risk scoring, the subject person should determine the extent of risk which the organisation is ready to take on in relation to every risk element. These four risk elements could then be combined to obtain a graphic representation of the risk appetite of the organisation, as in Figure 3 below. ***It should be noted that subject persons should have on record evidence to substantiate the criteria adopted to determine the risk appetite. This would be assessed by the FIAU in fulfilment of its compliance monitoring function.***

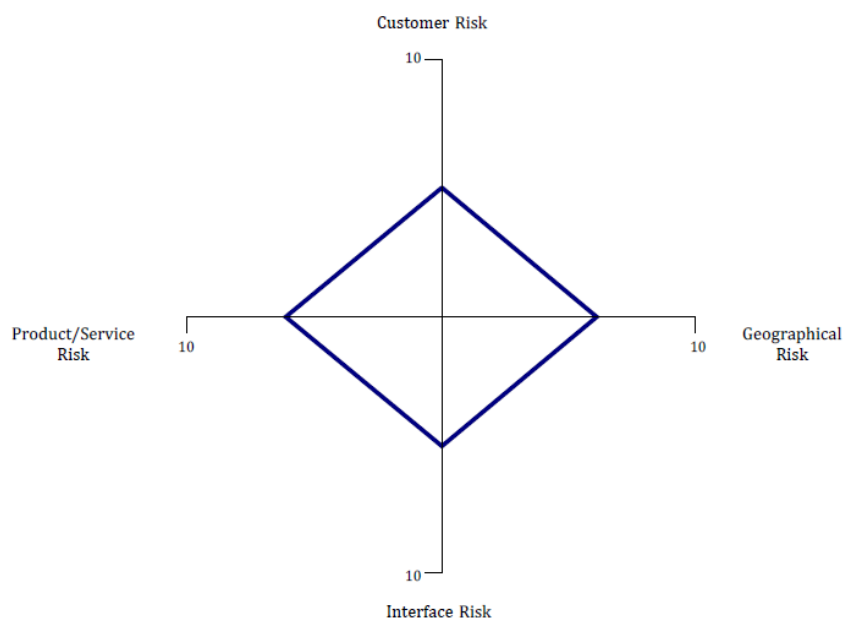


Figure 3 – Determination of risk appetite of the subject person

Once the risk appetite of the organisation is established, a risk rating of the prospective individual customer on the basis of the four risk categories should be conducted. Once the four risk elements are combined they shall provide the subject person with a risk profile for that prospective business relationship. The risk profile which is then obtained shall be viewed against the risk appetite of the subject person to determine the risk posed by the customer to the organisation – including whether to accept or refuse that business relationship.

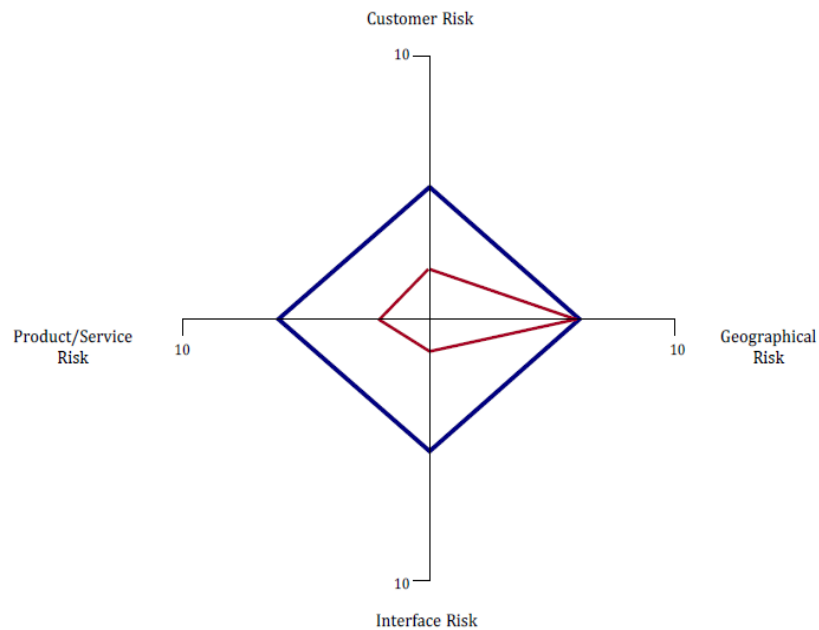


Figure 4 – Customer falling within the risk appetite of the subject person

Figure 4 above shows a graphic representation of a customer falling within the risk appetite of the subject person - in which case the subject person could accept the customer.

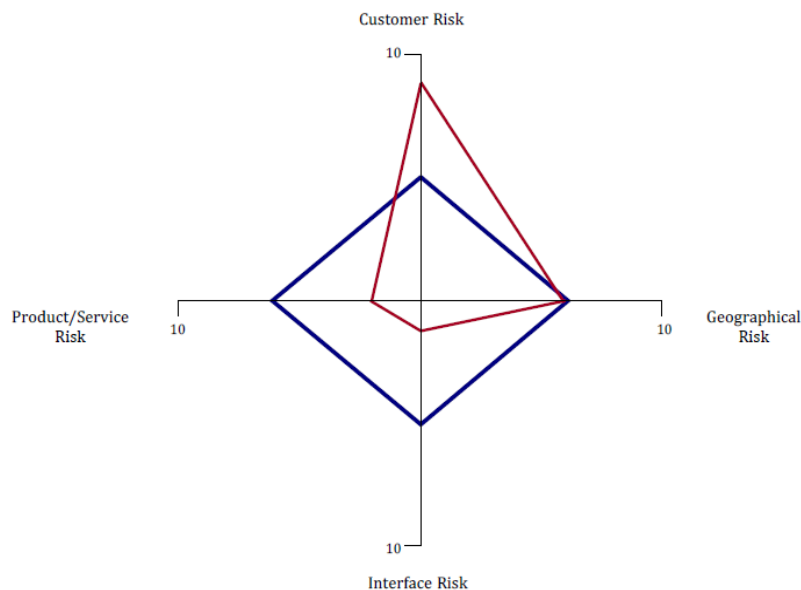


Figure 5 – Customer falling outside the risk appetite of the subject person

In Figure 5 above the customer falls outside the subject person's risk appetite. The customer would be considered as posing a higher risk to the institution and therefore could be accepted under higher monitoring or refused outrightly.

It is important to note that irrespective of whether the subject person has a high risk appetite, all high-risk customers must be subject to the application of enhanced due diligence measures. For instance, all non face-to-face customers and PEPs are considered to pose a higher risk of ML/FT and automatically require the application of enhanced due diligence. However, the extent of the enhanced due diligence measures to be applied may vary depending on the risks posed by each customer. Therefore, subject persons should ensure that the enhanced due diligence measures carried out in relation to, for instance, a high-net worth individual operating from a non-reputable jurisdiction on a non face-to-face basis should be much more stringent than the enhanced due diligence measures applied in relation to a student operating on a non face-to face basis.

4.2.2.3 Managing and controlling risks

Once the subject person has identified and assessed the risks and obtained a risk profile of the prospective business relationship, controls to manage and mitigate the risks must be devised and implemented. As a minimum these controls should include:⁵⁷

- (a) implementing a customer identification programme that varies the procedures in respect of customers in accordance with the identified and assessed ML/FT risks;
- (b) requiring adequate standards in relation to the quality of documentary evidence obtained;
- (c) obtaining additional information in accordance with the identified and assessed ML/FT risks; and
- (d) adopting the extent of monitoring customer transactions/activities depending on the outcome of the risk assessment.

A customer identification programme should at least involve:⁵⁸

- (a) a standard information dataset, which may include a factsheet, to be held in respect of all customers;
- (b) standard verification requirements for all customers;
- (c) the possibility to apply more extensive due diligence on customer acceptance for higher-risk customers;
- (d) the possibility to apply, where appropriate, more limited identity verification measures for specific lower risk customer/product combinations; and
- (e) an approach to monitoring customer activities and transactions that reflects the risk assessed to be presented by the customer, which will identify those transactions or activities that may be unusual or suspicious.

It should be pointed out that identifying a customer as posing a higher risk of ML/FT does not automatically mean that such customer is a money launderer or a terrorist financier. Similarly, the

⁵⁷ This part of the Implementing Procedures is based on Chapter 4 of the JMLSG Guidance.

⁵⁸ FATF RBA Guidance p. 38, paragraph 4.23.

fact that a customer is identified as presenting a low risk of ML/FT does not exclude the possibility that such customer may attempt to launder money or fund terrorism. In view of this, the risk-based criteria should not be applied rigidly without allowing past experience and available information to be taken into consideration in reaching a determination.⁵⁹

4.2.2.4 Monitoring controls

It is essential that the controls to manage and mitigate the identified risks are constantly monitored. This should be done so that in the event of a change in circumstances, which might mitigate or exacerbate a particular risk, the respective control is modified accordingly.

For instance it is important that the subject person has a system in place to identify changes in customer characteristics, as this would obviously have a bearing on the risk profile of the customer. Similarly, the threat posed by a particular product or service may cease to exist which would lead to a re-consideration of the risk scoring of the business relationship. In view of this, the subject person must be in a position to identify such changes.

Subject persons should also carry out periodic internal audits or assessments to review the adequacy of the risk assessment, the internal controls and the compliance arrangements. Such audits or assessments should also review the effectiveness of liaison between the different departments of the organisation, and the effectiveness of the balance between technology-based and people-based systems.

4.2.2.5 Recording the action taken

As stated above, in applying a RBA, subject persons should be in a position to demonstrate to the FIAU that the measures adopted are appropriate in view of the ML/FT risks that the subject person may be or become exposed to. Therefore, it is of utmost importance that every determination and assessment taken in identifying, assessing, managing and mitigating risks, as well as the monitoring of such processes is duly recorded in writing. This will enable the subject person to support the procedures undertaken when an inspection is carried out by the FIAU or the relevant supervisory authority acting on its behalf.

⁵⁹ FATF RBA Guidance p. 38, paragraph 4.27.

CHAPTER 5 – RECORD KEEPING PROCEDURES

5.1 Purpose of keeping records

Subject persons shall retain records, including documentation and information, for use in an investigation into, or an analysis of, the possibility of ML/FT. These records can be requested by the FIAU or by other relevant competent authorities as required.

The records maintained by subject persons are extremely relevant to competent authorities responsible for analysis, investigation, law enforcement and prosecution since they may constitute evidence of the audit trail and of money flows. It is therefore crucial that subject persons adhere to the legal obligations applicable in this area.

5.2 Records to be retained

Subject persons should have procedures in place to ensure that the following records are maintained in relation to all business relationships formed and occasional transactions carried out:

- (a) records indicating the nature of the evidence of the CDD documents required and obtained, which should include either a copy of the evidence required for the identity or a reference to the evidence required for identity. Such reference should provide sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained. The records to be maintained should include the following:
 - Where subject persons view the original CDD documents listed in Section 3.1.1.2(ii)(a)(1) and (2), a true copy of such original documents on file, signed and dated by an officer of the subject person should be maintained;
 - Where subject persons receive a certified copy of the CDD documents listed in Section 3.1.1.2(ii)(a)(1) and (2), such copy should be maintained on file;
 - Where subject persons verify the identity of the applicant for business by electronic means in accordance with Section 3.1.1.2(ii)(b), a print-out of the results of the search should be maintained on file;
 - Where it is impossible for subject persons to take a copy of the documents listed in Section 3.1.1.2(ii)(a)(1) a record should be maintained of the type of document and its number, date and place of issue so that if necessary the document may be re-obtained from its source of issue. A record of the reasons for the impossibility to take a copy of the documents should be recorded;
 - Where the verification of the residential address of the subject person is carried out by visiting the customer at such address, a record of the visit should be maintained on file;
 - Where verification is carried out on the basis of alternative documents referred to in Section 3.3, a copy of such documents should be maintained on file;

- A copy of the documentation and other information obtained in fulfilment of the obligations set out in Sections 3.1.3.1 to 3.1.3.6, Section 3.4.1 and Sections 3.5.1 to 3.5.3 should be maintained on file.
- (b) records containing details relating to the business relationship and all transactions carried out in the course of an established business relationship or occasional transaction. These records should include the following:
- files related to accounts held by the subject person, where applicable, and all business correspondence of the subject person in the course of an established business relationship; and
 - details on all transactions, whether international or domestic, carried out by the customers. The details should include the customer's and beneficiary's name, address or other identifying information normally recorded by the subject person, the nature and date of the transaction, the type and amount of currency involved, the type and identifying number of any account involved in the transaction, the volume of funds flowing through the account, the origin of the funds, where necessary and the form in which the funds were placed or withdrawn.⁶⁰
- Such records should either consist of original documents or else copies which are admissible in court proceedings.
- (c) records of the findings of the examination of the background and purpose of the relationship and transactions carried out in accordance with Regulation 15(1) and (2) of the PMLFTR (refer to Sections 3.1.5.1 and 3.5.1.2).

Subject persons should also retain the following records required as evidence of compliance with the PMLFTR and for statistical purposes:

- internal reports made to the MLRO;
- reports made by the subject person to the FIAU;
- a record of the reasons for not forwarding an internal report to the FIAU;
- a record of AML/CFT training provided, including:
 - the date on which the training was delivered;
 - the nature of the training;
 - the names of employees receiving the training;
 - the results of any assessment undertaken by employees;
 - a copy of any handouts or slides;
- other important records, including:
 - any reports by the MLRO to senior management made for the purposes of complying with the obligations under the PMLFTR such as recommendations on internal procedures, correspondent banking relationships, PEPs, etc;
 - records of consideration of those reports and of any action taken as a consequence thereof;
 - the section of reports drawn up in relation to an internal audit or assessment dealing with AML/CFT issues.

⁶⁰ These requirements only apply to those subject persons who carry out transactions in the course of their business.

5.3 Period of retention of records

Subject persons shall maintain the records, referred to in Section 5.2, for a period of at least five (5) years. The date of commencement of this time period depends on the type of records to be retained.

5.3.1 CDD documentation

With respect to CDD documentation referred to in Section 5.2(a), the time period of five (5) years commences from the date on which the business relationship is terminated or the occasional transaction is carried out. This date varies depending on the following circumstances:

- *Where negotiations take place between the parties with a view to the formation of a business relationship between them:* The date of ending of such business relationship;
- *Where there is knowledge or suspicion that the applicant for business may have been, is or may be engaged in ML/FT or that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in ML/FT:* The date when the suspicious transaction was reported. However, this five (5) year period may be extended by the FIAU as may be required;
- *Single Large Transaction as defined under the definition of 'Case 3' of the PMLFTR:* The date of carrying out the occasional transaction;
- *Series of Transactions as defined under the definition of 'Case 4' of the PMLFTR:* The date of carrying out the last transaction in a series of transactions.

Where the formalities necessary to end a business relationship have not been observed but the five (5) year period has elapsed since the date on which the last transaction was carried out, then the date of that transaction shall be deemed to be the date on which the business relationship was effectively completed, provided that the business relationship is then immediately terminated in a formal manner. Should the business relationship not be terminated formally as required above the subject person shall be required to maintain the records beyond the five-year period from the date of the last transaction.

5.3.2 Documentation on the business relationship and on the transactions carried out in the course of a business relationship or in relation to an occasional transaction

The time period for the retention of documentation referred to in Section 5.2(b) commences from the date on which all dealings taking place in the course of the transaction in question were completed.

In relation to an occasional transaction or a series of occasional transactions, the time period commences on the date on which the occasional transaction or the last of a series of occasional transactions took place.

Where a suspicious transaction report has been filed with the FIAU, transaction records related to that suspicious transaction should be retained for a period of five (5) years from the date of the

filing of the report, irrespective of whether the transaction is carried out within the context of an established business relationship or as an occasional transaction.

5.3.3 Records of the findings of the examination of the background and purpose of the relationship and transactions carried out in accordance with Regulation 15(1) and (2) of the PMLFTR

The time period for the retention of the findings of the examination of the background and purpose of the relationship and transactions carried out in accordance with Regulation 15(1) and (2) of the PMLFTR, commences from the date on which all dealings taking place in the course of the transaction in question were completed.

5.4 Form of records

There are certain specific instances set out in the Implementing Procedures which require subject persons to keep a hard copy of the documents on file. In all other cases subject persons may maintain their records in any one of the following forms:

- in physical files;
- in scanned form;
- in computerised or electronic form.

Subject persons should use a standardised approach to record keeping and must ensure that the approach used enables the quick retrieval of records for the purposes laid out in Section 5.5.

5.5 Retrieval of records

Subject persons are required to maintain efficient record-keeping procedures that enable them to retrieve information in a timely manner when so requested by the relevant authorities acting in accordance with the applicable laws.

In particular, subject persons carrying out relevant financial business are required to provide the FIAU, the supervisory authority or other relevant competent authorities with information as might be required from time to time related to:

- (a) whether they maintain or have maintained a business relationship with a specified natural or legal person/s during the previous five years; and
- (b) the nature of that relationship.

To this effect, subject persons carrying out relevant financial business are required to establish effective systems which are commensurate with the size and nature of their business and that enable them to respond efficiently, adequately, promptly and comprehensively to such enquires made to them by the FIAU or by supervisory or other relevant competent authorities in accordance with applicable law. The provision of this information is of particular importance in the context of procedures leading to measures such as freezing or seizing of assets – including terrorist assets.

When requests for information are made by the FIAU, subject persons should ensure that they are able to reply to these enquiries in a timely manner but not later than five (5) working days from when the demand is made, unless the subject person makes representations justifying why the requested information cannot be submitted within the said time. In such cases the FIAU may, at its discretion and after having considered such representations, extend such time period as may be reasonably necessary to obtain the information, whereupon the subject person shall submit the information requested within the time period as extended.⁶¹

⁶¹ Regulation 15(11) of the PMLFTR.

CHAPTER 6 – REPORTING PROCEDURES AND OBLIGATIONS

Subject persons are required to have internal and external reporting procedures in place for the purpose of reporting knowledge or suspicion of ML/FT to the FIAU.

6.1 The Money Laundering Reporting Officer

The PMLFTR state that internal reporting procedures maintained by a subject person shall include the appointment of a Money Laundering Reporting Officer who shall be an officer of the subject person and who shall be of sufficient seniority and command:

(a) *Officer of the subject person*

The person to be appointed by the subject person to act as MLRO shall be a person who is an official in employment with, or the executive director of, the subject person and resident in Malta. In addition the functions of a MLRO may not be:

- outsourced;
- carried out by a non-executive director of the subject person;
- carried out by a person who only occupies the position of company secretary of the subject person and does not hold any other position within the organisation; or
- carried out by a person who undertakes internal audit functions within the organisation.

It should be noted that a sole practitioner may act as the MLRO himself.

(ii) *Sufficient seniority and command*

The MLRO must occupy a senior position within the institution where effective influence can be exercised on the subject person's AML/CFT policy. The person occupying this position must have a direct reporting line to the Board of Directors and should not be precluded from posing effective challenge where necessary. The MLRO must also have the authority to act independently in carrying out his responsibilities and should have full and unlimited access to all records, data, documentation and information of the subject person for the purposes of fulfilling his responsibilities.

The MLRO is responsible for the oversight of all aspects of the subject person's AML/CFT activities and is the focal point for all activity relating to AML/CFT. The senior management of the subject person must ensure that the MLRO has sufficient resources available to him, including appropriate staff and technology, to be able to monitor the day-to-day operations of the subject person to ensure compliance with the subject person's AML/CFT policy.

According to the PMLFTR the MLRO is responsible for:

- (a) receiving reports of knowledge or suspicion of ML/FT;⁶²
- (b) considering such reports to determine whether a suspicion of ML/FT subsists;⁶³
- (c) reporting knowledge or suspicion of ML/FT to the FIAU;⁶⁴ and
- (d) responding promptly to any request for information made by the FIAU.⁶⁵

The appointment of the MLRO, and any subsequent changes thereto, must be notified to the FIAU and to the relevant supervisory authority.

6.2 The designated employee

The subject person may appoint one or more designated employees to assist the MLRO in the fulfilment of his AML/CFT duties. The appointment of the designated employee must receive the approval of the MLRO and such appointed person shall work under his direction.

Designated employees assist the MLRO to consider reports received in order to determine whether or not the information, or other matter contained in the report, give rise to a knowledge or suspicion that a person may have been, is, or may be engaged in ML/FT.

The appointment of the designated employee must also be notified to the FIAU and the relevant supervisory authority.

6.3 Internal reporting procedures

The internal reporting procedures of the subject person should clearly set out the steps to be followed when an employee knows or suspects that a person or transaction is related to ML/FT.

The procedure should clearly state that any knowledge or suspicion of ML/FT should be reported directly to the MLRO or, in his absence, to the designated employee. Therefore, it is crucial that all employees are informed of the identity of the MLRO and any designated employee. Internal reports should be submitted in a written form, preferably on a standard template, together with all related information and documentation. The name of the employee making the report shall not be disclosed by the MLRO to the FIAU.

It should be noted that ideally the reporting line between the employee having the suspicion and the MLRO should be as short as possible, thus ensuring speed, confidentiality and accessibility to the MLRO. However, in larger organisations the reporting lines can be such that an employee has to consult with his superior before the report is forwarded to the MLRO. Where the superior decides not to forward an internal report to the MLRO, the employee submitting the report should be informed of the decision. Additionally, the superior should maintain written records of internal report not forwarded to the MLRO containing the reasons why such a decision not to report was

⁶² Regulation 15(4)(a) of the PMLFTR.

⁶³ Regulation 15(4)(b) of the PMLFTR.

⁶⁴ Regulation 15(6) of the PMLFTR.

⁶⁵ Regulation 15(11) of the PMLFTR.

taken. Such records should be available to the MLRO to be in a position to carry out assessments at his discretion and to the internal auditors where applicable.

In cases where the superior does not forward the internal report to the MLRO and the employee still has a suspicion that ML/FT is occurring or has taken place, the reporting lines should still enable the employee to submit the report directly to the MLRO.

The MLRO is to consider every internal report in the light of all other relevant information in order to determine whether or not the information contained in the report does give rise to a knowledge or suspicion of ML/FT. In view of this the MLRO should be granted reasonable access to all relevant documentation.

Failure by the MLRO to diligently consider all relevant material may lead to vital information being overlooked and the suspicion not being disclosed to the FIAU. In order to ensure that no essential information is overlooked, the MLRO should take into consideration:

- (a) previous transactions, transaction patterns and volumes, previous patterns of instructions, the length of the business relationship and CDD information;
- (b) where possible, other connected accounts and the existence of other relationships, including where the person suspected of ML/FT:
 - (1) is a settlor, donor, contributor, protector, trustee or beneficiary of a trust, trust account or other trust relationship with the subject person; or
 - (2) is a beneficial owner, director, shareholder or legal representative of a legal entity or other legal arrangement having a business relationship with the subject person; or
 - (3) holds a power of attorney or has any fiduciary arrangements related to a business relationship with the subject person.

If the MLRO concludes, for justifiable reasons, that an internal report does not give rise to a suspicion, the MLRO need not inform the FIAU. In this case, the MLRO shall keep a written record of the internal reports received, the assessment carried out, the outcome and the reasons why the report was not submitted to the FIAU. Upon request by the FIAU or the relevant supervisory authority acting on behalf of the FIAU, or in completing the Annual Compliance Report mentioned under Section 6.11, the MLRO will make such information available.

6.4 External reporting procedures

After considering the internal report and all the necessary documentation, where the MLRO knows, suspects or has reasonable grounds to suspect that:

- a transaction may be related to ML/FT; or
- a person may have been, is, or may be connected with ML/FT; or
- ML/FT has been, is being, or may be committed or attempted,

the MLRO shall file a report with the FIAU.⁶⁶

⁶⁶ Regulation 15(6) of the PMLFTR.

The PMLFTR require the MLRO to report to the FIAU when he has **knowledge, suspicion or reasonable grounds to suspect** ML/FT. A brief explanation of these three concepts is provided below:

(i) Knowledge

Being an objective criterion the existence of knowledge of ML/FT is not difficult to ascertain. If for any reason the MLRO, or any other employee of the subject person, is aware or is in possession of information that indicates that any of the above activities may have taken place, are taking place, or will be taking place, the MLRO should immediately proceed with filing a report with the FIAU.

(ii) Suspicion

Suspicion of ML/FT is more subjective than knowledge and in order to determine its existence the MLRO must rely on objective criteria, which differ depending on the circumstances. For instance, an unemployed customer of a bank depositing considerable amounts of money into his bank account should raise the suspicion of the bank. In this case the objective element is the fact that the person is unemployed and although the bank does not have any concrete evidence that the money derives from an illegal activity there are objective indications pointing to such a possibility. Another objective element on which suspicion may be based, which is specifically referred to in the PMLFTR, is the situation where the subject person is unable to complete customer due diligence due to the unwillingness of the applicant for business to provide the required documentation or information. In such a case, the PMLFTR require the subject person to consider filing a report with the FIAU.

Certain pronouncements by the courts in the United Kingdom may be of assistance in determining what constitutes 'suspicion' for the purposes of the PMLFTR and the degree of suspicion that is required for a STR to be made:

"A degree of satisfaction and not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not".⁶⁷

"Although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation."⁶⁸

In *R v Da Silva* [2006] 4 All ER 900, the UK Court of Appeal stated the following:

"It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts'."

⁶⁷ JMLSG Guidance Chapter 6, Paragraph 6.9 p. 121,

⁶⁸ *Ibid.*

Furthermore in *Shah v HSBC Private Bank (UK) Ltd*, the UK High Court held that “[t]o be a suspicion rather than a mere feeling of unease it must be thought to be based on possible facts, but the sufficiency of those possible facts as a grounding for the suspicion is irrelevant...”

The Court in this case further stated that:

“Parliament intended suspicion as a subjective fact to be sufficient (1) to expose a person to criminal liability for money laundering and (2) to trigger disclosures to the authorities. Parliament did not require, in addition, that the suspicion be based upon “reasonable” or “rational” grounds. There are good practical reasons for this. Unlike law enforcement agencies, banks have neither the responsibility nor the expertise to investigate criminal activity to satisfy themselves that the grounds for their suspicion are well founded, reasonable or “rational”.”

(iii) Reasonable Grounds to Suspect

The requirement to file a report goes beyond “suspicion” and also includes the obligation to report when “reasonable grounds to suspect” exist. This implies that a further obligation to report arises where, on the basis of objective facts, the subject person ought to have suspected that ML/FT existed, even though a suspicion was not formed.

Any disclosures made by the subject person to the FIAU should be made as soon as is reasonably practicable, but **not later than five (5) working days** from when the suspicion first arose. The suspicion shall be deemed to have first arisen when any person within the structure of the subject person first suspects the existence of ML/FT and thus submits an internal report to the MLRO.

Any disclosures made to the FIAU should be made through the completion of a Suspicious Transaction Report (STR). A template for this purpose can be found in Appendix II.⁶⁹ MLROs have to complete this report and should provide as much detail as possible together with the relevant identification and other supporting documentation. This report should then be delivered, preferably by hand, to the FIAU premises addressed to the Director at the following address:

Financial Intelligence Analysis Unit
67/4 South Street
Valletta VLT 1105

In cases of great urgency an initial disclosure may be made by telephone on the number provided below, but a written report will also be required immediately thereafter:

Telephone Number: (+356) 21 231 333

⁶⁹ It is to be noted that a STR which is not submitted in the format provided by the FIAU in Appendix II will still be valid and acceptable to the FIAU. However, this should be an exceptional occurrence and, for the sake of consistency, subject persons are strongly encouraged to use the format in Appendix II. An electronic copy of the STR form may be found at <http://www.fiumalta.org/library/PDF/STRFORM.doc>.

It should be noted that STRs should only be filed with the FIAU and should not be copied to any supervisory authority.

6.5 Actions after reporting

Upon receipt of a STR the FIAU sends an acknowledgement to the subject person and the process for assessing the STR is then initiated by the Director who allocates the report to the financial analysts for further analysis.

In the course of the analysis of the STR, the FIAU may require further information and, in terms of the PMLFTR, it could request such information from the subject person filing the STR or any other subject person, the police, any Government Ministry, department, agency or other public authority, or any other person, physical or legal and from any supervisory authority. When the FIAU requests such information from a subject person, that subject person shall comply with the request as soon as is reasonably practicable but not later than five (5) working days from when the demand is first made, unless the subject person makes representations justifying why the requested information cannot be submitted within the said period of time. The FIAU can, at its discretion and after having considered such representations, extend such time as is reasonably necessary to obtain the information. The subject person shall then submit the information requested within the extended time limit. Subject persons should make a request under this provision with caution and only where absolutely necessary as its frequent use could hinder the FIAU in the conduct of its duties.

