A Bill
entitled

A law to codify the administrative laws of Malta into one single Code, to set out the principles which ought to govern the public administration in its relationship with the individual, to establish an Administrative Court and to make ancillary and consequential provisions thereto.

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

Short title and commencement.

1. (1) This Law may be cited as the Administrative Code.

(2) This Code shall come into force on such a date as the Prime Minister may by notice in *The Malta Government Gazette* appoint, and different dates may be so appointed for different provisions or different purposes of this Code.

(3) A notice under subarticle (2) may make such transitional provisions as appear to the Prime Minister to be necessary or expedient in connection with the provisions thereby brought into force.

PRELIMINARY PROVISIONS

Interpretation.

2. (1) In this Code and in any law, unless the context otherwise requires –

"Act" means an Act of Parliament;

"Act of Parliament" means any law made by Parliament and includes any code, ordinance, proclamation, order, rule, regulation, bye-law, notice or other instrument having the force of law in Malta;

"Administrative Committee" means an Administrative Committee established in terms of article 47A of the Local Councils Act; [Cap. 363]

"amend" includes repeal, add to, change, modify and vary;

"Constitution" means the Constitution of Malta;

"contractor of the public administration" means a person, whether corporate or unincorporate, who has been awarded a contract by the public administration, whether following a public call for tenders or through a direct order or following the obtainment of quotations or directly through a call for works howsoever designated or made;

"contravene" includes fail to comply with;

"document" means any matter expressed or described on any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter;

"enactment" means a written law or any provision thereof;

“entity of the public administration” means any one of the entities listed in any of paragraphs of the definition of the expression “public administration”;

"function" includes power and duty;

"Gazette" means *The Malta Government Gazette* or any other official journal substituted therefor and published by order of the Government;

"Government" means the Government of Malta;

“Government of Malta” means the Cabinet of Ministers;

"House" means the House of Representatives of Malta;

"law" includes any instrument having the force of law and any unwritten rule of law, and "lawful" and "lawfully" shall be construed accordingly;

“local Council” means any local council established in terms of article 3 of the Local Councils Act; [Cap. 363]

“moral person” means a collective entity that is recognised by law or custom as an artificial person which is given certain legal rights and duties of a physical person;

"name" used in relation to an individual includes surname;

"Parliament" means the Parliament of Malta;

"pass", and any derivative thereof, used in relation to the word Act, includes the making of any instrument having the force of law;

“person” includes both a physical person and a moral person;

“physical person” means a human being, also known as a natural person;

“public administration” means any one of the following entities, or any subdivision thereof, of the public administration, namely:

(a) the Government of Malta;

(b) the public service;

(c) any local council, including an Administrative Committee;

(d) any public corporation;

(e) any partnership established in terms of the Companies Act (Cap. 386) in which the Government, or such public corporation, or a combination thereof, has a controlling interest or which is a subsidiary of such a partnership;

(f) any foundation established by the Government, by such a public corporation or such a partnership;

(g) chairmen and members of boards, committees, commissions and other decision making bodies, whether established by law or by an administrative act, which can take decisions affecting any person;

(h) an undertaking entrusted with the operation of services of an essential economic interest or having the character of a revenue producing monopoly;

(i) a public officer;

(j) any public administration employee who receives a salary from public funds irrespective of whether he is working with a government established foundation in terms of the Civil Code (Cap. 16) or a company incorporated in terms of the Companies Act (Cap. 386) but does not include a contractor of the public administration;

(k) the public sector,

but does not include the following persons or bodies:

(a) Parliament;

(b) the courts of justice, whether of civil or criminal jurisdiction;

(c) tribunals;

(d) the Law Commissioner;

(e) the Parliamentary Ombudsman and Commissioners for Administrative Investigations;

(f) the Auditor General;

(g) the Director of Public Prosecution;

(h) the Data Protection Commissioner;

(i) the Security Service;

“public administration employee” means an employee of the public administration and includes for the purpose of Section B, Section C and paragraph 27 of the Code of Ethics a public administration employee for three years following his retirement, resignation or dismissal from public administration employment;

“public officer” has the same meaning assigned to it by article 124 of the Constitution of Malta;

“public sector” includes officers, servants and employees howsoever designated:

(a) in the public service;

(b) of local councils;

(c) of any public corporation;

(d) of any agency of the Government;

(e) of any partnership established in terms of the Companies Act (Cap. 386) in which the Government or such public corporation, or a combination thereof, has a controlling interest or which is a subsidiary of such a partnership;

(f) any foundation established by the Government, by such a public corporation or such a partnership;

(g) chairmen and members of boards, committees, commissions and other decision making bodies, whether established by law or by an administrative act, who can take decisions affecting any member of the public;

“public service shall have the same meaning assigned to it in article 124(1) of the Constitution;

"repeal" used in relation to a law includes rescind, revoke, cancel and replace;

“statute” means a law;

"words" includes figures, graphs, tables, charts and symbols;

"writing" includes printing, lithography, typewriting, photography and any other mode of representing or reproducing words in a visible form.

(2) In this Code, and in every law passed either before or after the commencement of this Code, "Malta" means the Island of Malta, the Island of Gozo and other islands of the Maltese Archipelago, including the territorial waters thereof.

(3) For the purposes of this Code:

"the Islands of the Maltese Archipelago" include Malta, Gozo, Comino, Cominotto, Manoel Island, the Islands of St. Paul/Selmunett Island, Island at Qawra Point/Ta' Fra Ben Island and Delimara Island;

"the rocks of the Maltese Archipelago" include Fungus Rock, Barbaganni Rock, Fessej Rock, Ghallis Rock, Halfa Rock, Large Blue Lagoon Rocks, Mistra Rocks, Small Blue Lagoon Rocks, Tac-Cawl Rock, Sala Rock, Xrobb il-Ghagin Rock, and Ta' Taht il-Mazz Rock.

(4) Any reference in this Code and in every law to:

(a) "international law" shall be construed as a reference to international law interpreted where required in accordance with such international instruments, if any, to which Malta may from time to time be a party;

(b) Malta's international obligations shall be construed as a reference to the obligations of Malta assumed under international law;

(c) "crimes against humanity", "crimes against international law" and "political offence" shall have the same meaning assigned to them under customary international law in general and in international instruments to which Malta may be a party in particular.

(5) A reference in this Code and to every enactment, whether passed before or after the commencement of this Code, to a part, article or schedule shall, unless the contrary intention appears, be read as a reference to a part, article or schedule of that enactment; and references in any such enactment to a subarticle, paragraph or sub-paragraph shall, unless the contrary intention appears, be read as a reference to a subarticle, paragraph or sub-paragraph of the article, subarticles or paragraph, as the case may be, in which the reference occurs.

(6) The authentic text of international instruments to which Malta may be a party shall be that which the Minister may cause to be published on an internet site in exercise of the powers conferred by article 300 of this Code[1] and the text shall be consolidated with subsequent amendments, provided that a notice be published in the Gazette giving the address of the website wherein the said treaties or other international instruments are published.

Cap. 460.

(7) For the purpose of publication of the legal instruments of the European Union to which Malta has acceded in accordance with the European Union Act, publication of the legal instruments on the Official Journal, judicial notice of which is authorised according to article 5(2) of the said European Union Act, and the official websites of the European Union shall suffice for the requirements of publication and it will not be necessary for the

[1] Publication of laws on the internet - article 11A of the Statute Law Revision Act, 1980.

Minister to publish a notice to this effect with regard to all past, present or future legal instruments of the Union.

(8) No provision of this Code limiting its application, or that of any of its provisions, to certain Acts shall be construed as implying that other Acts, or any provision thereof or any expression occurring therein, are to be interpreted, construed or applied in a manner different from that provided in this Code.

Precedence of this Code over other laws and customs. Constitution to prevail over the Administrative Code.

3. (1) The provisions of this Code replace any rules of law, whether written or unwritten, and of custom on any matter regulated by this Code.

(2) This Code is subordinate to the Constitution of Malta, the European Convention Act and the European Union Act and none of the provisions of this Code shall have any precedence over the Constitution or the said enactments.

BOOK FIRST

OF GENERAL PRINCIPLES OF ADMINISTRATIVE JUSTICE

PART I

OF THE JURIDICAL NATURE OF ADMINISTRATIVE LAW

Title I

OF THE CLASSIFICATION OF LAWS

Sub-Title I

Of Classification of Law by Extent

Classification of laws by extent.

4. (1) A law is classified into a general law and a special law.

(2) A law is also classified into a local law and a personal law.

Lex generalis.

5. The general law is that which applies to the whole community, unlimited both in its area and as regards the person in its effects.

Lex specialis.

6. (1) A special law is directed to a special subject or a special class of objects and lays down provisions for the guidance of persons concerned with that subject-matter or to a particular class of persons who are to be either protected or affected adversely by the law.

(2) A special law creates special rights or special duties in relation to the special case dealt with it, apart from the general law of the land.

Classification of codes as general law.

7. By its very own nature, a code is a general law.

Limited law. Cap. 363.

8. (1) If a law is limited in its operation in respect of an area which is lesser than the entire area over which the body entrusted with law making powers concerned has jurisdiction, it is local.

(2) Bye-laws made under the Local Councils Act are an example of local laws.

Personal law.

9. Where a law is limited in respect of a person, it is personal law.

Sub-Title II

Of Classification of Law by Object

Classification of laws into primary and subsidiary legislation.

10. (1) A primary law shall be made by Parliament.

(2) Examples of primary law include codes, acts and ordinances.

(3) Unless delegated, laws shall be made by Parliament.

(4) Subsidiary legislation, also known as secondary legislation or delegated legislation, may be made by such person or body to whom Parliament delegates its law making function.

(5) Delegated legislation may only be made by a person or body specifically authorised to do so by law.

Classification of laws by object.

11. A law is classified by object when it is declaratory, enacting, codifying, consolidating, remedial, enabling, penal and fiscal.

Declaratory laws.

12. (1) A law is said to be declaratory when it is intended to remove a doubt as to the interpretation of any law or to set aside what the law making person or body deems to have been a judicial error.

(2) The intention of a declaratory act is usually retrospective. It is couched in such words as ‘shall be deemed to have always meant’ *et similia* (and the like).

(3) A law may be declaratory in effect though not in form.

Enacting laws.

13. An enacting law creates or regulates rights and obligations.

Codifying laws.

14. (1) A codifying law embodies in the form of a code the whole of the existing law contained in laws, case law and doctrine (the works of jurists).

(2) The object of a code is systematisation of the law.

Consolidating laws.

15. A consolidating law aims to bring together in one law the provisions contained in a number of laws with corrections and minor improvements as may be necessary to remove ambiguities and anomalies.

Distinction between codification and consolidation.

16. (1) The distinction between a codifying and a consolidating law is that in construing a consolidating statute, there is a rebuttable presumption, a *juris tantum* presumption, that there was no intention to alter the law but there is no such presumption in the case of codifying laws.

(2) Cases decided before a code are usually no authority for its interpretation, though they may be referred to for the purpose of ascertaining the previous state of the law.

(3) In interpreting the provisions of a consolidated law, the previous decisions are *prima facie* relied upon, but the presumption is rebuttable, and it may be shown that while consolidating the law, the law making body or person introduced material changes, and that the framework of the new law was different.

Remedial law. *Ubi jus ibi rimedium*.

17. (1) Where there is law, there is a remedy.

(2) The object of a remedial law is to rectify some grievance or to supply some defect in the existing law, either by providing a new remedy or by improving an existing remedy.

Penal laws.

18. (1) The object of a penal law is to penalise a person for transgressing its provisions.

(2) Penal law first creates a prohibition and then imposes a punishment for doing the prohibited act or omission.

Enabling laws.

19. An enabling law is one which makes it lawful to do something which would not otherwise be lawful.

Fiscal laws.

20. (1) A fiscal law is a law that imposes a financial burden upon a person.

(2) Such burden can be in the form of a direct tax or an indirect tax.

(3) Contributions, fees, levies and taxes are all forms of fiscal measures.

Sub-Title III

Of Classification of Laws by Nature of Sanction

Classification of laws by nature of sanction.

21. Law is classified by nature of sanction into: permissive, obligatory, absolute, mandatory, directory and imperative.

Permissive law.

22. A permissive law is one which allows something to be done without commanding that it be performed.

Obligatory law.

23. When a person empowered by an enabling law has no option but to exercise the power to do the thing which the law legalises, it is called obligatory.

Absolute or mandatory law.

24. An absolute or mandatory law is one whose provision or requirement must be strictly complied with and, in the absence of such non-comnpliance, the act done shall be null and void.

Directory law.

25. A directory law provides for the doing of certain things, or that certain things must be done in a particular manner, but provides for no sanction either in the non-performance of the act or non-observance of the formalities prescribed.

Distinction between a mandatory and a directory law.

26. (1) Both a mandatory law and a directory law enjoin the doing of certain things, or prescribe the formality for the doing of certain things.

(2) Non-compliance with the provisions of a mandatory law nullifies the act done.

(3) Non-compliance with the provisions of a directory law does not nullify the act done though it may entail other consequences.

Imperative laws.

27. When a law prescribes some formalities or conditions for the exercise of some powers or the performance of some duty, those formalities or conditions which are essential to the validity of the thing done are called imperative.

Sub-Title IV

Of Delegated Legislation

Delegatus not potest delegare.

28. (1) Unless otherwise provided by law, a person or body who has been authorised to make a subsidiary law may not delegate in turn his law making power bestowed upon him by Parliament to another person or body.

(2) The said person or body delegated by Parliament to make laws may make laws only within the authority granted to such person or body.

(3) Where a person or body makes a law which such person or body is not authorised to make or exceeds the powers such person or body has been authorised to exercise, that law shall be null and void to the extent that it is not so authorised to be made.

Henry VIII Clauses.

29. (1) Parliament shall apply Henry VIII clauses only by way of exception.

(2) A Henry VIII clause may be applied only in those cases where Parliament enacts a law and authorises a person or body to amend primary law to bring primary law in conformity with a new law.

(3) Parliament may impose restrictions upon the making of a Henry VIII clause. Such restrictions may include the following:

(a) that vested rights are not adversely effected;

(b) that the act of delegation does not authorise a person or body to make retroactive legislation;

(c) that the act of delegation does not authorise a person or body to exercise that law making function after a certain date to be specified in the Henry VIII clause elapses;

(d) that Parliament reserves the right to annul or amend any subsidiary law when made and during such time as Parliament may determine;

(e) that Parliament may at any time in its discretion revoke the act of delegation of power or assign such delegation to another person or body or exercise such law making function itself or may revoke such delegation and confer such power upon itself or any Committee or officer of the House;

(f) that Parliament may impose other conditions in the provision delegating law making functions to a person to body to comply with any of the following procedures:

(i) to prepare a draft subsidiary law and submit that draft subsidiary law for public consultation before the final text of that subsidiary law is approved by that person or body;

(ii) to require that person or body to consult with the public administration, civil society and such other organised interests or persons as Parliament may in the empowering provision determine;

(iii) such other requirements as Parliament may from time to time determine;

(g) that the act of delegation does not authorise the delegated body or person to impose administrative sanctions retroactively or to create criminal offences with retroactive effect.

Delegated legislation not to constitute an administrative act.

30. (1) It is hereby declared that delegated legislation does not constitute an administrative act for the purposes of judicial review of administrative action.

(2) This implies that delegated legislation may not be challenged under the provisions of judicial review of administrative action contained in Part II of Book Third of this Code.

(3) The Administrative Civil Court and, on appeal, the Constitutional Court, shall have jurisdiction to determine whether delegated legislation:

(a) runs counter to the parent law;

(b) is *ultra vires*;

(c) has not been authorised by the parent law;

(d) is in conflict with the Constitution of Malta, the European Convention Act, the European Union Act or the Diplomatic Privileges and Immunities Act;

(e) is otherwise unlawful.

Parliamentary scrutiny of delegated legislation.

31. (1) It shall be the duty of the Law Commissioner to scrutinise delegated legislation and to report to the Standing Committee on Recodification and Consolidation of Laws the following cases:

(a) where a subsidiary law imposes a charge on public revenues or contains provisions requiring payments to be made to any public authority in consideration of any licence, or any consent, or of any services rendered;

(b) where a subsidiary law purports to exclude the jurisdiction of the courts or tribunals or to do away with any remedy granted hitherto to any person;

(c) where a subsidiary law purports to have retrospective effect;

(d) where there appears to have been an unjustifiable delay in laying or publicising the subsidiary law;

(e) where there is doubt as to whether the subsidiary law is *intra vires* its enabling Act or where the subsidiary law is not made under the provision authorising the making of such subsidiary law;

(f) where the terms of the subsidiary law require elucidation;

(g) where the subsidiary law appears to run counter to or makes conflicting provisions with another law;

(h) where for any reason whatsoever the drafting of the subsidiary law appears to be defective;

(i) where a subsidiary law prejudices vested rights;

(j) where a subsidiary law runs counter to this Code, the Constitution of Malta, the European Convention Act, the European Union Act and the Diplomatic Privileges and Immunities Act; [Cap. 319; Cap. 460; Cap. 191]

(k) on such other cases as the Standing Committee on the Recodification and Consolidation of Laws may request the Law Commissioner to report thereupon.

(2) The Standing Committee on the Recodification and Consolidation of Laws shall draw up a report on the said subsidiary law and refer it to the House of Representatives for its consideration. Where the said Standing Committee endorses the report of the Law Commissioner, with or without amendments, it shall refer the Law Commissioner's report and its views thereupon to the Speaker.

(3) The Speaker shall lay the said report and views on the table of the House for discussion by the House on the first occasion following receipt of the said report and views as the House Business Committee may direct.

(4) The House of Representatives shall discuss such report and views.

(5) After doing so, the House may either amend, substitute or repeal the said subsidiary law or a provision therein or take such other action as it deems relevant in the circumstances including requesting the body or person who made that subsidiary law to amend, substitute or repeal it and report back to the House on any such action taken.

Sub-Title V

Of Subsidiary Legislation

Construction of subsidiary legislation.

32. Where an Act, whether passed before or after the commencement of this Code, confers power to make, grant or issue any order, warrant, scheme, rules, regulations, bye-laws or other instrument, expressions used in any such instrument made after the commencement of this Code shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Subsidiary legislation may be retrospective.

33. (1) Any law made after the commencement of this Code by virtue of a power conferred by any Act passed either before or after the commencement of this Code may, unless the contrary intention appears in the Act conferring that power, be made to operate retrospectively to any date which is not earlier than the commencement of such Act or, where different provisions of such Act come into operation on different dates, the commencement of the provision under which the subsidiary law is made.

(2) No person shall be made or shall become liable to any punishment in respect of anything done or omitted to be done before the commencement of the subsidiary law.

Subsidiary laws to be valid in case of wrong reference to enabling powers.

34. Where by virtue of any Act, whether passed before or after the commencement of this Code, power is conferred to make subsidiary laws, any subsidiary law that may lawfully be made thereunder shall be valid and shall have effect whether or not it purports to be made in exercise of those powers and even if it purports to be made in exercise of other powers.

Subsidiary legislation to be laid on Table of House.

35. (1) Where an Act confers power to make subsidiary legislation, any such legislation made by virtue of those powers after the coming into force of this Code shall as soon as may be after it is made be laid on the Table of the House and if, within the period of twenty-eight days after it is so laid, the House resolves that it be annulled or amended, the same shall thereupon cease to have effect or shall be so amended, as the case may require, but without prejudice to the validity of anything previously done thereunder or to the making of subsidiary legislation.

(2) In reckoning for the purposes of subarticle (1) any period of twenty-eight days therein referred to, no account shall be taken of any time during which the House of Representatives is not in session or during which it is adjourned for more than seven days.

(3) Notwithstanding the foregoing provisions of this article, where the principal law conferring the power to make subsidiary legislation makes different provision in respect of any of the matters aforesaid, those provisions shall apply to any subsidiary legislation made by virtue of those powers in preference to the provisions of this article in respect of those matters.

Title II

OF THE PUBLICATION OF LAWS

Publication of laws in the Gazette.

36. (1) There shall be published as a supplement in the Gazette all municipal laws and such other official documents or classes of documents as may be required to be published by law or where publication is desirable for public information.

(2) All municipal laws and other official documents of the public administration shall be published in the Gazette without the need of obtaining prior authorisation from the Government for their publication provided that they have been approved by the authority who is by law vested with the power of making them.

(3) The public officer responsible for the publication of the Gazette shall ensure that all municipal laws and other official documents of the public administration are published in the Gazette without due delay.

Division of the Gazette's Supplement.

37. Publication of laws in the Supplement to the Gazette shall be classified as follows:

(a) Supplement A – the Laws enacted by Parliament, that is, primary legislation;

(b) Supplement B – legal notices made by a body or person delegated to make legislation, that is subsidiary legislation (also known as "secondary legislation" or "delegated legislation");

(c) Supplement C – Bills which are given a First Reading in the House of Representatives;

(d) Supplement D – Bye-laws made in terms of the Local Councils Act; [Cap. 363]

(e) Supplement E – Draft subsidiary legislation mandated in terms of a provision of law or in terms of an administrative decision of the public administration seeking public consultation;

(f) Supplement F – Directives and guidelines issued by the Prime Minister to entities of the public administration in terms of Part I of Book Second of this Code;

(g) Supplement G – White Papers;

(h) Supplement H – Green Papers;

(h) Supplement I – such other publications not mentioned above of the public administration or any organs of the state of Malta which require publication in the *Gazette* to bring the contents of such publication to the attention of the public.

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Title III

OF THE OBJECT AND CLASSIFICATION OF ADMINISTRATIVE LAW AND THE BASIC PRINCIPLES OF GOVERNANCE

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Sub-Title I

Of the Object, Subject and Classification of Administrative Law

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Object of Administrative Law.

38. (1) Administrative Law has for its object the relationship between the state and persons.

(2) The State is made up of three principal organs of the state, the public administration, public corporations and public offices.

The three principal organs of the state.

3**9.** The three principal organs of the State are:

(a) the Legislature;

(b) the Executive; and

(c) the Judiciary.

Public corporations to continue to be established by Parliament.

40. (1) Parliament shall continue to establish by law public corporations.

(2) Parliament shall regulate by law *inter alia* the functions of such public corporations.

(3) Public corporations are bodies created by Parliament under specific legislation.

(4) Once established, public corporations may not be altered or abolished except by a further law.

Definition of public corporation.

41. (1) A public corporation is a body corporate established by law.

(2) It shall enjoy all the attributes of a moral person.

Characteristic trait of a public corporation.

42. (1) A characteristic trait of a public corporation is that it is established by Parliament as an autonomous and independent non-governmental entity.

(2) Public corporations are independent to varying degrees set out in the laws creating them and are independent from day-to-day control by Government.

(3) If an act of Parliament allows a Minister to give directions in particular circumstances, those directions shall not be valid unless they are given by means of regulations and those directions shall become binding as from their date of publication in the Gazette or such later date as the said regulations may prescribe.

(4) Being established by Parliament, public corporations shall be independent from the Government and the public service.

(5) Public corporations shall not be subject to the direction or control of Government or of the public service unless specifically prescribed by law.

(6) Public corporations shall be responsible to Parliament for their workings.

(7) Parliament holds public corporations to be fully accountable to it, as the creator of each public corporation.

(8) Public corporations shall fall under the legislative organ of the state.

(9) Responsibility for a public corporation may not be assigned to Government in terms of article 82 of the Constitution of Malta.

(10) Parliamentary questions on the workings of public corporations shall be address to and shall be answered by the Speaker of the House of Representatives.

Oversight of the functioning of public corporations.

43. The Public Accounts Committee of the House of Representatives shall be responsible for the oversight of the functioning of public corporations.

Appointment and removal of the Board of Governors of public corporations.

44. (1) The chairman and board members of public corporations shall be appointed by the Public Accounts Committee.

(2) The Board of Governors of a public corporation shall be responsible for the appointment of top management of public corporations.

(3) The top management of a public corporation comprises the Chief Executive Officer or Director-General, howsoever designated.

Common provisions applicable to public corporations.

45. (1) The Standing Committee on Recodification and Consolidation of Laws may, following a proposal to that effect by the Law Commissioner, compile a code of law consisting in a codification and consolidation of law relating to public corporations.

(2) Such code shall contain common provisions applicable to all public corporations including –

(a) their reporting functions to the Public Accounts Committee at such intervals as the Public Accounts Committee may determine, provided that each public corporation shall be obliged to submit an annual report to the House of Representatives;

(b) the approval of their financial estimates;

(c) the appointment and removal of the board of governors;

(d) the regulation of public administration employees employed directly by or performing functions with public corporations;

(e) the appointment of external auditors to audit the accounts of public corporations;

(f) the appointment of internal auditors to report to the board of governors, the Auditor General and to the Public Accounts Committee of their findings;

(g) the establishment of internal complaints mechanisms and a procedure whereby all complaints received and investigated by internal complaints mechanisms of public corporations are copied to the Ombudsman;

(h) the incorporation of public corporations and other corporate matters relevant to public corporations;

(i) the receipt of such information as the House of Representatives or a Committee thereof may require from public corporations in order to perform its supervisory and monitoring role over public corporations;

(j) the giving of such directives to public corporations by the House of Representatives or any Committee thereof might deem necessary from time to time;

(k) any other matters which the Public Accounts Committee may request the Law Commissioner to address in the aforesaid Code.

(3) The Public Accounts Committee shall be responsible for the monitoring and supervision of the workings of public corporations.

Public offices.

46. (1) Public offices may be established by –

(a) the Constitution of Malta;

(b) any ordinary law; and

(c) an administrative decision.

(2) A public office established by an administrative decision shall only be established either by Cabinet or by a Minister.

(3) Such public office may be paid out of public funds only following approval by Parliament.

Subjects of Administrative Law.

47. (1) The public administration and persons are the subjects of Administrative Law.

(2) All law making by the public administration shall be subject to the law.

Common good as the main object of Administrative Law.

48. (1) Administrative Law has also for its object the common good of the community.

(2) Administrative Law is promulgated for the care of the community and is an ordinance of reason for the common good.

Reasonableness as a constitutive ingredient of Administrative Law.

49. (1) Reasonableness is an indispensable quality for all laws.

(2) An unreasonable law does not foster the common good.

(3) This Code enshrines the values that are held by the Maltese to be fundamental for the governance of the community.

Classification of Administrative Law.

50. Administrative Law is a branch of Public Law.

Sub-Title II

Basic Principles of Governance

Basic Principles of governance.

51. The public administration shall exercise power in accordance with the following basic principles:

(a) sovereignty resides in the people and all government authority emanates therefrom;

(b) the State values the dignity of every human person and guarantees full respect for human dignity and for human rights and fundamental freedoms;

(c) civilian authority is, at all times, supreme over the military;

(d) the State shall by law ensure the autonomy of local government;

(e) the right of the people and their organisations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms;

(f) the State shall respect the rule of law in all of its acts and omissions.

Title IV

OF THE NATURE OF LAWS

Promulgation of laws.

52. (1) A law comes into being when it is promulgated.

(2) A law is promulgated when it is published in the Gazette.

(3) No law may be enforced unless it is promulgated.

Prospective nature of laws.

53. Laws concern matters of the future, not those of the past, unless express provision is made in them to regulate matters of the past such as in the case of safeguarding vested rights.

Invalidating and incapacitating laws.

54. (1) Only those laws shall be considered invalidating or incapacitating which expressly prescribe that an act is null or that a person is incapable.

(2) Unless there is no such declaration, a law shall be presumed to be valid and a person shall be presumed to be capable.

Title V

OF SUPLLETORY LAW

Sources of suppletory law.

55. (1) If on a particular matter there is no express provision of law, nor a custom, then, provided it is not a penal matter, the question is to be decided by taking into account of:-

(a) laws enacted in similar matters;

(b) the general principles of law;

(c) decided cases by courts and tribunals; and

(d) the common and constant opinion of learned authors, also known as doctrine.

(2) Although decided cases by courts and tribunals may be a persuasive and authoritative source of suppletory law, courts and tribunals shall not be bound by the doctrine of precedent as in common law jurisdictions.

(3) Although Malta is a mixed legal system which has received within its fold various legal systems such as the civil law system, the common law system and the European Union Law system, in so far as Administrative Law is concerned, it shall be the judge's duty to ascertain the law from the words which this Code uses. The Code articulates the rules in accordance with which judgments shall be given.

No hierarchy amongst suppletory law sources.

56. (1) The interpreter of a law is not obliged to consult the four sources of suppletory law set out in article 15 in the order proposed in that article.

(2) The interpreter shall, where possible, use these four sources in a coordinated way in order to reach a reasonable solution.

Title VI

OF VESTED RIGHTS

Respect for vested rights.

57. (1) New law shall receive the widest application not only to new cases but also to the future existence of past cases.

(2) However, new law shall not infringe vested rights.

Definition of a vested right.

58. A vested right is that right acquired by reason of a fact which according to the law existing at the time that fact took place, was capable of calling into being that right which according to the same law came to form part of the property of that person.

Elements of a vested right.

59. A vested right shall satisfy the following three elements:

(a) the existence of a former law which admitted of a certain manner of acquiring a right;

(b) the fact or act in law which according to the former law was capable of producing the acquisition of that right; and

(c) that the right has come to form a part of the property of a person.

Distinction of vested right from abstract faculties and mere expectations.

60. Vested rights shall be distinguished from abstract faculties and mere expectations.

Exceptions to vested rights.

61. Exceptions to vested rights shall be allowed in the following cases:

(a) when the public interest makes imperative that the new law shall apply also to vested rights;

(b) when the law is expressly retroactive;

(c) when the new law purports to be merely interpretative of the preceding law.

Title VII

OF THE ABROGATION OF LAWS

When a law is considered to be abrogated.

62. A law is abrogated when it has ceased to exist.

Method of abrogation of a law.

63. A law is abrogated in either of two ways:-

(a) when a contrary law is enacted; or

(b) when a contrary legal custom is established.

Typology of abrogation.

64. (1) Abrogation of a law may be total or partial.

(2) Abrogation of a law may be explicit or tacit.

Tacit abrogation of a law.

65. Tacit abrogation of a law may be brought about by one of the following ways:

(a) by the incompatibility of the new law with the former law;

(b) if the two laws which are contrary to one another are both general laws, there is absolute incompatibility between them and the former one is entirely repealed;

(c) if the new law is general and the former one was particular the new law is applied to all cases saving those contemplated by the former law which is not repealed;

(d) the rule enunciated in paragraph (c) is reversed if it is evident that the new law was intended to cover also those special cases provided for by the former law;

(e) if both laws are special only those provisions of the former law are repealed which cover the same cases provided for by the new law;

(f) if the new law contains a complete regulation of the subject-matter of the former repealed law.

Tacit abrogation of a law by a legal custom.

66. Tacit abrogation of a law is brought about by a contrary legal custom in any one of the three following cases:

(a) when the law just falls out of practice; or

(b) when the former law is modified; or

(c) when a legal custom introduces a rule contrary to that sanctioned by a former law.

Title VIII

OF LEGAL CUSTOM

Juridical nature of legal custom.

67. (1) A legal custom which is contrary to, or inconsistent with, the law shall acquire the force of law only when such custom is considered to be binding upon the community and that the law in force has fallen into desuetude through the constant repetitive practice.

(2) A practice shall acquire the status of a legal custom when it satisfies the following three requirements:

(a) a practice of long duration;

(b) a belief that the practice is obligatory; and

(c) consistency with the law.

Application of custom in the absence of statutory law.

68. In the absence of statutory law the courts are bound to apply the common law of Malta, otherwise also known as legal custom.

Effects of legal custom.

69. (1) Legal custom may have the following effects:

(a) it may provide for cases not contemplated in statutory law;

(b) it may interpret statutory laws;

(c) it may amend and abrogate previous laws, whether written or unwritten.

(2) Amending and abrogating previous laws, whether written or unwritten, may take place either:

(a) when the law falls out of practice without any new law being substituted for it, otherwise known as desuetude; or

(b) when the previous rule is repealed or the opposite rule is introduced through legal custom.

Title IX

OF THE RULE OF LAW

Rule of Law within an Administrative Law context.

70. The rule of law within the context of Administrative Law obliges the state, including the public administration, to respect and observe the principles set out in this Title.

General principles of the rule of law.

71. The rule of law:

(a) is the foundation of a civilized community;

(b) establishes a transparent process accessible and equal to all;

(c) ensures adherence to principles that both liberate and protect.

Key components of the rule of law.

72. The key components of the rule of law comprise the following:

(a) restraint on state autonomy in inter-state relations;

(b) the supremacy of the law;

(c) equality before the law;

(d) separation of powers;

(e) the independence of the judiciary;

(f) the international rule of law in relation to the person;

(g) respect for human dignity and safeguarding of human rights and fundamental freedoms;

(h) public participation in the decision making process;

(a) due consultation with civil society before major decisions are taken.

Requirements of the rule of law.

73. The law of law requires that:

(a) the state, including the public administration, is subject to the law;

(b) the public administration shall respect the rights of persons under the rule of law and provide effective means for their enforcement;

(c) the judiciary shall be guided by the rule of law, protect and enforce it without fear or favour and resist any encroachments by Parliament, the public administration or political parties in their independence as members of the judiciary;

(d) all members of the legal profession shall insist with the state that every accused person living under the rule of law is entitled by law to a fair trial.

Criteria to be satisfied by law.

74. (1) The law shall be accessible and so far as possible intelligible, clear and predictable.

(2) A law which does not satisfy any of the above criteria may be struck down by the Administrative Court in terms of the procedure set out in Title III of Part V of Book First of this Code.

Law not discretion.

75. Questions of legal right and liability shall ordinarily be resolved by application of the law and not through the exercise of discretion.

Equality before the law.

76. The laws of the land shall apply equally to all, save to the extent that objective differences justify differentiation.

The exercise of power.

77. The public administration shall exercise the powers conferred upon it in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.

Respect for human dignity, human rights and fundamental freedoms.

78. (1) The law shall afford adequate protection to human dignity, human rights and fundamental freedoms.

(2) Human rights and fundamental freedoms come in four generations. All four generations of human rights and fundamental freedoms as contained in statutory law shall be protected and respected by the state, including the public administration.

Dispute resolution.

79. (1) Means shall be provided by the state for resolving, without prohibitive cost or inordinate delay, *bona fide* civil disputes which the parties themselves are unable to resolve.

(2) Such means of dispute resolution include the courts, arbitration and alternative dispute resolution mechanisms such as mediation.

Fair trial.

80. Adjudicative procedures provided by the state shall all be fair.

The rule of law in the international legal order.

81. The rule of law requires compliance by the State of Malta with its obligations in international law as in national law.

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TITLE X

OF CONSULTATION

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Procedure for the conduct of the process of consultation.

82. (1) Whenever a law requires a consultation process to take place, consultation is anything but perfunctory or pro forma.

(2) Consultation is a serious process which implies taking the following measures:

(a) bringing together the person to be consulted, not merely contacting him by mail, electronic mail, text messaging, telephone or other means of technological communication;

(b) holding consultation face-to-face;

(c) fully informing the person consulted of the facts of the situation and its background;

(d) encouraging a full and free discussion and an honest exchange of views about the decision to be taken;

(e) each person shall express his own judgment sincerely and candidly;

(f) the person who is consulting and who is to take the decision shall, as far as possible, aim to achieve consensus with the person consulted and, if such consensus shall not be achieve, the person consulting shall avoid taking a decision out of pique or to spite the person consulted;

(g) where the person consulting feels compelled to act differently than being advised by the consulted person, he shall give the person consulted the reason for his decision and such reasons shall be published in the *Gazette* if such consultation is about a policy and not a particular person;

(h) saving the provisions of paragraph (g) above, both the consulting person and the consulted persons shall observe the confidentiality of the process, when such confidentiality is stipulated by law.

(3) Consultation shall be made in good faith and its result shall be inspired by attaining the common good of the community.

(4) Where consultation between the Prime Minister and the Leader of the Opposition is mandated by law with regard to the filling of any public office, that consultation shall be inspired by the public interest and not by political partisan ends.

PART II

OF THE INDEPENDENCE OF THE JUDICIARY

Title I

OF THE JUDICIARY AND THE EXECUTIVE

Interpretation of this Title.

83. For the purpose of this Title:

"the Executive" means the executive branch of the state and has the same meaning as is assigned to the expression "public administration" in article 2(1) of this Code;

"the Judiciary" means the Chief Justice, judges and magistrates;

"personal independence" means that the terms and conditions of judicial service are adequately secured so as to ensure that individual members of the Judiciary are not subject to executive control;

"substantive independence" means that in the discharge of his judicial function, a a member of the judiciary is subject to nothing but the law and the commands of his conscience.

Sub-Title I

On the Remedy for Breach of the Independence of the Judiciary

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Independence of the judiciary.

83. The independence of the judiciary shall be afforded and guaranteed by this Code.

Remedy for breach of the independence of the judiciary.

84. (1) Should a member of the judiciary feel that his independence is, has been or is about to be threatened by the legislature or the executive, he may apply in writing to the President of Malta seeking the President's protection.

(2) If the President believes that such threat exists, has existed or is about to exist, he shall, in his capacity of guardian of the Constitution, following consultation with any person or body, issue an order requesting the legislature or the executive to desist from interfering with the independence of the judiciary.

(3) When such order is issued by the President, the organ of the state or person to whom it is addressed shall forthwith comply therewith.

(4) In exercise of his functions under this article, the President shall act on his own deliberate motion and shall not be required to seek the advice of any other person or body when issuing an order in terms of sub-article (2) above.

(5) The President's order shall be final.

(6) The remedy established in this article may not be exercised by any member of the judiciary after the expiration of one month from the date that the alleged threat on the independence of such a member has taken place.

(7) The President may also act on his own initiative without the need of a complaint from a member of the judiciary if the President believes that the independence of the judiciary is at stake.

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Sub-Title II

Standards of Judicial Independence

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Compliance with standards of judicial independence.

85. The following standards of judicial independence shall be complied with.

Personal and substantive independence guaranteed.

86. Individual members of the judiciary shall enjoy personal independence and substantive independence.

Autonomy and collective independence.

87. The judiciary as a whole shall enjoy autonomy and collective independence from the Executive.

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Sub-Title III

The Judicial Appointments and Promotion Board

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Mode of exercise of judicial appointments and promotions.

88. (1) Judicial appointments and promotions shall vest in the Government who shall act on the advice of a Judicial Appointments and Promotions Board.

(2) The Board's criteria shall include the following:

(a) high level of legal knowledge and experience;

(b) high level of skills and competence in interpretation and application of the law;

(c) ability to apply the law to make sustainable decisions.

(3) Merit shall be the criterion upon which the judiciary shall be appointed and promoted. However, seniority shall also be taken into consideration when appointing judges from amongst magistrates or when appointing magistrates from amongst judicial assistants.

(4) The Board shall agree on a range of qualities possession of which constitutes merit and which successful applicants for judicial office must demonstrate. Such criteria, once approved by the Board, shall be published in the Gazette.

Establishment of the Judicial Appointments and Promotions Board.

89. (1) There shall be a Judicial Appointments and Promotion Board.

(2) The Board shall consists of:-

(a) two judicial members appointed by the Chief Justice;

(b) three legal members appointed by the Minister responsible for justice in terms of article 91; and

(c) five lay members appointed by the Prime Minister.

The judicial members.

90. The judicial members of the Board shall consist of one Judge and one Magistrate.

The legal members.

91. The legal members shall consist of one advocate appointed by the Minister responsible for justice, one advocate appointed by the Leader of the Opposition and one advocate appointed by the Chamber of Advocates.

The lay members.

92. (1) The Prime Minister shall appoint five lay persons to sit on the Board.

(2) A lay person cannot be selected from amongst members of the legal profession, that is, advocates, notaries and legal procurators, or from amongst members of the judiciary.

Chairman of the Board.

93. The Prime Minister shall appoint one of the members as Chairman of the Board and another member as Deputy Chairman of the Board.

Term of office.

94. The term of office of the Board shall be of six years.

Reappointment.

95. No member may be reappointed following the termination of his appointment.

Transparency in filling judicial posts.

96. Vacancies in judicial posts shall be announced openly and advertised publicly.

Minister to make regulations.

97. The Minister responsible for justice may make regulations to give better effect to the provisions of this Title and may, without prejudice to the generality of the foregoing, regulate resignation of members, quorum, conflict of interest, procedure, committees of the Board, delegation of certain tasks by the Board to committees, and code of ethics for Board members.

Administrative positions in the judiciary.

98 (1) Administrative positions occupied by a judge or magistrate such as that of Senior Administrative Judge and Senior Magistrate shall be made by the Chief Justice following the approval of the Judicial Appointments and Promotions Board.

Assignment of duties.

99. When members of the judiciary are to be assigned to a court by the Chief Justice, he shall seek the approval of the Judicial Appointments and Promotion Board for such assignment.

Sub-Title IV

Discipline of the Judiciary

Mode of exercise of discipline over the judiciary.

100. (1) The Executive may participate in the discipline of the judiciary only by referring complaints against the judiciary to the Commission for the Administration of Justice.

(2) The Executive shall not be involved in the discipline of the judiciary.

Removal of a member of the judiciary.

101. (1) The power of removal of a member of the judiciary shall vest in the Commission for the Administration of Justice.

(2) The Commission for the Administration of Justice shall appoint a board to be known as the Judiciary Removal Board which shall conduct a fair and transparent process for judicial removal.

(3) The Commission, with the concurrence of the President of Malta, shall makes rules regulating the procedure to be followed in disciplining members of the judiciary. In its rules, the Commission shall ensure that a fair trial is always afforded to the member of the judiciary charged before such Board.

Control over judicial functions.

102 The Executive shall not have control over judicial functions.

Making of rules of procedure and practice.

103. Rules of procedure and practice shall be made by legislation.

Execution of court judgments.

104. (1) The state shall have a duty to provide for the execution of court judgments.

(2) The judiciary shall exercise supervision over the execution process.

Competence of judicial matters.

105. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.

Judicial administration.

106. The central responsibility for judicial administration shall vest in the judiciary.

Duty to provide adequate financial resources for the administration of justice.

107. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.

Assignment of judicial duties.

108. (1) Division of work among the judiciary shall ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.

(2) The plan shall be published in the Gazette.

Chief Justice to assign judicial work.

109. (1) The power of division of judicial work shall be vested in the Chief Justice.

(2) It shall not be considered inconsistent with judicial independence to accord to the Chief Justice the power to change the predetermined plan for sound reasons.

(3) In doing so, the Chief Justice shall consult with all the members of the judiciary.

Assignment of cases.

110. The exclusive responsibility for case assignment shall vest in the Chief Justice.

Transfer of members of the judiciary.

111. (1) The power to transfer a member of the judiciary from one court to another shall vest in the Chief Justice.

(2) Except in the case of discipline, the power of transfer as aforesaid shall be subject to the member of the judiciary's consent.

(3) However, such consent shall not be unreasonably withheld by the member of the judiciary concerned.

Financing of court services.

112. Court services shall be adequately financed by the state.

Judicial salaries and pensions.

113. (1) Judicial salaries and pensions shall be adequate and shall be regularly adjusted to account for price increases independent of Executive control.

(2) Judicial salaries and pensions shall be established by law.

(3) Judicial salaries and pensions shall be established by the Public Accounts Committee following consultation with the Auditor General, the Principal Permanent Secretary and such other bodies or persons as the Public Accounts Committee may determine.

Security of tenure.

114. The position of the judiciary, their independence, their security, and their adequate remuneration shall be secured by law.

Decrease of judicial salaries.

115. Judicial salaries may not be decreased during the judiciary's service except as a coherent part of an overall public economic measure.

The judiciary may not receive allowances, etc.

116. The judiciary shall not receive any allowance or other form of remuneration in addition to their salary unless they are approved by law.

Government to respect the independence of the judiciary.

117. The Government shall not exercise any form of pressure on the judiciary, whether overt or convert, and shall not make statements which adversely affect the independence of judiciary as a whole or singularly.

Prerogative of mercy to be exercised cautiously.

118. The power of pardon shall be exercised cautiously so as to avoid its use as interference with judicial decisions.

Executive not to frustrate the resolution of a dispute or frustrate a court judgment.

119. The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute or frustrates the proper execution of a court judgment.

It is prohibited for the Executive to suspend the courts.

120. The Executive shall not have the power to close down or suspend the operation of the court system at any level.

Title II

OF THE JUDICIARY AND THE LEGISLATURE

No law shall be passed to retroactively reverse court decisions.

121. The Legislature shall not pass legislation which retroactively reverses court decisions.

Non-application to serving members of the judiciary of unfavourable terms and conditions of judicial service.

122. Legislation introducing changes in the terms and conditions of judicial service shall not be applied to members of the judiciary holding office at the time of passing the legislation unless the changes improve the terms of service.

Legislation reorganizing courts shall not prejudice serving members of the judiciary.

123. In case of legislation re-organising courts, members of the judiciary serving in these courts shall not be effected, except for their transfer to another court of the same status.

Right to be tried by the ordinary courts of criminal justice.

124. A person shall have the right to be tried by the ordinary courts of criminal justice and shall not be tried before special tribunals.

Title III

OF THE TERMS AND NATURE OF JUDICIAL APPOINTMENT

Regulation of judicial appointments.

125. Judicial appointments shall generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment which shall not exceed seventy years of age.

Retirement age cannot be reduced for serving members of the judiciary.

126. Retirement age shall not be reduced for serving members of the judiciary.

No probationary appointment is allowed for the judiciary.

127. (1) Judges shall not receive probationary appointments.

(2) They shall be appointed until they achieve retirement age.

No appointment of temporary or part-time judiciary.

128. Temporary and part-time judiciary shall not be appointed.

Number of judiciary to be fixed by law.

129. (1) The number of judges and magistrates shall be fixed by law.

(2) The number of judges and magistrates shall be rigid and shall not be subject to change, except by legislation.

Criteria for selection of judiciary.

130. The Judicial Selection and Promotions Board shall regulate the terms of office and nature of judicial appointment when this is not provided for in the Constitution, this Code or in any other law.

Title IV

OF JUDICIAL REMOVAL AND DISCIPLINE

Proceedings for discipline and removal of the judiciary.

131. The proceedings for discipline and removal of the judiciary shall ensure fairness to the judiciary, and adequate opportunity for hearing.

Proceedings to be held *in camera* or, at the request of a member of the judiciary, in public.

132. (1) The procedure for discipline shall be held *in camera*.

(2) A member of the judiciary may however request that the hearing be held in public.

Judgments in disciplinary proceedings to be published.

133. Judgments in disciplinary proceedings, whether held *in camera* on in public, shall be published on the Ministry responsible for justice's website.

Clear Grounds of removal of a member of the judiciary to be fixed by law.

134. The grounds for removal of members of the judiciary shall be fixed by law and shall be clearly defined.

Disciplinary action.

135. All disciplinary action shall be based upon standards of judicial conduct promulgated by law or in established rules of court.

Removal of a member of the judiciary.

136. A member of the judiciary shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of a member of the judiciary.

Power to discipline and remove the judiciary.

137. Where the power to discipline and remove a member of the judiciary is vested in an institution other than the Legislature, the tribunal for discipline shall be permanent and be composed predominantly of members of the judiciary.

Supervisory powers of the Chief Justice.

138. The Chief Justice may legitimately have supervisory powers to control the members of the judiciary on administrative matters.

Title V

OF THE TRAINING OF THE JUDICIARY

Participation in training courses.

139. Members of the judiciary shall have the duty to keep themselves updated on developments of the law through participation in training courses.

Establishment of the Judicial Studies Committee.

140. There shall be a Judicial Studies Committee, hereinafter referred to in this Title as "the Committee", which shall act under the general direction of the Chief Justice.

Objectives of the Judicial Studies Committee.

141. The Committee shall have the following objectives:-

(a) to identify the training needs of members of the judiciary;

(b) to organise induction courses for new members of the judiciary;

(c) to provide training for members of the judiciary;

(d) to organise lectures, seminars, courses and similar events for members of the judiciary;

(e) to inform members of the judiciary of recent legal developments through the use of information technology;

(f) to issue updated papers on aspects of judicial work; and

(g) to promote international co-operation in matters touching upon judicial training.

Appointment of the Judicial Studies Committee.

142. (1) The Chairman and Deputy Chairman of the Committee shall be appointed by the Chief Justice and shall be selected from amongst the members of the judiciary.

(2) The Chairman of the Committee shall have both an original vote and a casting vote.

(3) The Minister responsible for justice shall appoint two members to sit on the Committee.

(4) The Minister responsible for justice shall also appoint, following agreement with the Chief Justice, a public officer to act as non-voting Secretary to the Committee.

(5) The appointments mentioned in sub-articles (1), (3) and (4) of this article shall be for a period of three years and may be renewed for further three-year periods.

Finances of the Judicial Studies Committee.

143. (1) The Committee shall forward annual financial plans to the Director General (Courts), who shall thereupon request the Ministry responsible for Finance to allocate funds for the purpose of the proper working of the Committee.

(2) The Director General (Courts) shall administer the funds allocated to the Committee as the Committee may direct.

(3) The expenses for the running of the Committee shall be a charge on the Consolidated Fund.

(4) The Courts of Justice Division shall provide the necessary support service to the Committee in order to enable it to carry out the objectives listed in article 141 above.

Right to have case decided by a well trained member of the judiciary.

144. Any party to a suit shall have the right of have his case decided by a well trained member of the judiciary.

Judicial training to be compulsory.

145. (1) Training for the judiciary shall form part of the conditions of employment of all members of the judiciary.

(2) Judicial training shall be compulsory for all members of the judiciary.

(3) Regular attendance for training courses by the members of the judiciary shall be a criterion to be taken into consideration by the Judicial Appointments and Promotions Board.

(4) The Secretary of the Judicial Studies Board shall hold an attendance for all training session organized by the Committee and shall forward, at regular intervals, copies of such attendance to the Judicial Appointments and Promotions Board.

Acting as Examiner and Lecturer at the University of Malta.

146. (1) Members of the judiciary shall be allowed to act both as examiners and lecturers, including dissertation or thesis supervisor, at the University of Malta.

(2) Members of the judiciary shall be allowed to lecture at the University of Malta in their area of specialization up to fifty-six hours of lecturing per year.

(3) Members of the judiciary shall be paid for acting as examiners and lecturers at the University of Malta at the established rate which shall be published by the Rector of the University of Malta by means of regulations.

(4) Judges shall also benefit of the academic works resource fund in terms of any collective agreement which may be approved from time to time.

(5) Judges shall however not be entitled to vote at any election for the office of dean; nor may they hold any administrative office at the University of Malta such as Head of Department, Head of Unit or Head of Programme or such other office as the House of Representatives may be resolution determine.

Title VI

OF THE MEDIA, THE JUDICIARY AND THE COURTS

Public accountability of the judiciary.

147. (1) Judicial independence does not render the judiciary free from public accountability.

(2) However, the media and other institutions shall be aware of the potential conflict between judicial independence and excessive pressure on the judiciary.

Duty of media not to prejudice the right to a fair trial.

148. (1) The media shall show restraint in publications on pending cases where such publication may influence the outcome of the case.

(2) The judiciary may not reply to articles in the media to set the record straight. However, there shall be a Media Officer who shall be the spokesperson of the judiciary and who may reply or contribute to the media following instructions to that effect from the judiciary.

(3) In carrying out his duties as aforesaid, the Media Officer shall not act through the Department of Information or through a Ministry's Communications Office but shall act on his behalf.

(4) The Media Officer's contributions to the media shall not require the prior approval of Government.

Title VII

OF THE STANDARDS OF CONDUCT

Members of the judiciary not to occupy positions in the Executive or Legislature.

149. (1) Members of the judiciary may not serve, during their term of office, in Executive functions except in executive positions related to the judiciary such as Senior Administrative Judge and Senior Magistrate.

(2) In particular, members of the judiciary shall not serve as ministers or parliamentary secretaries, mayors or local councilors; nor may they serve as members of the Legislature or chairpersons or members of any public corporation or of any entity of the public administration.

Judiciary may chair boards of inquiry.

150. (1) The judiciary may serve as chairpersons of boards of inquiry in cases where the process requires skill of fact-finding and evidence-taking.

(2) Such an appointment shall be approved by the Commission for the Administration of Justice which shall ensure that it does not detract the judiciary from the performance of their official judicial duties.

(3) Should the Commission for the Administration of Justice reject the proposed appointment, the Commission's decision shall be final and the member of the judiciary not serve in the capacity of chairperson of a board of inquiry.

Judiciary precluded from holding positions in political parties.

151. The judiciary shall not hold positions in political parties.

Judiciary may not practice any legal profession.

152. The judiciary may not practice any legal profession during their term of office.

Judiciary not to carry on business activities.

153. The judiciary shall refrain from business activities, except with regard to their personal investments, or ownership of property.

Upright behaviour of the judiciary.

154. (1) Members of the judiciary shall always behave in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

(2) The judiciary shall refrain from having their own personal website; nor may they contribute to any blog or internet webpage unless such contribution is approved by the Commission for the Administration of Justice.

(3) The judiciary shall be precluded from having their own social media network site or to contributing to other persons' social media network sites.

(4) The judiciary may involve themselves, with the approval of the Commission for the Administration of Justice and subject to such conditions as the Commission may impose, in non-judicial activities such as chairing or being members of committees of cultural and sports organisations.

(5) The Commission may withdraw its approval if it is satisfied that the non-judicial duties are not conducive to the member of the judiciary in carrying out his judicial duties.

(6) Nevertheless, the judiciary shall abstain from hearing a case in the following circumstances:

(a) when one of the parties to a suit is a member of a committee which the judge presides or is a member of the committee thereof;

(b) when one of the parties to a suit is a sponsor of the organisation of which the member of the judiciary presides or is a member of the committee thereof;

(c) where the member of the judiciary is of the view that in the interests of justice he should abstain from hearing the case if he is in a dual relation with one or more parties to a suit.

(7) For the purposes of this article, "dual relationship" occurs when a member of the judiciary is in a professional role with a party to a suit and

(a) at the same time the member of the judiciary is in another role with the same party to a suit;

(b) at the same time he is in a relationship with a person closely associated with or related to the party to a suit; and

(c) he promises to enter into another relationship in the future following conclusion of the case with a party to a suit or a person closely associated with or related to such party to a suit.

(8) A member of the judiciary shall not dedicate more than ten hours per month to non-judicial work and shall ensure that such non-judicial work does not in any way interfere with his judicial duties.

Judicial organizations allowed.

155. Members of the Judiciary may be organised in associations designed for the judiciary, for furthering their rights and interests as members of the judiciary.

Judiciary may take collective action to protect judicial independence and their position.

156. The judiciary may take collective action to protect their judicial independence and to uphold their position.

Title VIII

OF SECURING IMPARTIALITY AND INDEPENDENCE

When the judiciary have to abstain.

157. A member of the judiciary shall not sit in a case where there is a reasonable suspicion of bias or potential bias.

Judiciary should not be perceived as being partial.

158. Members of the judiciary shall avoid any course of conduct which might give rise to an appearance of partiality.

Title IX

OF THE INTERNAL INDEPENDENCE OF THE JUDICIARY

Internal independence of the judiciary with regard to other members of the judiciary.

159. In the decision-making process, a member of the judiciary shall be independent with regard to judicial colleagues and superiors.

Doctrine of precedent does not bind the judiciary.

160. Members of the judiciary shall not be bound by the doctrine of precedent.

PART III

OF MINISTRIES AND MINISTERIAL RESPONSIBILITY TO PARLIAMENT

Title I

OF MINISTRIES

The ministries of the Government of Malta.

161. (1) There shall be a number of ministries which together form the Government of Malta.

(2) Each ministry shall have a political head and an administrative head.

(3) The Minister shall be the political head of a Ministry and he shall be responsible for the activities of the Ministry.

(4) A Permanent Secretary, or in the case of the Office of the Prime Minister the Principal Permanent Secretary, shall be the administrative head of a Ministry.

(5) A Permanent Secretary shall be answerable to the Minister.

(6) Ministries shall be bodies of administration carrying out administrative and professional tasks and duties falling within the competence of the state of Malta in one or several related domains where they wholely or to some extent as determined by law, directly ensure and are responsible for the implementation of laws.

(7) The ministries shall be responsible for the preparation of laws and policies falling within their scope and shall perform other tasks as determined by separate laws.

Establishment of minimum number of core ministries.

162. (1) When forming a Cabinet, the Prime Minister shall ensure that the following core ministries have been and are established by him throughout a legislature:

(a) Office of the Prime Minister;

(b) Ministry of Foreign Affairs;

(c) Ministry of Finance;

(d) Ministry of Justice;

(e) Ministry for Home Affairs;

(f) Ministry of Tourism;

(g) Ministry for the Environment;

(h) Ministry for Education;

(i) Ministry for Gozo;

(j) such other Ministries as may be established from time to time.

(2) The Prime Minister may amalgamate any two or more of the ministries mentioned in subarticle (1) or add other areas of government to the ministries mentioned in subarticle (1) such as culture, youth, sports, social solidarity, communications and transport. In doing so, the Prime Minister shall ensure that at each given moment in time all the ministries listed in paragraphs (a) to (i) above are always established and operative.

(3) The responsibilities for each ministry shall be set out by regulations made by the Prime Minister on establishing a new Cabinet.

(4) The Prime Minister may also advise the President of Malta to designate one or more ministers as Deputy Prime Minister or Deputy Prime Ministers.

(5) One of the Ministers may be designated by the President of Malta on the advice of the Prime Minister as Leader of the House.

Ministries.

163. (1) A ministry shall be shall consist of:

(a) the Minister's secretariat;

(b) the secretariats of such Parliamentary Secretaries as may be appointed to assist the Minister;

(c) the office of the Permanent Secretary and his staff;

(d) Parliamentary Assistants;

(e) such other divisions, directorates, sections, offices or other units within the public service as may be placed or established within the Ministry by the Prime Minister.

(2) Where more than one Permanent Secretary reports to the same Minister (other than temporarily due to arrangements made under articles 83 or 84 of the Constitution), the scope of responsibilities of each Permanent Secretary shall be delineated by regulations to be made by the Prime Minister.

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Title II

OF MINISTERIAL RESPONSIBILITY TO PARLIAMENT

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Key elements of ministerial responsibility to Parliament.

164. (1) Under the Maltese system of representative government, ministers are answerable to Parliament for the discharge of their responsibilities.

(2) Ministerial responsibility entails four key elements:

(a) responsibility for the overall administration of their portfolios, both in terms of policy and management;

(b) administration of legislation assigned to them;

(c) the carriage in Parliament of their accountability obligations to that institution;

(d) collectively, for the policies and exercise of responsibility by fellow ministers.

Individual ministerial responsibility to Parliament.

165. (1) Ministerial responsibility requires ministers to be answerable to Parliament for every action of public administration employees, including personal staff and other personnel acting under the minister's legislative, administrative or contractual authority.

(2) In all cases, whether an action occurred with or without the minister's authorisation or knowledge, the minister remains liable to answer for that action and any corrective action.

(3) Ignorance of a matter does not excuse the minister, and ministers shall have in place systems to ensure they are kept informed.

Ministers and Ministers' secretariats. Cap. 249.

166. (1) Where a Minister is assigned responsibility for any department of Government in terms of article 82 of the Constitution, that Minister shall, in line with article 92 of the Constitution, and without prejudice to article 325[2], have the general direction and control of all government departments and government agencies of the public administration that may be placed under his responsibility and may give directions directly to the departments and agencies falling within his responsibilities, on any matter, except matters where the department and agency is required by any law to act -

(a) independently; or

(b) in accordance with the direction of a person or authority other than the Minister.

(2) Where a Permanent Secretary has been appointed to supervise a government department or agency, the Minister shall inform the Permanent Secretary that he has given such directions.

(3) A Minister may be assigned responsibility for any department and agency of the public administration including those listed in Part II of the **Second Schedule**.

(4) The staff assigned to the secretariat of a Minister, including advisors or consultants to the Minister, shall be deemed to be occupying positions of special trust and shall, even if they are public officers assigned on transfer, be appointed thereto on the basis of a definite contract. On the expiration or termination of the contract, the regulations mentioned in subarticle (5) shall apply.

(5) The Prime Minister may make regulations concerning the functions, administration and establishment of Ministers' secretariats, the engagement of staff thereto, and the terms and conditions under which such staff shall serve.

(6) Save as may otherwise be provided for by the Prime Minister's regulations, a Minister's secretariat shall be under the supervision of a member of staff designated as Head of Secretariat who shall report to the Minister.

(7) The provisions of subarticles (3) to (6) shall apply *mutatis mutandis* to the secretariat of a Parliamentary Secretary.

(8) Remuneration to advisors and consultants appointed by Ministers and Parliamentary Secretaries shall be approved by the Public Accounts Committee after it hears both the Minister and Parliamentary Secretary, as the case may be, the

[2] Article 6 of the Interpretation Act.

Auditor General and such other person it deems necessary in the circumstances.

Collective ministerial responsibility to Parliament.

167. (1) Ministers share collective responsibility for the actions of all other ministers, whether or not those actions have been the subject of Cabinet or other collective deliberation.

(2) The principle of collective responsibility for the decisions which are taken in Cabinet is fundamental to effective Cabinet government. From this principle flows the constitutional practice that what is discussed in Cabinet and, in particular, the views of individual ministers on issues before the Cabinet, are to remain entirely within the confidence of the members of Cabinet.

(3) Similarly, the papers considered by Cabinet and the minutes recording the outcome of the Cabinet's deliberations are regarded as confidential to the government of the day.

Discharge of ministerial accountability.

168. (1) Ministers may discharge their responsibility to be accountable at one or more of six levels.

(2) The appropriate level of accountability may vary according to circumstances and judgments related to the detail of each case.

The six levels of ministerial accountability.

169. (1) The six levels of ministerial accountability are the following:

(a) redirecting the question to the relevant minister;

(b) providing all relevant information;

(c) providing full explanations;

(d) taking any remedial action;

(e) accepting personal culpability; or

(f) resignation.

(2) The six levels of accountability involve the following:

(a) redirecting the question applies where the matter falls outside the minister's responsibility and is redirected to a ministerial colleague, other government or non-governmental entity with responsibility;

(b) providing all relevant information is appropriate when the only requirement is for the minister to provide some factual information concerning a matter within an area for which he has responsibility;

(c) providing a full explanation is where, in order to discharge responsibility, a minister provides an explanation of the events or actions taken but where no corrective or remedial action is required;

(d) taking any necessary remedial action concerns instances where some action was or is required in response to events which have occurred, or decisions have been taken by the minister or any subordinate, which require some corrective or remedial action;

(e) ministers are expected to accept personal culpability for their own acts and omissions and for those of their heads of department and their personal staff and other instances in which they have participated or of which they were aware or should have been aware. In determining whether a minister is personally culpable, ignorance of a matter does not excuse the acts or omissions of the minister where the minister should have known or should have ensured the matter was drawn to the minister's personal attention. Without limiting the circumstances in which ministers should have known of any matter, they are deemed to have the knowledge of their heads of department and others who report directly to them and all members of their personal staff;

(f) resignation is appropriate where a minister has lost the confidence of the House of Representatives or the Prime Minister in the minister's capacity to satisfactorily discharge the responsibilities of the office. If a vote of no confidence is passed by the House of Representatives in a Minister is expected to resign after the vote is taken. Should he fail to do so, the Prime Minister shall carry out a Cabinet reshuffle within three days from the taking of the vote of no confidence and shall advice the President of Malta in terms of article 82 of the Constitution of Malta to remove the Minister who has been found not to enjoy the confidence of the House of Representatives.

PART IV

OF PRINCIPLES OF GOOD ADMINISTRATION

Title I

OF THE RIGHT TO GOOD ADMINISTRATION

Good administration as a civil right.

170. It is hereby declared in this Code that good administration is a civil right owed by the public administration to the community.

Right to good administration.

171. Persons are owed by the public administration a right to good administration as explained in this Title.

The elements of the right to good administration.

172. (1) Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the public administration.

(2) In its relations with any person, the public administration shall conform to the principles of good administrative behaviour laid down in this Title.

(3) The provisions found in this Title shall apply notwithstanding the provisions of any other law except in the case of those laws listed in sub-article (4) below. Should there be any inconsistency between both provisions, the provisions of this Code shall prevail and the other law not being any one of the laws listed in sub-article (4) below shall, to the extent of the inconsistency, be void.

(4) The laws referred to in sub-article (3) are the following:

(a) the Constitution of Malta;

(b) the Diplomatic Privileges and Immunities Act; [Cap. 191]

(c) the European Convention Act; [Cap. 319]

(d) the European Union Act. [Cap. 460]

What good administration stands for.

173. (1) Good administration implies that the public administration is open, transparent and subject to public scrutiny.

(2) The public administration shall strive to achieve continuous enhancement of efficiency and effectiveness in its workings.

(3) The public administration shall from time to time develop new citizen oriented services and review them periodically when necessary.

(4) Political neutrality is one of the principles on which the public administration shall be based.

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Title II

OF THE PRINCIPLES OF PERSONAL PROTECTION

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Effective personal protection.

174. The principles of personal protection are means available to the public to enable them to obtain effective personal protection vis-a-vis administrative action.

Principles of personal protection.

175. The principles of personal protection comprise the following:-

(a) the principle of equality;

(b) the principle of useful public administration;

(c) the principle of proper functioning of the public administration;

(d) the principle of establishing procedures for hearing persons beforehand and providing them with information;

(e) the principle of appointing an ombudsman;

(f) the principle of justification of administrative decisions;

(g) the principle of establishing independent administrative authorities;

(h) the principle of establishing judicial protection.

The principle of equality.

176. The principle of equality means that persons shall be considered equal to the public administration in their dealings with the public administration.

The principle of useful public administration.

177. (1) The public administration has a duty to exercise the powers and responsibilities vested in it by existing law, by drawing on the prevailing concept of law, in such a way as to avoid an overly rigid application of statutory provisions.

(2) Useful administration is dictated by the key notions of proportionality and legitimate expectation espoused in article 193 and article 198 respectively.

The principle of proper functioning of the public administration.

178. (1) The public administration shall carry out its activities not only in accordance with the law but also in a professional manner and in keeping with the facts of common experience.

(2) The public administration shall behave in good faith.

The principle of establishing procedures for hearing users beforehand and providing them with information.

179. (1) Persons have the right to be invited by the public administration to express their views and to be actually heard by the public administration prior to the adoption of any individual decision that might adversely affect such persons.

(2) The public administration has a duty to provide persons with any information in its possession that concerns such persons, while offering the said persons the opportunity to state their views.

(3) Persons shall have their affairs dealt with by the public administration in a thorough and impartial manner.

(4) Persons shall also be able, through administrative review, to ask the administration to review its case.

The principle of appointing an ombudsman.

180. A national ombudsman and sectoral ombudsmen shall be appointed to investigate complaints from the public.

Justification of public administration decisions.

181. The public administration shall give reasons for its decisions.

The principle of access to administrative documents.

182. (1) A person shall be granted access to administrative documents prior, during and after a decision affecting such person has, is or will be taken by the public administration.

(2) This principle may only be curtailed by an express provision of the law.

The principle of the need to apply to administrative action rules of administrative procedure.

183. The public administration shall apply and comply with the rules of administrative procedure set out in this Code and in any other law.

The principle of respecting the autonomy of independent bodies.

184. (1) The public administration shall respect the autonomy of independent bodies.

(2) The expression "independent bodies", for the purpose of subarticle (1) comprises:

(a) the Commissions and Authority established by the Constitution of Malta;

(b) public corporations established by law;

(c) public offices established by law such as the Law Commissioner, the Director of Public Prosecution, the Data Protection and Information Commissioner, the Ombudsman, Commissioners for Administrative Investigations and the Auditor General.

The principle of establishing judicial protection.

185. (1) A person shall have a remedy to set aside or amend any administrative decision which infringes the lawful interests or rights of such a person in terms of Book Third of this Code.

(2) Such a remedy shall include compensation for any damage or loss suffered by such person as a result of the unlawful performance of administrative action and also criminal prosecution of those responsible.

(3) Such a remedy may include recourse to non-judicial alternative solutions to administrative disputes, such as negotiated settlement, mediation and arbitration.

Title III

OF THE PRINCIPLES OF GOD ADMINISTRATIVE BEHAVIOUR

Sub-Title I

Of the Interpretation of this Sub-Title

Interpretation.

186. In this Sub-Title, unless the context otherwise requires:-

"principles of good administrative behaviour" means the principles of good administrative behaviour listed in this Title;

"service of an essential economic interest" means such service required to guarantee the combined production, provision and distribution in respect of:

(a) water;

(b) electricity;

(c) gas;

(d) post;

(e) drainage;

(f) telephony;

(g) hospitals;

(h) airport;

(i) ports; and

(j) such other services which the Minister may by notice designate,

and such services shall be required to be made available to the public at all times for their continued provision to the community;

"the Minister" means the Minister responsible for justice.

Sub-Title II

Of the Setting Out of the Principles of Good Administrative Behaviour

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Scope of application.

187. (1) Subject to article 210 of this Code,[3] this Sub-Title shall apply to the public administration in its relations with any person.

(2) The public administration shall take all the necessary measures to ensure that the provisions set out in this Sub-Title also apply to those other persons working for it, who are not public administration employees. Such other persons include persons employed under private law contracts.

[3] Request for information.

Material scope of application.

188. (1) This Sub-Title contains the general principles of good administrative behaviour that apply to all relations of the public administration with the public, unless they are governed by other specific provisions under this Code or any other law.

(2) Saving the provisions of the Constitution of Malta, this Code and any other law regulating the conditions of employment of public officers, the principles set out in this Sub-Title shall also apply to the relations between the public administration and public administration employees.

Principle of accountability.

189. (1) The public administration manages public resources and provides services to the public. It also performs other functions on behalf of the State.

(2) The public administration, other than public corporations, in the management of resources and provision of the services aforesaid, shall:

(a) be governed by the provisions of this Title, including the public administration values set out in article 190 of this Code and the Code of Ethics;

(b) be subject to Ministerial direction as provided for in the Constitution of Malta and in this Code and other laws, except on matters in respect of which they are expressly required by law to act independently or under the direction of a person or authority other than a Minister;

(c) be accountable under this Code and other laws for the manner in which it provides services, carry out its functions and manages its resources, for its observance of the public administration values and the Code of Ethics, and for its observance of the Ministerial directions referred to in paragraph (*b*).

Public administration values.

190. (1) The public administration shall be governed by the values inherent in the duties listed hereunder and it shall:

(a) exercise any powers vested in it by law, and deliver services to the public, courteously, expeditiously and impartially;

(b) provide objective and knowledgeable advice on matters within its competence;

(c) efficiently and effectively implement the policies of the government of the day;

(d) contribute towards the co-ordination of Government policy amongst the various entities which make up the public administration; and

(e) contribute through its own conduct to making the workplace one which recognises talent, develops skills and abilities, rewards performance, avoids discrimination and offers safety.

(2) The public administration shall uphold and promote the public administration values, and a failure to do so on the part of any public administration employee may constitute grounds for disciplinary proceedings against that employee under applicable rules and procedures.

(3) The Prime Minister may issue directives and guidelines to the public administration, other than public corporations, aimed at upholding and better realising the public administration values, and public administration employees shall comply with such directives.

(4) Such directives and guidelines shall be in writing and shall only have effect on publication in the Gazette.

(5) The Public Accounts Committee may issue directives aimed at upholding and better realising the public administration values by public corporations and their employees shall comply with such directives and guidelines.

Lawfulness.

191. (1) The public administration shall act according to law and shall apply the rules and procedures prescribed by law. In particular, the public administration shall:-

(a) refrain from performing anything which is prohibited by law;

(b) abide by and implement mandatory provisions of the law which impose an obligation, duty or burden on the public administration;

(c) desist from acting in any manner which brings it in conflict with a provision of the law;

(d) exercise any discretion conferred upon it by law within the limits for the exercise of that discretion circumscribed by law in terms of Title IV of Part IV of Book First of this Code.

(2) The public administration shall in particular ensure that decisions which affect the rights or interests of any person have a basis in law and that their content complies with the law.

Equality.

192. (1) In dealing with requests from any person and in taking decisions, the public administration shall ensure that the principle of equality of treatment is respected.

(2) Persons who are in the same situation shall be treated in a similar manner.

(3) If any difference in treatment is made, the public administration shall ensure that it is justified by the objective relevant features of the particular case.

(4) The public administration shall in particular avoid any unjustified discrimination amongst persons based on any of the grounds referred to in subarticle (3) of article 45 of the Constitution of Malta and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as incorporated in the First Schedule to the European Convention Act. [Cap. 319]

Proportionality.

193. (1) When taking decisions, the public administration shall ensure that the measures taken are proportional to the aim pursued.

(2) The public administration shall, in particular, avoid restricting the rights of any person or imposing charges on such persons, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.

(3) Such charges shall be established by law.

(4) When taking decisions, the public administration shall respect the fair balance between the interests of any person and the general public interest.

(5) The expression "charges" means the fees to be charged by the public administration or on its behalf in respect of licences, authorizations, permissions, permits or any other act or service whatsoever.

Proper use of power. *Salus populi suprema lex esto*.

194. (1) The public administration shall act solely in the public interest.

(2) The welfare of the people shall be the supreme law guiding the public administration.

(3) By the expression "public interest" is meant the general welfare of the public that warrants recognition and protection.

(4) The public interest shall not equate or be equated to the interest of the public administration but to the welfare of the people.

(5) The public administration shall be subservient to the welfare of the people.

(6) Powers shall be exercised by the public administration solely for the purposes for which they have been conferred by the relevant provisions of the law. The public administration shall, in particular, not use its powers for purposes which have no basis in the law conferring such powers.

Fairness, impartiality and independence. Cap. 12.

195. (1) The public administration shall act fairly and reasonably.

(2) The public administration shall be impartial and independent.

(3) The conduct of a public administration employee shall never be guided by personal, family, religious or by political interest.

(4) A public administration employee shall not take part in a decision in which he, or any close member of his family, has any interest.

(5) The expression "close member of his family" shall be assigned the same meaning as that contained in sub-paragraphs (a) and (b) of subarticle (1) of article 734 of the Code of Organization and Civil Procedure.

Objectivity.

196. When taking decisions, the public administration shall take into consideration all the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

Hearing or consultation.

197. (1) When making a decision concerning any person, the public administration shall hear or consult such person even in those cases where the law does not specifically request it to do so, other than in laws of a criminal nature.

(2) The public administration shall act in a way that will not make it unfair or inconsistent with good administration for any person to be denied such hearing or consultation.

(3) The public administration shall comply with the provisions of article 82 of this Code when carrying out consultations.

Legitimate expectation.

198. (1) The public administration shall follow its own established administrative practices, unless there are legitimate grounds from departing from those practices in an individual case.

(2) When the public administration intends to depart from its own established administrative practice in an individual case, it shall record in writing the grounds which merit such a departure and shall call the person concerned to a hearing to explain to the said person such reasons.

(3) The public administration shall communicate in writing such reasons to the person concerned in the case of a departure from its own established administrative practice. It shall do so not later than five working days from the meeting mentioned in subarticle (2) above.

(4) The public administration shall respect the legitimate and reasonable expectations that persons have in the light of how the public administration has acted in the past.

Consistency and advice. Duty to be helpful.

199. (1) The public administration shall be consistent in its own administrative behaviour and action.

(2) A change in policy adopted by the public administration shall be published in the Gazette and publicized prior to its entry into force. Such change shall not come into force before thirty days from its publication in the Gazette or such longer period as the Prime Minister may prescribe.

(3) The public administration shall, where necessary, advise the public on how a matter which comes within its remit is to be pursued and how to proceed in dealing with the matter.

Courtesy.

200. (1) The public administration shall be customer minded, correct, courteous and accessible in relations with any person.

(2) When answering any correspondence, telephone call, fax and e-mail, the public administration shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.

(3) If a public administration employee is not responsible for the matter concerned, he shall direct the person making the inquiry to the competent entity of the public administration.

(4) If an error occurs which negatively affects the rights or interests of any person, the public administration shall apologize for it, endeavour to correct the negative effects resulting from its error in the most expedient way and inform the member of the public of any right of appeal or review in accordance with article 157 of this Sub-Title.

Reply to letters in the language of the letter.

201. (1) The public administration shall ensure that every member of the public who writes to it in the Maltese language receives an answer in the same language.

(2) In doing so, the public administration shall comply with article 5 of the Constitution of Malta.

(3) Where the public administration initiates correspondence with any person, it shall use the Maltese language unless it has reason to believe that such member is not Maltese speaking.

Acknowledgement of receipt and indication of the competent public administration employee.

202. (1) Every letter or complaint to the public administration shall receive an acknowledgement of receipt within a period of two weeks, unless a substantive reply can be sent within that period.

(2) The reply or acknowledgement of receipt shall indicate the name, postal address, electronic mail address and the telephone number of the public administration employee who is dealing with the matter, as well as the name of the competent entity of the public administration to which such employee belongs.

(3) No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.

Obligation to transfer to the competent entity of the public administration.

203. (1) If a letter or a complaint to the public administration is addressed or transmitted to one entity of the public administration which has no competence to deal with it, the receiving public administration employee shall ensure that the letter is transferred without delay to the competent entity of the public administration.

(2) The public administration employee who originally received the letter or complaint shall notify the author of this transfer and shall indicate the name and the telephone number of the public administration employee to whom the letter or complaint has been passed.

(3) A public administration employee shall alert any person to any errors or omissions in documents and provide such person with an opportunity to rectify them, unless the law does not prescribe otherwise.

Right to be heard and to make statements.

204. (1) In cases where the rights or interests of any person are involved, the public administration shall ensure that, at every stage in the decision making procedure, the rights of the said person are respected.

(2) Every person shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

Reasonable time limit for taking decisions.

205. (1) The public administration shall ensure that a decision on every request or complaint to it is taken within a reasonable time limit, without delay, and in any case no later than two months from the date of receipt of such request or complaint, unless the law provides for a longer time period.

(2) The same rule shall apply for answering letters from any person and for answers to administrative notes which a public administration employee has sent to his superior requesting instructions regarding the decisions to be taken.

(3) If a request or a complaint to the public administration cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the public administration shall inform the person concerned as soon as possible. In that case, a definitive decision should be notified to the said person in the shortest time.

(4) Saving those cases where the law prescribes a longer period within which the public administration is required to make a decision, the absence of a decision by the public administration following a person's written demand served upon it by means of a judicial act, shall, after two months from such service, constitute a refusal by the public administration as stated in article 961(2) of this Code.

Duty to state the grounds of decisions.

206. (1) Every decision of the public administration which may adversely affect the rights or interests of any person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

(2) The public administration shall also state how it has applied the relevant facts and legal basis to each individual decision taken by it.

(3) If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision, and where standard replies are therefore made, the public administration shall guarantee that it will subsequently provide that member who expressly requests it, with the detailed grounds of that decision.

(4) The public administration shall avoid making decisions which are based on a superficial evaluation or on vague grounds.

Indication of the possibilities of appeal or review.

207. (1) A decision of the public administration which may adversely affect the rights or interests of any person shall contain an indication of the appeal or review possibilities available for challenging the decision.

(2) Such decision shall, in particular, indicate the nature of the remedies, the bodies before which an appeal or review proceedings may be lodged, and the time limits for exercising them.

(2) Such decision shall, in particular, refer to the possibility of judicial proceedings or complaints under the provisions of this Code or any other law.

Notification of the decision.

208. (1) The public administration shall ensure that decisions which affect the rights or interests of any person are notified in writing to the person concerned as soon as the decision has been taken.

(2) The public administration shall abstain from communicating its decision to third parties until the person concerned has been first informed of the said decision of the public administration.

Data protection and data retention. Cap. 440.

209. (1) When the public administration deals with personal data concerning a member of the public, it shall respect the privacy of the individual in accordance with the provisions of Title III of Part I of Book Second of this Code, and shall also respect his integrity.

(2) The public administration shall in particular avoid processing personal data not authorized by law or transmitting such data to non-authorized persons.

(3) The public administration shall refrain from retaining personal data beyond the time limit allowed by law for such retention.

(4) Where the public administration is allowed by law an indefinite period within which to retain such data, it shall ensure that the said data is not retained beyond what is reasonably acceptable to retain such data in the circumstances.

(5) Where such personal data is no longer required by the public administration, it shall be disposed of within a reasonable time and in terms of law. The Information and Data Protection Commissioner shall be informed of such disposal within thirty days from such disposal taking place.

Requests for information.

210. (1) The public administration shall, when it has responsibility for the matter concerned, provide the person concerned with the information that he has requested on the procedure leading to a decision both in terms of Title IV of Part I of Book Second of this Code or any other law.

(2) Where appropriate, the public administration shall give advice to the person concerned on how to initiate an administrative procedure within its field of competence.

(3) The public administration shall take care to ensure that the information communicated to the person concerned is clear and understandable.

(4) If an oral request for information made by any person is too complicated or too comprehensive to be dealt with, the public administration shall advise such person to formulate his demand in writing.

(5) Where appropriate, the public administration shall, depending on the subject of the request, direct the person seeking information to the competent entity of the public administration responsible for providing information to the public.

Request for public access to documents.

211. (1) The public administration shall deal with requests for access to documents in accordance with the provisions of Title IV of Part I of Book Second of this Code or any other relevant law regulating public access to documents.

(2) If the public administration cannot comply with an oral request for access to its documents, the person concerned shall be advised to formulate in writing his request for access to the documents of the public administration.

Keeping of adequate records.

212. (1) The public administration shall keep adequate records of its incoming and outgoing mail, of the documents it receives, and of the measures it takes.

(2) Such documents shall be preserved and deposited at the National Archives when they are no longer needed in terms of Title V of Part I of Book Second of this Code.

Simplification of the administrative procedures. One stop shop.

213. (1) The public administration shall keep procedures as simple as possible without unnecessary forms and formalities.

(2) Procedure concerning several entities of the public administration shall be coordinated so that persons have, as far as possible, only one contact entity in the public administration.

Power of Minister to make regulations to implement provisions of this Title.

214. The Minister responsible for justice following agreement with the Law Commissioner may make regulations to implement and to give better effect to the provisions of this Title and may, without prejudice to the generality of the foregoing:

(a) establish the date of entry into force of the provisions of this Title with regard to those entities of the public administration that the Minister may by regulations specify; and

(b) make such amendments, alterations, deletions, repeals, corrections, changes and modifications to any principal law or subsidiary law for the purpose of bringing such principal law or subsidiary law in conformity with the provisions of this Title.

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Title IV

OF PRINCIPLES APPLICABLE TO THE EXERCISE OF DISCRETIONARY POWERS BY ADMINISTRATIVE AUTHORITIES

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Scope and definitions.

215. Without prejudice to the provisions of article 191(1)(d) of this Code, the following principles apply to the protection of the rights, liberties and interests of persons with regard to administrative acts taken in the exercise of discretionary powers.

Definitions.

216. Unless the context otherwise requires, the following definitions shall apply to this Title:

(a) the term "administrative act" shall have the same meaning as is assigned to it in article 961 (2) of this Code;

(b) the term "discretionary power" means a power which leaves the public administration some degree of latitude as regards the decision to be taken, enabling it to choose from among several legally admissible decisions the one which it finds to be the most appropriate.

What has to be observed in the implementation of these Principles.

217. (1) In the implementation of these principles, the requirements of good and efficient administration and the interests of third parties and major public interests shall be duly taken into account by the public administration.

(2) Where these requirements or interests make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavour shall be made to observe the spirit of this Title.

Basic principles regulating the exercise of a discretionary power.

218. The public administration, when exercising a discretionary power:

(a) shall not pursue a purpose other than that for which the power has been conferred;

(b) shall observe objectivity and impartiality, taking into account only the factors relevant to the particular case;

(c) shall observe the principle of equality before the law by avoiding unfair discrimination;

(d) shall maintain a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues;

(e) shall take its decision within a time which is reasonable having regard to the matter at stake;

(f) shall apply any general administrative guidelines in a consistent manner while at the same time taking account of the particular circumstances of each case.

Procedure.

219. (1) The following principles shall apply specifically to the taking of administrative acts in the exercise of a discretionary power.

(2) Any general administrative guidelines which govern the exercise of a discretionary power shall be:

(a) published in the Gazette and made public, and

(b) communicated in an appropriate manner and to the extent that is necessary to the person concerned, at his request, be it before or after the taking of the act concerning him.

(3) Where the public administration, in exercising a discretionary power, departs from a general administrative guideline in such a manner as to affect adversely the rights, liberties or interests of a person concerned, such person shall be informed of the reasons for this decision.

(4) Such information shall be provided by stating the reasons in the act. Where the public administration has failed to do so, at the request of any person, shall communicate in writing to the person concerned such information within twenty days from the date of receipt of the said request.

Control.

220. (1) An act taken in the exercise of a discretionary power shall be subject to control of legality by a court or other independent body.

(2) This control does not exclude the possibility of a preliminary control by an administrative authority empowered to decide both on legality and on the merits.

(3) As stated in article 205(4) and in article 961(2) of this Code, where no time-limit for the taking of a decision in the exercise of a discretionary power has been set by law and the public administration does not take its decision within two months following a person's written demand served upon it by means of a judicial act, its failure to do so may be submitted to control by an authority competent for the purpose.

(4) A court or other independent body which controls the exercise of a discretionary power shall have such powers of obtaining information as are necessary for the exercise of its function.

Principles affecting the protection of persons from the exercise of administrative discretion.

221. (1) The following principles shall apply to the protection of persons in administrative procedures with regard to any individual measures or decisions which are taken in the exercise of public authority by the public administration and which are of such nature as directly to affect their rights, liberties or interests.

(2) In the implementation of these principles the requirements set out in article 217(1) shall be duly taken into account by the public administration and the provisions of article 217(2) shall also apply.

(3) Where any such requirement is excluded, the public administration shall provide reasons for such exclusion. Such reasons shall be published in the Gazette within twenty days from the date of the decision.

Right to be heard.

222. (1) In respect of any administrative act of such nature as is likely to affect adversely his rights, liberties or interests, the person concerned may put forward facts and arguments and, in appropriate cases, call evidence which shall be taken into account by the public administration.

(2) In appropriate cases the person concerned shall be informed, in due time and in a manner appropriate to the case, of the rights stated in the preceding sub-article.

Access to information.

223. At his request, the person concerned shall be informed, before an administrative act is taken, by appropriate means, of all available factors relevant to the taking of that act.

Assistance and representation.

224. The person concerned may be assisted or represented in the administrative procedure by any person of his choice including an advocate or legal procurator.

Statement of reasons.

225. Where an administrative act is of such nature as adversely to affect his rights, liberties or interests, the person concerned shall be informed of the reasons on which it is based.

(2) This is done either by stating the reasons in the act, or by communicating them, at his request, to the person concerned in writing within twenty days from the date of the receipt of the request.

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Indication of remedies.

226. Where an administrative act which is given in written form adversely affects the rights, liberties or interests of the person concerned, it shall indicate the normal remedies against it, and the time-limits for their utilization in terms of article 207 of this Code.

Title V

OF THE STATUS OF PUBLIC OFFICERS

Typology of systems governing public administration employees.

227. (1) The systems governing public administration employees can be generally defined as being a mixed system of contractual and career arrangements.

(2) In the former, public administration employees are under a contract where conditions apply which are more or less similar to those of employees in the private sector.

(3) In the latter system, public administration employees are subject to a specific status defined by law or regulation.

Choice of system.

228. (1) The choice of system to be adopted vary according to the specific circumstances of each entity of the public administration.

(2) Whatever the system, a number of essential principles of good practice, which follow hereafter, shall be respected, as these principles constitute the very basis of an efficient and citizen-oriented public administration.

Legal framework for public administrators and implementation.

229. The legal framework and general principles concerning the status of public administration employees shall be established by law and by collective agreements, if any, and their implementation shall be left to the public administration or settled through collective agreements.

Authority responsible for public administration employees.

230. (1) The management policies relating to public administration employees shall, in general, be the responsibility of the public administration.

(2) In all cases, in order for the public administration to be efficient, it is essential to avoid possible conflict of competence between the various authorities responsible for public administration employees.

Categories and levels of public administration employees.

231. Where appropriate, the categories and levels of public administration employees shall be defined in the light of the function performed, to which a certain level of responsibility is attached.

Conditions and requirements for recruitment.

232. (1) Recruitment of public administration employees shall be defined by equality of access to public posts and selection based on merit, fair and open competition and an absence of discrimination.

(2) Some pre-conditions may however exist for accessing public posts.

(3) In addition, general requirements and specific requirements may exist for recruitment.

(4) Such requirements, in so far as they constitute exceptions to these principles, shall be admitted only if lawfully justified.

Recruitment procedures.

233. (1) Recruitment systems and procedures shall be open and transparent, and their rules shall be clear.

(2) Such systems shall allow the best candidate to be appointed to meet the specific needs of the entity of the public administration concerned.

