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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli John Dalli, M.P., Ministru tal-Finanzi, u moqri għall-Ewwel darba fis-Seduta tad-29 ta' Novembru, 1993.

ATT sabiex jagħmel dispożizzjonijiet ġenerali dwar il-protezzjoni tas-segretzza professjonali u sabiex jagħmel emendi konsegwenzjali f'ligijiet oħra.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A **BILL** introduced by the Honourable John Dalli, M.P., Minister of Finance, and read the First time at the Sitting of the 29th November, 1993.

AN ACT to establish general provisions protecting professional secrecy and to make consequential amendments to other laws.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ATT DWAR IS-SEGRETEZZA PROFESSJONALI

Arrangament ta' Artikoli

Artikolu

TAQSIMA I - PRELIMINARI

1. Titolu fil-qosor u bidu fis-sehh
2. Tifsir

TAQSIMA II - ID-DMIR TA' SEGRETEZZA PROFESSJONALI

3. Tifsir ta' l-artikolu 257 tal-Kodici Kriminali
4. Depożitarju ta' sigriet
5. Investigaturi

TAQSIMA III - EĊĊEZZJONIJIET

6. Awtorizzazzjoni li wiehed jikxef
7. Komunikazzjoni meħtieġa lil impjegati eċċ.
8. Kxif imġieghel bil-liġi
9. Ordnijiet tal-Qorti biex isir kxif
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TAQSIMA IV - PROVVEDIMENTI SUPPLEMENTARI

12. Riżervi għal komunikazzjonijiet privileġġati
13. Referenzi f'liġijiet oħra
14. Proċedimenti kriminali
15. Emenda ta' l-artikolu 257 tal-Kodici Kriminali

ABBOZZ TA' LIĠI
msejjah

ATT sabiex jagħmel dispożizzjonijiet generali dwar il-protezzjoni tas-segretezza professjonali u sabiex jagħmel emendi konsegwenzjali fligijiet oħra.

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

TAQSIMA I - PRELIMINARI

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1993 dwar Segretezza Professjonali.

Titolu fil-qosor u bidu fis-sehh

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' b'avviż fil-Gazzetta jistabbilixxi.

2. (1) Kull referenza f'dan l-Att għall-kxif ta' tagħrif għandha tinkludi referenzi għall-kommunikazzjoni ta' dak it-tagħrif bil-miktub, bit-trasmissjoni ta' dokumenti jew tagħrif elettroniku, b'sinjali, b'negazzjoni jew b'kull mod ieħor .

Tifsir

(2) Referenzi f'dan l-Att għal uffiċjali jew impjegati ta' l-Istat jew għal persuni impjegati mill-Istat jinkludi referenzi għal:

(a) impjegati tal-Gvern ta' Malta;

(b) impjegati ta' organizzazzjoni jew korp ieħor, sew jekk tkun korp magħqud jew le, li fihom il-Gvern ta' Malta jkollu sehem li jagħtih kontroll jew li fuqhom ikollu kontroll effettiv, sew direttament jew permezz ta' organizzazzjonijiet u korpi oħra bħal dawk;

(c) persuni li jagħmluha ta' konsulenti jew jahdmu f'kapacità kontrattwali oħra bħal dik mal-Gvern ta' Malta jew ma' xi organizzazzjoni oħra jew korp ieħor bħal dawk imsemmija qabel; jew

(d) persuni li jwettqu funzjonijiet ta' uffiċjal jew rappreżentant tal-Gvern ta' Malta jew ta' kull organizzazzjoni oħra jew korp ieħor bħal dawk imsemmija qabel.

(3) Għall-finijiet ta' dan l-Att, zewg persuni jew iktar li jidhlu fl-ambitu ta' l-artikolu 257 tal-Kodiċi Kriminali, għandhom jitqiesu bħala soċji jekk huma jeżerċitaw setgħat ta' tmexxija u kontroll effettiv f'kumpannija limitata li tkun twaqqfet bil-ghan ta' l-eżerċizzju tal-professjoni tagħhom.