If once a report is filed the subject person decides to maintain the business relationship with the customer who is the subject of the report, the subject person should classify the customer as a high-risk customer and monitor the activities of that customer to a larger extent. It is to be noted that in such circumstances subject persons should not automatically report every transaction carried out by that customer after the report has been filed. Subject persons should analyse the circumstances of the case and where necessary consider passing on additional information to the FIAU. For instance, if a customer who has been subject to a STR receives his monthly salary into the same account through which a suspicious transaction was deemed to have been carried out, the subject person would not be expected to report such a transaction. However, if a transaction similar to the transaction which had been reported to the FIAU were to be carried out, such transaction is likely to give rise to a further suspicion and would therefore be reportable. Additionally, before taking any decision related to a customer and services provided thereto which may have an impact on the analysis or any future investigation, it would be advisable to hold discussions with the FIAU prior to carrying out such transactions to ensure that the steps taken by the subject person do not hinder the analysis or the investigation.

Subject persons reporting a STR to the FIAU may request feedback from the FIAU on the progress of the analysis of the STR. In such cases, the FIAU shall provide such information to the reporting subject person that it considers to be of interest to the subject person in order to enable that subject person to regulate its affairs and to assist it to carry out its duties under the PMLA and the PMLFTR. Subject persons should treat feedback information with utmost confidentiality.

6.6 Request to carry out a transaction known or suspected to be related to ML/FT

In accordance with Regulation 15(7), subject persons shall not carry out a transaction that is suspected or known to be related to ML/FT until they have informed the FIAU. This obligation is also found in Article 28 of the PMLA, which empowers the FIAU to delay the execution of such transactions by twenty-four (24) hours. In accordance with Article 28, where a subject person is aware or suspects that a transaction which is to be executed may be linked to ML/FT, that subject person shall inform the FIAU before executing the transaction, giving all the information concerning the transaction, including the period within which it is to be executed.

Such information may be given by telephone (telephone number: 21 231 333) but shall be forthwith confirmed by fax (fax number: 21 231 090) or by any other written means. The FIAU will acknowledge in writing the receipt of the information and it is only upon the receipt by the subject person of the FIAU's acknowledgement that the notification to the FIAU shall be deemed to have taken place.

After acknowledging the receipt of the information, the FIAU will determine whether the execution of the transaction should be delayed. The FIAU shall do its utmost to ensure that such determination is reached within the period of time within which the transaction is expected to be executed, as notified by the subject person. The execution of the transaction may be delayed by twenty-four (24) hours and notice of such delay of execution shall be immediately given to the subject person. Where the FIAU delays the transaction but upon further analysis determines that no suspicion of ML/FT subsists it may subsequently authorise the execution of the transaction before the expiry of the twenty-four (24) hour period.

There may be situations where the FIAU does not oppose the execution of the transaction. In this case, where the period of time provided by the subject person within which the transaction is expected to be executed lapses, the subject person may proceed with the execution of the transaction.

Where the execution of the transaction is opposed by the FIAU, the subject person may only proceed with the execution of the transaction upon the lapse of the twenty-four (24) hour period, unless in the meantime an attachment order issued by the competent court would have been served on the subject person.

In accordance with Regulation 15(7), where subject persons are not in a position to refrain from carrying out a transaction which is known or suspected to be related to ML/FT in view of the fact that such action is **impossible** because of the nature of the transaction or such action is likely to frustrate efforts of investigating or pursuing the beneficiaries of the suspected ML/FT operations, subject persons shall carry out the transaction and inform the FIAU immediately.

Similarly, Article 29 of the PMLA states that where the subject person is unable to inform the FIAU before the transaction is executed either because it is **not possible** to delay executing the transaction due to its nature or because delay in executing the transaction could prevent the prosecution of the individuals benefitting from the suspected ML/FT, subject persons shall carry out

the transaction and shall inform the FIAU immediately giving the reasons why the FIAU was not so informed before executing the transaction.

In these two provisions besides the failure to inform the FIAU because of the likelihood of frustrating investigation and prosecution efforts, the law states that it is only in cases where it is impossible for the transaction not to be executed that the subject person may carry out the transaction and this impossibility must arise from the nature of the transaction itself.

6.7 Monitoring orders

In terms of Article 30B, the FIAU may demand that a subject person monitors transactions or banking operations suspected of being related to ML/FT. Such power may be exercised by the FIAU when it:

- (a) receives a STR; or
- (b) when from information in its possession the FIAU suspects that:
 - any subject persons may have been used for any transactions suspected to involve ML/FT; or
 - property is being held by a subject person that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity or from an act or acts of participation in criminal activity.

A monitoring order shall be made for a specified period of time. During the course of such order the subject person is required to monitor the transactions or, in the case of banks, banking operations:

- carried out through one or more accounts in the name of any natural or legal person suspected of a ML/FT offence; or
- carried out through one or more accounts suspected to have been used in the commission of a ML/FT offence; or
- which could provide information about a ML/FT offence or the circumstances thereof.

The FIAU may issue such a monitoring order whether before, during or after the commission of the ML/FT offence referred to above. Subject persons are required to communicate to the FIAU the information resulting from the monitoring and the FIAU may use that information for the purpose of carrying out its analysis and reporting functions.

6.8 Professional privilege

By virtue of Regulation 15(10), auditors, accountants, tax advisors, notaries and members of the legal profession are exempt from the duty to report suspicious transactions to the FIAU in accordance with the provisions of Regulation 15(6) and the duty to inform the FIAU prior to carrying out a transaction that is known or suspected to be related to ML/FT in accordance with Regulation 15(7), if such information is received or obtained in the course of ascertaining the legal position for their client or performing their responsibility of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

This principle was upheld in a judgement by the European Court of Justice in ***Ordre des barreaux francophones and germanophones & Others vs Conseil des Ministres C-305/05, (ECJ Grand Chamber) 26th June 2007***. The court held the following:

“The reporting obligations apply to lawyers only insofar as they advise a client in the preparation or execution of certain transactions – essentially those of a financial nature or concerning real estate – or when they act on behalf of and for a client in any financial or real estate transaction. As a rule, the nature of such activities is such that they generally take place in a context with no link to judicial proceedings and consequently, those activities fall outside the scope of the right to a fair trial. Moreover, as soon as lawyers acting in connection with a financial or real estate transaction are called upon for assistance in defending a client or in representing such a client before the courts, or for advice as to the manner of instituting or avoiding judicial proceedings, those lawyers are exempt from the reporting obligations, regardless of whether the information has been received or obtained before, during or after the proceedings. An exemption of that kind safeguards the right of the client to a fair trial”.

Although the judgement only related to lawyers, Regulation 15(10) extends the same principle to other members of the legal profession, notaries, auditors, accountants and tax advisors. This principle ensures that the trust placed by the client in the professional is not breached when these professionals are called upon to ascertain the legal position of a client, to defend a client or represent such a client before the courts, or for advice as to the manner of instituting or avoiding judicial proceedings.

Moreover, where the subject persons mentioned in this section are seeking to dissuade a client from engaging in an illegal activity, they shall not be in breach of their confidentiality obligations and any such disclosure shall not constitute tipping off.⁷⁰ Nevertheless, if in any other circumstances where the professional privilege referred to under this section does not apply, the professional is under an obligation to file a STR with the FIAU without informing the client in a situation where the client seeks to carry out a transaction with the aim of laundering money or funding terrorism

6.9 Prohibition of disclosures

When a subject person has a suspicion that ML/FT is occurring, both the subject person as well as any official or employee of a subject person, are prohibited from disclosing to the person under investigation or to a third party, that an investigation is being carried out, may be carried out, or that information has been or may be transmitted to the FIAU.⁷¹ Disclosure of such information would give rise to the offence of tipping off and may prejudice an investigation. The elements of the offence of tipping off and the punishment set out by law are laid out in more detail in Section 8.5.1.6.

A subject person must however still retain the necessary contact with a customer and should enquire, in a tactful manner, about any transaction which is not consistent with the customer's

⁷⁰ Regulation 16(3) of the PMLFTR.

⁷¹ Regulation 16(1) of the PMLFTR.

normal pattern of activity. This is prudent practice and forms an integral part of CDD measures. Such enquiries would not in themselves give rise to tipping off.

6.10 Permissible disclosures

Although the PMLFTR outline the prohibition of disclosure for subject persons, there are certain circumstances established by the PMLFTR where disclosures made will not constitute a breach of the PMLFTR.⁷² Such circumstances include disclosures:

- (a) to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law;
- (b) disclosure by the MLRO of a subject person undertaking relevant financial business to the MLRO of another person/persons who:
 - (1) undertakes equivalent activities;
 - (2) forms part of the same group of companies; and
 - (3) is situated in Malta, within another Member State of the European Community or in a reputable jurisdiction;
- (c) disclosure by the MLRO of a subject person undertaking relevant activity under paragraphs (a) and (c) of Regulation 2 of the PMLFTR (definition of 'relevant activity') to the MLRO of another person/persons who:
 - (1) undertakes equivalent activities;
 - (2) performs their activities whether as employees or not;
 - (3) within the same legal person or within a larger structure to which the subject person belongs and which shares common ownership, management or compliance control; and
 - (4) is situated in Malta, within another Member State of the European Community or in a reputable jurisdiction;
- (d) disclosures between the same professional category of subject persons referred to in paragraphs (b) and (c) above in cases:
 - (1) that relate to the same customer;
 - (2) that relate to the same transaction;
 - (3) that involve two or more institutions or persons situated in Malta, within another Member State of the European Community or in a reputable jurisdiction;
 - (4) such persons are subject to equivalent obligations of professional secrecy and personal data protection; and
 - (5) the information exchanged shall only be used for the purposes of the prevention of ML/FT.

However, if the FIAU determines, or is informed, that a jurisdiction does not meet the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit

⁷² Regulation 16(2) of the PMLFTR.

subject persons from applying the provisions applicable to permissible disclosures with persons and institutions from that jurisdiction.

Furthermore, any *bona fide* communication or disclosure made by a subject person or by an employee or director of such subject person, shall not constitute a breach of the duty of professional secrecy, or any other restriction (whether imposed by statute or otherwise) and such person shall not be subject to liability of any kind.⁷³

6.11 Annual Compliance Report

Article 16(1)(c) of the PMLA charges the FIAU with the responsibility of monitoring compliance with AML/CFT obligations by subject persons. This responsibility is further elaborated under Article 26 of the PMLA empowering the FIAU to undertake both off-site and on-site examinations. Moreover, Article 27 empowers the FIAU to enter into agreements with relevant supervisory authorities to undertake compliance examinations on its behalf.

Monitoring of compliance by subject persons is partly conducted on an off-site basis which requires the gathering of relevant information from subject persons. In order to properly fulfil its off-site compliance function the FIAU has introduced a procedure whereby subject persons are required to submit an annual compliance report related to their activities during that calendar year. This report ensures that the FIAU gathers information for compliance purposes on a systematic and timely basis.

The annual compliance report assists the FIAU in fulfilling another essential function, which is the compilation of statistics and records in order to review the effectiveness of the AML/CFT regime in Malta. This function emanates from Article 16(1)(g) of the PMLA and is reflected in Regulation 14(2) of the PMLFTR. It is pertinent to note that Regulation 14(2) extends the requirement to maintain comprehensive statistical data to subject persons, supervisory and other competent authorities which are required to make such data available to the FIAU upon request.

6.11.1 Contents of the Annual Compliance Report

The annual compliance report (“the Report”) requires the completion of general details on the subject persons, as well as other information which, *inter alia*, includes:

- (a) information on internal suspicious reports and STRs submitted to the FIAU;
- (b) an overview of the policies and procedures on internal control, risk assessment, risk management and compliance management established by the subject person and their effective implementation;
- (c) an overview of the manner through which the MLRO would have assessed internal compliance, including overall oversight by the internal audit function, where applicable, highlighting any non-compliance findings that may have been identified and corrective measures taken accordingly; and
- (d) information concerning the AML/CFT training attended by the MLRO and any designated employees and AML/CFT training provided to staff members.

⁷³ Regulation 15(12) of the PMLFTR.

The Report is to be completed by the MLRO and submitted internally to senior management and the Board of Directors, as applicable. It should be signed by the highest-ranking officer within the organisation and submitted to the FIAU in accordance with the time-frames envisaged in Section 6.11.2 below. A soft-copy of the template of the Report, which may be reviewed from time to time, is available on the website of the FIAU.

6.11.2 The submission period

Subject persons will be required to submit the Report, **covering the previous calendar year**, in accordance with the time-frames provided below:

By not later than 28th February of every year:

- Entities licensed under the Banking Act
- Entities licensed under the Financial Institutions Act
- Entities licensed under the Insurance Business Act, Insurance Intermediaries Act, Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations and the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations

By not later than 31st March of every year:

- Entities licensed under the Investment Services Act
- Entities licensed under the Special Funds (Regulation) Act
- Central Securities Depository / Financial Markets

By not later than 30th April of every year:

- Trust & Corporate Service Providers
- Real Estate Agents
- Casinos

By not later than 31st May of every year:

- Other categories of non-financial subject persons

It shall be the MLRO's responsibility to ensure that the Report is completed and submitted by the designated date. Where the same entity or person carries out more than one activity falling within the definition of relevant financial business and relevant activity, such entity or person shall not be required to submit a separate Report in relation to each individual activity carried out and should submit the Report on the earliest date on which the Report is due.

6.11.3 Actions by the FIAU after receiving the Report

On the basis of the contents of the Report the FIAU may provide a number of recommendations or require remedial action where these are deemed to be necessary. The FIAU may also require subject persons to provide further information in relation to matters that raise concerns. The Report will also assist the FIAU in planning its on-site monitoring programme on a risk-based approach in respect of all subject persons.

CHAPTER 7 – AWARENESS, TRAINING AND VETTING OF EMPLOYEES

Every subject person is required to ensure that employees are kept aware of the subject person's AML/CFT policies and procedures and the relevant legislation and to provide training in relation thereto, as well as in relation to the recognition and handling of transactions carried out by, or on behalf of, any person who may have been, is, or appears to be engaged in ML/FT.⁷⁴

Awareness of the AML/CFT procedures of the subject person and training in relation to identification of unusual activities or suspicious transactions are key elements in the detection and deterrence of ML/FT activities. Indeed, policies and procedures to prevent ML/FT cannot be implemented effectively unless employees are made fully aware of their obligations and are provided with the necessary training.

It should be noted that awareness and training should be provided to employees whose duties include the handling of either relevant financial business or relevant activity,⁷⁵ irrespective of their level of seniority, in view of the fact that such employees will be in a position to detect transactions which may be related to ML/FT. This includes directors, senior management, the MLRO himself, compliance staff and generally all members of staff involved in the activities of the subject person which fall within the definition of relevant financial business and relevant activity.

7.1 Employee awareness

All employees should be made aware of the subject person's:

- (a) customer due diligence measures;
- (b) record-keeping procedures;
- (c) internal reporting procedures;
- (d) policies and procedures on internal control;
- (e) policies and procedures on risk assessment and risk management; and
- (f) policies and procedures on compliance management and communication.

All employees should be informed of the identity of the MLRO and designated employee(s), where applicable, and of their functions and responsibilities.

Employees should also be made aware of the following:

- (a) the provisions of the PMLA;
- (b) the provisions in the Criminal Code on funding of terrorism;
- (c) the provisions of the PMLFTR;
- (d) the offences and penalties in relation to any breach of the PMLA or the PMLFTR; and
- (e) the Implementing Procedures.

⁷⁴ Regulation 4(1)(d) and (e) of the PMLFTR.

⁷⁵ Regulation 4(3) of the PMLFTR.

All the above-mentioned information should be made readily available to all employees to enable them to refer to such information as and when appropriate throughout the conduct of their duties.

7.2 Nature of training

The Regulations specify that every subject person is required to provide training to employees in order to recognise and handle transactions carried out by, or on behalf of, any person who may have been, is, or appears to be engaged in ML/FT.

In order to be in a position to recognise and handle suspicious transactions, employees should be trained on how the products and services of the subject person may be misused for the purposes of ML/FT and the manner in which such vulnerabilities should be managed. Training should be tailored in accordance with the specific responsibilities and functions of the respective employees and the business carried out by the subject person. For instance, front-office employees should be provided with a different kind of training to that provided to employees carrying out back-office functions and the training provided by a credit institution would naturally differ from the training provided by a company carrying out the business of insurance or a real-estate agent.

Additionally, training should be of a more practical nature rather than simply theoretical. This means that the training provided should make references to real-life situations such as, for instance, the steps to be followed when accepting customers, the handling of high-risk customers and the behaviour to be adopted when faced with a request for a transaction which is suspicious. Typology reports prepared by the FATF, Moneyval or other FSRBs play an important role in preparing training material.

Subject persons need to determine the method in which training is to be delivered, as the most appropriate method may vary from one organisation to the other. The method generally depends on the size of the organisation. On-line learning systems can often provide an adequate solution for general training to all employees who deal with clients, while focused classroom training for higher-risk areas can be more effective.

It is vital to maintain comprehensive records of training sessions which, as already stated in Chapter 5, should include:

- (a) the date on which the training was delivered;
- (b) the nature of the training;
- (c) the names of employees receiving the training;
- (d) the results of any assessment undertaken by employees; and
- (e) a copy of any handouts or slides.

7.3 Timing of awareness training

Measures adopted to increase employee awareness and other training in accordance with Regulation 4 of the PMLFTR should be provided from time to time. The frequency of awareness and training depends on a number of factors including the size and nature of business, the ML/FT risks of the subject person and the functions and responsibilities of the particular employees. However,

the established principle is that awareness and training should be an ongoing exercise to ensure that employees are constantly kept up-to-date with any developments or changes in the operations of the subject person and any changes in the applicable laws.

Subject persons should preferably prepare an annual training programme for AML/CFT which should include both internal and external sessions. Although the annual training programme should vary from year to year according to the requirements of the subject person at the time, training programmes should include ongoing refresher courses, where the need arises, for those employees who would have already received training during previous programmes.

Subject persons must also provide training at appropriate intervals as follows:

- (a) to new employees during the induction training upon commencement of work;
- (b) to specific employees where there is a change in the employee's role at some stage after employment;
- (c) to all employees, including senior management and the directors, where there is a substantial change in requirements and obligations in the pertinent legislation.

7.4 Vetting of new employees

Subject persons shall ensure that they have in place appropriate procedures for due diligence when hiring employees.⁷⁶ This would generally include obtaining professional references, confirming employment history and qualifications and requesting a recent police conduct certificate. This requirement must be applied whenever recruitment is taking place irrespective of the position of the employee.

⁷⁶ Regulation 4(2) of the PMLFTR.

CHAPTER 8 – OTHER ANCILLARY MATTERS

8.1 The notion of reputable jurisdiction

The definition of reputable jurisdiction under Regulation 2 refers to *‘any country having appropriate legislative measures for the prevention of money laundering and the funding of terrorism, taking into account that country’s membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism, and which supervises natural and legal persons subject to such legislative measures for compliance therewith’*.

The PMLFTR do not require the FIAU to issue a list of “reputable jurisdictions” but provide for subject persons themselves to determine the level of AML/CFT legislation and supervision of a particular country. Primarily, for a country to be deemed to be reputable, it should be established that that country has “appropriate legislative measures” in place for the prevention of ML/FT. The definition itself then guides subject persons to take into account *inter alia* that country’s membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of ML/FT. For this purpose subject persons should refer to mutual evaluation reports or public statements on that country issued by the FATF, MONEYVAL or other FSRBs.

Subject persons may be required to establish whether a jurisdiction is to be considered a “reputable jurisdiction”, as defined in Regulation 2 of the PMLFTR, for a number of reasons, including the risk assessment of an applicant for business and qualification for SDD or EDD in terms of Regulations 10 and 11 respectively; whether a subject person can rely on a third party’s customer due diligence under Regulation 12; or whether the prohibition laid down in Regulation 6 (cross border branches and subsidiaries) applies to a particular jurisdiction.

While Member States of the European Community, on the basis of the principle of mutual recognition applicable in view of the implementation of the 3rd AML Directive, may be automatically presumed to satisfy the criteria of “reputable jurisdiction”, acceptance of business or transactions from third countries would require a more detailed assessment by subject persons. The list of countries contained in the Common Understanding on Third Country Equivalence issued by the Member States (refer to Appendix III), which list is a voluntary, non-binding measure that nevertheless represents the common understanding of Member States, is to be seen to be an added tool to assist subject persons in this assessment. It should be noted, however, that the mere omission of a jurisdiction from the said list does not necessarily mean that the AML/CFT and due diligence standards in those countries are low and should therefore be classified as a non-reputable jurisdiction. Neither does it mean that states included in the list are to be automatically deemed to classify as a reputable jurisdiction, although a lighter assessment would, under normal circumstances, suffice.

These third countries are currently considered by EU Member States as having equivalent AML/CFT systems to the EU. The list may, however, be reviewed, in particular in the light of public evaluation

reports adopted by the FATF, MONEYVAL or other FSRBs, the IMF or the World Bank according to the revised 2003 FATF Recommendations and Methodology.

Consequently, domestically, the common list, which is also endorsed by the FIAU, should be seen to be particularly relevant to assist subject persons in their assessment as to whether a jurisdiction is to be considered a reputable jurisdiction in terms of and for the purposes of the PMLFTR.

The onus remains on subject persons to carry out their own assessment of particular countries based on up-to-date information on that country. Not only should the subject person consider its own knowledge and experience of the country concerned, but particular attention should be paid to any FATF, MONEYVAL or other FSRBs or IMF/World Bank evaluations undertaken, membership of groups that only admit those meeting a certain benchmark, contextual factors, incidence of trade with the particular jurisdiction, public announcements of non-cooperation and other relevant factors.

In this regard subject persons should document in writing the reasons for determining that a particular jurisdiction is considered to be a “reputable jurisdiction”.

8.2 Branches and subsidiaries

The PMLFTR provide that subject persons carrying out relevant financial business shall not establish or acquire branches or majority owned subsidiaries in jurisdictions that do not meet the criteria for a reputable jurisdiction.⁷⁷

Moreover, subject persons carrying out relevant financial business through a branch or a majority owned subsidiary in a reputable jurisdiction shall:

- (a) communicate to such branches and majority owned subsidiaries its relevant AML/CFT internal policies and procedures established in accordance with the PMLFTR; and
- (b) apply in such branches and majority owned subsidiaries, where applicable, measures relating to customer due diligence and record keeping that, as a minimum, are equivalent to those under the PMLFTR.

Where the legislation of that reputable jurisdiction does not permit the application of such equivalent measures, subject persons shall immediately inform the FIAU and shall take additional measures to effectively handle the risk of ML/FT. The PMLFTR do not establish the nature of the ‘additional measures’ to be applied and therefore leave this at the discretion of the subject person. Such measures could, for example, include the application of EDD to all customers, transactions or products related to such jurisdiction, the imposition of limits on particular transactions or any similar obligations.

If the subject person is unable to apply such additional measures, the subject person shall immediately inform the FIAU who, in collaboration with the supervisory authority, may require the closure of the branch or majority owned subsidiary in accordance with the applicable law.

⁷⁷ Regulation 6(1) of the PMLFTR.

8.3 Written procedures

Subject persons are required to draw up a written procedures manual setting out in detail the procedures implemented by the subject person in order to comply with all the obligations emanating from the PMLFTR and the PMLA, which procedures manual should receive the approval of senior management or the Board of Directors, where applicable.

All relevant employees should have access to the procedures manual and subject persons should ensure that employees acknowledge that they have received and understood such procedures manual. The employees' awareness of the procedures manual should be tested periodically and records of such tests should be available for inspection by the FIAU. In terms of Section 7.2 the procedures manual should be the basis for the training programmes of the subject persons.

Subject persons shall, when so requested, provide a copy of their written procedures to the FIAU.

8.4 Internal controls

Regulation 4(1)(c) requires subject persons to establish policies and procedures on internal control, compliance management and communications that are adequate and appropriate to prevent the carrying out of operations that may be related to ML/FT. This entails that apart from the internal reporting procedures referred to in Section 6.3, subject persons must ensure that the policies and procedures implementing the provisions of the PMLFTR and the Implementing Procedures are adequately controlled and monitored. Such function should ideally be vested in the internal audit department of the subject person. Where an internal audit department is not set up, subject persons are expected to take other measures, such as for instance assigning this task internally to a person other than the MLRO or engaging the services of an external assessor, to control and monitor their policies and procedures.

8.5 Offences and penalties

A number of offences and breaches of an administrative nature are contemplated under the PMLA and the PMLFTR. The procedure for the imposition of a penalty further to a failure to comply with the law varies depending on the nature of the breach. Those offences which are punishable with a fine (*multa*) or imprisonment are subject to proceedings before the criminal courts of Malta. Where an administrative penalty is contemplated, these may be imposed by the FIAU without recourse to a court hearing.

When any sanction contemplated in the PMLFTR or any written warning is to be imposed by the FIAU the following procedure shall be followed:

- (a) the subject person is informed of the potential breach detected by the FIAU and the possibility of the imposition of an administrative penalty;
- (b) the subject person is requested to make any representations in writing explaining why such administrative penalty should not be imposed and providing all material

- information which the subject person may deem to be relevant in order for the FIAU to reach its determination as to whether the penalty is to be imposed;
- (c) the subject person is required to make such representations and provide such information within thirty days from the date of the FIAU's request;
 - (d) upon receipt of the representations of the subject person an internal evaluation will be carried out by the FIAU and a determination is reached as to whether the sanction is to be imposed;
 - (e) in the event that an administrative penalty is imposed, the FIAU will inform the subject person of such penalty explaining the reasons why such a determination was reached;
 - (f) administrative penalties are to be paid within fourteen days from the date on which the subject person is informed of such penalty;
 - (g) if, on the basis of representations made and the information provided, the FIAU determines that the breach does not subsist and therefore the imposition of an administrative penalty is not warranted, the FIAU may still conclude that the circumstances warrant a warning which shall be given in writing by the FIAU;
 - (h) written warnings may also be issued by the FIAU at its discretion in the course of the carrying out of its compliance monitoring function under Article 16(1)(c) of the PMLA in situations other than those mentioned in paragraph (g) above.

8.5.1 Offences and breaches of an administrative nature under the PMLFTR

This section contains a list of offences and breaches of an administrative nature, together with their respective penalties, which can be found under the various regulations of the PMLFTR.

8.5.1.1 Non-compliance with procedures to prevent ML/FT

Regulation: 4(5)

Offence: Contravention of the provisions of Regulation 4 of the PMLFTR by a subject person by not maintaining appropriate procedures for CDD, record keeping and reporting or does not provide the necessary training to its employees.

Penalty: Subject persons shall on conviction be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

8.5.1.2 Non-compliance with procedures to prevent ML/FT by corporate/unincorporated bodies/other associations of persons

Regulation: 5

Offence: Contravention of the provisions of Regulation 4 of the PMLFTR, where the offence is committed by a body corporate or other association of persons, be it corporate or unincorporated, or by a person within and for the benefit of that body or other association of persons consequent to the lack of supervision or control that should have been exercised on him.

Penalty: Such body or association shall be liable to an administrative penalty of not less than one thousand two hundred euro (€1,200) and not more than five thousand euro (€5,000). Such penalty shall be imposed by the FIAU without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed fifty thousand euro (€50,000).

Every person who at the time of the commission of the offence was a director, manager, secretary or similar officer of such body or association or was purporting to act in any such capacity, shall be guilty of that offence, unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Where such person is found guilty the penalty envisaged under Regulation 4(5) shall apply.

8.5.1.3 False declaration/false representation by an applicant for business

Regulation: 7(10)

Offence: A false declaration or false representation or the production of false documentation by an applicant for business.

Penalty: The applicant for business shall on conviction be guilty of an offence and shall be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000), or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

8.5.1.4 Contravention of the provisions on customer due diligence

Regulation: 7(12)

Offence: Contravention of the provisions of Regulation 7 of the PMLFTR or of the provisions of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15th November 2006 on information on the payee accompanying transfers of funds.

