

**A Bill
entitled**

AN ACT to amend the Prevention of Money Laundering Act, Cap 373.

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

1. The short title of this Act is the Prevention of Money Laundering (Amendment) Act, 2017, and this Act shall be read and construed as one with the Prevention of Money Laundering Act, hereinafter referred to as "the principal Act".

Short title.

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

Amendment of article 2 of the principal Act.

" "European Supervisory Authority" means the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council, or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council or the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council;"

3. Article 12 of the principal Act shall be amended as follows:

Amendment of article 12 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the

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following:

"(1) The Minister may, acting on the advice of the Unit, make rules or regulations generally for the better carrying out of the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, may by such rules or regulations require credit institutions, financial institutions and other undertakings and professions operating within the financial sector and other relevant sectors to implement measures, procedures, systems and controls to prevent money laundering and the funding of terrorism, including identification, risk management, record-keeping, training and reporting.";

(b) sub-article (4) thereof shall be substituted by the following:

"(4) The Minister may, in consultation with the Minister responsible for justice, by regulation amend, alter or add to the list of offences specified in the Second Schedule to this Act."; and

(c) immediately after sub-article (4) thereof, there shall be added the following new sub-article (5):

"(5) The Minister may prescribe by regulations any matter required to be prescribed by this Act.".

Addition of a new article 12A to the principal Act.

4. Immediately after article 12 of the principal Act there shall be added the following new article:

"National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism.

12A. (1) The Minister may, by regulations made under this Act, establish a committee that shall be referred to as the National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism.

(2) The committee established under sub-article (1) shall draw up a national strategy and policies to combat money laundering, the funding of terrorism and the financing of the proliferation of weapons of mass destruction and co-ordinate any action to be taken to develop, implement and review the national strategy and policies, including the co-ordination of national risk assessments and the actions to be taken to address any threats, vulnerabilities and risks identified.

(3) The committee established under sub-article (1) shall be composed of a senior official representing the Ministry responsible for finance, the Ministry responsible for home affairs, the Ministry responsible for justice, the Central Bank of Malta, the Revenue Departments as defined in the Commissioner for Revenue Act, the Malta Financial Services Authority, the Malta Gaming Authority, the Malta Police Force, the Office of the Attorney General, the Unit, and any other department, agency, authority or body as the Prime Minister may, after consultation with the Minister, designate.

(4) The members of the committee established in terms of this article shall be appointed by the Minister upon their nomination by the respective Ministry, department, agency, authority or body referred to in sub-article (3).

(5) The Chairman and Deputy Chairman of the committee shall be appointed by the Prime Minister after consultation with the Minister from among the members of the committee.

(6) The Minister shall prescribe by means of regulations the powers to be conferred on the committee and the procedures it is to follow for the proper carrying out of its functions.

(7) The remuneration payable, if any, to any member of the committee shall be determined by the Minister."

5. Article 13 of the principal Act shall be substituted by the following:

Substitution of article 13 of the principal Act.

"Punishments, penalties and other measures.

13. (1) The Minister may make rules or regulations to provide for criminal punishments, administrative penalties and other measures that may be imposed in respect of any contravention, breach or failure to comply with any rules, regulations or directives made under this Act:

Provided that:

(a) criminal punishments so imposed shall not exceed a fine (*multa*) of one million euro (€1,000,000) or imprisonment for a term not exceeding five years, or both such fine and imprisonment as set out in the rules or regulations concerned; and

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(b) administrative penalties so imposed shall not exceed:

(i) five million euro (€5,000,000); or

(ii) twice the amount of the benefit derived from the contravention, breach or failure to comply, where this can be determined; or

(iii) ten *per centum* (10%) of the total annual turnover according to the latest approved available financial statements,

whichever is the highest.

(2) The administrative penalties referred to under sub-article (1) shall be imposed by the Unit in accordance with policies and procedures established by the Board of Governors referred to in article 18, from time to time.

(3) The Unit may, in cross-border cases, co-operate with any foreign national or supranational body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in article 26(1), to co-ordinate the imposition of administrative penalties or other measures.

