

**ATT TAL-2010 DWAR IL-PROTEZZJONI TA' MIN JIŻVELA
INFORMAZZJONI LI TKUN PROTETTA****TAQSIM TAL-ATT**

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ABBOZZ TA' LIĠI msejjah

ATT biex jipprovdi għal proċeduri li bis-saħħa tagħhom impjegati, kemm fis-settur privat u kif ukoll fl-amministrazzjoni pubblika, jistgħu jiżvelaw informazzjoni dwar prattiċi mhux xierqa mill-prinċipali tagħhom jew minn impjegati oħra fl-impjeg tal-prinċipali tagħhom u biex jipproteġi impjegati illi jagħmlu dak l-iżvelar minn azzjoni ta' detriment.

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:-

TAQSIMA I

PRELIMINARI U ĠENERALI

Titolu fil-qosor
u bidu fis-sehħ.

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2010 dwar il-Protezzjoni ta' Min jiżvela Informazzjoni li tkun Protetta.

(2) Dan l-Att għandu jidhol fis-sehħ f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' b'avviż fil-Gazzetta jstabilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal finijiet differenti u għal disposizzjonijiet differenti ta' dan l-Att.

Tifsir.

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

Kap. 497.

"amministrazzjoni pubblika" għandha l-istess tifsira mogħtija lilha bl-artikolu 2(1) tal-Att dwar l-Amministrazzjoni Pubblika;

Kap. 326.

"atti ta' korruzzjoni" għandha l-istess tifsira mogħtija lilha bl-artikolu 6 tal-Att dwar il-Kummissjoni Permanenti Kontra l-Korruzzjoni;

"awtorità" tfisser l-entitajiet preskritti li jirċievu żvelar estern, kif elenkati fl-Iskeda;

"azzjoni ta' detriment" tinkludi:

- (a) azzjoni li tikkaguna offiża, telf jew ħsara; u, jew
- (b) vittimizzazzjoni, intimidazzjoni jew għoti ta' fastidju; u, jew
- (ċ) detriment fuq il-post tax-xogħol; u, jew
- (d) prosekuzzjoni taħt l-artikolu 101 tal-Kodiċi Kap. 9. Kriminali dwar kalunnja; u, jew;
- (e) proċeduri ċivili jew kriminali jew proċeduri dixxiplinari;

"detriment fuq il-post tax-xogħol" fir-rigward tal-ambjent tax-xogħol ta' impjegat tinkludi:

- (a) li jiġi soġġett għal kull azzjoni dixxiplinari inkluż għal ksur ta' etika jew kunfidenzjalità;
- (b) li jiġi mkeċċi, sospiż jew żgradat ħlief meta ġustifikat b'mod amministrattiv jew kummerċjali għal raġunijiet organizzattivi;
- (ċ) li jiġi trasferit kontra l-volontà tiegħu jew jiġi miċhud trasferiment jew promozzjoni ħlief meta ġustifikat b'mod amministrattiv jew kummerċjali għal raġunijiet organizzattivi;
- (d) li jiġi soġġett għal terminu jew kondizzjoni tal-impjieg jew irtirar li tinbidel jew tinzamm mibdula bi żvantaġġ għalih;
- (e) li jiġi miċhud minn riferenza jew jingħata riferenza ħazina minn prinċipal ħlief fejn dan ikun ġustifikabbli fuq il-bażi tal-prestazzjoni tiegħu fuq ix-xogħol;
- (f) li ma jithalliex jiġi appuntat f'xi impjieg, professjoni jew uffiċċju; jew
- (g) li jiġi mod ieħor affettwat ħazin fir-rigward tal-impjieg, professjoni jew uffiċċju tiegħu, inkluż opportunitajiet ta' impjieg u sigurtà tax-xogħol;

"ħaddiem ta' barra" tfisser persuna li tingħata mill-prinċipal oġġetti, materjali jew servizzi ta' kull tip biex twettaq kull tip ta' xogħol jew servizz fejn dak ix-xogħol jew servizz ikun ser jitwettaq sew fid-dar tal-ħaddiem ta' barra jew f'xi fond ieħor li ma jkunx taħt il-kontroll jew maniġġjar ta' dik il-persuna l-oħra;

"impjegat" tfisser:

(a) kull persuna li tkun għamlet jew taħdem taħt kuntratt ta' servizz ma' prinċipal u tinkludi kuntrattur jew subkuntrattur li jagħmel xogħol jew jagħti servizz jew li jkun intrabat li jagħmel xi xogħol jew jagħti xi servizzi; jew

(b) kull persuna li tkun intrabtet personalment li tagħmel xi xogħol jew hidma għal haddieħor, u taħt id-direzzjoni u l-kontroll immedjat ta' persuna oħra, u tinkludi haddiem ta' barra, iżda teskludi xogħol jew servizz mogħti fi sfond professjonali meta dak ix-xogħol jew servizz ma jkunx regolat b'kuntratt ta' servizz speċifiku; jew

(ċ) kull persuna impjegata fl-amministrazzjoni pubblika, inkluż bħala membru ta' korp dixxiplinat;

(d) kull persuna li kienet impjegata hemm qabel;

(e) kull persuna li hi jew kienet sekondata mill-prinċipal; jew

Kap. 492.

(f) kull voluntier skont l-artikolu 2(1) tal-Att dwar l-Organizzazzjonijiet Volontarji;

"korp dixxiplinat" tfisser:

(a) korp navali, militari jew tal-ajru tal-Gvern ta' Malta;

(b) il-Korp tal-Pulizija ta' Malta; u

(ċ) s-servizz tal-ħabs ta' Malta;

"korp statutorju" tfisser kull korporazzjoni jew korp ieħor magħqud imwaqqaf bil-liġi;

"kuntratt ta' servizz" tfisser ftehim inkluż servizz bħala membru ta' korp dixxiplinat sew verbali jew bil-miktub, f'kull forma, li permezz tiegħu persuna tintrabat li toffri servizz lil jew tagħmel xogħol għal prinċipal, bi ħlas;

"linji gwida" tfisser is-sett ta' regoli maħruġa minn awtorità, minn żmien għal żmien, għal iżjed implimentazzjoni tad-disposizzjonijiet ta' dan l-Att, u kull regolament maħruġa taħtu;

"membru" fir-rigward ta' korp dixxiplinat tinkludi kull persuna li taħt il-liġi li tirregola d-dixxiplina ta' dak il-korp, hija soġġetta għal

dik id-dixxiplina;

"Ministru" tfisser il-Ministru tal-gustizzja;

"organizzazzjoni" tfisser kull entità legali, sew jekk registrata bħala persuna legali jew le;

"organizzazzjoni volontarja" għandha l-istess tifsira mogħtija lilha bl-artikolu 2(1) tal-Att dwar l-Organizzazzjonijiet Volontarji irrispettivament minn jekk dik l-organizzazzjoni hijiex elenkata skont l-imsemmi Att; Kap. 492.

