MALTA

ATT Nru. XXIV ta' l-1994

ATT maħruġ b' liġi mill-Parlament ta' Malta.

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

ACT No. XXIV of 1994

AN ACT enacted by the Parliament of Malta.

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

ATT DWAR IS-SEGRETEZZA PROFESSJONALI

Arranġament ta' Artikoli

Artikolu

TAQSIMA I - PRELIMINARI

1. Titolu fil-qosor u bidu fis-seħħ
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 wieħed jikxef
7. Komunikazzjoni meħtieġa lil impjegati eċċ.
8. Kxif imġiegħel bil-liġi
9. Ordnijiet tal-Qorti biex isir kxif
10. Tagħrif li jsir pubbliku
11. Komunikazzjonijiet fi ħdan il-Gvern

TAQSIMA IV - PROVVEDIMENTI SUPPLEMENTARI

12. Riżervi għal komunikazzjonijiet privileġġati
13. Referenzi f'liġijiet oħra
14. Proċedimenti kriminali
15. Emenda ta' l-artikolu 257 tal-Kodiċi Kriminali, Kap. 9

Nagħti l-kunsens tiegħi,

(L.S)

UGO MIFSUD BONNICI
President

13 ta' Settembru, 1994

ATT Nru. XXIV ta' l-1994

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

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

TAQSIMA I - PRELIMINARI

Titolu fil-qosor u bidu fis-seħħ.

1. (1) Dan l-Att jista' jissejjaħ l-Att ta' l-1994 dwar Segretezza Professjonali.

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

Tifsir.

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 .

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

(a) impjegati tal-Gvern ta' Malta;

(b) impjegati ta' korp kostitwit imwaqqaf b'liġi;

(ċ) kull persuna, kemm jekk individwu, u kemm jekk le u sew jekk tkun korp magħqud jew le, li tagħmilha ta' konsulenti jew tkun f'kapaċita' kontrattwali oħra simili bħal dik mal-Gvern ta' Malta jew ma' korp kostitwit imwaqqaf b'liġi; jew

(d) kull persuna, kemm jekk tkun individwu kemm jekk le sew jekk tkun korp magħqud jew le, li twettaq funzjonijiet ta' uffiċjal jew rappreżentant tal-Gvern ta' Malta jew ta' korp kostitwit imwaqqaf b'liġi.

(3) "Sigriet professjonali" jew "sigriet" f'dan l-Att jirreferi għal tagħrif li jaqa' taħt xi waħda mill-kategoriji li ġejjin:

(a) tagħrif li għandu jiġi meqjus sigriet taħt xi dispożizzjoni speċifika ta' xi liġi;

(b) tagħrif li jkun deskritt bħala sigriet mill-persuna li tkun qed tgħaddi dak it-tagħrif lil persuna li tidħol fl-ambitu ta' l-artikolu 257 tal-Kodiċi Kriminali; jew

Kap. 9

(ċ) tagħrif li għandu raġonevolment jiġi meqjus bħala sigriet minħabba -

(i) iċ-ċirkostanzi li fihom dak it-tagħrif ikun mgħoddi jew ġie irċevut; u

(ii) in-natura ta' dak it-tagħrif; u

(iii) l-istat, il-professjoni jew kariga tal-persuna li tirċievi t-tagħrif, u tal-persuna li tagħti t-tagħrif, fejn hu l-każ.

TAQSIMA II - ID-DMIR TA' SEGRETEZZA PROFESSJONALI

Tifsir ta' l-artikolu 257 tal-Kodiċi Kriminali. Kap. 31

3. (1) Dawk il-persuni li, minħabba fl-istat, professjoni jew kariga tagħhom, jidħlu fl-ambitu ta' l-artikolu 257 tal-Kodiċi Kriminali, jinkludu dawn li ġejjin: membri ta' professjoni regolata mill-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandhom x'jaqsmu magħha, avukati, nutara, prokuraturi leġali, *accountants,* udituri, impjegati u uffiċjali ta' istituzzjonijiet finanzjarji u ta' kreditu, *trustees,* uffiċjali ta' kumpanija *nominee,* jew ta' *nominee* liċenzjata, persuni li jkollhom liċenza biex jipprovdu servizzi ta' investiment taħt l-Att ta' l-1994 dwar Servizzi ta' Investimenti, *stockbrokers* li jkollhom liċenzja taħt l-Att dwar il-Borża ta' Malta, assiguraturi, aġenti ta' l-assigurazzjoni, *brokers* ta' l-assigurazzjoni, uffiċjali u impjegati ta' l-Istat.

