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I assent.

(L.S.)

**MARIE LOUISE  
COLEIRO PRECA  
President**

1st August, 2014

**ACT No. XXIV of 2014**

*AN ACT to amend the Criminal Code (Cap. 9.) and to provide for any other matters ancillary or consequential thereto.*

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

Short title and  
commencement.

**1.** (1) The short title of this Act is the Various Laws (Criminal Matters) (Amendment No. 2) Act, 2014.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for Justice may by notice in the Gazette establish, and different dates may be so established for different provisions and for different purposes of this Act.

**PART I**

**Amendments to the Criminal Code**

Amendment of  
the Criminal  
Code.  
Cap. 9.

**2.** This Part amends the Criminal Code, and it shall be read and construed as one with the Criminal Code, hereinafter in this Part referred to as "the Code".

Amendment of  
article 5 of the  
Code.

**3.** In sub-paragraph (i) of paragraph (e) of sub-article (1) of article 5 of the Code, for the words "314B, 316" there shall be substituted the words "314B, 314CA, 316".

Amendment of  
article 17 of the  
Code.

**4.** In sub-paragraph (b) of article 17 of the Code, the words "provided the period to be awarded shall not exceed thirty-five years" shall be deleted.

5. Article 23C of the Code shall be amended as follows:

Amendment of  
article 23C of  
the Code.

(a) in sub-article (2) thereof, for the words "(3A)(b) and (d)" there shall be substituted the words "(3A)(b) and (d) and (7)"; and

(b) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) For the purposes of this article:

"relevant offence" means any offence not being one of an involuntary nature, liable to the punishment of imprisonment for a term of more than one year;

"property" shall have the same meaning assigned to it by article 23B(3)."

6. Article 28G of the Code shall be amended as follows:

Amendment of  
article 28G of  
the Code.

(a) immediately after sub-article (1) thereof, there shall be added the following new sub-article:

"(1A) Where a supervision order is made in accordance with the provisions of sub-article (1), the court may, in addition to the order, make a community service order as defined in article 11 of the Probation Act and the provisions of the Probation Act shall, *mutatis mutandis*, apply to any such order."; and

(b) immediately after sub-article (9) thereof, there shall be added the following new sub-article:

"(10) Any reference to a supervision order shall be deemed to include a community service order."

7. Article 31 of the Code shall be amended as follows:

Amendment of  
article 31 of the  
Code.

(a) sub-paragraph (i) to sub-paragraph (xiv), both inclusive, of paragraph (b) of sub-article (1) thereof shall be renumbered as sub-paragraphs (ii) to (xv) respectively and immediately before sub-paragraph (ii), as renumbered, there shall be added the following new sub-paragraph:

"(i) from ten years to forty years";

(b) in paragraph (c) of sub-article (1) thereof, for the words "the descent from the fourteenth degree" there shall be substituted the words "the descent from the fifteenth degree";

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and

(c) in paragraph (d) of sub-article (1) thereof for the words "commencing from the fourteenth degree" there shall be substituted the words "commencing from the fifteenth degree".

Substitution of  
article 49 of the  
Code.

**8.** Article 49 of the Code shall be substituted by the following new article:

"49. (1) A person is deemed to be a recidivist if, after being sentenced for any offence by a judgement, even when delivered by a foreign court, which has become *res judicata*, he commits another offence.

(2) In any proceedings under or for the purposes of this article, a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of that State, or part of that State, shall be admissible as evidence of the fact and date of the conviction without any need for further evidence.

(3) A document shall be deemed to be duly authenticated if one of the following conditions applies:

(a) it purports to be signed by a judge, magistrate or officer of the sentencing State; or

(b) it purports to be certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the sentencing State; or

(c) it purports to be authenticated by the oath, declaration or affirmation of a witness.

(4) Any document which is to be sent in connection with proceedings under this article may be transmitted by any secure means capable of producing written records and under conditions permitting the ascertainment of its authenticity.

(5) In this article, "oath" includes an affirmation or a declaration; and nothing in this article shall be construed as prejudicing the admission in evidence of any document which is admissible in evidence under any other provision of law."

Substitution of  
the heading of  
Title I of Part II  
of Book First of  
the Code.

**9.** Immediately before article 54A of the Code, the heading of Title I of Part II of Book First shall be substituted by the following new heading: "OF GENOCIDE, CRIMES AGAINST HUMANITY,

## WAR CRIMES AND CRIMES OF AGGRESSION".

**10.** Article 54A of the Code shall be amended as follows:

Amendment of  
article 54A of  
the Code.

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) It is a crime for a person to commit genocide, a crime against humanity, a war crime or a crime of aggression.";

(b) in sub-article (2) thereof, immediately after the definition "war crime" there shall be added the following new definition:

" "crime of aggression" means a war crime as defined in article 54DA;" and

(c) in sub-article (4) thereof, for the words "54C and 54D" there shall be substituted the words "54C, 54D and 54DA".

**11.** Immediately after sub-paragraph (xii) of paragraph (e) of article 54D of the Code, there shall be added the following new sub-paragraphs:

Amendment of  
article 54D of  
the Code.

"(xiii) employing poison or poisoned weapons;

(xiv) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;"

**12.** Immediately after article 54D of the Code, there shall be added the following new article:

Addition of new  
article to the  
Code.

"Crime of  
aggression.

54DA. (1) A crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

(2) For the purposes of this article an "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

(3) Any of the following acts, regardless of a declaration of war, shall, in accordance with UN General Assembly Resolution 3314(XXIX) of 14 December 1974, qualify as an act of aggression:

(a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) the blockade of the ports or coasts of a State by the armed forces of another State;

(d) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; and

(g) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein."

**13.** Article 82A of the Code shall be amended as follows:

Amendment of article 82A of the Code.

(a) for the words "violence or hatred", wherever they occur in the said article 82A, there shall be substituted the words "violence or racial hatred"; and

(b) in sub-article (2) thereof, for the words "language, ethnic origin," there shall be substituted the words "language, national or ethnic origin, citizenship,".

**14.** In article 82B of the Code, for the words "descent or national" there shall be substituted the words "citizenship, descent or national".

Amendment of article 82B of the Code.

**15.** In sub-article (1) of article 82C of the Code, for the words "language, ethnic origin," there shall be substituted the words "language, national or ethnic origin, citizenship,".

Amendment of article 82C of the Code.

**16.** In article 83 of the Code, immediately after the words "who establishes, maintains" there shall be added the words "on his own or with other persons"; and for the words "to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment" there shall be substituted the words "to a fine (*multa*) not exceeding five thousand euro (€5000) or to imprisonment for a term from nine months to five years, or to both such fine and imprisonment".

Amendment of article 83 of the Code.

**17.** Article 83A of the Code shall be amended as follows:

Amendment of article 83A of the Code.

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) Any person who -

(a) promotes, constitutes, organises or finances an organization with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more; or

(b) knowing or having reasonable cause to suspect the aim or general activity of the organization set up for the purpose mentioned in paragraph (a), actively takes part in the organisation's criminal activities, including but not limited to the provision of information or material means or the recruitment of new members,

shall be guilty of an offence and shall be liable, on conviction, to the punishment of imprisonment for a term from four to nine years.";

(b) in sub-article (2) thereof, for the words "shall for that mere fact be liable to the punishment of imprisonment for a term from one to five years" there shall be substituted the words "shall for that mere fact be liable to the punishment of imprisonment for a term from two to seven years"; and

(c) in the Maltese version of sub-article (4) thereof, for the words "taht dan l-artikolu" there shall be substituted the words "taht dan it-titolu".

Amendment of the Sub-title before article 83B.

**18.** In the Sub-title before article 83B of the Code, for the words "MOTIVATED BY XENOFobia" there shall be substituted the words "MOTIVATED BY XENOFobia OR HOMOFobia".

Amendment of article 83B of the Code.

