

Naghti l-kunsens tieghi.

(L.S.)

GUIDO DE MARCO  
President

27 ta' Frar, 2004

### ATT Nru. I ta' l-2004

*Att biex jemenda l-Att dwar l-Amministrazzjoni Finanzjarja u l-Verifika, Kap. 174.*

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

**1.** It-titolu fil-qosor ta' dan l-Att hu l-Att ta' l-2004 biex jemenda l-Att dwar l-Amministrazzjoni Finanzjarja u l-Verifika, u għandu jinqara u jiftiehem haġa waħda ma' l-Att dwar l-Amministrazzjoni Finanzjarja u l-Verifika, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali". Titolu fil-qosor.

**2.** L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' artikolu 2 ta' Att prinċipali.

(a) minnufih qabel it-tifsira ta' "bank" f'dak l-artikolu għandha tiżdied din it-tifsira ġdida li ġejja:

““awditjar intern” għandu jkollha l-istess tifsira bħalma hu mogħti lilha bl-artikolu 2 ta' l-Att ta' l-2003 dwar Awditjar Intern u Investigazzjonijiet Finanzjarji;” u

(b) minflok it-tifsira “flejjes pubbliċi” f'dak l-artikolu, għandhom jidhlu dawn it-tifsiriet li ġejjin:

““flejjes pubbliċi” tfisser kull dhul, self, *trust* u flejjes ohra kollha mdahhlin jew amministrati jew miżmuma minn, f'isem jew akkont tal-Gvern ta' Malta, inklużi flejjes li l-Gvern iħallas jew jiżborża minn fondi riċevuti minn xi

organizzazzjoni jew korp internazzjonali jew sovrannazzjonali jew minn xi istituzzjoni jew korp tagħhom;

“irregolarità” tfisser xi att jew ommissjoni minn persuna bi ksur ta’ ftehim kontrattwali mal-Gvern jew bi ksur ta’ xi disposizzjoni rilevanti tal-liġi jew ta’ xi att li għandu l-forza vinkolanti tiegħu ġejja min xi trattat jew ftehim internazzjonali li Malta tkun għamlet;”.

Emenda ta’  
l-artikolu 4 ta’  
l-Att prinċipali.

**3.** Subartikolu (1) ta’ l-artikolu 4 ta’ l-Att prinċipali għandu jiġi emendat kif ġejj:

(a) il-paragrafu (f) tiegħu għandu jiġi enumerat mill-ġdid bħala paragrafu (i); u

(b) minnufih wara paragrafu (e) tiegħu għandhom jiġu mdahhla dan il-paragrafi ġodda li ġejjin:

“(f) għall-ghoti ta’ fondi konfinanzjament għal programmi u inizjattivi ekonomiċi u soċjali minn flejjes pubbliċi;

(g) sabiex isiru aġġustamenti u tpaċijiet f’kontijiet u hlasijiet minn kontijiet dwar dak li għandu x’jaqsam ma’ flejjes pubbliċi skond ma’ jistgħu jkunu mehtieġa f’konnessjoni mal-kofinanzjament imsemmi fil-paragrafu ta’ qabel u l-finanzjament minn xi organizzazzjoni jew korp internazzjonali jew sovrannazzjonali jew minn xi istituzzjoni jew korp relattiv;

(h) għall-ġabra, kodifikazzjoni u ppubblikar ta’ dawk l-istandards u metodoloġiji ta’ l-ikkontjar u ta’ dawk il-*policies* u proċeduri li minn żmien għall-iehor jistgħu jitqiesu mehtieġa jew espedjenti għall-amministrazzjoni u twettiq fis-sehh ahjar tad-disposizzjonijiet ta’ dan l-Att;”.

Emenda ta’  
l-artikolu 25 ta’  
l-Att prinċipali.