Penalty: Administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500), which shall be imposed by the FIAU without recourse to a court hearing.

8.5.1.5 Contravention of the provisions on reporting procedures and obligations

Regulation: 15(15)

Offence: Contravention of the provisions of Regulation 15 of the PMLFTR or failure to disclose information in accordance with Regulation 15(6) and (7) or failure to submit information in accordance with Regulation 15(11).

Penalty: Administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500), which shall be imposed by the FIAU without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed twelve thousand five hundred euro (€12,500).

8.5.1.6 Tipping off

Regulation: 16(1)

Offence: Disclosure by a subject person, a supervisory authority, or any official or employee of a subject person or a supervisory authority, to a person concerned or to a third party, other than as provided for in Regulation 16, that an investigation is being or may be carried out or that information has been or may be transmitted to the FIAU pursuant to the PMLFTR.

Penalty: The subject person, a supervisory authority, or any official or employee of a subject person or a supervisory authority shall on conviction be guilty of an offence and liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000), or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

8.5.1.7 Non-compliance with the Implementing Procedures

Regulation: 17(2)

Offence: A subject person who fails to comply with the provisions of any procedures and guidance issued by the FIAU with the concurrence of the relevant supervisory authority shall be liable to an administrative penalty.

Penalty: Administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500), which shall be imposed by the FIAU without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed twelve thousand five hundred euro (€12,500).

As stated under Section 1.4, the FIAU shall not impose a penalty for non-compliance with the Implementing Procedures where a subject person has already been sanctioned for the same act or omission in terms of the PMLFTR.

8.5.2 Offences under the PMLA

This section contains a list of offences, together with their respective penalties, which can be found under the various articles of the PMLA.

8.5.2.1 Money laundering offence

Article: 3(1)

Offence: Money laundering

Penalty: Any person committing any act of money laundering shall on conviction be guilty of an offence and liable to a fine (*multa*) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (€2,329,373.40), or to imprisonment for a term not exceeding fourteen (14) years or to both such fine and imprisonment.⁷⁸

Where the offence is committed by a body of persons, whether corporate or unincorporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of such body or association or was purporting to act in any such capacity, shall be guilty of that offence, unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Where the person found guilty of an offence of money laundering under the PMLA is an officer of a body corporate or is a person having a power of representation or having such authority and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of the PMLA be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (€1,164,686.70).

The court shall, in addition to any punishment to which the person convicted of an offence of money laundering under the PMLA may be sentenced and in addition to any penalty to which a body corporate may become liable, order the forfeiture in favour of the Government of Malta of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate and any property of or in the possession or under the control of any person found guilty as aforesaid or of a body corporate shall, unless proved to the contrary, be deemed to be derived from the offence of money laundering and liable to confiscation or forfeiture by the court.

8.5.2.2 Disclosure of an investigation/attachment order

Article: 4(2)/4(6A)

⁷⁸ The amounts in Euro correspond to the equivalent sum in Maltese liri at the fixed Maltese lira/Euro exchange rate of 0.4293.

Offence: Disclosure that an investigation/attachment order has been made or applied for.

Penalty: Any person disclosing that an investigation/attachment order has been made or applied for shall on conviction be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87), or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment.⁷⁹

8.5.2.3 Acting in contravention of an investigation/attachment order

Article: 4(5)/4(10)

Offence: Acting in contravention of an investigation/attachment order.

Penalty: Any person acting in contravention of an investigation/attachment order shall on conviction be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87), or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment.⁸⁰

8.5.2.4 Acting in contravention of a freezing order

Article: 6

Offence: Acting in contravention of a freezing order

Penalty: Any person acting in contravention of a freezing order shall on conviction be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87), or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment and any act so made in contravention of such court order shall be null and without effect at law and the court may, where such person is a garnishee, order the said person to deposit in a bank to the credit of the person charged the amount of moneys or the value of other movable property paid or delivered in contravention of the freezing order.⁸¹

8.5.3 Offence of Funding of Terrorism (Criminal Code)

Article: 328F to 328I

Offence: Funding of Terrorism

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

Penalty: Any person committing any of the offences under the above-mentioned articles shall on conviction be guilty of an offence and be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87), or to imprisonment for a term not exceeding four (4) years or to both such fine and imprisonment.⁸²

⁸² *Ibid.*

APPENDIX I – Open Sources

- CIA World Factbook
<https://www.cia.gov/library/publications/the-world-factbook/index.html>
- FATF
<http://www.fatf-gafi.org>
- International Monetary Fund
<http://www.imf.org/>
- International Narcotics Control Strategy Report
<http://www.state.gov/p/inl/rls/nrcrpt/2009/>
- Malta Financial Services Authority (MFSA) (Sanctions Implementation)
www.mfsa.com.mt
- NASD
<http://www.finra.org/index.htm>
- OECD: uncooperative tax havens
http://www.oecd.org/document/57/0,3343,en_2649_33745_30578809_1_1_1_1,00.html
- Transparency International's Corruption Perception Index
http://www.transparency.org/policy_research/surveys_indices/cpi
- US Office of Foreign Assets Control
<http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>
- US State Department's list of major drug transit and major illicit drug producing countries
<http://www.state.gov/p/inl/rls/rpt/109777.htm>

APPENDIX II – STR Template

Company Name

SUSPICIOUS TRANSACTION REPORT for Money Laundering and Financing of Terrorism

Date

--	--	--	--	--	--	--

Report Ref. No.

--	--	--	--	--	--	--	--	--	--	--	--	--	--

Check appropriate box:

☐

Initial Report

☐

Supplemental Report

Previous connected reports:

Ref. No.

Ref. No.

Part 1: Subject of Report *

Full Name of Suspect (including aliases and/or nickname/s:			
Identification: Type and document number (If available, copy to be attached to this report): ☐ Identity Card ☐ Passport ☐ Company Number ☐ Other – Specify No. _____ No. _____ No. _____ No. _____ Expires: _____ Expires: _____ Expires: _____ Expires: _____			
Address:			
Date of Birth / Registration:			
Occupation / Nature of Business:			
Nationality / Country of Incorporation:			
Date when Business Relationship was established:			
Type of Products (Accounts, Investments, Policies, Usernames, etc) held with institution, if any:	(One product per box)	(One product per box)	(One product per box)
Product/Relationship (Accounts, Investments, Policies, Usernames, etc) Number			
Date of Opening/Closing			

of Product (Account, Investment, Policy, etc.,)			
Balance as at report date:			
Name of the MLRO (in block letters):		Signature of the MLRO:	

*** Subject persons submitting STRs dealing with more than one subject should submit multiple copies of this page (Part 1) ensuring that the details of each subject are submitted on a separate page.**

Part 2: Suspicious Transaction/Activity

Details of Sums arousing suspicions indicating source & currency used	<u>Date</u>	<u>Amount</u>	<u>Source</u>
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Explanation/description of suspicious transaction /activity

The STR should be described in a complete and clear manner. All facts should be given in a chronological order including what is unusual, irregular or suspicious about the transaction/activity being reported. All relevant information used by the MLRO supporting documentation that is likely to assist the FIAU in its analysis should be attached to this report. **(Annex additional sheets if required.)**

List of Documents attached:

Name of the MLRO (in block letters)	MLRO'S Signature
-------------------------------------	------------------

This report should be accompanied by a covering letter on the subject person's letterhead, which must also be signed by the MLRO. Any additional material that may be considered to be relevant and which may be of assistance to the FIAU, including bank statements, copies of cheques, forms, vouchers, telegraphic transfers, policies, details of associated accounts and products, copies of correspondence and agreements, should also be submitted.

APPENDIX III – Common Understanding

COMMON UNDERSTANDING
between Member States on third country equivalence^{1,2}
under the Anti-Money Laundering Directive (Directive 2005/60/EC)
June 2011

These third countries are currently considered as having equivalent AML/CFT systems to the EU. **The list may be reviewed**, in particular in the light of public evaluation reports adopted by the FATF, FSRBs, the IMF or the World Bank according to the revised 2003 FATF Recommendations and Methodology.

It should be noted that the list does not override the need to continue to operate the risk-based approach. The fact that a financial institution is based in a 3rd country featuring on the list only constitutes a refutable presumption of the application of simplified CDD. Moreover, the list does not override the obligation under article 13 of the Directive to apply enhanced customer due diligence measures in all situations which by their nature can present a higher risk of money laundering or terrorist financing, when dealing with credit and financial institutions, as customers, based in an equivalent jurisdiction.

Draft Revised List – after the Meeting on 15 June 2011

Australia
Brazil
Canada
Hongkong
India
Japan
Korea
Mexico
The Russian Federation
Singapore
Switzerland
South Africa
The United States

¹ Directive 2005/60/EC does not grant the European Commission a mandate to establish a positive list of equivalent third countries. The Common Understanding between EU Member States on Third Country Equivalence is drafted, managed and agreed by the EU Member States.

² The list does not apply to Member States of the EU/EEA which benefit de jure from mutual recognition through the implementation of the 3rd AML Directive. The list also includes the French overseas territories (Mayotte, New Caledonia, French Polynesia, Saint Pierre and Miquelon and Wallis and Futuna) and Aruba, Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba. Those countries and territories are not members of the EU/EEA but are part of the membership of France and the Kingdom of the Netherlands of the FATF. The UK Crown Dependencies (Jersey, Guernsey, Isle of Man) may also be considered as equivalent by Member States.

ANNEX V

Computation of sentences of imprisonment.

Added by:
VI. 1947.6.
Substituted by:
III. 2002.8.

22. Except in the case of a sentence of imprisonment for life or of imprisonment or detention in default of payment of a fine (*multa* or *ammenda*), any time prior to conviction and sentence during which the person sentenced is in prison for the offence or offences for which he has been so convicted and sentenced, not being time in prison in execution of a sentence, shall count as part of the term of imprisonment or detention under his sentence; but where he was previously subject to a probation order, an order for conditional discharge or to a suspended sentence in respect of such offence or offences, any such period falling before that order was made or suspended sentence passed shall be disregarded for the purposes of this article:

Provided that where any time prior to conviction as aforesaid has, by virtue of this article, been counted as part of the term of imprisonment or detention under the sentence in respect of that conviction, such time shall not be counted as part of the term of imprisonment or detention under any other sentence.

Forfeiture of *corpus delicti*.
Amended by:
VI. 1947.7;
XXXI. 2007.3.

23. (1) The forfeiture of the *corpus delicti*, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property.

(2) In case of contraventions, such forfeiture shall only take place in cases in which it is expressly stated in the law.

(3) In the case of things the manufacture, use, carrying, keeping or sale whereof constitutes an offence, the forfeiture thereof may be ordered by the court even though there has not been a conviction and although such things do not belong to the accused.

(4) Notwithstanding the provisions of subarticles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.

Freezing of property of person accused.

Added by:
III. 2002.9.
Amended by:
III. 2004.69.

23A. (1) In this article, unless the context otherwise requires:

"relevant offence" means any offence not being one of an involuntary nature other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year;

"the Act" means the [Prevention of Money Laundering Act](#);

"the Ordinances" means the [Dangerous Drugs Ordinance](#) and the [Medical and Kindred Professions Ordinance](#).

(2) Where a person is charged with a relevant offence the provisions of article 5 of the Act shall apply *mutatis mutandis* and the same provisions shall apply to any order made by the Court by

Cap. 373.

Cap. 101.
Cap. 31.

virtue of this article as if it were an order made by the Court under the said article 5 of the Act.

23B. (1) Without prejudice to the provisions of article 23 the court shall, in addition to any punishment to which the person convicted of a relevant offence may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of article 121D, order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said article 121D.

Forfeiture of proceeds.
Added by:
III. 2002.9.
Amended by:
XXXI. 2007.4.

(1A) Any property, whether in Malta or outside Malta, of or in the possession or under the control of any person convicted of a relevant offence or in the possession or under the control of a body corporate as may become liable under the provisions of article 121D shall, unless proved to the contrary, be deemed to be derived from the relevant offence and be liable to confiscation or forfeiture by the court.

(1B) The provisions of article 7 of the Act shall *mutatis mutandis* apply so however that any reference in that article to "article 3(3)" shall be construed as a reference to subarticle (1A) of this article and any reference in the said article 7 to "an offence under article 3" shall be construed as a reference to a relevant offence.

(2) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the [Code of Organization and Civil Procedure](#).

Cap. 12.

(3) For the purposes of this article:

"proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of the offence and includes any income or other benefits derived from such property;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

"relevant offence" and "the Act" have the same meaning assigned to them by article 23A(1).

23C. (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the

Forfeiture of property derived from criminal activity.
Added by:
XXXI. 2007.5.

criminal activity of that person, that property shall be liable to forfeiture.

Cap. 101.

(2) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A)(b) and (d) of the [Dangerous Drugs Ordinance](#) shall apply *mutatis mutandis* in the circumstances mentioned in those paragraphs.

Liability of person having the charge of another, in case of contravention.
Added by:
VIII.1909.2.

24. In the case of any contravention committed by a person who is under the authority, control or charge of another person, not only the person committing the contravention but also such other person shall be liable to punishment, if the contravention is against some provision the observance of which such other person was bound to enforce, and if the contravention could have been prevented by the exercise of diligence on the part of such other person.

Abolition of disabilities arising out of punishments.
Amended by:
VI.1871.2;
XXI. 1971.5.

25. All disabilities arising, under the provisions of any law whatsoever, out of any punishment, are abolished.

Right of civil action unaffected.
Amended by:
VIII. 1909.3.

26. (1) Any sentence to a punishment established by law shall always be deemed to have been awarded without prejudice to the right of civil action.

(2) A pardon commuting or remitting a punishment lawfully awarded shall not operate so as to bar the civil action.

Difference between punishment at the time of the offence and that at the time of trial.

27. If the punishment provided by the law in force at the time of the trial is different from that provided by the law in force at the time when the offence was committed, the less severe kind of punishment shall be awarded.

Rules as to the serving of punishments.
Amended by:
XII. 1914.5.

28. (1) When more punishments of the same kind are awarded at the same time against the same offender, they shall be undergone one after the termination of the other; if they are of different kinds, the heavier punishment shall be undergone first, and immediately on its termination, the less severe punishment shall commence.

(2) If any person, while actually undergoing one punishment, shall be sentenced to another punishment either of the same or of a less severe kind, he shall continue to undergo the first punishment, and immediately on its termination, he shall undergo the second punishment.

(3) If the second punishment be heavier than the first, the person sentenced shall at once be subjected to the second punishment, and on its termination, he shall immediately revert to the first punishment and undergo the remainder thereof.

(4) The punishment of interdiction shall take effect from the date of the sentence awarding such punishment.

the age of fourteen years and who have acted without a mischievous discretion, shall likewise be exempted from punishment:

Provided that the provisions contained in article 35(3), (4) and (5) may be applied to such persons.

Other rules
concerning deaf-
mutes.

Added by:
III.1899.13.
Amended by:
XI.1900.13;
XXI.1971.7;
XLIX. 1981.4.

40. The following rules shall be observed in the case of deaf-mutes who have acted with a mischievous discretion:

- (a) if at the time of the offence they have attained the age of fourteen but not the age of eighteen years, the provisions contained in articles 36 and 37 shall apply;
- (b) if at the time of the offence they have attained the age of eighteen years -
 - (i) in the case of a crime liable to the punishment of imprisonment for life, they shall be liable to imprisonment for a term not exceeding twenty years;
 - (ii) in the case of any other crime, they shall be liable to the punishment established by law diminished by one-third;
 - (iii) in the case of contraventions, they shall be liable to the punishments established for contraventions.

TITLE III

OF ATTEMPTED OFFENCE

Attempted crime.

41. (1) Whosoever with intent to commit a crime shall have manifested such intent by overt acts which are followed by a commencement of the execution of the crime, shall, save as otherwise expressly provided, be liable on conviction -

- (a) if the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;
- (b) if the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to law.

Attempted
contravention.

(2) An attempt to commit a contravention is not liable to punishment, except in the cases expressly provided for by law.

TITLE IV
OF ACCOMPLICES

- 42.** A person shall be deemed to be an accomplice in a crime if he -
- Complicity in crime.
Amended by:
VIII. 1909.4.
- (a) commands another to commit the crime; or
 - (b) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or
 - (c) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or
 - (d) not being one of the persons mentioned in paragraphs (a), (b) and (c), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or
 - (e) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid or reward after the fact.
- 43.** Unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal.
- Punishment for complicity.
- 44.** Where two or more persons take part in the commission of a crime, the circumstances which refer solely to the person of any one of them individually, whether he be a principal or an accomplice, and which may exclude, aggravate, or mitigate the punishment in regard to him, shall not operate either in favour of, or against the other persons concerned in the same crime.
- Personal circumstances not communicable.
- 45.** Where two or more persons take part in the commission of a crime, any act committed by any of such persons, whether he be a principal or an accomplice, which may aggravate the crime, shall only be imputable -
- Real circumstances when communicable.
- (a) to the person who commits the act;
 - (b) to the person with whose previous knowledge the act is committed; and
 - (c) to the person who, being aware of the act at the moment of its commission, and having the power to prevent it, does not do so.
- 46.** Where the actual commission of a crime is established, an accomplice shall be liable to be punished, independently of the principal, notwithstanding that such principal shall die or escape or be pardoned or otherwise delivered before conviction, or notwithstanding that the principal is not known.
- Accomplice liable to punishment independently of the principal.

Constraint to
commit offence,
etc.
Added by:
V. 1956.13.

47. Any person who -

- (a) constrains another person by an external force which such other person could not resist, to commit an offence; or
- (b) participates by any of the acts specified in article 42 in an offence committed by any other person who is according to law exempt from criminal responsibility,

shall himself be guilty of that offence as a principal offender.

Complicity in
contraventions.

48. The provisions contained in this Title shall also apply to contraventions.

Added by:
III. 2002.18.

TITLE IV BIS

OF CONSPIRACY

Conspiracy.
Added by:
III. 2002.18.

Cap. 248.

48A. (1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the [Press Act](#), shall be guilty of the offence of conspiracy to commit that offence.

(2) The conspiracy referred to in subarticle (1) shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(3) Any person found guilty of conspiracy under this article shall be liable to the punishment for the completed offence object of the conspiracy with a decrease of two or three degrees.

(4) For the purposes of subarticle (3), in the determination of the punishment for the completed offence object of the conspiracy account shall be had of any circumstances aggravating that offence.

TITLE V

OF RECIDIVISTS

Definition of
recidivist.
Amended by:
IV. 1856.8;
XI. 1900.14;
XXXI. 2007.6.

49. A person is deemed to be a recidivist, if, after being sentenced for any offence by a judgment which has become absolute, he commits another offence:

Provided that the court may, in determining the punishment, take into account a judgment delivered by a foreign court which has become absolute.

Effect of previous
conviction for
crime.
Amended by:
XI.1900.14.

50. Where a person sentenced for a crime shall, within ten years from the date of the expiration or remission of the punishment, if the term of such punishment be over five years, or within five years, in all other cases, commit another crime, he may be sentenced to a punishment higher by one degree than the punishment established for such other crime.

(4) In interpreting and applying the provisions of articles 54B, 54C and 54D, hereinafter, in this Title, referred to as "the relevant articles", the court shall take into account -

- (a) any relevant Elements of Crimes adopted in accordance with article 9 of the ICC Treaty, and
- (b) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30th June, 2000.

(5) The Minister may set out in regulations the text of the Elements of Crimes referred to in subarticle (2), as amended from time to time.

(6) The relevant articles shall for the purposes of this Title be construed subject to and in accordance with any relevant reservation or declaration made by Malta when ratifying any treaty or agreement relevant to the interpretation of those articles.

(7) The Minister may by regulations set out the terms of any reservation or declaration referred to in subarticle (5) and where any such reservation or declaration is withdrawn in whole or in part may revoke or amend any regulations as aforesaid which contain the terms of that reservation or declaration.

(8) In interpreting and applying the provisions of the relevant articles the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

Genocide.
Added by:
XXIV. 2002.13.

54B. (1) Genocide is committed where any of the following acts is committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such -

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

(2) Whosoever directly and publicly incites others to commit genocide shall be guilty of a crime.

Crimes against
humanity.
Added by:
XXIV. 2002.13.

54C. (1) A crime against humanity is committed where any of the following acts is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) murder;

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- (b) extermination;
 - (c) enslavement;
 - (d) deportation or forcible transfer of population;
 - (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) torture;
 - (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in subarticle (3), or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this sub-article or any crime under article 54A;
 - (i) enforced disappearance of persons;
 - (j) the crime of apartheid;
 - (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- (2) For the purpose of subarticle (1) -
- (a) "attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in subarticle (1) against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) "extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) "enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) "deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

- (f) "forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "the crime of apartheid" means inhumane acts of a character similar to those referred to in subarticle (1), committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

(3) For the purpose of this Title, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

War crimes.
Added by:
XXIV. 2002.13.

54D. A war crime is committed where any of the following acts is committed:

- (a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) wilful killing;
 - (ii) torture or inhuman treatment, including biological experiments;
 - (iii) wilfully causing great suffering, or serious injury to body or health;
 - (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) unlawful deportation or transfer or unlawful

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- confinement;
- (viii) taking of hostages;
- (b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - (v) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - (viii) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded

are collected, provided they are not military objectives;

- (x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) declaring that no quarter will be given;
- (xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) pillaging a town or place, even when taken by assault;
- (xvii) employing poison or poisoned weapons;
- (xviii) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
..... *omissis*
- (xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 54C(2)(f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the

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- Geneva Conventions in conformity with international law;
- (xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;
- (c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
- (i) violence to life and person, in particular murder of all kind, mutilation, cruel treatment and torture;
 - (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) taking of hostages;
 - (iv) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable;
- (d) paragraph (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;
- (e) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the

- United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) pillaging a town or place, even when taken by assault;
 - (vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 54C(2)(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) killing or wounding treacherously a combatant adversary;
 - (x) declaring that no quarter will be given;
 - (xi) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) paragraph (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

paragraph (a).

82D. Whosoever aids, abets or instigates any offence under articles 82A to 82C, both inclusive, shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.

Aiding, abetting or instigating offences under articles 82A to 82C.

Added by:
XI. 2009.3.

82E. (1) The provisions of articles 121D, 208B(5) and 248E(4) shall apply *mutatis mutandis* to an offence under articles 82A to 82D, both articles inclusive.

Applicability of articles 121D, 208B(5), 248E(4) and 328.

Added by:
XI. 2009.3.

(2) The provisions of article 328K shall also apply *mutatis mutandis* to any offence under articles 82A to 82D, both articles inclusive, as if the reference to article 328J in article 328K were a reference to article 121D.

83. Any person who establishes, maintains or belongs to any association of persons who are organised and trained or organised and equipped for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object shall be guilty of an offence and liable, on conviction, to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Promotion of political object by use or display of physical force.

Added by:
XV.1959.2.
Substituted by:
XV. 1973.2.
Amended by:
XIII.1983.5;
L.N. 407 of 2007.

83A. (1) Any person who promotes, constitutes, organises or finances an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more shall be liable to the punishment of imprisonment for a term from three to seven years.

Promoting, etc., an organization of two or more persons with a view to commit criminal offences.

Added by:
III. 2002.20;
L.N. 407 of 2007.

(2) Any person who belongs to an organisation referred to in subarticle (1) shall for that mere fact be liable to the punishment of imprisonment for a term from one to five years.

(3) Where the number of persons in the organisation is ten or more the punishment in the preceding subarticles shall be increased from one to two degrees.

(4) Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable as follows:

- (a) where the offence of which the person was found guilty is the offence in subarticle (1), to the payment of a fine (*multa*) of not less than thirty-four thousand and nine hundred and forty euro and sixty cents (34,940.60) and not more than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents

(116,468.67);

- (b) where the offence of which the person was found guilty is the offence in subarticle (2), to the payment of a fine (*multa*) of not less than twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) and not more than sixty-nine thousand and eight hundred and eighty-one euro and twenty cents (69,881.20);
- (c) where the offence of which the person was found guilty is punishable as provided in subarticle (3) of this article -
 - (i) where the offence is that provided in subarticle (1), to the punishment of a fine (*multa*) of not less than forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70);
 - (ii) where the offence is that provided in subarticle (1), to the punishment of a fine (*multa*) of not less than thirty-four thousand and nine hundred and forty euro and sixty cents (34,940.60) and not more than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67).

(5) The criminal action for an offence against the provisions of this article may be prosecuted in Malta notwithstanding that the organization of persons is based or pursues its criminal activities outside Malta.

GENERAL PROVISION APPLICABLE TO OFFENCES
WHICH ARE RACIALLY AGGRAVATED OR MOTIVATED
BY XENOPHOBIA

General provision.
Added by:
XI. 2009.4.

83B. The punishment established for any offence shall be increased by one to two degrees when the offence is racially or religiously aggravated within the meaning of sub-articles (3) to (6), both inclusive, of article 222A or is motivated, wholly or partly, by xenophobia.

TITLE III

OF CRIMES AGAINST THE ADMINISTRATION OF JUSTICE
AND OTHER PUBLIC ADMINISTRATIONS*Sub-title I*OF THE USURPATION OF PUBLIC AUTHORITY AND OF
THE POWERS THEREOF

§ OF THE USURPATION OF FUNCTIONS

84. Whosoever shall assume any public function, whether civil or military, without being entitled thereto, and shall perform any act thereof, shall, on conviction, be liable to imprisonment for a term from four months to one year.

Unlawful exercise
of public functions.

§ OF THE UNLAWFUL ASSUMPTION BY PRIVATE PERSONS OF
POWERS BELONGING TO PUBLIC AUTHORITY

85. (1) Whosoever, without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, shall, of his own authority, compel another person to pay a debt, or to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person, or demolish buildings, or divert or take possession of any water-course, or in any other manner unlawfully interfere with the property of another person, shall, on conviction, be liable to imprisonment for a term from one to three months:

Arbitrary exercise
of pretended rights.
Amended by:
XVI. 2006.2.

Provided that the court may, at its discretion, in lieu of the above punishment, award a fine (*multa*).

(2) The provisions of article 377(5) shall apply in the case of any conviction under subarticle (1) and when the conduct of the offender has resulted in a person being despoiled the Court shall apply the provisions of that subarticle in order to ensure that the person despoiled is fully re-vested in the position before he was despoiled.

86. Whosoever, without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrests, detains or confines any person against the will of the same, or provides a place for carrying out such arrest, detention or confinement, shall, on conviction, be liable to imprisonment for a term from seven months to two years:

Illegal arrest,
detention or
confinement.
Amended by:
XLIX. 1981.4.

Provided that the court may, in minor cases, award imprisonment for a term from one to three months or a fine (*multa*).

under colour of his office, exact that which is not allowed by law, or more than is allowed by law, or before it is due according to law, shall, on conviction, be liable to imprisonment for a term from three months to one year.

Extortion.
Amended by:
XLIX. 1981.4.

113. Where the unlawful exaction referred to in the last preceding article, is committed by means of threats or abuse of authority, it shall be deemed to be an extortion, and the offender shall, on conviction, be liable to imprisonment for a term from thirteen months to three years.

Aggravating
circumstances.

114. Where the crimes referred to in the last two preceding articles are accompanied with circumstances which render such crimes liable also to other punishments, the higher punishment shall be applied with an increase of one degree.

Bribery.
Amended by:
XII. 1914.8, 9;
IV.1974.2;
XLIX. 1981.4;
III. 2002.27;
III. 2004.70.

115. Any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:

- (a) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;
- (b) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;
- (c) where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.

Where failure of
duty consists in
passing sentence
on defendant or
person accused.
Amended by:
XXI. 1971.14;
IV. 1974.3;
XLIX. 1981.4;
X. 2000.11;
III. 2004.71.

116. (1) Where the crime referred to in paragraph (c) of the last preceding article consists in sentencing a defendant or person accused, the punishment shall be imprisonment for a term from eighteen months to ten years:

Provided that in no case shall the punishment be lower than that to which the defendant or person accused has been sentenced.

(2) Where the punishment to which the defendant or person accused is sentenced is higher than the punishment of imprisonment for ten years, such higher punishment shall be applied.

Embracery and
corruption of other
persons.

