

I assent.

(L.S.)

GEORGE VELLA
President

7th February, 2020

ACT No. I of 2020

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:-

Short title.

Cap. 373.

1. (1) The short title of this Act is the Prevention of Money Laundering (Amendment) Act, 2020, and this Act shall be read and construed as one with the Prevention of Money Laundering Act, hereinafter referred to as "the principal Act".

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

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

Amendment of article 12 of the principal Act.

(a) sub-article (5) thereof shall be renumbered as sub-article (6); and

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

"(5) The Minister shall, acting on the advice of the committee referred to in article 12A, designate, by order in the Gazette, those public functions in Malta and those held within international organisations accredited in Malta, which are to be considered as prominent public functions for the purpose of any regulations issued under this Act, and the list of any such functions shall be reviewed and updated from time to time:

Provided that any order issued in terms of this sub-article shall be made available to the European Commission upon publication in the Gazette."

3. Article 13A of the principal Act shall be amended as follows:

Amendment of article 13A of the principal Act.

(a) in sub-article (3) thereof, the words "and such an appeal shall be regulated by the applicable provisions of the Code of Organization and Civil Procedure" shall be substituted by the words "and, saving the provisions of this article, such an appeal shall be regulated by the applicable provisions of the Code of Organization and Civil Procedure";

(b) sub-article (4) thereof shall be renumbered as sub-article (6); and

(c) immediately after sub-article (3) thereof there shall be added the following new sub-articles:

"(4) The Court of Appeal (Inferior Jurisdiction) shall, without delay, set down the appeal for hearing at an early date, which date shall in no case be later than three (3) months from the date of the filing of the appeal.

(5) The Court of Appeal (Inferior Jurisdiction) shall hear the appeal which shall be decided within six (6) months from the date fixed for the original hearing of the appeal, and no adjournment beyond the said six (6) months shall be granted except either with the consent of the appellant and the respondent or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than

that justified by any such reason."

Amendment of article 13B of the principal Act.

4. In sub-article (2) of article 13B of the principal Act, the words "the appeal is decided, deserted or withdrawn," shall be substituted by the words "is subsequently confirmed in whole or in part,".

Substitution of article 13C of the principal Act.

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

"Publication of administrative penalties.

13C. (1) Any administrative penalty imposed by the Unit in terms of rules and regulations made under article 13, and which exceeds fifty thousand euro (€50,000), shall be subject to publication on the official website of the Unit, together with any other administrative measure imposed by the Unit in conjunction with that administrative penalty and the publication shall take place within five (5) working days from the date of notification of the administrative penalty to the subject person:

Provided further that where the administrative penalty has been appealed in terms of article 13A, the Unit shall, without undue delay, publish information on the appeal, and thereafter on the status of the appeal and the outcome thereof, including information on any decision of the Court of Appeal (Inferior Jurisdiction) which alters or revokes in whole or in part that administrative penalty in question.

(2) The Unit shall publish on an anonymous basis the following administrative measures and penalties imposed by the Unit in terms of rules and regulations made under article 13:

(a) administrative penalties that do not exceed fifty thousand euro (€50,000); and

(b) administrative measures imposed by the Unit, except those envisaged under sub-article (1).

(3) Notwithstanding the provisions of sub-articles (1) and (2), where the Unit considers that the publication of an administrative measure or penalty may jeopardise the stability of financial markets or may jeopardise any on-going supervisory, analytical or investigative work, or it considers it to be disproportionate, the Unit may, in accordance with policies and procedures established by the Board of Governors in terms of sub-article (4), decide to delay the publication, or to publish that administrative measure or penalty on an anonymous

basis, or not to publish such an administrative measure or penalty.

(4) The Board of Governors referred to in article 18 shall establish and publish policies and procedures to further regulate the publication of administrative measures and penalties."

6. In sub-article (2) of article 15 of the principal Act, immediately after the words "memoranda of understanding or other agreement" there shall be added the word "including".

Amendment of article 15 of the principal Act.

7. Article 16 of the principal Act shall be amended as follows:

Amendment of article 16 of the principal Act.

(a) in sub-article (1) thereof:

(i) immediately after the words "dissemination of information with a view to" there shall be added the words "preventing, detecting and effectively";

(ii) in sub-paragraph (i) of paragraph (k) immediately after the words "paragraphs (a) and (b)" there shall be added the words "regardless of its nature or status";

(iii) in sub-paragraph (ii) of paragraph (k) the words "or with any authority outside Malta which it considers to have equivalent or analogous functions to a supervisory authority in Malta; and" shall be substituted by the words "or any other authority or 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 monitoring compliance by subject persons or other persons undertaking equivalent activities outside Malta, with anti-money laundering and counter-funding of terrorism laws or with other laws specific to their activities or services, or in ensuring that the financial sector and other relevant sectors or professions are not used for criminal purposes, or to safeguard their integrity";

(iv) in paragraph (l) the words "in the course of the discharge of any of its functions at law." shall be substituted by the words "in the course of the discharge of any of its functions at law;" and immediately thereafter there shall be added the following new paragraphs:

"(m) to monitor compliance with any restrictions on payments in cash which may be

introduced from time to time under this Act; and

(n) to establish, manage and administer centralised automated mechanisms allowing for the retrieval of data and information on any person holding or controlling payment or bank accounts or any person making use of safe custody services offered by credit institutions.";

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

(c) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(2) For the purpose of carrying out any of its functions under this Act or other regulations issued thereunder, the Unit shall have the power to impose fees and charges, including fees or charges to cover costs incurred by Unit in engaging any expert as envisaged in article 26A."

