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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli Eddie Fenech Adami, M.P., Prim Ministru, u moqri għall-Ewwel darba fis-Seduta tat-28 ta' Mejju, 2002.

ATT blex jipprovdi dwar ir-regolament tal-funzjoni ta' verifika interna u tal-funzjoni ta' investigazzjoni finanzjarja, inkluża s-setgħa li jsiru verifiki interni u investigazzjoni finanzjarji Indipendenti u effettivi, blex jipprovdi dwar is-salvagwardji mehtieġa sabiex jiġi żgurat il-harsien ta' l-interessi finanzjarji tal-Gvern inklużi l-fondi li jista' jirċievi jew ikun mehtieġ li jamministra taht l-obbligi internazzjonali ta' Malta.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Louis Deguara, M.P., Minister of Health, and read the First time at the Sitting of the 16th February, 2001.

AN ACT to provide for the regulation of the internal audit and financial investigative functions, including the power to carry out effective independent internal audits and financial investigations, providing for the necessary safeguards to ensure the protection of the financial interests of Government including the funds it may receive or be required to manage under Malta's international obligations.

RICHARD J. CAUCHI
Clerk of the House of Representatives

ABBOZZ TA' LIĠI

msejjah

ATT biex jipprovi dwar ir-regolament tal-funzjoni ta' verifika interna u tal-funzjoni ta' investigazzjoni finanzjarja, inkluża s-setgħa li jsiru verifiki interni u investigazzjonijiet finanzjarji indipendenti u effettivi, biex jipprovi dwar is-salvagwardji meħtieġa sabiex jiġi żgurat il-ħarsien ta' l-interessi finanzjarji tal-Gvern inklużi l-fondi li jista' jirċievi jew ikun meħtieġ li jamministra taħt l-obbligi internazzjonali ta' Malta.

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

TAQSIMA I

PRELIMINARI

1. (1) It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2002 dwar Verifika Interna u Investigazzjonijiet. Titolu fil-qosor u bidu fis-sch.

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

2. F'dan l-Att kemm-il darba r-rabta tal-kliem ma tkunx Tifsiriet.
teħtieġ xort'ohra -

"Bord" tfisser il-Bord ta' Verifika Interna u Investigazzjonijiet;

"id-Direttorat" tfisser id-Direttorat għall-Verifika Interna u l-Investigazzjonijiet imsemmi fit-Taqsima IV ta' dan l-Att;

"Direttur" tfisser id-Direttur, id-Direttorat għall-Verifika Interna u l-Investigazzjonijiet u tinkludi, sal-limitu ta' l-awtorità mogħtija, kull min ikun awtorizzat għaldaqshekk mid-Direttur;

"entità" tinkludi persuni kemm naturali kemm legali, inkluż kull korp jew assoċjazzjoni ta' persuni, kemm korporati kemm mhux korporati;

"entità verifikata" tfisser kull entità li tkun jew tista' tkun isogġett ta' verifika interna u, jew ta' investigazzjoni finanzjarji li ssir mid-Direttur skond ma hemm provdut dwar dan f'dan l-Att;

"flejjes pubbliċi" tinkludi wkoll flejjes li l-Gvern jirċievi, jhallas, jew ikun meħtieġ li jamministra taħt l-obbligi internazzjonali ta' Malta jew taħt xi liġi;

"funzjonijiet" tinkludi poteri u dmirijiet;

"funzjonijiet ta' konformità u assikurazzjoni" tfisser dawk il-funzjonijiet f'dipartiment tal-gvern jew ministeru li jiżguraw li jiġu osservati l-kontrolli finanzjarji u kontrolli oħra relatati, s-sistemi, l-politka u l-proċeduri meħtieġa għall-funzjonament kif imiss ta' dak id-dipartiment tal-gvern jew ministeru;

