

MALTA

ATT Nru. XIX ta' l-1994

ATT mahruġ b'ligi mill-Parlament ta' Malta.

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

ACT No. XIX of 1994

AN ACT enacted by the Parliament of Malta.

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

Nagħti l-kunsens tiegħi,

(L.S.)

UGO MIFSUD BONNICI
President

13 ta' Settembru, 1994

ATT Nru. XIX ta' l-1994

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

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

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1994 kontra *Money Laundering*.

Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-finanzi jista' b'avviż fil-Gazzetta jistabbilixxi u jistgħu jigu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti jew għanijiet differenti ta' dan l-Att.

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

"attività kriminali" tfisser kull attività, tkun fejn tkun maghmula, u tkun meta tkun maghmula, li taht il-ligi ta' Malta jew ligi ohra, tainmonta ghal:

(a) delitt jew delitti speċifikati fl-artikolu 3 (1) (a) tal-United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adottata fid-19 ta' Diċembru 1988 fi Vjenna, liema artikolu jinsab riprodott (bilingwa Ingliża biss) fl-Ewwel Skeda ghal dan l-Att; jew

(b) wiehed mid-delitti elenkati fit-Tieni Skeda ghal dan l-Att;

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

"*money laundering*" tfisser :

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

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

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

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

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

(vi) l-aġir bħala kompliċi fit-tifsir ta' l-artikolu 42 tal-Kodiċi Kriminali rigward xi waħda mill-hwejjeġ ^{Kap. 9} jew attivitajiet definiti fis-sub-paragrafi (i), (ii), (iii), (iv) u (v) ta' hawn fuq;

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

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

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

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

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

(d) art jew kull interess fiha.

(2) (a) Persuna tista' tinsab hatja tad-delitt ta' *money laundering* taht dan l-Att, anke fin-nuqqas ta' sentenza ta' Qorti li tistabbilixxi htija fir-rigward ta' l-attività kriminali sottostanti, liema attività kriminali tista' tigi stabbilita minn prova cirkostanzjali jew prova oħra, minghajr il-htiega li l-prosekuzzjoni tipprova li kien hemm sentenza ta' kundanna għall-offiża sottostanti.

(b) Persuna tista' tinsab hatja separatament kemm ta' delitt ta' *money laundering* taht dan l-Att, kif ukoll ta' l-attività kriminali sottostanti li minnha inkisbet il-proprjeta' jew irrikavat li fir-rigward tiegħu ikun qed jigi akkużat ta' *money laundering*.

(c) Għall-finijiet ta' dan is-subartikolu "attività kriminali sottostanti" tirreferi għall-attività kriminali li minnha il-proprjeta' jew rikavat iehor, li tkun involuta fir-reat ta' *money laundering* taht dan l-Att tkun giet direttament jew indirettament miksuba.

Reati.

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

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

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

Setgħat
addizzjonali ta'
investigazzjoni.

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

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

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

(3) Ordni ta' investigazzjoni:

(a) ma jaghti ebda jedd għall-produzzjoni ta' aċċess għal, jew tiftix għal komunikazzjonijiet bejn avukat jew prokuratur legali u l-klijent tiegħu, u bejn saċerdot u persuna li tkun għamlet qrara miegħu, li fi proċedimenti legali jkunu protetti kontra l-kxif bis-subartikolu (1) ta' l-artikolu 642 tal-Kodiċi Kriminali jew bis-subartikolu (1) ta' l-artikolu 588 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili;

Kap. 9

Kap. 12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Kap. 12

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

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

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

(11) Ordni ta' sekwestru għandu, kemm - il darba ma jiġix revokat aktar kmieni mill-Avukat Ġenerali b'avviż bil-miktub notifikat lill-persuna suspettata u lis-sekwestratarju bil-mod provdut fis-subartikolu (9), jispicċa milli jkollu sehħ ma' għeluq tletin jum mid-data li fiha jkun sar; u l-qorti ma tagħmilx ordni ieħor ta' sekwestru dwar dik il-persuna suspettata kemm - il darba ma tkunx sodisfatta li hemm informazzjoni sostanzjalment ġdida dwar ir-reat imsemmi fl-artikolu 3:

Izda l-imsemmi perijodu ta' tletin jum ghandu jitwaqqaf ghal dak iż-żmien li l-persuna suspettata tkun tinsab barra minn dawn il-Gzejjer u l-Avukat Ġenerali javża b'dan il-fatt lis-sekwestratarju b'avviż bil-miktub notifikat bil-mod provdut fis-subartikolu (9).