"persuna" tfisser persuna naturali;

"prattiċi mhux xierqa" tfisser:

(a) meta persuna naqset, qiegħda tonqos jew x'aktarx ser tonqos milli thares kull obbligu legali li tkun soġġetta għalih; jew

(b) meta s-saħħa u s-sigurtà ta' kull individwu kienet, qiegħda jew x'aktarx ser tkun fil-periklu; jew

(ċ) meta l-ambjent kellu, għandu jew x'aktarx ser ikollu ħsara; jew

(d) att ta' korruzzjoni; jew

(e) reat kriminali li seħħ, qiegħed iseħħ jew x'aktarx ser iseħħ; jew

(f) nuqqas ta' ġustizzja li seħħet, qiegħda sseħħ jew x'aktarx ser isseħħ; jew

(g) informazzjoni li qisha turi illi xi kwistjoni li taqa' taħt xi wieħed mill-paragrafi preċedenti kienet, qiegħda jew x'aktarx ser tkun moħbija deliberatament;

"prinċipal" tfisser kull persuna, organizzazzjoni jew korp statutorju sew jekk jiffirma parti mill-amministrazzjoni pubblika jew mis-settur privat illi:

(a) tkun għamlet kuntratt ta' servizz ma' impjegat; jew

(b) timpjega jew tingagga kull persuna oħra,

u għandha tinkludi organizzazzjoni volontarja fir-rigward ta' voluntiera li jagħtu servizzi lil dik l-organizzazzjoni volontarja fuq bażi volontarja jew mod ieħor;

"uffiċjal li jirraporta dwar min jiżvela informazzjoni li tkun protetta" tfisser dak l-uffiċjal fi hdan l-impjieg inkarigat bit-twettiq tal-funzjonijiet preskritti bl-artikolu 12;

"unità dwar min jiżvela informazzjoni li tkun protetta" tfisser dak l-uffiċjal, uffiċċju jew sezzjoni fi hdan awtorità li twettaq il-funzjonijiet preskritti bl-artikolu 17 u, għal dak li jirrigwarda l-amministrazzjoni pubblika, dik is-sezzjoni, dak il-korp jew dik l-unità kif tista' tiġi stabbilita taht l-Att dwar l-Amministrazzjoni Pubblika;

Kap. 497.

"żvelar estern" tfisser żvelar magħmul skont is-Sezzjoni 3 tat-Taqsima III;

"żvelar intern" tfisser żvelar magħmul skont is-Sezzjoni 2 tat-Taqsima III;

"żvelar protett" tfisser żvelar intern jew żvelar estern ta' informazzjoni, magħmul bil-miktub jew f'kull forma oħra li tista' tkun preskritta.

(2) Meta dan l-Att jirreferi għal kwistjoni li tista' tkun preskritta, sakemm dan l-Att ma jinnominax espressament il-persuna awtorizzata u l-mod kif issir in-nomina, dik il-kwistjoni tista' tiġi preskritta mill-Ministru permezz ta' regolamenti jew mill-awtorità permezz ta' linji gwida jew permezz ta' waħda minnhom jew kollha kif jista' jiġi stabbilit, u fil-każ ta' xi kunflitt, regolament mill-Ministru għandu jipprevali fuq linja gwida.

(3) Dan l-Att m'għandux japplika għal membri ta' korp dixxiplinat jew għal membri tas-Servizzi ta' Sigurtà sakemm il-Ministru ma jagħmilx regolamenti li jirregolaw il-mod kif id-disposizzjonijiet ta' dan l-Att japplikaw għalihom, u permezz ta' hekk, il-Ministru jista' jimmodifika jew ma japplikax id-disposizzjonijiet ta' dan l-Att kif ikun neċessarju għall-finijiet tas-sigurtà nazzjonali.

TAQSIMA II

PROJBIZZJONI TA' AZZJONI TA' DETRIMENT

Projbizzjoni ta' azzjoni ta' detriment.

3. Minghajr hsara għall-eċċezzjonijiet msemmija f'dan l-Att, minkejja kull projbizzjoni ta', jew restrizzjoni fuq, l-iżvelar ta' informazzjoni taht xi liġi, stat ta' dritt, kuntratt, gurament jew Prattika, l-ebda persuna m'għandha tkun soġgetta għal azzjoni ta' detriment talli tkun għamlet żvelar protett.

Żvelar protett.
Kap. 9.

4. Minkejja d-disposizzjonijiet tal-Kodiċi Kriminali jew ta' kull liġi oħra, l-ebda persuna li tagħmel żvelar protett m'għandha

tkun soġġetta għal proċeduri ċivili jew kriminali jew proċeduri dixxiplinari talli tkun għamlet dak l-iżvelar.

5. (1) Xejn f'din it-Taqsima m'għandu jwaqqaf it-tehid ta' proċeduri kriminali kontra l-persuna li tagħmel l-iżvelar fejn l-awtorità tkun stabbiliet illi dik il-persuna kienet l-awtur jew kompliċi fil-prattika mhux xierqa li tikkostitwixxi reat jew kontravvenzjoni taht xi liġi applikabbli qabel l-iżvelar ta' dik il-prattika mhux xierqa.

L-ebda immunità fejn il-persuna li tiżvela kenet l-awtur jew kompliċi.

(2) Xejn f'din it-Taqsima m'għandu jiġi mfisser bħala li qed jipprovdi immunità lil xi persuna li tagħmel l-iżvelar dwar Prattika mhux xierqa minn proċeduri dixxiplinari jew ċivili jew responsabbiltà li tirriżulta mill-azzjonijiet tagħha.

6. (1) Kull uffiċjal li jirraporta dwar min jiżvela informazzjoni li tkun protetta jew unità dwar min jiżvela informazzjoni li tkun protetta li lilhom tiġi żvelata jew riferita informazzjoni protetta ma jistgħux jiżvelaw informazzjoni li tidentifika jew tista' twassal għall-identifikazzjoni tal-persuna li tagħmel l-iżvelar sakemm:

Projbizzjoni ta' żvelar ta' informazzjoni li tidentifika min jiżvela informazzjoni li tkun protetta.

(a) il-persuna li tagħmel l-iżvelar ma tagħtix il-kunsens bil-miktub dwar l-iżvelar ta' dik l-informazzjoni;

(b) l-imsemmi uffiċjal li jirraporta dwar min jiżvela informazzjoni li tkun protetta jew unità dwar min jiżvela informazzjoni li tkun protetta ma jkunx jemmen b'mod raġjonevoli illi l-iżvelar tal-identità tal-persuna li tagħmel l-iżvelar:

(i) huwa essenzjali għall-investigazzjoni effettiva tal-allegazzjonijiet fl-iżvelar protett; jew

(ii) huwa essenzjali biex jipprevjeni riskju serju għas-saħħa jew sigurtà pubblika jew għall-ambjent; jew

(iii) huwa essenzjali minħabba fil-prinċipji tal-gustizzja naturali; jew

(ċ) l-iżvelar tal-identità tal-persuna huwa neċessarju għall-prosekuzzjoni tal-persuna jew organizzazzjoni responsabbli għal Prattika mhux xierqa li tikkostitwixxi reat jew kontravvenzjoni taht xi liġi.

