

**Abbozz ta' Liġi
msejjah**

*Att biex jemenda l-Att dwar il-Kummissjoni Permanenti
Kontra l-Korruzzjoni, Kap. 326.*

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:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2010 li jemenda l-Att dwar il-Kummissjoni Permanenti Kontra l-Korruzzjoni, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Kummissjoni Permanenti Kontra l-Korruzzjoni, hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor
u bidu fis-seħh

Kap. 326..

(2) Id-disposizzjonijiet ta' dan l-Att għandhom jidhlu fis-seħh f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

2. It-titolu twil tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni
tat-titolu twil
tal-Att
prinċipali.

"Biex jipprovdi għat-twaqqif u l-funzjonijiet ta' kummissjoni permanenti kontra l-korruzzjoni, li l-għan tagħha huwa dak li tinvestiga atti ta' korruzzjoni kommessi kemm fis-settur pubbliku, kif ukoll f'dak privat, kemm minn persuni li jokkupaw karigi pubbliċi, kif ukoll minn persuni fil-kapaċità privata tagħhom, kemm minn persuni naturali ukoll minn persuni legali; u għal hwejjeġ li għandhom x'jaqsmu ma' dan."

Emenda tal-artikolu 2 tal-Att prinċipali.

3. Fl-artikolu 2 tal-Att prinċipali, minnufih wara t-tifsira "il-Kummissjoni" għandha tiżdied it-tifsira ġdida li ġejja:

" "persuna", għall-finijiet ta' dan l-Att, tinkludi kull persuna naturali kif ukoll kwalunkwe persuna legali jew korp ġuridiku;"

Emenda tal-artikolu 3 tal-Att prinċipali.

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

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Għandu jkun hemm Kummissjoni, li għandha tkun magħrufa bħala l-Kummissjoni Permanenti Kontra l-Korruzzjoni, li tkun magħmula minn:

(a) *chairman*, li jinħatar mill-President ta' Malta li jaġixxi skont riżoluzzjoni tal-Kamra tad-Deputati li tgħaddi bis-saħħa tal-voti ta' mhux anqas minn żewġ terzi tal-membri kollha tal-Kamra, u d-disposizzjonijiet tal-proviso għall-artikolu 108(2) tal-Kostituzzjoni ta' Malta għandhom jgħoddu, *mutatis mutandis*, għar rigward ta' din il-ħatra; u

(b) żewġ membri oħra, mahtura mill-President ta' Malta li jaġixxi skont il-parir tal-Prim Ministru mogħti wara li jkun ikkonsulta l-Kap tal-Oppożizzjoni.";

(b) is-subartikolu (5) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(5) Membru tal-Kummissjoni jista' jitneħħa mill-kariga mill-President ta' Malta li jaġixxi skont il-parir tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja.";

(ċ) fis-subartikolu (6) tiegħu, minflok il-kliem "il-President ta' Malta li jaġixxi skond il-parir tal-Prim Ministru, mogħti wara li jkun ikkonsulta l-Kap tal-Oppożizzjoni",

għandhom jidhlu l-kliem "il-President ta' Malta li jaġixxi bil-
għudizzju deliberattiv tiegħu stess wara li jkun ikkonsulta mal-
Prim Ministru u mal-Kap tal-Oppożizzjoni"; u

(d) fis-subartikolu (7) tiegħu, minflok il-kliem "mill-
President ta' Malta li jaġixxi skond il-parir tal-Prim Ministru,
mogħti wara li jkun ikkonsulta l-Kap tal-Oppożizzjoni",
għandhom jidhlu l-kliem "mill-President ta' Malta li jaġixxi bil-
għudizzju deliberattiv tiegħu stess wara li jkun ikkonsulta mal-
Prim Ministru u mal-Kap tal-Oppożizzjoni".