(4) Where an administrative penalty or other measure, as provided for in this article, is imposed in respect of a subject person carrying out relevant financial business, as defined under regulations in force from time to time under this Act, the Unit shall notify the relevant European Supervisory Authority of the action taken and, where applicable, the European Supervisory Authority shall also be notified of any pending appeal and the outcome thereof.

(5) For the purposes of this article and articles 13A and 13B the term "subject person" has the same meaning assigned to it by article 14 of this Act."

Substitution of article 13A of the principal Act.

6. Article 13A of the principal Act shall be substituted by the

following:

"Appeals from administrative penalties.

13A. (1) Whenever a subject person feels aggrieved by an administrative penalty imposed by the Unit in terms of rules and regulations made under article 13, and that administrative penalty exceeds five thousand euro (€5,000), whether imposed in respect of one or more contraventions, the subject person may appeal such administrative penalty both on points of law and fact.

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(2) The appeal as referred to in sub-article (1) shall lie to the Court of Appeal (Inferior Jurisdiction) constituted in terms of article 41(6) of the Code of Organization and Civil Procedure.

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(3) An appeal to the Court of Appeal (Inferior Jurisdiction) in terms of sub-article (1) shall be filed in the registry of the said Court within twenty days from the date when the imposition of the administrative penalty is notified to the subject person, and such an appeal shall be regulated by the applicable provisions of the Code of Organization and Civil Procedure relating to appeals.

(4) For the purposes of safeguarding the confidentiality of information and documents relating to the proceedings, the appeal before the Court of Appeal (Inferior Jurisdiction) filed in terms of this article shall be heard in camera and saving the provisions of article 13C the judgment shall not be published.

(5) For the purposes of this article and articles 13A and 13B the term "subject person" has the same meaning assigned to it by article 14 of this Act."

7. Immediately after article 13A of the principal Act there shall be added the following new articles:

Addition of a new articles to the principal Act.

"Recovery of administrative penalties.

13B. (1) An administrative penalty, served on the subject person against whom it is imposed by means of a notice in writing, which is not appealed in accordance with the provisions of article 13A and which is not paid within twenty days from the date of notification, shall be recoverable as a civil debt, and the notice in writing shall, upon the service of a copy thereof by means of a judicial act on the subject person indicated in the notice, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

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(2) Where the administrative penalty is appealed and the appeal is decided, deserted or withdrawn, the administrative penalty shall be enforceable in accordance with the procedure provided for in sub-article (1).

Publication of administrative penalties.

13C. (1) Any administrative penalty imposed by the Unit in terms of rules and regulations made under article 13, which exceeds ten thousand euro (€10,000) and which has become final and due shall be subject to publication in accordance with policies and procedures established by the Board of Governors referred to in article 18."

Amendment of article 14 of the principal Act.

8. Article 14 of the principal Act shall be amended as follows:

(a) immediately before the definition "subject person" there shall be added the following new definition:

" "competent authority" shall have the same meaning assigned to it by regulations in force from time to time under this Act or as may be prescribed under this Act;" and

(b) the definition "subject person" shall be substituted by the following:

" "subject person" shall have the same meaning assigned to it by regulations in force from time to time under this Act or as may be prescribed under this Act;"

Amendment of article 16 of the principal Act.

9. Sub-article (1) of article 16 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof the words "liaise with supervisory authorities" shall be substituted by the words "liaise with any authority in or outside Malta having supervisory or regulatory functions"; and

(b) paragraph (k) thereof shall be substituted by the following:

"(k) upon request or on its own motion and subject to such conditions and restrictions as it may determine, to cooperate and exchange information with:

(i) any foreign body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in paragraphs (a) and (b);

(ii) any supervisory authority in Malta or with any authority outside Malta which it considers to have equivalent or analogous functions to a supervisory authority in Malta; and

(iii) any other competent authority;"

10. In sub-article (2) of article 26 of the principal Act, the words "In carrying out its responsibilities under sub-article (1) the Unit" shall be substituted by the words "The Unit shall carry out its responsibilities under sub-article (1) on a risk sensitive basis and, in so doing, the Unit".