(2) L-unità dwar min jiżvela informazzjoni li tkun protetta m'għandhiex tikkomunika l-iżvelar lil dipartimenti oħra fi hdan l-awtorità li l-unità tkun tagħmel parti minnha sakemm ma tkunx investigat debitament l-iżvelar u stabbiliet illi huwa neċessarju jew

xieraq għat-twettiq ta' aktar investigazzjoni minn dawk id-dipartimenti.

(3) Għandhom jinħarġu minn kull awtorità linji gwida li jiffissaw:

(a) id-dmirijiet ta' komunikazzjoni bejn l-unità dwar min jiżvela informazzjoni li tkun protetta u l-persuna li tagħmel l-iżvelar u r-restrizzjonijiet fuqhom; u

(b) r-regoli għal żvelar lil dipartimenti oħra jew lil awtoritajiet jew entitajiet oħra tal-Istat.

Rikors lill-Qorti Ċivili.

7. (1) Persuna li temmen li azzjoni ta' detriment ittiehdet jew tista' tittiehed kontra tagħha bħala tpattija għal żvelar protett tista' tippreżenta rikors quddiem il-Prim' Awla tal-Qorti Ċivili għal -

(a) ordni li teħtieġ lill-persuna li ħadet l-azzjoni ta' detriment li tirmidja dik l-azzjoni; jew

(b) inibizzjoni.

(2) Il-Qorti, sakemm tiddeċiedi dwar ir-rikors taht dan l-artikolu tista':

(a) tagħmel ordni *interim*; jew

(b) tagħti inibizzjoni *interim*.

(3) Jekk, fid-deċizzjoni dwar ir-rikors taht is-subartikolu (2), il-Qorti tkun sodisfatta li persuna ħadet jew bi ħsiebha tieġu azzjoni ta' detriment kontra l-persuna bħala tpattija għal żvelar protett, il-Qorti tista':

(a) tordna lill-persuna li ħadet jew bi ħsiebha tieġu azzjoni ta' detriment li tirmidja dik l-azzjoni u tistabilixxi l-ammont ta' danni, inklużi iżda mhux limitati għal, danni morali kif il-Qorti tista' tiddetermina, dovuti lill-persuna li sofriet l-azzjoni ta' detriment; jew

(b) tordna inibizzjoni taht dawk it-termini li jidhrilha xierqa.

Kap. 12.

(4) Minkejja d-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, inibizzjoni mogħtija skont is-subartikolu (3) għandha tkun għal perjodu indefinit sakemm isir rikors għar-revoka tagħha u ma jkunx hemm bżonn li tiġi segwita b'azzjoni. Id-disposizzjonijiet tal-artikoli 873 u 875 tal-Kodiċi ta' Organizzazzjoni

u Proċedura Ċivili għandhom japplikaw għal mandati maħruġa taht is-subartikolu (3).

(5) Id-disposizzjonijiet tal-artikoli 829 sa 838B tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili m'għandhomx japplikaw għal inibizzjonijiet mogħtija skont is-subartikolu (3). Kap. 12.

(6) Minkejja d-disposizzjonijiet tal-Iskeda A li tinsab mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, ma jithallas ebda dritt tar-registru għall-preżentata ta' rikors ipprezentat fil-Prim' Awla tal-Qorti Ċivili mill-persuna msemmija fis-subartikolu (1). Kap. 12.

8. Kull persuna li setgħet sofriet azzjoni ta' detriment bħala riżultat li tkun għamlet żvelar protett għandha, bla ħsara għal kull dritt ieħor taht xi liġi oħra, ikollha dritt għal kumpens għal kull danni sofferti. Dritt għal kumpens wara azzjoni ta' detriment.

TAQSIMA III

ŻVELAR

SEZZJONI 1

ŻVELAR PROTETT

9. (1) Żvelar huwa żvelar protett jekk - Żvelar protett.

(a) ikun magħmul *bona fide*; u

(b) il-persuna li tagħmel l-iżvelar temmen b'mod raġjonevoli li:

(i) l-informazzjoni żvelata, u kull allegazzjoni fiha, huma sostanzjalment veri;

(ii) l-informazzjoni żvelata x'aktarx turi li tkun qed isseħħ Prattika mhux xierqa mill-prinċipal ta' dik il-persuna, impjegat ieħor tal-prinċipal tagħha jew minn persuni li jaġixxu f'isem u fl-interessi tal-prinċipal; u

(c) l-iżvlar ma jkunx magħmul għall-finijiet ta' gwadann personali.

(2) Il-protezzjonijiet mogħtija b'dan l-artikolu m'għandhomx japplikaw għal impjegat li xjentement jiżvela informazzjoni li jaf, jew raġjonevolment kien imissu jkun jaf, li hija falza.

(3) Huwa reat punibbli skont l-artikolu 101 tal-Kodiċi Kriminali li persuna tipprovdi informazzjoni falza skont it-termini ta' Kap. 9.

dan l-Att.

Informazzjoni
protetta bi
privileġġ
professjonali
legali.
Kap. 377.

10. Bla ħsara għad-disposizzjonijiet tal-artikolu 6A(ċ) tal-Att dwar Segretezza Professjonali, xejn f'dan l-Att ma jawtorizza persuna biex tiżvela informazzjoni protetta bil-privileġġ professjonali legali u żvelar ta' dik l-informazzjoni mhuwiex żvelar protett għall-finijiet ta' dan l-Att.

Żvelar magħmul
b'mod anonimu.

11. (1) Żvelar magħmul b'mod anonimu m'għandux ikun ikkonsidrat bħala żvelar protett skont dan l-Att.

(2) Uffiċjal li jirrapporta dwar min jiżvela informazzjoni li tkun protetta jew l-unità dwar min jiżvela informazzjoni li tkun protetta jista' jirċievi u jipproċessa żvelar anonimu. L-obbligi imposti fuq l-uffiċjal li jirrapporta dwar min jiżvela informazzjoni li tkun protetta jew l-unità dwar min jiżvela informazzjoni li tkun protetta bl-artikolu 6 jinholqu fir-rigward ta' żvelar anonimu.

SEZZJONI 2

ŻVELAR INTERN

Proċeduri
interni biex tiġi
riċevuta u
trattata
informazzjoni
protetta.