Amended by:

VI. 1871.7.

Substituted by:

IV. 1974.7.

Amended by:

III. 2002.28;

XIII. 2002.10;

III. 2004.75.

121. (1) The provisions of this sub-title shall apply to and in relation to any person who is entrusted with or has functions relating to the administration of a statutory or other corporate body having a distinct legal personality, or who is employed with such a body, as they apply to or in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115.

(2) Articles 115 to 117, article 119 and article 120(1) and (2) shall apply to and in relation to jurors as they apply to or in relation to a public officer or servant referred to in article 115.

(3) The provisions of this sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this subarticle the expression "breach of duty" includes any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question.

(4) The provisions of this sub-title shall also apply to any conduct falling within the descriptions set out in the provisions of this sub-title and in which is involved:

- (a) a public officer or servant of any foreign State including any member of a domestic assembly of any foreign State which exercises legislative or administrative powers; or
- (b) any officer or servant, or any other contracted employee, of any international or supranational organization or body or of any of its institutions or bodies, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee; or
- (c) any member of a parliamentary assembly of any international or supranational organisation; or
- (d) any holder of judicial office or any official of any international court; or
- (e) any member, officer or servant of a Local Council; or
- (f) any person mentioned in the preceding paragraphs and the offence was committed outside Malta by a Maltese citizen or by a permanent resident in Malta;

For the purposes of this paragraph, the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(d); or

- (g) as the person who committed the offence, any person

mentioned in paragraph (b) and the organisation, institution or body in question has its headquarters in Malta:

Provided that:

- (i) where the person involved is any person mentioned in paragraphs (a), (b), (d) or (e) the provisions of articles 115, 116, 117 and 120 shall apply; and
- (ii) where the person involved is any person mentioned in paragraph (c) the provisions of articles 118 and 120 shall apply.

121A. (1) Any person who promises, gives or offers, directly or indirectly, any undue advantage to any other person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in the preceding articles of this sub-title, in order to induce such other person to exercise such influence, whether such undue advantage is for such other person or anyone else, shall on conviction be liable to the punishment of imprisonment for a term from three months to eighteen months.

Trading in
influence.
Added by:
III. 2002.29.
Amended by:
VI. 2007.2;
XXXI. 2007.8.

(2) Any person who requests, receives or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in subarticle (1) shall on conviction be liable to the punishment laid down in that subarticle.

(3) The offences referred to in subarticles (1) and (2) shall be complete whether or not the alleged ability to exert an improper influence existed, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.

121B. Whosoever, with intent to commit, conceal or disguise any offence under the preceding articles of this sub-title, creates or uses an invoice or any other accounting document or record containing false or incomplete information or unlawfully omits to make a record of payment, shall on conviction be liable to the punishment of imprisonment from three months to eighteen months without prejudice to any other punishment to which he may be liable under any other provision of this Code or of any other law.

Accounting
offences.
Added by:
III. 2002.29.
Amended by:
VI. 2007.3.

121C. Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

Jurisdiction.
Added by:
III. 2002.29.
Amended by:
XIII. 2002.10.

- (a) only part of the action giving execution to the offence took place in Malta; or
- (b) the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; or
- (c) the offence involves a public officer or servant of Malta or is a member of the House of Representatives or of a Local Council; or

- (d) the offence involves any of those persons to whom reference is made in article 121(4)(b), (c) or (d) and that person is at the same time a citizen or permanent resident in Malta within the meaning of article 5(1)(d).

Corporate liability for offences under this title.

Added by:

III. 2002.29.

Amended by:

L.N. 407 of 2007.

121D. Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

Applicability of article 248E(4) of the Code.

Added by:

XXXI. 2007.9.

121E. The provisions of article 248E(4) shall apply *mutatis mutandis* to any person found guilty of any of the offences under this sub-title.

§ OF ABUSES COMMITTED BY ADVOCATES AND LEGAL PROCURATORS

Prevarication by advocate or legal procurator.

122. Any advocate or legal procurator who, having already commenced to act on behalf of one party, shall, in the same lawsuit, or in any other involving the same matter and interest, in opposition to such party or to any person claiming under him, change over, without the consent of such party or person, and act on behalf of the opposite party, shall, on conviction, be liable to a fine (*multa*), and to temporary interdiction from the exercise of his profession for a term from four months to one year.

Betrayal of interests of client.

Amended by:

XLIX. 1981.4.

123. Any advocate or legal procurator who shall betray the interests of his client in such a manner that, in consequence of his betrayal or deceitful omission, the client shall lose the cause, or any right whatsoever shall be barred to his prejudice, shall, on conviction, be liable to imprisonment for a term from seven to eighteen months, and to perpetual interdiction from the exercise of his profession.

§ OF MALVERSATION BY PUBLIC OFFICERS AND SERVANTS

Private interest in adjudications, etc.

124. Any public officer or servant who shall overtly or covertly or through another person take any private interest in any adjudication, contract, or administration, whether he holds wholly or in part the direction or superintendence thereof, or held such direction or superintendence at the time when such adjudication, contract, or administration commenced, shall, on conviction, be

Title IV

OF CRIMES AGAINST THE RELIGIOUS SENTIMENT

*Added by:
XXVIII. 1933.1.*

Vilification of the
Roman Catholic
Apostolic
Religion.
*Added by:
XXVIII. 1933.2.*

163. Whosoever by words, gestures, written matter, whether printed or not, or pictures or by some other visible means, publicly vilifies the Roman Catholic Apostolic Religion which is the religion of Malta, or gives offence to the Roman Catholic Apostolic Religion by vilifying those who profess such religion or its ministers, or anything which forms the object of, or is consecrated to, or is necessarily destined for Roman Catholic worship, shall, on conviction, be liable to imprisonment for a term from one to six months.

Vilification of
other cults
tolerated by law.
*Added by:
XXVIII. 1933.2.*

164. Whosoever commits any of the acts referred to in the last preceding article against any cult tolerated by law, shall, on conviction, be liable to imprisonment for a term from one to three months.

Obstruction of
religious services.
*Added by:
XXVIII. 1933.2.*

165. (1) Whosoever impedes or disturbs the performance of any function, ceremony or religious service of the Roman Catholic Apostolic Religion or of any other religion tolerated by law, which is carried out with the assistance of a minister of religion or in any place of worship or in any public place or place open to the public shall, on conviction, be liable to imprisonment for a term not exceeding one year.

(2) If any act amounting to threat or violence against the person is committed, the punishment shall be imprisonment for a term from six months to two years.

Title V

OF CRIMES AFFECTING PUBLIC TRUST

Sub-title I

OF FORGERY OF PAPERS, STAMPS AND SEALS

Forgery of
Government
debentures.
*Amended by:
XII. 1913.4;
XLIX. 1981.4.*

166. (1) Whosoever shall forge any Government debenture for sums advanced on loan to the Government, shall, on conviction, be liable to imprisonment for a term from three to five years, with or without solitary confinement.

(2) The same punishment shall apply where the forgery consists in opening a credit relative to such loan in the books of the Government Treasury.

(3) Where the forgery consists in the endorsement of a genuine Government debenture, the offender shall, on conviction, be liable to imprisonment for a term from thirteen months to four years, with or without solitary confinement.

167. (1) Whosoever shall forge any schedule, ticket, order or other document whatsoever, upon the presentation of which any payment may be obtained, or any delivery of goods effected, or a deposit or pledge withdrawn from any public office or from any bank or other public institution established by the Government, or recognized by any public act of the Government, shall, on conviction, be liable to imprisonment for a term from thirteen months to four years, with or without solitary confinement.

Forgery of documents.
Amended by:
XII. 1913.5;
XLIX. 1981.4.

(2) The same punishment shall apply where the crime consists in the forgery of any entry in the books of any such office, bank or other institution, relating to any such payment, goods, deposit, or pledge.

(3) Where the forgery consists only in the endorsement of a genuine schedule, ticket, order, or document, the offender shall, on conviction, be liable to imprisonment for a term from nine months to three years, with or without solitary confinement.

168. (1) Any public officer or servant who, by abuse of his office or employment, becomes guilty of any of the crimes referred to in the last two preceding articles, shall, on conviction, be liable to the punishment therein prescribed for any such crime, increased by one degree.

Forgery of Government debentures and documents by public officers.
Amended by:
IV. 1882.1.

(2) The same punishment shall apply to any public officer or servant who shall knowingly re-issue any order for payment of money or any of the documents mentioned in the last preceding article, after the payment or the delivery of the goods obtainable upon the presentation of such order or document has been effected.

169. Whosoever shall knowingly make use of any of the instruments specified in articles 166, 167 and 168 shall, on conviction, be liable to the same punishment as the principal offender.

Use of forged debentures or documents.

170. (1) Whosoever shall forge any act containing an order or resolution of the Government of Malta, and whosoever shall forge any judgment, decree, or order of any court, judge, magistrate, or public officer, whereby any obligation is imposed or terminated, or any claim allowed or disallowed, or whereby any person is acquitted or convicted on any criminal charge, shall, on conviction, be liable to imprisonment for a term from two to four years, with or without solitary confinement.

Forgery of Government, judicial or official acts.
Amended by:
XXVII. 1975.14;
XLIX. 1981.4.

(2) Whosoever shall knowingly make use of any such forged act, judgment, decree or order, shall, on conviction, be liable to the same punishment as the principal offender.

Making use of forged acts.

(3) Where the person guilty of any of the crimes referred to in this article is a public officer or servant specially charged with the drawing up, registration, or custody of any such act, judgment, decree or order, the punishment shall be increased by one degree.

Forgery of acts or use of forged acts by public officer or servant.

Counterfeiting the Public Seal of Malta.

Amended by:
XV. 1937.3;
XXVII. 1975.15;
XLIX. 1981.4.

Counterfeiting of seals, stamps, or other Government marks.

Amended by:
XLIX. 1981.4;
III. 2002.33.

Making use of counterfeited seal, stamp, or mark.

Counterfeiting postage stamps, and making use of same.

Added by:
XVI. 1900.137.
Amended by:
XLIX. 1981.4.

Possessing counterfeited postage stamps, dies, etc.

Added by:
XVI. 1900.137.
Amended by:
XXVII. 1975.16.

Purchasing or having in possession certain paper before it has been duly stamped and issued.

Added by:
XVI. 1900.137.
Amended by:
VIII. 1909.9.

Act of counterfeiting Public Seal of Malta, stamps, etc., defined.

Punishment for counterfeiting Public Seal of Malta, stamps, etc., when committed by public officers.

171. Whosoever shall counterfeit the Public Seal of Malta, or shall knowingly make use of such counterfeited seal, shall, on conviction, be liable to imprisonment for a term from three to five years, with or without solitary confinement.

172. (1) Whosoever, except in the cases referred to in the last preceding article, shall counterfeit any seal, stamp, or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property, or which are under the public guarantee, shall, on conviction, be liable to imprisonment for a term from thirteen months to three years, with or without solitary confinement.

(2) Whosoever shall knowingly make use of any such seal, stamp, or mark and whosoever shall knowingly and without lawful authority be in possession of the said objects, shall be liable to the same punishment.

173. Whosoever shall counterfeit postage stamps, or shall knowingly make use of counterfeited postage stamps, shall, on conviction, be liable to imprisonment for a term not exceeding two years, with or without solitary confinement.

174. (1) Whosoever, without the special permission of the Government, shall knowingly keep in his possession counterfeited postage stamps, dies, machines or instruments intended for the manufacture of postage stamps, shall, on conviction, be liable to the punishment established in the last preceding article.

(2) The provisions contained in this and in the last preceding article shall also apply in regard to any stamp denoting a rate of postage of any foreign country.

175. The same punishment established in article 173 shall apply to any person who, without lawful authority or excuse, (the proof whereof shall lie on the person accused), knowingly purchases or receives, or takes or has in his custody or possession any paper exclusively manufactured or provided by or under the authority of the Government of Malta, for use as envelopes, wrappers or postage stamps, and for receiving the impression of stamp dies, plates or other instruments provided, made or used by or under the authority of the Government for postal purposes, before such paper has received such impression and has been issued for public use.

176. There shall be forgery within the meaning of articles 171 and 172, not only if a false instrument is made or affixed but also if the genuine instrument is fraudulently affixed.

177. Where the person guilty of any of the crimes referred to in articles 171, 172 and 176 is a public officer or servant charged with the direction, custody, or proper application of the seals, stamps, or other instruments, the punishment shall be increased by one degree.

178. Any person guilty of any of the crimes referred to in articles 166 to 177 inclusively, shall be exempted from punishment if, before the completion of such crime and previously to any proceedings, he shall have given the first information thereof and revealed the offenders to the competent authorities.

Exemption from punishment.
Substituted by:
IX. 1982.2.

Sub-title II

OF FORGERY OF OTHER PUBLIC OR PRIVATE WRITINGS

179. Saving the cases referred to in the preceding sub-title, any public officer or servant who shall, in the exercise of his functions, commit forgery by any false signature, or by the alteration of any act, writing, or signature, or by inserting the name of any supposititious person, or by any writing made or entered in any register or other public act, when already formed or completed, shall, on conviction, be liable to imprisonment for a term from two to four years, with or without solitary confinement.

Forgery of acts by public officer.
Amended by:
XLIX. 1981.4.

180. Any public officer or servant who, in drawing up any act within the scope of his duties, shall fraudulently alter the substance or the circumstances thereof, whether by inserting any stipulation different from that dictated or drawn up by the parties, or by declaring as true what is false, or as an acknowledged fact a fact which is not acknowledged as such, shall, on conviction, be liable to the punishment established in the last preceding article or to imprisonment for a term from eighteen months to three years, with or without solitary confinement.

Fraudulent alteration of acts by public officer.
Amended by:
XLIX. 1981.4.

181. Any public officer or servant who shall give out any writing in a legal form, representing it to be a copy of a public act when such act does not exist, shall, on conviction, be liable to imprisonment for a term from thirteen months to two years, with or without solitary confinement.

Delivery of writings falsely purporting to be copies of public acts which do not exist.
Amended by:
XLIX. 1981.4.

182. (1) The punishment laid down in the last preceding article shall be applied where the forgery is committed by the public officer or servant on a legal and authentic copy, by giving out the same in virtue of his office, in a manner contrary to or different from the original, without this being altered or suppressed.

Delivery of copies of acts differing from the original.

(2) Where such copy is so given out by the mere negligence of the public officer or servant, he shall, on conviction, be liable to a fine (*multa*).

Penalty in case of negligence.

183. Any other person who shall commit forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or

Forgery of public, commercial or private bank documents by person not being a public officer.
Amended by:
VI.1871.10;
XLIX.1981.4.

alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove, shall, on conviction, be liable to imprisonment for a term from thirteen months to four years, with or without solitary confinement.

Malicious use of false documents.

184. Any person who shall knowingly make use of any of the false acts, writings, instruments or documents mentioned in the preceding articles of this sub-title, shall, on conviction, be liable to the punishment established for the forger.

Issue of false declarations or certificates.
Amended by:
VI.1871.11;
XLIX. 1981.4.

185. (1) Saving the cases referred to in the preceding articles of this Title, where any public officer or servant who, by reason of his office, is bound to make or issue any declaration or certificate, shall falsely make or issue such declaration or certificate, he shall, on conviction, be liable to imprisonment for a term from nine months to three years.

(2) Where the falsification is committed by any person, other than a public officer or servant acting with abuse of authority, the punishment shall be imprisonment for a term from seven months to two years.

Malicious use of false declarations or certificates.

186. Whosoever shall knowingly make use of any of the documents mentioned in the last preceding article, shall, on conviction, be liable to the same punishment established for the author thereof.

Forgery of private writings.
Amended by:
XLIX. 1981.4.

187. (1) Whosoever shall, by any of the means specified in article 179, commit forgery of any private writing tending to cause injury to any person or to procure gain, shall, on conviction, be liable to imprisonment for a term from seven months to three years, with or without solitary confinement.

Malicious use of forged private writings.

(2) Whosoever shall knowingly make use thereof, shall be liable to the same punishment.

False declarations or information to a public authority.
Added by:
XIII. 1980.4.

188. Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall, on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (*multa*):

Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment.

GENERAL PROVISIONS APPLICABLE TO THIS TITLE

Other kinds of forgery and use of forged documents.
Amended by:
IX.1911.10.
Substituted by:
V.1956.16.

189. Whosoever shall commit any other kind of forgery, or shall knowingly make use of any other forged document, not provided for in the preceding articles of this Title, shall be liable to imprisonment for a term not exceeding six months, and if he is a public officer or servant acting with abuse of his office or employment, he shall be punishable with imprisonment for a term from seven months to one year.

(2A) Where the court makes an order under subarticle (2) such order shall be registered in any criminal record of the offender.

(2B) Where the person convicted of any of the offences mentioned in subarticle (1) is the subject of an order as that provided for by subarticle (2) made by a foreign court the court shall order that effect shall be given to the order made by the foreign court as if it were an order made by the court under subarticle (2).

(3) The provisions of articles 121D and 248E(4) shall apply *mutatis mutandis*.

Cap. 63.

(4) The provisions of articles 13 and 14 of the [White Slave Traffic \(Suppression\) Ordinance](#), shall apply *mutatis mutandis*.

(5) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the said offences where:

- (a) only part of the action giving execution to the offence took place in Malta; or
- (b) the offender is a Maltese national or permanent resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or
- (c) the offence was committed by means of a computer system accessed from Malta notwithstanding that such computer system may be outside Malta; or
- (d) the offence was committed against a Maltese national or permanent resident in Malta.

(6) Notwithstanding any other provision of this Code or of any other law, the period of prescription shall run from the day on which the victim attains the age of majority.

Offences against decency or morals committed in public.

209. Whosoever, except in the cases referred to in the preceding articles of this sub-title or in any other provision of law, shall commit an offence against decency or morals, by any act committed in a public place or in a place exposed to the public, shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine (*multa*).

Sub-title III

OF CRIMES TENDING TO PREVENT OR DESTROY THE PROOF OF THE STATUS OF A CHILD

Kidnapping or concealing an infant, etc.
Amended by:
XLIX. 1981.4.

210. Any person found guilty of kidnapping, or concealing, an infant, or of suppressing its birth, or of substituting one infant for another, or of suppositiously representing an infant to have been born of a woman who had not been delivered of a child, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.

Title VIII
OF CRIMES AGAINST THE PERSON

Sub-title I
OF WILFUL HOMICIDE

211. (1) Whosoever shall be guilty of wilful homicide shall be punished with imprisonment for life.

Wilful homicide.
Amended by:
V.1868.7;
XXI.1971.19;
XLIX.1981.4.

(2) A person shall be guilty of wilful homicide if, maliciously, with intent to kill another person or to put the life of such other person in manifest jeopardy, he causes the death of such other person.

Definition of
"wilful homicide".

(3) Where the offender gives cause to the death of a person within the limits of the territorial jurisdiction of Malta, the homicide shall be deemed to be wholly completed within the limits of the said jurisdiction, notwithstanding that the death of such person occurs outside such limits.

Death outside the
jurisdiction, of a
person stricken
within the
jurisdiction.

212. The provisions contained in the last preceding article shall also apply even though the offender did not intend to cause the death of any particular person, or, by mistake or accident, shall have killed some person other than the person whom he intended to kill.

Where the offender
did not intend to
cause the death of
any person in
particular, or where
the offender kills a
person other than
the intended
victim.

213. Whosoever shall prevail on any person to commit suicide or shall give him any assistance, shall, if the suicide takes place, be liable, on conviction, to imprisonment for a term not exceeding twelve years.

Inciting or helping
others to commit
suicide.
Added by:
XI.1900.31.
Amended by:
XLIX.1981.4.

Sub-title II
OF WILFUL OFFENCES AGAINST THE PERSON

214. Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.

Bodily harm.
Amended by:
XI. 1900.32.

215. A bodily harm may be either grievous or slight.

Grievous or slight
bodily harm.

Grievous bodily harm.

Amended by:

V.1868.8;

VI.1871.14;

XI. 1900.32;

XLIX. 1981.4.

216. (1) A bodily harm is deemed to be grievous and is punishable with imprisonment for a term from three months to three years -

- (a) if it can give rise to danger of -
 - (i) loss of life; or
 - (ii) any permanent debility of the health or permanent functional debility of any organ of the body; or
 - (iii) any permanent defect in any part of the physical structure of the body; or
 - (iv) any permanent mental infirmity;
- (b) if it causes any deformity or disfigurement in the face, neck, or either of the hands of the person injured;
- (c) if it is caused by any wound which penetrates into one of the cavities of the body, without producing any of the effects mentioned in article 218;
- (d) if it causes any mental or physical infirmity lasting for a period of thirty days or more; or if the party injured is incapacitated, for a like period, from attending to his occupation;
- (e) if, being committed on a woman with child, it hastens delivery.

(2) Where the person injured shall have recovered without ever having been, during the illness, in actual danger of life or of the effects mentioned in subarticle (1)(a), it shall be deemed that the harm could have given rise to such danger only where the danger was probable in view of the nature or the natural consequences of the harm.

Grievous bodily harm with arms proper, etc.

Amended by:

VIII. 1857.2;

VI.1871.14;

XI.1900.32;

XLIX. 1981.4;

XIV. 1983.3.

Cap. 446.

217. A grievous bodily harm is punishable with imprisonment for a term from five months to four years if it is committed with arms proper, or with a cutting or pointed instrument, or by means of any explosive, or any burning or corrosive fluid or substance:

Provided that where the offence is committed by means of any explosive fluid or substance the minimum punishment shall be imprisonment for two years and the provisions of the [Probation Act](#) shall not be applicable.

Other cases of grievous bodily harm.

Amended by:

IX.1859.14;

V. 1868.9;

XI. 1900.32;

XLIX. 1981.4;

XIV. 1983.4.

218. (1) A grievous bodily harm is punishable with imprisonment for a term from nine months to nine years -

- (a) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity;
- (b) if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured;
- (c) if, being committed on a woman with child, it causes

conviction, be liable to the punishment prescribed in the latter article, increased by one degree.

247A. (1) Whosoever, having the responsibility of any child under twelve years of age, by means of persistent acts of commission or omission ill-treats the child or causes or allows the ill-treatment by similar means of the child shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable on conviction to imprisonment for a term not exceeding two years.

Ill-treatment or neglect of child under twelve years.
Added by:
III. 2002.49.

(2) For the purposes of subarticle (1), ill-treatment includes neglecting the child's need for adequate nutrition, clothing, shelter, and protection from harm, persistently offending the child's dignity and self-esteem in a serious manner and persistently imposing upon the child age-inappropriate tasks or hard physical labour.

(3) The provisions of article 197(4) shall also apply in the case of an offence under this article, when the offence is committed by any ascendant or tutor.

248. Whosoever, having found a newly born child, shall fail to provide for its immediate safety, or, having assumed the care thereof, shall not, within twenty-four hours, deliver the same, or give information thereof, to the Executive Police, shall, on conviction, be liable, in the first case, to imprisonment for a term from four to six months, and, in the second case, to imprisonment for a term from one to three months:

Failure to take care of foundling or to make report thereof.

Provided that in either case, the court may, in its discretion, award a fine (*multa* or *ammenda*) in lieu of imprisonment.

GENERAL PROVISION APPLICABLE TO OFFENCES
UNDER SUB-TITLES I TO V, BOTH INCLUSIVE,
AND SUB-TITLE VIII

Added by:
VII. 2010.15.

248 Bis. The provisions of article 208B(2) and (2A) shall apply to any person found guilty of any offence under Sub-titles I to V, both inclusive, and Sub-title VIII when committed against a person under age.

Disability in case of offences against persons under age.
Added by:
VII. 2010.15.

Sub-title VIII BIS

Added by:
III. 2002.50.

OF THE TRAFFIC OF PERSONS

Traffic of a person of age for the purpose of exploitation in the production of goods or provision of services.

Added by:
III. 2002.50.
Amended by:
VII. 2010.16.

248A. (1) Whosoever, by any means mentioned in subarticle (2), trafficks a person of age for the purpose of exploiting that person in:

- (a) the production of goods or provision of services; or
- (b) slavery or practices similar to slavery; or
- (c) servitude; or
- (d) activities associated with begging; or
- (e) any other unlawful activities not specifically provided for elsewhere under this sub-title,

shall, on conviction, be liable to the punishment of imprisonment for a term from two to nine years.

For the purposes of this subarticle exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in subarticle (1) are the following:

- (a) violence or threats, including abduction;
- (b) deceit or fraud;
- (c) misuse of authority, influence or pressure;
- (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.

Traffic of a person of age for the purpose of exploitation in prostitution, etc.

Added by:
III. 2002.50.

248B. Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material shall, on conviction, be liable to the punishment laid down in article 248A(1).

Traffic of a person of age for the purpose of exploitation in the removal of organs.

Added by:
III. 2002.50.

248C. Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in the removal of any organ of the body shall on conviction be liable to the punishment of imprisonment for a term from four to twelve years.

Traffic of a minor for any of the purposes mentioned in articles 248A to 248C.

Added by:
III. 2002.50.

248D. Whosoever trafficks a minor for any of the purposes mentioned in articles 248A to 248C, both inclusive, shall, on conviction be liable to the same punishment laid down in those articles, as the case may be, even if none of the means mentioned in article 248A(2) has been used:

Provided that where any of the means mentioned in article 248A(2) has been used in the commission of the offence under this article the punishment for the offence shall be increased by one degree.

248DA. Whosoever, for any purpose referred to in articles 248A to 248C, both inclusive, acting as an intermediary for the adoption of a child improperly induces the consent of any person whose consent is required for the adoption shall on conviction be liable to the punishment laid down in article 248D.

Improperly inducing consent to adoption of a minor for purposes of exploitation.
Added by:
VII. 2010.17.

248DB. Whosoever shall practice or engage in child labour for any of the purposes mentioned in article 248A shall, on conviction, be liable to the punishment established under article 248D.

Child labour.
Added by:
VII. 2010.17.

For the purposes of this article child labour shall include the coercion of a person under age into forced or compulsory labour for any purpose whatsoever including the forced or compulsory recruitment of minors to take part in armed conflict.

248E. (1) In this sub-title, the phrase "trafficks a person" or "trafficks a minor" means the recruitment, transportation, sale or transfer of a person, or of a minor, as the case may be, including harbouring and subsequent reception and exchange of control over that person, or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the purposes mentioned in the preceding articles of this sub-title, as the case may be.

General provisions applicable to this sub-title.
Added by:
III. 2002.50.
Amended by:
L.N. 407 of 2007;
XXXI. 2007.14;
VII. 2010.18.

(2) Where any of the offences in articles 248A to 248D, both inclusive -

- (a) is accompanied by violence; or
- (b) generates proceeds exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87); or
- (c) is committed with the involvement of a criminal organisation within the meaning of article 83A(1); or
- (d) is committed by a public officer or servant in the course of the exercise of his duties; or
- (e) is committed against a vulnerable person within the meaning of article 204D(2); or
- (f) when the offender willfully or recklessly endangered the life of the person trafficked,

the punishment otherwise due shall be increased by one degree.

(3) The provisions of article 121D shall apply *mutatis mutandis* to the offences under this sub-title, so however that the punishment to which the body corporate shall be liable under this subarticle shall be the payment of a fine (*multa*) of not less than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) and not more than one million and eight hundred and sixty-three thousand and four hundred and ninety-eight euro and seventy-two cents (1,863,498.72).

(4) Where the person found guilty of any of the offences under this sub-title -

- (a) was at the time of the commission of the offence an employee or otherwise in the service of a body

corporate, and

- (b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and
- (c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D,

the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

(5) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

- (a) only part of the action giving execution to the offence took place in Malta; or
- (b) the offender is a Maltese national or permanent resident in Malta.

Exemption for acts under compulsion.

(6) The offences committed under this sub-title shall not be liable to punishment if the offender was compelled thereto by another person where the provisions of article 33(b) do not apply.

Inapplicability of Immigration Act. Cap. 217.

(7) The provisions of article 14 of the [Immigration Act](#) shall not apply until the lapse of thirty days from the date that the Principal Immigration Officer has reasonable grounds to believe that the person concerned is a victim of any of the offences under this sub-title.

Sub-title IX

OF THREATS, PRIVATE VIOLENCE AND HARASSMENT

Amended by:
VIII. 1909.25.
Substituted by:
XX. 2005.14.

Threats by means of writings.
Amended by:
IX. 1859.17;
XIV. 1983.5;
III. 2002.51.