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

(13) Ghall-fini tas-smigh bil-gurament ta' persuna kif provdut fis-subartikolu (12) il-magistral ikollu l-istess setghat li bil-ligi ghandha l-Qorti tal-Magistrati (Malta) jew il-Qorti tal-Magistrati (Għawdex) bhala Qorti Istrutturja kif ukoll is-setghat imsemmija fl-artikolu 554 tal-Kodiċi Kriminali; iżda dak is-smigh ghandu dejjem isir bil-magħluq.

Kap. 9

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

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

Iffriżar ta' proprjeta' ta' persuna akkużata.

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

(b) li jipprojbixxi lill-akkużat milli jittrasferixxi, jagħti b'rahan, jipoteka jew xort' oħra jiddisponi minn xi proprjeta' mobbli jew immobbli:

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

Izda wkoll il-Qorti tista' barra minn dan -

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

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

(2) Dak l-ordni ghandu -

(a) jibda jsehh u jorbot lit-terzi persuni kollha immedjatement malli jsir, u r-Registatur tal-Qorti ghandu jiehu hsieb li avviż dwaru jigi pubblikat minghajr dewmien fil-Gazzetta, u ghandu jiehu hsieb ukoll li kopja tieghu tigi registrata fir-Registru Pubbliku dwar proprjeta' immobbli, u

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

(3) Il-Qorti tista' f'ċirkostanzi partikolari tibdel dak l-ordni, u d-dispożizzjonijiet tas-subartikoli ta' qabel ghandhom japplikaw ghal dak l-ordni kif hekk mibdul.

(4) Kull ordni bhal dak ghandu jkun fih l-isem u l-kunjom ta' l-akkużat, il-professjoni, is-sengha jew stat iehor tieghu, isem missieru, isem ommu u kunjom ta' xubitha, post tat-twelid u post ta' residenza u n-numru tal-karta ta' l-identita' tieghu jew ta' dokument iehor ta' identifikazzjoni, jekk ghandu.

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

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

Piena għall-ksur ta' l-ordni tal-Qorti.

6. Kull persuna li tagħmel xi haġa bi ksur ta' l-ordni tal-Qorti msemmi fl-artikolu 5 ta' dan l-Att tkun hatja ta' reat u tehel meta tinsab hatja multa ta' mhux iżjed minn hamest elef lira Maltija jew għal prigunerija għal żmien li ma jeċċedix tnaax-il xahar, jew dik il-multu u prigunerija flimkien, u kull haġa hekk magħmula bi ksur ta' ordni tal-Qorti bhal dik tkun nulla u bla effett fil-ligi.

Proċedimenti speċjali tal-Qorti.

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

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

(3) Ir-rikorrent ghandu b'sustenn ghat-talba tieghu, jehmez mar-rikors id-dokumenti kollha li hu jkun jista' jipproduci u ghandu jaghti fir-rikors tieghu l-ismijiet tax-xhieda kollha li jkun bi hsiebu jgib, fejn ighid dwar kull wiehed il-prova li jkun bi hsiebu jaghmel.

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

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

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

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

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

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

9. (1) Il-Ministru jista' jagħmel regoli u regolamenti in generali kif ikun meħtieġ għall-implimentazzjoni aħjar tad-dispożizzjonijiet ta' dan l-Att, u, in partikolari, jista' permezz ta' dawn ir-regoli jew regolamenti, jipprovdi għar-regolament u l-kontroll ta' banek, istituzzjonijiet ta' kreditu u istituzzjonijiet finanzjarji ohra biex jipprovdi *inter alia* għal proċeduri u sistemi għal taħriġ, identifikazzjoni, żamma ta' *records*, rapporti interni u rapporti lill-awtoritajiet ta' sorveljanza għall-prevenzjoni ta' *money laundering*. Regoli u regolamenti.