"investigazzjoni finanzjarja" tfisser l-eżami fil-fond taċ-ċirkostanzi kollha relattivi għal irregolaritajiet u każijiet ta' frodi suspetta, inkluża l-korruzzjoni ta' uffiċjali pubbliċi, u, f'dak ir-rigward, il-ksib ta' *records* u, jew, tagħrif u t-twertiq stimi, analiżi u rakkomandazzjonijiet relatati, hekk li dik l-investigazzjoni finanzjarji tkun limitata fl-iskop għall-implikazzjonijiet finanzjarji li jistgħu joriġinaw minn tali irregolarità jew frodi suspetta;

"irregolarità" tfisser att jew ommissjoni li jnaqqas il-flejjes pubbliċi kontra l-liġj jew li ma jikkonformax ma' l-amministrazzjoni tagħhom kif imiss;

"uffiċjali pubbliċi" għandu jkollha l-istess tifsir bħalma hu mogħti lilha fil-Kostituzzjoni ta' Malta, u tinkludi l-uffiċjali ta' organizzazzjonijiet internazzjonali li magħhom Malta jkollha obbligi internazzjonali, waqt li dawn ikunu qed jaqdu dmirijietom fit-territorju Malti;

"verifika interna" tfisser assikurazzjoni indipendenti u

oġġettiva, u attività ta' konsulenza, maħsuba biex ikatru l-valur u jtejjbu l-hidmiet of entitajiet verifikati, filwaqt li jghinu lill-entità verifikata tilhaq l-ghanijiet tagħha billi bl-introduzzjoni ta' approċ sistematiku u dixxiplinat sabiex tiġi valutata u mtejjba l-effettività ta' *risk management*, kontroll, u proċessi ta' governanza.

TAQSIMA II

DISPOSIZZJONIJIET ĠENERALI

3. Id-Direttorat għandu jkollu żewġ funzjonijiet separati u distinti: ta' verifika interna u investigazzjonijiet finanzjarji. Funzjonijiet separati.
4. Il-verifika interna fil-mod kif jiġi preskritt b'regolamenti tista' ssir f'kull dipartiment tal-Gvern jew xi entità li taqa' taħt is-sorveljanza tas-Segretarji Permanenti, bil-ghan li Segretarju Permanenti jiġi assistit fl-ghemil kif imiss ta' dmirijietu. Il-verifika interna.
5. Investigazzjoni finanzjarja tista' ssir skond id-disposizzjonijiet ta' dan l-Att f'kull dipartiment tal-Gvern u f'kull entità oħra pubblika jew privata li b'xi mod tkun benefiċjarja, debitorċi jew amministratriċi tal-flejjes pubbliċi, bil-ghan li tipprotegi l-flejjes pubbliċi kontra irregolaritajiet u frodi, jew xort'oħra biex tevalwa x'attiv ikollhom entitajiet pubbliċi jew privati li jikkontribwixxu għal dawk il-flejjes. Investigazzjoni finanzjarja.

TAQSIMA III

IL-BORD TA' VERIFIKA INTERNA U INVESTIGAZZJONIJIET

6. Ikun hemm Bord, li jkun magħruf bħala l-Bord ta' Verifika Interna u Investigazzjonijiet, li għandu jeżerċita l-funzjonijiet li jiġu lilu assenjati b'dan l-Att. Il-Bord.
7. Il-Bord għandu jiġi mahtur mill-Prim Ministru għal dak iż-żmien li jista' jiġi stabbilit mill-Prim Ministru, u l-Bord ikun direttament responsabbli lejha. Hatra tal-Bord.
8. (1) Il-Bord ikun magħmul: Għamla tal-Bord.
- (a) mis-segretarju tal-Kabinett bħala *Chairperson*;
- (b) mid-Direttur;
- (c) mis-Segretarju Permanenti fil-Ministeru tal-Finanzi;
- (d) minn persuna konoxxuta sew fil-professjoni tal-kontabilità u, jew, tal-verifika, li ma jkunx uffċjal pubbliku; u

(e) membru wiehed ieħor:

Iżda mill-inqas żewġ membri għandhom ikunu kompetenti f'dixxiplini li jkollhom x'jaqsmu mas-settur pubbliku ta' l-amministrazzjoni finanzjarja.