(3) The law shall provide for the legal protection of applicants to public positions including, *inter alia,* ensuring the due confidentiality of sensitive information provided in the context of the selection procedure and a legal remedy for the candidates against the decision of the competent entity of the public administration.

Transfers of public administration employees.

234. (1) In so far as possible, public administration employees shall not be transferred without their consent unless it is required in the public interest and, in particular, of a good public administration.

(2) In all cases, the transfer should not constitute a disguised sanction.

(3) Public administration employees shall enjoy a legal remedy against the possible unlawfulness of such a measure. Where the law does not provide for such a remedy, it shall be exercised before the Administrative Court.

Promotions.

235. Promotions implying a higher level of responsibility shall be based on merit.

Rights.

236. (1) Public administration employees shall, in principle, enjoy the same rights as all persons.

(2) However, the exercise of these rights may be regulated by law or through collective agreement in order to make it compatible with their public duties.

(3) Their rights, particularly political and trade union rights, shall only be lawfully restricted in so far as it is necessary for the proper exercise of their public functions.

Non discrimination.

237. There shall be no unfair discrimination on the basis of, *inter alia,* age, disability, gender, marital status, sexual orientation, race, colour, ethnic or national origin, community background, political or philosophical opinion and religious beliefs, especially concerning the access to public posts and promotion.

Participation of public administration employees.

238. Public administration employees shall promote participation or consultation of staff in decision-making processes concerning the organisation, structure and principles governing the exercise of public functions.

Social protection.

239. The state shall ensure the social protection of public administration employees, including pensions, by means of the general social security and pension scheme or by means of specific schemes.

Remuneration.

240. (1) Public administration employees shall have an adequate remuneration commensurate with their responsibilities and function.

(2) Remuneration shall be regarded as a means of achieving desired organisational goals and should be sufficient so as to ensure that public administration employees are not put at risk of corruption or engaging in activities incompatible with the performance of public duties.

(3) Such remuneration shall be established by the Public Accounts Committee following a public consultation process.

(4) The Principal Permanent Secretary shall be responsible, following consultation with the Permanent Secretary in the Ministry of Finance, to draw up proposals for consideration by the Public Accounts Committee as to the remuneration to be paid to public administration employees.

(5) Such remuneration may be revised at regular intervals in terms of the procedure set out in this article.

Duties.

241. (1) Having due regard to the rights of all citizens, inherent obligations are imposed on public administration employees in the exercise of their public functions. They include, *inter alia*, respect for the rule of law, loyalty to the democratic institutions, discretion, neutrality, impartiality, hierarchical subordination and respect for the public and accountability.

(2) In addition, in order to ensure that public administration employees devote themselves fully to their public functions and avoid conflicts of interest and corruption, public administration employees may be subject to certain restrictions regarding second jobs or the carrying out of, or participation in, certain activities.

Disciplinary responsibility of public administration employees.

242. (1) Public administration employees shall be responsible for discharging the tasks entrusted to them.

(2) Failure by public administration employees to fulfil their duties, whether intentionally or through negligence on their part, may lead to the institution of disciplinary proceedings. In this case, the disciplinary proceedings shall be adversarial and the employees concerned shall be entitled to be assisted by a representative of their choice.

(3) Disciplinary action shall be lawfully established.

(4) Public administration employees shall have a legal remedy against disciplinary action as may be established by law or by a collective agreement. In the absence of such law or collective agreement, the Prime Minister shall by regulations prescribe the procedure available to public administration employees to avail themselves of such a legal remedy where such remedy is competent in their case.

Training.

243. (1) Ongoing training is an essential element for an efficient system of public administration.

(2) It is the task of the public administration to offer public administration employees relevant training in the frame of an appropriate training policy for them.

(3) Public administration employees shall have the right and the duty to undergo relevant training without discrimination.

(4) Furthermore, training may be a condition of recruitment or promotion.

(5) For this purpose a Training Academy for Public Administration Employees shall be established by the Prime Minister by regulations setting out its functions, structure and other ancillary matters relating thereto.

Termination of public administration employees' employment.

244. (1) Termination of employment of public administration employees shall only occur in the cases and for the reasons provided for by law.

(2) A legal remedy shall be available in all cases to protect public administration employees against misuse of authority in terms of Title VII of Part I of Book Second of this Code.

Protection of public administration employees.

245. (1) A legal remedy before a court or other independent institution shall be available to public administration employees for the protection of their rights in relation to their employer.

(2) The state shall provide for the protection of public administration employees who, because of the lawful performance of their public duties, are the subject of abusive claims or other illegal acts by third parties. For this purpose, any public administration employee shall have a right to be defended by the entity of the public administration which employs him.

Title VI

OF PRINCIPLES TO BE APPLIED IN IMPOSING ADMINISTRATIVE SANCTIONS

Application to this Title.

246. (1) This Title applies to the public administration.

(2) The public administration includes any entity of the public administration howsoever called which is by law authorised to inflict an administrative sanction but does not include a court or tribunal established by law.

(3) This Title applies also to administrative acts which impose a punishment on a person on account of conduct contrary to the applicable law. Such punishment can be in the form of a fine or any other punitive measure, whether pecuniary or not, but shall not include a punishment in the form of imprisonment, detention, custody, arrest or any other form of punishment restrictive of a person's liberty.

(4) The following are not considered to be administrative sanctions:

(a) measures which the public administration is obliged to take as a result of criminal proceedings; and

(b) disciplinary sanctions.

Principles to be applied in imposing administrative sanctions. Application of the *nullum crimen sine lege, nulla poena sine lege* to administrative proceedings.

247. The applicable administrative sanctions and the circumstances in which they may be imposed shall be laid down by law.

Non-retroactive application of administrative sanctions and severity of punishment.

248. (1) No administrative sanction may be imposed on account of an act which, at the time when it was committed, did not constitute conduct contrary to the applicable law.

(2) Where a less onerous sanction was in force at the time when the act was committed, a more severe sanction subsequently introduced may not be imposed.

(3) The entry into force, after the act, of less repressive provisions shall not be to the advantage of the person on whom the public administration is considering imposing an administrative sanction.

Application of the principle of *ne bis in idem* to administrative proceedings.

249. (1) A person may not be administratively penalised twice for the same act, on the basis of the same rule of law or of rules protecting the same social interest.

(2) When the same act gives rise to action by two or more entities of the public administration, on the basis of rules of law protecting distinct social interests, each of those entities shall take into account any sanction previously imposed for the same act.

Time limit within which an administrative action and decision are to be taken.

250. (1) Any action by the public administration against conduct contrary to the applicable law shall be taken within a reasonable time.

(2) When the public administration has set in motion a procedure capable of resulting in the imposition of an administrative sanction, it shall act with reasonable speed in the circumstances.

Application of *res judicata* to administrative sanctions.

251. Any procedure capable of resulting in the imposition of an administrative sanction which has been instituted in respect of a person shall give rise to a decision which terminates the proceedings.

Principles to apply to administrative sanctions.

252. (1) The following principles shall apply specifically to the taking of administrative sanctions:

(a) any person faced with an administrative sanction shall be informed of the charge against him;

(b) he shall be given sufficient time to prepare his case, taking into account the complexity of the matter and the severity of the sanctions which could be imposed upon him;

(c) he or his representative shall be informed of the nature of the evidence against him;

(d) he shall have the opportunity to be heard before any decision is taken;

(e) an administrative act imposing a sanction shall contain the reasons on which it is based.

Right to a fair trial.

253. In respect of any administrative act of such nature as is likely to affect adversely his rights, liberties or interests, the person concerned may put forward facts and arguments and, in appropriate cases, call evidence which shall be taken into account by the public administration.

(2) The person concerned shall be informed, in due time and in a manner appropriate to the case, of the rights stated in the preceding subarticle.

Access to information.

254. At his request, the person concerned shall be informed, before an administrative act is taken, by appropriate means, of all available factors relevant to the taking of that act.

Assistance and representation.

255. The person concerned may be assisted or represented in the administrative procedure by any person of his choice, including an advocate or a legal procurator.

Statement of reasons.

256. (1) Where an administrative act is of such nature as adversely to affect his rights, liberties or interests, the person concerned shall be informed of the reasons on which it is based.

(2) This is done either by stating the reasons in the act, or by communicating them, at his request, to the person concerned in writing within twenty days from receipt of such a request.

Indication of remedies.

257. Where an administrative act which shall be given in written form adversely affects the rights, liberties or interests of the person concerned, it shall indicate the normal remedies against it, and the time-limits for their utilisation.

(2) Subject to the consent of the person concerned and in accordance with the law, the principles in sub-article (1) may be dispensed with in cases of minor importance, which are liable to limited pecuniary penalties not exceeding one hundred euro (€100).

(3) However, if the person concerned objects to the proposed sanction, all the guarantees of sub-article (1) shall apply.

Onus probandi.

258. The onus of proof shall be on the public administration.

Control of legality by a court or tribunal.

259. An act imposing an administrative sanction shall be subject, as a minimum requirement, to control of legality by an independent and impartial court or tribunal established by law.

Adaptation of laws.

260. (1) The Law Commissioner shall have the function of advising the Standing Committee on Codification and Recodification of Laws on any amendments that may have to be made to any law which, directly or indirectly, refers to the imposition of administrative sanctions, for the purpose of adapting the same to the provisions of this Title.

(2) Such amendments shall be made by regulations to be published in the Gazette by the Standing Committee aforesaid.

(3) Any amendments to any law as aforesaid may be given retroactive effect, saving any vested rights.

(4) Such amendments shall come into force on such date as the said Select Committee may by regulations prescribe.

Title VII

OF PUBLIC ACCESS TO OFFICIAL DOCUMENTS

Definitions.

261. For the purposes of this Title:

"official documents" shall mean all information recorded in any form, drawn up or received and held by the public administration and linked to any public or administrative function, with the exception of documents under preparation.

Scope.

262. (1) The provisions of this Title concern only official documents held by the public administration.

(2) However, the Select Committee on Recodification and Consolidation of Laws shall examine, in the light of domestic law and practice, to what extent the principles of this Title may be applied to information held by legislative bodies and judicial authorities.

(3) The Standing Committee may make regulations to extend or to adapt the provisions of this Code regulating public access to official documents held by legislative and judicial authorities and, in so doing, may amend, substitute or delete any primary law and subsidiary law to ensure compliance of such primary law and subsidiary law with the provisions of this Code.

(4) The right of access or the limitations to access to official documents laid down in Title III of Part I of Book Second of this Code.

General principle on access to official documents.

263. (1) The right of everyone to have access, on request, to official documents held by the public administration shall be granted by law.

(2) This principle shall apply without discrimination on any ground, including that of national origin.

Possible limitations to access to official documents.

264. (1) The right of access to official documents may be limited by law.

(2) Limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

(a) national security, defence and international relations;

(b) public safety;

(c) the prevention, investigation and prosecution of criminal activities;

(d) privacy and other legitimate private interests;

(e) commercial and other economic interests, be they private or public;

(f) the equality of parties concerning court proceedings;

(g) nature;

(h) inspection, control and supervision by public authorities;

(i) the economic, monetary and exchange rate policies of the state;

(j) the confidentiality of deliberations within or between entities of the public administration during the internal preparation of a matter.

(2) Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in subarticle (1), unless there is an overriding public interest in disclosure.

(3) The law may set time limits beyond which the limitations mentioned in subarticle (1) shall no longer apply.

Requests for access to official documents.

265. (1) An applicant for an official document shall not be obliged to give reasons for having access to the official document.

(2) Formalities for requests shall be kept to a minimum.

Processing of requests for access to official documents.

266. (1) A request for access to an official document shall be dealt with by any entity of the public administration holding the document.

(2) Requests for access to official documents shall be dealt with on an equal basis.

(3) A request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed within any time limit which is specified by law.

(4) If the public administration does not hold the requested official document it shall, wherever possible, refer the applicant to the competent entity of the public administration.

(5) The public administration shall help the applicant, as far as possible, to identify the requested official document. The public administration shall not be under a duty to comply with the request if it is a document which cannot be identified.

(6) A request for access to an official document may be refused if the request is manifestly unreasonable.

(7) When the public administration refuses access to an official document wholly or in part shall give reasons for refusal.

Forms of access to official documents.

267. (1) When access to an official document is granted, the public administration shall allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.

(2) If a limitation applies to some of the information in an official document, the public administration shall nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, such access may be refused.

(3) The public administration may give access to an official document by referring the applicant to easily accessible alternative sources.

Charges for access to official documents.

268. (1) Consultation of original official documents on the premises shall, in principle, be free of charge.

(2) A fee may be charged to the applicant for a copy of the official document, which shall be reasonable and not exceed the actual costs incurred by the public administration.

Review procedure.

269. (1) An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in articles 518 and 519 of this Code shall have access to a review procedure before a court of law or another independent and impartial body established by law.

(2) An applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by an entity of the public administration or review in accordance with subarticle (1).

Complementary measures.

270. The following measures shall be taken:

(a) a person shall be informed about his rights of access to official documents and how that right may be exercised;

(b) public administration employees shall be trained in their duties and obligations with respect to the implementation of this right;

(c) the public administration shall ensure that applicants can exercise their right.

(2) To this end, the public administration shall in particular:

(a) manage its documents efficiently so that they are easily accessible;

(b) apply clear and established rules for the preservation and destruction of its documents;

(c) as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.

Information made public at the initiative of the public authorities.

271. The public administration shall, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within the public administration or will encourage informed participation by the public in matters of public interest.

Title VIII

OF THE EXECUTION OF ADMINISTRATIVE AND JUDICIAL DECISIONS IN THE FIELD OF ADMINISTRATIVE LAW

Execution of administrative decisions regarding private persons.

272. The principles contained in this Title apply to any individual measure or decision which is taken by the public administration in the exercise of public authority and which is of such nature as directly to affect the rights, liberties or interests of any person.

Implementation.

273. (1) All persons shall be provided to ensure that all persons comply with administrative decisions that have been brought to their knowledge in accordance with the law, notwithstanding the protection by judicial authorities of their rights and interests.

(2) Where it is not provided for by law that the introduction of an appeal against a decision entails automatic suspension, a person shall be able to request an administrative or judicial authority to suspend the implementation of the contested decision in order to ensure the protection of their rights and interests.

(3) This possibility shall be exercised within twenty days from the date that the administrative decision has been brought to the attention of such person in order to avoid unnecessarily blocking the action of the public administration and to ensure legal certainty.

(4) In deciding on the request for suspension, the public interest and the rights and interests of third persons shall be taken into account by the public administration and, unless it is excluded by law, by the judicial authority.

Enforcement.

274. (1) The use of enforcement by the public administration shall be subject to the following guarantees:

(a) enforcement is to be expressly provided for by law;

(b) a person against whom the decision is to be enforced shall be given the possibility to comply with the administrative decision within reasonable time except in urgent duly justified cases;

(c) the use of and the justification for enforcement shall be brought to the attention of the person against whom the decision is to be enforced;

(d) the enforcement measures used including any accompanying monetary sanctions shall respect the principle of proportionality.

(2) In urgent cases, the extent of the enforcement procedure shall be proportionate to the urgency of the case.

(3) Any person shall be to lodge an appeal before the Administrative Court against the enforcement procedure in order to ensure the protection of his rights and interests in those cases where no remedy is already afforded by this Code or any other law, whether before a court or tribunal. Unless otherwise prescribed by law, such an appeal shall be lodged within twenty days from the date of notification of the public administration's decision.

(4) If the public administration does not use an enforcement procedure, those whose rights and interests are protected by the non-implemented decision shall be able to apply to the Administrative Court.

Execution of judicial decisions regarding administrative authorities.

275. (1) The public administration shall implement judicial decisions within a reasonable period of time. In order to give full effect to these decisions, the public administration shall take all necessary measures in accordance with the law.

(2) In cases of non-implementation by the public administration of a judicial decision, an appropriate procedure shall be provided to seek execution of that decision, in particular through an executive act, a precautionary act or a coercive fine. Such procedure shall be exercised before the Administrative Court.

(3) The public administration shall be held liable where it refuses or neglects to implement judicial decisions. Public administration employees in charge of the implementation of judicial decisions may also be held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them.

Execution of judicial decisions entailing an obligation to pay a sum of money.

276. (1) Where the public administration is obliged to pay a sum of money, it shall comply with this obligation within a reasonable period of time.

(2) Interest payable by the public administration, due to non-implementation of judicial decisions entailing an obligation to pay a sum of money, shall be no less than interest payable by any person to the public administration in a similar situation.

(3) The public administration shall ensure that it has appropriate provision to avoid a situation whereby a lack of funds would prevent it meeting its obligation to pay a sum of money.

(4) In the case of non-implementation by the public administration of judicial decisions entailing an obligation to pay a sum of money, it shall be lawful for any person to seize the property of the public administration within the limits prescribed by law and dispose of such property through a judicial sale by auction.

(5) The public administration may always sue for damages a public administration employee who, through his fault, the public administration was condemned by the Administrative Court to pay damages in order to recover the said damages from the said employee subject to the provisions of article 930 of this Code.

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Title IX

OF ADMINISTRATIVE PROCEDURES AFFECTING A LARGE NUMBER OF PERSONS

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Scope and definitions.

277. (1) This Title applies to the protection of the rights, liberties and interests of persons in relation to administrative acts which concern a large number of persons, more specifically:

(a) a large number of persons to whom the administrative act is addressed, hereafter referred to as persons of the first category;

(b) a large number of persons whose individual rights, liberties or interests are liable to be affected by the administrative act even though it is not addressed to them, hereafter referred to as persons of the second category;

(c) a large number of persons who, according to national law, have the right to claim a specific collective interest that is liable to be affected by the administrative act, hereafter referred to as persons of the third category.

(2) Persons of the three categories are hereafter referred to as persons concerned.

(3) Sub-Title I of this Title sets out the principles applicable to the making of the above-mentioned administrative acts and to the control thereof.

(4) Sub-Title II of this Title states additional principles designed to protect the persons concerned when an administrative act is liable to have effects in the territory of a neighbouring state.

(5) In the implementation of these principles, due regard shall be had to the requirements of sound, efficient administration and to major public interests and the interests of third parties, in particular with respect to the protection of personal data and of industrial or commercial secrecy. When the above requirements or interests make it necessary, one or more of these principles may be derogated from or excluded by regulations to be made by the Prime Minister in specific areas of public administration or in duly justified circumstances.

Achievement of aims of this Title.

278. The aims of this Title can be achieved:

(a) either through a single set of rules covering the whole subject, or

(b) through rules or practices specific to particular categories of decisions or particular fields.

Sub-Title I

Of Administrative Procedure and Control

Administrative act taken following recourse to a participation procedure

279. The administrative act which concerns a large number of persons shall be taken on completion of a participation procedure conforming to the principles set forth below.

Information to be provided by the public administration.

280. When the public administration proposes to take such administrative act, the persons concerned shall be informed in such manner as may be appropriate and be provided with such factors as will enable them to judge its possible effects on their rights, liberties and interests.

Representation.

281. Having regard to the object and effects of the proposed administrative act, the interests at stake, the status or number of the persons concerned or the need to ensure efficient administration, the public administration may decide that at all or some stages of the procedure:

(a) persons of the second category with common interests shall nominate one or more common representatives;

(b) persons of the third category shall be represented by associations or organisations.

Access to available factors.

282. (1) At their request, persons of the first category and, subject to such representation arrangements as may be imposed on them in conformity with Sub-Title II, persons of the other categories should have access in such manner as may be appropriate to all the available factors relevant to the taking of the act.

(2) Having regard to the object and effects of the proposed administrative act, the interests at stake, the status or number of the persons concerned or the need to ensure efficient administration, the public administration shall decide that the participation procedure continue under one or more of the following forms:

(a) written observations;

(b) private or public hearing;

(c) representation in an advisory body of the competent authority.

(3) Where the procedure chosen is that of representation of the persons concerned in an advisory body, persons of the first category and, subject to such representation arrangements as may be imposed on them in conformity with Sub-Title II, persons of the second category shall also have the right to put forward facts and arguments and, in appropriate cases, present evidence.

Duty of the public administration.

283. The public administration shall take into account facts, arguments and evidence submitted by the persons concerned during the participation procedure.

Publicity of administrative act.

284. (1) The administrative act shall be notified to the public.

(2) Without prejudice to any other way of communication, a public notification shall specify, to the extent that it does not itself contain the information, how the persons concerned may gain access to the following:

(a) the main conclusions emerging from the procedure;

(b) the reasons on which the administrative act is based;

(c) information on normal remedies against the administrative act and the time-limit within which they must be utilised.

(3) Persons of the first category shall be personally informed of the administrative act and of the reasons on which it is based. The reasons may be included in the act itself or be communicated to these persons in writing, at their request, within a reasonable time. An indication of the normal remedies against the act and of the time limit for their utilisation, shall also be given to the said persons.

Review of administrative act.

285. (1) The administrative act shall be subject to control by the Administrative Court or other tribunal designated for this purpose by law. Such control does not exclude the possibility of a preliminary control by an administrative authority.

(2) When the control procedure involves a large number of individuals, the court or other tribunal may, in accordance with fundamental principles and having due regard to the rights and interests of the parties, take various steps to rationalise the procedure, such as requiring participants with common interests to choose one or more common representatives, hearing and deciding test appeals and making notification by public announcement.

Sub-Title II

International Aspects

International effects of an administrative act.

286. (1) When the administrative act is likely to affect rights, liberties or interests in the territory of a neighbouring state, the administrative participation procedure referred to in Sub-Title I shall be accessible to the persons concerned in that state, on a non-discriminatory basis, according to the following indications:

(a) the public administration shall provide these persons with the information mentioned in Sub-Title I, at the same time as it informs the persons concerned on its territory. Such notification may be made either directly, by any appropriate means, provided the rules or practices governing relations between the states concerned so allow, or through the authorities of the neighbouring state;

(b) such representation arrangements as may be laid down by the public administration shall apply to the representation of these persons;

(c) these persons may submit their observations either directly, in accordance with the procedure in the territory of the state where the act is being proposed, or through the authorities of the neighbouring state when these authorities have declared their readiness to perform such functions in their residents' interest;

(d) the public administration shall inform these persons of the administrative act following the methods of communication mentioned in paragraph (a);

(e) the public administration may provide the information mentioned in paragraphs (a) and (d) in its own language.

(2) The public administration shall not be bound to take into account observations submitted in other languages.

Regulation of access to control procedure.

287. Access to the control procedure shall be secured without discrimination on grounds of nationality or residence.

Application of reciprocity to the administrative procedure.

288. Access to the administrative participation procedure and to the control procedure shall be subject to reciprocity.

Subjection of the provisions of this Sub-Title to international conventions.

289. (1) The application of the principles contained in this Sub-Title may be subordinated to conventions concluded between the states concerned.

(2) With due regard to the jurisdictions provided for by the internal law of each state and to the existing international agreements, the states and territorial communities or authorities concerned should further maintain liaison with one another with a view to ensuring an effective participation by all the persons concerned. They shall endeavour to facilitate exchanges of information between the public administration and the persons concerned. They may conclude either general or specific agreements or arrangements on a basis of reciprocity and equivalence for such purposes as:

(a) designating the authorities of the neighbouring state which should be approached according to the kind of administrative act proposed;

(b) enabling the factors relevant to the taking of the administrative act to be made available to the persons concerned in the neighbouring state;

(c) enabling an authority of the neighbouring state to obtain the observations of the persons concerned residing in its territory and to forward them to the public administration;

(d) stating the languages to be used.

Part V

OF STATUTORY LAW MAKING

Title I

OF THE LAW COMMISSIONER AND THE REVISED EDITION OF THE LAWS OF MALTA

Interpretation of this Title.

290. In this Title, unless the context otherwise requires -

"revised edition" means an edition of the laws of Malta prepared under this Title;

"the Commissioner" means the Law Commissioner appointed under le 74A of the Constitution or article 291 of this Code;

"statute law" includes any instrument having the force of law;

"the Minister" means the Minister responsible for justice.

Sub-Title I

The Law Commissioner

The Law Commissioner.

291. (1) For the purpose of preparing, from time to time, a revised edition of the statute laws of Malta, the Speaker may, with the concurrence of the House of Representatives' Standing Committee on Recodification and Consolidation of Laws, appoint a Law Commissioner. The Law Commissioner shall be an officer of Parliament.

(2) Where Parliament has provided that a law may be enacted or made in either the Maltese or the English language only, and is so enacted or made, the Commissioner may prepare the revised text of that law in that language only.

(3) The Commissioner may be appointed for such term and subject to such conditions as may be determined by the Speaker with the concurrence of the House of Representatives' Standing Committee on Recodification and Consolidation of Laws.

(4) The Commissioner may be eligible for re-appointment.

(5) The Commissioner may, at any time, resign his office and may also, for a good cause, be removed from office in the same way that a judge may be removed from office in terms of article 97(2) and (3) of the Constitution of Malta.

Cap. 12.

(6) A Minister, Parliamentary Secretary, Parliamentary Assistant, Permanent Secretary, public officer, mayor, councillor and a person who holds judicial office may not be appointed as a Commissioner.

(7) There shall be paid to the Commissioner such remuneration and allowances as the Public Accounts Committee may, by notice in the Gazette, determine.

(8) It shall also be the function of the Commissioner to perform such other duties as may, after consultation with him, be assigned to him by the Speaker, with the concurrence of the Standing Committee on Recodification and Consolidation of Laws, including duties of consolidating extant laws and codifying laws.

(9) The office of Law Commissioner shall be established as a public corporation.

(10) The Commissioner shall have a distinct legal personality and shall be capable, subject to the provisions of this Title, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of his 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 his functions under this Code.

(11) The expenses required by the Commissioner to exercise his functions under this Code and any other law shall be approved by the Public Accounts Committee and shall be a charge on the Consolidated Fund without the need of any

further appropriation other than this Code.

(12) Where during the course of any financial year the sum fixed by the Public Accounts Committee is in the opinion of the Commissioner insufficient to enable him to efficiently fulfil his functions the Commissioner shall prepare supplementary estimates for approval by the said Committee.

(13) The Commissioner shall cause to be prepared in every financial year, and shall not later than six weeks after the end of each such year adopt, estimates of the income and expenditure of the Commissioner for the next following financial year.

(14) The estimates for the first financial year of the Commissioner shall be prepared and adopted within such time as the Public Accounts Committee may by notice in writing to the Commissioner specify.

(15) A copy of the estimates shall, upon their adoption by the Commissioner, be sent forthwith by the Commissioner to the Public Accounts Committee.

(16) The Public Accounts Committee shall at the earliest opportunity and not later than six weeks after it has received a copy of the estimates from the Commissioner, approve the same with or without amendment.

(17)The Commissioner shall cause to be kept proper accounts and other records in respect of his operations under this Code and other laws and shall cause to be prepared a statement of accounts in respect of each financial year.

(18) The accounts of the Commissioner shall be audited by an auditor or auditors to be appointed by the Commissioner and approved by the Public Accounts Committee.

(19) The Public Accounts Committee may require the books or the accounts of the Commissioner to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other certifications as he may deem necessary.

(20) After the end of each financial year, and not later than the date on which the estimates of the Commissioner are forwarded to the Public Accounts Committee under subarticle (13), the Commissioner shall cause a copy of the statement of account duly audited to be transmitted to the Public Accounts Committee together with a copy of any report made by the auditors on that statement or on the accounts of the Commissioner.

(21)The Commissioner shall, not later than six weeks after the end of each financial year, make and transmit to the Public Accounts Committee a report dealing generally with the activities of the Commissioner during the financial year and contain such information relating to the proceedings and policy of the

Commissioner as the said Committee may from time to time require.

Office of the Law Commissioner.

292. (1) The Office of the Law Commissioner shall have the following Divisions:

(a) Human Rights Impact Assessment Division: this Division shall be responsible for vetting all bills submitted to the House of Representatives before the Second Reading of a bill takes place to ensure that such bills do not violate human rights and fundamental freedoms enshrined in Maltese Law;

(b) European Union Law Compliance Division: this Division shall be responsible to ensure that all bills submitted to the House of Representatives before the Second Reading of a bill takes place Maltese Law is compliant with European Union Law and that all directives are transposed within the prescribed time into Maltese Law;

(c) Legislative Drafting Division: this Division shall be responsible to draft such bills as the Standing Committee on the Recodification and Consolidation of Laws or the Commissioner may request;

(d) Legal Research Division: this Division shall carry out all legal research both with regard to case law and foreign law as the Standing Committee on the Recodification and Consolidation of Laws or the Commissioner may direct. It shall compile and publish on the Law Commissioner's website an index and summary of landmark Maltese case law and other cases which the Commissioner may by order in the Gazette establish;

(e) Electronic Law Updating Division: this Division shall be entrusted with the electronic updating of primary and subsidiary law;

(f) Recodification and Consolidation of Laws Division: this Division shall be responsible for the recodification and consolidation of Maltese Law. Once a draft law or draft code is prepared by this Division, the Commissioner shall forward it, with or without amendments, to the Standing Committee on the Recodification and Consolidation of Laws for its consideration;

(g) Corporate Services Division: this Division shall be responsible for the provision of corporate services to the office of the Commissioner and to the Standing Committee on the Recodification and Consolidation of Laws.

(2) The Law Commissioner shall appoint his own officers and employees following a public call for applications. In doing so, he shall not be subject to the direction or control of any other person or body.

(3) The Law Commissioner shall not, during his tenure, engage in the practice of any profession or in the active management or control of any business which in any way will be affected by the functions of his office, nor shall he be financially interested, directly or

indirectly, in any contract with, or in any franchise or privilege granted by the public administration.

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Sub-Title II

Of the Revised Edition of the Laws of Malta

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Powers of the Law Commissioner.

293. (1) In carrying out his functions under this Code, the Commissioner shall have power –

(a) to omit -

(i) all statute laws or parts of statute laws which have been expressly repealed, or which have expired, or have become spent or have had their effect;

(ii) all repealing provisions contained in any statute law;

(iii) all preambles to statute laws where such omission can, in the opinion of the Commissioner, be conveniently made;

(iv) all introductory words of enactment in any article, regulation or paragraph of a statute law which consists of more than one article, regulation or paragraph;

(v) all enactments prescribing the date on which a statute law is to come into force, where such omission can, in the opinion of the Commissioner, be conveniently made;

(vi) all amending provisions contained in a statute law where the amendments effected thereby and which are still in force have been embodied by the Commissioner in the statute law to which they relate;

(vii) all subsidiary legislation that is, or is intended to be, of a temporary nature or is subject to relative or frequent changes or is otherwise such that, in the opinion of the Commissioner, may be properly omitted. Any such omission shall not affect the continued operation of any such subsidiary legislation for as long as it otherwise remains in force;

(b) to consolidate into one statute law any two or more statute laws in *pari materia*, making such verbal alterations in the consolidated law as may thereby become necessary;

(c) to alter the order of articles or other sub-divisions of a statute law and, wherever necessary, to re-number those articles or other sub-divisions;

(d) to alter the form or arrangement of any article or other sub-division of a statute law, either by combining it in whole or in part with another article or subdivision, or other articles or sub-divisions, or by dividing it into two or more parts or sub-divisions;

(e) to divide any statute law, whether consolidated or not, into parts or other divisions;

(f) to add a short title to any statute law which may, in the opinion of the Commissioner, require it and, if necessary, to alter the short title of any statute law;

(g) to supply or alter marginal notes;

(h) to shorten and simplify the phraseology of any statute law;

(i) to correct grammatical, typographical and other mistakes in the existing copies of the statute laws, and for that purpose to make verbal additions, omissions or alterations not affecting the meaning of any provision;

(j) to convert any weight or measure into a metric weight or measure corresponding thereto as nearly as practicable, and for that purpose the Commissioner shall have power to round off any decimal as he may deem appropriate;

(k) to make any addition, omission or alteration which is consequential to any amendment to any statute law or provision thereof;

(l) to do all other things relating to form and method which may improve the revised edition.

(2) Where any statute law is to have effect or is to be read or construed, or to be read and construed, as provided in another statute law, the Commissioner may treat such a provision in the same manner as an amendment of the former by the latter enactment.

(3) The powers conferred by this article shall not be construed as empowering the Commissioner to make any alteration or amendment in the matter or substance of any statute law; but the Commissioner shall have power to make any alteration or amendment which might be necessary to make the revised edition more faithful to the original text or to remove any conflict between the Maltese and the English text of any law, and for these purposes the Commissioner shall have power to alter or amend either of those texts or both, including the prevailing text.

(4) The Commissioner shall have power to propose the making of any alteration or amendment in the matter or substance of any statute law to the Speaker or to the Standing Committee on Recodification and Consolidation of Laws.

Power to omit certain laws.

294. (1) It shall not be necessary for the Commissioner to include in a revised edition any statute law omitted under the authority of the Malta Statute Law Revision Ordinance, 1936 and the State Law Revision Act, 1980.

(2) Nor shall it be necessary for the Commissioner to include in a revised edition any law which, though in force in Malta immediately before 21st September, 1964, was so in force by virtue of or under any Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland; but any such omission shall not affect the validity or operation of any law so omitted.

Printing of revised edition.

295. (1) A revised edition shall be prepared in such order, form and manner, and shall contain such tables, indices and other information as the Commissioner, with the concurrence of the Standing Committee for Recodification and Consolidation of Laws, may deem necessary or expedient.

(2) Without prejudice to the generality of the foregoing provisions of this article the Commissioner may -

(a) add to any revised edition further parts containing the laws in force on a date or dates subsequent to that indicated in the revised edition, or in a further part thereof, as in force on such date or dates as are indicated in the further part or parts, and any such further part shall be deemed to be an integral part of the revised edition;

(b) keep the laws contained in any part of a revised edition updated to a date or dates indicated by the Commissioner, and for such purpose the Commissioner may publish a revised edition or any part thereof in a loose-leaf form and keep it updated in such manner and under such conditions as the Commissioner may deem appropriate,

and the provisions of this Title, including in particular, but without prejudice to the generality of the expression, article 293 and article 297, shall apply to any further part, and to any revised edition or part thereof published in a loose-leaf form, as they apply to any other revised edition or part thereof.

(3) A revised edition shall be printed under such arrangements as the Commissioner with the approval of the Public Accounts Committee, approve.

Construction of references to enactments.

296. (1) Where in any enactment or in any document of whatever kind, reference is made to any enactment affected by or under the operation of this Code, or to any provision of such enactment, such reference shall, where necessary and practicable, extend and apply to the corresponding enactment, or provision thereof, in the revised edition then in force.

(2) Where parts of a revised edition are brought into force on different dates, and in a part which is in force reference is made to an enactment, or a provision of an enactment, as such an enactment or provision will be contained in a part of the same edition which is not yet in force, such reference shall, until such time as the latter part comes into force, be read as a reference to the corresponding enactment or provision thereof as then in force.

(3) Where the Commissioner finds that any part of a revised edition published by him, whether such part has or has not come into force, contains an error or an omission, including an error or an omission which should have been rectified in a revised edition, he may publish, and cause to be sealed and signed as provided in article 298 of this Code, a correction in such form as it may deem appropriate; and, with effect from such date as the Commissioner may by notice in the Gazette appoint, being a date not earlier than the coming into force of the part of the revised edition to which the correction refers, the said part of the revised edition shall, notwithstanding any other provision of this Code, have effect subject to such correction.

(4) Where an enactment contained in a part of a revised edition is amended with effect from a date subsequent to the publication but before the coming into force of that part of the edition, and the Commissioner recommends to the Committee on the Recodification and Consolidation of Laws alterations in the amending enactment in order that the latter may be read and construed more appropriately as one with the principal enactment amended by it as contained in the revised edition, the Chairman of the said Committee may by order in the Gazette make the alterations so recommended; and thereupon, or as from such date as the said Chairman may in the notice specify, the amended enactment shall have effect as so amended.

Bringing into force and validity of revised edition.

297. (1) A revised edition shall come into force on such day as the Commissioner may by notice in the Gazette appoint.

(2) From the date of the coming into force of a revised edition, that edition shall be without any question whatever in all Courts of Justice and for all purposes whatsoever, the sole and only proper and authentic text of the statute laws included in it as in force on such date as the Commissioner shall with the concurrence of the Standing Committee on the Recodification and Consolidation of Laws by notice in the Gazette specify, but subject to any amendments thereto or any repeal thereof made after such date.

(3) Where a revised edition is published in electronic format, that edition shall be the sole and only proper and authentic text of the statute laws included in it, so however that any copy thereof or of any part thereof, printed on paper or in any other form and issued by the Commissioner, shall, in so far as it conforms to the revised edition printed in electronic format, also be an authentic text of the laws included in the said copy.

(4) If there is any conflict between the Maltese and the English texts of any revised edition, the Maltese text shall prevail.

(5) Notwithstanding anything contained in the foregoing provisions of this article, the Commissioner with the concurrence of the Standing Committee on the Recodification and Cnsolidation of Laws may, in any notice given thereunder, appoint or specify different dates for different parts of any revised edition, and in any such case the said provisions shall apply accordingly.

Copies to be signed, sealed and deposited.

298. (1) One copy of each volume of a revised edition shall be signed by the Commissioner, and shall be sealed with the Public Seal of Malta.

(2) Such copies shall then be transmitted to the Registrar of the Civil Courts and Civil Tribunals to be enrolled on record in his office.

Publication of revised edition in electronic format.

299. (1) The Commissioner may, with the concurrence of the Standing Committee on Consolidation and Codification of Laws, determine that a revised edition be made in electronic format on CD-ROM of DVD or such other electronic format as the said Committee may be order in the Gazette approve.

(2) Where a revised edition is made in electronic format as aforesaid, the foregoing provisions of this Title shall have effect subject to the following provisions of this article.

(3) Two hard copies of the Revised Edition shall be made in printed form and shall be bound in such number of volumes as the Commissioner may determine. The hard copies so made shall be signed and sealed as provided in article 298 of this Code.

(4) One of the copies so made shall be transmitted, together with a copy of the Revised Edition in electronic format to the Registrar of the Administrative Court to be enrolled on record in his office as provided in article 298, and another shall be placed at the office of the Commissioner and shall be open for inspection by the public on the payment of such fees as the Commissioner, with the concurrence of the Public Accounts Committee, may determine.

(5) At the request of any person, the Commissioner may issue hard copies of particular laws in a revised edition on the payment of such fees as he may, with the concurrence of the Public Accounts Committee, determine.

(6) The Commissioner shall cause such copies to be authenticated by the Commissioner or such member of his staff as he may by notice in the Gazette from time to time determine.

(7) Such authenticated copies shall, unless the contrary is proved, be accepted in evidence before any court of law as a true copy of such law as it appears in the revised edition.

(8) A revised edition made in electronic format shall not come into force before copies thereof have been transmitted to the Registrar of Civil Courts and Tribunals as provided in sub-article (4) of this article.

Publication of laws on the Internet.

300. (1) The Commissioner may cause to be published on the Internet site of his Office a consolidated version of any revised edition incorporating all amendments which may have been made to any law in a revised edition and including in such Internet site all Acts enacted after the publication of the last revised edition incorporating all amendments thereto. Such Acts enacted after the publication of a revised edition shall be given a chapter number as if they were incorporated in a revised edition and may be referred to by such chapter number.

(2) The Commissioner may also cause to be published on such Internet site an up to date consolidated version of subsidiary legislation made under the laws included in a revised edition and under Acts subsequently enacted, and may in such publication cause such subsidiary legislation to be given such enumeration with reference to the chapter number of the principal law or otherwise as the Commissioner may deem proper and reference to such subsidiary legislation by such enumeration shall be valid as if reference were made to the same subsidiary legislation as previously promulgated as a Government or legal notice or otherwise.

(3) The Commissioner shall cause a notice to be published in the Gazette giving the address of the website wherein the said laws are published on the Internet.

(4) Unless proof is brought to the contrary the text of any law published on an internet site in accordance with this article shall be deemed to be a true representation of the law incorporating all amendments up to the date indicated on the Internet site.

Application of the Copyright Act.

301. (1) No person may without the permission of the Commissioner make, or cause to be made copies or reproductions in any material form of any revised edition or any part thereof as published by the Commissioner.

(2) The provisions of sub-article (1) of this article shall not apply to the printing or publication of any law contained in a revised edition, by whatever means, provided that no part thereof is photocopied, scanned, electronically printed out or otherwise produced by using the revised edition or any part thereof as the physical base for the reproduction, and provided further that any such publication contains a declaration stating that it is not an official publication of the law in question.

Cap. 415.

(3) The provisions of article 9 of the Copyright Act shall apply *mutatis mutandis* to sub-article (1) of this article.

(4) Any person who acts in breach of the provisions of this article shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of one year or to a fine (*multa*) not exceeding twelve thousand euro (€12,000) or to both such fine and imprisonment.

(5) The provisions of sub-article (4) of this article shall be without prejudice to any right of action for damages pertaining to the Government or to the Commissioner against any person committing the offence.

Title II

OF THE STANDING COMMITTEE ON RECODIFICATION AND CONSOLIDATION OF LAWS

Constitution of a Standing Committee on Recodification and Consolidation of Laws.

302. (1) There is hereby established a Standing Committee of the House of Representatives to be known as the Standing Committee on Recodification and Consolidation of Laws.

(2) The Standing Committee for the Recodification and Consolidation of Laws shall consist of not less than five and not more than seven Members of Parliament.

(3) Where the Standing Committee for the Recofidication and Consolidation of Laws is composed of five members the quorum shall be three and where the Committee is composed of seven members the quorum shall be four.

(4) The members of the Standing Committee for the Consolidation and Recodification of Laws shall be chosen so as fairly to represent the House in general and the proportion of Government and Opposition members in particular.

(5) Alternate members shall also be appointed for each member of the Standing Committee on Recodification and Consolidation of Laws.

(6) Each side of the House may substitute any member or alternate member nominated by it to represent it on the Standing Committee on Recodification and Consolidation of Laws.

(7) Such substitution shall only have effect after the Speaker is notified therewith.

(8) The Speaker shall, at the first available opportunity, notify the House, or, if the House is in recess, the Standing Committee on House Business of such substitution.

Functions of the Standing Committee on Reconsolidation and Consolidation of Laws.

303. (1) The Standing Committee on Recodification and Consolidation of Laws shall have power to propose to the House of Representatives:

(a) the simplification of extant laws both as to content and format;

(b) the repeal of anachronistic and spent laws;

(c) the consolidation of laws;

(d) the codification of laws;

(e) amendments to extant laws;

(f) the approval of bills;

(g) law reform.

Reports drawn up by the Standing Committee on Recodification and Consolidation of Laws.

304. (1) The Standing Committee on Recodification and Consolidation of Laws shall draw up an annual report detailing its workings during the previous year.

(2) The Standing Committee on Recodification and Consolidation of Laws may append to such report draft laws which it might be proposing to Parliament to enact.

(3) The said Standing Committee on Recodification and Consolidation of Laws may submit interim reports as such times as it may deem expedient.

Procedure regulating draft bill.

305. (1) Should the House of Representatives elect to approve any report submitted by the Standing Committee on Recodification and Consolidation of Laws which contains attached thereto a draft bill submitted to it by the said Committee, the House shall order the draft bill to be laid on the table of the House and be given a first

reading without the need of a motion being made and a question put 'that leave be given to bring in such a Bill'.

(2) The Chairman of the Committee on Recodification and Consolidation of Laws, or any member thereof as may be agreed by the said Committee, shall be responsible for moving the draft law through all the stages of a bill in the House of Representatives.

(3) The committee stage on the draft bill shall be taken either before the House of Representatives or before any such Committee as the House may decide.

Assistance to be granted to the Standing Committee on Recodification and Consolidation of Laws.

306. (1) In the exercise of its functions, the Standing Committee on Recodification and Consolidation of Laws shall be assisted in the performance of its functions by the Law Commissioner, the Attorney General and the Ministry responsible for justice.

(2) The Speaker shall provide the Standing Committee on Recodification and Consolidation of Laws which such secretarial, financial and administrative services as the Committee may reasonably require.

Submissions from the public.

307. (1) The Standing Committee on Recodification and Consolidation of Laws may receive submissions from the general public on law reform.

(2) The said Standing Committee may also consult with the public on any draft reports or draft bills it might draw up before submitting them to the House of Representatives.

Title III

OF THE PROCEDURE REGULATING UNCONSTITUTIONAL AND ILLEGAL LAWS

Application of this Title.

308. This Title applies in the case of unconstitutional laws and illegal laws.

Definition of "unconstitutional law" and "illegal laws" for the purpose of this Title.

309. (1) Unconstitutional laws are provisions in a law which run counter to the Constitution of Malta.

(2) Illegal laws are laws which run counter to the provisions of:

(a) the European Convention Act; [Cap. 319]

(b) the European Union Act; [Cap. 460]

(c) the Diplomatic Privileges and Procedures Act. [Cap. 191]

(3) Subsidiary laws which run counter to primary laws are also considered to be illegal laws for the purpose of this Title.

Procedure to be followed when a law is declared unconstitutional or illegal or both.

310. (1) Where a court has declared in a definite judgment which has become *res judicata* that a provision of a law or a whole law is null and void, the court shall order the Registrar to serve a true copy of its judgment on the Law Commissioner.

(2) The Law Commissioner shall, not later than three working dates from the date of service of the said judgment upon himself, enter a notation in the Revised Edition of the Laws of Malta by way of an asterisk next to the number of the said provision or law declared null and void in the aforesaid judgment and a corresponding asterisk in a footnote to the said provision or title of the law, that the said provision or law has been so declared null and void setting out the relevant details of the court judgment.

(3) The relevant details of the court judgment as referred to in the previous sub-article shall consist of the following:

(a) name of all parties thereto;

(b) name of court delivering the judgment;

(c) where the court is composed of one judge, the name and surname of that judge;

(d) date of judgment;

(e) court file reference number.

Service of court judgment upon the Law Commissioner.

311. The court shall serve upon the Law Commissioner a true copy of the final decision of its judgment within twenty-four hours in case of a court of second instance and within twenty-four hours from the date following the expiration of the time limit to lodge an appeal where no appeal has been so lodged.

Cessation of operation of provision or law declared null and void.

312. (1) Once the Law Commissioner enters the said note in the Revised Edition of the Laws of Malta, the provision or law in question shall cease to be operative from the date of judgment and the said provision or law shall have no legal effect.

(2) Should the Law Commissioner be of the view that the cessation of operation of a provision or of a law be insufficient to bring that provision or law in conformity to the court judgment, the Law Commissioner shall prepare a draft Bill which gives effect to such judgment.

(3) The Law Commissioner shall submit such draft Bill to the Standing Committee for Recodification and Consolidation of Laws and that Bill shall be discussed by the said Committee as expeditiously as possible, and, if agreed upon, it shall be given a first reading, with or without modifications, by the Chairman of the said Committee,.

(4) The Bill shall be debated in the House of Representatives or in such Committee of the House as the House may direct not later than one week from the first reading if the House is in session with or without modifications or within one week from the date when it reconvenes, if it happens not to be in session.

When can a court declare a provision or a law null and void.

313. (1) A court may declare a provision or a law to be null and void in terms of:-

(a) article 6 of the Constitution of Malta;

(b) article 13 of the Diplomatic Privileges and Immunities Act; [Cap. 191]

(c) article 3(2) of the European Convention Act; [Cap. 319]

(d) article 3(2) of the European Union Act; [Cap. 460]

(e) any other law which might make provision to this effect which is in force from time to time.

(2) A court may also declare a provision or a law to be null and void when:

(a) such provision or law is contained in a subsidiary law and the said subsidiary law runs counter to a primary law;

(b) such provision or law has been made by a person or body who has not been authorised or delegated by law to make such provision;

(c) such provision or law has not been made in accordance with the law authorising the procedure to be followed in making that law.

Title IV

OF THE ENFORCEMENT OF EUROPEAN UNION LAW IN DOMESTIC LAW

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Where Maltese Law is in breach of European Union Law. Cap. 460.

314. (1) Where a Maltese law or an administrative act:

(a) does not comply with the provisions of the European Union Act, or

(b) has not transposed a European Union directive; or

(c) has wrongly transposed a European Union directive; or

(d) is in conflict with a Council Decision or a Regulation of the European Union,

any person may exercise a right of action for a declaration that any law or administrative act as aforesaid is invalid as it is not in conformity with European Union Law.

(2) Such right of action shall appertain to all persons without distinction.

(3) A person bringing such action shall not be required to show any personal interest in support of his action.

(4) Such action shall be filed before the Administrative Court.

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Title VII

OF CODES OF ETHICS

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Parliament to make Codes of Ethics.

315. Parliament may make Codes of Ethics for the following categories of persons:

(a) Ministers;

(b) Parliamentary Secretaries;

(c) Parliamentary Assistants;

(d) Members of Parliament;

(e) public administration employees;

(f) Board Directors in the Public Sector;

(g) Mayors, Deputy Mayors and Local Councillors;

(h) such other category of persons as Parliament may from time to time determine.

Drafting of Codes of Ethics.

316. Code of Ethics shall be prepared by the Law Commissioner.

Codification of Codes of Ethics.

317. (1) The Law Commissioner shall submit to the Committee for the Recofidication and Consolidation of Laws a codified version of the Codes of Ethics listed in article 315 above.

(2) Such codified version of the Codes of Ethics shall be presented to the said Committee by way of a draft Bill to enact a law to be entitled the "Code of Ethics Act".

(3) Any new Codes approved by Parliament under paragraph (h) of article 315 above shall be proposed by way of an amendment to the Code of Ethics Act.

Approval of Codes of Ethics.

318. (1) A Code of Ethics shall be approved by the Standing Committee for Recodification and Consolidation of Laws.

(2) The Standing Committee for Codification and Reconsideration of Laws shall submit the approved Code of Ethics in the form of a Bill to the House of Representatives.

Functions of the Standing Committee for Codification and Recodification of Laws.

319. (1) The Standing Committee for Codification and Recodification of Laws shall have the following functions in relation to ethical behaviour:

(a) to oversee the maintenance and monitoring the operation of the register of interests of Members of Parliament;

(b) to receive complaints of alleged breach of the codes of ethics with regard to those persons to whom the codes of ethics apply. Such complaints shall be forwarded for investigation investigated by the Law Commissioner;

(c) to monitor the operation of the codes of ethics and, where appropriate, propose possible modifications of those codes;

(d) with the assistance of the Law Commissioner, the Training Academy for Public Administration Employees and the Judicial Studies Committee, to prepare guidance to and provide training for those persons to whom the codes of ethics apply;

(e) on its own motion and without expressing itself as to whether a breach of the codes of ethics has been committed, to request the Law Commissioner to investigate possible breaches of the codes of ethics;

(f) determine disciplinary action instituted by the Law Commissioner before the Standing Committee on the Recodification and Consolidation of Laws against any person to whom the codes of ethics apply for any alleged misconduct committed by such person.

Procedure before the Standing Committee on Recodification and Consolidation of Laws.

320. (1) Hearings before the Standing Committee for the Recodification and Consolidation of Laws shall be held in public.

(2) The media shall be invited to attend such meetings.

(3) All disciplinary sanctions which may be inflicted upon any person to whom the Codes of Ethics apply shall be listed in the Code of Ethics Act.

(4) Any person charged by the Law Commissioner for alleged breach of the codes of ethics before the Standing Committee for the Recodification and Consolidation of Laws shall be afforded a fair hearing.

(5) This provision is without prejudice to any criminal sanction which may be prescribed by law and which may be instituted against the person charged with an alleged breach of the codes of ethics.

(6) Should the Executive Police charge a person for an alleged breach of the codes of ethics, they shall, within two working days from the date the person is charged in court, serve a copy of the charge on the Law Commissioner and on the Chairman of the Standing Committee on the Recodification and Consolidation of Laws.

(7) On receipt of a charge as aforesaid, the Chairman of the Standing Committee for Consolidation and Recodification of Laws shall stay the disciplinary proceedings, if any are pending, until there is a final outcome of the criminal proceedings.

(8) The Commissioner of Police shall keep the Chairman of the Standing Committee on the Recodifdication and Consolidation of Laws appraised of the developments taking place in the criminal or other proceedings in relation to the person charged. In particular, the Commissioner of Police shall submit to the Chairman of the said Standing Committee copies of any decrees and judgments delivered in those proceedings.

(9) Depending on the outcome of the court proceedings, the said Standing Committee shall decide whether to appoint the disciplinary proceedings for hearing.

(10) In those cases where the person charged as aforesaid is found guilty by a court of criminal jurisdiction and punished in terms of law, the Chairman shall request the Standing Committee to decide whether to allow the disciplinary proceedings to proceed or whether to stop such proceedings in the light of the *ne bis in idem* rule as applied to disciplinary proceedings.

(11) The Standing Committee shall hear both the Law Commissioner and the person found guilty before deciding whether to stop, start or resume the disciplinary proceedings.

Appeal proceedings.

321. (1) An appeal shall lie from the final decision on the merits of the disciplinary proceedings instituted by the Law Commissioner before the Select Committee for the Reconsideration and Consolidation of Laws.

(2) Such an appeal shall be lodged before the Administrative Court which shall be competent to hear appeals from disciplinary proceedings instituted before the Select Committee for the Recodification and Consolidation of Laws.

(3) Such appeal shall be lodged within twenty days from the date of the decision of the Standing Committee on Recodification and Consolidation of Laws.

Regulation of proceedings.

322. Parliament may by law regulate the procedure before the Standing Committee on the Recodification and Consolidation of Laws and the Constitutional Court when hearing disciplinary proceedings for alleged breach of the codes of ethics and may in such law give better effect to the provisions of this Title.

Part VI

OF STATUTORY CONSTRUCTION

Title I

OF INTERPRETATION OF STATUTORY LAWS

Sub-Title I

Rules of Statutory Interpretation

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Grammatical variations, gender, number, etc.

323. In this Code and in every Act whether passed before or after the commencement of this Code, unless the contrary intention appears -

(*a*) the definition of any word or expression shall extend to all grammatical variations and to cognate expressions of the word or expression so defined;

(*b*) words importing the masculine gender shall include females;

(*c*) words in the singular shall include the plural, and words in the plural shall include the singular;

Cap. 16.

(*d*) the expression "person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not;

(e) the expression “power” includes a right, entitlement, authority or competence to do something.

Commencement.

324. (1) In this Code, and in every Act passed either before or after the commencement of this Code, the expression "commencement", when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act of Parliament passed after the commencement of this Code, or an order, warrant, scheme, rule, regulation, bye-law, notice or other instrument made, granted or issued after the commencement of this Code under a power conferred by any Act, whether passed before or after the commencement of this Code, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Construction of provisions as to exercise of powers and duties.

325. In any Act, whether passed before or after the commencement of this Code -

(a) where such Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires;

(b) where such Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of that office;

(c) where such Act confers a power on the holder of an office, and such power relates to any business of the Government, or is exercisable as part of the functions of a department of Government for which responsibility has been assigned to a Minister under the Constitution, such power shall be exercisable by the holder of that office, and except to the extent that the holder of that office is expressly declared by any law not to be subject to the direction or control of any other person or authority, the Minister responsible for that business or department of the Government shall have power, even where such power is expressed to be exercisable in the discretion (whether absolute or otherwise) of the holder of that office, to give such direction in writing relative to the exercise of that power (including a direction ordering the reversal of a decision) as such Minister may deem fit. However, on employment, promotion or disciplinary matters in relation to individual employees, such direction may only be given by the Prime Minister and in such a case the head of department shall inform the Public Service Commission;

(d) where such Act confers a power to make any rules, regulations or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations or byelaws, and such power shall be exercisable without prejudice to the making of new rules, regulations or bye-laws.

Exercise of statutory powers between the passing and commencement of an Act.

326. Where an Act passed after the commencement of this Code is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant or issue any order, warrant, scheme, rule, regulation, bye-law, notice or other instrument, or to give notices, to prescribe forms, or to do any other thing for the purpose of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation; and the provisions of this article shall apply to anything done under or in respect of Acts passed before the commencement of this Code as they apply to things done under or in respect of Acts passed after such commencement.

Effect of repeal in future Acts and of amendments in any Act.

327. (1) Where any Act passed after the commencement of this Code repeals any other law, then, unless the contrary intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any law so repealed;

(c) affect any right, privilege or liability acquired or accrued or incurred under any law so repealed;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or any liability thereto;

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

(2) Where an Act, whether passed before or after the commencement of this Code, amends any other Act passed either before or after the commencement of this Code, or any provision of any such Act, the Act or provision so amended, as well as anything done thereunder or by virtue thereof, shall, unless the contrary intention appears, continue to have full effect, and shall so continue to have effect as amended, and subject to the changes made, by the amending Act.

(3) For the purposes of subarticle (2) "amendment" means and includes any amendment, modification, change, alteration, addition or deletion, in whatsoever form or manner it is made and howsoever expressed, and includes also a provision whereby an Act or a provision thereof is substituted or replaced, or repealed and substituted, or repealed and a different provision made in place thereof.

Offences by association of persons.

328. (1) Where any offence under or against any provision contained in any Act, whether passed before or after this Code, 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) Except in respect of offences under or against a provision contained in an Act in which a provision similar to that of this article occurs, the provisions of this article shall apply only to offences committed after the commencement of this Code.

Language of laws.

329. Without prejudice to the provisions of any other enactment, an Act of Parliament passed after the commencement of this Code may be enacted, in whole or in part, in the Maltese or in the English language only if the bill for that Act of Parliament,

or part of such bill, is presented to the Clerk of the House and published in one only of the said languages and if the Act when passed contains a provision authorising the enactment thereof, or any one or more of its parts, as the case may require, in that language only.

Amendment or repeal of Act in same session.

330. Any Act of Parliament may be altered, amended or repealed in the same session of Parliament; and the provisions of this article shall apply to anything done in respect of any enactment before the commencement of this Code as they apply to anything done in respect of an Act of Parliament after such commencement.

Electronic publication.

331. (1) Where any act or document is required to be published in the Gazette, it shall be sufficient that such act or document is published in electronic format on CD Rom, DVD or digital or is made available at a publicly accessible website on the internet and notice of such publication in electronic format on CD Rom, DVD or digital or the availability of the document on the website is published in the Gazette.

(2) Where an act or document is so published in electronic format on CD Rom or is so made available on a publicly accessible website on the internet, a hard copy thereof is made available for public inspection during normal office hours at a government department or office and notice of such availability is also published in the Gazette.

Sub-Title II

Of Domicile

Application of this Sub-Title.

332. In this Code and in every Act, unless the contrary intention appears, the rules set out in this Sub-Title shall apply to domicile.

Domicile.

333. (1) Every person has a domicile.

(2) No person may have more than one domicile at one and the same time.

The rule of revival of domicile of origin is abolished.

334. (1) The domicile of a person continues until a new domicile is acquired.

(2) The rule of law known as the revival of domicile of origin whereby a person's domicile of origin revives upon the abandonment of a domicile of choice is hereby abolished.

Domicile of married woman.

335. The rule of law whereby a married woman has at all times the domicile of her husband is abolished.

Acquisition of independent domicile. Cap. 191. Cap. 220.

336. (1) Except as provided in articles 337 and 338, a person is capable of acquiring an independent domicile.

(2) A person acquires an independent domicile in the state or country in which that person has his principal home and in which he intends to reside indefinitely.

(3) For the purpose of subarticle (2), a person is presumed to intend to reside indefinitely in the state or country where his principal home is situate, unless a contrary intention appears.

(4) Subarticle (3) does not apply to a person subject to military law in terms of the Armed Forces of Malta enlisted under the Malta Armed Forces Act or to a person entitled to diplomatic immunity under the Diplomatic Immunities and Privileges Act.

Domicile of minors.

337. (1) In this article –

(a) "minor" means a person under the age of eighteen years who has not married;

(b) references to the parents of a minor include adoptive parents and parents who are not married to each other.

(2) A person who is a minor –

(a) takes the domicile of his parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the minor habitually resides;

(c) takes the domicile of the father, where the domicile of the minor cannot be determined under paragraphs (a) or (b) above;

(d) takes the domicile of the mother, where the domicile of the minor cannot be determined under paragraph (c) above.

Domicile of a person with a mental disability.

338. (1) In this article –

(a) "court" means the Civil Court (Family Section);

(b) "person with a mental disability" means a person suffering, or appearing to be suffering, from mental disorder and the words "mental disorder" have the same meaning as is assigned to them in article 2(1) of the Mental Health Act. [Cap. 262]

(2) A person who is born mentally disordered has, so long as he is mentally disordered, the domicile of a minor under article 337.

(3) A person who becomes mentally disordered retains, so long as he is mentally disordered, the domicile he had under this Sub-Title, immediately prior to his becoming mentally disordered.

(3) Any relative of any person with whom the mentally disordered person is residing or any mental welfare officer so designated in terms of the Mental Health Act may request the court to change the domicile of a mentally disordered person.

(4) The mentally disordered person shall, at least twenty days before the date fixed by the court for the hearing of the application, be served with a true copy of the application.

(5) The court shall ensure that the mentally disordered person is duly represented in court by an advocate of his own choice and, in such absence, the court shall appoint an advocate to assist or represent the mentally disordered person.

(6) Where the court itself appoints an advocate to represent the mentally disordered person, such advocate shall be paid by the Registrar of the Civil Courts and Tribunals such sum as the court may *arbitrio boni viri* establish.

(7) In determining whether to approve a change of domicile under subarticle (3), the court shall consider, in addition to all other relevant circumstances and even after hearing the Children's Advocate, its effect upon any child of the mentally disordered person.

Determination of domicile.

339. The domicile of a person shall be determined under this Sub-Title to the exclusion of the laws of any other country or state.

Non-applicability of foreign choice of law rules.

340. Where a person is found domiciled in another state or country, the law of that state or country, excluding its choice of law, shall apply.

Title II

OF STATUTORY CONSTRUCTION IN GENERAL

Construction of statute law.

341. (1) In constructing a provision of this Code or of any other law, the duty of a court shall be that of ascertaining and give effect to the will of Parliament as expressed in this Code and of any other law.

(2) A mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used, if they be literally interpreted, is no sufficient reason for departing from the literal construction.

(3) What the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication.

(4) The fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs the most natural and probable. Such signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law.

The literal meaning.

342. (1) Where the words of this Code or of any other law are in themselves precise and unambiguous, a court shall resort to the literal meaning of such a provision.

(2) Where the language of this Code or of any other law is plain, admitting of only one meaning, the Legislature shall be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted shall be enforced unless it leads to absurd or mischievous results, in which case a departure from the literal meaning of the law shall be allowed.

Departure from the literal meaning.

343. (1) A court may however depart from the literal meaning and prefer therefor an interpretation based on the plain intention of the House of Representatives once this can be gathered from this Code or from any other law as a whole when such a literal meaning leads to some absurdity, or some repugnance or inconsistency with the rest of the provisions of this Code or of any other law, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency, but no farther. The cases where the literal meaning may be done away with are where:

(a) the provision is ambiguous or obscure; or

(b) a literal interpretation of a provision in this Code or in any other law would be absurd or would fail to reflect the plain intention of the House of Representatives; or

(c) the ordinary meaning conveyed by the text of the provision taking into account its context in this Code or in any other law and the purpose or object underlying this

Code or any other law leads to a result that is absurd or would fail to reflect the plain intention of the House of Representatives.

Effect of ambiguous law.

344. An ambiguous law shall not be construed to derogate from the rights of any person.

Statute to be read as a whole.

345. (1) This Code or any other law shall be read as a whole and construction made to give effect to all the provisions in this code or in any other law together.

(2) Every provision of this Code or of any other law shall be construed with reference to the context and other provisions of this Code of or any other law so as, as far as possible, to make a consistent interpretation of the whole Code or of any other law or part thereof.

(3) When reading this Code or any other law as a whole in order to determine the meaning of a provision:

(a) all the provisions of this Code or of any other law shall be taken into account, including –

(i) their sequence, segmentation and punctuation; and

(ii) the general organization and structure of this Code or of any other law;

(b) any provisions of this Code or of any other law that have been repealed may be taken into account;

(c) any amended provisions of this Code or of any other law as they read before their amendment may be taken into account;

(d) any intrinsic information may be taken into account but only as an opinion on the information it conveys.

Law to be interpreted in the light of changing circumstances.

346. (1) This Code or any other law shall be interpreted –

(a) as applying to circumstances as they arise; and

(b) in accordance with the contemporary meaning of its language.

(2) Any interpretation of this Code or any other law in terms of subarticle (1) shall be consistent with the purpose and scope of the law in question.

Inconsistencies between provisions in this Code or any other law.

347. In the event of any inconsistency between a long title, enacting statement, preamble, table of contents, segment heading, schedule or annexure in any law and any other provision of that law, that other provision prevails.

Interpretation of subsidiary legislation.

348. (1) A provision in any subsidiary law shall be interpreted in the context of its enabling legislation.

(2) Unless the subsidiary law prescribes otherwise, definition of words in the parent law shall also apply to the definition of the same words in the subsidiary law made under the parent law.

Sub-Title I

OF CANONS OF STATUTORY CONSTRUCTION

Construction to be in accordance with policy and object of the law.

349. The construction adopted of this Code or of any other law shall be in accordance with the policy and object of the law in question.

Words to be construed in popular sense.

350. (1) This Code or any other law shall be *prima facie* presumed to use words in their popular sense.

(2) If words are used in connection with some particular business, trade or transaction, such words shall be presumed to be used in a sense appropriate to such business, trade or transaction.

Words in a law are presumed to be used precisely and exactly.

351. (1) Words in this Code or in any other law are presumed to be used precisely and exactly.

(2) The burden of establishing that this is not the case lies on the person alleging that something in the context of this Code or of any other law shows that the loose and inexact meaning must be preferred.

Same words bear the same meaning.

352. (1) The same words are used in the same meaning in this Code or in any other law.

(2) Consequently a change of language is some indication of a change of intention on the part of the Legislature.

(3) Words occurring in different parts of this Code or of any other law shall be given the same meaning unless this Code or such other law expressly provides otherwise.

(4) Where the Legislature has used the same words in a similar connection in two laws it may be presumed in the absence of any context indicating a contrary intention that the same meaning attaches to the words in the latter as in the former law.

Where the law is clear it shall be enforced. *Dura lex sed lex*.

353. If the language of this Code or of any other law is clear, it shall be enforced though the result may seem harsh or unfair and inconvenient.

Construction to avoid absurdity.

354. (1) This Code or any other law shall be construed as far as possible to avoid absurdity.

(2) This Code or any other law shall be construed in a manner to give it validity rather than invalidity.

Guidance for judicial interpretation.

355. (1) A judge, magistrate or other adjudicating body shall give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the this Code or of any other law.

(2) He shall also determine the extent of general words with reference to that context.

(3) If a judge, magistrate or other adjudicating body considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of this code or of any other law, he may apply them in any secondary meaning which they are capable of bearing.

(4) A judge, magistrate or other adjudicating body may read in words which are already in this code or in any other law and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of this Code or of any other law.

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Sub-Title II

OF PRESUMPTIONS IN THE INTERPRETATION OF STATUTORY LAWS

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Presumption of constitutionality.

356. This Code and any other law shall be presumed to be in conformity with the Constitution of Malta.

Presumption of compatibility with European Union law.

357. This Code or any other law shall be presumed to be in conformity with European Union law.

Presumption of compatibility with international obligations.

358. This Code or any other law shall be presumed to be in conformity with the international obligations assumed by Malta.

Presumption that all laws bear a meaning.

359. No words in this Code or any other law are enacted without a meaning.

Presumption that an updated construction should be applied.

360. (1) This Code or any other law shall be read in the light of conditions prevailing today and that social and technological developments shall be taken into account.

(2) In construing a provision of this Code or any other law, a court may also make allowances for any changes, in law, the meaning of words used in this Code or in any other law and other relevant matters, which have occurred since the date of the passing of this Code or of any other law, so far as its text, purpose and context permit.

Presumption that penal provisions be construed strictly.

361. Penal liability shall not be implied in this Code or in any other law in the absence of clear and unambiguous words.

Presumption against implicit changes in the law.

362. A provision which is ambiguous as to whether or not it effects a change in this Code or in any other law shall be regarded as not effecting any such change.

Presumptions against retrospective effect.

363. When a law changes the substantive, as distinct from the procedural, law then, regardless of whether the law is otherwise prospective or retrospective in its operation, it shall not be deemed to affect proceedings brought under the law which existed prior to the amending law and was pending at the date of the coming into operation of the amending law, when such amending law expressly or by necessary intendment provides to the contrary.

Presumption against extra-territorial effects.

364. Law shall be presumed to have effect only within the territory of the Republic of Malta.

Presumption as to giving the same meaning to a word or expression judicially construed in a subsequent law using the said word or expression.

365. When a word or expression in this Code or in any other law has received a clear judicial interpretation, there is a presumption that any subsequent law that incorporates the same word or expression in a similar context shall be construed so that the word or expression is interpreted according to the meaning that has previously been ascribed to it.

Derogation from these presumptions.

366. (1) Parliament may derogate from the application of any of these presumptions in any law.

(2) Such derogation shall be made by an explicit provision of the law.

Sub-Title III

Of Internal Aids to Construction

Long Title to a statute.

367. The long title to a statute may be used to ascertain the purpose and legislative intent behind a provision.

Marginal notes.

368. No marginal note placed at the side of any article or provision to indicate the subject, contents, or effect of such article or provision shall be taken to be part of the law and considered for interpretation purposes of that law.

Headings.

369. No heading placed at the head or beginning of a Part, Title, Sub-Title, Section or provision or a group of provisions to indicate the subject, contents or effect of such Part, Title, Sub-Title, Section or provision or a group of provisions shall be taken to be part of the law and considered for interpretation purposes of that law.

Footnotes.

370. No footnote to a provision in any law, shall be taken to be part of the law and considered for interpretation purposes of that law.

Proviso.

371. (1) A proviso is a clause of exception or qualification in a law, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.

(2) A proviso is generally identified by the words "Provided that" or "this provision does not apply to".

(3) Unless of necessity, a proviso shall never be construed as enlarging the scope of the enacting words.

(4) A proviso shall be construed with reference to the preceding parts of the clause to which it is appended and as subordinate to the main clauses of the law.

(5) Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment, though, the natural presumption is that, but for the proviso, the enacting part of the provision would have included the subject-matter of the proviso.

Schedules.

372. (1) Schedules of a law shall have the same force of law as the content of a provision of the law.

(2) However, in the case of a conflict between a schedule and a provision of a law, the provision shall prevail.

Sub-Title IV

Of Extrinsic Aids To Construction

Reference to other laws.

373. Where two or more laws deal with similar subject-matter, that is, they are in *pari materia*, those laws may be construed together and the same terms used in both or more laws may be interpreted as having the same meaning when used in similar contexts in the said laws.

Explanatory memoranda.

374. Where an explanatory memorandum is published together with a Bill or with a treaty which is incorporated into municipal law, such memorandum may be used as an extrinsic aid to construction of a law.

Legislative history of a provision.

375. (1) It is permissible to use the legislative history of a law as an extrinsic aid to its construction.

(2) By "legislative history" is meant the legislative antecedents of the provision under construction and pre-parliamentary material and parliamentary material relating to it. Legislative history also includes reference to preparatory materials of a foreign law when the domestic law is modeled on that foreign law.

Debates and resolutions of the House of Representatives.

376. (1) Where a provision is ambiguous or obscure, recourse may be had to parliamentary debates to ascertain the law's meaning.

(2) A court shall however refuse to use a parliamentary resolution from which Parliament's interpretation of a legislative provision is evident, as an aid to Parliament's own interpretation of the particular provision.

(3) In such cases, the court shall ascertain the intention of the legislature in typical textual fashion from the wording of the legislation.

Treaties and associated documents.

377. (1) Where a law implements, either expressly or impliedly, a treaty, both the terms of the treaty and its *travaux preparatoires* may be considered in interpreting an ambiguous provision of the law incorporating that treaty into Maltese Law.

(2) For the purposes of this article, the expression "treaty" shall have the same meaning as is assigned to it in the Ratification of Treaties Act. [Cap. 304]

Documents emanating from the European Union.

378. (1) Where a law transposes an European Union directive, the preparatory documents used for the drafting of the directive, including previous texts of the directive, any comments thereon and any debates thereon by the European Union organs, may be considered in interpreting an ambiguous provision of the law incorporating that directive into Maltese Law.

(2) For the purposes of this article, the instruments mentioned in article 5 of the European Union Act shall be considered as an extrinsic aid to interpretation.

Textbooks and dictionaries.

379. (1) Textbooks may be used as an aid to construction of a law.

(2) Dictionaries may be consulted with regard to the ordinary meaning of words used in a law.

Circulars of the public administration.

380. (1) Circulars of the public administration constitute an extrinsic aid to construction.

(2) Circulars of the public administration come into two types:

(a) state-and-subject type, that is, announcements by the public administration of the course which it is proposed to take in the administration of particular laws;

(b) subject-and-subject type, that is, arrangements made by the public administration which affect the operation of the law between one subject and the others.

Other extrinsic aids to construction.

381. Other extrinsic aids to construction include the following:

(a) any document that is declared by this Code or any other law to be a relevant document for the purposes of this article;

(b) any relevant report of a committee of the House of Representatives;

(c) any publication of any official body that was appointed before the time when the provision was enacted and which had given an input to the preparation of the Bill;

(d) such other document as the court, for a particular reason, considers essential;

(e) all matters not forming part of a statute that are set out in the document containing the text of the statute as printed;

(f) any relevant report of the Law Commissioner or other similar body that was published before the time when the provision was made law;

(g) any relevant report of the European Union.

Legal maxims to be applied in statutory construction.

382. The following legal maxims shall apply in statutory construction:

(a) the public welfare is the highest law (*salus populi est suprema lex*);

(b) the law does not concern itself about trifles (*de minimis non curat lex*);

(c) the greater contains the less (*omne majus continet in se minus*);

(d) that which was originally void, does not by lapse of time become valid (*quod ab initio non valet in tractu temporis non convalescit*);

(e) inclusion of the one means the exclusion of the other (*inclusio unius est exclusion alterius*);

(f) words of a law are to be construed in the light of their context (*noscitur a sociis*);

(g) wide words in significance associated in the text with more limited words in significance are taken to be restricted by implication to matters of the same limited character (*ejusdem generis*);

(h) a general statutory provision does not repeal a specific one (*generalia specialibus non derogant*);

(i) to express one thing is to exclude another (*expressio unis est exclusio alterius*).

(j) where legislation prohibits a certain result, that which causes the result is, by implication, also prohibited;

(k) where legislation demands or allows a certain result or action, it follows that such legislation also demands or permits everything which is reasonably necessary to bring about the result or to perform the action effectively;

(l) when the law allows someone something, that without which the thing itself cannot exist is also permitted (*quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest*);

(m) if legislation prohibits or permits a certain thing it follows that accessory or ancillary acts or matters are also prohibited or permitted (*ex accessorio eius, de quo verba loquntur*);

(n) where an enabling law confers a power, it also by implication confers those powers which are reasonably necessary to achieve the principal aim;

(o) the jurisdiction of the courts is not restricted or ousted by law unless there is an express provision stating that a court's jurisdiction is to be excluded;

(p) a statutory provision which denies or restricts the right of a person to appeal to a court shall be interpreted strictly;

(q) when a law repeals or amends a previously obtaining law, the repeal or amendment of a previously obtaining law shall be effected expressly;

(r) when a new law repeals or amends a previously obtaining law and the objects of the two conflicting provisions are in *pari materia* (essentially the same), the earlier and subsequent law shall be read together and reconciled together. Where such reconciliation is impossible, it is the later provision which shall prevail;

(s) a provision in a subsequent general law does not repeal an earlier specific provision (*specialibus non derogant*);

(t) a provision shall be interpreted so as to burden or restrict those to whom it applies as little as possible;

(u) provisions imposing burdens are to be interpreted strictly (*dispositiones odiosae*);

(v) someone whose rights have been infringed by legislation is entitled to compensation even though the legislation concerned does not provide for this. Exclusion of compensation must be enacted;

(w) penal clauses must be strictly interpreted (*in poenis strictissima verborum significatio accipienda)*;

(x) if a penal clause is ambiguous, the court will give the accused the benefit of the doubt (*poenalibus causis benignus interpretandum est*).

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Sub-Title V

OF RULES TO BE FOLLOWED IN THE DRAFTING OF STATUTE LAW

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Drafting of laws.

383. When drafting laws, the following rules shall be observed:

(a) the wording of the law shall be clear, concise and unambiguous;

(b) unnecessary abbreviations and excessive long sentences shall be avoided;

(c) imprecise references to other laws shall be avoided;

(d) too many cross-references which make the text difficult to understand shall be avoided;

(e) the various provisions of a law shall be consistent with each other;

(f) the same terms shall be used throughout to express a given concept;

(g) the rights and obligations of those to whom the law is to apply shall be clearly defined;

(h) the law shall be laid out according to the standard structure;

(i) provisions without legislative character shall be avoided;

(j) any amendments, extension or repeal of a law shall be clearly set out;

(k) any law amending an earlier law shall not contain autonomous substantive provisions, but only provisions to be directly incorporated into the law to be amended;

(l) the date of entry into force of a law shall be clearly provided for;

(m) any saving and transitory provisions which might be necessary shall be clearly stated.

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BOOK SECOND

OF SUBSTANTIVE ADMINISTRATIVE LAW

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Part I

OF THE PUBLIC ADMINISTRATION AND REMEDIES AGAINST THE PUBLIC ADMINISTRATION

_____

Title I

OF THE PUBLIC ADMINISTRATION

_____

Sub-Title I

Of Definitions and Declaration of Principles

_____

Interpretation.

384. (1) In this Title, unless the context otherwise requires:-

"Code of Ethics" means the code of ethics contained in the Code of Ethics Act and until such code is enacted means the code of ethics contained in the First Schedule;

"department of Government" or "department" means any entity in the Public Service that is listed in the Second Schedule;

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"Disciplinary Regulations" means the Disciplinary Procedure in the Public Service Commission Regulations or any other regulations on disciplinary matters substituting them and which may be made under article 121(1) of the Constitution;

"government agency" or "agency" means a body listed in the Third Schedule;

"grade" means any of the grades listed in the Fourth Schedule, and consists of a group of one or more posts in one or more departments which bear a common designation and are filled directly through an appointment to the grade;

"Minister" means, unless the context otherwise requires, the Minister responsible for the public service so however that where the Prime Minister has delegated, wholly or in part, any of the powers, functions or authorities assigned to him by this Title, the Prime Minister may still exercise such powers, functions or authorities collaterally with such Minister;

"ministry" means an organisation referred to in article 163 of this Code;

"position" means any office in the public service, other than a grade;

"post" means a particular set of tasks or duties which are performed or intended to be performed by one person;

"Principal Permanent Secretary" means the person appointed in terms of article 92(5) of the Constitution of Malta;

"public administration values" means the values listed in article 190;

"public office" has the same meaning assigned to it by article 124 of the Constitution and shall also, for the purposes of this Title, be understood to mean any grade or position in the public service except those listed in subarticle (2)(*a*) (b) and (c);

"public officer" has the same meaning assigned to it by article 124 of the Constitution, but shall for the purposes of this Title be understood in accordance with subarticles (2) and (3);

"public service" has the same meaning assigned to it by the Constitution, but shall for the purposes of this Title be understood in accordance with subarticles (2) and (3);

"Public Service Commission" means the Commission established by article 109 of the Constitution;

"Senior Executive Service" means the body of senior public officers to which article 395 of the Code refers;

"transfer" means to assign a public officer to a different post.

(2) This Title shall not apply to:

(*a*) the offices of judge, magistrate, Director of Public Prosecutions, Attorney General, Auditor General and Law Commissioner; and

(*b*) the offices of Speaker, Deputy Speaker, Ombudsman and Data Protection and Information Commissioner; and

(c) the Broadcasting Authority, the Electoral Commission, the Employment Commission, the Commission for the Administration of Justice and (in so far as this Title does not specifically refer to it) the Public Service Commission.

(3) Without prejudice to the independence of the Electoral Commission and the Public Service Commission under the Constitution, this Title shall not apply to the Electoral Office and the Public Service Commission Secretariat.

(4) Unless otherwise specified to the contrary in this Title, where a provision of this Title conflicts with the provisions of any other law governing an entity of the public administration, the other law shall prevail.

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Sub-Title II

Of The Public Service

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Section I

Organisation

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Departments.

385. (1) Departments of Government shall be those listed in the Second Schedule.

(2) The functions of departments shall be in accordance with the indicative summaries shown against the respective departments in the Second Schedule.

(3) The Prime Minister may, by regulations, amend the Second Schedule to:

(*a*) establish a new department;

(*b*) abolish a department or change its name or function; and

(*c*) change the titles of heads of department and other officers as provided for in article 386.

(4) Departments which, by virtue of any applicable laws or special administrative arrangements, are not subject to the direction and control of a Minister in the performance of their main functions shall be listed in Part II of the Second Schedule, but the applicability of any such law to such a department shall not depend on its listing in the Schedule.

Senior Appointments Advisory Committee.

385A. (1) There shall be a Senior Appointments Advisory Committee, hereinafter referred to as the Committee, that shall:

(*a*) consult the competent Minister about the duties attached to and the results expected from any headship position that is vacant or expected to become vacant;

(*b*) identify candidates for the position in accordance with article 397(2) of this Code, within the parameters set by the Constitution; and

(*c*) give due account about the candidates and propose for the Prime Minister's consideration the candidate who in its opinion is best suited on the basis of merit to fill the position.

(2) The Committee shall be chaired *ex officio* by the Principal Permanent Secretary and shall consist of:

(*a*) at least two other members, one of whom shall not be a public officer, who shall be appointed by the Prime Minister; and

(*b*) any additional members co-opted by the Prime Minister for the purpose of considering applicants for specific headship positions.

(3) The Committee shall call upon the advice and assistance of Permanent Secretaries in screening or short-listing candidates but shall otherwise regulate its own procedure.

(4) No person may be appointed to a headship position to which article 92(4) of the Constitution applies unless:

(*a*) that person is eligible therefor by virtue of the grade which he holds; or

(*b*) that person has served for six consecutive years in one or more positions in the Senior Executive Service.

Titles of headship positions and other public offices, and equivalent titles at law.

386. (1) The Prime Minister may from time to time determine the position titles under which heads of department shall be appointed, and such titles shall, by order of the Prime Minister published in the Government Gazette, be listed

next to the names of the departments in the Second Schedule.

(2) The re-designation of a position while it is occupied shall not be taken as a re-appointment of the incumbent or a change to the terms of his appointment.

(3) The assignment by the Prime Minister of similar position titles to different headship positions shall not mean that such positions should necessarily attract the same status and terms and conditions.

(4) Where, in accordance with the provisions of this Title, a headship position, or any other office in the public service, that has been established or is assigned functions by another provision of this Title–

(*a*) is assigned a new title; or

(*b*) is merged with another public office as a result of organisational restructuring;

the title assigned to the office by the other provision of this Title (hereafter in this article referred to as the "equivalent title at law") shall be listed in the Second Schedule along with the new title of the office or the office with which it has been merged in terms of paragraph (*a*) or (*b*), as the case may be, and subarticles (4) and (5) shall apply.

(5) Where any office in the public service is listed in the Second Schedule along with an equivalent title at law -

(*a*) the powers assigned to the office under its equivalent title at law shall vest in the holder of the office as currently titled; and

(*b*) both titles shall be regarded as interchangeable for the purpose of any law and a reference to one title in place of another shall not invalidate any act or any legal proceedings.

(6) Where any law -

(*a*) assigns, or permits the assignment of, functions to staff acting on behalf of the holder of a public office; and

(*b*) that office is listed in the Second Schedule as the equivalent title at law of a second office;

such functions may be performed by staff in the department to which the second office belongs, notwithstanding anything to the contrary in the said law; but any conditions or requirements attached by the law to the performance of such functions shall otherwise continue to apply.

(7) If a public office has more than one equivalent title at law, subarticles (5) and (6) shall apply in respect of each such title.

Exercise of powers during a public officer's absence.

387. The Permanent Secretary with respect to the head of any department listed in the Second Schedule and the head of department with respect to a member of staff as the case may be, shall ensure that the most suitable officer as the case may be, and due account being taken of seniority and technical abilities, is nominated for the purposes of article 124(5) of the Constitution with the aim of exercising any powers as are vested by any law if the head or other member of staff is absent from his office and temporarily unable to discharge his duties so that such powers shall be exercised during the period of the officer's absence.

Secretariats of boards and commissions.

388. (1) Unless otherwise provided for in any other law, where a board is supported by a secretariat consisting of public officers drawn from a department, the board, limitedly in relation to administrative matters and matters affecting the department as a whole, shall be subject to the authority of the head of department.

(2) The secretariat of the board shall be under the direction of an officer, hereinafter referred to in this article as "the designated officer", who shall follow the directions of the head of department within which the board secretariat operates on the matters mentioned in subarticle (1).

(3) A head of department shall not give directions to the board or the designated officer on matters in respect of which the board is required by law to function independently.

(4) In this article "board" includes any commission, council, panel, committee or other similar body, not being a body established by the Constitution, but does not include any *ad hoc* board set up for the purpose of inquiring into the conduct of any public administration employee or the operations of any entity of the public administration.

Section II

Leadership

The Principal Permanent Secretary.

389. (1) There shall be a Principal Permanent Secretary who shall be head of the public service.

(2) The Principal Permanent Secretary shall be appointed in terms of article 92(5) of the Constitution.

(3) The Principal Permanent Secretary shall take instructions from the Prime Minister.

(4) The Principal Permanent Secretary may, with the concurrence of the Prime Minister, delegate any of his functions under this article to one or more Permanent Secretaries or heads of department.

(5) The Principal Permanent Secretary shall:

(*a*) provide leadership to the public service;

(*b*) uphold and promote the provisions of this Code, and monitor the compliance of public officers therewith;

(*c*) take measures to improve the performance of the public service;

(*d*) assume overall responsibility for human resource management and development within the public service;

(*e*) take measures to ensure coordination between public administration entities and to ensure that such entities are complying with the key policy objectives and management priorities of the Government;

(*f*) provide leadership and direction to Permanent Secretaries;

(*g*) set performance targets for Permanent Secretaries and monitor their performance following consultation with the competent Minister;

(*h*) advise the Prime Minister on matters relating to the public service, including the appointment and termination of appointment of Permanent Secretaries and heads of department; and

(*i*) perform any other function that may be assigned to him by this Code or under any other law.

(5) The Principal Permanent Secretary shall assume the headship and supervisory functions of a Permanent Secretary in relation to the Office of the Prime Minister and the public service.

(6) The Principal Permanent Secretary shall however not assume supervisory functions over such persons or bodies which fall administratively within the Office of the Prime Minister and which in terms of the Constitution or any other law are established as independent bodies and are not subject to the direction or control of

any person or body, including the Principal Permanent Secretary.

(7) One or more additional Permanent Secretaries may be appointed to assist the Principal Permanent Secretary in accordance with such arrangements as the Prime Minister may make under article 415(2).

Criteria for appointment of Principal Permanent Secretary.

390. (1) When the Prime Minister is to appoint a Principal Permanent Secretary in terms of article 92(5) of the Constitution he shall appoint him from amongst persons having the qualifications to be appointed Permanent Secretaries in terms of the Constitution.

(2) Both the Principal Permanent Secretary and Permanent Secretaries shall be appointed in terms of article 92(3) of the Constitution on the basis of competitive selection on merit.

(3) Before making any such appointment as mentioned in subarticle (2), the Prime Minister shall issue a call for applications addressed to senior public officers who may apply for such posts.

(4) For the purpose of this subarticle only but not for the purpose of the other provisions of this Code, the expression "senior public officers" means officers in salary scales 1 to 5 as set out in the Fourth Schedule to this Code.

(5) Where the Principal Permanent Secretary is not appointed for any reason whatsoever, the Secretary to the Cabinet shall assume the functions of Principal Permanent Secretary until such time as a Principal Permanent Secretary is appointed.

(6) Where there is no incumbent in the office of Secretary to the Cabinet, the most senior or, should he be unable to perform such duties due to ill-health, the next senior amongst Permanent Secretaries shall assume the temporary functions of Principal Permanent Secretary until such time as a Principal Permanent Secretary is appointed.

(7) Where there is no incumbent in the office of Permanent Secretary, the most senior or, should he be unable to perform such duties due to ill-health, the next senior amongst officers within a Ministry shall assume the temporary functions of Permanent Secretary until such time as a Permanent Secretary is appointed.

(8) Before appointing the selected candidate as Principal Permanent Secretary or Permanent Secretary as aforesaid the Prime Minister shall publish in the *Gazette* the report of the Selection Board setting out the reasons why such candidate was chosen for the office together with any comments which the Prime Minister might want to publish on the selected candidate.

Directives and guidelines issued by the Principal Permanent Secretary in relation to departments of Government.

