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MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Edward Zammit Lewis, M.P., Ministru għall-Ġustizzja, l-Ugwaljanza u l-Governanza, u moqri għall-Ewwel darba fis-Seduta tad-29 ta' Lulju 2020.

A BILL introduced by the Honourable Edward Zammit Lewis, M.P., Minister for Justice, Equality and Governance, and read the First time at the Sitting of the 29th July 2020.

ATT sabiex jipprovdi għall-identifikazzjoni, it-traċċar, l-iffriżar u l-konfiska tar-rikavat mill-kriminalità, inkluż proprjetà li tiġi minn *money laundering*, dħul u benefiċċji oħra li ġejjin minn rikavat miżmuma minn akkuzati kriminali, proprjetà li hija r-rikavat ta', jew li intużat fi, jew intenzjonati jew allokata għall-użu ta' finanzjar ta' terroriżmu, atti terroristiċi jew organizzazzjonijiet terroristiċi, għat-twaqqif tal-Uffiċċju għall-Irkupru tal-Assi bħala korp, indipendenti mill-Gvern, għall-iskop imsemmi, għall-konfiska bbażata fuq il-kundanna mhux ibbażata fuq kundanna ta' rikavat mill-kriminalità u kwistjonijiet oħra konsegwenzjali jew anċillari għalihom.

AN ACT to provide for the identification, tracing, freezing and confiscation of proceeds of crime including laundered property, income and other benefits derived from such proceeds held by criminal defendants, property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations, for the setting up of the Asset Recovery Bureau as a body, independent of the Government, for the said purpose, for non-conviction based confiscation of proceeds of crime and other matters consequential or ancillary thereto.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT sabiex jipprovdi għall-identifikazzjoni, it-traċċar, l-iffriżar u l-konfiska tar-rikavat mill-kriminalità, inkluż proprjetà li tiġi minn money laundering, dħul u benefiċċji oħra li ġejjin minn rikavat miżmuma minn akkużati kriminali, proprjetà li hija r-rikavat ta', jew li intużat fi, jew intenzjonati jew allokata għall-użu ta' finanzjar ta' terroriżmu, atti terroristiċi jew organizzazzjonijiet terroristiċi, għat-twaqqif tal-Uffiċċju għall-Irkupru tal-Assi bħala korp, indipendenti mill-Gvern, għall-iskop imsemmi, għall-konfiska bbażata fuq il-kundanna mhux ibbażata fuq kundanna ta' rikavat mill-kriminalità u kwistjonijiet oħra konsegwenzjali jew anċillari għalihom.

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

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TAQSIMA I
Preliminari

Titolu fil-qosor
u bidu fis-seħh.

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2020 dwar ir-
Rikavat mill-Kriminalità.

(2) Dan l-Att għandu jidhol fis-seħh f'dik id-data li l-Ministru
responsabbli għall-Ġustizzja jista' b'ordni jistabbilixxi fil-Gazzetta u
jistgħu jiġu stabbiliti dati differenti għal dispożizzjonijiet u għanijiet
differenti ta' dan l-Att.

Tifsir,

2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx
xort'oħra:

"assi virtwali" tfisser rappreżentazzjoni digitali ta' valur li
jista' jiġi nneozjat digitalment, jew trasferit, u jista' jintuża għal
skopijiet ta' hlas jew investment;

"Bord" tfisser il-Bord tal-Uffiċċju stabbilit permezz tal-
artikolu 7;

"Direttur" tfisser id-Direttur tal-Uffiċċju, u tinkludi
membru tal-persunal tad-Direttorat debitament awtorizzat mid-
Direttur u kuntrattur tal-Uffiċċju li jaġixxi taħt l-istruzzjonijiet
tad-Direttur;

"konfiska" tfisser it-teħid jew qbid ta' proprjetà b'ordni
tal-awtorità kompetenti li ċċaħhad is-sid mit-titolu tiegħu, kollu
jew parzjalment għal ebda kumpens;

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

"proprjetà" tfisser l-assi kollha ta' kull tip, tangibbli jew intangibbli, mobbli jew immobbli, korporjali jew inkorporali, u tinkludi assi virtwali u dokumenti legali jew strumenti li juru t-titolu ta', jew l-interess fi, tali assi;

"Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi" tfisser is-sezzjoni tal-Qorti Ċivili mwaqqfa permezz tat-Tielet Taqsima;

"sid" tfisser persuna bi sjieda jew interess assigurat fi proprjetà. "Sid" ma tinkludix persuna nominata li minkejja li għandha titolu legali, ma teżerċitax il-ħakma u kontroll fuq il-proprjetà konsistenti mad-drittijiet tal-veru sid. "Sid" ma tinkludix ukoll kreditur mhux garantit b'każ ta' azzjoni kontra s-sid tal-proprjetà jew il-proprjetà tiegħu imma li ma jkollu l-ebda interess fi proprjetà speċifika;

"suspettat" tfisser persuna suspettata li kkommettiet ir-reat rilevanti;

"Uffiċċju" tfisser l-Uffiċċju għall-Irkupru tal-Assi mwaqqaf permezz tal-artikolu 6.

(2) (a) Fejn hemm provdut f'dan l-Att li azzjoni tista' tiġi istitwita "mill-Gvern", tali azzjoni tista' titwettaq minn wieħed jew iktar fost l-Uffiċċju għall-Irkupru tal-Assi u l-Kummissarju tal-Pulizija li jaġixxu jew individwalment jew kollettivament, iżda xejn f'dan is-subartikolu ma għandu jiġi interpretat bħala li jippermetti l-preżentata ta' aktar minn azzjoni waħda fuq l-istess talba minn applikanti differenti. L-Uffiċċju għall-Irkupru tal-Assi u l-Kummissarju tal-Pulizija jistgħu jidhlu f'memorandum ta' ftehim bejniethom sabiex jiddeterminaw it-tipi ta' kawżi ta li se jkunu segwiti minn wieħed jew iktar minn wieħed minnhom.

(b) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra, kull referenza għall "persuna" għandha titqies li tinkludi referenza għal persuna fiżika jew morali, u tinkludi referenza għal assoċjazzjoni jew korp ta' persuni, kemm jekk korporali jew inkorporali u kemm jekk dik l-assoċjazzjoni, korp jew grupp ieħor ikun għal perjodi tranżitorju, jew għal għan partikolari, jew mod ieħor.

3. (1) "Rikavat mill-kriminalità" tfisser kwalunkwe vantaġġ ekonomiku jew benefiċċju ieħor derivat direttament jew indirettament minn reat rilevanti, inkluża iżda mhux limitata għal kwalunkwe proprjetà jew interess fi proprjetà li ma tkunx inkisbet jew tinzamm hlief għat-twertiq tar-reat.

Rikavat mill-kriminalità, proprjetà faċilitattiva, u proprjetà soġġetta għall-konfiska.

(2) Ir-rikavat mill-kriminalità jista' jikkonsisti f'kull tip ta' proprjetà ta' kwalunkwe deskrizzjoni u ta' kwalunkwe natura, kemm

jekk mobbli jew immobbli, korporjali jew inkorporali irrispettivament minn jekk dik il-proprjeta tkunx tinsab f'Malta jew mod ieħor u irrispettivament minn min tinzamm dik il-proprjeta, u tinkludi kwalunkwe investment mill-gdid jew trasformazzjoni sussegwenti.

(3) Ir-rikavat mill-kriminalità tfisser ir-rikavat totali ta' reat rilevanti mingħajr kreditu jew tnaqqis għal kwalunkwe spiża mgarrba biex issir ir-reat jew taxxi mħallsa jew dovuti.

(4) "Proprjeta faċilitattiva" tfisser kwalunkwe proprjeta użata jew maħsuba biex tintuża biex titwettaq jew biex tiffaċilita t-twettiqta' reat rilevanti, bħal billi tagħmel ir-reat inqas diffiċli biex jitwettaq jew ftit jew wisq hieles minn ostaklu jew tfixkil.

(5) "Proprjeta involuta fil-*money laundering*" tinkludi kwalunkwe rikavat mill-kriminalità li huma s-sugġett tat-tranzazzjoni ta' *money laundering*, kwalunkwe proprjeta li tirrigwarda r-rikavat mill-kriminalità fil-mument meta sseħħ it-tranzazzjoni ta' *money laundering*, kwalunkwe proprjeta li fiha r-rikavat jew il-kriminalità huma investiti jew li għalihom huma skambjati matul ir-reat tal-*money laundering*, u kwalunkwe proprjeta użata biex tiffaċilita r-reat tal-*money laundering*.

(6) "Proprjeta soġġetta għall-konfiska" tinkludi rikavat mill-kriminalità, proprjeta li tiffaċilita, u kull proprjeta involuta f'reat ta' *money laundering*.

Reat rilevanti.

4. "Reat rilevanti" huwa kull reat taħt kwalunkwe liġi, u li ma jkunx reat ta' natura involontarja, soġġett għall-piena ta' ħabs jew detenzjoni għal żmien massimu ta' mill-inqas sena (1).

Responsabbiltà għal danni ċivili.

5. (1) Il-konfiska tar-rikavat mill-kriminalità taħt dan l-Att ma għandha tneħħi ebda responsabbiltà ta' kwalunkwe persuna li tkun wettqet reat minn kwalunkwe responsabbiltà għall-ħlas ta' danni lil xi persuna bħala kumpens għal kwalunkwe telf imgarrab minn tali persuna bħala konsegwenza tar-reat.

Relazzjoni ma' liġijiet oħra.

(2) Mingħajr preġudizzju għad-dispożizzjonijiet ta' dan l-Att, kwalunkwe proċediment mibdija qabel id-dhul fis-seħħ ta' dan l-Att skont kwalunkwe liġi oħra jew regolamenti għandhom jibqgħu jkunu regolati mid-dispożizzjonijiet ta' dik il-liġi jew regolamenti.

(3) Meta l-liġi tipprovdi għall-konfiska tal-assi tal-akkużat bħala konsegwenza ta' htija, id-dispożizzjonijiet ta' din il-liġi għandhom jibqgħu japplikaw fir-rigward ta' tali konfiska għall-esklużjoni tad-dispożizzjonijiet ta' dan l-Att, b'dak il-mod illi d-dispożizzjonijiet ta' dan l-Att għandhom madankollu japplikaw fir-rigward ta' proprjeta li tikkostitwixxi rikavat u li mhijiex soġġetta għall-konfiska taħt kull liġi

msemmija.

(4) Kwalunkwe ordni ta' sekwestru, ordni ta' iffriżar, ordni ta' investigazzjoni, ordni ta' monitoraġġ, qbid jew xi ordni ieħor magħmul fir-rigward ta' xi investigazzjoni ta' reat rilevanti jew għal proċeduri kriminali qabel id-dhul fis-seħħ ta' dan l-Att għandu wara d-dhul fis-seħħ ta' dan l-Att jibqa' jkollu effett u jkun regolat bil-liġi li tahtu gie maħrug u ma għandux ikun affettwat mid-dispożizzjonijiet ta' dan l-Att.

TAQSIMA II

Uffiċċju għall-Irkupru tal-Assi

6. (1) Għandu jkun hemm imwaqqaf korp, indipendenti mill-Gvern, li jkun magħruf bħala l-Uffiċċju għall-Irkupru tal-Assi.

Twagqif tal-Uffiċċju għall-Irkupru tal-Assi.

(2) Bla ħsara għad-dispożizzjonijiet ta' dan l-Att u ta' kwalunkwe liġi oħra, għandha tkun il-funzjoni tal-Uffiċċju li jintraċċa u jidentifika r-rikavat mill-kriminalità u kwalunkwe proprjetà oħra soġġetta għall-konfiska, u li jieħu azzjoni għall-konfiska tagħhom kif ukoll għall-amministrazzjoni u r-rimi xieraq tagħhom, u biex jassisti awtoritajiet oħra tal-infurzar u regolatorji fil-ġlieda kontra l-kriminalità.

(3) L-Uffiċċju għandu jkun korp li jkollu personalità ġuridika distinta minn dik tal-Gvern u għandu jkun kapaċi bla ħsara għad-dispożizzjonijiet ta' dan l-Att li jidhol f'kuntratti, li ikollu u jkun jista' jiddisponi minn proprjetà ta' kull tip għall-iskop tal-funzjonijiet tiegħu, li jħarrek u jiġi mħarrek u li jidhol fit-tranzazzjonijiet l-oħra kollha li huma inċidentali jew li jwasslu għat-twettiq xieraq tal-funzjonijiet tiegħu.

(4) Fl-eżerċizzju tal-funzjonijiet tiegħu taht dan l-Att, l-Uffiċċju ma għandux ikun soġġett għal ebda direzzjoni jew kontroll minn xi persuna, awtorità jew korp.

(5) L-Uffiċċju għandu jikkonsisti minn Bord u minn Direttorat.

(6) Ir-rappreżentazzjoni legali u ġudizzjarja tal-Uffiċċju għandha tkun vestita fiċ-*Chairperson*:

Izda l-Bord tal-Uffiċċju jista' jahtar lid-Direttur jew lil wieħed jew iktar mill-membri tal-persunal tad-Direttorat biex jidhru f'isem l-Uffiċċju fi kwalunkwe proċedura ġudizzjarja u fi kwalunkwe att, kuntratt jew strument jew kwalunkwe dokument ieħor.

(7) Kull dokument li jkun jidher li jkun strument magħmul jew maħrug mill-Uffiċċju u ffirmit mill-President f'isem l-Uffiċċju għandu jintlaqa' bħala prova, u sakemm ma jiġix ippruvat il-kuntrarju,

jitqies li huwa strument magħmul jew maħrug mill-Uffiċċju.

Bord tal-Uffiċċju.

7. (1) Il-Bord tal-Uffiċċju għandu jikkonsisti minn *Chairperson* mahtur mill-Kabinett tal-Ministri, wara konsultazzjoni mal-Kap tal-Oppożizzjoni minn fost persuni li kellhom il-kariga ta' Imħallef jew Maġistrat, jew li kellhom karigi għolja fis-servizz pubbliku ta' Malta, u erba' (4) membri oħra kif ġej:-

(a) ol-Kummissarju tal-Pulizija jew ir-rappreżentant tiegħu;

(b) il-Kummissarju tat-Taxxi jew ir-rappreżentant tiegħu;

(ċ) l-Uffiċjal Kap Eżekuttiv tal-Aġenzija għas-Servizzi tal-Qorti jew ir-rappreżentant tiegħu;

(d) id-Direttur tal-Korp għall-Analisi ta' Informazzjoni Finanzjarja jew ir-rappreżentant tiegħu.

(2) Wieħed mill-membri tal-Bord tal-Uffiċċju għandu jinhatar mill-Ministru bħala Deputat *Chairperson*. Id-Deputat *Chairperson* għandu jkollu s-setgħat kollha u jaqdi d-dmirijiet kollha taç-*Chairperson* waqt l-assenza taç-*Chairperson* jew matul kwalunkwe perjodu fejn iç-*Chairperson* ma jistax jaqdi l-funzjoni tiegħu għal kwalunkwe kawża oħra, jew waqt kwalunkwe post battal fil-kariga taç-*Chairperson*.

(3) Il-Bord jista' jaġixxi minkejja kwalunkwe vakanza fil-kompożizzjoni tiegħu jew matul l-assenza ta' xi wieħed mill-membri tiegħu sakemm iç-*Chairperson* jew id-Deputat *Chairperson* u kwalunkwe żewġ (2) membri oħra jkunu preżenti.

(4) Persuna ma għandhiex tkun kwalifikata biex tkun mahtura, jew biex tkompli tiegħu l-kariga, bħala membru tal-Bord jekk hi:

(a) interdetta jew inkapaċitata;

(b) tkun iddikjarata falluta jew għamlet kompromess jew arrangament ieħor mal-kredituri tagħha; jew

(ċ) instabet hatja ta' reat f'Malta jew barra minn Malta hlief:

(i) reat ta' natura involontarja; jew

(ii) reat soġġett għall-piena stabbilita għal kontravvenzjonijiet.

(5) Għall-fini tal-paragrafu (ċ) tas-subartikolu (4) ta' dan l-artikolu, persuna li tkun instabet haġta ta' reat kif speċifikat f'dak il-paragrafu għandha xorta tkun skwalifikata milli jkollha l-kariga minkejja li xi penali mogħtija tkun għet sospiża jew tali persuna tkun għet meħlusa kondizzjonalment jew titpoġġa taħt *probation* mingħajr l-ebda infrazzjoni jew tali persuna ingħatat sentenza skont l-Att dwar il-*Probation* mingħajr ebda infrazzjoni ta' penali.

(6) Iċ-*Chairperson* u d-Deputat *Chairperson* għandhom jinhatru għal perjodu ta' hames (5) snin u jkunu jistgħu jinhatru mill-ġdid.

(7) Fejn membru tal-Bord jokkupa l-kariga bħala r-rappreżentant ta' persuna oħra kif provdut fil-paragrafi (a) sa (d) tas-subartikolu (1), tali membru għandu jkun maħtur għal perjodu ta' hames (5) snin imma jista' jerga' jinhatar mill-ġdid.

(8) Iċ-*Chairperson*, id-Deputat *Chairperson* u l-membri l-oħra tal-Bord, inklużi dawk il-membri l-oħra kif jissemmew fis-subartikolu (7) għandhom jaqdu dmirijethom skont id-diskrezzjoni individwali tagħhom stess u ma għandhomx ikunu soġġetti għad-direzzjoni jew il-kontroll ta' xi persuna jew awtorità oħra.

(9) Il-membri tal-Bord għandhom jirċievu dik ir-rimunerazzjoni kif il-Ministru jista' jiddetermina malli jinhatru.

(10) Membru tal-Bord ma jistax jitneħħa mill-kariga, hliet miċ-*Chairperson* li jaġixxi fuq il-parir tal-Kabinett tal-Ministri għal raġunijiet jew inkapaċità li jwettaq il-funzjoni tiegħu (kemm jekk jirriżulta minn nuqqas fiżika jew mentali jew kwalunkwe kawża oħra) jew fuq prova ta' imġieba hażina.

(11) Il-Ministru għandu jaħtar persuna li tkun avukat jew prokuratur legali biex taġixxi bħala Segretarju għall-Bord.

(12) Il-minuti, diskussjonijiet, deliberazzjonijiet u deċiżjonijiet tal-Bord għandhom jiġu ttrattati bħala kunfidenzjali u ma għandhomx jiġu żvelati hliet:

(a) meta jkun hemm awtorizzazzjoni biex isir dan taħt xi waħda mid-dispożizzjonijiet ta' dan l-Att;

(b) għall-finijiet tat-twettiq ta' dmirijiet jew l-eżerċizzju ta' funzjonijiet taħt dan l-Att; u

(ċ) lil kwalunkwe entità kompetenti, qorti jew tribunal.

8. (1) Il-Bord għandu jkun responsabbli biex jistabbilixxi l-politika li għandha tiġi adottata mill-Uffiċċju fl-eżerċizzju tal-

Funzjonijiet tal-Bord.

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funzjonijiet tiegħu taħt dan l-Att.

(2) Il-Bord għandu jkun responsabbli li jiżgura li l-Uffiċċju jaqdi l-funzjonijiet tiegħu skont dan l-Att u skont kull prassi stabbilita minnu.

(3) Il-Bord jista' minn żmien għal żmien, jekk jidhirlu xieraq, jagħmel regoli ġenerali għall-gwida tad-Direttorat fl-eżerċizzju tal-funzjonijiet tiegħu taħt dan l-Att, u jista' f'kull hin jirrevoka jew ivarja regoli bħal dawn:

Iżda xejn f'dan is-subartikolu ma għandu jinftiehem bħala li jawtorizza lill-imsemmi Bord milli jagħti direzzjonijiet rigward it-tmexxija ta' kwalunkwe investigazzjoni jew funzjoni oħra tal-Uffiċċju fi kwalunkwe każ partikolari.

(4) Il-Bord għandu wkoll jivverifika u japprova l-kontijiet tal-Uffiċċju u l-abbozzi ta' stimi u l-pjanijiet finanzjarji tal-Uffiċċju, imħejjija mid-Direttur qabel is-sottomissjoni finali tagħhom lill-Ministru skont dan l-Att.

(5) Il-Bord għandu jinżamm infurmat mid-Direttur dwar it-tmexxija ġenerali tal-Uffiċċju u l-imsemmi Direttur għandu barra minn hekk jinforma lill-imsemmi Bord bir-riżultat ġenerali ta' investigazzjonijiet u operazzjonijiet konklużi mill-Uffiċċju.

Id-Direttorat.

9. (1) Id-Direttorat tal-Uffiċċju għandu jikkonsisti mid-Direttur li għandu jkun l-Uffiċjal Kap Eżekuttiv tal-Uffiċċju, minn Deputat Direttur u minn dawk l-uffiċjali l-oħra u l-impjegati tal-Uffiċċju li jistgħu jiġu ingaġġati mill-Uffiċċju minn żmien għal żmien.

(2) Id-Direttur għandu jkun inkarigat mit-tmexxija ġenerali u l-azzjoni eżekuttiva tal-Uffiċċju u għandu jżomm lill-Bord mgħarraf dwar it-tmexxija ġenerali tal-Uffiċċju u dwar ir-riżultat ġenerali ta' investigazzjonijiet u operazzjonijiet konklużi mill-Uffiċċju.

(3) Id-Direttur għandu jinhatar mill-Ministru minn fost Uffiċjali Pubbliċi Anzjani, wara konsultazzjoni mal-Bord, għal dak il-perjodu u skont dawk il-termini li l-Ministru jista', b'konsultazzjoni mal-Bord, jiddetermina.

(4) Id-Deputat Direttur u l-uffiċjali u l-impjegati l-oħra tad-Direttorat għandhom ikunu magħżula mid-Direttur u ingaġġati mill-Uffiċċju skont dawk il-proċeduri u skont dawk il-kondizzjonijiet li l-Bord jista' minn żmien għal żmien jiddetermina.

(5) Id-Deputat Direttur u l-uffiċjali u l-impjegati l-oħra tad-Direttorat (hawn iżjed 'il quddiem imsejha l-persunal tad-Direttorat)

għandhom, kemm jista' jkun, jintagħzlu minn fost:

(a) membri tal-Pulizija eżekuttiva, innominati u maħtura mill-Kummissarju tal-Pulizija;

(b) uffiċjali fid-dipartimenti li jaqgħu taħt it-tmexxija tal-Kummissarju tat-Taxxi nnominati u maħtura mill-Kummissarju tat-Taxxi; u

(c) uffiċjali pubbliċi.

(6) L-Uffiċċju jista' jaġixxi wkoll permezz ta' dawk il-kuntratturi li jista' minn żmien għal żmien jingagġa:

Iżda dawn il-kuntratturi għandhom f'kull hin jaġixxu skont dawk l-istruzzjonijiet mogħtija mid-Direttur.

(7) Id-Direttur u l-persunal tad-Direttorat għandhom għall-finijiet kollha tal-Kodiċi Kriminali jitqiesu bħala uffiċjali pubbliċi, u għandhom jingħataw il-protezzjoni kollha u jistgħu jidhlu fir-responsabbiltà kollha bħala tali.

(8) Id-Direttur u l-persunal tad-Direttorat għandhom, bla ħsara għal kwalunkwe dispożizzjoni kuntrarja f'dan l-Att jew fi kwalunkwe liġi oħra, jimxu ma' kwalunkwe kodiċi ta' etika applikabbli għal uffiċjali pubbliċi:

Iżda xejn f'dan is-subartikolu ma jista' jitqies li jipprekludi l-Bord milli jagħmel aktar regoli li jirregolaw l-aġir tad-Direttur u tal-persunal tad-Direttorat biex jissupplimentaw kwalunkwe Kodiċi ta' Etika bħal dan.

10. (1) Il-Bord għandu jiltaqa' mill-inqas għaxar (10) darbiet fis-sena. Laqgħat oħra tal-Bord għandhom jissejñu kif jista' jkun meħtieġ. Laqgħat tal-Bord.

(2) Is-Segretarju għall-Bord għandu jieħu minuti tad-deċiżjonijiet fil-laqgħat tiegħu. Il-minuti għandhom jiġu ffirmati mis-Segretarju u miċ-*Chairperson*.

(3) Il-laqgħa tal-Bord għandha tkun ippreseduta miċ-*Chairperson* jew fl-assenza tiegħu mid-Deputat *Chairperson*.

(4) Id-deċiżjonijiet tal-Bord għandhom jiġu adottati b'maġġoranza sempliċi tal-voti tal-membri preżenti u jivvutaw, u f'każ ta' voti indaqs iċ-*Chairperson*, jew fejn il-laqgħa tkun preseduta mid-Deputat *Chairperson*, id-Deputat *Chairperson* għandu jkollu u jeżerċita t-tieni vot jew vot deċiżiv. Il-kworum fil-laqgħat tal-Bord

għandu jkun magħmul minn tliet (3) membri.

(5) Id-Direttur għandu jkun intitolat li jattendi l-laqgħat tal-Bord u li jieħu sehem fid-diskussjonijiet. Il-Bord jista' jstieden kwalunkwe membru iehor tal-persunal tad-Direttorat biex jattendi laqgħa tal-Bord u biex jieħu sehem fid-diskussjonijiet. Id-Direttur u kwalunkwe membru tal-persunal tad-Direttorat li jieħu sehem f'kull diskussjoni tal-Bord tal-Uffiċċju ma għandhomx jivvutaw fil-laqgħat li fihom jipparteċipaw:

Izda *ċ-Chairperson* jista' f'kull hin, jekk jidhirlu li huwa xieraq li jagħmel dan, fi kwalunkwe hin jeskludi d-Direttur jew kwalunkwe membru tal-persunal tad-Direttorat mistieden biex jattendi għal laqgħa tal-Bord minn kwalunkwe laqgħa jew parti minnha.

(6) Kull parteċipazzjoni f'laqgħa tal-Bord ta' persuna li mhijiex intitolata li tkun prezenti ma għandhiex tinvalida l-proċedimenti tal-laqgħa u lanqas għandha din il-proċedura tkun invalidata jekk sussegwentement jiġi skopert li persuna aġixxiet *in bona fede* bħala membru u difett fil-ħatra tagħha jew fi kwalifika tagħha tiġi skoperta wara.

(7) Avviż ta' ġimgħa għandu jingħata lill-membri tal-Bord għal kwalunkwe laqgħa tagħha:

Izda f'każ fejn tinqala' sitwazzjoni urġenti u deċiżjonijiet għandhom jittieħdu minnufih, b'deċiżjonijiet meħuda minn tal-anqas żewġ (2) membri tal-Bord li wiehed minnhom ikun *ċ-Chairperson* jew id-Deputat *Chairperson* għandhom ikunu validi daqslikieku ttieħdu f'laqgħa tal-Bord mlaqqa' regolarment b'avviż xieraq.