Kap. 345

(2) Bla ħsara għad-dispożizzjonijiet ta' l-artikolu 10 ta' dan l-Att, persuna tibqa' suġġetta għad-dispożizzjonijiet ta' l-artikolu 257 tal-Kodiċi Kriminali anke wara li hi tkun waqfet teżerċita dak l-istat jew dik il-professjoni relevanti jew milli tibqa' f'dik il-kariga relevanti.

(3) Kull referenza f'liġijiet 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 tehtieġx mod ieħor, bħala referenza għad dmir impost bl-artikolu 257 tal-Kodiċi Kriminali biex ma jikxifx sigriet li jkun jaqa' taħt dak l-artikolu.

Depożitarju ta' siġriet.

4. (1) Persuna jitqies ukoll li jkun sar depożitarju ta' sigriet minħabba fl-istat, professjoni jew kariga tiegħu meta huwa jikseb dak is-sigriet billi jkun impjegat jew prinċipal, soċju jew assistent ta' persuna li jidħol 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 minħabba fl-istat, professjoni jew kariga tiegħu, meta jikseb dak is-sigriet waqt li jkun impjegat mill-Istat.

(3) Meta persuna jafda tagħrif sigriet lill-impjegat jew prinċipal ta' persuna li tidħol fl-ambitu ta' l-artikolu 257 tal-Kodici Kriminali minħabba fir-relazzjoni ta' dak l-impjegat mal-prinċipal tiegħu, dak it-tagħrif sigriet għandu jitqies li jkun ġie afdat lill-prinċipal permezz ta' l-impjegat tiegħu jew lill-impjegat permezz tal-prinċipal tiegħu, skond il-każ, bħala mandatarju.

Investigaturi.

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

TAQSIMA III - EĊĊEZZJONIJIET

Awtorizzazzjoni li wieħed jikxef.

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 ġiet awtorizzata tagħmel dan mill-persuna li tkun fdatilha dak it-tagħrif.

(2) Għall-finijiet tas-subartikolu (1) ta' dan l-artikolu, min ikun irċieva tagħrif sigriet mingħand persuna oħra ma jkunx jista' jagħti awtorizzazzjoni valida għall-kxif ta' dak it-tagħrif minn terzi.

Komunikazzjoni meħtieġa lil impjegati eċċ.
Kap. 9

7. (1) Kemm-il darba min ikun fada t-tagħrif sigriet ma jgħidx li għandu jsir mod ieħor, huwa għandu jitqies li jkun awtorizza l-komunikazzjoni tat-tagħrif sigriet lill-impjegati, soċji u assistenti tal-persuna li lilha jkun ġie afdat it-tagħrif, jew lil xi persuna oħra li tidħol fl-ambitu ta' l-artikolu 257 tal-Kodiċi Kriminali, meta din il-komunikazzjoni tkun meħtieġa għat-twettiq ta' servizzi mitluba minn min ikun fada t-tagħrif.

(2) Żewġ persuni jew aktar li jidħlu fl-ambitu tal-artikolu 257 tal-Kodiċi Kriminali, u li jeżerċitaw is-setgħa ta' tmexxija u kontroll effettiv ta' kumpannija mwaqqfa bil-għan ta' l-eżercizzju tal-professjoni tagħhom, għandhom għall-finijiet ta' dan l-artikolu jitqiesu bħala soċji.

Kxif imġiegħel bil-liġi.
Kap. 9

8. Għall-finijiet ta' l-artikolu 257 tal-Kodiċi Kriminali, persuna m'għandhiex titqies li tkun imġiegħla bil-liġi li tagħti tagħrif lill-awtorita' pubblika kemm-il darba ma jkunx hemm ħtieġa statutorja espressa li tkun tgħid dan.