391. (1) The Principal Permanent Secretary may issue directives and guidelines to public officers as variously specified in this Title and may in addition issue directives and guidelines on any matter relating to the organisation and management of the public service, and in so doing he shall seek to frame his directives in the best interests of the consumer and in such a manner as to impose the least possible administrative burden.

(2) All such directives and guidelines shall be approved by the Prime Minister before they come into force and shall following the Prime Minister's approval be published in the *Gazette*.

(3) The Principal Permanent Secretary shall ensure that bureaucracy is kept to a minimum by the public service and that the public welfare should be the guiding principle in policy making in the public service. For this purpose he shall ensure that the public service shall be governed by the principles of good administration and shall be responsible for ensuring better regulation within the public service.

(4) For the purpose of this Title, "better regulation" means:-

(a) the process of seeking to improve and simplify the regulatory environment. The underlying principle is that regulation shall be used only when necessary, and it shall be appropriate and proportionate to the task, transparent, enforceable, accessible to all and as simple as possible;

(b) essential to protect persons and businesses alike;

(c) not about outright removal of such regulation but about ensuring that regulation is only used when appropriate, and when used is of a high quality.

(5) Public officers shall comply with all applicable directives issued by the Principal Permanent Secretary, and officers who fail to comply shall be liable to proceedings under the Disciplinary Regulations.

(6) Directives issued by the Principal Permanent Secretary may incorporate guidelines to assist public officers in correctly applying and observing the directives, and public officers shall accordingly have regard to such guidelines.

(7) Directives and guidelines issued by the Principal Permanent Secretary may apply for a definite or an indefinite period and to any or all departments and public officers, according to the nature of the provisions contained therein or as specified by the Principal Permanent Secretary.

(8) The Principal Permanent Secretary may codify standing directives and guidelines, together with any amendments that he may make thereto from time to

time, in the form of the Public Service Management Code or other manuals on specific matters which he may issue for this purpose.

(9) Such code and manual shall be published in the *Gazette* or in an internet website the address whereof shall be published in the Gazette, together with any amendments made thereto and such Code or manual, and any such amendments shall come into effect on such date as may be specified in the *Gazette*.

(10) The Prime Minister may give directions to the Principal Permanent Secretary concerning the issue, amendment or revocation of any directives and guidelines.

(11) Such directions shall be in writing and shall be published in the Gazette.

Committee of Permanent Secretaries.

392. (1) There shall be a Committee of Permanent Secretaries which shall be chaired by the Principal Permanent Secretary, and which shall consist of the Secretary to the Cabinet as deputy chairperson and all Permanent Secretaries as members.

(2) The Permanent Secretaries shall fulfil their collegiate responsibility for the performance of the public service, facilitate the realisation of Government policies and ensure the achievement of Government objectives that cut across ministries through the Committee of Permanent Secretaries.

(3) The meetings of the Committee of Permanent Secretaries shall be convened by the Principal Permanent Secretary as often as he may deem necessary but at least once every three months.

(4) This article shall apply without prejudice to the individual responsibility of Permanent Secretaries to their Ministers, and to the Prime Minister through the Principal Permanent Secretary, for the achievement of Government objectives.

Supervision of departments by Permanent Secretaries.

393. (1) Where, in accordance with article 92(2) of the Constitution, a Permanent Secretary is charged with the supervision of one or more of the departments of Government that are listed in Part I of the Second Schedule, he shall ensure that each department is:

(a) working towards the timely and effective fulfilment, in conjunction with other entities of the public administration as appropriate, of his Minister's and the Government's policy objectives;

(*b*) being managed according to this Code and any other law, and applicable policies and directives governing staff conduct, management and the use of resources; and

(*c*) operating economically, efficiently and effectively and delivering any services to the public to a satisfactory standard.

(2) A Permanent Secretary shall advise his Minister on all matters pertaining to the departments under his supervision.

(3) A Permanent Secretary may give directions to and set targets for a head of department on any matter in fulfilment of his duties under subarticle (1), and he shall monitor and assess the head of department's performance in relation to such directions and targets.

(4) A Permanent Secretary may not give directions to or set targets for a head of department on matters where the head is required by any law to act independently or in accordance with the direction of a person or authority other than a Minister.

(5) A Permanent Secretary may, with the concurrence of the Prime Minister, exercise his powers of supervision of a department of government through another public officer of suitable seniority.

(6) A Permanent Secretary shall be answerable to his Minister and, through the Principal Permanent Secretary, to the Prime Minister for the performance of the departments under his supervision notwithstanding any arrangements that may be in effect under subarticle (5).

(7) Where a Permanent Secretary is charged with the supervision of one or more of the departments listed in Part II of the Second Schedule, this article shall apply subject to the following limitations:

(*a*) subarticles (1)(*a*) and (2) shall not apply; and

(*b*) subarticle (6) shall apply only as may be compatible with paragraph (*a*) of this subarticle.

Duties of heads of department.

394. (1) Besides any other duties that may be assigned or delegated to him by or under any law, it shall be the duty of a head of department -

(*a*) to manage the activities and programmes of the department efficiently, effectively and economically;

(*b*) to ensure that the department achieves a satisfactory standard in the delivery of any services to the public and the business community with the least possible bureaucratic processes;

(*c*) to tender advice to the relative Minister through the Permanent Secretary and to other authorities as appropriate on matters within the department's

competence;

(*d*) to establish performance indicators covering the programmes and activities of the department, and to set performance targets for public officers serving in the department; and

(*e*) to coordinate the activities of the department with those of other government organisations in the best interests of efficiency, effectiveness and service quality.

(2) The head of a department that is listed in Part I of the Second Schedule shall answer to his Minister through the Permanent Secretary and shall discharge his duties under subarticle (1) in accordance with their lawful directions.

(3) The head of a department that is listed in Part II of the Second Schedule shall discharge his duties under subarticle (1) in accordance with the laws governing his department and any special administrative arrangements that may apply thereto.

Senior Executive Service.

395. (1) There shall be a Senior Executive Service which shall be headed by the Principal Permanent Secretary and shall consist of:

(*a*) Permanent Secretaries;

(*b*) heads of the departments listed in the Second Schedule;

(*c*) senior public officers within each ministry who have been charged with primary responsibility for any of the following or similar functions:

(i) the management of corporate services;

(ii) policy development;

(iii) the application of indicators of efficiency;

(iv) the co-ordination of European Union affairs;

(v) information management; and

(*d*) the holders of such other senior public offices as the Prime Minister may designate for this purpose.

(2) Officers in a ministry or department who are members of the Senior Executive Service shall constitute the senior management team of that ministry or department, and in relation thereto they shall, without prejudice to the authority of the head of the department or ministry, be collectively responsible for:

(*a*) promoting and upholding the provisions of this Code, and applicable policies and directives governing staff conduct, management and the use of resources;

(*b*) achieving satisfactory levels of efficiency and quality in the delivery of any public services; and

(*c*) achieving Government objectives, in coordination as necessary with other entities of the public administration.

(3) A member of the Senior Executive Service shall be individually responsible in relation to his area of responsibility for the matters listed in subarticle (2); and he shall be liable to proceedings under the Disciplinary Regulations if he fails to prevent or correct misconduct or negligence on the part of his subordinates where he could reasonably have taken steps to do so.

(4) Offices within the Senior Executive Service may be established, abolished or re-titled only by the Prime Minister, who may prescribe the terms on which appointments to such offices shall be made.

(5) Subarticle (4) shall not be read as conferring power to change the terms of an officer's appointment during the course of that appointment.

(6) An office may be abolished only if any of the conditions listed under article 539(4) of this Code applies.

(7) The Prime Minister may delegate his powers under subarticles (1)(*d*) and (4) to the Principal Permanent Secretary or to other senior public officers in such respects, and under such conditions, as he may prescribe. The instrument of delegation shall be published in the *Gazette*.

Section III

Of Public officers

Public officers' assignment to and transfer between posts.

396. (1) A public officer may be assigned to a post in any department in the public service which involves performance of the duties of his grade or position, and he may also be transferred to such a post in any other department.

(2) Such initial assignment or transfer may be made by the Principal Permanent Secretary or by any other public officer delegated by him for the purpose.

Merit principle.

397. (1) Except as otherwise provided for in this Code or in any other law, appointments to public offices shall be made by competitive selection on merit.

(2) For the purpose of this article, competitive selection on merit means the selection of the candidate best suited for the office on the basis of an assessment of eligible candidates' individual and relative merits against the requirements of that office.

Powers of heads of department in relation to public officers. Cap. 12.

398. Subject to the provisions of the Constitution, articles 181B of the Code of Organization and Civil Procedure, article 961(6) of this Code and the Public Service Management Code, a head of department shall exercise in relation to public officers in his department all rights, duties and powers of an employer in relation to his employees.

Power to create, abolish and classify positions.

399. (1) A head of department may in writing create positions in his department in accordance with such directives and guidelines as may be issued in that respect by the Principal Permanent Secretary. Such directives and guidelines shall be approved by the Prime Minister and shall come into effect after their publication in the *Gazette*.

(2) Positions shall be classified, and the terms and conditions of service applicable thereto determined, in accordance with such directives and guidelines on classification as may be issued by the Principal Permanent Secretary with the approval of the Prime Minister. Such directives and guidelines shall be published in the *Gazette*.

(3) A head of department may re-title a position in his department and alter the duties attached to it, and if necessary the position shall be reclassified in accordance with subarticle (2).

(4) This subarticle shall not be read as conferring power to change the terms of an officer's appointment during the course of that appointment.

(5) A head of department may abolish a position in his department only in the following cases:

(*a*) where a position has been filled through a contract of service for a fixed term or for the duration of a specified task, on the conclusion of that term or task; or

(*b*) if the position is vacant; or

(*c*) if the position is no longer needed by the department.

(6) No person in any position may be paid a remuneration which is less than that applicable to his grade.

Appointments to positions.

400. (1) A head of department may appoint a person to fill a position in a department under his charge in accordance with such directives and guidelines as may be issued by the Principal Permanent Secretary in relation thereto. Such directives and guidelines shall be approved by the Prime Minister and published in the *Gazette*.

(2) Appointments to positions shall be made in the manner prescribed under articles 110 and 121(1) of the Constitution and in accordance with article 397 of this Code, and before making an appointment to a position a head of department shall -

(*a*) advertise the position in such a manner as to allow eligible persons a reasonable opportunity to apply for the position; and

(*b*) appoint a selection panel to examine applicants and to make recommendations based on the criteria set out in article 397 of this Code.

(3) Any person appointed to a position in terms of this article shall, for the duration of his appointment, be considered a public officer and shall have all the rights, powers and duties pertaining thereto under this Code and any other applicable law, even if he does not hold a grade.

(4) A head of department may make an appointment to a position for a fixed term or for the duration of a specified task.

(5) An appointment for a fixed term may, subject to the provisions of any other law, be extended for one further term without recourse to a fresh call for applications.

(6) The Principal Permanent Secretary may with the approval of the Prime Minister issue directives and guidelines on matters of employment including but not limited to:

(*a*) the definition of eligibility requirements for positions; and

(*b*) the conditions under which heads may make appointments;

so however that where the tasks that are to be carried out are intermittent or not on a regular basis, they shall be commissioned though a contract for service.

(7) Such directives and guidelines shall be published in the *Gazette*.

(8) The Principal Permanent Secretary shall consult with the Public Service Commission before issuing directives and guidelines under this article, and in so far as such directives and guidelines deal with matters falling within the scope of article 110(1) of the Constitution they may only be issued with the agreement of the Public Service Commission.

Filling of positions by lateral appointment.

401. (1) A head of department may opt to fill a position through the appointment of a public officer who holds a grade or position at a level comparable to the vacant position, such that the officer so appointed shall not obtain better terms and conditions, including salary, than those pertaining to his grade or to his previous position solely by virtue of this lateral appointment.

(2) Where a position is filled in terms of subarticle (1), a competitive selection need not be carried out and in this respect article 397 of this Code shall not apply to appointments made in accordance with this article.

Removal from positions.

402. (1) A public officer may not be removed from a position except in the following cases:

(*a*) as a sanction in accordance with the Disciplinary Regulations; or

(b) at the end of the term for which the appointment to the position was made; or

(*c*) where the position is abolished.

(2) Where a public officer in a grade has been appointed to a position in accordance with the provisions of this Code, he shall retain his grade and shall, on the expiry or termination of his appointment to the position, be assigned work in his grade, unless his appointment to the grade has also been terminated or he is declared surplus to requirements in terms of article 404 of this Code.

Grades.

403. (1) The grades to which public officers may be appointed shall be those listed in the Fourth Schedule.

(2) The Minister responsible for the public service may, by Order in the *Gazette*, add new grades to the Fourth Schedule and abolish or re-title any of the grades listed therein.

(3) The Minister responsible for the public service shall establish, after informing the Public Service Commission, the eligibility requirements for appointments to each grade including, where applicable, rules of progression.

(4) The Minister responsible for the public service may delegate his powers under this article to the Principal Permanent Secretary or to other senior public officers in such respects, and under such conditions, as he may prescribe. Such act of delegation and conditions attached thereto shall come into force after it is published in the *Gazette*.

(5) Whenever the terms and conditions of a public officer's appointment are in conflict with the Fourth Schedule, such terms and conditions shall prevail.

(6) Appointments to grades shall be made in the manner prescribed under articles 110 and 121(1) of the Constitution and based on the eligibility requirements prescribed under subarticle (3), and except as otherwise provided by the foregoing, in accordance with article 397 of this Code.

Surplus Pool.

404. (1) In this article "Surplus Pool" means those public officers who are assigned thereto as provided by subarticle (2) because they are surplus to requirements, that is:

(*a*) they are not needed in their current posts and cannot be transferred or laterally appointed to other duties within their respective department; and

(*b*) they cannot be transferred to another department in terms of article 396 of this Act.

(2) The Principal Permanent Secretary may by direction in writing assign a public officer who is surplus to requirements to the Surplus Pool, concurrently -

(*a*) assigning the said officer such duties in any department as the Principal Permanent Secretary may deem appropriate in view of the officer's skills and abilities; or

(*b*) assigning such officer for retraining in a specialisation,

skill or profession in which the public service has a shortage of staff.

(3) A public officer in a substantive grade who is assigned to the Surplus Pool shall retain his substantive grade.

(4) An officer who has been retrained to a satisfactory standard in terms of subarticle (2)(*b*) may be withdrawn from the Surplus Pool and appointed by the Principal Permanent Secretary to a grade or position appropriate to the officer's new skills provided that in the case of such appointments the provisions of **article 57** of this Code need not be applied.

(5) The duration of the assignment under subarticle (2) shall be determined by the Principal Permanent Secretary.

Applicability of certain provisions in terms of the Constitution.

405. Articles 397 to 402 inclusive and article 404 of this Code shall have effect subject to there being an instrument of delegation in force under article 110 of the Constitution, and they shall cease to have effect to the extent that such delegation is withdrawn, suspended or derogated from by amendment, until such time as the instrument is restored.

Recommendation on victimisation.

406. (1) The Public Service Commission shall ensure that no public officer is victimised for making any report to his superior, to the Commission or to another relevant authority about any breach of the provisions of this Code or of any other law.

(2) Where the Public Service Commission finds that a public officer has been victimised as aforesaid in a manner that it is unable to prevent or redress, it shall make a report to the Prime Minister or to other authorities recommending such measures to redress the situation as it considers appropriate.

Anonymity of the public service.

407. (1) Public officers shall respect the doctrine of the anonymity of the public service.

(2) The doctrine of ministerial responsibility requires that ministers, not public officers, accept responsibility to Parliament for their actions and those of their departments and government agencies including the public officers performing duties in such departments and agencies.

(3) Public officers shall be obliged to serve different governments impartially and their political activities shall be restricted by law. They shall work behind the scenes except in order to impart information on laws enacted by Parliament or policies approved by the public administration. They are expected to preserve a cloak of anonymity and a tradition of discreet silence.

Sub-Title III

Agencies

Establishment of agencies.

408. (1) A government agency may be set up in terms of this article by Order of the Prime Minister published in the *Gazette*.

(2) An Order establishing an agency under this article shall serve as the basic charter governing the agency's operations and it shall:

(*a*) set out the functions and duties of the agency;

(*b*) specify which Minister is responsible therefor;

(*c*) prescribe the financial arrangements applying to the agency in accordance with article 413 of this Code;

(*d*) set out any other special arrangements applying to the agency; and

(*e*) amend the Third Schedule.

(3) All government agencies established in accordance with subarticle (1) shall be listed in the Third Schedule together with an indicative summary of their functions.

(4) The Prime Minister may by Order published in the *Gazette*:

(*a*) abolish an agency established by Order under this article and listed in the Third Schedule; or

(*b*) amend the functions and duties thereof as well as amend any other matter provided for in subarticle (2):

(5) Any such Order shall provide for the necessary amendments to the Third Schedule.

Legal personality and judicial representation of agencies.

409. (1) A government agency shall be a body corporate having a separate and distinct legal personality and capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations, and of suing and being sued, and to which any function or operation of Government may be assigned under this or any other law.

(2) The legal and judicial representation of an agency shall lie in its Chief Executive Officer or such other officer of the agency as the Minister responsible for it may from time to time appoint by notice in the Gazette:

Cap. 12.

(3) For the purposes of article 181B of the Code of Organisation and Civil Procedure, where such other officer is duly designated, any reference to the Chief Executive Officer in a judicial action or act shall automatically apply to the officer so designated.

Directives and guidelines issued by the Principal Permanent Secretary in relation to agencies.

410. (1) Except in so far as expressly precluded by any other law or any Order establishing an agency under this Code, the Principal Permanent Secretary may with the approval of the Prime Minister in addition to his powers under articles 190, 384 and 412 issue directives and guidelines to any or all government agencies to -

(*a*) ensure that agencies coordinate their activities with other entities of the public service;

(*b*) put into effect measures to improve the performance of agencies and the quality of the services they deliver to the public;

(*c*) provide for matters relating to employment, including:

(i) the redeployment of staff to, from or between agencies; and
(ii) the application of the merit principle and the establishment of safeguards in relation thereto;

(*d*) establish mechanisms for staff classification and the determination of pay levels; and

(*e*) put into effect such other policy objectives and management priorities as the Government may from time to time set out.

(2) Chief Executive Officers and employees of government agencies shall comply with all applicable directives issued by the Principal Permanent Secretary following approval by the Prime Minister, and failure to comply shall be grounds for disciplinary proceedings under any applicable procedures.

Cap. 174.

(3) The Principal Permanent Secretary shall seek to frame his directives in the best interests of the consumer and in such a manner as to impose the least possible administrative burden on agencies consonant with the achievement of Government objectives, bearing in mind any directives issued in virtue of article 694 of this Code.

(4) Article 391(3) to (6) shall apply *mutatis mutandis* to the directives issued by the Principal Permanent Secretary under this article.

General direction and control of agencies by Ministers and supervision by Permanent Secretaries.

411. (1) Save as otherwise provided in any other law or in any Order establishing an agency, the Chief Executive Officer of any agency shall be under the general direction and control of the Minister responsible for the agency and, subject to such direction and control, under the supervision of the Permanent Secretary of that ministry.

(2) Save as aforementioned, where an agency is subject to supervision by a Permanent Secretary in terms of article 393 of this Code, except for subarticle (6) thereof, and article 394 of this Code shall apply to the agency and its Chief Executive Officer in the same manner as to departments and their heads.

Agency performance agreements.

412. (1) A government agency shall enter into an agency performance agreement with the Permanent Secretary responsible therefor, or, where a Permanent Secretary is not appointed, with the competent Minister, and such agreement shall set out the tasks to be addressed by the agency, the targets it is expected to meet, and the funds available to it.

(2) An agency performance agreement shall cover a period of one year to three years and shall be renewable in accordance with such directives and guidelines as the Principal Permanent Secretary may issue governing the development of agency performance agreements. Such directives and guidelines shall be approved by the Prime Minister and published in the *Gazette*.

Accounts, audit and other financial arrangements.

413. (1) The Prime Minister shall, in consultation with the Minister responsible for finance, decide on the manner in which an agency shall be financed and whether and to what extent the provisions of Title II of Part III of Book Second of this Code shall apply to the agency.

(2) The following provisions shall apply:

(*a*) heads of agency shall keep proper books of accounts in such a manner as the Minister responsible for finance may from time to time direct;

(*b*) such accounts shall be subject to audit by an auditor appointed for the purpose by the head of each agency with the concurrence of the Minister responsible for finance and shall moreover be subject to scrutiny by the Financial Management Monitoring Unit, and audit by the Internal Audit and Investigations Directorate (the latter established by article 840 of this Code) and the Auditor General as the case may be;

(*c*) not later than eight weeks after the end of each financial year, the head of each agency shall present to his Minister through the relative Permanent

Secretary an audited statement of accounts together with a report on the workings of the agency which shall state the manner in which the agency has operated to fulfil its functions and its plans for the future; and

(*d*) this report shall be laid before the House by the Minister responsible for the agency not later than two weeks after its receipt or, where the House is not in session, not later than the second week after the House resumes its sittings.

Advisory boards.

414. (1) The Minister responsible for an agency may establish an advisory board to assist the Chief Executive Officer in the discharge of his duties.

(2) An advisory board established under this article shall be chaired by the Chief Executive Officer and shall consist of not less than two and not more than four members appointed by the Minister responsible for the agency.

(3) The remuneration paid to members of an agency advisory board shall be in accordance with any directives and guidelines issued by the Principal Permanent Secretary in relation thereto. Such directives and guidelines shall be approved by the Prime Minister and published in the Gazette. The said remuneration shall also be approved by the Public Accounts Committee following consultation with the Auditor-General.

Detailing of public officers with an agency.

415. The Principal Permanent Secretary may, following the direction of the Prime Minister, detail or revoke the detailing of a public officer for duty with an agency for such a term and under such conditions as he may prescribe.

Pension rights and other arrangements.

416. (1) Where a public officer is detailed for duty with an agency such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the head of the agency, but shall otherwise remain and retain all rights and duties as a public officer, and for the purpose of any law relating to government service pensions, service with any such agency shall be deemed to be service with the Government.

(2) In assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions, no account shall be taken of any allowances, bonuses or gratuities paid to such officer by the agency in excess of what he is entitled to as a public officer.

(3) During the time in respect of which such public officer is so detailed to perform duties with the agency his terms and conditions of service shall not be less favourable than those which are attached to his appointment with the public service during the period aforesaid. Such terms and conditions shall not be deemed to be

less favourable because they are not in all respects identical or superior to those enjoyed by the officer concerned at the date of such detailing, if in the opinion of the Prime Minister such terms and conditions, taken as a whole, offer substantially equivalent or greater benefits.

(4) For the purposes of calculating pensionable emoluments, posts and salary grades with an agency shall be classified in the most nearly corresponding grades and incremental levels in the public service reference to job descriptions, skills, responsibilities and other analogous factors.

(5) The classification referred to in subarticle (4) shall be carried out by a board composed of a chairperson appointed by the Public Accounts Committee, and two other members, one appointed by the Minister responsible for finance and one appointed by the Minister responsible for the agency. The classification shall be subject to the final approval of the Minister responsible for finance with the concurrence of the Public Accounts Committee.

(6) Such classification shall take place within three months of any adjustment of the salaries of public officers or of employees of the agency.

(7) No post shall be classified in a grade higher than that of a Grade 3 in the public service or such other grade that the Minister responsible for finance may from time to time, by notice in the Gazette, with the concurrence of the Public Accounts Committee, determine.

Cap. 93.

(8) Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification.

(9) Without prejudice to any other law, where on the date of the coming into force of this Title, arrangements which should have been made with respect to public officers that have been detailed in terms of any applicable law have not been finalised, the Prime Minister may issue regulations with the purpose of resolving any administrative difficulties that may have arisen between the time that a public officer has been detailed.

Application of this Sub-Title.

417. The provisions of this Sub-Title shall apply to all Government agencies except in so far as they may conflict with the provisions of any other law regulating an agency.

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Sub-Title IV

Entities of the Public Administration

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Application of certain articles of this Code and of other laws.

418. (1) The Prime Minister may by Order published in the *Gazette* extend to any entity of the public administration, other than public corporations, and to the public administration employees other than those of public corporations, the applicability of any of the provisions of this Code which do not already apply thereto and the applicability of any other law applying to the public service or to public officers.

(2) Such Order may be made by the Prime Minister and shall be published in the Gazette.

Supervision of entities of the public administration by Permanent Secretaries.

419. (1) An entity of the public administration which is subject to the direction and control of a Minister, other than a public corporation, shall, to the extent delegated by that Minister, be subject to supervision by the appropriate Permanent Secretary, in which case the Permanent Secretary may be empowered to issue directions to the entity and to instruct or advise Government representatives on the entity's governing board. Such directions shall be given in writing and published in the Gazette before their entry into force.

(2) A Permanent Secretary who is supervising an entity of the public administration, other than a public corporation, in terms of subarticle (1) shall ascertain that it is -

(*a*) working towards the timely and effective fulfilment, in conjunction with other entities of the public administration as appropriate, of the Minister's and the Government's policy objectives;

(*b*) being managed according to the provisions of this Code and of any other law and applicable policies and directives governing staff conduct, management and the use of resources; and

(*c*) operating economically, efficiently and effectively and delivering any services to the public to a satisfactory standard.

(3) In fulfilment of his duties under subarticle (2), a Permanent Secretary may, in consultation with the relative Minister, establish targets for the entity of the public administration, other than for public corporations, and require any information except where this is precluded by law.

(4) A Permanent Secretary shall report to his Minister on the performance of the entities of the public administration, other than public corporations, under his supervision.

(5) A public corporation shall not be considered to be an entity of the public administration for the purposes of this Sub-Title.

Sub-Title V

Quality Service Charters

Drawing up of quality service charters.

420. (1) Each government department and government agency shall draw up a quality service charter within one year from the entry into force of this provision of this Code.

(2) The quality service charter shall commit departments and agencies to delivering services to stated standards.

(3) Charters shall be approved by the Public Accounts Committee.

(4) Charters shall be published in the *Gazette* within one week of their approval.

General Principles to be observed in the drawing up of charters.

421. (1) Charters shall spell out the rights of citizens as customers of a public service and specify the quality of service that can be expected.

(2) A department and an agency with a charter shall commit itself to stated performance targets; typically on waiting times, quality of product, courtesy and information provided. Charters also explain how to lodge complaints.

(3) The purpose behind a quality service charter shall be to establish a quality management culture within the public service for the delivery of services; services that meet the public's expectations reliably and at a reasonable cost.

(4) Charters shall provide a direct and integral service to the general public or to a specific group of customers.

(5) Departments and agencies shall undertake changes to their business processes in order to be geared towards maintaining a charter.

(6) Quality service charters shall be governed by the following principles:

(a) establishing a customer orientation and service culture;

(b) providing an efficient service at the convenience of the customer;

(c) enabling easy access to services;

(d) commitment to service delivery;

(e) providing a welcoming environment;

(f) afford value for money.

(7) Departments and agencies shall each year publish results on their performance against service delivery standards.

(8) The Public Accounts Committee may request public corporations to submit for its approval quality service charters.

Sub-Title VI

Of Miscellaneous Provisions

Power to make regulations.

422. The Prime Minister may make regulations to give effect to any of the provisions of this Title and the enforcement thereof, and without prejudice to the generality of the foregoing such regulations may provide for:

(*a*) the better management and administration of the public service and government agencies;

(*b*) the manner in which the accounts and records of government agencies are to be kept;

(*c*) the manner in which goods and services are to be procured by any or all government agencies, and the procedures to be adopted in connection therewith;

(d) the manner in which public officers shall be detailed, released, deployed, attached or seconded with agencies, and the rights accruing to such officers, so however that the Prime Minister may, without prejudice to any vested rights, also issue regulations with a view to resolving any matter outstanding as at the time of the coming into force of this Code; and

(e) the recruitment in public administration of nationals of member states of the European Union other than Malta and nationals of other countries enjoying similar rights in relation to the free movement of workers. However, posts involving the exercise of public authority and the safeguarding of the general interests of the State, and particularly those listed herein, may be reserved for Maltese nationals:

(i) posts in the Office of the President, the House of Representatives, the Prime Minister's and Ministers' Secretariats, the Cabinet Office, and the offices of the Principal Permanent Secretary and of Permanent Secretaries;

(ii) the Judiciary, posts involving the preparation of expert advice in the field of prosecution of offences or lawmaking, and posts entailing responsibility for advisory constitutional bodies;

(iii) posts involving the sovereignty of the State, including diplomatic and foreign representation;

(iv) posts in the Office of the Prime Minister and the Ministries of Finance, Justice, Home Affairs and Foreign Affairs;

(v) posts within departments charged with the protection of the economic interests of the State, including tax authorities;

(vi) positions in the Senior Executive Service;

(vii) posts in the disciplined forces and offices responsible for defence matters; and

(viii) posts in the security services and in the field of civil protection and defence.

Title II

OF THE OMBUDSMAN

Interpretation. Cap. 363.

423. (1) In this Code, unless the context otherwise requires -

"action" means any action relating to a matter of administration and includes failure to act;

"local council" means a local council established under the Local Councils Act;

"Ombudsman" includes, to the extent of any delegation under article 453, a person so delegated;

“President” means the President of Malta appointed in terms of article 48 of the Constitution of Malta;

“Speaker” means the Speaker of the House of Representatives appointed in terms of article 59 of the Constitution of Malta;

"statutory body" means any public corporation or other body corporate established by law.

(2) For the purposes of this Title, “the Government, or other authority, body or person to whom this Act applies”, wherever it occurs, means the entities referred to in sub-articles (1) and (2) of article 433 of this Code and:

(a) any agency established as provided by article 408; other than the Director of Public Prosecutions in the exercise of powers referred to in sub-article (3) of article 91 of the Constitution;

(b) any foundation established by the Government or by any statutory body and any partnership or other body referred to in article 433(b);

(c) chairmen and members of boards, committees, commissions and other decision making bodies, whether established by law or by an administrative act, which can take decisions affecting any member of the public and which do not fall under article 433(3).

Sub-Title I

Appointment

Appointment of Ombudsman.

424. (1) There shall be appointed as an Officer of Parliament a Commissioner for Administrative Investigations to be called the Ombudsman, who shall be appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House.

(2) When a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives he shall not be treated as a member of the House for the purpose of establishing the majority required by this article.

Disqualification and incompatibilities.

425. (1) A person shall not be qualified to be appointed to the office of Ombudsman if he is a member of the House of Representatives, a member of a local council, if he is a public officer or if he is a public administration employee.

(2) The office of Ombudsman shall be incompatible with the exercise of any professional, banking, commercial or trade union activity, or other activity for profit or reward.

(3) The Ombudsman shall not hold any position which is incompatible with the correct performance of his official duties or with his impartiality and independence or with public confidence therein. The Ombudsman shall declare to, and seek the approval of, the Speaker of the House of Representatives to any positions, trusts or memberships which the Ombudsman considers do not affect impartiality, or independence and public confidence, and which it is desired to retain during the term of office. Notice of such positions, trusts or membership shall be published in the Gazette.

Term of office.

426. (1) Except as otherwise provided in this Title, an Ombudsman shall hold office for a term of five years, and shall be eligible for reappointment for one consecutive term of five years.

(2) Unless his office sooner becomes vacant, a person appointed as an Ombudsman shall hold office until his successor is appointed.

(3) An Ombudsman may at any time resign his office by writing addressed to the President.

Removal or suspension from office.

427. (1) An Ombudsman may at any time be removed or suspended from his office by the President, upon an address from the House of Representatives supported by the votes of not less than two-thirds of all members of the House, praying for such removal on the ground of proved inability to perform the functions

of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour, and the provisions of article 427(2) shall also apply for the purpose of establishing the majority required under this subarticle.

(2) At any time when Parliament is not in session, an Ombudsman may be suspended from his office by the President acting in accordance with his own discretion for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next ensuing session of Parliament.

Filling of vacancy.

428. (1) If an Ombudsman dies, or resigns from office, or vacates his office or is removed from office, the vacancy thereby created shall be filled in accordance with this article.

(2) If the vacancy in the office of an Ombudsman occurs at any time while Parliament is in session, it shall be filled by the appointment of the Ombudsman by the President on the recommendation of the House of Representatives in accordance with article 427.

(3) If the vacancy occurs less than two months before the close of that session and no such recommendation is made in that session, the provisions of subarticle (4) shall apply as if the vacancy had occurred while Parliament was not in session.

(4) If any such vacancy occurs at any time while Parliament is not in session, the President shall appoint an Ombudsman to fill the vacancy, and the person so appointed shall, unless his office sooner becomes vacant, hold office until an Ombudsman is appointed in accordance with article 427.

Temporary appointment of Ombudsman.

429. (1) The President may -

(*a*) at any time during the illness or absence of the Ombudsman, or

(*b*) for any other temporary purpose where the Ombudsman considers it necessary not to conduct an investigation himself because of such circumstances, that were he a judge of the superior courts, he would abstain,

appoint an Ombudsman to hold office in accordance with this article, and such an Ombudsman shall be paid such salary, not exceeding the amount payable to the Ombudsman, as the President on the advice of the Public Accounts Committee thinks fit.

(2) The power conferred by article (1)(*b*) shall be exercised only on a certificate signed by the Ombudsman to the effect that, in his opinion, it is necessary for the due conduct of the business of the Ombudsman under this Title that an additional Ombudsman should be temporarily appointed.

(3) An Ombudsman appointed under this article on account of the illness or absence of the Ombudsman shall hold office until the resumption of office of the Ombudsman, and every other Ombudsman appointed for a temporary purpose shall hold office until he performs the function assigned to him.

(4) A person shall not be qualified to be approved under this article if he is disqualified to be appointed to the Office of Ombudsman under article 425(1).

(5) The provisions of articles 425(2) and (3) shall apply to a person appointed under this article.

(6) A person appointed under this article may exercise any activity for profit or reward which is not in any way incompatible with the provisions of article 425(3).

Oath of Office.

430. (1) Before entering upon the exercise of the duties of his office an Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with article 447, divulge any information acquired by him under this Title.

(2) The oath shall be administered by the Speaker of the House of Representatives.

Resources.

431. (1) Subject to the provisions of the Constitution and of any other enactment applicable thereto, and subject to the provisions of this article the Ombudsman may appoint such officers and employees as may be necessary for the carrying out of the functions, powers and duties under this Title. This power to appoint includes approval to the numbers of persons that may be appointed under this article whether generally or in respect of any specific duties or classes of duties, their salaries and conditions of appointment.

(2) The Ombudsman may in the conduct of an investigation engage, in a consultative capacity, any person whose particular expertise is essential to the effectiveness of the investigation.

(3) If the consultant required is a public officer the Prime Minister may, at the request of the Ombudsman, designate the public officer to assist.

(4) Subject to the provisions of this article the Ombudsman shall be responsible for approving the level of capital equipment, furnishings, materials, and administrative activities for the carrying out of the functions, powers and duties under this Code.

(5) The finance required for the Ombudsman's salary and allowances, and for the resources described in subarticles (1), (2) and (3) shall not exceed a maximum amount indicated in an Ombudsplan approved by the House of Representatives and shall be a charge on the Consolidated Fund without any further appropriation other than this Code.

(6) The Ombudsman shall present to the House by the l5th day of September of each year, an Ombudsplan which will indicate the ensuing year's activities.

(7) The salary, allowances and expenses payable to the Ombudsman shall be at rates equivalent to those applicable to a judge of the superior courts. The salary is not to be diminished during the continuance of the Ombudsman's appointment.

(8) The officers and employees appointed in accordance with subarticle (1) shall before entering into the exercise of their office or employment take an oath that they will faithfully and impartially perform the duties of their office or employment, and that they will not, except in accordance with article 447, divulge any information acquired by them under this Title. Such oath shall be administered by the Ombudsman.

Audit.

432. The accounts of the office of the Ombudsman shall be audited by the Auditor General and the provisions of Title II of Part III of Book Second of this Code shall apply.

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SUB-TITLE II

Of Functions

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Application of this Title.

433. (1) Subject to the provisions of this article, this Title applies to -

(a) the Government, any government department or other authority of the Government, any Minister or Parliamentary Secretary, any public officer and any member or servant of an authority as aforesaid;

(b) any statutory body, and any partnership or other body in which the Government or any one or more of the said bodies aforesaid or any combination thereof has a controlling interest or over which it has effective control, including any director, member, manager or other officer of such body or partnership or of its controlling body (hereinafter collectively referred to as organisation);

(c) the private sector when it provides a service on behalf of the entities mentioned in paragraphs (a) and (b) above; and

(d) local councils, administrative committees and any committee thereof, mayors, councillors and members of staff of all local councils.

(2) This Title applies as aforesaid even when the persons to whom it applies have acted in accordance with recommendations received or after holding consultations according to law or after observing other legal requirements.

(3) This Act does not apply to the persons or bodies listed in Part A of the Fifth Schedule to this Code.

(4) This Title shall not apply to the bodies listed in Part B of the Fifth Schedule to this Code, unless proof to the satisfaction of the Ombudsman is produced showing that all available means of redress have been exhausted.

(5) The Prime Minister may by order in the Gazette amend, vary or substitute the lists in Part A and Part B of the Fifth Schedule to this Code.

(6) No order made under this subarticle shall have effect unless it has received the prior approval of the House of Representatives signified by resolution.

Functions.

434. (1) Subject to the provisions of this article, it shall be the function of the Ombudsman to investigate any action taken by or on behalf of the Government, or other authority, body or person to whom this Title applies, being action taken in the exercise of their administrative functions.

(2) The Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest who claims to have been aggrieved by any action as aforesaid, or where the person aggrieved has died or is for any reason unable to act for himself, of his heir or representative.

(3) Notwithstanding the provision of subarticle (1), the Ombudsman may, if he considers it desirable so to do, decline to exercise his power under this article in any case where adequate means of redress are or have been available to the complainant under any other law.

(4) The Ombudsman may conduct an investigation if satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort or have resorted to such means of redress.

(5) Without limiting the foregoing provisions of this article, it is hereby declared that any Committee of the House of Representatives may at any time refer to the Ombudsman, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case the Ombudsman shall, subject to any special directions of the Committee, investigate the matters so referred, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in article 438, or article 448, or article 449 of this Code shall apply in respect of any investigation or report made under this subarticle.

(6) The Ombudsman shall not proceed to investigate any complaint on the subject-matter of which proceedings are pending in a court or other tribunal, and shall suspend the investigation if any interested person shall file a demand before any court or other tribunal on the subject-matter of the investigation; provided that an investigation may be proceeded with in respect of problems of general interest contained in the complaint.

(7) Subject to the provisions of article 433(3) without limiting the foregoing provisions of this article, the Prime Minister may at any time refer to the Ombudsman for investigation and report any matter, other than a matter which is subject to judicial proceeding, which the Prime Minister considers should be investigated by the Ombudsman. Where, pursuant to this subarticle, a matter is investigated by the Ombudsman, he shall report thereon to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.

(8) The Ombudsman shall not conduct an investigation under this Act in respect of such action or matter as is described in the Sixth Schedule to this Code.

(9) In exercise of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority.

Time limit for complaints.

435. A complaint shall not be entertained under this Title unless it is made not later than six months from the day on which the complainant first had knowledge of the matters complained about; but the Ombudsman may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

Rules for Ombudsman's guidance.

436. (1) The House of Representatives may by resolution from time to time if it thinks fit, make general rules for the guidance of the Ombudsman, in the exercise of his functions under this Title, and may at any time in like manner revoke or vary any such rules.

(2) All rules made under this article shall be published in the Gazette.

Mode of complaint.

437. (1) Every complaint to the Ombudsman shall be made in writing or orally. A complaint made orally shall be put in writing as soon as practical.

Cap. 262.

(2) Notwithstanding any provision in any enactment, where any letter appearing to be written by a person in custody or on a charge or after conviction of any offence, or by any patient of any hospital within the meaning of the Mental Health Act, is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient. Any letter written by the Ombudsman to a person or patient so described shall be immediately forwarded, unopened, to such person or patient by the person for the time being in charge of the place or institution.

Refusal to investigate complaints.

438. (1) If upon a complaint, or in the course of an investigation of a complaint it appears to the Ombudsman that, having regard to all the circumstances of the case, any investigation, or further investigation is unnecessary, he may refuse to investigate, or investigate further any such complaint.

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Title, the Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to investigate further a complaint if in his opinion -

(*a*) the subject-matter of the complaint is trivial; or

(*b*) the complaint is frivolous or vexatious or is not made in good faith; or

(*c*) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he shall inform the complainant of that decision, and shall state his reasons therefor.

Additional functions assigned to the Ombudsman.

439. (1) The Ombudsman is hereby being assigned the functions of the Maltese national human rights institution.

(2) The functions of the Maltese national human rights institution comprise the following:

(a) to promote understanding and awareness of and protect the basic values and principles of human rights of persons in Malta including the rights, liberties and freedoms that are guaranteed under the Constitution of Malta and under the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(b) to act as a source of information and advice to enable persons to stand up for their rights with regard to *inter alia* age, disability, gender, race, religion, belief and sexual orientation;

(c) to ensure that human rights legislation in such areas as work, education, health and social care service provision is applied fairly and without any discrimination and that existing obligations and responsibilities in these fields are duly enforced;

(d) to collaborate with the public administration so that human rights issues are given due importance to the legislative process and that human rights standards and norms are adequately upheld in Maltese law, policy and practice;

(e) in the event of evidence that human rights are not being upheld or not properly respected, to take appropriate action including enquiries and the publication of reports to recommend to the public administration to take the necessary remedial action;

(f) to issue regular reports on the human rights situation in Malta and disseminate knowledge and assist public opinion on human rights issues by means of studies and the organization of public seminars, discussions and educational programmes; and

(g) such other functions which may be assigned to the Ombudsman by resolution of the House of Representatives.

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SUB-TITLE III

Of The Commissioners for Administrative Investigations

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Appointment, functions, etc. of Commissioners for Administrative Investigations. Cap. 497.

440. (1) The Ombudsman may appoint Commissioners for Administrative Investigations, hereinafter "the Commissioners", for specialized areas as may be

determined by him. The Commissioners shall be Officers of Parliament and shall be appointed by the Ombudsman in accordance with the following provisions of this article.

(2) The Ombudsman shall appoint as Commissioner such person as the Prime Minister and the Leader of the Opposition shall jointly communicate to him in writing as the person to be appointed to the post. In default of receipt of such communication within three weeks from the date when the Ombudsman informs in writing both the Prime Minister and the Leader of the Opposition of the decision to appoint such Commissioner or from the date when a vacancy arises in any such office, the appointment of Commissioner shall be made by the Ombudsman acting in accordance with his own deliberate judgment.

(3) The term of office of all persons appointed to such office shall be of five years, and any person filling any vacancy which occurs during such term shall serve until the expiration of the term of office of his predecessor. The provisions of article 426 of this Code shall apply to such an appointment.

(4) The Commissioners shall be so appointed from amongst persons knowledgeable and well versed in those specialized areas for which they shall be appointed to investigate. Notice of their respective appointments, dates of appointment and dates on which they shall vacate their office shall be published in the Gazette.

(5) The Commissioners shall be paid such salary and allowances, which shall be a charge on the Consolidated Fund, as may be determined by the Ombudsman, with the concurrence of the Public Accounts Committee. Such salary and allowances shall be published by way of Order in the Gazette.

(6) The functions of the Commissioners shall be approved by the Ombudsman after consultation with the Prime Minister and shall be published by way of rules in the Gazette.

(7) The Commissioners shall communicate their report to the Government, or other authority, body or person to whom this Title applies and to the complainant, if any. Before communicating any report as aforesaid a Commissioner may seek the Ombudsman’s opinion on any matter of substance or procedure thereon. The Ombudsman, may establish a list of those subject matters upon which the Commissioners have received his opinion.

(8) Saving the provisions of article 443, the Ombudsman shall not accept complaints asking him to review the report of any Commissioner once such report has been communicated to the Government, or other authority, body or person to whom this Title applies and to the complainant, if any, except in cases where the Ombudsman considers that there are issues relating to breach of the rules of natural justice, points of law or principles of equity.

Organizational set up.

441. (1) The Commissioners appointed under sub-article (1) of article 440 shall, whilst retaining their full autonomy and independence in the exercise of their respective functions, utilize the administrative and investigative services of the Office of the Ombudsman. The Ombudsman shall not review any final report submitted by a Commissioner except in cases where the Ombudsman feels that there are points of law or principles of equity or natural justice involved.

(2) It shall be the duty of the Ombudsman to ensure that the Commissioners are provided with such administrative and investigative services to enable them to carry out their respective duties in terms of such functions as may be assigned to them in terms of subarticle (6) of article 440 of this Code.

(3) The Commissioners shall enjoy full immunity from any disciplinary, administrative or civil action for any act arising from the execution of their official duties.

(4) The provisions of this Title applicable to the Office of the Ombudsman shall *mutatis mutandis* apply to the Commissioners acting in exercise of their duties under this Title so that the investigative procedure shall be as homogeneous and uniform as possible. The Commissioners shall have full access to all information relating to the investigation.

(5) A Commissioner appointed under this article shall prepare and submit an Annual Report which shall be incorporated within the Annual Report of the Ombudsman.

Application of the Ombudsman Act to the Commissioners. Review of recommendations made by the Commissioners.

442. (1) The provisions of articles 425 to 428, 430, 434 to 454 and 455(2) of this Title shall apply *mutatis mutandis* to the Commissioners appointed under sub-article (1) of article 440 of this Code.

(2) The Ombudsman may appoint a temporary Commissioner in the same circumstances that the President may make a temporary appointment of an Ombudsman under article 429 and the provisions of that article shall apply *mutatis mutandis* to such a temporary appointment as if for the word "President" there were written the word "Ombudsman" and for the word "Ombudsman" there were written the word "Commissioner". Notice of such temporary appointment shall be published in the Gazette.

(3) Each Commissioner appointed in terms of sub-article (1) of article 440 of this Code shall draw up an annual report which shall be published as part of the Ombudsman's annual report referred to in article 455 of this Code.

Review of recommendations made by the Commissioners.

443. (1) Except where a Commissioner appointed in terms of sub-article (1) of article 440 has not drawn up a report, or where although such a report has been drawn up it contains no recommendations, the said Commissioner shall send his report to the

Government or other authority, body or person to whom this Title applies, to the Ombudsman and to the competent Minister.

(2) Where no action as recommended by the Commissioner is taken within a reasonable time from the date that the Commissioner has sent his report to the Government, or to the said authority, body or person, or where the Commissioner is informed that no action will be taken or that only partial action will be taken on his recommendations by the Government, or by the said authority, body or person, the Commissioner shall inform accordingly the Ombudsman, the competent Minister and the complainant, if any, within a reasonable time of receipt of the aforesaid report.

(3) Where the Commissioner has informed a complainant that the Government, authority, body or person aforesaid will not be implementing the Commissioner's recommendation in his report, or will be implementing his recommendations only partially, or where no reply has been received by the Ombudsman within such time indicated by the Commissioner in his report, the complainant may request the Ombudsman to review that Commissioner's report and the objection thereto of the Government, authority, body or person as aforesaid.

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SUB-TITLE IV

Of Proceedings

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Proceedings.

444. (1) Before investigating any matter under this Title the Ombudsman shall inform the head of department concerned, or, as the case may require, the chief executive officer of the organisation concerned, or the mayor of the local council concerned, of his intention to make the investigation.

(2) Every investigation by the Ombudsman under this Title shall be conducted in private.

(3) The Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such enquiries as he thinks fit. It shall not be necessary for the Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by the Ombudsman.

(4) If at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any department, organisation, local council or person, he shall give to that department, organisation, local council or person an opportunity to be heard.

(5) In the case of an investigation relating to a department, organisation or local council, the Ombudsman may in his discretion at any time during or after the investigation consult a Minister, head of department, chief executive, mayor or any other person who is concerned in the matter of the investigation, and the Ombudsman shall consult any Minister, head of department, chief executive, mayor or any other person who so requests or to whom a recommendation which is the subject of the investigation has been made, after the Ombudsman had made the investigation and before he has formed a final opinion on any of the matters referred to in articles 448(1) and (2).

(6) If, during or after any investigation, the Ombudsman is of the opinion that there is substantial evidence of any significant breach of duty or misconduct on the part of any officer or employee of any department, organisation or local council, he shall refer the matter to the appropriate authority including the Police.

(7) The Ombudsman may continue further with his investigation after having referred the matter as aforesaid.

(8) Subject to the provisions of this Title and of any rules made thereunder, the Ombudsman may regulate his procedure in such manner as he thinks fit.

Evidence.

445. (1) Subject to the provisions of this article and of article 446 of this Code, the Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or papers or things which in the Ombudsman's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subarticle shall apply whether or not the person is an officer, employee, or member of any department, organisation or local council, and whether or not such documents, papers, or things are in the custody or under the control of any department, organisation or local council.

(2) The Ombudsman shall have power to summon witnesses and to administer an oath to any witness and to any person concerned in the investigation, and require them to give evidence.

(3) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause to answer or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by the Ombudsman, or refuses or fails, without sufficient cause, to produce any document he was required to produce by the Ombudsman shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding one thousand two hundred euro (€1,200) or to imprisonment not exceeding three months, or to both such fine and imprisonment.

(4) Without prejudice to the generality of the provisions of subarticle (2), no person giving evidence before the Ombudsman may be compelled to answer any question which tends to expose him to any criminal prosecution, and every such person shall, in respect of any evidence given by him before the Ombudsman, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

Exemptions from disclosure.

446. (1) Where the Prime Minister certifies that the giving of any information or the answering of any question or the production of any thing, paper or other document -

(*a*) affects the security or defence of Malta or relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments; or

(*b*) is likely to damage seriously the national economy; or

(*c*) involves the disclosure of the deliberations or proceedings of Cabinet or any committee of Cabinet; or

(*d*) prejudices the investigation or detection of offences,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the thing, paper or other document to be produced.

(2) Subject to the provisions of subarticle (1), the rule of law which authorises or requires the withholding of any document, thing, or paper, or the refusal to answer any question, on the ground that the disclosure of the document, thing or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Ombudsman.

Secrecy of information.

447. (1) Information obtained by the Ombudsman and every person holding any office, appointment or designation under the Ombudsman, in the course of or for the purpose of an investigation under this Title, shall not be disclosed except for the purposes of the investigation and of any report to be made thereon under this Title, or for the purpose of any proceedings relating to an offence under this Title, and the Ombudsman and members of his staff shall not be called upon to give evidence in any proceedings, other than such as aforesaid, of matters coming to their knowledge in the course of an investigation under this Title.

Cap. 9.

(2) Article 133 of the Criminal Code shall apply to and in relation to the Ombudsman and his staff as they apply to or in relation to a public officer or servant referred to in article 133 of the Criminal Code.

SUB-TITLE V

Of The Procedure After Investigation

Procedure after investigation.

448. (1) The provisions of this article shall apply in every case where, after making any investigation under this Title, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation -

(*a*) appears to have been contrary to law; or

(*b*) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or

(*c*) was based wholly or partly on a mistake of law or fact; or

(*d*) was wrong.

(2) The provisions of this article shall also apply in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this article applies the Ombudsman is of opinion -

(*a*) that the matter should be referred to the appropriate authority for further consideration; or

(*b*) that the omission should be rectified; or

(*c*) that the decision should be cancelled or varied; or

(*d*) that any practice on which the decision, recommendation, act, or omission was based should be altered; or

(*e*) that any law on which the decision, recommendation, act, or omission was based should be reconsidered; or

(*f*) that reasons should have been given for the decision; or

(*g*) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate department, organisation or local council, and may make such recommendations as he thinks fit. In any such case he may request the department, organisation or local council to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Ombudsman shall also, in the case of an investigation send a copy of his report or recommendations to the Minister concerned and to the mayor in the case relating to a local council.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments (if any) made by or on behalf of any department, organisation or local council affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to the House of Representatives on the matter as he thinks fit.

(5) The Ombudsman shall attach to every report sent under subarticle (4) a copy of any comments made by or on behalf of the department, organisation or local council affected.

(6) Notwithstanding anything in this article, the Ombudsman shall not, in any report made under this Title, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

Information to complainant.

449. (1) Where, on any investigation following a complaint, the Ombudsman makes a recommendation under article 448(3) and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

(2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

Proceedings not subject to review.

450. Except on the ground of lack of jurisdiction, no proceeding or recommendation of the Ombudsman may be challenged in any court.

Proceedings privileged.

451. (1) No proceedings, civil or criminal, shall lie against the Ombudsman or against any member of his staff for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Title unless it is shown that he acted in bad faith.

(2) The Ombudsman and such persons as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions under this Title.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Title shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

SUB-TITLE VI

Of Miscellaneous Provisions

Power to enter premises.

452. (1) For the purposes of this Title, but subject to the provisions of this article, an Ombudsman may at any time enter any premises occupied by any of the departments or organisations to which this Title applies as specified in article 433, and inspect the premises and, subject to the provisions of articles 445 and 446, carry out therein any investigation that is within his jurisdiction.

(2) Before entering any such premises an Ombudsman shall notify the permanent head of the department or, as the case may require, the principal administrative officer of the organisation by which the premises are occupied.

Delegation of functions.

453. (1) The Ombudsman may delegate in writing to any person holding any office under him any of his powers under this Title, except this power of delegation.

(2) A delegation of functions under this Title shall be without prejudice to the exercise of those functions by the Ombudsman, and shall be revocable by the Ombudsman at will.

Use of name "Ombudsman".

454. (1) No person other than the Ombudsman appointed under this Title, may use the name "Ombudsman" in connection with any business, trade or occupation, or the provision of any service, whether for payment or otherwise, or hold himself out to be an Ombudsman except with the written consent of the Ombudsman appointed under this Title.

(2) A person who contravenes subarticle (1) shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding two hundred and thirty euro (€230).

Reports.

455. (1) The Ombudsman shall annually or as frequently as he may deem expedient report to the House of Representatives on the performance of his functions under this Title to the Speaker who shall lay a copy on the Table of the House at the first available opportunity.

(2) The Ombudsman may from time to time in the public interest, or in the interest of any person, or department, or organisation publish reports relating generally to the exercise of his functions under this Title, or reports relating to any particular case or cases investigated. Such reports may be published whether or not the matters dealt with in the report have been the subject of a report to the House of Representatives under this Title.

Title III

OF DATA PROTECTION

Sub-Title I

Of Preliminary Provisions

Interpretation.

456 In this Act, unless the context otherwise requires:

"blocking" in relation to personal data, means the operation to suspend modification of data or suspend or restrict the provision of information to a third party when such provision is so suspended or restricted in accordance with the provisions of this Title;

"Commissioner" means the Information and Data Protection Commissioner appointed under article 490 and includes any officer or employee of the Commissioner authorised by him in that behalf;

"consent" means any freely given specific and informed indication of the wishes of the data subject by which he signifies his agreement to personal data relating to him being processed;

"controller of personal data" or "controller" means a person who alone or jointly with others determines the purposes and means of the processing of personal data;

"data subject" means a natural person to whom the personal data relates;

Cap. 258.
"identity card number" means the identifying number contained in an identity card as provided in Title I of Part X of Book Second of this Code;

"Minister" means the Minister responsible for freedom of information and data protection;

"personal data" means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

"personal data filing system" or "filing system" means any structured set of personal data which is accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;

"personal data representative" means a person, appointed by the controller of personal data, who shall independently ensure that the personal data is processed in a correct and lawful manner;

"prescribed" means prescribed by regulations made by the Minister in accordance with the provisions of this Title, after consultation with the Commissioner;

"processing" and "processing of personal data" mean any operation or set of operations which is taken in regard to personal data, whether or not it occurs by automatic means, and includes the collection, recording, organisation, storage, adaptation, alteration, retrieval, gathering, use, disclosure by transmission, dissemination or otherwise making information available, alignment or combination, blocking, erasure or destruction of such data;

"processor" means a person who processes personal data on behalf of a controller;

"recipient" means a person to whom personal data is provided; however, when personal data is provided in order that the Commissioner may perform such supervision, control or audit that it is under a duty to attend to, the Commissioner shall not be regarded as a recipient;

"sensitive personal data" means personal data that reveals race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health, or sex life;

"third country" means a state that is not included in an Order issued for the purpose of determining which states are not to be considered as a third country for the purposes of this Title as may be prescribed from time to time under this Title;

"third party" means a person other than the data subject, the controller of personal data, the personal data representative, the processor and such persons who under the direct responsibility of the controller of personal data or the processor are authorised to process personal data.

SUB-TITLE II

Of Applicability

Mode of Processing.

457. The provisions of this Title shall apply to the processing of personal data, wholly or partly, by automated means and to such processing other than by automated means where such personal data forms part of a filing system or is intended to form part of a filing system.

Territorial scope.

458. (1) This Title shall also apply:

(*a*) to the processing of personal data carried out in the context of the activities of an establishment of a controller in Malta or in a Maltese Embassy or High Commission abroad;

(*b*) to the processing of personal data where the controller is established in a third country provided that the equipment used for the processing of the personal data is situated in Malta.

(2) Without prejudice to sub-article (3), the provisions of subarticle (1)(*b*) shall not apply if the equipment is used only for purposes of transit of information between a third country and another such country.

(3) The controller in such a case shall appoint a person established in Malta to act as his representative.

Non-applicability of this Title.

459 . This Title shall not apply -

(*a*) to processing of personal data where such processing is undertaken by a natural person in the course of a purely personal activity; and

(*b*) to processing operations concerning public security, defence, State security (including the economic well being of the State when the processing operation relates to security matters) and activities of the State in areas of criminal law:

(2) The Minister may, after consultation with the Commissioner and with the concurrence of the Minister responsible for the Police, by regulations make provisions extending the application of this Title or adding to or derogating from the provisions of this subarticle to enforce the provisions of any international obligation, convention or treaty relating to the protection of personal data, to which Malta is a party, or may become a party.

Freedom of expression. Cap. 319. Cap. 248.

460. (1) Subject to the following provisions of this article, nothing in this Title shall prejudice the application of the provisions of the European Convention Act relating to freedom of expression, or the provisions of the Press Act relating to journalistic freedoms.

(2) Notwithstanding the provisions of subarticle (1) the Commissioner shall encourage the drawing up of a suitable code of conduct to be applicable to journalists and to the media to regulate the processing of any personal data and the code of conduct shall provide appropriate measures and procedures to protect the data subject, having regard to the nature of the data.

(3) In the absence of such code of conduct, the Commissioner may establish specific measures and procedures to protect the data subjects; in such a case journalists and the media are to comply with measures and procedures so established.

(4) If the measures and procedures contained in the code of conduct applicable to journalists and the media in terms of subarticle (2) or (3) are not complied with, the Commissioner may prohibit any person concerned from carrying out any processing, in whole or in part, and order the blocking of data when, having regard to the nature of the data, the means of the processing or the effects that it may have, there is a serious risk of a relevant damage to one or more data subjects.

SUB-TITLE III

Of Requirements And Criteria For Processing

Requirements for processing.

461. The controller shall ensure that:

(*a*) personal data is processed fairly and lawfully;

(*b*) personal data is always processed in accordance with good practice;

(*c*) personal data is only collected for specific, explicitly stated and legitimate purposes;

(*d*) personal data is not processed for any purpose that is incompatible with that for which the information is collected;

(*e*) personal data that is processed is adequate and relevant in relation to the purposes of the processing;

(*f*) no more personal data is processed than is necessary having regard to the purposes of the processing;

(*g*) personal data that is processed is correct and, if necessary, up to date;

(*h*) all reasonable measures are taken to complete, correct, block or erase data to the extent that such data is incomplete or incorrect, having regard to the purposes for which they are processed;

(*i*) personal data is not kept for a period longer than is necessary, having regard to the purposes for which they are processed.

Processing for historical purposes, etc.

462. The processing of personal data for historical, statistical or scientific purposes shall not be regarded as incompatible with the purposes for which the information was collected.

(2) The Controller shall ensure that:

(*a*) the appropriate safeguards are in place where personal data processed for historical, statistical or scientific purposes may be kept for a period longer than is necessary having regard to the purposes for which they are processed; or

(*b*) personal data kept for historical, statistical or scientific purposes shall not be used for any decision concerning a data subject.

Criteria for processing.

463. Personal data may be processed only if:

(*a*) the data subject has unambiguously given his consent; or

(*b*) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or

(*c*) processing is necessary for compliance with a legal obligation to which the controller is subject; or

(*d*) processing is necessary in order to protect the vital interests of the data subject; or

(*e*) processing is necessary for the performance of an activity that is carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data is disclosed; or

(*f*) processing is necessary for a purpose that concerns a legitimate interest of the controller or of such a third party to whom personal data is provided, except where such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right to privacy.

Direct marketing.

464. (1) Personal data may not be processed for purposes concerning direct marketing, if the data subject gives notice to the controller of personal data that he opposes such processing.

(2) The controller shall appropriately inform the data subject of his right to oppose, at no cost, the processing referred to subarticle (1) of this article.

Revocation of consent.

465. (1) In those cases where the processing of personal data is made in terms of article 463(*e*) and (*f*), the data subject, except where otherwise provided in any other law, shall be entitled to object at any time to the controller on compelling legitimate grounds to the processing of such data.

(2) Saving the provisions of article 464, where the processing of personal data takes place with the consent of the data subject, the data subject may at any time revoke his consent for compelling legitimate grounds relating to his particular situation.

Sensitive personal data.

466. (1) Subject to the other provisions of this Title no person shall process sensitive personal data.

(2) Such personal data may be processed in those cases provided for under subarticle (3) and under articles 467 to 470 or as may be prescribed by the Minister having regard to an important public interest.

(3) Sensitive personal data may be processed if the data subject:

(*a*) has given his explicit consent to processing; or

(*b*) has made the data public.

Necessary processing.

467. Sensitive personal data may be processed if appropriate safeguards are adopted and the processing is necessary in order that:

(*a*) the controller will be able to comply with his duties or exercise his rights under any law regulating the conditions of employment; or

(*b*) the vital interests of the data subject or of some other person will be able to be protected and the data subject is physically or legally incapable of giving his consent; or

(*c*) legal claims will be able to be established, exercised or defended.

SUB-TITLE IV

Of Processing For Specific Purposes

Processing by foundations, etc.

468. (1) Any body of persons or other entity not being a commercial body or entity, with political, philosophical, religious or trade union objects may, in the course of its legitimate activities and with appropriate guarantees, process sensitive personal data concerning the members of the respective body or entity and such other persons who by reason of the objects of the body or entity have regular contact therewith.

(2) Sensitive personal data may be provided to a third party only if the data subject explicitly consents thereto.

Processing concerning health or medical purposes.

469. (1) Sensitive personal data may be processed for health and hospital care purposes, provided that it is necessary for:

(*a*) preventive medicine and the protection of public health;

(*b*) medical diagnosis;

(*c*) health care or treatment; or

(*d*) management of health and hospital care services:

(2) The data is processed by a health professional or other person subject to the obligation of professional secrecy.

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For the purposes of this article "health professional" means a person in possession of a warrant to exercise a profession regulated by the Medical and Kindred Professions Ordinance or the Health Care Professions Act and any person acting under the personal direction and supervision of such person.

Processing concerning research and statistics

470. (1) Sensitive personal data may be processed for research and statistics purposes, provided that the processing is necessary as stipulated in article 463(*e*).

(2) If the processing referred to in subarticle (1) has been approved:

(*a*) in the case of statistics, by the Commissioner himself;

(*b*) in the case of research, by the Commissioner on the advice of a research ethics committee of an institution recognised by the Commissioner for the purposes of this paragraph;

the provisions of subarticle (1) shall be deemed to be satisfied.

(3) Personal data may be provided to be used for the purposes referred to in subarticle (1), unless otherwise provided by applicable rules on secrecy and confidentiality.

Processing concerning legal offences.

471. (1) Data relating to offences, criminal convictions or security measures may only be processed under the control of a public authority.

(2) For this purpose, the Minister may by regulations authorise any person to process the data referred to in subarticle (1) subject to such suitable specific safeguards as may be prescribed.

(3) A complete register of criminal convictions may only be kept under the control of a public authority.

Processing of identity card number.

472. The identity card number may, in the absence of consent, only be processed when such processing is clearly justified having regard to:

(*a*) the purpose of the processing;

(*b*) the importance of a secure identification;

(*c*) some other valid reason as may be prescribed.

SUB-TITLE V

Of Data Collection And Right Of Access

Information to data subject.

473. The Controller or any other person authorised by him in that behalf must provide a data subject from whom data relating to the data subject himself are collected, with at least the following information, except, where the data subject already has it:

(*a*) the identity and habitual residence or principal place of business of the controller and of any other person authorised by him in that behalf, if any;

(*b*) the purposes of the processing for which the data are intended; and

(*c*) any further information relating to matters such as:
  (i) the recipients or categories of the recipients of data;
  (ii) whether the reply to any questions made to the data subject is obligatory or voluntary, as well as the possible consequence of failure to reply; and
  (iii) the existence of the right to access, the right to rectify, and, where applicable, the right to erase the data concerning him,

and, insofar as such further information is necessary, having regard to the specific circumstances in which the data is collected, to guarantee fair processing in respect of the data subject.

Data collected from other sources.

474. (1) Where the data have not been obtained from the data subject, the controller or any other person authorised by him in that behalf shall provide the data subject with at least the following information, except where the data subject already has it:

(*a*) the identity and habitual residence or principal place of business of the controller and of any other person authorised by him in that behalf;

(*b*) the purposes of the processing;

(*c*) any further information including:

(i) the categories of data concerned;

(ii) the recipients or categories of recipients;

(iii) the existence of the right of access, the right to rectify, and, where applicable, the right to erase the data concerning him;

and insofar as such further information is necessary, having regard to the specific circumstances in which the data is processed, to guarantee fair processing in respect of the data subject.

(2) The information referred to in subarticle (1) shall be provided at the time of undertaking the recording of personal data or, if a disclosure to a third party is envisaged, not later than the time when the data are first disclosed.

(3) Information referred to in subarticle (1) need not be provided if there are provisions concerning the registration or disclosure of any such personal data in any other law and appropriate safeguards are adopted.

(4) Information under subarticle (1) need not be provided if the personal data is required:

(*a*) for processing for statistical purposes;

(*b*) for purposes of historical or scientific research;

and insofar as the provision of such information proves impossible or would involve a disproportionate effort.

Right of access.

475. (1) The controller of personal data at the request of the data subject shall provide to the data subject, without excessive delay and without expense, written information as to whether personal data concerning the data subject is processed.

(2) A request by the data subject under subarticle (1) shall only be made by the data subject at reasonable intervals.

(3) If such data is processed the data controller shall provide to the data subject written information in an intelligible form about:

(a) actual information about the data subject which is processed;

(b) where this information has been collected;

(c) the purpose of the processing;

(d) to which recipients or categories of recipients the information is disclosed; and

(e) knowledge of the logic involved in any automatic processing of data concerning the data subject.

(3) An application under subarticle (1) shall be made in writing to the controller of personal data and is to be signed by the data subject.

Rectification.

476. (1) The controller shall be liable at the request of the data subject to immediately rectify, block or erase such personal data that has not been processed in accordance with this Title or with regulations made under this Title.

(2) The controller shall notify the third party to whom the data has been disclosed about the measures undertaken under subarticle (1) of this article

(3) No such notification need be provided if it is shown to be impossible or it will involve a disproportionate effort.

SUB-TITLE VI

Of Exemptions, Restrictions and Other Measures

Exemptions and restrictions in case of secrecy, etc.

477. (1) The provisions of articles 461, 473,474 (1),475 and 489 shall not apply when a law specifically provides for the provision of information as a necessary measure in the interest of:

(*a*) national security;

(*b*) defence;

(*c*) public security;

(*d*) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions;

(*e*) an important economic or financial interest including monetary, budgetary and taxation matters;

(*f*) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority referred to in paragraphs (*c*), (*d*) and (*e*); or

(*g*) such information being prejudicial to the protection of the data subject or of the rights and freedoms of others.

(2) The provisions of article 475 shall not apply when data is processed solely for purposes of scientific research or is kept in personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics.

(3) The provisions of subarticle (2) shall not apply where the data is used for taking measures or decisions regarding any particular individual or where there is a risk of breaching the privacy of the data subject.

Decisions based on automated processing.

478. (1) If a decision is based solely on automated processing of such personal data as is intended to assess the qualities of a natural person, and such decision has a legal or other significant effect for that person, that person shall have the right to request that the decision be reconsidered other than in a manner based solely on automated processing, and such reconsideration shall be obligatory on the person making such decision.

(2) The provisions of subarticle (1) shall not apply where the decision is taken in the course of the entering into or performance of a contract with the data subject, provided that the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or that there are suitable measures to safeguard his legitimate interests such as the right to be heard.

(3) A person who is the subject of a decision referred to in subarticle (1) shall be entitled to obtain upon representation information from the controller about what has controlled the automated processing that resulted in the decision.

(4) Information made available by the controller shall be subject to the provisions of article 475.

Persons authorised to process data.

479. (1) Any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data may only process personal data in accordance with instructions from the controller unless

the person is otherwise required to do so by law.

(2) The carrying out of processing by way of a processor is to be governed by a contract or other legally binding instrument in a written or in an equivalent form binding the processor to the controller and stipulating in particular that the processor:

(*a*) shall act only on instructions from the controller;

(*b*) shall take those measures referred to in article 480(1).

Security measures relating to processing.

480. (1) The controller shall implement appropriate technical and organisational measures to protect the personal data that is processed against accidental destruction or loss or unlawful forms of processing thereby providing an adequate level of security that gives regard to the:

(*a*) technical possibilities available;

(*b*) cost of implementing the security measures;

(*c*) special risks that exist in the processing of personal data;

(*d*) sensitivity of the personal data being processed.

(2) If the controller engages a processor, the controller shall ensure that the processor:

(*a*) can implement the security measures that must be taken;

(*b*) actually takes the measures so identified by the controller.

Transfer of data to a third country.

481. (1) Without prejudice to the provisions of article 482, the transfer to a third country of personal data that is undergoing processing or intended processing, may only take place subject to the provisions of this Title and provided that the third country to which the data is transferred ensures an adequate level of protection.

(2) The adequacy of the level of protection of a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.

(3) It is for the Commissioner to decide whether a third country ensures an adequate level of protection.

(4) The transfer of personal data to a third country that does not ensure adequate protection is prohibited.

Exemptions from the prohibition of the transfer of data to third country

482. (1) For the purpose of implementing any international convention to which Malta is a party or any other international obligation of Malta, the Minister may by Order published in the Gazette designate that the transfer of personal data to any country listed in the said Order shall not, notwithstanding the provisions of this Title or any other law, be restricted on grounds of protection of privacy. In making such Order the Minister may include conditions and restrictions provided for in any said international instrument.

(2) A transfer of personal data to a third country that does not ensure an adequate level of protection within the meaning of article 481(2) may be effected by the controller if the data subject has given his unambiguous consent to the proposed transfer or if the transfer -

(*a*) is necessary for the performance of a contract between the data subject and the controller or the implementation of precontractual measures taken in response to the data subject's request;

(*b*) is necessary for the performance or conclusion of a contract concluded or to be concluded in the interests of the data subject between the controller and a third party;

(*c*) is necessary or legally required on public interest grounds, or for the establishment, exercise or defence of legal claims;

(*d*) is necessary in order to protect the vital interests of the data subject; or

(*e*) is made from a register that according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, provided that the conditions laid down in law for consultation are fulfilled in the particular case.

(3) Without prejudice to subarticle (1) the Commissioner may authorise a transfer or a set of transfers of personal data to a third country that does not ensure an adequate level of protection within the meaning of article 481(2).

(4) The controller provides adequate safeguards, which may result particularly by means of appropriate contractual provisions, with respect to the protection of the privacy and fundamental rights and freedoms of individuals and with respect to their

exercise.

SUB-TITLE VII

Of Notification And Other Procedures

Obligation for notification.

483. (1) The controller shall notify the Commissioner before carrying out any wholly or partially automated processing operation or set of such operations intended to serve a single purpose or several related purposes.

(2) The Minister may prescribe on any matter relating to the form of notification to be made under this subarticle in respect of -

(*a*) processing whose sole purpose is the keeping of a register which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person demonstrating a legitimate interest; and

(*b*) processing operations referred to in article 468.

(3) The notification referred to in subarticle (1) must specify:

(*a*) the name and address of the data controller and of any other person authorised by him in that behalf, if any;

(*b*) the purpose or purposes of the processing;

(*c*) a description of the category or categories of data subject and of the data or categories of data relating to them;

(*d*) the recipients or categories of recipient to whom the data might be disclosed;

(*e*) proposed transfers of data to third countries; and

(*f*) a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to article 480 to ensure security of processing.

(4) The controller shall notify the Commissioner of any changes affecting the information referred to under subarticle (3) and the Minister may prescribe any matter related to the form of such notification.

(5) The Commissioner may allow the simplification of or the exemption from the notification obligations provided for under this Sub-Title only in respect of categories of processing operations -

(a) which are unlikely, due account being taken of the data being processed, to prejudice the rights and freedoms of data subjects, and

(b) in respect of which the Commissioner specifies the purposes of the processing, the data or categories of data being processed, the category or categories of data subjects affected by such processing, the recipients or categories of recipients to whom the data is to be disclosed and the length of time for which the data is to be stored.

Derogation from the obligation for notification.

484. (1) The controller shall notify the Commissioner on the appointment or removal of a personal data representative.

(2) Where a personal data representative has been so appointed the notification required in terms of article 483(1) and (3) shall not be required.

Function of data representative.

485. (1) The personal data representative shall have the function of independently ensuring that the controller processes personal data in a lawful and correct manner and in accordance with good practice and in the event of the personal data representative identifying any inadequacies, he shall bring these to the attention of the controller.

(2) If the personal data representative has reason to suspect that the controller has contravened the provisions applicable for processing personal data and if rectification is not implemented as soon as practicable after such contravention has been pointed out, the personal data representative shall notify this situation to the Commissioner.

(3) The personal data representative shall also consult with the Commissioner in the event of doubt about how the rules applicable to processing of personal data are to be applied.

Register of processing subject to notification.

486. The personal data representative shall maintain a register of the processing that the controller implements and which would have been subject to the duty of notification if the representative had not been appointed. The register shall comprise at least the information that a notification under article 483 would have contained.

Assistance to data subject.

487. The personal data representative shall assist the data subject to exercise his rights under this Title.

Mandatory notification.

488. (1) Processing of personal data that involves particular risks of improper interference with the rights and freedoms of data subjects shall be submitted for prior checking to the Commissioner. The Minister may by regulation define the processing operations involving particular risks as referred to in paragraph (*a*) and prescribe rules in relation thereto.

(2) The prior checking referred to in subarticle (1) shall be carried out by the Commissioner following receipt of a notification from either the controller or the personal data representative.

(3) In the case of doubt, the controller or personal data representative shall consult the Commissioner.

Register of processing operations.

489. (1) The Commissioner shall maintain a register of processing operations notified in accordance with article 483(1). The register shall contain the information listed in article 483(3)(*a*) to (*e*).

(2) The controller or the personal data representative, if so instructed by the controller, shall provide at least the information referred to in article 483(3)(*a*) to (*e*) to any person who requests it expeditiously and in an appropriate manner about such automated or other processing of personal data that have not been notified to the Commissioner under article 483(3).

(3) The provisions of subarticle (2) shall not apply to the information specified in article 483(2)(*a*).

SUB-TITLE VIII

Of The Information and Data Protection Commissioner

Information and Data Protection Commissioner.

490. (1) There shall be an Information and Data Protection Commissioner who shall be appointed by the Prime Minister after he has consulted the Leader of the Opposition.

(2) A person shall not be qualified to hold office as Commissioner if he:

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

(b) is a judge or magistrate of the courts of justice; or

(c) is an officer in the public service or a public administration employee; or

(d) is a member of a local council; or

(e) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a Commissioner.

(3) The disqualification of a person under paragraph (e) may be waived if such person declares the interest and such declaration and waiver are published in the Gazette.

Independence of functions.

491. (1) In the exercise of his functions under this Title the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority.

Commissioner may not hold other offices of profit. Exceptions.

(2) It shall not be lawful for the Commissioner to carry out any other profession, business or trade or to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any temporary judicial office on any international court or tribunal or any international adjudicating body, and the office of examiner at a University.

Legal personality and representation of the Commissioner.

492. (1) The Commissioner shall have a distinct legal personality and shall be capable, subject to the provisions of this Title, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of his 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 his functions under this Title.

(2) Any document purporting to be an instrument made or issued by the Commissioner and signed by him shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Commissioner.

Tenure of office.

493. (1) The Commissioner shall hold office for a term of five years and shall be eligible for reappointment on the expiration of his term of office.

(2) The Commissioner shall not be removed from his office except by the President upon an address of the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(3) If the Commissioner resigns or if his office is otherwise vacant or if the Commissioner is for any reason unable to perform the functions of his office, or for any other temporary purpose where the Commissioner considers it necessary not to carry out any of his functions because of such circumstances, that were he a judge of the superior courts, he would abstain, the Prime Minister shall, after he has consulted the Leader of the Opposition, appoint a person who is qualified to be appointed as a temporary Commissioner, if such person is qualified to be a Commissioner. Any person so appointed shall cease to be such a Commissioner when a Commissioner is appointed to fill the vacancy or, as the case may be, when the Commissioner who was unable to perform the functions of his office resumes those functions or, in the case of a temporary purpose, the temporary Commissioner has performed the function assigned to him.

(4) The appointment of a temporary Commissioner for a temporary purpose as provided in subarticle (3) shall be exercised only on a certificate signed by the Commissioner to the effect that, in his opinion, it is necessary for the due conduct of the business of the Commissioner under this Act, that a temporary Commissioner be appointed.

Functions of the Commissioner.

494. The Commissioner shall have the following functions:

(*a*) to create and maintain a public register of all processing operations according to notifications submitted to him as specified in this Title;

(*b*) to exercise control and, either of his own motion or at the request of a data subject, verify whether the processing is carried on in accordance with the provisions of this Title or regulations made thereunder;

(*c*) to instruct the processor and controller to take such measures as may be necessary to ensure that the processing is in accordance with this Title or regulations made thereunder;

(*d*) to receive reports and claims from data subjects or associations representing them on violations of this Title or regulations made thereunder, to take such remedial action as he deems necessary or as may be prescribed under this Title, and to inform such data subjects or associations of the outcome;

(*e*) to issue such directions as may be required of him for the purposes of this Title;

(*f*) to institute civil legal proceedings in cases where the provisions of this Title have been or are about to be violated and to refer to the competent public authority any criminal offence encountered in the course of or by reason of his functions;

(*g*) to encourage the drawing up of suitable codes of conduct by the various sectors affected by the provisions of this Title and to ascertain that the provisions of such codes are in accordance with the provisions of this Act and for such purpose the Commissioner may seek the views of data subjects or their representatives;

(*h*) to take such measures as may be necessary so as to bring to the knowledge of the general public the provisions of this Title and for such purpose to give advice to any person where it is required;

(*i*) to order the blocking, erasure or destruction of data, to impose a temporary or definitive ban on processing, or to warn or admonish the controller;

(*j*) to advise the Government on any legislative measures that are required to be taken to enable him carry out his functions appropriately;

(*k*) to draw up annual reports of his activities at regular intervals, at least once a year, which reports shall be made public;

(*l*) at the request of a data subject to verify that the processing of the personal data described in article 477 of this Code is compliant with the provisions of this Act or of any law as specified in subarticle (1) of the said article 477 and in such a case the data subject shall be informed accordingly; and

(*m*) to collaborate with supervisory authorities of other countries to the extent necessary for the performance of his duties, in particular by exchanging all useful information, in accordance with any convention to which Malta is a party or other any international obligation of Malta; and

(*n*) to carry out the functions assigned to him by Title IV of Part I of Book Second of this Code.

Commissioner's right of access to information.

495. (1) The Commissioner shall be entitled to obtain on request:

(*a*) access to the personal data that is processed, and;

(*b*) information about and documentation of the processing of personal data and security of such processing:

(2) Where the personal data is processed for the purpose of compliance with a legal obligation to which the controller is subject, the Minister may by regulation prescribe rules and procedures for the purposes of the implementation of subarticle (1)(*a*).

(3) Without prejudice to any other provision of any other law, any person who does not comply with any lawful request relevant to an investigation by the Commissioner shall be guilty of an offence against this article.

(4) The investigations on the data processing described in article 477 are subject to the written authorisation of the Commissioner.

(5) If the Commissioner cannot, pursuant to a request under subarticle (1), obtain sufficient information in order to conclude that the processing of personal data is lawful, the Commissioner may prohibit the controller of personal data from processing personal data in any other manner than by storing them.

(6) In the exercise of his functions under this article the Commissioner shall have the same powers to enter and search any premises as are vested in the executive police by any law as may from time to time be in force.

Commissioner to seek rectification.

496. (1) If the Commissioner concludes that personal data is processed or may be processed in an unlawful manner, the Commissioner shall order rectification, and if rectification is not effected or if the matter is urgent, the Commissioner may prohibit the controller of personal data to continue processing the personal data in any manner other than to store that data.

(2) If the controller does not implement security measures in terms of article 480, the Commissioner may impose an administrative fine as stipulated in the following subarticle.

(3) In any of the cases mentioned in the preceding subarticles or in article 495(2), the Commissioner may, by order in writing, require the controller of personal data to pay such administrative fine as may be prescribed, provided that if the controller fails to comply with such requirement the Commissioner shall commence proceedings against the controller.

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(4) Such administrative fine shall be due to the Commissioner as a civil debt, constituting an executive title for the purposes of Title VII of the Code of Organisation and Civil Procedure as if payment of the amount of the fine had been ordered by a judgement of a court of civil jurisdiction.

Application for erasure.

497. (1) Where the Commissioner decides that personal data has been unlawfully processed, the Commissioner shall by notice order the controller of personal data to erase the personal data.

(2) If the controller of personal data feels aggrieved by the decision of the Commissioner, he may, within twenty days from the receipt of the notice referred to in subarticle (1), by application request the Administrative Court to revoke the order of the Commissioner.

Collaboration with other authorities.

498. The Commissioner, before taking a decision in the exercise of his functions under article 494(*c*) or (*e*) which may significantly impact the operation of any government department or of any public or private enterprise, shall consult the interested party or parties who may be directly affected by the decision and he shall give reasons for his decisions.

Oath of secrecy. Cap. 50.

499. The Commissioner and any officer and employee of the Commissioner shall, before assuming their duties, take an oath of office contained in the Seventh Schedule to this Code to carry out their duties with equity and impartiality and in accordance with the provisions of this Title and shall be subject to the provisions of the Official Secrets Act, and the Code of Ethics applicable to public officers. The oath of office shall be taken before the Attorney General.

Compensation for damages.

500. (1) The data subject may, by sworn application filed in the competent court, exercise an action for damages against the controller who processes data in contravention of this Title or regulations made thereunder.

(2) An action under this article shall be commenced within a period of twelve months from the date when the data subject becomes aware or could have become aware of such a contravention, which ever is the earlier.

Penalties.

501. (1) Any person who:

(*a*) provides untrue information to data subjects as is prescribed by this Title, or in the notification to the Commissioner under article 483 or to the Commissioner when the Commissioner requests information in accordance with article 495;

(*b*) processes personal data in contravention of the provisions of articles 466 to 471;

(*c*) transfers personal data to a third country in contravention of article 481 and 482;

(*d*) omits to give notification under article 483(1) or in accordance with regulations issued under article 488;

shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) or to imprisonment for six months or to both such fine and imprisonment.

(2) Any person who fails to comply with an order in writing to pay an administrative fine in accordance with the provisions of article 495(2) or of article 496(1), shall not be subject to the payment of a penalty under the provisions of this article.

Appeals.

502. Any person aggrieved by a decision of the Commissioner shall have the right to appeal in writing to the Administrative Court within twenty days from the notification to him of the said decision.

Grounds of appeal.

503. (1) An appeal to the Administrative Court may be made on any of the following grounds:

(*a*) that a material error as to the facts has been made;

(*b*) that there was a material procedural error;

(*c*) that an error of law has been made;

(*d*) that there was some material illegality, including unreasonableness or lack of proportionality.

(2) The Administrative Court shall give reasons for its decision and shall cause such decisions to be made public omitting, if it deems it appropriate for reasons of confidentiality, the names of the persons involved.

(3) In determining an appeal under this article the Administrative Court may:

(a) dismiss the appeal;

(b) annul the decision;

and where the Administrative Court annuls the decision it may refer the matter to the competent authority with a direction to reconsider it and reach a decision in accordance with the findings of the Administrative Court.

(4) The effect of a decision to which an appeal relates shall not except where the Administrative Court or the Constitutional Court, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.

Powers and procedures of the Administrative Court.

504. The Administrative Court shall be competent to hear and decide any appeal made to it in accordance with the provisions of this Title and any regulations made thereunder; and subject to article 505, the decisions of the Administrative Court shall be final and binding.

Appeal to the Constitutional Court. Cap. 12.

505. Any party to an appeal to the Administrative Court who feels aggrieved by a decision of the Administrative Court, or the Commissioner if he feels aggrieved with any such decision, may on a question of law appeal to the Constitutional Court by means of an application filed in the registry of that court within thirty days from the date on which that decision has been notified.

Financial provision.

506. (1) The expenses required by the Commissioner to exercise his functions under this Title, Title IV of Part I of Book Second of this Code and other laws as may be fixed by the House of Representatives in accordance with this article shall be a charge on the Consolidated Fund without the need of any further appropriation other than this Title.

(2) Where during the course of any financial year the sum fixed by the House of Representatives is in the opinion of the Commissioner insufficient to enable him to efficiently fulfil his functions the Commissioner shall prepare supplementary estimates for consideration by the House of Representatives.

(3) The Commissioner shall cause to be prepared in every financial year, and shall not later than six weeks after the end of each such year adopt, estimates of the income and expenditure of the Commissioner for the next following financial year.

(4) A copy of the estimates shall, upon their adoption by the Commissioner, be sent forthwith by the Commissioner to the Minister and to the Minister responsible for finance.

(5) The Minister shall at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Commissioner, approve the same with or without amendment after consultation with the Minister responsible for finance.

Accounts and audit.

507. (1) The Commissioner shall cause to be kept proper accounts and other records in respect of his operations under this Title, Title IV of Part I of Book Second of this Code and other laws and shall cause to be prepared a statement of

accounts in respect of each financial year.

(2) The accounts of the Commissioner shall be audited by an auditor or auditors to be appointed by the Commissioner and approved by the Minister:

(3) The Minister responsible for finance may after consultation with the Minister require the books or the accounts of the Commissioner to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other certifications as he may deem necessary.

(4) After the end of each financial year, and not later than the date on which the estimates of the Commissioner are forwarded to the Minister under article 506(3), the Commissioner shall cause a copy of the statement of account duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the accounts of the Commissioner.

(5) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such statement and report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause every such statement and report to be laid on the Table of the House of Representatives.

(6) The Commissioner shall, not later than six weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Commissioner during the financial year and contain such information relating to the proceedings and policy of the Commissioner as either of the said Ministers may from time to time require. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session cause a copy of every such report to be laid on the Table of the House of Representatives.

SUB-TITLE IX

Of General Provisions

Power to make regulations.

508. The Minister may, after consultation with the Commissioner, prescribe regulations for the better carrying out of the provisions of this Title, and without

prejudice to the generality of the foregoing may in particular prescribe regulations concerning:

(a) the cases in which processing of personal data is permitted;

(b) the requirements which are imposed on the controller when processing personal data;

(c) what a notification or application to a controller should contain;

(d) which information shall be provided to the data subject and how information shall be provided;

(e) notification to the Commissioner and the procedure when information notified has been altered;

(f) rules and procedures relating to access by the Commissioner of data held in instances where the controller processes data for compliance with a legal obligation;

(g) the qualifications required for a person to be appointed as a personal data representative;

(h) the minimum guarantees to be provided by the bodies of persons or other entities referred to in article 468 in the processing of personal data;

(i) the fees that may be levied by the Commissioner;

(j) the administrative fines that may be imposed by the Commissioner and the administrative violations in respect of which such fines be imposed; provided that such fines shall not be in an amount exceeding twenty-five thousand euro (€25,000) for each violation and two thousand five hundred euro (€2,500) for each day during which such violation persists;

(k) the penalties that may be imposed under this Title;

(l) for establishing rules, procedures, formalities and time limits in respect of any matter provided for under this Title;

(m) the extension of the application of this Title to any particular activity or sector and to provide for the manner in which data protection is to be implemented in specific sectors or in respect of specific activities; and

(n) for anything that may be prescribed under any of the provisions of this Title.

English text to prevail.

509. In the case of conflict between the Maltese and English text of this Title, the English text shall prevail.

Title IV

OF FREEDOM OF INFORMATION

SUB-TITLE I

Of Preliminary Provisions And Declaration Of Principles

Interpretation.