Kap. 9

TAQSIMA II - ID-DMIR TA' SEGRETEZZA PROFESSJONALI

Tifsir ta'
l-artikolu
257 tal-Kodiċi
Kriminali

3. (1) Dawk il-persuni li, minhabba fl-istat, professjoni jew kariga tagħhom, jidhlu fl-ambitu ta' l-artikolu 257 tal-Kodiċi Kriminali, jinkludu dawn li ġejjin: tobba, kirurgi, uffiċjali mediċi, farmaċisti, spiżjara, qwiebel, avukati, nutara, prokuraturi legali, *accountants*, udituri, bankiera, *trustees*, uffiċjali ta' kumpanija *nominee*, persuni li jkollhom liċenza biex jipprovdu servizzi ta' investment taht l-Att ta' l-1993 dwar Servizzi ta' Investimenti, *stockbrokers* li jkollhom liċenza taht l-Att dwar il-Borża ta' Malta, assiguratari, aġenti ta' l-assigurazzjoni, *brokers* ta' l-assigurazzjoni, uffiċjali u impjegati ta' l-Istat.

(2) Bla hsara għad-dispożizzjonijiet ta' l-artikolu 10 ta' dan l-Att, it-tagħrif jikkostitwixxi sigriet professjonali jekk dan jiġi afdat għand jew miksub minn persuna minhabba fl-istat, professjoni jew kariga tiegħu, ukoll jekk sussegwentement huwa jieqaf milli jeżerċita dak l-istat jew dik il-professjoni jew milli jibqa' f'dik il-kariga.

(3) Kull referenza fliġijiet oħra għal "id- dmir ta' segretezza professjonali", jew espressjonijiet simili, għandhom minn issa 'l quddiem jiġu interpretati, kemm il-darba r-rabta tal-kliem ma tehtiegx mod ieħor, bħala referenza għad-dmir impost bl-artikolu 257 tal-Kodiċi Kriminali biex ma jikxifx sigriet li jkun jaqa' taht dak l-artikolu.

Depożitarju
ta' sigriet

4. (1) Persuna jitqies li jkun sar depożitarju ta' sigriet minhabba fl-istat, professjoni jew kariga tiegħu meta huwa jikseb dak is-sigriet billi jkun impjegat, soċju jew assistent ta'persuna li jidhol fl-ambitu ta' l-artikolu 257 tal-Kodiċi Kriminali jew billi jkun għamilha ta' interpretu jew traduttur fil-komunikazzjoni ta' dak is-sigriet.

(2) Persuna wkoll jitqies li jkun sar depożitarju ta' sigriet minhabba fl-istat, professjoni jew kariga tiegħu meta jikseb dak is-sigriet waqt li jkun impjegat mill-Istat.

(3) Meta persuna jafda tagħrif sigriet lil-impjegat ta' persuna li tidhol fl-ambitu ta' l-artikolu 257 tal-Kodiċi Kriminali minhabba fir-relazzjoni ta' dak l-impjegat mal-prinċipal tiegħu, dak it-tagħrif sigriet għandu jitqies li jkun ġie afdat lill-prinċipal permezz tal-impjegat tiegħu bħala mandatarju.

Investigaturi

5. Kull min jirċievi jew jikseb tagħrif sigriet bis-sahha ta' setgħa ta' investigazzjoni jew inkjesta li jkollu u li tkun ingħatatlu b'liġi jew bis-sahha ta' xi leġislazzjoni li tkun tehtieg il-komunika ta' informazzjoni għandu jitqies li jkun sar id-depożitorju ta' dak it-tagħrif bis-sahha tal-istat, professjoni jew kariga tiegħu.