**19.** In article 83B of the Code, for the words "language, ethnic origin," there shall be substituted the words "language, national or ethnic origin, citizenship," and for the words "sub-articles (3) to (6), both inclusive, of article 222A." there shall be substituted the words "sub-articles (3) to (6), both inclusive, of article 222A:", and immediately thereafter there shall be added the following new proviso:

"Provided that the provisions of this article shall not apply where an aggravation of punishment in respect of the motives mentioned in this article is already provided for under this Code or any other law."

Addition of new article to the Code.

**20.** Immediately after article 83B of the Code there shall be

added the following new article:

"Offences  
committed by a  
body corporate.

83C. Whenever an offence is committed for the benefit, in part or in whole, of a body corporate by a person who has the power of representation of the body corporate, authority to take decisions on behalf of the body corporate, or authority to exercise control of the body corporate, the legal person may be subject to:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding up; or
- (e) temporary or permanent closure of establishments:

Provided that the provisions of this article shall not apply where the punishment mentioned in this article is already provided for under this Code or any other law."

21. Immediately after article 135 of the Code there shall be added the following new article:

Addition of new  
article to the  
Code.

"Promotion of  
violence or  
racial hatred by  
public officers.

135A. Any public officer or servant who, under colour of his office, creates or assumes leadership of a group which promotes violence or racial hatred within the meaning of sub-articles (3) to (6), both inclusive, of article 222A, shall, where the act committed does not constitute a more serious offence, be liable to the punishment of imprisonment for a term from one to five years."

22. In article 161 of the Code, for the words "destined for public utility or public embellishment, and erected by, or with the permission of the public authority, shall, on conviction, be liable to imprisonment for a term from one month to one year or to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37)" there shall be substituted the words "destined for public utility or public embellishment, and

Amendment of  
article 161 of  
the Code.



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erected by, or with the permission of the public authority, shall, on conviction, be liable to imprisonment for a term from six to eighteen months or to a fine (*multa*) not exceeding three thousand and five hundred euro (€3,500)".

Amendment of  
article 162 of  
the Code.

**23.** In article 162 of the Code, for the words "on conviction, be liable to imprisonment for a term from one to eighteen months or to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69)" there shall be substituted the words "on conviction, be liable to imprisonment for a term from nine months to two years or to a fine (*multa*) not exceeding five thousand euro (€5,000)".

Amendment of  
article 222A of  
the Code.

**24.** Article 222A of the Code shall be amended as follows:

(a) in sub-article (2) thereof, for the words "language, ethnic origin," there shall be substituted the words "language, national or ethnic origin, citizenship,"; and

(b) in sub-article (3) thereof, for the words "language, ethnic origin," there shall be substituted the words "language, national or ethnic origin, citizenship,".

Amendment of  
article 250 of  
the Code.

**25.** Article 250 of the Code shall be amended as follows:

(a) in sub-article (1) thereof, for the words "five to eighteen months" there shall be substituted the words "one to four years"; and

(b) in sub-article (2) thereof, for the words "seven months to three years" there shall be substituted the words "eighteen months to five years".

Amendment of  
article 251 of  
the Code.

**26.** Immediately after sub-article (2) of article 251 of the Code there shall be added the following new sub-article:

"(3) Whosoever shall cause another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) shall be liable to the punishments prescribed in sub-article (1) decreased by one to two degrees:

Provided that where the offender shall have attained his end, he shall be liable to the punishment laid down in sub-article (2) decreased by one to two degrees.".

**27.** Sub-article (4) of article 251A of the Code shall be amended as follows:

Amendment of article 251A of the Code.

(a) for the words "one to three months" there shall be substituted the words "one to six months"; and

(b) for the words "two thousand and three hundred and twenty-nine euro and thirty-seven cents (2329.37) and not more than four thousand and six hundred and fifty-eight euro and seventy-five cents (4658.75)" there shall be substituted the words "two thousand five hundred euro (2,500) and not more than five thousand euro (5,000)".

**28.** Immediately after article 251A of the Code, there shall be added the following new article:

Addition of new article to the Code.

"Stalking.

251AA. (1) A person who:".

(a) pursues a course of conduct in breach of article 251A(1), and

(b) the course of conduct amounts to stalking,

shall be guilty of an offence under this article.

(2) For the purposes of paragraph (b) of sub-article (1) of this article and article 251BA(1)(a), a person's course of conduct amounts to stalking of another person if:

(a) it amounts to harassment of that person,

(b) the acts or omissions involved are ones associated with stalking, and

(c) the person, whose course of conduct it is, knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking:

(a) following a person,

(b) contacting, or attempting to contact, a person by any means,

(c) publishing, by any means, any statement or other material -

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(i) relating or purporting to relate to a person, or

(ii) purporting to originate from a person,

(d) monitoring the use by a person of the internet, email or any other form of electronic communication,

(e) loitering in any place, whether public or private,

(f) interfering with any property in the possession of a person,

(g) watching or spying on a person.

(4) A person guilty of an offence under this article shall be liable to the punishment of imprisonment for a term from six to twelve months or to a fine (*multa*) not exceeding ten thousand euro (10,000), or to both such fine and imprisonment:

Provided that the punishment shall be increased by one degree when the offence is committed against any person mentioned in article 222(1)."

Adds new article to the Code.

**29.** Immediately after article 251B of the Code, there shall be added the following new article:

"Stalking involving fear of violence, serious alarm or distress.

251BA. (1) A person whose course of conduct -

(a) amounts to stalking, and

(b) either:

(i) causes another to fear on at least two occasions that violence will be used against him, or

(ii) causes him serious alarm or distress which has a substantial adverse effect on his usual day-to-day activities,

shall be guilty of an offence under this article if he knows or ought to know that his course of conduct will cause that person so to fear on each of those occasions or, as the case may be, will cause such alarm or distress.

(2) For the purposes of this article, the person whose course of conduct is in question ought to know that it will cause another person to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

(3) For the purposes of this article, the person whose course of conduct is in question ought to know that it will cause another person serious alarm or distress which has a substantial adverse effect on the said person's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause the other such alarm or distress.

(4) It shall be a defence for a person charged with an offence under this article that his course of conduct was pursued in the circumstances mentioned in article 251B(3)(a) or (b).

(5) A person guilty of an offence under this article shall be liable to imprisonment for a term for nine months to five years or to a fine (*multa*) not exceeding thirty thousand euro (30,000), or to both such fine and imprisonment:

Provided that the punishment shall be increased by one degree when the offence is committed against any person mentioned in article 222(1).

(6) The acquittal of a person charged with an offence under this article shall not exclude a conviction for an offence under articles 251A or 251AA.

(7) This article shall be without prejudice to the generality of the provisions of article 251B."

**30.** In article 251C of the Code, for the words "51A and 251B" there shall be substituted the words "51A to 251BA, both inclusive." Amendment of article 251C of the Code.

**31.** Article 251D of the Code shall be substituted by the following: Substitution of article 251D of the Code.

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"General  
provisions.

251D. (1) The punishments established in the foregoing provisions of this sub-title shall be increased by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A.

(2) The punishments established in articles 251A to 251BA, both inclusive, shall be increased by one degree when the offence is committed by any of the means mentioned in article 337B(1).

(3) Where a person is charged under articles 251 to 251BA, both inclusive, the court may make an order in terms of sub-article (1) and paragraphs (a) to (c), both inclusive, of sub-article (3) of article 412C."

Substitution of  
article 298B of  
the Code.

**32.** Article 298B of the Code shall be substituted by the following:

"Violation of  
copyright.

298B. (1) Any person who, in the exercise of any trade or in the course of business or with a view to gain for himself or for any other person, or with intent to cause loss to, or to prejudice, another person:

(a) prints, manufactures, duplicates or otherwise reproduces, or sells, distributes or otherwise offers for sale or distribution, any article or other thing in violation of the rights of copyright protected by or under Maltese law, or

(b) has in his possession, custody or control any such article or other thing with a view to carrying out any of the acts mentioned under paragraph (a),

shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine (*multa*) of not less than three thousand euro (€3,000) and not more than twenty-four thousand euro (€24,000) or to both such fine and imprisonment.

