

## **Nru. 243**

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11. 10. 2021

### **MALTA**

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#### **KAMRA TAD-DEPUTATI**

#### **HOUSE OF REPRESENTATIVES**

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ABBOZZ ta' Liġi mressaq mill-Onorevoli Edward Zammit Lewis, M.P., Ministru għall-Ġustizzja u l-Governanza, u moqri għall-Ewwel darba fis-Seduta tas-6 ta' Ottubru 2021.

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A BILL introduced by the Honourable Edward Zammit Lewis, M.P., Minister for Justice and Governance, and read the First time at the Sitting of the 6th October 2021.

**ATT sabiex jemenda l-Att dwar ir-Rikavat mill-Kriminalità, Kap. 621.**

**AN ACT to amend the Proceeds of Crime Act, Cap. 621.**

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RAYMOND SCICLUNA  
*Skrivan tal-Kamra tad-Deputati*

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RAYMOND SCICLUNA  
*Clerk of the House of Representatives*



**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT sabiex jemenda l-Att dwar ir-Rikavat mill-Kriminalità, Kap. 621.*

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

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2021 li jemenda l-Att dwar ir-Rikavat mill-Kriminalità u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar ir-Rikavat mill-Kriminalità, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 621.

2. Fis-subartikolu (1) tal-artikolu 16 tal-Att prinċipali, il-kliem "din l-informazzjoni ma għandhiex" għandhom jiġu sostitwiti bil-kliem "din l-informazzjoni għandha".

Emenda tal-artikolu 16 tal-Att prinċipali.

3. L-artikolu 35 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 35 tal-Att prinċipali.

(a) minnufih wara l-paragrafu (b) tas-subartikolu (11) tiegħu għandu jizdied il-paragrafu ġdid li ġej:

"(c) L-amministratur maħtur taħt dan l-artikolu għandu jkollu d-dritt għal dak il-ħlas li l-Qorti Kriminali tista' fid-diskrezzjoni tagħha, tkun tal-fehma li huwa dovut lill-amministratur, liema ħlas għandu jsir mill-flus tal-azjenda jew tal-korp magħqud. Fl-ebda każ, madankollu, dawn il-ħlasijiet ma jistgħu jsiru minn fondi fejn hemm tagħrif jew suspett li l-fondi ikunu miksuba minn attività kriminali jew ikunu fondi li wiehed għandu raġuni jemmen li kienu laundered:

Iżda kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra:

Kap. 373. "attività kriminali" għandu jkollha l-istess tifsira kif mogħtija lilha fl-artikolu 2 tal-Att kontra *Money Laundering*;

Kap. 373. "laundered" għandu jkollha l-istess tifsira ta' "*money laundering*" kif imfissra fl-artikolu 2 tal-Att kontra *Money Laundering*;" u

(b) minnufih wara s-subartikolu (11) tiegħu għandhom jiżdiedu s-subartikoli ġodda li ġejjin:

"(11A) Amministratur maħtur skont is-subartikolu (11) għandu:

(a) b'effett immedjat jamministra l-azjenda kummerċjali jew korp magħqud, u l-amministrazzjoni ordinarja tan-negozji u l-attivitajiet kollha inkluż l-immanniġġjar ta' kwalunkwe ħwienet, ristoranti jew attivitajiet oħra u għandu jakkwista, ibiġġ, jinnegozja u jwettaq l-atti kollha ta' immanniġġjar u amministrazzjoni ordinarja u jieħu l-miżuri kollha meħtieġa għal preservazzjoni tal-assi tal-azjenda kummerċjali jew tal-korp magħqud;

(b) fi zmien xahar (1) min-notifika tad-digriet tal-hatra, iħeji rapport, ikkonfermat bil-ġurament, li jindika l-attività kummerċjali tal-azjenda kummerċjali jew tal-korp magħqud inklużi l-assi u l-passiv u l-valur attwali tal-azjenda kummerċjali jew tal-korp magħqud. Wara r-rapport inizjali, l-amministratur għandu jħejji u jippreżenta rapporti ta' kull xahar.

(ċ) jissottometti kull decizjoni amministrattiva ta' natura straordinarja għal decizjoni mill-qorti; u

(d) jiftaħ u jimmaniġġja kont bankarju ma' istituzzjoni finanzjarja f'isem l-azjenda kummerċjali jew korp magħqud.

