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EVALUATION OF ANTI-MONEY
LAUNDERING MEASURES AND THE
FINANCING OF TERRORISM
(MONEYVAL)

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Malta

Progress report - *Annexes*¹

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APPENDIX III – Relevant Maltese legislation

Table of Contents

Appendix III.1	Prevention of Money Laundering Act
Appendix III.2	Article 435AA of the Criminal Code
Appendix III.3	Prevention of Money Laundering and Funding of Terrorism Regulations
Appendix III.4	Confiscation Orders (Execution in the European Union) Regulations
Appendix III.5	Freezing Orders (Execution in the European Union)(Amendment)(No.2) Regulations
Appendix III.6	Freezing Orders (Execution in the European Union) Regulations
Appendix III.7	Sub-Title IV A – Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences – Criminal Code
Appendix III.8	Security Council Resolutions (Terrorism) Regulations
Appendix III.9	United Nations Sanctions (Taliban) Regulations

APPENDIX III.1

CHAPTER 373**PREVENTION OF MONEY LAUNDERING ACT**

To make provision for the prevention and prohibition of the laundering of money in Malta.

23rd September, 1994

ACT XIX of 1994 as amended by: Act II of 1998; Legal Notice 71 of 1999; Acts XXXI of 2001, III of 2002, and III and XIII of 2004; Legal Notice 176 of 2005; Acts VI of 2005 and XIV of 2006; Legal Notice 425 of 2007; Act XXXI of 2007; Legal Notice 105 of 2008; and Act VII of 2010.

1. The short title of this Act is the Prevention of Money Laundering Act. Short title.

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

"criminal activity" means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to:

(a) a crime or crimes specified in Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna reproduced (in the English language only) in the First Schedule to this Act; or

(b) one of the offences listed in the Second Schedule to this Act;

Interpretation.
Amended by:
XXXI. 2001.2;
III. 2004.79;
L.N. 425 of 2007;
XXXI. 2007.43;
VII. 2010.59.

"Minister" means the Minister responsible for finance;

"money laundering" means -

- (i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in

Cap. 9.

- criminal activity;
- (iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;
- (vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v);

"prescribed" means prescribed by regulations made under this Act;

"property" means property of every kind, nature and description, whether movable or immovable, tangible or intangible and, without derogation from the generality of the foregoing, shall include -

- (a) any currency, whether or not the same is legal tender in Malta, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including one payable to bearer or endorsed payable to bearer whether expressed in euro or any other foreign currency;
- (b) cash or currency deposits or accounts with any bank, credit or other institution as may be prescribed which carries or has carried on business in Malta;
- (c) cash or items of value including but not limited to works of art or jewellery or precious metals; and
- (d) land or any interest therein;

"the Unit" means the unit established by article 15.

- (2) (a) A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity.
- (b) A person can be separately charged and convicted of both a money laundering offence under this Act and of an underlying criminal activity from which the property or the proceeds, in respect of which he is charged with money laundering, derived.
- (c) For the purposes of this subarticle, "underlying criminal activity" refers to the criminal activity from

which the property or other proceeds, which are involved in a money laundering offence under this Act have been directly or indirectly derived.

PART I

Added by:
XXXI. 2001.3.

INVESTIGATION AND PROSECUTION OF OFFENCES

3. (1) Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40), or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment.

Offences.
Amended by:
III. 2002.166;
L.N. 425 of 2007;
XXXI. 2007.44;
L.N. 105 of 2008.

(2) Where an offence against the provisions of this Act is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2A) (a) Every person charged with an offence against this Act shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall be liable -

Direction by the
Attorney General.

- (i) on conviction by the Criminal Court to the punishment of imprisonment for a term of not less than three years but not exceeding fourteen years, or to a fine (*multa*) of not less than twenty-three thousand two hundred and ninety-three euro and seventy-three cents (23,293.73) but not exceeding two million three hundred and twenty-nine thousand three hundred and seventy-three euro and forty cents (2,329,373.40), or to both such fine and imprisonment; or
 - (ii) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) to the punishment of imprisonment for a term of not less than six months but not exceeding nine years, or to a fine (*multa*) of not less than two thousand three hundred and twenty-nine euro and thirty-seven cents (2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (116,468.67), or to both such fine and imprisonment.
- (b) Notwithstanding that the Attorney General has directed in accordance with the provisions of paragraph (a) that a person be tried in the Criminal

Court, he may, at any time before the filing of the bill of indictment or at any time after filing the bill of indictment before the jury is empanelled, and with the consent of the accused, direct that that person be tried before the Court of Magistrates, and upon such direction the Court of Magistrates as a court of criminal judicature shall become competent to try that person as if no previous direction had been given. Where the Attorney General has given such new direction after the filing of the bill of indictment, the registrar of the Criminal Court shall cause the record to be transmitted to the Court of Magistrates, and shall cause a copy of the Attorney General's direction to be served on the Commissioner of Police.

Cap. 9. (c) Notwithstanding the provisions of article 370 of the Criminal Code and without prejudice to the provisions of subarticle (2), the Court of Magistrates shall be competent to try all offences against this Act as directed by the Attorney General in accordance with the provisions of subarticle (1).

Cap. 101. (3) In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply.

Cap. 9. (4) Where the person found guilty of an offence of money laundering under this Act is an officer of a body corporate as is referred to in article 121D of the Criminal Code or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

Cap. 9. (5) (a) Without prejudice to the provisions of article 23 of the Criminal Code the court shall, in addition to any punishment to which the person convicted of an offence of money laundering under this Act may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of subarticle (4), order the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said subarticle (4) and any property of or in the possession or under the control of any person found guilty as aforesaid or of a body corporate as mentioned in this subarticle shall, unless proved to the contrary, be deemed to be derived from the offence

of money laundering and liable to confiscation or forfeiture by the court even if in the case of immovable property such property has since the offender was charged passed into the hands of third parties, and even if the proceeds of property, movable or immovable, are situated in any place outside Malta:

Provided that, for the purposes of this subarticle, "proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property.

- (b) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine shall be recoverable as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.
- (c) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.
- (6) Without prejudice to the provisions of article 5 of the Criminal Code, the Maltese courts shall also have jurisdiction over any offence of money laundering under this Act in the same circumstances as are mentioned in article 121C of the Criminal Code.
- (7) The provisions of article 248E(4) of the Criminal Code and those of article 22(3A)(b) and (d) of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to the offences under this Act.

Forfeiture of proceeds.

Cap. 12.

Forfeiture of property derived from criminal activity.

Cap. 9.

Cap. 9.
Cap. 101.

4. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in article 3, he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporate) named in the order who appears to be in possession of particular material or material of a particular description which is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with,

Additional powers of investigation.
Amended by:
III. 2004.80;
XIV. 2006.106;
L.N. 425 of 2007;
XXXI. 2007.45.

the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for such material.

(2) Where an investigation order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

(3) An investigation order -

- (a) shall not confer any right to production of, access to, or search for communications between an advocate or legal procurator and his client, and between a clergyman and a person making a confession to him, which would in legal proceedings be protected from disclosure by article 642(1) of the Criminal Code or by article 588(1) of the Code of Organization and Civil Procedure;
- (b) shall, without prejudice to the provisions of the foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and
- (c) may be made in relation to material in the possession of any government department.

(4) Where the material to which an application under subarticle (1) relates consists of information contained in a computer, the investigation order shall have effect as an order to produce the material or give access to such material in a form in which it can be taken away and in which it is visible and legible.

(5) Any person who, having been ordered to produce or grant access to material as provided in subarticle (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

(6) Together with or separately from an application for an investigation order, the Attorney General may, in the circumstances mentioned in subarticle (1), apply to the Criminal Court for an

Cap. 9.

Cap. 12.

order (hereinafter referred to as an "attachment order") -

- (a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect;
- (b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other movable property so attached; and
- (c) prohibiting the suspect from transferring or otherwise disposing of any movable or immovable property.

(6A) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.

(7) Before making an investigation order or an attachment order, the court may require to hear the Attorney General in chambers and shall not make such order -

- (a) unless it concurs with the Attorney General that there is reasonable cause as provided in subarticle (1); and
- (b) in the case of an investigation order, unless the court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates -
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of communications referred to in subarticle (3)(a).

(8) The provisions of article 381(1)(a), (b) and (e) and of article 382(1) of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to the attachment order. Cap. 12.

(9) An attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police not below the rank of inspector.

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be

liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other movable property attached as provided in subarticle (6)(a) or in the transfer or disposal by the suspect of any movable or immovable property in contravention of subarticle (6)(c), the fine shall always be at least twice the value of the money or property in question:

Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

(11) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in subarticle (9), cease to be operative on the expiration of thirty days from the date on which it is made; and the court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regards to the offence mentioned in article 3 is available:

Provided that the said period of thirty days shall be held in abeyance for such time as the suspect is away from these Islands and the Attorney General informs of this fact the garnishee by notice in writing served in the manner provided for in subarticle (9).

(12) In the course of any investigation of an offence against article 3, the Executive Police may request a magistrate to hear on oath any person who they believe may have information regarding such offence; and the magistrate shall forthwith hear that person on oath.

(13) For the purpose of hearing on oath a person as provided in subarticle (12) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a court of criminal inquiry as well as the powers mentioned in article 554 of the Criminal Code; provided that such hearing shall always take place behind closed doors.

(14) It shall not be lawful for any court to issue a warrant of prohibitory injunction to stop the execution of an investigation order.

4A. The provisions of article 30B of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to proceeds within the meaning of article 3(5).

Cap. 9.

Applicability of
Dangerous Drugs
Ordinance.
Added by:
III. 2002.166.
Cap. 101.

4B. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in article 3, he may apply to the Criminal Court for an order (hereinafter referred to as a "monitoring order") requiring a bank to monitor for a specified period the transactions or banking operations being carried out through one or more accounts in the name of the suspect, or through one or more accounts suspected to have been used in the commission of the offence or which could provide information about the offence or the circumstances thereof, whether before, during or after the commission of the offence, including any such accounts in the name of legal persons. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring and, once the information is collated, the person or authority receiving the information shall transmit that information to the Attorney General.

Monitoring order.
Added by:
VII. 2010.60.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

5. (1) Where a person is charged under article 3, the court shall at the request of the prosecution make an order -

Freezing of
property of person
accused.
Amended by:
L.N. 425 of 2007.

- (a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and
- (b) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the court may also -

- (a) authorise the payment of debts which are due by the accused to bona fide creditors and which were contracted before such order was made; and

(b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and

(b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The court may for particular circumstances vary such order, and the provisions of the foregoing subarticles shall apply to such order as so varied.

(4) Every such order shall contain the name and surname of the accused, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and the number of his identity card or other identification document, if any.

(5) Where any money is or becomes due to the accused from any person while such order is in force such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the accused.

(6) When such order ceases to be in force as provided in subarticle (2)(b) the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

Penalty for
contravening court
order.
Amended by:
L.N. 425 of 2007;
XXXI. 2007.46.

6. Any person who acts in contravention of a court order mentioned in article 5 shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the person charged the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

Special court
proceedings.
Amended by:
XXXI. 2007.47.

7. (1) Where an order of forfeiture is made under article 3(5), the person found guilty and any other person having an interest may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of an offence under article 3 or is otherwise involved in the offence of money laundering, nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

(2) Such action shall be brought not later than three months

from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

(3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.

(6) The court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties 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.

(7) Saving the preceding provisions of this article, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.

Cap. 12.

(8) Any decision revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

8. When the court allows the demand for a declaration as provided in article 7(1) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period of its forfeiture.

Reversion of property ceasing to be forfeited.

9. (1) Where the Attorney General receives a request made by the judicial or prosecuting authority of any place outside Malta for investigations to take place in Malta in respect of a person (hereinafter referred to as "the suspect") suspected by that authority of an act or omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence under article 3, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply to that application and to the suspect and to any investigation or attachment order made by the court as a result of that application.

Powers of investigation in connection with offences cognizable by courts outside Malta.
Added by:
II. 1998.9.

Cap. 101.

	<p>(2) The words "investigation order" in subarticles (2) and (5) of the same article 24A shall be read and construed as including an investigation order made under the provisions of this article.</p> <p>(3) The words "attachment order" in article 24A(6A) of the Dangerous Drugs Ordinance shall be read and construed as including an attachment order made under the provisions of this article.</p>
<p>Cap. 101.</p> <p>Transactions or banking operations carried out through one or more accounts. <i>Added by:</i> <i>VII. 2010.61.</i></p>	<p>9A. Where the request referred to in the preceding article is made for the purpose of monitoring the transactions or banking operations being carried out through one or more accounts of a suspect, the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 4B shall apply <i>mutatis mutandis</i>.</p>
<p>Freezing of property of person accused with offences cognizable by courts outside Malta. <i>Added by:</i> <i>II. 1998.9.</i></p> <p>Cap. 101.</p>	<p>10. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused") charged or accused in proceedings before the courts of that place of an offence consisting in an act or an omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence under article 3, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") having the same effect as an order as is referred to in article 22A(1) of the Dangerous Drugs Ordinance, and the provisions of the said article 22A shall, subject to the provisions of subarticle (2) of this article, apply <i>mutatis mutandis</i> to that order.</p>
<p>Cap. 101.</p>	<p>(2) The provisions of article 24C(2) to (5) of the Dangerous Drugs Ordinance shall apply to an order made under this article as if it were an order made under the said article 24C.</p>
<p>Cap. 101.</p>	<p>(3) Article 22B of the Dangerous Drugs Ordinance shall also apply to any person who acts in contravention of a freezing order under this article.</p>
<p>Enforcement of confiscation orders made by courts outside Malta following conviction for offences cognizable by those courts. <i>Added by:</i> <i>II. 1998.9.</i> Cap. 101.</p>	<p>11. (1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person convicted of a relevant offence shall be enforceable in Malta in accordance with the provisions of article 24D(2) to (11) of the Dangerous Drugs Ordinance.</p> <p>(2) For the purposes of this article "confiscation order" includes any judgment, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property as is described in subarticle (1).</p> <p>(3) For the purposes of this article "relevant offence" means any offence consisting in any act which if committed in these Islands, or in corresponding circumstances, would constitute the offence mentioned in article 3.</p>

12. (1) The Minister may make rules or regulations generally for the better carrying out of the provisions of this Act and in particular may by such rules or regulations provide for the regulation and control of banks, credit and other financial institutions to provide *inter alia* for procedures and systems for training, identification, record-keeping, internal reporting and reporting to supervisory authorities for the prevention of money laundering and funding of terrorism.

Rules and regulations.
Amended by:
VI. 2005.5;
L.N. 425 of 2007.

(2) The Minister may by regulations extend the provisions of this Act in whole or in part and of any regulations made thereunder to categories of undertakings and to professions which engage in activities which, in the opinion of the Minister, are particularly likely to be used for money laundering purposes or funding of terrorism.

(3) Rules or regulations made under this article may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (€46,587.47) or imprisonment for a term not exceeding two years or both such fine and imprisonment.

13. Saving the provisions of article 12, the Minister may, in consultation with the Minister responsible for justice -

Matters to be prescribed by regulations.

- (a) prescribe by regulation any matter required to be prescribed by this Act;
- (b) by regulation amend, alter or add to the list of offences specified in the Second Schedule to this Act.

PART II

FINANCIAL INTELLIGENCE ANALYSIS UNIT

14. In this Part, unless the context otherwise requires:

Definitions.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

"subject person" means any person required to maintain internal reporting procedures and to report transactions suspected to involve money laundering or funding of terrorism under regulations in force from time to time under this Act or as may be prescribed under this Act;

"supervisory 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;

"the Board" means the Board of Governors referred to in article 18;

"the Chairman" means the Chairman of the Board appointed under article 20;

"the Deputy Chairman" means the Deputy Chairman of the Board appointed under article 20;

"the Director" means the Director of the Unit appointed or recruited under article 23.

Establishment of
the Unit.
Added by:
XXXI. 2001.4.

15. (1) There shall be a government agency, to be known as the Financial Intelligence Analysis Unit.

(2) The Unit shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of concluding memoranda of understanding or other agreements with any foreign body, authority or agency as is referred to in article 16(1)(k), of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the borrowing of money.

(3) The Unit shall enter into an agency performance agreement with the Minister which agreement shall determine the funding of the agency and, without prejudice to the generality of article 16(1), any specific tasks within the scope of the functions of the Unit which are to be addressed and achieved by the Unit.

