

## **Nru. 75**

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### **MALTA**

#### **KAMRA TAD-DEPUTATI**

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**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** biex jipprovdi għall-prevenzjoni u l-projbizzjoni ta' *laundering* ta' flus f'Malta.

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**RICHARD J. CAUCHI**  
*Skrivan tal-Kamra tad-Deputati*

#### **HOUSE OF REPRESENTATIVES**

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

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**RICHARD J. CAUCHI**  
*Clerk to the House of Representatives*

**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT biex jipprovai għall-prevenzjoni u l-projbizzjoni ta' laundering ta' flus f' Malta.*

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

1. (1) Dan l-Att jista' jissejjah l-Att tal 1993 kontra *Money Laundering*. Titolu 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 u jistgħu jiġu hekk stabbiliti dati differenti għal dispozizzjonijiet differenti jew għanijiet differenti ta' dan l-Att.

2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegħ Tifsir. xort'ohra -

"attività kriminali" tfisser id-delitt jew delitti speċifikati fl-Artiklu 3(1)(a) tal-*United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* adottata fid-19 ta' Diċembru 1988 fi Vjenna, u d-delitti elenkati fl-iskeda annessa ma' dan l-Att, ikunu fejn ikunu magħmula, kemm jekk f' Malta jew fi Stat jew Stati sovrani ohra;

"Ministru" tfisser il-Ministru responsabbli għall-finanzi;

"*money laundering*" tfisser :

(i) il-konversjoni jew trasferiment ta' proprjeta' meta wiehed ikun jaf li dik il-proprjeta' tkun direttament jew indirettament inkisbet minn, jew mir-rikavat ta', attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali, għall-iskop ta' jew skopijiet ta' habi jew wiri haġa b'ohra ta' l-origini tal-proprjeta' jew ta' għoti ta' għajnuna lil xi persuna jew persuni involuti jew konċernati f'attività kriminali;

(ii) il-habi jew wiri haġa b'ohra tal-veri xorta, provenjenza, lok, dispozizzjoni, moviment ta' jeddijiet rigward, fi jew fuq proprjeta', meta wiehed ikun jaf li dik il-proprjeta' tkun inkisbet direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;

(iii) l-akkwist ta' proprjeta' meta wiehed ikun jaf li l-istess proprjeta' tkun inkisbet jew originat direttament jew indirettament minn attivita' kriminali jew minn att jew atti ta' partecipazzjoni f'attivita' kriminali;

(iv) ir-ritenzjoni minghajr skuża raġonevoli ta' proprjeta' meta wiehed ikun jaf li l-istess proprjeta' tkun inkisbet jew originat direttament jew indirettament minn attivita' kriminali jew minn att jew atti ta' partecipazzjoni f'attivita' kriminali;

Kap 9

(v) it-tentattiv ta' xi hwejjeg jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii) u (iv) ta' hawn fuq, u dan fit-tifsir ta' l-artikolu 41 tal-Kodiċi Kriminali, ;

Kodiċi Kriminali,  
Kap 9

(vi) l-aġir bħala kompliċi fit-tifsir ta' l-artikolu 42 rigward xi wahda mill-hwejjeg jew attivitajiet definiti fis-subparagrafi (i), (ii), (iii), (iv) u (v) ta' hawn fuq.

"preskritt" tfisser preskritt b'regolamenti magħmula taht dan l-Att;

"proprjeta'" tfisser proprjeta' ta' kull xorta, natura deskrizzjoni, kemm jekk mobbli jew immobbli, tangibbli jew mhux tangibbli u, bla hsara għall-generalita' ta' dak li ntqal qabel, tinkludi :

(a) kull flus, kemm jekk l-istess flus ikunu jew ma jkunux valuta legali f'Malta, *bills*, titoli, *bonds*, dokumenti negozjabbli jew kull dokument li jista' jkun negozjabbli inkluż dokument li jithallas lill-portatur jew imdawwar biex jithallas lill-portatur kemm jekk espressi f'liri Maltin jew f'xi flus ohra barranin;

(b) flus kontanti jew depożiti jew kontijiet ta' flus ma' xi bank, istituzzjoni ta' kreditu jew istituzzjoni ohra kif jista' jiġi preskritt li jmexxu jew ikunu mexxew il-kummerċ tagħhom f'Malta;

(ċ) flus kontanti jew oġġetti ta' valur li jinkludu iżda mhux limitati għal xoghlijiet ta' l-arti jew gojjellerija jew metalli prezzjużi; u

(d) art jew kull interess fiha.