**4.** Minnufih fi tmiem l-artikolu 25 ta’ l-Att prinċipali għandu jiżdied dan il-proviso ġdid li ġejj:–

“Iżda l-Ministru jista’ għal dawk l-għanijiet minn żmien għal żmien jawtorizza il-hruġ ta’ dawk l-ammonti mill-Fond konsolidat (li ma jkunux iżjed minn għaxra fil-mija ta’ l-ammont approprjat għas-sena finanzjarja, jew kull perċentwali iehor li l-Kamra tista’ b’riżoluzzjoni minn żmien għal żmien tapprova) skond ma jista’ jqis li jkun mehtieġ għal dak l-għan minghajr il-htieġa ta’ ebda approprjazzjoni ohra minbarra dan l-Att, u l-Ministeru għandu

jagħmel rapport dwar dan lill-Kmara fi żmien xahar minn dik l-appropriazzjoni, u meta f'dak iż-żmien ma jkun hemm seduti tal-Kamra, mhux iżjed tard mit-tielet seduta wara li l-Kamra terġa' tiltaqa'.".

5. Minnufih wara l-artikolu 48 ta' l-Att prinċipali għandhom jiżiedu dawn l-artikoli 49 sa 52 li ġejjin:

Żieda ta' l-artikoli godda 49 sa 52 ma' l-Att prinċipali.

Miżuri kontra l-frodi u irregolaritajiet.

49. (1) Meta, wara li jkun hemm kxif ta' xi irregolarità jew frodi fir-rigward ta' flejjes pubbliċi, rapport magħmul skond id-disposizzjonijiet ta' l-Att dwar l-Awditur Ġenerali u l-Uffiċċju Nazzjoanli tal-Verifika, u ta' l-Att ta' l-2003 dwar Awditjar Intern u Investigazzjonijiet Finanzjarji, jiġi mibgħut jew riferit lil xi Kap ta' Dipartiment, huwa għandu malli jirċevih jiehu l-miżuri kollha meħtieġa għall-harsien ta' dawk il-flejjes pubbliċi, inkluż il-ġbir ta' pieni amministrattivi skond ma jkun hemm f'regolamenti magħmulin taht l-artikolu 52 u azzjoni legali għall-irkupru ta' l-ammont ta' kull defiċjenza, telf, hlas li jkun sar mhux kif imiss kaġunat jew magħmul bħala riżultat jew filwaqt li tkun qed issehh xi irregolarità jew frodi bħal dawk u d-disposizzjonijiet ta' l-artikolu 466 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom ikunu japplikaw għal kull ammont li jista' jiġi rkuprat kif hawn qabel imsemmi.

(2) Minkejja dak kollu li jista' jiġi stipulat għall-kuntrarju, kull *bond*, garanzija bankarja jew titolu iehor mogħtija sabiex kuntratt li jithallas minn flejjes pubbliċi jkun jista' jitwettaq ahjar, għandhom ukoll jestendu sabiex jiggarantixxu l-irkupru ta' kull flejjes jew penali amministrattiva f'dak li għandu x'jaqsam mal-kuntratt u li dwaru l-persuna li tkun qed tipprovdi l-*bond*, il-garanzija bankarja jew titolu iehor tista' tkun responsabbli.

(3) Meta d-defiċjenza, telf, jew hlas li jkun sar mhux kif imiss minhabba f'xi irregolarità jew frodi ikun jinvolvi flejjes li l-Gvern ikun irċeva minn xi organizzazzjoni jew korp internazzjonali jew sovrannazzjonali jew minn xi istituzzjonijiet jew korpi tagħhom jew taht il-pattijiet ta' xi trattat jew ftehim iehor bejn Stati, kull proċediment taht dan l-artikolu għandu jsir f'konsultazzjoni mal-persuna f'Malta, jekk ikun il-każ, li tkun speċifikament inkarigata bl-awtorizzazzjoni tal-hlas jew bir-rilaxx ta' dawk il-flejjes mill-Kap ta' Dipartiment:

Iżda jekk ma ssirx konsultazzjoni bhal dik, dan ma ghandu b'ebda mod li jkun jolqot il-validità ta' procedimenti li jsiru taht dan l-artikolu.