(4) The members of the Unit and all its employees shall abide by any Code of ethics applicable to public officers and shall, subject to any law to the contrary, have the same obligations thereunder:

Provided that the Unit may, with the concurrence of the Minister, draw up service values and a Code of Ethics to supplement any public service Code of Ethics in respect of the Unit.

Functions of the
Unit.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

16. (1) Subject to the other provisions of this Act and without prejudice to any other power or function conferred on it by this Act or by any other law, the Unit shall be responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism and without prejudice to the generality of the aforesaid shall in particular have the following functions:

- (a) to receive reports of transactions suspected to involve money laundering or funding of terrorism made by any subject person in pursuance of any regulation made under article 12, to supplement such reports with such additional information as may be available to it or as it may demand, to analyse the report together with such additional information and to draw up an analytical report on the result of such analysis;
- (b) to send any analytical report as is referred to in paragraph (a) to the Commissioner of Police for further investigation if having considered the suspicious transaction report, the Unit also has reasonable grounds to suspect that the transaction is suspicious and could involve money laundering or funding of terrorism;
- (c) to monitor compliance by subject persons and to co-operate and liaise with supervisory authorities to ensure such compliance;

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- (d) to send to the Commissioner of Police together with any analytical report sent in accordance with paragraph (b) or at any time thereafter any information, document, analysis or other material in support of the report;
 - (e) to instruct any subject person to take such steps as it may deem appropriate to facilitate any money-laundering or funding of terrorism investigation in general or the investigation of any particular suspicious transaction report;
 - (f) to gather information on the financial and commercial activities in the country for analytical purposes with a view to detecting areas of activity which may be vulnerable to money laundering or funding of terrorism;
 - (g) to compile statistics and records, disseminate information, make recommendations, issue guidelines and advice the Minister on all matters and issues relevant to the prevention, detection, investigation, prosecution and punishment of money laundering or funding of terrorism offences;
 - (h) to promote the training of, and to provide training for, personnel employed with any subject person in respect of any matter, obligation or activity relevant to the prevention of money laundering or funding of terrorism;
 - (i) to consult with any person, institution or organization as may be appropriate for the purpose of discharging any of its functions;
 - (j) to advise and assist persons, whether physical or legal, to put in place and develop effective measures and programmes for the prevention of money laundering and funding of terrorism;
 - (k) upon request or on its own motion, to exchange information with any foreign body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in this subarticle and with any supervisory authority in Malta or with any supervisory authority outside Malta which it deems to have equivalent or analogous functions as a supervisory authority in Malta, subject to such conditions and restrictions 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, where that information may be relevant to the processing or analysis of information or to investigations regarding financial transactions related to money laundering or funding of terrorism and the natural or legal persons involved;
 - (l) to report to the Commissioner of Police any activity

which it suspects involves money laundering or funding of terrorism and of which it may become aware in the course of the discharge of any of its functions.

(2) The Unit shall at least once a year prepare a report on its activities in general to the Minister and shall afford to the Minister facilities for obtaining information with respect to its property and its activities in general and furnish him with returns, accounts and other information with respect thereto.

Liability for damages.
Added by:
XXXI. 2001.4.

17. The Unit, its Board, officers and employees shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Act, unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

Distribution of duties of the Unit.
Added by:
XXXI. 2001.4.

18. (1) The Unit shall consist of a Board and a Director.

(2) The Board shall be responsible for the policy to be adopted by the Unit and to be executed and pursued by the Director and to ensure that the Director carries out that policy accordingly. The Board shall also be responsible for advising the Minister as provided in article 16(1)(g).

(3) The Director shall be responsible for the execution of the policy established by the Board and for carrying out all the functions of the Unit not attributed by this Act to the Board in accordance with the policy and subject to the general supervision of the Board.

(4) The Board may appoint any officer or any member of the staff of the Unit to act as director when the Director is absent, unable to act or on vacation or during any vacancy in the office of the Director.

Composition of the Board.
Added by:
XXXI. 2001.4.

19. (1) The Board shall consist of:

- (a) four members appointed by the Minister in the manner provided in subarticle (2);
- (b) not more than two other members, as may be requested by the Board, appointed by the Minister in the manner provided in subarticle (3).

(2) The Minister shall appoint the four members referred to in subarticle (1)(a) by selecting one member from each of four panels, each of at least three persons, nominated respectively by the Attorney General, the Governor of the Central Bank, the Chairman of the Malta Financial Services Authority and the Commissioner of Police.

(3) The Minister shall appoint each additional member as may be requested by the Board in pursuance of the provisions of subarticle (1)(b) from a panel of not less than three persons nominated by the authority to be indicated by the Board with respect to each additional member.

(4) The members of the Board shall be appointed for a term of three years against such remuneration as the Minister may

determine and may be re-appointed in the manner laid down in subarticles (2) or (3), as the case may be, on the expiration of their term of office.

(5) The members of the Board shall discharge their duties in their own individual judgement and shall not be subject to the direction or control of any other person or authority.

(6) A person shall not be qualified to be appointed, or to hold office, as a member of the Board if he:

- (a) is legally incapacitated; or
- (b) has been declared bankrupt or has made a composition or scheme of arrangement with his creditors; or
- (c) has been convicted of an offence against this Act or of an offence listed in the First Schedule or in the Second Schedule or of an offence of money laundering against the provisions of the Dangerous Drugs Ordinance or of the Medical and Kindred Professions Ordinance; or
- (d) is not a salaried official on the permanent staff in the service of the official by whom he is to be or has been recommended for appointment; or
- (e) is a salaried official of or is otherwise employed with or in the service of a subject person or is in any other manner professionally connected to a subject person.

Cap. 101.
Cap. 31.

(7) A member of the Board may be relieved of office by the Minister, after consultation with the official by whom the member was recommended, on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or to any other cause, or of misbehaviour; and, for the purposes of this subarticle, repeated unjustified non-attendance of Board meetings may be deemed to amount to misbehaviour.

(8) A member of the Board may also resign from office by letter addressed to the Minister.

(9) Where any vacancy occurs in the membership of the Board for any reason other than the lapse of the term of office that vacancy shall, for the remainder of the term of office which has become vacant, be filled by another member appointed by the Minister from among a panel of not less than three persons nominated by the official who nominated the panel from among whom the member who vacated office had been appointed.

20. A Chairman and Deputy Chairman shall be appointed by the Prime Minister after consultation with the Minister from among the members of the Board. The Chairman shall be the Head of the Unit and the Deputy Chairman shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or while he is on vacation or during any vacancy in the office of chairman.

Chairman and
Deputy Chairman
of the Board.
Added by:
XXXI. 2001.4.

21. (1) The Board shall meet within one month from its constitution and as often as may be necessary or expedient thereafter, but in no case less frequently than ten times in each year.

Meetings of the
Board.
Added by:
XXXI. 2001.4.

The meetings of the Board shall be called by the Chairman on his own initiative or at the request of any two of the other members or at the request of the Director.

(2) The Board shall not act unless a quorum consisting of the Chairman or Deputy Chairman and not less than two other members is present.

(3) The meetings of the Board shall be chaired by the Chairman, or in his absence, by the Deputy Chairman.

(4) The decisions of the Board shall be adopted by a simple majority of the votes of the members present and voting and in the event of an equality of votes the member presiding at the meeting shall have and exercise a second or casting vote.

(5) The Director shall be entitled to attend the meetings of the Board and to take part in the discussions, but shall have no vote. Saving the provisions of subarticle (2) the absence of the Director from any meeting shall not invalidate the proceedings of the meeting.

(6) Any vacancy among the members of the Board, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the Board.

(7) Subject to the provisions of this Act, the Board may regulate its own procedure.

(8) All acts done by any person acting in good faith as a member of the Unit shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered.

Decisions in case
of emergency.
Added by:
XXXI. 2001.4.

22. In case of emergency, decisions shall be taken by at least two members of the Board one of whom shall be the Chairman or Deputy Chairman.

The Executive and
other staff of the
Unit.
Added by:
XXXI. 2001.4.

23. The Director and the other officers and staff of the Unit shall be appointed or recruited by the Board according to such procedures and on such terms and conditions and in such numbers as the Board may determine.

The police liaison
officer.
Added by:
XXXI. 2001.4.

24. (1) The Commissioner of Police shall detail a police officer not below the rank of Inspector to act as a liaison officer to liaise with the Unit.

(2) Notwithstanding anything to the contrary in any other law the police liaison officer detailed as aforesaid shall be bound to keep secret and confidential any information that may come to his knowledge as a result of his duties as a liaison officer with the Unit and shall not disclose such information to any person other than a member of the Unit or any of its staff in the course of the exercise of his functions as a liaison officer with the Unit.

Provided that where the Unit has submitted a report to the Police in accordance with the provisions of this Act the Unit may, without prejudice to the provisions of article 31(4), authorise the police liaison officer to disclose to the Police, or to any other competent authority identified by the Unit as having an interest in

the investigation of the report, any information relevant to the said report that may have come or may come to the knowledge of the police liaison officer in the course of his assignment with the Unit.

(3) The police liaison officer shall, subject to complying with any internal requirements of the police force, make available to the Unit or to any member of its staff any information at the disposal of the police or which is part of police records to the extent that such information is relevant to the exercise of the functions of the Unit.

(4) The police liaison officer shall assist the Unit in the analysis and processing of suspicious transaction reports and of information and intelligence data collected by the Unit in the exercise of its functions and shall advise the Unit on investigative techniques and on all law enforcement issues.

25. (1) The legal and judicial representation of the Unit shall vest in the Chairman and in his absence in the Deputy Chairman:

Legal and judicial representation of the Unit.

Added by:
XXXI. 2001.4.

Provided that the Unit may appoint any one or more of its other members or of its officers or employees to appear in the name and on behalf of the Unit in any judicial proceedings and in any act, contract, instrument or other document whatsoever.

(2) Any document purporting to be an instrument made or issued by the Unit and to be signed by the Chairman or by the Deputy Chairman on behalf of the Unit shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Unit.

26. (1) The Unit shall be responsible to ensure that subject persons comply with the provisions of this Act and any regulations made thereunder in so far as these are applicable to them.

Compliance.
Added by:
XXXI. 2001.4.

(2) If the Unit so considers necessary it may:

- (a) authorise any of its officers, employees or agents, on producing evidence of his authority, to require any subject person to provide him forthwith with such information or documents relating to that subject person's internal procedures for 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 subarticle (1);
- (b) by notice in writing served on a subject person require that person to produce, within the time and at the place as may be specified in that notice, any documents as may be so specified in the notice provided such documents are reasonably required by the Unit for the performance of its functions under this Act.

(3) Where the documents required under subarticle (2) are produced, the Unit may make notes and take copies of the whole or any part of such documents.

(4) Where the documents required under subarticle (2) are not produced, the Unit may require the subject person who was

required to produce them to state, in writing, why such documents could not be produced.

(5) Subject to the provisions of article 27, a supervisory authority is, for the purposes of subarticle (2)(a), considered to be an agent of the Unit.

Co-operation with
supervisory
authorities.
Added by:
XXXI. 2001.4.

27. (1) Without prejudice to the generality of the provisions of this Act, the Unit shall co-operate with the supervisory authorities to ensure that the financial and other systems are not used for criminal purposes and thus safeguard their integrity.

(2) Without prejudice to the special provisions of any other law applicable to them, the supervisory authorities shall extend all assistance and co-operation to the Unit in the fulfilment of its responsibilities under this Act.

(3) In pursuance of its responsibilities under the provisions of article 26, the Unit may request a supervisory authority to do all or any of the following and the supervisory authority shall not unreasonably withhold its assistance:

- (a) to provide the Unit with such information of which the supervisory authority may become aware of in the course of its supervisory functions and which indicates that a subject person falling under the competence of the supervisory authority may not be in compliance with any requirements under this Act or any regulations made thereunder;
- (b) to carry out, on behalf of the Unit, on-site examinations on subject persons falling under the competence of the supervisory authority with the aim of establishing that person's compliance with the provisions of this Act and any regulations made thereunder and to report to the Unit accordingly.

(4) The Unit may authorise any of its officers or employees to accompany the supervisory authority in any on-site examination as may be required by the Unit under subarticle (3)(b) and any such officer or employee shall be entitled, on producing, if requested, evidence of his authority, to enter any premises of the subject person on whom an examination is being undertaken.

Delay of execution
of a suspicious
transaction.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

28. (1) Where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering or funding of terrorism that subject person shall inform the Unit before executing the transaction giving all the information concerning the transaction including the period within which it is to be executed. Such information may be given by telephone but shall be forthwith confirmed by fax or by any other written means and the Unit shall promptly acknowledge the receipt of the information.

(2) Where the matter is serious or urgent and it considers such action necessary, the Unit may oppose the execution of a transaction before the expiration of the period referred to in subarticle (1) and notice of such opposition shall be immediately notified by fax or by any other written means.

(3) The opposition by the Unit shall halt the execution of the transaction for twenty-four hours from the time of the notification referred to in subarticle (1) unless the Unit shall authorise earlier, by fax or otherwise in writing, the execution of the transaction.

(4) Where within the period referred to in subarticle (1) no opposition has been made by the Unit as provided in subarticle (2) the subject person concerned may proceed to the execution of the transaction in question and where opposition has been made as provided aforesaid the subject person concerned may proceed to the execution of the transaction in question upon the lapse of the period referred to in subarticle (3) unless in the meantime an attachment order has been served on the subject person.

29. Where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering or funding of terrorism but it is unable to inform the Unit before the transaction is executed, either because it is not possible to delay executing the transaction due to its nature, or because delay in executing the transaction could prevent the prosecution of the individuals benefiting from the suspected money laundering or funding of terrorism, the subject person shall inform the Unit immediately after executing the transaction giving the reason why the Unit was not so informed before executing the transaction.

Action after execution of suspicious transaction which could not be delayed.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

30. (1) When the Unit receives a report as is referred to in article 16(1)(a) or when from information in its possession the Unit suspects that any subject person may have been used for any transaction suspected to involve money laundering or funding of terrorism the Unit may demand from the subject person making the report or from the subject person which is suspected of having been used for any transaction suspected to involve money laundering or funding of terrorism as well as from any other subject person, the police, any Government Ministry, department, agency or other public authority, or any other person, physical or legal, and from any supervisory authority, any additional information that it deems useful for the purpose of integrating and analysing the report or information in its possession.

Power of the Unit to demand information.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

(2) Notwithstanding anything contained in the Professional Secrecy Act and any obligation of secrecy or confidentiality under any other law the subject person or any other person, physical or legal, and any authority or entity from whom information is demanded by the Unit in pursuance of the provisions of subarticle (1) shall communicate the information requested to the Unit and for the purposes of article 257 of the Criminal Code any such disclosure shall be deemed to be a disclosure of information to a public authority compelled by law:

Cap. 377.

Cap. 9.

Provided that nothing in this subarticle shall imply any obligation on the Attorney General to communicate to the Unit any information which in any way relates to or is connected with or came into his possession as a result of the exercise by him of any powers referred to in article 91(3) of the Constitution or any obligation on any person to communicate to the Unit any information which would in legal proceedings be protected from disclosure by article 642(1) of the Criminal Code or by article 588(1) of the Code of Organization and Civil Procedure.

Cap. 9.
Cap. 12.

Power of Unit to demand information under article 16.
Added by:
XIII. 2004.126.

30A. (1) Notwithstanding anything contained in any other law, the Unit may likewise demand from any person, authority or entity, as is referred to in article 30, any information it deems relevant and useful for the purpose of pursuing its functions under article 16.

(2) The provisions of article 30(2) shall *mutatis mutandis* apply where any information is demanded by the Unit under this article.

Unit may require the subject person to monitor transactions or banking operations.
Added by:
VII. 2010.62.

30B. (1) When the Unit receives a report as is referred to in article 16(1)(a) or when from information in its possession the Unit suspects that any subject person may have been used for any transaction suspected to involve money laundering or funding of terrorism or that property is being held by a subject person that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity or from an act or acts of participation in criminal activity, the Unit may require the subject person to monitor for a specified period the transactions or banking operations being carried out through one or more accounts in the name of any person suspected of the said offences, or through one or more accounts suspected to have been used in the commission of any of the said offences or which could provide information about the offences or the circumstances thereof, whether before, during or after the commission of the offences, including any such accounts in the name of legal persons. The subject person shall communicate to the Unit the information resulting from the monitoring and the Unit may use that information for the purpose of carrying out its analysis and reporting functions under this Act.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, discloses that an investigation is being undertaken or makes any other disclosures likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

(3) The provisions of article 30(2) shall *mutatis mutandis* apply where any information is demanded by the Unit under this article.