(2) Il-Bord għandu jiltaqa' mill-inqas kull tliet xhur u għandu xort'ohra jirregola l-proċedura tiegħu nnifsu.

(3) Id-deċiżjonijiet tal-Bord għandhom jittieħdu b'maġġoranza tal-voti u *Chairperson* għandu jkollu vot kemm originali kemm deċiżiv fil-każ ta' voti ndaqs.

Funzjonijiet tal-Bord.

9. Il-Bord għandu jkollu dawn il-funzjonijiet li ġejjin:

(a) li jservi bħala korp indipendenti u oġġettiv biex jissorvelja l-funzjoni ta' kontroll finanzjarju intern pubbliku f'Malta;

(b) li jissorvelja l-hidma tad-Direttorat;

(ċ) li jissalvagwardja l-indipendenza funzjonali knontinwata tad-Direttur u ta' l-uffiċjali tad-Direttorat;

(d) li japprova jew xort'ohra jippjana, jiffinanzja u jiskeda kif propost mid-Direttur dwar l-amministrazzjoni dovuta tad-Direttorat;

(e) li jeħtieġ lid-Direttorat li jagħmel xi hidmiet speċifiċi skond ma hemm provdut taħt dan l-Att, kif u meta jkun meħtieġ;

(f) li jistabbilixxi kull politka, proċedura u metodologija għall-funzjonament kif imiss ta' verifika interna pubblika u għall-ghemil ta' investigazzjonijiet finanzjarji.

TAQSIMA IV

ID-DIRETTORAT GĦALL-VERIFIKA INTERNA U INVESTIGAZZJONIJIET

Id-Direttorat.

10. Id-Direttorat għall-Verifika Interna u Investigazzjonijiet, ikun il-korp fdat bl-eżerċizzju u t-twettiq tal-funzjonijiet assenjati lillu taħt dan l-Att. Id-Direttorat ikollu bħala kap tiegħu lid-Direttur.

Uffiċjali
pubbliċi.

11. (1) L-uffiċjali tad-Direttorat ikunu uffiċjali pubbliċi.

(2) Id-Direttur u l-uffiċjali l-oħra tad-Direttorat għandhom, qabel ma jibdew jeżerċitaw dmirijiethom, jieħdu għurament fl-għamla

stabbilita fl-Iskeda li tinsab ma' dan l-Att, quddiem l-Avukat Ġenerali, li jkunu se jaqdu fedelment u b'imparzjalità id-dmirijiet tal-kariga tagħhom, li ma jkunu se jikxfu ebda tagħrif li huma jiksibu taht dan l-Att, hlief f'dawk iċ-ċirkostanzi speċifikati f'dan l-Att.

12. Fit-twettiq tal-funzjonijiet tagħhom taht dan l-Att, id-Direttur u l-uffiċjali l-oħra tad-Direttorat ma għandhom u la jkunu soġġetti għal xi influwenza jew kontroll diretti jew indiretti mill-entità verifikata u lanqas ma għandhom jinfluwenzaw jew jikkontrollw huma nfushom l-entità verifikata. Indipendenza.

TAQSIMA V

FUNZJONIJIET TA' L-UFFIĊJALI TAD-DIRETTORAT

13. Id-Direttur ikun responsabbli għall-amministrazzjoni ta' kuljum tad-Direttorat. Amministrazzjoni.

14. (1) Id-Direttur għandu, kemm jista' jkun malajr, wara li jikkonkludi investigazzjoni finanzjarja jew verifika interna, jittrasmetti rapport dwarha lis-Segretarju Permanenti li l-entità verifikata tkun taqa' taht is-superviżjoni tiegħu. Id-Direttur jista' wkoll jittrasmetti kopja ta' dak ir-rapport lill-entità verifikata. Rapport.