510. In this Title, unless the context otherwise requires:

"applicant" means, in relation to a request for the disclosure of a document in accordance with article 511, the person who made that request;

"Commissioner" means the Information and Data Protection Commissioner appointed in terms of article 490 of this Code;

"decision notice" has the meaning given by article 531 of this Code;

"document" means any article that is held by a public authority and on which information has been recorded in whatever form, including electronic data, images, scale models and other visual representations, and audio or video recordings, regardless of whether the information can be read, seen, heard or retrieved with or without the aid of any other article or device;

"eligible person" means a person who is either a citizen of Malta or a citizen of any other member state of the European Union or a citizen of any other state the citizens of which have a right, in virtue of any treaty between such state and the European Union, to be treated in Malta in the same manner as citizens of member states of the European Union;

"enforcement notice" has the meaning given by article 533 of this Code;

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"European Union" has the meaning given by the European Union Act;

"exempt document" means a document which is not subject to disclosure under this Act in accordance with Sub-Titles V and VI;

"exempt matter" means matter the inclusion of which in a document causes the document to be an exempt document;

"information notice" has the meaning given by article 532 of this Code;

"Minister" means the Minister responsible for freedom of information and data protection;

"Principal Permanent Secretary" means the officer appointed in terms of article 92(5) of the Constitution and article 389 of this Code;

"public authority" means the public administration;

"relevant public authority" means a public authority other than those mentioned in article 513 of this Code.

Right of access to official documents.

511. Any eligible person has a right of access to documents held by public authorities in accordance with and subject to the provisions of this Title.

Access to documents other than through this Title.

512. Nothing in this Title shall be construed as preventing public authorities from publishing or granting access to documents (including exempt documents) otherwise than as required by this Title.

Application of this Title.

513. (1) Subject to subarticle (2), this Title shall not apply to documents that -

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(*a*) are held by a Local Council and are accordingly subject to article 45 of the Local Councils Act;

S.L. 435.61 Cap. 504.

(*b*) are subject to the Freedom of Access to Information on the Environment Regulations or to any other regulations made under the Environment and Development Planning Act and providing for freedom of access to information;

(*c*) have been transferred to the National Archives in accordance with Title V of Part I of Book Second of this Code;

(*d*) are accessible to the public under this Code and any other law;

(*e*) are available for purchase by the public in accordance with arrangements made by a public authority; or

(*f*) are held by a commercial partnership in which the Government or another public authority has a controlling interest, in so far as the documents in question relate to the commercial activities of the commercial partnership.

(2) This Title shall apply to documents to which subarticle (1) refers only in so far as may be provided for by any law governing access to such documents.

(3) This Title shall not apply to documents in so far as such documents contain -

(*a*) personal data subject to Title III of Part I of Book Second of this Code; or

(*b*) information the disclosure of which is prohibited by any other law:

(4) Where it is possible to release a document with such data or information deleted, this shall be done in accordance with article 521(1) and (2).

(5) This Title shall not apply to documents held by:

(a) the Electoral Commission;

(b) the Director of Public Prosecutions;

(c) the Public Service Commission;

(d) the Office of the Attorney General;

(e) the National Audit Office;

(f) the Security Service; or

(g) the Broadcasting Authority, in so far as such documents relate to its functions under article 119(1) of the Constitution; or

(h) the Ombudsman.

SUB-TITLE II

Of Submission And Handling Of Requests For Information

Manner in which requests for access shall be made.

514. (1) An applicant's request to a public authority in terms of article 511 shall -

(*a*) be delivered in writing, including by post or electronically, subject to paragraph (*e*), to an office of the public authority; and

(*b*) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the public authority to identify it; and

(*c*) include a copy of the applicant's identity card or residence permit, or make reference to the identity card or residence permit in such a way as may be specified by regulations issued under article 550(a);

(*d*) specify a postal address at which notices under this Title may, if necessary, be sent to the applicant; and

(*e*) be accompanied by any fee payable in accordance with article 517(3).

(2) No applicant shall be required to justify or give any reasons for a request under this Title, and any beliefs of public authorities as to what are the applicant's reasons for seeking access shall not affect that request.

Public authority's duty to assist applicants.

515. Where an eligible person -

(*a*) wishes to make a request to a public authority; or

(*b*) has made to a public authority a request that does not comply with article 514 of this Code,

it is the duty of the public authority to take reasonable steps to assist the person to make the request in a manner that complies with article 514 of this Code, and it shall do so at no charge.

Transfer of requests.

516. Where a request in accordance with article 514 of this Code is made to a public authority, and the document to which the request relates is not held by the authority but is believed by the person dealing with the request to be held by another public authority, the public authority to which the request is made shall promptly, and in any case not later than ten working days after the day on which the request is received, transfer the request to the other public authority and inform the applicant accordingly.

Fees.

517. (1) Subject to subarticle (2) and to any regulations issued under this Title, a public authority may charge a fee to an applicant for access to a document in accordance with this Title.

(2) Any fee set by a public authority shall not exceed the cost of making a document available to the applicant, whereas if regulations issued as aforesaid prescribe a range of standard fees, such fees shall not exceed the average cost of making documents available to applicants.

(3) Regulations issued as aforesaid may provide for the payment of a fee specifically for the processing of a request for access to documents, and for the payment of such a fee on presentation of the request.

(4) Where a public authority decides to charge an applicant a fee, it shall advise him accordingly and inform him that he has the right to complain to the Commissioner under article 531 of this Code if he feels that the fee is excessive.

(5) If the fee is a standard fee established by regulations under this Title, the Commissioner may in response to such a complaint inquire only into whether the regulations have been correctly applied.

(6) A public authority may waive any fees payable in respect of a particular application if, in the opinion of the authority -

(*a*) the fee payable is so small as to be not worth collecting; or

(*b*) payment of the fee would cause financial hardship to the applicant, bearing in mind the applicant's means and circumstances; or

(*c*) disclosure of the information requested is in the public interest.

(7) Where a public authority fails to meet the time limit set by article 518 or, if applicable, article 519 of this Code, it shall not charge any fee for access to a document.

Decisions on and replies to requests.

518. Subject to this Title, the public authority to which a request is made in accordance with article 514 or is transferred in accordance with article 516 of this Code shall, as soon as reasonably practicable, and in any case not later than twenty days after the day on which the request is received by the authority -

(a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge (if any); and

(*b*) inform the applicant accordingly in writing.

Extension of time limits.

519. (1) Where a request in accordance with article 514 is made or transferred to a public authority, the authority may extend the time limit set out in article 518 by up to forty working days in respect of the request if -

(*a*) the request is for a large number of documents or necessitates a search through a large number of documents, and meeting the original time limit would unreasonably interfere with the operations of the public authority; or

(*b*) consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.

(2) Any extension under subarticle (1) shall be for a reasonable period of time having regard to the circumstances.

(3) The extension shall be effected by giving notice to the person who made the request within twenty days after the day on which the request is received, and the notice shall -

(*a*) specify the period of the extension;

(*b*) give the reasons for the extension;

(*c*) state that the applicant has the right under article 531 to make a complaint to the Commissioner about the extension; and

(*d*) contain such other information as is necessary.

Manner in which access may be granted.

520. (1) A public authority may grant an applicant access to a document in one or more of the following ways:

(*a*) by giving the applicant a reasonable opportunity to inspect the document; or

(*b*) by providing the applicant with a copy of the document; or

(*c*) in the case of a document that is a recording of sounds or visual images, by making arrangements for the applicant to hear or view those sounds or visual images; or

(*d*) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified

form, by providing the applicant with a written transcript of the words recorded or contained in the document; or

(*e*) by giving an excerpt or summary of the contents.

(2) Subject to article 521 of this Code, the public authority shall make the document available to the applicant in the way preferred by the applicant unless to do so would -

(a) impair efficient administration; or

(*b*) be contrary to any legal duty of the public authority in respect of the document; or

(*c*) prejudice the interests protected by Sub-Titles V and VI of this Title and (in the case of the interests protected by Title VI) those interests are not outweighed by a contrary public interest.

(3) Where access is not granted in the way preferred by the applicant, the public authority shall give to the applicant the reason for not providing the information in that way and state that the applicant has the right under article 531 to make a complaint thereon to the Commissioner.

Deletion of exempt matter or irrelevant material.

521. (1) Where a request is made to a public authority for a document which is an exempt document, but -

(*a*) it is possible for the public authority to make a copy of the document with the deletion of the exempt matter; and

(*b*) it is reasonably practical for the public authority, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy,

the public authority shall make such a copy available to the applicant.

(2) Where access is granted to a copy of a document in accordance with subarticle (1), the applicant shall be informed -

(*a*) that it is a copy;

(*b*) of the grounds for the deletions; and

(*c*) that the applicant has the right under article 531 to make a complaint to the Commissioner about the deletions.

(3) Where a document (not being an exempt document) contains material that is irrelevant to the applicant's request, the public authority may, if possible and reasonably practical and if the applicant agrees, make available to the applicant a copy of the document with the irrelevant material deleted; but a document may not be withheld on the grounds that it contains irrelevant material which cannot be deleted.

Reasons for refusal of requests.

522. A request made in accordance with article 514 of this Code may be refused only for one or more of the following reasons:

(*a*) that the document requested is excluded from the scope of this Title by virtue of article 513 of this Code;

(*b*) that, by virtue of Sub-Titles V or VI, there is good reason for withholding the document requested;

(*c*) that, by virtue of article 542 of this Code, the public authority does not confirm or deny the existence or non-existence of the document requested;

(*d*) that the document requested is publicly available or will be published within three months;

(*e*) that the document requested cannot be found, and this is certified in writing by the head of the public authority;

(*f*) that the resources required to -

(i) identify, locate or collate a document or documents;

(ii) examine a document or consult any person or body in relation to its possible disclosure; or

(iii) make a copy, or an edited copy, of a document, would substantially and unreasonably divert the resources of the public authority from its other operations, and it has not proved possible for the applicant, with advice from the public authority, to redefine his request in such a manner as to make it more easily addressed by the authority;

(*g*) that the document requested is not held by the public authority and the person dealing with the request has no grounds for believing that the document is held by, or connected more closely with the functions of, another public authority; or

(*h*) that the request is frivolous or vexatious or that the information requested is trivial.

Reason for refusal to be given.

523. (1) Where a request made in accordance with this Title is refused, the public authority shall –

(*a*) subject to article 542 of this Code, give the applicant the reasons for the refusal; and

(*b*) state that the applicant has the right, under article 531 of this Code, to seek an investigation and review by the Commissioner of the refusal.

(2) A notice under this article is not required to contain any matter that is of such a nature that its inclusion in a document would cause that document to be an exempt document.

Decisions by public authorities under this Title.

524. (1) A decision by a public authority in respect of a request under this Title shall, subject to article 325(c) of this Code, be taken by -

(*a*) the head of the public authority; or

(*b*) an employee of the public authority, acting within the scope of the authority exercisable by him in accordance with arrangements approved by the head of the authority or by its governing board.

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(2) A decision to disclose or grant access to a document in accordance with this Title shall constitute authorised disclosure in terms of the Official Secrets Act.

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SUB-TITLE III

Of Access To Certain Documents

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Publication of information by public authorities.

525. (1) Not later than six weeks after the coming into force of this article, every relevant public authority, if it has not already done so, shall publish, in accordance with any instructions issued by the Commissioner:

(*a*) a description of its structure, functions and responsibilities;

(*b*) a general description of the categories of documents held by it;

(*c*) a description of all manuals and similar types of documents which contain policies, principles, rules or guidelines in accordance with which decisions or recommendations are made in respect of members of the public (including bodies corporate and employees of the public authority in their personal capacity); and

(*d*) a statement of the information that needs to be available to members of the public who wish to obtain access to official documents from the public authority, which statement shall include particulars of the officer or officers to whom requests for such access should be sent.

(2) The Minister may, by regulations issued in consultation with the Commissioner, require relevant public authorities to publish information additional to that listed in subarticle (1).

(3) Each public authority shall update the material published in accordance with subarticles (1) and (2) at least annually, or at more frequent intervals as may be established by regulations issued under subarticle (2).

(4) Publication on an internet website or another electronic medium that is publicly accessible at all reasonable times shall be sufficient to satisfy the requirements of this article, provided that the information published hereunder shall be made available in printed form to members of the public who so require it.

(5) Nothing in this article shall require the publication of information where there is good reason under this Title to withhold it.

Right of access to certain official information.

526. (1) Regulations may be issued under this Title to establish a right of access to information which is held by bodies or persons other than public authorities or the employees thereof, and which pertains to:

(*a*) services provided to the public by such bodies or persons on behalf of the Government or another public authority; or

(*b*) projects or initiatives which are undertaken by such bodies or persons but financed by the Government or another public authority.

(2) The giving of access to any information to which subarticle (1) applies shall be subject to the provisions of any regulations made under this Title.

Right of access to internal rules affecting decisions.

527. (1) Subject to Sub-Titles V and VI of this Title, any eligible person has a right to and shall, on request made under this article, be given access to any document (including a manual) which is held by a public authority and which

contains policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of members of the public (including bodies corporate and employees of the public authority in their personal capacity).

(2) The provisions of Sub-Title II other than articles 520 and 521 shall apply *mutatis mutandis* to a request made under subarticle (1).

(3) Where, by virtue of Sub-Titles V and VI, there is good reason for withholding parts of a document to which subarticle (1) relates, the public authority shall, unless it is impracticable to do so, either:

(*a*) make a copy of that document available with such deletions or alterations as are necessary; or

(*b*) provide another document stating the substance and effect of the document except as it relates to the information withheld.

(4) Where a document is made available in accordance with subarticle (3), the public authority shall -

(*a*) give to the applicant the reasons for withholding the information; and

(*b*) state that the applicant has the right, under article 531, to seek an investigation and review by the Commissioner of the withholding of the information.

Right of access by a person to reasons for decisions affecting that person.

528. (1) Subject to the provisions of Sub-Titles V and VI, where a public authority makes a decision or recommendation in respect of any eligible person, including an eligible person acting on behalf of a body corporate, that person has the right to and shall, on request within six months from when the person learns of the decision or recommendation, be given a written statement of -

(*a*) the findings on material issues of fact; and

(*b*) subject to subarticle (2), a reference to the information on which the findings were based; and

(*c*) the reasons for the decision or recommendation.

(2) A reference to the information on which any findings were based need not be given under subarticle (1)(*b*) if -

(*a*) the disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise to the person who supplied the information to the effect

that the information, or his identity, or both would be held in confidence; or

(*b*) after consultation undertaken (where practicable) by or on behalf of the public authority with a natural person's medical practitioner, the public authority is satisfied that the information relates to that person and the disclosure of the information (being information that relates to the physical or mental health of the person making the request under this article) would be likely to prejudice the physical or mental health of that person; or

(*c*) in the case of a natural person under the age of eighteen, the disclosure of the information would be contrary to that person's interests; or

(*d*) the disclosure of the information (being information in respect of a person who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that person.

(3) For the purposes of subarticle (2)(*a*), the term "evaluative material" means an assessment or opinion compiled solely -

(*a*) for the purpose of determining the suitability, eligibility or qualifications of the person to whom the material relates for purposes relating to the award, continuation or cancellation of an appointment, a contract, an award, a scholarship, an honour or any other benefit; or

(*b*) for the purpose of determining whether to insure any person or property or to continue or renew such insurance.

(4) The provisions of Sub-Title II other than articles 520 and 521 shall apply *mutatis mutandis* to a request made under subarticle (1).

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SUB-TITLE IV

Of The Information And Data Protection Commissioner

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General functions of the Commissioner.

529. (1) In addition to his duties under Title III of Part I of Book Second of this Code, it shall be the duty of the Commissioner to promote the observance by relevant public authorities of -

(*a*) the requirements of this Title; and

(*b*) the provisions of the code of practice issued under article 549 of this Code.

(2) The Commissioner shall arrange for the dissemination in such form and manner as he considers appropriate of such information as it may appear to him expedient to give to the public -

(*a*) about the operation of this Title,

(*b*) about compliance with the law, and

(*c*) about other matters within the scope of his functions under this Title,

and he may give advice to any person or authority as to any of those matters.

(3) Without prejudice to articles 530, 532 and 533 of this Code, the Commissioner may, with the consent or at the request of any public authority, assess whether that authority is following good practice.

(4) The Commissioner may charge such sums as he may, with the consent of the Minister, determine for any of the services provided by the Commissioner under this article.

(5) Within three months following the end of each calendar year the Commissioner shall prepare and submit to the Minister an annual report on the workings of this Title during that year, and the Minister shall at the first available opportunity cause a copy of the report to be laid on the table of the House of Representatives. The report shall state:

(*a*) how many requests for information under this Title have been made to public authorities;

(*b*) how many of these requests have been accepted and rejected;

(*c*) the reasons for rejection;

(*d*) the average time taken to reply to requests;

(*e*) how many complaints have been made to the Commissioner, the grounds for such complaints, and the outcome thereof;

(*f*) the number of appeals lodged with the Administrative Court and how they have been determined; and

(*g*) the number of information, decision and enforcement notices issued by the Commissioner.

(6) Without prejudice to subarticle (4) and to articles 534, 547 and 548 of this Code, in the exercise of his functions under this Title the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority.

(7) In this article "good practice", in relation to a public authority, means such practice in the discharge of its functions under this Title as appears to the Commissioner to be desirable, and includes (but is not limited to) compliance with the requirements of this Title and the provisions of the code of practice issued under article 549 of this Code.

Recommendations as to good practice.

530. (1) If it appears to the Commissioner that the practice of a relevant public authority in relation to the exercise of its functions under this Title does not conform with that proposed in the code of practice issued under article 549 of this Code, he may give to the authority a recommendation (in this section referred to as a "practice recommendation") specifying the steps which ought in his opinion to be taken for promoting such conformity.

(2) A practice recommendation must be given in writing and must refer to the particular provisions of the code of practice with which, in the Commissioner's opinion, the public authority's practice does not conform.

Application for decision by Commissioner.

531. (1) Any applicant may apply to the Commissioner for a decision whether, in any specified respect -

(*a*) a request for information made by the applicant to a public authority has been dealt with in accordance with the requirements of this Title; or

(*b*) a public authority is in compliance with the requirements set out in Sub-Title III of this Title.

(2) On receiving an application under this article, the Commissioner shall make a decision unless it appears to him -

(*a*) that the applicant has not exhausted any complaints procedure which may be provided by the public authority in conformity with the code of practice issued under article 549. The Commissioner may decide on the application if in his opinion the complaints procedure provided by the public authority has not been, or is unlikely to be, concluded within a reasonable period;

(*b*) that there has been undue delay in making the application;

(*c*) that the application is frivolous or vexatious; or

(*d*) that the application has been withdrawn or abandoned.

(3) Where the Commissioner has received an application under this article, he shall either -

(*a*) notify the applicant that he has not made any decision under this article as a result of the application and of his grounds for not doing so; or

(*b*) serve notice of his decision (in this Title referred to as a "decision notice") on the applicant and the public authority.

(4) Where the Commissioner decides that a public authority -

(*a*) has failed to provide access to a document, or to confirm or deny the existence of a document, in a case where it is required to do so under this Title; or

(*b*) has failed to comply with any of the other requirements of Sub-Title II of this Title in its handling of the applicant's request for a document; or

(*c*) has failed to comply with any of the requirements of Sub-Title III of this Title,

the decision notice shall specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.

(5) A decision notice shall contain particulars of the right of appeal conferred by article 547 of this Code.

(6) Where a decision notice requires steps to be taken by the public authority within a specified period, the time specified in the notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, no step which is affected by the appeal need be taken pending the determination or withdrawal of the appeal.

(7) This article shall have effect subject to article 534 of this Code.

Information notices.

532. (1) If the Commissioner has received an application under article 531 of this Code, or reasonably requires any information -

(*a*) for the purpose of determining whether a public authority has complied or is complying with any of the requirements of this Title; or

(*b*) for the purpose of determining whether the practice of a public authority in relation to the exercise of its functions under this Title conforms with that set out in the code of practice established under article 549 of this Code,

he may serve the authority with a notice (in this Title referred to as an "information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such a manner as may be so specified, with such information as is so specified relating to the application or to the purposes to which paragraphs (*a*) and (*b*) refer.

(2) An information notice shall specify the purpose for which the Commissioner requires the information and, where it refers to information recorded in a document, shall include such details as is reasonably necessary to enable a responsible officer of the public authority to identify that document.

(3) An information notice shall also contain particulars of the right of appeal conferred by article 547 of this Code.

(4) The time period specified in an information notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information required by the notice need not be furnished pending the determination or withdrawal of the appeal.

(5) A public authority shall not be required by virtue of this article to make available to the Commissioner any information in respect of:

(*a*) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Title; or

(*b*) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Administrative Court) and for the purposes of such proceedings.

(6) In subarticle (5) references to the client of a professional legal adviser include references to any person representing such a client.

(7) The Commissioner may cancel an information notice by written notice to the public authority on which it was served.

(8) In this article "information" includes unrecorded information.

Enforcement notices.

533. (1) If the Commissioner is satisfied that a public authority has failed to comply with any of its obligations under this Title, the Commissioner may serve the authority with a notice (in this Title referred to as "an enforcement notice") requiring the authority to take, within such a time as may be specified in the notice, such steps as may be so specified for complying with those obligations.

(2) An enforcement notice shall contain -

(*a*) a statement of the requirement or requirements of this Title with which the public authority has, in the Commissioner's satisfied opinion, failed to comply, and his reasons for reaching that conclusion; and

(*b*) particulars of the right of appeal conferred by article 547 of this Code.

(3) An enforcement notice shall not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(4) The Commissioner may cancel an enforcement notice by written notice to the public authority on which it was served.

(5) This article shall have effect subject to article 534 of this Code.

Exception from duty to comply with decision notice or enforcement notice.

534. (1) A decision or enforcement notice issued by the Commissioner in respect of the disclosure of a document shall not have effect if the Prime Minister certifies to the Commissioner that, in his opinion, the document is an exempt document in terms of any of the provisions of Sub-Title V of this Title.

(2) A certificate under this article shall contain a statement by the Prime Minister of the reasons for his opinion, except in so far as this would involve the disclosure of matter that is exempt matter in terms of the provisions of Part V of this Title.

(3) Where the Prime Minister issues a certificate under this article, he shall as soon as practicable thereafter lay a copy of it before the House of Representatives.

(4) Where the Commissioner receives a certificate under this article in respect of a decision notice, he shall inform the applicant accordingly.

Failure to comply with notice.

535. (1) Where a public authority or an officer of such an authority refuses or, without a good reason, fails to comply with -

(*a*) so much of a decision notice as requires steps to be taken;

(*b*) an information notice; or

(*c*) an enforcement notice,

this shall be regarded as an offence in terms of article 495(3) of this Code, and the Commissioner may also levy an administrative fine against the defaulting authority or officer thereof as provided for by article 496(3) of this Code.

(2) Where a public authority fails to comply with an information notice, or where the Commissioner believes that an offence in terms of article 551 of this Code is being or is about to be committed, the Commissioner may act to secure compliance with the notice or to prevent the offence from being committed using the powers of entry and search vested in the Commissioner under article 495(6) of this Code, which shall be applicable for this purpose.

(3) For the purposes of this article, a public authority which, in purported compliance with an information notice -

(*a*) makes a statement which it knows to be false in a material respect; or

(*b*) recklessly makes a statement which is false in a material respect,

shall be taken to have failed to comply with the notice.

No civil action against a public authority.

536. (1) This Title does not confer any right of action in civil proceedings in respect of any failure to comply with any duty imposed by or under this Title.

(2) Subarticle (1) shall not affect the powers of the Commissioner under article 535 of this Code.

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SUB-TITLE V

Of Conclusive Reasons For Not Disclosing Official Documents Under This Title

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Documents affecting national security, defence or international relations, and Cabinet documents.

537. (1) A document is an exempt document if its disclosure under this Title:

(*a*) would, or could reasonably be expected to, cause damage to the security, the defence, or the international relations of Malta; or

(*b*) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government, or an international organisation to the Government of Malta or to another public authority, or by the Government of Malta or another public authority to a foreign government, an authority thereof, or an international organisation.

(2) Subject to subarticle (3), a document is an exempt document if it is:

(*a*) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission to the Cabinet;

(*b*) an official record of the Cabinet;

(*c*) a document that is a copy of all or part of, or contains an extract from, a document referred to in paragraph (*a*) or (*b*); or

(*d*) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was published.

(3) Each year, the Prime Minister may direct that certain Cabinet documents, being documents selected from among those that are thirty years old or more, shall be subject to disclosure, whereupon this subarticle shall not apply to such documents.

(4) Subarticle (2) shall not apply to a document if, and in so far as, it contains factual information relating to a decision of the Cabinet that has been published.

(5) In subarticles (2), (3) and (4), "Cabinet" includes Cabinet Committees.

Documents affecting the enforcement of the law and the protection of public safety.

538. (1) A document is an exempt document if its disclosure under this Title would, or could reasonably be expected to:

(*a*) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;

(*b*) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or

(*c*) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Title would, or could reasonably be expected to:

(a) prejudice the fair trial of a person or the impartial adjudication of a particular case by any court, tribunal, disciplinary board, arbitration panel or similar body, or prejudice an inquiry conducted under Title VI of Part I of Book Second of this Code;

(b) prejudice the effectiveness of lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law through the disclosure thereof; or

(*c*) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(3) For the purposes of subarticle (1)(*b*), a person shall be taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection by the Police or other public authorities as:

(*a*) a witness; or

(*b*) a person who, because of his relationship to or association with a witness, needs or may need such protection; or

(*c*) any other person who, for any reason, needs or may need such protection.

Documents subject to legal professional privilege or containing material obtained in confidence.

539. (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is an exempt document if its disclosure under this Title would found an action by a person (other than a public authority) for breach of confidence.

(3) Subarticle (2) shall not apply to internal working documents prepared by a member, officer or employee of the Government or any other public authority in the course of his duties unless the disclosure would constitute a breach of confidence

owed to a person or body other than a member, officer or employee of the Government or any other public authority as aforesaid.

Documents relating to business affairs, the economy and research.

540. (1) A document is an exempt document if its disclosure under this Title would disclose:

(*a*) trade secrets;

(*b*) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(*c*) information (other than trade secrets or information to which paragraph (*b*) applies) concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information:

(i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(ii) the disclosure of which under this Title could reasonably be expected to prejudice the future supply of information to the Government or to another public authority for the purpose of the administration of a law or the administration of matters administered by the authority.

(2) Subarticle (1) shall not apply to a request for access to a document by reason only that the document contains information about:

(*a*) the applicant's own business or professional affairs;

(*b*) the business, commercial or financial affairs of an undertaking where the applicant is the proprietor of the undertaking or is acting on behalf of the proprietor; or

(*c*) the business, commercial or financial affairs of an organisation where the applicant is acting on its behalf.

(3) Subarticle (1)(*c*) shall not apply to information solely concerning a person's status as a member of a profession.

(4) A document is an exempt document if its disclosure under this Title would be contrary to the public interest by reason that it:

(*a*) would, or could reasonably be expected to, have a substantial adverse effect on the ability of the Government to manage the Maltese economy; or

(*b*) could reasonably be expected to result in an undue disturbance of the ordinary course of business in the community, or an undue benefit or detriment to any person or community, or an undue benefit or detriment to any person or class of persons, by reason of giving premature knowledge of or concerning proposed or possible action or inaction of the Government or Parliament.

(5) The kinds of documents to which subarticle (4) may apply include, but are not limited to, documents containing matter relating to:

(*a*) currency or exchange rates;

(*b*) interest rates;

(*c*) taxes, including duties of customs or of excise;

(*d*) the regulation or supervision of banking, insurance and other financial institutions;

(*e*) the stability of the financial system;

(*f*) proposals for expenditure;

(*g*) foreign investment in Malta; or

(*h*) borrowings by the Government or other public authorities.

(6) A document is an exempt document if it is in the possession of a member of the academic staff of the University of Malta and contains information relating to research that has been or is being undertaken by such a member, unless the research has been commissioned by a public authority.

(7) A document is an exempt document if:

(*a*) it contains information relating to scientific or academic research that is being, or is to be, undertaken by a member of staff of a public authority, other than research to which subarticle (6) applies; and

(*b*) disclosure of the information before the completion of the research would be likely unreasonably to expose the public authority or the member of staff to disadvantage.

(8) Subarticle (7) shall not apply to a document that, in so far as it contains information relating to research, only contains information relating to research that has been completed.

(9) A document is an exempt document if it contains information relating to research on security and defence matters which has been undertaken or commissioned by, or with the involvement of, a public authority.

Documents the disclosure of which would be contempt of Parliament or of Court.

541. A document is an exempt document if public disclosure of the document could, apart from this Title and any immunity of the Government:

(*a*) be in contempt of court;

(*b*) be contrary to an order made or direction given by any Board to which Title VI of Part I of Book Second of this Code applies, or by any tribunal or other person having power to take evidence on oath; or

(*c*) infringe the privileges of Parliament.

Information concerning existence of certain documents.

542. Where -

(*a*) a request under this Title relates to a document to which the provisions of this Sub-Title apply, or would apply if such a document existed; and

(*b*) the existence or non-existence of the document would in its own right, if it were stated in a document, be subject to non-disclosure in terms of any of the said provisions,

the public authority dealing with the request may give notice in writing to the applicant that it neither confirms nor denies the existence or non-existence of that document.

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SUB-TITLE VI

Other Reasons For Withholding Official Information

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Application of this Sub-Title.

543. (1) This Sub-Title shall apply subject to the provisions of Sub-Title V.

(2) A document may be withheld in accordance with the provisions of this Sub-Title only if it contains matter in relation to which the public interest that is served by non-disclosure outweighs the public interest in disclosure.

Internal working documents.

544. (1) Subject to article 543 and to subarticles (2) and (3) hereof, a document is an exempt document if its disclosure under this Title would disclose matter in the nature of, or relating to, opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Government or another public authority.

(2) Subarticle (1) shall not apply to a document by reason only of purely factual information contained in the document.

(3) Subarticle (1) shall not apply to:

(*a*) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed by a public authority or not, including reports expressing the opinions of such experts on scientific or technical matters; or

(*b*) the record of, or a final statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

(4) In subarticle (3) the term "scientific or technical expert" shall be construed as excluding senior managers in public authorities.

Documents affecting financial or property interests of public authorities.

545. Subject to article 543 of this Code, a document is an exempt document if its disclosure under this Title would have a substantial adverse effect on the financial or property interests of the Government or of another public authority.

Documents concerning certain operations of public authorities.

546. Subject to article 543 of this Code, a document is an exempt document if its disclosure under this Title would, or could reasonably be expected to:

(*a*) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by a public authority;

(*b*) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by a public authority;

(*c*) have a substantial adverse effect on the proper and efficient conduct of the operations of a public authority; or

(*d*) have a substantial adverse effect on the conduct of negotiations (including commercial and industrial negotiations) by or on behalf of the Government or another public authority.

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SUB-TITLE VII

Of Further Provisions

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Appeals against notices served by the Commissioner.

547. (1) Where a decision notice has been served, the applicant or the public authority may appeal to the Administrative Court against the notice within twenty days.

(2) A public authority on which an information notice or an enforcement notice has been served by the Commissioner may appeal to the Administrative Court against the notice.

(3) If, on an appeal under this article, the Administrative Court considers -

(*a*) that the notice against which the appeal is brought is not in accordance with the law; or

(*b*) the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Administrative Court shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Administrative Court shall dismiss the appeal.

(4) Where the Administrative Court substitutes a notice as aforesaid, the Commissioner shall take action under article 535 to secure compliance as if that notice had been issued by the Commissioner.

(5) In hearing appeals under this article the Administrative Court shall remain subject to the following provisions of this Code:

(*a*) article 502(3); and

(*b*) article 504(2), (3) and (4).

Appeals from decisions of the Administrative Court.

548. Decisions of the Administrative Court under this Title shall be subject to appeal to the Constitutional Court as provided for by article 997 of this Code.

Code of practice.

549. (1) The Minister shall issue a code of practice providing guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of public authorities' functions under Sub-Titles II and III of this Title.

(2) The code of practice shall, in particular, include provisions relating to:

(*a*) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them;

(*b*) the transfer of requests by one public authority to another public authority which holds, or may hold, the documents requested;

(*c*) consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information;

(*d*) the inclusion in contracts entered into by public authorities of terms relating to the disclosure of information;

(*e*) the provision by public authorities of rapid procedures for dealing with complaints about the handling by them of requests for information; and

(*f*) the keeping of documents and records by public authorities in such a manner as to facilitate the identification and retrieval of documents for the purposes of this Title.

(3) The code of practice may make different provision for different public authorities.

(4) Before issuing or revising any code under this article, the Minister shall consult the Commissioner and the Principal Permanent Secretary.

Regulations.

550. The Minister may, following consultation with the Commissioner, make regulations for any or all of the following purposes:

(*a*) to prescribe application forms (manual or electronic) and other documents required for the purposes of this Title, or authorising any person to prescribe or approve such forms or documents. Forms cannot place requirements on applicants additional to those set out by this Title, and an application meeting all such requirements shall still be considered if it is made otherwise than using the prescribed form;

(*b*) to establish the procedure for the service of notices and documents by public authorities under this Title;

(*c*) to prescribe reasonable charges or scales of reasonable charges for the purposes of this Title; and

(*d*) to provide for such matters as are contemplated by or necessary for giving full effect to this Title and for its due administration.

Damage, etc., of documents to constitute an offence. Cap. 9.

551. Article 144 of the Criminal Code shall apply to any person who embezzles, destroys, mutilates or purloins a document with the intention of preventing the disclosure of information to an applicant under this Title.

Council of Europe Convention on access to official documents.

552. (1) Government is empowered to accede to the Council of Europe's Convention on Access to Official Documents adopted by the Committee of Ministers on Access to Official Documents on 27 November 2008.

(2) Following such accession, the Law Commissioner shall draw up a bill to amend this Code to bring the provisions on this Code and of any other law on access to official documents in line with the said Convention.

International conventions on freedom of information.

553. The Law Commissioner shall carry out a study to determine which international conventions exist in the realm of freedom of information to which Malta shall accede. He shall submit his report to the Committee for the Recodification and Consolidation of Laws on such date as stipulated in his annual report.

Council of Europe Convention on the audiovisual heritage.

554. (1) Government is empowered to accede to the Council of Europe's Convention for the Protection of the European Audiovisual Heritage.

(2) Following such accession, the Law Commissioner shall draw up a bill to amend this Code to bring the provisions on this Code and of any other law on access to official documents in line with the said Convention.

Council of Europe Protocol to the European Convention on audiovisual heritage.

555. (1) Government is empowered to accede to the Council of Europe's Protocol to the Convention for the Protection of the European Audiovisual Heritage on the Protection of Television Productions.

(2) Following such accession, the Law Commissioner shall draw up a bill to amend this Code to bring the provisions on this Code and of any other law on access to official documents in line with the said Convention.

Title V

OF THE NATIONAL ARCHIVES

Sub-Title I

Of Preliminary Provisions

Interpretation.

556. In this Title, unless the context otherwise requires -

"archival repository" means a building or part of a building in which archives are preserved and made available for consultation;

"archives" means records of enduring value selected for permanent preservation;

"Council" means the National Archives Council established under article 568 of this Code;

"current records" means records regularly used for the conduct of the current business of an institution;

"financial year" means any period of twelve months ending on the 31st December;

"heads of public offices" means the Permanent Secretaries, Heads of Departments of Government, Chief Executive Officers and officials in a comparable positions responsible for the administration and operation of any public office;

Cap. 363.

"Local Council" means a local council established under the Local Councils Act;

"Minister" means the Minister responsible for the National Archives;

"National Archives" means the entity called the National Archives of Malta established under article 557 of this Code;

"National Archivist" means the head of the National Archives appointed under article 599 of this Code;

"prescribed" means prescribed by regulations or orders made under this Title;

"private records" means records other than public records as specified in the Second Schedule;

"public office" means any body established by the Constitution or by or under any law, or with any partnership or other body in which the Government of Malta, or any such body as aforesaid, have a controlling interest or over which they have effective control;

"public officer" has the same meaning assigned to it by article 124 of the Constitution;

"public records" means the records specified in the Tenth Schedule to this Code;

"records" means recorded information regardless of form or medium created, received and maintained by any public office in pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business;

"Records Officer" means the person so appointed under article 570 of this Code;

"retention and disposal schedule" means the control document recording appraisal decisions and prescribing retention or disposal action in respect of records.

SUB-TITLE II

Of The Constitution, Composition and Functions of the National Archives

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National Archives.

557. (1) There shall be a body, to be called the National Archives of Malta, under the responsibility of the National Archivist. The mission of the National Archives is to preserve the collective memory of the Maltese nation through the protection and accessibility of all public archives regulated by this Title.

Legal personality and judicial representation.

(2) The National Archives shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Title, of entering into contracts, of acquiring, holding and disposing of any property for the purpose 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 Title.

Objects and functions of the National Archives.

558. (1) The functions of the National Archives shall be:

(*a*) to safeguard the collective memory of the Maltese nation and protect the rights of citizens through the selection, preservation and access to the archives in whatever medium to the highest of standards;

(*b*) establish and maintain a register to be known as the National Register of Archives;

(*c*) to monitor with powers of inspection the record-keeping practices within public offices;

(*d*) accept and acquire private records of national significance by gift, purchase, bequest or deposit;

(*e*) provide leadership to Maltese archives in such areas as preservation of archival records, records management and national cooperation schemes;

(*f*) promote the professional training of archivists and records managers.

(2) For the purposes of subregulation (1)(*b*), the National Register of Archives shall contain particulars, in such form as the National Archivist considers appropriate, of -

(a) archives open for public inspection and location of holdings;

(b) records of national significance in private archives, after the necessary permission has been granted by the owner of the records; and

(c) any other details or information which will benefit the promotion of the archives and the provision of research facilities to the general public.

Appointment of National Archivist.

559. (1) There shall be a National Archivist who shall be a person with professional qualifications, recognised competence and reputation in the domain of archives, and who shall be appointed by the Minister following consultation with the Archives Council for a period of three years under such terms and conditions as is established in his letter of appointment. On the expiry of his term such a person may be re-appointed for a further term or terms of three years.

(2) The legal and judicial representation of the National Archives shall vest in the National Archivist provided that the National Archivist may appoint any one or more of the officers or employees of the National Archives, to appear in his name

and on his behalf in any judicial proceedings and on any act, contract, instrument or other document whatsoever.

(3) There shall also be an Assistant National Archivist for Gozo with the same professional qualifications as the National Archivist and who shall be appointed in the same manner and for the same periods of time as the National Archivist.

Functions and duties of the National Archivist.

560. (1) The National Archivist shall be the chief executive officer of the National Archives, and he shall also be responsible for the preservation of all public records of enduring value other than any records whose transfer may have been deferred under article 562(5), and shall in particular:

(*a*) provide professional assistance, advice and guidance on the establishment and management of filing and registry systems in public offices and on the training of the staff of public offices in record keeping;

(*b*) inspect the record keeping practices and systems of public offices which are obliged to deliver records to the National Archives;

(*c*) agree with the heads of public offices on, and ensure the implementation of, the retention and disposal schedules relating to records specific to each such office, which schedules shall be sufficient authority for taking the action specified at the due date;

(*d*) establish and ensure compliance with standards for the management of public records;

(*e*) ensure the arrangement and description of the archival holdings and provide appropriate finding aids to facilitate access to them;

(*f*) ensure that reasonable facilities are available to the public for inspecting and obtaining copies of public records in the National Archives, insofar as such records are open to inspection under article 564 of this Code;

(*g*) give advice to users on the use of the preserved records and documentary material of the Archives, and increase the knowledge of national history and support studies in it;

(*h*) establish a reference library on archival theory and practice;

(*i*) make the holdings of the National Archives known by organising outreach events and the lending of public records elsewhere subject to conditions which he may specify in line with article 563 of this Code;

(*j*) prescribe rules to be observed by those wishing to consult public records in the National Archives or any other archival repository under his control;

(*k*) dispose of public records in his custody if in his opinion they do not warrant preservation by the National Archives or the preservation by the National Archives of copies of them in such form as he may determine will suffice;

(*l*) enter into arrangements with other institutions for the joint management or conservation or restoration of archives, and for the provision of reprographic or other technical facilities; and

(*m*) prepare and sell publications or objects related to the functions of the National Archives.

(2) The National Archivist shall furthermore -

(*a*) assume full responsibility for the administration and organization and the administrative control of the officers and employees of the National Archives and for such purpose assign to each officer or employee such duties as may be required;

(*b*) develop the necessary strategies for the implementation of the objectives of the National Archives;

(*c*) advise the Minister and the Council on any matter they may refer to him or on any matter which he considers necessary or expedient;

(*d*) perform such other duties as the Minister may assign to him from time to time.

Oath of secrecy.

561. The National Archivist and every employee of the National Archives shall, before assuming duties in the National Archives, subscribe to the oath contained in the Ninth Schedule to this Code.

Records to be deposited in the Archives.

562. (1) The records to be preserved in the National Archives shall be the public records listed in the Tenth Schedule to this Code.

(2) Archives of a particular nature which are regulated by any other law, in force from time to time shall be kept and shall be regulated in accordance with that law provided that such archives are preserved and made accessible according to standards agreed upon with the National Archivist.

(3) The Minister may in concurrence with the Minister responsible for a particular archive, order the transfer of documents kept in such archives to the National Archives, and this under such conditions as may be agreed upon by the Minister and the Minister responsible for those Archives; and where any such document is transferred to the National Archives, for the purpose of any law regulating the deposit of that document in the existing archives, such document shall be deemed to be properly deposited in accordance with such law, and all responsibility relative to such document, including the issue of copies and extracts therefrom, as well as the authentication thereof, shall upon the transfer of such documents vest in the National Archivist.

(4) The National Archivist may certify that particular departmental records which are more than thirty years old do not warrant transfer to the National Archives for preservation, and any records so certified shall be retained in the appropriate public office or, as the case may be, returned to that public office, where they may be retained, or disposed of, subject to the granting of an authorisation under article 560 of this Code.

Deferment of transfer.

(5) The National Archivist may defer the acceptance of the transfer of records and archives into his custody if accommodation for them is not available or other arrangements for their reception cannot be made.

Records may not be taken out of the National Archives without permission.

563. (1) No record or object preserved in the National Archives may, without the written permission of the National Archivist, be taken out from the premises of the National Archives. A copy of every permission granted by the National Archivist shall be preserved in the National Archives and shall be available for inspection.

(2) Loans of public records outside Malta may not be made without the written permission of the Minister given following consultation with the National Archivist and the Council.

(3) Where a document to be found in the National Archives is to be exhibited in Court, or otherwise used in the original, the National Archivist shall exhibit or otherwise use the original after making a copy thereof for preservation in the archives if that is possible.

Access to records.

564. (1) Notwithstanding the provisions of any other law, when a record is deposited at the National Archives public access to such records shall only be regulated by the provisions of this Title.

(2) Public records in the National Archives, or in any other archival repository under the control of the National Archivist, shall be available for public inspection

after the expiration of a period of thirty years from their creation, except insofar as a longer or shorter period may have been prescribed by the Minister following consultation with the Minister responsible for the public office which created the records or its successor in function.

(3) At the expiration of the period of thirty years prescribed in subarticle (1) any records selected for permanent preservation which are still classified as confidential, or secret shall be examined by the Council to ascertain whether their continuing classification is necessary and, if it is not, they shall be de-classified and shall become open to public inspection under subarticle (1).

(4) The Minister may, on the advice of the National Archivist, limit access by the public to documents and objects where:

(*a*) they contain information which has been obtained by a public authority under an obligation of secrecy or confidentiality; or

(*b*) the security of the State or the personal safety of any individual so require; or

(*c*) the fragility of the archives so warrants; or

(*d*) the need for organisation of the archives makes it necessary.

(5) Without prejudice to the provisions of article 563 of this Code, every copy of a document, issued as a true copy duly sealed with the seal of the National Archives and signed by the National Archivist, shall for the purposes of any law, be deemed an authentic copy and for the purpose of evidence in any court or tribunal be deemed equivalent to the original.

Right of preference exercisable by the Government.

565. (1) In case of sale of any record or work which in the opinion of the Minister, following consultation with the National Archivist, has archival or historical importance, the Government shall have the right of acquiring the same in preference to all other persons on equal conditions.

(2) Such right of preference shall be exercised by the National Archivist by means of a judicial act served on the purchaser within two months from the date on which the vendor or the purchaser gives notice to the Minister, by means of a judicial act or a registered letter, of the sale indicating the name and address of the purchaser and the conditions of sale, or, if no such notice is given, within six months on which it shall come to the knowledge of the Minister that a sale has been effected.

(3) Any person who is responsible for any act or omission having the effect of frustrating the exercise of the right of preference appertaining to the Government under this article shall be guilty of an offence under this Act and shall be liable for the penalties contemplated in this Title.

Relations with the Minister.

566. In the exercise of his functions under this Title, the National Archivist shall:

(*a*) give effect, as soon as practicable, to any direction, not inconsistent with any provision of this Title which the Minister may give to him, in relation to the policy to be followed by him in the discharge to his function, and in relation to any matter which appears to the Minister to affect the nation's archival heritage;

(*b*) afford to the Minister facilities for obtaining any information with regard to the property and activities of the National Archives, and for this purpose the National Archivist shall furnish the Minister with returns, accounts and other information with respect to the functions of the National Archives, and afford facilities for the verification of any information furnished, in such manner and at such times as the Minister may require.

Exemption from certain taxes.

567. The National Archives shall be exempt from any liability for payment of any tax, other than customs or excise duties, or tax on income or duty on documents for the time being in force in Malta.

National Archives Council.

568. (1) There shall be a National Archives Council, appointed by the Minister, which shall be composed as follows:

(*a*) a Chairperson;

(*b*) the Superintendent of Cultural Heritage *ex officio* or his representative;

(*c*) the Chairperson of Heritage Malta *ex officio* or his representative;

(*d*) the National Librarian *ex officio* or his representative;

(*e*) the Permanent Secretary in the office of the Prime Minister *ex officio* or his representative;

(*f*) a person to represent the non-governmental archives or records centres;

(*g*) three other persons chosen from amongst persons known to be users of and familiar with archives, records management and information professions, or working in non-governmental organizations dedicated to information and archives, one of whom shall be appointed by the Minister responsible for Gozo.

(2) The National Archivist and the Assistant National Archivist for Gozo shall attend all the meetings of the Council but shall not vote at such meetings.

(3) The Council may, if it deems so fit, require the National Archivist and the Assistant National Archivist for Gozo not to attend any of the meetings or any part of a meeting.

(4) The members of the Council shall be appointed for a term of three years, but the members so appointed shall be eligible for reappointment on the expiration of their term of office.

(5) The meetings of the Council shall be called by the Chairperson as often as may be necessary but at least once every two months either on his own initiative or at the request of any two of the other members.

(6) Half the number of the members for the time being constituting the Council shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairperson shall have an initial vote and in the event of an equality of votes, a casting vote.

(7) Any member who has a direct or indirect interest in any contract or other action made or proposed to be made by the Council in connection with the National Archives, shall disclose the nature of his interest at the first meeting of the Council after the relevant facts have come to his knowledge. Such disclosure shall be recorded in the minutes of the meeting, and such member shall withdraw from any meeting while such matter is discussed or decided upon by the Council.

(8) Subject to the provisions of this Title and to such procedures as may be prescribed, the Council shall regulate its own proceedings.

Functions of the Council.

569. (1) Without prejudice to the provisions of this Title, the Council shall -

(*a*) promote the National Archives and other record keeping entities;

(*b*) ensure and facilitate the collaboration between the different stakeholders with direct or indirect responsibility for the protection and management of the archives sector;

(*c*) advise the Minister on the management of archives in Malta;

(*d*) draw the attention of the Minister or of any organisation or person responsible for archives to any urgent action that may be considered necessary for the better management of archives and records;

(*e*) advise the Minister on any matter arising from the provisions of this Title and on any other matter referred to it by the Minister.

(2) The Council shall also biannually convene a National Forum about the archives to discuss the state of the archives generally after receiving a relative report to be drawn up by the Council. There shall be invited to attend at such Forum, among others, Departments and other Government entities, Mayors of Local Councils, owners of private archives and their archivists, non-governmental organisations having an interest in the maintenance and safeguarding of archives and public records, the University of Malta, other education institutions, specialists, consultants, representatives of the commercial sector, persons who make use of the archives, and any such other party showing to the Council in writing that it has an interest therein. The Forum procedures shall be published and sent to the Minister.

(3) The Council shall give public notice one month in advance of the meeting of the Forum which shall be chaired by the President who is to be appointed by the Council.

Responsibility of Departmental Records Officers.

570. (1) There shall be in every public office a Records Officer or Officers. It shall be the duty of every head of public office to send a yearly return to the National Archivist with details of the Records Officer and other details about the upkeep of records in their public office as may be required by the National Archivist.

(2) Records Officers shall be responsible for creating and maintaining adequate documentation of the functions and activities of their respective public offices through the establishment of good records keeping practices, including:

(*a*) creating and managing current records within appropriate filing and registry systems;

(*b*) drafting with the National Archivist retention and disposal schedules relating to records specific to each public office. Such schedules shall only come into effect when approved and signed by the National Archivist, and in the case of records containing personal data, also after consultation with the Commissioner for Information and Data Protection;

(*c*) implementing retention and disposal schedules issued in accordance with article 560 of this Code;

(*d*) providing access to the National Archives for inspections of records in accordance with article 560 of this Code;

(*e*) informing the National Archivist as soon as it is known that a function or functions of the pubic office will be transferred to another public office or organisation, or that an activity carried on by the public office or an activity of some other body connected with its work is to be wound up;

(*f*) preparing, and providing the National Archives with, lists of records to be transferred to the Archives for permanent preservation in accordance with guidelines issued by the National Archivist;

(*g*) arranging the material to be transferred to the National Archives according to archival best practice agreed with the National Archivist;

(*h*) providing for the safe transfer of records to be preserved at the National Archives.

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SUB-TITLE III

Administrative and Personnel Provisions

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Staff appointments.

571. (1) Subject to the provisions of the Constitution and of any other law including this Title applicable thereto, the appointment of officers and other employees of the National Archives shall be made by the National Archivist. The terms and conditions of employment shall be determined by the National Archivist with the approval of the Minister.

Appointments and functions of officers and employees.

(2) The National Archivist shall appoint and employ, at such remuneration and upon such terms and conditions as he may in accordance with subarticle (1) determine, such officers and employees as may from time to time be necessary for the due and efficient discharge of the functions of the National Archives.

Cap. 9.

(3) The members of the Council, all officers and employees of the National Archives shall be deemed to be public officers within the meaning of the Criminal Code.

Detailing of public officers.

572 . (1) The Prime Minister may, at the request of the National Archivist, from time to time direct that any public officer, shall be detailed for duty with the National Archives in such capacity and with effect from such date as may be specified in the direction.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, be such as may be specified in the direction, unless the direction is revoked earlier by the Prime Minister.

Status of public officers.

(3) Where any officer is detailed for duty with the National Archives in accordance with this article, such officer shall during the time in which such direction has effect in relation to him, be under the administrative authority and control of the National Archivist but shall for other intents and purposes remain and be considered and treated as a public officer.

(4) Without prejudice to the generality of the foregoing, a public officer detailed for duty as aforesaid -

(*a*) shall not during the time while such officer is so detailed -

(i) be precluded from applying for a transfer to a department or agency of the Government in accordance with the terms and conditions of service attached to the appointment in the public service held by that public officer at a date on which he was detailed for duty; or

(ii) be so employed that the remuneration and conditions of service are less favourable than those which are attached to the appointment in the public service held by that public officer at the date he was detailed for duty as aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the National Archives; and

Cap. 93. Cap. 58.

(*b*) shall be entitled to have the service with the National Archives considered as service with the public service for the purpose of any pension, gratuity or benefit under the Pensions Ordinance, and the Widows' and Orphans' Pensions Act, and of any other right or privilege to which that public officer would be entitled, and shall be liable to any liability to which he would be liable, but for the fact that he is detailed for duty with the National Archives.

(5) Where an application is made as provided in subarticle (4)(*a*)(i), the same consideration shall be given thereto as if the applicant had not been detailed for duty with the National Archives.

(6) The National Archives shall pay to the Government, where applicable, such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the National Archives as aforesaid during the period in which such officer is so detailed.

Offers of permanent employment to public officers detailed for duty with the National Archives.

573. (1) The National Archives may, with the approval of the Prime Minister, offer to any officer detailed for duty with it under any of the provisions of article 572 of this Code permanent employment at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer.

(2) The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

Cap. 93. Cap. 58.

(3) Every officer who accepts permanent employment with the National Archives, under the provisions of subarticle (1), shall for all purposes other than those of the Pensions Ordinance, and of the Widows' and Orphans Pensions Act, be deemed to have ceased to be in service with the public service and to have entered into service with the National Archives on the date of such acceptance and for the purposes of the said Ordinance and of the said Title, so far as applicable to that officer, service with the National Archives shall be deemed to be service with the public service within the meanings thereof respectively.

Cap. 58.

(4) Every such officer as aforesaid who immediately before accepting permanent employment with the National Archives was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be so entitled to benefit thereunder to all intents as if service with the National Archives was service with the public service.

(5) The National Archives shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted permanent employment with it as aforesaid during the period commencing on the date of such officer's acceptance.

(6) For the purposes of this article the posts and salary grades with the National Archives shall be classified in the most nearly corresponding grades and incremental levels in the public service by reference to job description, skills,

responsibilities and other analogous factors.

(7) The classification referred to in subarticle (6) shall be carried out by a board composed of a chairperson appointed by the Minister responsible for finance and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the National Archivist. The classification shall be subject to the final approval of the Minister responsible for finance.

(8) Such classification shall take place within three months of any adjustment of salaries of employees in the public service, and, or, of employees of the National Archives.

(9) No post shall be classified in a grade higher than that of grade 3 in the public service or such other grade that the Minister responsible for finance may from time to time by notice in the Gazette determine.

Cap. 93.

(10) Without prejudice to the provisions of article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which that person would have been entitled prior to such classification.

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SUB-TITLE IV

Financial Provisions

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Revenues of the National Archives.

574. (1) Without prejudice to the following provisions of this article, the National Archives shall so conduct its affairs that every effort shall be made to meet as much as possible of the expenditure required for the proper performance of its functions out of its revenues.

(2) For such purpose the National Archivist shall levy such fees, rates and other payments prescribed or deemed to be prescribed by or under this Title or any other law.

(3) The National Archives shall be paid by Government out of the Consolidated Fund such sums as the House, may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by the National Archives, being works of infrastructure or a similar capital nature, or to

meet any of its expenditure which it cannot meet out of its own revenue.

(4) Any revenue shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied to the National Archives for its purposes, and without prejudice to the generality of the powers given to the Minister by this subarticle, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees rates and other payments levied in accordance with subarticle (2).

Power to borrow capital.

575. (1) For the purposes of any requirements of a capital nature, the National Archives may, with the approval in writing of the Minister in consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

(2) The National Archives may also, with the approval of the Minister in consultation with the Minister responsible for finance, from time to time borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Title.

Advances from Government.

576. The Minister responsible for finance may, after consultation with the Minister, make advances to the National Archives of such sums as the Minister responsible for finance may agree to be required for carrying out any of its functions under this Title, and may make such advances on such terms and conditions as the Minister responsible for finance may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for finance out of the Consolidated Fund, and without further appropriation other than this Title, by warrant, authorising the Accountant General to make such advance.

Estimates of the National Archives.

577. (1) The National Archivist shall prepare in every financial year, and shall not later than eight weeks before the end of each financial year adopt, estimates of the income and expenditure for the next following financial year:

(2) The estimates shall be made in such forms and shall contain such information and such comparisons with previous estimates as the Minister responsible for finance may direct.

(3) A copy of the estimates shall, upon their adoption by the National Archivist, be sent forthwith to the Minister and to the Minister responsible for finance.

Expenditure according to the approved estimates.

578. (1) No expenditure shall be made or incurred by the National Archives unless it has been approved by the House.

(2) Notwithstanding the provisions of subarticle (1) -

(*a*) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year by the House, whichever is the earlier date, the National Archives may make or incur expenditure for carrying out its functions under this Title not exceeding in the aggregate one-half of the amount approved for the preceding financial year;

(*b*) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister, be incurred in respect of another head or sub-head of the estimates;

(c) if in respect of any financial year it is found that the amount approved by the House is not sufficient, or if a need has arisen for expenditure for a purpose not provided for in the estimates, the National Archives may adopt supplementary estimates for approval by the House and pending such approval, the National Archives may in special circumstances and with the approval of the Minister, acting in consultation with the Minister responsible for finance, incur the relative expenditure or part thereof as the said Minister may so approve, and in any such case the provisions of this Act applicable to the estimates shall, as near as practicable, apply to the supplementary estimates.

Accounts and audit.

579. (1) The National Archivist shall cause to be kept proper books of account and other records in respect of the operations of the National Archives and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the National Archives shall be audited by an auditor or auditors to be appointed by it and approved by the Minister.

(3) The Minister responsible for finance may require the books and other records of the National Archives to be audited or examined by the Auditor General who shall for this purpose have power to carry out such physical checking and other verification, and may require such information, as the Auditor General may deem necessary.

(4) After the end of each financial year, at the same time as a copy of the estimates of the National Archives is forwarded to the Minister under article 577 of this Code, the National Archivist shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister and to the Minister responsible for

finance together with a copy of any report made by the auditor or auditors on that statement or on the accounts of the National Archives.

(5) The Minister shall cause a copy of every such statement and report to be laid before the House.

Deposit of revenues and payment by the National Archives.

580. (1) All moneys accruing to the National Archives shall be paid into a bank or banks appointed as bankers by it. Such moneys shall, as far as practicable, be paid into the banks from day to day, except for such sum as the National Archivist may require to retain to meet petty disbursements and immediate payments.

(2) All payments out of the funds of the National Archives, except petty disbursements not exceeding such sum as may be fixed by the National Archivist with the approval of the Minister, shall be made by such officer or officers of the National Archives as shall be appointed or designated for the purpose.

(3) Cheques against and withdrawals from any bank account of the National Archives shall be signed by such officer of the National Archives as may be appointed or designated by the National Archivist for that purpose and shall be countersigned by the authorised member or officer of the National Archives as may be authorised by the National Archives for that purpose.

(4) The National Archives shall also make provision with respect to -

(*a*) the manner in which and the officer or officers by whom payments are to be authorised or approved;

(*b*) the title of any account held with the bank or banks into which its monies are to be paid, and the transfer of funds from one account into another;

(*c*) the method to be adopted in making payments out of its fund; and

(*d*) generally with respect to any matter which is relevant to the proper keeping and control of the accounts, books and other records and the control of its finances.

Contracts of supply and of works.

581. The National Archives shall not, except with the approval of the Minister granted after consultation with the Minister responsible for finance, award or enter into any contract for the supply of goods or materials or for the execution of work or for the rendering of services, to or for the benefit of the National Archives, which is estimated by the National Archivist to involve an expenditure exceeding ten thousand euro (€10,000), or such other amount as the Minister responsible for finance may authorize, except after notice of its intention to enter into such contract

has been published and competitive tenders have been issued.

Annual report.

582. The National Archivist shall, not later than six weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the National Archives during that financial year and containing such information relating to its proceedings and policy as either of the said Ministers may from time to time require. The Minister shall, not later than four weeks from the receipt of such report, cause a copy of every such report to be laid on the Table of the House.

SUB-TITLE V

Transfer of certain Assets to the National Archives

Transfer of assets to the National Archives.

583. (1) The property and undertakings owned by the Government and used by it immediately before the date of the coming into force of this Title, for the operation of any of the functions which by this Title are being transferred to or vested in the National Archives shall, on the date aforesaid, by virtue of this Title and without further assurance, be transferred to and vested in the National Archives under the same title by which they were held by the Government immediately before the said date. The provisions of this subarticle shall not apply to immovable property.

(2) The use and administration of the immovable assets from time to time specified in the Order made by the Minister responsible for lands in consultation with the Minister and published in the Gazette (hereinafter referred to as "the immovable assets'') being immovable assets which immediately before the coming into force of this Title were owned by the Government and used by it for the operation of any of the functions which by this Title are being transferred to or vested in the National Archives, shall, with effect from such day as may be specified in any such Order and by the virtue of this Title and without any further assurance, be vested in the National Archives.

(3) The transfer and vesting aforesaid shall extend to the whole of such property and undertakings and, without prejudice to the generality aforesaid, shall include all plant, equipment, apparata, instruments, vehicles, craft, buildings, structures, installations, land, roads, works, stocks and other property movable or immovable, assets, powers, rights and privileges and all things necessary or ancillary thereto which are held or enjoyed in connection therewith or appertaining thereto, as well as all obligations affecting or relating to any of the aforesaid property or undertakings

or other thing included therein as aforesaid.

(4) Any transfer of property, whether moveable or immovable, shall be subject to all those terms and conditions that the Minister may deem necessary to ensure that such property is exclusively used for the purposes of the functions of the National Archives or purposes ancillary thereto.

Construction of laws, etc.

584. Subject to the provisions of this Title, all laws, rules, regulations, orders, judgements, decrees, awards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other arrangements, subsisting immediately before the date of the coming into force of this Title affecting or relating to any of the properties or undertakings transferred to the National Archives by or under this Title shall have full force and effect against or in favour of the National Archives, and shall be enforceable freely and effectually, as if instead of the Government or governmental authority the National Archives had been named therein or had been a party thereto, and otherwise in substitution of the Government or governmental authority.

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SUB-TITLE VI

Offences

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Unauthorised removal or destruction or damage of public records.

585. (1) Any person who -

(*a*) receives or retains any public record knowing that it has been illegally removed in Malta or illegally exported from any other country; or

(*b*) hinders, obstructs, molests or interferes with, or attempts to hinder, obstruct, molest or interfere with, any officer or employee of the National Archives or any police officer in the execution of duties provided for under this Title, or fails to comply with any lawful order by any such officer or employee or police officer as aforesaid, or knowingly furnishes such officers or employees with false information or neglects or refuses to give any information required by or under this Title,

shall be guilty of an offence against this Title and shall be liable, on conviction, to a fine (*multa)* of not less than five hundred euro (€500) and not exceeding twelve thousand euro (€12,000), or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(2) Subject to the above maximum, the minimum fine *(multa*) to which an offender shall become liable under this article shall not be less than the value of any work that might be required to remedy the effects of the offence.

(3) The Court, besides awarding the punishment referred to in this article, may order the convicted offender to remove the causes of the offence and to undo anything which was done without the authorisation required under this Title, within a time sufficient for the purpose and, if the offender fails to comply with any such order within the time so fixed, he shall be liable to a further fine *(multa*) of not less than sixty euro (€60) and not more than one hundred and twenty euro (€120), as the court may fix, for every day during which the default continues after the expiration of the said time.

(4) Any public record which has been or which may be removed without proper authorisation under this Title, may be reclaimed by the National Archives.

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SUB-TITLE VII

Of Miscellaneous Provisions

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Copyright.

586. (1) In making available for inspection or providing copies of public records in his custody the National Archivist shall not be in breach of the copyright of such records.

(2) The provision of copies of public records by the National Archivist does not imply the transfer of any copyright therein to the recipients.

(3) The publication of facsimile copies of public records in the custody of the National Archivist in which copyright of the Government of Malta subsists is prohibited except with the consent of the National Archivist and subject to such conditions as he may require and to the payment of such fees as may be prescribed under this Title.

Power to make regulations.

587. The Minister may, after consultation with the National Archivist, make regulations to give effect to any of the foregoing provisions of this Act, or to regulate or otherwise provide for any matter relating to public records, and may in particular, but without prejudice to the generality of the foregoing make regulations for any of the following purposes:

(*a*) to provide for the proper management and preservation of public records and the manner in which the public may have access to the documents and objects in the National Archives;

(*b*) to establish the standards and the manner in which copies and other reproductions of documents and objects in the National Archives, may be made;

(*c*) to establish the fees and dues which may be payable by or under, or for services rendered pursuant to, the provisions of this Title;

(*d*) to ensure the better fulfilment of the functions of the National Archives, the National Archivist, and the Council;

(*e*) to regulate the appointment of officers and employees with the National Archives;

(*f*) to establish guidelines for best preservation practice;

(*g*) to provide for any forms or procedures which may be necessary or expedient and for which no express procedure is contained in this Title;

(*h*) to regulate movement of public records and the periods within which such records shall remain closed to public inspection;

(*i*) where not otherwise provided in this Title, to prescribe rules regulating the powers and duties of, and the procedures to be followed by the National Archives;

(*j*) to amend the Schedule;

(*k*) to prescribe anything else which may or is to be prescribed under this Title.

Transitional provisions for Records in the National Archives.

588. Records and other materials in the custody of the Curator of the National Archives on the day before the coming into operation of this Title are hereby transferred to the custody of the National Archivist subject to any terms and conditions that were applicable to those records and other materials on that day.

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Title VI

INQUIRIES ACT

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Interpretation.

589. In this Title, unless the context otherwise requires -

"Board" includes any commission, committee or other body of persons and includes also a single person functioning as a Board or similar authority;

"inquiry" includes any investigation or other examination of the facts or circumstances of a case;

"public officer" has the same meaning as is assigned to it by section 124 of the Constitution of Malta;

"statutory body" means any public corporation or other body corporate established by law or any partnership or other body in which the Government or such body as aforesaid has a controlling interest, or over which it has effective control.

Application of the provisions of this Title.

590. This Title shall apply to any Board appointed or authorised by or under any law, including this Title, to carry out any inquiry or inquiries into any of the following matters:

(*a*) the conduct of public officers, or of officers or servants of a statutory body, or of anyone or more of such public officers or officers or servants;

(*b*) the conduct or management of any department or agency of Government or of any statutory body;

(*c*) any matter falling within the functions or responsibility of any such department, agency or body, or otherwise concerning or affecting a service of the Government,

and in particular, but without prejudice to the generality of the aforesaid, this Act shall apply to any Board or other authority, exercising powers of discipline with respect to public officers in accordance with article 110 and article 121 of the Constitution of Malta and any regulations made thereunder.

Appointment of Boards under this Title.

591. (1) A Board may be appointed under this Title either by the Prime Minister for any of the purposes mentioned in section 590 of this Code, or by a Minister for any of the purposes mentioned in paragraphs (*b*) and (*c*) of the said section 590 in so far as the matter of the inquiry concerns or affects a department or statutory body or service for which he is responsible or in respect of which he has powers under any enactment.

(2) Where a Board consists of three persons or more, this shall be composed of a chairman together with such number of other members in an even number as the person appointing the Board may deem fit; and where the total number of the members composing the Board is more than three, one of the members of the Board other than the chairman shall be appointed by the person appointing the Board as deputy chairman and shall preside at the meetings of the Board in the absence of the chairman.

(3) The quorum of the Board shall consist of the chairman, or in the absence of the chairman the deputy chairman, together with such other members being not less than half the number of the members other than the chairman, composing the Board.

(4) Subject to the provisions of this Act, any Board appointed under this Act shall carry out such functions and other duties, and in such manner and within such time, as may be specified in the instrument appointing it.

(5) A Board shall be independent in the exercise of its powers and in the performance of its duties and functions.

(6) The Board may appoint an expert or experts in any field as an advisor to provide technical or specialist advice.

Oath of office.

592. (1) Every person appointed to be, or to serve as chairman or deputy chairman as the case may be, or member of any Board to which this Title applies shall, before entering upon those duties, take and subscribe an oath in the form set out in the Eleventh Schedule to this Code or in such other form as may be appropriate to the case.

(2) Such oath may be taken before any commissioner for oaths and shall be deposited with the Attorney General.

Summoning of witnesses and administration of oaths.

593. (1) Every Board to which this Title applies shall have power, exercisable through its chairman or deputy chairman as the case may be, or by the person constituting the Board -

(*a*) to summon witnesses;

(*b*) to administer an oath to any witness and to any person concerned in the inquiry, and require them to give evidence and to produce documents in their possession or under their custody in such circumstances as they could be required to give evidence or produce documents before a court of law.

(2) Summonses for attendance of witnesses may be in the form set out in the Eleventh Schedule to this Code or in such other form as may be appropriate to the case, and shall be signed by the chairman or secretary of the Board or, as the case may require, by the person constituting the Board.

(3) A summons may be served either by hand or by post. Where it is served by hand it shall be sufficient to prove service by evidence that the summons was left with a person over the age of sixteen years at the place of residence or of business of the person summoned; and if served by post it shall be sufficient to prove service by evidence that the summons was properly addressed and posted.

(4) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause, to answer or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by or with the concurrence of the Board, or refuses or fails, without sufficient cause, to produce any document he was required to produce by or with the concurrence of the Board, shall be liable on conviction to a fine (*multa*) not exceeding one thousand two hundred euro (€1,2000) or to imprisonment not exceeding three months, or to both fine and imprisonment.

(5) Without prejudice to the generality of the provisions of paragraph (*b*) of subsection (1) of this section, no person giving evidence before a Board may be compelled to incriminate himself, and every such person shall, in respect of any evidence given by him before a Board, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

(6) No proceedings shall be commenced in respect of any offence against this article without the concurrence of the Director of Public Prosecutions.

Tabling of report.

594. (1) Within fifteen sitting days of receiving the final report of the Board, the competent Minister shall lay on the Table of the House all or part of the report or, if it is not in the public interest to table such report, a statement of reasons why the whole report or certain parts thereof are not being tabled.

(2) A report may not be tabled, in whole or in part, in the interests of national security, defence, public order, public health, privacy or due to professional or official secrecy.

(3) The competent Minister shall publish an update on the implementation of the recommendations by the Board that he accepts not later than one year after the tabling of the final report and reasons why the other recommendations are not being implemented.

Support services.

595. (1) There shall be established an agency of Government to provide support services to Boards of Inquiry set up under this Title.

(2) The agency shall be known as the Boards of Inquiry Support Service Agency.

(3) The role of such agency shall include responsibility for the following tasks:

(a) assisting with matters preparatory to the formal establishment of the inquiry;

(b) making available secretarial staff to the Board;

(c) providing assistance to the Board to ensure an efficient and expedited establishment process and conduct of the inquiry; and

(d) at the conclusion of the inquiry, facilitating the transfer of an archival copy of the records of the inquiry to the National Archives.

Notification of alleged offences.

596. The Board shall be empowered to communicate information that relates to an offence, or evidence of an offence, to the Commissioner of Police or such other competent authority which the Board considers appropriate in the circumstances.

Protection from legal liability.

597. (1) No civil or criminal proceedings shall lie in respect of acts done, or omissions made, in good faith, in the exercise, or intended exercise, of powers or functions under this Title.

(2) This protection shall apply to the members of the Board, advocates, legal procurators, experts and other participants and those employed or engaged in whatever manner by an inquiry.

(3) No civil proceedings shall lie against a person for loss, damage or injury of any kind suffered by another person by reason of the provision of any information or the making of any statement to the Board, or acts done in preparation for such provision of information or making of statements.

(4) Board of Inquiry members are not compellable to give evidence about an inquiry under the court gives leave.

National security.

598. (1) National security information shall be treated by the Board as secret.

(2) National security information shall not be published nor disclosed in any other way.

Reference to the Administrative Court for advice.

599. A Board may refer a question of law to the Administrative Court, either on its own motion or pursuant to the request of a participant.

Prejudicial findings.

600. (1) The Board's report shall not make any findings that is adverse to a person, unless the inquiry has taken all reasonable steps to give notice of proposed adverse findings or the risk or likelihood of adverse findings, and disclosed the relevant material relied upon and the reasons on which such a finding might be based.

(2) The inquiry shall take all reasonable steps to give that person an opportunity to respond to the proposed finding, and the inquiry shall properly consider any response given.

Participation of a person's legal representative.

601. (1) A Board may allow any person or a person's advocate or legal procurator to participate in an inquiry to the extent that inquiry members consider appropriate.

(2) In making that decision, inquiry members may have regard to factors including:

(a) any direct or special interest a person may have in the matters relevant to an inquiry;

(b) the probability that an inquiry may make a finding adverse to that person's interests; and

(c) the ability of a person to assist an inquiry.

(3) When an inquiry gives an opportunity to a person to respond to potential adverse findings made against him in a report, that response, or where appropriate a summary of it, shall be published, at the request of that person.

Powers of the Board in regulating proceedings.

602. (1) The Board may:

(a) make directions prohibiting or restricting:

(i) public access to a hearing,
(ii) publication of any information that might enable a person to identify a person giving information to the inquiry; and
(iii) publication of any information provided to the inquiry; and

(b) exercise the power to prohibit or restrict public access or publications on the following grounds:

(i) prejudice or hardship to any person;
(ii) the nature and subject matter of the information that may be involved;
(iii) the potential for prejudice to legal proceedings;
(iv) the efficient and effective conduct of an inquiry; and

(v) any other matter than an inquiry considers appropriate.

(2) If a person is disrupting the proceedings of an inquiry, the Board may exclude that person from those proceedings, and authorise a police officer, security guard or another person to use necessary and reasonable force in excluding that person.

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Title VII

Whistle Blowing Act

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Sub-Title I

Of Preliminary and General Provisions

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Interpretation.
603 . (1) In this Title, unless the context otherwise requires:

"authority" means the entities prescribed to receive external disclosures, as listed in the Twelfth Schedule;

"contract of service" means an agreement including service as a member of a disciplined force whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for remuneration;

"corrupt practices" has the same meaning as is assigned to it by article 6 of the Permanent Commission against Corruption Act; [Cap. 326]

"detrimental action" includes:

(a) action causing injury, loss or damage;

(b) victimisation, intimidation or harassment;

(c) occupational detriment;

Cap. 9.
(d) prosecution under article 101 of the Criminal Code relating to calumnious accusations; and

(e) civil or criminal proceedings or disciplinary proceedings;

"disciplined force" means:

(a) naval, military or air force of the Government of Malta;

(b) the Malta Police Force;

(c) the Malta prison service;

"employee" means:

(a) any person who has entered into or works under a contract of service with an employer and includes a contractor or subcontractor who performs work or supplies a service or undertakes to perform any work or to supply services;

(b) any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity when such work or service is not regulated by a specific contract of service;

(c) any person in employment in the public administration, including as a member of a disciplined force;

(d) any former employee;

(e) any person who is or was seconded to an employer; or

(f) any volunteer in terms of article 2(1) of the Voluntary Organisations Act; [Cap. 492]

"employer" means any person, organisation or statutory body whether forming part of the public administration or the private sector who:

(a) enters into a contract of service with an employee; or

(b) who employs or engages any other person,

and shall include a voluntary organisation in relation to volunteers who render services to such voluntary organisation on a voluntary basis or otherwise;

"external disclosure" is a disclosure made in accordance with Section 3 of Sub-Title III;

"guidelines" means the set of rules issued by an authority, from time to time, for the further implementation of the provisions of this Title, and any regulations made hereunder;

"improper practice" means:

(a) where a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

(b) where the health or safety of any individual has been, is being or is likely to be endangered;

(c) where the environment has been, is being or is likely to be damaged;

(d) a corrupt practice;

(e) a criminal offence that has been committed, is being committed or is likely to be committed;

(f) a miscarriage of justice that has occurred, is occurring or is likely to occur; or

(g) information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed;

"internal disclosure" is a disclosure made in accordance with Section 2 of Sub-Title III;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

"Minister" means the Minister responsible for justice;

"occupational detriment", in relation to the working environment of an employee, includes:

(a) being subjected to any disciplinary action including for breach of ethics or confidentiality;

(b) being dismissed, suspended or demoted except where administratively or commercially justifiable for organisational reasons;

(c) being transferred against his will or being refused transfer or promotion except where administratively or commercially justifiable for organisational reasons;

(d) being subjected to a term or condition of employment or retirement which is altered or kept altered to his disadvantage;

(e) being refused a reference or being provided with an adverse reference from his employer except where justifiable on the basis of performance;

(f) being denied appointment to any employment, profession or office; or

(g) being otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and work security;

"outworker" means a person to whom articles, materials or services of any nature are given out by an employer for the performance of any type of work or service where such work or service is to be carried out either in the home of the outworker or in some other premises not being under the control and management of that other person;

"organisation" means any legal entity, whether registered as a legal person or not;

"person" means a natural person;

"protected disclosure" means an internal disclosure or an external disclosure of information, made in writing or in any format which may be prescribed;

"statutory body" means any public corporation or other body corporate established by law;

Cap. 492.
"voluntary organisation" has the same meaning as is assigned to it by article 2(1) of the Voluntary Organisations Act irrespective of whether such organisation is enrolled in terms of the said Act;

"whistleblowing reporting officer" means such officer within an employer charged with carrying out the functions designated by article 613 of this Code;

"whistleblowing unit" means such officer, office or section within an authority to carry out the functions designated by article 618 of this Code, and, with respect to the public administrtation, such section, body or unit as may be established under Title I of Part I of Book Second of this Code.

(2) Where this Title refers to a matter which may be prescribed, unless this Title expressly designates the person authorised and the manner thereof, such matter may be prescribed by the Minister through regulations or by the authority through guidelines or by any one or all of them as may be determined, and in the case of any conflict, a regulation by the Minister shall prevail over a guideline.

(3) This Title shall not apply to members of a disciplined force or to members of the Security Service until the Minister makes regulations regulating the manner in which the provisions of this Title shall apply in their regard, and in so doing, the Minister may dis-

apply or modify the provisions of this Title as necessary for the purposes of national security.

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Sub-Title II

Of The Prohibition of Detrimental Action

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Prohibition of detrimental action.

604. Subject to the exceptions referred to in this Title, despite any prohibition of, or restriction on, the disclosure of information under any enactment, rule of law, contract, oath or practice, no person may be subjected to detrimental action on account of having made a protected disclosure.

Protected disclosure. Cap. 9.

605. Notwithstanding the provisions of the Criminal Code or of any other law, no person who makes a protected disclosure shall be liable to any civil or criminal proceedings or to a disciplinary proceeding for having made such a disclosure.

No immunity where person who makes disclosure is himself a perpetrator or accomplice.

606. (1) Nothing in this Sub-Title shall prevent the institution of criminal proceedings against the person making the disclosure where the authority has determined that such person was the perpetrator or an accomplice in the improper practice which constitutes a crime or contravention under any applicable law prior to its disclosure.

(2) Nothing in this Sub-Title shall be interpreted as providing immunity to any person making a disclosure about an improper practice from any disciplinary or civil proceedings or liability arising from his own conduct.

Prohibition of disclosure of information which identifies whistleblower.

607. (1) Every whistleblowing reporting officer or whistleblowing unit to whom a protected disclosure is made or referred shall not disclose information that identifies or may lead to the identification of the person making the disclosure unless:

(a) the person making the disclosure consents in writing to the disclosure of that information; or

(b) the said whistleblowing reporting officer or whistleblowing unit reasonably believes that disclosure of the identity of the person making the disclosure -

(i) is essential to the effective investigation of the allegations in the protected disclosure; or

(ii) is essential to prevent serious risk to public health or public safety or the environment; or

(iii) is essential having regard to the principles of natural justice; or

(c) the disclosure of the person's identity is necessary for the prosecution of the person or organisation responsible for an improper practice which constitutes a crime or contravention under any law.

(2) The whistleblowing unit shall not communicate the disclosure to other departments within the authority of which it forms part until it has duly investigated the disclosure and established that it is necessary or appropriate for further investigation to be carried out by such other departments.

(3) Guidelines shall be issued by each authority setting out -

(a) the duties of communication between the whistleblowing unit and the person making the disclosure and the restrictions thereon; and

(b) the rules for disclosure to other departments of the authority or to other authorities or entities of the public administration.

Application to the Administrative Court.

608. (1) A person who believes that detrimental action has been taken or may be taken against him in reprisal for a protected disclosure may file an application to the Administrative Court for -

(a) an order requiring the person who has taken the detrimental action to remedy that action; or

(b) an injunction.

(2) The Administrative Court, pending the final determination of an application under this article, may -

(a) make an interim order; or

(b) grant an interim injunction.

(3) If, in determining the application under sub-article (2), the Administrative Court is satisfied that a person has taken or intends to take detrimental action against a person in reprisal for a protected disclosure, the Administrative Court may:

(a) order the person who took the detrimental action to remedy that action and determine the amount of damages, including, but not limited to, moral damages as the

Administrative Court may determine, due to the person who suffered the detrimental action; or

(b) grant an injunction in any terms the Administrative Court considers appropriate.

Cap. 12.
(4) Notwithstanding the provisions of the Code of Organisation and Civil Procedure, an injunction granted in terms of sub-article (3) shall be for an indefinite period until an application for its revocation is made, and the injunction need not be followed by an action. The provisions of articles 873 and 875 of the Code of Organisation and Civil Procedure shall apply to warrants issued under sub-article (3).

Cap. 12.
(5) The provisions of articles 829 to 838B of the Code of Organisation and Civil Procedure shall not apply to injunctions granted in terms of sub-article (3).

(6) Notwithstanding the provisions of Schedule A of the Code of Organisation and Civil Procedure, no registry fees shall be charged on an application filed in the registry of the Administrative Court by the person referred to in sub-article (1).

Right to compensation following detrimental action.
609. Any person who may have suffered detrimental action as a result of making a protected disclosure shall, without prejudice to any other right under any other law, have a right to compensation for any damage caused.

Sub-Title III

Of Disclosures

Section I

Of Protected Disclosures

Protected disclosures.
610. (1) A disclosure is a protected disclosure if -

(a) it is made in good faith; and

(b) the person making the disclosure reasonably believes that:

(i) the information disclosed, and any allegation contained in it, are substantially true;

(ii) the information disclosed tends to show an improper practice being committed by his employer, another employee of his employer or by persons acting in the employer's name and interests; and

(c) the disclosure is not made for purposes of personal gain.

(2) The protections conferred by this article do not apply to an employee who knowingly discloses information which he knows, or ought to reasonably know, is false.

Cap. 9.

(3) It shall be an offence punishable in accordance with article 101 of the Criminal Code to knowingly provide false information in terms of this Title.

Information protected by legal professional privilege. Cap. 377.

611. Saving the provisions of article 6A(c) of the Professional Secrecy Act, nothing in this Title authorises a person to disclose information protected by legal professional privilege and a disclosure of such information is not a protected disclosure for the purposes of this Title.

Anonymous disclosures.

612. (1) Disclosures made anonymously shall not be considered as protected disclosures in terms of this Title.

(2) A whistleblower reporting officer or whistleblowing unit may receive and process an anonymous disclosure. The obligations imposed on a whistleblower reporting officer or whistleblowing unit by article 607 of this Code arise in relation to anonymous disclosures.

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Section II

Internal Disclosures

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Internal procedures for receiving and dealing with protected information.

613. (1) Every employer shall have in operation internal procedures for receiving and dealing with information about improper practices committed within or by that organisation; such internal procedures must at least identify the person or persons within

the organisation, in this Title referred to as the "whistleblowing reporting officer", to whom a protected disclosure may be made.

(2) Information about the existence of the internal procedures, and adequate information on how to use the procedures shall be published widely within the organisation and shall be republished at regular intervals.

(3) An internal disclosure is a protected disclosure made in accordance with the provisions of this Title if it is made by an employee to an employer substantially in the manner established by internal procedures established by the employer for receiving or dealing with such disclosures.

Notification to person who made the disclosure.

614. (1) The whistleblowing reporting officer shall, within a reasonable time after receiving an internal disclosure, notify the person who made the disclosure of the status of the improper practice disclosed or such matters as may be prescribed.

(2) For the purposes of article 617 of this Code, where it is apparent from external action that action has been taken to rectify the improper practice, it will not be necessary for the whistleblowing reporting officer to notify the person who made the disclosure.

Internal disclosure made to the head or deputy head of the organisation.

615. An internal disclosure may be made to the head or deputy head of the organisation if:

(a) the organisation has no internal procedures established and published for receiving and dealing with information about an improper practice; or

(b) the person making the disclosure believes on reasonable grounds that the whistleblowing reporting officer is or may be involved in the alleged improper practice; or

(c) the employee making the disclosure believes on reasonable grounds that the whistleblowing reporting officer is, by reason of any relationship or association with a person who is or may be involved in the improper practice alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.

Section III

External Disclosures

Protection of external disclosure.

616. Except as provided in this Sub-Title, an external disclosure shall only be protected if an internal disclosure in accordance with Section 2 of this Sub-Title has already been made or has been attempted to be made.

External disclosure made to the whistleblowing unit of the authority.

617. (1) An external disclosure may be made to the whistleblowing unit of the authority as provided in the Twelfth Schedule if the employee making the disclosure believes on reasonable grounds -

(a) that the head of the organisation is or may be involved in the improper practice alleged in the disclosure; or

(b) that immediate reference to the authority is justified by the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or

(c) at the time he makes the external disclosure, that he will be subjected to an occupational detriment by his employer if he makes an internal disclosure; or

(d) that it is likely that evidence relating to the improper practice will be concealed or destroyed if he makes an internal disclosure; or

(e) that although an internal disclosure has previously been made, the person who made such disclosure has not been informed on the status of the matter disclosed or it is reasonably evident to the person who made such a disclosure that there has been no action or recommended action on the matter to which the disclosure relates within a reasonable time from the making of the disclosure.

(2) In determining for the purposes of sub-article (1) whether it is reasonable for the employee to make the disclosure to the authority, regard shall be had, in particular, to:

(a) the seriousness of the alleged improper practice,

(b) whether the improper practice is continuing or is likely to occur in the future,

(c) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,

(d) in a case falling within sub-article (1)(e), any action which the employer has taken or might reasonably be expected to have taken as a result of the previous disclosure, and

(e) whether in making the disclosure to the authority, the employee complied with any procedure whose use by him was authorised by the employer in accordance with article 613(1) of this Code.

(3) If a person makes a disclosure to an authority in accordance with this Sub-Title, the authority shall within forty-five (45) days after receiving the disclosure consider and reach a conclusion as to whether it is appropriate for the disclosure to be made externally.

(4) If the authority concludes that a disclosure should not have been made externally, then it shall within a reasonable time notify in writing the person who made the disclosure and the whistleblowing reporting officer within the employer's organisation that an internal disclosure in accordance with Section 2 of this Sub-Title shall be made and that it shall not be dealing further with the disclosure.

(5) If the authority concludes that a disclosure has been properly made, then it must within a reasonable time notify in writing the person who made the disclosure of the status of the improper practice disclosed or such matters as may be prescribed.

Setting up of whistleblowing units.

618. (1) All authorities referred to in the Twelfth Schedule shall set up a whistleblowing unit.

(2) The whistleblowing unit shall be charged with receiving and processing any external disclosures relating to the activities of persons operating within the sector regulated by the relevant authority as set out in the Schedule so as to determine whether the disclosures should be referred for further investigation and the conditions under which such referral should take place.

Referral of information to another authority.

619. (1) Where the authority to whom a protected disclosure is made considers that the information disclosed can be better investigated by another authority, the authority to whom the disclosure is made may refer that information to such other authority and inform in writing the person making the disclosure accordingly.

(2) A protected disclosure shall not, by reason of its referral to another authority, cease to be a protected disclosure.

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Sub-Title IV

Of Offences and Penalties

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Use or threats of violence.

620. Any person who, for the purpose of compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing under the provisions of this Title, wrongfully and without legal authority -

(a) uses or threatens to use violence against such person, or the wife, husband or child of such person, or a member of his household, or causes or threatens to cause damage to his property;

(b) persistently follows such other person from place to place;

(c) watches or besets the house or other place where such other person resides or the approaches to such house or place;

(d) deprives such person, or in any manner hinders him in the use of, any tools, clothing or other property owned or used by such other person,

shall be guilty of an offence and be liable on conviction to imprisonment for a period not exceeding three months or to a fine (*multa*) not exceeding one thousand and two hundred euro (€1,200) or to both such imprisonment and fine, without prejudice to any heavier punishment to which the offence may be liable under any other enactment.

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Sub-Title V

Of Regulations and Guidelines

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Regulations and guidelines.

621. (1) The Minister may from time to time make regulations for the better implementation of this Title.

(2) An authority may, in furtherance of any of its functions under this Title, from time to time issue and publish guidelines on all matters in respect of which the Minister may make regulations including guidelines setting out the procedures which are available in terms of law to those who wish to disclose an improper practice.

(3) Guidelines issued by an authority shall be binding on all organisations whose activities are regulated by such authority.

(4) Except for amendments to the guidelines which are purely administrative in nature, and are expressly declared to be so by the authority, which come into force immediately upon the posting thereof on the official website of the said authority, any new guidelines or amendments to guidelines shall come into force on the lapse of twenty days after they are posted on the official website or on such later date as may be stated therein.

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Sub-Title VI

Of Miscellaneous Provisions

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Conflict between contract of service and provisions of this Title.