(4) Meta żewġ persuni jew aktar ikunu responsabbli għall-irregolarità jew frodi li jkunu rrizultaw mid-defiċjenza, telf, jew hlas li jkun sar mhux kif imiss, dawk il-persuni ghandhom jinżammu solidament responsabbli għal dan flimkien ma' kull persuna oħra li, għalkemm kellha d-dmir li tagħmel dan, tkun naqset milli tiehu prekawzjonijiet raġonevoli u milli teżercita diligenza kif dovuta biex tipprevjeni dik l-irregolarità jew frodi.

(5) Ebda haġa f'dan l-artikolu jew f'din it-Taqsima ma ghandha tiftiehem bhala li tipprekludi lil xi persuna oħra li jkollha interess milli tiehu azzjoni, sew flimkien mal-Kap tad-Dipartiment sew xort'oħra, għall-irkupru ta' kull somma li tista' tiġi irkuprata taht id-disposizzjonijiet ta' dan l-artikolu.

(6) Għall-finijiet ta' dan l-artikolu u ta' l-artikoli l-oħra taht din it-Taqsima, "Kap ta' Dipartiment" tinkludi lil kull direttur, *manager*, segretarju jew ufficjal prinċipali ieħor ta' xi korp, kemm jekk ikun vestit b'personalità ġuridika kemm jekk le, li jkun responsabbli għall-amministrazzjoni, iż-żamma jew l-użu ta' flejjes pubbliċi jew li jkun riċevitur jew benefiċjarju tal-flejjes pubbliċi, jew li jkun persuna li jkollha s-setgħa li tirrappreżenta dak il-korp jew li jkollha awtorità tiehu deciżjonijiet f'isem dak il-korp jew li jkollha awtorità teżercita kontroll fi hdan dak il-korp.

Mghax li jintalab.

50. Għandu jintalab fuq kull ammont li jista' jiġi irkuprat taht l-artikolu 49 mghax ekwivalenti għar-rata medja peżata li tkun tapplika fid-data dovuta fis-suq tal-flus lokali għal operazzjonijiet ta' finanzi pubbliċi tul żmien qasir għall-perjodu li matulu l-ammont jibqa' mhux imhallas mid-data meta dan ikollu jithallas.

Taghrif.

51. Għall-fini li jingabru l-flejjes li jistgħu jiġu rkuprati taht id-disposizzjonijiet ta' l-artikolu 49, kull Kap ta' Dipartiment li jirċevi jew li lili jiġi riferit rapport skond ma hemm provdut f'dak l-artikolu jista', minghajr preġudizzju għal kull rabta li jkollu ta' segretezza professjonali skond il-liġi, jehtieg lil kull min ikun qed jamministra flejjes pubbliċi biex jipprovdi kull taghrif li jkollu għal dak l-ghan.

Pieni amministrativi.

52. Il-Ministru jista' permezz ta' regolamenti jipprovdi dwar pieni amministrativi li jistgħu jiġu imposti għal kull irregolarità, dwar il-proċedura li għandha tiġi segwita fl-imposizzjoni ta' dawk il-pieni u dwar kull haġa ohra incidentali jew supplimentari għal kull haġa minn dawn hawn qabel imsemmija:

Iżda piena amministrattiva ma tistax tkun iżjed minn hamsin elf lira.”.

6. Minnufih wara l-artikolu 6 ta' l-Att dwar Tpaċija u *Netting* f'każ ta' Insolvenza, għandu jiżded dan l-artikolu ġdid li ġej:

Emenda ta' l-Att dwar Tpaċija u *Netting* f'każ ta' Insolvenza, Kap. 459.

“Poter li jsiru regolamenti.

