

CHAPTER 373

PREVENTION OF MONEY LAUNDERING ACT

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

23rd September, 1994

ACT XIX of 1994 as amended by: Act II of 1998; Legal Notice 71 of 1999; Acts XXXI of 2001, III of 2002, and III and XIII of 2004; Legal Notice 176 of 2005; Acts VI of 2005 and XXVIII of 2006; Legal Notice 425 of 2007; Act XXXI of 2007; Legal Notice 105 of 2008; Act VII of 2010; Legal Notice 426 of 2012; and Acts XXXVIII of 2014, III, VIII of 2015, XXVIII of 2017, XLII of 2018, VII and XXXI of 2019, I and VIII of 2020, V, XV of 2021 and XLIII of 2021.

1. The short title of this Act is the Prevention of Money Laundering Act. Short title.

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

"criminal activity" means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to:

- (a) a crime or crimes specified in Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna reproduced (in the English language only) in the First Schedule to this Act; or
- (b) one of the offences listed in the Second Schedule to this Act;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2 May, 1992 as amended by the Protocol signed at Brussels on the 17 March, 1993 and as may be amended by any subsequent Acts;

"European Supervisory Authority" means the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council, or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council or the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council;

"funding of terrorism" means the conduct described in articles 328B and 328F to 328I, both inclusive, of the Criminal Code;

Cap. 9.

"Member State" means a Member State of the European Union and includes an EEA State;

"Minister" means the Minister responsible for finance;

"money laundering" means -

- (i) the conversion or transfer of property knowing

Interpretation.
Amended by:
XXXI. 2001.2;
III. 2004.79;
L.N. 425 of 2007;
XXXI. 2007.43;
VII. 2010.59;
III. 2015.2;
XXVIII. 2017.2.

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

- (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (v) attempting any of the matters or activities defined in the above foregoing sub-paragaphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;
- (vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v);

Cap. 9.

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

"property" means property and assets of every kind, nature and description, whether movable or immovable, whether corporeal or incorporeal, tangible or intangible, legal documents or instruments evidencing title to, or interest in, such property or assets and, without derogation from the generality of the foregoing, shall include -

- (a) any currency, whether or not the same is legal tender in Malta, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including one payable to bearer or endorsed payable to bearer whether expressed in euro or any other foreign currency;
- (b) cash or currency deposits or accounts with any bank, credit or other institution as may be prescribed which carries or has carried on business in Malta;

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

(d) land or any interest therein;

"the Unit" means the unit established by article 15.

(2) (a) A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity.

(b) A person can be separately charged and convicted of both a money laundering offence under this Act and of an underlying criminal activity from which the property or the proceeds, in respect of which he is charged with money laundering, derived.

(c) For the purposes of this sub-article, "underlying criminal activity" refers to the criminal activity from which the property or other proceeds, which are involved in a money laundering offence under this Act have been directly or indirectly derived.

PART I

*Added by:
XXXI. 2001.3.*

INVESTIGATION AND PROSECUTION OF OFFENCES

3. (1) Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding two million and five hundred thousand euro (€2,500,000), or to imprisonment for a period not exceeding eighteen years, or to both such fine and imprisonment:

Provided that an act of money laundering shall be aggravated when:

(a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA; or

(b) the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 and has committed the offence in the exercise of his professional activities:

Provided further that the Court may impose any one (1) or more of the following additional sanctions:

(a) in the case where an act of money laundering is committed by natural persons:

(i) the temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;

(ii) the temporary or permanent disqualification

Offences.

*Amended by:
III. 2002.166;
L.N. 425 of 2007;
XXXI. 2007.44;
L.N. 105 of 2008;
XXXVIII. 2014.98;
III. 2015.4;
VIII. 2015.43;
XV. 2021.2.*

- from the practice of commercial activities;
- (iii) the temporary bans on running for elected or public office;
- (b) in the case where an act of money laundering is committed by a body of persons, whether corporate or unincorporate:
- (i) the exclusion from entitlement to public benefits or public aid;
 - (ii) the temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;
 - (iii) the temporary or permanent disqualification from the practice of commercial activities;
 - (iv) the placing under judicial supervision;
 - (v) its dissolution and winding up;
 - (vi) the temporary or permanent closure of establishments which have been used for committing the offence.

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

Direction by the
Attorney General.

- (2A) (a) Every person charged with an offence of money laundering under this Act 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 be liable -
- (i) on conviction by the Criminal Court to the punishment of imprisonment for a term of not less than four years but not exceeding eighteen years, or to a fine (*multa*) of not less than fifty thousand euro (€50,000) but not exceeding two million and five hundred thousand euro (€2,500,000), or to both such fine and imprisonment; or
 - (ii) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) to the punishment of imprisonment for a term of not less than twelve months but not exceeding nine years, or to a fine (*multa*) of not less than twenty thousand euro (€20,000) but not exceeding two hundred and fifty thousand euro (€250,000), or to both such fine and imprisonment:

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 inquiry or within seven days from the date on which the accused is served with the bill of indictment, 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.

(b) Notwithstanding that the Attorney General has

directed in accordance with the provisions of paragraph (a) that a person be tried in the Criminal Court, he may, at any time before the filing of the bill of indictment or at any time after filing the bill of indictment before the jury is empanelled, and with the consent of the accused, direct that that person be tried before the Court of Magistrates, and upon such direction the Court of Magistrates as a court of criminal judicature shall become competent to try that person as if no previous direction had been given. Where the Attorney General has given such new direction after the filing of the bill of indictment, the registrar of the Criminal Court shall cause the record to be transmitted to the Court of Magistrates, and shall cause a copy of the Attorney General's direction to be served on the Commissioner of Police.

Cap. 9.

- (c) Notwithstanding the provisions of article 370 of the Criminal Code and without prejudice to the provisions of sub-article (2), the Court of Magistrates shall be competent to try offences of money laundering under this Act as directed by the Attorney General in accordance with the provisions of this sub-article.

Cap. 101.

(3) In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply.

Cap. 9.

(4) Where it is established that an offence of money laundering under this Act was committed by an officer of a body corporate as is referred to in article 121D of the Criminal Code or by a person having a power of representation or having such authority as is referred to in that article and the offence was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the punishment laid down in sub-article (1):

Provided that where legal representation no longer vests in the said person, for purposes of this article, legal representation shall vest in the person occupying the office in his stead or in such person as is referred to in that article.

Cap. 9.

- (5) (a) Without prejudice to the provisions of article 23 of the Criminal Code the court shall, in addition to any punishment to which the person convicted of an offence of money laundering under this Act may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of sub-article (4), order the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said sub-article (4) and any property of or in the possession or under the control of any person found guilty as aforesaid or of a body corporate

as mentioned in this sub-article shall, unless proved to the contrary, be deemed to be derived from the offence of money laundering and liable to confiscation or forfeiture by the court even if in the case of immovable property such property has since the offender was charged passed into the hands of third parties, and even if the proceeds of property, movable or immovable, are situated in any place outside Malta:

Provided that, for the purposes of this sub-article, "proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property.

- (b) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine shall be recoverable 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](#).
Forfeiture of proceeds.
Cap. 12.
- (c) Where it is established that the value of the property of the person found guilty of an offence of money laundering under this Act is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.
Forfeiture of property derived from criminal activity.
- (6) Without prejudice to the provisions of article 5 of the [Criminal Code](#), the Maltese courts shall also have jurisdiction over any offence of money laundering under this Act in the same circumstances as are mentioned in article 121C of the [Criminal Code](#).
Cap. 9.
- (7) The provisions of article 248E(4) and Title IV of Part III of Book Second of the [Criminal Code](#) and those of article 22(3A)(b), (d) and (7) of the [Dangerous Drugs Ordinance](#) shall apply *mutatis mutandis* to the offence of money laundering under this Act.
Cap. 9.
Cap. 101.

- 4.** (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in article 3, he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporate) named in the order who appears to be in possession of particular material or material of a particular description which

Additional powers of investigation.
Amended by:
III. 2004.80;
XXVIII. 2006.106;
L.N. 425 of 2007;
XXXI. 2007.45;
III. 2015.5;
XXVIII. 2017.23;
VIII.2020.85.

is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with, the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for such material.

(2) Where an investigation order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

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

(3) An investigation order -

- (a) shall not confer any right to production of, access to, or search for communications between an advocate or legal procurator and his client, and between a clergyman and a person making a confession to him, which would in legal proceedings be protected from disclosure by article 642(1) of the Criminal Code or by article 588(1) of the Code of Organization and Civil Procedure;
- (b) shall, without prejudice to the provisions of the foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and
- (c) may be made in relation to material in the possession of any government department.

Cap. 9.

Cap. 12.