31. (1) Where following an analysis of a suspicious transaction report and of the information in its possession relevant to the report the Unit is of the opinion that a reasonable suspicion of money laundering or funding of terrorism persists the report together with any relevant information in its possession and the results and conclusions of any analysis carried out by the Unit shall be transmitted to the Police for further investigation.

Transmission of information to police for investigation.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

(2) The provisions of subarticle (1) shall also apply *mutatis mutandis* to any suspicion of money laundering or funding of terrorism which the Unit may have formed on the basis of information in its possession without any suspicious transaction report having been made to the Unit or independently of any such report.

(3) Where the Unit transmits information to the Police in pursuance of the provisions of subarticles (1) and (2) and a subject person over which another authority or agency has supervisory or regulatory functions is involved the Unit shall inform the said authority or agency of action taken.

(4) Where the Unit transmits information to the Police in pursuance of subarticles (1) and (2) it shall thereafter transmit to the Police any further relevant information in respect of the suspicion communicated to the Police as aforesaid.

32. The Unit shall, at the request of the subject person, give to the subject person which reports any transaction suspected to involve money laundering or funding of terrorism such information as the Unit considers to be of interest to the subject person in order to enable that subject person to regulate its affairs and to assist it to carry out its duties under this Act or any regulation made thereunder.

Information.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

33. Any official or employee of the Unit who, in any circumstances other than those provided for in the proviso to article 24(2), discloses to the person concerned or to a third party that an investigation is being carried out by the Unit, or that information has been transmitted to the Unit by a subject person, or that the Unit has transmitted information to the police for investigation, shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67) or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Tipping off by the officials or employees of the Unit.
Added by:
XXXI. 2001.4.
Amended by:
L.N. 425 of 2007.

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

Confidentiality and permissible disclosure of information.
Added by:
XXXI. 2001.4.
Amended by:
VI. 2005.5.

- (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) when specifically and expressly required to do so

under a provision of any law.

(2) The Unit may disclose any document or information referred to in subarticle (1) to an organization outside Malta which in the opinion of the Unit has functions similar to those of the Unit and which has similar duties of secrecy and confidentiality as those of the Unit or to a supervisory authority in Malta or to a supervisory authority outside Malta which in the opinion of the Unit has duties similar to those of a supervisory authority in Malta.

(3) The Unit may, in particular, refuse to disclose any document or information if:

- (a) in its opinion such disclosure could lead to causing prejudice to a criminal investigation in course in Malta; or
- (b) due to exceptional circumstances, such disclosure would be clearly disproportionate to the legitimate interests of Malta or of a natural or legal person; or
- (c) such disclosure would not be in accordance with fundamental principles of Maltese law:

Provided that any refusal under this subarticle shall be clearly explained to the body or authority requesting the disclosure of the document or information.

(4) The Unit may also disclose any document or information referred to in subarticle (1) to a competent authority in Malta or outside Malta investigating 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 such disclosure shall be subject to the condition that the information or document disclosed shall not, without the express consent of the Unit, be used for any other purpose other than that of the investigation or for any subsequent prosecution for the offence which is the subject of the investigation or for any proceedings which may lead to the confiscation of any proceeds from the said offence or of funds, assets or other property used for the purpose of funding of terrorism.

Revenue of the
Unit.
Added by:
XXXI. 2001.4.

35. The revenue of the Unit shall consist of:

- (a) fees payable to the Unit for services rendered by it;
- (b) rents, interests and profits accruing from property, deposits and other assets of the Unit;
- (c) any monies advanced to it by the Minister;

(d) any other money receivable or received by the Unit.

36. (1) The Unit may:

Powers of the Unit.

Added by:
XXXI. 2001.4.

- (a) hold accounts with any bank;
- (b) invest any of its liquid assets in short and medium term first class securities as approved by the Board;
- (c) acquire, purchase, lease or dispose of any movable or immovable property required for the conduct of its business or for any purposes ancillary or incidental to the performance of its functions under this Act.

(2) For the purpose of carrying out any of its functions under this Act, the Unit may, with the approval in writing of the Minister, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister may in writing approve.

37. The Minister may make advances to the Unit of such sums as the Minister may consider to be required by the Unit for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as the Minister may deem appropriate. Any such advances may be made by the Minister out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advances.

Advances by the
Government.
Added by:
XXXI. 2001.4.

38. (1) The Director shall, not later than six weeks before the end of each financial year, submit to the Board estimates of the income and expenditure of the Unit for the following financial year:

Estimates and
expenditure.
Added by:
XXXI. 2001.4.

Provided that the estimates for the first financial year of the Unit shall be prepared and adopted within such time as the Minister may by notice in writing to the Unit specify.

(2) In the preparation of such estimates the Unit shall endeavour to ensure that the total revenues of the Unit are at least sufficient to meet all sums properly chargeable to its Income and Expenditure Account, including but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Board may direct.

(4) Before the end of each financial year the Board shall consider and adopt, with or without amendments as the case may be, the estimates submitted to it for the following financial year.

(5) If in respect of any financial year it is found that the amount approved by the Board is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Director may cause supplementary estimates to be prepared and sent forthwith to the Board for adoption and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to supplementary estimates.

Determination and allocation of profits.

Added by:
XXXI. 2001.4.

39. All profits realised by the Unit shall be put to a reserve fund which shall be used for such purposes as the Unit may deem to be required to meet the objects of the Unit, including the repayment of any liabilities.

Financial year.

Added by:
XXXI. 2001.4.

40. The financial year of the Unit shall begin on the first day of January and end on the thirty-first day of December:

Provided that the first financial year shall begin at the date of commencement of this article and shall end on the thirty-first day of December of the following year.

Audit.

Added by:
XXXI. 2001.4.

41. The Unit shall keep proper books of account in such manner as the Minister may from time to time direct. Such accounts shall be audited by auditors appointed by the Board with the concurrence of the Minister from among persons qualified to be appointed as auditors of a company under the law for the time being in force in Malta, as if the Unit were such a company, and shall moreover be subject to audit by the Auditor General.

Annual accounts.

Added by:
XXXI. 2001.4.

42. (1) The Board shall, as soon as may be but not later than three months after the close of each financial year, transmit to the Minister:

- (a) a copy of the annual accounts certified by the auditors;
- (b) a report on the operations of the Unit during the year.

(2) The report referred to in subarticle (1) shall be laid on the Table of the House by the Minister not later than six weeks after its receipt, or where the House is during the period not in session not later than the second week after the House resumes its sittings.

Exemption from taxes.

Added by:
XXXI. 2001.4.

43. The Unit shall be exempted from any liability for the payment of income tax and duty on documents and transfers under any law for the time being in force.

FIRST SCHEDULE

(Article 2)

Article 3 (1) (a) of the United Nations Convention

Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

- (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
- (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
- (iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
- (iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs, or psychotropic substances;
- (v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above.

SECOND SCHEDULE

(Article 2)

Amended by:
L.N. 71 of 1999.
Substituted by:
L.N. 176 of 2005.

Any criminal offence.

APPENDIX III.2

transmission of the record and the filing of the indictment shall commence to run anew, the first term commencing from the day on which the record is sent back to the Court of Magistrates.

(3) Where such other offence not included in the inquiry as aforesaid shall be altogether separate and distinct from the offence or offences included in the inquiry, a new and separate inquiry shall, on the demand of the Attorney General, be held in regard to such other offence.

(4) Any demand of the Attorney General under the provisions of this article shall be made in writing.

435A. (1) The provisions of article 4 of the Act shall apply *mutatis mutandis* where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence and the provisions of the said article 4 shall apply to any investigation order or attachment order applied for or issued by virtue of this subarticle as if it were an investigation order or attachment order applied for or issued under the same article 4 of the Act and in particular, the provisions of subarticles (12) and (13) of the said article 4 shall also apply to any investigation for a relevant offence by virtue of this subarticle.

Special powers of investigation.
Added by:
III. 2002.102.

(2) The provisions of article 5 of the Act shall apply *mutatis mutandis* where any person is charged with a relevant offence and the provisions of article 6 of the Act shall apply to any order issued by virtue of this subarticle as if it were an order issued under the said article 5.

(3) In this article the expressions "the Act" and "relevant offence" shall have the meaning assigned to them respectively by article 23A(1).

435AA. (1) Where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence (hereinafter referred to as "the suspect") he may apply to the Criminal Court for an order (hereinafter referred to as a "monitoring order") requiring a bank to monitor for a specified period the banking operations being carried out through one or more accounts of the suspect. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring.

Issuing of monitoring order of banking operations.
Added by:
XXXI. 2007.19.
Amended by:
VII. 2010.30.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the monitoring is taking place or has been applied for, discloses that such monitoring is taking place or has been applied for or makes any other disclosures likely to prejudice the monitoring operation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding twelve thousand euro (12,000) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subarticle, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the monitoring operation.

(3) For the purposes of this article, "relevant offence" means an offence, not being one of an involuntary nature, consisting of any act or omission which if committed in these islands, or in corresponding circumstances, would constitute an offence liable to the punishment of imprisonment or of detention for a term of more than one year.

Temporary
surrender of person
in custody to
foreign country.
Added by:
XXXI. 2007.19.

435AB. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody for the purpose of an investigation to be carried out or being carried out by a judicial, prosecuting or administrative authority of any place outside Malta at the request of a judicial, prosecuting or administering authority in Malta.

(2) The person surrendered shall be kept in custody in the place outside Malta to which he has been surrendered.

(3) Any time spent in custody in the place outside Malta shall be deemed to be time spent in custody in Malta.

Powers of
investigation in
connection with
offences
cognizable by
courts outside
Malta.
Added by:
III. 2002.102.
Amended by:
XXXI. 2007.20.
Cap. 101.

435B. (1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for investigations to take place in Malta in respect of a person (hereinafter in this article and in article 435BA referred to as "the suspect") suspected by that authority or court of a relevant offence, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A of the Dangerous Drugs Ordinance, hereinafter in this title referred to as "the Ordinance", shall *mutatis mutandis* apply to that application and to the suspect and to any investigation order or attachment order made by the court as a result of that application.

(2) The phrase "investigation order" in subarticles (2) and (5) of the same article 24A of the Ordinance shall be read and construed as including an investigation order made under the provisions of this article.

(3) The phrase "attachment order" in article 24A(6A) of the Ordinance shall be read and construed as including an attachment order under the provisions of this article.

Issuing of
monitoring order
of banking
operations.
Added by:
XXXI. 2007.21.
Amended by:
VII. 2010.31.

435BA. (1) Where the request referred to in the preceding article is made for the purpose of monitoring the banking operations being carried out through one or more accounts of a person suspected of a relevant offence within the meaning of article 435AA(3), the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 435AA shall apply *mutatis mutandis*.

(2) Where a person or authority has been indicated by the Attorney General as provided under article 435AA, that person or authority shall transmit the information resulting from the monitoring operation to the Attorney General.

APPENDIX III.3

SUBSIDIARY LEGISLATION 373.01

**PREVENTION OF MONEY LAUNDERING AND
FUNDING OF TERRORISM REGULATIONS**

31st July, 2008

LEGAL NOTICE 180 of 2008, as amended by Legal Notice 328 of 2009.

1. (1) The title of these regulations is the Prevention of Money Laundering and Funding of Terrorism Regulations. Title and scope.

(2) The objective of these regulations is to implement the provisions of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, including Directive 2006/70/EC of the European Commission of 1 August 2006 laying down implementing measures for Directive 2005/60/EC as regards the definition of politically exposed persons and as regards the technical criteria for simplified customer due diligence and for the exemption on grounds of a financial activity being conducted on an occasional or very limited basis, as may be amended from time to time, and any further implementing measures that may be issued thereunder.

2. (1) In these regulations, unless the context otherwise requires - Interpretation and application.

"the Act" means the Prevention of Money Laundering Act;

"applicant for business" means a legal or natural person, whether acting as principal or agent, who seeks to form a business relationship, or carry out an occasional transaction with a person who is acting in the course of either relevant financial business or relevant activity;

"beneficial owner" means the natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction is being conducted, and:

- (a) in the case of a body corporate or a body of persons, the beneficial owner includes any natural person or persons who -
- (i) ultimately own or control, whether through direct or indirect ownership or control, including, where applicable, through bearer share holdings, more than 25% of the shares or voting rights in that body corporate or body of persons other than a company that is listed on a regulated market which is subject to disclosure requirements consistent with Community legislation or equivalent international standards; or
 - (ii) otherwise exercise control over the management

Amended by:
L.N. 328 of 2009.
Cap. 373.

- of that body corporate or body of persons; and
- (b) in the case of any other legal entity or legal arrangement which administers and distributes funds, the beneficial owner includes:
 - (i) where the beneficiaries have been determined, a natural person who is the beneficiary of at least 25% of the property of the legal entity or arrangement;
 - (ii) where the beneficiaries have not yet been determined, the class of persons in whose main interest the legal entity or arrangement is set up or operates;
 - (iii) a natural person who controls at least 25% of the property of the legal entity or arrangement; and
 - (c) in the case of long term insurance business, the beneficial owner shall be construed to be the beneficiary under the policy;

"business relationship" means a business, professional or commercial relationship, which is expected to have an element of duration, between two or more persons, at least one of which is acting in the course of either relevant financial business or relevant activity;

"Case 1" (negotiations) means any case where negotiations take place between the parties with a view to the formation of a business relationship between them;

"Case 2" (suspicion) means any case where, regardless of any exemption or threshold, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business may have been, is, or may be engaged in money laundering or the funding of terrorism, or that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in money laundering or the funding of terrorism;

"Case 3" (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of fifteen thousand euro (€15,000) or more, and, where an occasional transaction involves a money transfer or remittance in accordance with regulation 7(11), the payment amount is one thousand euro (€1,000) or more;

"Case 4" (series of transactions) means any case where, in respect of two or more transactions -

- (a) it appears at the outset to a person dealing with any of the transactions that -
 - (i) the transactions are carried out by the same person and are of a similar character, and
 - (ii) the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is fifteen thousand euro (€15,000) or more; or
- (b) at any later stage it appears to such a person that the

provisions of paragraph (a)(i) and (ii) are satisfied;

"casino" shall have the same meaning as is assigned to it by article 2 of the Gaming Act and "casino licensee" in these regulations shall be construed accordingly; Cap. 400.

"collective investment scheme", "participants" and "units" have the same meanings as are assigned to these terms respectively in the Investment Services Act; Cap. 370.

"the Community" shall mean the European Community and, for the purposes of these regulations, shall include EEA States;

"company" has the same meaning as is assigned to it in the Companies Act; Cap. 386.

"criminal activity" has the same meaning as is assigned to the term in the Act;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2 May, 1992 as amended by the Protocol signed at Brussels on the 17 March, 1993 and as may be amended by any subsequent acts;

"established business relationship" means a business relationship formed by a person acting in the course of either relevant financial business or relevant activity where that person has carried out customer due diligence under procedures maintained by him, in accordance with the provisions of these regulations in relation to the formation of that business relationship;

"Financial Intelligence Analysis Unit" has the same meaning as is assigned to the term in the Act;

"funding of terrorism" means the conduct described in articles 328F and 328I both inclusive, of the Criminal Code; Cap. 9.

"group of companies" has the same meaning as is assigned to the term "group company" by the Companies Act so however that, for the purposes of these regulations, it shall include also any other body corporate registered or operating in a reputable jurisdiction and forming part of the group of companies and which is further licensed or otherwise authorised under the laws of that jurisdiction to carry out any activity equivalent either to relevant financial business or to relevant activity;

"long term insurance business" means the business of insurance of any of the classes specified in the Second Schedule to the Insurance Business Act; Cap. 403.