7. (1) Il-Ministru jista' jagħmel regolamenti biex jagħti effett lid-dispożizzjonijiet ta' dan l-Att u, bla hsara għall-ġeneralità tad-dispożizzjonijiet hawn qabel imsemmija, jista' b'mod partikolari jagħmel regolamenti li jittrasponu u jimplementaw kull Direttiva tal-Parlament Ewropew u tal-Kunsill dwar arrangamenti ta' kollaterali finanzjarju; u, b'mod partikolari, regolamenti li għandhom x'jaqsmu ma' kull aspett li jirrigwarda pattijiet ta' kollaterali finanzjarju u arrangamenti simili; dawk ir-regolamenti jistgħu jfissru xi jkun kollaterali finanzjarju, jistgħu jipprovdu għad-drittijiet u l-obbligi ta' min jipprovdi l-kollaterali u ta' min jagħti l-kollaterali, jistabbilixxu htigiet formali u regoli dwar l-infurzar ta' pattijiet ta' kollaterali finanzjarju u arrangamenti simili, ir-rikonossiment ta' titolu u l-inapplikabilità ta' xi regoli tal-Kodiċi Ċivili u ta' provvedimenti legali li għandhom x'jaqsmu mal-falliment u l-insolvenza, u l-istess regolamenti jistgħu jipprovdu għal regoli relattivi dwar konflitti fil-liġijiet u kull haġa ohra incidentali jew konnessa magħhom.

(2) Regolamenti li jsiru taht dan l-artikolu jistgħu jsiru u jkunu pubblikati bl-ilsien Inġliż biss.”.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 104 tat-23 ta' Frar, 2004.

ANTON TABONE  
*Speaker*

RICHARD J. CAUCHI  
*Skrivan tal-Kamra tad-Deputati*

I assent.

(L.S.)

GUIDO DE MARCO  
President

27th February, 2004

**ACT No. I of 2004**

*AN ACT to amend the Financial Administration and Audit Act, Cap. 174.*

BE IT ENACTED by the President, by and with the advice and consent of the House, 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 Financial Administration and Audit (Amendment) Act, 2004, and shall be read and construed as one with the Financial Administration and Audit Act, hereinafter referred to as “the principal Act”.

Amendment of article 2 of the principal Act.

**2.** Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition of “financial year” therein there shall be added the following new definitions:

““internal audit” shall have the same meaning assigned to it by article 2 of the Internal Audit and Financial Investigations Act;

“irregularity” means an act or omission by any person in breach of a contractual agreement with the Government or in breach of any relevant provision of law or of any act the binding force of which derives from any treaty or international agreement entered into by Malta”; and

(b) for the definition of “public moneys” therein, there shall be substituted the following:

“ “public moneys” means all revenue, loan, trust and other funds received or managed or held by, for or on account of the Government, including moneys which the Government pays out or disburses from funds received from any international or supranational organization or body or from any of its institutions or bodies;”.

**3.** Subarticle (1) of article 4 of the principal Act shall be amended as follows: Amendment of article 4 of the principal Act.

(a) paragraph (f) thereof shall be renumbered as paragraph (i); and

(b) immediately after paragraph (e) thereof there shall be inserted the following new paragraphs:

“(f) for the co-funding of economic and social development programmes and initiatives from public moneys;

(g) for effecting adjustments, setoffs in and payments from any account relating to public moneys as may be required in connection with the co-financing referred to in the previous paragraph and funding from any international or supranational organization or body or from any of its institutions or bodies;

(h) for the preparation, codification and publication of such sets of accounting standards, methodologies, policies and procedures as may from time to time be deemed necessary or expedient for the better carrying the provisions of this Act into effect;”.

**4.** Immediately at the end of article 25 of the principal Act there shall be added the following proviso:— Amendment of article 25 of the principal Act.

“Provided that the Minister may for such purposes from time to time authorise the issue of such sums out of the Consolidated Fund (not exceeding ten per cent of the sum appropriated for the financial year, or such other percentage as the House may by resolution from time to time approve) as he may consider necessary for the purpose without the need of any further appropriation other than this Act, and he shall make a report thereon to the House

within one month of such appropriation, and where the House is not sitting at the time not later than the third sitting after the House reconvenes.”

Addition of new articles 49 to 52 to the principal Act.