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

(5) Any person who, having been ordered to produce or grant access to material as provided in sub-article (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

(6) Together with or separately from an application for an

investigation order, the Attorney General may, in the circumstances mentioned in sub-article (1), apply to the Criminal Court for an order (hereinafter referred to as an "attachment order") -

- (a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;
- (b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and
- (c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

(6A) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this sub-article, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.

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

- (a) unless it concurs with the Attorney General that there is reasonable cause as provided in sub-article (1); and
- (b) in the case of an investigation order, unless the court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates -
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of communications referred to in sub-article (3)(a).

(8) The provisions of article 381(1)(a), (b) and (e) and of article 382(1) of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to the attachment order.

Cap. 12.

(9) An investigation order shall be served on the persons referred to in sub-article (1) and an attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police or by an officer of the issuing authority or by an officer of the Courts

Substituted by:
XXVIII. 2017.3.

or of the Asset Recovery Bureau:

Provided that such orders may also be served on the garnishee and the persons referred to in sub-article (1), except for the suspect, by electronic mail in which case the person upon whom the order is served shall acknowledge receipt by return electronic mail by not later than one working day from such service. In default of receipt of such acknowledgement the order shall be served physically by any of the officers referred to in this sub-article without prejudice to the validity of the service made by electronic mail:

Cap. 101.

Provided further that the procedure stipulated in this sub-article shall apply, in addition to that provided in sub-article (9) of article 24A of the Dangerous Drugs Ordinance, with regard to service of investigation orders and attachment orders issued under the said Ordinance.

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other movable property attached as provided in sub-article (6)(a) or in the transfer or disposal by the suspect of any movable or immovable property in contravention of sub-article (6)(c), the fine shall always be at least twice the value of the money or property in question:

Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

(11) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in sub-article (9), cease to be operative on the expiration of six (6) months from the date on which it is made; and the court may, upon application of the Attorney General, and where it is satisfied that sufficient grounds exist, extend the validity of the attachment order for another six (6) months. The court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regards to the offence mentioned in article 3 is available:

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

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

(13) For the purpose of hearing on oath a person as provided in sub-article (12) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a court of criminal inquiry as well as the powers mentioned in article 554 of the [Criminal Code](#); provided that such hearing shall always take place behind closed doors.

Cap. 9.

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

4A. The provisions of article 30B of the [Dangerous Drugs Ordinance](#) shall apply *mutatis mutandis* to proceeds within the meaning of article 3(5).

Applicability of Dangerous Drugs Ordinance.

Added by:
III. 2002.166.
Cap. 101.

4B. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in article 3, he may apply to the Criminal Court for an order (hereinafter referred to as a "monitoring order") requiring a bank to monitor for a specified period the transactions or banking operations being carried out 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. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring and, once the information is collated, the person or authority receiving the information shall transmit that information to the Attorney General.

Monitoring order.
Added by:
VII. 2010.60.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

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

Freezing of
property of person
accused.

Amended by:
L.N. 425 of 2007;
L.N. 426 of 2012;
III. 2015.6;
XXXI.2019.16.

5. (1) Where a person is charged under article 3, the court shall at the request of the prosecution make an order -

- (a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and
- (b) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the court may also -

- (a) authorise the payment of debts which are due by the accused to bona fide creditors and which were contracted before such order was made; and
- (b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

- (a) become operative and binding on all third parties immediately it is made, and the Director of the Asset Recovery Bureau shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and
- (b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

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

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

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

(6) When such order ceases to be in force as provided in sub-article (2)(b) the Director of the Asset Recovery Bureau shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of

that order.

(7) Where the court does not proceed forthwith to make an order as required under sub-article (1), the court shall forthwith make a temporary freezing order having the same effect as an order made under this article, which temporary order shall remain in force until such time as the court makes the order required by the said article.

(8) Where for any reason whatsoever the court denies a request made by the prosecution for an order under sub-article (1), the Attorney General may, within three working days from the date of the court's decision, apply to the Criminal Court to make the required order and the provisions of this article shall apply mutatis mutandis to the order made by the Criminal Court under this sub-article as if it were an order made by the court under sub-article (1). The temporary freezing order made under sub-article (7) shall remain in force until the Criminal Court determines the application.

(9) The person charged may, within three working days from the date of the making of the order under sub-article (7), apply to the Criminal Court for the revocation of the order provided that the order shall remain in force unless revoked by the Criminal Court.

6. Any person who acts in contravention of a court order mentioned in article 5 shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the person charged the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

Penalty for
contravening court
order.

Amended by:
L.N. 425 of 2007;
XXXI. 2007.46.

7. (1) Where an order of forfeiture is made under article 3(5), the person found guilty and any other person having an interest may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of an offence under article 3 or is otherwise involved in the offence of money laundering, nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

Special court
proceedings.
Amended by:
XXXI. 2007.47;
XXXVIII. 2014.99;
V.2021.68.

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

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

(4) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than

thirty days from the date of the filing of the application.

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

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

Cap. 12.

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

(8) Subject to sub-article (9) any decision revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

Cap. 12.

(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.

Reversion of
property ceasing to
be forfeited.

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

Powers of
investigation in
connection with
offences
cognizable by
courts outside
Malta.
Added by:
II. 1998.9.

Cap. 101.

9. (1) Where the Attorney General receives a request made by the judicial or prosecuting authority of any place outside Malta for investigations to take place in Malta in respect of a person (hereinafter referred to as "the suspect") suspected by that authority of an act or omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence under article 3, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply to that application and to the suspect and to any investigation or attachment order made by the court as a result of that application.

(2) The words "investigation order" in sub-articles (2) and (5) of the same article 24A shall be read and construed as including an investigation order made under the provisions of this article.

(3) The words "attachment order" in article 24A(6A) of the Dangerous Drugs Ordinance shall be read and construed as including an attachment order made under the provisions of this article.

Cap. 101.

9A. Where the request referred to in the preceding article is made for the purpose of monitoring the transactions or banking operations being carried out through one or more accounts of a suspect, the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 4B shall apply *mutatis mutandis*.

Transactions or
banking operations
carried out through
one or more
accounts.

Added by:
VII. 2010.61.

10. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused") charged or accused in proceedings before the courts of that place of an offence consisting in an act or an omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence under article 3, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") having the same effect as an order as is referred to in article 22A(1) of the Dangerous Drugs Ordinance, and the provisions of the said article 22A shall, subject to the provisions of sub-article (2) of this article, apply *mutatis mutandis* to that order.

Freezing of
property of person
accused with
offences
cognizable by
courts outside
Malta.
Added by:
II. 1998.9.

Cap. 101.

(2) The provisions of article 24C(2) to (5) of the Dangerous Drugs Ordinance shall apply to an order made under this article as if it were an order made under the said article 24C.

Cap. 101.

(3) Article 22B of the Dangerous Drugs Ordinance shall also apply to any person who acts in contravention of a freezing order under this article.

Cap. 101.

11. (1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person described in the order shall be enforceable in Malta in accordance with the provisions of article 24D(2) to (11) of the Dangerous Drugs Ordinance.

Enforcement of
confiscation orders
made by courts
outside Malta
following
conviction for
offences
cognizable by
those courts.
Added by:
II. 1998.9.

Amended by:
VIII. 2015.43.
Cap. 101.

(2) For the purposes of this article "confiscation order" includes any judgment, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property as is described in sub-article (1).

The Director of the Asset Recovery Bureau to conduct enquiries.

Added by:

III. 2015.7.

Amended by:

XXXI.2019.17.

Rules and regulations.

Amended by:

VI. 2005.5;

L.N. 425 of 2007;

III. 2015.8;

XXVIII. 2017.4;

I.2020.2

11A. (1) Where the court makes any order as is referred to in article 5, it shall order the Director of the Asset Recovery Bureau to conduct inquiries to trace and ascertain the whereabouts of any moneys or other property, due or pertaining to or under the control of the person charged or accused or convicted, as the case may be.

(2) Whosoever is required by the Director of the Asset Recovery Bureau to provide information for the purpose of sub-article (1) shall comply with the demand within thirty days from the day of receipt of the demand.

(3) The demand made by the Director of the Asset Recovery Bureau and any reply thereupon in terms of this article, may be made by electronic mail.

12. (1) The Minister may, acting on the advice of the Unit, make rules or regulations generally with a view to combating money laundering and funding of terrorism or for the better carrying out of the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may by such rules or regulations require credit institutions, financial institutions and other undertakings and professions operating within the financial sector and other relevant sectors, to implement measures, procedures, systems and controls to prevent money laundering and the funding of terrorism, including identification, risk management, record-keeping, training and reporting.

(2) The Minister may by regulations extend the provisions of this Act in whole or in part and of any regulations made thereunder to categories of undertakings and to professions which engage in activities which, in the opinion of the Minister, are particularly likely to be used for money laundering purposes or funding of terrorism.