"money laundering" means the doing of any act which constitutes an offence under the Act, or in the case of an act committed otherwise than in Malta, would constitute such an offence if done in Malta;

"occasional transaction" means any transaction other than a transaction carried out in the exercise of an established business relationship formed by a person acting either in the course of relevant financial business or in the course of relevant activity;

"politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and shall

include their immediate family members or persons known to be close associates of such persons, but shall not include middle ranking or more junior officials;

"relevant activity" means the activity of the following legal or natural persons when acting in the exercise of their professional activities:

- (a) auditors, external accountants and tax advisors, including when acting as provided for in paragraph (c);
- (b) real estate agents;
- (c) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or execution of transactions for their clients concerning the -
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies;
 - (v) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider;
- (d) trust and company service providers not already covered under paragraphs (a), (c), (e) and (f);
- (e) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act;
- (f) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act;
- (g) casino licensee;
- (h) other natural or legal persons trading in goods whenever payment is made in cash in an amount equal to fifteen thousand euro (€15,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked; and
- (i) any activity which is associated with an activity falling within paragraphs (a) to (h);

"relevant financial business" means -

- (a) any business of banking or any business of an electronic money institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act; Cap. 371.
- (b) any activity of a financial institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Financial Institutions Act; Cap. 376.
- (c) long term insurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act or enrolled or required to be enrolled under the provisions of the Insurance Intermediaries Act, any affiliated insurance business carried on by a person in accordance with the Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations, and any business of insurance carried on by a cell company in accordance with the provisions of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations; S.L. 403.11
S.L. 386.10
- (d) investment services carried on by a person or institution licensed or required to be licensed under the provisions of the Investment Services Act; Cap. 370.
- (e) administration services to collective investment schemes carried on by a person or institution recognised or required to be recognised under the provisions of the Investment Services Act; Cap. 370.
- (f) a collective investment scheme marketing its units or shares, licensed or recognised, or required to be licensed or recognised, under the provisions of the Investment Services Act; Cap. 370.
- (g) any activity other than that of a scheme or a retirement fund, carried on in relation to a scheme, by a person or institution registered or required to be registered under the provisions of the Special Funds (Regulation) Act and for the purpose of this paragraph, "scheme" and "retirement fund" shall have the same meaning as is assigned to them in the said Act; Cap. 450
- (h) any activity of a regulated market and that of a central securities depository authorised or required to be authorised under the provisions of the Financial Markets Act; Cap. 345.
- (i) any activity under paragraphs (a) to (h) carried out by branches established in Malta and whose head offices are located inside or outside the Community;
- (j) any activity which is associated with a business falling within paragraphs (a) to (i);

"reputable jurisdiction" means any country having appropriate

legislative measures for the prevention of money laundering and the funding of terrorism, taking into account that country's membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism, and which supervises natural and legal persons subject to such legislative measures for compliance therewith;

"shell bank" means a credit institution or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is not affiliated with a regulated financial group;

"subject person" means any legal or natural person carrying out either relevant financial business or relevant activity;

"supervisory authority" means -

- (a) the Central Bank of Malta;
- (b) the Malta Financial Services Authority;
- Cap. 386. (c) the Registrar of Companies acting under articles 403 to 423 of the Companies Act;
- Cap. 386. (d) a person appointed by the Registrar of Companies under articles 403 to 423 of the Companies Act;
- Cap. 403. (e) an inspector appointed under article 30 of the Insurance Business Act, including when such inspector exercises his functions for the purposes of the Insurance Intermediaries Act by virtue of article 54 thereof;
- Cap. 487. (f) a person appointed under article 20 or article 22 of the Banking Act;
- Cap. 371. (g) a person appointed under article 14 or article 15 of the Financial Institutions Act;
- Cap. 376. (h) a person appointed under article 13 or article 14 of the Investment Services Act;
- Cap. 370. (i) the Lotteries and Gaming Authority acting under the Lotteries and Other Games Act and the Gaming Act, and any regulations issued thereunder;
- Cap. 438. (j) a person appointed under article 17 of the Lotteries and Other Games Act;
- Cap. 400. (k) 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;
- Cap. 438.

Cap. 9. "terrorism" means any act of terrorism as defined in article 328A of the Criminal Code<

"trust and company service providers" means any natural or legal person who, by way of business, provides any of the following services to third parties:

- (a) forming companies or other legal persons;
- (b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (c) providing a registered office, business address and other related services for a company, a partnership or any other legal person or arrangement;
- (d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
- (e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards. Cap. 345.

(2) Where these regulations are extended to professions and other categories of undertakings other than those referred to in this regulation and whose activities are particularly likely to be used for the purposes of money laundering or the funding of terrorism, these regulations shall apply in full or in part as may be established by such extension in accordance with the provisions of the Act, and the Financial Intelligence Analysis Unit shall inform the European Union Commission accordingly through the established appropriate channels.

(3) These regulations shall also apply where any 'relevant financial business' or any 'relevant activity' as defined in this regulation is undertaken or performed through the Internet or other electronic means.

(4) Where the Financial Intelligence Analysis Unit determines, or is otherwise informed, that a particular jurisdiction meets the criteria of a 'reputable jurisdiction' as defined in this regulation, it shall inform the relevant authorities of other Member States of the Community and the European Union Commission through the established appropriate channels.

3. (1) The Financial Intelligence Analysis Unit may determine that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or the funding of terrorism occurring, do not fall within the scope of relevant financial business as defined for the purposes of these regulations.

Relevant financial business on an occasional or very limited basis.

(2) In making a determination under subregulation (1) the Financial Intelligence Analysis Unit shall, subject to subregulation (3), apply all the following criteria:

- (a) the total turnover of the financial activity does not exceed fifteen thousand euro (€15,000), and the Financial Intelligence Analysis Unit may establish different thresholds not exceeding this amount depending on the type of financial activity;

- (b) each transaction per customer does not exceed five hundred euro (€500) whether the transaction is carried out in a single operation or in several operations which appear to be linked, and the Financial Intelligence Analysis Unit may establish different thresholds not exceeding this amount depending on the type of financial activity;
- (c) the financial activity is not the main activity and in absolute terms does not exceed five per centum (5%) of the total turnover of the legal or natural person concerned;
- (d) the financial activity is ancillary and not directly related to the main activity;
- (e) with the exception of paragraph (i) of the definition of 'relevant activity', the main activity is not an activity falling within the definition of relevant financial business or relevant activity; and
- (f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.

(3) In assessing the risk of money laundering or the funding of terrorism for the purposes of subregulation (1), the Financial Intelligence Analysis Unit shall pay particular attention to, and examine any financial activity which, is particularly likely, by its very nature, to be used or abused for money laundering or the funding of terrorism and the Financial Intelligence Analysis Unit shall not consider that financial activity as representing a low risk of money laundering or funding of terrorism if the information available suggests otherwise.

(4) In making a determination under subregulation (1) the Financial Intelligence Analysis Unit shall further state the reasons underlying the decision and shall revoke such determination should circumstances change.

(5) The Financial Intelligence Analysis Unit shall establish risk-based monitoring mechanisms or other adequate measures as is practicable to ensure that determinations under subregulation (1) are not abused for money laundering or the funding of terrorism.

Systems and training to prevent money laundering and the funding of terrorism.

4. (1) No subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless that subject person -

- (a) maintains the following measures and procedures established in relation to that business in accordance with the provisions of these regulations:
 - (i) customer due diligence measures;
 - (ii) record-keeping procedures; and
 - (iii) internal reporting procedures;
- (b) applies the measures and procedures established under paragraph (a) including when entering into or

undertaking non face-to-face relationships or transactions;

- (c) establishes policies and procedures on internal control, risk assessment, risk management, compliance management and communications that are adequate and appropriate to prevent the carrying out of operations that may be related to money laundering or the funding of terrorism;
- (d) takes appropriate measures from time to time for the purpose of making employees aware of -
 - (i) the measures and procedures under the provisions of paragraph (a) and paragraph (c), and any other relevant policies that are maintained by him; and
 - (ii) the provisions of the Prevention of Money Laundering Act; of the Sub-Title, Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences of Title IVA of Part II of Book First of the Criminal Code; and of these regulations; and
- (e) provides employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who may have been, is, or appears to be engaged in money laundering or the funding of terrorism.

Cap. 373.

Cap. 9.

(2) Subject persons shall ensure that they have in place appropriate procedures for due diligence when hiring employees.

(3) In this regulation, the term "employees" means those employees whose duties include the handling of either relevant financial business or relevant activity.

(4) Where a natural person undertakes any of the professional activities as defined under 'relevant activity' in regulation 2 as an employee of a legal person, the obligations under this regulation shall apply to that legal person.

(5) Any subject person who contravenes the provisions of this regulation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(6) In determining whether a subject person has complied with any of the requirements of subregulation (1), a court shall consider:

- (a) any relevant guidance or procedures issued, approved or adopted by the Financial Intelligence Analysis Unit with the concurrence of the relevant supervisory authority, and which applies to that subject person; and
- (b) in a case where no guidance or procedures falling within the provisions of paragraph (a) apply, any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that subject person.

(7) In proceedings against any subject person for an offence against this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

Offences by bodies corporate and unincorporated associations.

5. (1) Where an offence against the provisions of regulation 4 is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2) Without prejudice to subregulation (1), where the offence is committed by a body or other association of persons, be it corporate or unincorporate, or by a person within and for the benefit of that body or other association of persons consequent to the lack of supervision or control that should have been exercised on him by a person referred to in subregulation (1), such body or association shall be liable to an administrative penalty of not less than one thousand two hundred euro (€1,200) and not more than five thousand euro (€5,000).

(3) Administrative penalties under subregulation (2) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance provided that in the latter case the accumulated penalty shall not exceed fifty thousand euro (€50,000).

Branches and majority owned subsidiaries.

6. (1) Subject persons carrying out relevant financial business shall not establish or acquire branches or majority owned subsidiaries in a jurisdiction that does not meet the criteria for a reputable jurisdiction as defined in regulation 2.

(2) In relation to their branches and majority owned subsidiaries situated in a reputable jurisdiction, subject persons carrying out relevant financial business shall:

- (a) communicate to such branches and majority owned subsidiaries the relevant policies and procedures established in accordance with regulation 4;
- (b) apply in such branches and majority owned subsidiaries, where applicable, measures that, as a minimum, are equivalent to those under these regulations regarding customer due diligence and record keeping,

and where the legislation of that reputable jurisdiction does not permit the application of such equivalent measures, subject persons under this regulation shall immediately inform the Financial Intelligence Analysis Unit and shall further take additional measures to effectively handle the risk of money laundering or the funding of terrorism.

(3) Where the Financial Intelligence Analysis Unit is in possession of information in accordance with subregulation (2)(b) it shall immediately inform the relevant domestic supervisory authority, the relevant authorities of the other Member States of the Community, and the European Union Commission accordingly.

(4) Where a subject person under this regulation is unable to apply additional measures as required under subregulation (2) to effectively handle the risk of money laundering or the funding of terrorism, that subject person shall immediately inform the Financial Intelligence Analysis Unit who, in collaboration with the relevant supervisory authority, may require the closure of the branch or majority owned subsidiary in accordance with the applicable law.

7. (1) Customer due diligence measures in accordance with regulation 4(1)(a) shall comprise - Customer due diligence.

- (a) the identification of the applicant for business and the verification of the identity of the applicant for business on the basis of documents, data or information obtained from a reliable and independent source;
- (b) the identification, where applicable and in accordance with subregulation (3), of the beneficial owner and the taking of reasonable measures to verify the identity such that the subject person is satisfied of knowing who the beneficial owner is, including, in the case of a body corporate, trusts and similar legal arrangement, reasonable measures to understand its ownership and control structure;
- (c) obtaining information on the purpose and intended nature of the business relationship, such that a subject person is able to establish the business and risk profile of the customer;
- (d) conducting ongoing monitoring of the business relationship,

and where the applicant for business or the beneficial owner is subsequently found to be or becomes a politically exposed person as defined in regulation 2, customer due diligence shall proceed in accordance with regulation 11(6) and (7).

(2) The ongoing monitoring of a business relationship for the purposes of subregulation (1) shall include:

- (a) the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and
- (b) ensuring that the documents, data or information held by the subject person are kept up to date.

(3) Where an applicant for business is or appears to be acting otherwise than as principal, in addition to the identification and the

verification of the identity of the applicant for business:

- (a) subject persons shall ensure that the applicant for business is duly authorised in writing by the principal;
- (b) subject persons shall establish and verify the identity of the person on whose behalf the applicant for business is acting;
- (c) where the principal is a body corporate, a body of persons, or any other form of legal entity or arrangement, subject persons shall, in addition to verifying the legal status of the principal, identify all directors and, where such principal does not have directors, all such other persons vested with its administration and representation, and establish the ownership and control structure;
- (d) in addition to the requirements under paragraph (c), where the principal is a body corporate, a body of persons, trust or any other form of legal entity or arrangement in which there is a shareholding, or any other form of ownership interest or assets held under a trustee or any other fiduciary arrangement, a subject person shall not undertake any business with or provide any service to the applicant for business unless that applicant for business discloses the identity of the beneficial owners, his principal, and the trust settlor, as the case may be, and produces the relevant authenticated identification documentation, and such disclosure procedures shall also apply where there are changes in beneficial ownership, or principal;
- (e) where the applicant for business is acting as a trustee or under any other fiduciary arrangement, a subject person shall not undertake any business with or provide any service to the applicant for business unless that applicant for business discloses the identity of the beneficial owners, his principal, and the trust settlor, as the case may be, and produces the relevant authenticated identification documentation, and such disclosure procedures shall also apply where there are changes in beneficial ownership, or principal.

(4) Subject persons shall not keep anonymous accounts or accounts in fictitious names.

(5) Without prejudice to the provisions of regulation 8, customer due diligence measures maintained by a subject person shall be deemed to be in accordance with the provisions of these regulations if, in Cases 1 to 4, that subject person requires their application to all new applicants for business when contact is first made between that subject person and the applicant for business concerning any particular business relationship or occasional transaction.

(6) Customer due diligence measures under this regulation shall be applied to all new customers and, at appropriate times, to

existing customers on a risk-sensitive basis.

(7) Where, following the application of the customer due diligence measures under these regulations, in an established business relationship doubts have arisen about the veracity or adequacy of the previously obtained customer identification information, or changes have occurred in the circumstances surrounding that established business relationship, then the customer due diligence measures shall be repeated in accordance with these regulations.

(8) Without prejudice to subregulation (1), subject persons may determine the extent of the application of customer due diligence requirements on a risk sensitive basis depending on the type of customer, business relationship, product or transaction:

Provided that subject persons are able to demonstrate to the Financial Intelligence Analysis Unit, or to any other supervisory authority acting on behalf of the Financial Intelligence Analysis Unit in ensuring compliance with these regulations, that the extent of the application on a risk-sensitive basis is appropriate in view of the risks of money laundering and the funding of terrorism.

(9) For the purposes of this regulation, subject persons shall develop and establish effective customer acceptance policies and procedures that are not restrictive in allowing the provision of financial and other services to the public in general but that are conducive to determine, on a risk based approach, whether an applicant for business is a politically exposed person and that, as a minimum, include:

- (a) a description of the type of customer that is likely to pose higher than average risk;
- (b) the identification of risk indicators such as the customer background, country of origin, business activities, products, linked accounts or activities and public or other high profile positions; and
- (c) the requirement for an enhanced customer due diligence for higher risk customers in accordance with regulation 11.

(10) An applicant for business who makes a false declaration or a false representation or who produces false documentation for the purposes of this regulation shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(11) Subject persons who carry out a financial activity under 'relevant financial business' that involves the transfer of funds both domestically and cross-border shall comply with the provisions of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds, as may be in force from time to time.

(12) A subject person who contravenes the provisions of this regulation or of Regulation (EC) No 1781/2006 of the European

Parliament and of the Council of 15 November 2006 on information on the payee accompanying transfers of funds shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500) which shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing.

Verification of
identification.

8. (1) Subject persons shall verify the identity of the applicant for business and, where applicable, the identity of the beneficial owner, before the establishment of a business relationship or the carrying out of an occasional transaction.

(2) Notwithstanding subregulation (1), subject persons may complete the verification during the establishment of a business relationship where this is necessary for the continued normal conduct of business provided that the risk of money laundering or the funding of terrorism is low and, provided further, that the verification procedures be completed as soon as is reasonably practicable after the initial contact.

(3) Notwithstanding subregulations (1) and (2), in relation to life insurance, subject persons may complete the verification of the identity of the beneficiary under the policy after the business relationship has been established but prior to or at the time of payout or at or before the time the beneficiary intends to exercise any of his rights vested under the policy.

(4) Notwithstanding subregulations (1) and (2), subject persons may open a bank account as may be required by the applicant for business provided that adequate measures are put in place such that no transactions are carried out through the account until the verification procedures in accordance with subregulation (1) have been satisfactorily completed.