(2) Proceedings under this article may not be taken except on the complaint of the injured party."

**33.** In article 308 of the Code, for the words "to imprisonment for a term from seven months to two years" there shall be substituted the words "to imprisonment for a term from one to seven years".

Amendment of article 308 of the Code.

**34.** In article 309 of the Code, for the words "imprisonment for a term from one to six months" there shall be substituted the words "imprisonment for a term from two months to two years".

Amendment of article 309 of the Code.

**35.** Article 310 of the Code shall be substituted by the following new article:

Substitution of article 310 of the Code.

"310. (1) In cases referred to in this sub-title -

(a) when the amount of damage caused by the offender exceeds five thousand euro (€5000), the punishment shall be that of imprisonment from two to nine years;

(b) when the amount of damage caused by the offender exceeds five hundred euro (€500) but does not exceed five thousand euro (€5000), the punishment shall be that of imprisonment from six months to four years:

Provided that if the punishment laid down for the relevant offence in the preceding articles of this Sub-title is higher than the punishment laid down in this paragraph the former punishment shall apply increased by one degree and in the case of the offence under article 294 the punishment so increased shall not be awarded in its minimum;

(c) when the amount of the damage caused by the offender does not exceed five hundred euro (€500), the offender shall be liable to imprisonment for a term not exceeding six months.

(2) The provisions of sub-article (1)(c) shall not

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apply in the case of any of the crimes referred to in articles 296 and 298."

Amendment of  
article 310A of  
the Code.

**36.** In article 310A of the Code, for the words "121C, 121D and 248E(4)" there shall be substituted the words "121C, 121D, 248E(4) and 328K".

Addition of new  
article in the  
Code.

**37.** Immediately after article 310B of the Code, there shall be added the following new article:

"Possession,  
making or  
supplying etc.,  
of articles for  
use in fraud.

310BA.(1) Whosoever is found to be in possession or has under his control any article for use in the course of or in connection with any fraud, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term from six months to three years and to the forfeiture of the said articles.

(2) Whosoever makes, adapts, supplies or offers to supply any article -

(a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or

(b) intending it to be used to commit, or assist in the commission of, fraud,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term from twelve months to five years and to the forfeiture of the said articles.

(3) For the purposes of this article:

"article" includes any document, program or data held in electronic form; and

"document" shall have the meaning assigned to it by article 558(2)."

Amendment of  
article 316 of  
the Code.

**38.** Article 316 of the Code shall be amended as follows:

(a) for the words "vessel, dock" there shall be substituted "vessel, vehicle, dock";

(b) in paragraph (a) thereof, for the words "nine to twelve years;" there shall be substituted the words "six to twelve years"; and

(c) in paragraph (b) thereof, for the words "five to nine years." there shall be substituted the words "four to nine years."

**39.** In article 317 of the Code, for the words "any building, shed" there shall be substituted the words "any building, vehicle, shed"; and for the words "such building, shed" there shall be substituted the words "such building, vehicle, shed".

Amendment of  
article 317 of  
the Code.

**40.** In article 318 of the Code, for the words "any building, shed" there shall be substituted the words "any building, vehicle, shed"; and for the words "such building, shed" there shall be substituted the words "such building, vehicle, shed" and for the words "any other building, shed".

Amendment of  
article 318 of  
the Code.

**41.** Sub-article (1) of article 325 of the Code shall be amended as follows:

Amendment of  
article 325 of  
the Code.

(a) paragraph (a) thereof shall be substituted by the following new paragraph:

"(a) if the amount of the damage exceeds two thousand and five hundred euro (2,500), to imprisonment for a term from eighteen months to four years;"

(b) paragraph (b) thereof shall be substituted by the following new paragraph:

"(b) if the amount of the damage does not exceed two thousand and five hundred euro (2,500) but exceeds two hundred and fifty euro (250), to imprisonment for a term from eight to fourteen months;"

(c) paragraph (c) thereof shall be substituted by the following new paragraph:

"(c) if the amount of the damage does not exceed two hundred and fifty euro (250), to imprisonment for a term not exceeding six months;"

**42.** In sub-article (1) of article 325A of the Code, for the words "language, ethnic origin," there shall be substituted the words "language, national or ethnic origin, citizenship,".

Amendment of  
article 325A of  
the Code.

**43.** Article 328 of the Code shall be amended as follows:

Amendment of  
article 328 of  
the Code.

(a) in the proviso thereto, for the words "on the complaint of the injured party." there shall be substituted the words "on the complaint of the injured party:" and

(b) immediately after the proviso thereto there shall be added the following new proviso:



"Provided further that the proceedings referred to in paragraph (d) with respect to damage caused on a motor vehicle, which is public property, on the complaint of the head of the Government department in charge of the said vehicle, the provisions of article 374(d) shall not apply to those proceedings after the complainant will have confirmed his complaint under oath before the court and the absence of the complainant from attendance in court in any stage of the proceedings shall not be considered to constitute desertion of the proceedings or the withdrawal of the complaint as long as such absence occurs at a stage which is subsequent to the said confirmation on oath of the complaint by the complainant."

Amendment of article 328N of the Code.

**44.** In the Maltese version of sub-paragraph (i) of paragraph (a) of sub-article (1) of article 328N of the Code, for the words "bejn sema u ilma" there shall be substituted the words "f'ibhra miftuħa".

Amendment of article 355AV of the Code.

**45.** In paragraph (c) of article 355AV of the Code, for the words "consent of the person arrested:" there shall be substituted the words "consent of the person arrested and the provisions of the proviso to article 355BB shall, *mutatis mutandis*, apply:".

Amendment of article 355BA of the Code.

**46.** Article 355BA of the Code shall be amended as follows:

(a) in paragraph (a) of sub-article (1) thereof, for the words "palm-prints" there shall be substituted the words "palm-prints, other prints or hand-writing samples"; and

(b) in paragraph (a) of sub-article (2) thereof, for the words "palm-prints or other prints" there shall be substituted the words "palm-prints, other prints or hand-writing samples".

Amendment of article 355BB of the Code.

**47.** The proviso to article 355BB of the Code shall be substituted by the following:

"Provided that in the event that the person, other than the person arrested, withholds his consent to the taking of a sample, whether intimate or non-intimate, a Magistrate's authorisation may also be obtained upon an application and, saving the provisions of article 355AZ, such authorization shall also cover the taking of any proportionate and necessary measures, including the use of force, by the Executive Police to give effect to such authorization."

Addition of new article to the Code.

**48.** Immediately after article 355BC of the Code there shall be added the following new article:

"Use of  
specimens.

355BD. The Commissioner of Police may make use of specimens, which would have been taken in criminal proceedings, for the purposes of subsequent criminal proceedings."

**49.** In sub-article (1) of article 360A of the Code for the words "or by an employee or officer of a body corporate established by law", there shall be substituted the words "or by an employee or officer of a body corporate established by law or by a representative of an undertaking as defined in terms of article 2 the Electronic Communications (Regulation) Act".

Amendment of  
article 360A of  
the Code.

**50.** Immediately after article 360A of the Code there shall be added the following new article:

Addition of new  
article to the  
Code.

"Judgements  
*in absentia*.

360B. (1) Notwithstanding the other provisions of this Code or of any other law, the provisions of this article shall apply to offences within the jurisdiction of the Court of Magistrates as a court of criminal judicature under article 370(1).

(2) Where a person, having been charged with an offence referred to in sub-article (1) and having been duly served with a summons, fails to appear personally before the court, he shall be deemed to have given his consent for the trial to proceed in his absence and, the court shall proceed with the hearing in the absence of the person charged and shall thereupon proceed to deliver judgement:

Provided that any person charged as aforesaid may instead of appearing before the Court of Magistrates file in the Registry of that court representations in writing and, or a declaration on the facts of the case confirmed on oath contesting the charge against him, and the Court shall, prior to deciding the case, take into account such representations and, or a declaration as if they had been made *viva voce* before the said court.