(3) The Minister, acting on the advice of the Unit, may make regulations to transpose, implement and give effect to the provisions and requirements of directives, regulations and any other legislative instruments of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder.

(4) The Minister may, in consultation with the Minister responsible for justice, by regulation amend, alter or add to the list of offences specified in the Second Schedule to this Act.

(5) The Minister shall, acting on the advice of the committee referred to in article 12A, designate, by order in the Gazette, those public functions in Malta and those held within international organisations accredited in Malta, which are to be considered as prominent public functions for the purpose of any regulations issued under this Act, and the list of any such functions shall be reviewed and updated from time to time:

Provided that any order issued in terms of this sub-article shall be made available to the European Commission upon publication in the Gazette.

(6) The Minister may prescribe by regulations any matter required to be prescribed by this Act.

12A. (1) The Minister may, by regulations made under this Act, establish a committee that shall be referred to as the National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism.

(2) The committee established under sub-article (1) shall draw up a national strategy and policies to combat money laundering, the funding of terrorism and the financing of the proliferation of weapons of mass destruction and co-ordinate any action to be taken to develop, implement and review the national strategy and policies, including the co-ordination of national risk assessments and the actions to be taken to address any threats, vulnerabilities and risks identified.

(3) The committee established under sub-article (1) shall be composed of the Permanent Secretary of the Ministry responsible for finance, the Permanent Secretary of the Ministry responsible for home affairs, the Permanent Secretary of the Ministry responsible for justice, the Governor of the Central Bank of Malta, the Commissioner for Revenue, the Chairman of the Malta Financial Services Authority, the Chairperson of the Malta Gaming Authority, the Commissioner of Police, the Attorney General, the Chairman of the Unit and the Chairperson of the Asset Recovery Bureau or their deputies.

(4) The committee may, whenever it deems so necessary or expedient, engage one or more persons, whom it considers to be in possession of suitable expertise, to assist it in carrying out specific tasks requiring such expertise.

(5) The Chairperson of the committee shall be the Permanent Secretary of the Ministry responsible for finance.

(6) The Minister shall prescribe by means of regulations the powers to be conferred on the committee and the procedures it is to follow for the proper carrying out of its functions.

(7) The remuneration payable, if any, to any member of the committee shall be determined by the Minister.

13. (1) The Minister may make rules or regulations to provide for criminal punishments, administrative penalties and other measures that may be imposed in respect of any contravention, breach or failure to comply with any rules, regulations or directives made under this Act:

Provided that:

- (a) criminal punishments so imposed shall not exceed a fine (*multa*) of one million euro (€1,000,000) or imprisonment for a term not exceeding five years, or both such fine and imprisonment as set out in the rules or regulations concerned; and
- (b) administrative penalties so imposed shall not exceed:

National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism.
Added by:
XXVIII. 2017.5.

Punishments, penalties and other measures.
Substituted by:
XXVIII. 2017.6.

- (i) five million euro (€5,000,000); or
- (ii) twice the amount of the benefit derived from the contravention, breach or failure to comply, where this can be determined; or
- (iii) ten *per centum* (10%) of the total annual turnover according to the latest approved available financial statements.

(2) The administrative penalties referred to under sub-article (1) shall be imposed by the Unit in accordance with policies and procedures established by the Board of Governors referred to in article 18, from time to time.

(3) The Unit may, in cross-border cases, co-operate with any foreign national or supranational body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in article 26(1), to co-ordinate the imposition of administrative penalties or other measures.

(4) Where an administrative penalty or other measure, as provided for in this article, is imposed in respect of a subject person carrying out relevant financial business, as defined under regulations in force from time to time under this Act, the Unit shall notify the relevant European Supervisory Authority of the action taken and, where applicable, the European Supervisory Authority shall also be notified of any pending appeal and the outcome thereof.

(5) For the purposes of this article and articles 13A and 13B the term "subject person" has the same meaning assigned to it by article 14 of this Act.

13A. (1) Whenever a subject person feels aggrieved by an administrative penalty imposed by the Unit in terms of rules and regulations made under article 13, and that administrative penalty exceeds five thousand euro (€5,000), whether imposed in respect of one or more contraventions, the subject person may appeal such administrative penalty both on points of law and fact.

(2) The appeal as referred to in sub-article (1) shall lie to the Court of Appeal (Inferior Jurisdiction) constituted in terms of article 41(9) of the Code of Organization and Civil Procedure.

(3) An appeal to the Court of Appeal (Inferior Jurisdiction) in terms of sub-article (1) shall be filed in the registry of the said Court within twenty days from the date when the imposition of the administrative penalty is notified to the subject person, and, saving the provisions of this article, such an appeal shall be regulated by the applicable provisions of the Code of Organization and Civil Procedure relating to appeals.

(4) The Court of Appeal (Inferior Jurisdiction) shall, without

Appeals from
administrative
penalties.
Added by:
III. 2015.9.
Substituted by:
XXVIII. 2017.7.
Amended by:
I.2020.3.

Cap. 12.

Cap. 12.

delay, set down the appeal for hearing at an early date, which date shall in no case be later than three (3) months from the date of the filing of the appeal.

(5) The Court of Appeal (Inferior Jurisdiction) shall hear the appeal which shall be decided within six (6) months from the date fixed for the original hearing of the appeal, and no adjournment beyond the said six (6) months shall be granted except either with the consent of the appellant and the respondent or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

(6) For the purposes of safeguarding the confidentiality of information and documents relating to the proceedings, the appeal before the Court of Appeal (Inferior Jurisdiction) filed in terms of this article shall be heard *in camera* and saving the provisions of article 13C the judgment shall not be published.

13B. (1) An administrative penalty, served on the subject person against whom it is imposed by means of a notice in writing, which is not appealed in accordance with the provisions of article 13A and which is not paid within twenty days from the date of notification, shall be recoverable as a civil debt, and the notice in writing shall, upon the service of a copy thereof by means of a judicial act on the subject person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the [Code of Organization and Civil Procedure](#).

Recovery of
administrative
penalties.
Added by:
XXVIII. 2017.8.
Amended by:
I.2020.4.

Cap. 12.

(2) Where the administrative penalty is appealed and is subsequently confirmed in whole or in part, the administrative penalty shall be enforceable in accordance with the procedure provided for in sub-article (1).

13C. (1) Any administrative penalty imposed by the Unit in terms of rules and regulations made under article 13, and which exceeds fifty thousand euro (€50,000), shall be subject to publication on the official website of the Unit, together with any other administrative measure imposed by the Unit in conjunction with that administrative penalty and the publication shall take place within five (5) working days from the date of notification of the administrative penalty to the subject person:

Publication of
administrative
penalties.
Added by:
XXVIII. 2017.8.
Substituted by:
I.2020.5.

Provided further that where the administrative penalty has been appealed in terms of article 13A, the Unit shall, without undue delay, publish information on the appeal, and thereafter on the status of the appeal and the outcome thereof, including information on any decision of the Court of Appeal (Inferior Jurisdiction) which alters or revokes in whole or in part that administrative penalty in question.

(2) The Unit shall publish on an anonymous basis the following administrative measures and penalties imposed by the Unit in terms of rules and regulations made under article 13:

(a) administrative penalties that do not exceed fifty thousand euro (€50,000); and

(b) administrative measures imposed by the Unit, except those envisaged under sub-article (1).

(3) Notwithstanding the provisions of sub-articles (1) and (2), where the Unit considers that the publication of an administrative measure or penalty may jeopardise the stability of financial markets or may jeopardise any on-going supervisory, analytical or investigative work, or it considers it to be disproportionate, the Unit may, in accordance with policies and procedures established by the Board of Governors in terms of sub-article (4), decide to delay the publication, or to publish that administrative measure or penalty on an anonymous basis, or not to publish such an administrative measure or penalty.

(4) The Board of Governors referred to in article 18 shall establish and publish policies and procedures to further regulate the publication of administrative measures and penalties.

PART II

FINANCIAL INTELLIGENCE ANALYSIS UNIT

Definitions.

*Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.
XXVIII. 2017.9;
XLIII.2021.7.*

14. In this Part, unless the context otherwise requires:

"competent authority" shall have the same meaning assigned to it by regulations in force from time to time under this Act or as may be prescribed under this Act;

"designated authority" means the Executive Police, the Attorney General and any Magistrate conducting inquiries relating to the "*in genere*" in terms of article 546 of the [Criminal Code](#);

"Europol" has the same meaning as assigned to it by Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016;

"financial analysis" means the results of operational and strategic analysis that has already been carried out by the Unit in pursuance of its tasks and functions under article 16(1)(a) and (f);

"financial information" means any type of information or data, such as data on financial assets, movement of funds or financial business relationships, which is already held by the Unit to prevent, detect, and effectively combat money laundering and terrorist financing, other than information or data gathered or held by the Unit in relation to its supervisory function under article 16(1)(c), article 16(1)(k)(ii), and article 26;

"law enforcement information" means any type of information or data, including but not limited to information on investigations,

freezing or seizure of assets or other investigative or provisional measures, and information on convictions and on confiscation and criminal records, which is already held by:

- (a) any designated authority in the context of preventing, detecting, investigating, or prosecuting criminal offences; and
- (b) public authorities or private entities in the context of preventing, detecting, investigating or prosecuting criminal offences, and which is available to designated authorities in line with the provisions of any other law applicable to them;

"subject person" shall have the same meaning assigned to it by regulations in force from time to time under this Act or as may be prescribed under this Act;

"supervisory authority" shall have the same meaning assigned to it by regulations in force from time to time under this Act or as may be prescribed under this Act;

"the Board" means the Board of Governors referred to in article 18;

"the Chairman" means the Chairman of the Board appointed under article 20;

"the Deputy Chairman" means the Deputy Chairman of the Board appointed under article 20;

"the Director" means the Director of the Unit appointed or recruited under article 23.

15. (1) There shall be a government agency, to be known as the Financial Intelligence Analysis Unit.

(2) The Unit shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of concluding memoranda of understanding or other agreements including with any foreign body, authority or agency as is referred to in article 16(1)(k), of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the borrowing of money.

Establishment of
the Unit.
Added by:
XXXI. 2001.4.
Amended by:
I.2020.6

(3) The Unit shall enter into an agency performance agreement with the Minister which agreement shall determine the funding of the agency and, without prejudice to the generality of article 16(1), any specific tasks within the scope of the functions of the Unit which are to be addressed and achieved by the Unit.

(4) The members of the Unit and all its employees shall abide by any Code of ethics applicable to public officers and shall, subject to any law to the contrary, have the same obligations thereunder:

Provided that the Unit may, with the concurrence of the

Minister, draw up service values and a Code of Ethics to supplement any public service Code of Ethics in respect of the Unit.

Functions of the Unit.

*Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5;
III. 2015.10;
XXVIII. 2017.10;
I.2020.7.*

16. (1) Subject to the other provisions of this Act and without prejudice to any other power or function conferred on it by this Act or by any other law, the Unit shall be responsible for the collection, collation, processing, analysis and dissemination of information with a view to preventing, detecting and effectively combating money laundering and funding of terrorism and without prejudice to the generality of the aforesaid shall in particular have the following functions:

- (a) to receive reports of transactions or activities suspected to involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity made by any subject person in pursuance of any regulation made under article 12, to supplement such reports with such additional information as may be available to it or as it may demand, to analyse the report together with such additional information and to draw up an analytical report on the result of such analysis;
- (b) to send any analytical report as is referred to in paragraph (a) to the Commissioner of Police for further investigation if having considered the report received under paragraph (a), the Unit also has reasonable grounds to suspect that the transaction or activity is suspicious and could involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity;
- (c) to monitor compliance by subject persons and to co-operate and liaise with any authority in or outside Malta having supervisory or regulatory functions to ensure such compliance;
- (d) to send to the Commissioner of Police together with any analytical report sent in accordance with paragraph (b) or at any time thereafter any information, document, analysis or other material in support of the report;
- (e) to instruct any subject person to take such steps as it may deem appropriate to facilitate any money-laundering or funding of terrorism analysis in general or the analysis of any particular report received by the Unit under paragraph (a);
- (f) to gather information on the financial and commercial activities in the country for analytical purposes with a view to detecting areas of activity which may be vulnerable to money laundering or funding of terrorism;

- (g) to compile statistics and records, disseminate information, make recommendations, issue guidelines and advice the Minister on all matters and issues relevant to the prevention, detection, analysis, investigation, prosecution and punishment of money laundering or funding of terrorism offences;
- (h) to promote the training of, and to provide training for, personnel employed with any subject person in respect of any matter, obligation or activity relevant to the prevention of money laundering or funding of terrorism;
- (i) to consult with any person, institution or organization as may be appropriate for the purpose of discharging any of its functions;
- (j) to advise and assist persons, whether physical or legal, to put in place and develop effective measures and programmes for the prevention of money laundering and funding of terrorism;
- (k) upon request or on its own motion and subject to such conditions and restrictions as it may determine, to cooperate and exchange information with:
 - (i) any foreign body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in paragraphs (a) and (b) regardless of its nature or status;
 - (ii) any supervisory authority in Malta or any other authority or body having regulatory or supervisory functions outside Malta, when the Unit is of the view that such co-operation and exchange of information would assist in monitoring compliance by subject persons or other persons undertaking equivalent activities outside Malta, with anti-money laundering and counter-funding of terrorism laws or with other laws specific to their activities or services, or in ensuring that the financial sector and other relevant sectors or professions are not used for criminal purposes, or to safeguard their integrity;
 - (iii) any other competent authority;
- (l) to report to the Commissioner of Police any activity which it suspects involves money laundering or the underlying criminal activity, or funding of terrorism and of which it may become aware in the course of the discharge of any of its functions at law;
- (m) to monitor compliance with any restrictions on payments in cash which may be introduced from time to time under this Act; and

*Substituted by:
XXVIII. 2017.10.*

(n) to establish, manage and administer centralised automated mechanisms allowing for the retrieval of data and information on any person holding or controlling payment or bank accounts or any person making use of safe custody services offered by credit institutions.

(2) For the purpose of carrying out any of its functions under this Act or other regulations issued thereunder, the Unit shall have the power to impose fees and charges, including fees or charges to cover costs incurred by Unit in engaging any expert as envisaged in article 26A.

(3) The Unit shall at least once a year prepare a report on its activities in general to the Minister and shall afford to the Minister facilities for obtaining information with respect to its property and its activities in general and furnish him with returns, accounts and other information with respect thereto.

Liability for damages.

*Added by:
XXXI. 2001.4.*

17. The Unit, its Board, officers and employees shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Act, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

Distribution of duties of the Unit.

*Added by:
XXXI. 2001.4.*

18. (1) The Unit shall consist of a Board and a Director.

(2) The Board shall be responsible for the policy to be adopted by the Unit and to be executed and pursued by the Director and to ensure that the Director carries out that policy accordingly. The Board shall also be responsible for advising the Minister as provided in article 16(1)(g).

(3) The Director shall be responsible for the execution of the policy established by the Board and for carrying out all the functions of the Unit not attributed by this Act to the Board in accordance with the policy and subject to the general supervision of the Board.

(4) The Board may appoint any officer or any member of the staff of the Unit to act as director when the Director is absent, unable to act or on vacation or during any vacancy in the office of the Director.

Composition of the Board.

*Added by:
XXXI. 2001.4.
Amended by:
I.2020.8.*

19. (1) The Board shall consist of:

- (a) five members appointed by the Minister in the manner provided in sub-article (2);
- (b) not more than two other members, as may be requested by the Board, appointed by the Minister in the manner provided in sub-article (3).

(2) The Minister shall appoint the five members referred to in sub-article (1)(a) by selecting one member from each of five panels, each of at least three persons, nominated respectively by the Governor of the Central Bank of Malta, the Chairman of the Malta Financial Services Authority, the Chairperson of the Malta Gaming Authority, the Commissioner of Police and the Commissioner for Revenue.

(3) The Minister shall appoint each additional member as may be requested by the Board in pursuance of the provisions of sub-article (1)(b) from a panel of not less than three persons nominated by the authority to be indicated by the Board with respect to each additional member.

(4) The members of the Board shall be appointed for a term of three years against such remuneration as the Minister may determine and may be re-appointed in the manner laid down in sub-articles (2) or (3), as the case may be, on the expiration of their term of office.

(5) The members of the Board shall discharge their duties in their own individual judgement and shall not be subject to the direction or control of any other person or authority.

(6) A person shall not be qualified to be appointed, or to hold office, as a member of the Board if he:

- (a) is legally incapacitated; or
- (b) has been declared bankrupt or has made a composition or scheme of arrangement with his creditors; or
- (c) has been convicted of an offence against this Act or of an offence listed in the First Schedule or in the Second Schedule or of an offence of money laundering against the provisions of the Dangerous Drugs Ordinance or of the Medical and Kindred Professions Ordinance; or
- (d) is not a salaried official on the permanent staff in the service of the official by whom he is to be or has been recommended for appointment; or
- (e) is a salaried official of or is otherwise employed with or in the service of a subject person or is in any other manner professionally connected to a subject person.

Cap. 101.
Cap. 31.

(7) A member of the Board may be relieved of office by the Minister, after consultation with the official by whom the member was recommended, on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or to any other cause, or of misbehaviour; and, for the purposes of this sub-article, repeated unjustified non-attendance of Board meetings may be deemed to amount to misbehaviour.