Ordnijiet tal-Qorti biex isir kxif

9. Qorti tista' tawtorizza jew toħroġ ordni għal kxif ta' tagħrif sigriet skond id-dispożizzjonijiet espress ta' liġi, u biss għal finijiet speċifiċi li għalihom dik id-dispożizzjoni tkun saret b'liġi:

Iżda fejn ma hemmx dispożizzjoni espressa għar-rigward ta' professjoni, stat jew kariga partikolari, ebda ħaġa f'dan l-artikolu m'għandha tiftiehem li qed tbiddel ir-regoli eżistenti tal-liġi għar-rigward tas-setgħa tal-qorti li teħles xhud quddiem qorti li jkun membru ta' dik il-professjoni, dak l-istat jew dik il-kariga mid-dmir tas-segretezza professjonali;

Iżda wkoll fejn il-qorti tawtorizza jew tordna dak il-kxif, dik ix-xhieda għandha tinstema' *in camera* u tkun biss aċċessibbli għall-qorti u għall-partijiet;

Iżda wkoll li xejn f'dan l-Att m'għandu jiftiehem li jolqot id-dispożizzjonijiet tal-Kodiċi ta' l-Organizazzjoni u Proċedura Ċivili għar-rigward ta' mandati ta' sekwestru. Kap. 12

Tagħrif li jsir pubbliku.

10. Tkun difiża għal akkuża ta' kxif ta' tagħrif sigriet kontra l-artikolu 257 tal-Kodiċi Kriminali jekk jiġi pruvat li, fil-ħin li nkixef it-tagħrif, it-tagħrif kien sar ta' dominju pubbliku b'mod leġittimu.

Komunikazzjonijiet fi ħdan il-Gvern.

11. (1) Ma jkunx hemm ksur ta' l-artikolu 257 tal-Kodiċi Kriminali meta persuna impjegata mill-Istat tikkomunika tagħrif sigriet lil persuna oħra impjegata mill-istess enti jew lil Ministru li jkun responsabbli għal dik l-enti, meta dik il-komunikazzjoni tkun meħtieġa b'mod dirett għat-twettiq tal-funzjonijiet rispettivi tagħhom.

(2) Għall-finijiet ta' dan l-artikolu, dawn li ġejjin huma entijiet separati:

(a) kull korp kostitwit imwaqqaf b'liġi;

(b) id-Dipartiment tat-Taxxi Interni;

(ċ) kull dipartiment jew diviżjoni ta' l-Istat, b'esklużjoni ta' l-entijiet imsemmija fil-paragrafi (a) u (b) ta' qabel dan.

TAQSIMA IV - PROVVEDIMENTI SUPPLEMENTARI

Riżervi għal komunikazzjonijiet privileġġati.

12. Ebda ħaġa f'dan l-Att ma għandha tirristrinġi jew tillimita, jew titqies li tirristrinġi jew tillimita, il-liġijiet jew konswetudni dwar il-protezzjoni ta' komunikazzjonijiet privileġġati.

Referenzi f'liġijiet oħra.

13. Kull referenza f'xi liġi, sew jekk mgħoddija qabel jew wara d-data tal-bidu fis-seħħ ta' dan l-Att, għal obbligazzjoni li tinżamm is-segretezza jew il-kunfidenzjalita', għandha tiġi nterpretata bħala li tkun qegħda timponi dmir li għall-inqas ikollu sahha daqskemm għandu dmir ta' segretezza professjonali, bla ħsara għal kull ħtieġa oħra ta' dik il-ligi.

Proċedimenti kriminali.

14. (1) Ma għandhom jinbdew ebda proċedimenti għal reat taħt l-artikolu 257 tal-Kodiċi Kriminali mingħajr l-awtorizzazzjoni ta' l-Avukat Ġenerali.

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

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

15. Minflok l-artikolu 257 tal-Kodiċi Kriminali, għandu jidħol dan li gej:

"Kxif ta' sigrieti professjonali.

257. Kull min, minħabba l-istat, professjoni jew kariga tiegħu, ikun sar id-depożitarju ta' sigriet li jkun ġie fdat lilu, jikxef dan is-sigriet, ħlief fil-każijiet li fihom il-liġi tobbligah igħarrafhom lil awtorita' pubblika, jeħel, meta jinsab ħati, il-piena ta' multa ta' mhux iżjed minn 20,000 lira Maltija jew ta' priġunerija għal żmien mhux iżjed minn sentejn jew għal dik il-multa u priġunerija flimkien.".

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 303 ta' l-20 ta' Lulju, 1994.