(11B) Meta l-qorti taħtar amministratur skont is-subartikolu (11), kopja ta' dan id-digriet għandu minnufih jiġi nnotifikat lid-Direttur u għandu jsir operattiv u jorbot meta jsir u d-Direttur għandu jagħmel avviż dwar dan biex jiġi ppubblikat mingħajr dewmien fil-Gazzetta."

4. Fis-subartikolu (1) tal-artikolu 43 tal-Att prinċipali, il-kliem "dik il-proprjetà permezz ta' konfiska bbażata fuq nuqqas ta' kundanna" għandhom jiġu sostitwiti bil-kliem "dik il-proprjetà permezz ta' konfiska bbażata fuq kundanna".

Emenda tal-  
artikolu 43 tal-  
Att prinċipali.

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### Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz ta' Liġi huma sabiex jipprovdu għal kjarifiki relattivi għall-ħlas ta' amministraturi ta' azjenda jew korp magħqud fil-kuntest ta' Ordni ta' Sekwestru jew Ordni ta' Qbid u ta' Ffriżar. Dan l-Abbozz jikkjarifika wkoll il-mekkanizmu ta' konfiski bbażati fuq nuqqas ta' kundanna.

**A BILL  
entitled**

*AN ACT to amend the Proceeds of Crime Act, Cap. 621.*

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

Short title.

**1.** The short title of this Act is the Proceeds of Crime (Amendment) Act, 2021 and this Act shall be read and construed as one with the Proceeds of Crime Act, hereinafter referred to as "the principal Act".

Cap. 621.

Amendment of article 16 of the principal Act.

**2.** In the Maltese version, in sub-article (1) of article 16 of the principal Act, the words "din l-informazzjoni ma għandhiex" shall be substituted by the words "din l-informazzjoni għandha".

Amendment of article 35 of the principal Act.

**3.** Article 35 of the principal Act shall be amended as follows:

(a) immediately after paragraph (b) of sub-article (11) thereof there shall be added the following new paragraph:

"(c) The administrator appointed under this article shall have the right to such payment as the Criminal Court may, in its discretion, be of the opinion that is due to the administrator, which payment shall be effected from the moneys of the going concern or body corporate. In no event, however, may such payments be made from funds where there is knowledge or suspicion that the funds are derived from a criminal activity or are funds which one has cause to believe have been laundered:

Provided that in this paragraph, unless the context otherwise requires:

Cap. 373. "criminal activity" shall have the same meaning as assigned to it in article 2 of the Prevention of Money Laundering Act;

Cap. 373. "laundered" shall have the meaning of "money laundering" as defined in article 2 of the Prevention of Money Laundering Act."; and

(b) immediately after sub-article (11) thereof there shall be added the following new sub-articles:

"(11A)An administrator appointed in accordance with sub-article (11) shall:

(a) with immediate effect administer the commercial going concern or body corporate, and the ordinary administration of all business and activities including the management of any outlets, restaurants or other activities and shall acquire, sell, negotiate and effect all necessary acts of management and ordinary administration and to take all necessary measures for the preservation of the assets of the commercial going concern or body corporate;

(b) within one (1) month from the service of the appointment decree, prepare a report, confirmed on oath, indicating the commercial activity of the commercial going concern or body corporate including the assets and liabilities and the actual value of the commercial going concern or body corporate. Following the initial report, the administrator shall prepare and file monthly reports;

(c) submit every administration decision of an extraordinary nature for the decision of the court; and

(d) open and manage a bank account with a financial institution on behalf of such commercial going concern or body corporate.

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(11B) When the court appoints an administrator in accordance with sub-article (11), a copy of this decree shall be immediately served on the Director and shall become operative and binding when it is made and the Director shall cause a notice thereof to be published without delay in the Gazette."

Amendment of  
article 43 of the  
principal Act.

**4.** In sub-article (1) of article 43 of the principal Act, the words "such property through non-conviction based confiscation" shall be substituted by the words "such property through a conviction based confiscation".

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### **Objects and Reasons**

The objects and reasons of this Bill are to provide for clarifications relative to payment of administrators of a going concern or body corporate in the context of an Attachment Order or Seizing and Freezing Order. This Bill also clarifies the mechanism of non-conviction based confiscations.