**5.** Immediately after article 48 of the principal Act there shall be added the following new articles 49 to 52:

Measures against fraud and irregularities.

49. (1) Where, on the detection of any irregularity or fraud against public moneys, a report made in terms of the provisions of the Auditor General and National Audit Office Act or the Internal Audit and Financial Investigations Act is sent or referred to a Head of Department he shall thereupon take all necessary measures for the protection of such public moneys, including the levying of administrative penalties in accordance with regulations made under article 52 and legal action for the recovery of the amount of any deficiency, loss, improper payment caused or made as a result or in the course of any such irregularity or fraud and the provisions of article 466 of the Code of Organization and Civil Procedure shall apply to any amount recoverable as aforesaid.

(2) Notwithstanding any stipulation to the contrary any bond, bank guarantee or other security given for the proper performance of any contract payable out of public moneys shall also extend to guarantee the recovery of any moneys or administrative penalties in connection with the contract and for which the person supplying the bond, bank guarantee or other security may be liable.

(3) Where the deficiency, loss, or improper payment as a result of the irregularity or fraud involves funds received by the Government from any international or supranational organization or body or from any of its institutions or bodies or under the terms of any treaty or other agreement between States any proceedings under this article shall take place in consultation with the person in Malta, if any, specifically charged with authorising the payment or release of such funds by the Head of Department:

Provided that the lack of such consultation shall not in any way whatsoever affect the validity of any proceedings taken under this article.

(4) Where two or more persons are responsible for the irregularity or fraud which resulted in the deficiency, loss, or improper payment those persons shall be held jointly

and severally liable therefor together with any other person who, although in duty bound to do so, failed to take reasonable precautions and to exercise due diligence to prevent the irregularity or fraud.

(5) Nothing in this article or in this Part shall be construed as precluding any other person interested from taking action, whether jointly with the Head of Department or otherwise, for the recovery of any sum recoverable under the provisions of this article.

(6) For the purposes of this article and the other articles under this Part, "Head of Department" includes any director, manager, secretary or other principal officer of a body, whether vested with legal personality or not, which is responsible for administering, holding or using public moneys or which is a recipient or beneficiary of public moneys, or who is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body.

Interest  
to be  
charged.

50. On any amount recoverable under article 49 there shall be charged interest equivalent to the average weighted rate applicable on the due date on the local money market for short-term public finance operations for the period during which the amount remains unpaid from the date on which it becomes payable.

Information.

51. For the purpose of recovering any moneys that may be recoverable under the provisions of article 49 any Head of Department who receives or to whom is referred a report as provided in that article may, without prejudice to the constraints imposed by professional secrecy according to law, require any person managing public moneys to provide any information in his possession relevant for the said purpose.

Administrative  
penalties.

52. The Minister may by regulations provide for administrative penalties which may be imposed for any irregularity, for the procedure to be followed for the imposition of such penalties and for any other matter incidental or supplementary to any of the foregoing matters :

Provided that an administrative penalty may not be greater than fifty thousand liri.”.

**6.** Immediately following article 6 of the Set-off and Netting on Insolvency Act, there shall be inserted the following new article:

“Power to  
make  
regulations.

7. (1) The Minister may make regulations to give effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may in particular make regulations to transpose and implement any Directive of the European Parliament and of the Council on financial collateral arrangements; and, in particular, regulations relating to any aspect concerning financial collateral agreements and similar arrangements; such regulations may define financial collateral, may provide for the rights and obligations of the collateral taker and the collateral provider, establish formal requirements and rules on the enforcement of financial collateral agreements and similar arrangements, the recognition of title and the non-applicability of certain rules of the Civil Code and of legal provisions relating to bankruptcy and insolvency, and such regulations may also provide for relative rules on conflict of laws and for any other matters as are incidental or connected thereto.

(2) Regulations made under this article may be made and published in the English language only.”.

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Passed by the House of Representatives at Sitting No. 104 of the 23rd February, 2004.

ANTON TABONE  
*Speaker*

RICHARD J. CAUCHI  
*Clerk to the House of Representatives*