(2) Fi żmien xahar minn meta jiġi riċevut dak ir-rapport, is-Segretarju Permanenti għandu jagħti dawk l-istruzzjonijiet lill-entità verifikata li jistgħu jkunu mehtieġa sabiex jiġu rimedjati xi nuqqasijiet, u għandu jgħarraf lid-Direttur skond ma jkun gara.

15. Id-Direttur għandu jmexxi dawk ir-reviżjonijiet li jsegwu u li jistgħu jkunu mehtieġa. Reviżjonijiet li jsegwu.

16. Meta entità jkollha għaliex tissuspetta li jkun hemm xi irregolarità u, jew xi każ suspett ta' frodi tal-flejjes pubbliċi, hija għandha tirreferi l-kwistjoni minnufih lid-Direttur, u għandha tagħti lid-Direttur l-informazzjoni kollha relatata li jkollha. Suspett ta' xi irregolarità.

17. Meta d-Direttur jew il-Bord jidhirlu li jkun hemm konflitt ta' interess jekk id-Direttur nnfsu kellu jagħmel investigazzjoni finanzjarja, il-Bord jista' jahtar uffiċjal pubbliku anzjan minn fost l-uffiċjali tad-Direttorat biex jagħmel dik l-investigazzjoni minflok. Konflitt ta' interess.

18. Kull meta u malli d-Direttur jistabbilixxi għalkollox li jkun hemm każijiet suspetti ta' irregolaritajiet u, jew każijiet suspetti ta' frodi li jirrigwardaw ir-responsabbiltajiet ta' l-entità verifikata li tkun qed issir reviżjoni tagħha, id-Direttur għandu, jekk ikun tal-fehma li l-irregolarità, jekk tigi pprovata, tikkostitwixxi reat kriminali, minnufih jgħarraf lill-Avukat Ġenerali; xort'oħra, jekk id-Direttur ikun tal-fehma li l-irregolarità tkun waħda ta' xorta amministrattiva, huwa Każijiet suspetti ta' irregolarit jew frodi.

għandu jgħarraf lis-Segretarju Permanenti ta' l-Entità verifikata.

Rapport
annwali.

19. Id-Direttur għandu, mhux aktar tard mill-ewwel tliet xhur ta' kull sena, jikkompila u jibgħat lill-Bord rapport annwali li jkun generalment jittratta dwar l-Attivitajiet tad-Direttorat matul is-sena ta' qabel u li jkun fih tagħrif li jirrigwarda l-Attivitajiet tad-Direttorat hekk kif il-Bord jista' minn żmien għal żmien jehtieg. Il-Bord għandu jiddeċiedi dwar it-tqassim ta' tali rapport kif u skond ma jkun mehtieg.

Setgħa ta' dhufl.

20. (1) Hlicf hekk kif jista' jkun espressament provdut b'xi liġi, id-Direttur għandu, bil-għan li jwettaq l-funzjonijiet tiegħu taht dan l-Att, ikollu s-setgħa li -

(a) jidhol u jispezzjona l-fondi ta' entità verifikata biex iwettaq verifikà interna u, meta jkollu tassew għaliex jahseb li jkunu graw jew ikunu qegħdin jigrū l-irregolaritajiet u, jew frodi, jidhol f'kull fond ta' entità verifikata sabiex iwettaq investigazzjoni finanzjarja:

Iżda, jekk ikun mehtieg aċċess għal go xi fond li jkun kollu kemm hu oġkupat jew f'parti minnu bil-għan ta' abitazzjoni, dak l-aċċess ikun jehtieg il-hruġ minn qabel ta' ordni ffirmata minn Maġistrat:

Iżda wkoll, dak l-aċċess għandu jsir matul il-gurnata;

(b) jehtieg li l-entità verifikata tipproduci l-kotba, records, kontijiet, dokumenti jew tagħrif inkluż kull computer data f'kull għamla u jew parti minnu, inklużi kuntratti, kontijiet, vouchers u riċevuti li jirrigwardawhom, u jekk jitqies li jkun hekk mehtieg mid-Direttur, huwa jista' jzomm dawk id-dokumenti, u jara li jsiru kopji jew estratti tagħhom mingħajr ma jsir ebda hlas dwarhom minkejja kull liġi jew regolament li jkun jgħid xort'ohra.