(2) F'dan l-Att u f'kull regolamenti magħmula tahtu, jekk ikun hemm xi konflitt bejn it-test Ingliż u t-test Malti, għandu jipprevali t-test Ingliż.

Reati.

3. (1) Kull persuna li tagħmel att ta' *money laundering* tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux iżjed minn Lm1,000,000 (miljun lira Maltija), jew prigunerija għal żmien ta' mhux iżjed minn 14-il sena, jew dik il-multa u prigunerija flimkien.

(2) Meta reat kontra d-dispożizzjonijiet ta' dan l-Att isir minn korp ta' persuni (sew jekk dak il-korp ikun korporat jew le), kull persuna li, fiż-żmien ta' l-eghmil ta' reat, kienet direttur, *manager*, segretarju jew uffiċjal iehor simili ta' dak il-korp jew ghaqda, jew kienet tidher li qed tagħxi f'dik il-kariga, tkun hatja ta' reat kemm-il darba ma tippruvax li r-reat ikun sar minghajr it-tagħrif tagħha u li tkun eżerċitat id-diligenza kollha xierqa biex ma thallix illi jsir ir-reat.

(3) Kull proprjeta' ta' persuna jew li tkun fil-pussess ta' persuna jew taht il-kontroll ta' persuna li tagħmel reat kontra dan l-artikolu għandha, kemm-il darba ma tingiebx prova kontra, titqies bħala li ġejja minn *money laundering* u tkun tista' tiġi konfiskata jew tittiehed mill-qorti.

4. (1) Meta wara informazzjoni li tasallu, l-Avukat Ġenerali Setgħat jkollu raġuni biżżejjed biex jissuspetta li persuna (hawnhekk iżjed 'il addizzjonali ta' quddiem imsejha "il-persuna suspettata") huwa hati tar-reat imsemmi fl-investigazzjoni artikolu 3 ta' dan l-Att, huwa jista' jitlob lill-Qorti Kriminali għal ordni (hawnhekk iżjed 'il quddiem imsejjah "ordni ta' investigazzjoni") biex persuna (inkluż korp jew ghaqda ta' persuni, sew jekk persuna ġuridika jew le) imsemmija fl-ordni li tidher li għandha fil-pussess tagħha materjal partikolari jew materjal ta' deskrizzjoni partikolari li x'aktarx li jkun ta' siwi sostanzjali (kemm jekk waħdu jew flimkien ma' materjal iehor) għall-investigazzjoni ta' jew in-konnessjoni ma', il-persuna suspettata, turi jew tagħti aċċess għal dak il-materjal lill-persuna jew persuni indikati fl-ordni; u l-persuna jew persuni hekk indikati jkollhom, bis-saħha ta' l-ordni ta' investigazzjoni, is-setgħa li jidhlu f'kull dar, bini jew reċint iehor sabiex jagħmlu tfittxija għal dak il-materjal.

(2) Meta jkun sar jew ikun intalab ordni ta' investigazzjoni, kull min, meta jkun jaf jew ikollu suspett li tkun qed issir l-investigazzjoni, jikxef xi haġa li tista' tippreġudika l-imsemmija investigazzjoni ikun hati ta' reat u jehel, meta jinsab hati, multa ta' mhux iżjed minn hamest elef lira Maltija jew prigunerija għal mhux iżjed minn tnaħ-il xahar, jew dik il-multa u prigunerija flimkien:

Iżda fi proċedimenti għal reat taht dan is-subartikolu, l-akkużat ikun jista' jiddefendi ruhu billi jipprova illi huwa ma kienx jaf jew jissuspetta li l-kxif seta' jippreġudika l-investigazzjoni.