(8) Bla ħsara għad-dispożizzjonijiet l-oħra ta' dan l-Att, il-Bord għandu jirregola l-proċeduri tiegħu stess.

Hatriet tal-persunal.

11. Mingħajr preġudizzju għad-dispożizzjonijiet l-oħra ta' dan l-Att, il-ħatra ta' uffiċjali u impjegati oħra tal-Uffiċċju għandha ssir mill-Uffiċċju. It-termini u l-kondizzjonijiet tal-impjieg għandhom ikunu stabbiliti mill-Uffiċċju bi qbil mal-Ministru.

ħatra u funzjonijiet ta' uffiċjali u impjegati tal-Uffiċċju.

12. L-Uffiċċju għandu jahtar u jimpjega, b'dak il-ħlas u skont it-termini u l-kondizzjonijiet tal-hin li jista', skont l-artikoli 9 u 11, jiddetermina, dawk l-uffiċjali u l-impjegati tal-Uffiċċju li minn żmien għal żmien jistgħu jkunu meħtieġa għall-kwittanza dovuta u effiċjenti tal-funzjonijiet tal-Uffiċċju.

13. (1) Il-Prim Ministru jista', fuq talba tal-Uffiċċju, minn żmien għal żmien jordna li uffiċjal pubbliku għandu jiġi assenjat biex jaqdi dmirijietu mal-Uffiċċju f'dik il-kapaċità u b'seħh minn dik id-data kif jista' jkun speċifikat fl-ordni tal-Prim Ministru.

Assenjazzjoni ta' uffiċjali pubbliċi biex jaqdu dmirijiethom mal-Uffiċċju.

(2) Il-perjodu li matulu ordni bħal dik hawn aktar qabel imsemmija għandha tapplika għal xi uffiċjal speċifikat fiha, għandu, kemm-il darba l-uffiċjal ma jkunx irtira mis-servizz pubbliku, jew xort'oħra temm milli jibqa' fil-kariga f'data li tiġi qabel, jew kemm-il darba ma tiġix speċifikata data differenti f'dik l-ordni, jtemm milli jibqa' jseħh wara sena mid-data effettiva ta' dik l-ordni kemm-il darba l-ordni ma tiġix aktar kmieni revokata mill-Prim Ministru.

14. (1) Meta uffiċjal jiġi assenjat għal dmirijiet mal-Uffiċċju taħt xi wieħed mid-dispożizzjonijiet tal-artikolu 13, dak l-uffiċjal għandu, matul iż-żmien li fih dik l-ordni jkollha effett dwaru, ikun taħt l-awtorità u l-kontroll amministrattiv tal-Uffiċċju iżda huwa għandu għal kull għan u raġuni oħra jibqa' u jitqies u jiġi ttrattat bħala uffiċjal pubbliku.

Status tal-uffiċjali pubbliċi assenjati biex jaqdu dmirijiethom mal-Uffiċċju.

(2) Mingħajr preġudizzju għall-ġeneralità ta' dak hawn aktar qabel imsemmi, uffiċjal li jkun assenjat għal dmirijiet kif hawn aktar qabel imsemmi:

(a) ma għandux waqt iż-żmien li matulu huwa hekk assenjat:

(i) jiġi prekluz milli japplika għal trasferiment f'xi dipartiment tal-Gvern skont il-pattijiet u l-kondizzjonijiet ta' servizz konnessi mal-ħatra tiegħu mal-Gvern li jkollu fid-data meta huwa jiġi hekk assenjat għal dmirijietu; jew

(ii) ikun hekk impjegat li r-rimunerazzjoni u l-kondizzjonijiet tas-servizz tiegħu jkunu inqas favorevoli minn dawk li jkunu konnessi mal-ħatra tiegħu mal-Gvern li jkollu fid-data hawn aktar qabel imsemmija jew li kienu jkunu konnessi ma' dik il-ħatra, matul dak iż-żmien, li kieku dak l-uffiċjal ma jkunx ġie assenjat biex jaqdi dmirijietu mal-Uffiċċju; u

(b) ikollu l-jedd li s-servizz tiegħu mal-Uffiċċju jiġi meqjus bħala servizz mal-Gvern għall-finijiet ta' pensjoni, gratwità, jew benefiċċju taħt l-Ordinanza dwar il-Pensjonijiet u l-Att dwar il-Pensjonijiet lil Nisa Romol u Tfal Iltiema u ta' kull dritt jew privileġġ ieħor li għalih jkollu jedd għalih, u responsabbli għal kull responsabbiltà li dwarha huwa jkun

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responsabbli, hlief għall-fatt li huwa jkun ġie assenjat biex iwettaq dmiru mal-Uffiċċju.

(3) Fejn issir applikazzjoni kif provdut fis-subartikolu (2)(a)(i) għandha tingħata l-istess konsiderazzjoni daqslikienu l-applikant ma jkunx ġie assenjat għal servizz mal-Uffiċċju.

(4) L-Uffiċċju għandu jhallas lill-Gvern dawk il-kontribuzzjonijiet li jistgħu minn żmien għal żmien jiġu stabbiliti mill-Ministru responsabbli għall-finanzi dwar l-ispiza tal-pensjonijiet u l-gratwitajiet li jinqalgħu minn uffiċjal li jkun assenjat għal dmirijiet mal-Uffiċċju kif hawn aktar qabel imsemmi matul il-perjodu li fih huwa hekk assenjat.

Offerta ta' impjieg permanenti mal-Uffiċċju għall-uffiċjali pubbliċi assenjati biex jaqdu dmirijiet mal-Uffiċċju.

15. (1)L-Uffiċċju jista', bl-approvazzjoni tal-Prim Ministru, joffri lil uffiċjal assenjat għal dmirijiet mal-Uffiċċju taht xi wahda mid-dispożizzjoni tal-artikolu 12 impjieg permanenti mal-Uffiċċju b'dik ir-rimunerazzjoni u b'dawk il-pattijiet u l-kondizzjonijiet li ma jkunux inqas favorevoli minn dawk li jgawdi dak l-uffiċjal fid-data ta' dik l-offerta.

(2) Il-pattijiet u l-kondizzjonijiet f'xi offerta magħmula kif hawn aktar qabel imsemmi ma għandhiex titqies bhala inqas favorevoli biss għaliex ma jkunux għal kollox identiċi jew superjuri għal dawk li l-uffiċjal involut ikun qieghed igawdi fid-data ta' dik l-offerta, jekk dawk il-pattijiet u kondizzjonijiet ikkunsidrati flimkien, fil-fehma tal-Prim Ministru jkunu joffru benefiċċji sostanzjalment ekwivalenti jew akbar.

(3) Kull uffiċjal li jaċċetta impjieg permanenti mal-Uffiċċju li jiġi offrut lilu, taht id-dispożizzjonijiet tas-subartikolu (1) għandu għall-għanijiet kollha minbarra dawk tal-Ordinanza dwar il-Pensjonijiet u l-Att dwar il-Pensjonijiet lil Nisa Romol u Tfal Iltiema, u b'riżerva għad-dispożizzjonijiet tas-subartikolu (6), jitqies bhala li jkun temm fis-servizz mal-Gvern u li jkun daħal fis-servizz mal-Uffiċċju fid-data tal-aċċettazzjoni tiegħu, u għall-finijiet tal-imsemmija Ordinanza u tal-imsemmi Att, sakemm japplika għalih, servizz mal-Uffiċċju għandu jitqies li hu servizz mal-Gvern fi hdan it-tifsiriet tagħhom rispettivi.

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(4) Kull uffiċjal bħal dak hawn aktar qabel imsemmi li, minnufih qabel ma jaċċetta impjieg permanenti mal-Uffiċċju kellu jedd jikseb benefiċċju taht l-Att dwar il-Pensjonijiet lil Nisa Romol u Tfal Iltiema, għandu jibqa' jkollu dak il-jedd li jibbenefika tahtu għal kull skop bħallikieku s-servizz tiegħu mal-Uffiċċju kien servizz mal-Gvern.

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(5) L-Uffiċċju għandu jhallas lill-Gvern dawk il-kontribuzzjonijiet li jistgħu minn żmien għal żmien jiġu ddeterminati mill-Ministru responsabbli għall-finanzi fir-rigward tal-ispiza tal-pensjonijiet u l-gratwitajiet miksuba minn uffiċjal li aċċetta l-eżekuzzjoni tal-impjeg mal-Uffiċċju skont dan l-artikolu matul il-perjodu li jibda fid-data tal-aċċettazzjoni ta' dan l-uffiċjal.

(6) (a) Għall-għaniet ta' dan l-artikolu, il-karigi u l-grad i tas-salarji mal-Uffiċċju għandhom jiġu kklassifikati fi gradi u livelli inkrementali fis-servizz taht il-Gvern ta' Malta li jkunu l-aktar jikkorrispondu b'referenza għad-deskrizzjoni tax-xogħol, il-ħiliet, ir-responsabbiltajiet u fatturi analogi oħra.

(b) Il-klassifikazzjoni msemmija fil-paragrafu (a) għandha ssir minn bord magħmul minn president mahtur mill-Ministeru responsabbli għall-finanzi u żewġ (2) membri oħra, wieħed mahtur mill-Ministeru responsabbli ċentralment għall-politika tal-persunal fis-servizz pubbliku u wieħed mahtur mill-Uffiċċju. Il-klassifikazzjoni għandha tkun soġġetta għall-approvazzjoni finali tal-Ministru responsabbli għall-finanzi.

(ċ) Dik il-klassifikazzjoni għandha sseħħ fi żmien tliet (3) xhur minn kull aġġustament tas-salarji tal-impjegati fis-servizz tal-Gvern u, jew, tal-impjegati tal-Uffiċċju.

(d) Ebda kariga ma għandha tigi klassifikata fi grad oġhla minn dak ta' Grad 3 fis-servizz tal-Gvern jew fi grad ieħor li l-Ministru responsabbli għall-finanzi jista' minn żmien għal żmien permezz ta' avviż fil-Gazzetta jiddetermina.

(e) Mingħajr preġudizzju għall-artikolu 113 tal-Kostituzzjoni, l-ebda persuna ma tista', wara klassifikazzjoni kif intqal hawn qabel, tkun intitolata għal drittijiet taht l-Ordinanza dwar il-Pensjonijiet inqas favorevoli minn dawk li hija kienet tkun intitolata għaliha qabel dik il-klassifikazzjoni.

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16. (1) Fl-eżerċizzju tal-funzjonijiet tiegħu taht dan l-Att, id-Direttur u kwalunkwe membru tal-persunal tad-Direttorat, awtorizzat minnu, għandu jkollhom is-setgħa li jfittxu mingħand kull persuna jew awtorità kwalunkwe informazzjoni rigward kwalunkwe persuna jew rigward kwalunkwe kwistjoni, u l-persuna fil-pussess ta' din l-informazzjoni ma għandhiex, minkejja d-dispożizzjoni ta' kwalunkwe liġi għall-kuntrarju, tkun obbligata tagħti d-Direttur jew kwalunkwe membru bħal dan l-informazzjoni hekk mitluba;

Dritt tal-Uffiċċju li jikksew informazzjoni.

Iżda:

(a) L-ebda avukat jew prokuratur legali ma jista' jkun kostrett li jiżvela informazzjoni derivata mill-kunfidenza professjonali li l-partijiet infushom ikunu poġġew fl-assistenza u, jew, fil-parir tagħhom;

(b) Ebda kleru ma jista' jiġi interrogat dwar kwalunkwe kwistjoni jew ċirkustanza li setgħa sar jafha taħt is-sigill tal-qrar jew tal-konfessjonijiet:

Iżda fejn kwalunkwe persuna jew awtorità tkun kisbet informazzjoni minn kwalunkwe persuna jew awtorità fi kwalunkwe Stat għajr Malta permezz tal-operazzjoni ta' kwalunkwe trattat jew arrangament ma' dak l-Istat l-ieħor li fih Malta tkun parti, u dak it-trattat jew arrangament jipprovdi li kwalunkwe informazzjoni mġhoddi mill-operat ta' tali trattat jew arrangament ma jista' jiġi żvelat lil ebda persuna oħra hlief bil-kunsens tal-persuna li tghaddi l-informazzjoni mitluba, il-persuna li mingħandha tkun mitluba l-informazzjoni tista' żżomm l-informazzjoni jekk tali kunsens ma jingħatax.

(2) L-informazzjoni msemmiya taħt is-subartikolu (1) hawnhekk għandha tiġi pprovduta fi żmien mhux aktar minn tletin (30) jum mill-wasla tat-talba:

Iżda wara li tiġi murija kawża tajba lid-Direttur, tali perjodu jista' jiġi estiż mid-Direttur għal tali perjodu jew perjodi oħra li d-Direttur jista' jidhirlu raġonevoli.

Prosekuzzjoni
eċċ għandhom
jinfermaw lill-
Uffiċċju.

17. Meta persuna tkun akkużata quddiem qorti ta' Ġurisdizzjoni Kriminali f'Malta b'reat rilevanti, għandu jkun id-dmir tal-uffiċjal tal-prosekuzzjoni u tar-Registatur tal-Qorti quddiem liema tali persuna akkużata tkun ġiet akkużata biex tinforma lill-Uffiċċju, malajr kemm jista' jkun u f'kull każ mhux aktar tard mill-iskadenza ta' ġimgħa (1) minn meta dik il-persuna li qiegħda tiġi akkużata, u biex iżżomm lill-Uffiċċju mġharraf bil-progress tal-proċeduri kontra tali persuna, partikolarment dwar kull kundanna jew ħelsien u dwar kull appell u r-riżultat tagħha.

Prosekuzzjoni
biex tikkordina
mal-Uffiċċju
għall-hruġ ta'
ordnijiet taħt
dan l-Att.

18. Għandu jkun id-dmir tal-uffiċjal tal-prosekuzzjoni f'kull każ fejn persuna tkun ġiet akkużata b'reat rilevanti, li jagħti lill-Uffiċċju l-informazzjoni kollha meħtieġa u li tista' tkun meħtieġa biex tiddetermina jekk dik il-persuna bbenefikatx mir-rikavat mill-kriminalità u biex tiddetermina jekk hemmx bżonn li tittiehed xi miżura taħt dan l-Att fir-rigward ta' dik il-persuna jew il-proprietà tagħha.

19. (1) Meta xi proprjetà minn sentenza finali ta' qorti tkun giet meħuda jew ikkonfiskata favur il-Gvern, għandha tkun ir-responsabbiltà fuq ir-Registratur ta' dik il-qorti li jinforma lill-Uffiċċju dwar tali telf jew konfiska u li jibgħat lill-Uffiċċju kopja tas-sentenza, li tordna t-telf jew il-konfiska jew li minħabba fiha jkun sar it-teħid jew il-konfiska.

Amministrazzjoni u rimi ta' proprjetà mitlufa, u ta' proprjetà kkonfiskata favur il-Gvern.

(2) L-imsemmi Registratur għandu wkoll jibgħat lill-Uffiċċju kwalunkwe proprjetà hekk mitlufa jew konfiskata jew, u kull titolu għal dik il-proprjetà li tista' tkun fil-pussess tal-qorti.

(3) Mingħajr preġudizzju għad-dispożizzjonijiet ta' kwalunkwe liġi oħra li tippovdi għal teħid bħala konsegwenza ta' kundanna għal reat kriminali, il-konfiska favur il-gvern tal-proprjetà soġġetta għall-konfiska, li tappartjeni lil persuna misjuba hatja ta' reat rilevanti hija konsegwenza ċivili ta' xi kundanna bħal din, u ma għandux għalfejn jiġi ppronunzjat fis-sentenza li tkun sabet il-ħtija tiegħu. Fejn din il-konfiska tinkludi rikavat mill-kriminalità, hija mhix limitata biss għall-qligħ li joħroġ mir-reat li għalih tirreferi s-sentenza, imma testendi għar-rikavat minn reati oħra rilevanti li jintwerew fuq bilanċ ta' probabilitajiet li jkun għew kommissi mill-istess persuna.

(4) (a) Meta kull proprjetà hekk meħuda jew ikkonfiskata tikkonsisti fi flus f'munita oħra għajr l-euro, għandha tinbidel f'euro bir-rata tal-kambju fis-seħh.

(b) Meta dik il-proprjetà tikkonsisti f'oġġetti jew assi oħra, din għandha tiġi mneħhija mill-Uffiċċju b'mod li jiżgura l-akbar benefiċċju għall-Gvern.

(5) Id-dhul mid-disponiment ta' kwalunkwe proprjetà mill-Uffiċċju għandu jiġi trasferit lid-Direttur għall-fond konsolidat jew għal tali fond ieħor li jista' jiġi stabbilit b'regolamenti magħmula mill-Ministru bi qbil mal-Ministru responsabbli għall-finanzi għall-użu bħala appoġġ għall-isforzi għall-ġlieda kontra l-*money laundering* u l-iffinanzjar tat-terroriżmu kemm jista' jkun wara li jkun irċieva:

Izda dak il-porzjon ta', jew dik is-somma mnissla minn dak ir-rikavat, kif tista' tiġi ddeterminata fl-estimi approvati mill-Ministru, tista' tinzamm mill-Uffiċċju bħala riżerva biex tkopri spejjeż kontinwi u futuri.

(6) L-Uffiċċju għandu jkun intitolat ukoll, bl-awtorizzazzjoni tal-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) li jkollu u jmexxi, jivvaluta, iżomm u jamministra proprjetà li tkun iffriżata u fil-proċess li tiġi kkonfiskata u tbiegħ dik il-proprjetà li hija ta' natura li tithassar jew li teħtieġ spejjeż sostanzjali biex tinzamm jew hija soġġetta għal

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deprezzament sostanzjali. Għal dan il-għan l-Uffiċċju jista' jkun assistit mill-kuntratturi tiegħu jew professjonisti esternalizzati.

Sena
finanzjarja.

20. Is-sena finanzjarja tal-Uffiċċju għandha tibda fl-ewwel jum ta' Jannar u tintemm fil-wieġed u tletin jum ta' Diċembru:

Iżda l-ewwel sena finanzjarja tal-Uffiċċju tibda mid-data tad-dhul fis-sehħ ta' dan l-Att u għandha tintemm fil-31 ta' Diċembru tas-sena ta' wara.

Estimi u nefqa.

21. (1) Id-Direttur għandu, mhux aktar tard minn sittax (16)-il ġimgħa qabel it-tmiem ta' kull sena finanzjarja, jissottometti lill-Bord tal-Uffiċċju stimi tad-dhul u l-infiq tal-Uffiċċju għas-sena finanzjarja ta' wara.

(2) Fil-preparazzjoni ta' dawn l-estimi l-Uffiċċju għandu jagħmel hiltu biex jiżgura li s-somom li għandhom jiġu allokat lill-Uffiċċju, flimkien ma' kwalunkwe somma miżmuma skont il-proviso tas-subartikolu (5) tal-artikolu 19 huma tal-inqas biżżejjed biex jilħqu s-somom kollha li jithallsu fil-kontijiet tad-dhul u nfiq tiegħu inkluż, iżda mingħajr preġudizzju għall-ġeneralità ta' dik l-espressjoni, deprezzament.

(3) L-estimi għandhom isiru f'dik il-forma, u għandu jkun fihom dik l-informazzjoni, u tali paraguni ma' snin preċedenti, kif il-Bord jista' jordna.

(4) Mhux aktar tard minn tliet (3) ġimgħat minn meta jirċievi dawn l-estimi mid-Direttur, il-Bord għandu jikkunsidra dawn l-estimi u għandu jibgħat l-istess bi jew mingħajr emendi lill-Ministru għall-approvazzjoni tiegħu.

(5) Qabel tmiem is-sena finanzjarja, il-Ministru għandu japprova u jadotta dawn l-estimi b'emendi jew mingħajrhom.

(6) Jekk fir-rigward ta' kwalunkwe sena finanzjarja jinstab li l-ammont hekk approvat ma jkunx biżżejjed jew tkun inqal għet hteġa għal nefqa għal skop mhux provdut fl-estimi, id-Direttur għandu jikkawża li jiġu ppreparati estimi supplimentari u jintbagħtu minnufih lill-Bord għat-trażmissjoni lill-Ministru għall-approvazzjoni tiegħu, u fi kwalunkwe każ bhal dawn id-dispożizzjonijiet tal-artikolu għandhom kemm jista' jkun japplikaw għall-estimi supplimentari.

Avvanzi mill-
Gvern.

22. Il-Ministru jista', billi jaġixxi skont l-Att ta' approprjazzjoni, jagħmel avvanzi u jipprovdi tali fondi lill-Uffiċċju biex iwettaq il-funzjonijiet tiegħu taht dan l-Att, skont dawk l-estimi approvati skont l-artikolu 21.

23. L-Uffiċċju għandu jżomm kotba ta' kontijiet xierqa b'dak il-mod li l-Ministru, wara konsultazzjoni mal-Ministru responsabbli għall-finanzi, jista' minn żmien għal żmien jidderiegi. Kontijiet bħal dawn għandhom jiġu vverifikati minn awdituri mahtura mill-Bord tal-Uffiċċju bi qbil tal-Ministru minn fost persuni kkwalifikati biex jiġu mahtura bħala awdituri ta' kumpanija skont dik il-liġi li fis-sehħ bħalissa f'Malta. Dawn il-kontijiet barra minn hekk għandhom ikunu soġġetti għal verifika mill-Awditur Ġenerali.

Kontijiet u verifika.

24. (1) Il-Bord għandu malajr kemm jista' jkun iżda mhux aktar tard minn tliet (3) xhur wara l-għeluq ta' kull sena finanzjarja, jibgħat lill-Ministru rapport annwali li jikkonsisti minn:

Rapport annwali.

(a) kopja tal-kontijiet annwali ċertifikati mill-awdituri;
u

(b) rapport dwar l-operat tal-Uffiċċju matul is-sena finanzjarja preċedenti.

(2) Ir-rapport annwali għandu jkun impoġġi fuq il-mejda tal-Kamra mill-Ministru sa mhux aktar tard minn sitt (6) ġimgħat wara li tasal, jew fejn il-Kamra tkun f'dak il-perjodu mhux f'sessjoni, mhux aktar tard mit-tieni ġimgħa wara li l-Kamra terġa' titlaqqa'.

25. (1) L-Uffiċċju għandu jiġbor, imexxi u jipproċessa *data* relatata ma':

Id-*data* għandha tinżamm mill-Uffiċċju.

(a) persuni suspettati investigati mill-Uffiċċju;

(b) l-iffriżar, il-qbid u l-konfiska tal-proprjeta', inkluż *data* kompressiva fuq l-effettività tal-iffriżar u l-qbid tal-proprjeta' sal-konfiska; u

(ċ) assistenza fl-infurzar ta' sentenzi li jinvolvu konfiska ta' proprjeta';

(d) il-ġestjoni tal-assi;

(e) il-qligħ stmat, il-valur ta' proprjeta' maqbuda u kkonfiskata u l-ammont realizzat jiffirma mill-amministrazzjoni jew bejgħ ta' dik il-proprjeta';

(f) fejn il-proprjeta' tiġi rilaxxata, ir-raġunijiet għar-rilaxx.

(2) Id-Direttur għandu jżomm rekord ta' dawk il-persuni jew kategoriji ta' persuni li jkollhom aċċess għad-*data* msemmija fis-subartikolu (1), u għandu jpoġġi tali rekord disponibbli għall-Kummissarju għall-Infurmazzjoni u l-Protezzjoni tad-*Data*.

Rekord ta' persuni li jkollhom aċċess għad-*data*.

(3) Id-*data* miżmuma għall-iskopijiet ta' dan l-Att għandha tinzamm għal perjodu ta' hmistax (15)-il sena liema perjodu għandu jiġi sospiż waqt li l-investigazzjonijiet ikunu pendenti jew ta' litigazzjoni li għalihom l-imsemmija data tkun rilevanti.

Żvelar ta' informazzjoni.

26. (1) Id-Direttur u l-membri tal-Bord, il-membri tal-persunal tad-Direttorat u l-konsulenti u l-kuntratturi tal-Uffiċċju għandhom jittrattaw kull informazzjoni akkwistata permezz tal-qadi ta' dmirijietom taħt dan l-Att bħala sigrieti u kunfidenzjali u ma għandhomx jiżvelaw l-istess lil kwalunkwe persuna ħlief kif meħtieġa għat-twettiq korrett tad-dmirijiet tagħhom:

Iżda xejn f'dan is-subartikolu ma għandu jitqies li jipprekludi d-Direttur jew kwalunkwe membru tal-persunal tad-Direttorat li jaġixxi taħt awtorizzazzjoni ġenerali jew speċifika mill-imsemmi Bord biex jiżvela informazzjoni lill-Avukat Ġenerali, jew lil kwalunkwe awtorità li tagħmel prosekuzzjoni, li tista' tkun meħtieġa fil-prosekuzzjoni ta' reati għal reat rilevanti jew lil kwalunkwe awtorità fiskali jew ta' sorveljanza stabbilita minn jew taħt kwalunkwe liġi oħra bl-iskop li tgħin lil awtorità bħal din fit-twettiq tal-funzjonijiet tagħha.

(2) Id-Direttur u l-membri tal-persunal tad-Direttorat għandhom iżommu rekord ta' kwalunkwe żvelar ta' informazzjoni li jkun sar skont is-subartikolu (1), li jindika lill-persuna li lilha ġiet żvelata l-informazzjoni u fejn meħtieġ id-*data* tal-awtorità biex tiżvela mogħtija bil-miktub mid-Direttur:

Iżda f'kazijiet urġenti, awtorità biex tiżvela tista' tingħata bil-fomm f'liema każ għandha tiġi kkonfermata bil-miktub kemm jista' jkun, u fl-ebda każ mhux aktar tard minn jumejn (2) ta' xogħol mill-ġoti tal-awtorità verbali.

Responsabbiltà għad-danni.

27. L-Uffiċċju, il-Bord, id-Direttur u l-membri tal-persunal tad-Direttorat ma għandhomx ikunu responsabbli għad-danni għal xi haġa magħmula jew li tħalliet barra li ssir fir-rilaxx jew it-twettiq ta' kwalunkwe funzjoni taħt dan l-Att sakemm l-att jew l-ommissjoni ma jintwerewx li kienu saru jew tħallew barra milli jsiru b'intenzjoni hażina jew b'negligenza kbira.