5. L-artikolu 4 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-
artikolu 4 tal-
Att prinċipali.

(a) il-paragrafu (a) tiegħu għandu jiġi sostitwit bil-
paragrafu ġdid li ġej:

"(a) li tikkunsidra atti ta' korruzzjoni allegati
jew suspetti li saru minn jew bil-parteciġazzjoni ta'
kwalunkwe persuna, inkluż xi persuna msemmija fil-
paragrafi (b) u (ċ), u/jew minn xi persuna oħra, u fejn il-
Kummissjoni tiddeċiedi li jkun hemm raġuni suffiċjenti li
tagħmel investigazzjoni, li tinvestiga dik l-allegazzjoni jew
dak is-suspett u li tirrapporta dwar dan skont l-artikolu
11;" u

(b) fil-paragrafu (ċ) tiegħu, minflok il-kliem "li
tinvestiga l-kondotta ta' xi persuna li tkun jew kienet fdata
bi" "għandhom jidhlu l-kliem "li tinvestiga l-kondotta ta'
kwalunkwe persuna oħra, inkluż persuna li tkun jew kienet fdata
bi".

6. L-artikolu 6 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-
artikolu 6 tal-
Att prinċipali.

(a) fil-paragrafu (a) tas-subartikolu (1) tiegħu minflok
il-kliem "xi persuna msemmija fl-artikolu 4(b) u (ċ)" għandhom
jidhlu l-kliem "xi persuna msemmija fl-artikolu 4(a), (b) u (ċ)";

(b) is-subartikolu (2) tiegħu għandu jiġi sostitwit bis-
subartikolu ġdid li ġej:

"(2) Id-disposizzjonijiet ta' dan l-artikolu
għandhom japplikaw għal kull persuna."; u

(ċ) minnufih wara s-subartikolu (2) tiegħu għandu
jiżdied is-subartikolu ġdid li ġej:

"(3) Id-disposizzjonijiet tal-artikoli 121A sa
121E, it-tnejn inklużi, tal-Kodiċi Kriminali għandhom

jgħoddu u r-reati msemija f'dawk l-artikoli għandhom jitqiesu bħala atti ta' korruzzjoni għall-finijiet tas-subartikoli (1) u (2).".

Żjieda ta' artikolu ġdid mal-Att prinċipali.

7. Minnufih wara l-artikolu 7 tal-Att prinċipali għandu jiżdied l-artikolu ġdid li ġej:

"Prosektur Speċjali.

7A. (1) Il-Kummissjoni għandha taħtar Prosektur Speċjali biex jassistiha fil-funzjonijiet tagħha u biex jeżerċita l-funzjonijiet stabbiliti taħt dan l-artikolu. Kull persuna maħtura f'din il-kariga għandha tkun avukat li jkun eżerċita l-professjoni ta' avukat f'Malta għal perjodu ta' mhux inqas minn seba' snin jew persuna li tkun okkupat il-kariga ta' għall-inqas Superintendent tal-Pulizija għal mhux inqas minn seba' snin, u dik il-persuna għandha żżomm il-kariga għal perjodu ta' erba' snin, liema perjodu jista' jiġġedded għal perjodu wieħed ieħor ta' erba' snin.

(2) Il-Prosektur Speċjali ma jkunx jista' jkollu impjeg ieħor u ma għandux jkollu xi interessi kummerċjali f'kumpanniji jew soċjetajiet oħra kif rikonoxxuti mil-liġi.

(3) Il-Prosektur Speċjali għandu jeżerċita l-funzjonijiet tiegħu taħt id-direzzjoni tal-Kummissjoni.

(4) Il-funzjonijiet tal-Prosektur Speċjali jkunu dawn li ġejjin:

(a) il-Prosektur Speċjali għandu jagħmel rapport lill-Pulizija Eżekuttiva skont l-artikolu 535 tal-Kodiċi Kriminali dwar kull att jew ommissjoni li, jekk ssir prova dwarhom, jistgħu jikkostitwixxu att ta' korruzzjoni skont dan l-Att, u l-Pulizija Eżekuttiva għandha tagħmel dawk l-investigazzjonijiet fuq dak ir-rapport u tmexxi dwaru skont id-disposizzjonijiet tal-Kodiċi Kriminali jew kull liġi oħra li tapplika għal dak l-att jew dik l-ommissjoni;

Kap. 9.