(3) Ordni ta' investigazzjoni:

(a) ma jagħti ebda jedd għall-produzzjoni ta' aċċess għal, Kap 9. jew tiftix għal komunikazzjonijiet bejn avukat jew prokuratur legali u l-klijent tiegħu li fi proċedimenti legali jkunu protetti kontra l-kxif bis- Kap. 12. subartikolu (1) ta' l-artikolu 642 tal-Kodiċi Kriminali jew bis-subartikolu (1) ta' l-artikolu 588 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili;

(b) għandu, minghajr preġudizzju għad-dispożizzjonijiet tal-paragrafu ta' qabel dan, ikollu seħħ minkejja kull obbligu dwar is-segretezza jew restrizzjoni fuq il-kxif ta' informazzjoni imposti minn kull liġi jew xort'ohra; u

(c) jista' jsir dwar materjal fil-pussess ta' dipartiment tal-gvern.

(4) Meta l-materjal li dwaru tkun tirreferi talba taht is-subartikolu (1) ikun jikkonsisti f'informazzjoni li tkun f'computer, l-ordni ta' investigazzjoni ghandu jkollu sehħ bhala ordni għall-produzzjoni tal-materjal, jew għall-ghoti ta' access għal dak il-materjal, f'ghamla li wiehed jista' jiehdu mieghu u li jkun vizibbli u legibbli.

(5) Kull persuna li, wara li tkun għet ordnata biex tipproduci jew tagħti access għal materjal kif provdut fis-subartikolu (1), minghajr raġuni valida ( li l-prova tagħha tkun tinkombi fuqha) volontarjament tonqos jew tirrifjuta ti tobdi dak l-ordni ta' investigazzjoni, jew li volontarjament timpedixxi jew tostakola xi tfittxija għal dak il-materjal, tkun hatja ta' reat u tehel, meta tinsab hatja, multa ta' mhux iżjed minn hamest elef lira Maltija jew prigunerija għal mhux iżjed minn tnax - il xahar, jew dik il-multa u prigunerija flimkien.

(6) Flimkien ma' , jew separatament minn, talba għal ordni ta' investigazzjoni, l-Avukat Ġenerali jista', fiċ-cirkostanzi msemmija fis-subartikolu (1), jitlob lill-Qorti Kriminali għal ordni (hawnhekk iżjed 'il quddiem imsejjah "ordni ta' sekwestru") -

(a) li jissekwestra fidejn dawk il-persuni (hawnhekk iżjed 'il quddiem imsejha "is-sekwestratarji") li jkunu msemmijin fit-talba l-flus u l- proprjeta' mobbli ohra kollha li jkunu dovuti jew jgħajju jew jappartjenu lill-persuna suspettata,

(b) li jordna lis-sekwestratarju biex jiddikjara bil-miktub lill-Avukat Ġenerali, mhux aktar tard minn erba' u għoxrin siegħa mill-hin tan-notifika ta' l-ordni, ix-xorta u l-provenjenza tal-flus u l-proprjeta' mobbli ohra kollha hekk sekwestrati, u

(c) li jipprojbixxi lill-persuna suspettata milli tittrasferixxi jew b'xi mod iehor tiddisponi minn xi proprjeta' mobbli jew immobbli.

(7) Qabel ma tagħmel ordni ta' investigazzjoni jew ordni ta' sekwestru, il-qorti tista' titlob li tisma' lill-Avukat Ġenerali bil-magħluq u ma tagħmilx dak l-ordni -

(a) kemm - il darba ma taqbilx ma' l-Avukat Ġenerali li hemm raġuni biżżejjed kif provdut fis-subartikolu (1); u

(b) fil-każ ta' ordni ta' investigazzjoni, kemm - il darba l-qorti ma tkunx sodisfatta li jkun hemm raġuni biżżejjed biex wiehed jissuspetta li l-materjal li għalih tirreferi t-talba -

(i) x'aktarx li jkun ta' siwi sostanzjali (kemm jekk wahdu jew flimkien ma' materjal iehor) għall-investigazzjoni li għaliha tkun saret it-talba, u

(ii) ma jkunx jikkonsisti f'komunikazzjonijiet imsemmija fil-paragrafu (a) tas-subartikolu (3).