(5) Where a subject person is unable to comply with regulation 7(1)(a), (b) and (c), the customer due diligence procedures shall require that subject person not to carry out any transaction through the account, not to establish the business relationship or carry out any occasional transaction, or to terminate the business relationship and to consider making a suspicious transaction report to the Financial Intelligence Analysis Unit in accordance with these regulations:

Provided that, where to refrain in such manner is impossible or is likely to frustrate efforts of investigating a suspected money laundering or the funding of terrorism operation that business shall proceed on condition that a disclosure is immediately lodged with the Financial Intelligence Analysis Unit in accordance with regulation 15(6):

Provided further that subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of this subregulation if those subject persons are acting in the course of ascertaining the legal position for their client or performing their responsibilities of defending or representing that client in, or concerning, judicial procedures, including advice on instituting or

avoiding procedures.

9. (1) In addition to complying with the provisions of regulation 7 and regulation 8, a casino licensee shall:

Additional
customer due
diligence
requirements for
casino licensees.
Cap. 400.

- (a) not allow any person to enter the casino unless such person has been satisfactorily identified pursuant to the provisions of article 25 of the Gaming Act;
- (b) identify, and verify by the production of an identification document, any person who, whilst in the casino exchanges cash, a cheque or bank draft, whether such is drawn on a local or a foreign credit institution, or who otherwise makes a credit or a debit card payment in exchange for chips or tokens for an amount of two thousand euro (€2,000) or more for use in the casino;
- (c) identify, and verify by the production of an identification document, any person who, whilst in the casino exchanges cash, exchanges chips or tokens after playing a game or games, for an amount of two thousand euro (€2,000) or more;
- (d) ensure that the particulars relating to the identity of a person exchanging chips or tokens to the value of two thousand euro (€2,000) or more is matched with, and cross referred to, the particulars relating to the identity of the person exchanging cash, cheques or bank drafts, or making a credit or debit card payment in exchange for those chips or tokens, and shall further ensure that chips or tokens are derived from winnings made whilst playing a game or games at the casino; and
- (e) ensure that the provisions of paragraphs (b) to (d) are also applied in cases where in any one gaming session a person carries out transactions which are individually for an amount of less than two thousand euro (€2,000) but which in aggregate equal or exceed such amount.

(2) Notwithstanding the provisions of subregulation (1) and without prejudice to the provisions of regulation 15(6) and (7), the casino licensee shall further record the particulars relating to the identity of a person playing a game or games in the casino where the casino licensee or any casino employee has any knowledge or suspicion that such person may have been, is, or may be, engaging in money laundering or the funding of terrorism.

10. (1) Without prejudice to the provisions of subregulation (5) and subregulation (6), subject persons shall not apply customer due diligence measures in accordance with regulation 7 and regulation 8(1), but shall gather sufficient information to establish that the applicant for business qualifies accordingly -

Simplified
Customer Due
Diligence.
Amended by:
L.N. 328 of 2009.

- (a) where the applicant for business is a person who is authorised to undertake relevant financial business or is a person who is licensed or otherwise authorised in another Member State of the Community or under the

Cap. 345.

laws of a reputable jurisdiction to carry out an activity which is equivalent to relevant financial business;

- (b) in the case of legal persons listed on a regulated market authorised in accordance with the provisions of the Financial Markets Act or on an equivalent regulated market within the Community, and legal persons otherwise listed on an equivalent regulated market in a reputable jurisdiction and which are subject to equivalent public disclosure requirements;
- (c) with respect to beneficial owners of pooled accounts held by persons carrying out a relevant activity under paragraph (c) of the definition of "relevant activity" domestically, from within the Community or from a reputable jurisdiction, provided that the subject person shall ensure that supporting identification documentation is available, or may be made available, on request, to the institution that is acting as the depository for the pooled accounts;
- (d) in the case of domestic public authorities or public bodies which fulfill all the following criteria:
 - (i) the applicant for business has been entrusted with a public function pursuant to the Treaty on the European Union, the Treaties on the Communities or other Community legislation;
 - (ii) the identification of the applicant for business is publicly available, transparent and verified;
 - (iii) the applicant for business undertakes activities that are transparent, including any accounting practices; and
 - (iv) the applicant for business is either accountable to a Community institution or to a domestic relevant authority or to an authority of another member of the Community or, where appropriate and effective procedures are in place to control the activity of the applicant;
- (e) to any other applicant for business who is a legal person and who represents a low risk of money laundering or the funding of terrorism in accordance with subregulation (2).

(2) For the purposes of subregulation (1)(e), an applicant for business who is a legal person and who does not have the status as provided for under subregulation (1)(d) shall be considered as representing a low risk of money laundering or the funding of terrorism where -

- (a) the applicant for business undertakes a financial activity outside the scope of relevant financial business as defined in these regulations, provided that the applicant for business is also subject to these regulations independently, even if the applicant for business forms part of a group of companies;

- (b) the identity of the applicant for business is publicly available, transparent and verified;
- (c) the applicant for business is subject to the full licensing requirements under domestic law for undertaking those financial activities, is supervised for those activities by a relevant competent authority, and is further subject to supervision on compliance with these regulations in accordance with the relevant provisions of the Act; and
- (d) the applicant for business is subject to all sanctions and administrative measures provided for under these regulations for non-compliance.

(3) Without prejudice to the provisions of subregulation (5) and subregulation (6), subject persons shall not apply customer due diligence measures in accordance with regulation 7 and regulation 8(1) in relation to -

- (a) insurance policies in respect of which a premium is payable in one installment of an amount not exceeding two thousand five hundred euro (€2,500);
- (b) insurance policies in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand euro (€1,000);
- (c) insurance policies in respect of pension schemes provided that such policies contain no surrender clause and may not be used as collateral for a loan;
- (d) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are effected through deductions from wages and where the scheme regulations prohibit members from assigning their interests under the scheme;
- (e) electronic money as defined under the Banking Act where, if the electronic device cannot be recharged the maximum amount stored is one hundred and fifty euro (€150) or less, or where, if the electronic device can be recharged, a limit of two thousand five hundred euro (€2,500) is imposed on the total amount that can be transacted in a calendar year, except where an amount of one thousand euro (€1,000) or more is redeemed in that calendar year; and
- (f) any other product or transaction that represents a low risk of money laundering or the funding of terrorism in accordance with subregulation (4).

Cap. 371.

(4) Subject persons shall consider products that fulfill all the following criteria, or transactions related to them, as representing a low risk of money laundering or funding of terrorism for the purposes of subregulation (3)(f) where:

- (a) the product is subject to a written contractual agreement;

Cap. 371.

- (b) the related transactions are carried out through an account in the name of the applicant for business held with a credit institution authorised under the Banking Act or so authorised in another Member State of the Community or otherwise so authorised under the laws of a reputable jurisdiction;
- (c) the product or related transactions are not anonymous and they allow for the application of the customer due diligence measures in accordance with these regulations under Case 2 (suspicion) or similar regulations in another Member State of the Community or a reputable jurisdiction;
- (d) the product is subject to a predetermined maximum threshold and -
 - (i) where the product constitutes an insurance policy or savings product of a similar nature, the maximum threshold does not exceed that laid down in subregulation (3)(a) and (b);
 - (ii) in all other cases, the maximum threshold does not exceed fifteen thousand euro (€15,000), whether the transaction is carried out under Case 3 (single transaction) or Case 4 (series of transactions);
- (e) third parties cannot enjoy the benefits of the product or related transactions, except in the case of death, disablement, survival to a predetermined age, or similar events;
- (f) where the products or related transactions allow for the investment of funds in financial assets or claims, including insurance or other kind of contingent claims, provided that -
 - (i) the benefits of the product or related transactions are only realisable in the long term;
 - (ii) the product or related transactions cannot be used as collateral;
 - (iii) there are no accelerated payments, no surrender clauses are used and no early termination takes place during the contractual relationship.

(5) Nothing in this regulation contained shall apply in circumstances falling within Case 2 (suspicion).

(6) For the purposes of this regulation, in determining whether an applicant for business or a product or related transactions represent a low risk of money laundering or the funding of terrorism, subject persons shall pay special attention to the activities of that applicant for business or to any type of product or transaction that, by its nature, may be used or abused for money laundering or the funding of terrorism, and, where there is information that suggests that this risk may not be low, that applicant for business or that product and related transactions shall not be considered as representing a low risk of money laundering or

the funding of terrorism.

(7) Where the Financial Intelligence Analysis Unit determines that a particular jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2, or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions for simplified customer due diligence under this regulation to all business relationships and transactions from that particular jurisdiction.

11. (1) In Cases 1 to 4, in addition to the requirements under regulation 7, subject persons shall apply, on a risk-sensitive basis, enhanced customer due diligence measures in accordance with this regulation and in situations which, by their nature, can present a higher risk of money laundering or the funding of terrorism.

Enhanced
Customer Due
Diligence.

(2) Subject persons shall apply one or more of the following additional measures to compensate for the higher risk where the applicant for business has not been physically present for identification purposes:

- (a) establish the identity of the applicant for business using additional documentation and information;
- (b) verify or certify the documentation supplied using supplementary measures;
- (c) require certified confirmation of the documentation supplied by a person carrying out a relevant financial activity;
- (d) ensure that the first payment or transaction into the account is carried out through an account held by the applicant for business in his name with a credit institution authorised under the Banking Act or otherwise so authorised in another Member State of the Community or in a reputable jurisdiction.

Cap. 371.

(3) In establishing cross-border correspondent banking and other similar relationships with respondent institutions from a country other than a Member State of the Community, subject persons carrying out relevant financial business under paragraph (a) of the definition in regulation 2 shall ensure that -

- (a) they fully understand and document the nature of the business activities of their respondent institution, including, from publicly available information, the reputation of and the quality of supervision on that institution and whether that institution has been subject to a money laundering or funding of terrorism investigation or regulatory measures;
- (b) they assess the adequacy and effectiveness of their internal controls for the prevention of money laundering and the funding of terrorism;
- (c) the prior approval of senior management for the

establishment of new correspondent banking relationships is obtained;

- (d) they document their respective responsibilities for the prevention of money laundering and the funding of terrorism;
- (e) with respect to payable-through accounts, they are satisfied that the respondent credit institution has verified the identity of and performed on-going due diligence on the customers having direct access to the accounts of the respondent institution and that it is able to provide relevant customer due diligence data to that subject person upon request.

(4) Subject persons carrying out relevant financial business under paragraph (a) of the definition in regulation 2 shall -

- (a) not enter into, or continue, a correspondent banking relationship with a shell bank;
- (b) take appropriate measures to ensure that they do not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

(5) Subject persons shall pay special attention to any threat of money laundering or funding of terrorism that may arise from new or developing technologies, or from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use in money laundering or funding of terrorism.

(6) In accordance with subregulation (7) and subject to subregulation (8), subject persons undertaking transactions or establishing business relationships with politically exposed persons residing in another Member State of the Community or in any other jurisdiction shall -

- (a) require the approval of senior management for establishing such business relationships;
- (b) ensure that the internal procedures include adequate measures to establish the source of wealth and funds that are involved in these business relationships or transactions;
- (c) conduct enhanced ongoing monitoring of the business relationships.

(7) For the purposes of the definition of 'politically exposed persons' in regulation 2 -

- (a) the term 'natural persons who are or have been entrusted with prominent public functions' shall include the following:
 - (i) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries;
 - (ii) Members of Parliament;
 - (iii) members of the Courts or of other high-level

- judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
- (iv) members of courts of auditors, Audit Committees or of the boards of central banks;
 - (v) ambassadors, *charges d'affaires* and other high ranking officers in the armed forces;
 - (vi) members of the administrative, management or boards of State-owned corporations,
- and where applicable, for the purposes of subparagraphs (i) to (v), shall include positions held at the Community or international level;
- (b) the term 'immediate family members' shall include the following:
 - (i) the spouse, or any partner recognised by national law as equivalent to the spouse;
 - (ii) the children and their spouses or partners; and
 - (iii) the parents;
 - (c) the term 'persons known to be close associates' shall include the following:
 - (i) a natural person known to have joint beneficial ownership of a body corporate or any other form of legal arrangement, or any other close business relations with that politically exposed person;
 - (ii) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that politically exposed person.

(8) Without prejudice to the application of enhanced customer due diligence measures on a risk sensitive basis, where a person as mentioned in subregulation (6) has ceased to be entrusted with a prominent public function for a period of at least twelve months such person shall no longer be considered as a politically exposed person.

12. (1) In accordance with the provisions of this regulation, subject persons may rely on a third party or another subject person to fulfill the customer due diligence requirements provided for under regulation 7(1)(a) to (c), provided that, notwithstanding the reliance on a third party or other subject person, the relevant subject person remains responsible for compliance with the requirements under regulation 7(1)(a) to (c).

Reliance on
performance by
third parties.

(2) For the purposes of this regulation, and without prejudice to subregulation (11), a third party shall mean a person undertaking activities equivalent to 'relevant financial business' or 'relevant activity' who is situated in a Member State of the Community other than Malta or in a reputable jurisdiction and who is subject to authorisation or to mandatory professional registration recognised by law.

(3) Subject persons relying on a third party or another subject person shall ensure that the third party or other subject person shall make the information required in accordance with the provisions under regulation 7(1)(a) to (c) immediately available to them.

(4) Subject persons relying on a third party or another subject person shall further ensure that, upon request, the third party or other subject person shall immediately forward to them relevant copies of the identification and verification data and other relevant documentation of the applicant for business or the beneficial owner as required under these regulations.

(5) For the purposes of fulfilling the requirements under regulation 7(1)(a) to (c), and in accordance with this regulation, subject persons may rely on subject persons carrying out relevant financial business as defined in these regulations.

(6) In accordance with the provisions of this regulation, subject persons may, for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a third party who undertakes activities equivalent to those falling within the scope of the definition of 'relevant financial business' under regulation 2(1), with the exception of those persons whose main business is currency exchange or money transmission or remittance services as defined under paragraph (b) of that definition or their equivalent, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(7) Subject persons carrying out an activity falling with the scope of paragraph (b) of the definition of 'relevant financial business' and whose main business is currency exchange or money transmission or remittance services may, in accordance with the provisions of this regulation and for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a third party who undertakes currency exchange or money transmission or remittance services, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(8) For the purposes of fulfilling the requirements under regulation 7(1)(a) to (c), and in accordance with this regulation, subject persons may rely on those subject persons carrying out a relevant activity under paragraphs (a), (c), or (f) of the definition of 'relevant activity' under regulation 2.

(9) Further to subregulation (8) subject persons carrying out a relevant activity under paragraphs (a), (c) or (f) of the definition of 'relevant activity' under regulation 2 may, in accordance with the provisions of this regulation and for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a

third party who undertakes an activity equivalent to any of those in paragraph (a), (c) or (f) of the definition of 'relevant activity' under regulation 2, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(10) This regulation shall not apply -

- (a) to outsourcing or agency relationships where, on the basis of a contractual agreement, the outsourcing service provider or agent is to be regarded as part of the subject person; and
- (b) for reliance on subject persons under paragraph (i) in the definition of 'relevant activity' and subject persons under paragraph (j) of the definition of 'relevant financial business' in regulation 2(1).

(11) Where the Financial Intelligence Analysis Unit determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2 and the criteria for a third party as established under subregulation (2), or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction as defined in regulation 2 and that for a third party as established under subregulation (2), it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from relying on persons and institutions from that particular jurisdiction for the performance of customer due diligence requirements under this regulation.

13. (1) Subject persons shall retain the documents and information specified in this regulation for use in any investigation into, or an analysis of, possible money laundering or the funding of terrorism activities by the Financial Intelligence Analysis Unit or by other relevant competent authorities in accordance with the provisions of applicable law.

Record keeping
procedures.

(2) Record-keeping procedures maintained by a subject person shall be deemed to be in accordance with the provisions of this regulation if they make provision for the keeping, for the prescribed period, of the following records:

- (a) in relation to any business relationship that is formed or an occasional transaction that is carried out, a record indicating the nature of the evidence of the customer due diligence documents required and obtained under procedures maintained in accordance with these regulations, comprising a copy of or the reference to the evidence required for the identity and providing sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained;
- (b) a record containing details relating to the business relationship and to all transactions carried out by that person in the course of an established business relationship or occasional transaction which shall

include the original documents or other copies which are admissible in court proceedings;

- (c) in relation to regulations 15(1) and 15(2) a record of the findings of the examination of the background and purpose of the relationships and transactions therein.