(3) A judgement delivered in terms of this article shall be subject to appeal.

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(4) Where no appeal is filed, a judgement delivered in terms of this article shall be served on the offender personally who, within seven working days of service, shall have a further right of appeal against judgement and the provisions of this code relating to appeals shall, subject to the provisions of this article, *mutatis mutandis* apply:

Provided that there shall be no right of appeal if it is shown that any of the following circumstances exist:

(a) the offender was in due time:

(i) summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the judgement, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he was aware of the scheduled trial; and

(ii) informed that a judgement may be handed down if he does not appear for the trial; or

(b) the offender, being aware of the scheduled trial, had given a mandate to legal counsel appointed by him to defend him at his trial, and was indeed defended by the said legal counsel at the trial.

(5) A summons issued under this article shall also contain an intimation that in default of appearance the person summoned shall be deemed to have given his consent for the trial to proceed in his absence.

(6) Where a judgement is served as provided under sub-article (4) the offender shall also be informed of his further right of appeal in terms of the said sub-article."

Substitution of  
article 392B of  
the Code.

**51.** Article 392B of the Code shall be substituted by the following:

"Admission of  
guilt.

**392B.** (1) In the case where the accused, in answer to the question in article 392(1)(b) and in any stage of the proceedings, states, that he is guilty of the offence charged and the said offence is liable to a punishment exceeding ten years imprisonment, the court shall warn him in the most solemn manner about the legal consequences of that reply, and shall allow him a period of time for him to reply. Without prejudice to the provisions of sub-article (3) of article 392A and notwithstanding any other provision of this Code or any other law, if the accused persists in his statement that he is guilty of the offence charged, the court shall, after recording the admission of guilt:

(a) order the record of the inquiry, together with all the exhibits in the case, to be, transmitted to the Attorney General, within three working days; and

(b) notify the Registrar of the Criminal Court that an admission of guilt has been made.

(2) The Attorney General shall be allowed the term of one month to present a note in the Criminal Court by which note he shall declare that the indictment presented before the Court of Magistrates as a court of inquiry and to which the accused person has admitted guilt, shall be considered as a bill of indictment; such declaration shall not in any way give rise to any nullity or other defect in the proceedings notwithstanding the other provisions of this Code and of any other law.

(3) Where the Criminal Court is notified by the Court of Magistrates as a court of inquiry, about the admission of guilt in accordance with paragraph (b) of sub-article (1), the Criminal Court shall, within two months from the date of notification, appoint the date of hearing.

(4) The Criminal Court shall, either *ex officio*, upon a request by the Attorney General or by the accused, examine that evidence that it deems relevant for the purposes of punishment, and after examining the submissions by the Attorney General and the accused relating to the punishment, proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.

(5) (a) The accused and the Attorney General may request the Criminal Court to apply a sanction or measure or, where provided for by law, a combination of sanctions or measures, of the kind and quantity agreed between them, and to which the accused can be sentenced.

(b) If the court is satisfied that the sanction or the measure, or the combination of sanctions and measures requested, as provided for in paragraph (a), is one which it would be lawful for it to impose upon conviction of the offence for which the accused has pleaded guilty, the court shall proceed to pass the sentence indicated to it by the parties declaring in its judgement that the sentence being awarded is being so awarded at the request of the parties.

(c) The provisions of sub-articles (3), (4) and (5) of article 453A shall, *mutatis mutandis*, apply to this sub-article.

(6) Notwithstanding any other provisions of this Code or any other law, an admission made and recorded according to the provisions of sub-article (1) may not be revoked or withdrawn.

(7) When the Criminal Court deems that a formality was not observed according to this article or there is any other defect in the proceedings, the Criminal Court shall send all proceedings back to the Court of Magistrates as a court of inquiry to commence the inquiry anew."

Addition of new  
article to the  
Code.

**52.** Immediately after article 392B of the Code there shall be added the following new article:

"Payment of costs upon admission of guilt.

392C. (1) Upon an admission of guilt by the accused, whether during the examination or at any stage of the proceedings, the court shall, before proceeding to pronounce judgement, ascertain whether an inquiry relating to the *in genere* or a *repertus* has been held and if in the affirmative, the court shall, in pronouncing judgement or in any subsequent order, sentence the person convicted or the persons convicted, jointly or severally, to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the process verbal of the inquiry, within such period and in such amount as shall be determined in the judgement or order:

Provided that where the said costs are not yet determined at time of pronouncing the judgement or in the event that any expert or referee has not presented his report or the process verbal has not been concluded, the Registrar is empowered to determine the costs, and to proceed to their recovery from the person or persons convicted, wholly or in part, as directed by the court in its judgement:

Provided further that the Court shall, before proceeding to pronounce judgement as aforesaid and in making an order in terms of article 23B, ascertain whether an order as is referred to in articles 23A and 23D has been made, and if in the affirmative, the provisions of this sub-article shall, *mutatis mutandis*, apply to any such order.

(2) The provisions of article 533 shall *mutatis mutandis* apply to any order made under this article."

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Amendment of  
article 397 of  
the Code.

**53.** In sub-article (1) of article 397 of the Code, for the words "experiment or any other thing" there shall be substituted the words "experiment, the taking of any sample and any other measure or thing".

Substitution of  
article 399 of  
the Code.

**54.** Article 399 of the Code shall be substituted by the following new article:

"399. (1) When the court decides that the examination of any witness or any other process of the inquiry by a foreign authority is indispensably necessary, the request for legal assistance and the court's decision shall be served, within three working days, on the Attorney General who may, within five working days, make any submissions in writing as he may deem appropriate.

(2) The accused may, not later than four working days from any such decision, submit an additional request for the examination of any witness or any other process of the inquiry, and appoint some person to represent him at the examination or process. Such term may, upon good cause being shown, be extended:

Provided that such term as extended shall not exceed thirty days from the date of the decision.

(3) The court shall order the transmission of the request for legal assistance to the foreign authority within three working days upon the expiry of the period referred to in sub-article (2).

(4) The Criminal Court shall have competence to order the transmission of the request for legal assistance to the foreign authority upon an application being made by the Attorney General or the accused upon the expiry of the time period referred to in sub-article (3).

(5) The provisions of article 622B of the Code of Organization and Civil Procedure providing for the audio-recording or video-recording of evidence or by any other means shall apply to a request for the examination of any witness under this article.

(6) The provisions of articles 618 and 619 of the Code of Organization and Civil Procedure shall apply for the purposes of this article:

Provided that where there exists any treaty, convention, agreement or understanding between Malta and

another country or which applies to both such countries or to which both such countries are a party, the request shall be made and transmitted in terms of the said treaty, convention, agreement or understanding.

(7) For purposes of this article a letter of request shall contain the following:

- (a) the object of and the reason for the request;
- (b) details of the person or persons named in the request including, where available, address, date of birth and nationality;
- (c) a description of the offences with which a person has been charged and the punishment to which the offences are liable;
- (d) a summary of the facts giving rise to the request; and
- (e) a copy of the relevant legislation that criminalises the conduct attributed to the offender and gives information on the offence, penalty and rights a person may be afforded."

**55.** In paragraph (c) of sub-article (1) of article 402 of the Code, for the words "article 399." there shall be substituted the words "article 399;" and immediately thereafter there shall be added the following new paragraph:

Amendment of article 402 of the Code.

"(d) when the court accedes to a request made in terms of article 46(3) of the Constitution."

**56.** Immediately after sub-article (7) of article 405 of the Code, there shall be added the following new sub-article:

Amendment of article 405 of the Code.

"(8) The court shall proceed to take any other action or measure relating to the inquiry as may be demanded in writing by the Attorney General."