TAQSIMA III - EĊĊEZZJONIJIET

6. (1) Tkun difiża għal akkuża ta' kxif ta' tagħrif sigriet kontra l-artikolu 257 tal-Kodiċi Kriminali jekk jiġi ppruvat li t-tagħrif sigriet ikun inkixef mill-persuna akkużata biss meta din giet awtorizzata tagħmel dan mill-persuna li tkun fdatilha dak it-tagħrif. Awtorizzazzjoni
li wieħed
jikxef
- (2) Għall-finijiet tas-subartikolu (1) ta' dan l-artikolu, min ikun irċieva tagħrif sigriet minghand persuna oħra ma jkunx jista' jagħti awtorizzazzjoni valida għall-kxif ta' dak it-tagħrif minn terzi.
7. Kemm -il darba min ikun fada t-tagħrif sigriet ma jgħidx li għandu jsir mod iehor, huwa għandu jitqies li jkun awtorizza l-komunikazzjoni tat-tagħrif sigriet lill-impjegati, soċji u assistenti tal-persuna li lilha jkun gie afdat it-tagħrif, meta din il-komunikazzjoni tkun meħtieġa għat-twettiq ta' servizzi mitluba minn min ikun fada t-tagħrif. Komunikazzjoni
meħtieġa lil
impjegati
eċċ
8. Għall-finijiet ta' l-artikolu 257 tal-Kodiċi Kriminali, persuna m'għandhiex tingieghel bil-liġi li tagħti tagħrif lill-awtorita' pubblika kemm-il darba ma jkunx hemm hteġa statutorja espressa li tkun tghid dan. Kxif imġieghel
bil-liġi
9. Ebda qorti ma għandha toħrog ordni li tkun tawtorizza jew teħtieġ il-kxif ta' tagħrif sigriet, hlief meta dan ikun qieghed isir skond dispozizzjoni espressa tal-liġi, u biss għall-finijiet specifici li għalihom dak id-dispozizzjoni tkun saret b'liġi. Ordinijiet tal-
Qorti biex isir
kxif
10. Tkun difiża għal akkuża ta' kxif ta' tagħrif sigriet kontra l-artikolu 257 tal-Kodiċi Kriminali jekk jiġi pruvat li, fil-hin li nkixef it-tagħrif, it-tagħrif kien sar b'mod legittimu. Tagħrif li
jsir
pubbliku
11. (1) Ma jkun hemm ebda ksur ta' l-artikolu 257 tal-Kodiċi Kriminali meta persuna mpjegata mill-Istat tikkomunika tagħrif sigriet lil persuna oħra li tkun impjegata mill-istess enti meta dik il-komunikazzjoni tkun meħtieġa b'mod dirett għat-twettiq tal-funzjonijiet ta' l-ewwel persuna jew li dak it-tagħrif jiġi komunikat lil ministru li jkun responsabbli għal dik l-enti. Komunikazzjonijiet
fi hdan il-
Gvern
- (2) Għall-finijiet ta' dan l-artikolu, dawn li ġejjin huma entijiet separati:
- (a) kull korp magħqud kontrollat mill-Istat;
 - (b) id-Dipartiment tat-Taxxi Interni;
 - (c) l-Istat, b'eskluzjoni ta' l-entijiet msemmija fil-paragrafi (a) u (b) ta' qabel dan.

TAQSIMA IV - PROVVEDIMENTI SUPPLEMENTARI

Riżervi
ghal komunikazzjonijiet
privileġgati

12. Ebda haġa f'dan l-Att m' ghandha tirristringi jew tillimita, jew titqies li tirristringi jew tillimita, il-liġijiet jew konswetudni dwar il-protezzjoni ta' komunikazzjonijiet privileġgati.

Referenzi f'liġijiet oħra

13. Kull referenza fxi liġi, sew jekk mghoddija qabel jew wara d-data tal-bidu fis-sehh ta' dan l-Att, ghal obligazzjoni li tinzamm is-segretezza jew il-kunfidenzjalita', ghandha tigi nterpretata bhala li tkun qeghda timponi dmir li għall-inqas ikollu sahha daqskemm ghandu dmir ta' segretezza professjonali, bla hsara ghal kull hteġa oħra ta' dik il-liġi.

Proċedimenti kriminali

14. (1) Ma ghandhom jinbdew ebda proċedimenti ghal reat taht l-artikolu 257 tal-Kodiċi Kriminali minghajr l-awtorizzazzjoni ta' l-Avukat Ġenerali.