(3) For the purposes of subregulation (2), the prescribed period shall be the period of at least five years commencing with -

- (a) in relation to such records as are described in paragraph (a), the date on which the relevant financial business or relevant activity was completed; and
- (b) in relation to such records as are described in paragraphs (b) and (c), the date on which all dealings taking place in the course of the transaction in question were completed:

Provided that, in relation to records relating to an occasional transaction or a series of occasional transactions, the aforesaid period of at least five years shall commence with the date on which the occasional transaction or the last of a series of occasional transactions took place.

(4) For the purposes of subregulation (3)(a) the date on which relevant financial business or relevant activity is completed shall, as the case may be, be deemed to be the date of -

- (a) in circumstances falling within Case 1 (negotiations), the ending of the business relationship in respect of whose formation the record under this regulation was compiled;
- (b) in circumstances falling within Case 2 (suspicion), the reporting of the suspicious transaction in accordance with regulation 15, provided that the period of five years may be extended as may be required by the Financial Intelligence Analysis Unit;
- (c) in the circumstances falling within Case 3 (single large transaction), the carrying out of the transaction or the last of a series of single large transactions in respect of which the record under this regulation was compiled; and
- (d) in circumstances falling within Case 4 (series of transactions), the carrying out of the last transaction in a series of transactions in respect of which the record under this regulation was compiled,

and where the formalities necessary to end a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of that transaction shall be treated as the date on which the relevant financial business or relevant activity was completed, provided that the business relationship is immediately formally terminated.

(5) Without prejudice to subregulations (2) to (4), a casino licensee shall also maintain records in relation to all identification processes under regulation 9 in accordance with the relevant provisions of the Gaming Act.

Cap. 400.

(6) Subject persons shall ensure that, upon request, all customer identification, due diligence records and transaction records and other relevant information are made available on a timely basis to the Financial Intelligence Analysis Unit and, as may be allowed by law, to other relevant competent authorities, for the purposes of the prevention of money laundering and the funding of terrorism.

(7) Subject persons carrying out relevant financial business shall establish systems that enable them to respond efficiently to enquiries from the Financial Intelligence Analysis Unit or from supervisory or other relevant competent authorities, in accordance with applicable law, as to -

- (a) whether they maintain or have maintained during the previous five years a business relationship with a specified natural or legal person or persons; and
- (b) the nature of that relationship.

14. (1) The Financial Intelligence Analysis Unit, subject persons and supervisory and other competent authorities responsible for combating money laundering or the funding of terrorism, shall maintain comprehensive statistical data, as applicable, in accordance with subregulation (2) and, upon request, such subject persons and supervisory and other competent authorities, shall make this statistical data available to the Financial Intelligence Analysis Unit to enable it to review the effectiveness of the national systems.

Statistical data.

(2) Comprehensive statistical data on matters relevant to the effectiveness of national systems to combat money laundering and the funding of terrorism maintained under subregulation (1) shall, as a minimum, include:

- (a) the number of suspicious transaction reports made to the Financial Intelligence Analysis Unit;
- (b) the number of suspicious transaction reports forwarded by the Financial Intelligence Analysis Unit for further investigation by the law enforcement agencies;
- (c) the follow up given to these reports;
- (d) the number of cases investigated;
- (e) the number of persons prosecuted;
- (f) the number of persons convicted for the offence of money laundering or the funding of terrorism;
- (g) details and value of property that has been frozen, seized or confiscated;

Cap. 373. (h) any other relevant statistical data as may justifiably be required by the Financial Intelligence Analysis Unit in order for it to fulfill its obligations under this regulation and the Prevention of Money Laundering Act.

(3) The Financial Intelligence Analysis Unit shall publish consolidated reviews of the statistical data gathered in accordance with this regulation.

(4) The Financial Intelligence Analysis Unit shall, wherever practicable and as may be allowed by the provisions of the Act within the provisions of law, provide subject persons and, where applicable, supervisory authorities with timely feedback on the effectiveness of the suspicious transaction reports, other information it receives under regulation 15, and the effectiveness of the statistical data gathered under this regulation.

Reporting
procedures and
obligations.

15. (1) Subject persons shall examine with special attention, and to the extent possible, the background and purpose of any complex or large transactions, including unusual patterns of transactions, which have no apparent economic or visible lawful purpose, and any other transactions which are particularly likely, by their nature, to be related to money laundering or the funding of terrorism, establish their findings in writing, and make such findings available to the Financial Intelligence Analysis Unit and to the relevant supervisory authority in accordance with applicable law.

(2) Subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings, including those carrying out relevant financial business or a relevant activity, from a jurisdiction that does not meet the criteria of a reputable jurisdiction as defined in regulation 2, and, where the provisions of subregulation (1) apply to such transactions, subject persons shall proceed as provided for in subregulation (1).

(3) Where a jurisdiction, as is mentioned in subregulation (2), continues not to apply measures equivalent to those laid down by these regulations, subject persons shall inform the Financial Intelligence Analysis Unit which, in collaboration with the relevant supervisory authority, may require such business relationship not to continue or a transaction not to be undertaken or apply any other counter-measures as may be adequate under the respective circumstances.

(4) Internal reporting procedures maintained by a subject person, shall be deemed to be in accordance with the provisions of these regulations if they provide for -

(a) the appointment by the subject person of one of its officers of sufficient seniority and command as the reporting officer, to whom a report is to be made of any information or other matter which gives rise to a knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the

funding of terrorism or that a transaction may be related to money laundering or the funding of terrorism;

- (b) consideration of such report by the reporting officer or by another designated employee of the subject person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to a knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the funding of terrorism;
- (c) reasonable access for the reporting officer or other designated employee to any information held by the subject person which may be of assistance for the purposes of considering the report;
- (d) a procedure whereby any knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the funding of terrorism determined by the reporting officer or other designated employee is reported in accordance with subregulation (6);
- (e) notifying the Financial Intelligence Analysis Unit and the relevant supervisory authority, where applicable, of the details of the appointed reporting officer and any subsequent changes thereto and the appointment of a designated employee for the purposes of paragraphs (b) to (d); and
- (f) any employee designated by the subject person for the purposes of paragraphs (b) to (d) shall be approved by the reporting officer and shall work under his direction.

(5) A supervisory authority shall maintain internal reporting procedures in accordance with the provisions of subregulation (4), although the failure of a supervisory authority to maintain such procedures in accordance with the provisions of this regulation shall not constitute an offence but may be the subject of internal disciplinary proceedings against the officials or employees concerned.

(6) Where a subject person knows, suspects or has reasonable grounds to suspect that a transaction may be related to money laundering or the funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism, or that money laundering or the funding of terrorism has been, is being or may be committed or attempted, that subject person shall, as soon as is reasonably practicable, but not later than five working days from when the suspicion first arose, disclose that information, supported by the relevant identification and other documentation, to the Financial Intelligence Analysis Unit.

(7) Subject persons shall refrain from carrying out a transaction that is suspected or known to be related to money laundering or the funding of terrorism until they have informed the Financial

Intelligence Analysis Unit in accordance with this regulation and, where to refrain in such a manner is not possible or is likely to frustrate efforts of investigating or pursuing the beneficiaries of the suspected money laundering or funding of terrorism operations, subject persons shall accordingly inform the Financial Intelligence Analysis Unit immediately the transaction is effected.

(8) Where, following the consideration of an internal report, the reporting officer or other designated employee determines not to report in accordance with this subregulation for justifiable reasons in accordance with subregulation (4)(b), the reporting officer shall record the reasons for such determination in writing and, upon request, shall make it available to the Financial Intelligence Analysis Unit or a supervisory authority acting on behalf of the Financial Intelligence Analysis Unit in monitoring compliance with these regulations.

(9) Where a supervisory authority, either in the course of its supervisory work or in any other way, discovers facts or obtains any information that could be related to money laundering or the funding of terrorism, that supervisory authority shall, as soon as is reasonably practicable, but not later than five working days from when facts are discovered or information obtained, disclose those facts or that information, supported by the relevant documentation that may be available, to the Financial Intelligence Analysis Unit.

(10) Subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of subregulation (6) or subregulation (7) if such information is received or obtained in the course of ascertaining the legal position for their client or performing their responsibility of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(11) Where, following a submission of a disclosure as in subregulation (6) or subregulation (7), or for any other reason as is allowed by law, the Financial Intelligence Analysis Unit demands information from the disclosing or any other subject person, that subject person shall comply as soon as is reasonably practicable but not later than five working days from when the demand is first made unless that subject person makes representations justifying why the requested information cannot be submitted within the said time and the Financial Intelligence Analysis Unit, at its discretion and after having considered such representations, extends such time as is reasonably necessary to obtain the information, whereupon the subject person shall submit the information requested within the time as extended.

(12) Any *bona fide* communication or disclosure made by a supervisory authority or by a subject person or by an employee or director of such a supervisory authority or subject person in accordance with these regulations shall not be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information

and shall not involve that supervisory authority or subject person or the directors or employees of such supervisory authority or subject person in any liability of any kind.

(13) Any information disclosed under these regulations shall be used only in connection with investigations of money laundering and, or funding of terrorism activities.

(14) Any investigating, prosecuting, judicial or administrative authority and subject persons shall protect and keep confidential the identity of persons and employees who report suspicions of money laundering or the funding of terrorism either internally or to the Financial Intelligence Analysis Unit.

(15) A subject person who contravenes the provisions of this regulation, or who fails to disclose information as is required by subregulation (6) or subregulation (7) or who fails to submit information demanded under subregulation (11), shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500).

(16) Administrative penalties under subregulation (15) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed twelve thousand five hundred euro (€12,500).

16. (1) A subject person, a supervisory authority or any official or employee of a subject person or a supervisory authority who discloses to the person concerned or to a third party, other than as provided for in this regulation, that an investigation is being or may be carried out, or that information has been or may be transmitted to the Financial Intelligence Analysis Unit pursuant to these regulations shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Prohibition of disclosure.

(2) Without prejudice to subregulation (1), disclosures made under the following circumstances shall not constitute a breach of that subregulation:

- (a) disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law;
- (b) disclosures by the reporting officer of a subject person who undertakes relevant financial business to the reporting officer of another person or persons undertaking equivalent activities and who form part of the same group of companies of the former subject person, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction;
- (c) disclosures by the reporting officer of a subject person who undertakes activities under paragraph (a) or

paragraph (c) of the definition of ‘relevant activity’ to the reporting officer of another person or persons undertaking equivalent activities, who perform their professional activities whether as employees or not, but within the same legal person or within a larger structure to which the subject person belongs and which shares common ownership, management or compliance control, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction;

- (d) disclosures between the same professional category of subject persons referred to in paragraph (b) and paragraph (c) in cases related to the same customer and the same transaction that involves two or more institutions or persons, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction, provided that such subject persons are subject to equivalent obligations as regards professional secrecy and personal data protection and, provided further that the information exchanged shall only be used for the purposes of the prevention of money laundering or the funding of terrorism.

(3) The fact that a subject person as referred to in subregulation (2)(c) is seeking to dissuade a client from engaging in an illegal activity shall not constitute a disclosure in breach of subregulation (1).

(4) Where the Financial Intelligence Analysis Unit determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2, or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions of subregulation (2) with persons and institutions from that jurisdiction.

Implementing
procedures.
Amended by:
L.N. 328 of 2009.

17. (1) The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority, may issue procedures and guidance as may be required for the carrying into effect of the provisions of these regulations, and which shall be binding on persons carrying out relevant financial business or relevant activity.

(2) A subject person who fails to comply with the provisions of any procedures and guidance established in accordance with subregulation (1) shall be liable to the administrative penalties as provided for under regulation 15(15) and (16).

Cap. 373.

(3) In fulfilling its compliance supervisory responsibilities under the Prevention of Money Laundering Act, the Financial Intelligence Analysis Unit may monitor persons carrying out a ‘relevant activity’, with the exception of those under paragraph (g) and paragraph (i), on a risk-sensitive basis.

18. The revocation of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2003* shall not -

Revocation of
Legal Notice 199
of 2003.

- (a) affect the previous operation of the regulations so revoked or anything done or suffered under those regulations;
 - (b) affect the institution, continuation or enforcement of any inquiry, investigation or legal proceeding under the regulations so revoked or the imposition of any penalty or punishment under the provisions of those regulations.
-

*Revoked by these regulations.

APPENDIX III.4

SUBSIDIARY LEGISLATION 9.15

CONFISCATION ORDERS (EXECUTION IN THE EUROPEAN UNION) REGULATIONS

22nd October, 2010

LEGAL NOTICE 464 of 2010.

1. The title of these regulations is the Confiscation Orders (Execution in the European Union) Regulations. Citation.

2. In these regulations, unless the context otherwise requires - Definitions.

"the Arrangement" means the Council Framework Decision 2006/783/JHA of 6 October, 2006 on the application of the principle of mutual recognition to confiscation orders as amended by Council Framework Decision 2009/299/JHA of 26 February 2009;

"certificate" means the form, as contained in the Annex to the Arrangement, purporting to reproduce details setting out the information required by the same form, set out in Schedule 2;

"confiscation order" means a final penalty or measure imposed by a court on a natural or legal person, following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property;

"Council Framework Decision 2005/212/JHA" means Council Framework Decision of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, set out in Schedule 4;

"cultural objects forming part of the national cultural heritage" shall be defined in accordance with Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State;

"the European Union" means the European Union as referred to in the Treaty;

"executing State" means the Member State to which a confiscation order has been transmitted for the purpose of execution;

"instrumentalities" means any property used, or intended to be used, in any manner, wholly or in part, to commit a criminal offence or offences;

"issuing State" means the Member State in which a court has issued a confiscation order within the framework of criminal proceedings;

"proceeds" means any economic advantage derived from criminal offences, which may consist of any form of property;

"property" means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and

instruments evidencing title to or interest in such property, which the court in the issuing State has decided:

- (a) is the proceeds of a relevant offence, or equivalent to either the full value or part of the value of such proceeds, or
- (b) constitutes the instrumentalities of such an offence, or
- (c) is liable to confiscation resulting from the application in the issuing State of any of the extended powers of confiscation specified in Article 3(1) and (2) of Framework Decision 2005/212/JHA, or
- (d) is liable to confiscation under any other provisions relating to extended powers of confiscation under the law of the issuing State;

"relevant offence" means:

- (a) a scheduled offence; or
- (b) any other offence liable to the punishment of imprisonment or of detention for a term of more than one year;

"scheduled offence" is any offence in the list of offences set out in Schedule 1;

"the Treaty" shall have the same meaning assigned to it by article 2 of the European Union Act.

Cap. 460.

Limitation.

3. These regulations shall be limited to the transmission and execution of confiscation orders between Malta and a Member State of the European Union listed in Schedule 3 and shall apply to confiscation orders received in Malta after the 24th November, 2008.

Competent authorities.

4. For the purposes of these regulations:

- (a) the Attorney General shall be competent to receive confiscation orders issued in the issuing State and to transmit to the executing State confiscation orders issued in Malta by a court of criminal jurisdiction, and
- (b) a court of criminal jurisdiction shall be competent to issue confiscation orders.

Mode of transmission.

5. (1) A confiscation order shall be transmitted with the certificate provided for in Schedule 2 containing the information prescribed therein, by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

(2) The certificate shall be in either the Maltese or English language:

Provided that it shall not be necessary for the confiscation order to be in either the Maltese or English language.

(3) The original of the confiscation order, or a certified copy thereof, and the original of the certificate shall be transmitted to the executing State if it so requires.

6. (1) A confiscation order shall contain a statement that the order relates to: Details of confiscation orders.

(a) conduct which -

- (i) is a scheduled offence; and
- (ii) carries a sentence of imprisonment or another form of detention of a maximum period of at least three years in the issuing State:

Provided that in such cases there shall be no verification of the double criminality of the act; or

(b) conduct which -

- (i) would constitute an offence under the law of Malta if it occurred in Malta; and
- (ii) is punishable under the laws of Malta with imprisonment or another form of detention for a term of twelve months or a greater punishment.

(2) In determining for the purposes of this regulation whether an offence falls within the requirements of sub-regulation (1)(b)(i) -

- (a) the description of the offence shall not be regarded as material if the offence under the law of Malta and the law of the issuing State are substantially of the same nature;
- (b) if the conduct relates to a tax or duty, it is immaterial that the law of Malta does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the issuing State;
- (c) if the conduct relates to customs or exchange, it is immaterial that the law of Malta does not contain rules of the same kind as those of the law of the issuing State.