12. (1) Kull prinċipal għandu jkollu operabbli proċeduri interni biex tiġi riċevuta u trattata informazzjoni dwar prattiċi mhux xierqa magħmula fi hdan jew minn dik l-organizzazzjoni; daww il-proċeduri interni għandhom tal-anqas jidentifikaw il-persuna jew persuni fi hdan l-organizzazzjoni, f'dan l-Att msejha l-"uffiċjal li jirrapporta dwar min jiżvela informazzjoni li tkun protetta", li lilhom jista' jsir żvelar protett.

(2) Informazzjoni dwar l-eżistenza ta' proċeduri interni, u informazzjoni adegwata dwar kif jintużaw il-proċeduri għandha tkun pubblikata b'mod estensiv fi hdan l-organizzazzjoni u għandha tkun pubblikata mill-ġdid f'intervalli regolari.

(3) Żvelar intern huwa żvelar protett magħmul skont id-disposizzjonijiet ta' dan l-Att jekk ikun magħmul minn impjegat lil prinċipal sostanzjalment fil-mod stabbilit bi proċeduri interni mwaqqfa mill-prinċipal biex jirċievu u jittrattaw dak l-iżvelar.

Notifika lill-
persuna li tkun
għamlet l-
iżvelar.

13. (1) L-uffiċjal li jirrapporta dwar min jiżvela informazzjoni li tkun protetta għandu, fi żmien raġjonevoli wara li jirċievi żvelar intern, jinnotifika lill-persuna li għamlet l-iżvelar fuq l-istat tal-prattika mhux xierqa żvelata jew daww il-kwistjonijiet kif jistgħu jkunu preskritti.

(2) Għall-finijiet tal-artikolu 16, fejn ikun jidher minn azzjoni esterna illi azzjoni tkun ittiehdet biex tirmidja l-prattika mhux

xierqa, ma jkunx neċessarju għall-uffiċjal li jirraporta dwar min jiżvela informazzjoni li tkun protetta li jinnotifika lill-persuna li tkun għamlet l-iżvelar.

14. Żvelar intern jista' jkun magħmul lill-kap jew viċi kap tal-organizzazzjoni jekk:

Żvelar intern magħmul lill-kap jew viċi kap tal-organizzazzjoni.

(a) l-organizzazzjoni m'għandiex proċeduri interni mwaqqfa u pubblikati biex tircievi u tittratta informazzjoni dwar prattika mhux xierqa; jew

(b) il-persuna li tagħmel l-iżvelar temmen fuq bażi raġjonevoli illi l-uffiċjal li jirraporta dwar min jiżvela informazzjoni li tkun protetta huwa jew ser ikun involut fl-allegata prattika mhux xierqa; jew

(ċ) l-impjegat li jagħmel l-iżvelar jemmen fuq bażi raġjonevoli li l-uffiċjal li jirraporta dwar min jiżvela informazzjoni li tkun protetta mhuwiex, minhabba f'xi relazzjoni jew assoċjazzjoni ma' persuna li hija jew ser tkun involuta fl-allegata prattika mhux xierqa, persuna xierqa li lilha jsir l-iżvelar.

SEZZJONI 3

ŻVELAR ESTERN

15. Hlief kif provdut f'din it-Taqsima, żvelar estern għandu jkun protett biss jekk l-iżvelar intern skont is-Sezzjoni 2 ta' din it-Taqsima kien diġà magħmul jew kien hemm tentattiv li jsir.

Protezzjoni ta' żvelar estern.

16. (1) Żvelar estern jista' jkun magħmul lill-unità dwar min jiżvela informazzjoni li tkun protetta tal-awtorità kif provdut fl-Iskeda jekk l-impjegat li jagħmel l-iżvelar jemmen b'mod raġjonevoli -

Żvelar estern magħmul lill-unità dwar min jiżvela informazzjoni li tkun protetta tal-awtorità.

(a) illi l-kap tal-organizzazzjoni huwa jew ser ikun involut fil-prattika mhux xierqa allegata fl-iżvelar; jew

(b) illi referenza immedjata lill-awtorità hija ġustifikata minhabba fl-urġenza tal-każ li miegħu għandu x'jaqsam l-iżvelar, jew xi ċirkostanzi eċċezzjonali oħra; jew

(ċ) fiż-żmien li jagħmel l-iżvelar estern, illi hu ser ikun soġġett għal detriment fuq il-post tax-xogħol mill-prinċipal tiegħu jekk jagħmel żvelar intern; jew

(d) illi l-evidenza dwar il-prattika mhux xierqa

x'aktarx ser tinheba jew tkun meqruda jekk jagħmel żvelar intern; jew

(e) illi għalkemm żvelar intern kien sar qabel, il-persuna li għamlet dak l-iżvelar ma kenitx informata dar l-istat tal-kwistjoni żvelata jew ikun b'mod raġjonevoli evidenti għall-persuna li għamlet dak l-iżvelar illi ma ttiehdet l-ebda azzjoni jew rakkomandazzjoni ta' azzjoni dwar il-kwistjoni li għandha x'taqsam mal-iżvelar fi żmien raġjonevoli wara dak l-iżvelar.

(2) Biex jiġi stabbilit għall-finijiet tas-subartikolu (1) jekk huwiex raġjonevoli għall-impjegat li jagħmel l-iżvelar lill-awtorità, għandhom jitqiesu, b'mod partikolari:

(a) kemm tkun serja l-allegata prattika mhux xierqa;

(b) jekk il-prattika mhux xierqa hijiex qed tkompli jew x'aktarx li ser ssehh fil-futur;

(ċ) jekk l-iżvelar huwiex magħmul bi ksur ta' obbligu ta' kunfidenzjalità dovut mill-impjegat lil xi persuna oħra;

(d) f'każ illi jaqa' taht is-subartikolu (1)(e), kull azzjoni li tkun ittiehdet jew huwa mistenni b'mod raġjonevoli li tkun ittiehdet mill-prinċipal bħala riżultat tal-iżvelar preċedenti; u

(e) jekk meta gie magħmul l-iżvelar lill-awtorità, l-impjegat ħarisx xi proċedura li l-użu tagħha minnu kienet awtorizzata mill-prinċipal skont l-artikolu 12(1).

(3) Jekk persuna tagħmel żvelar lil awtorità skont din it-Taqsima, l-awtorità għandha fi żmien hamsa u erbgħin (45) jum wara li tirċievi l-iżvelar, tikkonsidra u tilhaq konkluzjoni jekk huwiex xieraq li l-iżvelar jiġi magħmul b'mod estern.