249. (1) Whosoever by means of any writing, whether anonymous or signed in his own or in a fictitious name, shall threaten the commission of any crime whatsoever, shall, on conviction, be liable to imprisonment for a term from one to six months:

Provided that where the threat concerns the use of nuclear material to cause death or serious injury to any person or substantial damage to property or the commission of an offence of theft of nuclear material in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act the punishment for the offence shall be increased by three degrees; the expression "nuclear material" shall have the

the circumstances of the case.

Extenuating
circumstances.
Discretionary
power of court.
Amended by:
XI. 1900.36.

254. Where there are extenuating circumstances, the court may award a punishment lesser than those hereinbefore laid down or apply the provisions of article 378, according to the circumstances of the case.

No proceedings
without complaint
of aggrieved party.
Where party
aggrieved dies
before complaint
or where the
offence is against
the memory of
deceased persons.
Amended by:
XI. 1900.36.

255. No proceedings shall be instituted for defamation except on the complaint of the party aggrieved:

Provided that where the party aggrieved dies before having made the complaint, or where the offence is committed against the memory of a deceased person, it shall be lawful for the husband or wife, the ascendants, descendants, brothers and sisters, and for the immediate heirs, to make the complaint.

Libel.
Amended by:
XIV. 1889.44;
XI. 1900.36;
XXII. 1976.4.
Cap. 248.

256. (1) In cases of defamation committed by means of printed matter, the provisions contained in the Press Act shall apply.

(2) Where, according to the said Act, proceedings may only be instituted on the complaint of the party aggrieved, the provisions contained in the proviso to the last preceding article shall also apply.

Disclosing of
professional
secrets.
Substituted by:
XXIV. 1994.15.
Amended by:
II. 1998.7;
L.N. 407 of 2007.

257. If any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to a public authority, disclose such secret, he shall on conviction be liable to a fine (*multa*) not exceeding forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that, notwithstanding the provisions of any other law, it shall be a defence to show that the disclosure was made to a competent public authority in Malta or outside Malta investigating any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute -

Cap. 101.

(a) any of the offences referred to in article 22(2)(a)(1) of the [Dangerous Drugs Ordinance](#); or

Cap. 31.

(b) any of the offences referred to in article 120A(2)(a)(1) of the [Medical and Kindred Professions Ordinance](#); or

Cap. 373.

(c) any offence of money laundering within the meaning of the [Prevention of Money Laundering Act](#):

Provided further that the provisions of the first proviso of this article shall not apply to a person who is a member of the legal or the medical profession.

Title IX
OF CRIMES AGAINST PROPERTY AND PUBLIC SAFETY

*Amended by:
XVI. 1901.1;
I. 1903.11.*

Sub-title I

OF THEFT

§ OF AGGRAVATED THEFT

261. The crime of theft may be aggravated -

Theft. Aggravating
circumstances.

- (a) by "violence";
- (b) by "means";
- (c) by "amount";
- (d) by "person";
- (e) by "place";
- (f) by "time";
- (g) by "the nature of the thing stolen".

262. (1) A theft is aggravated by "violence" -

Theft aggravated
by "violence".

- (a) where it is accompanied with homicide, bodily harm, or confinement of the person, or with a written or verbal threat to kill, or to inflict a bodily harm, or to cause damage to property;
- (b) where the thief presents himself armed, or where the thieves though unarmed present themselves in a number of more than two;
- (c) where any person scouring the country-side and carrying arms proper, or forming part of an assembly in terms of article 63, shall, by a written or verbal request, made either directly or through another person, cause to be delivered to him the property of another, although the request be not accompanied with any threat.

(2) In order that an act of violence may be deemed to aggravate the theft, it shall be sufficient that such act be committed previously to, at the time of, or immediately after the crime, with the object of facilitating the completion thereof, or of screening the offender from punishment or from arrest or from the hue and cry raised by the injured party or by others, or of preventing the recovery of the stolen property or by way of revenge because of impediment placed or attempted to be placed in the way of the theft, or because of the recovery of the stolen property or of the discovery of the thief.

Theft aggravated
by "means".

263. Theft is aggravated by "means" -

- (a) when it is committed with internal or external breaking, with false keys, or by scaling;
- (b) when the thief makes use of any painting, mask, or other covering of the face, or any other disguise of garment or appearance, or when, in order to commit the theft, he takes the designation or puts on the dress of any civil or military officer, or alleges a fictitious order purporting to be issued by any public authority, even though such devices shall not have ultimately contributed to facilitate the theft, or to conceal the perpetrator thereof.

Definition of
"breaking".
Amended by:
IX.1859.19;
XVI. 1921.3, 4;
XXXII. 1986.3.

264. (1) "Breaking" shall include the throwing down, breaking, demolishing, burning, wrenching, twisting, or forcing of any wall, not being a rubble wall enclosing a field, roof, bolt, padlock, door, or other similar contrivances intended to prevent entrance into any dwelling-house or other place or enclosure, or to lock up or secure wares or other articles in boxes, trunks, cupboards, or other receptacles, and the breaking of any box, trunk, or other receptacle even though such breaking may not have taken place on the spot where the theft is committed.

Saving the provisions of article 326, any breaking, twisting, wrenching, or forcing of the pipes of the public water service or of the gas service, or of the wires or cables of the electricity service, or of the meters thereof, or of any seal of any meter, made for the purpose of effecting an unlawful communication with such pipes, wires, or cables, or the existence of artificial means as are mentioned in subarticle (2), shall also be deemed to be "breaking".

Presumptive
evidence in the
case of breaking of
pipes, etc.

(2) In the case of breaking of pipes of the public water service or of the gas service, or of the wires or cables of the electricity service, or of the metres thereof, or of any seal of any meter, or in the case of the existence of artificial means capable of effecting the unlawful use or consumption of water, gas or electric current, or capable of preventing or altering the measurement or registration on the meter of the quantity used or consumed, shall, until the contrary is proved, be taken as evidence of the knowledge on the part of the person occupying or having the control of the tenement in which such breaking or artificial means are found, of the said use or consumption of water, gas or electric current, as the case may be.

Definition of "false
key".

265. Any hook, picklock, skeleton-key, or any key imitated, counterfeited, or adapted, and any genuine key when procured by means of theft, fraud or any kind of artifice, and, generally, any other instrument adapted for opening or removing fastenings of any kind whatsoever, whether internal or external, shall be deemed a false key.

Definition of
"scaling".

266. (1) The entry into any of the places mentioned in article 264 by any way other than by the doors ordinarily intended for the purpose, whether the entry is effected by means of a ladder or rope or by any other means whatsoever, or by the bodily assistance of any other person or by clambering in any way whatsoever in order

to mount or descend, as well as the entry by any subterraneous aperture other than that established as an entrance, shall be deemed "scaling".

(2) For the purposes of punishment, there shall also be deemed to be "scaling" when the offender, although he shall have entered into any of the places aforesaid by any way ordinarily destined for the purpose, shall get out of the same by any of the means aforesaid.

267. Theft is aggravated by "amount", when the value of the thing stolen exceeds two hundred and thirty-two euro and ninety-four cents (232.94).

Theft aggravated by "amount".
Amended by:
XI. 1900.37;
III. 1971.6;
XIII. 1980.8;
XIII. 1983.5;
L.N. 407 of 2007.

268. Theft is aggravated by "person" -

Theft aggravated by "person".

- (a) when it is committed in any place by a servant to the prejudice of his master, or to the prejudice of a third party, if his capacity as servant, whether real or fictitious, shall have afforded him facilities in the commission of the theft;

the term "servant" shall include every person employed at a salary or other remuneration in the service of another, whether such person lives with his master or not;

Definition of "servant".

- (b) when it is committed by a guest or by any person of his family, in the house where he is receiving hospitality, or, under similar circumstances, by the host or by any person of his family, to the prejudice of the guest or his family;
- (c) when it is committed by any hotel-keeper, innkeeper, driver of a vehicle, boatman, or by any of their agents, servants or employees, in the hotel, inn, vehicle or boat wherein such hotel-keeper, innkeeper, driver or boatman carries on or causes to be carried on any such trade or calling, or performs or causes to be performed any such service; and also when it is committed in any of the above-mentioned places, by any individual who has taken lodgings or a place, or has entrusted his property therein;
- (d) when it is committed by any apprentice, fellow workman, journey-man, professor, artist, soldier, seaman, or any other employee, in the house, shop, workshop, quarters, ship, or any other place, to which the offender has access by reason of his trade, profession, or employment.

269. Theft is aggravated by "place", when it is committed -

Theft aggravated by "place".

- (a) in any public place destined for divine worship;
- (b) in the hall where the court sits and during the sitting of the court;

- (c) on any public road in the country-side outside inhabited areas;
- (d) in any store or arsenal of the Government, or in any other place for the deposit of goods or pledges, destined for the convenience of the public;
- (e) on any ship or vessel lying at anchor;
- (f) in any prison, or other place of custody or punishment;
- (g) in any dwelling-house or appurtenance thereof.

Theft aggravated by "time".

270. Theft is aggravated by "time", when it is committed in the night, that is to say, between sunset and sunrise.

Theft aggravated by "the nature of the thing stolen".
Amended by:
XIII. 1983.5;
XXXII. 1986.4;
III. 2002.53;
V. 2005.37;
L.N. 407 of 2007.

271. Theft is aggravated by "the nature of the thing stolen"-

- (a) when it is committed upon things exposed to danger, whether by their being cast away or removed for safety, or by their being abandoned on account of urgent personal danger arising from fire, the falling of a building, or from any shipwreck, flood, invasion by an enemy, or any other grave calamity;
- (b) when it is committed on beehives;
- (c) when it is committed on any kind of cattle, large or small, in any pasture-ground, farmhouse or stable, provided the value be not less than two euro and thirty-three cents (2.33);
- (d) when it is committed on any cordage, or other things essentially required for the navigation or for the safety of ships or vessels;
- (e) when it is committed on any net or other tackle cast in the sea, for the purpose of fishing;
- (f) when it is committed on any article of ornament or clothing which is at the time on the person of any child under nine years of age;
- (g) when it is committed on any vehicle in a public place or in a place accessible to the public, or on any part or accessory of, or anything inside, such vehicle;
- (h) when it is committed on nuclear material as defined in article 314B(4);
- (i) when it is committed on any public record as defined in article 2 of the [National Archives Act](#).

Cap. 477.

Punishment for theft accompanied with wilful homicide.
Amended by:
XXI. 1971.20;
XLIX. 1981.4.

272. Whosoever shall be guilty of theft accompanied with wilful homicide shall be liable to the punishment of imprisonment for life.

272A. (1) Whosoever shall be guilty of theft accompanied with grievous bodily harm from which death ensues shall be liable:

Punishment for theft accompanied with grievous bodily harm from which death ensues.
Added by:
VII. 2010.19.

- (a) if the harm is grievous and death ensues as a result of the nature or the natural consequences of the harm and not of any supervening accidental cause:
 - (i) to imprisonment for a term from eight to thirty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the crime;
 - (ii) to imprisonment for a term from six to twenty five years, if death shall ensue after the said forty days, but within one year to be reckoned as above;
- (b) if death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the harm, the offender shall, on conviction, be liable to imprisonment for a term from five to ten years.

(2) The provisions of article 220(3) shall apply where the harm is caused within the territorial limits of Malta but death occurs outside those limits.

273. Whosoever shall be guilty of theft accompanied with attempted homicide shall be liable to imprisonment for a term from six to twenty years.

Punishment for theft accompanied with attempted homicide.
Amended by:
IV. 1856.13;
VI. 1871.19;
XI.1900.38;
XLIX. 1981.4.

274. Whosoever shall be guilty of theft accompanied with bodily harm shall be liable -

Punishment for theft accompanied with bodily harm.
Amended by:
XI.1900.38;
XLIX. 1981.4.

- (a) if the harm is grievous and produces the effects mentioned in article 218, to imprisonment for a term from four to twelve years;
- (b) if the harm is grievous without the effects mentioned in article 218, to imprisonment for a term from three to nine years;
- (c) if the harm is slight, to imprisonment for a term from two to five years;
- (d) if the harm is slight and of small consequence, and is not committed by any of the means mentioned in article 217, to imprisonment for a term from eighteen months to three years.

275. Whosoever shall be guilty of theft accompanied with confinement of the person shall be liable to imprisonment for a term from one to four years.

Punishment for theft accompanied with confinement of person.
Amended by:
V.1868.17;
XLIX. 1981.4.

Punishment for theft aggravated by "violence" not accompanied with wilful or attempted homicide or with bodily harm or confinement of person.

Amended by:
V.1868.17;
XLIX.1981.4.

Punishment when "violence" is directed against certain persons.

Added by:
XXIX. 1990.12.
Amended by:
III. 2002.54.

Punishment for theft aggravated by "violence" accompanied with other aggravating circumstances.

Amended by:
XXIX.1990.13.

Punishment for theft aggravated by "means" only or by "means" and other aggravating circumstances.

Amended by:
VI.1871.20;
XI.1900.39;
I.1903.12;
XII.1913.6;
III.1971.7;
XIII.1980.9;
XLIX.1981.4;
XIII.1983.5;
L.N. 407 of 2007.

Powers of court.

276. Whosoever shall be guilty of theft aggravated by "violence", but not accompanied with any of the circumstances mentioned in articles 272, 273, 274 and 275, shall be liable to imprisonment for a term from nine months to three years.

276A. The punishment established in articles 273, 274, 275 and 276 shall be increased by one or two degrees when the "violence" therein mentioned is directed against a person who is under the age of twelve years or over the age of sixty years or against a person who is suffering from a degree of physical or mental infirmity in consequence of which he is unable to offer adequate resistance.

277. When the theft aggravated by "violence" in terms of article 274, 275 or 276, is accompanied with any of the other aggravating circumstances specified in article 261, the offender shall, on conviction, be liable -

- (a) where the theft is accompanied with one or more of such other aggravating circumstances, with the exception of that of "means", to the punishment established in article 274, 275, 276 or 276A, which shall not be awarded in its minimum;
- (b) where the theft is accompanied with the aggravating circumstance of "means", whether with or without other aggravating circumstances, to the punishment established in article 274, 275, 276 or 276A, increased by one or two degrees.

278. (1) Whosoever shall be guilty of theft aggravated by "means" only shall be liable to imprisonment for a term from five months to three years.

(2) Where the theft, besides being accompanied with the aggravating circumstance of "means", is also accompanied with one of the other aggravating circumstances, with the exception of that of "violence", the said punishment shall not be awarded in its minimum.

(3) Where the theft, besides being accompanied with the aggravating circumstance of "means", is also accompanied with two or more of the other aggravating circumstances, with the exception of that of "violence", the said punishment shall be increased by one degree and shall not be awarded in its minimum.

(4) Where, however, the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (23.29), the court may, without prejudice to the operation of article 371(2)(c), apply in each case the punishment of imprisonment for a term from five to nine months.

279. Whosoever shall be guilty of theft aggravated by "amount" only shall be liable -

- (a) if the value of the thing stolen does not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), to imprisonment for a term from five months to three years;
- (b) if the value of the thing stolen exceeds two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), to imprisonment for a term from thirteen months to seven years:

Punishment for theft aggravated by "amount".

Amended by:

XI. 1900.39;

XII. 1913.7;

III. 1971.8;

XIII. 1980.10;

XLIX. 1981.4;

XIII. 1983.5;

V. 2005.37;

L.N. 407 of 2007.

Provided that where for any reason mentioned in article 325(2) it is not possible to estimate the value of the thing stolen the said value shall be deemed to exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37).

280. (1) Where the theft aggravated by "amount" is accompanied with one or more of the other aggravating circumstances, with the exception of that of "violence" or "means", the offender shall be liable, as the case may be, to the punishments established in the last preceding article, which shall not, however, be awarded in their minimum.

Punishment for theft aggravated by "amount" accompanied with other aggravating circumstances.

Amended by:

XI.1900.39;

XII.1913.8;

XXIX.1990.14.

(2) Where the theft, besides being accompanied with the aggravating circumstance of "amount", is also accompanied with the aggravating circumstance of "violence", or with that of "means", or with both, the punishment applicable to theft when accompanied with such aggravating circumstances shall be applied:

Provided that, if such punishment be lower than the punishments laid down in the last preceding article, the latter punishments shall be applied with an increase of one degree.

(3) For the purposes of the foregoing subarticle, where the "violence" is directed against any of the persons mentioned in article 276A, the punishment applicable to theft when accompanied with the aggravating circumstance of "violence" shall be the punishment as increased by that article.

281. Whosoever shall be guilty of theft aggravated only by "person", "place", "time", or "the nature of the thing stolen", shall be liable -

Punishment for theft aggravated by "person", "place", "time" or "nature of thing stolen".

Amended by:

XLIX.1981.4.

- (a) where the theft is accompanied with one only of these four aggravating circumstances, to imprisonment for a term from seven months to two years;
- (b) where the theft is accompanied with two of such aggravating circumstances, to the same punishment, which, however, shall in no case be awarded in its minimum;
- (c) where the theft is accompanied with more than two of such aggravating circumstances, to the said punishment, which may, however, be increased to any term not exceeding three years.

Punishment for aggravated theft when the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (23.29).

Amended by:

*IV.1856.14;
V.1868.18;
VI.1871.21;
XI.1900.40;
I.1903.14;
III.1971.9;
XLIX.1981.4;
XIII. 1983.5;
L.N. 407 of 2007.*

Theft of water, gas or electric current.

Added by:

*XVI.1921.5.
Amended by:
XIII.1983.5;
L.N. 407 of 2007.*

When deemed to be completed. Punishment when value of water, etc., does not exceed twenty-three euro and twenty-nine cents (23.29).

Complaint of the injured party.

Added by:

XXII. 2005.3.

282. Where in cases of theft accompanied with one or more of the aggravating circumstances mentioned in article 261, with the exception of that of "violence" or "means", the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (23.29), the offender shall, on conviction, be liable to imprisonment for a term not exceeding three months.

283. In the cases set forth in the second paragraph of article 264(1), the theft aggravated by "means" shall be deemed to be completed when the communication therein mentioned is effected, and the offender shall be liable to the punishment laid down in article 278(4), unless it is proved that the value of the water, gas or electric current stolen exceeds twenty-three euro and twenty-nine cents (23.29).

283A. No proceedings shall be instituted in respect of any offence of theft of electricity except on the complaint of the injured party even if the offence is one which falls within the competence of the Court of Magistrates as provided in article 370(1) and even if the injured party has not expressly waived the right to prosecute within four days from the commission of the offence. The provisions of this article shall apply notwithstanding anything to the contrary provided in article 373.

§ OF SIMPLE THEFT

Simple theft.

284. Theft, when not accompanied with any of the aggravating circumstances specified in article 261, is simple theft.

Punishment.

Amended by:

*III.1971.10;
XLIX.1981.4;
XIII. 1983.5;
L.N. 407 of 2007.*

285. Whosoever shall be guilty of simple theft shall be liable to imprisonment for a term from one to six months:

Provided that if the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (23.29), the offender shall, on conviction, be liable to imprisonment for a term not exceeding three months.

286. The punishment established for simple theft according to the value of the thing stolen shall be applied against any person who, having been convicted in Malta for theft, or for receiving stolen articles, is found to have in his possession any stolen article the lawful possession of which he does not satisfactorily account for.

Possession of stolen articles by person previously convicted of theft or of receiving stolen articles.
Amended by:
XI. 1900.41;
I.1903.15.

287. Whosoever, having been convicted in Malta for theft, or for receiving stolen articles, is found to have in his possession fruits, plants, or other field or garden produce or money or other articles, not in keeping with his condition, the lawful possession of which he does not satisfactorily account for, or is found to have in his possession any adapted or counterfeit keys, or any implements capable of opening or forcing open any lock, or to have in his possession any impression of locks, the actual lawful destination of which he does not satisfactorily account for, shall, on conviction, be liable to imprisonment for a term not exceeding three months.

Unjustified possession of moneys, articles, etc., by person previously convicted of theft, etc.
Added by:
XI.1900.41.

288. The offender shall be liable to the punishments established for contraventions, when, in any case of simple theft, the gain contemplated by the offender is the mere use of the thing, with intent to restore the same immediately.

Theft for mere use of thing stolen.
Amended by:
IV.1856.15;
VI.1871.22;
XI.1900.42.

GENERAL PROVISION APPLICABLE TO THIS SUB-TITLE

289. (1) In the case of a second or subsequent conviction for any offence referred to in this sub-title, the punishment may be increased, in the case of a second conviction, by one or two degrees, and, in the case of a third or subsequent conviction, by one to three degrees.

Punishment in case of second or subsequent conviction for theft.

(2) When the increase of punishment cannot otherwise take place than by the application of solitary confinement, such punishment may be awarded to the extent of eighteen periods.

Sub-title II

OF OTHER OFFENCES RELATING TO UNLAWFUL ACQUISITION AND POSSESSION OF PROPERTY

290. Whosoever shall purchase or otherwise receive from any other person or shall be found to have in his possession any article bearing any mark or sign denoting such article to be the property of the Republic of Malta, or any article which the possessor knows to be the property of the Republic of Malta, for the disposal of which no written permission shall have been given by the competent authority, and shall fail to give a satisfactory account as to how he came by the article or thing found in his possession, shall, on conviction, be liable to a fine (*multa*) or imprisonment for a term not exceeding one month.

Unlawful possession of property of the Republic of Malta.
Amended by:
IV. 1856.16;
XXVI. 1931.3;
XXVII. 1975.19.

Destroying or
obliterating marks
denoting property
of the Republic of
Malta.

Amended by:
XXII. 1931.3;
XXVII. 1975.20;
XLIX. 1981.4.

Unlawful dealings
in or possession of
marine or ship's
stores.

291. Whosoever, with intent to conceal any property of the Republic of Malta, shall destroy or obliterate, in any of the articles or things mentioned in the last two preceding articles, for the disposal of which no permission shall have been given, any mark or sign denoting such article or thing to be the property of the Republic of Malta, shall, on conviction, be liable to imprisonment for a term from one to six months.

292. Whosoever, without a licence from the Government, shall keep for sale or deal in any articles which are by common repute considered to come under the denomination of marine or ship's stores, and whosoever, without such licence, shall be found in possession of such articles, without being able to give a satisfactory account as to how he came by the articles so found, shall, on conviction, be liable to a fine (*multa*) and to the forfeiture of the said articles.

Sub-title III

OF FRAUD

Misappropriation.

Amended by:
IV. 1874.3;
VIII. 1909.28;
XLIX. 1981.4;
III. 2002.55.

293. Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months:

Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party.

Aggravating
circumstances.

Amended by:
VIII. 1909.29;
XLIX. 1981.4;
III. 2002.56.

294. Nevertheless, where the offence referred to in the last preceding article is committed on things entrusted or delivered to the offender by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, criminal proceedings shall be instituted *ex officio* and the punishment shall be of imprisonment for a term from seven months to two years.

Fraud relating to
insurance.

Amended by:
VIII. 1857.9;
IV. 1874.4;
VIII. 1909.30;
XLIX. 1981.4;
III. 2002.57.

295. Whosoever, with intent to obtain for himself or for any other person the payment of any money due under any insurance against risks, or any other undue benefit, destroys, disperses or deteriorates, by any means whatsoever, things belonging to him, shall, on conviction, be liable to imprisonment for a term from seven months to two years, and, where he succeeds in his intent, from nine months to three years.

Barratry.

Amended by:
IV. 1874.5;
XLIX. 1981.4;
III. 2002.58.

296. (1) Any master, *padrone* or boatman or any person entrusted with the command, use or custody of any lighter, boat, skiff, caique or other vessel, even if intended to navigate once only within the limits of Malta, who, for purposes of gain -

- (a) abandons or damages the vessel or causes the vessel to sink;
- (b) steals or damages any goods or other things which are

on the vessel;

- (c) falsely represents the loss of or damage to the vessel, goods or other things;
- (d) sells or otherwise disposes of the vessel against the will and to the prejudice of the owner,

shall, on conviction, be liable to imprisonment for a term from five months to two years.

(2) The said punishment shall also be applied where the offender is a part-owner of the vessel, goods or things.

297. Whosoever, making an improper use of any paper signed in blank entrusted to him, shall, for the purpose of gain, write thereon anything to the prejudice of another person, or shall, for the like purpose, add upon any paper not in blank, entrusted to him, any writing or clause, shall, on conviction, be liable to imprisonment for a term from nine months to three years.

Fraudulent breach
of trust in respect
of papers signed in
blank or otherwise.
Amended by:
XLIX. 1981.4;
III. 2002.59.

298. (1) Whosoever -

- (a) forges or alters, without the consent of the owner, the name, mark or any other distinctive device of any intellectual work or any industrial product, or knowingly makes use of any such name, mark or device forged or altered, without the consent of the owner, even though by others;
- (b) forges or alters, without the consent of the owner, any design or model of manufacture, or knowingly makes use of any such design or model forged or altered, without the consent of the owner, even though by others;
- (c) knowingly makes use of any mark, device, signboard or emblem bearing an indication calculated to deceive a purchaser as to the nature of the goods, or sells any goods with any such mark, device or emblem;
- (d) puts on the market any goods in respect of which a distinctive trade mark has been registered, after removing the trade mark without the consent of the owner thereof;
- (e) applies a false trade description to any goods, that is to say, applies to goods any forged or altered figure, word or mark which according to the custom of the trade is taken to indicate -
 - (i) the number, quantity, measure, gauge or weight of the goods,
 - (ii) the place or country in which the goods are made or produced,
 - (iii) the mode of manufacturing or producing the goods,
 - (iv) that the goods are the subject of an existing patent, privilege or industrial copyright;

Commercial or
industrial fraud.
Amended by:
XI. 1899.106;
XLIX. 1981.4.

- (f) knowingly puts into circulation, sells or keeps for sale or imports for any purpose of trade, any goods bearing a fraudulent imitation of any mark, device or emblem;
- (g) knowingly makes, keeps or transfers to any person, any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a trade mark,

shall, on conviction, be liable to imprisonment for a term from four months to one year.

(2) For the purposes of subarticle (1)(e), any figure, word or mark which, according to the custom of the trade, is commonly taken to indicate any of the matters therein referred to, shall be deemed to be a trade description thereof.

Fraudulent access to tele-communications systems.

Added by:
XII.1991.41.
Amended by:
L.N. 407 of 2007.

298A. Whoever shall construct, alter, make, be in possession of, sell or purchase any device whereby such person may unlawfully connect with any telecommunication system shall, on conviction, be liable -

- (a) where the offence is committed for gain or by way of trade, to imprisonment for a term not exceeding one year or to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) or to both such fine and imprisonment; and
- (b) in all other cases, to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37).

Violation of copyright.

Added by:
XII.1991.41.
Amended by:
XIX.1992.2;
L.N. 407 of 2007.

298B. (1) Whosoever, for gain, or by way of trade prints, manufactures, duplicates or otherwise reproduces or copies, or sells, distributes or otherwise offers for sale or distribution, any article or other thing in violation of the rights of copyright enjoyed by any other person and protected by or under Maltese law, shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to both such fine and imprisonment.

(2) Proceedings under this article may not be taken except on the complaint of the injured party.

Usury.

Added by:
III. 2002.60.
Amended by:
L.N. 407 of 2007.

298C. (1) Whosoever receives from another person or obtains from another person a promise to give, to himself or to others, in consideration of a loan, interests or any other gain under any form whatsoever in excess of what is allowed by law shall, on conviction, be liable to imprisonment for a term not exceeding eighteen months and to the payment of a fine (*multa*) from two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) to thirty-four thousand and nine hundred and forty euro and sixty cents (34,940.60).

(2) The same punishment laid down in subarticle (1) shall apply to whosoever receives from another person or obtains from

another person a promise to give, to himself or to others, in consideration of a service consisting in any other benefit of any kind, interests or any other gain under any form whatsoever in excess of what is allowed by law or otherwise grossly disproportionate to the service given.

(3) The same punishment laid down in subarticle (1) shall also apply to whosoever, not being an accomplice in the offence in the same subarticle, intervenes to procure for another person a sum of money or any other benefit by having a person give or promise to give, to himself or to others, in respect of the intervention, a grossly disproportionate compensation.

(4) For the purposes of subarticles (1), (2) and (3), in the determination of whether the interests are, or any gain or compensation is, grossly disproportionate account shall be had of all the circumstances of the fact and of the average rates usually applicable to operations similar to the one in question.