(2) Mingħajr preġudizzju għas-subartikolu (1)(b), u bil-għan li l-funzjonijiet tiegħu taht dan l-Att, id-Direttur jista' jserrah fuq kull record li jinżamm jew isir minn xi unità ta' verifika jew investigattiva ta' xi entità inklużi l-persuna jew unità li jkunu qegħdin iwettqu l-funzjonijiet ta' konformità u assikurazzjoni fid-dipartiment tal-gvern jew ministeru involuti.

Assistenza.

21. Meta jkun qed jagħmel xi verifika interna jew investigazzjoni finanzjarja li tirrigwardaw flejjes amministrati minn Malta skond l-obbligi internazzjonali tagħha, id-Direttur jista' jkun assistit minn rappreżentanti ta' l-organizzazzjoni internazzjonali

involuta, li jistghu jipparteċipaw flimkien mad-Direttur fil-verifika jew fl-investigazzjoni, kif ikun il-każ, u għal dak l-ghan dawk ir-rappreżentanti għandhom jitqiesu li jkunu taht l-istess obligazzjonijiet bħalma jkunu l-uffiċjali tad-Direttorat u għandhom, qabel ma jibdew iwettqu dmirijiethom, jieħdu l-gurament speċifika fl-Iskeda li tinsab ma' dan l-Att.

22. (1) Kull tagħrif li jingħata minn entità verifikata matul il-kors ta' xi verifika jew investigazzjoni finanzjarja għandhom f'kull waqt jiġu ttrattati bħala konfidenzjali u għandhom unikament jiġu użati mid-Direttorat bil-ghan li jwettqu l-verifika interna u, jew investigazzjoni finanzjarja.

Tagħrif mogħti
minn entità
verifikata.

(2) Id-Direttur għandu jittratta r-rapporti interni dwar il-verifika u r-rapporti ta' investigazzjonijiet finanzjarji bħala strettament konfidenzjali u għanduf, hliet għall-iskop ta' xi investigazzjoni jew prosekuzzjoni kriminali, jikkess biss x'ikun fihom lis-Segretarju Permanenti u, jekk ikun meħtieġ, lill-Bord, jew lill-Awditur Ġenerali.

(3) Mingħajr preġudizzju għad-drittijiet ta' l-Awditur Ġenerali taht kull liġi, ebda tagħrif li jinkiseb b'kull mod li jkun taht dan l-Att ma għandu jinkixef hliet:

(a) għall-finijiet ta' l-investigazzjoni finanzjarja u l-prosekuzzjoni ta' reat kriminali;

(b) lil uffiċjali tad-Direttorat fil-kors ta' dmirijiethom taht dan l-Att; u

(ċ) f'materji li taht dan l-Att johorġu mill-obbligi internazzjonali ta' Malta, lill-awtoritajiet rilevanti ta' verifika u kontroll barranin.

TAQSIMA VI

MIXXELLANJI

23. Għall-finijiet ta' l-artikolu 9(1), il-Bord għandu jahtar Kumitat Ko-ordinattiv, li jkun presjedut mid-Direttur, sabiex jikkoordina l-isforzi dwar attivitajiet ta', u jiffaċilita l-iskambju ta' tagħrif bejn, entitajiet differenti li jkunu inkarigati bil-protezzjoni u s-salvagwardja tal-flejjes pubbliċi; it-termini ta' riferenza ta' l-Kumitat Ko-ordinattiv għandhom jiġu stabbiliti mill-Bord.