Kap. 9. (b) meta l-Kummissarju tal-Pulizija jonqos milli jaġixxi fuq rapport bħal dan, il-Prosekutur Speċjali jkollu d-dritt jipprezenta rikors quddiem il-qorti kompetenti skond id-disposizzjonijiet tal-artikolu 541 tal-Kodiċi Kriminali;

Kap. 9. (ċ) il-Prosekutur Speċjali jkun jista' wkoll jagħmel rapport skont id-disposizzjonijiet tal-artikolu 546 tal-Kodiċi Kriminali dwar kull haġa li tirrigwarda att ta' korruzzjoni taht dan l-Att;

Kap. 9. (d) f'kull prosekuzzjoni dwar att ta' korruzzjoni, il-Prosekutur Speċjali għandu jkollu l-istess drittijiet bħal ma huma mogħtija lill-parti offiża skont id-disposizzjonijiet tal-artikolu 410 tal-Kodiċi Kriminali.

(5) Il-Kummissarju tal-Pulizija, meta jaġixxi fuq rapport skont is-subartikolu (4)(a), u Maġistrat li jikkonduċi inkjesta skont is-subartikolu (4)(b), għandhom ihejju rapporti u jibgħatuhom lill-Kummissjoni f'intervalli ta' mhux aktar minn xahar dwar il-progress tal-investigazzjoni jew tal-inkjesta, kif ikun il-każ."

8. Fis-subartikolu (1) tal-artikolu 121A tal-Kodiċi Kriminali, minflok il-kliem "xi persuna li hemm imsemmija fl-artikoli preċedenti ta' dan is-sub-titolu" għandhom jidhlu l-kliem "xi persuna li hemm imsemmija fl-artikoli preċedenti ta' dan is-sub-titolu u kull persuna oħra".

Emenda
konsegwenzjali
għall-Kodiċi
Kriminali.
Kap. 9.

Għanijiet u Raġunijiet

L-għanijiet ta' dan l-Abbozz ta' Liġi huma biex l-iskop tal-Att dwar il-Kummissjoni Permanenti Kontra l-Korruzzjoni jiġi estiż għal ċittadini privati u persuni oħra; biex jipprovdu għall-ħatra ta' Prosekutur Speċjali fi hdan il-Kummissjoni Permanenti kontra l-Korruzzjoni, u biex jipprovdu għall-funzjonijiet tal-imsemmi Prosekutur Speċjali.

**A Bill
entitled**

AN ACT to amend the Permanent Commission Against Corruption Act, Cap. 326.

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 and commencement.

Cap. 326.

1. (1) The short title of this Act is the Permanent Commission Against Corruption (Amendment) Act, 2010, and this Act shall be read and construed as one with the Permanent Commission Against Corruption Act, hereinafter referred to as "the principal Act".

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

Substitution of the long title of the principal Act.

2. The long title of the principal Act shall be substituted by the following:

"To make provision for the establishment and functions

of a permanent commission against corruption, whose aims shall be the investigation of corrupt practices committed both in the public sector as well as in the private sector, both by persons who occupy a public office, as well as by persons in their private capacity, both by natural persons as well as by juridical persons; and for purposes connected therewith."

3. In article 2 of the principal Act, immediately after the definition "corrupt practice" there shall be added the following new definition:

Amendment of article 2 of the principal Act.

" "person", for the purposes of this Act, includes any natural person as also any other legal person or juridical body;"

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

Amendment of article 3 of the principal Act.

(a) subarticle (1) thereof shall be substituted by the following:

"(1) There shall be a Commission, to be known as the Permanent Commission Against Corruption, which shall consist of:

(a) a chairman, who shall be appointed by the President of Malta acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members in the House, and the provisions of the proviso to article 108(2) of the Constitution of Malta shall, *mutatis mutandis*, apply in relation to such appointment; and

(b) two other members who shall be appointed by the President of Malta acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition.";

(b) subarticle (5) thereof shall be substituted by the following:

"(5) A member of the Commission may be removed from office by the President of Malta, acting in accordance with the advice of the Commission for the Administration of Justice.";

(c) in subarticle (6) thereof, for the words "the President of Malta acting in accordance with the advice of the Prime

Minister given after he has consulted the Leader of the Opposition", there shall be substituted the words "the President of Malta acting in accordance with his own deliberative judgment after having consulted the Prime Minister and the Leader of the Opposition"; and

(d) in subarticle (7) thereof, for the words "by the President of Malta acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition", there shall be substituted the words "by the President of Malta acting in accordance with his own deliberative judgment after having consulted the Prime Minister and the Leader of the Opposition".