(2) Il-Ministru jista' b'regolamenti jestendi d-dispożizzjonijiet kollha ta' dan l-Att jew parti minnhom u ta' regolamenti maghmula taht dan l-Att ghal kategoriji ta' azjendi u ta' professjonijiet li jwettqu attivitajiet li fl-opinjoni tal-Ministru jistghu b'mod partikolari jintużaw ghal finijiet ta' *money laundering*.

(3) Ir-regoli u r-regolamenti maghmula taht dan l-artikolu jistghu jimponu pjeni jew penalitajiet ohra rigward kull kontravvenzjoni jew nuqqas ta' tharis ta' mhux iżjed minn multa ta' Lm20,000 (ghoxrin elf lira Maltija) jew prigunerija ghal żmien ta' mhux iżjed minn sentejn jew dik il-multa u prigunerija flimkien.

Hwejjeg
preskritti
u regolamenti.

10. Bla hsara ghad-dispożizzjonijiet ta' l-artikolu 9 ta' dan l-Att, il-Ministru jista', b'konsultazzjoni mal-Ministru responsabbli ghall-gustizzja,

(a) jippreskrivi b'regolament kull haġa li tkun meħtieġa li tiġi preskritta b'dan l-Att;

(b) b'regolament jemenda, jibdel jew iżjed mal-lista ta' reati speċifikati fit-Tieni Skeda ta' dan l-Att.

L-EWWEL SKEDA

(Artikolu 2)

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

Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

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

IT-TIENI SKEDA

(Artikolu 2)

- * Reat kontra l-ligi dwar medicini jew narkotiċi perikolużi
 - * Transazzjonijiet illegali f'armi u f'armamenti
 - * Tressiq ta' kummerċ ta' persuni taht l-eta' jew ta' nisa jew irgiel għal skopijiet immorali
 - * Negozju ta' skjavi
 - * Piraterija
 - * Htif jew sekwestru illegali ta' persuna
 - * Omiċidju volontarju
 - * Offiża gravi volontarja kontra l-persuna
 - * Rikatt.
-

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

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XIX of 1994

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

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

1. (1) This Act may be cited as the Prevention of Money Laundering Act, 1994. Short title and commencement.

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

Interpretation.

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

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

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

(b) one of the crimes listed in the Second Schedule to this Act;

"Minister" means the Minister responsible for finance;

"money laundering" means:

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

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

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

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

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

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

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

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

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

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

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

(d) land or any interest therein.

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

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

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

Offences.

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

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

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

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

Additional
powers of
investigation.

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

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

(3) An investigation order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cap. 9

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

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

Freezing of
property of
person accused.

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

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

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

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

Provided further that the Court may also-

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

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

(2) Such order shall -

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

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

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

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

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

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

6. Any person who acts in contravention of a Court order mentioned in section 5 of this Act shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law. Penalty for contravening Court order.

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

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

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

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

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

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

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

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

Reversion of property ceasing to be forfeited.

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

Rules and regulations.

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

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

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

10. Saving the provisions of section 9 of this Act, the Minister may, in consultation with the Minister responsible for justice,

Matters to be prescribed by regulations.

(a) prescribe by regulation any matter required to be prescribed by this Act;

(b) by regulation amend, alter or add to the list of offences specified in the Second Schedule to this Act.

FIRST SCHEDULE

(Section 2)

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

Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

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

SECOND SCHEDULE

(Section 2)

- * An offence against the law relating to dangerous drugs or narcotics
 - * Illegal dealing in arms and armaments
 - * Procuring, or trafficking in men, women or young persons for immoral purposes
 - * Dealing in slaves
 - * Piracy
 - * Illegal arrest, detention or confinement of a person
 - * Wilful homicide
 - * Wilful greivous bodily harm
 - * Blackmail.
-

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

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.