Kumitat Ko-
ordinattiv.

24. Kull min volontarjament jostakola lid-Direttur fit-tweġiq tal-funzjonijiet tiegħu taht dan l-Att, jew jonqos, meta jkun mitlub, li jagħti aċċess għal xi fond jew jipproduċi xi records lid-Direttur, jew

Reati u pjeni.

ma josservax id-disposizzjonijiet ta' l-artikolu 16, ikun hati, minghajr preġudizzju għal kull responsabbiltà oħra li jista' jkollu taht xi ligi oħra, ta' reat kontra dan l-Att u jehel, meta jinsab hati, multa ta' mhux iżjed minn elf lira jew prigunerija għal żmien mhux iżjed minn tliet xhur, jew dik il-multa u prigunerija flimkien.

Revizjoni. **25.** (1) Il-Bord għandu, darba kull tliet snin, jahtar awdituri jew ditti ta' awdituri, awtorizzati kif imiżs taht id-disposizzjonijiet ta' l-Att dwar il-Professjoni ta' l-*Accountancy*, biex jagħmlu revizjonijiet tal-mod kif id-Direttorat ikun qed jahdem.

Kap. 281.

(2) L-awdituri jew ditti ta' awdituri mahtura taht is-subartikolu (1) jkunu indipendenti mid-Direttur u l-hidma tad-Direttorat u, meta titlesta r-revizjoni, għandhom jipprezentaw rapport bil-miktub lill-Bord.

Regolamenti. **26.** Il-Prim Ministru jista' minn żmien għal żmien jagħmel regolamenti sabiex jagħti sehh aħjar lid-disposizzjonijiet ta' dan l-Att.

SKEDA

(Artikoli 11 u 21)

Ġurament li jiehdu Uffiċjali tad-Direttorat
għall-Verifika Interna u l-Investigazzjonijiet

"Jien solennement
nahlef/nafferma li se naqdi onestament u b'diligenza d-dmirijiet
tiegħu bħala uffiċjal tad-Direttorat għall-Verifika Interna u l-
Investigazzjonijiet b'mod konformi mal-htigiet ta' l-Att dwar
Verifika Interna u Investigazzjonijiet, u li, hliet hekk kif provdut bil-
ligi, f'ebda waqt ma jien se nikxef jew nġharraf ebda haġa li nsir naf
biha bis-saħħa tas-servizz tiegħi f'din il-kariga".

Hekk Alla jghinni.

Firma ta' min ikun qed jiehdu l-ġurament

Mahluf u ffirmat quddiem i llum..... ta' tas-
sena f'

Avukat Ġenerali

Għanijiet u Raġunijiet

L-għanijiet ta' dan l-Abbozz huma sabiex jiġi pprovdut il-
makkinarju biex ikunu jistgħu jsiru verifiki interni u
investigazzjonijiet finanzjarji effettivi u indipendenti.

**A BILL
entitled**

AN ACT to provide for the regulation of the internal audit and financial investigative functions, including the power to carry out effective independent internal audits and financial investigations, providing for the necessary safeguards to ensure the protection of the financial interests of Government including the funds it may receive or be required to manage under Malta's international obligations.

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:-

PART I

PRELIMINARY

Short title and commencement.

1. (1) The short title of this Act is Internal Audit and Financial Investigations Act, 2002.

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

Definitions.

2. In this Act unless the context otherwise requires -

"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 Act;

"Board" means the Internal Audit and Investigations Board;

"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;

"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 Part IV of this Act;

"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 and, or, information and the carrying out of related assessments, analysis and recommendations, such 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 an act or omission which unlawfully diminishes public funds or is not consonant with the proper management thereof;

"public funds" also includes funds that Government receives, pays, or is required to manage under any of Malta's international obligations or under any 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.