(8) Id-dispożizzjonijiet tal-paragrafi (a), (b) u (c) tas-subartikolu (1) ta' l-artikolu 381 u tas-subartikolu (1) ta' l-artikolu 382 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom Kap. 12. japplikaw, *mutatis mutandis*, għall-ordni ta' sekwestru.

(9) Ordni ta' sekwestru għandu jiġi notifikat lis-sekwestratarju u lill-persuna suspettata minn uffiċjal tal-Pulizija Eżekuttiva li ma jkunx taht il-grad ta' spettur.

(10) Kull persuna li tikser ordni ta' sekwestru tkun hatja ta' reat u tehel, meta tinsab hatja, multa ta' mhux iżjed minn hamest elef lira Maltija jew prigunerija għal żmien ta' mhux iżjed minn tnaq - il xahar, jew dik il-multa u prigunerija flimkien:

Iżda meta r-reat ikun jikkonsisti fil-hlas jew konsenja lil xi persuna mis-sekwestratarju ta' xi flus jew proprjeta' mobbli oħra sekwestrata kif provdut fil-paragrafu (a) tas-subartikolu (6) jew ikun jikkonsisti fit-trasferiment jew tnehhija ta' xi proprjeta' mobbli jew immobbli mill-persuna suspettata bi ksur tal-paragrafu (c) tas-subartikolu (6), il-multa għandha dejjem tkun mill-inqas id-doppju tal-valur tal-flus jew proprjeta' in kwistjoni.

(11) Ordni ta' sekwestru għandu, kemm - il darba ma jiġix revokat aktar kmieni mill-Avukat Generali b'avviz bil-miktub notifikat lill-persuna suspettata u lis-sekwestratarju bil-mod provdut fis-subartikolu (9), jispiċċa milli jkollu sehh ma' eghluq tletin jum mid-data li fha jkun sar; u l-qorti ma taghmilx ordni iehor ta' sekwestru dwar dik il-persuna suspettata kemm - il darba ma tkunx sodisfatta li hemm informazzjoni sostanzjalment ġdida dwar ir-reat imsemmi fl-artikolu 3.

Iżda l-imsemmi perijodu ta' tletin jum għandu jitwaqqaf għal dak iż-żmien li l-persuna suspettata tkun tinsab barra minn dawn il-Gżejjer u l-Avukat Generali javża b'dan il-fatt lis-sekwestratarju b'avviz bil-miktub notifikat bil-mod provdut fis-subartikolu (9).

(12) Waqt li tkun qed issir investigazzjoni ta' reat kontra l-artikolu 3 ta' dan l-Att, il-Pulizija Eżekuttiva tista' titlob lil maġistrat biex jisma' bil-gurament lil kull persuna li hija taħseb li għandha informazzjoni dwar dak ir-reat; u l-maġistrat għandu minnufih jisma' lil dik il-persuna bil-gurament.

(13) Għall-fini tas-smigh bil-gurament ta' persuna kif provdut fis-subartikolu (12) il-maġistrat ikollu l-istess setgħat li bil-liġi għandha l-Qorti tal-Maġistrati (Malta) jew il-Qorti tal-Maġistrati (Għawdex) bhala Qorti Istrutturja kif ukoll is-setgħa irsemija fl-artikolu 554 tal-Kodiċi Kriminali; iżda dak is-smigh għandu dejjem isir bil-magħluq. Kap. 9.

(14) Ebda qorti ma tista' toħroġ mandat ta' inibizzjoni għall-waqfien ta' l-esekuzzjoni ta' ordni ta' investigazzjoni.

5. (1) Meta persuna tiġi akkużata taht l-artikolu 3 ta' dan l-Att, Iffriżar ta' prorjeta' ta' persuna akkużata. il-Qorti għandha fuq it-talba tal-prosekuzzjoni tagħmel ordni -

(a) li jissekwestra f'idejn terzi persuni b'mod generali l-flejjes u l-proprjeta' mobbli kollha li jkunu dovuti lil jew ikunu jmissu lill-akkużat jew ikunu proprjeta' tiegħu, u

(b) li jipprojbixxi lill-akkużat milli jittrasferixxi jew xort' ohra jiddisponi minn xi proprjeta' mobbli jew immobbli:

Iżda l-Qorti għandha f'dak l-ordni tistabbilixxi xi flejjes jistgħu jithallsu lil jew jiġu riċevuti mill-akkużat fil-waqt li jkun qed isehh dak l-ordni, fejn jiġu speċifikati l-ghejjun, il-mod u modalitajiet ohra ta' hlas, inklużi salarju, paga, pensjoni u benefiċċji soċjali li jithallsu lill-akkużat, sabiex huwa u l-familja tiegħu jithallilhom għixien decenti f'ammont, fejn ikun hemm mezzi biżżejjed, ta' sitt elef lira Maltija fis-sena:

Iżda wkoll l-Qorti tista' barra minn dan -

(a) tawtorizza l-hlas ta' djun li jkollhom jithallsu mill-akkużat lil kredituri *bona fide* u li jkunu saru qabel ma jkun sar dak l-ordni; u

(b) għal raġuni tajba tawtorizza lill-akkużat biex jittrasferixxi proprjeta' mobbli jew immobbli.

(2) Dak l-ordni għandu -

(a) jibda jsehħ u jorbot lit-terzi persuni kollha immedjatament malli jsir, u r-Registatur tal-Qorti għandu jiehu hsieb li avviz dwaru jiġi pubblikat mingħajr dewmien fil-Gazzetta, u għandu jiehu hsieb ukoll li kopja tiegħu tiġi registrata fir-Registru Pubbliku dwar proprjeta' immobbli, u

(b) jibqa' jsehħ sakemm il-proċedimenti jkunu ġew deċiżi b'mod finali u konkluziv, u fil-każ li persuna tinsab hatja, sakemm is-sentenza tkun għet eżegwita.

(3) Il-Qorti tista' c'ċirkostanzi partikolari tibdel dak l-ordni, u d-dispożizzjonijiet tas-subartikoli ta' qabel għandhom japplikaw għal dak l-ordni kif hekk mibdul

(4) Kull ordni bhal dak għandu jkun fih l-isem u l-kunjom ta' l-akkużat, il-professjoni, is-sengħa jew stat ieħor tiegħu, isem missieru, isem ommu u kunjom ta' xhubitha, post tat-twelid u post ta' residenza u n-numru tal-Karta ta' l-Identita tiegħu, jekk għandu.

(5) Meta xi flus ikunu jew isiru dovuti lill-akkużat mingħand xi persuna fil-waqt li dak l-ordni jkun fis-sehħ, dawk il-flus għandhom, sakemm ma jkunx ordnat xort' ohra f'dak l-ordni, jiġu depożitati f'bank għall-kreditu ta' l-akkużat.

(6) Meta dak l-ordni ma jibqax fis-sehħ kif provdut fil-paragrafu (b) tas-subartikolu (2) ta' dan l-artikolu, r-Registatur tal-Qorti għandu jiehu hsieb li avviz f'dak is-sens jiġi pubblikat fil-Gazzetta, u għandu jirregistra fir-Registru Pubbliku nota li thassar ir-registrazzjoni ta' dak l-ordni.

6. Kull persuna li taghmel xi haġa bi ksur ta' l-ordni tal-Qorti Piena għall-ksur ta' l-ordni ta' dan l-artikolu 5 ta' dan l-Att tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux iżjed minn hamest elef lira Maltija jew għal prigrunerija għal żmien li ma jeċċedix tnax-il xahar, jew dik il-multa u prigrunerija flimkien, u l-Qorti tista' tordna lill-persuna hekk misjuba hatja li tiddepożita f'bank għall-kreditu ta' l-akkużat l-ammont tal-flejjes jew il-valur ta' proprjeta' mobbli oħra mhallsa jew konsenjata bi ksur ta' dak l-ordni tal-Qorti.