622. Any provision in a contract of service or other agreement between an employer and an employee is void in so far as it -

(a) purports to exclude any provision of this Title, including an agreement to refrain from instituting or continuing any proceedings under this Title or any proceedings for breach of contract; or

(b) purports to preclude the employee or has the effect of discouraging the employee from making a protected disclosure in terms of this Title.

Applicability of this Title.

623. This Title shall apply only to disclosures of information relating to conduct which occurs after the coming into force of this Title or, if commencing before the coming into force of this Title, continues after its coming into force.

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Part V

Of Delegation of Powers and Parliamentary Assistants

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Title I

Of Delegation of Functions by Ministers

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Interpretation.

624. In this Title, unless the context otherwise requires -

"functions" includes powers and duties;

"Minister" means the holder of an office under article 80 of the Constitution.

Delegation of functions.

625. (1) A Minister may delegate to a Parliamentary Secretary assisting him in the performance of his duties, any functions which in virtue of his office are conferred on him by or under any law.

(2) A delegation of functions under this article shall be without prejudice to the exercise of those functions by the Minister.

(3) The power so delegated to make orders, rules or regulations shall, unless the contrary intention appears, be construed as including a power to revoke, amend or vary orders, rules or regulations.

(4) Notwithstanding the above provisions, the Prime Minister may assign Parliamentary Secretaries to Ministers and in so doing may also elect to assign specific duties to such Parliamentary Secretaries.

Notice of delegated functions.

626. Every delegation of functions and any addition to, or amendment, variation, substitution or rescission of such delegation shall be made in writing under the hand of the Minister, and notice thereof shall be published in the Gazette.

Legal proceedings.

627. A Parliamentary Secretary may sue or be sued in respect of any functions delegated to him under this Title, and may continue any legal proceedings commenced in respect of those functions before the date when the delegation is made.

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Title II

Of Parliamentary Assistants

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Appointment of Parliamentary Assistant.

628. (1) A Cabinet Minister may be assisted by one or more Parliamentary Assistants appointed by the Prime Minister from amongst Members of Parliament following consultation with the Minister concerned.

(2) The Parliamentary Assistant shall not be chosen from the same electoral district from which the Minister concerned is elected to the House of Representatives.

Conflict of interest.

629. Although Parliamentary Assistants are not formal members of the Government, they shall ensure that no conflict of interest arises, or appears to arise, between their role as a Parliamentary Assistant, and their private interests.

Restrictions on the provision of official information to Parliamentary Assistants.

630. (1) Official information given to a Parliamentary Assistant shall generally be limited to what is necessary for the discharge of his Parliamentary and political duties.

(2) This need not preclude him from being brought into Ministry discussions where appropriate, but any such access should be approved by the Minister concerned.

Duties of Parliamentary Assistants.

631. (1) A Parliamentary Assistant shall not put parliamentary questions on matters affecting the Ministry with which he is connected.

(2) Unless authorized by the Minister to do so, a Parliamentary Assistant shall not make any speeches in the House affecting the Ministry with which he is connected.

(3) A Parliamentary Assistant is not precluded from serving on Standing Committees and Select Committees of the House of Representatives or from chairing or serving on such Committees. He shall however withdraw from any involvement with inquiries into the Ministry, departments and other entities of the public administration which are part of his Minister's portfolio.

(4) A Parliamentary Assistant shall avoid associating himself with recommendations critical of, or embarrassing to, the Ministry concerned.

(5) A Parliamentary Assistant shall exercise discretion in any speeches, publications or broadcasts outside the House of Representatives concerning the Ministry with which he is connected.

(6) The Minister concerned may assign to a Parliamentary Assistant any of the following functions:

(a) to chair meetings related to certain sectors of the Ministry’s work;

(b) to attend for national engagements on behalf of the Minister concerned;

(c) to accompany the Minister concerned during such meetings, events, news conferences and other occasions;

(d) to deliver speeches in the House of Representatives concerning the workings of the Ministry, especially during the discussion of the Ministry’s financial estimates or discussions in the House on the workings of any entity of the public administration falling under the responsibility of the Ministry concerned;

(e) to help, assist and co-operate with the Minister in parliamentary work;

(f) to attend such meetings as the Ministry might require;

(g) to keep oneself informed of the workings of the Ministry concerned;

(h) to move the reading of a Bill on behalf of the Minister concerned and to deputise for the Minister at Committee Stage;

(i) to deputise for the Minister in Select Committees and Standing Committees of the House of Representatives;

(j) to make statements and propose motions on behalf of the Minister;

(k) to focus on particular areas assigned by the Minister concerned in relation to certain aspects of the Ministry's work;

(l) co-ordinating speakers for bills falling under the Ministry concerned;

(m) organizing briefing sessions for speakers on the said Bills;

(n) organizing meetings with Opposition speakers on the same Bills.

(7) The Minister may not request a Parliamentary Assistant to reply to parliamentary questions on behalf of the Minister concerned.

Official visits overseas.

632. (1) Where it is proposed to take a Parliamentary Assistant on an official visit overseas, the Prime Minister's approval is required.

(2) Official overseas travel by a Parliamentary Assistant should be exceptional.

Planning issues.

633. Parliamentary Assistants, particularly those attached to Ministries with planning responsibilities, shall take special care when making representations to Ministers about planning issues. In particular, they shall not discuss planning cases with interested parties or imply that they have any influence over planning decisions. In representing their constituency interests they shall abide by the guidance in Section E of the Code of Ethics for Members of Parliament or such other Code of Ethics as may from time to time be approved.

Assistance to be provided to Parliamentary Assistants.

634. (1) The Clerk of the House shall provide Parliamentary Assistants with clerical staff to enable Parliamentary Assistants to perform their parliamentary duties.

(2) The Minister concerned shall provide a Parliamentary Assistant with clerical staff assistance and transport services to perform those duties assigned to him.

(3) The Clerk of the House shall also provide a Parliamentary Assistant with an office within the Ministry from where the Parliamentary Assistant may operate.

Minister's duty to consult.

635. The Minister concerned shall consult with the Parliamentary Assistant on matters concerning the workings of the Ministry which are to be discussed or are being discussed in the House of Representatives.

Part III

Of Financial Management

Title I

Of The Financial Year

Definition of financial year.

636. For the purposes of the Constitution, and as provided by article 124 thereof, it is hereby prescribed that the 31st day of December shall be the date on which every financial year.

Title II

Of Financial Administration and Audit

SUB-TITLE I

Of Preliminary Provisions

Interpretation.

637. In this Title, unless the context otherwise requires -

"accounting officer" means a person holding or acting in the office of permanent head of a government department and includes every person who is charged with the duty of collecting, receiving or accounting for, or who in fact collects, receives or accounts for, any public moneys, or who is charged with the duty of disbursing, or who does in fact disburse, any public moneys, and every person who is charged with the receipt, custody or disposal of, or the accounting for, public stores, or who in

fact receives, holds or disposes of public stores. However, where there is in force a direction in writing by the Minister that the duties, functions and responsibilities of an accounting officer specified in the direction shall vest exclusively in one or more public officers as is so specified, "accounting officer", in respect of the said duties, functions and responsibilities and to the extent specified in the said direction, means and includes only the public officer or public officers specified as aforesaid;

"bank" means any bank which for the time being is entrusted with the keeping of public moneys of the Government of Malta;

"Consolidated Fund" means the Consolidated Fund established by article 102 of the Constitution;

"estimates" means the estimates, presented to the House of Representatives in respect of any financial year, of the expenditure for the service of that financial year and includes any supplementary estimates of expenditure for which it may be necessary to provide after the estimates have been presented to the House of Representatives;

"financial year" has the meaning as it has for the purposes of the Constitution;

"internal audit" shall have the same meaning assigned to it by article 827 of this Code;

"irregularity" means an act or omission by any person in breach of a contractual agreement with the Government or in breach of any relevant provision of law or of any act the binding force of which derives from any treaty or international agreement entered into by Malta;

"Minister" means the Minister responsible for finance;

"public moneys" means all revenue, loan, trust and other funds received or managed or held by, for or on account of the Government, including moneys which the Government pays out or disburses from funds received from any international or supranational organization or body or from any of its institutions or bodies;

"revenue" means all taxes, imposts, rates, and duties and all other moneys collected or received for or on account of the Consolidated Fund;

"vote" means a separate head of the estimates or a main division of the appropriation by the House of Representatives for the service of a financial year.

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SUB-TITLE I

Of General Provisions

Administration of this Title.

638. (1) The Minister is charged with the administration of this Title.

(2) Subject to the provisions of this Title and of any regulations made thereunder, accounting officers shall follow the directions which may, from time to time, be given by the Minister concerning public moneys and the rendering of accounts thereof.

(3) The Minister, or any officer of his Ministry authorised by him in that behalf, by means of a government notice published in the Gazette, shall be entitled to inspect such offices and to have such access to official books, documents and other records as may be necessary for the purpose of the Minister's exercise of his powers and his performance of his duties under this Title.

Regulations.

639. (1) The Minister may make regulations not inconsistent with the provisions of this Title for carrying the provisions of this Title into effect, and without prejudice to the generality of the foregoing, such regulations may provide -

(*a*) for the collection, receipt, custody, issue, expenditure, due accounting for, care and management of all public moneys and the guidance of all persons concerned therein;

(*b*) for the more effectual record, examination, inspection and departmental check of all receipts and expenditure and the keeping of all necessary books and accounts;

(*c*) for the books which are to be kept and the accounts which are to be rendered for the purposes of this Act and the form in which such books and accounts are to be kept and rendered;

(*d*) for the purchase, safe custody, issue, sale or other disposal or writing off of public stores and other government property, and the proper accounting for, and stock-taking of, such stores and property;

(*e*) for prescribing anything required to be prescribed under this Title;

(*f*) for the co-funding of economic and social development programmes and initiatives from public moneys;

(*g*) for effecting adjustments, set-offs in and payments from any account relating to public moneys as may be required in connection with the co-financing referred to in the previous paragraph and funding from any international or supranational organization or body or from any of its institutions or bodies;

(*h*) for the preparation, codification and publication of such sets of accounting standards, methodologies, policies and procedures as may from time to time be deemed necessary or expedient for the better carrying the provisions of this Title into effect;

(*i*) for any other matter incidental or supplementary to any of the foregoing matters.

(2) All regulations made under this article shall be published in the Government Gazette and shall be laid on the Table of the House of Representatives within ten days of such publication.

(3) In reckoning the period mentioned in subarticle (2), no account shall be taken of any time during which the House of Representatives is dissolved or prorogued, or during which it is adjourned for more than ten days.

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SUB-TITLE III

Of Accounting Officers

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Duties of accounting officers.

640. Every accounting officer shall be subject to the provisions of this Title and any regulations made thereunder and shall perform such duties, keep such books and render such accounts as may be prescribed by or under this Title or by instructions issued by the Minister by means of an Order published in the Gazette.

Bank account not to be opened by accounting officers without Minister's authority.

641. No accounting officer shall open any public or official account in any bank, except as authorised by this Title or by any regulations made thereunder, without the authority in writing of the Minister, and the Government shall not be held liable for any overdraft on any such account unless it be authorised by the Minister as provided in article 648 of this Code.

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SUB-TITLE IV

Of Banking Arrangements and Collection of Moneys

Arrangement with bank.

642. The Minister may from time to time make arrangements with any bank or banks upon such terms and conditions as he thinks fit for the receipt, custody and payment of public moneys and their transmission from and to Malta, and for any advances which may be made under the authority of this Title or of any other law, for the charges in respect thereof, and for the interest payable by or to the bank or banks upon balances or advances respectively and generally for the conduct of the banking business of the Government.

The Public Account and the Malta Government Savings Bank Account.

643. All public moneys shall be kept in the bank under an account to be known as "the Public Account" to which shall be carried and paid all moneys forming the Consolidated Fund, and all other moneys whatsoever, except -

(*a*) moneys belonging to the Malta Government Savings Bank[4], which shall be kept under a separate account to be known as "the Malta Government Savings Bank Account"; and

(*b*) any other moneys which the Minister may specifically authorise to be kept in separate accounts.

All moneys in the bank to be public moneys.

644. All moneys paid into the bank to the credit of the accounts mentioned in the last preceding article shall be deemed to be public moneys, and may not be removed from the bank except as provided by this Title.

Deposits and unclaimed deposits.

645. (1) Moneys received by or on behalf of the Government by way of deposit on account of customs duties or otherwise on public account, moneys deposited in court under any law or authority whatever, moneys deposited in the Malta Government Savings Bank*, moneys received in trust, and all moneys deposited by any person pending the completion of any work or transaction whereby the same or any portion thereof may become payable to the Government or repayable to the depositor or other person, shall be deemed to be public moneys within the meaning and for the purposes of this Title.

[4] *Vide* Malta Government Savings Bank (Winding Up) Act (Cap. 307).

(2) Such moneys shall be either paid into the bank to the credit of the proper account or otherwise dealt with and accounted for by the person having custody thereof as the Minister, subject to this Title and any regulations made thereunder, may from time to time direct.

(3) Unless otherwise expressly provided, every sum so deposited, with the exception of moneys deposited in the Malta Government Savings Bank*, which is unclaimed for a period of thirty years shall be transferred to a special account to be known as "the Deposits Fund Account" and the Minister may, without further appropriation than this Title, authorise the Accountant General to pay the same out of the said account at any time to any claimant who establishes his claim thereto.

(4) At the end of each financial year any balance in excess of twenty-three thousand and three hundred euro (23,300) of the said Deposits Fund Account may, if the Minister so decides, be passed to the Consolidated Fund. Should at any time the said account not be sufficient to meet such claims, these will be met out of the Consolidated Fund without any further appropriation than this Title.

Payment of all moneys into bank.

646. (1) The Accountant General shall, from day to day, cause to be paid into the bank to the credit of the proper account, all public moneys collected or received at the Treasury, including Savings Bank deposits:

(2) The Accountant General may retain in hand such amount as may be deemed necessary to meet daily requirements, which amount shall not, however, except with the written authority of the Minister, exceed seventy thousand euro (70,000) in respect of moneys payable to the credit of the Public Account exclusive of any moneys temporarily held by the Accountant General pending withdrawal from circulation and destruction, and forty-seven thousand euro (47,000) in respect of moneys payable to the credit of the Malta Government Savings Bank Account.

Collection of public moneys to be paid into bank.

647. (1) Every accounting officer collecting or receiving public moneys shall pay into the bank to the credit of the proper account, the gross amount of his collections on such days and in such manner and form as the Accountant General may direct.

(2) Where the Minister so directs, accounting officers may deduct from the gross amount of their collections such sums as may be required to enable them to effect payments of drawback, repayments or refunds.

Borrowing of money.

648. Except as may be specifically provided by any law and subject to the provisions of this article, it shall not be lawful for the Government to borrow, nor for any bank or other person to lend to the Government, any moneys, and every engagement for the repayment of any such loan shall be absolutely null and void.

(2) The Minister may authorise a fluctuating overdraft on the Public Account as and when required, and in such case -

(*a*) the repayment of any such overdraft shall be made before the close of the financial year in which such overdraft was incurred, and

(*b*) a statement of the position of such overdraft on the last day of each quarter shall, as soon as possible thereafter, be laid on the Table of the House of Representatives.

SUB-TITLE V

OF THE APPROPRIATION OF PUBLIC MONEYS

Lapsing of Appropriation Act.

649. Any Act appropriating moneys out of the Consolidated Fund shall not be construed as authorising the expenditure of such moneys in any financial year other than the financial year to which it is expressed to relate, and any moneys so appropriated which may remain unexpended at the close of any financial year shall cease to be a liability on the Consolidated Fund for that year.

Authorisation of expenditure before appropriation.

650. (1) If the Appropriation Act has not come into operation at the commencement of any financial year, the Minister may authorise the issue of moneys from the Consolidated Fund for the purpose of meeting such expenditure as he may consider necessary for carrying on the Government of Malta. However, moneys so authorised to be issued for any service which is of a recurrent nature shall not exceed one-third of the amount voted for that service in the Appropriation law for the preceding financial year.

(2) Any moneys authorised to be issued as provided in subarticle (1) shall not exceed the sum specified for that service in the estimates presented for the current financial year and shall be set off against the amounts respectively provided in the Appropriation Act on its coming into operation.

(3) The powers conferred on the Minister by this article shall not extend beyond the period of the first four months of any financial year or beyond the day on which the Appropriation Act for that year comes into operation, whichever is the earlier.

Application of savings on subheads.

651. (1) If the exigencies of the public service render it necessary to alter the proportions assigned to the subheads under a head of expenditure shown in

the estimates the Minister may by minute authorise the transfer of a further sum out of any surplus arising on any other subhead of the same head in aid of any subhead which may be deficient.

(2) The Minister may in his discretion and subject to such conditions as he may deem proper delegate to an officer of his Ministry the power vested in him under subarticle (1).

(3) Whenever any such delegation has been made the officer so delegated shall submit to the Minister at the end of each quarter a statement showing particulars of all the cases where he has exercised the powers so delegated.

(4) Such statement shall be published in the Gazette.

Supplementary provision.

652. (1) If in respect of any financial year it is found that the amount appropriated by the Appropriation Act for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, or that any moneys have been expended for any purpose in excess of the amount appropriated for the purpose by the Appropriation Act, or for a purpose for which no amount has been appropriated by that Act, supplementary estimates showing the sums required or spent shall be laid before the House of Representatives and the Appropriation Bill shall contain such expenditure under appropriate heads.

(2) The Minister may for such purposes from time to time authorise the issue of such sums out of the Consolidated Fund (not exceeding ten per cent of the sum appropriated for the financial year, or such other percentage as the House may by resolution from time to time approve) as he may consider necessary for the purpose without the need of any further appropriation other than this Title, and he shall make a report thereon to the House within one month of such appropriation, and where the House is not sitting at the time not later than the third sitting after the House reconvenes.

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SUB-TITLE VI

PAYMENT OF MONEYS

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Authority for the issue of moneys.

653. No moneys shall be issued out of the Consolidated Fund, except as provided in the Constitution, nor out of other funds or accounts except for the purpose of such funds or accounts and under such authority as may be applicable to their constitution.

All disbursements to be made by Accountant General.

654. (1) Subject to the provisions of this Title and of any regulations made thereunder, all disbursements of public moneys shall be made by the Accountant General in such manner as may be prescribed by the Minister by regulations made under the provisions of this Title.

(2) The Accountant General shall not make any payments (notwithstanding that the services to which they relate may be duly provided for in the Appropriation Act) unless authorised so to do by warrant under the Minister's hand and directed to him.

(3) Such warrant shall be signed in triplicate by the Minister. One copy of the warrant shall be filed in the Minister's office, one in the Accountant General's office and one in the National Audit Office.

(4) No warrant under this article shall continue in force except during the financial year for which it is issued.

Payment on vouchers.

655. Every claim for the payment of public moneys shall be set out in a voucher in such form as the Accountant General may direct, and shall be charged against the proper vote or account and certified by the officers who are recognised by the Accountant General as the proper officers for the purpose.

Payment of accounts by accounting officers.

656. No accounting officer shall pay any account unless he has ascertained that the provisions of this Title and of any regulations made thereunder relating to the payment of accounts have been complied with and that the payment of the account is in accordance with proper authority.

Contingencies Fund.

657. (1) There shall be established a fund (to be known as "the Contingencies Fund") of one million, one hundred and sixty-five thousand euro (1,165,000) which amount shall be provided, within a period of five years, by appropriation made from time to time out of the Consolidated Fund to the said fund.

(2) The Minister may, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists or for which funds cannot be provided under article 651 of this Code, make advances from the Contingencies Fund to meet that need, until a Supplementary Appropriation Bill providing for such expenditure can be passed into law.

(3) The Contingencies Fund shall be operated in accordance with the rules set out in the Schedule. The provisions of this Twelfth Schedule may be amended by further rules to be made by the Minister, which shall be published in the Gazette and shall be laid on the Table of the House of Representatives at the next meeting thereafter.

Imprest.

658. (1) Whenever it becomes necessary for any accounting officer to have at his disposal, for disbursement on the public service, moneys for which vouchers cannot be presented direct to the Accountant General for payment, an imprest may be issued to him for such amount as the Minister may authorise.

(2) The Permanent Secretary for Gozo Affairs may receive a floating imprest for such amount as the Minister may authorise to enable him to carry out the service of all the departments in Gozo in accordance with this Title and with any regulations made thereunder.

(3) The authority mentioned in the two last preceding subarticles shall be conveyed to the Accountant General by an imprest warrant under the Minister's hand.

Treasury Clearance Fund.

659. There shall be established a fund to be known as "the Treasury Clearance Fund" to provide for the receipt and repayment of court and other deposits and of moneys raised by the issue of Treasury Bills, and for payments of money orders and other postal transactions, for payments on behalf of other administrations, for payments on account of pensions awaiting sanction, for purchase of wheat and unallocated stores, and for the purpose of meeting any other expense temporarily defrayable out of public funds and repayable gradually or otherwise into this fund out of the Consolidated Fund or from other sources.

Accrual of interest and investment fluctuation.

670. **(1)** Subject to the provisions of this article, interest and other income accruing to the Treasury Clearance Fund shall be credited to the Consolidated Fund and any appreciation or depreciation in the value of any investments of the Treasury Clearance Fund shall, together with any profits or losses arising from the sale or redemption of securities, be credited or debited as the case may be to the Consolidated Fund:

(2) In the case of deposits on account of foundations or trusts, the *Il-Monti* and the Custodian of Enemy Property such interest and other income, appreciation or depreciation in the value of investments and the profits or losses on the sale or redemption of securities shall be credited or debited as the case may be to the proper account.

Disbursements out of Treasury Clearance Fund.

671. The Minister may without further appropriation than this Title cause the Accountant General to effect disbursements from the Treasury Clearance Fund by warrant under the Minister's hand, which in the case of all payment of moneys repayable into the fund shall specify the manner and terms of such repayment.

Power to transfer temporarily from one account to another.

672. The Accountant General may from time to time transfer any balances of the public account, or any part thereof, from one fund or account to another fund or account, within the public account for such periods and on such terms as the Minister may authorise.

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SUB-TITLE VII

OF INVESTMENTS

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Investment of balances.

673. The Minister may, from time to time, cause any of the balances of the public account or any other account, or any part thereof, to be invested, on behalf of the proper fund or account, for such periods and on such terms as he thinks fit, in the purchase of such securities as he may from time to time declare to be securities in which public moneys may be invested.

Accounting of interest on investments.

674. The interest received on securities purchased under this Sub-Title shall unless otherwise provided in this or any other law be paid to the public account or any other account to the credit of the proper fund or account to which the securities belong.

Sale or exchange of securities.

675. Whensoever it shall seem to the Minister to be expedient in the interest of the public service, he may from time to time cause such securities, or any part thereof, to be sold and converted into money and the proceeds either paid to the credit of the proper fund or account to which they belong or re-invested, on behalf of the proper fund or account in the purchase of any other securities authorised by this Sub-Title.

Purchase and custody of securities.

676. (1) The investments in securities shall, in the case of securities held in Malta, be made in the name of three or more persons jointly, who shall be appointed from time to time by the Minister, and, in the case of securities held abroad, in the name of such person or persons as may be appointed from time to time by the Minister.

(2) Such persons shall only have the custody of such securities on behalf of the Government of Malta and it shall not be lawful for them severally or jointly to take any measures in respect of such securities save as provided by this Act.

Provisions for ensuring safe custody.

677. In order to ensure the safe custody of all securities, the following provisions shall apply:

(*a*) all securities in Malta shall be held under two or more keys by the persons vested with their custody, or deposited by them in the bank, and such of the securities as are kept abroad shall be held in the custody of such person or persons as may be appointed from time to time by the Minister;

(*b*) securities held in respect of each fund or account shall be kept separate and apart from those of any other fund or account;

(*c*) securities held in respect of each fund or account shall be kept and used solely for the purposes of that fund or account.

Manner in which securities may be sold, converted or exchanged.

678. In order to facilitate the sale, conversion, exchange or other disposition of such securities, as occasion requires, the persons vested with the custody thereof shall, at the written request of the Minister or of any other officer duly authorised by him in writing in that behalf, part with the possession of the securities and sign without delay such documents as may be necessary for the sale, conversion, exchange or other disposition thereof. The request shall specify the purpose for which the securities named therein are required.

Certified returns of securities held abroad.

679. At least once in every year in respect of securities held abroad on behalf of the Government of Malta, the Accountant General shall obtain from the persons vested with their custody a certified statement of all such securities, showing separately the fund or account for which they are respectively held.

Return of securities to be submitted to Auditor General.

680. An annual return of all securities held in Malta and abroad under the provisions of this Sub-Title shall be prepared by the Accountant General and forwarded to the Auditor General as provided in article 694 of this Code.

SUB-TITLE VIII

MONEYS OUTSIDE MALTA

Arrangements regarding moneys outside Malta.

681. Notwithstanding anything in this Title, the Minister may make arrangements on such terms and conditions as he considers necessary for the collection, receipt, custody, deposit in banks, issue, expenditure, advances, due accounting for, care and management outside Malta of any public moneys and for the keeping of accounts, and furnishing of statements, returns and vouchers relating to such collection, receipt, custody, deposit, issue, expenditure, advances and for the examination of such accounts, statements, returns and vouchers.

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SUB-TITLE IX

AUDIT AND INSPECTION

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Duties of the bank.

682. The bank into which public moneys are paid, shall, at such times as the Accountant General may fix, transmit to him a statement showing, in order of date, every sum received and paid under each account kept at the bank, and shall furnish him with a monthly certificate, in duplicate, of the public moneys in the hands of the bank at the end of each month and at such other dates as may be fixed by him. One copy of the certificate shall, after the balance therein shown has been found to agree with that shown in the Treasury books, be forwarded by the Accountant General to the Auditor General.

Measures against fraud and irregularities. Cap. 12.

683. (1) Where, on the detection of any irregularity or fraud against public moneys, a report made in terms of the provisions of Title III and Title VI of Part V of Book Second of this Code is sent or referred to a Head of Department he shall thereupon take all necessary measures for the protection of such public moneys, including the levying of administrative penalties in accordance with regulations made under article 689 and legal action for the recovery of the amount of any deficiency, loss, improper payment caused or made as a result or in the course of any such irregularity or fraud and the provisions of article 466 of the Code of Organization and Civil Procedure shall apply to any amount recoverable as aforesaid.

(2) Notwithstanding any stipulation to the contrary any bond, bank guarantee or other security given for the proper performance of any contract payable out of public moneys shall also extend to guarantee the recovery of any moneys or administrative penalties in connection with the contract and for which the person supplying the bond, bank guarantee or other security may be liable.

(3) Where the deficiency, loss, or improper payment as a result of the irregularity or fraud involves funds received by the Government from any international or supranational organization or body or from any of its institutions or bodies or under

the terms of any treaty or other agreement between States any proceedings under this article shall take place in consultation with the person in Malta, if any, specifically charged with authorising the payment or release of such funds by the Head of Department. The lack of such consultation shall not in any way whatsoever affect the validity of any proceedings taken under this article.

(4) Where two or more persons are responsible for the irregularity or fraud which resulted in the deficiency, loss, or improper payment those persons shall be held jointly and severally liable therefor together with any other person who, although in duty bound to do so, failed to take reasonable precautions and to exercise due diligence to prevent the irregularity or fraud.

(5) Nothing in this article or in this Sub-Title shall be construed as precluding any other person interested from taking action, whether jointly with the Head of Department or otherwise, for the recovery of any sum recoverable under the provisions of this article.

(6) For the purposes of this article and the other articles under this Sub-Title, "Head of Department" includes any director, manager, secretary or other principal officer of a body, whether vested with legal personality or not, which is responsible for administering, holding or using public moneys or which is a recipient or beneficiary of public moneys, or who 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.

Interest to be charged.

684. On any amount recoverable under article 683 of this Code there shall be charged interest equivalent to the average weighted rate applicable on the due date on the local money market for short-term public finance operations for the period during which the amount remains unpaid from the date on which it becomes payable.

Information.

685. For the purpose of recovering any moneys that may be recoverable under the provisions of article 683 of this Code any Head of Department who receives or to whom is referred a report as provided in that article may, without prejudice to the constraints imposed by professional secrecy according to law, require any person managing public moneys to provide any information in his possession relevant for the said purpose.

Administrative penalties.

686. (1) The Minister may by regulations provide for administrative penalties which may be imposed for any irregularity, for the procedure to be followed for the imposition of such penalties and for any other matter incidental or supplementary to any of the foregoing matters.

(2) An administrative penalty may not be greater than one hundred and twenty thousand euro (€120,000).

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SUB-TITLE X

OF ACCOUNTS AND STATEMENTS

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Accountant General's books of account.

687. The Accountant General shall cause to be kept at the Treasury the following books of account: a cash book, a journal, a ledger and a monthly abstract, together with such subsidiary and other books as he may consider necessary.

Accounting officers' books of account.

688. Subject to the provisions of any regulations made under this Act, every accounting officer collecting, receiving or paying public moneys shall keep such books and accounts in such manner and form as the Accountant General may, from time to time, by circular or minute, direct.

Quarterly statement of Consolidated Fund Account to be published in the Government Gazette.

689. The Accountant General shall, as soon as conveniently possible after the end of each quarter, submit to the Minister for publication in the Government Gazette, a statement of the Consolidated Fund Account as compared with the corresponding quarter of the immediately preceding financial year.

Annual statements.

690. (1) As soon as possible after the close of each financial year, and in every case not later than three months after the close of such year, the Accountant General shall prepare and forward to the Auditor General the following returns:

(*a*) a statement of the Consolidated Fund Account as compared with that of the last preceding financial year;

(*b*) a statement of the receipts and expenditure of any fund or account created by this or any other law.

(2) As soon as the Auditor General returns such statements to the Accountant General, the Minister shall cause such statements to be published in the Gazette, and shall lay them on the Table of the House of Representatives within ten days of such publication.

(3) In reckoning such period, no account shall be taken of any time during which the House of Representatives is dissolved or prorogued, or during which it is

adjourned for more than ten days.

Preparation of annual financial accounts.

691. The Accountant General shall, as soon as possible after the close of the accounts of every financial year, and in any case not later than six months after the close of such year, prepare and send to the Auditor General the following statements and accounts:

(*a*) an abstract of the receipts and payments of the Public Account as compared with the receipts and payments of the last preceding financial year;

(*b*) an abstract of the Consolidated Fund Account as compared with that of the last preceding financial year;

(*c*) a detailed statement of revenue, as compared with the estimates, showing variations in respect of each item;

(*d*) a detailed statement of expenditure showing the several sums appropriated under each head distributed according to subheads as detailed in the estimates, the expenditure made during the financial year, and the amount over-expended or under-expended thereon;

(*e*) a statement of the receipts and payments in respect of loans made by the Government;

(*f*) a statement of the public debt and the annual charge thereon showing also the amount repaid during the financial year;

(*g*) a statement of the receipts and expenditure of trust funds and of any other fund or account of the Government;

(*h*) a statement of all investments held by the Government at the end of the financial year on behalf of each fund or account as required by article 680 of this Code, showing the cost price and the current market value in London on that date;

(*i*) a statement of the revenue and expenditure of the Malta Government Savings Bank[5] and of deposits received and repaid and interest credited to depositors together with a statement of assets and liabilities;

(*j*) a statement of assets and liabilities of the Government at the end of the financial year;

[5]*Vide* Malta Government Savings Bank (Winding Up) Act (Cap.307).

(*k*) a statement of balances (excluding special funds) at the end of the financial year;

(*l*) a statement of special funds deposited in the Treasury;

(*m*) a detailed statement of advances made out of the Treasury Clearance Fund;

(*n*) a tabular summary of unallocated stores financed out of the Treasury Clearance Fund; and

(*o*) a statement of claims abandoned, of losses of cash and of stores written off.

Annual report on accounts and finances.

692. The Accountant General shall, as soon as possible after the closing of the accounts of every financial year and in any case not later than six months after the close of such year submit to the Minister for publication a report on the accounts and finances of the Government.

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SUBTITLE XII

MISCELLANEOUS

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Loss of titles to goods or deposits.

693. (1) On the loss of any receipt or document, entitling the holder thereof or the person named therein to withdraw from any government department any sum of money or any article deposited therein, the Accountant General may, on receiving proof of such loss through the permanent head of the department concerned, authorise the issue of a duplicated receipt or document so lost, provided a written indemnity is given to his satisfaction against all claims that may be made against him by reason of the issue of such duplicate receipt or document.

(2) The Accountant General may in his discretion and on his own responsibility delegate in writing, on such conditions as he may deem proper, any of his powers under this article to any public officer not below the administrative officer class suitable in his opinion for the purpose.

(3) The Minister may prescribe for the levying of a fee on the issue of such duplicate receipts or documents.

Directives.

694. (1) The Minister responsible for finance, or any person, body or unit delegated on his behalf, may, notwithstanding any other law, issue directives as provided in subarticle (2) to any authority, board, foundation, corporation, institute, agency, commission, company or any other entity 51 per cent or more of which is held in ownership by the Government or over which the Government has effective control, or where 51 per cent of its income comes from public monies or from monies it receives by virtue of any law.

(2) These directives may not be issued with regard to public corporations but the Public Accounts Committee may issue directives on the same lines as those mentioned in subarticle (3) to public corporations.

(3) The directives referred to in subarticle (1) may regulate:

(*a*) the recruitment of employees and, or their remuneration;

(b) the procurement of fixed assets, services, consultancies, contracts of whatever type or nature relating to operational and, or administrative expenses, and, where such directives are issued, the Board of Directors or other Board responsible for the affairs of the entity shall ensure that the decisions taken at Board and at management level respect such directives.

(4) Any directive made under this article shall have effect only on publication in the Gazette and the Minister or the Public Accounts Committee, as the case may be, may establish different dates for the entry into force of these directives.

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Title III

Of Fees

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Power of Minister to fix fees.

695. (1) A Minister charged with responsibility for any government department or office may make regulations prescribing the fees to be charged in such department or office or on behalf thereof in respect of licences, permits or any other act or service whatsoever, and may from time to time vary or amend such regulations.

(2) Any such regulation, unless otherwise provided, shall have effect from the date of its publication, and shall, as soon as may be, be laid on the table of the House of Representatives.

Fixing of fees to be exercised with the concurrence of Finance Minister.

696. The power conferred by subarticle (1) of article 685 and any other power conferred by any other law to fix such fees as aforesaid shall be exercisable with the concurrence of the Minister responsible for finance.

Officer may decline to do act or service required until fee is paid.

697. The officer in charge of any public office or department, required to do any act or service for which a fee is chargeable under this Ordinance, may decline to do such act or service until the fee is paid.

Proceedings for recovery of fees. Cap. 12.

698. The fees prescribed by any such regulation shall, unless otherwise provided, be recoverable in the manner laid down in the Code of Organization and Civil Procedure, for the recovery of sums due to a government department, on the demand or on behalf of the officer to whom the fee is payable.

Title IV

Of Treasury Bills

Interpretation.

699. In this Title -

"auctions" means a public invitation for submission of bids for treasury bills in such manner as the Minister may direct;

"Minister" means the Minister responsible for finance;

"prescribed" means prescribed by the Minister.

Raising money by treasury bills.

700. The Minister whenever authorised thereto by resolution of the House of Representatives may raise money not exceeding the amount specified in such resolution by the issue of bills under this Title for the purpose of providing temporary borrowing to meet monetary liquidity requirements to finance Government expenditure.

Form and currency of treasury bills.

701. (1) A bill under this Title (hereinafter referred to as a treasury bill), shall be a bill in the prescribed form for the payment of the principal sum named therein in the manner and at the date therein mentioned, so that the date be not more than twelve months from the date of the bill.

(2) Every treasury bill shall be signed by the Accountant General after his authorisation in writing for the purpose by the Minister.

(3) Every treasury bill shall be for a sum of one thousand euro (1,000) or a multiple of one thousand euro (€1,000).

Issuing of treasury bills.

702. Treasury bills may be issued in the following ways:

(*a*) by holding auctions and issuing treasury bills to persons whose bids are accepted; or

(*b*) by the issue of treasury bills at fixed rates of discount.

Charge of treasury bills on Consolidated Fund.

703. (1) All money raised by the issue of any treasury bill shall be paid into the public account of the Government of Malta.

(2) Proceeds of treasury bills shall be charged on and paid out of the Treasury Clearance Fund and interest thereon shall be paid out of the Consolidated Fund.

Treasury bills in lieu of bills paid off.

704. Where any treasury bills are or are about to be paid off, the Minister may for the purpose of replacing the amount required to pay off the principal money of such bills or any of them, raise a sum not exceeding the amount of such principal money by the issue of treasury bills.

Exemption from duty. Cap. 364.

705. Treasury bills shall not be subject to any duty under the Duty on Documents and Transfers Act.

Cancellation of treasury bills.

706. Upon repayment of the principal money represented by the treasury bill, the bill shall be delivered up to the Accountant General to be by him cancelled.

Conditions governing treasury bills.

707. A treasury bill issued under this Title shall, unless expressly provided by law, continue to be governed by the conditions prevailing at the time of its issue, until it is repaid.

Electronic central depository for treasury bills.

708. (1) The Minister may issue directives for the creation of an electronic central depository for treasury bills and for the institution of an electronic book entry transfer system.

(2) Notwithstanding anything contained in this Title, the provisions relating to the issue of treasury bill certificates shall not apply in the case of bills registered under the electronic central depository for treasury bills.

Regulations.

709. (1) The Minister may make regulations to prescribe or provide for –

(*a*) the preparation, form, mode of issue, registration, negotiation, payment and cancellation of treasury bills;

(*b*) the issue of a new treasury bill in lieu of a defaced, lost or destroyed bill;

(*c*) the creation of an electronic central depository for treasury bills and services related thereto; and

(*d*) such other matters as may be deemed to be necessary for the purpose of carrying the provisions of this Title into effect.

(2) All regulations under this Title shall be published in the Gazette and laid on the table of the House of Representatives.

Title V

Of Saving Bonds

Interpretation.

710. In this Title, unless the context otherwise requires -

"the Account" means the Savings Bonds Income Account held with the Bank under article 719 of this Code;

Cap. 204.

"the Bank" means the Central Bank of Malta established by the Central Bank of Malta Act;

"bond" means a savings bond issued under this Title;

"financial year" has the same meaning as it has for the purposes of the Constitution;

"the Fund" means the Savings Bonds Fund established under article 718 of this Code;

"holder" in relation to a bond means the person or persons in whose name or names the bond appears in the register;

"interest date" in relation to a bond means the date on which interest is payable thereon;

"Minister" means the Minister responsible for finance;

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

"register" means the register of bonds kept for the purposes of this Title under article 715 of this Code; and

"registered" shall be construed accordingly.

Authority to issue bonds.

711. (1) Subject to the provisions of this Title, it shall be lawful for the Minister to authorise the issue of savings bonds up to an amount not exceeding eleven million, six hundred and forty-six thousand euro (€11,646,000) or such higher amount as the House may from time to time by resolution approve.

(2) The Minister may authorise different issues of bonds or successive issues in respect of a particular issue of bonds provided the total amount at any one time outstanding shall not in the aggregate exceed the amount or amounts authorised to be issued by this article.

(3) Any act done and any preliminary expenses incurred in connection with the issue, promotion and administration of bonds before the coming into force of this Title shall have the same effect and validity as if such acts had been validly done and such expenses been lawfully incurred under this Title; and any act or thing so commenced but remaining unfinished at the date of the coming into force of this Title may be continued under this Act as if such act or thing had been initiated under this Title.

Issue of bonds.

712.(1) Where the issue of bonds has been authorised in accordance with article 711 of this Code, it shall be lawful for the Bank, subject to the provisions of this Title and of any regulations made thereunder and under and in accordance with such directions as the Minister may give, to issue, promote and administer bonds for and on behalf of the Government.

(2) Any one issue authorised as aforesaid shall remain open for subscription until such date as the Minister may determine by notice published in the Gazette not later than one month before such date or until it has been fully subscribed, whichever is the earlier event.

(3) Applications for the purchase of bonds shall be lodged with the Bank or with such agents as may be appointed by the Bank.

Holder entitled to bond book.

713. The purchaser of a bond shall be entitled to obtain from the Bank a bond book made out in such form as the Bank may determine and in which shall be entered the name and address of the holder of the bond or bonds to which the bond book relates and all relevant transactions relating thereto and appearing in the register.

Non-transferability of bonds.

714. Save as may otherwise be prescribed, bonds shall not be transferable.

Registration of bonds.

715. (1) The Bank shall cause a register to be kept of all bonds and of the transactions relating thereto and shall cause such entries to be made therein as may be necessary to show the names, addresses and other relevant details of the holders of the bonds registered therein.

(2) Save as may otherwise be prescribed, no person shall be entitled to any bond or to any payment thereunder unless he is the holder thereof.

Closing of register.

716.(1) The register shall be closed throughout the twenty-eight days immediately preceding each interest date in respect of bonds having the same interest date.

(2) Bonds purchased during the period in which the register is closed in respect of them shall not be registered before the register re-opens.

(3) The closing of the register shall not affect the running of interest and bonds purchased during the period aforesaid and registered thereafter shall earn interest as if they had been registered on the date of purchase.

Register to be conclusive evidence of facts entered therein.

717. The entries in the register relating to the holders of bonds and to transactions concerning the bonds registered therein shall be conclusive evidence of the facts, matters and particulars to which those entries relate; and a document purporting to be issued by the Bank certifying that it is a true copy of such an entry in the register as aforesaid shall be receivable in evidence in any judicial proceedings and shall, until the contrary is proved be evidence of the contents of the entry in the register of which it purports to be a true copy.

Savings Bonds Fund.

718.(1) There shall be established a fund to be called the Savings Bonds Fund, and there shall be paid into the Fund all proceeds derived from the sale of bonds and

there shall be paid out of the Fund all repayments of bonds.

(2) The fund shall be held and administered by the Bank in accordance with such directions as the Minister, after consultation with the Bank, may give.

(3) The repayment of all bonds outstanding at any time, the payment of any interest and, if bonds are issued at a premium, of any premium thereon, and all payments due under this Title are guaranteed by the Government and such moneys as may be required to effect any payment as aforesaid under the said guarantee shall be a charge on the Consolidated Fund and be payable out of the said Consolidated Fund and the assets of the Government.

Savings Bonds Income Account.

719. (1) All dividends, interest and other revenue derived from investments or other employment of moneys in the Fund made under article 718(2) shall be paid into an account to be called the Savings Bonds Income Account and to be held with the Bank.

(2) There shall be charged upon and paid out of the Account without any further appropriation other than this Title -

(*a*) all expenses relating to the promotion and administration of the bonds and all other charges connected therewith, including all preliminary expenses incurred or paid before the coming into force of this Title; and

(*b*) all interest payable in respect of bonds.

Surplus and deficit in the account.

720. (1) Without prejudice to the provisions of article 718(3), if at any time during any financial year the amount to the credit of the Account is insufficient to meet the expenses and charges due on the said account in accordance with article 719(2), the Minister may advance to and the Bank shall pay into the said Account such sum or sums as may be necessary to meet the expenses and charges aforesaid under such terms and conditions as the Minister, after consultation with the Bank, may determine.

(2) If on the last day of any financial year there is a surplus in the Account, the Minister may, after consultation with the Bank, direct the transfer of the surplus or of any part thereof to the Consolidated Fund.

(3) No such transfer as aforesaid may be directed by the Minister unless the liquid assets of the Fund together with the estimated market value of the investments held by the Fund as on that day and any transfer of surplus from the Account into the Fund under this subarticle exceed by at least fifteen per cent the amount of bonds outstanding on that day; and in any such case any surplus in the Account shall either be retained in the Account or transferred to the Fund, or partly so retained and partly

so transferred, as the Minister may, after consultation with the Bank, direct.

Audit.

721. The Bank shall keep or cause to be kept proper accounts and other appropriate records relating to the issue, promotion and management of bonds and all such accounts and records shall be audited by the Auditor General.

Submission of estimates of revenue and expenditure.

722. The Bank shall, not later than three months before the beginning of each financial year, submit to the Minister an estimate of expenditure expected to be incurred in that year on the issue, promotion and management of bonds and an estimate for the same period of the receipts expected to accrue to the Account.

Submission of statements by Bank.

723. (1) The Bank shall, not later than three months after the close of each financial year, submit to the Minister:

(*a*) a statement of the assets and liabilities of the Fund as on the last day of the financial year to which the statement relates;

(*b*) a statement of the position of the Account as on the day aforesaid;

(*c*) a statement of the amount of bonds outstanding on the day aforesaid, showing the bonds issued and repaid during the year; and

(*d*) a list of the securities and other investments held by the Fund as on the day aforesaid, showing in respect of each such security or investment and nominal value, the purchase price and the latest known market value thereof.

(2) The statements and the list aforesaid shall be duly signed for and on behalf of the Bank and shall be certified by the Auditor General.

(3) The Minister shall cause the statements and the list submitted to him under this article to be published in the Gazette not later than one month after he has received them.

(4) Nothing in the foregoing provisions of this article shall be construed as precluding the Minister from requiring the Bank to submit to him such further information and documents relating to bonds and to the management thereof as he may deem necessary or expedient.

Terms of issue.

724. (1) In respect of each issue of bonds authorised by him, the Minister shall, before any such bonds are issued, specify by direction the matters mentioned in subarticle (2) and cause such direction to be published in the Gazette.

(2) The matters to be specified under subarticle (1):

(*a*) the rate of interest payable on the bonds;

(*b*) the date of maturity of the bonds;

(*c*) the rate at which the bonds are repayable on maturity;

(*d*) the dates in each year on which the interest on the bonds is payable; and

(*e*) the commission payable on the sale of the bonds.

Interest not payable after maturity.

725. No interest shall be payable on any bond after the date of its maturity.

Encashment of bonds.

726. (1) A bond may be encashed at par before the date of its maturity on the expiration of one month after the receipt of an application in writing made at any time by the holder to the Bank for such encashment.

(2) A holder encashing a bond before the expiration of six months after the date of purchase shall forfeit all interest that may have accrued thereon, and any interest that may have already been paid thereon shall be deducted from the par value of the bond.

Conversion of bonds.

727. (1) On maturity, the holder of a bond may convert the bond into another bond or bonds issued under this Title if the prospectus relating to such issue so stipulates.

(2) Such conversion shall be effected on the terms and conditions as may be attached to the new issue and in such manner as may be provided in the prospectus of the new issue or as may be prescribed.

Where valid discharge cannot be obtained.

728. Where the Bank is unable, for any reason, to obtain a valid discharge for any payment falling to be made to any person in respect of a bond, it may, unless otherwise provided by or under this Title, open an account in a bank in Malta for the benefit of the person to whom payment appears to be due and may, until payment can be effected to the said person or until a valid payment can otherwise be made, retain the amount due in the said account.

Forgery. Cap. 9.

729. For the purposes of the Criminal Code any document issued under this Title entitling a person to any payment under this Title or to any other document entitling a person to any such payment shall be deemed to be a document upon the

presentation of which a payment may be obtained within the meaning of article 167 of the said Code, and the provisions of that Code shall apply accordingly.

Power to make regulations.

730. (1) The Minister may make and, when made amend, repeal or re-enact regulations concerning all matters necessary or expedient for giving effect to any of the provisions of this Act and, without prejudice to the generality of the foregoing, to make provision for:

(*a*) the manner of purchase of bonds;

(*b*) the maximum holding of bonds by any person;

(*c*) the eligibility of persons to be holders of bonds;

(*d*) the cases and manner in which persons may be registered as joint holders of bonds;

(*e*) the replacement of lost documents and issue of duplicate bond books;

(*f*) the manner of payment of interest;

(*g*) the payment of principal or interest and the transfer of bonds in the case of persons under a disability and in case of the transmission of bonds of a deceased holder;

(*h*) all matters required or authorised by this Act to be prescribed and matters in respect of which the Act provides that they are subject to, or are made saving the provisions of, any regulations made under this Act;

(*i*) all matters incidental to or connected with any matter hereinbefore mentioned.

(2) Regulations made under this Title shall be laid on the table of the House as soon as may be after they are made and if, within the period of twenty-eight days after they are so laid, the House resolves that they be annulled or amended, the same shall thereupon cease to have effect or shall be so amended, as the case may require, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations.

(3) In reckoning for the purposes of subarticle (2) any such period of twenty-eight days, no account shall be taken of any time during which the House is not in session or during which it is adjourned for more than seven days.

Secrecy.

731. (1) No person who is appointed to discharge any duty in connection with bonds shall disclose the name of the holder or the amount which he may hold except for the purposes of this Title or unless required to do so under any law for the time being in force.

(2) Any person who contravenes the provisions of this article shall be liable on conviction to a fine (*multa*) not exceeding two hundred and fifty euro (€250).

Non-liability of Government and bank.

732. (1) The Government, the Bank and any person acting under their authority shall not be liable in respect of any payment made or act done in accordance with the provisions of this Title or of any regulations made thereunder unless it is shown, in respect of any such person as aforesaid, that he acted in bad faith; and any payment made as aforesaid shall, saving the provisions of this Title concerning the rights of third parties, be deemed to be a valid payment and the receipt by the person to whom the payment is made shall constitute a full discharge of the Government and the Bank for the amount so paid.

(2) Where a warrant for any payment in respect of a bond is issued as payable to some person who is neither the holder nor a person otherwise entitled by or under this Title to receive such payment, then if it is shown that -

(*a*) the warrant was issued in good faith and without negligence, and

(b) the issue of the warrant to that person is attributable to some act or omission on the part of the holder or of the person otherwise entitled to receive payment,

the warrant shall, saving the provisions of this Title concerning the rights of third parties, be deemed to have been duly issued to the person entitled to receive payment.

Saving for rights of third parties.

733. Nothing contained in article 732 of this Code shall operate so as to prevent the recovery by any person of any money lawfully due to him from the person to whom that money was paid or from any person claiming under such person or so as to affect the rights of any person in respect of any bond against a third party.

Exemption from duty on documents.

734. All documents and instruments made or used under the provisions of this Title or of any regulations made thereunder shall be exempt from duty on documents.

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Title VI

Of Premium Bonds Act

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Interpretation.

735. In this Title, unless the context otherwise requires -

"the Account" means the Premium Bonds Income Account held with the Bank under article 751 of this Code;

Cap. 204.

"the Bank" means the Central Bank of Malta established under the Central Bank of Malta Act;

"bond" means a premium bond issued under this Title;

"financial year" has the same meaning as it has for the purposes of the Constitution;

"the Fund" means the Premium Bonds Fund established under article 750 of this Code;

"holder" in relation to a bond means the person in whose name the bond appears in the register;

"Minister" means the Minister responsible for finance;

"percentage rate" means a rate per cent per annum on the value of a bond;

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

"register" means the register of bonds kept for the purposes of this Title under article 740 of this Code; and

"registered" shall be construed accordingly.

Authority to issue bonds.

736.(1) Subject to the provisions of this Act, it shall be lawful for the Minister to authorise the issue of premium bonds.

(2) Where the issue of bonds has been authorised under subarticle (1) it shall be lawful for the Bank, subject to the provisions of this Title and of any regulations made thereunder and under and in accordance with such directions as the Minister may give, to issue, promote and administer bonds for or on behalf of the

Government.

(3) Any act done and any preliminary expenses incurred in connection with the issue, promotion and administration of bonds before the coming into force of this Title shall have the same effect and validity as if such acts had been validly done and such expenses been lawfully incurred under this Title; and any act or thing so commenced but remaining unfinished at the date of the coming into force of this Title may be continued under this Title as if such act or thing had been initiated under this Title.

Denomination and purchase bonds.

737.(1) Bonds shall be issued in such denomination and may be purchased in such denomination and up to such amount as may be prescribed.

(2) Applications for the purchase of bonds shall be made to the Bank or to such agents as may be appointed by the Bank.

Holder entitled to bond certificate.

738. (1) The purchaser of a bond shall be entitled to obtain from the Bank a bond certificate made out in such form as the Bank may deem proper so however that all bonds' certificates shall be issued in the same form.

(2) Where more than one bond is purchased by the same person at any one time the purchaser may be issued with a document in lieu of the bonds' certificate in respect of the bonds purchased, specifying the total number of bonds held and the registered number of each of such bonds; but for all other purposes of this Title and of any regulations made thereunder each of the bonds shown in the document in lieu of certificates shall be deemed to be a separate registered bond in the same way as if a separate bond certificate had been issued in respect of each of them.

Non-transferability of bonds.

739. Save as may otherwise be prescribed, bonds shall not be transferable.

Registration of bonds.

740. (1) The Bank shall cause a register to be kept of all bonds and of the transactions relating thereto and shall cause such entries to be made therein as may be necessary to show the names, addresses and other relevant details of the holders of the bonds registered therein.

(2) Save as may otherwise be prescribed, no person shall be entitled to any bond or to any payment thereunder unless he is the holder thereof.

Register to be conclusive evidence of facts entered therein.

741. The entries in the register relating to the holders of bonds and to transactions concerning the bonds registered therein shall be conclusive evidence of the facts, matters and particulars to which those entries relate; and a document

purporting to be issued by the Bank certifying that it is a true copy of such an entry in the register as aforesaid shall be receivable in evidence in any judicial proceedings and shall, until the contrary is proved, be evidence of the contents of the entry in the register of which it purports to be a true copy.

The draw.

741.(1) There shall be held in each month after the third calendar month following the month during which bonds are first offered for sale a draw, to be held in the prescribed manner, for the allocation of the monthly prize fund to be determined in accordance with article 744 of this Code.

(2) The time and place of the draw shall be appointed by the Minister and notice thereof shall be published in the Gazette.

(3) At any time before the draw is held the Minister may alter the time and the place of the draw or either of them and in any such case notice of the alteration shall be published in the Gazette as soon as practicable,

(4) If on the day or days appointed for the draw as aforesaid the persons charged with the supervision of the draw are satisfied that the draw cannot be held or cannot be completed on that day or on those days they shall order the draw to be postponed and notify the Minister forthwith of their decision; and in any such case the Minister may authorise the draw to be continued on subsequent days or direct that the draw shall be held at such time and place as he may appoint; and where the time or place of the draw is so altered notice thereof shall be published in the Gazette.

(5) The place where the draw is held shall be accessible to members of the public during the draw.

Bonds eligible to participate in a draw.

743.(1) A bond shall be eligible to participate in a draw -

(*a*) if it has been registered for three consecutive calendar months following the month in which it was purchased, before the draw is held; and

(*b*) if it has not been repaid before the first day of the month in which the draw is held.

(2) A bond shall participate in every draw held while it is eligible to participate therein under subarticle (1).

(3) The holder of a bond shall not be entitled to more than one prize in any one draw in respect of the same bond, and if such bond is drawn more than once in any one draw he shall be allotted the highest prize for which it is so drawn.

Monthly prize fund and distribution of prizes.

744. (1) The prize fund for each draw shall be determined by calculating the current percentage rate for one month on each bond eligible to participate in that draw.

(2) The prize fund for any draw shall in no case be less than fifteen thousand euro (€15,000).

(3) The percentage rate shall be established from time to time by the Minister after consultation with the Bank and shall be published in the Gazette.

(4) The number and value of the prizes shall be such as the Minister shall, from time to time, after consultation with the Bank, determine and publish in the Gazette.

Prizes exempt from income tax. Cap. 123.

745. A prize payable under this Title shall be deemed not to be income for the purposes of the Income Tax Act.

Notification of prize winners and payment of prizes.

746. (1) As soon as practicable after a draw the registered numbers of the winning bonds shall be published in the Gazette and the Bank shall notify by letter every person in whose name a winning bond is registered.

(2) Subject to the provisions of this Title and of any regulations made thereunder a prize payable under this Title shall be paid to the person in whose name the winning bond in respect of that prize is registered.

Conditions for payment of prizes.

747. (1) A prize shall not be payable -

(*a*) if the bond drawn in respect of that prize is not presented before the expiration of twelve months from the date of issue of the notification given under article 731 of the Code; or

(*b*) if the bank declares that the bond is invalid; or

(*c*) if the bond contains any alteration, erasure or abrasion of any of the numbers printed thereon;

and in respect of any of the matters aforesaid the decision of the Bank shall be final.

(2) The Bank may at its discretion effect payment of the prize, under such conditions as it may deem fit to impose, if the claimant's inability to comply with subarticle (1)(*a*) is notified to the Bank in writing by the claimant and such notice is received by the Bank within the period of twelve months mentioned in that paragraph.

(3) Any prize which remains unpaid in accordance with subarticle (1) shall be forfeited to the Government and paid into the Account.

Repayment of bonds.

748. (1) Subject to the provisions of this Act and of any regulations made thereunder, bonds shall be repayable at their face value on application:

(2) No application for repayment shall be entertained if the bond has not participated in at least one draw.

Where valid discharge cannot be obtained.

749. Where the Bank is unable, for any reason, to obtain a valid discharge for any payment falling to be made to any person in respect of a bond, it may, unless otherwise provided by or under this Title, open an account in the Government Savings Bank for the benefit of the person to whom payment appears to be due and may, until payment can be effected to the said person or until a valid payment can otherwise be made, retain the amount due in the said account.

Premium Bonds Fund.

750. (1) There shall be established a fund to be called the Premium Bonds Fund, and there shall be paid into the Fund all proceeds derived from the sale of bonds and there shall be paid out of the Fund all repayments of bonds.

(2) The Fund shall be held and administered by the Bank in accordance with such directions as the Minister, after consultation with the Bank, may give.

(3) The repayment of all bonds outstanding at any time and all other payments due under this Title are guaranteed by the Government and such moneys as may be required to effect any payment as aforesaid under the said guarantee shall be a charge on the Consolidated Fund and shall be payable out of the said Consolidated Fund and the assets of the Government.

Premium Bonds Income Account.

751. (1) All dividends, interest and other revenue derived from investments or other employment of moneys in the Fund made under article 750(2) and all sums due to the Government under article 748(2) shall be paid into an account to be called the Premium Bonds Income Account and to be held with the Bank.

(2) There shall be charged upon and paid out of the Account without any further appropriation other than this Title:

(*a*) all expenses relating to the promotion and administration of the bonds and all other charges connected therewith, including all preliminary expenses incurred or paid before the coming into force of this Title; and

(*b*) all sums due by way of a prize under this Title and all other charges and expenses connected with the draw and with the distribution of prizes under this Title.

Surplus and deficit in the Account.

752. (1) Without prejudice to the provisions of article 750(3), if at any time during any financial year the amount to the credit of the Account is insufficient to meet the expenses and charges due on the said account in accordance with article 751(2), the Minister may advance to and the Bank shall pay into the said Account such sum or sums as may be necessary to meet the expenses and charges aforesaid under such terms and conditions as the Minister, after consultation with the Bank, may determine.

(2) If on the last day of any financial year there is a surplus in the Account, the Minister may, after consultation with the Bank, direct the transfer of the surplus or of any part thereof to the Consolidated Fund.

(3) No such transfer as aforesaid may be directed by the Minister unless the liquid assets of the Fund together with the estimated market value of the investments held by the Fund as on that day and any transfer of surplus from the Account into the Fund under this subarticle exceed by at least fifteen per cent the amount of bonds outstanding on that day; and in any such case any surplus in the Account shall either be retained in the Account or transferred to the Fund, or partly so retained and partly so transferred, as the Minister may, after consultation with the Bank, direct.

Audit.

753. The Bank shall keep or cause to be kept proper accounts and other appropriate records relating to the issue, promotion and management of bonds and to the management of the prize fund and all such accounts and records shall be audited by the Auditor General.

Submission of estimates of revenue and expenditure.

754. The Bank shall, at least not later than three months before the beginning of each financial year, commencing with the first financial year following the year in which bonds are first issued, submit to the Minister an estimate of expenditure expected to be incurred in that year on the issue, promotion and management of bonds and an estimate for the same period of the receipts expected to accrue to the Account.

Submission of statements by Bank.

755. (1) The Bank shall, not later than three months after the close of each financial year, submit to the Minister:

(*a*) a statement of the assets and liabilities of the Fund as on the last day of the financial year to which the statement relates;

(*b*) a statement of the position of the Account as on the day aforesaid;

(*c*) a statement of the amount of bonds outstanding on the day aforesaid, showing the bonds issued and repaid during the year; and

(*d*) a list of the securities and other investments held by the Fund as on the day aforesaid, showing in respect of each such security or investment the nominal value, the purchase price and the last known market value thereof.

(2) The statements and the list aforesaid shall be duly signed for and on behalf of the Bank and shall be certified by the Auditor General.

(3) The Minister shall cause the statements and the list submitted to him under this article to be published in the Gazette not later than one month after he has received them.

(4) Nothing in the foregoing provisions of this article shall be construed as precluding the Minister from requiring the Bank to submit to him such further information and documents relating to bonds and the management thereof as he may deem necessary or expedient.

Forgery. Cap. 9.

756. For the purposes of the Criminal Code any document issued under or in pursuance of this Title entitling any person to any payment under this Title or to any other document entitling a person to any such payment shall be deemed to be a document upon the presentation of which a payment may be obtained within the meaning of article 167 of the said Code, and the provisions of that Code shall apply accordingly.

Power to make regulations.

757. (1) The Minister may make and, when made, amend, repeal and re-enact regulations concerning all matters necessary or expedient for giving effect to any of the provisions of this Title and, without prejudice to the generality of the foregoing, to make provision for:

(*a*) the value of each bond in Malta currency;

(*b*) the manner of purchase of bonds;

(*c*) the maximum holding of bonds by any person;

(*d*) the eligibility of persons to be holders of bonds;

(*e*) the method of payment of any sum payable under this Title;

(*f*) matters relating to the eligibility of bonds for a draw;

(*g*) the control of draws, including provision in respect of the persons who are to supervise the draws, the powers and duties in relation to draws and the settlement of disputes or difficulties arising in connection therewith;

(*h*) the procedure to be followed in the holding of draws;

(*i*) the forfeiture of bonds in favour of the Government;

(*j*) all matters required or authorised by this Title to be prescribed and matters in respect of which this Title provides that they are to be subject to, or are made saving the provisions of, any regulations made under this Title;

(*k*) all matters incidental to or connected with any matter hereinbefore mentioned.

(2) Regulations made under this Title shall be laid on the table of the House as soon as may be after they are made and if, within the period of twenty-eight days after they are so laid, the House resolves that they be annulled or amended, the same shall thereupon cease to have effect or shall be so amended, as the case may require, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations.

(3) In reckoning for the purposes of subarticle (2) any such period of twenty-eight days, no account shall be taken of any time during which the House is not in session or during which it is adjourned for more than seven days.

Secrecy.

758. (1) No person who is appointed to discharge any duty in connection with bonds shall disclose the name of the holder or the amount which he may hold or any prize which he may have drawn except for the purposes of this Title or unless required to do so under any law for the time being in force.

(2) Any person who contravenes the provisions of this article shall be liable on conviction to a fine (*multa*) not exceeding two hundred and fifty euro (€250).

Actions against Government or Bank barred by lapse of two years from date of draw.

759. No action against the Government, the Bank or any person acting under their authority in connection with the payment of a prize under this Title arising out of anything done or omitted to be done by or on the directions of the Minister or the Bank under this Title shall lie unless it is commenced not later than two years after the date on which the prize was, or is claimed to have been, drawn.

Non-liability of Government and Bank.

760. (1) The Government, the Bank and any person acting under their authority shall not be liable in respect of any payment made or act done in accordance with the provisions of this Title or of any regulations made thereunder unless it is shown, in respect of any such person as aforesaid, that he acted in bad faith; and any payment made as aforesaid shall, saving the provisions of this Title concerning the rights of third parties, be deemed to be a valid payment and the receipt by the person to whom the payment is made shall constitute a full discharge of the Government and the Bank for the amount so paid.

(2) Where a warrant for any payment in respect of a bond is issued as payable to some person who is neither the holder nor a person otherwise entitled by or under this Title to receive such payment, then if it is shown that -

(*a*) the warrant was issued in good faith and without negligence, and

(*b*) the issue of the warrant to that person is attributable to some act or omission on the part of the holder or of the person otherwise entitled to receive payment,

the warrant shall, saving the provisions of this Title concerning the rights of third parties, be deemed to have been duly issued to the person entitled to receive payment.

Saving for rights of third parties.

761. Nothing contained in article 760 of this Code shall operate so as to prevent the recovery by any person of any money lawfully due to him from the person to whom that money was paid or from any person claiming under such person or so as to affect the rights of any person in respect of any bond against a third party.

Exemption from duty on documents.

762. All documents and instruments made or used under the provisions of this Title or of any regulations made thereunder shall be exempt from duty on documents.

Exemption from Public Lotto Ordinance. Cap. 70.

763. Article 11 of the Public Lotto Ordinance shall not apply to the issue of bonds or to the holding of a draw under this Title.

Part VII

Of Land and Sea Administration

Title I

Of Land Acquisition for Public Purposes

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Definitions.

764. In this Title unless the context otherwise requires -

"acquisition rent" means the periodical payments to be made in terms of article 787 (14), (15) and (16) of this Code;

"agricultural or rural land" does not include the domestic garden of a house or building or any other land within the precincts of a house or building nor a building site nor waste land but includes farmhouses, buildings intended mainly for the keeping of store cattle or other domestic animals, and other structures of a kindred nature;

"clearance rights" means the subjection of any land to the restrictive conditions referred to in article 789 of this Code;

"competent authority" means the Commissioner of Land;

Cap. 116.

"dwelling house" has the same meaning as that assigned to it in the Rent Restriction (Dwelling Houses) Ordinance;

"historical building" means land which:

Cap. 504.

(*a*) is scheduled in accordance with article 81 of the Environment and Development Planning Act; or

Cap. 445.

(*b*) constitutes cultural property for the purposes of the Cultural Heritage Act other than cultural property of the type referred to in article 52 of the said Act; or

S.L. 445.01

(*c*) is included in the list of buildings, sites and remains having a geological, archeological, antiquarian or artistic importance in the Schedule to the Protection of Antiquities Regulations; or

Cap. 445.

(*d*) is land which upon the advice of the Committee of Guarantee established by article 14 of the Cultural Heritage Act, given within two months after the said Committee receives a request for advice from the Minister and

also after the said Committee has granted an opportunity to any person with an interest in the land to make his submissions, it is appropriate to acquire for a public purpose on the grounds that:

(i) it is of such historical or cultural significance as to render it appropriate that it be acquired for the purpose of maintaining or augmenting the cultural environment or the tourism services provided in Malta; or
(ii) is closely connected to events of major historical importance which have contributed to the national memory or to the national historical identity;

"land" includes any building, tree or anything fixed in the land and any portion of the shore, and any easement in or over land and other rights of user and any right of interference;

"lease" includes the right of occupation or use of any land by any title whatsoever;

"new urban tenement" means any urban building including dwelling houses, buildings in which trade is carried on, clubs, hotels and lodging houses, which, apart from fittings, decorations, and alterations, even if structural, was not complete or ready for use on the 31st March, 1939;

"old urban tenement" means an urban building including dwelling houses, buildings in which trade is carried on, clubs, hotels and lodging houses, which, apart from fittings, decorations, and alterations, even if structural, was complete or ready for use on the 31st March, 1939 provided that any repair of an old urban tenement made as a consequence of damage by enemy or counter-enemy action or any rebuilding of an old urban tenement the cost of which was recognized as being payable under the provisions of the War Damage Ordinance, 1943[6] shall not change the "old" nature of the tenement. "Old dwelling house" and "old shop" shall be construed accordingly;

"owner" includes lessee or other person having an interest in the land;

"public purpose" means any purpose connected with exclusive government use or general public use, or connected with or ancillary to the public interest or utility (whether the land is for use by the Government or otherwise) or with or to town-planning or reconstruction or the generation of employment, the furtherance of tourism, the promotion of culture, the preservation of the national or historical identity, or the economic well being of the State or any purpose connected with the defence of Malta or connected with or ancillary to naval, military or air operations; and includes any other purpose specified as public by any enactment; and for the purposes of this definition, where the purpose for the exercise of any right under

[6]Repealed by Act XXIX of 1980.

this Title is connected with the utilisation of any land or any right in connection or in relation therewith for any purpose connected with the supply, storage or distribution of fuels or other sources of energy, or in connection with the provision of any utility or municipal services or infrastructural project shall be deemed to be connected with or ancillary to the public interest or utility;

"public tenure" means the tenure of land by a competent authority, of which tenure the main qualities are set out in article 782(5), (6) and (7) of this Code;

"recognition rent" means the periodical payments due in consideration of the holding of land on public tenure;

"subsoil rights" means the subjection of any land to the restrictive conditions regarding underground works and excavations referred to in article 789 of this Code.

Declaration by President that land is required for public purpose.

765. (1) The President of Malta may by declaration signed by him declare any land to be required for a public purpose:

(2) However:

(*a*) when land to which the said declaration refers is required for a public purpose on account of the fact that it is a historical building, the said declaration shall state the said fact; and

(*b*) a historical building that is privately owned and kept in a good state of maintenance and to which access to the public, whether against payment or otherwise, is granted on a regular basis by its owners or administrators for educational, cultural or touristic purposes shall not be acquired as a historical building under this Title.

Proclamation by President declaring land to be subject to clearance rights.

766. The President of Malta may for any public purpose declare by proclamation that any land is subject to clearance rights or to subsoil rights.

Acquisition of land for public purposes.

767. (1) The competent authority may acquire any land required for any public purpose, either -

(*a*) by the absolute purchase thereof; or

(*b*) for the possession and use thereof for a stated time, or during such time as the exigencies of the public purpose shall require; or

(*c*) on public tenure.

(3) After a competent authority has acquired any land for possession and use or on public tenure the conversion into public tenure or into absolute ownership of the terms upon which such land is held shall always be deemed to be an acquisition of land required for a public purpose and to be in the public interest.

(4) Subject to the provisions of articles 776, 777 and 778 of this Code, a competent authority may acquire land partly by one and partly by another or others of the methods in paragraphs (*a*), (*b*) and (*c*).

(5) Where the land is to be acquired on behalf and for the use of a third party for a purpose connected with or ancillary to the public interest or utility, the acquisition shall, in every case, be by the absolute purchase of the land.

Declaration by President of public purpose to be conclusive. Cap. 12.

768.(1) Without prejudice to the provisions of subarticle (2), no person shall require any proof of the public purpose referred to in articles 750 and 751 and in article 768(1) other than the declaration of the President of Malta.

(2) Any person who has an interest in land, in respect of which a declaration of the President as is referred to in subarticle (1) is made, may contest the public purpose of the said declaration before the Administrative Court by means of an application to be filed in the registry of the said Court within twenty days from the publication of the said declaration and the provisions of this Code applicable to the hearing of causes before the Administrative Court, including the provisions regarding appeals from such decisions, shall apply, *mutatis mutandis*, to the determination of the said application.

(3) The filing of an application in terms of this subarticle shall not hinder the continuance of the expropriation proceedings or the doing of anything that may be done in respect of the land as provided in this Code during the time when the application is still not determined, without prejudice to the right of the applicant to seek compensation in the event that the declaration of the President is found to be without public purpose.

(4) The competent authority shall by not later than twenty days after the publication of the declaration of the President of Malta affix as it deems appropriate and if physically possible a notice of the said declaration on the land about which that declaration was issued.

Power of competent authority to dispose of land.

769. The competent authority may deal with and dispose of land acquired by it in such manner and subject to such conditions as it considers expedient having regard to the public interest or utility.

Preliminary investigation.

770. (1) Whenever the President of Malta considers it desirable that any land should be examined with a view to its possible acquisition for any public purpose, he may make a declaration signed by him to that effect, and thereafter it shall be lawful for any person either generally or specially authorised by the competent authority in that behalf, and for his assistants and workmen to do all or any of the following things:

(*a*) to enter upon and survey and take levels of any such land;

(*b*) to dig or bore under the subsoil;

(*c*) to do all other acts necessary to ascertain whether the land is adapted for such purpose;

(*d*) to clear, set out and mark the boundaries of the land proposed to be taken and the intended line of work proposed to be made thereon.

(2) No person shall enter into any building or upon any court or garden attached to any dwelling-house except with the consent of the occupier thereof, without previously giving such occupier at least seven days notice of his intention to do so.

(3) As soon as conveniently may be after any entry made under subarticles (1) and (2), the competent authority shall pay for all damage done, and in case of dispute as to the amount to be paid, either the competent authority or the person claiming compensation may refer such dispute to the Administrative Court.

(4) An appeal shall lie from the Administrative Court's decision to the Constitutional Court in terms of article 997 of this Code.

Notice of intention to take land.

771. (1) Whenever the President of Malta declares that any land is required for a public purpose, the competent authority shall cause a copy of such declaration (together with particulars sufficient for the purpose of identifying the land) to be published in the Gazette, in at least two local newspapers (one of which must be a newspaper published in English and the other a newspaper published in Maltese) and on the notice board of the office of the Local Council of the locality where the land is situated.

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(2) The competent authority shall also file a copy of the declaration and of the particulars in the registry of the Administrative Court, and shall cause a copy thereof to be served through the court's registry in the manner prescribed by the Code of Organisation and Civil Procedure on every owner of and on every other party having a legal interest in the land to which the declaration refers, of whose existence and identity the competent authority is aware.

Proceedings when owner is unknown, etc. Cap. 12.

772. When the owner or any of the owners of land to be compulsorily acquired by a competent authority is unknown or uncertain or is absent or a minor or an incapacitated person not legally represented or not known to the competent authority to be legally represented, proceedings under this Title shall be instituted against curators to be appointed by the Administrative Court, to represent that owner or owners as provided in the Code of Organization and Civil Procedure.

Proceedings when land belongs to person subject to disability. Cap. 26.

773. (1) Where the land to be acquired by a competent authority belongs to a person interdicted, or to a minor, or to a person subject to any other disability, or is dotal or subject to entail or to usufruct or to use or habitation, or is the object of an emphyteutical grant of which the time is determined by reference to the duration of lives, no special judicial or other authorization shall be necessary, but any compensation payable in terms of this Title, together with a sum amounting to 3% on the compensation assessed, shall be deposited in the Civil Court (Voluntary Jurisdiction Section), and shall not be withdrawn without the authorization of the competent court. The provisions of article 2 of the Investment of Certain Moneys Ordinance shall apply in the case of property subject to entail unless the court shall otherwise provide.

(2) In the case of the deposit of the compensation under the provisions of subarticle (1), the lawful expense of the proceedings for the withdrawal of the deposit shall be charged to the competent authority.

(3) The provisions of subarticles (1) and (2) shall apply similarly to acquisition rent and to recognition rent but so that in no case shall additional amounts, computed at 3% of each of the successive instalments deposited of acquisition rent or of recognition rent, be payable in respect of more than four instalments of acquisition rent or of recognition rent due in respect of any one acquisition for the possession and use of land or, as the case may be, on public tenure.

Rights of Government over land.

774. (1) Within fourteen working days from the date of publication in the Gazette, required under article 771(1), of a declaration made under article 765, the owner and the occupier, if any, of the land shall yield up possession thereof to the competent authority. However, if the land of which possession is so required, is a dwelling house actually occupied as such, the occupier shall not be required to yield up possession thereof before the lapse of twenty days from the date when alternative accommodation, reasonably sufficient for the persons resident in that dwelling house, has been offered in writing by the competent authority to the said occupier.

(2) On the lapse of the time mentioned in subarticle (1) the competent authority may without any further formality enter upon and take possession of the land or authorize any person to enter upon and take possession of the land and,

notwithstanding any restriction imposed on such land by any other law or by any instrument or otherwise, do or authorize any person to do in or upon or in relation to such land any work or other thing whatsoever which any person having an unrestricted interest in the land would be entitled to do by virtue of that interest saving the liability of the competent authority to re-instate the land or pay compensation for any damage caused if in the cases permitted by this Title the acquisition is not completed.

(3) Without prejudice to the provisions of article 785(3), simple interest at the rate of five *per centum per annum* shall accrue on the value of the land in accordance with the Fourteenth Schedule, and for the period indicated in such Schedule, in favour of any person having a right of compensation in respect of any land acquired by the absolute purchase thereof under this Title.

(4) Where a notice to treat has been issued under this Title, the interest shall accrue on the value determined in such notice, from the date of the taking of possession of the land by the competent authority up to the date of transfer by title of absolute purchase in favour of the Government of Malta.

(5) When a notice to treat has been issued and the person entitled to compensation elected not to accept the price offered therein, simple interest at the rate of five *per centum per annum* shall accrue on the value of the land in accordance with the Fifteenth Schedule, and for the period indicated in that Schedule, in favour of any person having a right of compensation in respect of any land acquired by absolute purchase thereof under this Title.

Amount of compensation may be fixed by agreement*:*

775. (1) The amount of compensation to be paid for any land required by a competent authority may be determined at any time by agreement between the competent authority and the owner, saving the provisions contained in subarticle (2).

(2) The compensation shall in the case of acquisition of land for temporary possession and use be an acquisition rent and in the case of acquisition of land on public tenure be a recognition rent determined in either case in accordance with the relevant provisions contained in article 787 of this Code.

(3) Acquisition rent or recognition rent as the case may be shall be payable to the person who is entitled to receive, or is immediately entitled to let and receive, the rental on lease of the land affected or the tutor, curator, administrator, procurator or other representative of the person so entitled.

(4) If the competent authority is not aware of the name and residence within Malta of the person to whom acquisition rent or recognition rent is so payable it may deposit such rent in the Civil Court (Voluntary Jurisdiction Section) in accordance with the provisions of article 773 of this Code.

Part of a house.

776. An owner shall not be required to sell or convey to the competent authority a part only of any house or other building, if such owner is willing and able to sell and convey the whole thereof.

Portion of building site.

777. (1) An owner shall not be required to sell or convey to the competent authority a portion only of a building site, if the remaining portion measures less than two hundred and twenty square metres, or if, in the opinion of the Administrative Court, the remaining portion, owing to its conformation and extension, will cease to be adaptable for building purposes under the laws and regulations relating to buildings; in any such case the competent authority shall acquire the whole site.

(2) If the owner owns adjacent land, the Administrative Court may declare that the foregoing provisions of this article do not apply to the land to be acquired.

Portion of land.

778. An owner shall not be required to transfer a portion only of any land if such portion exceeds three quarters of the area of the whole and the remaining portion measures less than one thousand one hundred and twenty-four square metres and that owner does not own any adjacent land.

Valuation of land not being a building site.

779. (1) Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of compulsory acquisition as rural land or as wasteland, as the case may be.

(2) In determining such compensation, consideration shall be given to the value of any structures existing thereon and whether such structures are covered by a permit according to law.

Building sites.

780. (1) Land, other than a historical building, shall be deemed to be a building site if it falls within the limits of a building scheme or as indicated and approved for development in a Structure Plan or subsidiary plan which has been adopted for the time being in force under any law relating to planning.

(2) In determining the compensation due for a building site, consideration shall be given to the use or development that can be made thereof or thereon in accordance with the provisions of subarticle (1).

Valuation of land expropriated prior to 2003.

781. Notwithstanding the provisions of this Title or any other law, the value of any land -

(*a*) still in the course of acquisition on the 1st January 2005;

(*b*) in respect of which a declaration under article 3 was issued before the 5th March 2003, and

(*c*) in respect of which a notice to treat was not issued before the 1st January 2005 under the provisions of this Title as in force before the date mentioned in this paragraph,

shall, saving any interests due until payment is made under article 774(3), be its value as on the 1st January 2005.

Land occupied for ten years; application that it be purchased or acquired on public tenure, etc.

782. (1) When land has been acquired by a competent authority for use and possession during such time as the exigencies of the public purpose shall require, the owner may, after the lapse of ten years from the date when possession was taken by the competent authority, apply to the Administrative Court for an order that the land be purchased or acquired on public tenure or vacated within a period of one year from the date of the order, and the land shall either be vacated or acquired on public tenure or purchased upon compensation to be determined in accordance with the provisions of this Title.

(2) When land which has been in the possession and use of a competent authority is vacated, the competent authority may remove all buildings, erections, or other improvements erected or made thereon during the period of occupation, making such compensation to the owner of the land for the damage which may have been caused by the erection of such buildings or otherwise, as may be agreed between the competent authority and the owner or as, in default of agreement, shall be assessed by the Administrative Court.

(3) When a competent authority has acquired any land for possession and use or, as the case may be, on public tenure and subsequently converts into public tenure or, as the case may be, into absolute ownership the title upon which such land is held, in assessing for purposes of that conversion of title the amount of the recognition rent or, as the case may be, of the compensation for the acquisition of the absolute ownership, no regard shall be had to any building, erection or other improvement erected or made on the land after the date upon which the possession thereof was taken by the competent authority and for purposes of such assessment the land shall be deemed not to have been altered in any material particular as from the first day of such possession.

(4) When the ownership of land which is in the possession and use of a competent authority or is held by it on a public tenure is transferred by its owner to a third party, such transfer shall not affect in any way the subsisting possession or tenure by the competent authority, except that as from the first due day of an

instalment of acquisition rent or of recognition rent following service on the competent authority of a judicial letter sent by the transferor and by the transferee jointly and containing full information of the transfer effected or, alternatively, following the submission of proof by the transferor or by the transferee to the satisfaction of the competent authority that the transfer has in fact taken place in a form valid according to law, the acquisition rent or the recognition rent shall be paid to the transferee.

(5) Public tenure shall of its nature endure in perpetuity, without prejudice to any consolidation by mutual consent or otherwise according to law of that tenure with the residual ownership of the land; and the recognition rent payable in respect thereof shall in every case be unalterable, without prejudice to the effects of any consolidation, total or partial. The residual ownership of land held on public tenure with the inherent right to receive recognition rent, shall, for all purposes of law, be deemed to be an immovable right by reason of the object to which it refers and shall be transferable according to law at the option of the owner, from time to time, of that right.

(6) The competent authority shall not be under any restriction as to the use it may make from time to time of land held by it on public tenure, saving its liability to pay any recognition rent that may be due thereon; it may demolish and not replace any structures thereon, and it may alter in any manner the use to which the land was previously put; it shall be entitled to any benefit whatsoever which every parcel of land held by it on public tenure may yield, including treasure trove found thereon, saving in this case such portion thereof as, according to law, may be due to the finder; and it shall have the right to recover any such land from any holder, even if such holder is entitled to a recognition rent in respect of the same land.

(7) The person entitled or the persons jointly entitled to receive a recognition rent shall not in any case be bound to carry out in or on the land or in or on any part of the land, in respect of which he or they are entitled to that recognition rent, any work imposed by law on an owner of land; nor shall his or their right to the recognition rent be affected in any way by the destruction in whole or in part and from whatsoever cause of any or all structures originally or subsequently erected on the land.

(8) The competent authority may, at any time, put up for sale by tender any block of urban tenements or one or more urban tenements capable of separate occupation or any parcel of land, in each case held by the competent authority on public tenure; and in connection with such or any other purpose it shall be lawful for the competent authority to apportion, as it deems fit, to any specified lot or lots comprising part of a parcel of land originally acquired as subject to a single recognition rent, a part or the whole of that recognition rent. Any such sale, however, shall be subject to the following special provisions:

(*a*) the recognition rent apportioned to any plot shall not exceed one half of the income which in the opinion of the Director of Public Works that plot might reasonably be expected to yield at the time of disposal, and the certificate of the Director of Public Works shall be final;

(*b*) in respect of each such case the proposed sale shall be notified by letter on behalf of the competent authority to the person at the time entitled or to the persons at the time jointly entitled to receive the original recognition rent or any part of it who appears or appear as such on the administrative books of the competent authority; but so that any default of such notification shall not in any case invalidate a sale or render it voidable;

(*c*) if a person who is at that time entitled to receive the original recognition rent or any part of it and appears as such on the administrative books of the competent authority, makes a tender lower than the highest tender by not more than ten *per centum* of that highest tender, and if, within six working days of the notification made to him in writing by the competent authority of the availability to him of the option hereunder and of the offer contained in the highest tender, that person declares in writing to the competent authority his intention of availing himself of the option hereunder, that person shall be allowed to augment the tender made by him to a parity with the highest tender. On an equality of tenders, either original or following the exercise of the option aforesaid, the tender of the person entitled to receive the recognition rent or a part thereof shall be preferred to the tender made by a person not so qualified;

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(*d*) on completion of such a sale, the liability of the competent authority to pay the recognition rent to which the land sold is subject and any charge of that recognition rent on the Consolidated Fund shall cease, but a special privilege on the immovable sold, ranking and governed in every other way on a parity with the privilege competent to the "*dominus*" over the "*dominium utile*" under article 2010 of the Civil Code, shall obtain on the immovable in favour of the person entitled or of the persons jointly entitled to the recognition rent thereon and who is not the purchaser or are not the joint purchasers of the immovable;

(*e*) a sale made by the competent authority of a part of a parcel of land held by it on public tenure, as subject to an apportioned part of the recognition rent due in respect of the whole of that parcel of land, shall not as a consequence bring about the obligation of the competent authority either to guarantee payment of that part of the recognition rent apportioned to the part thus transferred of the parcel of land or to purchase absolutely the residual ownership of any other part of the same parcel of land, and no joint and several action shall lie in respect of the different portions of the

original recognition rent;

(*f*) on any such sale as aforesaid no fine or other acknowledgement fee shall be due to the person entitled or persons jointly entitled to receive the recognition rent;

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(*g*) the relations between the purchaser or joint purchasers of land previously held by the vendor on public tenure and the person entitled or the persons jointly entitled to receive a recognition rent thereon shall be governed by the law of emphyteusis as set out in the Civil Code.

Termination of lease: compensation.

783. (1) When land, other than rural land, has been acquired by a competent authority, either absolutely or for a time, or on public tenure, and that land is subject to a lease other than an emphyteutical lease, then, no compensation for the termination of the lease shall be paid to the tenant or occupier, if a full year's notice to quit is given by the competent authority to such tenant or occupier.

(2) If less than a year's notice to quit is given, due compen-sation shall be paid to the tenant or occupier.

(3) Compensation for the termination of the lease shall in no case exceed the fair rent of the land for a period of two years.

(4) In fixing the amount of compensation within the limit aforesaid, regard shall be had to the remaining period of the lease and to all the circumstances of the particular case.

Termination of lease of rural land: compensation.

784. (1) When rural land has been acquired by a competent authority either absolutely or for a time or on public tenure, and that land is subject to a lease other than emphyteutical lease, there shall be paid to the tenant or occupier of such land a fair compensation in respect of any agricultural improvements carried out by the tenant or occupier or by a member of the family in the said rural land during the period of eight consecutive years preceding the date of termination of the lease and an amount equal to the value of the products gathered by the tenant, occupier or by a member of the family from the said rural land, after deduction of the expenses incurred towards its cultivation in the last four years immediately preceding the date of such termination.

(2) There shall not be deducted as part of the said expenses the cost of the tenant's or occupier's own labour or the labour of any member of the family in the rural land.

(3) Notwithstanding the provisions of subarticle (1), if the compensation in respect of improvements referred to in the said subarticle, or a part thereof, is payable to the owner of the rural land in terms of the agreement governing the contractual relations between such owner and the tenant or occupier of the rural land, such compensation or the part thereof which is so payable shall not be paid to the said tenant or occupier.

(4) The total aggregate sum payable to the tenant or occupier of the rural land under the last preceding subarticle shall in no case be less than the fair rent of the rural land for a period of two years.

(5) In this article "member of the family" means a lineal ascendant, a lineal descendant, a widow or a widower, a son-in-law, and a widowed daughter-in-law while not remarried, of the tenant or occupier.

Procedure.

785. (1) If the competent authority and the owner agree as to the amount of compensation for any land, the Administrative Court, on the application of any one of the parties, shall make an order carrying the agreement into effect. However, the amount of acquisition rent or recognition in rent, as the case may be, shall be determined in terms of the relevant provisions of article 787 of this Code.

(2) Where the land is to be acquired by the absolute purchase thereof (including the acquisition by conversion from possession and use or public tenure into absolute ownership), the President's Declaration issued for the purposes of article 765 of this Code, shall state the amount of compensation which the competent authority is willing to pay for the land to which the declaration refers. The Declaration shall have attached with it a valuation drawn up by an architect and where available a site plan of the land described in the Declaration.

(3) Within twenty days from the publication of the President's Declaration as is referred to in subarticle (2) in the Gazette the Government shall deposit in an interest bearing bank account (which will guarantee a minimum of interest per annum as the Minister responsible for lands may by regulation under this subarticle prescribe) a sum equal to the amount of compensation offered in the President's Declaration. Such sum shall be freely withdrawn together with any interests accrued thereon by the person or persons entitled to such compensation upon evidence to the entitlement thereto, in a manner satisfactory to the competent authority.