(8) A member of the Board may also resign from office by letter addressed to the Minister.

(9) Where any vacancy occurs in the membership of the Board for any reason other than the lapse of the term of office that vacancy shall, for the remainder of the term of office which has become vacant, be filled by another member appointed by the Minister from among a panel of not less than three persons nominated by the official who nominated the panel from among whom the member who vacated office had been appointed.

Chairman and
Deputy Chairman
of the Board.
Added by:
XXXI. 2001.4.

Meetings of the
Board.
Added by:
XXXI. 2001.4.

20. A Chairman and Deputy Chairman shall be appointed by the Prime Minister after consultation with the Minister from among the members of the Board. The Chairman shall be the Head of the Unit and the Deputy Chairman shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or while he is on vacation or during any vacancy in the office of chairman.

21. (1) The Board shall meet within one month from its constitution and as often as may be necessary or expedient thereafter, but in no case less frequently than ten times in each year. The meetings of the Board shall be called by the Chairman on his own initiative or at the request of any two of the other members or at the request of the Director.

(2) The Board shall not act unless a quorum consisting of the Chairman or Deputy Chairman and not less than two other members is present.

(3) The meetings of the Board shall be chaired by the Chairman, or in his absence, by the Deputy Chairman.

(4) The decisions of the Board shall be adopted by a simple majority of the votes of the members present and voting and in the event of an equality of votes the member presiding at the meeting shall have and exercise a second or casting vote.

(5) The Director shall be entitled to attend the meetings of the Board and to take part in the discussions, but shall have no vote. Saving the provisions of sub-article (2) the absence of the Director from any meeting shall not invalidate the proceedings of the meeting.

(6) Any vacancy among the members of the Board, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the Board.

(7) Subject to the provisions of this Act, the Board may regulate its own procedure.

(8) All acts done by any person acting in good faith as a member of the Unit shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered.

Decisions in case
of emergency.
Added by:
XXXI. 2001.4.

The Executive and
other staff of the
Unit..
Added by:
XXXI. 2001.4.
Substituted by:
I.2020.9.

22. In case of emergency, decisions shall be taken by at least two members of the Board one of whom shall be the Chairman or Deputy Chairman.

23. (1) The Director of the Unit shall be appointed by the Board, according to such procedures and on such terms and conditions as the Board may determine, following a public call for applications.

(2) The other officers and staff of the Unit shall be selected by the Director of the Unit according to such procedures and on such terms and conditions and in such numbers as the Board may determine.

(3) The Director and all officers and staff of the Unit shall be persons of integrity and good conduct.

24. (1) The Commissioner of Police shall detail a police officer not below the rank of Inspector to act as a liaison officer to liaise with the Unit.

(2) Notwithstanding anything to the contrary in any other law the police liaison officer detailed as aforesaid shall be bound to keep secret and confidential any information that may come to his knowledge as a result of his duties as a liaison officer with the Unit and shall not disclose such information to any person other than a member of the Unit or any of its staff in the course of the exercise of his functions as a liaison officer with the Unit.

The police liaison officer.

*Added by:
XXXI. 2001.4.*

*Amended by:
III. 2015.11.*

Provided that where the Unit has submitted a report to the Police in accordance with the provisions of this Act the Unit may, without prejudice to the provisions of article 31(4), authorise the police liaison officer to disclose to the Police, or to any other competent authority identified by the Unit as having an interest in the investigation of the report, any information relevant to the said report that may have come or may come to the knowledge of the police liaison officer in the course of his assignment with the Unit.

(3) The police liaison officer shall, subject to complying with any internal requirements of the police force, make available to the Unit or to any member of its staff any information at the disposal of the police or which is part of police records to the extent that such information is relevant to the exercise of the functions of the Unit.

(4) The police liaison officer shall assist the Unit in the analysis and processing of reports received by the Unit under article 16(1)(a) and of information and intelligence data collected by the Unit in the exercise of its functions and shall advise the Unit on investigative techniques and on all law enforcement issues.

25. (1) The legal and judicial representation of the Unit shall vest in the Chairman and in his absence in the Deputy Chairman:

Provided that the Unit may appoint any one or more of its other members or of its officers or employees to appear in the name and on behalf of the Unit in any judicial proceedings and in any act, contract, instrument or other document whatsoever.

Legal and judicial representation of the Unit.

*Added by:
XXXI. 2001.4.*

(2) Any document purporting to be an instrument made or issued by the Unit and to be signed by the Chairman or by the Deputy Chairman on behalf of the Unit shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Unit.

26. (1) The Unit shall be responsible to ensure that subject persons comply with the provisions of this Act and any regulations made thereunder in so far as these are applicable to them.

Compliance.

*Added by:
XXXI. 2001.4.*

*Amended by:
III. 2015.12;*

XXVIII. 2017.11;

VII.2019.51;

I.2020.10.

(2) The Unit shall carry out its responsibilities under sub-article (1) on a risk sensitive basis and, in so doing, the Unit may:

(a) authorise any of its officers, employees or agents, or any expert engaged under article 26A, on producing evidence

of his authority, to require any subject person to provide him forthwith with such information or documentation as may be required in order to monitor compliance with the provisions of this Act and any regulation made thereunder and to answer any questions as the Unit may reasonably require for the performance of its functions under sub-article (1), and such officer, employee, agent or expert may demand access to any data, information or documentation, whether or however stored or held, that the Unit considers relevant to monitor compliance, and may take copies of such data, information or documentation whether digital or otherwise;

- (b) by notice in writing served on a subject person require that person to produce, within the time and at the place as may be specified in that notice, any documents as may be so specified in the notice provided such documents are reasonably required by the Unit for the performance of its functions under this Act;
- (c) carry out on-site examinations on subject persons with the aim of monitoring compliance with the provisions of this Act and any regulations made thereunder;
- (d) make notes, take copies or recordings, whether digital or otherwise, of any data, information or documentation obtained or accessed by the Unit, or of any answers to questions posed by the Unit in the exercise of its powers under this sub-article.

*Added by:
VII.2019.52.*

- (3) For the purposes of pursuing its responsibilities under sub-article (1) on a risk-sensitive basis the Unit shall:
 - (a) ensure that it has a clear understanding of the money laundering and funding of terrorism risks to which Malta is exposed;
 - (b) take any necessary action and have access to any information or documentation that is necessary to assess and determine the money laundering and funding of terrorism risk profile of subject persons;
 - (c) ensure that the risk profile of subject persons is reviewed on a regular basis and when there are significant developments in the management and operations of subject persons, and kept up-to-date;
 - (d) ensure that the frequency and intensity of on-site and off-site supervision is determined on the basis of:
 - (i) the risk profile of subject persons, as assessed and determined by the Unit; and
 - (ii) the risks of money laundering and funding of terrorism to which Malta is exposed; and
 - (e) when carrying out on-site and off-site supervision, take into account the degree of discretion afforded to subject persons, under this Act, any regulations issued thereunder and procedures and guidance issued by the Unit, to adopt a risk-based approach to the implementation of their anti-

money laundering and counter-funding of terrorism obligations envisaged under this Act, the said regulations, procedures and guidance.

(4) Where the data, information or documentation required, sought to be accessed or demanded under sub-article (2) are not provided, the Unit may require the subject person to state, in writing, why such data, information or documentation, or access, could not be provided.

*Renumbered by:
VII.2019.51.*

(5) Subject to the provisions of article 27, a supervisory authority is, for the purposes of sub-article (2)(a), considered to be an agent of the Unit.

*Renumbered by:
VII.2019.51.*

26A. (1) The Unit may, whenever it deems so necessary or expedient, engage one or more persons, whom it considers to be in possession of suitable expertise, to assist it in carrying out specific tasks requiring such expertise, and, for this purpose, the Unit may impose such conditions as it considers necessary.

Engagement of experts.
*Added by:
XXVIII. 2017.12.*

(2) Article 33 and article 34(1) shall *mutatis mutandis* apply to any person engaged by the Unit under this article.