Amendment of
article 4 of the
principal Act.

5. Article 4 of the principal Act shall be amended as follows:

(a) paragraph (a) thereof shall be substituted by the following new paragraph:

"(a) to consider alleged or suspected corrupt practices committed by or with the participation of any person, including any person mentioned in paragraphs (b) and (c) and/or any other person, and where the Commission determines that there are sufficient grounds for holding an investigation, to investigate any such allegation or suspicion and to make a report thereon in accordance with article 11;"; and

(b) in paragraph (c) thereof, for the words "to investigate the conduct of any person who is or has been entrusted with" there shall be substituted the words "to investigate the conduct of any other person, including any person who is or has been entrusted with".

Amendment of
article 6 of the
principal Act.

6. Article 6 of the principal Act shall be amended as follows:

(a) in paragraph (a) of subarticle (1) thereof, for the words "any person mentioned in article 4(b) and (c)" there shall be substituted the words "any person mentioned in article 4(a), (b) and (c)";

(b) subarticle (2) thereof shall be substituted by the following new subarticle:

"(2) The provisions of this article shall apply to and in connection with every person."; and

(c) immediately after subarticle (2) thereof there shall

be added the following new subarticle:

"(3) The provisions of articles 121A to 121E, both inclusive, of the Criminal Code shall apply and the offences mentioned in the said articles shall be considered as corrupt practices for the purposes of subarticles (1) and (2)."

7. Immediately after article 7 of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Special Prosecutor.

7A. (1) The Commission shall appoint a Special Prosecutor to assist it in its functions and to exercise the functions established under this article. Any person appointed to such office must be an advocate who has practised as an advocate in Malta for a period of not less than seven years or a person who has occupied the rank of at least a Superintendent of Police for not less than seven years and shall hold office for a period of four years which can be renewed for one further period of four years.

(2) The Special Prosecutor shall be debarred from any other employment and shall not hold any commercial interests in companies or other partnerships as recognised by law.

(3) The Special Prosecutor shall exercise his functions under the direction of the Commission.

(4) The functions of the Special Prosecutor shall be the following:

(a) the Special Prosecutor shall make a report to the Executive Police in accordance with article 535 of the Criminal Code of any act or omission which, if proved, could constitute a corrupt practice in accordance with this Act, and the Executive Police shall make such investigations on such report and proceed thereon in accordance with the provisions of the Criminal Code or any other law applicable thereto;

Cap. 9.

Cap. 9. (b) where the Commissioner of Police fails to act on any such report, the Special Prosecutor shall be entitled to make an application before the competent court in accordance with article 541 of the Criminal Code;

Cap. 9. (c) the Special Prosecutor shall also be entitled to make a report in accordance with article 546 of the Criminal Code on any matter relating to a corrupt practice under this Act;

Cap. 9. (d) the Special Prosecutor shall in any prosecution on any corrupt practice have the same rights as are in accordance with article 410 of the Criminal Code accorded to the injured party.

(5) The Commissioner of Police, acting on a report under subarticle (4)(a), and a Magistrate conducting an inquiry under subarticle (4)(c), shall make reports to the Commission at intervals of not more than one month of the progress of the investigation or the inquiry, as the case may be."

Consequential amendment to the Criminal Code. Cap. 9.

8. In subarticle (1) of article 121A of the Criminal Code, for the words "of any person referred to in the preceding articles of this sub-title" there shall be substituted the words "of any person referred to in the preceding articles of this sub-title and of any other person".

Objects and Reasons

The objects of this Bill are to widen the scope of the Permanent Commission Against Corruption Act to include private citizens and other persons; to provide for the appointment of a Special Prosecutor within the Permanent Commission against Corruption, and to provide for the functions of the said Special Prosecutor.