(4) In cases where the President's Declaration refers to the acquisition by conversion from possession and use or public tenure into absolute ownership, the government shall not be bound by the time-limit established in this subarticle with respect to the deposit of a sum equal to the amount of compensation offered in the President's Declaration, and may deposit such amount any time thereafter; and in such cases simple interest at the rate of five *per centum per annum* shall be paid annually on the sum declared in the President's Declaration up to the date of the

eventual deposit in the Bank.

(5) In such cases, any proceeds from the sale, alienation or the creation of any real and personal right on such land, and any proceeds from any rent or other annual payment over such land, shall be retained by the Commissioner for Land and reserved for the payment to the rightful owners of the sum and interests referred to in the previous proviso and only such proceeds or payments in excess of such sum shall be transferred to and received by the Consolidated Fund.

(6) The competent authority shall signify its acceptance or otherwise of the evidence submitted by the persons referred to in subarticles (3) and (5), by means of a judicial act within two months from the submission of such evidence.

(7) The amount deposited as provided in subarticles (3), (4) and (5) together with any interests accruing thereon may be withdrawn as provided in the said subarticle whether or not the sum deposited as compensation has been accepted as the amount of compensation due, and the withdrawal of such deposit interests shall not prejudice the right competent to any person to take action according to this Ordinance for the purpose of determining any further compensation that may be payable to him in accordance with this Title.

(8) Where the person entitled to compensation does not accept that the amount deposited is adequate, such person may apply to the Administrative Court for the determination of the compensation in accordance with the provisions of this Title. Such application shall, on pain of nullity, state the compensation that in the opinion of the applicant is due.

(9) Such application shall be filed in the registry of the Administrative Court within twenty days from the notification of the judicial act by the competent authority accepting proof of evidence in accordance with subarticle (6). The Administrative Court shall determine such compensation and shall give all necessary orders and directives in accordance with this Title.

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(10) Upon the making of a Declaration by the President in accordance with this Title that any land is to be acquired by the absolute purchase thereof, the absolute ownership of the land to which the declaration refers shall be deemed to be a registration area for the purposes of the Land Registration Act and the absolute ownership thereof shall by virtue of this Title and without any further assurance or formality, be transferred to and be acquired by the competent authority free and unencumbered from any charge, hypothec or privilege and with all the appurtenances thereof, and the competent authority shall cause such land to be registered in the Land Registry in its name in accordance with the Land Registry Act within three months from the issue of the Declaration of the President.

(11) The right to withdraw the compensation deposited in accordance with subarticles (3), (4) and (5) and to any further compensation that may be due under this Title (hereinafter referred to as "the compensation rights") shall be deemed to be an immovable right by reason of the object to which it refers and shall be transferable accordingly. Any charge, hypothec or privilege which prior to the acquisition of the land by the competent authority attached to such land, shall continue to attach to the compensation rights with the same ranking and priority as it attached to the land.

(12)Where the compensation payable in respect of land acquired by the absolute purchase thereof is determined, whether by agreement or by decision of the Board, any sum due as compensation over and above any sum deposited in accordance with this article together with interests thereon in accordance with article 774(3), shall be paid to the person entitled thereto by the competent authority not later than three months from the date on which such compensation was determined as aforesaid.

(13) The compensation due for the acquisition by absolute purchase of any land, and the sum to be deposited in accordance with this article shall be:

(*a*) in cases other than those falling under paragraphs (*c*) and (d), such compensation as is established in accordance with the provisions of this Title regard being had to the value at the date of publication of the Declaration by the President in the Gazette;

(*b*) in the case of a historical building the value thereof shall be calculated as the higher of the following:

(i) the full value of the historical building if sold on the open market subject to the condition that the use that can be made thereof shall be limited to use for educational, touristic or cultural purposes less the amount required for the historical building to be restored in accordance with internationally accepted guidelines and standards of craftsmanship and practice for the purpose of rendering it suitable for such educational, touristic or cultural use; or

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(ii) where the historical building was originally Government-owned and transferred by Government, by updating the amount for which the said historical building was acquired from the Government commencing from a basis year not earlier than 1946 according to the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance from the date of the said acquisition until the date of the Declaration of the President of Malta made in terms of article 765 of this Code and adding thereto interest on the amount as updated at the rate of five per cent per annum from the date when the said historical building was transferred by the Government until the date of the said Declaration of the President of Malta, plus the value

of any improvements made to the building by the owner between the said dates, depreciated according to established accountancy standards. In calculating the compensation in accordance with this subparagraph:

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1. where the historical building was originally Government-owned and transferred by Government and the said transfer took place thirty years or more before the date of the Declaration of the President of Malta in respect thereof, the amount resulting after the value of the building based on the amount for which the said historical building was acquired from the Government is updated until the date of the said Declaration by the President of Malta in accordance with the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance as aforesaid shall be multiplied by fifteen;

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2. where the historical building was originally Government-owned and transferred by Government and the said transfer took place less than thirty years but more than twenty years before the date of the Declaration of the President of Malta in respect thereof, the amount for which the said historical building was acquired from the Government is updated until the date of the said Declaration by the President of Malta in accordance with the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance shall be multiplied by ten;

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3. where the historical building was originally Government-owned and transferred by Government and the said transfer took place more than ten but less than twenty years before the date of the Declaration of the President of Malta in respect thereof, the amount for which the said historical building was acquired from the Government is updated until the date of the said Declaration by the President of Malta in accordance with the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance shall be multiplied by five;

4. where the foregoing sub-sub-paragraphs 1 and 2 of this sub-paragraph apply, the interest payable according to subparagraph (ii) shall only be payable on the amount as updated according to the said subparagraph and not also on the increase resulting after sub-sub-paragraphs 1, 2 or 3 are applied; or

(iii) where the historical building is not a building which was originally Government-owned, the amount established as the value of the building by the person who is the owner of the building at the time of publication of the Declaration of the President of Malta in a declaration in respect of the transfer *causa mortis* of the property filed in accordance with the Duty on Documents and Transfers Act, or according to the declaration made for succession duty purposes according to any other law which has from time to time governed or is governing succession duty, updated in accordance with the provisions of subparagraph (ii), including the proviso thereto, which shall apply *mutatis mutandis*. Where only an undivided portion or undivided portions of a historical building have been so declared in respect of a transfer *causa mortis* or in any other manner for succession duty purposes, the value of the whole building for the purposes of this subparagraph (iii) shall be based on the projection of the value declared in respect of the said portion or portions averaged out together in such a manner as to cover one hundred per cent of the value of the building increased by ten per cent;

(iv) where the historical building, whether it originally belonged to Government or not, either has never been transferred *causa mortis* or after being transferred *causa mortis* was transferred *inter vivos* under an onerous title, the amount paid for such transfer by means of the most recent transfer prior to the date of publication of the Declaration of the President of Malta updated in accordance with the provisions of subparagraph (ii), including the sub-sub-paragraphs thereto, which shall apply *mutatis mutandis*. Where the Administrative Court in proceedings filed before it in terms of this Title on the compensation to be paid for the acquisition of a historical building, considers that no reasonable relationship of proportionality exists between the compensation amount resulting from the application of paragraphs (i), (ii), (iii) or (iv) and the open market price which in the opinion of the Board, after taking into consideration all relevant issues of fact and of law, that property would have fetched had it been sold voluntarily *tale quale* on the open market, at the time of publication of the Declaration of the President of Malta, the Board may authorise payment of a compensation amount based on the average between the computed amount in terms of paragraphs (i), (ii), (iii) or (iv) and such amount as the Board would consider to be the open market value;

(v) notwithstanding the other provisions of this subarticle, where the value of a historical building as calculated in accordance with subparagraphs (i), (ii), (iii) or (iv) including the sub-subparagraphs thereof, shall result in an amount that is higher than the open market

value of the said building at the time of publication of the Declaration of the President of Malta in respect thereof, the value of the historical building shall not exceed the said open market value;

(vi) in this subarticle:-

"the full value of the historical building" means:

(*a*) if the historical building belongs in absolute ownership to the person from whom it has been expropriated, the full value of that building;

(*b*) if the historical building is possessed by the person from whom it has been expropriated under title of perpetual emphyteusis, the full value of such perpetual emphyteusis at the time of the Declaration of the President of Malta;

(*c*) if the historical building is possessed by the person from whom it has been expropriated under title of temporary emphyteusis or under any other temporary title, the full value of such title of temporary emphyteusis or of such other temporary title at the time of the Declaration of the President of Malta;

"was originally Government-owned" means that the historical building was possessed by Government under a title of full ownership, perpetual emphyteusis or by virtue of any other temporary real right at any time from the 27th July 1925 onwards;

"transferred by Government" includes any transfer of a real right over immovable property including transfer under title of sale and emphyteusis whether in perpetuity or temporarily;

"the amount for which the said historical building was acquired from the Government" means:

(*a*) in case of a transfer under a title of sale, the price paid for the sale;

(*b*) in case of a transfer under a title of perpetual emphyteusis or under a title of temporary emphyteusis for a period exceeding ninety-eight years, the premium amount paid for the concession of that emphyteusis, if any, less one per cent for each year that passed from the time of the concession, incremented by the amount resulting after the ground rent payable annually is capitalised at a rate of five per cent;

(*c*) in case of a temporary emphyteusis for a period of ninety-eight years or less or of another temporary real right for such time, the premium amount paid for the concession of such emphyteusis or for such real temporary right, if any, less one per cent for each year that passed from the time of the concession or from the time of transfer of such title, incremented by the amount resulting after the ground rent payable annually is capitalised at a rate of eight per cent;

"emphyteusis" includes sub-emphyteusis;

"interest" means simple interest.

(*c*) in the case of conversion from possession and use into absolute purchase a sum arrived at by the capitalisation at the rate of one *per centum* of the annual acquisition rent due under the provisions of this Title;

(*d*) in the case of conversion from public tenure into absolute purchase a sum arrived by the capitalisation at the rate of one point four *per centum* of the annual recognition rent due under the provisions of this Title.

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(14) Property regulated by the Ecclesiastical Entities (Property) Act, shall notwithstanding any provision of this Title continue to be governed by the provisions of the said Act, and the procedures and criteria therein established for the determination of compensation and the payment thereof shall apply accordingly.

Powers of the Administrative Court.

786. (1) The Administrative Court shall be competent -

(*a*) to order immediate possession of any land to be given to the competent authority;

(*b*) to order the transfer of any land to the competent authority in absolute ownership or on public tenure;

(*c*) to order the subjection of land to any easement;

(*d*) to order the termination of any lease;

(*e*) to assess the amount of compensation payable under any of the provisions of this Title and for that purpose to declare whether any area is a building site or agricultural or waste land;

(*f*) to order the execution of its own decisions:

(2) The amount of compensation to be assessed by the Board in accordance with the provisions of paragraph (*e*), shall not exceed the higher amount of compensation as proposed by any of the parties.

(3) Whenever a question arises before the Administrative Court requiring the valuation of any land or any other technical opinion in connection with any case before the Administrative Court, the Chairman shall appoint two experts who are not chosen from amongst the members of the Panel to examine the land in question, or to take cognizance of the record of the case relative to the matter in which the technical opinion is requested; and such two members shall present their report to the Chairman during the sitting or file the said report in the Registry of the Board as the Chairman may direct. The report shall be accessible to the parties who shall be granted the opportunity to put questions in writing thereon to the said two experts and to comment thereon to the Administrative Court.

(4) The parties, without prejudice to their right to bring during the evidence stage their own expert witnesses *ex parte*, shall not be entitled to request the appointment of additional referees.

(5) When the report referred to in subarticle (3) consists of a valuation it shall state:

(*a*) the date of the valuation;

(*b*) the date with reference to which the property was valued;

(*c*) the state which it is calculated that the property was in on the date with reference to which the property was valued;

(*d*) the use which was being made of the property on the date with reference to which it was valued, including information as to whether the property was at the said time subject to rights of third parties such as emphyteusis, use, usufruct or lease;

(*e*) the comparable transactions, if any, with reference to which the property was valued.

(6) The two experts shall employ their best efforts to value the property on the basis of reference to comparable transactions.

(7) The Chairman may also require the two experts to attend the sitting of the Board when that case is being considered by the Administrative Court as he may deem appropriate or if the said experts require additional information from the parties or need to hear any particular witnesses.

(8) The parties shall be heard on a day to be fixed by the Administrative Court.

Assessment of compensation by the Administrative Court.

787. (1) Without prejudice to any special provision contained in this Title, in assessing compensation the Administrative Court shall act in accordance with the following rules:

(*a*) no allowance shall be made on account of the acquisition being compulsory;

(*b*) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realize:

Provided that -

(i) the value of the land shall be the value as at the time when the President's Declaration was served, without regard to any improvements or works made or constructed thereafter on the said land and where the land was in the possession of the competent authority immediately prior to the service of the President's Declaration no regard shall be had, in assessing the value of the land, to any improvements or works made or constructed by the competent authority while in possession of the land;

(ii) where a part only of the land belonging to any person is taken under this Title, any enhancement of the value of the residue of the land by reason of the proximity of any improvements or works made or constructed by the competent authority within eighteen months before the publication of the President's Declaration, or to be made or constructed by the competent authority within eighteen months after the publication of the President's Declaration shall be taken into consideration;

(iii) the damage, if any, sustained by the owner by reason of the severance of the land from other land belonging to such owner or other injurious effect upon such other land by reason of the exercise of the powers conferred by this Title, shall be taken into consideration;

(iv) where damage has been sustained by reason of any works done in or upon the land, regard shall be had to any increase in the value of the land by reason of any improved drainage and any other advantage derived from any such works;

(v) compensation in respect of a historical building shall be assessed in accordance with article 785(13)(b) of this Code.

(2) When the compensation to be assessed is in respect of the possession and use only of an old urban tenement and not also of the ownership thereof, the amount of the acquisition rent shall be assessed at the yearly rent of the tenement as shown on the registers of the Land Valuation Office.

(3) Where, however, -

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(*a*) the fair rent of an old dwelling house as unfurnished has been assessed by the Rent Regulation Board under the provisions of the Rent Restriction (Dwelling Houses) Ordinance, or

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(*b*) the rent of an old urban tenement let unfurnished at a rent not in excess of ninety-three euro and seventeen cents (93.17) a year has, after the 31st March, 1939, been assessed by the Rent Regulation Board under the provisions of the Reletting of Urban Property (Regulation) Ordinance on consideration of the reports of the two members of the Panel assigned to that case by that Board or the report of the technical members of that Board, as the case may be, following an inspection by them of the building, or

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(*c*) the rent of an old dwelling house let unfurnished at a rent in excess of ninety-three euro and seventeen cents (93.17) but not in excess of one hundred and sixteen euro and forty-seven cents (116.47) a year or of an old shop (within the meaning of the Reletting of Urban Property (Regulation) Ordinance) let unfurnished at a rent in excess of ninety-three euro and seventeen cents (93.17) a year has, at any time between the 1st April, 1939, and the 11th June, 1940, been increased under the provisions of article 14(2) of the Reletting of Urban Property (Regulation) Ordinance, or

(*d*) the rent of an old dwelling house let unfurnished at a rent in excess of one hundred and sixteen euro and forty-seven cents (116.47) a year has been increased at any time between the 1st April, 1939, and the 11th June, 1940,

the yearly rent so assessed, or mutually agreed upon, shall constitute the assessment of the acquisition rent payable in respect of the possession and use of the old urban tenement concerned.

(4) Where two or more determinations in respect of the same building have been given by the Rent Regulation Board (referred to in subarticle (3)) the assessment made by the last determination shall constitute the assessment of the amount of the acquisition rent if that determination was given following an inspection of the

building by the two experts appointed by the Administrative Court to that case, and on consideration of their report.

(5) Where a determination has been given by the Rent Regulation Board subsequently to an increase of rent referred to in subarticle (3)(*d*) the rent fixed by that Board shall constitute the assessment of the amount of the acquisition rent, if that determination was given following an inspection of the building by the two experts appointed by the Administrative Court to that case, and on consideration of their report.

(6) Where the yearly rent of an old urban tenement has not been assessed by the Rent Regulation Board as set out in subarticles (3), (4) and (5) and the competent authority or the owner proves that the average yearly rent of the building during the five years from the 1st April, 1934, to the 31st March, 1939, was different to that shown on the registers of the Land Valuation Office, such average yearly rent shall constitute the assessment of the amount of the acquisition rent instead of the rent as shown on the registers of the Land Valuation Office.

(7) For purposes of this Title, any determination referable to any part in use of an urban tenement damaged or partly demolished by enemy or counter enemy action, which may have been made by the Rent Regulation Board upon consideration of that damage or partial demolition, shall be deemed to be inoperative.

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(8) The acquisition rent to be assessed in respect of the possession and use of a new urban tenement shall be equal to the yearly rent determined by the appropriate board under the provisions of the Rent Restriction (Dwelling Houses) Ordinance, or in default of any such determination, by the Administrative Court in accordance with the rules contained in the said Rent Restriction (Dwelling Houses) Ordinance, applicable to the assessment of the yearly rent of a new urban tenement.

(9) The amount of the acquisition rent in respect of the acquisition for possession and use of building sites not being urban tenements, of agricultural lands, or of waste lands shall be assessed at the estimated yearly rental value thereof as on the 31st March, 1939.

(10) For the purpose of assessing acquisition rent under subarticle (9) land shall be considered as agricultural land, a building site or waste land as the case may have been on the 31st March, 1939, and no consideration shall be taken of contingencies through which its nature or its value may have been altered since the 31st March, 1939, provided that the provisions contained in subarticle (12) shall apply to such structural additions as may have been effected on the land, between the 1st April, 1939 and the 28th November, 1946.

(11) For the purpose of subarticle (9) the yearly rental value of a building site means the estimated yearly ground rent at which that site could reasonably have been granted on 31st March, 1939, on emphyteusis in perpetuity; and the yearly rental value of waste land means the estimated yearly ground rent at which that land could reasonably have been granted on the 31st March, 1939, on a ninety-nine year emphyteusis inclusive of the emphyteuta's undertaking to improve the land for agricultural purposes.

(12) In the case of structural alterations or additions effected on the land between the 1st April, 1939, and the date of the declaration made by the President of Malta under article 765 of this Code, the acquisition rent as fixed in the foregoing articles - not being rent previously fixed or revised by the Land Valuation Officer or previously fixed by the Rent Regulation Board after the alterations or additions were carried out - shall be revised by the competent authority and the owner, and, in case of disagreement, by the Board on the submission of either of them.

(13) The compensation in respect of the acquisition of any land on public tenure shall be equal to the acquisition rent assessable in respect thereof in accordance with the provisions contained in subarticles (2) to (12), inclusive, of this article, increased (*a*) by forty *per centum* (40%) in the case of an old urban tenement and (*b*) by twenty *per centum* (20%) in the case of agricultural land.

(14) The first payment of acquisition rent in respect of land of which possession and use is required for a public purpose shall be due as from the date of acquisition by the competent authority of possession of that land.

(15) Acquisition rent payable by the Government of Malta shall be a charge on the Consolidated Fund without any further appropriation than this Title.

(16) Acquisition rent shall be fixed on a yearly basis but shall be paid half yearly in advance. However, the competent authority at its option may at any time pay a broken amount in respect of any one or more parcels of land in order to regulate the due dates of payment thereafter in respect thereof.

(17) Recognition rent payable by the Government of Malta shall be a charge on the Consolidated Fund without any further appropriation than this Title.

(18) The provisions concerning acquisition rent contained in subarticles (14) and (16) shall apply *mutatis mutandis* to recognition rent.

(19) Besides the acquisition rent or, as the case may be, recognition rent to be assessed in accordance with the provisions of this Title, the competent authority in the circumstances set out hereunder, but not otherwise, shall in addition pay in one lump sum to the person from whom possession of the land has been compulsorily acquired a sum to be mutually agreed upon between the parties concerned, or, in default of agreement, to be assessed by the Administrative Court and in every case

in the first instance the amount which the competent authority is offering for the purposes of this subarticle shall be included in the President's Declaration together with the statement as to the amount of compensation referred to in article 785(2) of this Code. Such an additional sum shall not be payable except to -

(*a*) the possessor of the things which, on the date of the declaration referred to in article 765 of this Code, were *bona fide* serving for the furnishing of a dwelling house acquired by the competent authority and subject to the provisions contained in article 783(2), (3) and (4) of this Code not being applicable, and in such case the additional payment shall be equal to the reasonable cost of removing those furnishings to the dwelling house or to the place of storage reasonably selected by the same possessor; and

(b) the occupier of a *bona fide* trading establishment acquired by the competent authority and subject to the provisions contained in article 783 of this Code not being applicable, and in such case the additional payment shall be equal to the value of the goodwill of the same establishment computed at not more than the net profits made at that establishment by the same occupier during the two years ending on the date of the declaration referred to in article 765 of this Code if on that date the same occupier has been in occupation of those premises for not less than thirty months, or, in default of such occupation for at least thirty months, at not more than the net profits that would be likely to be made at that establishment by the same occupier during two years beginning on the termination of six months from the day when that occupier first started business in that establishment.

(20) If the provisions of article 783(2), (3) and (4) of this Code are applicable in respect of the occupier of a *bona fide* trading establishment, the additional compensation payable shall not exceed the amount provided in subarticle (3) of that article or the amount provided in paragraph (*b*), whichever is the greater.

Compensation for land damaged by enemy action.

788. (1) When the land has been damaged by enemy or counter-enemy action and the owner thereof was thereby entitled or might have been entitled to compensation under the War Damage Ordinance, 1943,[7] the compensation payable in accordance with the provisions of this Title in respect of the compulsory acquisition of the full ownership or of the public tenure of the land or of the conversion into either title of the possession and use or of the public tenure of the land previously held by the competent authority, shall, where such compensation is computed by reference to the value of the land undamaged, be deemed to include full consideration in respect of the assignment by the owner to the competent authority of all claims competent to the owner under the War Damage Ordinance, 1943,* aforesaid up to the day when the competent authority takes possession of the

[7]Repealed by Act XXIX of 1980.

land. In every case such assignment as aforesaid shall be deemed to be an integral part of any compulsory acquisition.

(2) In the case of land so damaged, however, the competent authority shall be entitled to deduct from any compensation payable under this Title -

(*a*) any balance not yet fallen due of the ten half yearly direct contributions, if any, payable in respect of that land under the said War Damage Ordinance, 1943*, and any arrears of such contributions which may have fallen due by the owner in respect thereof;

(*b*) any sum or sums which may have been advanced by the War Damage Commission to the owner when the works, on the date of the declaration made by the President of Malta under article 765 of this Code, have not been carried out, or, when only a part of the works have been carried out on that day, a proportionate part of the sum or sums so advanced.

(3) Where the owner of any land to which the provisions of subarticle (1) apply establishes that but for those provisions he would have been entitled to claim interest upon a value payment from the War Damage Commission, there shall be payable to him by the competent authority a sum equal to the amount of the acquisition rent which would have been payable to him under the provisions of article 787 of this Code if the land had been compulsorily acquired for temporary possession and use as at the date upon which such interest would begin to accrue and continuing up to the date at which the land was in fact acquired.

(4) If in any case to which the provisions of subarticle (3) apply the owner has during the relevant period received rent from a tenant who was a tenant at the commencement of the said period, the sum payable to the owner in lieu of interest shall be reduced by the amount of rent so received during the said period and the difference shall be payable to the tenant.

Clearance rights.

789. (1) When for any public purpose any land is declared to be subject to clearance rights, no owner shall build or erect any structure on any land declared to be so subject or increase the height of any existing structure without the permission of the Administrative Court.

(2) When for any public purpose any land is declared subject to subsoil rights, no owner shall make any new or extend any existing underground work or excavation without the prior permission, in writing, of the Administrative Court.

(3) When for any public purpose any land is declared to be subject to clearance rights or to subsoil rights, no compensation shall be payable by reason only of the subjection of the land to such rights or to the possession, by the competent authority, of any underground work or excavation made or constructed by any

competent authority, but the following provisions shall apply.

(4) The demand for the permission referred to in subarticle (1) and subarticle (2) shall be made by filing an application together with a plan showing the buildings or other structures proposed to be erected and the work or excavation proposed to be made. The Administrative Court shall forthwith cause notice of the application to be given to the competent authority.

(5) If the competent authority shall not oppose the application within twenty days after notice of the application shall have been given to the competent authority, the application shall be granted by the Administrative Court.

(6) If the competent authority shall oppose the grant of the permission, the Board shall, on the application of the person requiring the said permission, determine the compensation payable by reason of the refusal of the competent authority to allow the erection of the proposed buildings or other structures or the making of the proposed underground work or excavation. When compensation is paid under the provisions of this article, the Administrative Court shall specify the area in respect of which the compensation is granted, and in such case no further compensation shall at any time thereafter become payable for clearance rights or subsoil rights, as the case may be, in respect of that area, saving the provision of the last part of subarticle (9).

(7) No compensation shall be payable unless it is shown to the satisfaction of the Administrative Court -

(*a*) that the proposal to build or to increase the height of existing buildings or to make any new or extend any existing underground work or excavation is a genuine intention on the part of the owner;

(*b*) that no alternative proposal can be adopted which, while not detrimental to the owner, is acceptable to the competent authority.

(8) Where any land has been declared subject to clearance or subsoil rights, any person who makes, builds or erects any structure or increases the height of any structure on the land or who makes any new or extends any existing underground work or excavation in such land, without the prior permission, in writing, of the competent authority, shall, within ten days after due notice in writing has been given to him in that behalf by the competent authority -

(*a*) remove any structure so made, built or erected or any such increased part of a structure; and

(*b*) fill in any new or extended underground work or excavation, and restore the land to its condition prior to the making of the new or extended work or excavation,

and in the event of the notice not being complied with, the competent authority may order such part of a structure to be demolished, or such work or excavation to be filled in and the land restored, at the expense of the person erecting such structure or increased part of a structure or making such new or extended underground work or excavation, without any compensation to such person, and such expense shall be recoverable from him in the same manner as a fine, and he shall be liable, on conviction therefor, to a fine (*multa*) not exceeding fifty euro (€50) for non-compliance with such notice.

(9) Land subject to clearance rights under this article may be released by the competent authority from such rights, provided the owner consents to accept the release and pays to the competent authority such fair compensation as may be agreed upon or, in default of agreement, as may be fixed by the Administrative Court. Payment of compensation for the release from clearance rights may only be demanded by the competent authority where compensation has been paid for the subjection of the land to clearance rights in accordance with this article. Land released from clearance rights may again be declared subject to such rights.

(10) Where any land is declared subject to subsoil rights, the competent authority may retain the possession of any underground work or excavation which was constructed by the competent authority therein prior to the coming into force of this subarticle and may make or extend therein any underground work or excavation and use it for such purposes as it considers necessary:

(11) The competent authority shall take all reasonable precautions to ensure the safety and stability of any buildings or other structures on the surface of such land and any well, cellar or other underground structure used and enjoyed in connection with the occupation of such surface, and in case of injury to any such structure shall either repair and restore it to its former condition or pay compensation to the owner for any loss sustained by him by reason of such injury and the amount of such compensation shall, if the parties fail to agree thereto, be referred to and determined by the Administrative Court.

(12) Where any land has been declared subject to any rights in favour of the Government in virtue of this article, the Government may transfer any such rights over such land to any other person or authority. However, the exercise by the transferee of the right so transferred shall continue to be so exercised for a public purpose.

Right to order temporary evacuation of land.

790. (1) The President of Malta may by notice in the Gazette order the evacuation of any area where danger to life or limb is possible as a result of naval, military or air operations, and while such order is in force the danger area and all houses and buildings within that area shall be vacated by the tenants or occupiers and by any other person, and no responsibility shall lie with the naval, military or air authorities in consequence of any personal injury which may derive to any

person within the danger area as a result of the said operations. Any person remaining in the danger area while any such order is in force shall, on conviction by the Court of Magistrates, be liable to a fine not exceeding fifty euro (€50).

(2) Compensation for temporary evacuation shall be paid to any person who has incurred loss or expense in consequence of the evacuation.

(3) In the event of any compensation payable under this article not being agreed upon between the competent authority and the claimant, the amount thereof shall be determined by the Board in the manner provided in this Title.

Costs.

791. (1) Where the competent authority has made an offer in writing of any sum whether payable periodically or as a lump sum as compensation to an owner and the sum awarded by the Administrative Court to that owner does not exceed the sum offered, the Administrative Court shall order the owner to bear his own costs and to pay the costs of the competent authority so far as they were incurred after the offer was made.

(2) Where an owner does not accept the offer of the competent authority and claims that the amount due as compensation should be higher, indicating such sum, whether payable periodically or as a lump sum, as compensation, and has complied with the provisions of articles 771 and 774 of this Code, and the sum awarded is more than that offered by the competent authority, then all costs shall be borne by the parties in proportion that the difference in the amount offered by the competent authority and that determined by the Administrative Court has to the difference in the amount claimed by the owner and the amount determined by the Administrative Court.

(3) Where the Administrative Court orders the owner to pay the costs or any part of the costs of the competent authority, the competent authority may deduct the amount so payable by the owner from the amount of the compensation payable to him.

Competent authority not compelled to complete acquisition of land.

792. (1) Nothing in this Title shall be taken to compel the competent authority to complete the acquisition of any land unless the competent authority shall have entered into possession of the land or have failed within one month of the decision of the Board to intimate to the Administrative Court that the competent authority do not intend to proceed with the acquisition.

(2) The owner of the land shall be entitled to receive from the competent authority all such costs as may have been incurred by him by reason or in consequence of the proceedings for acquisition and compensation for the damage (if any) which he may have sustained by reason or in consequence of the notice of intended acquisition.

(3) The amount of such costs and compensation shall, in default of agreement, be determined by the Administrative Court.

Effect of service of notice.

793. The fact that any notification has been served upon any person shall not be taken as an admission by the competent authority that the person on whom such notice has been served or any other person has any estate or interest in the land or any part of the land specified in the notice, and shall not debar the competent authority from alleging in any proceedings under this Title or otherwise that all rights in or in relation to such land are vested in the Government of Malta.

Penalty for obstruction.

794. Any person who shall wilfully hinder or obstruct any person duly authorized from entering upon or taking possession of or using any land in pursuance of the provisions of this Ordinance, or who shall molest, hinder or obstruct any such person shall be liable to a fine not exceeding one hundred and fifty euro (€150) or to imprisonment for a term not exceeding three months.

Rules.

795. (1) The Minister responsible for justice may make rules, including rules as to forms, costs, and fees, for carrying this Title into effect; and unless and until other provision shall be made under this Title, the forms contained in the Thirteeth Schedule to this Code shall have effect.

(2) No nullity shall ensue if another form is used which complies substantially with the requirements of the forms in the Schedule.

Title II

Of Special Development Areas

Interpretation.

796. In this Title, unless the context otherwise requires -

"building" includes any structure whatsoever;

"Director" means the Director of Public Works;

"Special Development Area" means an area in respect of which a declaration has been made by the Minister under article 797 of this Code.

Declaration by Minister that area is a Special Development Area.

797. (1) Where the Government has earmarked an area within Malta for public acquisition with a view to its development for a public purpose other than that merely of town planning the Minister responsible for public works may declare such an area to be a Special Development Area for the purposes of this Title.

(2) No person shall require any proof of the purpose referred to in subarticle (1) other than the declaration of the Minister.

(3) Whenever any declaration is made as aforesaid, the Director shall cause a copy of such declaration, together with particulars sufficient for the purpose of identifying the area, to be published in the Gazette and to be posted up on the notice-board of the Police Station or each of the Police Stations of the towns or villages where or within the limits of which the area is situated.

(4) A copy of the said declaration together with a plan of the area to which the declaration refers shall also be made available for inspection by the public at the Office of Public Works, Valletta, and in the branch offices, if any, of the towns or villages referred to in subarticle (2).

(5) A declaration made under this article shall continue in force for a period of five years from the date on which it was made unless it is previously revoked.

(6) The Minister may, from time to time, amend, suspend or revoke any declaration previously made by him. Any such amendments, suspension or revocation shall be notified in the Gazette.

(7) In the case of amendment of such declaration the provisions of subarticles (3) and (4) shall apply as in the case of a new declaration.

Effects of declaration.

798. (1) As from the date of publication in the Gazette of the declaration made by the Minister as provided in the last preceding article and so long as such declaration continues in force the following provisions of this article shall apply in regard to any land or buildings comprised within the Special Development Area.

(2) No person shall lay out or construct any building or increase the height of any existing building or do any other work in, on, over or under the land or building other than ordinary maintenance works in the case of buildings and ordinary cultivation works in the case of agricultural land without the permission in writing of the Director who may refuse to grant any such permission at his discretion:

(3) In respect of the areas described in paragraphs A and B of the Sixteenth Schedule to this Code the restrictions imposed by this subarticle shall be deemed to have had effect as from the 15th and the 28th of November, 1955, respectively.

(4) The value of any such land or building which the Government acquires by absolute purchase shall, for the purposes of the compensation payable under Title I of Part IV of Book Second of the Code but notwithstanding anything to the contrary contained in that Title, be the value of the land or building as at the date of the publication in the Gazette of the declaration made as provided in article 797 or, in the case of an amendment of such declaration whereby an area to which such declaration refers is extended and in respect of the areas so added, the value at the date of the publication in the Government Gazette of that amendment.

(5) In respect of the areas described in the Sixteenth Schedule to this Code such value of any land or building comprised therein shall be its value as on the 14th of July, 1955.

Director of Public Works may release lands and buildings from the operation of this Title.

799. The Director may at any time by writing under his hand release any one or more individual lands or buildings from the operation of this Title either absolutely or subject to such conditions as he may make and thereupon the provisions of this Title shall consistently with the terms of such release cease to apply to those lands, or buildings.

Government may not be compelled to acquire lands or buildings.

800. (1) Nothing in this Title shall be construed as requiring the Government to acquire any land or building comprised in a Special Development Area:

(2) Unless such land or building is acquired by the Government or released from the operation of this Title within one year from the date of the publication of the Minister's declaration made under the provisions of article 797 of this Code, the owner shall thereafter and up to the time the land or building is either acquired by the Government or released be entitled to compensation for the loss which he proves to have actually suffered in consequence of the subjection of the land or building to the restrictions imposed by this Title but the amount of such compensation shall in no case exceed an amount equal to five *per centum per annum* on the value of the land or building, to be determined as in the case of acquisition after taking into consideration of article 798(3) of this Code. The compensation shall in default of agreement be fixed by the Administrative Court established under the provisions of the Title I of Part IV of Book Second of this Code.

Order to remove unauthorised works.

801. Any person who lays out or constructs any building or who increases the height of any existing building or does any other work in, on, over or under any land or building comprised in a Special Development Area otherwise than in accordance with article 798(2) of this Code shall remove the same within twenty days after due notice is given to him for that purpose by the Director; and, in the event of the notice not being complied with, the Director may order the works to be

removed at the expense of the person by whom the same was done without any compensation to that person and the expense of such removal shall be recoverable from that person as a civil debt and that person shall moreover be guilty of an offence for non-compliance with the said notice and shall be liable on conviction to a fine (*multa*) not exceeding five hundred euro (€500).

Provisions of this Title are in addition to those of other laws.

802. This Title shall, except to the extent that it is inconsistent therewith, be in addition to and not in derogation of the provisions of Title I of Part IV of Book Second of this Code or any other law and nothing herein shall in any way affect the right of the Government to acquire or otherwise deal with any land or property in accordance with those provisions and in particular the right to acquire land or property by any method other than absolute purchase.

Title III

Of Compulsory Eviction from Land and Tenements

Interpretation.

803. In this Title unless the context otherwise requires:

"Commissioner" means the Commissioner of Land;

"land" means any land or building owned or administered by the Government or any part thereof and any land or building or part thereof held by the Government under any title;

"order" means an order in writing given by the Commissioner.

Compulsory eviction. Cap. 169. Cap. 16. Cap. 9.

804. (1) The Commissioner, if it appears to him to be necessary or expedient to do so, may in his absolute discretion order the compulsory eviction of any person from any land which is occupied by such person without any title or on encroachment terms or where, in respect of land that may from time to time be specified in terms of article 2 of the Commissioner of Land Ordinance, the time-period specified in a contract conferring title has lapsed and the removal therefrom of any movable effects, within a specified period of time to be stated in the order, and may for the purpose give such directions as appear to him necessary so that any such order may be put into effect with the least possible delay. The provisions of article 535 of the Civil Code shall not be applicable to eviction orders issued in accordance with subarticle (1). An eviction order so issued shall not constitute an arbitrary exercise of pretended rights in terms of article 85 of the Criminal Code.

(2) If the occupier of any such land does not comply with the order within the period of time so specified, the Commissioner may instruct any Police officer not below the rank of inspector to take such steps and use such force as appear to him reasonably necessary for securing compliance with the order and with any directions given under the last foregoing subarticle and for the removal from such land of any movable effect existing therein.

(3) The Commissioner shall not be required to provide alternative storage for any such movable effects existing in the land and will not be held responsible for their safe custody and the removal of such movable effects shall be carried out at the complete risk and expense of the evictee.

(4) The removal of such movable effects an inventory of such effects shall be made and such inventory shall be signed by the Commissioner or his representative deputed by him in writing for that purpose and by a Police officer not below the rank of inspector.

(5) The evictee shall be liable to refund any expense which may have been incurred by the government for any storage of movable effects removed from the land and shall be liable further to pay compensation for such storage whether in Government property or elsewhere and to pay any costs ancillary or consequential to such storage.

Power to require information.

805. (1) Any person, if requested by the Commissioner so to do, shall furnish to the Commissioner such information in his possession relating to any land, being information which may reasonably be demanded of him in connection with or which the Commissioner deems necessary for the taking possession of any land.

(2) Any information required under the last preceding subarticle is to be given in a statement in writing to be signed by the person giving the information. In the case of an illiterate or a person otherwise incapacitated from writing the Commissioner may require the statement by the person giving the information to be marked by that person in the presence of two witnesses who shall sign the statement.

Service.

806. Service of any order, notice or direction on any person for the purposes of this Title shall be effected by the Executive Police.

Absentees and service thereon.

807. In the case of any person absent from Malta any order, notice or direction shall for the purpose of this Title be validly served on any known lawful representative of such absent person or, in the absence of a known lawful representative, on such person's husband or wife or on a near relation of such person by consanguinity or affinity.

Power to sell movable effects.

808. (1) If within one month of the expiry of the specified period of time stated in an order for the removal of movable effects the person upon whom such order was served fails to remove such effects from the land or from any other place, as the case may be, where any such movable effects may have been placed by the Commissioner, the Commissioner shall have the right to sell any such movable effects by public auction.

(2) Without prejudice to the provisions contained in article 809 of this Code, the proceeds of such public auction after deduction of any amounts due to the Government for the causes mentioned in article 804(3) of this Code and in respect of transport expenses and auction fees, shall be paid to the person to whom the said movable effects belonged.

Failure of purchaser to take delivery and remove effects.

809. If any person, having purchased movable effects at a public auction held under the provisions of the previous article, fails within twenty days from the date of the sale of any such movable effects to him, to take delivery of and remove any such movable effects, then any such movable effects not removed by the purchaser shall be forfeited to Government and the evictee or purchaser shall have no right to claim any compensation or refund of the price or any part thereof paid for such movable effects as the case may be.

Penal provisions.

810. Any person who without lawful excuse, the proof whereof shall lie on him, commits a breach of the provisions contained in article 805 of this Code whether by refusing to supply information or by supplying false information when required under the provisions of this Title to give information, shall be guilty of an offence under this Act and shall on conviction be liable to a fine (*multa*) of not less than twenty-five euro (€25) but not exceeding two hundred and fifty euro (€250) or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

Competence in respect of offences under this Title.

811. Proceedings for an offence under article 810 of this Code shall be instituted by the Police in the Court of Magistrates sitting as a court of criminal judicature.

(2) If any higher punishment is applicable to the offence under any other law whenever the circumstances set out in such other law concur in the offence, the punishment laid down in that other law shall apply and it shall be tried by the appropriate court.

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Title IV

Of the Disposal of Government Land

Interpretation.

812. In this Title, unless the context otherwise requires -

"disposal" means the transfer or grant of any land under any title whatsoever, including, but without prejudice to the generality of the aforesaid -

(*a*) any lease or encroachment or other right of use as well as any grant of any real or personal right in or over any land;

(*b*) a renewal of any real or personal right in or over any land, whether tacit or expressed on new terms and conditions (provided that an increase in rent, ground rent or compensation for use shall not be deemed to be a new condition), but including a renewal of any real or personal right in or over any land originally made in pursuance of a special resolution of the House of Representatives, even when made on the same terms and conditions;

Cap. 363.

(*c*) any change of any condition included in the disposal of any land other than land disposed of by the Housing Authority or by the Government for housing purposes, as long as the land remains subject to the condition that it be used for housing purposes, or land disposed of by a local council established under the Local Councils Act:

Provided that the transfer of any land acquired under any title under the provisions of Title I of Part IV of Book Second of this Code, where such land is no longer required for a public purpose, to the person from whom such land was so acquired, or to his successors in title, shall not constitute a disposal for the purposes of this Title where the transfer back is made for the consideration (including damages) paid by the Government on the acquisition together with interests at five *per centum per annum* from the date of the payment up to the date of the transfer back to such persons where such land was acquired by the Government under absolute ownership, and where the land is held by Government on public tenure or possession and use, the transfer back is made subject only to the cessation of the annual payment of the relative recognition rent or acquisition rent as the case may be;

Cap. 16.

"land" includes any property which is immovable either by its nature or by reason of the object to which it refers, as provided in articles 308, 309 and 310 of the Civil Code.

Government land to be disposed of in terms of this Title.

813. (1) No land which belongs to or is administered by the Government shall be disposed of unless such disposal is made in accordance with one of the following provisions, that is to say -

(*a*) after a call for tenders published in the Gazette in respect of the property proposed to be disposed of; or

(*b*) after an announcement of an auction as published in the Gazette in respect of the property to be disposed of. However, no land may be so disposed of unless it forms part of a Building Development Zone according to any law for the time being in force. The Minister responsible for land may by regulations establish the manner and procedure for the holding of any such auction;

(*c*) according to the policy applicable to the land being transferred, as shown in the Seventeenth Schedule, which Schedule can only be changed by virtue of a Resolution of the House of Representatives;

(*d*) in accordance with a special resolution of the House of Representatives which is in force at the time of the disposal; or

(*e*) to a body corporate established by law for the purposes of any function of such body. Any land disposed of to a body corporate, other than the Housing Authority or a local council established under the Local Councils Act [Cap. 363], under this paragraph (including a disposal made to it by another body corporate as authorised by this proviso) shall not without the approval of the House of Representatives expressed in a resolution, or in accordance with this sub-article, be disposed of by any body corporate, other than the Housing Authority or a local council as aforesaid, except in favour of the Government or of another body corporate established by law; or

(*f*) in accordance with any other law for the time being in force.

(2) A Resolution of the House of Representatives approved in terms of subarticle (1)(*d*) and (*e*) will remain valid for one year from the date of approval, but such Resolution can be extended by virtue of another Resolution or other Resolutions proposed after another period of one year.

(3) A disposal of land to which subarticle (1) applies, made in accordance with the provisions of this article, shall not require any further authority or sanction.

Cap. 396.

(4) Before notice of a motion proposing a resolution, as is referred to in subarticle (1)(*d*), is given to the Clerk of the House by a Minister, such Minister shall cause such motion to be referred to the National Audit Office Accounts Committee established under Part IV of the **Second** Schedule to the Title III of Part V of Book Second of this Code, and no notice of a motion as aforesaid may be given before the said committee shall have discnssed the motion and reported thereon to the House.

(5) Not later than fifteen days after a Minister shall have caused a notice as is referred to in subarticle (4) to be referred to it, the National Audit Office Accounts Committee shall meet to discuss the draft deed or writing or notice, as the case may be, and shall not later than one month after the said draft deed or writing or notice, as the case may be, has been referred to it, report thereon to the House.

(6) Where the said Committee fails to report to the House in a final manner within the said period of one month, the Minister may proceed to give notice to the Clerk of the House proposing a resolution as is referred to in subarticle (1).

(7) When the Committee referred to in the preceding subarticle is convened for the purposes of this Title, two additional members of the House of Representatives, one appointed by the Prime Minister, the other by the Leader of the Opposition, shall have the right to attend, and take part in the debate in this Committee, without the right to vote.

(8) Where the report of the National Audit Office Accounts Committee on a motion is unanimous, the House shall proceed to vote on such motion and on any amendments proposed in the said report without debate.

Disposals not in accordance with this Title to be null and void.

814.(1) Any disposal of land to which article 813 of this Code applies made otherwise than in accordance with the provisions of that article shall be null and void.

(2) The nullity of a disposal made in contravention of the article aforesaid may be demanded also by the Attorney General or by any person who is a member of the House of Representatives at the time of the demand.

Disposal not in accordance with this Title to constitute offence.

815. (1) Any person who enters into or appears on any deed, instrument or contract (whether in his own name or on behalf of others) in contravention of any of the provisions of article 813 of this Code, and any person who induces any other person to enter into or appear on any such deed, instrument or contract as aforesaid

or the making thereof, or aids or abets any of the aforesaid acts, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500) or to imprisonment not exceeding six months or to both such fine and imprisonment. It shall be a defence for any person to prove that he took reasonable steps to ascertain that the deed, instrument or contract would not, where made, be in contravention of the provisions aforesaid.

(2) For the purposes of any proceedings under subarticle (1), a declaration made by a court of competent jurisdiction that a disposal is null and void on the ground that it was made in contravention of any of the provisions of article 813 of this Code, or a mere declaration that it was so made, shall be conclusive evidence that the disposal was made in contravention of these provisions; and where any action for any such declaration has been taken, the period of prescription in respect of any offence against this article shall be suspended until a final judgment on the issue is given or the action is abandoned.

Part VIII

Of Certain Titular Heads of Department

Title I

Of the Director of Public Prosecutions

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816. (1) The Director of Public Prosecutions shall be the Chief Prosecuting Officer in Malta having such powers in connection with criminal proceedings and as may from time to time be by law provided.

(2) In the exercise of his powers to institute, undertake or discontinue criminal proceedings the Director of Public Prosecutions is to exercise such powers in his individual judgement.

(3) Where under any law the Director of Public Prosecutions is to act or exercise any power in his individual judgment he shall not be subject to the direction or control of any other person or authority.

(4) The Officers of the Director of Public Prosecutions when acting under the direction of the Director of Public Prosecutions in anything in which the said Director is to act in his own individual judgment, shall have the same protection at law as if the action done or omitted to be done were an act done or omitted to be

done by the said Director.

Title II

Of the Constitution of the Office of the Attorney General

Attorney General.

817. (1) The Attorney General shall be the chief legal advisor to the Government and shall have the judicial representation of the Government in judicial acts and actions where the law does not provide that such representation shall vest in some other person or authority.

(2) The Attorney General shall have the following additional functions:

(a) to represent the interests of the Government in civil proceedings either as plaintiff or defendant;

(b) to institute legal proceedings on behalf of the general public interest, either on his own initiative or on the application of any member of the public. Such an action may include proceedings against an entity of the public administration.

Other officers.

818. (1) There shall also be other officers performing duties at the Office of the Attorney General, who shall exercise and perform all such powers, functions and duties as may be delegated or assigned to them by the Attorney General.

(2) In the exercise and performance of the powers, functions and duties delegated or assigned to them as aforesaid, such other officers of the Attorney General shall, unless the contrary intention appears, have the same obligations and enjoy the same protection and privileges as are by law imposed on or given to the Attorney General.

(3) The Office of the Attorney General is hereby designated as a Government Agency and the provisions of subarticles (5) to (9) shall apply to the said agency.

(4) The Attorney General may also act through such contractors as he may from time to time appoint. However, such contractors shall at all times act in accordance with such instructions as may be given to them by the Attorney General.

(5) The Office of the Attorney General shall as a government agency be headed by the Attorney General and shall be the medium through which the Attorney General carries out his functions according to law.

(6) The said agency shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations and of suing and of being sued.

(7) The legal and judicial representation of the Office of the Attorney General shall lie in the Attorney General.

(8) The said agency shall enter into an agency performance agreement with the Government whereby the funding of the agency as well as the tasks to be addressed and achieved by it are determined:

(9) The Minister responsible for the agency shall, subject to the provisions of any law to the contrary, be entitled to give directions in writing to the agency and the agency and its head shall be bound to observe such directives:

(10) The provisions of the above proviso shall not apply where the Attorney General is in accordance with the Constitution or any other law to act in accordance with his own individual judgement, in which case the agency is to act according to the sole directions of the Attorney General.

(11) The Attorney General and the employees of the said agency 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:

(12) The Attorney General shall with the concurrence of the Minister responsible for the agency draw up service values and Codes of Ethics in respect of the agency to supplement any public service Code of Ethics.

Financial records.

819. (1)The Attorney General shall keep proper books of account in such manner as the Minister responsible for finance may from time to time direct. Such accounts shall be audited by an auditor appointed for the purpose by the Attorney General with the concurrence of the Minister responsible for finance and shall moreover be subject to audit by the Auditor General.

(2) The financial year of the Office of the Attorney General shall commence on the 1st January and shall end on the 31st December.

(3) The Attorney General shall not later than six weeks after the end of each financial year present to the Minister responsible for the Agency the audited accounts together with a report on the workings of the agency, which report shall state the manner in which the agency has operated to fulfil its functions and its plans for the future.

(4) The accounts and report mentioned in subparagraph (3) 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.

Detailing of public officers.

820. (1) The Prime Minister may by direction detail a public officer for duty with the said agency for such term and under such conditions as may be established in relation to the officer so detailed.

(2) The Prime Minister may at any time revoke any such direction.

(3) Where any officer is detailed for duty with the agency such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the Attorney General, but shall otherwise remain, and retain all rights and duties as, a public officer, and for the purposes of any law relating to government service pensions, service with the agency shall be deemed to be service with the Government:

(4) No account shall be taken in assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions of any allowances, bonuses or gratuities paid to such officer by the agency in excess to what he is entitled to as a public officer.

(5) During the time in respect of which such officer is so detailed to perform duties with the agency, the terms and conditions of his service shall not be less favourable than those which are attached to his appointment under the Government during the period aforesaid. Such terms and conditions shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such direction, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(6) Any public officer serving in the Office of the Attorney General on the date of the coming into force of this Act shall from such date be deemed to have been detailed by direction of the Prime Minister for duty with the Office of the Attorney General as a government agency under the provisions of this article, and thereupon the provisions of the same subarticle shall apply to such officer who shall continue to be detailed for duty as aforesaid until such time as the Prime Minister may revoke such direction as provided in article 820(2) of this Code.

(7) Where the Prime Minister revokes any direction as aforesaid the officer in whose respect the direction is revoked shall retain such grade in the public service which he held immediately before being detailed for duty with the Office of the Attorney General as a government agency by virtue of this article or shall occupy such other higher grade which he would have occupied had he not been detailed as

aforesaid.

Power to administer oaths.

821. The Attorney General and the other officers of the Attorney General shall have power to administer oaths.

Title III

Of the Auditor General and the National Audit Office

Interpretation.

822. In this Title unless the context otherwise requires -

"Auditor General" and "Deputy Auditor General" mean the Auditor General and the Deputy Auditor General appointed in terms of article 108 of the Constitution;

"National Audit Office" means the National Audit Office set up by article 108 of the Constitution.

Oath of Office.

823. The Auditor General and the Deputy Auditor General shall take an oath of Office in the terms following:

"I ..... swear that I shall honestly and diligently perform the functions of Auditor General/Deputy Auditor General, according to the Constitution of Malta and to any law that may from time to time be applicable, without fear or favour and to the best of my ability.".

Power of the Auditor General to administer oaths, etc.

824. The Auditor General may in connection with his functions under the Constitution or any other law, examine any person on oath on any matter pertaining to any account subject to his audit and shall have all the powers that are by virtue of Title VI of Part I of Book Second of this Code conferred on a chairman of a board of enquiry under that Title, and the provisions of that Title shall apply to the Auditor General in the exercise of his functions aforesaid as if he were a chairman appointed under that Title.

Manner in which the Auditor General shall report to Parliament.

825. The provisions of the Eighteenth Schedule to this Code shall apply to the reports that the Auditor General is to make to Parliament in accordance with article 108 of the Constitution.

Allocation of funds, etc., to National Audit Office.

826. (1) The provisions of the Nineteenth Schedule to this Code shall apply to the recruitment of staff at the National Audit Office, to the powers of the Auditor General and of his office, the allocation of funds to the National Audit Office, the keeping of accounts thereat and for their proper audit.

(2) The National Audit Office Accounts Committee established under Part IV of the Nineteenth Schedule to this Code shall have the powers and functions as set out in the said Nineteenth Schedule as well as such other powers and functions as may be assigned to it by any other law.

Title III

OF INTERNAL AUDIT AND FINANCIAL INVESTIGATIONS

SUB-TITLE I

OF PRELIMINARY PROVISIONS

Definitions. Cap. 204.

827. In this Title unless the context otherwise requires -

"Audit Committee" means the Audit Committee established under article 7(3) of the Central Bank of Malta Act;

"auditee" means any entity which is or may be the subject of an internal audit and, or a financial investigation performed by the Director as provided for in this Title;

"Board" means the Internal Audit and Investigations Board;

Cap. 204.

"Central Bank of Malta" or "the Bank" means the Central Bank of Malta established by article 3 of the Central Bank of Malta Act;

"compliance and assurance functions" means those functions within a Government department or ministry that ensure that financial and other related controls, systems, policies and procedures necessary for the proper functioning of that Government department or ministry are adhered to;

"conflict of interest" is a situation where any officer of the Directorate has a private or personal interest to influence, or appear to influence that which is effectively expected of him in the performance of his duties;

"Director" means the Director, Internal Audit and Investigations Directorate and includes, to the extent of the authority given, any person authorised in that behalf by the Director;

"Directorate" means the Internal Audit and Investigations Directorate referred to in Sub-Title of this Title;

"entity" includes both natural and legal persons, including any body or association of persons, whether corporate or unincorporate;

"financial investigation" means the in-depth examination of all circumstances relative to irregularities and cases of suspected fraud, including the corruption of public officers, and, in that regard, the acquiring of records o, information and the carrying out of related assessments, analysis and recommendations;

"financial investigation" being limited in scope to the financial implications that could arise out of such an irregularity or suspected fraud;

"functions" includes powers and duties;

"internal audit" means an independent, objective assurance and consulting activity designed to add value and improve the operations of auditees, helping the auditee to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes;

"irregularity" means whichever act or omission which unlawfully diminishes public funds and whatever is not consonant with the proper management thereof;

"public funds" also includes funds that Government receives, pays, including funds to local councils, or is required to manage under Malta's international obligations, or under any other public funds arising under any other law;

"public officers" shall have the same meaning as is assigned to it in the Constitution of Malta, and includes officials of international organizations with whom Malta has international obligations, whilst performing their duties on Maltese territory.

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SUB-TITLE II
GENERAL PROVISIONS

Separate functions.

828. The Directorate shall have two separate and distinct functions: internal audit and financial investigations.

Internal audit.

829. An internal audit in the manner as may be prescribed by regulations may be carried out in any department of Government or any entity falling under the supervision of Permanent Secretaries (other than a public corporation), for the purpose of assisting them in the effective discharge of their duties.

Financial investigation.

830. A financial investigation may be carried out in terms of the provisions of this Title in any department of Government and in any other public or private entity (other than a public corporation) which is in any way a beneficiary, debtor or manager of public funds, for the purpose of protecting public funds against irregularities and fraud, or otherwise to assess such public or private entities' liability to contribute to such funds.

SUB-TITLE III
THE INTERNAL AUDIT AND INVESTIGATIONS BOARD

The Board.

831. There shall be a Board, to be known as the Internal Audit and Investigations Board, which shall exercise the functions assigned to it by this Title.

Appointment of Board.

832. The Board shall be appointed by the Prime Minister for such period as the Prime Minister may determine, and it shall be directly responsible to him.

Composition of Board.

833. (1) The Board shall be composed of:

(*a*) the Secretary to Cabinet as Chairperson;

(*b*) the Director;

(*c*) the Permanent Secretary in the Ministry of Finance;

(*d*) a person of a recognised standing in the accounting and, or, auditing profession, who is not a public officer; and

(*e*) one other member:

(2) At least two members shall have expertise in disciplines related to public sector financial management.

(3) The Board shall meet at least quarterly and shall otherwise regulate its own procedure.

(4) The decisions of the Board shall be taken by a majority of votes and the Chairperson shall have both an original and a casting vote in case of an equality of votes.

Functions of the Board.

834. The Board shall have the following functions:

(*a*) to serve as an independent and objective body to monitor the public internal financial control function in Malta;

(*b*) to oversee the work of the Directorate;

(*c*) to safeguard the continued independence of the Director and officers of the Directorate;

(*d*) to endorse or otherwise plans, budgets and schedules as proposed by the Director for the proper administration of the Directorate;

(*e*) to require the Directorate to carry out specific tasks as provided under this Title, as and when necessary;

(*f*) to set policies, procedures and methods for the proper functioning of public internal audit and for the carrying out of financial investigations.

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SUB-TITLE IV

THE INTERNAL AUDIT AND INVESTIGATIONS DIRECTORATE

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The Directorate.

835. The Internal Audit and Investigations Directorate, shall be the body charged with exercising and performing the functions assigned to it under this Title. The Directorate shall be headed by the Director.

Public officers.

836. (1) The officers of the Directorate shall be public officers.

(2) The Director and the other officers of the Directorate shall, before entering upon their duties, take an oath in the form as set out in the Twentieth Schedule to this Code, in the hands of the Attorney General, that they will faithfully and impartially perform the duties of their office, and that they will not divulge any information acquired by them under this Title, except in those circumstances specified in this Title.

Independence.

837. In the fulfilment of their functions under this Title, the Director and other officers of the Directorate shall not be subject to any direct or indirect influence or control by the auditee and shall not themselves influence or control the auditee.

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SUB-TITLE V

FUNCTIONS OF THE OFFICERS OF THE DIRECTORATE

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Management.

838. The Director shall be responsible for the day-to-day management of the Directorate.

Report.

839. (1) The Director shall, as soon as may be, after concluding a financial investigation or an internal audit, transmit a report thereof to the Permanent Secretary under whose supervision the auditee falls. The Director may also transmit a copy of such report to the auditee.

(2) Within one month of receipt of such report, the Permanent Secretary shall give such instructions to the auditee as may be necessary to remedy any shortcomings, and shall inform the Director accordingly.

(3) Notwithstanding subarticles (1) and (2), where the auditee is the Central Bank of Malta, any report of a financial investigation carried out at the Bank shall be presented to the Chairman of the Audit Committee of the Bank who shall, within one month of the receipt of such report, give instructions to the Governor of the Bank as may be necessary to remedy any shortcomings, and shall inform the Director accordingly.

Follow-up reviews.

840. The Director shall conduct such follow-up reviews as may be necessary after an internal audit and financial investigation.

Suspicion of irregularity.

841. If an entity has reason to suspect any irregularity and, or a suspected case of

fraud of public funds, it shall refer the matter forthwith to the Director, and shall supply to the Director all information in his possession relating thereto.

Conflict of interest.

842. (1) Where the Director or the Board considers that there would be a conflict of interest if the Director himself were to conduct an internal audit or a financial investigation, the Board may appoint a senior public officer from amongst the officers of the Directorate to conduct that investigation in his stead.

(2) It shall be the duty of every officer of the Directorate who has any form of a conflict of interest in any internal audit or financial investigation, he is assigned to work upon, whether such conflict is direct or indirect, to immediately disclose to the Director his interest and refrain completely from involving himself in that particular case.

S.L. Const. 03

(3) Any officer of the Directorate who knowingly acts in contravention of this subarticle shall be guilty of an offence against this Title and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand and five hundred euro (€2,500), and shall also be subject to disciplinary proceedings as provided for in the Public Service Commission (Disciplinary Procedures) Regulations.

Suspected cases of irregularity or fraud.

843. (1) Whenever, and as soon as, the Director firmly establishes the existence of suspected cases of irregularities and, or suspected cases of fraud concerning the responsibilities of the auditee under review, the Director shall, if he is of the opinion that the irregularity, if proved, would constitute a criminal offence, immediately inform the Director of Public Prosecutions; otherwise, if the Director is of the opinion that the irregularity is of an administrative nature, he shall inform the Permanent Secretary of the auditee.

(2) In the case of the Central Bank of Malta, where the Director is of the opinion that the irregularity is of an administrative nature, he shall inform the Chairman of the Audit Committee of the Bank.

Annual report.

844. The Director shall, not later than the first three months of each year, compile and transmit to the Board an Annual Report dealing generally with the activities of the Directorate during the previous year and containing such information relating to the activities of the Directorate as the Board may from time to time require. The Board shall determine the distribution of such a report as and when required.

Power of entry.

845. (1) Except as may be expressly provided by any law, the Director shall, for the purpose of carrying out his functions under this Title, have the power -

(*a*) to enter and inspect any premises of an auditee in order to conduct an internal audit and, where he has reason to suspect that irregularities and, or fraud, have occurred or are occurring, to enter any premises of an auditee for the purpose of conducting a financial investigation. If access is required to any premises occupied in whole or in part for the purpose of habitation, such access shall require the prior issue of a warrant signed by a Magistrate. Entry shall take place during daytime;

(*b*) to require the auditee to produce any books, records, files, accounts, documents or information including any computer data in any form and or part thereof, including contracts, bills, vouchers and receipts relating to them, and if deemed necessary by the Director, for the latter to retain such documents in the original, and to ensure that copies or extracts are made thereof without paying any fee therefor notwithstanding any law or regulations to the contrary.

(2) Without prejudice to subarticle (1)(*b*), and for the purpose of his functions under this Title, the Director may rely on any of the records kept or made by any audit or investigative unit of any entity including the person or unit discharging the compliance and assurance functions within the Government department or ministry concerned.

Assistance.

846. When conducting an internal audit or a financial investigation concerning funds managed by Malta in terms of its international obligations, the Director may be assisted by representatives of the international organisation concerned, who may participate jointly with the Director in the audit or investigation, as the case may be, and for such purpose such representatives shall be considered to be under the same obligations as officers of the Directorate and shall, before entering upon their duties, take the oath specified in the Twentieth Schedule to this Code.

Information furnished by auditee.

847. (1) All information furnished by an auditee during the course of any internal audit or financial investigation shall at all times be treated as confidential and shall be solely used by the Directorate for the purpose of carrying out the internal audit and, or financial investigation.

(2) The Director shall treat internal audit reports and reports of financial investigations as strictly confidential and shall, except for the purpose of any criminal investigation or prosecution, only disclose their contents to the Permanent Secretary or, as the case may be, the Chairman of the Audit Committee of the Central Bank of Malta, and, if necessary, to the Board, or to the Auditor General.

(3) Without prejudice to the rights of the Auditor General under any law, no information obtained in any way under this Title shall be disclosed except:

(*a*) for the purposes of the financial investigation and the prosecution of a criminal offence;

(*b*) to officers of the Directorate in the course of their duties under this Title; and

(*c*) in matters which under this Title arise out of Malta's international obligations, to the relevant foreign audit and control authorities.

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SUB-TITLE VI

OF MISCELLANEOUS PROVISIONS

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Co-ordinating Committee.

848. For the purposes of article 834(a) of this Code, the Board shall appoint a Co-ordinating Committee, to be chaired by the Director, in order to co-ordinate the activities of, and to facilitate the exchange of information between, different entities charged with the protection and safeguarding of public funds; the terms of reference of the Co-ordinating Committee shall be determined by the Board.

Offences and penalties.

849. Any person who wilfully obstructs the Director in the performance of his functions under this Title, or who fails, when requested, to grant access to any premises or to produce any records to the Director, or who fails to comply with the provisions of article 841 of this Code, shall, without prejudice to any other liability under any other law, be guilty of an offence against this Act and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand and five hundred euro (€2,500) or to imprisonment for a term of not more than three months, or to both such fine and imprisonment.

Review. Cap. 281.

850. (1) The Board shall, once every three years, appoint auditors or firms of auditors, duly certified under the provisions of the Accountancy Professions Act, to conduct reviews of the Directorate's operations.

(2) The auditors or firms of auditors appointed under subarticle (1) shall be independent of the Director and the work of the Directorate and, on completion of the review, shall submit a written report to the Board.

Regulations.

851. The Prime Minister may from time to time make regulations for the

better giving effect to any of the provisions of this Title.

Part IX

Of Salaries of Certain Officers

President of Malta's salary.

852. There shall be paid to the President of Malta a salary of €53,762 with effect from 1st January, 2012 or such other higher salary as the Public Accounts Committee may approve.

Prime Minister's salary.

853. There shall be paid to the Prime Minister a salary of € with effect from 1st January, 2012 or such other higher salary as the Public Accounts Committee may approve.

Minister's salary.

854. There shall be paid to a Minister a salary of € with effect from 1st January, 2012 or such other higher salary as the Public Accounts Committee may approve.

Parliamentary Secretary's salary.

855. There shall be paid to a Parliamentary Secretary a salary of € with effect from 1st January, 2012 or such other higher salary as the Public Accounts Committee may approve.

Parliamentary Officers and other officers.

856. There shall be paid to the following public officers the salary indicated below with effect from 1st January, 2012 or such other higher salary as the Public Accounts Committee may approve:

PART A

Public Officer	Salary
Law Commissioner	
Director of Public Prosecutions	
Ombudsman	
Auditor General	
Information and Data Protection Commissioner	
Commissioner for Children	
Attorney General	

PART B

Chairman, Public Service Commission	
Chairman, Electoral Commission	
Chairman, Broadcasting Authority	
Chairman, Commission against Corruption	
Deputy Chairman, Public Service Commission	
Member, Public Service Commission	
Member, Electoral Commission	
Member, Broadcasting Authority	
Member, Commission against Corruption	

Salaries of Judicial officers and members of parliament.

857. There shall be paid to the following judicial officers and members of parliament the salary indicated below with effect from 1st January, 2012 or such other higher salary as the Public Accounts Committee may approve:

PART A

Judicial Officer	**Salary**
Chief Justice	
Judge	
Magistrate	
Judicial Assistant	

PART B

Officer	**Salary**
Member of Parliament	
Parliamentary Assistant	
Speaker	
Deputy Speaker	
Leader of the Opposition	

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Part X

Of Administrative Provisions relating to Constitutional Law

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Title I

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SUB-TITLE I

OF PRELIMINARY PROVISIONS

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Interpretation.
858. (1) In this Title, unless the context otherwise requires -

"alien" means a person who is not a citizen of Malta;

"appointed day" has the same meaning as is assigned to it by article 124 of the Constitution;

"certificate of naturalisation" means a certificate of naturalisation granted under this Title;

"foreign country" means a country other than Malta;

"Maltese consulate" means an office of a consular officer of the Government of Malta where a register of births or residents is kept or, where there is no such office, such office as may be prescribed;

"the Minister" means the Minister for the time being responsible for matters relating to Maltese citizenship and, to the extent of the authority given, includes any person authorised by such Minister to act on his behalf;

"oath", "swear" and "affidavit" include, in the case of persons allowed by any law to make a declaration or affirmation instead of taking an oath, a declaration or affirmation;

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

"stateless" means destitute of any nationality and "stateless person" shall be construed accordingly.

(2) For the purpose of this Title, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) A person shall, for the purposes of this Title, be of full age if he has attained the age of eighteen years and of full capacity if he is not of unsound mind.

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SUB-TITLE II

CITIZENSHIP ACQUIRED ON THE APPOINTED DAY AND BY REGISTRATION BY CERTAIN OTHER PERSONS

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Persons who became citizens of Malta on appointed day.

859. (1) Every person who, having been born in Malta, was on the day before the appointed day a citizen of the United Kingdom and Colonies, shall be deemed to have acquired Maltese citizenship on the appointed day. However, a person shall not be deemed to have become a citizen of Malta by virtue of this subarticle if neither of his parents was born in Malta.

(2) Every person who, having been born outside Malta, was on the day before the appointed day a citizen of the United Kingdom and Colonies shall, if his father became, or would but for his death have become, a citizen of Malta in accordance with the provisions of subarticle (1), be deemed to have become a citizen of Malta on the appointed day. However, a person born outside Malta before the appointed day of a mother who became, or would but for her death have become, a citizen of Malta in accordance with the provisions of subarticle (1), shall be entitled, upon making an application as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(3) Any person born outside Malta before the appointed day who proves he is a descendant in the direct line of an ascendant born in Malta of a parent likewise born in Malta shall, subject to the following provisions of this article, be entitled, upon making an application as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(4) Any ascendant as provided in subarticle (3) who died before the 1st August 2007 and who would, but for his death, have been entitled to acquire Maltese citizenship under this article, shall be deemed to have acquired such citizenship for the purposes of subarticle (3).

(5) Where any of the parents of a person applying to be registered as a citizen of Malta by virtue of subarticle (3) was alive on 1st August 2007 (for the purposes of this article referred to as "the relevant parent") and the relevant parent is also a descendant in the direct line of an ascendant born in Malta of a parent likewise born in Malta, such person shall not be entitled to be registered as a citizen of Malta by virtue of subarticle (3) unless the relevant parent had at any time acquired Maltese citizenship under this article; so however that any such relevant parent who died

before 1st August 2010 and who would have been entitled to acquire such citizenship under subarticle (3) shall be deemed to have acquired such citizenship for the purposes of that subarticle.

(6) The person applying to be registered as a citizen of Malta under subarticle (3) shall be entitled to be registered as a citizen of Malta if the relevant parent dies after the 31st July, 2010 and the relevant parent had applied for and would have been entitled to be granted Maltese citizenship under this article.

Persons entitled to be registered as citizens.

860. (1) Any person who on the day before the appointed day was or had been married to a person -

(*a*) who became a citizen of Malta by virtue of article 859 of this Code; or

(*b*) who having died before the appointed day would, but for his or her death, have become a citizen of Malta by virtue of that article,

shall be entitled upon making an application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(2) Any person who on the day before the appointed day was or had been married to a person who, on or after the appointed day, became a citizen of Malta shall be entitled upon making an application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(3) The provisions of subarticles (1) and (2) shall be without prejudice to the provisions of article 859 of this Code.

(4) Any person who in accordance with article 44(4)(*b*) of the Constitution is deemed to be a citizen of Malta for the purposes of that article, and who has returned to, and taken up permanent residence in, Malta, shall be entitled, upon making an application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(5) Notwithstanding any other provision of this Act, but without prejudice to article 65(3) of Act LVIII of 1974, a person shall not be entitled to be registered as a citizen of Malta more than once under the same provisions of this Title.

(6) No person shall be entitled to be registered as a citizen of Malta under subarticles (1) and (2), unless -

(*a*) the Minister is satisfied that the grant of citizenship to such person is not contrary to the public interest; and

(*b*) on the date of the application such person was still married to a citizen of Malta, or is the widow or widower of a person who was a citizen of Malta or of a person who having died before the appointed day, would, but for his or her death, have become a citizen of Malta by virtue of article 859 of this Code.

(7) No person shall be entitled to be so registered unless such person on the date of the application, is still married to that citizen of Malta and had been so married for at least five years and on that date had been living with that citizen or, if on that date had been *de jure* or *de facto* separated, had lived with such citizen of Malta for at least five years after the celebration of the marriage, or is the widow or widower of such citizen and at the time of his or her death had been married to that person for at least five years and was still living with him or her or who would, but for the death of that person, have been so married on the date of the application or, if on the date of death of such citizen had been *de jure* or *de facto* separated from such citizen, had lived with such citizen of Malta for at least five years after the celebration of the marriage.

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SUB-TITLE III

ACQUISITION OF CITIZENSHIP BY BIRTH OR DESCENT

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Acquisition of citizenship by birth or descent by persons born on or after appointed day.

861. (1) Every person born in Malta on or after the appointed day shall be deemed to have become or shall become, a citizen of Malta at the date of his birth. However, in the case of a person born on or before the 31st July, 1989, such person shall not be deemed to have become a citizen of Malta by virtue of this subarticle if at the time of his birth -

(*a*) neither of his parents was a citizen of Malta and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Malta; or

(*b*) his father was an enemy alien and the birth occurred in a place then under occupation by the enemy:

Provided that in the case of a person born on or after the 1st August, 1989 such person shall not become a citizen of Malta by virtue of this subarticle unless at the time of his birth, his father or his mother was or is:

(*a*) a citizen of Malta; or

(*b*) a person referred to in article 44(4)(*a*) or (*b*) of the Constitution;

Provided further that the preceding two provisos of this subarticle shall not apply in the case of a new-born infant found abandoned in any place in Malta who would in virtue thereof be stateless, and any such infant shall remain a citizen of Malta until his right to any other citizenship is established.

(2) A person born outside Malta on or after the appointed day shall be deemed to have become or shall become a citizen of Malta at the date of his birth:

(*a*) in the case of a person born on or before the 31st July, 1989, if at the date of such person's birth, his father was a citizen of Malta otherwise than by virtue of this subarticle or article 859(2). However, a person born on or before the 31st July, 1989, if at the date of such person's birth his mother was a citizen of Malta otherwise than by virtue of this subarticle or article 859(2) shall be entitled, upon making an application as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta; and

(*b*) in the case of a person born on or after the 1st August, 1989, if at the date of such person's birth, his father or mother is a citizen of Malta otherwise than by virtue of this subarticle, subarticle (3) of this article or subarticle (2) or (3) of article 859.

(3) A person born outside Malta on or after the appointed day who proves he is a descendant in the direct line of an ascendant born in Malta of a parent likewise born in Malta shall be entitled, upon making an application as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta. However, when the said person is a minor, any such person who according to law has authority over that minor, may submit an application for the registration of the said minor as a citizen of Malta.

(4) Any ascendant as provided in subarticle (3) who dies before the 1st August 2007 and who would, but for his death, have been entitled to acquire Maltese citizenship under this article, shall be deemed to have acquired such citizenship for the purposes of subarticle (3).

(5) Where any of the parents of a person applying to be registered as a citizen of Malta by virtue of subarticle (3) was alive on 1st August 2007 (for the purposes of this article referred to as "the relevant parent") and the relevant parent is also a descendant in the direct line of an ascendant born in Malta of a parent likewise born in Malta, such person shall not be entitled to be registered as a citizen of Malta by virtue of subarticle (3) unless the relevant parent had at any time acquired Maltese citizenship under this article or under article 859 of this Code; so however that any such relevant parent who dies before 1st August 2010 and who would have been entitled to acquire such citizenship under subarticle (3) or under subarticle (3) of

article 859 of this Code shall be deemed to have acquired such citizenship for the purposes of that subarticle.

(6) Where any of the parents of a person applying to be registered as a citizen of Malta by virtue of subarticle (3) was born on or after 1st August 2007 (for the purposes of this article referred to as "the relevant parent") and the relevant parent is also a descendant in the direct line of an ascendant born in Malta of a parent likewise born in Malta, such person shall not be entitled to be registered as a citizen of Malta by virtue of subarticle (3) unless the relevant parent had at any time acquired Maltese citizenship under this article.

(7) The person applying to be registered as a citizen of Malta under subarticle (3) shall be entitled to be registered as a citizen of Malta if the relevant parent dies after the 31st July, 2010 and the relevant parent had applied for and would have been entitled to be granted Maltese citizenship under this article or under article 859 of this Code.

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SUB-TITLE IV

CITIZENSHIP ACQUIRED BY REGISTRATION AFTER MARRIAGE

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Marriage to citizens of Malta.

862.(1) Any person who on or after the appointed day marries a person who is or becomes a citizen of Malta shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(2) No person shall be entitled to be registered as a citizen of Malta in virtue of this article unless:

(*a*) the Minister is satisfied that the grant of citizenship to such person is not contrary to the public interest; and

(*b*) on the date of the application such person was still married to a citizen of Malta or is the widow or widower of a person who was a citizen of Malta at the time of his or her death:

(3) No person shall be entitled to be so registered unless such person on the date of the application, is still married to that citizen of Malta and had been so married for at least five years and on that date had been living with that citizen or, if on that date had been *de jure* or *de facto* separated, had lived with such citizen of Malta for at least five years after the celebration of the marriage, or is the widow or widower of such citizen and at the time of his or her death had been married to that person for

at least five years and was still living with him or her or who would, but for the death of that person, have been so married on the date of the application or, if on the date of death of such citizen had been *de jure* or *de facto* separated from such citizen, had lived with such citizen of Malta for at least five years after the celebration of the marriage.

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SUB-TITLE V
OF MULTIPLE CITIZENSHIP

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Multiple citizenship.

863. It shall be lawful for any person to be a citizen of Malta, and at the same time a citizen of another country.

Re-acquisition of Maltese citizenship by registration.

864. (1) Any person who prior to the coming into force of this article was deemed under the provisions of the Constitution of Malta or of any other law to have ceased to be a citizen of Malta because of the possession or acquisition, voluntary or involuntary of any other citizenship, shall be entitled upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(2) No person shall be entitled to be registered as a citizen of Malta under this article if such person had been a citizen of Malta other than by virtue of articles 859 or 861 of this Code or by virtue of articles 22 or 25 of the Constitution as in force prior to the coming into force of the Constitution (Amendment) Act, 2000, and the Minister is satisfied that the grant of citizenship to such person is contrary to the public interest.

Persons deemed never to have lost Maltese citizenship.

865. Any person who was at any time a citizen of Malta in terms of articles 859 or 861 of this Code or in terms of articles 22 or 25 of the Constitution as in force prior to the coming into force of the Constitution (Amendment) Act 2000, and resided in any country outside Malta for an aggregate period of at least six years, acquired or retained the citizenship of any other country, shall be deemed not to have ever ceased to be a citizen of Malta.

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SUB-TITLE VI

CITIZENSHIP BY NATURALISATION

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Naturalisation of aliens or stateless persons.

866. (1) An alien or a stateless person, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be granted a certificate of naturalisation as a citizen of Malta if he satisfies the Minister -

(*a*) that he has resided in Malta throughout the period of twelve months immediately preceding the date of application; and

(*b*) that, during the six years immediately preceding the said period of twelve months, he has resided in Malta for periods amounting in the aggregate to not less than four years; and

(*c*) that he has an adequate knowledge of the Maltese or the English language; and

(*d*) that he is of good character; and

(*e*) that he would be a suitable citizen of Malta:

Provided that the Minister may, if he so thinks fit in the special circumstances of any particular case, allow periods of residence earlier than seven years before the date of application to be reckoned in computing the aggregate mentioned in paragraph (*b*).

(2) Any person of full age and capacity born outside Malta may, on making application therefor to the Minister in the prescribed manner, be granted a certificate of naturalisation as a citizen of Malta -

(*a*) if his father, or in the case of a person born on or after the 1st August, 1989, if either of his parents became, or would but for his death have become, a citizen of Malta by virtue of article 859(2) of this Code, or

(*b*) if his father, or in the case of a person born on or after the 1st August, 1989, if either of his parents, at the time of that person's birth, was, or would but for his death have been, a citizen of Malta by virtue of article 861(2) of this Code.

(3) Any person of full age and capacity who -

(*a*) has emigrated from Malta (whether before, on or after the 21st September, 1964) and, having been a citizen of Malta by virtue of article 859(1) or article 861(1) of this Code, has ceased to be such a citizen; or

(*b*) emigrated from Malta before the 21st September, 1964 and, but for his having ceased to be a citizen of the United Kingdom and Colonies before

that day, would have become a citizen of Malta by virtue of article 859(1) of this Code,

may, on making application therefor to the Minister in the prescribed manner, be granted a certificate of naturalisation as a citizen of Malta.

(4) Any person of full age and capacity who proves descent from a person born in Malta and who is a citizen of a country other than the country in which he resides, and whose access to the country of which he is a citizen is restricted, may on making application therefor to the Minister in the prescribed manner, be granted a certificate of naturalisation as a citizen of Malta. However, such person shall not be entitled to be granted a certificate of naturalisation as a citizen of Malta under the provisions of this subarticle if the Minister is satisfied that the grant of citizenship to such person is contrary to the public interest.

(5) A person shall not be granted a certificate of naturalisation as a citizen of Malta under the foregoing subarticles unless and until he has taken an oath of allegiance in the form specified in the Twentieth Schedule to this Code.

(6) Subject to the provisions of subarticles (7) and (8), a person shall be entitled, on making application to the Minister in the prescribed manner, to be granted a certificate of naturalisation as a citizen of Malta if he satisfies the Minister that he is and always has been stateless, and -

(*a*) that he was born in Malta, or

(*b*) that his father was a citizen of Malta at the date of his birth by virtue of the provisions of article 859(2) or article 861(2) or that his mother was at that date a citizen of Malta.

(7) A person referred to in subarticle (6)(*a*) shall not be entitled to be granted a certificate of naturalisation as a citizen of Malta under the provisions of that subarticle if the Minister is satisfied -

(*a*) that he has not been ordinarily resident in Malta throughout the period of five years ending with the date of the application; or

(*b*) that he has either been convicted in any country of an offence against the security of the State or has been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years.

(8) A person referred to in subarticle (6)(*b*) shall not be entitled to be granted a certificate of naturalisation as a citizen of Malta under the provisions of that subarticle if the Minister is satisfied -

(*a*) that he has not been ordinarily resident in Malta throughout the period of three years ending with the date of his application; or

(*b*) that he has been convicted in any country of an offence against the security of the State.

(9) Notwithstanding the provisions of this or any other Act, the Prime Minister may, by a notice to be published in the Gazette, authorise the Minister to grant a certificate of naturalization as a citizen of Malta to the spouse of any citizen of Malta when either the spouse or the said citizen has rendered exceptional services to Malta or humanity. The said person makes an application in such manner as may be prescribed and upon taking the oath of allegiance.

Minors.

867. (1) The Minister may cause the minor child of any citizen of Malta to be granted a certificate of naturalisation as a citizen of Malta upon application made in the prescribed manner by the person who according to law has authority over him.

(2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be granted a certificate of naturalisation as a citizen of Malta.

Effect of registration of naturalisation as a citizen.

868. A person registered as a citizen of Malta under article 860 or 862 of this Code or granted a certificate of naturalisation under this Act shall become a citizen of Malta by registration or naturalisation, as the case may be, on the date on which he is registered or naturalised.

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SUB-TITLE VII

RENUNCIATION AND DEPRIVATION OF CITIZENSHIP

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Renunciation of citizenship.

869. (1) If any citizen of Malta of full age and capacity who is also a national of a foreign country makes a declaration in the prescribed manner of renunciation of citizenship of Malta, the Minister may cause the declaration to be registered; and upon registration, that person shall cease to be a citizen of Malta.

(2) The Minister may refuse to register any declaration of the kind mentioned in subarticle (1) if it is made during any war in which Malta may be engaged or if, in his opinion, it is otherwise contrary to public policy.

Deprivation of citizenship of citizens by registration or naturalisation.

870. (1) Subject to the provisions of this article, the Minister

may by order deprive of his Maltese citizenship any citizen of Malta who is such by registration or naturalisation if he is satisfied that the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact.

(2) Subject to the provisions of this article, the Minister may by order deprive of his Maltese citizenship any citizen of Malta who is such by registration or by naturalisation if he is satisfied that the citizen -

(*a*) has shown himself by act or speech to be disloyal or disaffected towards the President or the Government of Malta; or

(*b*) has, during any war in which Malta was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) has, within seven years after becoming naturalised, or being registered as a citizen of Malta, been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than twelve months; or

(*d*) has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither -

(i) been at any time in the service of the Republic or of an international organisation of which the Government of Malta was a member; or
(ii) given notice in writing to the Minister of his intention to retain citizenship of Malta.

(3) The Minister shall not deprive a person of citizenship under this article unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malta and, in the case referred to in subarticle (2)(*c*), it appears to him that that person would not thereupon become stateless.

(4) Before making an order under this article, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this article; and if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.

(5) The Minister may make rules for the practice and procedure to be followed in connection with a committee of inquiry appointed under this article, and such rules may, in particular, provide for conferring on any such committee any powers, rights

or privileges of any court, and for enabling any powers so conferred to be exercised by one or more members of the committee.

Effect of renunciation or deprivation.

871. (1) A citizen of Malta who is deprived of his citizenship by an order of the Minister under article 870 of this Code shall, upon the making of the order, cease to be a citizen of Malta.

(2) The renunciation by any person of his Maltese citizenship or the deprivation of any person's Maltese citizenship under the provisions of this Sub-Title shall not affect the liability of that person for any offence committed by him before the renunciation or deprivation of his citizenship.

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SUB-TITLE VIII

OF SUPPLEMENTAL PROVISIONS

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Married women.

872. For the purposes of Sub-Titles VI and VII of this Title, any woman who has been married shall be deemed to be of full age.

Illegitimate and adopted children and foundlings.

873. (1) In this Title -

(*a*) any reference to the father of a person shall, in relation to a person born out of wedlock and not legitimated be construed as a reference to the mother of that person;

(*b*) any reference to the father of a person who was lawfully adopted before the 1st January, 1977, shall be construed as a reference to the adopter and in the case of a joint adoption, the male adopter; and

(*c*) any reference to the parents of a person who was lawfully adopted on or after the 1st August, 1989, and who was on the effective date of his adoption under the age of ten years, shall be construed as a reference to the adopters.

(2) For the purposes of this Title:

(*a*) an adoption of any person made on or after the 1st January, 1977, and before the 1st August, 1989, shall be without effect and shall be treated as if it had not been made; and

(*b*) an adoption of any person made on or after the 1st August, 1989, who on

the effective date of his adoption was ten years or over, shall be without effect and shall be treated as if it had not been made.

(3) Where a newborn infant is found abandoned in any place in Malta, that infant shall, unless the contrary is shown, be deemed to have been born in Malta and in any such case the provisions of the third proviso to article 861(1) shall apply to such infant.

Posthumous children.

874. Any reference in this Title to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before, and the birth occurs on or after the appointed day as defined in article 124 of the Constitution, the national status that the father would have had if he had died on the appointed day shall be deemed to be his national status at the time of his death.

Decision of Minister to be final.

875. The Minister shall not be required to assign any reason for the grant or refusal of any application under this Title and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

Certificate of citizenship in cases of doubt.

876. The Minister may in such cases as he thinks fit, on the application of any person with respect to whose citizenship of Malta a doubt exists, whether on a question of fact or law, certify that that person is a citizen of Malta; and a certificate issued under this article shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

Manner of making applications.

877. (1) Every application under this Title shall be made to the Minister.

(2) Every application to the Minister under this Title -

(*a*) shall be accompanied by the prescribed fee (if any);

(*b*) where the form of any such application is prescribed under this Title, shall be made in such form with such variations as the circumstances require and the Minister accepts;

(*c*) shall be supported by such evidence of the statements made therein as may be prescribed under this Title or as the Minister may require; and

(*d*) shall be verified by an affidavit made before a magistrate or commissioner for oaths.

Evidence.

878. (1) Every document purporting to be a notice, certificate, order or declaration, or any entry in a register, or a subscription of an oath of allegiance or declaration of renunciation, given, granted or made under this Title, shall be received in evidence, and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made.

(2) *Prima facie* evidence of any such document as aforesaid may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.

(3) Any entry in a register made under this Title shall be received as evidence of the matters stated in the entry.

Offences.

879. (1) Any person who, for the purpose of procuring anything to be done or not to be done under this Title, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months or to a fine (*multa*) of not less than one hundred and twenty euro (€120) nor more than two hundred and fifty euro (€250) or to both such imprisonment and fine.

(2) Any person who fails to comply with any requirement imposed on him by regulations made under this Title with respect to the delivering up of certificates of naturalisation or certificates of registration shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months or to a fine (*multa*) of not less than one hundred and twenty euro (€120) nor more than two hundred and fifty euro (€250) or to both such imprisonment and fine.

Regulations.

880. (1) The President of Malta may by regulations make provision generally for carrying into effect the purposes of this Title and in particular -

(*a*) for prescribing anything which is to be prescribed under this Title;

(*b*) for the registration of anything required or authorised under this Title to be registered;

(*c*) for the administration and taking of oaths of allegiance under this Title, for the time within which oaths of allegiance shall be taken and for the registration of oaths of allegiance;

(*d*) for the giving of any notice required or authorised to be given to any person under this Title;

(*e*) for the cancellation of the registration of, and the cancellation and amendment of certificates relating to persons deprived of citizenship under this Act, and for requiring such certificates to be delivered up for those purposes;

(*f*) for the registration of the births and deaths of persons of any class or description born or dying elsewhere than in Malta and otherwise for registration at Maltese consulates;

(*g*) for enabling the births and deaths of citizens of Malta born or dying in any country in which the Government of Malta has for the time being no diplomatic or consular representative to be registered by persons serving in the diplomatic, consular or other foreign service of any country which, by arrangement with the Government of Malta, has undertaken to represent that Government's interest in that country, or by a person authorised in that behalf by the President of Malta, and for the registration thereby of citizens of Malta ordinarily resident outside Malta;

(*h*) for prescribing forms, and providing for the imposition and recovery of fees, in respect of any application made to the Minister or in respect of any registration, or the making of any declaration, or the grant of any certificate, or the taking of any oath of allegiance, authorised to be made, granted or taken by or under this Act, and in respect of supplying a certified or other copy of any notice, certificate, order, declaration or entry, given, granted or made as aforesaid, and providing that the provisions or any of the provisions of Title III of Part III of Book Second of this Code shall apply to such fees as if they were fees prescribed thereunder.