LAWRENCE GONZI
Speaker

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

A 874

THE PROFESSIONAL SECRECY ACT

Arrangement of Sections

Section

PART I - PRELIMINARY

1. Short title and commencement

2. Interpretation

PART II - THE DUTY OF PROFESSIONAL SECRECY

3. Interpretation of section 257 of the Criminal Code

4. Depositary of secret

5. Investigators

PART III - EXCEPTIONS

6. Authorisation to disclose

7. Necessary communication to employees, etc.

8. Disclosure compelled by law

9. Court orders for disclosure

10. Information in the public domain

11. Intergovernmental communications

PART IV - SUPPLEMENTAL PROVISIONS

12. Savings for privileged communications

13. References in otner enactments

14. Criminal proceedings

15. Amendment of section 257 of the Criminal Code, Cap. 9

I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XXIV of 1994

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

Short title and commencement.

1. (1) This Act may be cited as the Professional Secrecy Act, 1994.

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

Interpretation.

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.

(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 body corporate established by law;

(c) any person, whether an individual or not, whether having corporate personality or not, acting as consultant or in any other similar contractual capacity with the Government of Malta or with a body corporate established by law; or

(d) any person whether an individual or not, whether having corporate personality or not exercising functions as an official or representative of the Government of Malta or of any body corporate established by law.

(3) "Professional secret" or "secret" in this Act refers to information which falls under any of the following categories:

(a) information which is to be considered secret under a specific provision of any law;

(b) information which is described as secret by the person communicating the information to a person falling within the scope of section 257 of the Criminal Code;

Cap. 9

(c) information which has reasonably to be considered as secret in view of -

(i) the circumstances in which the information has been communicated and received, and

(ii) the nature of the information, and

(iii) the calling, profession or office of the person receiving the information, and of the person giving the information, where applicable.

PART II - THE DUTY OF PROFESSIONAL SECRECY

Interpretation of section 257 of the Criminal Code.

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: members of a profession regulated by the Medical and Kindred Professions Ordinance, advocates, notaries, legal procurators, accountants, auditors, employees and officers of financial and credit institutions, trustees, officers of nominee companies or licensed nominees, persons licensed to provide investment services under the Investment Services Act, 1994, stockbrokers licensed under the Malta Stock Exchange Act, insurers, insurance agents, insurance brokers, officials and employees of the State.

Cap. 31

Cap. 345

(2) Subject to section 10 of this Act, a person shall still remain subject to the provisions of section 257 of the Criminal Code after he has ceased to exercise the relevant calling or profession, or to occupy the relevant office.

(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.

Cap. 9

Depositary of secret.

4. (1) A person shall also be deemed to have become the depositary of a secret by reason of his calling, profession or office when he obtains such secret by reason of being an employee, or employer, 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.

(2) A person shall also be deemed to have become the depositary 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 or employer 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 the employee or to the employee through the employer, as the case may be, as mandatory.

Investigators.

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 depositary of such information by virtue of his calling, profession or office.

PART III - EXCEPTIONS

Authorisation to disclose.

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.

(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. (1) 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, or to any other person falling within the scope of section 257 of the Criminal Code, where such communication is necessary for the performance of services requested by the person who entrusted the information.

Cap. 9.

(2) Two or more persons falling within the scope of section 257 of the Criminal Code who exercise power of effective management and control in a limited liability company set up for the purpose of exercising their profession shall for the purpose of this section be considered as partners.

Disclosure compelled by law.
Cap 9.

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

Court orders for disclosure.

9. A court may authorise or make an order requiring the disclosure of secret information pursuant to an express provision of law for the specific purposes for which that provision was enacted:

Provided that in the absence of any specific provision in relation to any particular calling, profession or office, nothing in this section shall be construed as modifying the existing rules of law in relation to the courts' power to release a witness in court belonging to any such calling, profession or office from the duty of professional secrecy;

Provided further where the court authorises or requires such disclosure such evidence shall be held in camera and shall only be accessible to the court and to the parties;

Provided further that nothing in the Act shall be construed as affecting the provisions of the Code of Organization and Civil Procedure in relation to garnishee orders. Cap. 12

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.

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 or to the Minister responsible for that entity, where such communication is directly necessary for the carrying out of their respective functions.

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

(a) any body corporate established by law;

(b) the Department of Inland Revenue;

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

PART IV - SUPPLEMENTAL PROVISIONS

Savings for privileged communications.

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.

References in other enactments.

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.

Criminal proceedings.

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

(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.

Amendment of section 257 of the Criminal Code, Cap. 9.

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

"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 a 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.".

Passed by the House of Representatives at Sitting No. 303 of the 20th July, 1994

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – Kastilja — *Published by the Department of Information – Kastilja*
Mitbugħ fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Price 10c — *Price 10c*