**57.** Immediately after sub-paragraph (vii) of paragraph (b) of sub-article (1) of article 413 of the Code, there shall be added the following new sub-paragraph:

Amendment of article 413 of the Code.

"(viii) the judgement of the inferior court is null by reason of lack of formality or procedural requirements;"



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Amendment of  
article 435AA  
of the Code.

**58.** In sub-article (1) of article 435AA of the Code, for the words "through one or more accounts of the suspect." there shall be substituted the words "through one or more accounts in the name of the suspect, or through one or more accounts suspected to have been used in the commission of the offence or which could provide information about the offence or the circumstances thereof, whether before, during or after the commission of the offence, including any such accounts in the name of legal persons."

Amendment of  
article 435BA  
of the Code.

**59.** In sub-article (2) of article 435BA of the Code, immediately after the words "435AA" there shall be added the words "or through one or more accounts suspected to have been used in the commission of the offence or which could provide information about the offence or the circumstances thereof, whether before, during or after the commission of the offence, including any such accounts in the name of legal persons".

Amendment of  
article 522 of  
the Code.

**60.** Article 522 of the Code shall be amended as follows:

(a) in sub-article (2) thereof, for the words "be liable to the punishment of imprisonment not exceeding three months" there shall be substituted the words "be liable to a fine (*multa*) of not less than two thousand and three hundred euro (€2,300) and not more than four thousand and six hundred euro (€4,600) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment"; and

(b) in sub-article (4) thereof, for the words "but shall be liable to the punishment of a fine (*multa*)" there shall be substituted the words "but shall be liable, on conviction, to the punishment of a fine (*multa*)".

Amendment of  
article 525 of  
the Code.

**61.** Article 525 of the Code shall be amended as follows:

(a) in sub-article (2) thereof, for the words "and of article 397(5)" there shall be substituted the words "of article 397(5) and of article 399"; and

(b) sub-article (3) thereof shall be substituted by the following:

"(3) The provisions of article 397, of sub-articles (2) to (4), both inclusive, of articles 467 and 623 shall, *mutatis mutandis*, also be applied by the Court of Magistrates in cases falling within its jurisdiction as court of criminal judicature under any other provision of this Code or of any other law."

**62.** Immediately after article 531 there shall be added the following new article:

Addition of new article to the Code.

"Subsequent notice.

531A. In proceedings before a court of criminal justice, where the party charged or accused, having been notified with the date of the first hearing in accordance with the provisions of this Code, has appeared for the said hearing, no subsequent notice need be given of any date to which a case which has been set down for hearing as aforesaid or has started to be heard is put off and it shall be the responsibility of the person charged or accused to verify such date:

Provided that this provision shall also apply where the person charged or accused, notwithstanding not having been notified in accordance with the provisions of this Code, still appears for the hearing."

**63.** In article 542 of the Code, for the words "by a brother on behalf of his sister or vice versa," there shall be substituted the words "by one of the siblings on behalf of the other,".

Amendment of article 542 of the Code.

**64.** Article 548 of the Code shall amended as follows:

Amendment of article 548 of the Code.

(a) the article shall be renumbered as sub-article (1) thereof;

(b) in the third proviso to sub-article (1) thereof, as renumbered, for the words "the relevant facts." there shall be substituted the words "the relevant facts, where the offence to be investigated is one which carries a maximum term of imprisonment of seven years or more."; and

(c) immediately after sub-article (1) thereof, as renumbered, there shall be added the following new sub-article:

"(2) Experts employed in the inquest for the purpose of collecting and examining any dactyloscopic data and samples for analyzing human DNA shall transmit to the Executive Police copies of the dactyloscopic data and DNA profiles together with any other information related to the dactyloscopic data and DNA profile.

For the purpose of this article:

"dactyloscopic data" means fingerprint images, images of fingerprint latents, palm prints, palm print latents, writers palm prints and writers palm print latents; and

"DNA profile" means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, that is the particular molecular structure at the various DNA locations (loci).".

Amendment of  
article 550 of  
the Code.

**65.** Article 550 of the Code shall be amended as follows:

(a) in sub-article (1) thereof:

(i) immediately after the words "or other persons who took part in the inquest" there shall be added the words "or gave evidence during the Magisterial inquest";

(ii) the words "in the inquest" shall be deleted; and

(iii) immediately after the words "as court of criminal inquiry" there shall be added the words "during the compilation stage";

(b) sub-article (2) thereof shall be substituted by the following new sub-article:

"(2) Nevertheless during the period for the conclusion of compilation of evidence referred to in article 401(1) up to the time when the court decides whether there exist enough reasons for the accused to be indicted for an offence as referred to in article 401(2) or not, it shall be lawful for the Police, with the special permission of the Court of Magistrates as a court of criminal inquiry to call upon any person referred to in sub-article (1) to give evidence during the compilation proceedings before the same court on matters which are duly specified and mentioned by the court in its special permission; so however that after the conclusion of the compilation stage in accordance with article 402(1) and after the court will have decided whether there are enough reasons for the accused to be indicted for an offence as referred to in article 401(2) or not, the Attorney General may require the presence of any of those persons in accordance with the provisions of article 405 in order for them to give replies

on specific matters indicated by the Attorney General in his written request. The person summoned may also request the presence of any one of those persons for the purpose of the cross-examination."

**66.** In sub-article (1) of article 605 of the Code, for the words "The Commissioner of Police or his representative, a Magistrate, the Attorney General or his representative, the President of the Chamber of Advocates and the President of the Chamber of Legal Procurators shall, twice a year, draw up to the best of their knowledge -" there shall be substituted the words "The Commissioner of Police or his representative, the Senior Magistrate, the Attorney General or his representative, the President of the Chamber of Advocates and the President of the Chamber of Legal Procurators shall, twice a year, attend a meeting called by the Director, Criminal Courts and Tribunals, to draw up to the best of their knowledge -".

Amendment of article 605 of the Code.

**67.** Immediately after article 647B of the Code there shall be added the following new article:

Addition of new article to the Code.

"Cross-border cooperation, particularly in combating terrorism and cross-border crime.

647C. (1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for -

(a) the taking of and supply of dactyloscopic data; or

(b) the taking and examination of a non-intimate sample; or

(c) the DNA profile of a person suspected in that place of a relevant offence or of a person accused, in proceedings before the courts of that place or international tribunal, of a relevant offence,

the Attorney General shall communicate the request to a Magistrate, who shall, upon receiving the request, order the arrest of the requested person and the provisions of article 355AV(c) shall, *mutatis mutandis*, apply in the execution of a request communicated under this article.

(2) The Magistrate shall transmit the said data, sample or profile, together with any report or result of the examination, to the Attorney General.

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(3) For the purposes of this article the terms "DNA profile" and "dactyloscopic data" shall have the meaning respectively assigned to them in article 548; "relevant offence" shall have the meaning assigned to it in article 435D.

(4) The provisions of article 649(2) and (5) shall *mutatis mutandis* apply to a request made under this article."

Amendment of  
article 673 of  
the Code.

**68.** Article 673 of the Code shall be amended as follows:

(a) in sub-article (2) thereof, for the words "the application shall not be allowed where the Attorney General objects to the application." there shall be substituted the words "the application shall not be allowed where the Attorney General objects to the application:", and immediately thereafter there shall be added the following new proviso:

"Provided that, where the Attorney General objects to the application, the court may impose on the accused that the costs for the deposit and upkeep of the property, held by the Registrar, connected with criminal proceedings or with the crime, be borne by the accused."; and

(b) immediately after sub-article (2) thereof, there shall be added the following new sub-article:

"(2A) Notwithstanding the provisions of sub-article (2), where property connected with criminal proceedings or with the crime is held by the Registrar, the owner of that property may request the court that he be allowed to effect such maintenance works as may be required on the property; if the owner of the property does not make the request mentioned in this sub-article or, having made the request, and the request having been granted by the court, does not effect such maintenance works, the responsibility for any loss or damages suffered by the said property shall be borne by the said owner."