(5) Where, in the course of criminal proceedings for an offence under this article, it is proved before the court that the accused has received from another person an amount of interest, or a consideration of an amount, in excess of what is allowed by law or otherwise grossly disproportionate to the service given, the court shall order the accused to pay to the said other person such amount as may be determined by the court as being the excess received by the accused as aforesaid. The said order of the court shall be without prejudice to any right of such other person to recover by any other means any greater amount due to him and the order shall constitute an executive title enforceable as if it were a final judgement given in a civil action between the offender and the person to whom payment is ordered.

(6) The punishment for an offence under this article shall be decreased by one degree where the accused, before final judgement, reimburses excess amount received by him to the person from whom such amount was received.

298D. Any person who, without the prior approval in writing of the Commissioner of Police, in any manner whatsoever, tampers, removes, alters or makes a chassis or engine identification number of, or on, any motor vehicle shall, on conviction be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) of not less than six hundred and ninety-eight euro and eighty-one cents (698.81) and not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to both such imprisonment and fine.

Tampering, removal, etc., of chassis or engine number.
Added by:
III. 2002.61.
Amended by:
L.N. 407 of 2007.

299. In the cases referred to in article 298(1)(a), (b), (c) and (d), criminal intent shall be presumed, unless the accused proves that he has acted without such intent.

Presumption of malice.
Added by:
XI. 1899.106.
Amended by:
XII. 1991.41.

300. In the cases referred to in the last part of article 298(1)(a) and in (b) and (d), the burden of proof of the consent of the owner shall lie on the accused.

Burden of proof.
Added by:
XI. 1899.106.

False trade
description.
Added by:
XI. 1899.106.

301. In the cases referred to in article 298(1)(e), the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of the said paragraph.

How presumption
of malice may be
rebutted in certain
cases.
Added by:
XI. 1899.106.

302. In the cases referred to in article 298(1)(f), criminal intent shall be presumed, unless the accused proves -

- (a) that, having taken all necessary precaution against committing the offence referred to in the said paragraph, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or sign; and
- (b) that, on demand made by any member of the Police, he gave all the information in his power with respect to the persons from whom he obtained the goods in question; and
- (c) that otherwise he had acted innocently.

Exemption from
punishment.
Added by:
XI.1899.106.

303. In the cases referred to in article 298(1)(g), no punishment shall be awarded if the accused proves -

- (a) that, in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines or other instruments for making or being used in making trade marks, or, as the case may be, to apply marks, devices or emblems to goods; and
- (b) that, in the case which is the subject of the charge, he was so employed by some person resident in Malta, and was not in any manner whatsoever interested in the goods by way of profit dependent on the sale of the goods to which any such mark, device or emblem might have been applied.

Cases in which a
trade mark, device
or description is
deemed to have
been applied.
Added by:
XI. 1899.106.

304. For the purposes of the preceding articles, every person is deemed to apply a trade mark or distinctive device or trade description to goods, who -

- (a) actually applies it to the goods themselves; or
- (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or
- (c) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, in, with or to any covering, label, reel or other thing, in respect of which a trade mark has been registered or to which a trade description has been applied; or
- (d) uses a trade mark, device or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are truly designated by that trade mark, device or trade description.

305. For the purposes of the foregoing articles, the expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case or wrapper; and the expression "label" includes any band or ticket indicative of the thing to which it is applied.

Definition of "covering" and "label".
Added by:
XI. 1899.106.

306. For the purposes of article 298(1)(d), where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting a description of the country in which the watch was made, and the watch bears no such description on any of its parts, those words or marks shall, until the contrary is proved, be deemed to be a description of that country.

Words or marks on watch cases.
Added by:
XI. 1899.106.

307. Whosoever, by the use of false weights or measures, shall deceive others in respect of the quantity of goods given for valuable consideration, shall, on conviction, be liable to imprisonment for a term not exceeding one year.

Use of false weights or measures.
Added by:
XI.1900.43.
Amended by:
XLIX. 1981.4.

308. Whosoever, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another person, shall, on conviction, be liable to imprisonment for a term from seven months to two years.

Obtaining money or property by false pretences.
Amended by:
XLIX. 1981.4;
III. 2002.62.

309. Whosoever shall make, to the prejudice of any other person, any other fraudulent gain not specified in the preceding articles of this sub-title, shall, on conviction, be liable to imprisonment for a term from one to six months or to a fine (*multa*).

Other cases of fraudulent gain.
Amended by:
XLIX. 1981.4;
III. 2002.63.

310. (1) In the cases referred to in this sub-title -

- (a) when the amount of the damage caused by the offender exceeds two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) the punishment shall be that of imprisonment from thirteen months to seven years;
- (b) when the amount of the damage caused by the offender exceeds two hundred and thirty-two euro and ninety-four cents (232.94) but does not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), the punishment shall be that of imprisonment from five months to three years;

Scale of punishment according to the amount of the damage.
Amended by:
VI. 1871.23;
IV.1874.6;
XI. 1900.44;
I.1903.16;
III. 1971.11;
XLIX. 1981.4;
XIII. 1983.5;
III. 2002.64;
L.N. 407 of 2007.

Provided that if the punishment laid down for the relevant offence in the preceding articles of this sub-title is higher than the punishment laid down in this paragraph the former punishment shall apply increased by one degree and in the case of the offence under article 294 the punishment so increased shall not be awarded in its minimum;

- (c) when the amount of the damage caused by the offender does not exceed twenty-three euro and twenty-nine cents

(23.29), the offender shall be liable to imprisonment for a term not exceeding three months;

- (d) when the amount of the damage caused by the offender does not exceed eleven euro and sixty-five cents (11.65), the offender shall be liable to imprisonment for a term not exceeding twenty days or to a fine (*multa*) or to the punishments established for contraventions.

(2) The provisions of subarticle (1)(c) and (d) shall not apply in the case of any of the crimes referred to in articles 296 and 298.

Corporate liability
for offences under
this sub-title.

Added by:
III. 2002.65.
Amended by:
XXXI. 2007.15.

310A. The provisions of articles 121C, 121D and 248E(4) shall apply to offences under this sub-title.

Jurisdiction.
Added by:
III. 2002.65.

310B. The offences under this sub-title shall be deemed to be offences even when committed outside Malta and, without prejudice to the provisions of article 5, the criminal action therefor may also be prosecuted in Malta according to the laws thereof against any person who commits or participates in the offence as provided in this Code -

- (a) when the offence took place, even if only in part, in Malta or on the sea in any place within the territorial jurisdiction of Malta; or
- (b) when the gain to the prejudice of another person has been received in Malta; or
- (c) when a person in Malta knowingly assisted or induced another person to commit the offence; or
- (d) when the offender is a Maltese citizen or a permanent resident in Malta and the fact also constitutes an offence according to the laws of the country where it took place:

Provided that for the purposes of this paragraph "permanent resident" shall have the same meaning assigned to it by article 5(1)(d).

Added by:
VII. 2010.20.

GENERAL PROVISION APPLICABLE TO OFFENCES UNDER SUB-TITLES I, II and III

Disability in case
of offences against
minors.
Added by:
VII. 2010.20.

310C. The provisions of article 208B(2) and (2A) shall apply to any person found guilty of any offence under Subtitles I to III, both inclusive, when committed against a person under age.

328. Whosoever, through imprudence, negligence or unskilfulness in his trade or profession, or through non-observance of any regulation, shall cause any fire or any damage, spoil or injury as mentioned in this sub-title, shall, on conviction, be liable -

Involuntary fire or damage.
Amended by:
IV. 1856.17;
XI. 1900.48;
V. 1956.18;
XIII. 1980.11;
XIII. 1983.5;
L.N. 407 of 2007;
VII. 2010.24.

- (a) if the death of any person is caused thereby, to the punishments established in article 225;
- (b) if any grievous bodily harm with any of the effects mentioned in article 218 is caused thereby, to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37);
- (c) if any grievous bodily harm without any of the effects aforesaid is caused thereby, to imprisonment for a term not exceeding three months or to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69);
- (d) in any other case, to imprisonment for a term not exceeding three months or to a fine (*multa*) or to the punishments established for contraventions:

Provided that in the cases referred to in paragraph (d), except where damage is caused to public property, other than a motor vehicle, proceedings may be instituted only on the complaint of the injured party.

*Sub-title IV A**

OF ACTS OF TERRORISM, FUNDING OF TERRORISM AND
ANCILLARY OFFENCES

Added by:
VI. 2005.2.

328A.(1) For the purposes of this sub-title, "act of terrorism" means any act listed in subarticle (2), committed wilfully, which may seriously damage a country or an international organization where committed with the aim of:

Acts of terrorism.
Added by:
VI. 2005.2.

- (a) seriously intimidating a population, or
- (b) unduly compelling a Government or international organization to perform or abstain from performing any act, or
- (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

(2) The acts to which reference is made in subarticle (1) are the following:

- (a) taking away of the life or liberty of a person;
- (b) endangering the life of a person by bodily harm;

*originally, as enacted by Act VI of 2005, this sub-title was numbered Sub-title V.

- (c) bodily harm;
- (d) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons;
- (g) research into or development of biological and chemical weapons;
- (h) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;
- (i) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person;
- (j) threatening to commit any of the acts in paragraphs (a) to (i):

Provided that in this subarticle "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them in article 314A(4).

(3) Whosoever commits an act of terrorism shall be guilty of an offence and shall be liable on conviction to the punishment of imprisonment from five years to life.

Terrorist groups.
Added by:
VI. 2005.2.

328B.(1) For the purpose of this sub-title "terrorist group" means a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences.

(2) In sub-article (1) "structured group" means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

(3) Whosoever promotes, constitutes, organises, directs, finances, supplies information or materials to, a terrorist group knowing that such participation or involvement will contribute towards the criminal activities of the terrorist group shall be liable -

- (a) where the said participation or involvement consists in directing the terrorist group, to the punishment of imprisonment not exceeding thirty years:

Provided that where the activity of the terrorist group consists only of the acts mentioned in article

328A(2)(j) the punishment shall be that of imprisonment for a period not exceeding eight years;

- (b) in any other case, to the punishment of imprisonment not exceeding eight years.

328C. (1) Whosoever, with the intention of committing any of the acts listed in article 328A(2)(a) to (i) or in article 328B -

Offences linked to terrorist acts.

Added by:
VI. 2005.2.
Amended by:
XI. 2009.6.

- (a) commits an offence of theft aggravated as provided in article 261; or
- (b) commits the offence in article 113 or 250; or
- (c) commits an offence of forgery or the offence in article 188,

shall be liable to the same punishment laid down in article 328A(3).

(2) Whosoever, knowingly -

- (a) publicly provokes the commission of an act of terrorism;
- (b) recruits or solicits another person to commit an act of terrorism;
- (c) trains or instructs another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing an act of terrorism,

shall be liable to the same punishment laid down in article 328A(3).

(3) Whosoever contributes to the commission of an offence mentioned in article sub-article (2) by a group of persons acting with a common design, knowing that the contribution will further the group's criminal activity or criminal purpose to commit any such offence, shall be liable to the same punishment laid down in article 328B(3)(b).

(4) For the commission of an offence under this article it shall not be necessary that an act of terrorism be actually committed.

328D. Whosoever incites, aids or abets any offence under the foregoing articles of this sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence incited, aided or abetted.

Inciting, aiding or abetting.
Added by:
VI. 2005.2.

328E.(1) In this sub-title, "terrorist property" means -

Terrorist property.
Added by:
VI. 2005.2.

- (a) money or other property which is likely to be used for the purposes of terrorism, including any resources of a terrorist group,
- (b) proceeds of the commission of acts of terrorism, and
- (c) proceeds of acts carried out for the purposes of terrorism.

(2) In sub-article (1) -

- (a) a reference to proceeds of an act includes a reference

to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and

- (b) the reference to a group's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the group.

Funding of terrorism.
Added by:
VI. 2005.2.
Amended by:
L.N. 407 of 2007.

328F. (1) Whosoever receives, provides or invites another person to provide, money or other property intending it to be used, or which he has reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, and unless the fact constitutes a more serious offence under any other provision of this Code or of any other law, be liable to the punishment of imprisonment for a term not exceeding four years or to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to both such fine and imprisonment.

(2) In this article a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether for consideration or not.

Use and possession.
Added by:
VI. 2005.2.

328G. (1) Whosoever uses money or other property for the purposes of terrorism shall, on conviction, be liable to the punishment of imprisonment not exceeding twelve years.

(2) Whosoever is in possession of money or other property intending it to be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, be liable to the punishment laid down in article 328F(1).

Funding arrangements.
Added by:
VI. 2005.2.

328H. Whosoever -

- (a) enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and
- (b) knows or has reasonable cause to suspect that the money or other property will or may be used for the purposes of terrorism,

shall on conviction be liable to the punishment laid down in article 328F(1).

Facilitating retention or control of terrorist property.
Added by:
VI. 2005.2.

328I. (1) Whosoever enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -

- (a) by concealment,
- (b) by removal from the jurisdiction,
- (c) by transfer to nominees, or
- (d) in any other way,

shall, on conviction, be liable to the punishment laid down in article 328F(1).

(2) It is a defence for a person charged with an offence under subarticle (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

328J. (1) The provisions of article 121D shall apply where a person is found guilty of an offence under this subtitle so however that the body corporate shall for such offence be liable to the punishment of a fine (*multa*) of not less than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) and not more than two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40).

Corporate criminal liability.
Added by:
VI. 2005.2.
Amended by:
L.N. 407 of 2007.

(2) The body corporate shall also be held liable for an offence under this sub-title where the lack of supervision or control by a person referred to in article 121D has made possible the commission of the offence for the benefit of the body corporate, which shall upon conviction be liable to the punishment laid down in subarticle (1).

328K. Without prejudice to any other punishment to which the offence may be liable under this Code or any other law, where the offender is a body corporate liable to punishment under the provisions of article 328J the Court may, at the request of the prosecution, order -

Other penalties.
Added by:
VI. 2005.2.

- (a) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;
- (b) the temporary or permanent closure of any establishment which may have been used for the commission of the offence;
- (c) the compulsory winding up of the body corporate.

328L. (1) The court by or before which a person is convicted of an offence under any of articles 328F to 328I may make a forfeiture order in accordance with the provisions of this article.

Forfeiture.
Added by:
VI. 2005.2.

(2) Where a person is convicted of an offence under articles 328F or 328G the court may order the forfeiture of any money or other property -

- (a) which, at the time of the offence, he had in his possession or under his control and,
- (b) which, at that time, he intended should be used, or which he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorism.

(3) Where a person is convicted of an offence under article 328H the court may order the forfeiture of the money or other property -

- (a) to which the arrangement in question related, and
- (b) which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorism.

(4) Where a person is convicted of an offence under article 328I the court may order the forfeiture of the money or other property to which the arrangement in question related.

(5) Where a person is convicted of an offence under any of articles 328F to 328I, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(6) Where a person other than the convicted person claims to be the owner of, or otherwise interested in, anything which can be forfeited by an order under this article, the court shall give him an opportunity to be heard before making an order.

Jurisdiction.
Added by:
VI. 2005.2.

328M. Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offences laid down in this sub-title where -

- (a) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;
- (b) the offender is a Maltese national or permanent resident in Malta;
- (c) the offender is a person suspected or convicted of an offence laid down in this sub-title and whose surrender or extradition to another country for such an offence is refused by Malta even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;
- (d) the offence is committed for the benefit of a legal person established in Malta;
- (e) the offence is an offence under article 328B or an offence under article 328D which involves a terrorist group even if the terrorist group is based or pursues its criminal activities outside Malta;
- (f) the offence is committed against the institutions or people of Malta or against an institution of the European Union or a body set up in accordance with the Treaties and based in Malta:

Provided that for the purposes of this paragraph:

"the European Union" shall have the same meaning assigned to it by article 2(1) of the [European Union Act](#);

"the Treaties" means the Treaty establishing the European Community done at Rome on the 25th March, 1957 and the Treaty on European Union done at Maastricht on the 7th February, 1992, and the Protocols annexed thereto.

Cap. 460.

Sub-title IV B

*Added by:
XI. 2009.7.*

OF PIRACY

328N. (1) For the purposes of this subtitle "piracy" means any of the following acts:

Definition of piracy.
*Added by:
XI. 2009.7.*

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any of the acts referred to in paragraph (a) committed by the crew or passengers of a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft;
- (c) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (d) any act of inciting or of knowingly facilitating an act described in paragraph (a) or (b) or (c).

(2) For the purposes of this Title, a ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in subarticle (1) or if the ship or aircraft has been used to commit any such act and the ship or aircraft remains under the control of the person guilty of that act.

(3) Any person guilty of piracy under this article shall be liable:

- (a) where the offence consists in any of the acts referred to in subarticle (1)(a) and (b) when accompanied with the loss of life of any person, to the punishment of imprisonment for life;
- (b) where the offence consists in any of the acts referred to in (1)(a) and (b) when not accompanied with the loss of life of any person, to the punishment of imprisonment not exceeding thirty years;
- (c) where the offence consists in any act referred to in subarticle (1)(c), to the punishment of imprisonment for a term not exceeding eight years;
- (d) where the offence consists in any act referred to in subarticle (1)(d), to the punishment laid down for the act incited or facilitated.

328O. (1) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this article where the offence is committed:

Jurisdiction.
*Added by:
XI. 2009.7.*

- (a) by any citizen of Malta or permanent resident in Malta;
- (b) by any person while on board any ship, vessel or aircraft belonging to Malta;
- (c) by any person against any ship, vessel or aircraft belonging to Malta or against the person or property of any citizen of Malta or permanent resident in Malta.

(2) For the purposes of this article a ship, vessel or aircraft shall be deemed to belong to Malta in the same circumstances mentioned in article 5(2).

GENERAL PROVISIONS APPLICABLE TO THIS TITLE

Punishment in respect of offences against property accompanied with offences against the person.

329. The punishments established in the respective articles of this Title for any offence against property accompanied with homicide, bodily harm, or confinement of the person, shall always be applied if the act of violence has been completed, even though the offence against the property was merely attempted.

Unlawful entry into houses, etc.
Added by:
IX. 1859.21.
Amended by:
VI. 1871.25;
XLIX. 1981.4;
III. 2002.69.

330. In the case of any entry into any house or other place or enclosure by any of the means mentioned in articles 264, 265 and 266, although there is no evidence of any act constituting an attempt to commit another offence, the offender shall, for the mere entry as aforesaid, on conviction, be liable -

- (a) if the circumstances show that the object of the offender was to commit theft or damage to property or any offence against the person as defined in article 5(1)(d), or if it is proved that the offender was previously convicted of any such offence or of any of the offences referred to in article 338(i) and (w), to imprisonment for a term from five to eighteen months;
- (b) in any other case, to imprisonment for a term not exceeding three months or to a fine (*multa*).

No criminal action for offences against the property of descendants, etc.
Amended by:
XI. 1900.49;
XX. 2005.16.

331. Except in the cases referred to in articles 316, 317 and 318, no criminal proceedings may be instituted except on the complaint of the injured party for offences committed against the property of any descendant or relative by affinity in the descending line, or of the husband or wife, unless such offences be accompanied with homicide, bodily harm or confinement of the person or with a threat to kill or to inflict bodily harm.

Criminal action for offences against the property of ascendants, etc., to be instituted on complaint of injured party.
Amended by:
XI. 1900.49.

332. Except in the cases referred to in articles 316, 317 and 318, no criminal proceedings may be instituted except on the complaint of the injured party for offences committed against the property of any ascendant or relative by affinity in the ascending line, or of a brother or sister or of any relative by affinity in the same degree, unless such offences be accompanied with homicide, bodily harm, other than a slight bodily harm of small consequence, or with confinement of the person.

333. The limitations mentioned in the last two preceding articles shall not operate in favour of such other persons as may have taken part in the commission of the offence.

Outsiders
excepted.
Amended by:
XI. 1900.49.

334. Whosoever shall in Malta knowingly receive or purchase any property which has been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or shall knowingly take part, in any manner whatsoever, in the sale or disposal of the same, shall, on conviction, be liable -

Receiving stolen
property.
Amended by:
XI.1900.50;
XXIX. 1990. 16.

- (a) if the property has been obtained by theft, to the punishment established for theft, according to the value of the property;
- (b) if the property has been obtained by means of any of the various offences relative to unlawful acquisition and possession of property, to the punishment established for such unlawful acquisition or possession;
- (c) if the property has been obtained by fraud, to the punishment established for the particular fraud by which the property was obtained:

Provided that the offender shall be exempted from any punishment in respect of any of the offences referred to in this article, if, before any criminal proceedings are instituted against him and within three days after receiving, purchasing, or taking part in the purchase, sale or disposal as aforesaid, he shall deliver to the competent authority the property received, purchased, sold or disposed of, and shall make known the perpetrators of the offence:

Exemption from
punishment.

Provided further that for the purpose of this article such property shall only be deemed to have been stolen, misapplied or obtained by means of any offence committed abroad if it has been obtained by any act of commission or omission which, if committed in Malta, would have amounted to any of the offences mentioned in paragraphs (a), (b) and (c).

334A. Whosoever, on becoming aware that any property in his possession is stolen property or property misapplied or obtained by means of any offence, fails to give notice thereof to the Executive Police within a week of becoming so aware, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (*multa*).

Failure to inform
about stolen, etc.,
property.
Added by:
III. 2002.70.

335. In any offence the punishment whereof varies according to the amount of the damage caused, such amount shall not be estimated by the gain made by the offender nor shall it include any interest accruing thereon, but it shall only be represented by the actual damage suffered by the injured party at the time of the offence.

Rule as to
estimation of
damage.

336. Where by the same offence the offender shall injure the property of any of the persons referred to in article 331 and also the property of any other person, and the punishment varies according to the amount of the damage caused, such amount shall be represented solely by the amount of the damage caused to the

Estimation of
damage caused
both to relative and
outsider.

337A. (1) Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or who, in Malta or outside Malta, conspires to that effect with any other person shall, without prejudice to any other punishment under this Code or under any other law, be liable to the punishment of imprisonment from six months to five years or to a fine (*multa*) of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) or to both such fine and imprisonment and the provisions of articles 21 and 28A and those of the Probation Act shall not apply:

Traffic in persons to enter or leave Malta illegally.
Added by:
III. 2002.72.
Amended by:
VI. 2005.3;
L.N. 407 of 2007.

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Provided that where the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid number more than three the punishment shall be increased by one to three degrees:

Provided also that where the offence is committed -

- (a) as an activity of a criminal organization; or
- (b) while endangering the lives of the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid,

the punishment shall always be increased by two degrees even when the first proviso does not apply.

(2) Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offence in this article where -

- (a) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;
- (b) the offender is a Maltese national or permanent resident in Malta;
- (c) the offence is committed for the benefit of a legal person established in Malta.

337AA.* The provisions of articles 328J and 328K shall apply *mutatis mutandis* to any offence under Sub-title IV of this title and to the offence in article 337A.

Corporate criminal liability.
Added by:
VI. 2005.4.

*originally, as enacted by Act VI of 2005, this article was numbered article 337B.

transmission of the record and the filing of the indictment shall commence to run anew, the first term commencing from the day on which the record is sent back to the Court of Magistrates.

(3) Where such other offence not included in the inquiry as aforesaid shall be altogether separate and distinct from the offence or offences included in the inquiry, a new and separate inquiry shall, on the demand of the Attorney General, be held in regard to such other offence.

(4) Any demand of the Attorney General under the provisions of this article shall be made in writing.

435A. (1) The provisions of article 4 of the Act shall apply *mutatis mutandis* where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence and the provisions of the said article 4 shall apply to any investigation order or attachment order applied for or issued by virtue of this subarticle as if it were an investigation order or attachment order applied for or issued under the same article 4 of the Act and in particular, the provisions of subarticles (12) and (13) of the said article 4 shall also apply to any investigation for a relevant offence by virtue of this subarticle.

Special powers of investigation.
Added by:
III. 2002.102.

(2) The provisions of article 5 of the Act shall apply *mutatis mutandis* where any person is charged with a relevant offence and the provisions of article 6 of the Act shall apply to any order issued by virtue of this subarticle as if it were an order issued under the said article 5.

(3) In this article the expressions "the Act" and "relevant offence" shall have the meaning assigned to them respectively by article 23A(1).

435AA. (1) Where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence (hereinafter referred to as "the suspect") he may apply to the Criminal Court for an order (hereinafter referred to as a "monitoring order") requiring a bank to monitor for a specified period the banking operations being carried out through one or more accounts of the suspect. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring.

Issuing of monitoring order of banking operations.
Added by:
XXXI. 2007.19.
Amended by:
VII. 2010.30.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the monitoring is taking place or has been applied for, discloses that such monitoring is taking place or has been applied for or makes any other disclosures likely to prejudice the monitoring operation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding twelve thousand euro (12,000) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the monitoring operation.

(3) For the purposes of this article, "relevant offence" means an offence, not being one of an involuntary nature, consisting of any act or omission which if committed in these islands, or in corresponding circumstances, would constitute an offence liable to the punishment of imprisonment or of detention for a term of more than one year.

Temporary
surrender of person
in custody to
foreign country.
Added by:
XXXI. 2007.19.

435AB. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody for the purpose of an investigation to be carried out or being carried out by a judicial, prosecuting or administrative authority of any place outside Malta at the request of a judicial, prosecuting or administering authority in Malta.

(2) The person surrendered shall be kept in custody in the place outside Malta to which he has been surrendered.

(3) Any time spent in custody in the place outside Malta shall be deemed to be time spent in custody in Malta.

Powers of
investigation in
connection with
offences
cognizable by
courts outside
Malta.
Added by:
III. 2002.102.
Amended by:
XXXI. 2007.20.
Cap. 101.

435B. (1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for investigations to take place in Malta in respect of a person (hereinafter in this article and in article 435BA referred to as "the suspect") suspected by that authority or court of a relevant offence, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A of the [Dangerous Drugs Ordinance](#), hereinafter in this title referred to as "the Ordinance", shall *mutatis mutandis* apply to that application and to the suspect and to any investigation order or attachment order made by the court as a result of that application.

(2) The phrase "investigation order" in subarticles (2) and (5) of the same article 24A of the Ordinance shall be read and construed as including an investigation order made under the provisions of this article.

(3) The phrase "attachment order" in article 24A(6A) of the Ordinance shall be read and construed as including an attachment order under the provisions of this article.

Issuing of
monitoring order
of banking
operations.
Added by:
XXXI. 2007.21.
Amended by:
VII. 2010.31.

435BA. (1) Where the request referred to in the preceding article is made for the purpose of monitoring the banking operations being carried out through one or more accounts of a person suspected of a relevant offence within the meaning of article 435AA(3), the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 435AA shall apply *mutatis mutandis*.

(2) Where a person or authority has been indicated by the Attorney General as provided under article 435AA, that person or authority shall transmit the information resulting from the monitoring operation to the Attorney General.

435BB. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody in a foreign State for the purpose of investigations to be carried out or being carried out in Malta at the request of a judicial, prosecuting or administrative authority of that State.

Temporary
surrender of person
in custody to
Malta.
Added by:
XXXI. 2007.21.

(2) The provisions of article 30C of the [Dangerous Drugs Ordinance](#) shall apply *mutatis mutandis* to a person temporarily surrendered to Malta under subarticle (1).

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435BC. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody in Malta for the purpose of an investigation to be carried out or being carried out by a judicial, prosecuting or administrative authority of any place outside Malta at the request of the said authority.

Temporary
surrender to
foreign country of
person in custody
in Malta at request
of foreign
authority.
Added by:
VII. 2010.32.

(2) The person surrendered shall be kept in custody in the place outside Malta to which he has been surrendered.

(3) Any time spent in custody in the place outside Malta shall be deemed to be time spent in custody in Malta.

435C. (1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused") charged or accused in proceedings before the courts of that place or before the international court of a relevant offence, the Attorney General may apply to the Criminal Court for an order (hereinafter in this title referred to as a "freezing order") having the same effect as an order as is referred to in article 22A(1) of the Ordinance, and the provision of the said article 22A shall, subject to the provisions of subarticle (2), apply *mutandis mutandis* to that order.

Freezing of
property of person
accused with
offences
cognizable by
courts outside
Malta.
Added by:
III. 2002.102.
Amended by:
XXXI. 2007.22.

(2) The provisions of article 24C(2) to (5) of the Ordinance shall apply to an order made under this article as if it were an order made under the said article 24C.