(4) Jekk l-awtorità tikkonkludi li żvelar mhux suppost li sar b'mod estern allura l-awtorità għandha, fi żmien raġjonevoli, tinnotifika lill-persuna li għamlet l-iżvelar u lill-uffiċjal li jirraporta dwar min jiżvela informazzjoni li tkun protetta fi hdan l-organizzazzjoni tal-prinċipal illi għandu jsir żvelar intern skont is-Sezzjoni 2 ta' din it-Taqsima u li l-awtorità mhijiex ser titratta iżjed dak l-iżvelar.

(5) Jekk l-awtorità tikkonkludi illi żvelar sar b'mod proprju, allura l-awtorità għandha fi żmien raġjonevoli tinnotifika bil-miktub lill-persuna li għamlet l-iżvelar dwar l-istat tal-prattika mhux xierqa żvelata jew dawk il-kwistjonijiet kif jista' jiġi preskritt.

17. (1) L-awtoritajiet kollha msemija fl-Iskeda għandhom iwaqqfu unità dwar min jiżvela informazzjoni li tkun protetta.

Twaqqif ta' unitajiet dwar min jiżvela informazzjoni li tkun protetta.

(2) L-unità dwar min jiżvela informazzjoni li tkun protetta għandha tkun inkarigata li tirċievi u tipproċessa kull żvelar estern li għandu x'jaqsam mal-attivitajiet tal-persuni li joperaw fi hdan is-settur regolat mill-awtorità rilevanti kif mniżżel fl-Iskeda sabiex jiġi stabbilit jekk l-iżvelar għandux jiġi riferit għal aktar investigazzjoni u l-kondizzjonijiet li taħthom dik ir-riferenza għandha sseħħ.

18. (1) Meta l-awtorità li lilha jsir l-iżvelar protett tikkonsidra li l-informazzjoni żvelata tista' tkun investigata aħjar minn awtorità oħra, l-awtorità li lilha jsir l-iżvelar protett tista' tirreferi dik l-informazzjoni lil dik l-awtorità l-oħra u tinforma debitament bil-miktub lill-persuna li għamlet l-iżvelar.

Riferenza ta' informazzjoni lil awtorità oħra.

(2) Żvelar protett ma jieqafx ikun żvelar protett minhabba f'li jiġi riferit għand awtorità oħra.

TAQSIMA IV

REATI U PIENI

19. Kull persuna li, bil-ħsieb li ġġiegħel lil xi persuna oħra li ma tagħmilx jew li tagħmel xi għemil li dik il-persuna l-oħra għandha jedd bil-liġi li tagħmel jew li ma tagħmilx skont id-disposizzjonijiet ta' dan l-Att, mingħajr dritt u mingħajr setgħa bil-liġi -

L-użu jew it-theddid ta' vjolenza.

(a) tuża jew thedded li tuża vjolenza fuq dik il-persuna, jew fuq martu, żewġha jew uliedha, jew fuq xi persuna oħra li tgħix magħha, jew tagħmel jew thedded li tagħmel ħsara lill-proprjetà tagħha;

(b) kontinwament timxi wara dik il-persuna l-oħra minn post għall-iehor;

(ċ) tgħasses jew iddawwar id-dar jew post ieħor fejn dik il-persuna l-oħra toqgħod, jew l-inħawi ta' dik id-dar jew dak il-post;

(d) iċċaħhad lil dik il-persuna, jew b'xi mod tfixkilha fl-użu ta' xi għodod, ilbies jew proprjetà oħra ta' dik il-persuna l-oħra jew użati minnha,

tkun haġja ta' reat u tehel meta tinsab haġja prigunerija għal żmien ta' mhux iżjed minn tliet xhur jew multa ta' mhux iżjed minn elf u mitejn euro (€1,200) jew dik il-prigunerija u multa flimkien, bla ħsara għal piena akbar li jkun hemm għal dak ir-reat taħt xi leġislazzjoni oħra.

TAQSIMA V

REGOLAMENTI U LINJI GWIDA

Regolamenti u linji gwida.

20. (1) Il-Ministru jista' minn żmien għal żmien jagħmel regolamenti għall-implimentazzjoni aħjar ta' dan l-Att.

(2) Awtorità tista', b'żieda ma' kull funzjoni oħra tagħha taħt dan l-Att, minn żmien għal żmien toħroġ u tippubblika linji gwida fuq kull kwistjoni li dwarha l-Ministru jista' jagħmel regolamenti inklużi linji gwida li jistabbilixxu l-proċeduri li jkunu disponibbli skont il-ligi lil dawk li jkunu jixtiequ li jiżvelaw prattika mhux xierqa.

(3) Linji gwida mahruġa minn awtorità għandhom ikunu vinkolanti fuq l-organizzazzjonijiet kollha li l-attivitàjiet tagħhom huma regolati minn dik l-awtorità.

(4) Hlief għal emendi għal-linji gwida li jkunu purament ta' natura amministrattiva u jkunu dikjarati b'mod espress hekk mill-awtorità, li jidhlu fis-sehħ minnufih wara l-pubblikazzjoni tagħhom fuq is-sit elettroniku uffiċjali tal-imsemmija awtorità, kull linja gwida ġdida jew emenda ta' linja gwida għandhom jidhlu fis-sehħ fi żmien hmistax-il jum wara li jiġu publikati fuq is-sitt elettroniku uffiċjali jew f'dik id-data iżjed tard kif jista' jkun hemm dikjarat.

TAQSIMA VI

MIXXELLANJI

Kunflitt bejn kuntratt ta' servizz u disposizzjonijiet ta' dan l-Att.

21. Kull disposizzjoni f'kuntratt ta' servizz jew ftehim ieħor bejn impjegat u prinċipal tkun nulla safejn -

(a) tkun turi li teskludi xi disposizzjoni ta' dan l-Att, inkluż ftehim li ma jittiehdwx jew ma jitkomplewx xi proċeduri taħt dan l-Att jew xi proċeduri għal ksur tal-kuntratt; jew

(b) tkun turi li tipprekludi lill-impjegat jew ikollha l-effett li tiskoraġġixxi lill-impjegat milli jagħmel żvelar protett skont it-termini ta' dan l-Att.

Applikabilità tal-Att.

22. Dan l-Att għandu japplika biss għal żvelar ta' informazzjoni li għandu x'jaqsam ma' azzjoni li ssehh wara d-dhul fis-sehħ ta' dan l-Att jew, jekk tibda qabel id-dhul fis-sehħ ta' dan l-Att, tkompli wara d-dhul fis-sehħ tiegħu.