(2) Meta r-reat imwettaq minn persuna jkun jikkostitwixxi reat iktar gravi taht xi liġi oħra, id-dispożizzjonijiet ta' dik il-liġi l-oħra ghandhom ikunu jghoddu għar-rigward ta' dak ir-reat.

Emenda ta' l-artikolu 257
tal-Kodiċi Kriminali
Kap. 9

15. Minflok l-artikolu 257 tal-Kodiċi Kriminali, ghandu jidhol dan li gej:

"Kxi ta' Sigrieti
Professjonali

257. Kull min, minhabba l-istat, professjoni jew kariga tiegħu, ikun sar id-depożitarju ta' sigriet li jkun ġie fdat lillu, jikxef dan is-sigriet, hlief fil-kazijiet li fihom il-liġi tobbligah iġharrafhom lill-awtorita' pubblika, jehel, meta jinsab hati, il-piena ta' multa ta' mhux iżjed minn 20,000 lira Maltija jew ta' prigunerija ghal żmien mhux iżjed minn sentejn jew ghal dik il-multa u prigunerija flimkien."

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz huwa sabiex jirregola aħjar l-obbligu ta' segretezza professjonali li jinsab f'diversi liġijiet u sabiex jagħmel emendi konsegwenzjali f'liġijiet oħra.

THE PROFESSIONAL SECRECY ACT

Arrangement of Sections

Section

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II - DUTY OF PROFESSIONAL SECRECY

3. Interpretation of section 257
4. Employees, etc.
5. Investigators

PART III - EXCEPTIONS

6. Authorisation to disclose
7. Necessary communication to employees, etc.
8. Disclosure compelled by law
9. Court order for disclosure
10. Information in the public domain
11. Intergovernmental communications

PART IV - SUPPLEMENTAL PROVISIONS

12. Savings for privileged communications
13. References in other enactments
14. Criminal proceedings
15. Amendment of section 257 of the Criminal Code

**A BILL
entitled**

AN ACT to establish general provisions protecting professional secrecy and to make consequential amendments to other laws.

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

1. (1) This Act may be cited as the Professional Secrecy Act, 1993.

Short title and commencement

(2) This Act shall come into force on such date as the Minister responsible for Finance may by notice in the Gazette appoint.

2. (1) Any reference in this Act to the revealing of information shall include references to the communication of such information in writing, by transmission of documents or electronic data, by signs, by negation or in any other way.

Interpretation

(2) References in this Act to officials or employees of the State or to persons employed by the State include references to:

(a) employees of the Government of Malta;

(b) employees of any organisation or other body, whether having corporate personality or not, in which the Government of Malta has a controlling interest or over which it has effective control, whether directly or through other such organisations and bodies;

(c) any person acting as consultant or in any other similar contractual capacity with the Government of Malta or any such organisation or body as aforesaid; or

(d) any person exercising functions as an official or representative of the Government of Malta or of any such organisation or body as aforesaid.

(3) For the purposes of this Act, two or more persons falling within the scope of section 257 of the Criminal Code shall be considered as partners if they exercise powers of effective management and control in a limited company set up for the purpose of the exercise of their profession.

PART II - THE DUTY OF PROFESSIONAL SECRECY

Interpretation of section 257
of the Criminal Code

Cap 9

3. (1) The persons who, by reason of their calling, profession or office, fall within the scope of section 257 of the Criminal Code include the following: doctors, physicians, surgeons, medical officers, pharmacists, apothecaries, midwives, advocates, notaries, legal procurators, accountants, auditors, bankers, trustees, officers of nominee companies, persons licensed to provide investment services under the Investment Services Act, 1993, stockbrokers licensed under the Malta Stock Exchange Act, insurers, insurance agents, insurance brokers, officials and employees of the State.

(2) Subject to section 10 of this Act, information constitutes a professional secret if it is entrusted to or acquired by a person by reason of his calling, profession or office, even if he subsequently ceases to exercise such calling or profession or hold such office.