(3) Article 22B of the Ordinance shall also apply to any person who acts in contravention of a freezing order under this article.

Enforcement of confiscation orders made by courts outside Malta following conviction for offences cognizable by those courts.

Added by:
III. 2002.102.
Amended by:
III. 2004.76.

435D. (1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person convicted of a relevant offence shall be enforceable in Malta in accordance with the provisions of article 24D(2) to (11) of the Ordinance.

(2) For the purposes of this article "confiscation order" includes any judgement, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property as is described in subarticle (1).

(3) For the purposes of this article and of articles 435B and 435C:

"the Act" and "the Ordinances" shall have the same meaning assigned to them respectively by article 23A(1);

"relevant offence" means an offence consisting of any act or omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence, other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year.

Controlled deliveries and joint investigations with the competent authorities of other countries.

Added by:
IX. 2003.128.
Amended by:
III. 2004.77;
XXXI. 2007.23.

435E. (1) Notwithstanding anything contained in any other law it shall be lawful for the Attorney General to authorise the Executive Police and, where appropriate, the Customs authorities to allow a controlled delivery to take place with a view to identifying persons involved in the commission of any criminal offence under the laws of Malta or under the laws of another country.

For the purposes of this subarticle a "controlled delivery" shall *mutatis mutandis* have the same meaning assigned to it by article 30B(2) of the [Dangerous Drugs Ordinance](#) so however that the illicit or suspect consignment referred to in that subarticle may for the purposes of this subarticle consist of anything whatsoever and that the consignment may be intercepted and allowed to continue with the original contents intact or removed or replaced in whole or in part.

(2) With the same objective of identifying persons involved in the commissions of a criminal offence under the laws of Malta or under the laws of another country, it shall also be lawful for the Attorney General to authorise the Executive Police or a person under the supervision or direction of the Executive Police, to acquire or procure an illicit or suspect consignment of anything from any person or place.

(3) Pursuant to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may authorise the competent authorities of another country to conduct in Malta, jointly with or under the supervision or direction of the Executive Police, investigations into criminal offences by officers acting under covert or false identity, provided that the Attorney General is satisfied of the true identity and official

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capacity of the officers in question and is fully informed of the nature of any documents which purport to guarantee, certify or authenticate the false identity assumed by any such officers. Notwithstanding the provisions of any other law the making or use of such documents by the said competent authorities or by such officers for the purpose or in the course of such investigations authorised as aforesaid shall be deemed to be lawful and shall not entail any liability, civil, criminal or otherwise, on the part of such authorities or officers.

(4) Any official from another country taking part in any of the operations referred to in subarticles (1) to (3), both inclusive, shall, for the purpose of any criminal liability incurred under this Code or any other law by that official or by others for conduct against that official, be deemed to be a public officer.

(5) The provisions of subarticle (4) shall apply *mutatis mutandis* to any official from another country taking part in any operation in Malta of the kind referred to in subarticle (3) even if none of the officers taking part in the operation is acting under covert or false identity.

(6) For purposes of this article "competent authorities of another country" and "official from another country" shall be construed as including officials of bodies set up pursuant to the Treaty on European Union as defined in article 2 of the [European Union Act](#).

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(7) Where the Attorney General has authorised the setting up of a joint investigation team as provided in subarticle (3), the foreign officials participating in the said investigation shall be entitled to be present when investigative measures are being taken and, if so authorised by the competent officer of the Executive Police, to take investigative measures.

Title IV OF THE CRIMINAL COURT

Amended by:
XXVII. 1975.40.

436. (1) The Criminal Court shall consist of one of the judges sitting with a jury for the trial of every offence which may be prosecuted according to law in Malta saving the provisions of article 370.

Constitution of
Criminal Court.
Amended by:
IX. 1857.1;
V.1868.24;
Order-in-Council
of 1899, s.3;
XI. 1900.72,73;
I. 1903.27;
II. 1914.3;
XVI. 1929.3;
XVI. 1932.2;
XV. 1937.6;
XXV. 1967.6;
XXVII.1975.40;
XIII. 1987.4.

(2) The jury shall decide on any matter touching the issue as to whether the accused is guilty or not guilty and on any collateral

Attributions of jury
and of court.

626. In all cases where, upon any allegation under this Title being proved, the trial cannot take place or is interrupted or the execution of the sentence is stayed, the trial shall be resumed or the sentence carried into effect, as soon as the impediment shall cease.

Resumption of trial on cessation of impediment.

627. In all cases where it shall be necessary to impanel a new jury for the determination of any allegation referred to in the preceding articles of this Title, such jury shall be impanelled and shall proceed according to the rules established in this Code relating to juries.

Jury to be impanelled according to general rules.

628. In all cases referred to in the preceding articles of this Title, any allegation shall be determined by the jury by a majority of votes.

Jury to decide by majority of votes. S.3(3) of Ord. XXXVII of 1934 so far as it provides that the decision of the jury shall be taken by a majority of votes, incorporated.

Title VIII

Of Mutual Assistance in Criminal Matters

Added by:
IX. 2003.128.

628A. (1) The Minister responsible for justice may make regulations to give effect to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or is otherwise applicable to Malta and which makes provision for mutual assistance in criminal matters.

Regulations.
Added by:
IX. 2003.128.

(2) Regulations made under this article may make provision as the Minister may deem appropriate in the circumstances, including the application, with any appropriate modifications, of any of the provisions of this Code or of any other law.

628B. (1) Without prejudice to the generality of the power conferred on the Minister by article 628A the Minister may, in particular, make regulations designating the competent person, body corporate or unincorporated, authority or agency for the purpose of providing the assistance that may be requested under any arrangement referred to in article 628A(1) and prescribing the conditions and procedures for the execution of any request for such assistance for all or any of the following purposes –

Conditions and procedures for the execution of request for assistance.
Added by:
IX. 2003.128.

- (a) the questioning of persons being investigated or prosecuted for a criminal offence;
- (b) the taking or production of evidence;
- (c) the service of any document or act;
- (d) the interception of communications;
- (e) the temporary transfer of a prisoner for the purposes of identification or for obtaining testimony or other assistance;
- (f) the entry into and search of any premises and the seizure of any item;
- (g) the taking of fingerprints or of intimate or non-intimate samples;

- (h) the exhumation of any body;
- (i) the provision of records and documents;
- (j) the investigation of proceeds of criminal offences;
- (k) the monitoring, freezing or seizing of assets of any kind including bank accounts;
- (l) the verification of any evidence or other material.

(2) Any regulations made under this article and article 628A shall contain a reference to the arrangement which those regulations are meant to implement.

PART III

OF MATTERS APPLICABLE TO ALL CRIMINAL TRIALS

Title I

OF WITNESSES AND EXPERTS

Amended by:
XI. 1900.87.

Sub-title I

OF WITNESSES

Competency of witnesses.
Amended by:
IX. 1859.32;
III. 1880.11.

629. (1) Every person of sound mind is admissible as witness, unless there are objections to his competency.

Explanation to witness on obligation of oath.

(2) The court shall explain to the witness the obligation of the oath if, on account of his age or for other reasons, it appears doubtful whether he understands such obligation; and if, notwithstanding such explanation, the court shall deem it necessary that the witness, before giving evidence, be further instructed as to the consequences of false testimony, the court may, if it considers the deposition of such witness to be important for the ends of justice, adjourn the trial to another day, and, should the case be before the Criminal Court, discharge the jury.

No particular age required for competency of witness.

630. No person shall be excluded from giving testimony for want of any particular age; it shall be sufficient that the court be satisfied that the witness, though not of age, understands that it is wrong to give false testimony.

Swearing in of witness.
Amended by:
V. 1868.39.

631. (1) A witness professing the Roman Catholic faith shall be sworn according to the custom of those who belong to that faith; and a witness not professing that faith shall be sworn in the manner which he considers most binding on his conscience.

(2) The provisions of this article shall apply in all cases in which an oath is administered.

Form of oath.

632. The form of oath to be administered to witnesses shall be

Examination of
infirm or aged
witness in his place
of abode.

Added by:
XI.1900.89.

Amended by:
VI. 1939.4;
L.N. 4 of 1963;
XIII. 1964.26;
L.N. 46 of 1965;
XXXI.1966.2;
XXV.1967.26;
LVIII. 1974.68;
XXVII.1975.40;
III.1976.8;
VIII. 1990.3;
III. 2002.151;
XXXI. 2002.205.
Cap. 12.

647. (1) If it shall be necessary to examine any person who either through infirmity or old age is unable to appear in court, such person shall be examined by the court, or, if the court so orders, by a member of the court, in the place of his or her abode:

Provided that the court may delegate the taking of the evidence of any such witness to one of the magistrates for the Island in which the witness resides, or to a judicial assistant.

(2) When the evidence required is that of a person who does not reside in the Island in which the proceedings are taking place and it is represented to the court that such person is about to leave Malta, the court may delegate the taking of the evidence to one of the persons to whom the taking of evidence may be delegated under subarticle (1); and in the case of a witness who is to be examined in Gozo or Comino, the court may also, if the circumstances so warrant and the Attorney General does not object, authorise the registrar to take such evidence and administer the necessary oath.

Right of accused to
be present.

(3) The party charged or accused is entitled to be present at the examination.

Reading out of
evidence in court.

(4) The evidence taken in accordance with the provisions of this article shall be read out in court, and a note to that effect shall be entered in the record.

Audio-recording or
video-recording of
evidence.

Added by:
XXXI. 2002.206.

647A. Without prejudice to the provisions of articles 646 and 647, the court may, if it deems it proper so to act, allow for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe.

Sending of
documents or any
act to person in a
foreign country.

Added by:
XXXI. 2007.24.

647B. Pursuant to and in accordance with any treaty, convention, agreement or understanding between Malta and another country or which applies to both such countries or to which both such countries are a party, procedural documents or any act of the proceeding may be sent directly by post to a person who is in the territory of the foreign country in a language which that person understands:

Provided that procedural documents shall be accompanied by a report indicating to the said person the remedies available and that information about his rights and obligations concerning the document may be obtained from the issuing authority or from another competent authority in Malta.

Identification of
person or object.

648. In order to identify any person whose identity is required to be proved, or in order to identify any object to be produced in evidence, it shall not, as a rule, be necessary that the witness should recognize such person from among other persons, or pick out such object from among other similar objects, unless the court, in some particular case, shall deem it expedient to adopt such course for the ends of justice.

649. (1) Where the Attorney General communicates to a magistrate a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or court or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

(2) The provisions of subarticle (1) shall only apply where the request by the foreign judicial, prosecuting or administrative authority or by the international court is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country, or between Malta and the court, from which the request emanates or which applies to both such countries or to which both such countries are a party or which applies to Malta and the said court or to which both Malta and the said court are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of subarticle (3) shall be applicable.

(3) Where the Minister responsible for justice communicates to a magistrate a request made by the judicial authority of any place outside Malta for the examination of any witness present in Malta, touching an offence cognizable by the courts of that place, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, notwithstanding that the accused be not present, and shall take down such testimony in writing.

(4) The magistrate shall transmit the deposition so taken, or the result of the investigation conducted, or the documents or things found or seized in execution of any order for search or/and seizure, to the Attorney General.

(5) For the purposes of subarticles (1) and (3) the magistrate shall, as nearly as may be, conduct the proceedings as if they were an inquiry relating to the *in genere* but shall comply with the formalities and procedures indicated by the requesting foreign authority unless they are contrary to the fundamental principles of Maltese law and shall have the same powers, or as nearly as may be, as are by law vested in the Court of Magistrates as court of criminal inquiry, as well as the powers, or as nearly as may be, as are by law conferred upon him in connection with an inquiry relating to the *"in genere"*: provided that a magistrate may not

Examination of witnesses in connection with offences cognizable by courts of justice outside Malta. Articles 1 and 2 of Ord. IV of 1872 incorporated. Amended by: L.N. 4 of 1963; VIII. 1990.3. Substituted by: III. 2002.152. Amended by: XIII. 2002.9; IX. 2003.127; XXXI. 2007.25; XI. 2009.11; VII. 2010.36.

arrest any person, for the purpose of giving effect to an order made or given under article 554(2), or upon reasonable suspicion that such person has committed an offence, unless the facts amounting to the offence which such person is accused or suspected to have committed amount also to an offence which may be prosecuted in Malta.

(5A) If the request cannot, or cannot fully, be executed in accordance with the formalities, procedures or deadlines indicated by the requesting foreign authority, the requesting authority shall be informed indicating the estimated time within which or the conditions under which execution of the request may be possible.

(6) Where the request of the foreign authority is for the hearing of a witness or expert by videoconference, the provisions of subarticles (7) to (12), both inclusive, shall apply.

(7) The magistrate shall summon the person to be heard to appear at the time and place equipped with videoconference facilities appointed for the purpose by the magistrate. The magistrate shall give effect to any measures for the protection of the person to be heard which the Attorney General may declare to have been agreed upon with the requesting foreign authority.

(8) The magistrate shall conduct the hearing and where necessary the magistrate shall appoint an interpreter to assist during the hearing. The magistrate present shall ensure that the person to be heard is identified and that the proceedings take place and continue at all times in conformity with the fundamental principles of the law of Malta.

(9) The person to be heard may claim the right not to testify which would accrue to him or her under the law of Malta or under the law of the country of the requesting foreign authority.

(10) Subject to any measures for the protection of the person to be heard referred to in subarticle (7), the magistrate shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document containing the record of the minutes shall be transmitted to the Attorney General to be forwarded to the requesting foreign authority.

(11) The following shall *mutatis mutandis* apply to the person to be heard under the provisions of subarticle (6):

- (a) the provisions of article 522, where the person to be heard refuses to testify when required to do so by the magistrate;
- (b) the provisions of articles 104, 105, 107, 108 and 109, as the case may be, where the person to be heard does not testify to the truth, for this purpose the proceedings before the foreign authority shall be deemed to be proceedings taking place in Malta and the person to be heard shall be deemed to be a person testifying in those proceedings. For the purpose of determining the

applicable punishment as may be necessary in proceedings for perjury under this subarticle the criminal fact being inquired into or adjudicated by the requesting foreign authority shall be deemed to be liable to the punishment to which it would have been liable had the same fact taken place in Malta or within the jurisdiction of the same Maltese criminal courts.

(12) The provisions of subarticles (6) to (11), both inclusive, shall apply where the person to be heard is a person accused in the country of the requesting foreign authority provided that the hearing shall only take place with the consent of the person to be heard and that all the rules of evidence and procedure which would apply to the testimony of a person accused in criminal proceedings in Malta would also apply to the testimony of the person accused to be heard under this article.

(13) The provisions of this article shall also apply *mutatis mutandis* where the request of the foreign authority is for the hearing of a witness or expert by telephone conference: provided that the witness or expert consents to the hearing.

(14) Where the Attorney General has made a declaration as provided in subarticle (2), foreign officials designated by the foreign authority or international court which made the request shall be entitled to be present for the examination of witnesses or when investigative measures are being taken.

Sub-title II

Added by:
XI. 1900.90.

OF EXPERTS

650. (1) In all cases where for the examination of any person or thing special knowledge or skill is required, a reference to experts shall be ordered.

Reference to experts.
Added by:
XI.1900.90.
Amended by:
XXX.1934.22;
L.N. 4 of 1963;
XXXI.1966.2;
III.1971.19;
VIII. 1990.3;
XXXII. 1997.3;
XIII. 2005.5.

(2) The experts shall be chosen by the court:

Choice of experts.

Provided that the Minister responsible for Justice may, after consultation with the Chief Justice, appoint one or more persons as official experts for the purpose of reporting on matters required by other provisions of this Code requiring special technical skill or knowledge, and when such persons are appointed, the court shall choose such experts from among those persons who may be on a roster system.

Appointment of official experts.

(3) For the purposes of article 533, the fees of the official experts for services rendered in any particular case shall be taxed by the registrar in the same manner provided for the taxation of the

Taxation of fees of official experts.

ANNEX VI

PART VI

GENERAL

20. Licences, permits or authorities for the purposes of this Ordinance other than Part V thereof may be issued or granted by such person on such terms and subject to such conditions (including in the case of a licence the payment of a fee) as the Minister responsible for public health may by rule prescribe.

Licences.
Amended by:
L.N. 4 of 1963;
XI. 1977.2.

21. (1) Any Police officer of a rank not inferior to that of sub-inspector shall, for the purposes of the execution of this Ordinance, have power to enter the premises of any person carrying on the business of a producer, manufacturer, seller or distributor of any drugs to which this Ordinance applies and to demand the production of and to inspect any books or documents relating to dealings in any such drugs and to inspect any stocks of any such drugs.

Power of
inspection and
seizure.
Amended by:
XXIII. 1980.4.

(2) If any person wilfully delays or obstructs any person in the exercise of his powers under this article or fails to produce or conceals or attempts to conceal any such books, stocks, drugs or documents as aforesaid, he shall be guilty of an offence against this Ordinance.

22. (1) Any person -

- (a) who acts in contravention of, or fails to comply with, any provision of this Ordinance; or
- (b) who acts in contravention of, or fails to comply with, the conditions of any licence or permit issued or authority granted under or in pursuance of this Ordinance; or
- (c) who for the purpose of obtaining, whether for himself or for any other person, the issue, grant or renewal of any such licence, permit or authority as aforesaid, makes any declaration, or statement which is false in any particular, or knowingly utters, produces or makes use of any such declaration or statement or any document containing the same; or
- (d) who in Malta aids, abets, counsels or procures the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence, or does any act preparatory to, or in furtherance of, any act which if committed in Malta would constitute an offence against this Ordinance; or
- (e) being a citizen of Malta or a permanent resident in Malta, who in any place outside Malta does any act which if committed in Malta would constitute an offence of selling or dealing in a drug against this Ordinance or an offence under paragraph (f); or

Offences and
penalties.
Amended by:
XLVIII. 1975.2;
XXIII. 1980.5;
XIII. 1983.5;
VIII. 1986.2;
VIII. 1990.3;
VI. 1994.11;
XVI. 1996.2;
II. 1998.8;
VI. 2000.2;
XVI. 2006.29;
L.N. 409 of 2007;
XXXI. 2007.35.

- (f) who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance or who promotes, constitutes, organises or finances the conspiracy,

shall be guilty of an offence against this Ordinance.

Cap. 217. For the purposes of paragraph (e), the expression "permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the [Immigration Act](#).

(1A) The conspiracy referred to in paragraphs (d) and (f) of the preceding subarticle shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(1B) For the purposes of this Ordinance the word "dealing" (with its grammatical variations and cognate expressions) with reference to dealing in a drug, includes cultivation, importation in such circumstances that the Court is satisfied that such importation was not for the exclusive use of the offender, manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug contrary to the provisions of this Ordinance:

Cap. 446.
Cap. 9. Provided that in the case of importation in such circumstances that the Court is satisfied that such importation was for the exclusive use of the offender, the provisions of the [Probation Act](#) and of article 21 of the [Criminal Code](#) shall not apply.

(1C) (a) A person shall also be guilty of an offence against this Ordinance who uses, transfers the possession of, sends or delivers to any person or place, acquires, receives, keeps, transports, transmits, alters, disposes of or otherwise deals with, in any manner or by any means, any money, property (whether movable or immovable) or any proceeds of any such money or property with intent to conceal or convert that money or property or those proceeds and knowing or suspecting that all or a part of that money or property, or of those proceeds, was obtained or received, directly or indirectly, as a result of -

(i) the commission of any of the offences mentioned in subarticle (1) or subarticle (1D)(a) or in subarticle (1E); or

(ii) any act of commission or omission in any place outside these Islands which if committed in these Islands would constitute an offence under subarticle (1) or subarticle (1D)(a).

(b) In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property

or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.

(1D) (a) A person shall also be guilty of an offence against this Ordinance who sells or otherwise deals in a substance mentioned in the Third Schedule hereto knowing or suspecting that the substance is to be used in or for the production of a drug contrary to the provisions of this Ordinance; and the definition of "dealing" in subarticle (1B) shall apply, *mutatis mutandis*, to this subarticle.

(b) The Minister responsible for public health may make rules for controlling the manufacture, sale, possession, distribution, importation and exportation of any of the substances mentioned in the Third Schedule hereto and in particular, but without prejudice to the generality of the foregoing, for any of the purposes mentioned in article 9(1)(a) to (e), in so far as applicable, the reference to drugs in those paragraphs being construed as a reference to the said substances.

(1E) A person shall also be guilty of an offence against this Ordinance who manufactures, transports or distributes any equipment or materials knowing that they are to be used in or for the cultivation, production or manufacture of any drug contrary to the provisions of this Ordinance and any such conduct as is prohibited under this subarticle shall be deemed for the purposes of this Ordinance as constituting an offence of selling or dealing in a drug against this Ordinance.

(1F) Any person who lands in Malta and is in possession of a drug against the provisions of this Ordinance shall be exempt from any criminal liability if the conditions mentioned in subarticle (1G) are satisfied.

(1G) The conditions to which reference is made in subarticle (1F) are the following:

- (a) the person in possession of the drug is not ordinarily resident in Malta and has come from a place outside Malta;
- (b) at the first opportunity after landing in Malta that person surrenders the said drug to a Police officer or to a customs officer and declares that the same drug was for his exclusive personal use; and
- (c) the said drug is in such a quantity and is in possession of that person under such circumstances as to reasonably lead to the inference that the same drug was destined for the exclusive personal use of that person.

(2) Every person charged with an offence against this Ordinance shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall, in

respect of each offence, be liable -

(a) on conviction by the Criminal Court -

- (i) where the offence is one under article 4 or under article 8(c) or consists in selling or dealing in a drug contrary to the provisions of this Ordinance or in an offence under subarticle (1)(f), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subarticles (1C) or (1D) or (1E), to imprisonment for life:

Provided that:

- (aa) where the court is of the opinion that, when it takes into account the age of the offender, the previous conduct of the offender, the quantity of the drug and the nature and quantity of the equipment or materials, if any, involved in the offence and all other circumstances of the offence, the punishment of imprisonment for life would not be appropriate; or

- (bb) where the verdict of the jury is not unanimous,

then the Court may sentence the person convicted to the punishment of imprisonment for a term of not less than four years but not exceeding thirty years and to a fine (*multa*) of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67); and

- (ii) for any other offence to imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) but not exceeding twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73); or

(b) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) -

- (i) where the offence is one under article 4 or under article 8(c) or consists in selling or dealing in a drug contrary to the provisions of this Ordinance or in an offence under subarticle (1)(f), or of the offence of possession of a drug, contrary to the

provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subarticles (1C) or (1D) or (1E), to imprisonment for a term of not less than six months but not exceeding ten years and to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) but not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87); and

- (ii) for any other offence to imprisonment for a term of not less than three months but not exceeding twelve months or to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) but not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to both such imprisonment and fine,

and in every case of conviction for an offence against this Ordinance, all articles in respect of which the offence was committed shall be forfeited to the Government, and any such forfeited article shall, if the court so orders, be destroyed or otherwise disposed of as may be provided in the order:

Provided that, for the purposes of this subarticle, when the person charged has not attained the age of sixteen years and unless he is charged jointly with any other person who has attained the age of sixteen years, any reference to the Court of Magistrates (Malta) or to the Court of Magistrates (Gozo) shall be construed as a reference to the Juvenile Court:

Provided further that where a person is convicted as provided in paragraph (a)(i) or paragraph (b)(i) and the offence has taken place in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet, or the offence consists in the sale, supply, administration or offer to do any of these acts, to a minor, to a woman with child or to a person who is following a programme for cure or rehabilitation from drug dependence, the punishment shall be increased by one degree.

(3) Where an offence against this Ordinance in respect of which a person has been found guilty consists in or refers to the cultivation of a plant in a field, garden or similar tenement, the court shall, in addition to any other punishment order the forfeiture in favour of the Government of the entire immovable property in which the offence took place as described in the bill of indictment or in the charge:

Provided that where none of the persons found guilty as aforesaid is an absolute owner or co-owner or bare owner of the immovable property, and the offender holds it on any other title, whether real or otherwise, the court shall order the forfeiture of

such title in favour of the Government.

(3A) Where an offence against this Ordinance in respect of which a person has been found guilty consists in any of the offences referred to in article 24A(1) the court shall, in addition to any other punishment, in its sentence or at any time thereafter, at the request of the prosecution -

- (a) where any immovable property, in Malta or in any place outside Malta, has been used for the keeping or storing, or for the selling or dealing in such drug, as described in the bill of indictment or in the charge, order the forfeiture in favour of the Government of any real title which the offender holds on such immovable property;
- (b) where the offender is not the absolute owner but holds any other real title on the immovable property, or has a title, other than a real title, in virtue of which he has the control of or a right of access to such property, the court shall order the offender to pay a fine (*multa*) of not less than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) but not exceeding sixty-nine thousand and eight hundred and eighty-one euro and twenty cents (69,881.20) as the court shall determine after taking into account the value of the immovable property and the value of the real title thereon, if any, forfeited as aforesaid;
- (c) saving the provisions of the [Criminal Code](#) and of the [Customs Ordinance](#), make an order whereby the provisions of paragraphs (a) and (b) shall be applied *mutatis mutandis* to or in respect of any vessel or vehicle, in Malta or in any place outside Malta, used for the keeping or storing, or for the selling or dealing in such drug; and
- (d) order the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of the person so found guilty even if the immovable property has since the offender was charged passed into the hands of third parties, and even if the said monies, movable property or immovable property are situated in any place outside Malta.

(3B) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the [Code of Organization and Civil Procedure](#).

Cap. 9.
Cap. 37.

Cap. 12.

(4) No person shall, on conviction for any offence of contravening or failing to comply with any rule under this Ordinance relating to the keeping of books or the issuing or dispensing of prescriptions containing drugs to which this Ordinance applies, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding one hundred and sixteen euro and forty-seven cents (116.47), if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to or committed in the course of or in connection with the commission or intended commission of any other offence against this Ordinance.

(5) If any person attempts to commit an offence against this Ordinance, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable on conviction to the same punishment and forfeiture as if he had committed an offence under this Ordinance.

(6) Where the offence in respect of which a person is found guilty under this Ordinance consists in the production, selling or otherwise dealing in a drug mentioned in this Ordinance, and such person is either licensed under this Ordinance or under the [Medical and Kindred Professions Ordinance](#), or is in possession of a warrant issued under that Ordinance to practise a profession, or a calling or a trade, or the offence is committed in a place licensed under this Ordinance or the Ordinance aforesaid, the court shall, at the request of the prosecution and in addition to any other punishment, order the revocation of such licence or warrant, and upon such order being made any such licence or warrant shall cease to have effect for all purposes of law and in particular for the purpose of this Ordinance and of the Ordinance aforesaid.

Cap. 31.

(7) Any decision as is mentioned in subarticles (3) and (3A) ordering the forfeiture of immovable property or of any title to such property shall be deemed to be and shall be enforceable as a civil judgment transferring that title in favour of the Government, and the Attorney General shall, for the purposes of article 239 of the [Code of Organization and Civil Procedure](#), be considered as the interested party that may obtain the registration of such transfer.

Cap. 12.

(8) Where it results to the court that the offender, other than an offender convicted of an offence as is referred to in paragraph (a)(i) or subarticle (2)(b)(i), is in need of care and assistance for his rehabilitation from dependence on any dangerous drug (as defined in article 12), the court may, instead of applying any of the punishments provided for in the foregoing subarticles, place the offender on probation in accordance with the provisions of the [Probation Act](#), so however that such probation order may be made notwithstanding that the offender, who has attained the age of fourteen years, has not expressed his willingness to comply with the requirements thereof as provided in article 7 of that Act.

Cap. 446.

(9) The provisions of articles 21 and 28A of the [Criminal Code](#) and the provisions of the [Probation Act](#) shall not be applicable in respect of any person convicted of an offence as is referred to in subarticle (2)(a)(i) or subarticle (2)(b)(i):

Cap. 9.
Cap. 446.

Cap. 446.

Provided that where, in respect of any offence mentioned in this subarticle, after considering all the circumstances of the case including the amount and nature of the drug involved, the character of the person concerned, the number and nature of any previous convictions, including convictions in respect of which an order was made under the [Probation Act](#), the court is of the opinion that the offender intended to consume the drug on the spot with others, the court may decide not to apply the provisions of this subarticle:

Provided further that an offender may only benefit once from the provisions of the above proviso.