(2) Any regulations made under this article shall be laid on the table of the House as soon as may be after they are made, and if, within the next twenty days beginning with the day on which any such regulations are so laid before it, the House resolves that the regulations be annulled, they shall thenceforth be void, but without prejudice to anything previously done thereunder or to the making of any new regulations.

(3) There shall not be included in the computation of the said twenty days any period of four or more consecutive days intervening between any two consecutive sittings of the House of Representatives.

Publication of names of registered or naturalised citizens of Malta.

881. (1) Not later than fifteen days after the end of every quarter the

Minister shall cause to be published in the Gazette a list containing the name and surname of all the persons who shall have become citizens of Malta by registration or by naturalisation during the immediately preceding quarter.

(2) For the purpose of this article, "quarter" means any period of three calendar months beginning on the 1st January, 1st April, 1st July or lst October of any year.

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SUB-TITLE IX

OF PROVISIONS RELATING TO TIME

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Provisions relating to time.

882. (1) The Minister and any officer of the Government authorised in that behalf by the Minister may:

(*a*) declare that any period specified in Chapter III of the Constitution of Malta as it was in force prior to the enactment of the Constitution of Malta (Amendment) Act, 2000, within which a person therein referred to could have made an application for registration, shall, in relation to any such person who is of unsound mind during that period, be so extended as to permit, in the opinion of the Minister or such authorised officer, such person when of sound mind an opportunity of making application for registration under the said Chapter III as it was in force prior to the enactment of the Constitution of Malta (Amendment) Act, 2000;

(*b*) in any other case in which he is satisfied that any person referred to in Chapter III of the Constitution of Malta as it was in force prior to the enactment of the Constitution of Malta (Amendment) Act, 2000, is by reason of any circumstances not attributable to his default or neglect, unable to make application within the period specified or prescribed in relation to that person in such Chapter, declare that such period in relation to that person shall be so extended as to permit, in the opinion of the Minister or such authorised officer, that person an opportunity of making application for registration under Chapter III of the Constitution of Malta as it was in force prior to the enactment of the Constitution of Malta (Amendment) Act, 2000.

(2) The power of the Minister and any officer of the Government authorised on that behalf by the Minister under this article may be exercised before or after the expiration of the relevant period specified in Chapter III of the Constitution of Malta as it was in force prior to the enactment of the Constitution of Malta (Amendment) Act, 2000.

Title II

Of Matters Relating to Employment

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Interpretation.

883. In this Title, unless the context otherwise requires -

"function" in relation to the Administrative Court means the function assigned to it by article 120 of the Constitution that is to say "to ensure that, in respect of employment, no distinction, exclusion or preference that is not justifiable in a democratic society is made or given in favour or against any person by reason of his political opinion";

"Secretary" means the registrar to the Administrative Court.

Jurisdiction and powers of the Administrative Court.

884.(1) The Administrative Court shall have jurisdiction to hear and determine any application made by any person in pursuance of article 120(8) and (9) of the Constitution on the ground that, in respect of employment, a distinction, exclusion or preference that is not justifiable in a democratic society has been made or given to his prejudice by reason of his political opinions.

(2) Where an application as aforesaid has been made to the Administrative Court in accordance with the provisions of this Title, the Administrative Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of the provisions of article 120(8) of the Constitution.

(3) The Administrative Court may, if it considers it desirable so to do, decline to exercise its powers under this article in any case where it is satisfied that adequate means of redress for the alleged distinction, exclusion or preference are or have been available to the applicant under any other law.

Cap. 12.

(4) For the purpose of the exercise of its function, the Administrative Court shall have all the powers conferred on the Civil Court, First Hall by the Code of Organization and Civil Procedure.

Additional provisions concerning the power of the Administrative Court.

885. (1) Without prejudice to the generality of the provisions of article 884 of this Code, the Administrative Court shall have power to order the employment, the non-employment and the termination of employment of any person, as well as the terms and conditions of any employment, the position or rank to be occupied by any person in any employment and any other matter relevant or

incidental thereto; and

(*a*) where the Administrative Court orders the employment of any person, or a term or condition of employment or the rank or position to be occupied by a person in any employment, or any other matter concerning any employment, any such order shall constitute a contract of employment or a term or condition of employment, or other matter to be observed or complied with in relation to employment, between the persons to whom it relates with effect from the date and in accordance with the provisions contained in the order;

(*b*) where the Administrative Court orders the termination of employment of any person, any compliance with such order shall not constitute an unfair dismissal for the purposes of any enactment and, notwithstanding any other enactment, no notice of termination shall be due; but in the case of an order terminating the employment of a person the Administrative Court shall have power to determine whether any compensation should be payable by the employer in respect of such termination and, where such compensation is payable, the Administrative Court shall have power to determine the amount and to order the payment thereof;

(*c*) any order or direction made or given by the Administrative Court shall be capable of forced execution.

(2) Without prejudice to the other provisions of this Title and to any other law, any act done or omitted to be done in contravention of any order or direction made or given by the Administrative Court, and any act done or omitted to be done in order to avoid, or having the effect of avoiding, any such order or direction, shall constitute contempt of the Administrative Court and the provisions of article 884(3) of this Code shall apply as they apply in the case of contempt of the Civil Court, First Hall.

(3) The period of detention and the fine (*multa*) to which a person may be sentenced for any such contempt shall be a period of detention not exceeding six months and a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500).

Procedure before the Administrative Court.

886. (1) Proceedings before the Administrative Court shall be by application filed with the Secretary.

(2) The application shall state clearly and concisely the facts out of which the complaint arises, the nature of the complaint and the redress sought by the applicant.

(3) It shall be lawful for the Administrative Court, if the application is allowed, to give any other redress within its jurisdiction which it may consider to be more appropriate.

(4) Default of compliance in the application with the requirements of the foregoing provisions of this section shall not render the application null; but the Administrative Court may, in any such case, require the applicant to remedy, in such manner and within such time as the Administrative Court may deem appropriate, any such default.

(5) The application shall be served on the person or persons from whom or against whom the redress is sought (hereinafter called "the defendant") without any avoidable delay.

(6) The Administrative Court shall set the date for the hearing of the application and shall communicate such date to the applicant and the defendant.

(7) The provisions of this article shall be without prejudice to the powers of the Administrative Court under article 121 of the Constitution.

Title III

Of Emergency Powers

SUB-TITLE I

OF GENERAL PROVISIONS

Declaration of public emergency.

888. (1) If the President of Malta, acting in accordance with the advice of the Prime Minister, is satisfied that a public emergency exists, he may by Proclamation declare that the provisions of Sub-Title II of this Title shall come into operation, and thereupon those provisions shall come into operation accordingly; and they shall continue in operation until the President of Malta, acting in accordance with the advice of the Prime Minister, by a further Proclamation directs that they shall cease to have effect, whereupon they shall cease to have effect except as respects things previously done or omitted to be done.

(2) A Proclamation made under subarticle (1) may be made so as to apply only to such part or parts of Malta as may be specified in the Proclamation (in this subarticle called "the emergency area") in which case regulations made under the said Sub-Title II shall, except as otherwise expressly provided in such regulations, have effect only in the emergency area.

(3) Whenever a Proclamation is made under subarticle (1), the occasion therefor shall be communicated to the House of Representatives -

(*a*) in the case of a Proclamation made when the House of Representatives is in session, within a period of seven days, and

(*b*) in any other case, as soon as practicable.

SUB-TITLE II

OF REGULATIONS

Regulations.

889. (1) The President of Malta, acting in accordance with the advice of the Prime Minister, may, subject to the provisions of the Constitution of Malta, make such regulations as appear to him acting as aforesaid to be necessary or expedient for securing the public safety, the defence of Malta, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by subarticle (1), the regulations may, so far as appears to the President of Malta acting as aforesaid to be necessary or expedient for any of the purposes mentioned in that subarticle -

(*a*) make provision for the detention of persons;

(*b*) authorize -

(i) the taking of possession or control on behalf of the Government of any property or undertaking;

(ii) the acquisition on behalf of the Government of any property other than land;

(*c*) authorize the entering and search of any premises;

(*d*) provide for amending any law, for suspending the operation of any law, and for applying any law with or without modification;

(*e*) provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;

(*f*) provide for payment of compensation and remuneration to persons

affected by the regulations;

(*g*) provide for the apprehension, trial and punishment of persons offending against the regulations;

(*h*) provide for maintaining such supplies and services as are, in the opinion of the President of Malta acting as aforesaid, essential to the life of the community:

(3) Nothing in this article shall authorize the making of provision for the trial of persons by military courts.

(4) Nothing in this article shall be construed to authorize the making of any regulation -

(i) making provision for the deportation or exclusion of persons from Malta, and

(ii) providing for the infliction of the punishment of death.

(5) The payment of any compensation or remuneration under the provisions of such regulations shall be a charge upon the Consolidated Fund.

Orders and rules under the regulations.

890. Regulations made under article 889 of this Code may provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which the regulations are authorized by this Title to be made, and may contain such incidental and supplementary provisions as appear to the President of Malta acting as aforesaid to be necessary or expedient for the purposes of the regulations.

Regulations, orders and rules to be approved by the House of Representatives.

891.(1) Every regulation made under article 889 of this Code and every order or rule made in pursuance of such a regulation shall, without prejudice to anything done or omitted to be done thereunder, cease to have effect at the expiration of a period of two months from the date upon which it came into operation unless, before the expiration of that period, it has been approved by resolution passed by the House of Representatives.

(2) Any such regulation, order or rule may, without prejudice to anything done or omitted to be done thereunder, at any time be amended or revoked by resolutions passed by the House of Representatives.

Inconsistency.

892. Every regulation made under article 889 of this Code and every order or rule made in pursuance of such a regulation shall have effect notwithstanding

anything inconsistent therewith contained in any law; and any provision of a law which is inconsistent with any such regulation, order or rule shall, whether that provision has or has not been amended, modified or suspended in its operation under this Title, to the extent of such inconsistency have no effect so long as such regulation, order or rule remains in force.

Presumption of authenticity.

893. Every document purporting to be an instrument made or issued by the President of Malta or other authority or person in pursuance of this Title, or of any regulation made under article 889 of this Code, and to be signed by or on behalf of the President of Malta or such other authority or person, shall be received in evidence, and shall, until the contrary is proved, be deemed to be an instrument made or issued by the President of Malta or that authority or person.

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Title IV

Of the Commission for the Administration of Justice

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Interpretation.

893A. In this Title, unless the context otherwise requires -

"Code of Ethics" means a code or codes of conduct, made under article 101A of the Constitution to regulate the conduct of persons to which the code applies, with their colleagues, the courts, members of other professions and the public in general. The Codes of Ethics to be made under article 101A of the Constitution shall make specific provision against such abusive or negligent conduct as may be deemed necessary to be specified, and shall further provide that it shall be a breach of ethics to conduct oneself abusively or negligently or in a manner repugnant to the decorum, dignity or honour of one's office or profession, or in such manner which could seriously effect the trust conferred on such persons by their office or profession;

"Commission" means the Commission for the Administration of Justice established by article 101A of the Constitution;

"misconduct" in relation to advocates or legal procurators means any breach of a code or codes of ethics relative to the profession of advocate or legal procurator, as the case may be;

"unit" means a sum of money equivalent to one *per centum* of the annual salary of the Attorney General as at the time established according to law.

Committee on Advocates and Legal Procurators.

893B. (1) The Commission shall at all times have a committee to be styled the Committee on Advocates and Legal Procurators.

(2) (*a*) The Committee on Advocates and Legal Procurators shall consist of:

(i) an advocate of at least ten years standing appointed by the Commission for a period of four years;

(ii) an advocate appointed by the Attorney General for a period of four years;

(iii) three advocates appointed by the Chamber of Advocates for a period of four years, so however that where the committee is dealing with any matter relating to the profession of legal procurators, or relating to the conduct of a legal procurator, three legal procurators appointed by the Chamber of Legal Procurators shall sit instead of the three advocates appointed by the Chamber of Advocates.

(*b*) The chairman of the committee shall be elected by the members of the committee from among themselves.

(3) (*a*) Any member of the committee may be challenged and shall abstain in the same circumstances as a judge of the superior courts may be challenged or may abstain.

(*b*) Where a member has been challenged or has abstained the President acting in accordance with his own deliberate judgment shall appoint as a substitute member to sit on the committee where possible, a person who in his opinion has as far as may be the same qualities and qualifications as the member substituted.

(4) Where the members to be appointed under subarticle (2)(*a*)(iii) are not appointed within two weeks from a call for their appointment by the Secretary of the Commission, then the appointment of the said members shall be made by the President, who in making such appointment shall act in accordance with his own deliberate judgment.

(5) The Committee shall have competence in all matters falling under the functions of the Commission relating to the professional conduct of advocates and legal procurators and to the exercise of the profession in general.

(6) The Committee shall make a report to the Commission of its findings in any investigation or study carried out by it.

(7) Where the Committee finds that there has been misconduct by an advocate or legal procurator in the exercise of his profession or where the Committee finds that the advocate or legal procurator suffers from an infirmity of mind that may seriously affect the exercise of his profession, it may -

(*a*) request the Commission to recommend to the Prime Minister to advise the President of Malta that the advocate or legal procurator be suspended perpetually or for a specified period from the exercise of his profession; or

(*b*) impose a pecuniary penalty, recoverable as a civil debt by the Secretary of the Commission, not exceeding ten units; or

(*c*) admonish the advocate or legal procurator; or

(*d*) make such recommendations to the advocate or legal procurator as it may deem appropriate in the circumstances.

(8) Where the Committee deems it appropriate, it may, notwithstanding anything in article 8(1), make public any action taken by it under this article.

(9) The Commission shall, upon an appeal made to it, have the same powers *mutatis mutandis* as the Committee has under subarticles (7) and (8).

Powers. Cap. 12.

893C. (1) In the exercise of their functions the Commission and the Committee for Advocates and Legal Procurators shall have all the powers as are assigned to the First Hall of the Civil Court by the Code of Organization and Civil Procedure.

(2) Three members of the Committee for Advocates and Legal Procurators shall constitute a *quorum* in its meetings. Save as is provided in article 101A of the Constitution and in any rules made for the purpose by the Commission that Committee shall regulate its own procedures.

Supervisory power of Committee on Advocates and Legal Procurators.

893D. The Committee for Advocates and Legal Procurators shall, of its own motion, or at the request of the Commission, or on the complaint of any person, have the power and duty -

(*a*) to investigate, inquire into and decide upon any misconduct of any advocate or legal procurator in the exercise of the profession or upon the inability of any advocate or legal procurator to exercise his profession because of infirmity of mind;

(*b*) without prejudice to any other action possible under any other law to impose disciplinary penalties and to take such other measures as it considers appropriate and as are provided for under this Act.

(2) Any investigation or inquiry on any misconduct of an advocate or legal procurator may only be commenced by the Committee within three months from the date the Commission, Committee or complainant become aware of the misconduct, and in any case not later than five years from the date of such misconduct.

Right of appeal.

893E. (1) There shall be a right of appeal to the Commission from a

decision of the Committee for Advocates and Legal Procurators.

(2) (*a*) The person against whom a Committee makes a finding and the Chamber of Advocates where the complaint is against an advocate, and the Chamber of Legal Procurators where the complaint is against a legal procurator, shall have the right of appeal to the Commission:

Provided that when an appeal is declared frivolous or vexatious by the Commission, the Commission may impose a pecuniary penalty on the appellant in a sum not exceeding ten units which penalty is recoverable as a civil debt by the Secretary of the Commission.

(*b*) The Commission shall from time to time establish rules of procedure for such appeals.

(*c*) A person against whom a complaint is made shall be entitled to sue the complainant in addition to the damages which may be due under any law for the time being in force in respect of any actual loss, or injury, the court may grant to the person against whom the complaint is made a sum not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75), if the complaint proves unfounded and he can prove that the complaint was the result of gross negligence, or malice, or was vexatious.

Proceedings to be held *in camera*.

893F. (1) The complainant and the person whose conduct is being investigated shall have the right to be present during the whole investigative process, produce witnesses in support of the complaint, or in defence, and to be assisted by an advocate or legal procurator. Unless the person being investigated requests otherwise, the hearing before the Committee for Advocates and Legal Procurators and the Commission shall be held *in camera*. The finding shall only be delivered in public where the hearing is not held *in camera*.

(2) Notwithstanding the provisions of subarticle (1), the Committee for Advocates and Legal Procurators shall transmit to the committee of the Chamber of Advocates a copy of any decision delivered by it on a complaint against an advocate, and shall transmit to the committee of the Chamber of Legal Procurators a copy of any decision delivered by it on a complaint against a legal procurator. The committees of the said chambers and every member thereof shall, where the complaint is heard *in camera,* treat such information as secret and confidential.

Additional powers of the Commission.

893G. The Commission shall in addition to the functions conferred to it under article 101A of the Constitution or under any other law, have the functions and powers to carry out investigations on any judge or magistrate in connection with an address as is referred to in article 97 of the Constitution in accordance with articles 10 and 11.

Procedure to be followed under article 97 of the Constitution.

893H. (1) Where notice is given in the House of Representatives of a motion for presenting an address to the President as is referred to in article 97(2) of the Constitution, the Speaker shall, without allowing any publicity, keep the motion pending, and shall refer the same for investigation to the Commission.

(2) The motion shall contain definite charges against the judge or the magistrate, as the case may be, on the basis of which the investigations are to be held. Together with the motion there shall be filed a statement showing the grounds on which each of such charges is based.

(3) Such charges together with such statement shall be communicated to the judge or magistrate as the case may be, and he shall be given a reasonable opportunity to present a written statement of defence within such time as may be specified by the Commission.

(4) The Commission shall carry out the necessary investigation and make a report thereon to the Speaker. If the report of the Commission contains a finding that there is no misbehaviour or that the judge or magistrate does not suffer from any inability, then, no further steps shall be taken in the House in relation to the report and the motion pending in the House shall not be proceeded with.

(5) If the report of the Commission contains a finding *prima facie* that the misbehaviour or incapacity has been proved then, the motion referred to in article 97(2) of the Constitution shall, together with the report of the Commission, be taken up for consideration by the House.

(6) If upon consideration by the House, it is satisfied that the misbehaviour or incapacity has been proved and if the motion is adopted by the House in accordance with the provisions of article 97(2) of the Constitution then the misbehaviour or inability of the judge or magistrate, as the case may be, to perform the functions of his office shall be deemed to have been proved and an address praying for the removal of the judge or magistrate, as the case may be, shall be presented to the President by the House in the same session in which the motion has been adopted.

(7) Proceedings by the Commission under this article shall be held *in camera*. The member of the House presenting the motion and the judge or magistrate whose conduct is being investigated shall have a right to be present during the whole process, to produce witnesses in support of the charges set in the motion or in defence, and to be assisted by any advocate or legal procurator.

Medical Board.

893I. (1) Where it is alleged that the judge or magistrate is unable to perform the functions of his office because of infirmity of body or mind and the allegation is denied, the Commission may order the medical examination of the judge or magistrate by such medical board as may be appointed for the purpose by

the President and the judge or magistrate, as the case may be, shall submit himself to such medical examination within the time specified by the Commission.

(2) The medical board shall submit a report to the Commission stating therein whether there exists any infirmity of body or mind, as the case may be, and in case such infirmity exists, whether it renders the judge or magistrate unable to perform the functions of his office.

(3) If the judge or magistrate refuses to undergo any medical examination considered necessary by the medical board, the Board shall submit a report to the Commission stating therein the examination which the judge or magistrate has refused to undergo, and the Commission may, on receipt of such report, presume that the judge or magistrate suffers from such infirmity of body or mind as is alleged in the relative motion referred to in article 10(1).

(4) The provisions of the foregoing subarticles of this article shall apply *mutatis mutandis* where it is alleged that an advocate or a legal procurator is unable to exercise his profession because of infirmity of mind.

Reports by judges and magistrates to the Commission for the Administration of Justice.

893J. Every judge and magistrate presiding over any court shall, not later than the fifteenth day of January of every year, make a report to the Commission for the Administration of Justice giving a list of all cases pending before the court over which he presides and which have been so pending for a period of five years or more, indicating in the report the reasons why each case is still pending and the time within which the judge or magistrate, as the case may be, expects the case to be disposed of by the said court.

Part VIII

Of Administrative Sanctions

Title I

Of the Commissioners for Justice

Interpretation.

894. In this Title, unless the context otherwise requires -

"authority" shall mean a body corporate or incorporate, as well as any association of persons by whatever name called;

"Commissioner" means a Commissioner for Justice appointed according to article 895 of this Code;

"Court of Magistrates" means the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, as a court of criminal judicature;

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"Electoral Register" shall have the same meaning as is assigned to it by the General Elections Act;

"Minister" means the Minister responsible for justice;

"scheduled offence" means an offence set out in the Twenty-First Schedule to this Code;

"scheduled offence specified in the charge" means an offence to which the charge issued by the Executive Police, or the local council or authority in accordance with the provisions of article 897 of this Code refers, and includes such other infringement in addition thereto or in substitution therefor as a Commissioner may, in accordance with article 897(5), authorise.

Commissioners for Justice. Cap. 363.
895. (1) There shall be appointed Commissioners for Justice who shall separately have the functions and powers assigned to them by this Title, or under the Local Councils Act, or under any other Act including the functions and powers -

(*a*) to consider any charge brought before them by the Executive Police in accordance with article 897 of this Code or by local councils under the Local Councils Act or by any other authority under any other Act;

(*b*) to hear witnesses on oath or affirmation and to examine such evidence as may be produced before them;

(*c*) to determine whether, on the evidence so produced, the scheduled offence specified in the charge has or has not been proved to have been committed by the person charged;

(*d*) to impose such penalty in accordance with the provisions of article 902(2) of this Act, and

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generally, for the purpose of exercising their functions and powers, the Commissioners shall have, *mutatis mutandis*, all such powers as are, by the provisions of Book Second of the Criminal Code, vested in the Court of Magistrates.

(2) An act or omission shall not, for the purposes of this Title, be considered to be a criminal act notwithstanding the provision of such law as is set out in the Twenty-First Schedule to this Code, but shall nevertheless be deemed to constitute an offence for which a Commissioner may, in accordance with the provisions of article 902(2) of this Code, order the payment of the penalty therein specified.

(3) Saving the provisions of article 903 of this Code, the Court of Magistrates shall not have jurisdiction to try a scheduled offence.

(4) The Court of Magistrates shall have jurisdiction to try any scheduled offence which is charged together with any other offence over which the said court has jurisdiction.

Appointment of Commissioners.

896.(1) The Commissioners shall be appointed by the Prime Minister from persons of either sex.

(2) A Commissioner shall be appointed for a term of two years and shall vacate his office at the expiration of the term of his appointment.

(3) The Commissioners shall be re-eligible for appointment.

(4) During their tenure of office the Commissioners may not be removed except in the same manner and on the same grounds as a magistrate may be removed from office.

(5) In the exercise of his function a Commissioner shall not be subject to the direction or control of any other person or authority.

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(6) The provisions of the Criminal Code regarding the abstention and challenge of magistrates shall apply to the abstention and challenge of a Commissioner.

(7) Where a Commissioner has been objected to or has abstained from sitting, or is otherwise unable to act, another Commissioner shall be surrogated in his stead by the Minister.

(8) Upon his appointment, a Commissioner shall take an oath to examine and decide the cases brought before him with impartiality and equity according to law.

(9) The oath shall be taken before the Attorney General.

(10) A Commissioner shall hold sittings on such days and at such time as the Minister may determine and such sittings may be held on Saturdays and outside the hours when the registries of the courts are considered closed.

(11)The sittings shall be held in such place or places designated as Local Tribunals by the Minister.

(12)The warrants or orders shall be signed by a Commissioner.

(13)The oath to the witnesses shall be administered by a Commissioner.

(14)The Commissioners shall receive such remuneration as the Public Accounts Committee, may from time to time prescribe. Such remuneration may not be altered to the disadvantage of a Commissioner during his period of office.

(5) The remuneration payable shall be published in the Gazette.

Proceedings before a Commissioner.

897. (1) The Executive Police, local council or other authority, as the case may be, shall have the duty to collect evidence and to charge offenders before a Commissioner in respect of any scheduled offence over which a Commissioner, in accordance with the provisions of this Title, may exercise his functions.

(2) Saving the provisions of article 907(4) of this Code, the Executive Police, local council or other authority, as the case may be, shall, by an order in writing, summon the person charged with a scheduled offence to appear before a Commissioner on the day and at the time specified in the said order.

(3) The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give. The summons shall also contain an intimation that in default of appearance the person summoned shall be deemed to have admitted the charge.

(4) The summons shall contain a form indicating the penalty to which the person charged may be liable if found to have committed the offence as well as the maximum additional penalty to which he may be liable under this Title, and the person charged may, up to three days before the hearing, settle the charge by paying only the penalty. In such a case such person need not appear before the Commissioner.

(5) A Commissioner may at any stage during the proceedings, authorise the addition of a fresh charge on a scheduled offence or the substitution of any charge contained in the summons by another charge on a scheduled offence:

(6) The person charged shall be afforded a reasonable time within which to prepare for his defence.

(7) Any addition or substitution may only be effected before the prosecution closes its case.

Service of judicial acts.

898. (1) The Minister responsible for justice may make regulations to regulate the methods of service of judicial acts under this Title.

(2) Until such regulations are made, the provisions of the Code of Organization and Civil Procedure and of any regulations made thereunder shall apply to service of judicial acts under this Title.

Failure to appear when summoned. Cap. 9.

899. (1) Saving the provisions of article 897(4) of this Code, if a person duly served with a summons or his representative as may be authorised in writing by him, fails to appear personally before a Commissioner he shall be deemed to have admitted the charge and, notwithstanding anything contained in the Criminal Code, the Commissioner shall thereupon proceed to order the payment of the penalty and give such other orders, according to circumstances, as provided in article 902(2) of this Code in the absence of the person charged.

(2) Any person charged may instead of appearing before the Commissioner send to the Registry of the Commissioners representations in writing and, or a declaration on the facts of the case confirmed on oath contesting the charge against him, and the Commissioner shall, prior to deciding the case, take into account such representations and, or a declaration as if they had been made *viva voce* before him.

Provisions of the Criminal Code applicable to proceedings before a Commissioner. Cap. 9.

900. (1) The provisions of the Criminal Code relating to proceedings before the Court of Magistrates shall apply *mutatis mutandis* to proceedings before a Commissioner and a reference made to that court in that Code shall, for all intents and purposes of law, be deemed to be a reference made to a Commissioner.

(2) A Commissioner may proceed with the hearing of the charge in the absence of the person charged.

(3) The person charged may instead of appearing before the Commissioner, appoint in writing a representative who shall for all intents and purposes of law be deemed to have the same rights and obligations as a person charged before the Commissioner.

Functions.

901. The Minister responsible for justice may by regulation designate the registrar and registry of each Local Tribunal and the functions thereof and by the same regulations may also designate such other officers as may be necessary for the operation of the Local Tribunal.

Decisions of the Commissioners.

902. (1) Where a Commissioner decides that the person charged has not

committed the scheduled offence specified in the charge, the person to whom such decision applies shall not, in respect of such offence, be subject to any further proceedings before a Commissioner or before any court.

(2) Where a Commissioner decides that the person charged has committed the scheduled offence specified in the charge, a Commissioner shall declare such person guilty of an infringement and shall order such person to pay a penalty in an amount not exceeding the maximum of the fine (*multa* or *ammenda*) prescribed by law for the offence and where such law provides for the sequestration of any object used in the commission of the offence, or for the revocation or suspension of any licence the Commissioner shall order such sequestration or such revocation or suspension in addition to the penalty. However, where the Commissioner decides that the person charged committed the scheduled offence specified in the charge, he shall order that where the person charged does not pay the fine (*multa* or *ammenda*) within one month from when the case is decided finally, the person charged shall pay a penalty of twelve euro (€12) in addition to the fine (*multa* or *ammenda*).

(3) Where a Commissioner has made an order for the payment of such penalty, the Registrar of the Tribunal or other person designated by the Minister responsible for justice, shall, and in cases where the original penalty arising from the charge is due to a Local Council or to some other authority in terms of any Act, that Local Council or authority shall as soon as such order is made, proceed to the collection of the penalty. The Registrar shall immediately inform the proper authorities in writing of any forfeiture of any object used in the commission of the offence, or of the revocation or suspension of any licence ordered by a Commissioner and shall send the authority a certified copy of the judgement of the Commissioner.

(4) Where due to the commission of an offence, any public authority, including a local council, has incurred expenses to remedy the consequences of the said offence, the Commissioner may also order the payment to such authority of a sum not exceeding two thousand and five hundred euro (€2,500) that may be proved to his satisfaction to have been expended by such authority to remedy such consequences. Such amount shall be without prejudice to any other action before any court to recover any expense beyond the sum awarded by the Commissioner, and such amount shall be recoverable by such authorities as a civil debt, liquidated and certain.

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(5) The amount of the penalty shall be due and owing to the Government or where the penalty is due to a Local Council in terms of the Local Councils Act, the amount of the penalty shall be due and owing to that Local Council, as a civil debt, liquidated and certain, and may be collected by the Registrar of Courts or by the Local Council, as the case may be. The order referred to in subarticle (2) shall constitute an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

(6) The civil debt mentioned in sub-article (5) shall not pass on to the heirs of the person ordered to pay any such penalty.

Applications to Court of Magistrates.: Cap. 9.

903. (1) Any person who feels himself aggrieved by the decision of a Commissioner may, within thirty days from the day on which such decision is given, apply to the Court of Magistrates to have the judgment of a Commissioner revoked or varied, and the court aforesaid shall thereupon become vested with jurisdiction to decide upon the merits of the application.

(2) For the purpose of exercising its functions under this article, the Court of Magistrates shall proceed in accordance with the provisions of the Criminal Code.

(3) The decision on the merits of the application to the Court of Magistrates shall not be subject to appeal before any other court.

(4) The Court of Magistrates may, if it considers the application frivolous or vexatious, order the appellant to pay a penalty not exceeding one hundred and twenty euro (€120).

(5) The provisions of article 902(3), (5) and (6) of this Code shall apply to the decision of the Court of Magistrates confirming or varying a decision of the Commissioner, including an order made under subarticle (3).

Re-Trial.

904. (1) Any person who has been found guilty of an infringement under article 902 of this Code may apply to the Court of Magistrates for a re-trial of his case on the ground that he was never duly served with the charge according to law.

(2) Such application shall be filed within twenty days from the day such person acquired, or should have reasonably be expected to have acquired, knowledge of the decision against him.

Prescription.

905. (1) Action before a Commissioner shall be subject to the same rules of prescription which may from time to time be applicable to the criminal action taken in respect of an offence mentioned in the Twenty-First Schedule to this Code.

(2) The period of prescription with respect to actions before a Commissioner shall be suspended from the date that a summons is served and shall remain so suspended for a period of one year.

(3) The period of prescription of the criminal action in respect of an offence mentioned in the Twenty-First Schedule to this Code shall be suspended by the

proceedings before a Commissioner.

Power to make regulations.

906. The Minister may make regulations:

(*a*) prescribing, or relating to, the procedure to be followed by the Commissioners;

(*b*) amending the Twenty-First Schedule to this Code by adding or removing therefrom offences; provided that no offence may be added to the said Schedule by regulations under this article if the punishment for that offence exceeds the punishments established for contraventions;

(*c*) for establishing any fees that may be payable in terms of this Title;

(*d*) for the establishment, after consultation with the Local Councils Association, of a Board which shall be competent to hear and decide requests which may be made for the waiving or discontinuance of proceedings against any person for any infringement before a Commissioner for Justice, or for remission of the penalty awarded, for any valid reason under such conditions as may be prescribed;

(*e*) for establishing any form to be used in terms of this Title;

(*f*) for establishing the procedures to be followed in the Registry of Local Tribunals;

(*g*) for establishing a local enforcement system and to determine its functions;

(h) for establishing and determining the functions of the Registrar and other officials of the Local Tribunal;

(*i*) to provide for rules of service of judicial acts in terms of this Title;

(*j*) to establish rules regarding the manner in which penalties may be collected, the forfeiture of objects and the withdrawal and suspension of licences in terms of this Title; and

generally with regard to any thing that may be by him determined, ordered, directed or prescribed in accordance with the provisions of this Title and any other matter that may be expedient for the better carrying into effect of this Title.

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(2) Without prejudice to the provisions of article 393 of this Code, any amendment to the Twenty-First Schedule to this Code made by regulations under

the provisions of the foregoing sub-article shall not come into effect except after the lapse of twenty days from the date of publication of the said regulations in the Gazette.

Special procedure in certain cases.

907. (1) Notwithstanding any other law providing for the trial and punishment of offences, where any person commits an offence which under this or any other law has been declared a scheduled offence, the following provisions of this article shall apply.

(2) Any Police Officer and any other officer, authority or person who in accordance with any law as aforesaid is charged with the responsibility for enforcement of such law, in whose opinion any such offence has been committed may hand over to the offender a notice containing a general description of the offence, the penalty to be paid, the place where he may pay such penalty, the period within which he may effect such payment and the consequences of non-payment:

(3) If a motor vehicle, boat or other object has been used in the commission of an offence, such notice may be affixed to the windscreen or other part of such motor vehicle, boat or other object.

(4) Where it is not practicable to hand over a notice, or to fix it as aforesaid, the notice may be served to the offender in the same manner that a summons may be served in terms of article 898 of this Code.

(5) Where any notice has been handed over or is affixed as is provided in subarticle (2), the person referred to in the said notice may pay at the place mentioned in such notice within such time indicated in the notice, which in no case shall be less than seven days, a penalty in respect of each offence referred to in each such notice, provided that such penalty shall not exceed the minimum established in the law for each such offence or twenty-five euro (€25), whichever is the higher.

(6) Where any penalty imposed under subarticle (3) is not paid within the aforementioned period, ordinary proceedings in respect of the offence may be taken in accordance with the provisions of this Title or any other law.

(7) In proceedings before the Commissioner no notice need be given the offender of any date to which a case which has been set down for hearing or has started to be heard is put off and it shall be the responsibility of the offender to verify such date.

(8) The payment of any such penalty shall for all intents and purposes of law, be deemed to be an admission of the commission of the offence.

(9) Data or other information retrieved from electronic or other apparata used by a Police Officer or any other officer, authority or person who in accordance with any law as aforesaid is charged with the responsibility for the enforcement of such

law shall be deemed to be proof of the contents thereof unless the defendant proves otherwise.

(10) Where the evidence to be given by any person refers to the registration of motor vehicles, boats or other objects which are required to be registered under any law, such evidence may be submitted by means of an affidavit.

(11) Where evidence is submitted by photographs, video-film or other visual means, such evidence shall be authenticated by the person who is the author of such photograph, video-film or other visual means.

(12) No proceedings before a Commissioner shall be deemed to be invalid because of the non-observance of any formalities or procedures if there has been substantial compliance with the provisions of this Title and any regulations made hereunder and the principles of natural justice have been observed.

(13) The Commissioner shall hear and determine all cases brought before him on the first day of hearing and shall only exceptionally accept a request for postponement of the hearing.

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Part IX

Of State Liability

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Title I

Of Governmental Liability

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Principles of governmental liability.

908. (1) Governmental liability is the obligation of the public administration to make good the damage caused by its acts, either by compensation or by any other appropriate means (hereinafter referred to as "reparation").

(2) The term "act" means any action or omission which is of such a nature as to affect directly the rights, liberties or interests of persons.

(3) The acts covered by this Sub-Title are the following:

(a) normative acts in the exercise of regulatory authority;

(b) administrative acts which are not regulatory;

(c) physical acts.

(4) Amongst the acts covered by subarticle (3) are included those acts carried out in the administration of justice which are not performed in the exercise of a judicial function.

(5) The term "victim" means the injured person or any other person entitled to claim reparation.

Pre-contractual liability.

909. (1) No pre-contractual liability shall arise against the public administration.

(2) Nor may any action be decided against the public administration on the basis of pre-contractual liability.

(3) It shall be a lawful defence for the public administration to plead that it is immune from any action instituted against it on the basis of pre-contractual liability.

(4) The Administrative Court as the competent court where the public administration shall sue and be sued shall not allow an action against the public administration on the basis of pre-contractual liability.

Governmental liability under the Civil Code.

910. (1) Unless provided otherwise in this Code, the public administration shall continue to be liable for contractual and tortious liability under the provisions of the Civil Code, for any damages it may occasion to any person or property caused by an unlawful act of public administration employees when implementing the provisions of this Code or of any other law on behalf of the public administration.

(2) The injured person may sue both the public administration and, where known, a public administration employee, in one and the same cause.

(3) Where a public administration employee has caused the damage but has not been sued by the injured party, the public administration may request the Administrative Court or other court of civil jurisdiction to order the joinder of the public administration employee into the cause.

(4) When the public administration has not requested the joinder of a public administration employee responsible for the damage, it shall have a right, where the public administration has indemnified the injured person, to claim reimbursement from the public administration employee who committed or caused the violation of a law with intent or gross negligence.

Prescription against the public administration.

911. (1) Notwithstanding the provisions of any other law, indemnity claims against the public administration shall be barred by the lapse of three years after expiry of the day when the injured party became aware of the damage.

(2) Where, however, the injured party has not become aware of the damage or if the damage resulted from a criminal act, the claim for damages shall not become barred until the expiry of ten years after the damage arose.

Prescription against the public administration employee.

912. The public administration may institute an action against a public administration employee in terms of article 910(5) of this Code within five years from the date the public administration has indemnified the injured person.

Principles.

913. (1) Reparation shall be ensured for damage caused by an act due to a failure of the public administration to conduct itself in a way which can reasonably be expected from it in law in relation to the injured person.

(2) Such a failure is presumed in case of transgression of an established legal provision.

When reparation may take place.

914. Even if the conditions stated in article 913 of this Code are not met, reparation shall be ensured if it would be manifestly unjust to allow the injured person alone to bear the damage, having regard to the following circumstances:

(a) the act is in the general interest;

(b) only one person or a limited number of persons have suffered the damage; and

(c) the act was exceptional or the damage was an exceptional result of the act.

Consequences for victim when he contributes to damage.

915. (1) If the victim has, by his own fault or by his failure to use legal remedies, contributed to the damage, the reparation of the damage may be reduced accordingly or disallowed.

(2) The same shall apply if a person, for whom the victim is responsible, has contributed to the damage.

Recourse to alternative dispute resolution.

916. (1) Prior to hearing any action before the Administrative Court, the Court shall request all parties to attend mediation.

(2) The Registrar of the Malta Mediation Centre shall certify that mediation proceedings have been concluded before the court can hear the case.

(3) Such certificate shall be filed before the Administrative Court so that the action could continue should the mediation proceedings not come to a successful end.

(4) The provisions of article 460 of the Code of Organization and Civil Procedure shall not apply to an action against the public administration (see consequential amendment revoking article 460 COCP).

Reparation, how made.

917. (1) Reparation under article 913 of this Code shall be made in full, it being understood that the determination of the heads of damage, of the nature and of the form of reparation falls within the competence of the Administrative Court.

(2) Reparation under article 914 of this Code shall be made only in part, on the basis of equitable principles.

Implementation of reparation.

918. (1) Decisions granting reparation shall be implemented as quickly as possible.

(2) This shall be ensured by appropriate budgetary or other measures.

No discrimination on nationality of victim.

919. The nationality of the victim should not give rise to any discrimination in the field of liability of the public administration.

When civil liability arises.

920. The civil liability of the public administration arises both when it acts *jure gestionis* and when it acts *jure imperii*.

No exemption from civil liability.

921. The state shall be actionable before the Administrative Court and shall not enjoy immunity from civil liability when acting *jure imperii* except when there is an express provision of law stating that such is the case.

Non-applicability of the dual personality of the state.

922. The continental doctrine of the dual personality of the state which has been refuted by case law shall continue not to be applied by the Administrative Court when adjudging a claim for civil liability against the public administration.

Public administration to make good for damages and duty to care.

923. (1) The public administration has a duty to make good any damage it causes if it exercised its powers outside of the proper limits.

(2) The public administration has a duty to care towards the public in the performance of its executive functions.

Application of the doctrine of cumul to administrative proceedings.

924. In the case of concurrent liability of the public administration, a concurrent claim in contract and in tort may be brought in one and the same action against the public

administration.

Public administration to act as a *bonus pater familias*.

925. The public administration, in its relations with other parties, shall act as a bonus *pater familias*, that is, as a reasonable man should act, and the public administration shall be guided by its duty to care towards the public.

Public administration to act diligently.

926. The public administration shall act diligently.

No need to prove incompetence of a public administration employee.

927. (1) In an action for damages against the public administration, the applicant shall not be required to prove that a public administration employee was incompetent.

(2) Nor shall it be required to prove that the said public administration employee was incompetent at the time when the employee was first engaged.

(3) Nor shall it be a lawful defence to plead that the act or omission which caused the damages by the public administration had been carried out in the public interest.

Public administration to assume responsibility for incompetent employees.

928. (1) The public administration shall assume responsibility for acts of incompetent public administration employees. It shall have a right to sue such employee in a subsequent case within five years on the Administrative Court decision becoming *res judicata* or else it may, where known, request the Administrative Court to order the joinder of the said employees in the court case.

(2) The level of diligence required by a public employee is that of a bonus paterfamilias in accordance with article 1032 of the Civil Code, that is, that of a reasonable man. The diligence required of a public employee is the diligence used by a competent person carrying out that job.

(3) The diligence to act as a *bonus paterfamilias* can be warranted contractually or tortuously.

(4) A public employee will not be held tortuously liable if at all stages he acts in accordance with the principles of good administration as set out in this Code.

(5) The claimant shall prove that the public employee was at fault in a general sense.

(6) Where the public employee is bound by law to act in a certain way evidence that he did not perform such duty is enough to give rise to civil responsibility. This arises from article 1033 of the Civil Code which states that liability arises if the damage is a result of the person breaching a duty imposed by law.

Acting within the law may still give rise to liability.

929. The fact alone that the public administration has acted within the law in no way means that it is free from fault when it does not act as a reasonable man would act in those circumstances.

Action against a public administration employee.

930. The obligation of the public administration to compensate for damage caused to any person is accompanied by the right to file an action for indemnity against the public administration or the public administration employee, when known, who caused the damage. The main principles of action against officials are:

(a) such an employee is required to compensate for damage, wrongfully caused as a result of a breach of duties. Consequently there is no recourse if damage was caused lawfully or if the official was not guilty;

(b) the amount of compensation is determined on the basis of the economic situation of the public administration employee, the assessment of the risk of causing damage arising from the nature of duties, lack of experience objectively arising from the length of service, the service-related orders and instructions issued to the said employee, and other circumstances which would render compensation for damage by the official in full unfair;

(c) if damage was not caused intentionally, the compensation shall not exceed six times the amount of the total of the salary and additional remuneration of the public administration employee.

Nature of public office. Public office is a public trust.

931. Public administration employees shall at all times be accountable to the people, serve them with the utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

Liability of superior officers.

932. (1) A public administration employee shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, negligence or gross negligence.

(2) Any public administration employee who, without just cause, neglects to perform a duty within a period fixed by law, or within a period of eight weeks if no such period is fixed, shall be liable for damages to the person concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, or negligence of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Liability of subordinate officers.

933. No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However he shall be liable for wilful or negligent acts done by him which are contrary to law even if he acted under orders or instructions of his superiors.

Title II

Of Judicial Liability

Immunity from judicial liability for acts performed in office.

934. (1) No action may be brought against a member of the judiciary or a member of a tribunal for any act or decision taken by the said member in the exercise of his official judicial functions.

(2) However, a member of the judiciary and a member of a tribunal may still be sued personally if it is alleged that in the exercise of their functions they had violated the law as a result of which the plaintiff suffered damages.

(3) It shall also be possible to sue a member of the judiciary or of a tribunal for wrong doing on his part in the case of fraud, when his wrong doing is malicious or when his act is in breach of European Union Law.

Subpoena of a member of the judiciary to give evidence.

935. (1) A member of the judiciary or of a tribunal shall not give evidence on matters which came to his knowledge in the exercise of official judicial functions unless the said member's evidence is absolutely required in the supreme interests of justice.

(2) The evidence requested has to be essential and vital to the administration of justice and that such evidence cannot be obtained otherwise and that what was requested from the said member of the judiciary or of a tribunal did not result from the acts of the proceedings.

(3) The *procès-verbal* as dictated by the court or tribunal and contained in the court file constitutes an authentic report of the *res gestae* of the court's or tribunal's proceedings.

(4) The notes of a member of the judiciary or of a tribunal the Chairman of a tribunal taken by him during the sitting are not admissible as evidence unless the same chairman inserts them in the acts of the proceedings.

Criminal action against a member of the judiciary.

936. The member of the judiciary or a tribunal shall enjoy no immunity from the institution of a criminal action.

Sub-Title III

Of the Liability of Public Administration Employees

Personal liability of public administration employees.

937. (1) A public administration employee may be sued in his personal capacity. If however it is not known whom he is, it shall be the public administration which shall be sued, subject to the provisions of article 928(1) of this Code.

(2) A public administration employee may be so sued when acting in an official capacity on the basis of the fact that his responsibility as an employee subsists when he acts illegally or beyond his lawful duties.

Title IV

Of Alternative Means of Dispute Resolution

General provisions.

938. This Sub-Title deals with alternative means for resolving disputes between the public administration and private parties.

Typology of alternative means of dispute resolution.

939. This Sub-Title deals with the following alternative means:

(a) internal reviews;

(b) conciliation;

(c) mediation;

(d) negotiated settlement; and

(e) arbitration.

Prevention of disputes.

940. Although this Sub-Title deals with resolving disputes between the public administration and any person, some alternative means of dispute resolution may also

serve to prevent disputes before they arise; this is particularly the case in respect of conciliation, mediation and negotiated settlement.

Scope of alternative means.

941. Alternative means to litigation shall be either generally permitted or permitted in certain types of cases deemed appropriate, in particular those concerning individual administrative acts, contracts, civil liability, and generally speaking, claims relating to a sum of money.

Appropriateness of alternative means.

942. The appropriateness of alternative means varies according to the dispute in question.

Regulating alternative means.

943. The regulation of alternative means shall provide either for their institutionalisation or their use on a case-by-case basis, according to the decision of the parties involved.

Rules to be applied in regulating alternative means.

944. The regulation of alternative means shall:

(a) ensure that parties receive appropriate information about the possible use of alternative means;

(b) ensure the independence and impartiality of conciliators, mediators and arbitrators;

(c) guarantee fair proceedings allowing in particular for the respect of the rights of the parties and the principle of equality;

(d) guarantee, as far as possible, transparency in the use of alternative means and a certain level of discretion;

(e) ensure the execution of the solutions reached using alternative means.

Duration of alternative dispute resolution mechanisms.

945. Alternative dispute resolution procedures shall be concluded within three months from their initiation.

Recourse to alternative dispute resolution procedures before the institution of judicial proceedings.

946. Some alternative means, such as internal reviews, conciliation, mediation and the search for a negotiated settlement, may be used prior to the institution of judicial proceedings.

Arbitration is not conducive to judicial proceedings.

947. The use of arbitration shall exclude recourse to judicial proceedings.

Suspension of time limits.

948. The use of alternative means of dispute settlement shall bring with it the suspension or interruption of the time-limits for legal proceedings.

Title V

Of Judicial Review of Administrative Action

Sub-Title I

Of the Principles Guiding the Exercise of Judicial Review

Definitions.

949. For the purposes of this Title:

"administrative acts" has the same meaning as is assigned to it in article 961(2) of this Code;

"judicial review" means the examination and determination by a court or tribunal of the lawfulness of an administrative act and the adoption of appropriate measures, with the exception of review by a constitutional court.

The scope of judicial review.

950. (1) All administrative acts shall be subject to judicial review. Such review may be direct or by way of exception.

(2) A court or tribunal shall be able to review any violation of the law, including lack of competence, procedural impropriety and abuse of power.

Access to judicial review. Cap. 16.

951. (1) Judicial review shall be available to any person in respect of administrative acts that directly affect his rights or interests.

(2) Access to judicial review shall also be opened to associations or other persons and bodies empowered to protect collective or community interests.

(3) A person shall be required to exhaust remedies provided by national law before having recourse to judicial review. The length of the procedure for seeking such remedies shall not be excessive. Until such remedies are concluded, any prescriptive period for the institution of an action for judicial review shall not run and shall be suspended in terms of

the Civil Code. The remedies which have to be exhausted comprise resort to mediation and to the Ombudsman and any other remedy which is established by this Code or any other law.

(4) A person shall be allowed such reasonable period of time fixed by law in which to commence judicial review proceedings.

(5) The cost of access to judicial review shall not be such as to discourage applications. Legal aid shall be available to persons lacking the necessary financial resources where the interests of justice require it.

An independent and impartial tribunal.

952. (1) Judicial review shall be conducted by a court or tribunal established by law whose independence and impartiality are guaranteed.

(2) The court or tribunal may be an administrative tribunal or part of the ordinary court system.

The right to a fair hearing.

953. (1) The time within which the tribunal takes its decision shall be reasonable in the light of the complexity of each case and of the procedural steps or postponements attributable to the parties.

(2) There shall be equality of arms between the parties to the proceedings. Each party shall be given an opportunity to present his or her case without being placed at a disadvantage.

(3) Subject to the provisions of article 637 of the Code of Organization and Civil Procedure, the public administration shall make available to the court or tribunal the documents and information relevant to the case.

(4) The proceedings shall be adversarial in nature. All evidence admitted by the court or tribunal shall in principle be made available to the parties with a view to adversarial argument.

(5) The court or tribunal shall be in a position to examine all of the legal and factual issues relevant to the case presented by the parties.

(6) The proceedings shall be public, other than in exceptional circumstances to be laid down by law.

(7) Judgment shall be pronounced in public.

(8) Reasons shall be given for the judgment. Courts and tribunals shall indicate with sufficient clarity the grounds on which they base their decisions. Although it shall not be necessary for a court or tribunal to deal with every point raised in argument, a submission

that would, if accepted, be decisive for the outcome of the case requires a specific and express response.

(9) The decision of a court or tribunal that reviews an administrative act shall, at least in important cases, be subject to appeal, unless the case is directly referred to a higher court or tribunal in accordance with the national legislation.

The effectiveness of judicial review**.**

954. (1) If a court or tribunal finds that an administrative act is unlawful, it shall have the power necessary to redress the situation so that it is in accordance with the law. In particular, it should be competent at least to quash the administrative decision and if necessary to refer the case back to the public administration or other tribunal to take a new decision that complies with the judgment. It shall also be competent to require of the public administration, where appropriate, the performance of a duty.

(2) The court or tribunal shall also have jurisdiction to award costs of the proceedings and compensation in appropriate cases.

(3) The necessary powers to ensure effective execution of the court's or tribunal's judgment shall be available in terms of Title IX of Part III of Book Second of this Code.

(4) The court or tribunal shall be competent to grant provisional measures of protection pending the outcome of the proceedings.

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Sub-Title II

Of the Grounds Upon Which Judicial Review of Administrative Action may be Exercised

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Definition of judicial review.

955. Judicial review is the process by which the Administrative Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.

Exclusive exercise of judicial review.

956. (1) No court of civil jurisdiction (other than the Administrative Court) shall exercise judicial review unless expressly provided for by law.

(2) For the avoidance of doubt it is hereby declared that the Civil Court, First Hall shall no longer be competent to exercise judicial review in terms of this Code, the Code of Organization and Civil Procedure or of any other law unless expressly provided for by law.

(3) It is further clarified that the Civil Court, First Hall, shall not exercise judicial review in terms of article 32 of the Code of Organization and Civil Procedure.

Nature of judicial review.

957. (1) Judicial review is not concerned with reviewing the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself.

(2) Judicial review is not an appeal from a decision but a review of the manner in which the decision was made.

(3) Judicial review is not intended to take away from the public administration the powers and discretions properly vested in them by law and to substitute the Administrative Court as the body making the decision.

(4) Judicial review is intended to see that the public administration uses its powers in a proper manner.

(5) In sum, judicial review is entirely different from an ordinary appeal: it is made effective by the court quashing an administrative decision without substituting its own decision, and is to be contrasted with an appeal where the court of second instance substitutes its own decision on the merits for that of the public administration.

Scope of judicial review.

958. Judicial review is intended to protect a person against the abuse of power by the public administration.

Purpose of judicial review.

959. (1) The purpose of judicial review is to ensure that a person is given fair treatment by the public administration to which he has been subjected.

(2) It is no part of that purpose to substitute the opinion of the Administrative Court for that of the authority constituted by law to decide the matter in question.

The grounds of judicial review.

960. Judicial review is concerned with:

(a) whether a decision exceeds its powers;

(b) commits an error of law;

(c) commits a breach of the rules of natural justice;

(d) reaches a decision which no reasonable tribunal could have reached; or

(e) abuses its power.

Judicial review of administrative action.

961. (1) Saving as is otherwise provided by law and in addition to the provisions of article 963 of this Code, the Administrative Court may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:

(*a*) where the administrative act is in violation of the Constitution;

(*b*) when the administrative act is *ultra vires* on any of the following grounds:

(i) when such act emanates from a public authority that is not authorised to perform it; or

(ii) when the public administration has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or

(iii) when the administrative act constitutes an abuse of the public administration's power in that it is done for improper purposes or on the basis of irrelevant considerations; or

(iv) when the administrative act is otherwise contrary to law.

(2) In this Title, unless the context otherwise requires, "administrative act" means any individual measure or decision which is taken by the public administration in the exercise of public authority and which is of such nature as to directly affect the rights, liberties or interests of persons. It also includes the issuing by the public administration of any order, licence, permit, permission, authorization, warrant, decision, or a refusal to any demand of any person, but does not include any measure intended for internal organization or administration within the said authority, provided that, saving those cases where the law prescribes a period within which the public administration is required to make a decision, the absence of a decision of the public administration following a claimant's written demand served upon it, shall, after two months from such service made in terms of article 205(4) of this Code, constitute a refusal for the purposes of this definition;

(3) An action to impugn an administrative act under:

(a) sub-article (1)(a) shall be filed within a period of ten years from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier; and

(b) sub-article (1)(*b*) shall be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

(4) The provisions of this article shall not apply where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law.

(5) In any action brought under this article, it shall be lawful for the plaintiff to include in the demands a request for the payment of damages based on the alleged responsibility of the public administration in tort or quasi tort, arising out of the administrative act. The said damages shall not be awarded by the court where notwithstanding the annulment of the administrative act the public administration has not acted in bad faith or unreasonably or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power.

(6) For the purposes of this article, and of any other provision of this and any other law, service with the public service is a special relationship regulated by the legal provisions specifically applicable to it and the terms and conditions from time to time established by the Government, and no law or provision thereof relating to conditions of employment or to contracts of service or of employment applies, or ever heretofore applied, to service with the public service except to the extent that such law provides otherwise.

Judicial review of administrative action.

962. The public administration shall give effect to the right:-

(a) of every person to administrative action that is lawful, reasonable and procedurally fair; and

(b) of every person whose rights have been adversely affected by administrative action to be given written reasons.

Further grounds of judicial review of administrative action.

963. The Administrative Court shall have the power to review administrative action if:-

(a) the public administration which took the action was not authorized to do so by the empowering provision;

(b) a peremptory procedure or peremptory condition prescribed by law was not complied with;

(c) the action is procedurally unfair;

(d) the action was influenced by an error of law or fact;

(e) the action was taken:

(i) for a reason not authorised by the empowering provision;
(ii) for an ulterior purpose or motive;

(iii) because irrelevant considerations were taken into account or relevant consideration not considered;
(iv) because of rigid adherence to a standard;
(v) because of the dictates of another person or body; or
(vi) arbitrarily, capriciously or without properly considering the matter; or

(f) the action itself –
(i) contravenes a law or is not authorised by law;
(ii) is uncertain;
(iii) is not rationally connected to:-
(a) the purpose for which it was taken;
(b) the purpose of the empowering provision;
(c) the information before the public administration; or
(d) the reasons given for it by the public administration; or
(iv) is unreasonable, taking into account all relevant factors, including:-
(a) the adverse effect of the action;
(b) the relationship between that effect and the benefits of the action; and
(c) any less restrictive means to achieve the purpose for which the action was taken.

(2) In this article:

"empowering provision" means the legislative provision or the non-legislative document in terms of which the administrative action was purportedly taken;

"relevant considerations" includes all material information and all seriously intended objections and seriously intended alternatives to the administrative action.

Remedies in proceedings for judicial review of administrative action.

964. The Administrative Court may, in proceedings for judicial review of administration action, grant appropriate relief. Such relief includes the following:-

(a) a temporary injunction or other temporary relief;

(b) orders dismissing the application and affirming the administrative action under judicial review;

(c) orders upholding the application and:-
(i) setting aside the administrative action and:-
(a) remitting the matter for reconsideration by the public administration in accordance with any recommendations by the court; or
(b) in exceptional cases, substituting or varying the administrative action so set aside or correcting a defect in any state of affairs resulting from the administrative action;

(ii) directing the public administration:-

(a) to act; or

(b) in exceptional cases, to correct a defect in the administrative action or any state of affairs resulting from the administrative action or to pay compensation to the applicant or another specified person; or

(iii) prohibiting the public administration from acting in a particular way;

(d) declaration of rights; or

(e) orders awarding judicial costs.

Title VI

Of the Administrative Court

Sub-Title I

Of Preliminary Provisions

Interpretation.

965. In this Sub-Title, unless the context otherwise requires -

"Administrative Court" means the Administrative Court established by article 982(1) of this Code;

"the Minister" means the Minister responsible for justice;

"principles of good administrative behaviour" means the principles of good administrative behaviour listed in Sub-Title II of this Title;

"the registrar" means the registrar of the Administrative Court;

“tribunal" means a tribunal listed in the Twenty-Second Schedule of this Code.

Sub-Title II

Principles of Good Administrative Behaviour to Apply to all Tribunals

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General provision applicable to all tribunals.

966. (1) In their relations with the public, all tribunals shall respect and apply the principles of good administrative behaviour laid down in this Sub-Title.

(2) The principles of good administrative behaviour include the following:

(*a*) a tribunal shall respect the parties' right to a fair hearing, including the principles of natural justice, namely:

(i) *nemo judex in causa sua*,
(ii) *audi et alteram partem*, and
(iii) the duty to give reasons for a decision;

(*b*) the time within which a tribunal shall take its decision shall be reasonable in the light of the circumstances of each case. The decision shall be delivered as soon as possible and for this purpose the tribunal shall deliver one decision about all matters involved in the cause whether they are of a preliminary, procedural or of a substantive nature;

(*c*) a tribunal shall ensure that there shall be procedural equality between the parties to the proceedings. Each party shall be given an opportunity to present its case, whether in writing or orally or both, without being placed at a disadvantage;

(*d*) a tribunal shall ensure that the public administration makes available the documents and information relevant to the case and that the other party or parties to the proceedings have access to these documents and information;

(*e*) proceedings before a tribunal shall be adversarial in nature. All evidence admitted by such a tribunal shall, in principle, be made available to the parties with a view to adversarial argument;

(*f*) a tribunal shall be in a position to examine all of the factual and legal issues relevant to the case presented by the parties in terms of the applicable law;

(*g*) save as otherwise provided by law, the proceedings before a tribunal shall be conducted in public;

(*h*) reasons shall be given for the judgment. A tribunal shall indicate, with sufficient clarity, the grounds on which it bases its decisions. Although it shall not be necessary for a tribunal to deal with every point raised in argument, a submission that would, if accepted, be decisive for the outcome of the case, shall require a specific and express response.

Power of Minister to make regulations to implement provisions of this Sub-Title.

967. The Minister may make regulations to implement and to give better effect to the provisions of this Sub-Title and may, without prejudice to the generality of the foregoing:

(*a*) establish the date of entry into force of the provisions of this Sub-Title with regard to any tribunal referred to in the Twenty-Second Schedule to this Code that the Minister may by regulations specify;

(*b*) make such amendments, alterations, deletions, repeals, corrections, changes and modifications to any primary law or subsidiary law for the purpose of bringing such primary law or subsidiary law in conformity with the provisions of this Sub-Title and may from time to time update the list of tribunals listed in the Twenty-Second Schedule to this Code.

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Sub-Title III

The Administrative Court

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Administrative Court as the court where the public administration sues and is sued.

968. (1) The Administrative Court shall be the court of the public administration.

(2) It is the court which hears and determines court cases pertaining both to central government and to local government.

(3) Decisions of the public administration may only be contested before the Administrative Court.

(4) It is in this court that the public administration shall be sued and it is in this court that the public administration shall sue.

(5) Where a person sues the public administration together with another person, the case shall be heard by the Administrative Court.

(6) The public administration may not sue nor may it be sued in a court of civil jurisdiction established by the Code of Organization and Civil Procedure.

Administrative Court as a court of original and appellate jurisdiction.

969. (1) The Administrative Court shall be a superior court of first instance.

(2) The Administrative Court shall also be a court of contentious jurisdiction and an advisory court. It shall provide advice in terms of article 600 of this Code.

(3) The Administrative court shall have an original jurisdiction and an appellate jurisdiction.

(4) As a court of original jurisdiction, the Administrative Court shall replace through a consolidation and organisation exercise the following courts, tribunals and other persons or bodies:

(a) the Administrative Review Tribunal established by the Administrative Justice Act; (Cap. 490)

(b) the Data Protection Tribunal established under the Data Protection Act; (Cap. 440) and which takes cognizance of appeals under the Freedom of Information Act; (Cap. 496);

(c) the Land Arbitration Board established under the Public Purposes Ordinance; (Cap. 88)

(d) the Civil Court, First Hall, with regard to public procurement regulations;

(e) the Civil Court, First Hall, when the latter exercise judicial review of administrative act powers – article 469A;

(f) the Civil Court, First Hall, sitting in its constitutional competence under Chapter IV of the Constitution of Malta and the European Convention Act or as a court of original jurisdiction in matters of a constitutional nature (e.g. *actio popularis*, etc);

(g) the Employment Commission established by article 120 of the Constitution;

(h) other administrative tribunals which have not been yet abolished and their duties transferred to the Administrative Review Tribunal in terms of the Administrative Justice Act;

(i) Ministers, when these are vested with quasi-judicial decision-making powers.

(4) The Administrative Court shall be a court of appellate jurisdiction. It shall replace the Court of Appeal, superior and inferior jurisdiction, when the Court of Appeal is hearing appeals from decisions of tribunals.

Review of the decisions of the Administrative Court.

970. (1) Appeals may be lodged from decisions of the Administrative Court to the Constitutional Court.

(2) The decisions of the Administrative Court are reviewable by the Constitutional Court in second instance by way of appellate or judicial review proceedings.

The mixed action.

971. (1) It shall be allowed to institute a mixed action before the Administrative Court.

(2) The mixed action means that any person may institute more than one action against the public administration.

(3) Such action shall comprise:

(a) an action for damages, whether in contract or in tort or both;

(b) an action of judicial review of administrative action;

(c) an action under the Constitution of Malta, the European Convention Act and the European Union Act;

(d) an action for an annulment of a law;

(e) an action requesting the enforcement of a EU directive which has not been transposed or which has been partially or incorrectly transposed;

(f) an action to declare that the public administration is not complying correctly with the provisions of any law;

(g) an action to uphold the provisions of this Code;

(h) an action ordering the public administration to pay actual, compensatory, consequential, continuing, future, pecuniary, and punitive damages and fees incurred by the person suing or being sued.

(4) All these actions may be brought together in a mixed action.

(5) It shall no longer be the rule that ordinary remedies have to be exhausted before the extraordinary remedy may be exercised (A consequential amendment needs to be made to the Constitution, article 46(2) proviso). By "extraordinary remedy" is meant a remedy in terms of Chapter IV of the Constitution or of the European Convention Act.

One uniform time limit within which cases may be instituted before the Administrative Court.

972. In all cases where the Administrative Court is seized of any proceedings, the law shall apply one uniform time limit for such proceedings to be instituted before the Administrative Court.

Right to criticise public administration and challenge its decisions.

973. (1) Each person is guaranteed the right to criticize the decisions of the public administration.

(2) Each person has the right to challenge the decisions of the public administration before the Administrative Court where the law allows so.

Procedure before the Administrative Court.

974. The procedure before the Administrative Court shall be as follows:-

(a) when a case is filed before the Administrative Court, it shall be assigned to mediation. The Registrar of the Administrative Court, on filing of a case before the Administrative Court shall forward that case to the Registrar of the Malta Mediation Centre who shall assign it to a mediator for fixing a date and time for a mediation sitting. The mediator shall conclude the mediation session within three months or such longer period as the Administrative Court may approve on an application by the mediator setting out reasons for the delay;

(b) when mediation is successful, the mediator shall draw up an agreement which shall be signed by the parties as constituting a conclusive, final and binding agreement between the parties and shall be filed by the Registrar of the Malta Mediation Centre in the registry of the Administrative Court;

(c) when mediation is unsuccessful, that case shall be assigned to the Administrative Court composed only of a single judge to carry out a pre-trial hearing;

(d) when the pre-trial hearing is concluded and the case has not been concluded at that stage, the case shall be assigned to the Administrative Court composed of a panel of members namely a single Judge, who presides, and two experts in the area.

Encouraging settlement of disputes through mediation.

975. In order to encourage settlement of disputes, no fees shall be paid by the parties for mediation.

Possibility of bringing proceedings via information technology.

976. (1) It shall be allowed for an applicant, advocate and legal procurator to file an application to commence proceedings and all subsequent judicial acts, written pleadings and other documents before the Administrative Court by electronic means.

(2) The registrar shall acknowledge receipt of the filing of the said documents by return electronic mail.

(3) Payment when presenting such documents may also be made electronically.

(4) The Minister may make regulations to give better effect to the provisions and of this and may, without prejudice to the generality of the foregoing, prescribe the procedure, method and manner to be followed when filing documents in court and when making payments.

(5) Judgments, decisions, orders and rulings delivered by the Administrative Court may be communicated by the registrar electronically to the parties and to their advocates, legal procurators and other parties assisting them and to other persons who might be involved in the proceedings before the Administrative Court such as witnesses and court experts.

(6) The parties may serve documents on the other parties electronically provided that a copy of each document served is also served on the registrar for the purpose of data retention.

(7) The Registrar shall levy half the fees applied for filing documents in court in the case of electronic filing.

Benefit of legal aid. Cap. 12.

977. The provisions of the Code of Organization and Civil Procedure relating to the benefit of legal aid shall apply to the applicant before the Administrative Court being persons entitled to such benefit within the meaning of those provisions.

Fundamental principles to be observed during the pre-trial.

978. (1) When a cause has been assigned to a Judge he shall, as soon as practicable, give such orders as provided in article 173 of the Code of Organization and Civil Procedure as may be conducive to an expeditious conclusion of the written pleadings.

(2) The Registrar shall keep a record of when a cause has been assigned to a Judge and of the date and time when the Deputy Registrar assigned to the Judge shall have signed for the relevant act or acts.

(3) Without prejudice to sub-article (1) and to any other law providing for special procedures, a Judge shall in any case order, not later than twenty days from when the Deputy Registrar shall have signed for the relevant act or acts, that the acts by which the proceedings are commenced be served on the defendant.

(4) Before the conclusion of the written pleadings, orders in terms of article 173 of the Code of Organization and Civil Procedure shall, as a rule, be limited to seeking more detailed information or clarification regarding the acts by which the proceedings are commenced.

(5) After the written pleadings have been concluded, the Judge may give such orders as provided in article 173 of the Code of Organization and Civil Procedure as may be conducive to the proper conduct of the pre-trial or trial hearing.

(6) A cause shall be appointed for a pre-trial hearing after the conclusion of mediation.

(7) The pre-trial hearing shall be presided by the Judge or by a judicial assistant acting under the guidance and directives of the Judge. Whenever possible, pre-trial hearings shall be held in the afternoon.

(8) Unless otherwise provided by any other law, pre-trial hearings shall be held in open court, but hearings and decrees or orders of the Judge or judicial assistant dealing solely with the management of the case may be held or given, as the case may be, *in camera*.

(9) A list of causes set down for pre-trial hearings shall be posted by the registrar as provided in article 194 of the Code of Organization and Civil Procedure.

(10) The purpose of the pre-trial hearing is to:

(*a*) identify the factual and legal issues involved in the case;

(b) establish who the interested parties are, make any necessary corrections to their designation and establish whether any other parties should be joined to the suit or should intervene in the cause;

(*c*) establish whether any corrections need to be made to the written pleadings and enter such corrections in the records of the cause;

(*d*) determine with exactness the demand of the plaintiff relative to the amount being claimed or the object being sought;

(*e*) examine the need or otherwise to appoint technical referees and their precise terms of reference, and, when so necessary, to appoint such referees;

(*f*) list the points of fact that the parties agree upon and the points of fact that the parties do not agree upon and on which the Judge or judicial assistant will require evidence as being points of fact crucial to the determination of the cause;

(*g*) list the points of law which will require argument and determination and the time within which the advocates of the parties may present written arguments in such form or manner as the Judge or judicial assistant shall direct;

(*h*) identify the witnesses and documents which the Judge or judicial assistant determine as being necessary for determining the cause, the ruling on the admissibility of witnesses and documents, and whether witnesses will be heard viva voce or by affidavit and the time within which the Judge or judicial assistant will require each party to present such evidence;

(*i*) determine any other thing or process (including the collection of evidence) and to establish any other procedure or time limit which in the opinion of the Judge or judicial assistant may bring the cause to an early determination, provided that whenever a pre-trial hearing is presided by a judicial assistant the provisions of article 97C of the Code of Organization and Civil Procedure shall be observed.

(11) Subject to the provisions of any other law dealing with arbitration, the Judge or judicial assistant may refer the parties to arbitration if the parties so request.

(12) The pre-trial hearing of a cause may be held in the course of a number of sittings; but a cause shall not, except for special reasons to be expressly noted in the relative minute, be adjourned for a period exceeding three months.

(13) When the Judge or judicial assistant consider that the cause should proceed to the trial hearing, the said cause shall be set down for trial hearing on a specified date and at a specified time, and the provisions of article 195(4) of the Code of Organization and Civil Procedure shall apply. When such date and time has not been determined during a pre-trial hearing it shall be sufficient if the notice of the trial hearing be communicated to the advocates of the parties at least two months prior to the date fixed for the hearing.

(14) All evidence or remaining evidence shall be produced, and submissions shall be made, during the trial hearing, after which the cause shall be put off for judgment, which may be delivered on the same day of the hearing.

Fundamental principles to be observed during the main trial.

979. (1) The following fundamental principles shall govern the main trial hearing before the Administrative Court:

(a) right to obtaining all information concerning the case, including but not limited to, the right to examine the file and to make copies of the file;

(b) right to participate in the court hearing and to know the panel of the court hearing the case;

(c) right to a fair hearing;

(d) right to challenge the members of the Administrative Court;

(e) right to submit applications *pendent lite*;

(f) right to give evidence *viva voce* or to submit affidavits in terms of the prescribed form to be made by regulations by the Minister;

(g) right to submit reasons and considerations related to all questions which arise in the course of the hearing of the matter in court, contest documents, reasons and considerations submitted by other parties in the proceedings, submit questions to other parties in the proceedings,

(h) right to submit evidence, including to participate in the inspection and examination of evidence and to submit questions to the witnesses and experts;

(i) principle of investigation where the Administrative Court may, if necessary, collect evidence on its own initiative;

(j) right to a hear the matter within reasonable time;

(k) obligation to exercise one's procedural rights in good faith;

(l) right to a public hearing, except for the cases when the applicant asks the court to declare it closed. A court may declare that a session or a part of it be held *in camera* in order to maintain a state or business secret, protect the private or family life of a person, maintain the confidentiality of messages or in the interests of a minor or the administration of justice.

(2) The court shall try, uninterruptedly, a case to a conclusion. Once appointed for trial a case shall be heard all at one go until it is put off for judgment.

(3) The court shall not put off a case appointed for trial except for the delivery of judgment.

Distribution of legal costs.

980. (1) Legal costs comprise the following fees:

(a) court registry fees;

(b) costs essential to proceedings.

(2) Costs essential to proceedings are:

(a) fees for experts, interpreters and translators and compensation for witnesses;

(b) costs of obtaining documentary evidence and conducting inspections and on-the-spot visits of inspection of physical evidence;

(c) costs for legal assistance (an advocate, legal procurator or other person who participates in a case as a representative or the costs of another person who provides legal assistance);

(d) postage and costs of serving summonses;

(e) costs relating to the publication of summonses and notices in the newspaper;

(f) wages which a participant in the proceeding does not receive due to absence from work, and travel and accommodation expenses and daily allowance.

Taxation of costs.

981. (1) The registrar shall tax judicial costs in terms of these principles.

(2) The principle is the party cast pays both his and the winning party's legal costs.

(3) If a party in a case abuses procedural rights by failing to appear in a court session without good reason or otherwise delays the proceeding in bad faith, the court may order the participant to pay a portion of the legal costs borne by the other participants in the proceeding.

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Sub-Title IV

Constitution, Composition and Panels of the Administrative Court

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Constitution of an Administrative Court.

982. (1) There shall be set up an independent and impartial court, to be known as the Administrative Court:

(a) for the purpose of reviewing administrative acts referred to it in accordance with this Code or any other law;

(b) for the purpose of exercising any other jurisdiction conferred on the Administrative Court by or under this or any other law, whether before or after the coming into force of this Code;

(c) for the purpose of hearing and determining at first instance and subject to an appeal to the Constitutional Court cases concerning the Constitution of Malta, the European Convention Act and any law of a constitutional and administrative nature;

(d) for hearing cases where the public administration is involved as a party thereto, whether as applicant or defendant or whether it has been joined or admitted in *status et terminis* in such proceedings.

(2) The Administrative Court shall be the competent court in which the public administration may be sued even with regard to a suit involving contractual or tortuous liability or both such types of liability.

(3) The Administrative Court shall enjoy complete administrative independence from government.

(4) The Judge presiding the Administrative Court shall exercise full authority over members of his own staff. He shall administer the court's budget with no intervention whatsoever from the executive.

(5) The Administrative Court shall be assisted by a body corporate to be known as the Administrative Court Support Service Corporation which shall be a public corporation established specifically to assist the Administrative Court in the execution of its functions. The said public corporation shall be established by regulations to be made by

the Law Commissioner following agreement with the Select Committee for Recodification and Consolidation of Laws.

Places where sittings may be held.

983. Although the Administrative Court shall have jurisdiction over all the Maltese islands and all the territory of Malta, it may hold sittings either in Malta or in Gozo or in both islands.

Principles which shall guide the Administrative Court.

984. The Administrative Court shall comply with the principles of good administrative behaviour laid down in article 966 of this Code.

Composition of the Administrative Court.

985. (1) The Administrative Court shall consist of a Chairperson who shall preside over the court.

(2) The President of Malta, acting on the advice of the Chief Justice, may appoint more than one Chairperson to sit on the Administrative Court, but only one Chairperson shall sit in any one case.

(3) A Chairperson shall be appointed for a term of four years and shall vacate his or her office at the expiration of the term of the said appointment.

(4) A Chairperson shall be a person who holds the office of a judge in Malta.

(5) During the tenure of office, a Chairperson may not be removed except in the same manner and on the same grounds as a judge may be removed in terms of article 97(2) of the Constitution of Malta.

(6) In the exercise of his or her function, a Chairperson shall not be subject to the direction or control of any other person or authority.

(7) Upon his or her appointment, a Chairperson shall take an oath to examine and decide the cases brought before him with impartiality, fairness and according to law. The oath shall be taken before the Constitutional Court.

(8) The warrants or orders of the Administrative Court shall be signed by the Chairperson.

(9) The oath to the witnesses shall be administered by the Chairperson or by the registrar of the Administrative Court or such other person as the Chairperson may by order in writing appoint.

(10) A Chairperson shall continue to receive the remuneration of a judge of the Superior Courts. Such remuneration may not be altered to the disadvantage of a Chairperson during his period of office.

Abstention and challenge of chairperson. Cap. 12.

986. (1) The provisions of the Code of Organization and Civil Procedure regarding the abstention and challenge of judges shall apply to the abstention and challenge of a Chairperson.

(2) When a Chairperson has been objected to or has abstained from sitting, or is otherwise unable to act, another Chairperson shall be surrogated in his stead by the President acting on the advice of the Chief Justice.

Panels of assistants.

987. (1) In proceedings before it, the Administrative Court shall be assisted by two assistants, appointed under this article, whom the Administrative Court may consult in any case for its decision.

(2) Such consultation shall take place in open court or *in camera* and the Administrative Court shall not be bound to abide by the opinion of the assistants.

(3) The two assistants shall be appointed by the President of Malta, acting on the advice of the Chief Justice from amongst persons who, in the Chief Justice's opinion, have previous experience and special qualifications in a particular field of expertise falling within the competence of the Administrative Court.

(4) The President of Malta, acting on the advice of the Chief Justice, may appoint panels of assistants depending on the subject matter of the dispute and the Registrar shall select two assistants from each panel for each case.

(5) The President of Malta, acting on the advice of the Chief Justice may, from time to time, add to or vary such order to include, remove, fuse together or change existing panels as the case may be.

(6) The President of Malta, acting on the advice of the Chief Justice, may at any time, appoint more than two persons on each panel as assistants of the Administrative Court, but only two such persons from each panel shall assist the said court in any one case.

(7) The office of an assistant of the Administrative Court shall become vacant:

(*a*) at the expiration of four years from the date of appointment unless such appointment is renewed for a period or further periods of four years; or

(*b*) following removal from office in the same manner and on the same grounds as a judge may be removed from office; or

(*c*) following a written request addressed to the Chief Justice to that effect by such assistant.

(8) The assistants of the Administrative Court may abstain or be challenged in the same manner and on the same grounds as, according to law, a judge may abstain or be challenged. Any question regarding any cause of abstention or challenge shall be decided by the Chairperson.

(9) In the exercise of his function, an assistant of the Administrative Court shall not be subject to the direction or control of any other person or authority other than the Chairperson of the Administrative Court.

(10) Upon appointment, an assistant of the Administrative Court shall take an oath of office. The oath shall be taken before the Chairperson.

(11) An assistant of the Administrative Court shall receive such remuneration as the President of Malta, acting on the advice of the Public Accounts Committee, may by order to be published in the Gazette from time to time prescribe. Such remuneration may not be altered to the disadvantage of an assistant during his or her period of office.

Sittings of the Administrative Court.

988. (1) The Administrative Court shall hold sittings in Malta and in Gozo at such regular intervals as may be necessary to expedite its business. The day and time of each sitting shall be determined by the Chairperson.

(2) The Minister shall, by notice in the Gazette, determine the buildings where the Administrative Court shall sit in Malta and in Gozo.

(3) Unless otherwise exempted by the Chairperson, assistants of the Administrative Court shall attend for all sittings of the said court.

Registry of the Administrative Court.

989. (1) The Minister may by regulations establish the Registry of the Administrative Court and the functions thereof, and by the same regulations may also appoint such officers as may be necessary for the operation of the said Court. All the records of the Administrative Court shall be filed in the Registry referred to in this subarticle.

(2) Unless the law prescribes otherwise, the records of the Administrative Court shall be accessible to all persons, and copies thereof shall be given on payment of the prescribed fee to any person on request.

(3) The records of the Administrative Court shall be deposited and kept in such archives as may be designated by the Minister by regulations made under this article.

Duties of Registrar.

990. (1) The Registrar of the Administrative Court shall be responsible for the running of the Registry. The Registrar shall also perform any other duty which may be incumbent upon him under this Code or any rules made thereunder.

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(2) Unless otherwise prescribed in this Code, the duties of Registrar shall be carried out in accordance with the provisions of the Code of Organization and Civil Procedure.

Appearance before the Administrative Court.

991. (1) The parties may appear before the Administrative Court in person or be represented through an advocate, a legal procurator or another person.

(2) The parties may be assisted by an advocate, a legal procurator or by another person.

Procedure before the Administrative Court. Cap. 12.

992. (1) The provisions of articles 21, 22 and 23 of the Code of Organization and Civil Procedure shall apply before the Administrative Court.

(2) Proceedings before the Administrative Court shall be commenced by the filing of an application. The applicant shall file an application in the Registry of the Administrative Court. The said application shall contain:

(*a*) a clear and correct statement of the subject-matter and the cause of the claim;

(*b*) the claim or claims;

(*c*) a clear and detailed statement of the facts of the case of which the applicant may be aware;

(*d*) the name of witnesses the applicant intends to produce, including the subpoena of the other party, stating in respect of them the proof the applicant intends to establish by their evidence; and

(*e*) the remedy being requested, with costs against the public administration.

(3) The application shall be served on the public administration not later than five working days from its date of filing. The provisions of article 966 of this Code in so far as they concern the expeditiousness of proceedings shall be observed in so far as the reply is concerned.

(4) The public administration shall file the reply within twenty days from the date of service of the application, unless it intends to admit the claim.

(5) When the public administration intends to admit the claim, wholly and unconditionally, it shall file a note to that effect. Once the applicant declares, by means of a note filed within twenty days from service of the public administration's admission of claim, that he is satisfied with the remedy granted by the public administration, the Administrative Court shall abstain from taking further cognizance of the case.

(6) If the applicant is not satisfied with the remedy granted by the respondent, whether in full or in part, or if the public administration intends to contest the claim wholly and unconditionally, the public administration shall file a reply containing:

(*a*) any such pleas as would be taken to be waived if not raised before the contestation of the suit;

(*b*) a clear and correct statement of the pleas on the merits of the claim or claims and referring to the provisions of the law in terms of which the decision was taken;

(*c*) a clear and detailed statement of facts of the case of which the public administration is aware, denying, admitting or explaining the circumstances of fact set out in the applicant's application;

(*d*) the name of the witnesses which the applicant intends to produce, including the subpoena of the other party, stating in respect of each of them the proof he/she intends to establish by their evidence;

(*e*) a request that the public administration be non-suited with costs against the applicant.

(7) Where the claim is contested, the Administrative Court shall appoint the case for a pre-trial hearing in terms of article 978 of this Code.

(8) The Administrative Court shall, subject to the provisions of this Code or any other applicable law regulating the procedure before the said Court, regulate its own procedure.

Minister to make regulations to implement provisions of this Sub-Title.

993. (1) The Minister may make regulations to implement and to give better effect to the provisions of this Sub-Title and may, without prejudice to the generality of the foregoing, establish the date of entry into force of the provisions of this Sub-Title with regard to the public administration and administrative tribunals that the Minister may by regulations specify.

(2) The Minister may also make regulations for the better functioning of the Administrative Court and may, without prejudice to the generality hereof, make

regulations:

(*a*) setting out the procedure before the Administrative Court;

(*b*) setting out the procedure in appeals from the decisions of the Administrative Court;

(*c*) establishing the forms that are to be used in proceedings before the Administrative Court;

(*d*) establishing the forms that are to be used in proceedings in appeals from the Administrative Court;

(*e*) establishing rates of costs in proceedings before the Administrative Court;

(*f*) establishing the fees that may be due to the Registry of the Administrative Court;

(*g*) establishing the fees that may be due to advocates, legal procurators and other persons representing or appearing before the Administrative Court;

(*h*) setting out the duties of the Registrar in relation to the Administrative Court;

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(*i*) establishing which provisions of the Code of Organization and Civil Procedure, if any, not mentioned in this Act, are to apply to the procedure before the Administrative Court;

(*j*) prescribing anything that may or is to be prescribed in accordance with this Sub-Title.

Service of judicial acts. Cap. 12.

994. The service of judicial acts in terms of this Sub-Title shall be carried out in such manner as is provided for the service of judicial acts in the Code of Organization and Civil Procedure, unless the Minister shall, by regulations made under this article, otherwise provide.

Administrative expenses of the Administrative Review Tribunal.

995. The expenses in connection with the administration of the Administrative Court, the remuneration due to the Chairperson and the assistants of the panel, the remuneration due to the Registrar and his staff as well as all monies for the functioning of the Administrative Court and the Administrative Court Support Service Corporation shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

Powers of the Administrative Court. Cap. 12

995A. (1) The Administrative Courtshall have all such powers as are, by the Code of Organization and Civil Procedure, vested in the First Hall of the Civil Court.

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(2) The enforcement of the decisions of the Administrative Court in the manner provided for in the Code of Organization and Civil Procedure, shall vest in the Administrative Court itself.

(3) The Administrative Court may, through its Chairperson, summon any person to appear before it and give evidence and produce documents, and the Chairperson shall have the power to administer the oath.

Minister to make regulations to implement provisions of this Sub-Title.

996. The Minister may make regulations to implement and to give better effect to the provisions of this Sub-Title and may, without prejudice to the generality of the foregoing make such amendments, alterations, deletions, repeals, corrections, changes and modifications to any law or regulation for the purpose of bringing such law or regulation in conformity with the provisions of this Sub-Title.

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Sub-Title VI

Appeals from decisions of the Administrative Court

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Right of appeal.

997. (1) Any party to the proceedings before the Administrative Court who feels aggrieved by a decision of the said court, may appeal to the Constitutional Court.

(2) Such appeal shall be brought before the Constitutional Court by means of an application filed in the registry of that court within twenty days from the day on which the decision of the Administrative Court was delivered.

(3) The said application of appeal shall be accompanied together with the payment of an all inclusive registry appeal fee as may be prescribed by the Minister responsible for justice in consultation with the Minister responsible for finance. Such fee shall cover all registry fees, including those taxed by the Registrar, Civil Courts and Tribunals, when final judgement is read out in open court.

(4) When there are two parties, the appeal shall be lodged in duplicate by means of an application. Where there are more than two parties to an appeal before the

Administrative Court, the application of appeal shall be lodged in such number of copies as there are parties to that appeal.

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(6) The application of appeal shall be filed in the competent registry in terms of the Code of Organization and Civil Procedure.

(7) The Registrar, Civil Courts and Tribunals, shall, on receipt of the application of appeal, serve a copy of the said application of appeal on the other party or parties.

(8) The respondent or respondents shall file their reply to the appeal within twenty days of service of the appeal. Such replies shall be accompanied together with the payment of an all inclusive registry fee as may be prescribed by the Minister responsible for justice in consultation with the Minister responsible for finance. Such fee shall cover all Registry fees, including those taxed by the Registrar, Civil Courts and Tribunals, when final judgement is read out in open court.

(9) When an appeal is lodged to the Constitutional Court as aforesaid, that appeal and the reply or replies thereto shall be referred by the Registrar, Civil Courts and Tribunals, to the Constitutional Court.

Powers of the Constitutional Court.
998. (1) The Constitutional Court shall have the power, in its judgement, to confirm, revoke or alter the decision appealed against and to give such directions as it may deem appropriate.

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(2) The provisions regulating the Court of Appeal in the Code of Organization and Civil Procedure shall apply to the Constitutional Court when hearing appeals from decisions of the Administrative Court.

(3) Subject to the foregoing provisions and of any applicable law, the Constitutional Court shall regulate its own procedure.

Part XIV

Of Identity Cards

Interpretation.
999. In this Part, unless the context otherwise requires -

"authorised officer" means the public officer designated by the Prime Minister as the person authorized to issue identity cards, and, to the extent of any power delegated as hereinafter provided, includes any person delegated for the purpose by the public officer designated as the authorised officer;

"holder", in relation to an identity card, means the person in respect of whom it is issued;

"identity card" means a document issued in respect of a person under and in accordance with this Part for the purpose of identifying that person;

"prescribed" means prescribed by regulations under this Part.

Possession of identity cards.

1000. (1) Every person over the age of fourteen years who -

(*a*) has resided in Malta for not less than six months immediately before the coming into force of this article and continues so to reside for one month thereafter; or

(*b*) at any time resides in Malta for a period of six months ending after the expiration of one month after the coming into force of this article,

shall be in possession of a valid identity card, and shall thereafter at all time during which he resides in Malta be in possession of a valid identity card; and for this purpose he shall make application therefor in accordance with the provisions of this Part.

(2) For the purposes of this Part temporary absences from Malta shall not interrupt residence.

(3) Identity cards may also be issued to such class or classes of persons as the authorised officer may deem appropriate or as may be prescribed.

Application for identity cards.

1001. (1) An application for the issue of an identity card shall be made on such form as may be provided by the authorised officer or as may be prescribed and shall contain such information and particulars and shall be accompanied by such photographs and other documents as may be required by the authorised officer or as may be prescribed; and any requirement resulting from any form referred to in this article shall be deemed to be a requirement by the authorised officer made under this article.