7. (1) Meta jkun sar ordni ta' konfiska taht is-subartikolu (3) ta' l-artikolu 3 ta' dan l-Att, il-persuna misjuba hatja tista' tibda azzjoni għal dikjarazzjoni li xi proprjeta' jew kull proprjeta' mobbli jew immobbli hekk konfiskata ma tkunx profitti jew dhul minn ksur ta' l-artikolu 3 ta' dan l-Att jew b'xi mod iehor involuta fil-kummissjoni tar-reat ta' *money laundering*, u lanqas proprjeta', akkwistata jew miksuba, direttament jew indirettament, minn jew permezz ta' xi profitti jew dhul bħal dawk. Proċedimenti speċjali tal-Qorti

(2) Dik l-azzjoni għandha tinbeda b'rikors fil-Prim'Awla tal-Qorti Ċivili mhux iktar tard minn tliet xhur mid-data li fiha s-sentenza li tordna l-konfiska tkun saret finali u konkluziva.

(3) Ir-rikorrent għandu b'sustenn għat-talba tiegħu, jehmeż mar-rikors id-dokumenti kollha li hu jkun jista' jipproduċi u għandu jagħti fir-rikors tiegħu l-ismijiet tax-xhieda kollha li jkun bi hsiebu jgħib, fejr. iġid dwar kull wiehed il-prova li jkun bi hsiebu jagħmel.

(4) Il-Qorti għandha, minghajr dewmien, tqiegħed ir-rikors għas-smigh f'data kmieni, liema data m'għandha febda każ tkun iktar tard minn tletin jum mid-data tal-preżentata tar-rikors.

(5) Ir-rikors u l-avviż tad-data stabbilita għas-smigh għandhom jigu notifikati lill-Kummissarju tal-Pulizija minghajr dewmien, u l-imsemmi Kummissarju għandu jippreżenta r-risposta tiegħu għar-rikors fi żmien hmistax-il jum wara d-data tan-notifika tar-rikors.

(6) Il-Qorti għandha tisma' r-rikors sat-tmien fi żmien għoxrin jum tax-xogħol mid-data stabbilita għas-smigh originali tar-rikors, u ma jingħata ebda aġġornament hliet jew bil-kunsens taż-żewġ partijiet jew għal raġuni eċċezzjonali li tiġi registrata mill-Qorti, u dik id-data aġġornata ma tkunx aktar tard minn dak li hu ġustifikat b'dik ir-raġuni.

(7) Bla hsara għad-dispożizzjonijiet ta' qabel ta' dan l-artikolu, id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili dwar il-proċedimenti quddiem il-Prim' Awla tal-Qorti Ċivili, għandhom japplikaw dwar kull rikors bħal dak.

(8) Kull sentenza li tirrevoka l-konfiska ta' proprjeta' immobbli titqies li tittrasferixxi t-titolu ta' dik il-proprjeta' lura minghand il-Gvern lill-parti li favur taghha tinghata, u dik il-parti tkun tista' tikseb ir-registrazzjoni ta' dak it-trasferiment fir-Registru Pubbliku.

Radd lura ta' proprjeta' li ma tibqax konfiskata.

8. Meta l-Qorti tilqa' talba ghal dikjarazzjoni kif provdut fis-subartikolu (1) ta' l-artikolu 7 dwar proprjeta' konfiskata, dik il-proprjeta' ma tibqax konfiskata u tintradd lura lir-rikorrent bis-sahha tas-sentenza meta din tkun finali u konlużiva, u ma' dan ir-rikorrent ikollu l-jedd li jiehu lura d-dhul riċevut mill-Gvern minn dik il-proprjeta' matul il-perijodu tal-konfiska taghha.

Regoli u regolamenti

9. (1) Il-Ministru jista' jaghmel regoli u regolamenti in generali kif ikun mehtieg ghall-implimentazzjoni ahjar tad-dispożizzjonijiet ta' dan l-Att, u, in partikolari, jista' permezz ta' dawn ir-regoli jew regolamenti, jipprovi ghar-regolament u l-kontroll ta' banek, istituzzjonijiet ta' kreditu u istituzzjonijiet finanzjarji ohra biex jipprovi *inter alia* ghal proceduri u sistemi ghal tahrig, identifikazzjoni, zamma ta' *records*, rapporti interni u rapporti lill-awtoritajiet ta' sorveljanza ghall-prevenzjoni ta' *money laundering*.

(2) Ir-regoli u r-regolamenti maghmula taht dan l-artikolu jistghu jimponu pieni jew penalitajiet ohra rigward kull kontravvenzjoni jew nuqqas ta' tharis ta' mhux izjed minn multa ta' LM20,000 (ghoxrin elf lira Maltija) jew prigunerija ghal zmien ta' mhux izjed minn sentejn jew dik il-multa u prigunerija flimkien.