Amendment of  
article 676 of  
the Code.

**69.** In article 676 of the Code, for the words "of this Code" there shall be substituted the words "of this Code or of any other law".

Amendment of  
article 679 of  
the Code.

**70.** In article 679 of the Code, for the words "of this Code" there shall be substituted the words "of this Code or of any other law".

Addition of new  
article to the  
Code.

**71.** Immediately after article 685 of the Code there shall be added the following new article:

"Definition of property. 685A. For purposes of this Title "property" shall have the same meaning assigned to it by article 23B."

72. Immediately after article 698 of the Code there shall be added the following new article: Addition of new article to the Code.

"Power to make regulations. 699. Notwithstanding the other provisions of this Code and of any other law, the Minister may make regulations to regulate the methods of service of judicial acts under this Code."

## PART II

### Amendments to the Code of Organization and Civil Procedure

73. This Part amends the Code of Organization and Civil Procedure, and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code". Amendment of the Code of Organization and Civil Procedure. Cap. 12.

74. For paragraph (c) of article 81 of the Code there shall be substituted the following: Amendment of article 81 of the Code.

"(c) he has obtained the academic degree of Doctor of Law (LL.D.) in accordance with the provisions of the Statute, Regulations and Bye-Laws of the University of Malta, or such other qualification at masters level as the Minister, after consultation with the Senate of the University of Malta, may from time to time prescribe, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having read law in Malta or in a Member State;"

## PART III

### Amendments to the Medical and Kindred Professions Ordinance

75. This Part amends the Medical and Kindred Professions Ordinance, and it shall be read and construed as one with the Medical and Kindred Professions Ordinance, hereinafter in this Part referred to as "the Ordinance". Amendment of the Medical and Kindred Professions Ordinance. Cap. 31.

76. Immediately after article 40A of the Ordinance there shall be added the following new articles: Addition of new articles to the Ordinance.

"Offences  
related to the  
plant Khat.

40B. (1) Any person who -

(a) cultivates the plant Khat; or  
(b) imports or brings into, or  
exports from, Malta the plant Khat; or

(c) has in his possession  
(otherwise than in the course of transit  
through Malta or the territorial waters  
thereof) the whole or any portion of the  
plant Khat; or

(d) sells or otherwise deals in  
the whole or any portion of the plant  
Khat; or

(e) with another one or more  
persons in Malta or outside Malta  
conspires for the purposes of selling or  
dealing in the plant Khat in Malta  
against the provisions of this article or  
who promotes, constitutes, organises or  
finances the conspiracy,

shall be guilty of an offence against this  
Ordinance:

Provided that the term "dealing" in  
this article shall have the same meaning as  
that assigned to it by article 120A(1B).

(2) Every person charged with an  
offence against this article shall be tried in the  
Criminal Court or before the Court of  
Magistrates (Malta) or the Court of  
Magistrates (Gozo), as the Attorney General  
may direct, and if he is found guilty shall, in  
respect of such offence, be liable -

(a) on conviction by the  
Criminal Court to a punishment of  
imprisonment of not less for a term of  
not less than twelve months but not  
exceeding ten years and to a fine (multa)  
of not less than four hundred and sixty-  
five euro and eighty seven cents  
(465.87) but not exceeding twenty three  
thousand and two hundred and ninety-  
three euro and seventy-three cents  
(23,293.73); or

(b) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) to imprisonment for a term of not less than three months but not exceeding twelve months or to a fine (multa) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) but not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to both such imprisonment and fine.

Power of the Minister to amend the Fourth Schedule.

40C. The Minister responsible for Justice may, after consultation with the Minister responsible for the Police and with the Attorney General, amend the Fourth Schedule to this Ordinance."

77. Article 120A of the Ordinance shall be amended as follows: Amendment of article 120A of the Ordinance.

(a) immediately after sub-article (2D) thereof there shall be added the following new sub-articles

"(2E) (a) in giving a direction in accordance with sub-article (2), the Attorney General shall give due consideration to the guidelines included in the Fourth Schedule to this Ordinance;

(b) where the Attorney General has directed that the person accused is to be tried in the Criminal Court in accordance with sub-article (2), upon the termination of the inquiry, if the Court of Magistrates as a Court of Criminal Inquiry, decides that there are sufficient grounds for committing the accused for trial on indictment, the accused may by application to be filed in the Criminal Court within seven days from the conclusion of the inquiry demand of the said court to order that he be tried in the Court of Magistrates and the Criminal Court shall, after ordering the service of the application upon the Attorney General and granting him at least seven days to reply and after having heard oral submissions from the accused and the Attorney General if it considers this necessary, decide upon the court in which the accused is to be tried and the accused shall be tried in accordance with the decision of the Criminal Court:



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Provided that an application in terms of this paragraph may only be filed once in the course of any proceedings:

Provided further that persons, who on the date of the coming into force of this sub-article, are awaiting trial in the Criminal Court further to a direction given in terms of sub-article (2) may, notwithstanding the other provisions of this paragraph, file an application in the said court in terms of this paragraph within one month from the said date.

(2F) Where, upon conviction by the Criminal Court as provided in paragraph (a) of sub-article (2), after considering all the circumstances of the case including the amount and nature of the drug involved, the character of the person concerned, the number and nature of any previous convictions, including convictions in respect of which an order was made under the Probation Act and the provisions of the Fourth Schedule, the court is of the opinion that the punishment provided for in paragraph (a) of sub-article (2) would be disproportionate it may, giving reasons, apply the punishment provided in paragraph (b) of sub-article (2)."

Addition of new  
Schedule to the  
Ordinance.

**78.** Immediately after the Third Schedule to the Ordinance there shall be added the following new Schedule:

#### **"FOURTH SCHEDULE**

##### **(Article 120A)**

#### **Guidelines on the exercise of discretion under article 120A**

*These guidelines apply to all accused persons aged 16 and over.*

In determining the court in which a person accused of an offence against this Ordinance is to be tried the harm or the potential harm caused by the offence charged shall be the principal consideration.

The quantity of the drug is a principal consideration in assessing harm. The purity need not necessarily be taken into account at the initial stage but it may be considered in determining whether a person initially referred for trial before the Criminal Court is to be referred for trial before the Court of Magistrates at a later stage.

The role played by the accused in the crime shall if sufficient information is available, also be taken into consideration.

In such cases a distinction should be made between persons who played a leading role, a significant role or a lesser role in the commission of the offence.

*A leading role in the commission of the offence may be indicated by the following:*

- that the accused organized or directed buying and selling of a drug on a commercial scale;
- that the accused had substantial links to and significant influence on other persons in a chain;
- that the accused had close links to the original source of the drugs;
- that the accused made substantial financial gain or had an expectation of substantial financial gain;
- that the accused used a legitimate business as a cover for buying or selling drugs;
- that the accused has abused a position of trust or of significant responsibility in the commission of the offence, for example when the accused is a prison employee or a legal or medical professional.

*A significant role in the commission of the offence may be indicated by the following:*

- that the accused had an operational or a management function within a chain;
- that the accused involved others in the operation either by exerting pressure or influence upon them or by intimidation or offer of reward;
- that the accused was motivated by the prospect of financial or other advantage, irrespective of whether the accused was acting alone or with others;
- that the accused appeared to be aware and to understand the scale of the operation;
- that the accused, not being a person abusing a position of trust or responsibility, supplied the drug to a prisoner for gain but without coercion.