Amendment of article 26 of the principal Act.

11. Immediately after article 26 of the principal Act, there shall be added the following new article:

Addition of a new article 26A to the principal Act.

"Engagement of experts.

26A. (1) The Unit may, whenever it deems so necessary or expedient, engage one or more persons, whom it considers to be in possession of suitable expertise, to assist it in carrying out specific tasks requiring such expertise, and, for this purpose, the Unit may impose such conditions as it considers necessary.

(2) Article 33 and article 34(1) shall *mutatis mutandis* apply to any person engaged by the Unit under this article."

12. Sub-article (1) of article 27 of the principal Act shall be substituted by the following:

Amendment of article 27 of the principal Act.

"(1) The Unit shall, upon request or on its own motion, co-operate and exchange information with any supervisory authority in Malta or any other body having regulatory or supervisory functions outside Malta, when the Unit is of the view that such co-operation and exchange of information would assist in ensuring that the financial sector and other relevant sectors are not used for criminal purposes or to safeguard their integrity:

Provided that where the Unit exchanges any information with a supervisory authority in Malta, that supervisory authority shall provide the Unit upon request and in a timely manner with information on the use made of the exchanged information and any outcome of any inspection or any other regulatory action undertaken on the basis of that information."

13. Immediately after article 27 of the principal Act, there shall

Addition of a new article 27A to the principal Act.

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be added the following new article:

"Co-operation
with
counterpart
Financial
Intelligence
Units.

27A. (1) In carrying out its functions under article 16(1)(k)(i), the Unit may exchange, any information that may be relevant for the processing or analysis of information or to investigations regarding financial transactions or activities related to money laundering or the underlying criminal activity, or funding of terrorism and the persons involved.

(2) The Unit may impose conditions and restrictions on the use of exchanged information as it may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or other agreement to regulate any such exchange of information:

Provided that the disclosure of information shall be subject to the condition that the information or documents disclosed shall not be used for purposes other than those indicated by the Unit nor shall they be disseminated to any other person, body, authority or agency, without the express prior consent of the Unit.

(3) The consent referred to in the proviso to sub-article (2) shall be provided by the Unit promptly and shall not be withheld unless in the opinion of the Unit such disclosure:

(a) could lead to the impairment of a criminal investigation;

(b) would be clearly disproportionate to the legitimate interests of Malta or of a person; or

(c) would not be in accordance with the fundamental principles of Maltese law.

(4) The Unit shall respond, in a timely manner, to requests for information made by any foreign authority, body or agency considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b):

Provided that the Unit may refuse to disclose any document or information:

(a) if in its opinion such disclosure would not be in accordance with fundamental principles of Maltese law;

(b) if in its opinion the foreign authority, body or agency does not have duties of secrecy and confidentiality that are at least equivalent to those of the Unit or does not provide effective measures to protect confidentiality and secrecy; or

(c) on the grounds of lack of reciprocity or repeated non-cooperation by the foreign authority, body or agency making the request:

Provided further that where the request for information is made by an authority, body or agency of a Member State considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b), the Unit may refuse to disclose any document or information only if in its opinion such disclosure would not be in accordance with fundamental principles of Maltese law.

(5) Where the Unit refuses to grant consent under sub-article (3) or to disclose information in terms of the provisos to sub-article (4), an explanation shall be provided.

(6) Without prejudice to the other provisions of this article, where the Unit receives information pursuant to its function under article 16(1)(a) which concerns another Member State, it shall promptly forward any relevant information to the authority, body or agency within that Member State, considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b).".

14. Immediately after article 27A of the principal Act, there shall be added the following new article:

Addition of a new article 27B to the principal Act.

"Cooperation with Competent Authorities.

27B. Without prejudice to the generality of the provisions of the Act, where the Unit is in possession of documentation or information which it considers to be of interest and relevance to any competent authority in the pursuance of its functions, the Unit may, if it deems it necessary or expedient, and subject to any conditions and restrictions that the Unit may impose, transmit such documentation or information to the relevant competent authority.".