Hwejjeg preskritti u regolamenti.

10. Bla hsara ghad-dispożizzjonijiet ta' l-artikolu 9 ta' dan l-Att, il-Ministru jista', b'konsultazzjoni mal-Ministru responsabbli ghall-gustizzja, jippreskrivi b'regolament kull haga li tkun mehtiega li tigi preskritta b'dan l-Att.

## SKEDA

## (ARTIKOLU 2)

- \* Omičidju volontarju
- \* Offiża volontarja fuq il-persuna gravi
- \* Tressiq ta' kummerè ta' persuni taht l-eta' jew nisa għal skopijiet immorali
- \* Arrest, detenzjoni jew sekwestru kontra l-ligi, jew negozju ta' skjavi
- \* Tnehhija kontra l-ligi ta' persuna fpajjiż barrani jew sekwestru ta' persuna f'dak il-pajjiż
- \* Serq, abbandun jew esposizzjoni ta' tfal
- \* Korruzzjoni
- \* Hruq jew għoti ta' nar
- \* Reat dwar flus foloz
- \* Reat kontra l-ligi dwar il-falsifikazzjoni
- \* Serq
- \* Appropriazzjoni bla jedd, frodi dwar sigurta', baratterija, abbuż ta' karta in bjank jew xort'ohra, qerq fil-kummerè jew fl-industrija, frodi b'egħmil qarrieqi, kazijiet ohra ta' qligh b'qerq
- \* Riċettazzjoni
- \* Appropriazzjoni bla jedd jew użu hażin minn uffiċjal jew impjegat pubbliku
- \* Rikatt, vjolenza kontra l-privat, eżazzjoni minn uffiċjal pubbliku ta' flus jew hwejjeg ohra kontra l-ligi, estorsjoni
- \* Reat kontra l-ligi dwar il-falliment jew il-ligi dwar il-kumpanniji
- \* Hsara b'qerq jew volontarja lil proprjeta'
- \* Azzjonijiet magħmula bil-hsieb ta' perikolu lil vetturi, bastimenti jew inġenji ta' l-ajru
- \* Reat kontra l-ligi dwar mediċini jew narkotiċi perikolużi
- \* Piraterija

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**Għanijiet u Raġunijiet**

L-għan ta' dan l-Abbozz huwa li johloq ir-reat kriminali ta' *money laundering* u li jagħti lill-Ministru tal-Finanzi s-setgħa li jadotta regolamenti kontra l-użu tas-sistema finanzjarja għal *money laundering*.

**A Bill  
entitled**

*AN ACT to make provision for the prevention and prohibition of the  
laundering of money in Malta.*

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 Act may be cited as the Prevention of Money Laundering Act, 1993.

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

Interpretation.

2. (1) In this Act, unless the context otherwise requires-

"criminal activity" means the crime or crimes, wheresoever committed, as specified in Article 3(1)(a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on 19 December 1988 in Vienna, and the crimes wheresoever committed, as listed in the schedule to this Act;

"Minister" means the Minister responsible for finance;

"money laundering" means:

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

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iii) the acquisition of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iv) retention without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of section 41 of the Criminal Code ; *Cap 9*

(vi) acting as an accomplice within the meaning of section 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v). *Cap 9*

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

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

(a) any currency, whether or not the same is legal tender in Malta, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including one payable to bearer or endorsed payable to bearer whether expressed in Maltese liri or any other foreign currency;

(b) cash or currency deposits or accounts with any bank, credit or other institution as may be prescribed which carries or has carried on business in Malta;

(c) cash or items of value including but not limited to works of art or jewellery or precious metals; and

(d) land or any interest therein.

(2) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

**3.** (1) Any person committing any act of money laundering shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding Lm1,000,000 (one million Maltese liri), or to imprisonment for a period not exceeding 14 years, or to both such fines and imprisonment.

*Offences.*

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

(3) Any property of or in the possession or under the control of any person who commits an offence under this section shall, unless proved to the contrary, be deemed to be derived from money laundering and liable to confiscation or forfeiture by the court.