(3) A confiscation order shall indicate whether the order has been issued for the purpose of:

- (a) confiscating one or more specific items of property; or
- (b) confiscating an amount of money.

7. Where the Attorney General receives a confiscation order within the meaning of these regulations, the Attorney General shall, in his own individual judgement and subject to the provisions of regulations 8 and 9, issue a certificate to the effect that the authority which issued a confiscation order has the function of issuing confiscating orders in the issuing State and such certificate shall be conclusive of its contents. Certificate by Attorney General.

8. (1) A confiscation order shall not be recognised by the Attorney General if: Grounds for non-recognition.

- (a) the certificate provided for in Schedule 2 is not produced, is incomplete or manifestly does not correspond to the confiscation order;
- (b) execution of the confiscation order would be contrary

to the principle of *ne bis in idem*;

- (c) the act on which the confiscation order is based is not one falling within the list of scheduled conduct and does not constitute an offence under the law of Malta;
- (d) there is an immunity or privilege under the law of Malta which prevents the execution of a domestic confiscation order on the property concerned;
- (e) the rights of any interested party, including *bona fide* third parties, under the law of Malta, make it impossible to execute the confiscation order:

Provided that if any action is brought before the courts of Malta by any interested party, the issuing State shall be informed thereof;

- (f) according to the certificate provided for in Schedule 2, the person against whom the order was issued did not appear personally at the trial resulting in the decision, unless the said certificate states that the person, in accordance with procedural requirements defined in the law of the issuing State:
 - (i) in due time was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that such a confiscation order may be handed down if he does not appear for the trial, or
 - (ii) being aware of the scheduled trial, had given a mandate to his legal counsel appointed by the said person or by the State, to defend him at his trial, and was indeed defended by the said legal counsel at the trial, or
 - (iii) after being served with the confiscation order and being expressly informed of the right to a retrial, or an appeal, in which he has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original decision being reversed, he expressly stated that he does not contest the confiscation order or he did not request a retrial or an appeal within the applicable time-frame;
- (g) the confiscation order is based on criminal proceedings in respect of criminal offences which:
 - (i) under the law of Malta, are regarded as having been committed wholly or partly within its territory, or in a place equivalent to its territory, or

- (ii) were committed outside the territory of the issuing State, and the law of Malta does not permit legal proceedings to be taken in respect of such offences where they are committed outside the Maltese territory;
 - (h) the execution of a confiscation order is barred by prescription according to the law of Malta and the acts constituting the offence for which the confiscation order was issued fall within the jurisdiction of the Maltese courts.
- (2) If it appears to the Attorney General that -
 - (a) the confiscation order was issued in circumstances where confiscation of the property was ordered as a result of the application, in the issuing State, of any of the extended powers of confiscation specified in Article 3(1) and (2) of Council Framework Decision 2005/212/JHA, and
 - (b) the confiscation order falls outside the scope of the option adopted by the executing State under Article 3(2) of Council Framework Decision 2005/212/JHA,

the confiscation order shall be executed at least to the extent provided for in similar cases under the law of Malta.

(3) The Attorney General shall consult with the authorities of the issuing state when he makes a decision to refuse recognition or execution of a confiscation order based on:

- (a) the grounds listed in sub-regulation (1)(a), (b), (f) or (g);
- (b) the ground listed in sub-regulation (1)(e) and information is not being provided to the issuing state of any action brought before a Court in Malta;
- (c) the grounds mentioned in sub-regulation (2).

(4) In the event that execution of the confiscation order is impossible due to the fact that the property to be confiscated has already been confiscated, has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, the competent judicial authorities of the issuing state shall be notified.

9. (1) The Attorney General may postpone the execution of a confiscation order transmitted in accordance with regulation 5 in the following cases:

Grounds for postponement of execution.

- (a) if, in the case of a confiscation order concerning an amount of money, he considers that there is a risk that the total value derived from its execution may exceed the amount specified in the confiscation order because of simultaneous execution of the confiscation order in more than one Member State;
- (b) in the case where an interested party is seeking legal

remedies against the recognition and execution of a confiscation order;

- (c) where its execution might damage an ongoing criminal investigation or proceedings, until such time as he deems reasonable;
- (d) where it is considered necessary to have the confiscation order or parts thereof translated, for the time necessary to obtain its translation, or
- (e) where the property is already subject to an order made in the course of other proceedings in Malta.

(2) If a postponement for any of the grounds mentioned in sub-regulation (1)(b) to (e) is deemed necessary, the Attorney General shall inform the issuing judicial authority of this fact and of the grounds for the postponement and, if possible, the expected duration of the postponement.

(3) Once the grounds for postponement have ceased to exist, the provisions of regulations 7 and 10 shall apply and the Attorney General shall inform the issuing State accordingly.

Execution after
issue of certificate.

10. Where a certificate has been issued by the Attorney General under regulation 7, and without the need of any further authority other than the authority conferred by this regulation, the confiscation order shall be executed by the Attorney General in accordance with regulation 11.

Enforcement of
confiscation order.

11. (1) The following provisions of this regulation shall apply to a confiscation order to which regulation 10 applies.

(2) The certificate issued under regulation 7 shall be filed before the First Hall of the Civil Court together with the confiscation order to which it refers.

Cap. 101.

(3) The provisions of article 24D(2) to (12), both inclusive, of the Dangerous Drugs Ordinance, hereinafter in these regulations referred to as "the Ordinance" shall apply *mutandis mutandis* to a confiscation order to which this regulation applies, as if it were an order referred to in article 24D(1) of the Ordinance.

(4) No action can be brought before the Maltese courts challenging the substantial reasons accounting for the issue of a confiscation order.

(5) Any person who acts in contravention of a confiscation order mentioned in these regulations shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87), or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and the court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

Alternative
execution.

12. (1) Where a confiscation order has been issued for the purpose of confiscating a specific item of property and upon

agreement with the issuing state, the Attorney General may demand that the person against whom the order was issued be ordered to pay an amount of money which is the equivalent to the value of the property, and the provisions of regulation 11 shall apply to a confiscation order to which this regulation refers.

(2) Where a confiscation order has been issued for the purpose of confiscating an amount of money, if payment is not obtained, the confiscation order shall be executed on any item of property in accordance with regulation 11.

13. (1) Where a confiscation order has been issued for the purpose of confiscating an amount of money, the amount to be confiscated may be converted into Euro currency, provided that the rate of exchange applied must be that of the date on which the confiscation order was issued.

Determination of amount to be enforced.

(2) Where the person against whom the confiscation order was issued is able to furnish proof of payment, totally or in part, in any State, the issuing State shall be consulted and any part of the amount, in the case of confiscation of proceeds, that is recovered pursuant to that order in any State other than Malta, shall be deducted in full from the amount which is to be confiscated.

14. (1) Without prejudice to the provisions of article 24D(7) of the Ordinance, any property so forfeited shall be disposed of in accordance with the provisions of this regulation.

Disposal of confiscated property.

(2) Money which has been obtained from the execution of the confiscation order shall be disposed of as follows:

- (a) where the amount gathered from the execution of the confiscation order is less than ten thousand euro (€10,000), or the equivalent to that amount, the amount shall accrue to the Government of Malta;
- (b) in all other cases, fifty per centum of the amount which has been obtained from the execution of the confiscation order shall be transferred to the issuing State.

(3) Property, other than money, which has been obtained from the execution of the confiscation order shall, in so far as is possible, be disposed of in any of the following ways:

- (a) by selling the property, in which case the proceeds shall be disposed of in accordance with sub-regulation (2)(a);
- (b) by transferring the said property to the issuing State:

Provided that if the confiscation order covers an amount of money, the property may only be transferred to the issuing State when that State has given its consent.

(4) Notwithstanding the provisions of sub-regulation (3), specific items covered by the confiscation order which constitute cultural objects forming part of the national heritage of Malta shall not be sold or returned to the issuing State.

Multiple
confiscation
orders.

15. Where two or more confiscation orders have been issued concerning -

- (a) an amount of money against the same person and the said person does not possess sufficient means in Malta to enable all the orders to be executed, or
- (b) the same specific item of property,

the Attorney General shall decide which confiscation order is or are to be executed in accordance with these regulations, if it appears to the Attorney General, having regard to all the circumstances of the case and in particular -

- (i) the involvement of frozen assets;
- (ii) the relative seriousness and place of the offence;
- (iii) the date of the respective orders; and
- (iv) the date of transmission of the respective orders,

that preference should be given to executing one or more of the other orders.

Information on the
result of the
execution.

16. The Attorney General shall immediately inform any of the issuing States by any means capable of producing a written record of any of the following:

- (a) a decision not to recognise the confiscation order, together with the reasons for such decision;
- (b) the total or partial non-execution of the order in terms of regulation 13(2) or for the reasons referred to in regulation 15;
- (c) upon completion of the execution of the confiscation order.

Issue of
confiscation
orders.

17. (1) Where an order for forfeiture is made by a court of criminal jurisdiction against a natural or legal person found guilty of a relevant offence and having property, monies or other income in another Member State, the provisions of this regulation shall apply.

(2) Upon the issue of an order for forfeiture by a court of criminal jurisdiction, the Attorney General shall append to the order:

- (a) the certificate provided for in Schedule 2 purporting to reproduce details setting out the information required by the same certificate;
- (b) a statement indicating that the order has been issued for the purpose of:
 - (i) confiscating one or more specific items of property; or
 - (ii) confiscating an amount of money.

(3) The Attorney General shall sign and certify as authentic the contents of the certificate.

(4) For purposes of this regulation, an order for forfeiture shall

be construed as a reference to a confiscation order referred to under these regulations.

18. (1) The transmission of a confiscation order shall not prevent the execution of the confiscation order by the Maltese Courts.

Consequences of
transmission of
confiscation
orders.

(2) Where a confiscation order concerning an amount of money is transmitted to more than one executing State, the total value derived from its execution may not exceed the maximum amount specified in the order.

Schedule 1

(Regulation 6)

Scheduled offences

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

Schedule 2

(Regulation 5)

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2006/783/JHA on the
application of the principle of mutual recognition to confiscation orders

(a) Issuing and executing States

- * Issuing State:
- * Executing State:

(b) Court which issued the confiscation order:

Official name:.....

Address:

File reference:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (when available)

Languages in which it is possible to communicate with the Court

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order, or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution (name, title/grade, tel., fax, and, when available, email)

(c) Authority competent for the execution of the confiscation order in the issuing State (if the authority is different from the Court under point (b)):

Official name:.....

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (when available)

Languages in which it is possible to communicate with the authority competent for the execution:

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution, (name, title/grade, tel, fax, and, when available, email)

(d) Where a central authority has been made responsible for the administrative transmission and reception of confiscation orders in the issuing State:

Name of the central authority:

Contact person, if applicable (title/grade and name):

.....

Address:

.....

File reference:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (when available)

(e) Authority or authorities which may be contacted (if point (c) and/or (d) has(have) been completed:

☐ Authority mentioned under point (b)

Can be contacted for questions concerning:

☐ Authority mentioned under point (c)

Can be contacted for questions concerning:

☐ Authority mentioned under point (d)

Can be contacted for questions concerning:

(f) Where the confiscation order is a follow-up to a freezing order transmitted to the executing State pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence *, provide relevant information to identify the freezing order (the dates of issue and transmission of the freezing order, the authority to which it was transmitted, reference number, if available):

.....

(g) Where the confiscation order has been transmitted to more than one executing State, provide the following information:

1. The confiscation order has been transmitted to the following other executing State(s) (country and authority):

.....

2. The confiscation order has been transmitted to more than one executing State for the following reason (tick the relevant box):

* OJ L 196, 2.8.2003, p.45.

2.1.	<p>Where the confiscation order concerns one or more specific items of property:</p> <p>Different specific items of property covered by the confiscation order are believed to be located in different executing States.</p> <p>The confiscation of a specific item of property involves action in more than one executing State.</p> <p>A specific item of property covered by the confiscation order is believed to be located in one of two or more specified executing States.</p>
2.2.	<p>Where the confiscation order concerns an amount of money:</p> <p>he property concerned has not been frozen under Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.</p> <p>The value of the property which may be confiscated in the issuing State and anyone executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.</p> <p>Other reason(s) (to be specified):</p> <p>.....</p>

<p>(h) Information regarding the natural or legal person against whom the confiscation order has been issued:</p>	
1.	<p><u>In the case of a natural person:</u></p> <p>Name:</p> <p>Forename(s):</p> <p>Maiden name, (where applicable):</p> <p>Aliases, (where applicable):</p> <p>Sex:</p> <p>Nationality:</p> <p>Identity number or social security number (when possible):</p> <p>Date of birth:</p> <p>Place of birth:</p> <p>Last known address:</p> <p>.....</p> <p>Language(s) which the person understands (if known):</p>
1.1.	<p>If the confiscation order concerns an amount of money:</p> <p>The confiscation order is transmitted to the executing State because (tick the relevant box):</p> <p><input type="checkbox"/> (a) the issuing State has reasonable grounds to believe that the person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:</p> <p style="padding-left: 20px;">Grounds for believing that the person has property / income:</p> <p style="padding-left: 20px;">Description of the property of the person / source of income:</p> <p style="padding-left: 20px;">.....</p>

		Location of the property of the person/source of income (if not known, the last known location):
<input type="checkbox"/>	(b)	there are no reasonable grounds, as referred to under (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information: Normal residence in the executing State:
1.2. If the confiscation order concerns specific item(s) of property: The confiscation order is transmitted to the executing State because (tick the relevant box):		
<input type="checkbox"/>	(a)	the specific item(s) of property is(are) located in the executing State (See point (i))
<input type="checkbox"/>	(b)	the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information: Grounds for believing that the specific item(s) of property is located in the executing State:
<input type="checkbox"/>	(c)	there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information: Normal residence in the executing State:
2. <u>In the case of a legal person:</u> Name: Form of legal person: Registration number (if available)*: Registered seat (if available)*: Address of the legal person:		
2.1. If the confiscation order concerns an amount of money: The confiscation order is transmitted to the executing State because (tick the relevant box):		

* Where a confiscation order is transmitted to the executing State because the legal person against whom the confiscation order has been issued has its registered seat in that State, Registration number and Registered seat must be completed.