SKEDA

Awtoritajiet Preskritti li jirċievu Żvelar Estern

Taqsim 1 - Settur Privat

Awtorità	Deskrizzjoni tal-Kwistjonijiet
Kummissarju tat-Taxxi Interni	Taxxa fuq l- <i>Income</i> , Taxxa fuq il-Korporazzjoni, Taxxa fuq il-Qligh Kapitali, Taxxa tal-boll, Kontribuzzjonijiet tas-sigurtà soċjali.
Korp għall-Analiżi ta' Informazzjoni Finanzjarja	<i>Money laundering</i> skont l-Att kontra il- <i>Money Laundering</i> .
Awtorità għas-Servizzi Finanzjarji ta' Malta	It-tweġġ ta' negozju dwar l-investment jew negozju tal-assigurazzjoni, il-ħidma ta' banek, negozji li jiehdu d-depożiti u reġim fuq is-suq tal-flus b'ingrossa; il-funzjonament tas-swieq finanzjarji, l-iskambji ta' investment u sezzjonijiet ta' proċessar; reati finanzjarji u mgħiba ħażina oħra serja finanzjarja b'rabta mal-attivitajiet regolati mill-Awtorità għas-Servizzi Finanzjarji ta' Malta.
Kummissjoni Permanenti kontra l-Korruzzjoni	Atti ta' korruzzjoni.
Ombudsman	(i) imġiba li tinvolvi riskju sostanzjali għas-saħħa u s-sigurtà pubblika jew l-ambjent illi, jekk pruvata, tkun tikkostitwixxi reat kriminali; (ii) attivitajiet ta' korp dixxiplinat; (iii) attivitajiet ta' organizzazzjoni volontarja; u (iv) kull kwistjoni oħra li tikkostitwixxi prattiċi mhux xierqa u li mhumieq intizi li jiġu rappurtati lil xi awtorità oħra.

Taqsim 2 - Amministrazzjoni Pubblika

Il-Kumitat dwar Governanza Korporattiva fi ħdan l-Uffiċċju tal-Kabinett.

Għanijiet u Raġunijiet

L-għanijiet ta' dan l-Abbozz huma biex jipprovdi għal proċeduri li bis-saħħa tagħhom impjegati kemm fis-settur privat u kif ukoll fl-amministrazzjoni pubblika jistgħu jiżvelaw informazzjoni dwar prattiċi mhux xierqa mill-principali tagħhom jew minn impjegati oħra fl-impjeg tal-principali tagħhom u biex jipprotegi impjegati illi jagħmlu dak l-iżvelar minn azzjoni ta' detriment.

THE PROTECTION OF THE WHISTLEBLOWER ACT, 2010

ARRANGEMENT OF ACT

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**A BILL
entitled**

AN ACT to make provision for procedures in terms of which employees in both the private sector and the public administration may disclose information regarding improper practices by their employers or other employees in the employ of their employers and to protect employees who make said disclosures from detrimental action.

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:-

PART I

PRELIMINARY AND GENERAL

1. (1) The short title of this Act is the Protection of the Whistleblower Act, 2010. Short title and commencement.

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

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

"authority" means the entities prescribed to receive external disclosures, as listed in the Schedule;

"contract of service" means an agreement including service as a member of a disciplined force whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for remuneration;

Cap. 326. "corrupt practices" has the same meaning as is assigned to it by article 6 of the Permanent Commission against Corruption Act;

"detrimental action" includes:

- (a) action causing injury, loss or damage; and, or
- (b) victimisation, intimidation or harassment; and, or
- (c) occupational detriment; and, or
- Cap. 9. (d) prosecution under article 101 of the Criminal Code relating to calumnious accusations; and, or
- (e) civil or criminal proceedings or disciplinary proceedings;

"disciplined force" means:

- (a) naval, military or air force of the Government of Malta;
- (b) the Malta Police Force;
- (c) the Malta prison service;

"employee" means:

- (a) any person who has entered into or works under a contract of service with an employer and includes a contractor or subcontractor who performs work or supplies a service or undertakes to perform any work or to supply services; or
- (b) any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity when such work or service is not regulated by a specific contract of service; or
- (c) any person in employment in the public administration, including as a member of a disciplined force;
- (d) any former employee; or
- (e) any person who is or was seconded to an employer;

or

(f) any volunteer in terms of article 2(1) of the Voluntary Organisations Act;

Cap. 492.

"employer" means any person, organisation or statutory body whether forming part of the public administration or the private sector who:

- (a) enters into a contract of service with an employee;
- or
- (b) who employs or engages any other person,

and shall include a voluntary organisation in relation to volunteers who render services to such voluntary organisation on a voluntary basis or otherwise;

"external disclosure" is a disclosure made in accordance with Section 3 of Part III;

"guidelines" means the set of rules issued by an authority, from time to time, for the further implementation of the provisions of this Act, and any regulations made hereunder;

"improper practice" means:

- (a) where a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- or
- (b) where the health or safety of any individual has been, is being or is likely to be endangered; or
- (c) where the environment has been, is being or is likely to be damaged; or
- (d) a corrupt practice; or
- (e) a criminal offence that has been committed, is being committed or is likely to be committed; or
- (f) a miscarriage of justice that has occurred, is occurring or is likely to occur; or
- (g) information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed;

"internal disclosure" is a disclosure made in accordance with Section 2 of Part III;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

"Minister" means the Minister responsible for justice;

"occupational detriment", in relation to the working environment of an employee, includes:

(a) being subjected to any disciplinary action including for breach of ethics or confidentiality;

(b) being dismissed, suspended or demoted except where administratively or commercially justifiable for organisational reasons;

(c) being transferred against his will or being refused transfer or promotion except where administratively or commercially justifiable for organisational reasons;

(d) being subjected to a term or condition of employment or retirement which is altered or kept altered to his disadvantage;

(e) being refused a reference or being provided with an adverse reference from his employer except where justifiable on the basis of performance;

(f) being denied appointment to any employment, profession or office; or

(g) being otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and work security;

"outworker" means a person to whom articles, materials or services of any nature are given out by an employer for the performance of any type of work or service where such work or service is to be carried out either in the home of the outworker or in some other premises not being under the control and management of that other person;

"organisation" means any legal entity, whether registered as a legal person or not;

"person" means a natural person;

"protected disclosure" means an internal disclosure or an

external disclosure of information, made in writing or in any format which may be prescribed;

"public administration" has the meaning as is assigned to it by article 2(1) of the Public Administration Act;

Cap. 497.

"statutory body" means any corporation or other body corporate established by law;

"voluntary organisation" has the same meaning as is assigned to it by article 2(1) of the Voluntary Organisations Act irrespective of whether such organisation is enrolled in terms of the said Act;

Cap. 492.

"whistleblowing reporting officer" means such officer within an employer charged with carrying out the functions designated by article 12;

"whistleblowing unit" means such officer, office or section within an authority to carry out the functions designated by article 17, and, with respect to the public administration, such section, body or unit as may be established under the Public Administration Act.

Cap. 497.

(2) Where this Act refers to a matter which may be prescribed, unless this Act expressly designates the person authorised and the manner thereof, such matter may be prescribed by the Minister through regulations or by the authority through guidelines or by any one or all of them as may be determined, and in the case of any conflict, a regulation by the Minister shall prevail over a guideline.