TAQSIMA III

Il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi)

Twaqqif tal-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi).

28. (1) Għandha tkun imwaqqfa sezzjoni tal-Qorti Ċivili biex tkun maħtura l-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi).

(2) Il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandha tieġu konjizzjoni ta' kazijiet ta' kwalunkwe kategorija kif hemm f'dan l-Att jew b'xi liġi oħra assenjata lilu.

(3) Il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandha tiegħu konjizzjoni tal-każijiet ikun xi jkun il-valur tal-kwistjoni in kwistjoni jekk il-każ jaqa' f'kategorija ta' każijiet assenjati lilha kif stipulat fis-subartikolu (2).

29. Il-proċeduri quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) huma ta' natura ċivili u l-oneru tal-prova meħtieġa biex tkun stabbilita sejba ma għandux ikun akbar minn dak li jista' jkun meħtieġ f'kull qorti oħra ta' ġuriżdizzjoni ċivili għall-kuntrarju ta' ġuriżdizzjoni kriminali.

Proċedimenti ta' natura ċivili.

30. La l-aċċettazzjoni ta' ebda dikjarazzjoni quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) minn xi persuna, u xejn ipprezentat f'dokument quddiemha jew xi haġa msemmija fil-provi minn xi persuna qabel ma għandhom ikunu ammissibbli bħala evidenza fi kwalunkwe proċediment għal xi reat kontra l-persuna li f'isimha tkun saret id-dikjarazzjoni jew giet aċċettata, jew f'isimha d-dokument gie preżentat, jew kontra l-persuna li tagħti xhieda:

Inammissibbiltà bħala evidenza f'każijiet kriminali.

Iżda xejn f'dan l-artikolu ma għandu jitqies li jeżenta lil kwalunkwe persuna minn kwalunkwe responsabbiltà kriminali jew oħra li tirriżulta minnha li tagħti evidenza falza quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) jew għall-preżentata jew li tikkawża li tkun ipprezentata kwalunkwe dokument li jaf li jkun falza.

31. (1) Hlief kif provdut mod ieħor f'din il-liġi jew f'xi liġi oħra, il-proċeduri quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandhom jiġu istitwiti u mmexxija skont l-istess proċedura kif applikabbli quddiem il-Prim' Awla tal-Qorti Ċivili, u għalhekk dak l-artikolu 460 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili ma għandhomx japplikaw fir-rigward ta' proċeduri quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi).

Proċedura.

Kap. 12

(2) Il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandu jkollha s-setgħa fuq applikazzjoni ta' kwalunkwe parti interessata biex:

(a) testendi kull limitu ta' żmien provdut minn dan l-Att;

(b) tiddeċiedi kwalunkwe kwistjoni dwar jekk il-privileġġ professjonali legali provdut f'dan l-Att japplikax fi kwalunkwe ċirkostanza ddikjarata.

32. L-ebda appell ma għandu jsir kontra deċiżjonijiet tal-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) hlief fuq punt tal-liġi deċiż fis-sentenza appellata jew abbażi ta' żball ta' fatt li jirriżulta mir-rekords tal-każ.

Appelli.

TAQSIMA IV
Ordnijiet

Ordnijiet ta'
Monitoraġġ.

33. (1) Fejn l-Avukat Ġenerali jkollu kawża raġonevoli biex jissuspetta li persuna hija ħatja ta' reat rilevanti, l-imsemmi Avukat Ġenerali jista' jitlob lill-Qorti Kriminali għal Ordni, (minn hawn 'il quddiem imsejha "Ordni ta' Monitoraġġ") li teħtieġ bank jew finazi oħra istituzzjoni liċenzjati biex joperaw f'Malta biex jissorveljaw għal perjodu speċifikat it-tranzazzjonijiet jew l-operazzjonijiet li jsiru permezz ta' kont wieħed jew aktar f'isem is-suspettat, jew permezz ta' kont wieħed jew aktar:

(a) suspettati li kienu użati fil-twettiq tar-reat; jew

(b) li jistgħu jipprovdu informazzjoni dwar ir-reat jew iċ-ċirkostanzi tiegħu; jew

(ċ) li jistgħu jipprovdu informazzjoni dwar il-post u l-ammonti tar-rikavat tal-kriminalità, matul jew wara l-kummissjoni tar-reat.

Il-Bank jew istituzzjoni finanzjarja oħra meta tirċievi tali Ordni mill-Qorti Kriminali għandha tipproċedi biex tissorvelja l-kont jew il-kontijiet kif indikat fl-Ordni, u għandha tikkomunika lill-Avukat Ġenerali l-informazzjoni li tirriżulta mill-monitoraġġ.

(2) L-applikazzjoni għal Ordni ta' Monitoraġġ għandha ssir bil-magħluq u d-deċiżjoni tal-Qorti Kriminali f'dik l-applikazzjoni għandha wkoll tingħata bil-magħluq.

(3) (a) Fejn mill-informazzjoni li tirriżulta mill-monitoraġġ ta' kont jew kontijiet skont l-Ordni ta' Monitoraġġ magħmula skont is-subartikolu (1), jidher lill-Avukat Ġenerali li reat ikun sar, u li tali reat rilevanti jista' jkun irriżulta f'rikavat mill-kriminalità, l-Avukat Ġenerali għandu jikkomunika lid-Direttur l-informazzjoni li tirriżulta mill-monitoraġġ.

(b) Id-Direttur għandu jistudja l-informazzjoni riċevuta skont il-paragrafu (a) bil-għan li jistabbilixxi l-kwantità ta' kwalunkwe rikavat mill-kriminalità u l-post tagħhom, u fejn għal dak il-għan huwa tal-fehma li kwalunkwe kont jew kontijiet oħra jkun hemm bżonn li jiġu ssorveljati sabiex tingabar l-informazzjoni għall-iskop imsemmi hawn fuq, huwa jista' jitlob lill-Avukat Ġenerali biex japplika quddiem il-Qorti Kriminali għall-ħruġ ta' aktar ordnijiet ta' monitoraġġ fir-rigward ta' tali kontijiet.

Ordni ta'
Investigazzjoni.

34. (1) Fejn l-Avukat Ġenerali jkollu kawża raġonevoli biex jissuspetta li persuna hija ħatja ta' reat rilevanti, l-Avukat Ġenerali

jista' jitlob lill-Qorti Kriminali għal Ordni (minn hawn 'il quddiem imsejha "Ordni ta' Investigazzjoni") li tehtieg li persuna jew persuni msemmija fl-Ordni li jista' jkun fil-pussess ta' materjal parikolari jew materjal ta' deskrizzjoni partikolari li x'aktarx ikun ta' valur sostanzjali (kemm jekk waħdu kif ukoll flimkien ma' materjal ieħor) għall-investigazzjoni jew, b'rabta mas-suspettat, għandha tipproduċi jew tagħti aċċess għal dak il-materjal għall-applikant, u bis-saħħa ta' tali Ordni ta' Investigazzjoni, l-applikant jew kwalunkwe persuna awtorizzata minnu għandu jkollhom is-setgħa li jidhlu fi kwalunkwe dar, bini jew kompartment bl-iskop li jfittxu dak il-materjal.

(2) Id-dispożizzjonijiet tal-artikolu 16 għandhom *mutatis mutandis* japplikaw fir-rigward ta' Ordni ta' Investigazzjoni.

(3) Fejn il-materjal soġġett għal Ordni ta' Investigazzjoni jikkonsisti f'informazzjoni li tinsab f'kompjuter, l-Ordni ta' Investigazzjoni għandu jkollu effett bhala ordni biex jipproduċi jew jagħti aċċess għal dak il-materjal f'forma li fiha jista' jinqabad u li fih tkun tidher u tidher legġibbli.

(4) Fejn fil-kors ta' investigazzjoni, skont ordni taħt dan l-artikolu, il-persuna li tkun qiegħda tmexxi l-investigazzjoni għandha raġuni biex temmen li kwalunkwe persuna jista' jkollha informazzjoni rigward reat rilevanti, il-persuna li tmexxi l-investigazzjoni għandha titlob lil Maġistrat biex tisma' lil dik il-persuna taħt ġurament, u l-Maġistrat għandu minnufih jisma' lill-persuna taħt ġurament u jfassal proċès-verbal li jkun fih dik ix-xhieda, u l-proċès-verbal hekk imfassal u l-provi rreġistrati hemmhekk għandhom l-istess valur probatorju bħal dak magħmul minn proċès-verbal u evidenza rreġistrata fi proċeduri skont it-Titolu II tat-Taqsima II tal-Ktieb Tieni tal-Kodiċi Kriminali. Kap. 9.

(5) Is-subartikolu (2) tal-artikolu 33 għandu japplika għal applikazzjoni għall-ħruġ ta' Ordni ta' Investigazzjoni u għad-deċiżjoni tal-Qorti Kriminali rigward kwalunkwe applikazzjoni bħal din.

(6) Fejn twettaq Ordni ta' Investigazzjoni, rapport tar-riżultat tal-investigazzjoni għandu jkun disponibbli wkoll għad-Direttur.

(7) (a) Fejn jidher lill-Avukat Ġenerali li Ordni ta' Investigazzjoni tista' twassal għall-iskoperta ta' materjal li jikkostitwixxi rikavat mill-kriminalità jew informazzjoni dwar il-post tagħhom, huwa jista' jitlob lill-qorti li l-persuna li tmexxi l-investigazzjoni tkun akkumpanjata mid-Direttur.

(b) Id-Direttur jista' meta jakkumpanja lill-persuna li tkun qiegħda twettaq l-investigazzjoni, jidhol f'xi dar, bini jew

kompartment, jew jimbarka fuq inġenju jew vettura soġġetta għall-investigazzjoni, skont is-subartikolu (1), jagħmel rekord ta' kwalunkwe materjal f'dik id-dar, bini jew post jew abbord l-inġenju jew ġewwa l-vettura li tista' tikkostitwixxi rikavat mill-kriminalità, u għal dan l-iskop għandu jkollu kwalunkwe materjal bħal dan fotografat, miżun, imkejjet u smat minn esperti.

(ċ) Fejn il-preżenza tad-Direttur ma tkunx giet mitluba mill-Avukat Ġenerali skont il-paragrafu (a) u l-ħtieġa li d-Direttur jidhol fi kwalunkwe dar, bini jew kompartment jew biex jitla' abbord kwalunkwe inġenju jew vettura jew biex imexxi kwalunkwe operazzjoni kif imsemmija fil-paragrafu (b) tirriżulta lill-Avukat Ġenerali wara li tkun saret l-Ordni ta' Investigazzjoni, jew id-Direttur jinforma lill-Avukat Ġenerali b'dak il-bżonn wara li jirċievi rapport li jkun sar disponibbli għalih skont is-subartikolu (6), l-Avukat Ġenerali jista' jitlob lill-Qorti biex tawtorizza lill-persuna li tkun qiegħda twettaq l-investigazzjoni biex terġa tidhol f'dik id-dar, bini jew post, jew biex timbarka tali inġenju jew tidhol f'dik il-vettura akkumpanjata mid-Direttur għall-iskop li twettaq l-operazzjonijiet skont kif imsemmija fil-paragrafu (b).

Ordni ta'
Sekwestru.

35. (1) Fejn l-Avukat Ġenerali jkollu raġuni raġonevoli biex jemmen li persuna (minn hawn 'il quddiem "is-suspettat") hija ħatja ta' reat rilevanti, huwa jista' japplika lill-Qorti Kriminali għal ordni (minn hawn 'il quddiem imsejha "Ordni ta' Sekwestru") billi:

(a) tissekwestra f'idejn dawk il-persuni jew f'idejn il-partijiet terzi li għandhom kustodja tal-proprjetà ta' dawn il-persuni, li huma msemmija fir-rikors (minn hawn 'il quddiem imsejha "s-sekwestranti") kif imsemmi fl-applikazzjoni il-flejjes kollha jew proprjetà mobbli oħra li jappartjenu lil jew li għandhom jingħataw lis-suspettat jew użati mis-suspettat;

(b) teħtieġ li s-sekwestrati jiddikjaraw bil-miktub lill-Avukat Ġenerali u lid-Direttur, mhux aktar tard minn erbgħa u għoxrin (24) siegħa mill-ħin tan-notifika tal-ordni, in-natura u s-sors tal-flejjes kollha u l-proprjetà mobbli oħra hekk mehmuża; u

(ċ) tipprojbixxi lis-suspettat milli jittrasferixxi jew jiddisponi b'xi mod ieħor ta' kwalunkwe proprjetà mobbli jew immobbli.

(2) Qabel ma tagħmel Ordni ta' Sekwestru, il-Qorti Kriminali tista' titlob li tisma' lill-Avukat Ġenerali fis-sigrieta u ma għandhiex tagħmel tali Ordni sakemm ma taqbilx miegħu li hemm raġuni raġonevoli kif stipulat fis-subartikolu (1).

(3) Id-dispożizzjonijiet tal-artikolu 381 (1)(a), (b) u (2) u l-artikolu 382 (1) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom *mutatis mutandis* japplikaw għall-Ordni ta' Sekwestru. Kap. 12.

(4) (a) Ordni ta' Sekwestru għandha tiġi notifikata fuq is-sekwestrant u fuq is-suspettat minn uffiċjal tal-Pulizija Eżekuttiva.

(b) Ordni ta' Sekwestru tista' wkoll tkun notifikata fuq is-sekwestranti bil-posta elettronika. Meta jkun notifikat dan, is-sekwestrant għandu, mhux aktar tard minn gurnata (1) tax-xogħol minn tali servizz, jirrikonoxxi l-irċevuta bil-posta elettronika tar-ritorn, u fin-nuqqas ta' tali konferma, kopja tal-Ordni għandha, mingħajr preġudizzju għall-validità tas-servizz permezz ta' mezzi elettronici, tiġi notifikata fuq is-sekwestrant minn uffiċjal tal-pulizija eżekuttiva;

(ċ) Sakemm il-Qorti Kriminali ma tordnax mod ieħor, Ordni ta' Twahħil għandha tiġi notifikata mingħajr avviż minn qabel lill-garnishee.

(5) Ordni ta' Sekwestru għandha, sakemm ma tkunx revokata qabel mill-Avukat Ġenerali b'avviż bil-miktub notifikat lis-suspettat u lis-sekwestrant, tiegħ topere fis-sitt (6) xhur mid-data li ssir, u l-Qorti Kriminali ma għandhiex tordna Ordni ta' Sekwestru oħra fir-rigward tas-suspettat sakemm ma tkunx sodisfatta li hemm informazzjoni sostanzjalment ġdida fir-rigward tar-reat relattiv rilevanti:

Iżda l-Qorti Kriminali tista', fuq talba tal-Avukat Ġenerali, meta tkun sodisfatta li jeżistu raġunijiet suffiċjenti, testendi l-validità ta' Ordni ta' Sekwestru għal perjodu ieħor ta' sitt (6) xhur.

(6) Meta matul il-perjodu ta' validità ta' Ordni ta' Sekwestru, kemm jekk originali kif ukoll estiż, is-suspettat jaħrab jew ikun għal xi raġuni oħra 'l bogħod mill-gżira, il-perjodu ta' żmien li matulu s-suspettat huwa 'l bogħod mill-gżira għandu jiżdied mal-perjodu ta' validità tal-Ordni ta' Sekwestru.

(7) Meta l-Avukat Ġenerali japplika għall-ħruġ ta' Ordni ta' Sekwestru kif provdut fis-subartikolu (1), huwa jista' jitlob lill-Qorti li toħroġ l-Ordni biex tawtorizza lid-Direttur biex jakkumpanja lill-persuna li taqdi l-Ordni ta' Sekwestru fuq is-suspettat, u fuq is-servizz tal-Ordni fuq is-suspettat id-Direttur għandu jkollu d-dritt, jidhol, akkumpanjat minn uffiċjal tal-Pulizija Eżekuttiva f'kull dar, bini jew post ieħor jew abbord kwalunkwe inġenju jew jidhol fi kwalunkwe vettura, li tappartjeni jew użata mill-suspettat, jew fejn huwa suspettat li s-suspettat jista' jkollu proprjetà jew assi oħra li jikkostitwixxu l-proprjetà soġġetta għal konfiska, u b'hekk jagħmel rekord ta'

kwalunkwe materjal li jista' jikkostitwixxi tali proprjetà. Id-Direttur jista' għal dan il-għan ikollu materjal bħal dan fotografat, miżun, imkejjel u stmat minn esperti.

(8) Id-Direttur jista' wkoll jneħhi u jieħu pussess ta' kwalunkwe materjal imsemmi fis-subartikolu preċedenti, u dak il-materjal għandu jibqa' meħmuż bl-Ordni f'idejn id-Direttur matul il-perjodu ta' validità tal-Ordni ta' Sekwestru:

Iżda fejn id-Direttur jieħu l-pussess ta' kwalunkwe materjal kif intqal qabel, mhux aktar tard minn ġimgħa (1) wara li ħa tali pussess huwa għandu jinforma lill-Qorti Kriminali b'dak li ħa l-pussess u jitlob lill-awtorità tiegħu biex tkompli żżomm il-pussess tal-materjal matul il-perjodu ta' validità tal-Ordni ta' Sekwestru. L-applikazzjoni tad-Direttur għandha tiġi notifikata lis-suspettat u lil kull persuna li l-pussess tagħha jkun tneħha il-materjal. Il-Qorti Kriminali għandha tiddeċiedi t-talba permezz ta' digriet, u meta fid-digriet tagħha tirrifjuta li tilqa' t-talba tad-Direttur, kollha jew parzjalment, id-Direttur għandu fi żmien mhux aktar minn ġimgħa (1) jirritorna l-materjal li għalih ir-rifjut jirreferi, lill-persuna li mill-pussess tagħha tneħha:

Iżda wkoll kull materjal li għalih jirreferi r-rifjut għandu, sakemm l-imsemmija qorti fid-digriet tagħha ma tiddeċidix mod ieħor, jibqa' soġġett għall-Ordni ta' Sekwestru msemmija fis-subartikolu (1).

(9) Fejn l-Avukat Ġenerali f'talba msemmija fis-subartikolu (7) ma jitlobx li d-Direttur jakkumpanja lill-persuna li tinnotifika l-Ordni ta' Sekwestru kif hemm provdut fiha, id-Direttur jista' fi kwalunkwe ħin matul il-validità tal-Ordni ta' Sekwestru jitlob lill-Qorti Kriminali biex jawtorizzah akkumpanjat minn uffiċjal tal-Pulizija Eżekuttiva biex jidhöl f'xi dar, bini jew post jew biex jitla' abbord kwalunkwe inġenju jew vettura kif imsemmi fis-subartikolu (7) u hemmhekk iwettaq l-operazzjonijiet imsemmi f'dak l-imsemmi subartikolu. Id-dispożizzjonijiet tas-subartikolu (8) għandhom japplikaw ukoll fil-każ ta' dhul mid-Direttur awtorizzat taht dan is-subartikolu.

(10) (a) Meta kwalunkwe materjal ikun miżmum f'idejn is-sekwestrant bis-saħħa ta' Ordni ta' Sekwestru maħruġa skont dan l-artikolu, id-Direttur jista' jitlob lill-Qorti Kriminali biex tordna lis-sekwestrant biex tittrasferixxi l-materjal kollu jew kull materjal miżmum f'idejn is-sekwestrant, fil-pussess tad-Direttur, fiż-żmien li l-imsemmija qorti tista' fid-digriet tagħha tippreskrivi, u wara dan it-trasferiment dak il-materjal għandu jibqa' soġġett għall-Ordni ta' Sekwestru f'idejn id-Direttur.

(b) In-nuqqas ta' xi persuna li tosserva Ordni maħruġa taht dan

is-subartikolu għandha tikkostitwixxi disprezz tal-Qorti u għandha tkun punibbli bħala tali mill-Qorti Kriminali:

Iżda kwalunkwe piena li l-imsemmija qorti tista' timponi m għandhiex teħles lill-persuna li ma ssewgix dik l-Ordni minn kull responsabbiltà għal danni kawżat minn-nuqqas tagħha li tikkonforma mal-Ordni favur xi persuni.

(11) (a) Fejn azjenda kummerċjali jew korp magħqud huwa soġġetta għal Ordni ta' Sekwestru, it-totalità tal-assi tal-azjenda, inklużi liċenzji u avvjament għandhom jiġu ppreservati u ma għandhomx jiġu trasferiti, u soġġetti għad-dispożizzjonijiet li ġejjin ta' dan is-subartikolu, l-azjenda jew korp magħqud għandu jkompli bin-negozju.

(b) Fejn l-azjenda kummerċjali jew korp magħqud ikun miżmum minn Ordni ta' Sekwestru, il-Qorti Kriminali tista' fuq talba magħmula mid-Direttur u wara li tisma' lis-suspettat, tahtar Amministratur ġeneralment għall-preservazzjoni aħjar tal-assi tal-azjenda kummerċjali jew korp magħqud u b'mod partikolari biex tipprovdi għal amministrazzjoni. Id-dispożizzjoni tal-artikolu 848B tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandha tapplika fir-rigward ta' applikazzjoni u l-ħatra ta' amministratur taht dan is-subartikolu. Kap. 12.

(12) Fejn il-proprjetà soġġetta għal Ordni ta' Sekwestru hija ta' natura li tithassar, il-persuna li għandha l-proprjetà għandha mingħajr aktar awtorizzazzjoni, tbiegħ dik il-proprjetà, u l-Ordni ta' Sekwestru għandha tibqa' tapplika fir-rigward tal-qligħ ta' dan il-bejgħ.

(13) Id-Direttur huwa marbut li jeżerċita għas-salvagwardja ta' kwalunkwe proprjetà soġġetta għal Ordni ta' Sekwestru, miżmuma fil-pussess tiegħu, dik il-kura eżerċitata minn *bonus paterfamilias*.

36. (1) Meta persuna tkun akkużata b'reat rilevanti, il-Qorti għandha, fuq talba tal-prosekuzzjoni, tagħmel Ordni (minn hawn 'il quddiem imsejha "Ordni ta' Qbid u Iffriżar") billi: Ordni ta' Qbid u Iffriżar.

(a) iżzomm f'idejn partijiet terzi b'mod ġenerali l-flus u kull proprjetà mobbli oħra dovuta jew li tappartjeni jew li tappartjeni lill-akkużat, u

(b) tipprojbixxi lill-akkużat milli jittrasferixxi, iwiegħed, jipoteka jew jibdel jew jiddisponi minn kwalunkwe proprjetà immobbli jew mobbli li tkun proprjetà ta' jew inkella miżmuma minnu:

Iżda l-Qorti għandha fuq l-applikazzjoni tal-akkużat notifikat

fil-prosekuzzjoni u d-Direttur tiddetermina liema flus jistgħu jithallsu jew jiġu rċevuti mill-akkużat matul is-sussistenza ta' tali ordni, billi tispeċifika s-sors, il-mod u l-modalitajiet l-oħra ta' hlas, inklużi salarju, paga, pensjoni u benefiċċji tas-sigurtà soċjali li għandhom jithallsu lill-akkużat, li jippermettu lilu u lill-familja tiegħu jgħixu diċenti fl-ammont, fejn il-mezzi jippermettu ta' sitt mitt euro (€600) kull hmistax (15)-il ġurnata. Fl-ebda każ, madanakollu, dawn il-hlasijiet ma jistgħu isiru minn fondi li għalihom hemm raġuni raġonevoli biex wiehed jemmen li kienu ttiehdu minn vittmi ta' kriminalità li jistgħu jirkupraw din il-proprjetà jekk l-akkużat ikun misjub hati.

(2) Ordni ta' Qbid u Iffriżar għandha tkun minnufih notifikata lid-Direttur u għandha:

(a) issir operattiva u torbot fuq il-partijiet terzi kollha immedjatament meta tinhareġ u d-Direttur għandu jikkawża li l-avviż tagħha jiġi ppubblikat mingħajr dewmien fil-Gazzetta u jikkawża wkoll li kopja tiegħu tiġi rreġistrata fir-Registru Pubbliku, fir-Registru tal-Artijiet u f'kull registru ieħor stabbilit bil-liġi għar-registrazzjoni ta' proprjetà ta' kwalunkwe tip. Kopja ta' tali ordni għandha tiġi notifikata wkoll lil kull persuna li l-prosekuzzjoni jew id-Direttur jistgħu jindikaw u;

(b) tibqa' fis-sehħ sad-determinazzjoni finali tal-proċeduri u fil-każ ta' sejba ta' htija sakemm is-sentenza tkun ġiet eżegwita.

(3) Għall-finijiet tal-paragrafu (b) tas-subartikolu (2), sentenza għandha titqies li ġiet eżegwita meta l-proċeduri stabbiliti fit-Taqsima V għall-finijiet tal-istabbiliment ta' kemm il-persuna kkundannata bbenefikat mir-rikavat mill-kriminalità, u għall-irkupru ta' tali rikavat ġie mitmum.

(4) Il-Qorti tista', fuq applikazzjoni ta' kwalunkwe parti interessata, meta ċ-ċirkostanzi jirrikjedu hekk, tvarja tali ordni, u d-dispożizzjonijiet tas-subartikolu msemmija hawn fuq għandhom japplikaw għal tali ordni varjata.

(5) Kull ordni bhal dan għandu jkun fih l-isem u l-kunjom tal-akkużat, il-professjoni tiegħu, il-kummerċ jew l-istatus ieħor, l-isem tal-missier, l-isem tal-omm u kumjomha xebba, il-post tat-twelid u l-post tar-residenza u numru ta' identifikazzjoni legalment validu, jekk ikun hemm.

(6) Fejn xi flus jiġu jew isiru dovuti lill-akkużat minn xi persuna waqt li dik l-ordni tkun fis-sehħ, dawk il-flus għandhom sakemm ma

jigix ordnat mod ieħor fl-ordni, jigu ddepożitati f'bank għall-kreditu tal-akkużat. Malli jsir d-depożitu kif intqal qabel, l-ordni għandha tapplika fir-rigward tad-depożitu li jkun sar.

(7) Fejn tali ordni ma tibqax fis-seħħ kif provdut fis-subartikolu (2)(b), id-Direttur għandu jikkawża avviż għal dak l-effett li jkun reġistrat fir-Reġistru Pubbliku u fir-reġistri l-oħra msemmija fis-subartikolu (2)(a) u s-subartikolu (3), u jipubblika avviż għal dak l-effett fil-Gazzetta. Kopja ta' dan l-avviż għandha tiġi notifikata wkoll lil kull persuna li kienet notifikata b'kopja tal-ordni ta' Qbid u Iffriżar skont is-subartikolu (2)(a).