*A lesser role in the commission of the offence may be indicated by the following:*

- that the accused has performed a limited role in the commission of the offence and has acted under the direction of others;
- that the accused was engaged by others to commit the offence by pressure, coercion or intimidation;
- that the accused got involved in the commission of the offence because of his naivete or because he was exploited by others;
- that the accused had no influence on those above him in a chain;
- that the accused had very little, if any, understanding of the scale of the operation;
- that taking all circumstances into account it is reasonable to conclude that the accused was involved in the commission of the offence solely for the purpose of obtaining drugs for his own use;
- that the accused made no financial gain from the offence, for example in cases involving a common purchase of a minimal quantity for no profit or the sharing of a minimal quantity between friends on a non-commercial basis.

Aggravating factors resulting from the law shall be taken into consideration.

*Other aggravating factors that may be taken into consideration may include:*

- the sophisticated nature of concealment of the drug and the nature of any attempts to avoid detection;
- any attempts made to conceal or to dispose of evidence;
- the exposure of others to exceptional danger such as when a drug is cut with harmful substances;
- high purity of the drug;
- that the accused has targeted places intended to locate vulnerable persons or has sought to supply drugs to minors;

- that others, especially children and non-users were present when the accused committed the offence.

*The following amounts involved in the offence, when the said amounts are known, can be taken as indicative that a person should not be referred for trial before the Criminal Court:*

ecstasy: less than 300 tablets

LSD: less than 300 squares

amphetamine: less than 300 grams

ketamine: less than 150 grams.

Any assistance which the accused may have rendered to the Police or to the prosecution may also be taken into account."

#### **PART IV**

##### **Amendments to the Notarial Profession and Notarial Archives Act**

**79.** This Part amends the Notarial Profession and Notarial Archives Act, and it shall be read and construed as one with the Notarial Profession and Notarial Archives Act, hereinafter in this Part referred to as "the principal Act".

Amendment of the Notarial Profession and Notarial Archives Act. Cap. 55.

**80.** For paragraph (c) of sub-article (1) of article 6 of the principal Act there shall be substituted the following:

Amendment of article 6 of the principal Act.

"(c) he has obtained the academic degree of Doctor of Law (LL.D.) in accordance with the provisions of the Statute, Regulations and Bye-Laws of the University of Malta, or such other qualification at masters level as the Minister, after consultation with the Senate of the University of Malta, may from time to time prescribe, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having read law in Malta or in a Member State;"

#### **PART V**

##### **Amendments to the Traffic Regulation Ordinance**

**81.** This Part amends the Traffic Regulation Ordinance, and it shall be read and construed as one with the Traffic Regulation Ordinance, hereinafter in this Part referred to as "the Ordinance".

Amendment of the Traffic Regulation Ordinance. Cap. 65.

**82.** In article 56 of the Ordinance, for the words "the payment of the fine or the penalty is effected." there shall be substituted the

Amendment of article 56 of the Ordinance.

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words "the payment of the fine or the penalty is effected:", and immediately thereafter there shall be added the following new proviso:

"Provided that this article shall not apply in the event that a renewal of a licence, a change in the name of the registered owner or the transfer of the road licence in respect of that vehicle is occasioned as a result of the said vehicle being acquired by virtue of a judicial sale by auction, held under the authority of the Courts, by the original vendor of the vehicle on account of non-payment of the purchase price."

## PART VI

### Amendments to the Conduct Certificates Ordinance

Amendment of the Conduct Certificates Ordinance. Cap. 77.

**83.** This Part amends the Conduct Certificates Ordinance, and it shall be read and construed as one with the Conduct Certificates Ordinance, hereinafter in this Part referred to as "the Ordinance".

Removal of Form C of the Ordinance.

**84.** Sub-article (2) of article 4 of the Ordinance and Form C in the First Schedule to the Ordinance shall be deleted.

Amendment of article 5 of the Ordinance.

**85.** In paragraph (d) of article 5 of the Ordinance the words "Probation Act." shall be substituted with the words "Probation Act;" and immediately thereafter there shall be added the following new paragraph:

"(e) it is a conviction of a person with no previous convictions in respect of which a punishment consisting of a fine (*multa*) of not more than two hundred euro was imposed and paid."

Amendment of article 8 of the Ordinance.

**86.** In article 8 of the Ordinance the words "in passing sentence, or at any time thereafter," shall be deleted.

## PART VII

### Amendment to the Dangerous Drugs Ordinance

Amendment of the Dangerous Drugs Ordinance. Cap. 101.

**87.** This Part amends the Dangerous Drugs Ordinance and it shall be read and construed as one with the Dangerous Drugs Ordinance, hereinafter in this Part referred to as "the Ordinance".

Amendment of article 22 of the Ordinance.

**88.** Article 22 of the Ordinance shall be amended as follows:

(a) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

"(2A) (a) in giving a direction in accordance with sub-article (2) the Attorney General shall give due consideration to the guidelines included in the Fourth Schedule to this Ordinance;

(b) where the Attorney General has directed that the person accused be tried in the Criminal Court in accordance with sub-article (2), upon the termination of the inquiry, if the Court of Magistrates, as a Court of Criminal Inquiry, decides that there are sufficient grounds for committing the accused for trial on indictment, the accused may, by application to be filed in the Criminal Court within seven days from the conclusion of the inquiry, demand the said court to order that he be tried in the Court of Magistrates and the Criminal Court shall, after ordering the service of the application upon the Attorney General and granting him at least seven days to reply and after having heard oral submissions from the accused and the Attorney General, if it considers this necessary, decide upon the court in which the accused is to be tried and the accused shall be tried in accordance with the decision of the Criminal Court:

Provided that an application in terms of this paragraph may only be filed once in the course of any proceedings:

Provided further that persons who, on the date of the coming into force of this sub-article, are awaiting trial in the Criminal Court further to a direction given in terms of sub-article (2) may, notwithstanding the other provisions of this paragraph, file an application in the said court in terms of this paragraph within one month from the said date.

(2B) Where, upon conviction by the Criminal Court as provided in paragraph (a) of sub-article (2), after considering all the circumstances of the case including the amount and nature of the drug involved, the character of the person concerned, the number and nature of any previous convictions, including convictions in respect of which an order was made under the Probation Act and the provisions of the Fourth Schedule, the court is of the opinion that the punishment provided for in paragraph (a) of sub-article (2) would be disproportionate it may, giving reasons, apply the punishment provided in paragraph (b) of sub-article (2)."

**89.** Article 22C of the Ordinance shall be amended as follows:

(a) in sub-article (8) thereof, for the words "Any decision

Amendment of  
article 22C of  
the Ordinance.

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revoking" there shall be substituted the words "Subject to sub-article (9) any decision revoking";

(b) immediately after sub-article (8) thereof, there shall be added the following new sub-article:

"(9) Where a decision has been taken revoking the forfeiture of any movable or immovable property under this article, and provided that the person convicted or the body corporate, or the person convicted and the body corporate in solidum, as the case may be, have not been so sentenced, the Court shall sentence the said persons, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure."

Addition of new  
Schedule to the  
Ordinance.

90. Immediately after the Third Schedule to the Ordinance there shall be added the following new Schedule:

**"FOURTH SCHEDULE  
(Article 22)  
Guidelines on the exercise of discretion**

*These guidelines apply to all accused persons aged 16 and over.*

In determining the court in which a person accused of an offence against this Ordinance is to be tried the harm or the potential harm caused by the offence charged shall be the principal consideration.

The quantity of the drug is a principal consideration in assessing harm. The purity need not necessarily be taken into account at the initial stage but it may be considered in determining whether a person initially referred for trial before the Criminal Court is to be referred for trial before the Court of Magistrates at a later stage.

The role played by the accused in the crime shall, if sufficient information is available, also be taken into consideration.

In such cases a distinction should be made between persons who played a leading role, a significant role or a lesser role in the commission of the offence.

*A leading role in the commission of the offence may be indicated by the following:*

- that the accused organized or directed buying and selling of a drug on a commercial scale;
- that the accused had substantial links to and significant influence on other persons in a chain;
- that the accused had close links to the original source of the drugs;
- that the accused made substantial financial gain or had an expectation of substantial financial gain;
- that the accused used a legitimate business as a cover for buying or selling drugs;
- that the accused has abused a position of trust or of significant responsibility in the commission of the offence, for example when the accused is a prison employee or a legal or medical professional.