(3) This Act shall not apply to members of a disciplined force or to members of the Security Service until the Minister makes regulations regulating the manner in which the provisions of this Act will apply in their regard, and in so doing, the Minister may dis-apply or modify the provisions of this Act as necessary for the purposes of national security.

PART II

PROHIBITION OF DETRIMENTAL ACTION

3. Subject to the exceptions referred to in this Act, despite any prohibition of, or restriction on, the disclosure of information under any enactment, rule of law, contract, oath or practice, no person may be subjected to detrimental action on account of having made a protected disclosure.

Prohibition of detrimental action.

4. Notwithstanding the provisions of the Criminal Code or of any other law, no person who makes a protected disclosure shall be liable to any civil or criminal proceedings or to a disciplinary

Protected disclosure. Cap. 9.

proceeding for having made such a disclosure.

No immunity where person who makes disclosure is himself a perpetrator or accomplice.

5. (1) Nothing in this Part shall prevent the institution of criminal proceedings against the person making the disclosure where the authority has determined that such person was the perpetrator or an accomplice in the improper practice which constitutes a crime or contravention under any applicable law prior to its disclosure.

(2) Nothing in this Part should be interpreted as providing immunity to any person making a disclosure about an improper practice from any disciplinary or civil proceedings or liability arising from his own conduct.

Prohibition of disclosure of information which identifies whistleblower.

6. (1) Every whistleblowing reporting officer or whistleblowing unit to whom a protected disclosure is made or referred must not disclose information that identifies or may lead to the identification of the person making the disclosure unless:

(a) the person making the disclosure consents in writing to the disclosure of that information; or

(b) the said whistleblowing reporting officer or whistleblowing unit reasonably believes that disclosure of the identity of the person making the disclosure -

(i) is essential to the effective investigation of the allegations in the protected disclosure; or

(ii) is essential to prevent serious risk to public health or public safety or the environment; or

(iii) is essential having regard to the principles of natural justice; or

(c) the disclosure of the person's identity is necessary for the prosecution of the person or organisation responsible for an improper practice which constitutes a crime or contravention under any law.

(2) The whistleblowing unit shall not communicate the disclosure to other departments within the authority of which it forms part until it has duly investigated the disclosure and established that it is necessary or appropriate for further investigation to be carried out by such other departments.

(3) Guidelines shall be issued by each authority setting out -

(a) the duties of communication between the

whistleblowing unit and the person making the disclosure and the restrictions thereon; and

(b) the rules for disclosure to other departments of the authority or to other authorities or entities of the State.

7. (1) A person who believes that detrimental action has been taken or may be taken against him in reprisal for a protected disclosure may file an application to the First Hall, Civil Court for - Application to the Civil Court.

(a) an order requiring the person who has taken the detrimental action to remedy that action; or

(b) an injunction.

(2) The Court, pending the final determination of an application under this article, may -

(a) make an interim order; or

(b) grant an interim injunction.

(3) If, in determining the application under sub-article (2), the Court is satisfied that a person has taken or intends to take detrimental action against a person in reprisal for a protected disclosure, the Court may:

(a) order the person who took the detrimental action to remedy that action and determine the amount of damages, including, but not limited to, moral damages as the Court may determine, due to the person who suffered the detrimental action; or

(b) grant an injunction in any terms the Court considers appropriate.

(4) Notwithstanding the provisions of the Code of Organisation and Civil Procedure, an injunction granted in terms of sub-article (3) shall be for an indefinite period until an application for its revocation is made, and the injunction need not be followed by an action. The provisions of articles 873 and 875 of the Code of Organisation and Civil Procedure shall apply to warrants issued under sub-article (3). Cap. 12.

(5) The provisions of articles 829 to 838B of the Code of Organisation and Civil Procedure shall not apply to injunctions granted in terms of sub-article (3). Cap. 12.

Cap. 12. (6) Notwithstanding the provisions of Schedule A of the Code of Organisation and Civil Procedure, no registry fees shall be charged on an application filed in the First Hall of the Civil Court by the person referred to in sub-article (1).

Right to compensation following detrimental action.

8. Any person who may have suffered detrimental action as a result of making a protected disclosure shall, without prejudice to any other right under any other law, have a right to compensation for any damage caused.

PART III

DISCLOSURES

SECTION 1

PROTECTED DISCLOSURES

Protected disclosures.

- 9.** (1) A disclosure is a protected disclosure if -
- (a) it is made in good faith; and
 - (b) the person making the disclosure reasonably believes that:
 - (i) the information disclosed, and any allegation contained in it, are substantially true;
 - (ii) the information disclosed tends to show an improper practice being committed by his employer, another employee of his employer or by persons acting in the employer's name and interests; and
 - (c) the disclosure is not made for purposes of personal gain.

(2) The protections conferred by this article do not apply to an employee who knowingly discloses information which he knows, or ought to reasonably know, is false.

Cap. 9. (3) It shall be an offence punishable in accordance with article 101 of the Criminal Code to knowingly provide false information in terms of this Act.

Information protected by legal professional privilege. Cap. 377.

10. Saving the provisions of article 6A(c) of the Professional Secrecy Act, nothing in this Act authorises a person to disclose information protected by legal professional privilege and a disclosure of such information is not a protected disclosure for the purposes of this Act.

11. (1) Disclosures made anonymously shall not be considered as protected disclosures in terms of this Act. Disclosures made anonymously.

(2) A whistleblower reporting officer or whistleblowing unit may receive and process an anonymous disclosure. The obligations imposed on a whistleblower reporting officer or whistleblowing unit by article 6 of this Act arise in relation to anonymous disclosures.

SECTION 2

INTERNAL DISCLOSURES

12. (1) Every employer must have in operation internal procedures for receiving and dealing with information about improper practices committed within or by that organisation; such internal procedures must at least identify the person or persons within the organisation, in this Act referred to as the "whistleblowing reporting officer", to whom a protected disclosure may be made. Internal procedures for receiving and dealing with protected information.

(2) Information about the existence of the internal procedures, and adequate information on how to use the procedures must be published widely within the organisation and must be republished at regular intervals.

(3) An internal disclosure is a protected disclosure made in accordance with the provisions of this Act if it is made by an employee to an employer substantially in the manner established by internal procedures established by the employer for receiving or dealing with such disclosures.

13. (1) The whistleblowing reporting officer must, within a reasonable time after receiving an internal disclosure, notify the person who made the disclosure of the status of the improper practice disclosed or such matters as may be prescribed. Notification to person who made the disclosure.

(2) For the purposes of article 16, where it is apparent from external action that action has been taken to rectify the improper practice, it will not be necessary for the whistleblowing reporting officer to notify the person who made the disclosure.