(8) Fejn il-Qorti ma tipproċedix minnufih biex tagħmel ordni kif meħtieġ skont is-subartikolu (1), il-Qorti għandha minnufih tagħmel Ordni temporanja ta' Qbid u Iffriżar bl-istess effett bħal ordni magħmula taħt id-dispożizzjonijiet preċedenti ta' dan l-artikolu. L-Ordni Temporanja tal-Qbid u l-Iffriżar magħmula taħt dan is-subartikolu għandha tibqa' fis-seħħ sakemm il-Qorti tagħmel l-ordni meħtieġa minn dak is-subartikolu jew sakemm il-Qorti Kriminali tkun iddeterminat applikazzjoni skont is-subartikolu (9) jew sakemm l-imsemmija Qorti Kriminali ma tkunx revokatha skont is-subartikolu (10):

Iżda Ordni ta' Qbid u Iffriżar Temporanja ma tibqax fis-seħħ lil hinn mill-hin meta Ordni ta' Qbid u Iffriżar skont is-subartikolu (2)(b) ma tibqax fis-seħħ.

(9) Meta għal kwalunkwe raġuni tkun xi tkun il-Qorti tiċhad talba magħmula mill-prosekuzzjoni għal ordni skont is-subartikolu (1), l-Avukat Ġenerali jista' fi żmien tlett (3) ijiem ta' xogħol mid-data tad-deċiżjoni tal-Qorti japplika lill-Qorti Kriminali biex tagħmel l-ordni meħtieġa u d-dispożizzjonijiet ta' dan l-artikolu għandhom japplikaw *mutatis mutandis* għall-ordni magħmula mill-Qorti Kriminali taħt dan is-subartikolu daqslikieku kienet ordni magħmula mill-Qorti taħt is-subartikolu (1).

(10) Il-persuna akkużata tista', fi żmien tlett (3) ijiem ta' xogħol minn meta ssir l-ordni skont is-subartikolu (8), titlob lill-Qorti Kriminali għar-revoka tal-Ordni Temporanja tal-Qbid u l-Iffriżar.

(11) Id-dispożizzjonijiet tas-subartikoli (7) sa (13) tal-artikolu 35 għandhom *mutatis mutandis* japplikaw fil-każ ta' Ordni ta' Qbid u Iffriżar magħmula taħt dan l-artikolu.

37. Meta wara li persuna tkun giet akkużata b'reat rilevanti, dik il-persuna taħrab, jew tmut, jew fejn minhabba mard proċeduri kontraha ma jistgħux jingiebu għal konkluzjoni, kwalunkwe ordni

Sussistenza ta' ordnijiet f'ċerti ċirkostanzi.

magħmula minn Qorti taħt din il-parti ta' dan l-Att għandha fuq applikazzjoni magħmula għal dak l-iskop mill-Avukat Ġenerali jew mid-Direttur tibqa' fis-seħh sakemm jiġu konklużi l-proċeduri skont l-artikolu 42, mill-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi).

TAQSIMA V

Proċeduri Speċjali Quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi)

Determinazzjoni tal-proprjetà soġġetta għall-konfiska.

38. (1) Meta persuna tkun instabet haġta ta' reat rilevanti, id-Direttur jista' permezz ta' applikazzjoni quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) notifikata fuq il-persuna misjuba haġta jew ir-rappreżentant legali tagħha (minn hawn 'il quddiem imsejha bhala "persuna kkundannata") titlob lill-imsemmija Qorti biex tiddetermina liema proprjetà hija soġġetta għall konfiska, inkluż l-ammont tar-rikavat mill-kriminalità mwettaq mill-persuna hekk misjuba haġta.

(2) L-applikazzjoni msemmija fis-subartikolu (1) għandha tiġi ppreżentata sa mhux aktar tard minn sena (1) mid-data meta s-sentenza li tkun sabet il-ħtija tal-persuna kkundannata tkun *res judicata*.

(3) L-applikazzjoni msemmija fis-subartikolu (2) għandu jkollha referenza għas-sentenza li ssib il-ħtija tal-persuna misjuba haġta, il-fatti tal-każ, kif ukoll l-ismijiet tax-xhieda b'appoġġ għall-applikazzjoni kif ukoll il-fatti li huma mfittxija li jiġu stabbiliti mill-evidenza ta' kull wieħed minn dawn ix-xhieda, kif ukoll minn lista tad-dokumenti kollha bhala appoġġ għall-applikazzjoni.

(4) Id-Direttur għandu wkoll jehmeż mal-applikazzjoni lista ta' proprjetà ta' kwalunkwe deskrizzjoni li huwa jiddikjara li jappartjeni lill-persuna kkundannata kemm jekk dik il-proprjetà tinzamm f'isem dik il-persuna jew f'isem haddiehor u kull fejn tinzamm, flimkien ma' dikjarazzjoni li juri x'inhu fl-opinjoni tiegħu l-ammont tar-rikavat mill-kriminalità mwettaq mill-persuna misjuba haġta:

Kap. 101.
Kap. 31.

Kap. 373.

Iżda meta r-reat rilevanti msemmi fis-subartikolu (1) ikun offiża kontra l-Ordinanza dwar il-Mediċini Perikolużi, l-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandhom x'jaqsmu magħha jew l-Att dwar il-*Money Laundering*, allura mingħajr preġudizzju għall-applikazzjoni tad-dispożizzjonijiet ta' dawk l-Atti l-proprjetà kollha tal-persuna misjuba haġta tkun kemm-il darba ma jiġix ippruvat mod ieħor, titqies li hija rikavat mill-kriminalità.

(5) Il-persuna kkundannata għandha fit-twegiba tagħha għall-applikazzjoni tad-Direttur tiddikjara jekk u sa fejn taċċetta t-talbiet tad-Direttur. Barra minn hekk, ir-risposta għandha tinkludi lista ta' xhieda b'appoġġ għall-każ tiegħu kif ukoll tal-fatti li huma mfittxija li

jkunu stabbiliti mill-evidenza tagħhom kif ukoll lista tad-dokumenti kollha bħala appoġġ għall-applikazzjoni.

(6) Il-persuna misjubahatja għandha barra minn hekk tipproduċi lista tal-proprjetà kollha tagħha ta' kull deskrizzjoni u kemm jekk tinżamm f'ismu jew f'isem haddiehor, u kemm jekk hija miżmuma f'Malta jew barra, flimkien ma' dikjarazzjoni li turi x'inhil-opinjoni tagħha l-ammont ta' qligħ, jekk hemm, magħmul permezz ta' rikavat mill-kriminalità.

(7) Meta tinstab proprjetà li tappartjeni lill-persuna misjuba hatja imma ma gietx inkluża fid-dikjarazzjoni magħmula minnha skont termini tas-subartikolu (6), din il-proprjetà għandha tkun mħollija lill-gvern.

(8) Dikjarazzjoni dwar it-tnehhija ta' kwalunkwe proprjetà kif imsemmi fis-subartikolu (7) għandha ssir fis-sentenza fuq l-applikazzjoni, jekk l-eżistenza ta' din il-proprjetà tkun stabbilita matul il-proċeduri fuq l-applikazzjoni. Meta dik il-proprjetà tiġi skoperta wara li dawn il-proċedimenti jiġu ffinalizzati, id-Direttur jista', f'kull hin iżda mhux aktar tard minn sitt (6) snin wara t-tmiem tal-imsemmija proċedura permezz ta' applikazzjoni quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) titlob lill-imsemmija Qorti biex tiddikjara dik il-proprjetà mħollija għall-gvern u d-dispożizzjonijiet ta' dan l-artikolu għandhom *mutatis mutandis* japplikaw għal kwalunkwe applikazzjoni jew applikazzjonijiet magħmula wara t-tmiem tal-proċeduri oriġinali.

(9) Il-Ministru jista' minn żmien għal żmien jagħmel regolamenti li jistabbilixxu b'mod ġenerali l-mod kif il-lista ta' proprjetà li għandha titfassal skont is-subartikoli (4) u (6) u b'mod partikolari għandu jiddikjara liema kategorija ta' oġġetti għandha tiġi elenkata separatament u liema jistgħu jingabru flimkien.

(10) Xejn f'dan l-artikolu ma għandu jipprekludi lid-Direttur u lill-persuna kkundannata milli jaslu għal ftehim dwar ir-rikavat mill-kriminalità magħmul mill-persuna misjuba hatja. Dan il-ftehim għandu jiġi rreġistrat f'att pubbliku fejn is-somma hekk miftiehma għandha tikkostitwixxi dejn ċivili dovut mill-gvern mill-persuna misjuba hatja.

(11) (a) Is-sentenza tal-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) li tiddikjara li proprjetà speċifika soġġetta għall-konfiska tista' tikkostitwixxi ordni ta' konfiska li tittrasferixxi t-titolu ta' tali proprjetà lill-Gvern ta' Malta.

(b) Jekk il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) issib li l-persuna misjuba hatja kisbet mir-rikavat mill-kriminalità li jaqbeż ir-rikavat mill-kriminalità inkluż fil-proprjetà speċifika kkonfiskata

skont il-paragrafu (a), is-sentenza għandha tiddikjara l-imsemmija persuna misjuba hatja bhala d-debitur tal-Gvern sal-punt tad-differenza bejn il-proprjeta speċifika kkonfiskata bhala l-qligh tal-kriminalità mit-total tal-qligh tal-kriminalità msemmija li l-persuna kisbet, direttament jew indirettament, mir-reat.

(ċ) Sal-punt li l-proprjeta li tkun soġġetta għall-konfiska tinkludi proprjeta oħra għajr ir-rikavat mill-kriminalità, il-Qorti għandha tiżgura li l-konfiska ta' dik il-proprjeta ma tkunx sproporzjonata hafna għall-gravità tar-reat jew reati li jagħtu lok għal Ordni ta' Konfiska.

(d) Fejn aktar minn persuna waħda tkun misjuba hatja għal reat, kull persuna misjuba hatja hija responsabbli *in solidum* għar-rikavat totali ta' reat miksub minn xi waħda minnhom, hlief li:

(i) il-Gvern ma jistax jirkupra aktar mir-rikavat totali tar-reat, u

(ii) fil-każ ta' persuna misjuba hatja li r-rwol tagħha fir-reat kien incidental meta mqabbel mar-rwoli tal-persuni l-oħra misjuba hatja, il-qorti trid tikkunsidra sa liema punt tagħmel lil dik il-persuna *in solidum* responsabbli għall-qligh totali tad-delitt ikun sproporzjonat hafna għar-rwol tagħha fir-reat.

Drittijiet ta' partijiet terzi.

39. (1) Fejn kwalunkwe persuna tiddikjara li hija s-sid ta' kwalunkwe proprjeta soġġetta għal Ordni ta' Qbid u Iffriżar skont it-Taqsima IV, jew tiddikjara li għandha drittijiet fuq dik il-proprjeta, jew tiddikjata li hi s-sid ta' proprjeta konfiskata skont l-artikolu 38, dik il-persuna tista' tapplika quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupra tal-Assi) biex tiddikjara li l-imsemmija proprjeta tappartjeni lilha, jew li għandha d-drittijiet mitluba fuq dik il-proprjeta, u l-Qorti għandha, wara li tkun sodisfatta permezz tal-prova prodotta minn tali persuna li l-applikant huwa s-sid tal-proprjeta, kif it-terminu huwa definit fl-artikolu 2, tiddikjara l-proprjeta li tappartjeni lill-applikant u ma tibqax soġġetta għall-Ordni tal-Qbid u l-Iffriżar jew Konfiska, u meta l-Qorti bl-istess mod tkun sodisfatta li l-applikant għandu d-drittijiet fuq il-proprjeta, hija għandha tiddikjara l-proprjeta maqbuda, konfiskata jew iffriżata bhala soġġetta għal dawk id-drittijiet.

(2) (a) Il-Qorti ma għandhiex tkun sodisfatta li kwalunkwe proprjeta li kienet fil-pussess ta' jew li tgawdjet mill-persuna misjubahatja tappartjeni lill-applikant, jekk it-titolu għal dik il-proprjeta kien meħtieġ mil-liġi biex jiġi rreġistrat, u ma kienx, mingħajr raġuni ġusta li tiġi ppruvata mill-applikant rreġistrat qabel il-bidu tal-proċeduri kontra l-persuna misjuba hatja.

(b) Id-dispożizzjoni tal-paragrafu (a) għandha tapplika wkoll

meta t-titolu jkun gie rreġstrat qabel il-bidu tal-proċedimenti, iżda wara data meta l-persuna misjuba hatja kienet taf jew raġonevolment jista' jiġi preżunt li kienet taf, li kienet qiegħda tiġi investigata jew imħarrka.

(3) (a) Jekk il-proprjeta' tinstab bhala r-rikavat mill-kriminalità, l-ebda oġġezzjoni minn parti terza għall-Qbid, Iffriżar jew Konfiska tal-proprjeta' ma tista' ssir hlief għall-oġġezzjoni ta' xerrej *bona fide* għall-valur kif deskritt fis-subartikolu (4).

(b) Mingħajr preġudizzju għal kwalunkwe proċedura li tista' tittiehed għall-konfiska bbażata fuq l-ebda kundanna taht it-Taqsima VIII, jekk il-proprjeta' tkun tiffacilita proprjeta' jew hija proprjeta' involuta f'reat ta' *money laundering* ghajr ir-rikavat mill-kriminalità, l-ebda oġġezzjoni minn parti terza għall-Qbid, Iffriżar jew Konfiska tal-proprjeta' ma tista' ssir hlief għall-oġġezzjoni ta' xerrej *bona fide* għall-valur kif deskritt fis-subartikolu (4), jew ta' terza persuna li kienet is-sid ta' proprjeta' qabel jew fil-hin tar-reat li jagħti lok għall-Qbid, Iffriżar jew Konfiska tal-proprjeta'.

(4) Meta l-applikant jiddikjara li akkwista l-proprjeta' jew id-dritt fuqha b'titolu oneruż jew f'tranżazzjoni kummerċjali, huwa għandu jkun mitlub jipprova li hallas il-prezz gust tiegħu, fuq tranżazzjoni *arm's length* u li għandu raġuni għaliex jemmen li l-proprjeta' kienet soġġetta għall-konfiska fiż-żmien li hu kellu interess fiha.

(5) Meta l-proprjeta' tkun magħmula minn immobbli u l-applikant jitlob li hemm wegħda ta' bejgħ relatata magħha, magħmula qabel il-proċeduri li wasslu għall-kundanna tal-persuna misjuba hatja, il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandha fl-għażla tad-Direttur:

(a) tippermetti li l-bejgħ ikompli bil-kondizzjoni li l-qligh tal-bejgħ għandu jiġi depożitat mill-applikant fir-reġistru tal-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) u s-somma hekk depożitata għandha tkun soġġetta għall-Ordni ta' Qbid u Iffriżar, minflok il-proprjeta' mibjugħa skont il-ftehim tal-wegħda tal-bejgħ; jew

(b) tagħti lid-Direttur id-dritt li l-proprjeta' tiġi trasferita f'isem il-Gvern, bl-istess termini provduti fil-wegħda tal-bejgħ, bil-kondizzjoni li d-Direttur ihallas lill-applikant kumpens gust u raġonevoli li ma jkunx aktar minn hames fil-mija (5%) tal-prezz għat-trasferiment kif miftiehem fil-wegħda tal-bejgħ, kif tista' tiddetermina l-Qorti.

(6) Fl-istima tagħha tal-prova miġjuba minn parti terza li titlob proprjeta' jew drittijiet fuqhom skont dan l-artikolu, il-Qorti għanda tikkunsidra kif jixraq il-familja, negozju jew relazzjoni oħra bejn il-persuna misjuba hatja u l-applikant, l-użu li qiegħed isir tal-proprjeta',

inkluż l-identità tal-persuni li eżerçitaw dominju u kontroll fuq il-proprjeta, l-identità tal-persuni li ħallu l-assigurazzjoni, taxxi, jew spejjeż ta' manutenzjoni tal-proprjeta u s-sorsi ta' tali ħlasijiet, il-mezzi tal-persuna li titlob il-proprjeta u ċ-ċirkostanzi l-oħra kollha li jistgħu jaffettwaw il-kredibilità tat-talba.

Assi tal-akkużat f'idejn, jew f'isem partijiet terzi.

40. (1) Fejn jidher lid-Direttur li kwalunkwe proprjeta f'idejn jew f'isem persuna, barra l-persuna misjuba ħatja, fil-fatt tappartjeni għall-persuna misjuba ħatja u mhux għall-persuna li żżomm il-proprjeta jew l-persuna li f'isimha tinzamm il-proprjeta, l-imsemmi Direttur jista' permezz ta' rikors ipprezentat fil-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) kontra l-persuna li għandha l-proprjeta jew li f'isimha tinzamm titlob lill-imsemmija Qorti biex tiddikjara li l-proprjeta ma tappartjenix għal dik il-persuna imma għall-persuna misjuba ħatja.

(2) Id-Direttur għandu jipproduci l-evidenza kollha b'appoġġ għat-talba tiegħu u d-dispożizzjonijiet tas-subartikolu (6) tal-artikolu 39 għandhom jiġu applikati mill-Qorti meta tevalwa l-evidenza mressqa quddiemha.

(3) Id-Direttur ma jistax jagħmel applikazzjoni taht din it-Taqsimata wara li jgħaddu għaxar (10) snin mid-data tas-sentenza li tikkundanna lill-persuna misjuba ħatja għar-reat rilevanti jew mid-data li fiha jiġi stabbilit li l-proċeduri ma jistgħux jiġu konklużi minħabba l-mewt jew mard tal-akkużat jew għaliex l-akkużat ħarab.

(4) Meta l-proprjeta soġġetta għall-konfiska tkun proprjeta kongunta tal-persuna misjuba ħatja u terza persuna, il-qorti għandha tiddetermina l-iktar mezz effettiv biex tippermetti lill-Gvern jikkonfiska l-interess tal-persuna misjuba ħatja mingħajr preġudizzju għad-drittijiet tat-terza persuna. Dawn il-mezzi jistgħu jinkludu l-ordni tal-bejgħ tal-proprjeta u d-diviżjoni tal-qligħ tal-bejgħ bejn il-Gvern u l-parti terza.

Determinazzjoni ta' ħlasijiet permessi.

41. (1) L-applikazzjonijiet skont il-proviso għall-paragrafu (b) tas-subartikolu (1) tal-artikolu 36 u skont is-subartikolu (4) tal-imsemmi artikolu għandhom jiġu notifikati lid-Direttur u, sakemm l-applikant ma jkunx l-akkużat, fuq l-akkużat. Tali applikazzjonijiet għandhom jinstemgħu b'urgenza u l-Qorti Kriminali tista' tordna li t-termini għal kwalunkwe risposta jew proċeduri oħra jiġu mqassra.

(2) Meta tiddetermina jekk is-somma ta' mhux aktar minn sitt mitt euro (€600) kull hmistax (15)-il ġurnata għandha tithallas lill-akkużat skont l-imsemmi proviso għall-paragrafu (b) tas-subartikolu (1) tal-artikolu 36, il-Qorti għandha tiegħu in konsiderazzjoni l-ħtiġijiet attwali tal-akkużat u d-disponibbiltà ta' mezzi oħra għas-sussistenza

tiegħu.

42. (1) Meta, wara li persuna tkun ġiet akkużata b'reat rilevanti, dik il-persuna taħrab jew tmut, jew fejn minhabba l-marda tagħha l-proċedimenti kontriha ma jistgħux jiġu konkluzi, id-Direttur jista' jressaq azzjoni quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) li tiddikjara li abbażi tal-provi mressqa quddiem il-Qorti mid-Direttur, il-prova, kieku waslet għall-konkluzjoni kienet tirriżulta f'kundanna.

Fejn l-akkużat jaħrab eċċ.

(2) Azzjoni għal dikjarazzjoni skont is-subartikolu (1) tista' wkoll titressaq meta l-persuna suspettata ma tkunx ġiet akkużata, minhabba li tmut jew taħrab qabel il-prosekuzzjoni tista' takkużaha:

Iżda ebda azzjoni ma tista' tinbeda fuq il-bażi ta' dan l-artikolu, wara li jgħaddu sitt (6) snin mid-data tal-mewt tal-persuna suspettata, jew mid-data meta jiġi skopert li huwa ħarab.

(3) Azzjoni fuq il-bażi tas-subartikoli (1) u (2) għandha titressaq kontra l-eredi tal-akkużat, jekk mejta, jew kontra kuraturi nominati biex jirrapprezentaw lill-akkużat jew, fejn applikabbli r-rappreżentant legali tal-akkużat li jista' f'kull każ tipproduċi dawn ix-xhieda u tipproduċi l-evidenza kollha għad-dispożizzjoni tagħhom biex tirribatti t-talbiet tad-Direttur.

(4) Dikjarazzjoni skont is-subartikoli (1) u (2), għall-finijiet tal-artikolu 38, titqies bħala kundanna, iżda ma għandhiex twassal għal konsegwenzi ta' natura kriminali.

(5) Għall-finijiet ta' azzjoni taħt l-artikolu 38 fuq il-bażi ta' sentenza skont dan l-artikolu, it-terminu ta' sena (1) msemmi fis-subartikolu (2) tal-imsemmi artikolu 38 għandu jibda jiddekorri mid-data meta s-sentenza fl-azzjoni skont is-subartikoli (1) u (2) saret *res judicata*.

TAQSIMA VI

Konfiska Bbażata Fuq Nuqqas ta' Kundanna

43. (1) Din it-Taqsima tistabbilixxi miżuri preventivi li jikkonsistu f'konfiska bbażata fuq nuqqas ta' kundanna maħsuba biex jissaħħu li jipprovdu għall-irkupru ta' proprjetà soġġetta għall-konfiska f'sitwazzjonijiet fejn, skont is-sentenza tal-Avukat Ġenerali, huwa meħtieġ jew aktar xieraq li tiġi rkuprata dik il-proprjetà permezz ta' konfiska bbażata fuq kundanna minflok bħala parti mill-prosekuzzjoni kriminali f'wieħed mill-każijiet li ġejjin:

Għan ta' din it-Taqsima u applikabilità.

- (a) fejn l-awtur jaħrab jew ma jkunx Malta;
- (b) fejn l-awtur huwa mejjet;

(ċ) fejn l-awtur imut qabel il-konklużjoni ta' proċeduri kriminali;

(2) Proprjetà soġġetta għall-konfiska taħt din it-Taqsima hija proprjetà li, fi kwalunkwe mill-każijiet imsemmija fis-subartikolu (1), hija r-rikavat derivat mill-kategoriji ta' reati li ġejjin:

(a) reat jew reati speċifikati fl-Artikolu 3(1)(a) tal-Konvenzjoni tan-Nazzjonijiet Uniti kontra t-Traffikar Illeċitu f'Drogi Narkotiċi u Sustanzi Psikotropiċi adottat fid-19 ta' Diċembru tal-1988 fi Vjenna riprodott (fil-lingwa Ingliża biss) fl-Ewwel Skeda li tinsab mal-Att Kontra *Money Laundering*;

Kap. 373.

(b) terroriżmu, u finanzjar ta' terroriżmu, *money laundering*, tranzazzjonijiet illegali f'armi u armamenti, traffikar ta' bnedmin, u kwalunkwe reat ieħor f'Malta li jkollu piena ta' prigunerija ta' mhux inqas minn għaxar (10) snin

(ċ) kwalunkwe reat imwettaq fil-qafas ta' organizzazzjoni kriminali fit-tifsira tad-Deċiżjoni Kwadru tal-Kunsill 2008/841/ĠAI ta' l-24 ta' Ottubru 2008 dwar il-Ġlieda kontra l-Kriminalità Organizzata;

(d) ksur tas-sanzjonijiet tan-Nazzjonijiet Uniti.

Kompetenza tal-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi).

44. (1) Il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandha tkun kompetenti biex tisma' u tiddetermina l-materji kollha li jinqalgħu taħt din it-Taqsima jekk il-proprjetà soġġetta għall-konfiska tinstab f'Malta jew jekk ir-reat li jagħti lok għall-konfiska seħħ f'Malta.

(2) L-azzjonijiet taħt din it-Taqsima għandhom ikunu azzjonijiet *in rem* kontra l-proprjetà soġġetta għall-konfiska u mhux kontra individwi. L-oneru tal-prova meħtieġ fil-proċeduri taħt din it-Taqsima għandu jkun dak applikabbli fil-proċeduri ċivili.

(3) Il-Gvern jista' jibda azzjoni taħt din it-Taqsima biex jirkupra kwalunkwe proprjetà soġġetta għall-konfiska. Fi proċedura bħal din, il-Gvern huwa r-rikorrent, il-proprjetà għandha tkun maħtura bħala *res* soġġetta għall-konfiska, u l-persuni li jikkontestaw il-konfiska huma intervenuti li jistgħu jintervjenu fl-azzjoni meta juru li għandhom interess ta' sjieda fil-proprjetà.

(4) L-oneru tal-prova għandu jkun fuq l-intervenut biex tistabilixxi kwalunkwe difiża affermattiva skont l-artikolu 59. Inkella, l-oneru tal-prova għandu jkun fuq il-Gvern.

Prinċipji.

45. L-awtoritajiet pubbliċi li jimplementaw din it-Taqsima

għandhom ikunu gwidati mill-prinċipji li ġejjin:

(a) ir-rispett għad-drittijiet u l-libertajiet fundamentali tal-bniedem kif imniżżel fil-Kostituzzjoni ta' Malta u fl-Att tal-Konvenzjoni Ewropea; Kap. 319.

(b) l-użu ta' miżuri preventivi li jikkonsistu f'konfiska bbażata mhux fuq kundanna ta' proprjetà pprovduta f'din it-Taqsima għandhom ikunu soġġetti għar-reqwiziti ta' neċessità f'soċjetà demokratika u l-proporzjonalità;

(c) kunfidenzjalità fit-twettiq ta' kwalunkwe arranġamenti speċjali provduti minn din it-Taqsima;

(d) iż-żieda u l-protezzjoni tas-sigurtà pubblika u l-prevenzjoni ta' arrikkiment mhux ġustifikat minn attività kriminali.

46. (1) Miżuri preventivi provduti taht din it-Taqsima għandhom ikunu applikabbli flimkien jew separatament. Relazzjoni mal-proċedimenti oħra.

(2) Il-proċedura għall-implimentazzjoni ta' miżuri preventivi provduti taht din it-Taqsima hija indipendenti mill-istituzzjoni ta' proċedimenti kriminali iżda tista' tintuża flimkien ma' jew paralleli ma' proċeduri kriminali.