Cap 9

(3) References in statutory enactments to 'the duty of professional secrecy' or similar expressions shall henceforth be interpreted, unless the context otherwise requires, as references to the duty imposed by section 257 of the Criminal Code not to disclose a secret covered by that section.

4. (1) A person shall be deemed to have become the depository of a secret by reason of his calling, profession or office when he obtains such secret by reason of being an employee, a partner or assistant, of a person who falls within the scope of section 257 of the Criminal Code or by reason of having acted as interpreter or translator in the communication of such secret.

Employees, etc.

Cap 9

(2) A person shall also be deemed to have become the depository of a secret by virtue of his calling, profession or office where he obtains such secret during the course of his employment by the State.

(3) Where a person entrusts secret information to an employee of a person falling within the scope of section 257 of the Criminal Code by reason of such employee's relationship with his employer, such secret information shall be deemed to have been entrusted to the employer through his employee as mandatory.

Cap 9

5. Any person who receives or acquires secret information by virtue of a power of investigation or enquiry conferred by law or by virtue of any enactment which requires information to be communicated shall be deemed to have become the depository of such information by virtue of his calling, profession or office.

Investigators

PART III - EXCEPTIONS

6. (1) It shall be a defence to a charge of disclosing secret information contrary to section 257 of the Criminal Code to show that the secret information was revealed by the person charged only when authorised to do so by the person who entrusted him with the information.

Authorisation to disclose

Cap 9

(2) For the purposes of subsection (1), a person who has received secret information from another shall not be able to give a valid authorisation for the disclosure of that information by a third party.

Necessary communication to employees, etc.

7. Unless the person who entrusted the secret information stipulates to the contrary, he shall be deemed to have authorised the communication of the secret information to employees, partners and assistants of the person to whom the information was entrusted, where such communication is necessary for the performance of services requested by the person who entrusted the information.

Disclosure compelled by law

8. For the purposes of section 257 of the Criminal Code, a person shall not be compelled by law to give information to the public authority unless there is an express statutory requirement to that effect.

Cap 9

Court orders for disclosure

9. A court shall not make an order authorising or requiring the disclosure of secret information except pursuant to an express provision of any law and only for the specific purposes for which that provision was enacted.

Information in the public domain

10. It shall be a defence to a charge of disclosing secret information contrary to section 257 of the Criminal Code to show that, at the time the information was revealed, the information had entered the public domain and had done so legitimately.

Cap 9

Intergovernmental communications

11. (1) It shall not be a breach of section 257 of the Criminal Code for a person employed by the State to communicate secret information to another person employed by the same entity where such communication is directly necessary for the carrying out of the functions of the first person or to communicate such information to a minister responsible for that entity.

Cap 9

(2) For the purposes of this section, the following are separate entities:

(a) any body corporate controlled by the State;

(b) the Department of Inland Revenue;

(c) the State, to the exclusion of the entities in paragraphs (a) and (b) above.

PART IV - SUPPLEMENTAL PROVISIONS

12. Nothing in this Act shall restrict or limit, or be deemed to restrict or limit, the laws or custom on the protection of privileged communications.

Savings for privileged
Communications

13. Any reference in an enactment, whether passed before or after the date of entry into force of this Act, to an obligation to observe secrecy or confidentiality, shall be interpreted as imposing a duty at least as strong as the duty of professional secrecy, without prejudice to any other requirements of such enactment.

References in other
enactments

14. (1) No proceedings for an offence under section 257 of the Criminal Code shall be commenced without the sanction of the Attorney General.

Cap 9

(2) When the act committed by an offender constitutes a more serious offence under any other law, the provisions of that other law shall apply in respect of that act.

15. Section 257 of the Criminal Code shall be substituted with the following:

Amendment of section 257
of the Criminal Code
Cap 9

"Disclosing of
professional
secrets

257. If any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to the public authority, disclose such secret, he shall on conviction be liable to a fine (*multa*) not exceeding 20,000 Maltese liri or to imprisonment for a term not exceeding two years or to both such fine and imprisonment."

Objects and Reasons

The object of this Bill is to further regulate the obligation of professional secrecy found in various laws and to make consequential amendments to other laws.