PART II

GENERAL PROVISIONS

Separate functions.

3. The Directorate shall have two separate and distinct functions: internal audit and financial investigations.

Internal audit.

4. 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, for the purpose of assisting a Permanent Secretary in the effective discharge of his duties.

Financial investigation.

5. A financial investigation may be carried out in terms of the provisions of this Act in any department of Government and in any other public or private entity 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.

PART III

THE INTERNAL AUDIT AND INVESTIGATIONS BOARD

The Board.

6. 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 Act.

Appointment of Board.

7. 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.

8. (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:

Provided that at least two members shall have expertise in disciplines related to public sector financial management.

- (2) The Board shall meet at least quarterly and shall otherwise

regulate its own procedure.

(3) 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.

9. The Board shall have the following functions:

Functions of the Board.

(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 functional 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 Act, as and when necessary;

(f) to set policies, procedures and methodologies for the proper functioning of public internal audit and for the carrying out of financial investigations.

PART IV

THE INTERNAL AUDIT AND INVESTIGATIONS DIRECTORATE

10. The Internal Audit and Investigations Directorate, shall be the body charged with exercising and performing the functions assigned to it under this Act. The Directorate shall be headed by the Director.

The Directorate.

11. (1) The officers of the Directorate shall be public officers.

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 Schedule to this Act, 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 Act, except in those circumstances specified in this Act.

12. In the fulfilment of their functions under this Act, the Director and other officers of the Directorate shall not be subject to

Independence.

any direct or indirect influence or control by the auditee and shall not themselves influence or control the auditee.

PART V

FUNCTIONS OF THE OFFICERS OF THE DIRECTORATE

- Management.** 13. The Director shall be responsible for the day-to-day management of the Directorate.
- Report.** 14. (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.
- Follow-up reviews.** 15. The Director shall conduct such follow-up reviews as may be necessary.
- Suspicion of irregularity.** 16. 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.** 17. Where the Director or the Board considers that there would be a conflict of interest if the Director himself were to conduct 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.
- Suspected cases of irregularity or fraud.** 18. 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 Attorney General; 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.
- Annual report.** 19. 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.

20. (1) Except as may be expressly provided by any law, the Director shall, for the purpose of carrying out his functions under this Act, have the power - Power of entry.

(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:

Provided that, 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:

Provided further that entry shall take place during daytime;

(b) to require the auditee to produce any books, records, 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, and to have copies or extracts 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 Act, 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.

21. 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 Schedule to this Act. Assistance.

22. (1) All information furnished by an auditee during the course of any audit or financial investigation shall at all times be Information furnished by auditee.

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 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 Act 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 Act; and

(c) in matters which under this Act arise out of Malta's international obligations, to the relevant foreign audit and control authorities.

PART VI

MISCELLANEOUS

Co-ordinating
Committee.

23. For the purposes of article 9(1), 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.

24. Any person who wilfully obstructs the Director in the performance of his functions under this Act, 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 16, 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 one thousand liri or to imprisonment for a term of not more than three months, or to both such fine and imprisonment.

Review.

Cap. 281.

25. (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.

26. The Prime Minister may from time to time make Regulations. regulations for the better giving effect to any of the provisions of this Act.

SCHEDULE

(Articles 11 and 21)

Oath of Officers of the Internal Audit and
Investigations Directorate

"I, solemnly swear/affirm that I will honestly and diligently fulfil my duties as an officer of the Internal Audit and Investigations Directorate in conformity with the requirements of the Internal Audit and Financial Investigations Act, and that I will not, except as provided by law, at any time disclose or make known any matter which comes to my knowledge by reason of my service as such.

So help me God.

Signature of person taking oath

Sworn and signed before me this day of of the year at

Attorney General

C 1784

Objects and Reasons

The objects of this Bill are to provide the machinery for the carrying out of effective independent internal audits and financial investigations.