(3) Jekk proprjetà ffrizata jew ikkonfiskata taht din it-Taqsima hija wkoll soġġetta għal iffriżar jew konfiska skont kwalunkwe liġi kriminali f'każ kriminali pendenti, il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandha tordna s-sospensjoni tal-iffriżar jew konfiska skont din it-Taqsima, jew *ex officio* jew fuq talba tal-Avukat Ġenerali jew ta' xi parti interessata. Is-sospensjoni għandha tintemm meta l-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) tiddeċiedi dwar l-irtirar jew l-estinzjoni tal-miżura li wasslet għas-sospensjoni.

47. Kull proprjetà soġġetta għall-konfiska li hija rikavat ta' reat, kif speċifikat fl-artikolu 43, kemm jekk tali reat twettaq Malta jew barra minn Malta, għandha tiġi kkonfiskata mill-Gvern skont din it-Taqsima and bil-proċedura provduta fl-artikoli 48 sa 51 li ġejjin (inklużi). Applikazzjoni.

48. (1) Il-Gvern jista' jibda azzjoni skont din it-Taqsima billi jippreżenta applikazzjoni għall-konfiska fil-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi): Proċedura.

(a) fil-mument li jippreżenta r-rikors tiegħu, il-Gvern għandu jagħti avviż dwarha lil kull persuna li tidher li għandha interess ta' sjieda f'talba għal titolu fil-proprjetà soġġetta għall-

konfiska. Meta dawn il-partijiet ikunu magħrufa u jkunu preżenti f'Malta, il-Qorti għandha tordna li jiġu notifikati bl-imsemmi avviż minn uffiċjal tal-qorti.

(b) jekk il-Gvern ma jkunx jista' jikseb indirizz validu għal persuna intitolata li tinnotifika skont il-paragrafu (a), għandu jipprova avviż permezz tal-pubblikazzjoni fil-Gazzetta u f'żewġ (2) gazzetti ta' kuljum jew fuq l-*internet* b'mod bħalma l-Qorti tista' tidderiegi.

(2) Parti li tikkontesta l-konfiska tal-proprjetà ("l-intervenut") trid tippreżenta twegiba li turi t-titolu tal-interess tagħha fil-proprjetà u l-hin u l-mod li bih kiseb dak l-interess. Ir-risposta għandha tiġi ppreżentata fi żmien tletin (30) jum mid-data meta l-Gvern innotifika jew ippubblika avviż tal-applikazzjoni għall-konfiska jew dak iż-żmien l-ieħor li l-Qorti tista' tidderiegi.

(3) Fi kwalunkwe hin qabel jew wara l-preżentazzjoni ta' applikazzjoni għall-konfiska, il-Gvern jista' jfittex li jaħtaf jew jiffriza proprjetà soġġetta għall-konfiska skont l-artikolu 36 li għandha tapplika *mutatis mutandis* għal din it-Taqsima.

(4) Jekk il-Gvern jikkontesta t-twegiba ta' kwalunkwe persuna intervenjenti għal nuqqas ta' stabbiliment ta' interess ta' sjieda fil-proprjetà ta' dan it-titolu, il-Qorti għandha tiddeċiedi fuq dik il-mozzjoni qabel ma tiddeċiedi fuq kwalunkwe kwistjoni oħra. Minkejja t-titolu għall-proprjetà, il-Qorti ma għandhiex tkun sodisfatta li terza persuna għandha interess ta' sjieda ta' titolu fuq il-proprjetà jekk issib li t-terza persuna tkun persuna nominata li ma eżerċitatx dominju effettiv u kontroll fuq il-proprjetà jew b'xi mod ieħor turi drittijiet ta' sjieda konsistenti ma' sjieda vera.

(5) (a) Jekk hadd ma jippreżenta talba valida għall-proprjetà fil-forma ta' twegiba għall-applikazzjoni, il-Qorti trid iddaħħal Ordni ta' Konfiska meta tkun taf li l-Gvern ikkonforma mal-proċedura biex jagħti avviż lir-rikorrenti potenzjali.

(b) Inkella, il-Qorti għandha ddaħħal Ordni ta' Konfiska jekk tiddetermina fuq bilanċ tal-probabbiltajiet li l-Gvern stabbilixxa li l-proprjetà tkun soġġetta għall-konfiska, u li l-ebda persuna intervenjenti li titlob titolu jew dritt ieħor fuq il-proprjetà tkun stabbilita difiża affermattiva skont l-artikolu 59.

(6) Sal-punt li l-proprjetà soġġetta għall-konfiska tinkludi proprjetà oħra għajr ir-rikavat mill-kriminalità l-Qorti għandha tiżgura li l-konfiska ta' din il-proprjetà ma tkunx sproporzjonata ħafna għall-gravità tar-reat jew reati li jagħtu lok għall-ordni ta' konfiska.

49. (1) Jekk il-Qorti ssib li l-Gvern laħaq l-oneru tiegħu li juri li l-proprjetà hija soġġetta għall-konfiska, il-persuna intervenjenti tista' turi li kienet is-sid tal-proprjetà u li l-proprjetà għandha tkun eżentata mill-konfiska għal waħda mir-raġunijiet li ġejjin:

Difiża ta' partijiet terzi.

(a) li l-persuna intervenjenti akkwistat is-sjeda tagħha fil-proprjetà bħala xerrej *bona fide* għall-valur kif deskritt fl-artikolu 39(4); jew

(b) jekk il-proprjetà tiffaċilita proprjetà jew hijiex proprjetà involuta f'reat ta' *money laundering* għajr il-qligħ ta' delitt, dik il-persuna intervenjenti kienet is-sid tal-proprjetà qabel jew fil-ħin tar-reat li wassal għall-konfiska tal-proprjetà u ma kienx jaf bl-użu illegali tal-proprjetà, jew wara li sar jaf dwar l-użu illegali, ħa l-passi kollha raġonevoli biex jevitaha.

(2) Il-persuna intervenjenti għandha l-oneru tal-prova fuq id-difiżi affermattivi deskritti fis-subartikolu (1).

50. (1) Id-deċiżjoni li taqa' jew li tiċhad il-konfiska għandha tiġi riveduta mill-qorti emittenti fuq talba tal-awtorità li tressaq, jew fuq talba ta' kwalunkwe parti oħra interessata, fi żmien ħames (5) snin minn meta ssir finali meta:

Stharrig ġudizzjarju tal-konfiska.

(a) tiġi ppreżentata evidenza ġdida, li kieku giet ippreżentata fil-kawża, kienet tkun deċiżiva għas-sentenza;

(b) jiġu skoperti fatti u provi ġodda li jipprekludu l-eżistenza ta' kondizzjonijiet għall-rikors tal-miżura ta' konfiska;

(c) id-deċiżjoni tal-konfiska kienet ibbażata fuq evidenza qarrieqa jew falza.

(2) Il-proċess ta' reviżjoni għandu jitwettaq mill-Qorti li tkun ħarġet id-deċiżjoni ta' konfiska ppreseduta minn imħallef jew imħallfin differenti.

51. (1) Il-proprjetà kkonfiskata permezz ta' sentenza tal-qorti, skont din it-Taqsima, għandha tiġi trasferita lill-Gvern meta d-deċiżjoni tal-konfiska ssir finali.

Trasferiment ta' konfiska proprjetà lill-Istat

(2) Ir-registratur tal-qorti kompetenti għandu jibgħat id-deċiżjoni finali tal-konfiska lill-Uffiċċju fi żmien tlett (3) ijiem.

(3) Fil-każ li d-deċiżjoni finali tal-konfiska tinqaleb aktar tard, is-sid jew il-pussessur tal-proprjetà għandhom ikunu kumpensati fil-limiti tal-valur tas-suq tal-proprjetà.

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Prijorità u reviżjoni fil-pront.

52. Sabiex tiġi garantita s-sigurtà pubblika u l-proporzjonalità ta' kull miżura preventiva, kull deċiżjoni u azzjoni meħuda mill-awtoritajiet skont din it-Taqsima, għandhom jiġu ttrattati bi priyorità, mingħajr dewmien mhux ġustifikat u fl-iskadenzi stipulati.

Mandati eċċ.

Kap. 12.

53. (1) Sentenzi tal-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandhom ikunu eżegwibbli skont id-dispożizzjonijiet tat-Titolu VII tat-Taqsima I tal-Ktieb it-Tieni tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u kull persuna tista' tiżgura drittijiet tagħha fi kwalunkwe kwistjoni fil-kompetenza tal-Qorti Ċivili (Taqsima tal-Irkupru tal-Assi) bil-ħruġ ta' atti kawtelatorji msemmija fit-Titolu VI tal-Ktieb Tielek tal-Kodiċi msemmi.

TAQSIMA VII

Koperazzjoni Internazzjonali

Relazzjonijiet magħhom korpi barranin ekwivalenti.

54. L-Uffiċċju għandu jistabbilixxi relazzjonijiet ma' istituzzjonijiet ekwivalenti barra Malta u għandu skont dawk ir-regoli tal-liġi tal-Unjoni Ewropea, jew skont dawn it-trattati, konvenzjonijiet jew ftehim applikabbli, bi kwalunkwe isem li jissejjaħ, jikkoopera ma' dawn l-istituzzjonijiet u jikkollabora u jieħu sehem f'dik l-istruttura li tista' tiġi stabbilita skont dawn ir-regoli, trattati, konvenzjonijiet jew ftehimiet.

Applikabilità tat-Taqsima IV fl-affarijiet transnazzjonali.

55. (1) Fejn skont u *ai termini* ta' kwalunkwe trattat, konvenzjoni jew ftehim, applikabbli għal Malta, jew fejn skont il-Liġi tal-Unjoni Ewropea, issir talba lill-Avukat Ġenerali jew lid-Direttur għall-monitoraġġ ta' kwalunkwe kont, l-investigazzjoni dwar kwalunkwe kwistjoni, it-twaħħil ta' kwalunkwe proprjetà jew il-Qbid u l-Iffriżar ta' kwalunkwe proprjetà f'Malta, minn awtorità ġudizzjarja, prosekuzzjoni jew amministrattiva ta' kwalunkwe post barra minn Malta, b'konnessjoni mal-investigazzjoni jew il-prosekuzzjoni ta' reat ekwivalenti, jew b'rabta mal-infurzar ta' sentenza relattiva għal reat ekwivalenti, l-Avukat Ġenerali jew id-Direttur skont il-każ jista' jitlob lill-Qorti Kriminali tagħmel Ordni ta' Monitoraġġ, jew Ordni ta' Investigazzjoni, Ordni ta' Sekwestru u, jew, Ordni ta' Qbid u Iffriżar, skont u li jkollha l-effetti kollha kif provdut fit-Taqsima IV daqsliekeku r-reat ekwivalenti kien reat rilevanti.

(2) Għall-fni ta' din it-Taqsima, "reat ekwivalenti" huwa reat skont il-liġi tal-awtorità ġudizzjarja, prosekuttiva jew amministrattiva li tagħmel it-talba, bi kwalunkwe isem li tissejjaħ, li kieku kien ġie kommiss f'Malta jikkostitwixxi reat rilevanti.

Ordnijiet barranin ta' konfiska.

56. (1) Ordni ta' konfiska magħmula minn qorti barra minn Malta għandha tkun infurzabbli f'Malta skont id-dispożizzjonijiet li ġejjin ta' dan l-artikolu.

(2) Meta d-Direttur skont il-Liġi tal-Unjoni Ewropea jew ma' dawn it-trattati, konvenzjonijiet jew ftehimiet applikabbli, applikabbli għal Malta bi kwalunkwe isem li jissejjaħ, jirċievi talba minn awtorità ġudizzjarja jew prosekuzzjoni ta' kwalunkwe post barra minn Malta għall-infurzar f'Malta ta' Ordni ta' Konfiska magħmula minn qorti kompetenti ta' ġuriżdizzjoni kriminali jew ċivili f'dak il-post (minn hawn 'il quddiem imsejha "Ordni ta' Konfiska Barranija"), id-Direttur jista' jressaq azzjoni fil-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) permezz ta' rikors li jinkludi talba għall-infurzar f'Malta tal-Ordni ta' Konfiska Barranija.

(3) Id-Direttur għandu jehmeż mal-applikazzjoni kopja tal-Ordni ta' Konfiska Barranija rilevanti, (u meta dik l-ordni tkun f'lingwa oħra barra l-Malti jew l-Ingliš, flimkien ma' traduzzjoni tal-ordni għall-Malti jew Ingliš) flimkien ma' dawk id-dokumenti b'appoġġ tat-talba kif jista' jkun fil-poter tiegħu li jipproduċi u għandu jindika fl-applikazzjoni tiegħu l-ismijiet tax-xhieda kollha li jkun bihsiebu jipproduċi, fil-waqt li jindika fir-rigward ta' kull wieħed x'tip ta' prova bihsiebu jagħmel.

(4) Ir-rikors għandu jiġi notifikat lill-persuna li l-proprjetà tagħha l-Ordni tal-Konfiska Barranija għandha l-intenzjoni li tikkonfiska, liema persuna għandha tippreżenta r-risposta tagħja fi żmien ħmistax (15)-il jum wara d-data ta' notifika tar-rikors. Ir-risposta għandha tinkludi lista tax-xhieda li l-intimat għandu l-intenzjoni li jipproduċi, fil-waqt li jiddikjara fir-rigward ta' kull persuna xi prova huwa bihsiebu jagħmel u dokumenti li jista' jkun fil-poter tiegħu li jipproduċi.

(5) Il-Qorti għandha minnufih tistabbilixxi l-applikazzjoni għas-smiġh f'data bikrija, liema data fl-ebda każ ma tista' tkun aktar tard minn tletin (30) jum mid-data tal-prezentazzjoni tar-rikors jew mid-data tan-notifika tiegħu skont is-subartikolu (4), skont liema huwa l-aħhar.

(6) Meta ddaħhal ordnijiet biex tiġi infurzata l-Ordni ta' Konfiska Barranija, il-Qorti għandha tkun marbuta bis-sejbiet tal-fatt sal-punt li jiġu ddikjarati fl-ordni barranija. Il-Qorti, madankollu ma għandhiex tordna l-infurzar f'Malta tal-Ordni ta' Konfiska Barranija jekk:

(a) l-intimat ma ġiex mgħarraf bil-proċeduri li wasslu għat-teħid tal-Ordni ta' Konfiska Barranin rilevanti, u ma kellux opportunità xierqa biex jikkontesta t-teħid tal-imsemmija Ordni;

(b) l-Ordni ta' Konfiska Barranija nkisbet minn frodi minn kwalunkwe persuna għall-preġudizzju tal-intimat;

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(c) l-Ordni ta' Konfiska Barranija fiha xi dispożizzjoni li tmur kontra l-politika pubblika jew il-liġi pubblika interna ta' Malta; jew

(d) l-Ordni ta' Konfiska Barranija fiha dispożizzjonijiet kontradittorji;

(e) l-Ordni ta' Konfiska Barranija hija bbażata fuq żball manifest ta' liġi jew ta' fatt.

(7) Deċiżjoni mill-Qorti li tordna l-infurzar ta' Ordni ta' Konfiska Barranija għandu jkollha l-effett li tikkonfiska favur il-Gvern ta' Malta kull haġa u proprjetà li tkun tinsab f'Malta li l-konfiska tagħha giet ordnata fl-Ordni ta' Konfiska Barranija, bla hsara għal kwalunkwe direzzjoni li l-Ministru jista' jagħti li ttiprovdi għad-disponiment ulterjuri tal-oġġetti jew il-proprjetà hekk konfiskati.

Kap. 12.

(8) Id-deċiżjoni li tordna l-infurzar ta' Ordni ta' Konfiska Barranija li ttiprovdi għall-konfiska ta' proprjetà immobbli għandu jkollha l-effett li tittrasferixxi dik il-proprjetà immobbli lill-Gvern ta' Malta, u għall-finijiet tal-artikolu 239 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili d-Direttur għandu jitqies bħala l-parti interessata li tista' tikseb ir-registrazzjoni tat-trasferiment.

(9) Id-deċiżjoni li tordna l-infurzar ta' Ordni ta' Konfiska Barranija li ttiprovdi għall-konfiska ta' proprjetà mhux speċifikata li l-valur tagħha jikkorrispondi għar-rikavat mill-kriminalità għandha, wara li tkun giet irregistrata fir-Registru Pubbliku, tohloq mid-data tar-registrazzjoni ipoteki ġenerali rigward id-dejn li jammonta għall-valur ta' dan ir-rikavat. Il-valur ta' tali rikavat għandu jiġi ddeterminat b'rikors quddiem il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) notifikat lis-sid tal-proprjetà li għandha tiġi kkonfiskata, skont id-dispożizzjonijiet, *mutatis mutandis*, tal-artikolu 38.

(10) Meta l-Ordni ta' Konfiska Barranija għandha x'taqsam mal-konfiska ta' somma ta' flus, espressa f'munita oħra għajr l-euro, is-somma li trid tiġi kkonfiskata għandha tkun l-ekwivalenti ta' dik is-somma f'euro, skont ir-rata tal-kambju stabbilita mil-Bank Ċentrali ta' Malta, operattiva fid-data tad-deċiżjoni li tordna l-infurzar.

Kap. 12.

(11) Id-Direttur, jista', biex jiżgura kwalunkwe proprjetà li l-Ordni ta' Konfiska Barranija tirreferi għaliha, jew il-valur ta' dik il-proprjetà, japplika lill-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għall-hruġ ta' kwalunkwe att kawtelatorju msemmi fl-artikolu 830 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(12) Għall-finijiet ta' dan l-artikolu:

"Ordni ta' Konfiska" tinkludi kull sentenza, deċiżjoni, dikjarazzjoni jew ordni oħra magħmula minn qorti barra minn Malta li tipprovdi jew tidher li tipprovdi għall-konfiska jew telf ta' proprjetà soġġetta għal konfiska, kemm jekk ibbażata fuq kundanna jew mhux ibbażata fuq kundanna;

"reat ekwivalenti" tfisser kull att jew ommissjoni bi kwalunkwe isem li jissejjaħ li jekk ikun imwettaq f'Malta jikkostitwixxi reat rilevanti; u

"rikavat" għandha l-istess tifsira kif mogħtija lilha fl-artikolu 2, bħallikieku kwalunkwe referenza għaliha għal reat rilevanti kienet referenza għal reat ekwivalenti.

TAQSIMA VII Regolamenti, Reati u Penali

57 Il-Ministru jista' jagħmel regolamenti għall-eżekuzzjoni aħjar tad-dispożizzjonijiet ta' dan l-Att u mingħajr preġudizzju għall-generalità ta' dak li ntqal qabel biex jirregola aktar il-proċeduri eżekuttivi u l-atti kawtelatorji msemmija jew imsemmija f'dan l-Att u b'mod partikolari biex jipprovdu:

Setgħa li jagħmel regolamenti.

(a) għall-kustodja aħjar tal-affarijiet maqbuda skont dawk il-mandati;

(b) għall-mod li bih għandu jitwettaq il-bejgħ ġudizzjarju b'irkant u b'mod partikolari l-pubblicità mogħtija lil dan il-bejgħ kemm f'Malta kif ukoll barra, il-post fejn għandhom isiru, il-partecipazzjoni ta' persuni fl-irkant permezz ta' mezzi elettronici, u jipprovdu biex il-bejgħ jitwettaq ukoll bl-assistenza ta' rkantatur kwalifikat; u

(c) għal kwalunkwe haġa oħra maħsuba biex tiżgura li l-aħjar prezz fis-suq jista' jinkiseb permezz ta' bejgħ b'irkant.

58. Kull min jiżvela informazzjoni akkwistata permezz tal-qadi ta' dmirijietu skont dan l-Att, għajr kif provdut fl-artikolu 26, għandu jkun ħati ta' reat kontra dan l-artikolu u, meta jinstab ħati, jista' jeħel multa li ma teċċedix tnaξ-il elf euro (€12, 000) jew għal prigunerija li ma taqbiżx it-tnax (12)-il xahar jew għal dik il-multa u prigunerija.

Żvelar mhux awtorizzat ta' informazzjoni.

59. (1) Kull min jonqos milli jipprovdi informazzjoni mitluba mid-Direttur jew minn membru tal-persunal tad-Direttorat skont l-artikolu 16 fiż-żmien, originali jew estiż, kif stipulat f'dak l-artikolu, għandu jkun ħati ta' reat kontra dan l-Att, u meta jinstab ħati jista' jeħel multa li ma taqbiżx it-tnax-il elf euro (€12, 000) jew prigunerija li ma taqbiżx sena (1) jew dik il-multa u prigunerija.

Nuqqas li tipprovdi informazzjoni.

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(2) Barra minn hekk, fil-ġudizzju tagħha, il-qorti tista', fuq talba tad-Direttur, tordna lill-persuna misjuba hatja li tipprovdi l-informazzjoni f'dak iż-żmien li tista' tiddetermina fis-sentenza tagħha. Att, u jkun responsabbli għal kundanna ta' multa oħra ta' mhux inqas minn hamsa u għoxrin euro (€25) u ta' mhux aktar minn mitejn u hamsin euro (€250) għal kull jum ta' dewmien biex tipprovdi l-informazzjoni skont it-termini stabbiliti mill-qorti fl-ordni tagħha.

(3) Kull appell mis-sentenza li jkun fiha ordni kif provduta fis-subartikolu (2) ma għandux jissospendi t-terminu tal-ġhoti tal-informazzjoni, kif jista' jkun ġie stabbilit mid-digriet.

Żvelar relattiv għall-Ordni ta' Monitoraġġ u Ordnijiet ta' Investigazzjoni eċċ.

60. Fejn tkun saret jew sar rikors għal Ordni ta' Monitoraġġ, Ordni ta' Investigazzjoni jew Ordni ta' Sekwestru, kull min ikun jaf jew jissuspetta li l-monitoraġġ jew investigazzjoni qiegħda sseħħ jew li Ordni ta' Monitoraġġ, Ordni ta' Investigazzjoni jew Ordni ta' Sekwestru saru jew intalbu, jew jagħmel kwalunkwe żvelar li x'aktarx jippreġudika l-operazzjoni ta' sorveljanza, jew l-investigazzjoni jew l-operazzjoni tal-Ordni ta' Sekwestru għandu jkun hati ta' reat kontra dan l-artikolu u għandu, meta jinstab hati, jeħel multa ta' mhux aktar minn tnax-il elf euro (€12, 000) jew prigunerija li ma taqbiżx it-tnax (12)-il xahar jew dik il-multa u prigunerija:

Iżda fil-proċeduri għal reat skont dan l-artikolu għandu jkun difiża għall-akkużat li jipprova li ma kienx jaf jew jissuspetta, u li fiċ-ċirkostanzi tal-każ ma setax raġonevolment ikun mistenni li jaf jew jissuspetta, li l-iżvelar x'aktarx jippreġudika l-operazzjoni ta' monitoraġġ, l-investigazzjoni jew l-operazzjoni tal-Ordni ta' Sekwestru.

Nuqqas ta' konformità ma' Ordni ta' Investigazzjoni.

61. Kull persuna li, wara li ġiet ordnata tipproduċi jew tagħti aċċess għal kwalunkwe materjal skont Ordni ta' Investigazzjoni, mingħajr skuża legali, li għandha tipprovaha hi stess, tonqos jew tirrifjuta li trid tikkonforma mal-Ordni ta' Investigazzjoni jew tfixkel jew ttellef b'rieda kull tfittxija għal materjal bħal dan, għandha tkun hati ta' reat kontra dan l-artikolu u, meta tinstab hatja tista' teħel multa ta' mhux aktar minn tnax-il elf euro (€12, 000) jew prigunerija li ma taqbiżx it-tnax (12)-il xahar jew dik il-multa u prigunerija.

Kontravvenzjoni ta' Ordni ta' Sekwestru eċċ.

62. Kull persuna li taġixxi b'kontravvenzjoni ta' Ordni ta' Sekwestru jew Ordni ta' Qbid u ta' Iffriżar għandha tkun hati ta' reat kontra dan l-artikolu u tista' meta tinstab hatja teħel multa ta' mhux aktar minn tnax-il elf euro (€12, 000) jew għal prigunerija li ma taqbiżx it-tnax (12)-il xahar jew kemm għal dik il-multa kif ukoll għal prigunerija, u meta r-reat jikkonsisti fil-hlas, it-trasferiment jew il-konsenja lil kwalunkwe persuna mis-sekwestrati ta' kwalunkwe flus jew proprjetà oħra mwahhla, maqbuda jew iffriżata mill-ordnijiet tal-

multa fl-ebda każ ma għandha tkun inqas mid-doppju ta' valur tal-ħlas magħmul jew tal-proprjetà trasferita jew ikkunsinnata, anke meta dik il-multa teċċedi s-somma msemmija ta' tnax-il elf euro (€12, 000).

63. (1) Il-multi inflitti skont din it-Taqsima għandhom għal terz tal-ammont tagħhom ikunu eżegwibbli kif u għandhom jikkostitwixxu dejn ċivili favur il-Gvern, u jistgħu jiġu rkuprati mid-Direttur.

Il-multi jistgħu jergħu jiġu rkuprati bhala dejn ċivili.

(2) Meta reat taħt din it-Taqsima jkun ġie mwettaq minn persuna li fil-ħin tal-imsemmi reat kienet direttur, maniġer jew segretarju jew uffiċjal prinċipali ieħor ta' korp korporattiv jew persuna li għandha s-setgħa ta' rappreżentanza ta' tali korp jew li għandha l-awtorità li tieħu deċiżjonijiet f'isem dak il-korp jew li jkollha awtorità biex teżerċita kontroll fi ħdan dak il-korp u dak ir-reat ġie mwettaq għall-benefiċċju parzjali jew sħiħ, ta' dak il-korp korporattiv, l-imsemmija persuna għandha għall-finijiet ta' din it-Taqsima tkun vestita bil-liġi rappreżentazzjoni tal-imsemmi korp korporattiv li jista' jkun soġġett għall-ħlas ta' multa ta' mhux aktar minn mitt elf euro (€100, 000):

Iżda meta rappreżentanza legali ma tibqax vestita fil-persuna msemmija, għall-iskop ta' dan l-artikolu, rappreżentanza legali għandha tingħata lill-persuna li tokkupa l-uffiċċju minfloku jew lil dik il-persuna kif imsemmi f'dan l-artikolu.