(10) Where, in the case of a person convicted of an offence referred to in subarticle (9), the court is satisfied that such person is in need of treatment for his rehabilitation from dependence on any dangerous drug (as defined in article 12) and -

- (a) the Minister responsible for public health certifies in writing that such treatment may be given in prison, and
- (b) the person so convicted agrees to submit to that treatment,

the court may, in passing sentence order that he be given such treatment in prison (hereinafter referred to as an "order for treatment") and for such period of time (hereinafter referred to as the "treatment period") as may be specified in the order (being not more than the period of time, as reduced in accordance with this subarticle, which the person convicted is to serve in prison) and the punishment of imprisonment which would, but for the provisions of this subarticle, have been awarded (hereinafter referred to as the "original punishment"), and which shall be expressly mentioned in the sentence, shall be reduced by the court by not more than one third.

(11) If during the treatment period, the court which made the order for treatment is satisfied, on an application by the Attorney General that the person to whom the order refers has, without valid reason (the proof whereof shall lie on such person), refused the treatment or has conducted himself in a manner as to make his treatment, or that of other prisoners, difficult or ineffective, it shall revoke such order and shall direct that the original punishment be served.

(12) The court which made the order for treatment shall, on an application made at any time during the treatment period by the person to whom the order refers requesting the revocation of that order, revoke such order and shall direct that the original punishment be served.

(13) The court which made the order for treatment may, on an application made at any time during the treatment period by the person to whom the order refers or by the Attorney General, discharge such order if it is satisfied that the treatment is no longer appropriate.

(14) For the purposes of subarticles (10) to (13) -

- (a) any decision of the court which revokes an order for

treatment and directs that the original punishment be served shall not be subject to appeal;

- (b) where an order for treatment is confirmed or varied by the Court of Criminal Appeal, the order shall be deemed to have been made by the said court;
- (c) an order for treatment shall, unless it has been revoked or discharged or has ceased to have effect earlier, cease to have effect upon the expiration or remission of the punishment of imprisonment for the offence in respect of which the order was made.

(15) Where an offence against this Ordinance in respect of which a person has been found guilty consists in any of the offences referred to in article 24A(1) or the offence of possession of a drug contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, the provisions of articles 121D and 248E(4) of the [Criminal Code](#) shall apply *mutatis mutandis*.

Cap. 9.

22A. (1) Where a person is charged under article 22 of this Ordinance, with selling or dealing in a drug, or with promoting, constituting, organising or financing a conspiracy under subarticle (1)(f) of that article, or with the offence in subarticle (1C) of the same article, or with the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, the court shall at the request of the prosecution make an order -

Freezing of property of person accused.
Added by:
VIII.1986.3.
Amended by:
VI. 2000.3;
L.N. 409 of 2007;
XXXI. 2007.36.

- (a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and
- (b) prohibiting the accused from transferring or otherwise disposing of any movable or immovable property:

Provided that the court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the court may also -

- (a) authorise the payment of debts which are due by the accused to *bona fide* creditors and which were contracted before such order was made; and
- (b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

- (a) become operative and binding on all third parties

immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property, and

- (b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The court may for particular circumstances vary such order, and the provisions of the foregoing subarticles shall apply to such order as so varied.

(4) Every such order shall contain the name and surname of the accused, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and his identity card number.

(5) Where any money is or becomes due to the accused from any person while such order is in force such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the accused.

(6) When such order ceases to be in force as provided in subarticle (2)(b) the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

Penalty for
contravening court
order.

Added by:

VIII. 1986.3.

Amended by:

VI. 1994.12;

L.N. 409 of 2007;

XXXI. 2007.37.

22B. Any person who acts in contravention of a court order mentioned in article 22A shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87), or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and the court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order. Any transfer or other disposal of any immovable property made in contravention of the said court order shall be null and without effect at law.

Suspension Order.

Added by:

VI. 2000.4.

Cap. 31.

22B. bis (1) Where a person is charged as provided in article 22A(1) and such person is a person as is referred to in article 22(6) or is a person in possession of a licence, permit or authority issued to him by a competent authority in or in connection with the exercise of any art, trade, calling or other occupation and the offence is committed in a place licensed under this Ordinance, under the [Medical and Kindred Professions Ordinance](#) or under any other law, the Court may, without prejudice to any other order that it may make under the provisions of this article, at the request of the prosecution make an order, hereinafter referred to as a "suspension order", suspending such licence, permit or authority.

(2) The suspension order shall remain in force for the whole duration of the proceedings until final judgement.

(3) Any person who does any act for the doing of which a licence, permit or authority is required under any law and such act is done when that licence, permit or authority had been suspended by virtue of a suspension order shall be deemed to have so acted without the required licence, permit or authority.

22C. (1) Where an order of forfeiture is made under of subarticle 22(3A)(d), the person found guilty, or the third party therein mentioned, may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of any offence under this Ordinance (whether or not so adjudged by a court of criminal justice) nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

Special court proceedings.
Added by:
VIII. 1986.3.
Amended by:
VI.1994.13.

(2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

(3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.

(6) The court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

(7) Saving the preceding provisions of this article, the provisions of the [Code of Organization and Civil Procedure](#) relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.

Cap. 12.

(8) Any judgment revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

22D. When the court allows the demand for a declaration as provided in article 22C(1) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period

Reversion of property ceasing to be forfeited.
Added by:
VIII. 1986.3.

of its forfeiture.

Destruction of
drugs after drawing
up a *procès-
verbal*.
Added by:
VIII.1986.4.
Amended by:
VI.1994.14.

22E. (1) At the commencement of proceedings under article 22, the drug in respect of which a person is charged shall be exhibited materially in court, as far as possible, and the following procedure shall be followed.

(2) The court shall appoint a photographic expert to take pictures, as shall be indicated by the court, of the drug in its containers, wrappings, packages or receptacles, and shall also appoint an expert to analyse and establish the exact quantity, kind and form and give the most accurate description of the drug, and to take samples thereof for preservation as evidence.

(3) The experts shall, as early as possible, file in court and confirm on oath a written report of their findings, together with the photographs and samples aforementioned.

(4) The court, upon being satisfied with such report or reports shall proceed to have the drug, other than the samples, destroyed under its supervision and draw up a *procès-verbal*.

(5) The *procès-verbal* shall be deemed to have been regularly drawn up if it contains a short description of the drug, the experts report or reports are attached thereto and it is signed by the court.

(6) The *procès-verbal* drawn up as aforesaid shall be evidence of its contents in any criminal proceedings.

(7) The provisions of subarticle (2) shall not apply where the drug has already been photographed and analysed by experts appointed in the course of the inquiry relating to the *in genere*, unless the court, in the particular circumstances of the case, shall deem it necessary to have the drug photographed and analysed again.

(8) The omission of any of the precautions or formalities referred to in this article shall be no bar to proving, in any manner allowed by law, the facts to which such precaution or formality relates.

Definition of the
expression
"corresponding
law".
Substituted by:
VI.1994.15.

23. For the purposes of articles 22 and 30B the expression "corresponding law" means any law stated in a certificate purporting to be issued by or on behalf of the Government of any country outside Malta to be a law providing, whether exclusively or otherwise, for the control or regulation in that country of the manufacture, sale, use, possession, transfer, export or import of, or dealing in, dangerous drugs, narcotics or psychotropic substances; and any statement in any such certificate as to the effect of the law mentioned in the certificate, or any statement in any such certificate that any facts constitute an offence against that law, shall be conclusive.

Power of arrest.

24. Any Police officer may arrest without warrant any person who has committed, or attempted to commit, or is reasonably suspected by the officer of having committed or attempted to commit, an offence against this Ordinance, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to and

cannot be ascertained by him.

24A. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect"):

Additional powers of investigation.

Added by:

VI. 1994.16.

Amended by:

XVI. 1996.3;

VI. 2000.5;

L.N. 409 of 2007;

XXXI. 2007.38.

- (a) is guilty of selling or dealing in a drug contrary to the provisions of this Ordinance, or
- (b) is guilty of any of the offences mentioned in article 22(1)(e) or (f), or
- (c) is guilty of an offence mentioned in article 22(1)(d) with reference to any of the offences referred to in the foregoing paragraphs of this subarticle, or
- (d) is guilty of the offence mentioned in article 22(1C), or
- (e) is guilty of the offence of possession of a drug contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender,

he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporate) named in the order who appears to be in possession of particular material or material of a particular description which is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with, the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for and seizing such material.

(2) Where an investigation order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, makes any disclosure likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

(3) An investigation order:

- (a) shall not confer any right to production of, access to, or search for communications between an advocate or legal procurator and his client which would in legal proceedings be protected from disclosure by article 642(1) of the [Criminal Code](#) or by article 588(1) of the [Code of Organization and Civil Procedure](#);
- (b) shall, without prejudice to the provisions of the

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foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and

- (c) may be made in relation to material in the possession of any government department.

(4) Where the material to which an application under subarticle (1) relates consists of information contained in a computer, the investigation order shall have effect as an order to produce the material or give access to such material in a form in which it can be taken away and in which it is visible and legible.

(5) Any person who, having been ordered to produce or grant access to material as provided in subarticle (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

(6) Together with or separately from an application for an investigation order, the Attorney General may, in the circumstances mentioned in subarticle (1)(a) to (e), apply to the Criminal Court for an order (hereinafter referred to as an "attachment order") -

- (a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect,
- (b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other moveable property so attached, and
- (c) prohibiting the suspect from transferring or otherwise disposing of any moveable or immoveable property.

(6A) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.

- (7) Before making an investigation order or an attachment

order the court may require to hear the Attorney General in chambers and shall not make such order -

- (a) unless it concurs with the Attorney General that there is reasonable cause as provided in subarticle (1); and
- (b) in the case of an investigation order, unless the court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates-
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of communications referred to in subarticle (3)(a).

(8) The provisions of article 381(1)(a), (b) and (e) and of article 382(1) of the [Code of Organization and Civil Procedure](#) shall, *mutatis mutandis*, apply to the attachment order.

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(9) An attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police not below the rank of inspector.

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other moveable property attached as provided in subarticle (6)(a) or in the transfer or disposal by the suspect of any moveable or immoveable property in contravention of subarticle (6)(c), the fine shall always be at least twice the value of the money or property in question:

Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

(11) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in subarticle (9), cease to be operative on the expiration of thirty days from the date on which it is made; and the court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regards to any of the acts mentioned in subarticle (1)(a) to (e) is available:

Provided that the said period of thirty days shall be held in abeyance for such time as the suspect is away from these Islands

and the Attorney General informs of this fact the garnishee by notice in writing served in the manner provided for in subarticle (9).

(12) In the course of any investigation of an offence against this Ordinance, the Executive Police may request a magistrate to hear on oath any person who they believe may have information regarding such offence; and the magistrate shall forthwith hear that person on oath.

(13) For the purpose of hearing on oath a person as provided in subarticle (12) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a Court of Criminal Inquiry as well as the powers mentioned in article 554 of the [Criminal Code](#); provided that such hearing shall always take place behind closed doors.

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(14) It shall not be lawful for any court to issue a warrant of prohibitory injunction to stop the execution of an investigation, attachment or suspension order.

Powers of investigation in connection with offences cognizable by courts outside Malta.
Added by: XVI.1996.4.
Amended by: II. 1998.8; XXXI. 2007.39.

24B. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for investigations to take place in Malta in respect of a person (hereinafter referred to as "the suspect") suspected by that authority of an act or omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in article 24A(1)(a), (b), (c), (d) and (e), the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A shall *mutatis mutandis* apply to that application and to the suspect and to any investigation or attachment order made by the court as a result of that application.

(2) The words "investigation order" in the same article 24A(2) and (5) shall be read and construed as including an investigation order made under the provisions of this article.

(3) The words "attachment order" in the same article 24A(6A) shall be read and construed as including an attachment order made under the provisions of this article.

Freezing of property of person accused with offences cognizable by Courts outside Malta.
Added by: XVI. 1996.4.
Amended by: XXXI. 2007.40.

24C. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused") charged or accused in proceedings before the courts of that place of an offence consisting in an act or an omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in article 24A(1)(a), (b), (c), (d) and (e), the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") having the same effect as an order as is referred to in article 22A(1) and the provisions of the said article 22A shall, subject to the following provisions of this article, apply *mutatis mutandis* to that order.

(2) The first proviso of article 22A(1) shall not apply to a

freezing order made under this article unless:

- (a) the accused is present in Malta on the date the order is made; or
- (b) the Attorney General or any other interested person present in Malta applies to the court, before or after the order is made, for the application of that proviso in which case the court shall only apply the proviso to the extent that it is satisfied that the application of the proviso is necessary to allow the accused and his family a decent living.

(3) In the case of a freezing order under this article it shall be sufficient that the order contains at least four of the particulars referred to in article 22A(4) and may also contain any other particulars, including the passport number, of the accused as may be useful to identify the accused.

(4) Subject to the provisions of subarticle (5), a freezing order under this article shall remain in force for a period of six months from the date on which it is made but shall be renewed by the court for further periods of six months upon an application for that purpose by the Attorney General and upon the court being satisfied that:

- (a) the conditions which led to the making of the order still exist; or
- (b) that the accused has been convicted of an offence as is referred to in subarticle (1) in the proceedings referred to in the same subarticle and the sentence in regard to the accused in those proceedings or any confiscation order consequential or accessory thereto, whether made in civil or criminal proceedings, has not been executed:

Provided that where the accused has been convicted as aforesaid but no confiscation order has been made in the sentence in respect of that conviction the freezing order shall nevertheless be renewed as requested by the Attorney General where the court is satisfied that civil or criminal proceedings for the making of such an order are pending or are imminent.

(5) Any freezing order under this article may be revoked by the Court before the expiration of the period laid down in subarticle (4):

- (a) at the request of the Attorney General; or
- (b) at the request of any interested person and after hearing the Attorney General upon the court being satisfied:
 - (i) that the conditions which led to the making of the order no longer exist; or
 - (ii) that there has been a final decision in the proceedings referred to in subarticle (1) by virtue of which the accused has not been found guilty of any offence as is referred to in the same

subarticle.

(6) Article 22B shall also apply to any person who acts in contravention of a freezing order under this article.

Enforcement of
confiscation orders
made by courts
outside Malta
following
conviction for
offences
cognizable by
those courts.
Added by:
XVI. 1996.4.
Amended by:
XXXI. 2007.41.

24D. (1) A confiscation order made by a court outside Malta shall be enforceable in Malta in accordance with the following provisions of this article.

(2) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the enforcement in Malta of a confiscation order made by a competent court in that place (hereinafter referred to as a "foreign confiscation order") the Attorney General may bring an action in the First Hall of the Civil Court by an application containing a demand that the enforcement in Malta of the foreign confiscation order be ordered.

(3) The Attorney General shall attach to the application a copy of the relevant foreign confiscation order together with all such documents in support of the demand as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The application shall be served on the person whose property the foreign confiscation order purports to confiscate who shall file his reply within fifteen days after the date of the service of the application. The reply shall contain a list of the witnesses which the respondent intends to produce stating in respect of each the proof which he intends to make and the respondent shall attach to the reply all such documents he intends to produce in evidence as it may be in his power to produce.

(5) The court shall without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(6) The court shall not order the enforcement in Malta of the foreign confiscation order if:

- (a) the respondent had not been notified of the proceedings which led to the making of the relevant foreign confiscation order so as not to have had an adequate opportunity to contest the making of the same order;
- (b) the foreign confiscation order was obtained by fraud on the part of any person to the prejudice of the respondent;
- (c) the foreign confiscation order contains any disposition contrary to the public policy, or the internal public law in force in Malta;
- (d) the foreign confiscation order contains contradictory dispositions.

(7) A decision by the court ordering the enforcement of a foreign confiscation order shall have the effect of forfeiting in favour of the Government of Malta all things and property

whatsoever situated in Malta the confiscation of which had been ordered in the foreign confiscation order subject to any directions which the Government of Malta may give providing for the further disposal of the same things and property so forfeited.

(8) The decision ordering the enforcement of a foreign confiscation order which provides for the forfeiture of immovable property or of any title to such property shall have the effect of transferring that immovable property or that title to the Government of Malta and for the purposes of article 239 of the [Code of Organization and Civil Procedure](#) the Attorney General shall be considered as the interested party that may obtain the registration of such transfer.

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(9) The decision ordering the enforcement of a foreign confiscation order which provides for the forfeiture of unspecified property the value of which corresponds to proceeds shall, upon being registered in the Public Registry Office, create as from the day of registration a hypothec in regard to the debt amounting to the said value.

(9A) When the foreign confiscation order consists in the requirement to pay a sum of money, the court shall convert the amount thereof into Maltese currency at the rate of exchange ruling on the date of the decision ordering the enforcement.

(10) Where the Attorney General receives a request as is referred to in subarticle (2) the Attorney General may, for the purpose of securing any or all of the property which the foreign confiscation order purports to confiscate or forfeit, apply to the Civil Court, First Hall, for the issue of all or any of the precautionary acts referred to in article 830 of the [Code of Organization and Civil Procedure](#):

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Provided that the aforesaid article 830(2) and article 836(1)(c), (d) and (e) and of the [Code of Organization and Civil Procedure](#) shall not apply to any precautionary act issued by virtue of this article.

(11) Saving the preceding provisions of this article, the provisions of the [Code of Organization and Civil Procedure](#) relating to proceedings before the Civil Court, First Hall, shall apply in relation to any application under this article.

(12) For the purposes of this article:

"confiscation order" includes any judgement, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of:

- (i) proceeds;
- (ii) property into which proceeds have been transformed or converted;
- (iii) property with which proceeds have been intermingled;
- (iv) income or other benefits derived from (i), (ii), and (iii);

- (v) property the value of which corresponds to proceeds; or
- (vi) dangerous drugs, materials and equipment or other instrumentalities used in or intended for use in any manner in a relevant offence;

"proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of a relevant offence and includes any income or other benefits derived from such property;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

"relevant offence" means any offence consisting in any act or omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in article 24A(1)(a), (b), (c), (d) and (e).

Meaning of importation and exportation under licence.

25. For the purposes of this Ordinance, any article shall be deemed to be imported under licence or exported under licence if the importer or exporter, as the case may be, is the holder of a licence or authorization issued under this Ordinance authorizing the importation or exportation, as the case may be, of the article and complies with the conditions, if any, of the licence or authorization, but not otherwise.

Burden of proof.
Amended by:
VI.1994.17.

26. (1) In any proceedings against any person for an offence against this Ordinance, it shall not be necessary to negative by evidence any licence, authority or other matter of exception or defence, and the burden of proving any such matter shall lie on the person seeking to avail himself thereof.

(2) When the offence charged is that of possession of, or of selling or dealing in, a drug contrary to the provisions of this Ordinance it shall not be a defence to such charge for the accused to prove that he believed that he was in possession of, or was selling or dealing in, some thing other than the drug mentioned in the charge if the possession of, or the selling or dealing in, that other thing would have been, in the circumstances, in breach of any other provision of this Ordinance or of any other law.

Detention during inquiry.
Added by:
VIII. 1986.5.
Amended by:
VIII. 1990.3;
VI.1994.18.
Cap. 9.

27. Notwithstanding the provisions of the [Criminal Code](#), and saving the extensions by the President of Malta of the term of the inquiry as provided in article 401(1) of that Code, where the Attorney General has directed that a person charged with selling or dealing in a drug against this Ordinance or charged with promoting, constituting, organising or financing a conspiracy under article 22(1)(f) or with the offence mentioned in article 22(1C) is to be tried in the Criminal Court, such person shall be arraigned under arrest and the Court of Magistrates as a court of criminal inquiry shall conclude the inquiry within the term of twenty days from the arraignment, and until the expiration of that term or, if the inquiry is concluded at an earlier date, until such day, the person accused

ANNEX VII

SUBSIDIARY LEGISLATION 365.07**UNITED NATIONS SANCTIONS (TALIBAN)
REGULATIONS**

21st December, 1999

LEGAL NOTICE 214 of 1999, as amended by Legal Notices 22 of 2001, 72 and 212 of 2002, and 425 of 2007.

1. The title of these regulations is the United Nations Sanctions (Taliban) Regulations. Citation.
2. In these regulations, unless the context otherwise requires - Interpretation.
"Act" means the National Interest (Enabling Powers) Act; Cap. 365.
"aircraft" includes a military aircraft of the Taliban or in the service of the Taliban or an aircraft which, not being a military aircraft, is owned, leased or operated by or on behalf of the Taliban;
"the Committee" means the Committee established in terms of paragraph 6 of the Resolution referred to in regulation 3;
"person" includes a body or other association of persons, whether such body or association is corporate or unincorporate;
"Taliban" means the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan.
3. (1) For the purpose of article 3(2) of the Act, Resolution number 1267 (1999) adopted by the Security Council of the United Nations on the 15th October, 1999, is published in Schedule A. Text of resolution 1267 (1999).
Amended by:
L.N. 22 of 2001;
L.N. 212 of 2002.
- (2) For the purposes of article 3(4) of the Act, Resolution number 1333 (2000) adopted by the Security Council of the United Nations on the 19th December, 2000, is published in Schedule B. Text of resolution 1333 (2000).
- (3) For the purposes of article 3(4) of the Act, Resolution number 1390 (2002) adopted by the Security Council of the United Nations on the 16th January, 2002, is published in Schedule C. Text of resolution 1390 (2002).
4. (1) Notwithstanding any other law, no citizen of Malta and no person in Malta shall - Application of sanctions.
Amended by:
L.N. 22 of 2001;
L.N. 72 of 2002;
L.N. 212 of 2002.
- (a) whether directly or indirectly, withdraw or attempt to withdraw or use or attempt to use any funds or other financial resources owned or controlled, directly or indirectly, by the Taliban, or by any undertaking owned or controlled by the Taliban, except as provided in the said Resolution;
- (b) whether directly or indirectly, pay or attempt to pay, to or for the benefit of the Taliban or any other undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorised by the Committee on a case by case basis on the

grounds of humanitarian need:

Provided that the provisions of paragraph (b) shall not apply to funds and other financial resources which may be authorized by the Committee on a case by case basis on the grounds of humanitarian need, provided that such funds and other financial resources are paid into separate accounts, with the Central Bank of Malta, exclusively for such funds.

(2) Notwithstanding any other law, no permission shall be granted for any aircraft to take off from, land in or overtly Malta if that aircraft has taken off from, or is destined to land at, a place in the territory of Afghanistan designated by the Committee as being under Taliban control:

Provided that the provisions of this subregulation shall not apply to flights which have been approved in advance by the Committee on the grounds of humanitarian need, including religious obligations such as the Hajj, or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan or is likely to promote Taliban compliance with the Resolutions referred to in regulation 3(1) and (2).

(3) Notwithstanding any other law, no citizen of Malta and no person in Malta shall:

- (a) whether directly or indirectly supply, sell or transfer to the territory of Afghanistan under Taliban control as designated by the Committee, any arms or related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment or spare parts for the aforementioned, or use any vessel or aircraft registered in Malta for the purposes referred to in this paragraph;
- (b) whether directly or indirectly, whether from Malta or elsewhere, sail, supply or transfer to the territory of Afghanistan under Taliban control as designated by the Committee, technical advice, assistance, or training related to the military activities of the armed personnel under the control of the Taliban:

Provided that the measures imposed by paragraphs (a) and (b) shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee, or to protective clothing, including flak jackets and military helmets, exported to Afghanistan by United Nations personnel, representatives of the media, and humanitarian workers for their personal use;

- (c) sell, supply or transfer the chemical acetic anhydride to any person in the territory of Afghanistan under Taliban control as designated by the Committee or to any person for the purpose of any activity carried on in, or operated from, the territory under Taliban control as designated by the Committee.

(4) Any funds or other financial assets or economic resources of Usama bin Laden and individuals and entities associated with him as designated by the Committee, including those in the Al-Qaida organization, and funds either derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, are immediately frozen and cannot be in any way transferred to the persons or entities herein before referred to.

(5) Notwithstanding any other law, no citizen of Malta and no person in Malta shall, whether directly or indirectly, transfer any funds or other financial or economic resources as are referred to in subregulation (4) the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden or individuals and entities associated with him, including the Al-Qaida organization.

(6) Notwithstanding any other law, no citizen of Malta and no person in Malta shall:

- (a) whether directly or indirectly supply, sell or transfer to the individuals, groups, undertakings or entities as designated by the Committee, any arms or related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, or spare parts for the aforementioned, or use any vessel or aircraft registered in Malta for the purposes referred to in this paragraph;
- (b) whether directly or indirectly, whether from Malta or elsewhere, sell, supply or transfer to the individuals, groups, undertakings or entities as designated by the Committee, technical advice, assistance or training related to military activities.

5. Any person found guilty of an offence against these regulations shall, on conviction, be liable to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67) or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

Penalty.
Amended by:
L.N. 212 of 2002;
L.N. 425 of 2007.

6. (1) Where any provision of any regulation made under the National Interest (Enabling Powers) Act, requires any person or any other entity, hereinafter "a subject person", to carry out the identification of funds or assets belonging to or in the possession of persons or entities as may be identified or identifiable under any regulations made in terms of the Act, or the freezing or blocking of such funds or assets, any subject person whose activities are subject to a licence, as described in subregulation (2), shall without delay notify in writing any relevant information it may have regarding persons, entities, assets or funds affected by the requirements of identification or freezing and blocking of funds to its licensing authority within the meaning of subregulation (2); and such licensing authority shall pass such relevant information to the Sanctions Monitoring Board established under the said Act, or to such other public authority as may be prescribed, for the purposes of the Act.

Notification about
freezing of assets.
Added by:
L.N. 212 of 2002.
Cap. 365.

(2) In this regulation -

Cap. 371.

Cap. 370.

Cap. 403.

Cap. 404.

Cap. 345.

(a) "licence" means any licence or other form of authorisation required to be issued under the Banking Act, the Investment Services Act, the Insurance Business Act, the Insurance Brokers and Other Intermediaries Act, the Financial Markets Act and such other licence or authorisation as may be prescribed from time to time; and

(b) "licensing authority" means the competent authority or other regulatory body authorised to issue any of the licences mentioned in paragraph (a).

Cap. 377.

(3) The disclosure of any information within the terms and requirements of this regulation shall not constitute a breach of the Professional Secrecy Act, where applicable, or of any other confidentiality obligation arising from a contract or any other law.

ANNEX VIII

SUBSIDIARY LEGISLATION 365.14**SECURITY COUNCIL RESOLUTIONS
(TERRORISM) REGULATIONS**

21st June, 2002

LEGAL NOTICE 156 of 2002.

1. The title of these regulations is the Security Council Resolutions (Terrorism) Regulations. Citation.

2. For the purposes of article 3(4) of the National Interest (Enabling Powers) Act, Resolutions number 1269 (1999), 1368 (2001), 1373 (2001) and 1390 (2002) adopted by the Security Council of the United Nations on the 19th October 1999, on the 12th September 2001, the 28th September 2001 and the 16th January 2002 respectively, are being hereby published in the Schedule. Text of resolutions.

3. (1) Whenever the Government receives a request for cooperation as envisaged in a resolution, referred to in regulation 2, in connection with a relevant vessel by a foreign Government to take appropriate measures with regard to such vessels reasonably suspected to carry terrorists or to carry equipment or other material on behalf of or in order to aid terrorism, the Attorney General may, with the concurrence of the Prime Minister, authorise the taking of the said measures by the competent authorities of the said foreign Government subject to such conditions as may be agreed between such authorities and the Attorney General with the concurrence of the Prime Minister. Cooperation in fight against terrorism.

(2) Where authorisation has been given by the Attorney General as aforesaid, the competent authorities so authorised, subject to the conditions as may have been agreed as provided in this regulation, shall be authorised to take the appropriate measures and to exercise on board the vessel in regard to which appropriate measures have been authorised under this regulation all such powers of arrest, entry, search and seizure vested in the executive police of Malta.

(3) For the purpose of this regulation, "relevant vessel" means a ship or any other floating craft of any description, including hovercrafts and submersible crafts, flying the flag of Malta, or displaying any marks of registry of Malta and exercising freedom of navigation according to international law; and "appropriate measures" with regard to a vessel include the boarding of and carrying a search on such vessel as well as any other appropriate action with respect to the vessel, persons and cargo on board such vessel, if evidence of involvement of the vessel in acts of, or acts aiding, terrorism is found.