Amendment of article 19 of the principal Act.

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

(a) in paragraph (a) of sub-article (1) thereof, the words "four members appointed" shall be substituted by the words "five members appointed"; and

(b) sub-article (2) thereof shall be substituted by the following:

"(2) The Minister shall appoint the five members referred to in sub-article (1)(a) by selecting one member from each of five panels, each of at least three persons, nominated respectively by the Governor of the Central Bank of Malta, the Chairman of the Malta Financial Services Authority, the Chairperson of the Malta Gaming Authority, the Commissioner of Police and the Commissioner for Revenue."

Substitution of article 23 of the principal Act.

9. Article 23 of the principal Act shall be substituted by the following:

"The Executive and other staff of the Unit.

23. (1) The Director of the Unit shall be appointed by the Board, according to such procedures and on such terms and conditions as the Board may determine, following a public call for applications.

(2) The other officers and staff of the Unit shall be selected by the Director of the Unit according to such procedures and on such terms and conditions and in such numbers as the Board may determine.

(3) The Director and all officers and staff of the Unit shall be persons of integrity and good conduct."

10. Article 26 of the principal Act shall be amended as follows:

Amendment of article 26 of the principal Act.

(a) paragraph (a) of sub-article (2) thereof shall be substituted by the following:

"(a) authorise any of its officers, employees or agents, or any expert engaged under article 26A, on producing evidence of his authority, to require any subject person to provide him forthwith with such information or documentation as may be required in order to monitor compliance with the provisions of this Act and any regulation made thereunder and to answer any questions as the Unit may reasonably require for the performance of its functions under sub-article (1), and such officer, employee, agent or expert may demand access to any data, information or documentation, whether or however stored or held, that the Unit considers relevant to monitor compliance, and may take copies of such data, information or documentation whether digital or otherwise;"

(b) paragraph (c) of sub-article (2) thereof shall be substituted by the following:

"(c) carry out on-site examinations on subject persons with the aim of monitoring compliance with the provisions of this Act and any regulations made thereunder;"

(c) immediately after paragraph (c) of sub-article (2) thereof there shall be added the following new paragraph:

"(d) make notes, take copies or recordings, whether digital or otherwise, of any data, information or documentation obtained or accessed by the Unit, or of any answers to questions posed by the Unit in the exercise of its powers under this sub-article.";

(d) sub-article (4) thereof shall be deleted and sub-article (5) and sub-article (6) shall be renumbered as sub-articles (4) and (5) respectively; and

(e) sub-article (4) thereof, as renumbered, shall be substituted by the following:

"(4) Where the data, information or documentation required, sought to be accessed or demanded under sub-article (2) are not provided, the Unit may require the subject person to state, in writing, why such data, information or documentation, or access, could not be provided."

Amendment of
article 27 of the
principal Act.

11. Article 27 of the principal Act shall be amended as follows:

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

"(1) Without prejudice to any restriction that the Unit may be subject to, the Unit shall, upon request or on its own motion, co-operate and exchange information with any supervisory authority in Malta or any other authority or 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 monitoring compliance by subject persons or other persons undertaking equivalent activities outside Malta, with anti-money laundering and counter-funding of terrorism laws or other laws specific to their activities or services, or in ensuring that the financial sector and other relevant sectors or professions are not used for criminal purposes, or to safeguard their integrity:

Provided that the exchange of information shall be subject to:

(a) a guarantee by the authority or body receiving such information that it has adequate rules and procedures in place governing the confidentiality and security of information;

(b) the condition that information or documents exchanged shall be used by the receiving authority or body only for the purpose of performing its supervisory or regulatory functions;

(c) the condition that the exchanged information shall not be used for purposes other than those referred to in paragraph (b), nor shall it be disseminated to any other person, body, authority or agency without the express prior consent of the Unit; and

(d) any other condition or restriction that the Unit 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 further 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.";

(b) in paragraph (b) of sub-article (3) thereof, the words "with the aim of establishing that person's compliance" shall be substituted by the words "with the aim of monitoring that person's compliance"; and

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

"(5) For the purposes of sub-article (1) the term supervisory authority shall also include any authority, body or committee responsible for the authorisation, licensing, registration, or regulation of, or the granting, suspension or revocation of a warrant to subject persons."