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Amendment to article 28 of the principal Act.

15. In sub-article (4) of article 28 of the principal Act, the words "suspended by the Unit for the period of time referred to in sub-article (2) or the extended period referred to in sub-article (3)" shall be substituted by the words "suspended in terms of this article".

Amendment to article 31 of the principal Act.

16. Immediately after sub-article (4) of article 31 of the principal Act, there shall be added the following new sub-article:

"(5) The Police shall, upon request and in a timely manner, inform the Unit on the use made of information provided by the Unit under this article and on the outcome of any investigations carried out pursuant to the information provided."

Addition of a new article 31A to the principal Act.

17. Immediately after article 31 of the principal Act, there shall be added the following new article:

"Feedback by competent authorities

31A. (1) Where the unit provides information to a competent authority as provided for under this Act, that competent authority shall inform the Unit, upon request and in a timely manner, with information on the use made of the information provided by the Unit and any outcome of any investigation or any other action undertaken on the basis of that information.

(2) For the purposes of this article the term competent authority shall only include the Comptroller of Customs when carrying out duties under any regulations that may be issued or are in force from time to time relating to the cross border movement of cash and other financial instruments."

Substitution of article 32 of the principal Act.

18. Article 32 of the principal Act shall be substituted by the following:

"Feedback on reports.

32. The Unit shall, at the request of the subject person or on its own motion, give to the subject person which makes a report to the Unit as provided for under sub-article 16(1)(a) such information as the Unit deems appropriate to keep the subject person informed about the outcome of the report submitted and any other information which the Unit considers to be of interest to the subject person to regulate its affairs and to assist it in carrying out its duties under this Act or any regulation made thereunder."

Amendment of article 34 of the principal Act.

19. Article 34 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof, shall be substituted by the

following:

"(1) The Unit, and its officers, employees and agents, whether still in service of the Unit or not, shall treat any information acquired in the performance of their duties or the exercise of their functions under this Act as confidential, and shall not disclose any information relating to the affairs of the Unit or of any person, which they have acquired in the performance of their duties or the exercise of their functions under this Act except:

(a) when authorised to do so under any of the provisions of this Act;

(b) for the purpose of the performance of their duties or the exercise of their functions under this Act;

(c) to any competent court or tribunal in any appeal proceedings instituted in accordance with the provisions of article 13A, or in proceedings to which the Unit is a party for the purpose of the enforcement of any penalty imposed by the Unit under this Act;

(d) in the form of an aggregation of data or other statistical information, which in the opinion of the Unit does not lead to the identification of any specific person and which does not prejudice any analysis or investigation; and

(e) when specifically and expressly required to do so under a provision of any law:

Provided that nothing in this article shall be construed as requiring the Unit to disclose any information received in carrying out its functions under sub-articles 16(1)(a), 16(1)(b) and 16(1)(k) or information which may prejudice any analysis or investigation.";

(b) sub-articles (3) and (4) thereof shall be renumbered as sub-article (2) and (3) and sub-article (2) thereof shall be deleted;

(c) in sub-article (2) thereof, as renumbered, the words "The Unit may, in particular, refuse to disclose any document or information" shall be substituted by the words "Without

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prejudice to the provisions of article 27A, the Unit shall not be obliged to provide any information or disclose any documents, and may refuse to do so";

(d) in sub-article (3) thereof, as renumbered, the words "a competent authority in Malta or outside Malta" shall be substituted by the words "an authority in Malta or outside Malta"; and

(e) in the proviso of sub-article (3) thereof, as renumbered the words "shall not, without the express consent of the Unit, be used" shall be substituted by the words "shall not, without the express consent of the Unit, be further disseminated or be used".

Amendment of
article 35 of the
principal Act.

20. In paragraph (a) of article 35 of the principal Act, the words "fees payable to the Unit" shall be substituted by the words "fees charged by and payable to the Unit".