*A significant role in the commission of the offence may be indicated by the following:*

- that the accused had an operational or a management function within a chain;
- that the accused involved others in the operation either by exerting pressure or influence upon them or by intimidation or offer of reward;
- that the accused was motivated by the prospect of financial or other advantage, irrespective of whether the accused was acting alone or with others;
- that the accused appeared to be aware and to understand the scale of the operation;
- that the accused, not being a person abusing a position of trust or responsibility, supplied the drug to a prisoner for gain but without coercion.



*A lesser role in the commission of the offence may be indicated by the following:*

- that the accused has performed a limited role in the commission of the offence and has acted under the direction of others;
- that the accused was engaged by others to commit the offence by pressure, coercion or intimidation;
- that the accused got involved in the commission of the offence because of his naivete or because he was exploited by others;
- that the accused had no influence on those above him in a chain;
- that the accused had very little, if any, understanding of the scale of the operation;
- that taking all circumstances into account it is reasonable to conclude that the accused was involved in the commission of the offence solely for the purpose of obtaining drugs for his own use;
- that the accused made no financial gain from the offence, for example in cases involving a common purchase of a minimal quantity for no profit or the sharing of a minimal quantity between friends on a non-commercial basis.

Aggravating factors resulting from the law shall be taken into consideration.

*Other aggravating factors that may be taken into consideration may include:*

- the sophisticated nature of concealment of the drug and the nature of any attempt to avoid detection;
- any attempts made to conceal or to dispose of evidence;
- the exposure of others to exceptional danger such as when a drug is cut with harmful substances;
- high purity of the drug
- that the accused has targeted places intended to locate vulnerable persons or has sought to supply drugs to minors;

- that others, especially children and non-users were present when the accused committed the offence.

*The following amounts involved in the offence, when the said amounts are known, can be taken as indicative that a person should not be referred for trial before the Criminal Court:*

- heroin and cocaine: less than 100 grams
- cannabis: less than 300 grams

Assistance which the accused may have rendered to the Police or to the prosecution may also be taken into account."

**91.** Article 34 of the Ordinance shall be re-numbered as sub-article (1) thereof and in sub-article (1) as re-numbered for the words "any of the Schedules to this Ordinance." there shall be substituted the words "the First, the Second and the Third Schedules to this Ordinance." and immediately thereafter there shall be added the following sub-article:

Amendment of article 34 of the Ordinance.

"(2) The Minister responsible for Justice may, after consultation with the Minister responsible for the Police and with the Attorney General, amend the Fourth Schedule to this Ordinance."

## **PART VIII**

### **Amendment to the Central Bank of Malta Act**

**92.** This Part amends the Central Bank of Malta Act and it shall be read and construed as one with the Central Bank of Malta Act, hereinafter in this Part referred to as "the Act".

Amendment of the Central Bank of Malta Act, Cap. 204.

**93.** In article 52 of the Act the words "in relation to the euro" shall be deleted.

Amendment of article 52 of the Act.

**94.** In article 53 of the Act the words "and in the case where the offences relate to the euro," shall be deleted.

Amendment of article 53 of the Act.

## **PART IX**

### **Amendment of the Extradition Act**

**95.** This Part amends the Extradition Act and it shall be read and construed as one with the Extradition Act, hereinafter in this Part referred to as "the Act".

Amendment of the Extradition Act, Cap. 276.

**96.** In article 2 of the Act, immediately before the definition "arrangement" there shall be added the following new definition:

Amendment of article 2 of the Act.

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" "accused person" includes a person, in respect of whom a warrant is issued, who is wanted in a designated foreign country for the purposes of conducting a criminal prosecution for the commission of an offence specified in the warrant."

## PART X

### Amendment of the Prevention of Money Laundering Act

Amendment of  
the Prevention  
of Money  
Laundering Act.  
Cap. 373.

**97.** This Part amends the Prevention of Money Laundering Act and it shall be read and construed as one with the Prevention of Money Laundering Act, hereinafter in this Part referred to as "the Act".

Amendment of  
article 3 of the  
Act.

**98.** In subparagraph (ii) of paragraph (a) of sub-article (2A) of article 3 of the Act for the words "or to both such fine and imprisonment." there shall be substituted the words "or to both such fine and imprisonment:" and immediately thereafter there shall be added the following proviso to paragraph (a):

"Provided that:

(i) in giving a direction in accordance with this sub-article the Attorney General shall give due consideration to the age of the offender, the prior conduct of the offender, the value of the property laundered and all the other circumstances of the offence;

(ii) where the Attorney General has directed that the person accused is to be tried in the Criminal Court in accordance with this sub-article, upon the termination of the inquiry, if the Court of Magistrates as a Court of Criminal Inquiry decides that there are sufficient grounds for committing the accused for trial on indictment, the accused may, by application to be filed in the Criminal Court within seven days from the conclusion of the inquiry, demand the said court to order that he be tried in the Court of Magistrates and the Criminal Court shall, after ordering the service of the application upon the Attorney General and granting him at least seven days to reply and after having heard oral submissions from the accused and the Attorney General if it considers this necessary, decide upon the Court in which the accused is to be tried and the accused shall be tried in accordance with the decision of the Criminal Court:

Provided that an application in terms of this sub-paragraph may only be filed once in the course of any

proceedings:

Provided further that persons who on the date of the coming into force of this sub-paragraph are awaiting trial in the Criminal Court further to a direction given in terms of this sub-article may, notwithstanding the other provisions of this sub-article, file an application in the said court in terms of this sub-paragraph within one month from the said date;

(iii) where upon conviction the accused is liable to the punishment provided in terms of sub-paragraph (a)(i) of this sub-article and the court competent to sentence the accused is of the opinion that when it takes into account the age of the offender, the prior conduct of the offender, the value of the property laundered and all the other circumstances of the offence, the punishment provided for in sub-paragraph (a)(i) of this sub-article would not be appropriate, it may, giving reasons apply the punishment provided in sub-paragraph (ii) of this sub-article."

**99.** Article 7 of the Act shall be amended as follows:

Amendment of  
article 7 of the  
Act.

(a) in sub-article (8) thereof, for the words "Any decision revoking" there shall be substituted the words "Subject to sub-article (9) any decision revoking";

(b) immediately after sub-article (8) thereof, there shall be added the following new sub-article:

"(9) Where a decision has been taken revoking the forfeiture of any movable or immovable property under this article, and provided that the person convicted or the body corporate, or the person convicted and the body corporate in solidum, as the case may be, have not been so sentenced, the Court shall sentence the said persons, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure."

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## PART XI

### Amendment of the Lotteries and Other Games Act

Amendment of  
the Lotteries  
and Other  
Games Act.  
Cap. 438.

**100.** This Part amends the Lotteries and Other Games Act and it shall be read and construed as one with the Lotteries and Other Games Act, hereinafter in this Part referred to as "the Act".

Amendment of  
article 67 of the  
Act.

**101.** In the third proviso to sub-article (1) of article 67 of the Act for the words "not more than seven thousand euro (€7,000.00)." there shall be substituted the words "not more than seven thousand euro (€7,000.00):" and immediately thereafter there shall be added the following new proviso:

"Provided further that where the court, after convicting the accused, is of the opinion that when it takes into account the age of the offender, the previous conduct of the offender, the effects of the offence, the means through which the offence was committed and all other circumstances of the offence, the punishment provided for in sub-article (1) and in the first proviso thereto is not appropriate, it may, notwithstanding the other provisions of the third proviso of this sub-article, apply the punishments established in the said third proviso."

Passed by the House of Representatives at Sitting No. 181 of the 18th July, 2014.

ANĠLU FARRUGIA

*Speaker*

RAYMOND SCICLUNA

*Clerk to the House of Representatives*