12. Article 27A of the principal Act shall be amended as follows: Amendment of article 27A of the principal Act.

(a) in sub-article (1) thereof, immediately after the words "funding of terrorism and the persons involved" there shall be added the words ", regardless of the type of underlying criminal activity, and even where the underlying criminal activity is not known at the time of exchange"; and

(b) sub-article (3) thereof shall be amended as follows:

(i) immediately after the words "by the Unit promptly" there shall be added the words ", regardless of the type of underlying criminal activity";

(ii) in paragraph (a) immediately after the words "criminal investigation;" there shall be added the word "or"; and

(iii) paragraph (b) shall be deleted and paragraph (c) shall be renumbered as paragraph (b).

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Amendment of article 27B of the principal Act.

13. Article 27B of the principal Act shall be amended as follows:

(a) the words "if it deems it necessary or expedient, and" shall be deleted and the words "information to the relevant competent authority." shall be substituted by the words "information to the relevant competent authority:"; and

(b) immediately after article 27B thereof there shall be added the following proviso:

"Provided that the transmission of information shall be subject to:

(a) a guarantee by the competent authority receiving such information that it has adequate rules and procedures in place governing the confidentiality and security of information;

(b) the condition that information or documents exchanged shall be used by the receiving competent authority only for the purposes of pursuing its functions at law;

(c) the condition that the transmitted information shall not be used for purposes other than those referred to in paragraph (b) above, nor shall it be disseminated to any other person, body, authority or agency without the express prior consent of the Unit; and

(d) any other condition or restriction that the Unit may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or other agreement to regulate any such transmission of information."

Renumbering of article 30B and article 30C of the principal Act.

14. Article 30B and article 30C of the principal Act shall be renumbered as articles 30C and 30D respectively.

Addition of new article to the principal Act.

15. Immediately after article 30A of the principal Act there shall

be added the following new article:

"Information demanded or obtained by the Unit. 30B. Without prejudice to the provisions of article 27A, any information demanded or obtained by the Unit in terms of the provisions of this Act and regulations issued thereunder may be used by the Unit for the pursuance of any of its functions under article 16 as it deems relevant and necessary."

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

Amendment of article 34 of the principal Act.

(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 and documents acquired in the performance of their duties or the exercise of their functions under this Act as confidential, and shall not disclose any information or document 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; and

(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.";

(b) sub-article (2) thereof shall be amended as follows:

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

"(a) in its opinion such disclosure could impede an inquiry, investigation or any other

proceeding in course in Malta; or";

(ii) paragraph (b) and paragraph (c) thereof shall be renumbered as paragraph (c) and paragraph (d) respectively; and

(iii) immediately after paragraph (a) thereof there shall be added the following new paragraph:

"(b) such information or document was received by the Unit in carrying out its functions under sub-articles 16(1)(a), 16(1)(b) and 16(1)(k) or providing such information or disclosing such document may, in the opinion of the Unit, prejudice any analysis; or";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) The Unit may also disclose any information or document referred to in sub-article (1) to any authority in or outside Malta carrying out a criminal investigation into any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute:

Cap. 101. (a) any of the offences referred to in article 22(2)(a)(1) of the Dangerous Drugs Ordinance; or

Cap. 31. (b) any of the offences referred to in article 120A(2)(a)(1) of the Medical and Kindred Professions Ordinance; or

(c) any offence of money laundering within the meaning of this Act; or

(d) any offence of funding of terrorism:

Provided that when disclosing any information or document in the circumstances referred to in this sub-article, the Unit may also disclose any information or document related to the underlying criminal activity."; and

(d) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(4) Notwithstanding any other provision of this Act or any other law, any information or document disclosed by the Unit in terms of sub-article (3) shall be considered as secret and shall:

(a) be used only for the purposes of the investigation being carried out and no other use thereof shall be made nor shall it be disclosed or disseminated to any other person or authority without the prior express consent of the Unit:

Provided such further use, disclosure or dissemination is strictly necessary for the purpose of the investigation being carried out and the provisions of this sub-article shall also apply to such further use, disclosure or dissemination;

(b) be considered as intelligence for the purposes of assisting the investigation being carried out, and shall not be considered as evidence nor used as such in any proceedings, whether judicial or otherwise, which may be instituted as a result of any such investigation;

(c) not be provided under oath;

(d) be recorded, held and archived separately from the acts of the investigation or any *procès verbal* and shall be sealed in such manner so as to ensure its confidentiality and secrecy;

(e) not form part of any published report or findings resulting from the investigation; and

(f) under no circumstance be made public."

17. In sub-article (1) of article 42 of the principal Act, the word "Board" shall be substituted by the word "Unit".

Amendment of
article 42 of the
principal Act.

Passed by the House of Representatives at Sitting No. 296 of the 5th February, 2020.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