27. (1) Without prejudice to any restriction that the Unit may be subject to, the Unit shall, upon request or on its own motion, co-operate and exchange information with any supervisory authority in Malta or any other authority or body having regulatory or supervisory functions outside Malta, when the Unit is of the view that such co-operation and exchange of information would assist in monitoring compliance by subject persons or other persons undertaking equivalent activities outside Malta, with anti-money laundering and counter-funding of terrorism laws or other laws specific to their activities or services, or in ensuring that the financial sector and other relevant sectors or professions are not used for criminal purposes, or to safeguard their integrity:

Co-operation with supervisory authorities.
*Added by:
XXXI. 2001.4.
Amended by:
XXVIII. 2017.13;
I.2020.11.*

Provided that the exchange of information shall be subject to:

- (a) a guarantee by the authority or body receiving such information that it has adequate rules and procedures in place governing the confidentiality and security of information;
- (b) the condition that information or documents exchanged shall be used by the receiving authority or body only for the purpose of performing its supervisory or regulatory functions;
- (c) the condition that the exchanged information shall not be used for purposes other than those referred to in paragraph (b), nor shall it be disseminated to any other person, body, authority or agency without the express prior consent of the Unit; and
- (d) any other condition or restriction that the Unit may determine, including the prior conclusion, if it deems

so necessary, of any memorandum of understanding or other agreement to regulate any such exchange of information:

Provided further that where the Unit exchanges any information with a supervisory authority in Malta, that supervisory authority shall provide the Unit upon request and in a timely manner with information on the use made of the exchanged information and any outcome of any inspection or any other regulatory action undertaken on the basis of that information.

(2) Without prejudice to the special provisions of any other law applicable to them, the supervisory authorities shall extend all assistance and co-operation to the Unit in the fulfilment of its responsibilities under this Act.

(3) In pursuance of its responsibilities under the provisions of article 26, the Unit may request a supervisory authority to do all or any of the following and the supervisory authority shall not unreasonably withhold its assistance:

- (a) to provide the Unit with such information of which the supervisory authority may become aware of in the course of its supervisory functions and which indicates that a subject person falling under the competence of the supervisory authority may not be in compliance with any requirements under this Act or any regulations made thereunder;
- (b) to carry out, on behalf of or jointly with the Unit, on-site or off-site examinations on subject persons falling under the competence of the supervisory authority with the aim of monitoring that person's compliance with the provisions of this Act and any regulations made thereunder and to report to the Unit accordingly.

(4) The Unit may authorise any of its officers or employees to accompany the supervisory authority in any on-site examination as may be required by the Unit under sub-article (3)(b) and any such officer or employee shall be entitled, on producing, if requested, evidence of his authority, to enter any premises of the subject person on whom an examination is being undertaken.

(5) For the purposes of sub-article (1) the term supervisory authority shall also include any authority, body or committee responsible for the authorisation, licensing, registration, or regulation of, or the granting, suspension or revocation of a warrant to subject persons.

27A. (1) In carrying out its functions under article 16(1)(k)(i), the Unit may exchange any information that may be relevant for the processing or analysis of information or to investigations regarding financial transactions or activities related to money laundering or the underlying criminal activity, or funding of terrorism and the persons involved, regardless of the type of underlying criminal activity, and even where the underlying criminal activity is not known at the time of exchange:

Co-operation with counterpart Financial Intelligence Units.
Added by:
XXVIII.2017.14.
Amended by:
XLI.2018.14;
VII.2019.52;
I.2020.12;
XLIII.2021.8.

Provided that the Unit may, in exceptional and urgent circumstances and subject to operational limitations, promptly exchange financial information or financial analysis relevant for the processing or analysis of information related to terrorism or organised crime associated with terrorism, with any authority, body, or agency of a Member State considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b):

Provided further that the Unit shall apply and make use of appropriate, protected and secure channels, mechanisms and technologies, to cooperate and exchange information as provided in this sub-article.

(2) The Unit may impose conditions and restrictions on the use of exchanged information as it may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or other agreement to regulate any such exchange of information:

Provided that the disclosure of information shall be subject to the condition that the information or documents disclosed shall not be used for purposes other than those indicated by the Unit nor shall they be disseminated to any other person, body, authority or agency, without the express prior consent of the Unit.

(3) The consent referred to in the proviso to sub-article (2) shall be provided by the Unit promptly, regardless of the type of underlying criminal activity and shall not be withheld unless in the opinion of the Unit such disclosure:

- (a) could lead to the impairment of a criminal investigation or;
- (b) would not be in accordance with the fundamental principles of Maltese law.

(4) The Unit shall respond, in a timely manner, to requests for information made by any foreign authority, body or agency considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b):

Provided that the Unit may refuse to disclose any document or information:

- (a) if in its opinion such disclosure would not be in accordance with fundamental principles of Maltese law;
- (b) if in its opinion the foreign authority, body or agency does not have duties of secrecy and confidentiality that are at least equivalent to those of the Unit or does not provide effective measures to protect confidentiality and secrecy; or
- (c) on the grounds of lack of reciprocity or repeated non-cooperation by the foreign authority, body or agency making the request;

Provided further that where the request for information is made by an authority, body or agency of a Member State considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b), the Unit may refuse to disclose any document or information only if in its opinion such disclosure would not be in accordance with fundamental principles of Maltese law.

(5) Where the Unit refuses to grant consent under sub-article (3) or to disclose information in terms of the provisos to sub-article (4), an explanation shall be provided.

(6) Without prejudice to the other provisions of this article, where the Unit receives information pursuant to its function under article 16(1)(a) which concerns another Member State, it shall promptly forward any relevant information to the authority, body or agency within that Member State, considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b).

(7) Where the Unit receives information, data or documents from a foreign authority, body or agency considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b), the Unit shall comply with any restriction and condition on the use of such information, data or documents imposed by that foreign authority, body or agency.

Cooperation with
Competent
Authorities.
Added by:
XXVIII. 2017.15.
Amended by:
I.2020.13.

27B. Without prejudice to the generality of the provisions of the Act, where the Unit is in possession of documentation or information which it considers to be of interest and relevance to any competent authority in the pursuance of its functions, the Unit may, subject to any conditions and restrictions that the Unit may impose, transmit such documentation or information to the relevant competent authority:

Provided that the transmission of information shall be subject to:

- (a) a guarantee by the competent authority receiving such information that it has adequate rules and procedures in place governing the confidentiality and security of information;
- (b) the condition that information or documents exchanged shall be used by the receiving competent authority only for the purposes of pursuing its functions at law;
- (c) the condition that the transmitted information shall not be used for purposes other than those referred to in paragraph (b) above, nor shall it be disseminated to any other person, body, authority or agency without the express prior consent of the Unit; and
- (d) any other condition or restriction that the Unit may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or

other agreement to regulate any such transmission of information.

27C. (1) The Unit shall, in accordance with the applicable provisions of this Act, and without prejudice to the provisions of article 34(3), co-operate with any designated authority and reply in a timely manner, on a case-by-case basis, to reasoned requests made by such designated authorities for financial information and, or financial analysis, where such information is necessary for the prevention, detection, investigation or prosecution of serious criminal offences:

Provided that, for the purposes of this article, the term "serious criminal offence" shall mean the offences listed in Annex I to Regulation (EU) 2016/794, tax evasion, and any other offence under the [National Interest \(Enabling Powers\) Act](#):

Co-operation with
designated
authorities.
Added by:
XLIII.2021.9.

Cap. 365.

Provided further that the provisions of article 34(4) shall *mutatis mutandis* apply in relation to any financial information or financial analysis disclosed by the Unit in terms of this sub-article.

(2) The Unit may refuse to disclose any financial information or financial analysis pursuant to sub-article (1) on the grounds as laid down under article 34(2)(b) to (f), and it shall provide an explanation for such a refusal.

(3) Any request received by the Unit pursuant to sub-article (1) shall be recorded by the Unit, which record shall include:

- (a) the name and contact details of the authority and of the officer or employee requesting the information;
- (b) the recipients of the results of the query or search, in so far as possible;
- (c) the case reference number that the requesting authority assigns to the case in relation to which the request for information is made;
- (d) the subject matter of the request; and
- (e) the manner in which the request was executed, including the method used for the dissemination of information or analysis requested, whenever such request has been acceded to.

(4) Records referred to in sub-article (3) shall be kept for a period of five (5) years from the date on which the request was received and shall be used solely for the purpose of checking the lawfulness of the processing of personal data.

(5) The Unit shall, upon a request from the Information and Data Protection Commissioner, make available any record as referred to in sub-article (3).

- (6) In addition and without prejudice to the powers of the

Unit under articles 30 and 30A, the Unit may request, and designated authorities shall disclose on a case-by-case basis, any law enforcement information necessary for the prevention, detection and combating of money laundering, underlying criminal activity and terrorist financing.

Co-operation with
Europol.
Added by:
XLII.2021.9.

27D. (1)Without prejudice to any restriction which the Unit may be subject to, the Unit shall, upon receipt of duly justified requests made by Europol within the limits of its responsibility in the performance of its tasks and on a case-by-case basis, exchange any financial information and, or financial analysis as if the request was received from a foreign authority, body or agency having functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b):

Provided that, in addition to the grounds as laid down under article 34(2)(b) to (f), the Unit may refuse to disclose any financial information or financial analysis if:

- (a) the provision of such information or analysis would be contrary to the essential interests of the security of Malta;
- (b) the provision of such information or analysis would jeopardise the safety of an individual; or
- (c) the provision of such information would disclose information relating to the organisations or specific intelligence activities in the field of national security.