TAQSIMA IX

Emendi u Dispożizzjonijiet Tranzitorji

64. Minnufih wara s-subartikolu (7) tal-artikolu 36 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandu jiżdied is-subartikolu ġdid li ġej:

Emenda għall-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili. Kap. 12.

"(7A)Il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandha tieħu konjizzjoni tat-talbiet kollha kontra persuni kemm jekk huma naturali jew legali li joqgħodu jew għandhom l-uffiċċju ordinarju tagħhom jew uffiċċju registrat jew li għandhom assi jew proprjetà ta' kwalunkwe tip fil-Gżira ta' Malta u fil-Gzejjer ta' Għawdex u Kemmuna u ta' azzjonijiet *in rem*, għall-irkupru tar-rikavat mill-kriminalità mill-Istat jew minn entità tal-Istat jew għall-konfiska bbażata fuq il-kundanna mhux ibbażata fuq assi u proprjetà ta' kwalunkwe tip kif jistgħu jiġu pprovduti fi kwalunkwe liġi minn żmien għal żmien fis-seħħ u l-kawżi l-oħra kollha espressament assenjati bil-liġi lil tali sezzjoni tal-Qorti Ċivili:

Iżda meta l-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) tieħu konjizzjoni tat-talbiet kontra persuni, kemm jekk fiżiċi kif ukoll legali, li joqgħodu jew li għandhom id-djar ordinarji tagħhom fil-Gzejjer ta' Għawdex u Kemmuna għandha

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żżomm is-seduti tagħha fil-bini tal-qrati ta' Għawdex.

Emenda għall-Ordni dwar it-Twaqqif ta' Sezzjonijiet tal-Qrati Ċivili. LS 12. 19.

65. L-Ordni dwar it-Twaqqif ta' Sezzjonijiet tal-Qrati Ċivili għandu jiġi emendat kif ġej:

(a) fir-regolament 2 tiegħu, il-kelma "erba'" għandha tiġi sostitwita bil-kelma "ħames";

(b) fir-regolament 3 tiegħu, il-kliem "is-Sezzjoni tal-Kummerċ" għandhom jiġu sostitwiti bil-kliem "is-Sezzjoni tal-Kummerċ, is-Sezzjoni tal-Irkupru tal-Assi"; u

(ċ) minnufih wara r-regolament 5A tiegħu għandu jiżdied ir-regolament ġdid li ġej:

"Assenjazzjoni ta' każijiet Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi).

5B. Lill-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi) għandhom jiġu assenjati rikorsi relatati ma' kwistjonijiet li jikkonċernaw l-irkupru ta' rikavat u għall-konfiska ta' proprjetà mhux ibbażati fuq il-kundanna mill-Istat jew minn entità tal-Istat kif tista' tiġi pprovduta minn kull liġi minn żmien għal żmien fis-seħħ u l-kawżi l-oħra kollha espressament assenjati bil-liġi lis-sezzjoni msemmija tal-Qorti Ċivili."

Emendi għall-liġijiet varji.

66. L-Iskeda li tinsab ma' dan l-Att tista' tiġi emendata b'regolamenti magħmula mill-Ministru. Il-liġijiet fl-Ewwel Taqsima tal-Iskeda li tinsab ma' dan l-Att jistgħu jiġu revokati jew emendati sakemm jipprovdu dispożizzjoni fir-rigward tal-materji previsti wkoll f'dan l-Att bil-mod kif provdut fit-Tieni Taqsima tal-Iskeda msemmija.

Emendi għall-Ordinanza dwar il-Mediċini Perikolużi. Kap. 101.

67. L-Ordinanza dwar il-Mediċini Perikolużi għandha tiġi emendata kif ġej:

(a) l-artikolu 22Ċ tiegħu għandu jiġi emendat kif ġej:

(i) fis-subartikolu (2) tiegħu, il-kliem "il-Prim'Awla tal-Qorti Ċivili" għandhom jiġu sostitwiti bil-kliem "il-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi)";

(ii) fis-subartikolu (5) tiegħu, il-kliem "lill-Kummissarju tal-Pulizija mingħajr dewmien, u l-imsemmi Kummissarju" għandhom jiġu sostitwiti bil-kliem "lill-Uffiċċju għall-Irkupru tal-Assi mingħajr dewmien, u l-imsemmi Uffiċċju"; u

(b) l-artikolu 24D tiegħu għandu jiġi emendat kif ġej:

(i) fis-subartikolu (2) tiegħu, il-kliem "fil-Prim' Awla tal-Qorti Ċivili" għandhom jiġu sostitwiti bil-kliem "fil-Qorti Ċivili (Sezzjoni tal-Ikrupru tal-Assi)";

(ii) fis-subartikolu (10) tiegħu, il-kliem "lill-Prim' Awla tal-Qorti Ċivili" għandhom jiġu sostitwiti bil-kliem "lill-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi)".

68. L-artikolu 7 tal-Att kontra *Money Laundering* għandu jiġi emendat kif ġej:

Emendi għall-Att kontra *Money Laundering*. Kap. 373.

(a) fis-subartikolu (2) tiegħu, il-kliem "fil-Prim' Awla tal-Qorti Ċivili" għandhom jiġu sostitwiti bil-kliem "fil-Qorti Ċivili (Sezzjoni tal-Irkupru tal-Assi)"; u

(b) fis-subartikolu (5) tiegħu, il-kliem "lill-Kummissarju tal-Pulizija mingħajr dewmien, u l-imsemmi Kummissarju" għandhom jiġu sostitwiti bil-kliem "lill-Uffiċċju għall-Irkupru tal-Assi mingħajr dewmien, u l-imsemmi Uffiċċju".

69. Ir-Regolamenti dwar l-Uffiċċju għall-Irkupru tal-Assi huma b'dan imhassra mingħajr preġudizzju għall-validità kontinwa jew għal kull haġa li saret jew għad trid issir taħt dawk ir-regolamenti.

Thassir u riżervi. L.S. 9. 23.

SKEDA
(Artikolu 66)

L-Ewwel Taqsima

- Kodiċi Kriminali Kap. 9
- Kodiċi ta' Organizzazzjoni u Proċedura Ċivili Kap. 12
- Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandhom x'jaqsmu magħha Kap. 31
- Ordinanza dwar il-Mediċini Perikolużi Kap. 101
- Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta Kap. 330
- Att kontra *Money Laundering* Kap. 373
- Att dwar il-Prevenzjoni ta' Abbuż fis-Swieq Finanzjarji Kap. 476

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It-Tieni Taqsima

Il-Ministru b'approvazzjoni minn qabel b'riżoluzzjoni tal-Kamra jista' fi żmien tliet (3) snin mid-data tad-dhul fis-seħħ ta' din l-Iskeda permezz ta' Avviż Legali jhassar jew jemenda d-dispożizzjonijiet fil-liġijiet elenkati fl-Ewwel Taqsima ta' din l-Iskeda sa fejn huma jipprovdu għal kwistjonijiet ipprovdu wkoll f'dan l-Att.

Ghanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz ta' Liġi huma sabiex jipprovdi għall-irkupru tar-rikavat mill-kriminalità. L-Abbozz ta' Liġi għandu jwaqqaf u jirristruttura l-Uffiċċju għall-Irkupru tal-Assi kif ukoll jiddefinixxi l-istruttura tal-imsemmi Uffiċċju u jiddefinixxi r-relazzjoni tiegħu u l-indipendenza mill-Gvern. L-Abbozz ta' Liġi jipprovdi wkoll il-bażi għall-armonizzazzjoni tal-proċeduri adottati taħt diversi liġijiet fir-rigward tar-rikavat mill-kriminalità. Barra minn hekk, l-Abbozz ta' Liġi jistabilixxi sezzjoni tal-Qorti Ċivili bil-għan li tirregola t-tilwim relatat mal-konfiska tar-rikavat mill-kriminalità u għall-proċeduri ċivili għall-irkupru ta' assi li jikkostitwixxu r-rikavat mill-kriminalità. Isiru dispożizzjonijiet ukoll għall-proċeduri *in rem* fuq proprjetà li tikkonsisti f'rikavat mill-kriminalità.

**A BILL
entitled**

AN ACT to provide for the identification, tracing, freezing and confiscation of proceeds of crime including laundered property, income and other benefits derived from such proceeds held by criminal defendants, property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations, for the setting up of the Asset Recovery Bureau as a body, independent of the Government, for the said purpose, for non-conviction based confiscation of proceeds of crime and other matters consequential or ancillary thereto.

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

ARRANGEMENT OF ACT

		Articles
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Part III	The Civil Court (Asset Recovery Section)	28 - 32
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Part V	Special Procedures before the Civil Court (Asset Recovery Section)	38 - 42
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PART I
Preliminary

Short title and commencement. **1.** (1) The short title of this Act is the Proceeds of Crime Act, 2020.

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

Interpretation. **2.** (1) In this Act, unless the context otherwise requires:

"Board" means the Board of the Bureau established by article 7;

"Bureau" means the Asset Recovery Bureau established by article 6;

"Civil Court (Asset Recovery Section)" means the section of the Civil Court established in Part III;

"confiscation" means taking or seizing a property by order of the competent authority that deprives the owner of his title, entirely or in part, for no compensation;

"Director" means the Director of the Bureau, and includes a member of the Directorate staff duly authorised by the Director and a contractor of the Bureau acting under the instructions of the Director;

"Minister" means the Minister responsible for justice;

"owner" means a person with an ownership or secured

interest in property. "Owner" does not include a nominee who despite having legal title, does not exercise dominion and control over the property consistent with the rights of the true owner. "Owner" also does not include an unsecured creditor with a cause of action against the property owner or his estate but no interest in specific property;

"property" means all assets of any kind, tangible or intangible, moveable or immovable, corporeal or incorporeal, and includes virtual assets and legal documents or instruments evidencing title to, or interest in, such assets;

"virtual asset" means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes;

"suspect" means a person suspected to have committed a relevant offence.

(2) (a) Where it is provided in this Act that an action may be instituted by "the Government" such action may be instituted by any one or more amongst the Asset Recovery Bureau and the Commissioner of Police acting either individually or collectively provided that nothing in this sub-article shall be interpreted as allowing the filing of more than one action on the same claim by different applicants. The Asset Recovery Bureau and the Commissioner of Police may conclude a memorandum of understanding between them in order to determine the types of cases which will be pursued by each or by more than one of them.

(b) In this Act unless the context otherwise requires, any reference to "a person" shall be deemed to be a reference to any person whether physical or moral, and includes a reference to an association or body of persons, whether corporate or incorporate and whether that association, body or other grouping is for a transitory period, or for a particular end, or otherwise.

3. (1) "Proceeds of crime" means any economic advantage or other benefit derived directly or indirectly from a relevant offence, including but not limited to any property or interest in property that would not have been obtained or retained but for the commission of the offence.

Proceeds of crime, facilitating property, and property subject to confiscation.

(2) Proceeds of crime may consist of any kind of property of any description and of whatsoever nature, whether movable or immovable, corporeal or incorporeal irrespective of whether such property is situated in Malta or otherwise and irrespective of by whom such

property is held, and includes any subsequent reinvestment or transformation of proceeds.

(3) Proceeds of crime means the gross proceeds of a relevant offence without credit or deduction for any costs incurred in committing the offence or taxes paid or owing.

(4) "Facilitating property" means any property used or intended to be used to commit or to facilitate the commission of a relevant offence, such as by making the offence less difficult to commit or more or less free from obstruction or hindrance.

(5) "Property involved in money laundering" includes any proceeds of crime that are the subject of the money laundering transaction, any property commingled with the proceeds of crime at the time the money laundering transaction occurs, any property in which the proceeds or crime are invested or for which they are exchanged in the course of the money laundering offence, and any property used to facilitate the money laundering offence.

(6) "Property subject to confiscation" includes the proceeds of crime, facilitating property, and all property involved in a money laundering offence.

Relevant offence.

4. A "relevant offence" is any offence under any law, and not being an offence of an involuntary nature, liable to the punishment of imprisonment or detention for a maximum term of at least one (1) year.

Liability for civil damages.

5. (1) The confiscation of the proceeds of crime under this Act shall not extinguish any liability of any person committing an offence from any liability for the payment of damages to any person as compensation for any loss suffered by such person as a consequence of an offence.

Relation to other laws.

(2) Without prejudice to the provisions of this Act, any proceedings commenced before the coming into force of this Act in accordance with any other law or regulations shall continue to be governed and regulated by the provisions of that law or regulations.

(3) When a law provides for the confiscation of assets of the accused as a consequence of a conviction, the provisions of such law shall continue to apply in respect of such confiscation to the exclusion of the provisions of this Act, so however that the provisions of this Act shall nevertheless apply in respect of property which constitutes proceeds of crime and which is not subject to confiscation under any said law.

(4) Any attachment order, freezing order, investigation order,

monitoring order, seizure or other order made in relation to any investigation of a relevant offence or to criminal proceedings before the coming into force of this Act shall after the coming into force of this Act continue to have effect and to be regulated by the law under which it was issued and shall not be affected by the provisions of this Act.

PART II

The Asset Recovery Bureau

6. (1) There shall be established a body, independent of the Government, to be known as the Asset Recovery Bureau. Establishment of the Bureau.

(2) Subject to the provisions of this Act and of any other law, it shall be the function of the Bureau to trace and identify proceeds of crime and any other property subject to confiscation, and to take action for their confiscation as well as their proper administration and disposal, and to assist other law enforcement and regulatory authorities in the fight against crime.

(3) The Bureau shall be a body having a distinct legal personality from that of the Government and shall be capable subject to the provisions of this Act to enter into contracts, to hold and dispose of property of any kind for the purpose of its functions, to sue and be sued and to enter into all such other transactions as are incidental or conducive for the proper performance of its functions.

(4) In the exercise of its functions under this Act, the Bureau shall not be subject to any direction or control by any person, authority or body.

(5) The Bureau shall consist of a Board and of a Directorate.

(6) The legal and judicial representation of the Bureau shall vest in the Chairperson:

Provided that the Board of the Bureau may appoint the Director or any one or more of the members of the Directorate staff to appear in the name and on behalf of the Bureau in any judicial proceedings and in any act, deed, contract or instrument or other document whatsoever.

(7) Any document purporting to be an instrument made or issued by the Bureau and signed by the Chairperson on behalf of the Bureau shall be received in evidence, and shall unless the contrary is proved, be deemed to be an instrument made or issued by the Bureau.

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Board of the
Bureau.

7. (1) The Board of the Bureau shall consist of a Chairperson appointed by the Cabinet of Ministers, after consultation with the Leader of the Opposition from among persons who have held the office of Judge or Magistrate, or who have held senior positions in the public service of Malta, and four (4) other members as follows:

- (a) The Commissioner of Police or his representative;
- (b) The Commissioner for Revenue or his representative;
- (c) The Chief Executive Officer of the Court Services Agency or his representative;
- (d) The Director of the Financial Intelligence Analysis Unit or his representative.

(2) One of the members of the Board of the Bureau shall be appointed by the Minister as Deputy Chairperson. The Deputy Chairperson shall have all the powers and perform all duties of the Chairperson during the absence of the Chairperson or during any period where the Chairperson cannot perform his function for any other cause, or during any vacancy in the office of the Chairperson.

(3) The Board may act notwithstanding any vacancy in its composition or during the absence of any of its members as long as the Chairperson or the Deputy Chairperson and any two (2) other members are present.

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

- (a) interdicted or incapacitated;
- (b) has been declared bankrupt or has made a compromise or other arrangement with his creditors; or
- (c) has been found guilty of an offence in Malta or abroad other than:
 - (i) an offence of an involuntary nature; or
 - (ii) an offence liable to the punishment established for contraventions.

(5) For the purpose of paragraph (c) of sub-article (4) a person who has been found guilty of an offence as specified in that paragraph shall still be disqualified to hold office notwithstanding that any punishment awarded has been suspended or such person has been conditionally released or put under probation without the infliction of any penalty or such person has been sentenced according to the Probation Act without the infliction of any penalty.

Cap. 446.

(6) The Chairperson and the Deputy Chairperson shall be appointed for a term of five (5) years and may be reappointed.

(7) Where a member of the Board holds office as the representative of another person as provided in paragraphs (a) to (d) of sub-article (1), such member shall be so appointed for a period of five (5) years but may be reappointed.

(8) The Chairperson, the Deputy Chairperson and the other members of the Board, including such other members as are mentioned in sub-article (7) hereof shall discharge their duties in accordance with their own individual judgement and shall not be subject to the direction or control of any other person or authority.

(9) The members of the Board shall receive such remuneration as the Minister may determine upon their appointment.

(10) A member of the Board may not be removed from office, except by the President acting on the advice of the Cabinet of Ministers on grounds or inability to perform his function (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(11) The Minister shall appoint a person being an advocate or a legal procurator to act as Secretary to the Board.

(12) The minutes, discussions, deliberations and decisions of the Board shall be treated as confidential and shall not be disclosed except:

- (a) when authorised to do so under any of the provisions of this Act;
- (b) for the purpose of the performance of duties or the exercise of functions under this Act; and
- (c) to any competent entity, court or tribunal.

8. (1) The Board shall be responsible to establish the policy to be adopted by the Bureau in the exercise of its functions under this

Functions of the Board.

C 4558

Act.

(2) The Board shall be responsible to ensure that the Bureau carries out its functions in accordance with this Act and in accordance with any policy established by it.

(3) The Board may from time to time, if it thinks fit, make general rules for the guidance of the Directorate in the exercise of its functions under this Act, and may at any time revoke or vary such rules:

Provided that nothing in this sub-article shall be construed as authorising the said Board from giving directions with regard to the conduct of any investigation or other function of the Bureau in any particular case.

(4) The Board shall also verify and approve the accounts of the Bureau and the draft estimates and the financial plans of the Bureau, prepared by the Director before their final submission to the Minister in accordance with this Act.

(5) The Board shall be kept informed by the Director on the general running of the Bureau and the said Director shall moreover inform the said Board of the general outcome of investigations and operations concluded by the Bureau.

The Directorate.

9. (1) The Directorate of the Bureau shall consist of the Director who shall be the Chief Executive Officer of the Bureau, a Deputy Director and such other officers and employees of the Bureau as may be engaged by the Bureau from time to time.

(2) The Director shall be in charge of the overall management and executive action of the Bureau and shall keep the Board informed on the general running of the Bureau and of the general outcome of investigations and operations concluded by the Bureau.

(3) The Director shall be appointed by the Minister from among Senior Public Officers, after consultation with the Board, for such period and on such terms as the Minister may, in consultation with the Board, determine.

(4) The Deputy Director and the other officers and employees of the Directorate shall be selected by the Director and engaged by the Bureau in accordance with such procedures and on such terms as the Board may from time to time determine.

(5) The Deputy Director and the other officers and employees of the Directorate (hereinafter collectively referred to as the directorate

staff) shall as far as possible be selected from among:

(a) members of the Executive Police, nominated and designated by the Commissioner of Police;

(b) officers in the departments falling under the headship of the Commissioner for the Revenue nominated and designated by the Commissioner for Revenue; and

(c) public officers.

(6) The Bureau may also act through such contractors as it may from time to time engage:

Provided that such contractors shall at all times act in accordance with such instructions as may be given to them by the Director.

(7) The Director and the Directorate staff shall for all purposes of the Criminal Code be considered as public officers, and shall be afforded all protection and may incur all liability as such.

(8) The Director and the Directorate staff shall subject to any contrary provision in this Act or in any other law abide by any code of ethics applicable to public officers:

Provided that nothing in this sub-article may be deemed to preclude the Board to make further rules regulating the conduct of the Director and of the Directorate staff to supplement any such Code of Ethics.

10. (1) The Board shall meet at least ten (10) times a year. Other meetings of the Board shall be convened as may be necessary. Meetings of the Board.

(2) The Secretary to the Board shall take minutes of decisions at its meetings. The minutes shall be signed by the Secretary and the Chairperson.

(3) The meeting of the Board shall be chaired by the Chairperson or in his absence the Deputy Chairperson.

(4) Decisions of the Board shall be adopted by a simple majority of votes of the members present and voting, and in the event of an equality of votes the Chairperson, or where the meeting is presided by the Deputy Chairperson, the Deputy Chairperson shall have and exercise a second or casting vote. The quorum at Board meetings shall consist of three (3) members.

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(5) The Director shall be entitled to attend the meetings of the Board and to take part in the discussions. The Board may invite any other member of the Directorate staff to attend meeting of the Board and to participate in the discussions. The Director and any member of the Directorate staff taking part in any discussion of the Board of the Bureau shall not have a vote in the meetings in which they participate:

Provided that the Chairperson may at any time, if he considers it proper so to do, at any time exclude the Director or any member of the Directorate staff invited to attend at a meeting of the Board from any meeting or part thereof.

(6) Any participation in a meeting of the Board of a person not entitled to be present shall not invalidate the proceedings of the meeting nor shall such proceedings be invalidated if it is subsequently discovered that a person acted in good faith as a member and a defect in his appointment or qualification is afterwards discovered.

(7) A week's notice shall be given to the members of the Board of any meeting thereof:

Provided that in case where an urgent situation arises and decisions are to be taken forthwith, with decisions taken by at least two (2) members of the Board one of whom being the Chairperson or the Deputy Chairperson shall be valid as if taken by a meeting of the Board regularly convened with proper notice.

(8) Subject to the other provisions of the this Act, the Board shall regulate its own proceedings.

Staff appointments.

11. Without prejudice to the other provisions of this Act, the appointment of officers and other employees of the Bureau shall be made by the Bureau. The terms and conditions of employment shall be established by the Bureau with the concurrence of the Minister.

Appointment and functions of officer and employees of the Bureau.

12. The Bureau shall appoint and employ, at such remuneration and upon such time terms and conditions as it may, in accordance with articles 9 and 11, determine, such officers and employees of the Bureau as may from time to time be necessary for the due and efficient discharge of the functions of the Bureau.

Detailing of public officers for duty with the Bureau.

13. (1) The Prime Minister may, at the request of the Bureau, from time to time direct that any public officer shall be detailed for duty with the Bureau in such capacity and with effect from such date as may be specified in the Prime Minister's direction.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein, shall, unless the officer retires from the

public service, or otherwise ceases to hold office at an earlier date, or unless a different date is specified in such direction, cease to have effect after one (1) year from the effective date of such direction unless the direction is revoked earlier by the Prime Minister.

14. (1) Where any officer is detailed for duty with the Bureau under any of the provisions of article 13, such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Bureau but he shall for other intents and purposes remain and be considered and treated as a public officer.

Status of public officers detailed for duty with the Bureau.

(2) Without prejudice to the generality of the foregoing, an officer detailed for duty as aforesaid:

(a) shall not during the time in respect of which he is so detailed:

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at a date on which he is so detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Bureau; and

(b) shall be entitled to have his service with the Bureau considered as service with the Government for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and the Widows and Orphans' Pensions Act and of any other right or privilege to which he would be entitled, and liable to any liability to which he would be liable, but for the fact of his being detailed for duty with the Bureau.

Cap. 93.
Cap. 58.

(3) Where an application is made as provided in sub-article (2)(a)(i) the same consideration shall be given thereto as if the applicant had not been detailed for service with the Bureau.

(4) The Bureau shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Bureau as aforesaid during the period in which he is so detailed.

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Offer of permanent employment with the Bureau to public officers detailed for duty with the Bureau.

15. (1) The Bureau may, with the approval of the Prime Minister, offer to any officer detailed for duty with the Bureau under any of the provisions of article 12 permanent employment with the Bureau at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer.

(2) The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

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Cap. 58.

(3) Every officer who accepts permanent employment with the Bureau offered to him, under the provisions of sub-article (1) shall for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, and saving the provisions of sub-article (6), be deemed to have ceased to be in service with the Government and to have entered into service with the Bureau on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Bureau shall be deemed to be service with the Government within the meanings thereof respectively.

Cap. 58.

(4) Every such officer as aforesaid who, immediately before accepting permanent employment with the Bureau was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be so entitled to benefit thereunder to all intents as if his service with the Bureau were service with the Government.

(5) The Bureau shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted performance of employment with the Bureau as aforesaid during the period commencing on the date of such officer's acceptance.

(6) (a) For the purposes of this article posts and salary grades with the Bureau shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government of Malta by reference to job description, skills, responsibilities and other analogous factors.

(b) The classification referred to in paragraph (a) shall be carried out by a board composed of a chairman appointed by the Ministry responsible for finance and two (2) other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the Bureau. The classification shall be

subject to the final approval of the Minister responsible for finance.

(c) Such classification shall take place within three (3) months of any adjustment of salaries of employees in Government service and, or, of employees of the Bureau.

(d) No post shall be classified in a grade higher than that of a Grade 3 in the service of the Government or such other grade that the Minister responsible for finance may from time to time by notice in the Gazette determine.

(e) Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification. Cap. 93.

16. (1) In the exercise of his functions under this Act, the Director and any member of the Directorate staff, authorised by him, shall have power to seek from any person or authority any information with regard to any person or with regard to any matter, and the person in possession of such information shall notwithstanding the provision of any law to the contrary be obliged to give the Director or any such member all information so requested: Right of the Bureau to acquire information.

Provided that:

(a) no advocate or legal procurator may be compelled to disclose information derived from the professional confidence which the parties themselves shall have placed in their assistance and, or, advice;

(b) no clergyman may be questioned on any matter or circumstance that may have come to his knowledge under the seal of confession or *loco confessionis*:

Provided further that where any person or authority has acquired information from any person or authority in any State other than Malta through the operation of any treaty or arrangement with such other State to which Malta is a party, and such treaty or arrangement provides that any information passed through the operation of such treaty or arrangement may not be divulged to any other person except with the consent of the person passing the information requested, the person from whom the information is requested may withhold the information if such consent is not given.

(2) The information referred to under sub-article (1) hereof shall be provided within not more than thirty (30) days of receipt of the request:

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Provided that upon good cause being shown to the Director, such period may be extended by the Director for such further period or periods as the Director may deem reasonable.

Prosecution etc.
to inform
Bureau.

17. Where a person is charged before a court of Criminal Jurisdiction in Malta with a relevant offence it shall be the duty of the prosecuting officer and of the Registrar of the Court before which such accused person has been charged to inform the Bureau, as soon as may be and in any case not later than the lapse of one (1) week of such person being charged, and to keep the Bureau informed of the progress of the procedures against such person, in particular of any conviction or acquittal and of any appeal and the result thereof.

Prosecution to
liaise with
Bureau for the
issue of orders
under this Act.

18. It shall be the duty of the prosecuting officer in any case where a person has been charged with a relevant offence, to give to the Bureau all necessary information that may be required to determine whether that person has benefited from proceeds of crime, and to determine whether any measure needs to be taken under this Act with regard to that person or his property.