(2) An application may be required by the authorised officer to be made at a place or places indicated by him, or as may be prescribed, and may also be required to be made in person.

Issue and contents of identity cards.

1002. (1) Identity cards shall be issued by the authorised officer and shall be stamped with the stamp of such officer or shall be otherwise authenticated as may be prescribed.

(2) An identity card shall contain a photograph of the person in respect of whom it is issued which in the opinion of the authorised officer truly resembles such person at the time the identity card is applied for and shall indicate the date on which its validity commences and expires, and an identifying number of the holder which may either be his act of birth number given by the Public Registry or any other number as may be assigned to him by the authorised officer, it shall moreover, wherever practicable, contain the signature of the holder or a reproduction of a recent signature of the holder, and also the following particulars concerning such person:

(*a*) name and surname;

(*b*) the address of the principal place of residence where such person habitually sleeps;

(*c*) sex;

(*d*) nationality;

(*e*) place and date of birth,

and may include such other particulars or information as the authorised officer may deem appropriate.

(3) An identity card shall be made of such material and in such manner as in the opinion of the authorised officer provide adequate security against forgery, tampering or alteration thereof, and it shall, in any case, include a limited area where machine readable coded information may be inserted:

(4) No information which is not included under subarticle (2) hereof may be so included.

Validity of identity cards and application for new ones.

1003. (1) An identity card shall remain valid for a period of ten years or such other period as may be prescribed, and may not be renewed:

(2) The Prime Minister may at any time (other than the period between the dissolution of Parliament and the conclusion of the first general election held after such dissolution), by notice in the Gazette terminate, in such manner and on such date or dates as he may deem appropriate, the validity of all or any class or classes of identity cards.

(3) Where an identity card has been issued in respect of a person under the age of eighteen years, such identity card shall cease to be valid upon the eighteenth birthday of the holder thereof.

(4) Where the holder of an identity card is a person to whom article 1000(1) applies, such person shall, not later than one month prior to the expiration of the validity of the identity card, or not later than one month after the termination of the validity of the identity card, as the case may require, apply for a new identity card in accordance with the provisions of this Part and shall surrender the invalid card for a new one.

Withdrawal and change of identity card.

1004. The authorised officer may request the holder of an identity card to return such identity card to him, so that a new identity card may be issued to the holder with special information about the validity of such card for travelling purposes, in the following cases:

(*a*) when there is in force an order issued by a Court or tribunal established by law, prohibiting the holder from leaving these Islands without requesting authorisation of such Court or tribunal;

(*b*) when the holder has accepted to be released on bail under a condition not to leave these Islands without the authorisation of any Court or tribunal;

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(*c*) when the holder has been released from detention by the Executive Police under the condition not to leave these Islands without the authorisation of the investigating officer under article 355AL of the Criminal Code.

Safe custody and production of card.

1005. (1) Every person to whom an identity card has been issued shall keep it in his safe custody and shall produce it on demand, or as may be prescribed, or as may be required by any enactment, and, where so required by any enactment, deliver it to any lawful authority:

(2) A person shall not be required to deliver a valid identity card unless he is given a receipt therefor by the person requiring its delivery.

(3) For the purposes of this article "lawful authority" means a person or authority authorised by law to require the production or delivery of an identity card.

(4) Any member of the Police Force may require any person to whom an identity card has been issued to produce that card on demand or, if it is not practicable for the person so required to produce it on demand, not later than twenty-four hours after the demand.

(5) Where a person has delivered a valid identity card to a lawful authority as provided in this article, the receipt given to him in respect thereof shall, until he is again in possession of his identity card, be sufficient evidence that he possesses a valid identity card.

Card to be evidence of identity of holder.

1006. An identity card which has not been tampered with shall, until its validity expires or is terminated, be evidence of the identity of the holder as shown on the card, and shall be accepted as such by every public officer or authority and by every other person.

Incorrect particulars on card.

1007. Whenever for any reason any of the particulars or any other information contained in an identity card is or becomes incorrect, the holder of the card shall, without delay, report the fact to the authorised officer and shall surrender the incorrect card to, and give all such information as may be required by, that officer; and that officer shall cause the card to be indelibly marked as "Withdrawn as Incorrect" and shall issue another card in substitution therefor.

Loss, destruction, etc., of card.

1008. (1) If an identity card is lost, destroyed or defaced, the holder of that card shall, without delay, report the fact to the authorised officer and, in the case of a defaced card, shall surrender the defaced card to that officer.

(2) Upon an application for the issue of an identity card in substitution of a card lost, destroyed or defaced, and upon the payment of a fee of two euro and thirty-three cents (2.33), or of such other fee as may be prescribed, the authorised officer, if satisfied that the card has been lost, destroyed or defaced and, in the case of a defaced card, that it has been surrendered as required by this Part, shall issue a fresh card.

(3) Except as provided in subarticle (2), or unless the authorised officer is of the opinion that he should, subject to any conditions he may deem appropriate, act otherwise in the circumstances, no identity card shall be issued in respect of the same person unless all cards previously issued in respect of that person, including a card the validity of which has expired, have been surrendered to that officer.

(4) For the purposes of this article an identity card shall be treated as lost if the authorised officer is satisfied that it is not recoverable.

Entries on card.

1009. Without prejudice to the provisions of article 1002(2) relating to the signature of the holder, no person other than the authorised officer shall make any mark or entry upon, or erase, cancel, alter or substitute any mark or entry made upon, or otherwise deface or destroy, an identity card.

Use and possession of card restricted to holder, etc.

1010. (1) No person other than the holder thereof, or the agent of the holder in the carrying out of any requirement of this Part or of any other law on behalf of the holder, shall have in his possession, or make any use whatever of, any identity card.

(2) Any person who comes into possession of an identity card issued to some other person shall forthwith deliver or forward it to the holder thereof or to the authorised officer.

(3) Any person who has in his possession more than one identity card issued in respect of him shall without delay and in person produce such cards to the authorised officer and shall surrender to him such one or more of the cards as that officer shall require.

Regulations.

1011. The Prime Minister may make regulations for prescribing anything which is required or authorised by this Part to be prescribed and for carrying into full effect the provisions of this Part.

Offences.

1012. (1) Without prejudice to the provisions of subarticle (2) and of the higher punishments therein provided, any person who contravenes or fails to comply with any of the provisions of this Part, or of any regulations made thereunder, or of any requirement of the authorised officer, shall, in respect of each offence, be liable to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) and, in the case of a continuing offence, to a fine (*multa*) not exceeding eleven euro and sixty-five cents (11.65) for each day during which the offence continues.

(2) Any person who -

(*a*) with intent to deceive contravenes any of the provisions of article 1009 or of article 1010(1); or

(*b*) makes any false statement, or gives any false information, or produces any false document, for any of the purposes of this Part, knowing the same to be false; or

(*c*) forges an identity card or any other document whatsoever required by, or intended for, any of the purposes of this Part; or

(*d*) aids or abets the commission of any offence against the foregoing paragraphs of this subarticle,

shall be liable on conviction to imprisonment for a period of not less than two years and not exceeding five years.

Repeal provision.

1012. The following laws shall be repealed:

(a) Statute Law Revision Act – unnumbered Chapter

(b) Code of Organization and Civil Procedure – Chapter 12, article 469A only

(c) Fees Ordinance – Chapter 35

(d) Land Acquisition (Public Purposes) Ordinance – Chapter 88

(e) Attorney General and Counsel for the Republic (Constitution of Office) Ordinance – Chapter 90

(f) Malta Treasury Bills Act – Chapter 133

(g) Special Development Areas Act – Chapter 149

(h) Accountant General Ordinance – Chapter 160

(i) Comptroller of Customs Ordinance – Chapter 163

(j) Commissioner of Land Ordinance – Chapter 169

(k) Financial Administration and Audit Act – Chapter 174

(l) Judges and Magistrates (Salaries) Act – Chapter 175

(m) Emergency Powers Act – Chapter 178

(n) President of Malta and other Officers (Salaries) Act – Chapter 186

(o) Maltese Citizenship Act – Chapter 188

(p) Saving Bonds Act – Chapter 222

(q) Premium Bonds Act – Chapter 223

(r) Land (Compulsory Eviction) Act – Chapter 228

(s) Interpretation Act – Chapter 249

(t) Identity Card Act – Chapter 258

(u) Employment Commission Act – Chapter 267

(v) Disposal of Government Land Act – Chapter 268

(w) Inquiries Act – Chapter 273

(x) Financial Year Act – Chapter 282

(y) Commissioners for Justice Act – Chapter 291

(z) Ministers (Delegation of Functions) Act – Chapter 324

(aa) National Archives Act – Chapter 339

(ab) Ombudsman Act – Chapter 385

(ac) Auditor General and the National Audit Office Act – Chapter 396

(ad) Reversion of Certain Lands Act – Chapter 432

(ae) Data Protection Act – Chapter 440

(af) Administration of Lands Act – Chapter 448

(ag) Internal Audit and Financial Investigations Act – Chapter 461

(ah) Administrative Justice Act – Chapter 490

(ai) Freedom of Information Act – Chapter 496

(aj) Public Administration Act – Chapter 497.

(ak) Commission for the Administration of ustice Act – Chapter 369

Saving provision.
1013.

Savings.
Inquiries Act:
Cap. 249.
594 **7.** Notwithstanding the repeal of the Committees of Inquiry Act, 1948[8], and without prejudice to the provisions of section 12 of the Interpretation Act, any power exercised and any oath taken under the aforesaid Act of 1948, shall continue to have effect as if it had been a power exercised under, or a power given by, this Act, as the case may require, or an oath taken under and for the purposes of this Act.

[8]Repealed by subsection (1) of section 7 of this Act as originally enacted, which subsection has been omitted under the Statute Law Revision Act, 1980.

784 **36.** Nothing in this Ordinance contained shall affect any rights acquired by a competent authority under the Order-in-Council of the 26th October, 1896.[9*]

Transitory provisions

Article 7(2) of Act XI of 2002:[10]

"(*a*) With respect to land subject to a declaration by the President before the coming into force of this article[11], or land which before the coming into force of this article was taken over by Government but no declaration was issued by the President in respect thereof prior to the coming into force of this article, article 12(3) of the Ordinance as amended by this article shall apply, so however that interest as therein indicated shall accrue from the date of taking over by the Government up to the date when compensation therefor is paid or deposited as the case may be:

Provided that the interests as aforesaid shall be calculated on the value of the land on the date of the President's Declaration or where no such Declaration was issued prior to the coming into force of this article on the date of taking over by Government of the land in question.

(*b*) (i) The President may in relation to any land subject of a Declaration issued before the coming into force of this article issue a fresh Declaration wherein shall be stated the amount of compensation which the competent authority is willing to pay for the land to which the Declaration refers. The said Declaration shall have attached with it a valuation drawn up by an architect and where available a site plan of the land described in the Declaration:

Provided that when such fresh Declaration is issued the compensation shall be determined on the basis of the value of such land on the date of the service of any notice to treat in respect of such land, and where no such notice to treat has been so served, on the date of the issue of the fresh Declaration by the President.

(ii) For the purpose of determining whether land is to be valued as a building site, agricultural or rural land or waste land for the purposes of this subarticle the relevant date shall be the date when the original Declaration was issued by the President before the coming into force of this article.

(iii) Any fresh Declaration issued in virtue of this paragraph shall, subject to the provisions of this subarticle, as a Declaration issued under the provisions of article 22 of the Ordinance as amended by this article, and thereupon the provisions of article 22(3) to (12) of the Ordinance as so

[9]*This Order-in-Council was published in Malta by Govt. Not. No. 183 of the 19th November, 1896.

[10]This subarticle was repealed by Act I. 2006.14, subject to the following proviso:
"Provided that when in relation to any land a fresh President's Declartion was issued under the provisioins of sub-srticle 7(2) repealed by this article such Declaration shall continue to be governed by the provisions of the same sub-article 7(2) as if it had not been repealed by this article".

[11]5th March of 2003 - article 7 of Act XI of 2002 amended articles 9, 12, 22, 27, 31, 33 and the Schedule of this Ordinance.

amended shall apply.

(*c*) Article 31 of the Ordinance, as amended by this article, shall apply to any proceedings relating to any Declaration even if issued prior to the date of the coming into force of this article.".

Transitory provision

Article 4(2) of Act XVII of 2004:

"The provisions of articles 25 and 31 of the Ordinance as amended by this article, shall apply to any proceedings relating to any land covered by any Declaration issued under article 3 of the Ordinance even if issued prior to the date of the coming into force of this article.".

Transitory provision

Article 9 of Act I of 2006:

"9. (1) The provisions of article 4 of this Act[12] shall only apply to land in respect of which a declaration under article 3 of the Ordinance was issued after the coming into force of this Act.

(2) (*a*) The President may in relation to any land subject of a Declaration issued before 5th March 2003, issue a fresh Declaration wherein shall be stated the amount of compensation which the competent authority is willing to pay for the land to which the Declaration refers. The said Declaration shall have attached with it a valuation drawn up by an architect and where available a site plan of the land described in the Declaration:

Provided that when such fresh Declaration is issued the compensation shall be determined on the basis of the value of such land on the date of the service of any notice to treat in respect of such land, and where no notice has been so served, in accordance with the value of the land as on 1st January 2005.

(*b*) For the purpose of determining whether land is to be valued as a building site, agricultural or rural land or waste land for the purpose of this sub-article the relevant date shall be the date when the original Declaration was issued by the President, in accordance with the criteria established by the law in force at the time of the issue of the original Declaration.

(*c*) Any fresh Declaration issued in virtue of this article shall, subject to the provisions of this sub-article be deemed as a Declaration issued under the provisions of article 22 of the principal law and the provisions of the said article as amended by this Act shall apply thereto."

Transitory provision.

1014.

Malta Citizenship Act:

27. (1) The acquisition or retention of Maltese citizenship by any person under the Constitution of Malta or any other law, prior to the enactment of the

[12]that is, of Act I of 2006, which article substitutes articles 17 and 18 of the Ordinance.

Maltese Citizenship (Amendment) Act, 2000 shall not be affected in any way by the provisions of the said Act.

(2) This Act shall not apply with regard to any application for registration as a citizen of Malta filed before the 15th day of August, 1999.

Administrative Justice Act:
Saving and transitory provision. Cap. 12.

24. (1) On the entry into force of Parts III and IV of this Act, all pending proceedings before those persons, bodies or administrative tribunals which were competent prior to the coming into force of article 25 shall be assigned to the Administrative Review Tribunal for determination and shall be regulated by the provisions of the said Parts III and IV of this Act; and the Minister may establish different dates for the entry into force of Parts III and IV of this Act with regard to the different persons, bodies or administrative tribunals referred to in article 25.

(2) Nothing in subarticle (1) shall invalidate any procedure whether written or oral which may have been made before the coming into force of this Act and which was valid according to the law in force on the date when made.

(3) The Administrative Review Tribunal shall draw up and deliver such decrees which might be necessary to regulate those undecided proceedings which hitherto were pending before the persons, bodies and administrative tribunals mentioned in subarticle (1) prior to the date of entry into force of this article and which have on the date of the entry into force of this article been assigned to the Administrative Review Tribunal so that the latter may bring these proceedings in line with the provisions of Part III of this Act:

Provided that, notwithstanding the provisions of this article, proceedings pending before the persons, bodies and administrative tribunals mentioned in subarticle (1) which have been put off for judgment or for final oral or written submissions on the date of the entry into force of this article, shall continue to be heard and decided by those persons, bodies and administrative tribunals and not by the Administrative Review Tribunal.

(4) Without prejudice to the generality of subarticle (1), one or more of the Chairpersons ordinarily sitting in the Administrative Review Tribunal or in a section or sections thereof, shall take cognizance of all proceedings pending before the persons, bodies or administrative tribunals mentioned in that subarticle which are reassigned to the Administrative Review Tribunal. The Secretary of the Administrative Review Tribunal shall ensure that all pending proceedings lodged from decisions of the public administration hitherto being heard by any person, body or administrative tribunal mentioned in subarticle (1) are referred to the section of the Administrative Review Tribunal which would be taking cognizance of the said proceedings.

Cap. 12.

(5) Appeals lodged to the Court of Appeal from any decision of any person, body or administrative tribunal prior to the entry into force of article 25 shall continue to be heard by the said Court until they are so determined, and the provisions of the Code of Organization and Civil Procedure shall continue to apply thereto.

Jurisdiction.

25. (1) This provision shall have effect subject to the provisions of article 24.

(2) The Administrative Review Tribunal shall henceforth have jurisdiction in lieu of the persons, bodies and administrative tribunals mentioned in the laws listed in the Third Schedule[13] prior to the entry into force of this article.

Miscellaneous provisions.

1015. (1) The Administrative Court, unless otherwise prescribed by this code, shall be the competent court before which the provisions of this code shall be enforced.

Regulations.

1016. (1) The Prime Minister shall, unless otherwise prescribed by this code, be the competent minister responsible for the implementation of the provisions of this code.

(2) The Prime Minister may, unless another minister is designated such function by this code, shall make, and when made, amend, substitute or repeal, regulations for the better carrying out of the provisions of this code, for clarifying the details of matters mentioned in this code which are not provided for therein and may, without prejudice to the generality of the foregoing, amend, substitute or repeal, any primary law and subsidiary law to bring such primary law and subsidiary law in conformity with the provisions of this code.

(3) The provisions of subarticle (3) above and of similar provisions in this code empowering a minister, including the Prime Minister, to amend, substitute and repeal a primary law and a subsidiary law do not extend to the Constitution of Malta, the European Convention Act and the European Union Act; and such minister may not make any subsidiary law to amend, substitute or repeal any provision of the Constitution of Malta, the European Convention Act and the European Union Act.

Amendment to Other Laws.

1057.

Amendments to the Code of Organisation and Civil Procedure. Cap. 12.

1. (1) Subarticle (2) of article 590 of the Code of Organisation and Civil Procedure (in this article referred to as the Code) shall be substituted by the following:

"(2) No witness may be compelled to disclose any information derived from

[13]Omitted under the Statute Law Revision Act, 1980. Amendments therein have been inserted in the relative legislation.

or relating to any document to which subarticle (3) of article 637 applies.".

(2) Subarticle (3) of article 637 of the Code shall be substituted by the following:

"(3) It shall not be lawful to demand the production of any document which is held by a public authority and -

(a) which is an exempt document under articles 29, 30 or 36(1) or subarticles (4) or (5) of article 32 of the Freedom of Information Act; or

(b) the disclosure of which is prohibited by any other law.".

(3) Subarticle (4) of article 637 of the Code shall be substituted by the following:

"(4) Where a demand is made for the production in court of a document held by a public authority, and the public authority is of the view that paragraph (a) of subarticle (3) applies to that document, the public authority shall reply to the demand as if that demand were a request for disclosure of the document under the Freedom of Information Act; and the provisions of Parts II and IV and of articles 39, 40 and 43 of the Freedom of Information Act shall apply accordingly.".

(4) Subarticle (6) of article 637 of the Code shall be substituted by the following:

"(6) In this article "public authority" shall have the meaning assigned to it by the Freedom of Information Act.".

Amendments to the Press Act. Cap. 248.

2. (1) Subarticles (1) and (2) of article 47 of the Press Act shall be deleted.

(2) Subarticle (3) of article 47 of the Press Act shall be renumbered as article 47 thereof.

Amendments to the Local Councils Act. Cap. 363.

3. (1) The provision of article 45 of the Local Councils Act shall be numbered as subarticle (1) of the same article.

(3) The following new subarticles (2) and (3) shall be added to article 45 of the Local Councils Act subsequent to the current provision thereof:

"(2) Any person who requests information from a Local Council in accordance with subarticle (1) and who is dissatisfied with the Council's response to his request may apply to the Information and Data Protection Commissioner for a decision whether, in any specified respect, his request has been dealt with in accordance with the requirements of this

Act and any regulations made hereunder.

(3) Part IV of the Freedom of Information Act, other than article 26, as well as articles 39, 40 and 43 of the same Act, shall apply *mutatis mutandis* to requests for information under this article, save that references to a code of practice in Part IV of the Freedom of Information Act shall be construed as referring to any code of practice on the disclosure of information that may be issued by the Minister through regulations under this Act; but the application of the Freedom og Information Act in terms of this subarticle shall not be dependent on the issue of such a code.".

Amendments to the Freedom of Access to Information on the Environment Regulations. S.L. 435.61

4. The Freedom of Access to Information on the Environment Regulations shall be amended in accordance with the Schedule to this Act.

Consequential amendment to the European Convention Act, Chapter 319 of the Laws of Malta.

5. The word 'may' in article 4 of the European Convention Act shall read 'shall' and the following proviso shall be added to the said subarticle:

"Provided that where the court is of the view that the enforcement of the European Court of Human Rights' judgment runs counter to a provision or law in Maltese domestic law, the court shall comply with the provisions of articles 310 and 311 of the Administrative Code."

SCHEDULES

FIRST SCHEDULE

CODE OF ETHICS
(Article)

A. Principles

1. This Code of Ethics is adopted within a framework of principles which are fundamental to the ethos governing behaviour. These have been identified as public trust; serving the public and the business community; responsibility to the Government of the day; productivity and flexibility; and public employees' rights.

2. The public has a right to expect that public sector organisations and their employees are of the highest integrity and competence and serve all citizens fairly, reasonably, equitably and efficiently.

3. Public employees shall provide impartial and accurate advice to the Government of the day and shall implement its policies promptly, efficiently and effectively.

4. The public and the business community have a right to expect that public employees will seek to meet their legitimate needs promptly and courteously.

5. The nation expects public employees to be committed to a constant quest for innovation, improved productivity, and the simplification of procedures, so as to contribute to national economic growth and competitiveness.

6. Public employees shall make full use of information and communication technology as an essential tool in the improvement of public administration and the delivery of better services, and they shall ensure that they possess the necessary skills to this end.

7. Public employees' rights are all the rights of employees, within the provisions of legislation and regulations.

B. Conflicts of Interest

8. A conflict of interest may be defined as a situation in which a public employee has a private or personal interest sufficient to influence or appear to influence the objective exercise of his or her official duties.

9. Public employees shall avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties.

10. In many cases only the individual employee will be aware of the potential for conflict. Therefore, the onus is on the employee to disclose to his or her senior if

a potential or actual conflict of interest arises.

11. This includes the notification of all relevant personal, financial, business or other interests, in particular:

(*a*) any directorship, partnership, agency or any shareholding;
(*b*) any interest in any activity or business in which or with which the organisation is engaged;
(*c*) any interest in goods or services recommended or supplied to the organisation.

12. Public employees shall notify the head of the organisation in writing within a week whenever any of the above interests arise namely, upon assuming office, change in duties or due to a change in circumstances.

C. Acceptance of Gifts or Benefits

13. No public employee or any member of his household shall accept gifts or services such as might be deemed to create an obligation, real or imagined.

14. A gift can be interpreted as an inducement or a reward simply because of its intrinsic value and therefore only token gifts may be accepted.

D. Personal and Professional Behaviour

15. Public employees shall perform any duties associated with their positions diligently, impartially and conscientiously, to the best of their ability.

16. In the performance of their duties, public employees shall:

(*a*) keep up to date with advances and changes in their area of expertise;
(*b*) comply with any relevant legislative or administrative requirements;
(*c*) treat members of the public and other staff members with courtesy and sensitivity to their rights;
(*d*) provide all necessary and appropriate assistance to members of the public;
(*e*) maintain adequate documentation to support any decisions made;
(*f*) strive to obtain value for public money spent and avoid waste and extravagance in the use of public resources;
(*g*) not take or seek to take improper advantage of any official information gained in the course of employment;
(*h*) not wilfully supply incorrect or misleading information;
(*i*) not indulge in favouritism or nepotism.

17. At all times the behaviour of a public employee shall be in such a way as not to discredit his or her position and not to reflect adversely on the public service.

18. Public employees shall be expected to give full support to the Government of the day regardless of which political party or parties are in office. When

implementing Government policy, public employees' own values and beliefs shall not take precedence over those explicit or implicit in Government policy.

19. Public employees shall not harass or discriminate in work practices on the ground of sex, marital status, pregnancy, age, race, colour, nationality, physical or intellectual impairment, sexual preference, or religious, political or other convictions / allegiances when dealing with their colleagues and members of the public.

20. Public employees have a duty to report to a senior employee any unethical behaviour or wrongdoing by any other public employee during the course of his or her duties.

E. Fairness and Equity

21. Issues or cases being considered by public employees shall be dealt with consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures, without discrimination on any grounds. There is an obligation to treat each issue reasonably and with a view to meeting the principles of natural justice.

22. When using any discretionary powers public employees shall ensure that they take all relevant facts into consideration and have regard to the particular merits of each case.

F. Use of Official Information

23. A public employee shall only disclose official information or documents acquired in the course of his or her employment when required to do so by law, in the course of duty, or when proper authority has been given. In such cases, comments made by public employees shall be confined to factual information and shall not express opinion on official policy or practice.

24. A public employee as defined in article 2 of the Public Administration Act shall not accept employment in the private sector if he will be placed in a position to make use of "insider information" if such information came to his knowledge as a direct result of his public employment.

G. Use of Official Facilities and Equipment

25. It is expected that public employees shall:

(*a*) be efficient and economical in the use and management of public resources;

(*b*) be scrupulous in their use of public property and services and not permit their abuse by others.

26. Official facilities and equipment shall not be used for private purposes unless prior official permission has been given.

H. Outside Employment and Termination

27. The prior approval of the Permanent Secretary of the Ministry concerned or the Chairperson/Chief Executive Officer is required before public employees may engage in any form of business or employment outside their official duties.

28. In all cases when outside employment is considered, public employees shall give their public sector employment first consideration and avoid situations which could give rise to, or the appearance of, a conflict of interest. In particular, they must consider whether the company or organisation concerned is in, or entering into, a contractual relationship with the Government, whether its primary purpose is to lobby government organisations or members of Parliament, or whether it is in a regulatory relationship with the organisation.

29. Former public employees shall ensure that they do not accept employment or engage in activities which may cast doubts on their own integrity or that of the organisation in which they were previously employed or of the Public Service generally.

I. Political Participation and Comment

30. It is of the greatest importance that public confidence in the impartiality of the public administration shall not be impaired in any way. Public employees need to ensure that their participation in political activities does not bring them into conflict with their primary duty to serve the Government of the day. This is important in order to maintain ministerial and public trust in the impartiality of the advice given, and actions taken, by public employees.

31. Likewise public employees need to ensure that the spirit of paragraph 30 hereof is respected whenever they are asked to make a public comment. Public comment includes public speaking engagements, comments on radio and television and expressing views in letters to the newspapers or in books, journals or notices or where it might be expected that the publication or circulation of the comment will spread to the community at large.

32. Determining what is appropriate in any particular case will depend on the extent of the participation of the individual, the nature of the issue, the position held by the individual and existing regulations within the organisation concerned.

33. If a public employee becomes aware that a potential conflict, whether real or apparent, has arisen or is likely to arise, the public employee shall immediately inform the head of his or her organisation.

34. If a conflict of interest does arise, the public employee may have to stop participating in political activity or withdraw from areas of his or her duties giving rise to the conflict of interest.

J. Sanctions

35. Sanctions may be applied if public employees are involved in breaches of this Code of Ethics.

36. The sanctions applied shall depend on the seriousness and nature of the breaches and may entail formal disciplinary and, or criminal action as applicable.

37. Whenever appropriate, counselling by a supervisor or member of senior staff may also be given.

SECOND SCHEDULE

DEPARTMENTS

(Article)

In each part of this Schedule departments are listed in alphabetical order according to the functional element of their title (Social Security rather than Department of Social Security).

Part I

Departments other than those not subject to ministerial control

Department	*Head of department*	*Other offices with statutory powers*	*Equivalent title at law (article 10)*	*Function of the department*
Agriculture and Fisheries Regulation Department	Director General (Agriculture and Fisheries Regulation)			To regulate the fishing industry and contribute to the conservation of fish stocks; to regulate plants and agricultural products; to regulate animal welfare; and to safeguard public health through assurance of livestock health
		Director (Veterinary Regulation)	Director General, Veterinary Services Director of Veterinary Services	
		Director (Fisheries Control)	Director of Fisheries Director responsible for fisheries	
		Director (Plant Health)	Director Plant Health Department Director of the Department responsible for plant health	

Benefit Fraud and Investigation Department	Director (Benefit Fraud and Investigation)	Director responsible for the Benefit Fraud and Investigation Directorate	To investigate fraud by individuals receiving benefits and allowances payable under the Social Security Act
Cabinet Office	Secretary to Cabinet		To support the workings of Cabinet
Citizenship and Expatriate Affairs Department	Director (Citizenship and Expatriate Affairs)		To administer the provisions of the law on Maltese citizenship, and to issue residence permits and employment licences
Department of Civil Protection	Director (Civil Protection)	Director of Civil Protection	To provide fire-fighting and rescue services and take protective action against natural, industrial and other emergencies
Cleansing and Maintenance Department	Director General (Cleansing and Maintenance)		To provide ancillary building projects services, manufacturing services, public cleansing services and a regulatory

			framework for the building construction industry
Commerce Department	Director General (Commerce)	Comptroller of Industrial Property Director of Trade Director of Industry	To monitor and provide assistance to small enterprises and craft industries, and to regulate intellectual property and trade
Consumer and Competition Department	Director General (Consumer and Competition)	Director of Consumer Affairs Public officer heading the Office for Fair Competition	To safeguard common interests and promote competitive market practices
Department of Contracts	Director General (Contracts)	Head of the Department of Contracts	To regulate, monitor, manage and approve contracts issued by Government Departments
Correctional Services Department	Director (Correctional Services)	Director of Correctional Services Director of Probation Services	To securely detain offenders while providing rehabilitation services to help them reintegrate into society
Courts of Justice Department	Director General (Courts)		To support and facilitate

		Director (Civil Courts and Civil Tribunals, Malta)	Director, Civil Courts and Tribunals Registrar, Civil Courts and Tribunals	the administration of justice
		Director (Criminal Courts and Criminal Tribunals, Malta)	Director, Criminal Courts and Tribunals Registrar, Criminal Courts and Tribunals	
		Director (Gozo Courts and Tribunals)	Director, Gozo Courts and Tribunals Registrar, Gozo Courts and Tribunals	
Customs Department	Director General (Customs)		Comptroller of Customs	To collect customs and excise duties and curb illegal imports while facilitating trade
Economic Policy Department	Director General (Economic Policy)			To provide expert advice and assistance to Government in the formulation of economic policy and the management of economic

				activity
Examinations Department	Director (Examinations)		Registrar of Examinations	To administer local and overseas examinations
Government Property Department	Director General (Government Property)			To promote the effective and profitable use of government owned immovable property
		Director (Land)	Commissioner of Land	
Department of Industrial and Employment Relations	Director (Industrial and Employment Relations)		Director responsible for employment and industrial relations Registrar of Trade Unions	To protect the interests of parties in employment contracts and to contribute towards stable industrial relations
Department of Information	Director General (Information, Local Government and Public Consultation)		Press Registrar	To provide the public with up-to-date, comprehensive and meaningful information on Government policies, services and activities, and on matters which may be of public interest
Inland Revenue Department	Director General (Inland		Commissioner of Inland Revenue	To administer fiscal legislation in

	Revenue)			relation to income and other taxes
Land and Public Registry	Director General (Land and Public Registry)			To cater for property registration and hypothecation, civil status registration, the registration of notarial deeds and other judicial acts, and related matters including the issue of passports
		Director (Land Registry)	Land Registrar	
		Director (Public Registry)	Director of the Public Registry Marriage Registrar	
		Director (Passport and Civil Registration)	Passport Officer	
Libraries Department	Director (Libraries)		Librarian	To ensure the collection and conservation of Malta's documentary heritage, and to provide library material for education, information, research and leisure purposes
Local Government Department	Director (Local Government)		Director responsible for Local Councils	To support and monitor the activities of Local Councils

Office of the Notary to Government	Chief Notary to Government and Keeper of Notarial Archives		To prepare, draft and publish notarial deeds to which the government is a party and to conserve notarial acts according to law
Planning and Priorities Coordination Department	Director General (Planning and Priorities Coordination)		To manage and co-ordinate the use of EU funds and funds from other funding protocols or arrangements
Malta Police Force	Commissioner of Police	Principal Immigration Officer	To preserve peace and order, to detect and investigate offences, and to prosecute offenders; to control immigration into Malta
Centre for Policy Research and Training	Chief Executive Officer, Centre for Policy Research and Training		To carry out research on issues of public policy and administration and to develop the skills and abilities of public officers through training
Government	Director		To print

Printing Press	(Printing Press)			Government documents
Project Design and Implementation Department	Director General (Project Design and Implementation)		Director of Public Works Superintendent of Public Works	To design, plan and carry out public infrastructure works and projects
Public Administration HR Office	Director General (Public Administration HR Office)			To provide a framework that enables ministries and departments to manage their human resources in the most effective manner
Public Health Regulation Department	Director General (Public Health Regulation)		Chief Government Medical Officer Superintendent of Public Health	To regulate the provision of health care by both public and private sector providers
Rural Development and Aquaculture Department	Director General (Rural Development and Aquaculture)			To promote and develop farming and regulate the upkeep of public gardens; to promote and develop aquaculture
		Director (Agriculture)	Director of Agriculture	

Department of Social Security	Director (Social Security)		To administer the social security (contributory and non-contributory) scheme and provide timely financial assistance and other social benefits, pensions and allowances to eligible applicants
Social Welfare Standards Department	Director (Social Welfare Standards)	Director of the Department responsible for social welfare	To regulate the welfare sector and ensure that the providers of social welfare services comply with set standards
Tax Compliance Unit	Head (Tax Compliance Unit)		To curb tax evasion
Treasury	Director General (Treasury)	Accountant General	To implement a standard accounting system throughout Government departments, and to supervise, monitor and report on all Government financial transactions

VAT Department	Director General (VAT)		Commissioner of Value Added Tax Director of Customs and Excise Tax	To ensure that all persons performing an economic activity against a consideration duly register under the VAT Act, and collect dues

Part II
Departments not subject to ministerial control

Department	*Head of department*	*Other offices with statutory powers*	*Equivalent title at law (article 10)*	*Function*
Office of the Clerk to the House	Clerk to the House of Representatives		Clerk of the House of Representatives	To provide administrative support to the House of Representatives
Electoral Office	Chief Electoral Commissioner			To support the Electoral Commission in the exercise of its functions
Internal Audit and Investigations Department	Director General (Internal Audit and Investigations)		Director, Internal Audit and Investigations Directorate	To conduct internal audits and investigations under the Internal Audit and Financial Investigations Act
Office of the President	Secretary to the Presidency		-	To support the President in the fulfilment of his constitutional

				duties
Office of the Public Service Commission	Executive Secretary, Public Service Commission	-	Executive Secretary to the Commission	To support the Public Service Commission in the exercise of its functions

THIRD SCHEDULE

GRADES

(Article)

Salary Scale 1

Attorney General

Officer in Grade 1

Salary Scale 2

Commissioner of Police

Officer in Grade 2

Salary Scale 3

Ambassador

Deputy Attorney General

Deputy Commissioner of Police

Director (Clinical)

Officer in Grade 3

Salary Scale 4

Assistant Attorney General

Assistant Commissioner of Police

Chief Electoral Commissioner

Chief Notary to Government

Consultant

Officer in Grade 4

Senior Counsellor

Salary Scale 5

Assistant Director of Education

Assistant Director, Pharmaceutical Services

Assistant Registrar

Salary Scale 5 Continued

Principal Information Officer

Principal Medical Officer

Principal Veterinary Officer

Project Manager (IT)

Senior Clerk Assistant

Senior Counsel

Senior Registrar

Sports Officer II

Superintendent of Police

Salary Scale 6

Clerk Assistant

Counsel

Education Officer

General Practitioner

Head of Building & Restoration

Head of School

Head of Trade School

Internal Audit Manager

Manager, Dental Hygiene Services

Manager, Dental Technology Services

Manager, Medical Laboratory Technology Services

Manager, Midwifery Services

Manager, Nursing Services

Manager, Occupational Therapy Services

Manager, Office of Co-operatives

Chief Architect & Civil Engineer
Chief Curator
Chief Economics Officer
Chief Engineer
Chief Inspector of Customs
Chief Psychologist
Chief Quantity Surveyor
Chief Scientific Officer
Deputy Director, Dept of Civil Protection
Deputy Director, Institute of Tourism Studies
First Counsellor
Librarian
Manager, Health Inspectorate
Officer in Grade 5

Salary Scale 6 Continued

Principal Trading Standards Officer
Registrar
Senior Architect & Civil Engineer
Senior Engineer
Senior Legal Officer
Senior Medical Officer
Senior Psychologist
Senior Quantity Surveyor
Senior Veterinary Officer

Salary Scale 7

Assistant Head of School
Assistant Head of Trade School
Chief Assistance and Rescue
Manager, Physiotherapy Services
Manager, Podology Services
Manager, Radiography Services (Diagnostic)
Manager, Radiography Services (Therapeutic)
Manager, Speech Therapy Services
Principal Economics Officer
Principal Environment Officer
Principal Health Promotion Officer
Principal Inspector (Health & Safety)
Principal Pharmacist
Principal Probation Officer
Principal Public Cleansing Officer
Principal Scientific Officer
Principal Social Worker

Salary Scale 8 Continued

Midwifery Officer
Nursing Officer
Principal Health Inspector
Principal Paramedic
Psychologist
Senior Assistant Librarian
Senior Co-Operatives Officer
Senior Economics Officer
Senior Environment Inspector
Senior Health Promotion Officer
Senior House Officer
Senior Inspector (Health & Safety)
Senior Probation Officer
Senior Scientific Officer

Officer
Chief Printer
Counsellor
Curator
Departmental Midwifery Officer
Departmental Nursing Manager
Head, Care Centre
Medical Officer (GP)
Operations Manager
Principal Agricultural Officer
Principal, Agricultural College
Principal Veterinary Support Officer
School Counsellor
Senior Information Officer
Senior Inspector of Customs
Senior Internal Auditor
Senior Notary
Senior Pharmacist
Senior Principal
Senior Systems Analyst (IT)
Subject Co-ordinator
Trade/Subject Co-ordinator
Trade/School Counsellor

Salary Scale 8

Architect & Civil Engineer
Dental Surgeon
Inspector of Police
Internal Auditor II
Legal Officer
Medical Officer
Meteorological Officer

Salary Scale 9 Continued

Senior Social Worker
Senior Statistics and Research Officer
Senior Trading Standards Officer
Veterinary Officer

Salary Scale 9

Assistant Chief Printer
Assistant Principal Health Inspector
Assistant Principal Paramedic
Cultural Organiser
Deputy Midwifery Officer
Deputy Nursing Officer
Disablement Resettlement Officer
Engineer
First Secretary
House Surgeon (Dentistry)
Houseman
Inspector of Customs
Instructor
Junior Architect & Civil Engineer
Junior Legal Officer
Junior Veterinary Officer
Manager, Security Services
Notary
Notary to Government (Gozo)
Officer i/c Operations (IT)
Operations Officer
Pharmacist
Principal Agricultural Foreman
Principal ECG Technician
Principal Pharmacy Technician

Salary Scale 11 Continued

Principal Technical Officer
Public Cleansing Officer
Public Relations Officer
Quantity Surveyor
Senior Agricultural Officer
Senior Consul
Senior Legal Procurator
Senior Veterinary Support Officer
Station Officer
Sports Officer I
Systems Analyst (IT)
Teacher

Salary Scale 10

Advocate for Legal Aid
Assistant Curator
Assistant Head, Care Centre
Assistant Librarian
Chief Marshal
Committee Clerk
Co-operatives Officer
Economics Officer
Environment Officer
Health Promotion Officer
Information Officer
Internal Auditor I
Junior Engineer
Legal Procurator
Principal
Principal Fisheries Officer
Scientific Officer
Second Secretary
Senior Health Inspector
Inspector (Printing Press)
Leading Assistance and Rescue Officer
Main Inspector
Officer in Grade 11
Photographer in Charge
Principal Security Officer
Programmer II (IT)
Senior Agricultural Foreman
Senior Correctional Officer
Senior ECG Technician
Senior Fisheries Officer
Senior Foreman
Senior Marshal
Senior Operator (IT)
Senior Pharmacy Technician
Senior Public Cleansing Foreman
Senior Technical Officer
Sergeant

Salary Scale 12

Agricultural Foreman
Agricultural Officer
Chief Weigher
Consul
Customs Officer
Environment Inspector
Facilitator
Foreman
Health Inspector
Inspector (Health & Safety)
Library Officer
Midwife
Museums Officer

Senior Paramedic
Sergeant Major
Social Worker
Statistician
Statistics and Research Officer
Trading Standards Officer

Salary Scale 11

Assistant Principal
Assistant Cultural Organiser
Court Recorder in Charge
Duty Management Officer

Salary Scale 13

Assistant Agricultural Foreman
Assistant Foreman
Assistant Technical Officer
Communications Officer
Computer Operator (IT)
ECG Technician
Enrolled Nurse
Instructor of Braille
Mail Officer
Marshal
Meteorological Assistant
Officer i/c Minor Staff
Pharmacy Technician
Security Officer
Senior Photographer
Senior Weigher

Salary Scale 14

Assistance and Rescue Officer
Assistant Veterinary Support Officer
Constable
Paramedic
Probation Officer
Public Cleansing Foreman
Quantity Surveyor's Assistant
Senior Care Worker
Senior Printer
Senior Restorer
Staff Nurse
Technical Officer
Trainee Internal Auditor
Veterinary Support Officer

Salary Scale 16

Airfield Operator
Airport Attendant
Airport Office Despatcher
Care Worker
Chaplain
Clerk
Communicator
Custodian and Guide
Customs Assistant
Guard
Health Assistant
Postperson
Printer
Security Guard
Supervisor
Tradesman
Warden (Environment)
Weigher

Other Industrial Grades

Armourer

Correctional Officer
Executive Officer
Fisheries Officer
Library Assistant
Officer in Grade 14
Restorer
Senior Clerk
Senior Customs Assistant
Senior Postperson
Senior Technician
Senior Tradesman
Social Support Worker

Salary Scale 15

Kindergarten Assistant
Nursing Aide
Paramedic Aide
Photographer
Senior Court Recorder
Senior Messenger
Technician
Usher

Salary Scale 17 Continued

Industrial Grades Group IV

Ambulance Driver
Barber/Hairdresser
Heavy Plant Driver
Laboratory Operator
Seamstress
Senior Operative
Vulcaniser
Art/Graphic Technician
Bookbinder
Butcher
Ceramist
Construction Diver
Cook
Equipment Cover Manufacturer
Farmer
Gardener
Hallmarker of Gold and Silver Articles
Hospital Orderly
Jeweller
Marbler
Meter Reader
Postmortem and Mortuary Attendant
Repairer of Records
Rigger
Silversmith
Timekeeper

Salary Scale 17

Assistant Care worker
Court Messenger
Court Recorder

Salary Scale 18

Messenger

Ward Clerical Assistant

Industrial Grades Group III

Boiler Attendant

Customs Auxiliary

Dairy Operative II

Deliveryman

Fuel Pump Attendant

Grave Digger

Library Attendant

Lighthouse Keeper

Motor Transport Driver

Operational Support Worker

Operative

Porter

Runway Painter

Quarryman

Stamper

Salary Scale 19

Industrial Grades Group II

General Hand

Health Attendant (Public Cleansing)

Hospital Auxiliary

Seaman II

Warden

Salary Scale 20

Industrial Grades Group I

Charwoman

Health Attendant (Public Convenience)

Labourer

Labourer (ex-Impressed Driver)
Watchman

FOURTH SCHEDULE

AGENCIES

(Article)

Agency	**Agency function**
Management Efficiency Unit	To support public sector change initiatives through the provision of consultancy advice
Office of the Attorney General	To support the Attorney General in his role as chief legal adviser to the Government and chief prosecuting officer

FIFTH SCHEDULE

(Article)

PART A

The President
The House of Representatives
The Cabinet
The Judiciary
Any Tribunal constituted by or under any law
The Commission for the Administration of Justice
The Electoral Commission
The Malta Broadcasting Authority
The Employment Commission
The Permanent Commission against Corruption
The Commission for Investigation of Injustices
The Attorney General in the exercise of the powers referred to in article 91(3) of the Constitution
Any Counsel or Legal Adviser to the Government acting in such a capacity
The Auditor General in respect of the functions under articles 108(5) and (8) 108 of the Constitution
The Armed Forces of Malta except as provided in Part B hereof
The Security Service.

PART B

The Public Service Commission
The Armed Forces of Malta in respect only of appointments, promotion, pay and pension rights of officers and men of the Force.

———————

SIXTH SCHEDULE

(Article)

Matters not subject to Investigation

1. Any matter certified by the Prime Minister to affect the internal or external security of Malta.
2. Action taken in matters certified by the Minister responsible for foreign affairs to affect relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments.

Cap. 276.

3. Action taken by the Minister responsible for justice under the Extradition Act.

Cap. 220.

4. The commencement or conduct of civil or criminal proceedings before any court of law or any tribunal in Malta, or of proceedings in respect of military offences under the Malta Armed Forces Act, or of proceedings before any international court or tribunal.

Cap. 9.

5. The exercise of the power of the Prime Minister under article 515 of the Criminal Code.
6. Any criminal investigation by the Police.

SEVENTH SCHEDULE

(Article)

Oaths of Office

I …… solemnly swear / affirm that I will faithfully and conscientiously perform my duties as (Information and Data Protection

Commissioner / Officer of the Information and Data Protection

Commissioner / Employee of the Information and Data Protection

Commissioner) in terms of the Data Protection Act and in accordance with the laws of Malta, without fear or favour. (So help me God.).

EIGTH SCHEDULE

(Article)

FREEDOM OF ACCESS TO INFORMATION
ON THE ENVIRONMENT (AMENDMENT) REGULATIONS, 2008

BY VIRTUE of the powers conferred by articles 3, 9, 19, 23 and 28 of the Environment Protection Act the Prime Minister has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Freedom of Access to Information on the Environment (Amendment) Regulations, 2008.

(2) These regulations shall be read and construed as one with the Freedom of Access to Information on the Environment Regulations, 2005, hereinafter referred to as "the principal regulations".

(3) These regulations shall come into force on such a date as the Minister responsible for the environment may by notice in the Gazette appoint.

Amendment to regulation 2.

2. In regulation 2 of the principal regulations, after the definition of "environmental information" there shall be added the following new definition:

" "Information and Data Protection Commissioner" means the official appointed in terms of article 36 of the Data Protection Act;".

Addition of new regulations.

3. (1) There shall be added to the principal regulations new regulations 12 and 13 as follows:

"Enforcement. 12. (1) Any person who requests the competent authority to provide him with environmental information in accordance with regulation 3, and who is dissatisfied with the response, may apply to the Information and Data Protection Commissioner for a decision whether, in any specified respect, his request has been dealt with in accordance with the requirements of these regulations

and

any additional regulations made in accordance with

regulation 11.

(2) Part IV of the Freedom of Information

Act other than article 26, as well as articles 39, 40 and 43

of the same Act, shall apply *mutatis mutandis* to requests

for information under this article, save that references to a

code of practice in Part IV of

Cap. 496. the Freedom of Information

Act shall be construed as referring to any code of practice

on the disclosure of information that may be issued by the

competent authority through regulations in accordance

with regulation 11; but the application of the Freedom of

Information Act in terms of this sub-regulation shall not be

dependent on the issue of such a code.

(3) Where the question emerges as to whether or not information requested under regulation 3 is environmental information to which these regulations apply, that question shall be subject to review and decision by the Information and Data Protection Commissioner and additionally subject to appeal under articles 39 and 40 of the Freedom of Information Act.

Cap. 496.

Interpretation.

13. In deciding whether or not particular environmental information is exempted from disclosure under paragraph (*a*) of sub-regulation (2) of regulation 7, regard shall be had to subarticles (2), (3) and (4) of article 29 and article 36 of the Freedom of Information Act; and information to which the aforementioned paragraph applies shall not be released under these regulations if it would be considered exempt matter under the Freedom of Information Act.".

Cap. 496.

NINTH SCHEDULE

(Article 561)

Form of Oath

I, ... swear/solemnly affirm that I will fully and honestly fulfil my duties as National Archivist/employee of the National Archives in conformity with the requirements of Title V of Part I of Book Second of the Administrative Code, and of all orders made thereunder, and that I will not, except in the performance of my duties under that Title and such orders and except when information has fallen into the public domain, disclose or make known during my service as National Archivist/employee of the National Archives or at any time thereafter, any matter which comes to my knowledge relating to any person, Government department or other public office by reason of my service as National Archivist/employee of the National Archives.

(So help me God.)

TENTH SCHEDULE

(Article 562)

List of Public Records

1. Public records and archives to be preserved in any archival repository which falls under the responsibility of the National Archives are those records and archives created, received and maintained by:

(*a*) the office of the President;

(*b*) the House of Representatives;

(*c*) the office of the Cabinet of Ministers;

(*d*) any ministry, department, commission, authority, agency or other public office. In the case of public corporations or other parastatal or public organizations which are or have been privatised the provisions of this Schedule shall only apply up to the date when the Government of Malta or any body owned or controlled by it no longer has effective control;

(*e*) any embassy or other foreign representation of the Government of Malta outside Malta and by any officer serving in such a post;

(*f*) the Electoral Commission or any committee or officer thereof;

(*g*) the Courts of Justice, or any other court or tribunal with jurisdiction within Malta or by any judge, magistrate or other officer of such a court;

(*h*) any local council or authority, or committee or sub-committee or officer thereof;

(*i*) any predecessor or successor of any of the institutions, bodies or individuals designated in paragraphs (*a*) to (*h*);

(*j*) any other body or individual so designated by the Minister by regulation made in accordance with this Act.

2. Records originated by the Ministry for Gozo, Gozo sections of government departments, and by public bodies established for Gozo shall be deposited at the Gozo Section of the National Archives.

3. All public records and archives which at the time of the coming into force of this Act were in the custody of the National Archives of Malta shall be considered to be public records for the purposes of this Title.

ELEVENTH SCHEDULE

[ARTICLE 592 AND 593]

A. Form of oath to be taken by chairman, deputy chairman or member of Board

I ..... having been appointed to be Chairman/Deputy Chairman/Member of ..... do swear/solemnly affirm that I will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by virtue of the said appointment.

So help me God.

B. Summons to Witnesses

(The Administrative Code - Inquiries)

To A.B. (name of person summoned and residence)

You are hereby summoned to appear before..... ..... at ..... (place) on ..... (date and time) and to give evidence respecting .... (the matter of the inquiry).

Given under my hand this ..... day of ..... 19...

.....
(Signature of Chairman, Deputy Chairman
or other member)

TWELFTH SCHEDULE

[ARTICLE 567]

RULES FOR THE OPERATION OF THE CONTINGENCIES FUND

1. Advances from the Contingencies Fund shall be made on the authority of a warrant under the hand of the Minister.

2. The amount for which any warrant is issued shall be withdrawn from the Contingencies Fund and shall be paid into the Consolidated Fund to meet the expenditure specified on the warrant and the moneys remaining available in the fund shall be reduced accordingly. Any amounts withdrawn and remaining unspent at the end of the year shall accrue to the Consolidated Fund.

3. Each warrant authorising the issue of a sum from the fund shall specify under which head or heads of the estimates the expenditure of the sum issued shall be recorded and such expenditure shall be accounted for in the same manner as if it had been authorised by a supplementary Appropriation Act.

4. All withdrawals from the fund shall be included in a supplementary estimate and an Appropriation Bill shall be introduced in the House of Representatives as soon as possible for the purpose of appropriating from the Consolidated Fund to the Contingencies Fund a sum equal to the total of the sums withdrawn and not already made good by previous appropriations from the Consolidated Fund so that the Contingencies Fund shall be restored to the amount appropriate under article 30.

5. No moneys shall accrue to the fund other than moneys appropriated by an Act and any interest or other accruals which might otherwise be received by the fund shall accrue to the Consolidated Fund.

THIRTEENTH SCHEDULE

(ARTICLES 765, 766, 770, 771, 774, & 975)

DECLARATION BY PRESIDENT OF MALTA

I hereby declare that the undermentioned land is required by the competent authority for a public purpose in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88)* and that the acquisition thereof is to be / by absolute purchase. / for the possession and use thereof for a period of ..... years. / for the possession and use thereof for such time as the exigencies of the public purpose require. / by way of public tenure. / by way of the imposition thereon of an easement (*here state the easement to be imposed*); or namely in order that it may be examined with a view to its possible acquisition.

The compensation / recognition rent / acquisition rent offered is € ..... / € ..... per annum as per valuation herein attached drawn up by architect ..... .

I further declare that the possession of the land is required by the competent authority within days from the date on which this Declaration shall be served on the owner or owners of the land.

DESCRIPTION OF LAND

1.

2.

3.

*Omit whichever does not apply.

President

Notice of President of Malta's Declaration and of particulars of land.

In the Land Arbitration Board.

Date.....

To *(here insert name of owner or owners).*

A.B. in his capacity as Commissioner of Land hereby serves on you a copy of a Declaration by the President of Malta (Exhibit A) declaring that the land is required for a public purpose in the manner specified therein. The land referred to is the following: *(here insert particulars of land*).

PROCLAMATION BY PRESIDENT OF MALTA

WHEREAS by virtue of Article 4 of the Land Acquisition (Public Purposes) Ordinance (Chapter 88) it is provided that the President of Malta may for any public purpose declare any land to be subject to clearance rights or to subsoil rights:

AND WHEREAS the property shown in the Schedule hereto is required to be declared subject to .....[14]

[14]Note: here insert - "clearance rights"

NOW THEREFORE I, in pursuance of the said article 4 of the said Ordinance, do hereby proclaim that the property shown in the Schedule hereto is subject to ..... *

SCHEDULE

.....

.....

The Palace, Valletta, this day of 20

"subsoil rights", or
"clearance and subsoil rights"
as the case may be.

FOURTEENTH SCHEDULE

(Article 774(3))

$$\left[\frac{A + B}{2}\right] \times \left[\frac{5}{100}\right] \times \left[\frac{C}{365}\right]$$

where "A" is the value of the land at the time when the competent authority took possession of the land;

"B" is the value of the land at the time when the land was transferred by title of absolute purchase in favour of the Government of Malta; and

"C" is the number of days between the dates of "A" and "B".

FIFTEENTH SCHEDULE

(Article 774(5), second proviso)

$$\left[\frac{\frac{P+Q}{2}}{100}\right] \times \left[\frac{5}{365}\right] \times R$$

where "P" is the value of the land determined in the notice to treat;

"Q" is the value of the land determined by the Land Arbitration Board; and

"R" is the number of days between the date of taking of possession of the land by the competent authority, and the date of transfer by title of absolute purchase in favour of the Government of Malta.

SIXTEENTH SCHEDULE

(Article 798)

List of Special Areas

A. An area situated between Marsa, Paola and Luqa and bounded:

On the North by Marsa Cross Road, Jetties Wharf and Shipwright's Wharf;

On the East by Paola Hill, Valletta Street (Paola) and Britannia Street (Paola);

On the South by Palm Street, the Addolorata Cemetery, Lane ta' }al Saflieni and a Government rural tenement known as "Tal-Qtates";

On the West by Valletta Road (Luqa), Marsa Racecourse and a lane leading from Marsa Racecourse to Marsa Cross.

The area is shown edged purple on a plan which may be seen on demand at the Office of Public Works, Valletta.

B. An area situated in Marsa and bounded:

On the North by Pinto Road and Spencer Hill;

On the West by Marsa Cross Road;

On the South and on the East by the Grand Harbour.

The area is shown edged purple on a plan which may be seen on demand at the Office of Public Works, Valletta.

SEVENTEENTH SCHEDULE

(Article 813)

Policy relating to the Transfers of Government Land

Interpretation

1. In this document the words 'land' and 'transfer' shall have the same meaning as is given to them by Title IV of Part IV of Book Second of this Code; and any reference to 'government land' or 'government building' includes a reference to any land or building administered by Government.

2. The cases in which government land may be transferred according to policy as contained in this schedule are additional to the cases in which government land may be transferred according to article 3(1)(*a*), (*b*), (*d*), (e) and (*f*) of this Act.

Transfer by title of sale or redemption

3. Government land may be sold or the perpetual or temporary *dominium directum* burden thereon may be redeemed if such land consists of flats or houses which are offered by means of a public notice to be bought or redeemed by a person who resides therein under such conditions as are shown in that notice.

3a. The perpetual *dominium directum* of government land, where the ground-rent is revisable, may be redeemed by the recognised emphyteuta, in accordance with any conditions contained in a public notice.

Transfer by title of emphyteusis

4. Government land may be transferred by title of emphyteusis:

(*a*) if it consists in land which is offered for development under a 'Home Ownership Scheme' by means of a public notice containing the conditions of the transfer and the manner of choice of the person who is making an offer;

(*b*) if it consists in land which is offered for an industrial project after applicant would have satisfied Government about the benefit which the project would render to the country's economy and that it would create an adequate number of jobs;

(*c*) if it consists in land which is offered for twenty-five (25) years for the building of kiosks according to plans approved by the Planning Authority, to such persons who in 1996 had a valid permit issued by the Department of Lands to operate a kiosk in such same locality;

(*d*) if it consists of land granted for a period of fifty (50) years to licensed livestock farmers in the dairy and/or pig-breeding sectors for the running of farms.

5. Emphyteutical grants given previously under the 'Home Ownership Schemes' for a definitive period, may be converted into perpetual emphyteusis.

Transfer by title of lease

6. Government land may be given by lease:

(*a*) if it consists in a new building (not being a building for commercial use) which is offered on a points system after the issue of a public notice indicating, at least in a general manner, the criteria on which the allocation of points will be made;

(*b*) if it consists in an old building (not being for commercial use) which is offered according to the merits of the case to whosoever is listed on the registers of the government department which is responsible for such matters;

(*c*) if it consists in a factory which is offered for an industrial project after applicant would have satisfied Government about the benefits which the project would render to the country's economy and that it would create an adequate number of jobs;

(*d*) if it consists in agricultural land which is offered on agricultural lease to whosoever would be cultivating it, although such person may not have any title thereto;

(*e*) if it consists in land which is directly allocated:

(i) to a lotto receiver;

(ii) to a person who has relinquished his place of residence or any other premises occupied by him for commercial purposes or for any other use, and would either have been evicted by Government for any public purpose or would have relinquished such premises due to its dangerous state;

(*f*) if it consists in a building (comprising land accessory thereto) which is mainly offered for a specific commercial use which may be only carried out under a licence issued by the Government for such use under a special law;

(*g*) if it consists in commercial premises which are directly allocated by Government on a new lease to such children or grand-children as the preceding tenant would have renounced in their favour (and then only if such tenant would have reached the age of sixty-one years or is in receipt of an invalidity pension under the Social Securtity Act (Cap. 318)). The rent of the premises shall be fixed on the basis of the previous lease increased by ten per cent for each period of ten years and/or part thereof which would have passed from the date of the last fixing of the rent of the preceding lease;

(*h*) if it consists in commercial premises leased on a yearly basis, which was in the past given by title of lease for an established period exceeding one year, to the same tenant. The lease of the premises is given to the same tenant, under the conditions of the original title, other than for the rent which is fixed again, sohowever that no lease may exceed a period of fifteen (15) years;

(*i*) if it consists of land which formed part of a larger land and is being allocated directly by Government on a new lease to the preceding tenant under the same conditions but at a different rent;

(*j*) if it consists of a concession under a temporary title for a maximum period of time of ten years of land situated outside Malta.

Servitudes, encroachments and other permits.

7. Servitudes and other similar rights may be created on government land whenever such rights are required for the proper use of any other land by any other person, and it would not be the case that such right is given on encroachment terms. In any other case such rights may and shall be given on encroachment terms.

8. Encroachment terms are also allowed as regards:

(i) stretches of shore land as 'beach concessions';

(ii) land adjacent to coffee-shops and similar establishments for the placing of tables and chairs; and

(iii) other similar concessions.

9. Permits may also be granted for the temporary or specific use of government land.

Right of first refusal

10. Offers for the transfer of government land may be made subject to the right known as the right of first refusal in any instance where Government deems it appropriate that such right should be conceded to any person.

Sub-lease in a lease agreement

11. Permission may be granted for the sub-lease of part of a larger building for commercial use connected with or accessory or ancillary to use made by the Government of the building of which the leased premises form part.

Transfer of land on the sea shore

12. Government land situated on the sea shore on which a room or any other building has been built or which is being used for the siting of a caravan thereon may be transferred by title of lease for not more than ten years at a rent fixed according to a valuation made by the Commissioner of Lands and which may in no case be less than one hundred euro (€100) annually;

Sohowever that the building together with all improvements made thereon, other than existing movables, shall revert to Government on the expiration of the lease without any right of compensation.

Land given by exchange

13. Government land may be given by exchange with any other land which is declared as required for a public purpose under Chapter 88 of the Laws of Malta, to the owner of the land which has been so declared. Provided that when a difference exists in the value of the two plots of land given by exchange, such difference shall be balanced with also giving an additional sum of money. Sohowever that the exchange may not be effected if the value of the government land to be given exceeds thirty per cent of the value of the expropriated land. Any damages sustained

due to the expropriation of such land shall form part of the value of the same land.

Tale quale transfer for relative compensation

14. Any plots of land comprised in such Building Development Areas, also including such plots of land in Building Development Areas which have been revoked, and which have not been utilized and[or there is apparently no use for them for a public purpose, may be transferred by title of exchange to the owners of the rights for relative compensation for each plot of land which is so transferred and for which an application has been submitted, with money's worth for each plot of land, of the rights for compensation regarding the same land, and when the person to whom the land shall be transferred was not the absolute owner of such land prior to its expropriation by Government, with money's worth also of an equivalent amount for each right of any other compensation relating to such land, free and exempt from any burden, hypothec or privilege, and also every right for any other interests or damages which may be due.

The person in whose favour the land is transferred is bound, on the same deed of transfer, to reconstitute on the land so transferred to such person any hypotech, privilege, easement, usufruct, use or any other real right which had existed on the same land prior to such land being declared a Building Development Area according to Act I of 1983 and which are presently incumbent on the compensation rights, until such time as such rights have not been erased by agreement between the parties prior to the reverse transfer; the person to whom such land is transferred shall also be obligated to bind itself on the same deed to recognize any right ta' rural lease and any other right which was incumbent on such land prior to such land being declared a Building Development Area in terms of the said Act I of 1983.

The expenses relating to the deed of transfer shall be paid by the Government of Malta.

EIGHTEENTH SCHEDULE

(Article 825)

Reports of the Auditor General

1. (*a*) The Auditor General shall make such examination and inquiries in the accounts of all departments or offices of the Government of Malta, or of such other bodies on whose accounts he is to report in accordance with any law, as he may consider necessary in order to enable him to report thereon as required by the Constitution or any other law.

(*b*) The Auditor General shall at least once in every year inspect all securities held in Malta and shall verify the annual return of all securities held in Malta and abroad prepared by the Accountant General under the provisions of Title II of Part III of Book Second of this Code.

(*c*) The Auditor General shall examine with the Treasury books the statements which the Accountant General is required to prepare and forward to him under Title II of Part III of Book Second of this Code; he shall certify and return them to the Accountant General within two weeks after the receipt thereof.

(*d*) If the Auditor General objects to any part of such statements, he shall certify the same with such remarks thereon as he thinks fit, and they shall be published and laid on the Table of the House of Representatives together with such remarks.

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(*e*) The Auditor General shall examine the statements and accounts prepared and sent to him by the Accountant General in terms of Title II of Part III of Book Second of this Code and shall make a report as is provided under and is required by this Code, by the Title II of Part III of Book Second of this Code and any regulations made thereunder, or as the Auditor General may think fit and desirable.

2. The Auditor General shall examine, in particular, such books and records as government departments are required to keep by or under Title II of Part III of Book Second of this Code, and shall in his report state his opinion as to whether such books and records fairly contain such information as is required in accordance with stated accounting policies of the Government of Malta.

3. The Auditor General may examine whether the department, office or other body whose accounts are being audited by him has used the funds and resources available to it effectively, efficiently, and economically without incurring expenditure which is unnecessary.

4. Nothing in paragraph 3 hereof shall be construed as entitling the Auditor General to go into the merits of any policy or objective of any such department, office or body.

5. The Auditor General shall annually report to the House of Representatives on:

(i) the work and activities of the National Audit Office; and
(ii) whether in carrying out his work he received all the information and explanations he required.

6. Each report under paragraph 5 shall call attention to anything that the Auditor General considers to be of significance and of a nature that should be brought to the attention of the House of Representatives, including in particular any cases in which he may have observed that -

(i) accounts and records have not been faithfully and properly maintained or public monies have not been fully accounted for or paid into the Consolidated Fund as may be required by law;
(ii) essential records have not been maintained or the rules and procedures applied have been insufficient to safeguard and control public property, to secure an effective check on the assessment, collection and proper allocation of revenue and to ensure that expenditures have been made only as authorised;
(iii) public monies have been expended for purposes other than those for which they were appropriated by Parliament or otherwise not in accordance with Title II of Part III of Book Second of this Code;
(iv) public monies have been expended uneconomically or without due regard to effectiveness and efficiency;
(v) satisfactory procedures have not been established to measure and report the effectiveness of expenditure programmes, where such procedures should reasonably have been established.

7. Each report made by the Auditor General under paragraph 5 of this Schedule shall be submitted to the Speaker of the House of Representatives not later than twelve months after the end of the financial year being reported upon, and the Speaker shall lay each such report before the House of Representatives on the next sitting of the House after receipt thereof by him.

8. (*a*) The Auditor General may make special reports to the House of Representatives:
(i) on any matter of pressing importance or urgency; or
(ii) dealing with value for money audit relating to efficiency and effectiveness of any department, office or body.
(*b*) The Speaker shall lay each such report before the House of Representatives on the next sitting of the House after receipt thereof by

him.

9. (*a*) The Auditor General may either personally or through the National Audit Office, on the initiative of the Auditor General himself or at the request of the Minister responsible for finance or of at least three members of the Public Accounts Committee or such other Committee of the House of Representatives that may from time to time replace such committee, inquire into and report on:

(i) any matter relating to government finances, property or funds administered or under the control of any Government department or office or of any body whose accounts are subject to his audit;

(ii) such accounts and financial reports which are in virtue of or under any law laid before the House of Representatives;

(iii) the accounts of those public authorities or bodies administering, holding or using funds belonging directly or indirectly to the Government of Malta;

(iv) the operations of companies or other entities in which the Government of Malta owns not less than 51 per cent of the shares;

(v) any other matter as may be provided by or under any law.

(*b*) The Speaker shall lay each such report before the House of Representatives on the next sitting of the House after receipt thereof by him.

(*c*) The Auditor General may give advice to any Government department or office, or to any body to which sub-paragraph (*a*) hereof applies, on anything discovered during such inquiry.

10. (*a*) Any serious irregularity discovered by the Auditor General in a government department or office, or in a body subject to his audit, shall be brought to the notice of the Minister responsible for that government department, office or body by the Auditor General.

(*b*) (i) The Auditor General may report to the Speaker any person who performs duties in such government department or office, or body subject to his audit, and who fails to comply with any of the provisions of Title III of Part V of Book Second of this Code or of Title II of Part III of Book Second of this Code, or of any regulations made thereunder.

(ii) The Auditor General shall report any such person to the Minister responsible for that Government department, office or body and may recommend that the Minister surcharges against that person the amount of deficiency or loss or improper payment resulting from the non-compliance of any provisions of Title III of Part V of Book Second of this Code, or of the Title II of Part III of Book Second of this Code, or of any regulations made thereunder.

(iii) Any person aggrieved by the imposition of any such surcharge shall have a right to contest such surcharge by action taken against the Minister in the Administrative Court not later than twenty days after notice has been given to him of such surcharge, and such surcharge shall not become effective before the lapse of one month or during such time as any such court action is still pending.

(iv) The Auditor General shall report any such person who fraudulently applies or fraudulently causes or permits to be applied public monies to other than public services, or who is a defaulter in respect of public monies, to the Minister, who shall take such steps as he may consider necessary to have the offender prosecuted according to law; but nothing herein contained shall prevent the taking of proceedings against such person by any person other than the Minister.

(*c*) The Auditor General shall make queries and observations addressed to any accounting officer or officer in any way concerned with the receipt or payment of public monies and call for explanations as he may think necessary. Every such query and observation addressed to any such officers shall be returned by them to the Auditor General with the necessary reply without delay. In the event of any unusual or unexplained delay occurring in obtaining reply, or an unsatisfactory reply being received, to inquiries or representations made by him, the Auditor General shall report the circumstances to the Minister responsible for the government department or office, or body subject to his audit, concerned.

NINETEENTH SCHEDULE

(Article 826)

National Audit Office

PART I

Officers of the National Audit Office

1. The Auditor General shall appoint such number and such classes of officers at the National Audit Office as he may consider necessary to assist him in the discharge of his functions according to law.

2. Such officers shall be appointed on such terms and shall enjoy such remuneration as the Auditor General may determine.

PART II

Powers of Auditor General and of National Audit Office

3. Except as may be expressly provided by any law, the Auditor General, and all authorised officers of the National Audit Office, shall be entitled to free access at all reasonable times to such information from officers and other personnel of government departments or offices, or of bodies subject to his audit, that may be required by them for the proper execution of their functions according to law, and they shall be entitled to receive from such officers and other personnel such reports and explanations as they may deem necessary for such purposes.

4. The Auditor General may also cause searches to be made in, and extracts to be taken from any books, documents or records existing in any premises of government departments or offices, or of bodies subject to his audit, without paying any fee therefor notwithstanding any law or regulations to the contrary.

5. In order to carry out his duties more effectively, the Auditor General may station a member of his staff in the offices of any Government department or office, or of any other body subject to his audit, and such department, office or body shall furnish such member with the necessary office accommodation.

6. The Auditor General shall require every officer employed by him who is to examine the accounts of any department, office or body to comply with any security requirements applicable thereto and to take any oath of secrecy that may be required by law to be taken by any person employed with that department, office or body.

7. (a) In carrying out his functions and responsibilities according to law, the Auditor General may rely on the report of the duly appointed auditor of the organisation being reported upon, and may also commission any person or group of persons who may in accordance with any law hold a warrant entitling them to audit the accounts of public limited liability companies, to audit the accounts of any department, office or body subject to his audit.

(b) The provisions of paragraphs 3, 4 and 6 of this Schedule shall apply in respect of the person or group of persons commissioned by the Auditor General.

PART III

Finance

8. The expenses of the National Audit Office and the salaries and allowances of the officers thereof (other than those of the Auditor General and of the Deputy Auditor General) up to a sum as may be fixed by the House of Representatives in accordance with this Part, shall be a charge on the Consolidated Fund without the need of any further appropriation other than this Part of this Schedule.

9. For the purposes of establishing the sum referred to in paragraph 8, the Auditor General shall prepare an estimate of the sum that he considers to be required.

10. Such estimate shall before consideration by the House of Representatives be examined by the Committee established under Part IV of this Schedule.

11. Where during the course of any financial year the sum fixed by the House of Representatives is in the opinion of the Auditor General insufficient to enable him to efficiently fulfil the responsibilities of his office, the Auditor General shall prepare supplementary estimates for consideration by the House of Representatives after examination by the Committee as aforesaid in paragraph 10.

12. The sum or sums referred to in the previous paragraphs of this Part shall be fixed by resolution of the House of Representatives after considering the estimates prepared by the Auditor General and the report thereon by the Committee.

Part IV

National Audit Office Accounts Committee

13. There shall be a Committee to be styled the National Audit Office Accounts Committee (hereinafter referred to as "the Committee") which shall be composed as follows:

(i) the member of the House of Representatives who is for the time being Chairman of the Public Accounts Committee of the House of Representatives or such other committee of the said House from time to time replacing such Committee;

(ii) the Minister responsible for parliamentary affairs (hereinafter referred to as "the Leader of the House of Representatives");

(iii) three members of the House of Representatives appointed by the said House upon a motion by the Leader of the House of Representatives, as to two members from among members supporting the Government and as to the remaining member from among the members in opposition.

14. The Committee shall from time to time but not less often than once a year present to the House of Representatives (through the Leader of the House of Representatives) a report of its activities and the report of its examination of any estimates prepared by the Auditor General.

15. The Committee shall elect a chairman from among its members, and may regulate its own proceedings.

16. Upon the dissolution of the House of Representatives the Committee shall be deemed to be dissolved until it is next reconstituted after the House next meets. Where upon the dissolution of the House of Representatives the sum to be established for the purposes of paragraph 8 of Part III is not so established or the

House has not after the end of a financial year established the said sum, the Auditor General shall be entitled to expend, each month, a sum equivalent to one twelfth of the sum or sums established for the previous financial year, until the said sum is so established.

17. The validity of any proceedings of the Committee shall not be affected by any vacancy among its members or by any defect in the appointment or nomination of any of its members.

PART V

Accounts of the National Audit Office

18. The accounts of the National Audit Office shall be audited by such person or persons (hereinafter referred to as "auditor") appointed by the Committee from among such persons who in accordance with such law as may from time to time be in force hold a warrant entitling them to audit the accounts of a public limited liability company.

19. The remuneration of the auditor shall be fixed by the Committee and shall be defrayed as part of the expenses of the National Audit Office.

20. The auditor shall have with regard to the accounts of the National Audit Office such powers as are by law vested in the Auditor General with regard to accounts subject to his audit.

21. The auditor shall present his report on the audit carried out by him to the Committee which shall (through the Leader of the House of Representatives) present the same to the House of Representatives together with any comment thereon by the said Committee or any of its members.

TWENTIETH SCHEDULE

[ARTICLE 866]

OATH OF ALLEGIANCE

I,..... solemnly swear/affirm that I will bear true faith and allegiance to the People and the Republic of Malta and its Constitution. (So help me God).

TWENTY-FIRST SCHEDULE

(Article 894)

Offences, which become infringements and may be tried by the Commissioners, against the following:

1. *Traffic Regulation Ordinance (Cap. 65)*

Article 3, the Second Schedule in respect of Parking or waiting or stopping at prohibited place.

2. *Motor Vehicles Regulations, 1994*
Regulations 17, 18, 21, 24, 25, 28 to 38, 41 to 44, 47, 55, 59 to 61, 65, 67 to 103, 105 to 110, 112, 114 to 118, 123 to 131, 139(1), 139(2), 139(3), 144, 146, 147, 149 to 151, 154, 156, 158, 162, 163, 170, 176, 178, 195, 197, 228, 229, 235, 237 and 242.

3. *Code of Police Laws (Cap.10.)*
Articles 38 (1) *(a), (b), (c), (d), (i), (j), (k),* 40 *(b),* 49, 51 to 60, 73, 77, 82, 86, 87, 89.

4. *Food Safety Act, (Cap. 449)*
Paragraph 2 of Part VIII of the Schedule to the Hygiene of Food Regulations

[15]5. *Traffic Signs and Carriageway Markings Regulations, 1969*.
Regulation 2

6. *Litter Act (Cap.206.)*
Articles 3, 4, 5, 8.

[16]7. *Education Act (Cap327.)*
Article 44 (1) *(b)*

8. *Motor Vehicles Insurance (Third-Party Risks) Ordinance (Cap.104.)*
Article 8 (1).

9. *Tobacco (Smoking Control) Act (Cap.315.)*
Article 14.

10. *Motor Vehicles (Wearing of Seat Belts) Regulations, 2003 (Legal Notice 252 of 2003).*

11. *Control of Dogs Regulations, 2000*

[15]*See* article 3 of Act I of 1985. (Trans. Prov.)

[16]*See* article 6 of Act XVII of 1989. (Trans Prov.)

(Legal Notice 242 of 2000).

12. *Controlled Parking Schemes (Residents and Commercial) Regulations, 2001 (Legal Notice 295 of 2001)*.

13. *Activities requiring Permit by Local Councils Regulations, 2002 (Legal Notice 119 of 2002)*.

14. *Trenching Works requiring Permit by Local Councils Regulations, 2002 (Legal Notice 313 of 2002)*.

15. *Erecting of Billboards on the Road Regulations, 2004 (Legal Notice 368 of 2004)* Regulation 14.

16. *Motor Vehicles (Registration and Licensing) Regulations (Legal Notice 476 of 2004)*
Regulations 14, 15(3), 18(1),(2), 19, 21, 22, 23, 26, 34(2), (4), (5), 35, 37 and 51(7)(*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*) and (*k*).

17. *Abandonment, Dumping and Disposal of Waste in Streets and Public Places or Areas Regulations, 2005* (Legal Notice 344 of 2005).

18. Environmental Management Construction Site Regulations, 2007 (Legal Notice 295 of 2007).

TWENTY-SECOND SCHEDULE

[Article 967]

List of Administrative Tribunals Respecting the Principle of Good Administrative Behaviour

Part A - Primary Legislation

Chapter Number	Name of Law	Provision Number	Name of Administrative Tribunal
3	Marriage Legacies Act	3	Commission
45	Lepers Ordinance	2(8)	Board
69	Reletting of Urban Property (Regulation) Ordinance	16	Rent Regulation Board
81	Utilities & Services (Regulation of certain works) Act	4	Refers to the Communications Appeal Board established by the Malta Communications Authority Act
85	Agricultural Produce (Export) Ordinance	18	Board of Reference (set up under subsidiary legislation SL 85.01 regulation 27)
88	Land Acquisition Public Purposes Ordinance	23	Land Arbitration Board
94	Department of Health (Constitution) Ordinance	44	General Services Board
110	Developed Land Valuation Ordinance	9	Board of Special Commissioners for Land Valuation
117	Supplies and Services Act	3(1)(*e*)	Boards or Tribunals set up under subsidiary legislation to take cognisance of offences
125	Housing Act	8(6) and 12(1)	Refers to Rent Regulation Board
164	Police Act	48	Police Board
171	Port Workers Ordinance	10 and 12	Ports Disputes Board

179	Enemy Property Act	4	Board of Custodians
199	Agricultural Leases (Reletting) Act	5	Rural Leases Control Board
204	Central Bank of Malta Act	36A	Financial Services Tribunal
210	Disabled Persons Employment Act	13	Appeal to the 'authority' set up under subsidiary legislation
214	Public Transport (Regulation of Employment) Act	3	Public Transport Labour Board established by article 30 of the Malta Transport Authority Act
217	Immigration Act	25A	Immigration Appeals Board
218	Civil Aviation (Air Operators Certificate) Act	9	Aviation Safety Board
254	Post Office Act	28	Communications Appeals Board
262	Mental Health Act	38	Mental Health Review Tribunal
288	Building (Price Control) Act	9	Building Price Control Tribunal
291	Commissioners for Justice Act	3	Commissioners for Justice
308	Partition of Inheritances Act	4	Partition of Inheritances Tribunal
318	Social Security Act	107 and 128	Umpire
325	Business Promotion Act	28	Appeals Board
327	Education Act	42	Scholastic Tribunal
330	Malta Financial Services Authority Act	21	Financial Services Tribunal
331	Trusts and Trustees Act	55	Financial Services Tribunal
332	Malta Transport Authority Act	30	Public Transport Labour Board
334	Malta Freeports Act	29(2)	Appeals Board constituted under article 28 of the

			Business Promotion Act
337	Import Duties Act	9	Customs Valuations Appeals Board
343	Employment and Training Services Act	3	National Employment Authority
345	Financial Markets Act	42	Financial Services Tribunal
356	Development Planning Act	15	Planning Appeals Board
364	Duty on Documents and Transfers Act	57	Board of Special Commissioners for Duty on Documents and Transfers
370	Investment Services Act	19	Financial Services Tribunal
371	Banking Act	10	Financial Services Tribunal
372	Income Tax Management Act	34	Board of Special Commissioners for Income Tax purposes
376	Financial Institutions Act	21	Financial Services Tribunal
378	Consumer Affairs Act	16	Consumer Claims Tribunal
379	Competition Act	4	Commission for Fair Trading
380	Small Claims Tribunal Act	3	Small Claims Tribunal
383	Controlled Companies (Procedures for Liquidations) Act	7	Appeals Board
395	Customs and Excise Tax Act	47	Excise Tax Tribunal
399	Telecommunications Regulation Act	16	Communications Appeals Board
403	Insurance Business Act	35	Financial Services Tribunal
406	Value Added Tax Act	43	Value Added Tax Appeals Board
409	Malta Travel and Tourism Services Act	13	Tourism Appeals Board
420	Refugees Act	5	Refugees Appeals Board
423	Malta Resources Authority Act	32	Resources Appeals Board

424	Occupational Health and Safety Authority Act	21	Occupational Health and Safety Appeals Board
435	Environment Protection Act	16	Appeal to the Planning Appeals Board established under Cap.356
436	Wine Act	4	Appeals Board
440	Data Protection Act	48	Data Protection Appeals Tribunal
441	Trading Licences Act	8	Licensing Appeals Board
442	Co-operative Societies Act	3	Co-operatives Board
447	Producer Organisations Act	18	Producer Organisations Appeals Board
450	Special Funds (Regulation) Act	54	Financial Services Tribunal
451	Mutual Recognition of Qualifications Act	7	Mutual Recognition of Qualifications Appeals Board
452	Employment and Industrial Relations Act	73	Industrial Tribunal
455	Sports Act	47	Sports Appeals Board
458	Medicines Act	21	Appeal to the Medicines Review Board from findings of the Medicines Authority
473	Eco-Contribution Act	26	Eco-Contribution Appeals Board
476	Prevention of Financial Markets Abuse Act	23	Financial Services Tribunal
484	Securitisation Act	19(14)	Financial Services Tribunal
487	Insurance Intermediaries Act	2	Financial Services Tribunal

Part B - Subsidiary Legislation

Subsidiary Legislation/Legal Notice Number	Name of Subsidiary Law	Provision Number	Name of Administrative Tribunal

GN 430 of 28 September 1937	Cinema and Stage Regulations	42	Board of Film and Stage Censors
SL 33.04	Civil Explosives Regulations	Second Schedule, paragraph 5 of 1. Module B	This regulation states that provision must be made for an appeal
SL 85.01	Potato Export Regulations	27	Board of Reference
SL 128.02	Licences Procedures Regulations	6	Police Licences Appeals Tribunal
SL 174.02	Public Service (Procurement) Regulations	15	Public Contracts Appeals Board
SL 174.04	Public Contracts Regulations	33	Public Contracts Appeals Board
SL 254.12	Postal Services Appeals Board (Rules of Procedures) Regulations	-	Postal Services Appeals Board
SL.260.03	Prison Regulations	79	Appeals Tribunal
SL 291.04	Petitions (Local Tribunals) Regulations	3	Petitions Board
SL 327.85	Assessment Test Regulations	6	University Disciplinary Board
SL 458.23	Licensing of Private Medical Clinics Regulations	5(2)	Tribunal
SL 458.25	Licensing of Private Medical Diagnostic Laboratories Regulations	5(2)	Tribunal appointed under regulation 5(2) of the Licensing of Private Medical Clinics Regulations (SL 458.23)
SL 499.32	Erection of Billboards on the	9(7)	*Ad hoc* Appeals Board until the Appeals Board is

Road Regulations constituted

Objects and Reasons

The object of this Bill is to codify into one enactment Maltese Administrative Law and Procedure as enacted in various chapters of the laws of Malta, as interpreted in court case law and as applied in practice by the public administration.

Consequential amendments to the Constitution.

A Bill
entitled

An Act to amend the Constitution of Malta to establish the Parliament Office of Law Commissioner and to make ancillary and consequential provisions thereto.

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

Short title and commencement.

1. (1) The short title of this Act is the Constitution of Malta (Amendment) Act, 2007 and this Act shall be read and construed as one with the Constitution of Malta, hereinafter referred to as "the Constitution".

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

(3) A notice under subarticle (2) may make such transitional provisions as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought into force.

Amendment of articles 44, 46, 55 and 95 of the Constitution.

2. The words "Civil Court, First Hall," wherever they occur in the proviso to articles 44(5), 46(1), (2), (3), (4) and (6), 55(2)(d) and 95(2)(c) shall be substituted by the words "Administrative Court".

Amendment of article 66 of the Constitution.

3. In paragraph (b) of sub-article (2) of article 66 of the Constitution, for the words "sub-article (2) of article 75" there shall be substituted the words "article 74A, sub-article (2) of article 75".

Addition of new article 74A to the Constitution.

4. Immediately after article 74 of the Constitution there shall be added the following new article:

"Office of Law Commissioner.

74A. (1) There shall be a Law Commissioner who shall have such functions as may be assigned to him by law.

(2) The Law Commissioner shall be on Officer of Parliament.

(3) The manner of appointment, the term of office, and the manner of removal or suspension from office of the Law Commissioner together with any other matter ancillary

or incidental thereto or considered necessary or expedient for the carrying out of the function referred to in subarticle (1) shall be provided by law.

(4) The expenses in connection with the administration of the office of the Law Commissioner and the remuneration due to the Law Commissioner and his staff, and for the functioning of the said office shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

(5) In the exercise of his functions under sub-article (1), the Law Commissioner shall not be subject only to the direction and control of the House of Representatives.".

Amendment of article 91 of the Constitution.

5. The words "Attorney General", wherever they occur in article 91 of the Constitution, in any other provision of the Constitution and in any other law shall be substituted by the words "Director of Public Prosecutions".

Amendment of article 92 of the Constitution.

6. Immediately after sub-article (4) of article 92 of the Constitution there shall be added the following new subarticle:

"(5) One of the Permanent Secretaries shall be designated as "Principal Permanent Secretary". The Principal Permanent Secretary shall be the head of the public service.".

Amendment of articles 96(1), 98, 100(1) and 101A of the Constitution.

7. Judges and Magistrates to be appointed, promoted, disciplined and removed by the Commission for the Administration of Justice.

Amendment of articles 97and 100(3) of the Constitution.

8. The words "sixty-five years" in article 97(1) and 100(3) of the Constitution shall be substituted by the words "seventy years".

Addition of article 115A to the Constitution.

9. The following article shall be added after article 115 of the Constitution:

"Recommendation by the Ombudsman. Cap. 285.

115A. (1) Notwithstanding the provisions of article 115 of this Constitution and in furtherance to the provisions of article 64A of this Constitution, the following procedure shall apply with regard to:

(a) reports made by the Ombudsman where such reports contain recommendations -

(i) which have to be implemented by the Public Service Commission; or

(ii) which have to be implemented by the Prime Minister on the recommendation of, or on the advice of, the Public Service Commission; and

(b) requests for information by the Ombudsman to the Public Service Commission to provide him which such information that he might require to enable him to carry out his investigation.

(2) The Public Service Commission shall provide the Ombudsman with such information as he may determine to carry out his lawful duties in terms of article 64A of this Constitution and of any law giving effect to that provision.

(3) Where the Public Service Commission receives a report from the Ombudsman making recommendations to the Public Service Commission to reconsider a previous recommendation, advice or decision made, given or taken by it, the said Commission shall discuss the Ombudsman's report and, where it elects to implement in full the Ombudsman's recommendations, it shall inform the Ombudsman of its decision within a reasonable time of receipt of the aforesaid report.

(4) Where the Public Service Commission elects not to implement the recommendations of the Ombudsman as contained in his report or where the said Commission elects to implement partially the recommendations of the Ombudsman, it shall inform the Ombudsman accordingly, within a reasonable time of receipt of the Ombudsman's report giving motivated reasons as to why it has elected not to implement any of the Ombudsman's recommendations or to partially implement some of the Ombudsman's recommendations.

(5) Where the Ombudsman:

(a) disagrees with the Public Service Commission as to the non-implementation or as to the partial implementation or as to the improper implementation of his recommendations by the Public Service Commission; or

(b) where the Public Service Commission has not replied to the Ombudsman within such reasonable time indicated by the Ombudsman in his report,

the Ombudsman may refer the matter before the House Business Committee.

(6) The House Business Committee shall take cognizance of the Ombudsman's reference and shall hear, if it so determines, the Ombudsman and the Public Service Commission.

(7) The House Business Committee shall then definitively rule on the reference.

(8) Any such ruling delivered by the House Business Committee shall bind the Public Service Commission and, notwithstanding the provisions of this Constitution or of any other law, the Public Service Commission shall comply with and implement such ruling within such period or extended period as the House Business Committee may determine.

(9) The House Business Committee may from time to time adopt rules to give better effect to the provisions of this article. Without prejudice to the generality of the foregoing, the House Business Committee shall regulate its own proceedings until such time as rules are made as aforesaid under this article.".

New provision.
The records of the Electoral Commission, the Employment Commission, the Public Service Commission, the Broadcasting Authority, Law Commissioner shall be open to inspection by any eligible person in terms of any law which may be in force from time to time subject to any restrictions or limitations that such law governing access to documents may make.

New provision.
Article 120: Employment Commission – Administrative Court