Additional  
powers of  
investigation.

**4** (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in section 3 of this Act, he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporate) named in the order who appears to be in possession of particular material or material of a particular description which is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with, the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for such material.

(2) Where an investigation order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, makes any disclosure likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand Maltese liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

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

(3) An investigation order:

(a) shall not confer any right to production of, access to, or search for communications between an advocate or legal procurator and his client which would in legal proceedings be protected from disclosure by subsection (1) of section 642 of the Criminal Code or by subsection (1) of section 588 of the Code of Organisation and Civil Procedure;

(b) shall, without prejudice to the provisions of the foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and

(c) may be made in relation to material in the possession of any government department.

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

(5) Any person who, having been ordered to produce or grant access to material as provided in subsection (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand Maltese liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

(6) Together with or separately from an application for an investigation order, the Attorney General may, in the circumstances mentioned in subsection (1), apply to the Criminal Court for an order (hereinafter referred to as an "attachment order")-

(a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other moveable property due or pertaining or belonging to the suspect,

(b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other moveable property so attached, and

(c) prohibiting the suspect from transferring or otherwise disposing of any moveable or immoveable property.

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

(a) unless it concurs with the Attorney General that there is reasonable cause as provided in subsection (1); and

(b) in the case of an investigation order, unless the Court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

(ii) does not consist of communications referred to in paragraph (a) of subsection (3).

(8) The provisions of paragraphs (a), (b) and (c) of subsection (1) of section 381 and of subsection (1) of section 382 of the Code of Organisation and Civil Procedure shall, *mutatis mutandis*, apply to the attachment order.

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

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand Maltese Liri or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

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

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

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

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

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

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

**5** (1) Where a person is charged under Section 3 of this Act, the Court shall at the request of the prosecution make an order -

Freezing of property of person accused.

(a) attaching in the hands of third parties in general all moneys and other moveable property due or pertaining or belonging to the accused, and

(b) prohibiting the accused from transferring or otherwise disposing of any movable or immovable property:

Provided that the Court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of six thousand Maltese liri every year:

Provided further that the Court may also-

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

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

(2) Such order shall -

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

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

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

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

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

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

6 Any person who acts in contravention of a Court order mentioned in section 5 of this Act shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and the Court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order. Penalty for contravening Court order.

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

(2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

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

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

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

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

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

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

Reversion of property ceasing to be forfeited.

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

Rules and regulations.

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

(2) Rules or regulations made under this section may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of Lm20,000 (twenty thousand Maltese liri) or imprisonment for a term not exceeding two years or both such fine and imprisonment.

Matters to be prescribed by regulations.

10. Saving the provisions of Section 9 of this Act, the Minister may, in consultation with the Minister responsible for justice, prescribe by regulation any matter required to be prescribed by this Act.

## SCHEDULE

### (SECTION 2)

- \* Wilful homicide
- \* Wilful greivous bodily harm
- \* Procuring, or trafficking in, women or young persons for immoral purposes
- \* Illegal arrest, detention or confinement, or dealing in slaves
- \* Unlawful removal of persons to a foreign country or confinement therein
- \* Kidnapping
- \* Bribery
- \* Arson or fire-raising
- \* An offence concerning counterfeit currency
- \* An offence against the law relating to forgery
- \* Theft
- \* Misappropriation, fraud relating to insurance, barratry, fraudulent breach of trust in respect of papers signed in blank or otherwise, commercial or industrial fraud, obtaining money or property by false pretences, other cases of fraudulent gain
- \* Receiving stolen property or property which was misapplied or obtained by means of any offence, or knowingly taking part in the sale or disposal thereof
- \* Embezzlement
- \* Blackmail, private violence, unlawful exaction, extortion
- \* An offence against bankruptcy law or company law
- \* Malicious or wilful damage to property
- \* Acts done with the intention of endangering vehicles, vessels or aircraft.
- \* An offence against the law relating to dangerous drugs or narcotics
- \* Piracy

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### Objects and Reasons

The purpose of the Bill is to create the criminal offence of money laundering and to give the Minister of Finance power to adopt regulations for the prevention of use of the financial system for money laundering.