(2) Where the Unit refuses to disclose information in terms of sub-article (1), an explanation shall be provided.

(3) The provisions of article 27C(3), (4) and (5) shall *mutatis mutandis* apply in relation to the record keeping of requests for information received by the Unit from Europol pursuant to this article.

Delay of execution
of a suspicious
transaction.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.
Substituted by:
III. 2015.13.
Amended by:
XXVIII. 2017.16.

28. (1) Where the Unit is informed by a subject person that a transaction to be carried out is suspected or known to be related to money laundering or the funding of terrorism, or to involve property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity, or where, on the basis of information in its possession, including upon a request by a foreign body, authority or agency which is considered to have functions equivalent or analogous to those of the Unit, the Unit knows or suspects that a transaction to be carried out by a subject person is related to money laundering or the funding of terrorism, or involves property that is derived from or constitutes the proceeds of criminal activity, the Unit may, where it considers such action necessary, oppose the execution of the transaction and a notification of such opposition shall be made to the subject person concerned by any written means:

Provided that where the Unit opposes the execution of the transaction following receipt of information from the subject

person, the notification of such opposition shall be made to the subject person by not later than one working day following the day on which the information was received by the Unit and the subject person shall, within such period, not carry out the transaction in question.

(2) The opposition by the Unit shall suspend the execution of the transaction for a period of one working day following the day of the notification by the Unit referred to in sub-article (1), unless the Unit shall, by any written means, authorise earlier the execution of the transaction.

(3) The Unit may, at its discretion, extend the period referred to in sub-article (2) by a further working day where this is considered to be necessary by the Unit and such extension shall be notified to the subject person before the lapse of the period referred to in sub-article (2).

(4) The obligation not to execute a transaction suspended in terms of this article shall prevail over any legal or contractual obligation to which a subject person may be subject.

(5) Where the Unit does not oppose the execution of the transaction as provided in sub-article (1), the subject person concerned may proceed with the execution of the transaction upon the lapse of the period referred to therein and where a notification of opposition has been made to the subject person in accordance with sub-article (1), the subject person concerned may proceed with the execution of the transaction upon the lapse of the period referred to in sub-article (2) or the extended period referred to in sub-article (3), as the case may be, unless in the meantime an attachment order has been served on the subject person.

(6) Where the Unit receives a request from a foreign body, authority or agency referred to in sub-article (1), it shall acknowledge receipt of that request and shall subsequently notify such foreign body, authority or agency of the decision whether the execution of the transaction subject to the request has been opposed or otherwise.

29. Where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering, or funding of terrorism or may involve property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity but it is unable to inform the Unit before the transaction is executed, either because it is not possible to delay executing the transaction due to its nature, or because delay in executing the transaction could prevent the prosecution of the individuals involved in the suspected money laundering or the underlying criminal activity, or funding of terrorism, the subject person shall inform the Unit immediately after executing the transaction giving the reason why the Unit was not so informed before executing the transaction.

Action after
execution of
suspicious
transaction which
could not be
delayed.

*Added by:
XXI. 2001.4.
Amended by:
VI. 2005.5;
III. 2015.14.*

Power of the Unit to demand information.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5;
III. 2015.15.

30. (1) When the Unit receives a report as is referred to in article 16(1)(a) or when from information in its possession the Unit suspects that any subject person may have been used for any transaction suspected to involve money laundering, funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity, the Unit may demand from the subject person making the report or from the subject person which is suspected of having been used for any transaction suspected to involve money laundering, funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity, as well as from any other subject person, the police, any Government Ministry, department, agency or other public authority, or any other person, physical or legal, and from any supervisory authority, any additional information that it deems useful for the purpose of integrating and analysing the report or information in its possession.

Cap. 377.

(2) Notwithstanding anything contained in the Professional Secrecy Act and any obligation of secrecy or confidentiality under any other law the subject person or any other person, physical or legal, and any authority or entity from whom information is demanded by the Unit in pursuance of the provisions of sub-article (1) shall communicate the information requested to the Unit and for the purposes of article 257 of the Criminal Code any such disclosure shall be deemed to be a disclosure of information to a public authority compelled by law:

Provided that nothing in this sub-article shall imply any obligation on the Attorney General to communicate to the Unit any information which in any way relates to or is connected with or came into his possession as a result of the exercise by him of any powers referred to in article 91(3) of the Constitution or any obligation on any person to communicate to the Unit any information which would in legal proceedings be protected from disclosure by article 642(1) of the Criminal Code or by article 588(1) of the Code of Organization and Civil Procedure.

Cap. 9.
 Cap. 12.

(3) Any information which the Unit demands in pursuance of sub-article (1) shall be provided in a timely manner and within such time period as the Unit may direct, or as may be established by regulations made under this Act.

Power of Unit to demand information under article 16.
Added by:
XIII. 2004.126.
Amended by:
III. 2015.16.

30A. (1) Notwithstanding anything contained in any other law, the Unit may likewise demand form any person, authority or entity, as is referred to in article 30, any information it deems relevant and useful for the purpose of pursuing its functions under article 16.

(2) The provisions of article 30(2) and (3) shall *mutatis mutandis* apply where any information is demanded by the Unit under this article.

Information demanded or obtained by the Unit.
Added by:
I.2020.15.

30B. Without prejudice to the provisions of article 27A, any information demanded or obtained by the Unit in terms of the provisions of this Act and regulations issued thereunder may be used by the Unit for the pursuance of any of its functions under article 16 as

it deems relevant and necessary.

30C. (1) When the Unit receives a report as is referred to in article 16(1)(a) or when from information in its possession the Unit suspects that any subject person may have been used for any transaction suspected to involve money laundering or funding of terrorism or that property is being held by a subject person that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity or from an act or acts of participation in criminal activity, the Unit may require the subject person to monitor for a specified period the transactions or banking operations being carried out through one or more accounts in the name of any person suspected of the said offences, or through one or more accounts suspected to have been used in the commission of any of the said offences or which could provide information about the offences or the circumstances thereof, whether before, during or after the commission of the offences, including any such accounts in the name of legal persons. The subject person shall communicate to the Unit the information resulting from the monitoring and the Unit may use that information for the purpose of carrying out its analysis and reporting functions under this Act.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the analysis is taking place, discloses that an analysis is being undertaken or makes any other disclosures likely to prejudice the said analysis shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

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

(3) The provisions of article 30(2) shall *mutatis mutandis* apply where any information is demanded by the Unit under this article.

30D. The Unit may, in order to combat money laundering and the funding of terrorism, to ensure compliance by subject persons with their obligations under this Act and any regulation made thereunder, and to prevent the financial and other systems from being used for criminal purposes, issue directives in writing requiring any subject person to do or to refrain from doing any act, and such directives shall be complied with within the time and in the manner stipulated therein.

Unit may require the subject person to monitor transactions or banking operations.

Added by:
VII. 2010.62.

Amended by:
III. 2015.17.

Renumbered by:
I.2020.14.

Power of Unit to issue directives.

Added by:

III. 2015.18.

Renumbered by:
I.2020.14.

Transmission of information to police for investigation.

*Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.*

*Substituted by:
III. 2015.19.
Amended by:
XXVIII. 2017.17.*

31. (1) Where, following an analysis of a report received by the Unit under article 16(1)(a) and of any other information relevant to that report, the Unit is of the opinion that a reasonable suspicion of money laundering or funding of terrorism or a reasonable suspicion that property may have derived directly or indirectly from, or constitutes the proceeds of criminal activity subsists, an analytical report drawn up as is referred to under article 16(1)(a) shall be transmitted to the Police for further investigation.

(2) The provisions of sub-article (1) shall also apply mutatis mutandis to any knowledge or suspicion of money laundering or the underlying criminal activity, or funding of terrorism, which the Unit may have gathered or formed from information in its possession without having received any report as is referred to under sub-article (1).

(3) Where the Unit transmits information to the Police in pursuance of the provisions of sub-articles (1) and (2) and a subject person over which another authority or agency has supervisory or regulatory functions is involved, the Unit shall inform the said authority or agency of actions taken.

(4) Where the Unit transmits information to the Police in pursuance of sub-articles (1) and (2) it shall thereafter transmit to the Police any further relevant information in respect of the knowledge or suspicion communicated to the Police as aforesaid.

(5) The Police shall, upon request and in a timely manner, inform the Unit on the use made of information provided by the Unit under this article and on the outcome of any investigations carried out pursuant to the information provided.