Administration
and disposal of
forfeited
property, and of
property
confiscated in
favour of the
Government.

19. (1) Where any property has by a final judgement of a court been forfeited or confiscated in favour of the Government, it shall be incumbent on the Registrar of such court to inform the Bureau of such forfeiture or confiscation and to transmit to the Bureau a copy of the judgement, ordering the forfeiture or confiscation or in virtue of which the forfeiture or confiscation has taken place.

(2) The said Registrar shall moreover hand over to the Bureau any property so forfeited or confiscated or, and any title to such property that may be in the possession of the court.

(3) Without prejudice to the provisions of any other law providing for forfeiture as a consequence of a conviction for a criminal offence, the confiscation in favour of the government of all property subject to confiscation pertaining to a person found guilty of a relevant offence is a civil consequence of any such conviction, and does not need to be pronounced in the judgement finding his guilt. Where such confiscation includes the proceeds of crime, it is not limited only to proceeds deriving from the offence to which the judgement refers, but extends to the proceeds of other relevant offences shown on a balance of the probabilities to have been committed by the same person.

(4) (a) Where any property so forfeited or confiscated consists of money in a currency other than the euro it shall be converted to euro at the rate of exchange in force.

(b) When such property consists of objects or other assets, it shall be disposed of by the Bureau in a manner that ensures the greatest

benefit to the Government.

(5) Proceeds from the disposal of any property by the Bureau shall be transferred by the Director to the consolidated fund or to such other fund which may be set up by regulations made by the Minister with the concurrence of the Minister responsible for finance for use in support of efforts to combat money laundering and financing of terrorism as soon as may be after receipt:

Provided that such portion of, or such sum derived from such proceeds, as may be determined in the estimates approved by the Minister, may be retained by the Bureau as a reserve to cover on-going and future expenses.

(6) The Bureau shall also be entitled, with the authorisation of the Civil Court (Asset Recovery Section) to take possession of and manage, value, maintain and administer property which is frozen and in the process of being confiscated and to sell such property which is of a perishable nature or which requires substantial expense to maintain or is subject to substantial depreciation. For this purpose the Bureau may be assisted by its contractors or outsourced professionals.

20. The financial year of the Bureau shall begin on the first day of January and end on the thirty first day of December: Financial year.

Provided that the first financial year of the Bureau shall commence on the date of coming into force of this Act and shall end on the 31st day of December of the following year.

21. (1) The Director shall, not later than sixteen (16) weeks before the end of each financial year, submit to the Board of the Bureau estimates of the income and expenditure of the Bureau for the following financial year. Estimates and expenditure.

(2) In the preparation of such estimates the Bureau shall endeavour to ensure that the sums to be allocated to the Bureau, together with any sums retained in accordance with the proviso to sub-article (5) of article 19 are at least sufficient to meet all sums properly chargeable to its income and expenditure accounts 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) Not later than three (3) weeks from the receipt of such estimates from the Director, the Board shall consider such estimates and shall transmit the same with or without amendments to the

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Minister for his approval.

(5) Before the end of the financial year, the Minister shall approve and adopt such estimates with or without amendments.

(6) If in respect of any financial year it is found that the amount so approved is not sufficient or a need has arisen for expenditure for a purpose not provided for in the, estimates the Director shall cause supplementary estimates to be prepared and to be sent forthwith to the Board for transmission to the Minister for his approval, and in any such case the provisions of the article shall as near as practicable apply to the supplementary estimates.

Advances by the government.

22. The Minister may, acting in accordance with an appropriation Act, make advances and provide such funds to the Bureau for carrying out its functions under this Act, in accordance with such estimates approved in accordance with article 21.

Accounts and audit.

23. The Bureau shall keep proper books of accounts in such manner as the Minister, following consultation with the Minister responsible for finance, may from time to time direct. Such accounts shall be audited by auditors appointed by the Board of the Bureau with the concurrence of the Minister from among persons qualified to be appointed as auditors of a company in accordance with such law for the time being in force in Malta. Such accounts shall moreover be subject to audit by the Auditor General.

Annual report.

24. (1) The Board shall as soon as may be but not later than three (3) months after the close of each financial year, transmit to the Minister an annual report consisting of:

(a) a copy of the annual accounts certified by the auditors; and

(b) a report on the operations of the Bureau during the previous financial year.

(2) The annual report shall be laid on the table of the House by the Minister not later than six (6) weeks after its receipt, or where the House is during that period not in session, not later than the second week after the House reconvenes.

Data to be kept by the Bureau.

25. (1) The Bureau shall gather, manage and process data relating to:

(a) suspect persons investigated by the Bureau;

(b) freezing, seizure and confiscation of property,

including comprehensive data on the effectiveness of the freezing and seizure of property up to confiscation; and

(c) assistance in the enforcement of sentences involving confiscation of property;

(d) the management of assets;

(e) the estimated proceeds, the value of seized and confiscated property and the amount realised from the administration or sale of such property;

(f) where property is released, the reasons for the release.

(2) The Director shall keep a record of those persons or categories of persons having access to the data referred to in sub-article (1) hereof, and shall make such record available to the Information and Data Protection Commissioner.

Record of persons having access to data.

(3) Data retained for the purposes of this Act shall be retained for a period of fifteen years which period shall be suspended during the pendency of investigations or litigation to which the said data is relevant.

26. (1) The Director and members of the Board, members of the Directorate staff and advisors and contractors of the Bureau shall treat any information acquired through the performance of their duties under this Act as secret and confidential and shall not disclose the same to any person other than as necessary for the proper performance of their duties:

Disclosure of information.

Provided that nothing in this sub-article shall be deemed to preclude the Director or any member of the Directorate Staff acting under a general or specific authorisation from the said Board to disclose information to the Attorney General, or any prosecuting authority, that may be required in the prosecution of offences for a relevant offence or to any fiscal or supervisory authority established by or under any other law for the purpose of aiding such other authority in the carrying out of its functions.

(2) The Director and members of the Directorate staff shall keep a record of any disclosure of information made in accordance with sub-article (1) hereof, indicating the person to whom the information has been disclosed and where necessary the date of the authority to disclose given in writing by the Director:

Provided that in urgent cases, authority to disclose may be

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given verbally in which case it shall be confirmed in writing as soon as may be, and in no case later than two (2) working days of the giving of the verbal authority.

Liability for damages.

27. The Bureau, the Board, the Director and members of the Directorate staff shall not be liable for 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 in bad faith or through gross negligence.

PART III

The Civil Court (Asset Recovery Section)

Establishment of the Civil Court (Asset Recovery Section).

28. (1) There shall be established a section of the Civil Court to be designated the Civil Court (Asset Recovery Section).

(2) The Civil Court (Asset Recovery Section) shall take cognisance of cases of any category as are by this Act or by any other law assigned to it.

(3) The Civil Court (Asset Recovery Section) shall take cognisance of cases whatever the value of the matter in dispute if the case falls in a category of cases assigned to it as provided in sub-article (2).

Proceedings of a civil nature.

29. Procedures before the Civil Court (Asset Recovery Section) are of a civil nature and the burden of proof required to establish a finding shall not be greater than may be required in any other court of civil jurisdiction as opposed to one of criminal jurisdiction.

Inadmissibility as evidence in criminal cases.

30. Neither the acceptance of any statement before the Civil Court (Asset Recovery Section) by any person, nor anything filed in a document before it or anything said in evidence by any person before it shall be admissible as evidence in any proceedings for any offence against the person in whose name the statement has been made or accepted, or in whose name the document has been filed, or against the person giving evidence:

Provided that nothing in this article shall be deemed to exempt any person from any criminal or other liability resulting from his or her giving false evidence before the Civil Court (Asset Recovery Section) or for filing or causing to be filed any document knowing it to be false.

31. (1) Save as otherwise provided in this or any other law, proceedings before the Civil Court (Asset Recovery Section) shall be instituted and conducted according to the same procedure as applicable before the Civil Court First Hall, so however that article 460 of the Code of Organization and Civil Procedure shall not apply with regard to proceedings before the Civil Court (Asset Recovery Section)

Procedure.

Cap. 12.

(2) The Civil Court (Asset Recovery Section) shall have the power upon the application of any interested party to:

(a) extend any time limit provided for by this Act;

(b) decide any matter as to whether the legal professional privilege provided for in this Act applies to in any stated circumstances.

32. No appeal shall lie against decisions of the Civil Court (Asset Recovery Section) except on a point of law decided in the appealed judgment or on the basis of an error of fact resulting from the records of the case.

Appeals.

PART IV Orders

33. (1) Where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence, the said Attorney General may apply to the Criminal Court for an Order, (hereinafter referred to as a "Monitoring Order") requiring a bank or other financial institution licensed to operate in Malta to monitor for a specified period the transactions or operations carried out through one or more accounts in the name of the suspect, or through one or more accounts:

Monitoring orders.

(a) suspected to have been used in the commission of the offence; or

(b) which could provide information about the offence or the circumstances thereof; or

(c) which could provide information as to the location and the amounts of proceeds of crime, during or after the commission of the offence.

The Bank or other financial institution on the receipt of such Order by the Criminal Court shall proceed to monitor the account or accounts as indicated in the Order, and shall communicate to the Attorney General the information resulting from the monitoring.

(2) The application for a Monitoring Order shall be made *in*

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camera and the decision of the Criminal Court in such application shall likewise be given *in camera*.

(3) (a) Where from the information resulting from the monitoring of an account or accounts in accordance with a Monitoring Order made in accordance with sub-article (1) hereof, it appears to the Attorney General that a relevant offence has been committed, and that such relevant offence may have resulted in proceeds of crime, the Attorney General shall communicate to the Director the information resulting from the monitoring.

(b) The Director shall study the information received in terms of paragraph (a) hereof for the purpose of establishing the quantum of any proceeds of crime and of their location, and where for such purpose he deems that any other account or accounts may need to be monitored in order to gather information for the aforesaid purpose, he may request the Attorney General to apply to the Criminal Court for the issue of further monitoring orders in respect of such accounts.

Investigation
order.

34. (1) Where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence, the Attorney General may apply to the Criminal Court for an Order (hereinafter referred to as an "Investigation Order") requiring that a person or persons named in the Order who may be in possession of particular material or material of a particular description which is likely to be of substantial value (whether alone or together with other material) to the investigation or, in connection with the suspect, shall produce or grant access to such material to the applicant, and by virtue of such an Investigation Order, the applicant or any person authorised by him shall have power to enter any house, building or enclosure for the purpose of searching for such material.

(2) The provisions of article 16 shall *mutatis mutandis* apply with regard to an Investigation Order.

(3) Where the material subject to an Investigation Order consists of information contained in a computer, the Investigation Order shall have effect as an order to produce or give access to such material in a form in which it can be taken away and in which it is visible and legible.

(4) Where in the course of an investigation, pursuant to an order under this article, the person conducting the investigation has reason to believe that any person may have information regarding a relevant offence, the person conducting the investigation shall request a Magistrate to hear such person on oath, and the Magistrate shall forthwith hear the person on oath and draw up a procès-verbal containing such testimony, and the procès-verbal so drawn up and the evidence therein recorded shall have the same probatory value as a procès-verbal drawn up and evidence recorded in procedures pursuant to Title II of Part II of Book Second of the Criminal Code.

Cap. 9.

(5) Sub-article (2) of article 33 shall apply to an application for the issue of an Investigation Order and to the decision of the Criminal Court with regard to any such application.

(6) Where an Investigation Order has been carried out, a report of the result of the investigation shall also be made available to the Director.

(7) (a) Where it appears to the Attorney General that an Investigation Order may lead to the discovery of material constituting proceeds of crime or information as to their location, he may request the court that the person conducting the investigation be accompanied by the Director.

(b) The Director may when accompanying the person conducting the investigation, entering any house, building or enclosure, or boarding a craft or vehicle subject to the investigation, in accordance with sub-article (1), make a record of any material in such house, building or enclosure or on board the craft or inside the vehicle that may constitute proceeds of crime, and shall for such purpose have any such material photographed, weighed, measured and valued by experts.

(c) Where the presence of the Director has not been requested by the Attorney General in accordance with paragraph (a) of this sub-article and the need for the Director to enter any house, building or enclosure or to board any craft or vehicle or to conduct any operation as mentioned in paragraph (b) hereof results to the Attorney General after the Investigation Order has been carried out, or the Director informs the Attorney General of such need following the receipt a report made available to him in accordance with sub-article (6) hereof, the Attorney General may request the Court to authorise the person conducting the investigation to again enter such house, building or enclosure, or to board such craft or enter such vehicle accompanied by the Director for the purpose of conducting the operations as are mentioned in paragraph (b).

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Attachment
order.

35. (1) Where the Attorney General has reasonable cause to believe that a person (hereinafter referred to as "the suspect") is guilty of a relevant offence, he may apply to the Criminal Court for an order (hereinafter referred to as an "Attachment Order"):

(a) attaching in the hands of such persons, or in the hands of third parties having custody of the property of such persons, as are mentioned in the application (hereinafter referred to as "the garnishees") all moneys or other movable property due to or pertaining to the suspect or used by the suspect;

(b) requiring the garnishees to declare in writing to the Attorney General and the Director, not later than twenty-four (24) hours from the time of service of the order, the nature and source of all moneys and other movable property so attached; and

(c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

(2) Before making an Attachment Order, the Criminal Court may require to hear the Attorney General in chambers and shall not make such an Order unless it concurs with him that there is a reasonable cause as provided in sub-article (1).

Cap. 12.

(3) The provisions of article 381(1)(a), (b) and (2) and article 382 (1) of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to the Attachment Order.

(4) (a) An Attachment Order shall be served on the garnishees and on the suspect by an officer of the Executive Police;

(b) An Attachment Order may also be served on the garnishees by electronic mail. Where it is so served, the garnishee shall, not later than one (1) working day from such service, acknowledge receipt by return electronic mail, and in default of such acknowledgement, a copy of the Order shall, without prejudice to the validity of the service by electronic means, be served on the garnishee by an officer of the Executive Police.

(c) Unless the Criminal Court otherwise directs, an Attachment Order shall be served without prior notice to the garnishee.

(5) An Attachment Order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and the garnishee, cease to be operative on the expiration of six (6) months from the date it is made, and the Criminal Court shall not make another Attachment Order with respect to the suspect unless it is satisfied that

there is substantially new information with regard to the relative relevant offence:

Provided that the Criminal Court may, upon an application of the Attorney General, where it is satisfied that sufficient grounds exist, extend the validity of an Attachment order for one further period of six(6) months.

(6) Where during the period of validity of an Attachment Order, whether original or extended, the suspect absconds or is for any other reason away from the island, the period of time during which the suspect is away from the island shall be added to the period of validity of the Attachment Order.

(7) Where the Attorney General applies for the issue of an Attachment Order as provided in sub-article (1), he may request the Court issuing the Order to authorise the Director to accompany the person serving the Attachment Order on the suspect, and upon the service of the Order on the suspect the Director shall have the right, to enter, accompanied by an officer of the executive police into any house, building or other enclosure or board any craft or enter any vehicle, belonging to or used by the suspect, or wherein it is suspected that the suspect may have property or other assets constituting property subject to confiscation, and thereat make a record of any material that may constitute such property. The Director may for such purpose have such material photographed, weighed, measured and valued by experts.

(8) The Director may moreover remove and take possession of any material referred to in the previous sub-article, and such material shall remain attached by the Order in the hand of the Director during the period of validity of the Attachment Order:

Provided that where the Director takes possession of any material as aforesaid he shall not later than one (1) week of taking such possession inform the Criminal Court of such taking of possession and request its authority to continue to keep possession of the material during the period of validity of the Attachment Order. The application of the Director shall be served on the suspect and on any person from whose possession the material was removed. The Criminal Court shall decide the application by decree, and where in its decree it refuses to grant the request of the Director, in whole or in part, the Director shall within a term of not more than one (1) week return the material to which the refusal refers, to the person from whose possession it was removed:

Provided further that any material to which the refusal refers,

shall, unless the said court in its decree otherwise decides, remain subject to the Attachment Order referred to sub-article (1).

(9) Where the Attorney General in a request referred to in sub-article (7) omits to request that the Director accompanies the person serving the Attachment Order as therein provided, the Director may at any time during the subsistence of the Attachment Order request the Criminal Court to authorise him accompanied by an officer of the executive police to enter any house, building or enclosure or to board any craft or vehicle as is referred to in the said sub-article (7) and therein conduct the operations referred to in the said sub-articles. The provisions of sub-article (8) shall also apply in the case of an entry by the Director authorised under this sub-article.

(10) (a) Where any material is attached in the hands of a garnishee in virtue of an Attachment Order issued in terms of this article, the Director may request the Criminal Court to order the garnishee to transfer all or any material attached in the hands of the garnishee, to the possession of the Director, within such time as the said court may in its decree prescribe, and upon such transfer such material shall remain subject to the Attachment Order in the hands of the Director.

(b) Failure by any person to abide by an Order issued under this sub-article shall constitute Contempt of Court and shall be punishable as such by the Criminal Court:

Provided that any punishment that the said court may impose shall not release the person disobeying such Order from any liability for damages that his failure to comply with the Order may incur in favour of any persons.

(11) (a) Where a commercial going concern or a body corporate is subject to an Attachment Order, the totality of the assets of the going concern, including licences and goodwill are to be preserved and shall not be transferred, and subject to the following provisions of this sub-article the going concern or a body corporate shall continue to do business.

(b) Where a commercial going concern or a body corporate has been attached by an Attachment Order the Criminal Court may on application made by the Director and after hearing the suspect, appoint an Administrator generally for the better preservation of the asset of the going concern or a body corporate and in particular to provide for its administration. The provision of article 848B of the Code of Organization and Civil Procedure shall apply with regard to an application and the appointment of an administrator under this sub-

article.

(12) Where the property subject to an Attachment Order is of a perishable nature, the person holding the property shall without further authorisation, sell such property, and the Attachment Order shall continue to apply with respect to proceeds of such sale.

(13) The Director is bound to exercise for the safekeeping of any property subject to an Attachment Order, held in his possession, such care as is exercised by a *bonus paterfamilias*.

36. (1) Where a person is charged with a relevant offence, the Court shall at the request of the prosecution make an Order (hereinafter referred to as a "Seizing and Freezing Order"): Seizing and freezing order.

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

(b) prohibiting the accused from transferring, pledging, hypothecating or otherwise changing or disposing of any immovable or movable property owned or otherwise held by him:

Provided that the Court shall on the application of the accused served on the prosecution and the Director determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the source, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit of six hundred euro (€600) every fifteen (15) days. In no event, however, may such payments be made from funds which there is reasonable cause to believe were taken unlawfully from victims of crime who would stand to recover such property if the accused is convicted.

(2) A Seizure and Freezing Order shall be immediately served upon the Director and shall:

(a) become operative and binding on all third parties immediately when it is made and the Director shall cause a notice thereof to be published without delay in the Gazette and also cause a copy thereof to be registered in the Public Registry, the Land Registry and any other registry established by law for the registration of property of any kind. A copy of such order shall also be served on any person who the prosecution or the Director may indicate 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) For the purposes of paragraph (b) sub-article (2), a sentence shall be deemed to be executed when the procedures set out in Part V for the purposes of establishing how much the person convicted has benefited from the proceeds of crime, and for the recovery of such proceeds have been terminated.

(4) The Court may, on the application of any interested party, when circumstances so warrant, vary such order, and the provisions of the foregoing sub article shall apply to such order as varied.

(5) 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 number, if any.

(6) 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 the order, be deposited in a bank to the credit of the accused. Upon the deposit as aforesaid, the order shall apply with regard to the deposit so made.

(7) Where such order ceases to be in force as provided in sub-article (2) (b), the Director shall cause a notice to that effect to be registered in the Public Registry and in the other registries referred to in sub-article (2)(a) and sub-article (3), and publish a notice to that effect in the Gazette. A copy of such notice shall also be served on any person who had been served with a copy of the Seizing and Freezing Order in accordance with sub-article (2)(a).

(8) Where the Court does not proceed forthwith to make an order as required under sub-article (1), the Court shall forthwith make a temporary Seizure and Freezing Order having the same effect as an order made under the preceding provisions of this article. The Temporary Seizing and Freezing Order made under this sub-article shall remain in force until such time as the Court makes the order required by that sub-article or until the Criminal Court shall have determined an application in accordance with sub-article (9) or until the said Criminal Court has not revoked it in accordance with sub-article (10):

Provided that a Temporary Seizing and Freezing Order shall not remain in force beyond the time when a Seizing and Freezing Order would in accordance with sub-article (2)(b) cease to be in force.

(9) 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 (3) 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 Court under this sub-article as if it were an order made by the Criminal Court under sub-article (1).

(10) The person charged may, within three (3) working days from the making of the order under sub-article (8), apply to the Criminal Court for the revocation of the Temporary Seizing and Freezing Order.

(11) The provisions of sub-articles (7) to (13) of article 35 shall *mutatis mutandis* apply in the case of a Seizing and Freezing Order made under this article.

37. Where after a person has been charged with a relevant offence, such person absconds, or dies, or where because of his illness procedures against him cannot be brought to a conclusion, any order made by a Court under this part of this Act shall upon an application made for the purpose to that effect by the Attorney General or by the Director remain in force until procedures in terms of article 42, by the Civil Court (Asset Recovery Section) have been concluded.

Subsistence of orders in certain circumstances.

PART V

Special Procedures Before The Civil Court (Asset Recovery Section)

38. (1) Where a person has been convicted of a relevant offence, the Director may by application before the Civil Court (Asset Recovery Section) served on the person convicted or his lawful representative (hereinafter referred to as "convicted person") request the said Court to determine what property is subject to confiscation, including the amount of the proceeds of the crime committed by the convicted person.

Determination of property subject to confiscation.

(2) The application referred to in sub-article (1) shall be filed not later than one (1) year from the date when the judgment finding the guilt of the convicted person has become *res judicata*.

(3) The application referred to in sub-article (2) shall contain a reference to the judgment finding the guilt of the convicted person, the facts of the case, as well as the names of witnesses in support of the application as well as the facts that are sought to be established by the evidence of each such witnesses, as well as a list of all documents in support of the application.

(4) The Director shall also attach to the application a list of

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property of any description which he claims belongs to the convicted person whether that property is held in the name of such person or in the name of others and wherever it is held, together with a statement showing what in his opinion is the amount of the proceeds of crime committed by the convicted person:

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Provided that where the relevant offence referred to in sub-article (1) is an offence against the Dangerous Drugs Ordinance, the Medical and Kindred Professions Ordinance or the Prevention of Money Laundering Act, then without prejudice to the application of the provisions of those Acts all property owned by the person convicted shall unless otherwise proved be deemed to be proceeds of crime.

(5) The convicted person shall in his reply to the application of the Director state whether and to what extent he accepts the claims of the Director. The reply shall moreover contain a list of witnesses in support of his case as well as the facts that are sought to be established by their evidence as well as a list of all documents in support of the application.

(6) The convicted person shall moreover produce a list of all his property of any description and whether it is held in his name or in the name of others, and whether it is held in Malta or abroad, together with a statement showing what in his opinion is the amount of gain, if any, made through proceeds of crime.

(7) Where property is found to belong to the convicted person but has not been included in the statement made by him in terms of sub-article (6), such property shall be forfeited to the government.

(8) A declaration of the forfeiture of any property as is referred to in sub-article (7) shall be made in the judgment on the application, if the existence of such property is established during the course of the procedures on the application. Where such property is discovered after these proceedings are finalised, the Director may, at any time but not later than six (6) years after the end of the said proceedings by application before the Civil Court (Asset Recovery Section) request the said Court to declare such property forfeited to the government and the provisions of this article shall *mutatis mutandis* apply to any application or applications made after the end of the original proceedings.

(9) The Minister may from time to time make regulations establishing in general the manner the list of property to be drawn up in terms of sub-articles (4) and (6) and in particular shall state what category of items shall be listed separately and which may be grouped

together.

(10) Nothing in this article shall preclude the Director and the convicted person from coming to an agreement as to the proceeds of crime obtained by the convicted person. Such agreement shall be recorded in a public deed whereby the sum so agreed shall constitute a civil debt owed by the convicted person to the government.

(11) (a) The judgment of the Civil Court (Asset Recovery Section) declaring that specific property is property subject to confiscation shall constitute a confiscation order transferring title to such property to the Government of Malta.

(b) If the Civil Court (Asset Recovery Section) finds that the convicted person obtained proceeds of crime in excess of the proceeds of crime included in the specific property confiscated in accordance with paragraph (a), the judgment shall declare the said convicted person to be the debtor of the Government to the extent of the difference between the specific property confiscated as the proceeds of crime and the total proceeds of crime said person obtained, directly or indirectly, from the offence.

(c) To the extent that the property found to be subject to confiscation includes property other than the proceeds of crime, the Court must ensure that the confiscation of such property is not grossly disproportional to the gravity of the offence or offences giving rise to the confiscation order.

(d) Where more than one person is convicted of an offence, each convicted person is jointly and severally liable for the total proceeds of crime obtained by any of them, except that:

(i) the Government may not recover more than the total proceeds of the offence, and

(ii) in the case of a convicted person whose role in the offence was incidental in comparison with the roles of the other convicted persons, the court must consider the extent to which making such person jointly and severally liable for the total proceeds of the crime would be grossly disproportional to his role in the offence.

39. (1) Where any person claims that he is the owner of any property subject to a Seizing and Freezing Order in accordance with Part IV, or claims that he has rights over such property, or claims that he is the owner of any property subject to confiscation in accordance with article 38, that person may apply to the Civil Court (Asset Recovery Section) to declare that the said property belongs to him, or

Third party rights.

that he has the rights claimed over such property, and the Court shall, upon being satisfied through the proof produced by such person that the applicant is the owner of the property, as that term is defined in article 2, declare the property to belong to the applicant and no longer subject to the Seizing, Freezing or Confiscation Order, and where the Court is in like manner satisfied that the applicant has rights over the property, it shall declare the property seized, frozen or confiscated as being subject to those rights.

(2) (a) The Court shall not be satisfied that any property which was in the possession of, or enjoyed by the convicted person, belongs to the applicant, if the title to that property was required by law to be registered, and was not, without just cause to be proved by the applicant registered before the commencement of proceedings against the convicted person.

(b) The provision of paragraph (a) shall also apply where the title was registered before the commencement of proceedings, but after a date when the convicted person knew or reasonably may be presumed to have known, that he was being investigated or prosecuted.