14. An internal disclosure may be made to the head or deputy head of the organisation if: Internal disclosure made to the head or deputy head of the organisation.

(a) the organisation has no internal procedures established and published for receiving and dealing with information about an improper practice; or

(b) the person making the disclosure believes on

reasonable grounds that the whistleblowing reporting officer is or may be involved in the alleged improper practice; or

(c) the employee making the disclosure believes on reasonable grounds that the whistleblowing reporting officer is, by reason of any relationship or association with a person who is or may be involved in the improper practice alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.

SECTION 3

EXTERNAL DISCLOSURES

Protection of external disclosure.

15. Except as provided in this Part, an external disclosure shall only be protected if an internal disclosure in accordance with Section 2 of this Part has already been made or has been attempted to be made.

External disclosure made to the whistleblowing unit of the authority.

16. (1) An external disclosure may be made to the whistleblowing unit of the authority as provided in the Schedule if the employee making the disclosure believes on reasonable grounds -

(a) that the head of the organisation is or may be involved in the improper practice alleged in the disclosure; or

(b) that immediate reference to the authority is justified by the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or

(c) at the time he makes the external disclosure, that he will be subjected to an occupational detriment by his employer if he makes an internal disclosure; or

(d) that it is likely that evidence relating to the improper practice will be concealed or destroyed if he makes an internal disclosure; or

(e) that although an internal disclosure has previously been made, the person who made such disclosure has not been informed on the status of the matter disclosed or it is reasonably evident to the person who made such a disclosure that there has been no action or recommended action on the matter to which the disclosure relates within a reasonable time from the making of the disclosure.

(2) In determining for the purposes of sub-article (1) whether it is reasonable for the employee to make the disclosure to the

authority, regard shall be had, in particular, to:

- (a) the seriousness of the alleged improper practice,
- (b) whether the improper practice is continuing or is likely to occur in the future,
- (c) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,
- (d) in a case falling within sub-article (1)(e), any action which the employer has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
- (e) whether in making the disclosure to the authority, the employee complied with any procedure whose use by him was authorised by the employer in accordance with article 12(1).

(3) If a person makes a disclosure to an authority in accordance with this Part, the authority must within forty-five (45) days after receiving the disclosure consider and reach a conclusion as to whether it is appropriate for the disclosure to be made externally.

(4) If the authority concludes that a disclosure should not have been made externally, then it must within a reasonable time notify in writing the person who made the disclosure and the whistleblowing reporting officer within the employer's organisation that an internal disclosure in accordance with Section 2 of this Part must be made and that it will not be dealing further with the disclosure.

(5) If the authority concludes that a disclosure has been properly made, then it must within a reasonable time notify in writing the person who made the disclosure of the status of the improper practice disclosed or such matters as may be prescribed.

17. (1) All authorities referred to in the Schedule shall set up a whistleblowing unit.

Setting up of
whistleblowing
units.

(2) The whistleblowing unit shall be charged with receiving and processing any external disclosures relating to the activities of persons operating within the sector regulated by the relevant authority as set out in the Schedule so as to determine whether the disclosures should be referred for further investigation and the conditions under which such referral should take place.

Referral of information to another authority.

18. (1) Where the authority to whom a protected disclosure is made considers that the information disclosed can be better investigated by another authority, the authority to whom the disclosure is made may refer that information to such other authority and inform in writing the person making the disclosure accordingly.

(2) A protected disclosure shall not, by reason of its referral to another authority, cease to be a protected disclosure.

PART IV

OFFENCES AND PENALTIES

Use or threats of violence.

19. Any person who, for the purpose of compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing under the provisions of this Act, wrongfully and without legal authority -

(a) uses or threatens to use violence against such person, or the wife, husband or child of such person, or a member of his household, or causes or threatens to cause damage to his property;

(b) persistently follows such other person from place to place;

(c) watches or besets the house or other place where such other person resides or the approaches to such house or place;

(d) deprives such person, or in any manner hinders him in the use of, any tools, clothing or other property owned or used by such other person,

shall be guilty of an offence and be liable on conviction to imprisonment for a period not exceeding three months or to a fine (*multa*) not exceeding one thousand and two hundred euro (€1,200) or to both such imprisonment and fine, without prejudice to any heavier punishment to which the offence may be liable under any other enactment.

PART V

REGULATIONS AND GUIDELINES

Regulations and guidelines.

20. (1) The Minister may from time to time make regulations for the better implementation of this Act.

(2) An authority may, in furtherance of any of its functions

under this Act, from time to time issue and publish guidelines on all matters in respect of which the Minister may make regulations including guidelines setting out the procedures which are available in terms of law to those who wish to disclose an improper practice.

(3) Guidelines issued by an authority shall be binding on all organisations whose activities are regulated by such authority.

(4) Except for amendments to the guidelines which are purely administrative in nature, and are expressly declared to be so by the authority, which come into force immediately upon the posting thereof on the official website of the said authority, any new guidelines or amendments to guidelines shall come into force on the lapse of fifteen days after they are posted on the official website or on such later date as may be stated therein.

PART VI

MISCELLANEOUS

21. Any provision in a contract of service or other agreement between an employer and an employee is void in so far as it -

Conflict
between
contract of
service and
provisions of
this Act.

(a) purports to exclude any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract; or

(b) purports to preclude the employee or has the effect of discouraging the employee from making a protected disclosure in terms of this Act.

22. This Act shall apply only to disclosures of information relating to conduct which occurs after the coming into force of this Act or, if commencing before the coming into force of this Act, continues after its coming into force.

Applicability of
Act.

SCHEDULE

Authorities Prescribed to receive External Disclosures

Part 1 - Private Sector

Authority	Description of Matters
Commissioner of Inland Revenue	Income tax, corporation tax, capital gains tax, stamp duties, national insurance contributions.
Financial Intelligence Analysis Unit	Money laundering in terms of the Prevention of Money Laundering Act.
Malta Financial Services Authority	The carrying on of investment business or of insurance business; the operation of banks, deposit-taking businesses and wholesale money market regimes; the functioning of the financial markets, investment exchanges and clearing houses; financial crime and other serious financial misconduct in connection with activities regulated by the Malta Financial Services Authority.
Permanent Commission Against Corruption	Corrupt practices
Ombudsman	<ul style="list-style-type: none"> (i) Conduct involving substantial risk to public health or safety or the environment that would if proved, constitute a criminal offence; (ii) Activities of a disciplined force; (iii) Activities of a voluntary organisation; and (iv) All matters which constitute improper practices and which are not designated to be reported to any other authority

Part 2 - Public Administration

The Corporate Governance Committee within the Cabinet Office

Objects and Reasons

The objects of this Bill are to provide for procedures in terms of which employees in both the private sector and the public administration may disclose information regarding improper practices by their employers or other employees in the employ of their employers and to protect employees who make said disclosures from detrimental action.