*Feedback by competent authorities.
Added by:
XXVIII. 2017.18.*

31A. (1) Where the Unit provides information to a competent authority as provided for under this Act, that competent authority shall inform the Unit, upon request and in a timely manner, with information on the use made of the information provided by the Unit and any outcome of any investigation or any other action undertaken on the basis of that information.

(2) For the purposes of this article the term competent authority shall only include the Comptroller of Customs when carrying out duties under any regulations that may be issued or are in force from time to time relating to the cross border movement of cash and other financial instruments.

*Feedback on reports.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5;
III. 2015.20.
Substituted by:
XXVIII. 2017.19.*

32. The Unit shall, at the request of the subject person or on its own motion, give to the subject person which makes a report to the Unit as provided for under sub-article 16(1)(a) such information as the Unit deems appropriate to keep the subject person informed about the outcome of the report submitted and any other information which the Unit considers to be of interest to the subject person to regulate its affairs and to assist it in carrying out its duties under this Act or any regulation made thereunder.

33. Any official or employee of the Unit who, in any circumstances other than those provided for in the proviso to article 24(2), discloses to the person concerned or to a third party that an analysis is being carried out by the Unit, or that information has been transmitted to the Unit by a subject person, or that the Unit has transmitted information to the police for investigation, shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67) or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Tipping off by the officials or employees of the Unit.
Added by:
XXXI. 2001.4.
Amended by:
L.N. 425 of 2007;
III. 2015.21.

34. (1) The Unit, and its officers, employees and agents, whether still in service of the Unit or not, shall treat any information and documents acquired in the performance of their duties or the exercise of their functions under this Act as confidential, and shall not disclose any information or document relating to the affairs of the Unit or of any person, which they have acquired in the performance of their duties or the exercise of their functions under this Act except:

Confidentiality and permissible disclosure of information.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.
XXVIII. 2017.20;
I.2020.16
XLIII.2021.10.

- (a) when authorised to do so under any of the provisions of this Act;
- (b) for the purpose of the performance of their duties or the exercise of their functions under this Act;
- (c) to any competent court or tribunal in any appeal proceedings instituted in accordance with the provisions of article 13A, or in proceedings to which the Unit is a party for the purpose of the enforcement of any penalty imposed by the Unit under this Act; and
- (d) in the form of an aggregation of data or other statistical information, which in the opinion of the Unit does not lead to the identification of any specific person and which does not prejudice any analysis or investigation.

(2) Without prejudice to the provisions of article 27A, the Unit shall not be obliged to provide any information or disclose any documents, and may refuse to do so if:

- (a) such information or document was received by the Unit in carrying out its functions under article 16(1)(a), (b) and (k); or
- (b) there are reasonable grounds to consider that such disclosure could impede an inquiry, investigation or any other proceeding in course in Malta; or
- (c) providing such information or disclosing such document may, in the opinion of the Unit, prejudice any analysis; or
- (d) due to exceptional circumstances, such disclosure would be clearly disproportionate to the legitimate interests of Malta or of a natural or legal person; or

- (e) such disclosure would not be in accordance with fundamental principles of Maltese law; or
- (f) such disclosure would be irrelevant with regard to the purpose for which it has been requested:

Provided that any refusal under this sub-article shall be clearly explained to the body or authority requesting the disclosure of the document or information.

(3) The Unit may also disclose any information or document referred to in sub-article (1) to any authority in or outside Malta carrying out a criminal investigation into any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute:

Cap. 101. (a) any of the offences referred to in article 22(2)(a)(1) of the Dangerous Drugs Ordinance; or

Cap. 31. (b) any of the offences referred to in article 120A(2)(a)(1) of the Medical and Kindred Professions Ordinance; or

(c) any offence of money laundering within the meaning of this Act; or

(d) any offence of funding of terrorism:

Provided that when disclosing any information or document in the circumstances referred to in this sub-article, the Unit may also disclose any information or document related to the underlying criminal activity.

(4) Notwithstanding any other provision of this Act or any other law, any information or document disclosed by the Unit in terms of sub-article (3) shall be considered as secret and shall:

(a) be used only for the purposes of the investigation being carried out and no other use thereof shall be made nor shall it be disclosed or disseminated to any other person or authority without the prior express consent of the Unit:

Provided such further use, disclosure or dissemination is strictly necessary for the purpose of the investigation being carried out and the provisions of this sub-article shall also apply to such further use, disclosure or dissemination;

(b) be considered as intelligence for the purposes of assisting the investigation being carried out, and shall not be considered as evidence nor used as such in any proceedings, whether judicial or otherwise, which may be instituted as a result of any such investigation;

(c) not be provided under oath;

(d) be recorded, held and archived separately from the acts

of the investigation or any *procès verbal* and shall be sealed in such manner so as to ensure its confidentiality and secrecy;

- (e) not form part of any published report or findings resulting from the investigation; and
- (f) under no circumstance be made public.

35. The revenue of the Unit shall consist of:

- (a) fees charged by and payable to the Unit in respect of its supervisory functions and other services rendered by it;
- (b) rents, interests and profits accruing from property, deposits and other assets of the Unit;
- (c) any monies advanced to it by the Minister;
- (d) any other money receivable or received by the Unit.

Revenue of the Unit.

Added by:

XXXI. 2001.4.

Amended by:

III. 2015.22.

XXVIII. 2017.21.

36. (1) The Unit may:

- (a) hold accounts with any bank;
- (b) invest any of its liquid assets in short and medium term first class securities as approved by the Board;
- (c) acquire, purchase, lease or dispose of any movable or immovable property required for the conduct of its business or for any purposes ancillary or incidental to the performance of its functions under this Act.

Powers of the Unit.

Added by:

XXXI. 2001.4.

(2) For the purpose of carrying out any of its functions under this Act, the Unit may, with the approval in writing of the Minister, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister may in writing approve.

37. The Minister may make advances to the Unit of such sums as the Minister may consider to be required by the Unit for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as the Minister may deem appropriate. Any such advances may be made by the Minister out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advances.

Advances by the Government.

Added by:

XXXI. 2001.4.

38. (1) The Director shall, not later than six weeks before the end of each financial year, submit to the Board estimates of the income and expenditure of the Unit for the following financial year:

Estimates and expenditure.

Added by:

XXXI. 2001.4.

Provided that the estimates for the first financial year of the Unit shall be prepared and adopted within such time as the Minister may by notice in writing to the Unit specify.

(2) In the preparation of such estimates the Unit shall endeavour to ensure that the total revenues of the Unit are at least sufficient to meet all sums properly chargeable to its Income and Expenditure Account, including but without prejudice to the

generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Board may direct.

(4) Before the end of each financial year the Board shall consider and adopt, with or without amendments as the case may be, the estimates submitted to it for the following financial year.

(5) If in respect of any financial year it is found that the amount approved by the Board is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Director may cause supplementary estimates to be prepared and sent forthwith to the Board for adoption and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to supplementary estimates.

Determination and allocation of profits.

*Added by:
XXXI. 2001.4.*

Financial year.

*Added by:
XXXI. 2001.4.*

Audit.

*Added by:
XXXI. 2001.4.*

Annual accounts.

*Added by:
XXXI. 2001.4;*

*Amended by:
I.2020.17.*

Exemption from taxes.

*Added by:
XXXI. 2001.4.*

39. All profits realised by the Unit shall be put to a reserve fund which shall be used for such purposes as the Unit may deem to be required to meet the objects of the Unit, including the repayment of any liabilities.

40. The financial year of the Unit shall begin on the first day of January and end on the thirty-first day of December:

Provided that the first financial year shall begin at the date of commencement of this article and shall end on the thirty-first day of December of the following year.

41. The Unit shall keep proper books of account in such manner as the Minister may from time to time direct. Such accounts shall be audited by auditors appointed by the Board with the concurrence of the Minister from among persons qualified to be appointed as auditors of a company under the law for the time being in force in Malta, as if the Unit were such a company, and shall moreover be subject to audit by the Auditor General.

42. (1) The Unit shall, as soon as may be but not later than three months after the close of each financial year, transmit to the Minister:

- (a) a copy of the annual accounts certified by the auditors;
- (b) a report on the operations of the Unit during the year.

(2) The report referred to in sub-article (1) shall be laid on the Table of the House by the Minister not later than six weeks after its receipt, or where the House is during the period not in session not later than the second week after the House resumes its sittings.

43. The Unit shall be exempted from any liability for the payment of income tax and duty on documents and transfers under any law for the time being in force.

FIRST SCHEDULE

(Article 2)

Article 3 (1) (a) of the United Nations Convention

Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

- (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
 - (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
 - (iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
 - (iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs, or psychotropic substances;
 - (v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above.
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SECOND SCHEDULE

(Article 2)

*Amended by:
L.N. 71 of 1999.
Substituted by:
L.N. 176 of 2005.*

Any criminal offence.