(3) (a) If the property is found to be the proceeds of crime, no third-party objection to the Seizing, Freezing or Confiscation of the property may be made except for the objection of a *bona fide* purchaser for value as described in sub-article (4).

(b) Without prejudice to any proceedings which may be taken for non-conviction based confiscation under Part VIII, if the property is facilitating property or is property involved in a money laundering offense other than the proceeds of crime, no third-party objection to the Seizing, Freezing or Confiscation of the property may be made except for the objection of a *bona fide* purchaser for value as described in sub-article (4), or of a third-party who was the owner of the property before or at the time of the offence giving rise to the Seizing, Freezing or Confiscation of the property

(4) Where the applicant claims that he acquired the property or right thereon by onerous title or in a commercial transaction, he shall be required to prove that he paid the fair price thereof in an arm's length transaction, and that he was without reason to believe that the property was subject to confiscation at the time that he acquired his interest in it.

(5) Where the property consists of immovables and the applicant claims that there is a promise of sale relative to it, made prior to the proceedings which led to the conviction of the convicted person, the Civil Court (Asset Recovery Section) shall at the choice of the

Director:

(a) allow the sale to proceed on condition that the proceeds of the sale shall be deposited by the applicant in the registry of the Civil Court (Asset Recovery Section) and the sum so deposited shall be subject to the Seizing and Freezing Order, in lieu of the property sold in accordance with the promise of sale agreement; or

(b) give the Director the right to have the property transferred to the name of the Government, on the same terms as provided in the promise of sale, on condition that the Director pays to the applicant a fair and reasonable compensation not being more than five percent (5%) of the price for the transfer as agreed to in the promise of sale, as the Court may determine.

(6) In its assessment of the proof brought by a third party claiming property or rights thereon in accordance with this article, due regard shall be had by the Court of the family, business or other relationship between the convicted person and the applicant, the use being made of the property including the identity of the person who exercised dominion and control over the property, the identity of the person who paid the insurance, taxes, and maintenance expenses of the property and the source of such payments, the means of the person claiming the property, and all other circumstances that may affect the credibility of the claim.

40. (1) Where it appears to the Director that any property in the hands of or in the name of a person, other than the convicted person, in fact belongs to the convicted person and not to the person holding the property or in whose name it is held, the said Director may by application filed in the Civil Court (Asset Recovery Section) against the person holding the property or in whose name it is held request the said Court to declare that the property does not belong to such person but to the convicted person.

Assets of the accused in the hands of, or in the name of third parties.

(2) The Director shall produce all evidence in support of his request and the provisions of sub-article (6) of article 39 shall be applied by the Court in assessing the evidence brought before it.

(3) The Director may not make an application under this section after the lapse of ten (10) years from the date of the judgment convicting the convicted person of the relevant offence or from the date on which it is established that the proceedings cannot be concluded because of the death or illness of the accused or because the accused has absconded.

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(4) Where the property subject to confiscation is jointly owned by the convicted person and a third party, the court shall determine the most effective means of allowing the government to confiscate the interest of the convicted person without prejudice to the rights of the third party. Such means may include ordering the sale of the property and the division of the proceeds of the sale between the government and the third party.

Determination
of allowed
payments.

41. (1) Applications in terms of the proviso to paragraph (b) of sub-article (1) of article 36 and in terms of sub-article (4) of the said article shall be served on the Director and, unless the applicant is not the accused, on the accused. Such applications shall be heard with urgency and the Criminal Court may order that the terms for any reply or other procedures be shortened.

(2) In determining whether a sum of not more than six hundred euro (€600) every fifteen (15) days be allowed to be paid to the accused in terms of the said proviso to paragraph (b) of sub-article (1) of article 36, the Court shall take into consideration the actual needs of the accused and the availability of other means for his subsistence.

Where accused
absconds etc.

42. (1) Where, after a person has been charged with a relevant offence, such person absconds or dies, or where because of his illness proceedings against him cannot be brought to a conclusion, the Director may bring an action before the Civil Court (Asset Recovery Section) to declare that on the basis of the evidence produced before the Court by the Director, the trial, had it come to a conclusion would have resulted in a conviction.

(2) An action for a declaration in accordance with sub-article (1) may also be brought where the suspected person has not been charged, because he dies or absconds before the prosecution may charge him:

Provided that no action may be commenced on the basis of this article, after the lapse of six (6) years from the date of death of the suspected person, or the date when it is discovered that he has absconded.

(3) An action on the basis of sub-articles (1) and (2) shall be brought against the heirs of the accused, if dead, or against curators nominated to represent the accused or, where applicable the accused's lawful representative who may in each case produce such witnesses and produce all evidence at their disposal to rebut the claims of the Director.

(4) A declaration in terms of sub-articles (1) and (2) shall for the purposes of article 38, be deemed to be a conviction, but shall not give rise to consequences of a criminal nature.

(5) For the purposes of an action under article 38 on the basis of a judgment in terms of this article, the term of one year referred to in sub-article (2) of the said article 38 shall run from the date when the judgment in the action in accordance with sub-articles (1) and (2) has become *res judicata*.

PART VI

Non-conviction Based Confiscation

43. (1) This Part establishes preventive measures consisting of non-conviction based confiscation that provide for the recovery of property subject to confiscation in situations where, in the judgment of the Attorney General, it is necessary or more appropriate to recover such property through non-conviction-based confiscation rather than as part of a criminal prosecution in any of the following cases:

Object of this Part and applicability.

- (a) where the perpetrator absconds or is not in Malta;
- (b) where the perpetrator is dead; or
- (c) where the perpetrator dies prior to the conclusion of the criminal proceedings.

(2) Property subject to confiscation under this part of this Act is property which, in any of the cases referred to in sub-article (1), is the proceeds derived from the following categories of crimes:

(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 the Prevention of Money Laundering Act;

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(b) terrorism, and funding of terrorism, money laundering, illegal dealing in arms and armaments, trafficking of persons, and any other crime liable in Malta to a punishment of imprisonment of not less than ten (10) years;

(c) any crime committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841 JHA of the 24th October 2008 on the fight against Organised Crime.

(d) violation of United Nations sanctions.

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Competence of the Civil Court (Asset Recovery Section).

44. (1) The Civil Court (Asset Recovery Section) shall be competent to hear and determine all matters arising under this Part if the property subject to confiscation is found in Malta or if the offence giving rise to the confiscation occurred in Malta.

(2) Actions under this Part shall be actions *in rem* against the property subject to confiscation and not against individuals. The burden of proof required in proceedings under this Part shall be that applicable in civil law proceedings.

(3) The Government may commence an action under this Part to recover any property subject to confiscation. In such a proceeding, the Government is the plaintiff, the property shall be designated as the *res* subject to confiscation, and persons contesting the confiscation are interveners who may intervene in the action upon showing that they an ownership interest in the property.

(4) The burden of proof shall be on the intervener to establish an ownership interest in the property and to establish any affirmative defence under article 59. Otherwise, the burden of proof shall be on the Government.

Principles.

45. Public authorities implementing this Part shall be guided by the following principles:

(a) the respect for fundamental human rights and freedoms as enshrined in the Constitution of Malta and in the European Convention Act;

(b) the use of preventive measures consisting of non-conviction based confiscation of property provided in this Part shall be subject to the requirements of necessity in a democratic society and proportionality;

(c) confidentiality in conducting any special arrangements provided for by this Part;

(d) increasing and protecting public security and preventing unjustified enrichment from criminal activity.

Relation to other proceedings.

46. (1) Preventive measures provided for under this Part, shall be applicable in combination or separately.

(2) The procedure for implementing preventive measures provided for under this Part, is independent of the institution of criminal proceedings but may be employed in conjunction with or parallel to criminal proceedings.

(3) If a property frozen or confiscated under this Part is also subject to freezing or confiscation under any criminal law in a pending criminal case, the Civil Court (Asset Recovery Section) shall order the suspension of the freezing or confiscation under this Part, either *ex officio* or at request of the Attorney General or of any interested party. The suspension shall end when the Civil Court (Asset Recovery Section) rules on the withdrawal or the extinction of the measure which gave rise to the suspension.

47. Any property subject to confiscation which is the proceeds of a crime, as specified in article 43, whether such crime was committed in Malta or outside Malta, shall be confiscated by the Government in accordance with this Part and with the procedure provided in the following articles 48 to 51 (inclusive). Application.

48. (1) The Government may commence an action under this Part by filing an application for Confiscation in the Civil Court (Asset Recovery Section): Procedure.

(a) at the time it files its application, the Government must provide notice thereof to any person who appears to have an ownership interest in the property subject to confiscation. Where such parties are known and are present in Malta, the Court shall order that they be served with the said notice by an officer of the court;

(b) if the Government is unable to obtain a valid address for a person entitled to notice under paragraph (a), it must provide notice by publication in the Gazette and in two (2) daily newspapers or on the internet in such manner as the Court may direct.

(2) A party contesting the confiscation of the property ("the intervener") must file a reply setting forth his ownership interest in the property and the time and manner in which he acquired such interest. The reply must be filed within thirty (30) days of the date when the Government served or published notice of the application for Confiscation or such other time as the Court may direct.

(3) At any time before or after the filing of a application for Confiscation, the Government may seek to seize or freeze property subject to confiscation pursuant to article 36 which shall apply *mutatis mutandis* to this Part.

(4) If the Government contests the reply of any intervener for failure to establish an ownership interest in the property, the Court must rule on that motion before ruling on any other matter. Notwithstanding the title to the property, the Court shall not be

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satisfied that a third party has an ownership interest in the property if it finds that the third party is a nominee who did not exercise effective dominion and control over the property or otherwise exhibits the rights of ownership consistent with true ownership.

(5) (a) If no one files a valid claim to the property in the form of a reply to the application, the Court must enter a Confiscation Order upon finding that the Government complied with the procedure for providing notice to potential claimants.

(b) Otherwise, the Court must enter a Confiscation Order if it determines on a balance of the probabilities that the Government has established that the property is subject to confiscation, and that no intervener person claiming a title or other right over the property has established an affirmative defence pursuant to article 59.

(6) To the extent that the property subject to confiscation includes property other than the proceeds of crime, the Court must ensure that the confiscation of such property is not grossly disproportional to the gravity of the offence or offences giving rise to the confiscation order.

Third party defences.

49. (1) If the Court finds that the Government has met its burden of showing that the property is subject to confiscation, the intervener may show that he is an owner of the property and that the property should be exempt from confiscation for one of the following reasons:

(a) that the intervener acquired his ownership interest in the property as a *bona fide* purchaser for value as described in Article 39(4), or

(b) if the property is facilitating property or is property involved in a money laundering offence other than the proceeds of crime, that the intervener was the owner of the property before or at the time of the offence giving rise to the confiscation of the property and did not know of the illegal use of the property, or upon learning of the illegal use, took all reasonable steps to prevent it.

(2) The intervener bears the burden of proof on the affirmative defences described in sub-article (1).

Judicial review of the confiscation.

50. (1) The decision acceding or disallowing the confiscation shall be revised by the issuing court at the request of the proposing authority, or at request of any other interested party, within five (5) years from when it becomes final when:

(a) new evidence is presented, which had it been

adduced at the trial, would have been decisive for the ruling;

(b) new facts and evidence are discovered which would preclude the existence of conditions for the application of the confiscation measure;

(c) the confiscation ruling was based on deceptive or false evidence.

(2) The revision process shall be carried out by the Court which issued the confiscation decision presided by a different judge or judges.

51. (1) The property confiscated by court ruling, pursuant to this Part, shall be transferred to the Government when the confiscation ruling becomes final.

Transfer of confiscated property to the State.

(2) The registrar of the competent court shall transmit the final confiscation ruling to the Bureau within three (3) days.

(3) In the event that the final confiscation ruling is later overturned, the owner or the possessor of the property shall be compensated within the limits of the property market value.

52. In order to guarantee public safety and the proportionality of any preventive measure, all decisions and actions taken by the authorities pursuant to this Part, shall be treated with priority, without unjustified delays and within the stipulated time frames.

Priority and prompt review.

53. (1) Judgments of the Civil Court (Asset Recovery Section) shall be enforceable in accordance with the provisions of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure and every person may secure his rights in any matter within the competence of the Civil Court (Asset Recovery Section) by the issue of precautionary acts mentioned in Title VI of Book Third of the said Code.

Warrants etc.

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PART VII International Cooperation

54. The Bureau shall establish relations with equivalent institutions outside Malta and shall in accordance with such rules of European Union law, or in accordance with such applicable treaties, conventions or agreements, by whatever name called, co-operate with such institutions and collaborate and participate in such structure that may be established under such rules, treaties, conventions or agreements.

Relations with equivalent foreign bodies.

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Applicability of Part IV in transnational affairs.

55. (1) Where pursuant to and in accordance with any treaty, convention or agreement, applicable to Malta, or where in accordance with European Union Law, a request is made to the Attorney General or the Director for the monitoring of any account, the investigation of any matter, the attachment of any property or the Seizure and Freezing of any property in Malta, by a judicial, prosecuting or administrative authority of any place outside Malta, in connection with the investigation or prosecution of an equivalent offence, or in connection with the enforcement of a judgment relative to an equivalent offence, the Attorney General or the Director as the case may be may request the Criminal Court to make a Monitoring Order, or an Investigation Order, an Attachment Order and, or, a Seizing and Freezing Order, in accordance with and having all the effects as provided in Part IV as if the equivalent offence were a relevant offence.

(2) For the purpose of this Part an "equivalent offence" is an offence under the law of the judicial, prosecuting or administrative authority making the request, by whatever name called, which had it been committed in Malta would constitute a relevant offence.

Foreign confiscation orders.

56. (1) A confiscation order made by a court outside Malta shall be enforceable in Malta in accordance with the following provisions of this article.

(2) Where the Director in accordance with European Union Law or with such applicable treaties, conventions or agreements, applicable to Malta by whatever name called, receives a request by a judicial or prosecuting authority of any place outside Malta for the enforcement in Malta of a Confiscation Order made by a competent court of criminal or civil jurisdiction in that place (hereinafter referred to as a "Foreign Confiscation Order") the Director may bring an action in the Civil Court (Asset Recovery Section) by an application containing a demand that the enforcement in Malta of the Foreign Confiscation Order be ordered.

(3) The Director shall attach to the application a copy of the relevant Foreign Confiscation Order, (and where such order is in a language other than Maltese or English, together with a translation of the order into Maltese or English) together with such documents in support of the demand 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 application shall be served on the person whose property the Foreign Confiscation Order purports to confiscate who shall file his reply within fifteen (15) days after the date of the service of the application. The reply shall contain a list of the witnesses which the

respondent intends to produce stating in respect of each the proof which he intends to make and such documents as it may be in his power to produce.

(5) 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 (30) days from the date of filing of the application or the date of its service in accordance with sub-article (4), whichever is the later.

(6) In entering orders to enforce the Foreign Confiscation Order, the Court shall be bound by the findings of fact to the extent that they are stated in the foreign order. The Court, however, shall not order the enforcement in Malta of the Foreign Confiscation Order if:

(a) the respondent was not notified of the proceedings which led to the making of the relevant Foreign Confiscation Order, and did not have an adequate opportunity to contest the making of the said Order;

(b) the Foreign Confiscation Order was obtained by fraud on the part of any person to the prejudice of the respondent;

(c) the Foreign Confiscation Order contains any disposition contrary to the public policy or the internal public law of Malta; or

(d) the Foreign Confiscation Order contains contradictory dispositions;

(e) The Foreign Confiscation Order is based on a manifest error of law or of fact.

(7) A decision by the Court ordering the enforcement of a Foreign Confiscation Order shall have the effect of confiscating in favour of the Government of Malta all things and property whatsoever situated in Malta the confiscation of which was ordered in the Foreign Confiscation Order, subject to any direction which the Minister may give providing for the further disposal of the things or property so confiscated.

(8) The decision ordering the enforcement of a Foreign Confiscation Order which provides for the confiscation of immovable property shall have the effect of transferring that immovable property to the Government of Malta, and for the purposes of article 239 of the Code of Organization and Civil Procedure the Director shall be considered as the interested party that may obtain the registration of the transfer.

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(9) The decision ordering the enforcement of a Foreign Confiscation Order providing for the confiscation of unspecified property the value of which corresponds to proceeds of crime shall, upon being registered in the Public Registry, create as from the date of registration a general hypothec in regard to the debt amounting to the value of such proceeds. The value of such proceeds shall be determined by application before the Civil Court (Asset Recovery Section) served on the owner of the property to be confiscated, in accordance with the provisions, *mutatis mutandis*, of article 38.

(10) Where the Foreign Confiscation Order relates to the confiscation of a sum of money, expressed in a currency other than the euro, the sum to be confiscated shall be the equivalent of such sum in euro, in accordance with the rate of exchange established by the Central Bank of Malta, operative on the date of the decision ordering the enforcement.

(11) The Director, may, in order to secure any of the property which the Foreign Confiscation Order refers to, or the value of such property, apply to the Civil Court (Asset Recovery Section) for the issue of any of the precautionary acts referred to in article 830 of the Code of Organization and Civil Procedure.

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(12) For the purposes of this article:

"confiscation order" includes any judgment, decision, declaration or other order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of property subject to confiscation, whether conviction based or non-conviction based

"equivalent offence" means any act or omission by any name called which if committed in Malta would constitute a relevant offence; and

"proceeds" has the same meaning as proceeds of crime in article 2, as if any reference therein to relevant offence were a reference to equivalent offence.

PART VIII

Regulations, Offences and Penalties

Power to make regulations.

57. The Minister may make regulations for the better execution of the provisions of this Act and without prejudice to the generality of the foregoing to further regulate the executive procedures and precautionary acts mentioned or referred to in this Act and in particular to provide:

(a) for the better custody of things seized in accordance with such warrants;

(b) for the manner in which judicial sales by auction are to be conducted and in particular the publicity given to such sales both in Malta and abroad, the place where they are to be held, the participation of persons in the auction by means of electronic means, and providing for the sales to be conducted also with the assistance of a qualified auctioneer; and

(c) for any other matter intended to secure that the best price on the market can be achieved through a sale by auction.

58. Whosoever discloses information acquired through the performance of his duties under this Act, other than as provided in article 26, shall be guilty of an offence against this article and shall, on conviction, be liable to a fine (*multa*) not exceeding twelve thousand euro (€12, 000) or to imprisonment not exceeding twelve (12) months or to both such fine and imprisonment.

Unauthorised disclosure of information.

59. (1) Whosoever shall fail to provide information requested by the Director or a member of the Directorate staff in accordance with article 16 within the time, original or extended, as provided in that article, shall be guilty of an offence against this Act, and shall on conviction be liable to a fine (*multa*) not exceeding twelve thousand euro (€12, 000) or to imprisonment not exceeding one (1) year or to both such fine and imprisonment.

Failure to provide information.

(2) The court may moreover, in its judgment, at the request of the Director order the person found guilty to provide the information within such time as it may determine in its judgment, failing which the person so ordered shall be guilty of a further offence against this Act, and shall be liable on conviction of a further fine (*multa*) of not less than twenty five euro (€25) and not exceeding two hundred and fifty euro (€250) for each day of delay in providing the information within the terms as established by the court in its order.

(3) Any appeal from the judgment containing an order as provided in sub-article (2) hereof, shall not suspend the running of the time for the provision of information, as may have been established by the order.

60. Where a Monitoring Order, an Investigation Order or an Attachment Order, has been made or applied for, whosoever, knowing or suspecting that the monitoring or investigation is taking place or that a Monitoring Order, an Investigation Order or an Attachment Order has been made or applied for, or makes any disclosure likely to prejudice the monitoring operation, or the investigation or the

Disclosure relative to Monitoring Order and Investigation Orders etc.

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operation of the Attachment Order shall be guilty of an offence against this article and shall, on conviction, be liable to a fine (*multa*) not exceeding twelve thousand euro (€12, 000) or to imprisonment not exceeding twelve (12) months or to both such fine and imprisonment:

Provided that in proceedings for an offence under this article it shall be a defence for the accused to prove that he did not know or suspect, and that in the circumstances of the case he could not reasonably be expected to know or suspect, that the disclosure was likely to prejudice the monitoring operation, the investigation or the operation of the Attachment Order.

Non-compliance with an Investigation Order.

61. Any person who, having been ordered to produce or grant access to any material in accordance with an Investigation Order shall, without lawful excuse, the proof of which shall lie on him, wilfully fails or refuses to comply with the Investigation Order or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence against this article and shall, on conviction be liable to a fine (*multa*) of not exceeding twelve thousand euro (€12, 000) or to imprisonment not exceeding twelve (12) months or to both such fine and imprisonment.

Contravention of Attachment Order etc.

62. Any person who acts in contravention of an Attachment Order or a Seizing and Freezing Order shall be guilty of an offence against this article and shall on conviction be liable to a fine (*multa*) of not exceeding twelve thousand euro (€12, 000) or to imprisonment not exceeding twelve (12) months or to both such fine and imprisonment, and where the offence consists in the payment, transfer or delivery to any person by the garnishee of any moneys or other property attached seized or frozen by the orders the fine shall in no case be less than twice the value of the payment made or the property transferred or delivered, even where such fine will exceed the said sum of twelve thousand euro (€12, 000).

Fines recoverable as a civil debt.

63. (1) Fines inflicted in accordance with this Part shall as to one third of their amount be enforceable as and shall constitute a civil debt in favour of the Government, and shall be recoverable by the Director.

(2) Where an offence under this Part has been committed by a person who at the time of the said offence was a director, manager or secretary or other principal officer of a body corporate or is a person having power of representation of such body or having authority to take decisions on behalf of that body or having authority to exercise control within that body and that offence was committed for the benefit in part or in whole, of that body corporate, the said person shall for the purpose of this Part be vested with the legal representation of

the said body corporate which shall be liable to the payment of a fine (*multa*) of not more than one hundred thousand euro (€100, 000):

Provided that where legal representation no longer vests in the said person, for the purpose 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 this article.

PART IX

Amendments and Transitory Provisions

64. Immediately after sub-article (7) of article 36 of the Code of Organization and Civil Procedure there shall be added the following new sub-article:

Amendment to the Code of Organization and Civil Procedure. Cap. 12.

"(7A)The Civil Court (Asset Recovery Section) shall take cognizance of all claims against persons whether natural or legal residing or having their ordinary abode or registered office or owning assets or property of any kind in the Island of Malta and in the Islands of Gozo and Comino and of actions *in rem*, for the recovery of proceeds of crime by the State or by an entity of the State or for the non-conviction based confiscation of assets and property of any kind as may be provided in any law from time to time in force and of all other causes expressly assigned by law to such section of the Civil Court:

Provided that when the Civil Court (Asset Recovery Section) shall take cognizance of claims against persons, whether natural or legal, residing or having their ordinary abode in the Islands of Gozo and Comino it shall hold its sittings in the building of the courts of Gozo."

65. The Civil Courts (Establishment of Sections) Order shall be amended as follows:

Amendment to Civil Courts (Establishment of Sections) Order. S.L. 12. 19.

(a) in regulation 2 thereof, the word "four" shall be substituted by the word "five";

(b) in regulation 3 thereof, the words "the Commercial Section" shall be substituted by the words "the Commercial Section, the Asset Recovery Section"; and

(c) immediately after regulation 5A thereof there shall

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be added the following new regulation:

"Assignment of cases to the Civil Court (Asset Recovery Section).

5B. To the Civil Court (Asset Recovery Section) there shall be assigned applications relating to matters concerning the recovery of proceeds of crime and to non-conviction based confiscation of property by the State or by an entity of the State as may be provided by any law from time to time in force and all other causes expressly assigned by law to the said section of the Civil Court".

Amendments to various laws.

66. The Schedule to this Act may be amended by regulations made by the Minister. The enactments in Part One in the Schedule to this Act may be repealed or amended insofar as they make provision in respect of matters also provided for in this Act in the manner as provided in the Part Two of the said Schedule.

Amendments to the Dangerous Drugs Ordinance. Cap. 101.

67. The Dangerous Drugs Ordinance shall be amended as follows:

(a) article 22C thereof shall be amended as follows:

(i) in sub-article (1) thereof, the words "Civil Court, First Hall" shall be substituted by the words "Civil Court (Asset Recovery Section)";

(ii) in sub-article (5) thereof, the words "Commissioner of Police without delay, and the said Commissioner" shall be substituted by the words "Asset Recovery Bureau without delay, and the said Bureau"; and

(b) article 24D shall be amended as follows:

(i) in sub-article (2) thereof, the words "First Hall of the Court" shall be substituted by the words "Civil Court (Asset Recovery Section)";

(ii) in sub-article (10) thereof, the words "Civil Court, First Hall" shall be substituted by the words "Civil Court (Asset Recovery Section).

Amendments to the Prevention of Money Laundering Act. Cap. 373.

68. Article 7 of the Prevention of Money Laundering Act shall be amended as follows:

(a) in sub-article (2) thereof, the words "Civil Court, First Hall" shall be substituted by the words "Civil Court (Asset

Recovery Section)"; and

(b) in sub-article (5) thereof, the words "Commissioner of Police without delay, and the said Commissioner" shall be substituted by the words "Asset Recovery Bureau without delay, and the said Bureau".

69. The Asset Recovery Bureau Regulations are hereby repealed without prejudice to the continuing validity or anything done or still to be done thereunder. Repeal and saving.
S.L. 9. 23.

SCHEDULE (Article 66)

Part One

- Criminal Code Cap. 9
- Code of Organization and Civil Procedure Cap. 12
- Medical and Kindred Professions Ordinance Cap. 31
- Dangerous Drugs Ordinance Cap. 101
- Malta Financial Services Authority Act Cap. 330
- Prevention of Money Laundering Cap. 373
- Prevention of Financial Markets Abuse Act Cap. 476

Part Two

The Minister with prior approval by resolution of the House of Representatives may within a period of three (3) years from the date of the coming into force of this Schedule by Legal Notice repeal or amend provisions in the enactments listed in Part One of this Schedule insofar as they provide for matters also provided for in this Act.

Objects and Reasons

The objects and reasons of this Bill are to provide for the recovery of proceeds of crime. The Bill is to set up and restructure the Asset Recovery Bureau also defining the structure of the said Bureau and defining its relationship with and independence from the Government. The Bill also provides the basis for the harmonisation of the

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procedures enacted under various laws in respect of proceeds of crime. Moreover the Bill establishes a section of the Civil Court for the purpose of regulating disputes relative to the confiscation of the proceeds of crime and for civil procedures for the recovery of assets constituting proceeds of crime. Provision is also made for *in rem* proceedings on property consisting of proceeds of crime.