<input type="checkbox"/>	(a)	the issuing State has reasonable grounds to believe that the legal person against whom the confiscation order has been issued has property or income in the executing State. Add the following information: Grounds for believing that the person has property / income: Description of the property of the person / source of income: Location of the property of the person/source of income (if not known, the last known location):
<input type="checkbox"/>	(b)	there are no reasonable grounds, as referred to in (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information: Registered Seat in the executing State:
2.2. If the confiscation order concerns specific item(s) of property: The confiscation order is transmitted to the executing State because (tick the relevant box):		
<input type="checkbox"/>	(a)	the specific item(s) of property is (are) located in the executing State (See point (i))
<input type="checkbox"/>	(b)	the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information: Grounds for believing that the specific item(s) of property is (are) located in the executing State:
<input type="checkbox"/>	(c)	there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information: Registered seat in the executing State:

- (i) The confiscation order
- The confiscation order was issued on (date):
- The confiscation order became final on (date):
- Reference number of the confiscation order (if available):
1. Information on the nature of the confiscation order
- 1.1. Indicate (by ticking in the relevant box(es)) if the confiscation order concerns:
- ☐ an amount of money
- The amount for execution in the executing State with indication of currency (in figures and words):
- The total amount covered by the confiscation order with indication of currency (in figures and words):
- ☐ specific item(s) of property:
- Description of the specific item(s) of property:
- Location of the specific item(s) of property (if not known, the last known location):
- Where the confiscation of the specific item(s) of property involves action in more than one executing State, description of the action to be taken:
- 1.2. The Court has decided that the property (tick the relevant box(es)):
- ☐ (i) is the proceeds of an offence, or is equivalent to either the full value or part of the value of such proceeds,
- ☐ (ii) constitutes the instrumentalities of such an offence,
- ☐ (iii) is liable to confiscation resulting from the application in the issuing State of extended powers of confiscation as specified in (a), (b) and (c). The basis for the decision is that the Court, based on specific facts, is fully convinced that the property in question has been derived from:
- ☐ (a) criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case,
- ☐ (b) similar criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case, or
- ☐ (c) the criminal activity of the convicted person, and it has been established that the value of the property is disproportionate to the lawful income of that person
- ☐ (iv) is liable to confiscation under any other provision relating to extended powers of confiscation under the law of the issuing State.
- If two or more categories of confiscation are involved, provide details on which property is confiscated in relation to which category:
-
-

<div>2.</div> <div>2.1.</div> <div>2.2.</div> <div>2.3.</div>	<div>Information on the offence(s) resulting in the confiscation order</div> <div>A summary of facts and a description of the circumstances in which the offence(s) resulting in the confiscation order has(have) been committed, including time and place</div> <div>Nature and legal classification of the offence(s) resulting in the confiscation order and the applicable statutory provision/code on basis of which the decision was made:</div> <div>If applicable, indicate one or more of the following offences to which the offence(s) identified under point 2.2 relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years (tick the relevant box(es)): <div><input type="checkbox"/> participation in a criminal organisation;</div><div><input type="checkbox"/> terrorism;</div><div><input type="checkbox"/> trafficking in human beings;</div><div><input type="checkbox"/> exual exploitation of children and child pornography;</div><div><input type="checkbox"/> illicit trafficking in narcotic drugs and psychotropic substances;</div><div><input type="checkbox"/> illicit trafficking in weapons, munitions and explosives;</div><div><input type="checkbox"/> corruption;</div><div><input type="checkbox"/> fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;</div><div><input type="checkbox"/> laundering of the proceeds of crime;</div><div><input type="checkbox"/> counterfeiting currency, including of the euro;</div><div><input type="checkbox"/> computer related crime;</div><div><input type="checkbox"/> environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;</div><div><input type="checkbox"/> facilitation of unauthorised entry and residence;</div><div><input type="checkbox"/> murder, grievous bodily injury;</div><div><input type="checkbox"/> illicit trade in human organs and tissue;</div><div><input type="checkbox"/> kidnapping, illegal restraint and hostage taking;</div><div><input type="checkbox"/> racism and xenophobia;</div><div><input type="checkbox"/> organised or armed robbery;</div><div><input type="checkbox"/> illicit trafficking in cultural goods, including antiques and works of art;</div><div><input type="checkbox"/> swindling;</div><div><input type="checkbox"/> racketeering and extortion;</div><div><input type="checkbox"/> counterfeiting and piracy of products;</div></div>
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<p><input type="checkbox"/> forgery of administrative documents and trafficking therein;</p> <p><input type="checkbox"/> forgery of means of payment;</p> <p><input type="checkbox"/> illicit trafficking in hormonal substances and other growth promoters;</p> <p><input type="checkbox"/> illicit trafficking in nuclear or radioactive materials;</p> <p><input type="checkbox"/> trafficking in stolen vehicles;</p> <p><input type="checkbox"/> rape;</p> <p><input type="checkbox"/> arson;</p> <p><input type="checkbox"/> crimes within the jurisdiction of the International Criminal Court;</p> <p><input type="checkbox"/> unlawful seizure of aircraft/ships;</p> <p><input type="checkbox"/> sabotage.</p> <p>2.4. To the extent that the offence(s) resulting in the confiscation order identified under point 2.2 is (are) not covered by point 2.3, give a full description of the offence(s) concerned (this should cover the actual criminal activity involved as opposed for instance to legal classifications):</p> <p>.....</p>

<p>(j) Proceedings resulting in the confiscation order</p> <p>Indicate if the person appeared in person at the trial resulting in the confiscation order:</p> <p>1. <input type="checkbox"/> Yes, the person appeared in person at the trial resulting in the confiscation order.</p> <p>2. <input type="checkbox"/> No, the person did not appear in person at the trial resulting in the confiscation order.</p> <p>3. <input type="checkbox"/> If you have ticked the box under point 2, please confirm the existence of one of the following:</p> <p><input type="checkbox"/> 3.1a the person was summoned in person on (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order and was informed that a decision may be handed down if he or she does not appear for the trial;</p> <p>OR</p> <p><input type="checkbox"/> 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the confiscation order, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;</p>

OR

- ☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

- ☐ 3.3. the person was served with the confiscation order on day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

- ☐ the person expressly stated that he or she does not contest the decision;

OR

- ☐ the person did not request a retrial or appeal within the applicable time frame.

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....
.....
.....

(k) Conversion and transfer of property

1. If the confiscation order concerns a specific item of property, state whether the issuing State allows for the confiscation in the executing State to take the form of a requirement to pay a sum of money corresponding to the value of the property.

☐ yes

☐ no

2. If the confiscation order concerns an amount of money, state whether property, other than money obtained from the execution of the confiscation order, may be transferred to the issuing State:

☐ yes

☐ no

(l)	<p>Alternative measures, including custodial sanctions</p> <p>1. State whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the confiscation order, either totally or in part:</p> <p style="margin-left: 20px;"> <input type="checkbox"/> yes <input type="checkbox"/> no </p> <p>2. If yes, state which sanctions may be applied (nature and maximum level of the sanctions):</p> <p style="margin-left: 20px;"> <input type="checkbox"/> Custody (maximum period): <input type="checkbox"/> Community service (or equivalent) (maximum period): <input type="checkbox"/> Other sanctions (description): </p>
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(m)	<p>Other circumstances relevant to the case (optional information):</p> <p>.....</p> <p>.....</p>
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(n)	<p>The confiscation order is attached to the certificate.</p> <p>Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate:</p> <p>Name:</p> <p>Post held (title/grade):</p> <p>Date:</p> <p>Official stamp (if available)</p>
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Schedule 3

(Regulation 3)

Member States of the European Union

Austria	Czech Republic
Denmark	Finland
Hungary	Latvia
Luxembourg	Poland
Portugal	Romania
Slovenia	Spain
The Netherlands	

Schedule 4

(Regulation 2)

COUNCIL FRAMEWORK DECISION 2005/212/JHA of 24 February 2005 on
Confiscation of Crime-Related Proceeds, Instrumentalities and Property

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29,
31(1)(c) and 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Denmark (1),

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The main motive for cross-border organised crime is financial gain. In order to be effective, therefore, any attempt to prevent and combat such crime must focus on tracing, freezing, seizing and confiscating the proceeds from crime. However, this is made difficult, *inter alia*, as a result of differences between Member States' legislation in this area.
- (2) In the conclusions of the Vienna European Council of December 1998, the European Council called for a strengthening of EU efforts to combat international organised crime in accordance with an action plan on how best to implement the provisions of the Treaty of Amsterdam in an area of freedom, security and justice (2).
- (3) Pursuant to paragraph 50(b) of the Vienna Action Plan, within five years of the entry into force of the Treaty of Amsterdam, national provisions governing seizures and confiscation of the proceeds from crime must be improved and approximated where necessary, taking account of the rights of third parties in *bona fide*.
- (4) Paragraph 51 of the conclusions of the Tampere European Council of 15 and 16 October 1999 stresses that money laundering is at the very heart of organised crime, and should be rooted out wherever it occurs and that the European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds from crime. The European Council also calls, in paragraph 55, for the approximation of

criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds).

- (5) Pursuant to Recommendation 19 in the 2000 action plan entitled ‘The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium’, which was approved by the Council on 27 March 2000 (3), an examination should be made of the possible need for an instrument which, taking into account best practice in the Member States and with due respect for fundamental legal principles, introduces the possibility of mitigating, under criminal, civil or fiscal law, as appropriate, the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.
- (6) Pursuant to Article 12, on confiscation and seizure, of the UN Convention of 12 December 2000 against Transnational Organised Crime, States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of judicial proceedings.
- (7) All Member States have ratified the Council of Europe Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Some Member States have submitted declarations with regard to Article 2 of the Convention concerning confiscation so as to be obliged to confiscate proceeds only from a number of specified offences.
- (8) The Council Framework Decision 2001/500/JHA (4) lays down provisions on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. Under that Framework Decision, Member States are also obliged not to make or uphold reservations in respect of the provisions of the Council of Europe Convention concerning confiscation, insofar as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.
- (9) The existing instruments in this area have not to a sufficient extent achieved effective cross-border cooperation with regard to confiscation as there are still a number of Member States which are unable to confiscate the proceeds from all offences punishable by deprivation of liberty for more than one year.
- (10) The aim of this Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, *inter alia*, in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime. This Decision is linked to a Danish draft Framework Decision on the mutual recognition within the European Union of decisions concerning the confiscation of proceeds from crime and asset-sharing, which is being submitted at the same time.
- (11) This Framework Decision does not prevent a Member State from applying its fundamental principles relating to due process, in particular the presumption of innocence, property rights, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

- ‘proceeds’ means any economic advantage from criminal offences. It may consist of any form of property as defined in the following indent,
- ‘property’ includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property,
- ‘instrumentalities’ means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences,
- ‘confiscation’ means a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property,
- ‘legal person’ means any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 2

Confiscation

1. Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.
2. In relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence.

Article 3

Extended powers of confiscation

1. Each Member State shall as a minimum adopt the necessary measures to enable it, under the circumstances referred to in paragraph 2, to confiscate, either wholly or in part, property belonging to a person convicted of an offence
 - (a) committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (5), when the offence is covered by:
 - Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (6),
 - Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (7),
 - Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (8),
 - Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (9),

- Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (10),
- Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (11),

- (b) which is covered by the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (12),

provided that the offence according to the Framework Decisions referred to above

- regarding offences other than money laundering are punishable with criminal penalties of a maximum of at least between 5 and 10 years of imprisonment,
- regarding money laundering, are punishable with criminal penalties of a maximum of at least 4 years of imprisonment,

and the offence is of such a nature that it can generate financial gain.

2. Each Member State shall take the necessary measures to enable confiscation under this Article at least:

- (a) where a national court based on specific facts is fully convinced that the property in question has been derived from criminal activities of the convicted person during a period prior to conviction for the offence referred to in paragraph 1 which is deemed reasonable by the court in the circumstances of the particular case, or, alternatively,
- (b) where a national court based on specific facts is fully convinced that the property in question has been derived from similar criminal activities of the convicted person during a period prior to conviction for the offence referred to in paragraph 1 which is deemed reasonable by the court in the circumstances of the particular case, or, alternatively,
- (c) where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a national court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person.

3. Each Member State may also consider adopting the necessary measures to enable it to confiscate, in accordance with the conditions set out in paragraphs 1 and 2, either wholly or in part, property acquired by the closest relations of the person concerned and property transferred to a legal person in respect of which the person concerned - acting either alone or in conjunction with his closest relations - has a controlling influence. The same shall apply if the person concerned receives a significant part of the legal person's income.

4. Member States may use procedures other than criminal procedures to deprive the perpetrator of the property in question.

Article 4

Legal remedies

Each Member State shall take the necessary measures to ensure that interested parties affected by measures under Articles 2 and 3 have effective legal remedies in order to preserve their rights.

Article 5

Safeguards

This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental principles, including in particular the presumption of innocence, as enshrined in Article 6 of the Treaty on European Union.

Article 6

Implementation

1. Member States shall adopt the necessary measures to comply with this Framework Decision by 15 March 2007.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission, by 15 March 2007, the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. In accordance with a report established on the basis of this information and a written report from the Commission, the Council shall assess, by 15 June 2007, the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 7

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at Brussels, 24 February 2005.

For the Council

The President

N. SCHMIT

-
- (1) OJ C 184, 2.8.2002, p. 3.
 - (2) OJ C 19, 23.1.1999, p. 1.
 - (3) OJ C 124, 3.5.2000, p. 1.
 - (4) OJ L 182, 5.7.2001, p. 1.
 - (5) OJ L 351, 29.12.1998, p. 1.
 - (6) OJ L 140, 14.6.2000, p. 1.
 - (7) OJ L 182, 5.7.2001, p. 1.
 - (8) OJ L 203, 1.8.2002, p. 1.
 - (9) OJ L 328, 5.12.2002, p. 1.
 - (10) OJ L 13, 20.1.2004, p. 44.
 - (11) OJ L 335, 11.11.2004, p. 8.
 - (12) OJ L 164, 22.6.2002, p. 3.
- _____

APPENDIX III.5

A.L. 467 tal-2010**KODIĊI KRIMINALI
(KAP. 9)****Regolamenti tal-2010 li jemendaw ir-Regolamenti dwar
l-Eżekuzzjoni ta' Ordnijiet ta' Iffriżar fl-Unjoni Ewropea
(Emenda Nru. 2)**

BIS-SAHHA tas-setgħat mogħtija bl-artikolu 628A tal-Kodiċi Kriminali, il-Ministru tal-Ġustizzja u l-Intern għamel dawn ir-regolamenti li ġejjin:-

1. It-titolu ta' dawn ir-regolamenti hu Regolamenti tal-2010 li jemendaw ir-Regolamenti dwar l-Eżekuzzjoni ta' Ordnijiet ta' Iffriżar fl-Unjoni Ewropea (Emenda Nru. 2), u dawn ir-regolamenti għandhom jinqraw u jinftehmha haġa waħda mar-Regolamenti dwar l-Eżekuzzjoni ta' Ordnijiet ta' Iffriżar fl-Unjoni Ewropea, hawn iżjed 'il quddiem imsejha "ir-regolamenti prinċipali". Titolu.

L.S. 9.13
2. Fir-regolament 4 tar-regolamenti prinċipali, fil-paragrafu (a), minflok il-kliem "mill-Qorti Kriminali" għandhom jidhlu l-kliem "minn qorti ta' ġurisdizzjoni kriminali", u fil-paragrafu (b) minflok il-kliem "il-Qorti Kriminali" għandhom jidhlu l-kliem "qorti ta' ġurisdizzjoni kriminali". Jemenda r-regolament 4 tar-regolamenti prinċipali.
3. Minflok is-subregolament (1) tar-regolament 12 tar-regolamenti prinċipali, għandu jidhol dan li ġejj: Jemenda r-regolament 12 tar-regolamenti prinċipali.

"(1) Meta persuna tiġi akkużata b'reat rilevanti, l-Avukat Ġenerali jew il-prosekuzzjoni jistgħu jitolbu b'rikors lil qorti ta' ġurisdizzjoni kriminali biex tohroġ ordni ta' iffriżar."
4. Fir-regolament 13 tar-regolamenti prinċipali minflok il-kliem "mill-Qorti Kriminali" għandhom jidhlu l-kliem "minn qorti ta' ġurisdizzjoni kriminali". Jemenda r-regolament 13 tar-regolamenti prinċipali.
5. L-Iskeda 3 li tinsab mar-regolamenti prinċipali għandha tiġi emendata kif ġejj: Jemenda l-Iskeda 3 li tinsab mar-regolamenti prinċipali.
 - (a) minnufih wara l-kliem "Il-Polonja" għandhom jiżdiedu l-kliem "Il-Portugall"; u
 - (b) minnufih wara l-kliem "Ir-Renju Unit", il-kliem "fir-rigward ta' ordnijiet ta' iffriżar li proviżorjament jissekwestraw provi" għandhom jiġu mħassra.

L.N. 467 of 2010

**CRIMINAL CODE
(CAP. 9)**

**Freezing Orders (Execution in the European Union)
(Amendment) (No. 2) Regulations, 2010**

IN exercise of the powers conferred by article 628A of the Criminal Code, the Minister for Justice and Home Affairs has made the following regulations:-

- | | |
|--|--|
| Citation. | 1. The title of these regulations is the Freezing Orders (Execution in the European Union) (Amendment) (No.2) Regulations, 2010, and these regulations shall be read and construed as one with the Freezing Orders (Execution in the European Union) Regulations, hereinafter referred to as "the principal regulations". |
| S.L. 9.13 | |
| Amends regulation 4 of the principal regulations. | 2. In regulation 4 of the principal regulations, for the words "the Criminal Court" wherever they occur there shall be substituted the words "a court of criminal jurisdiction". |
| Amends regulation 12 of the principal regulations. | 3. For sub-regulation (1) of regulation 12 of the principal regulations, there shall be substituted the following:

"(1) Where a person is charged with a relevant offence, the Attorney General or the prosecution may apply to a court of criminal jurisdiction for a freezing order." |
| Amends regulation 13 of the principal regulations. | 4. In regulation 13 of the principal regulations for the words "the Criminal Court" there shall be substituted the words "a court of criminal jurisdiction". |
| Amends Schedule 3 to the principal regulations. | 5. Schedule 3 to the principal regulations shall be amended as follows:

(a) immediately after the word "Poland" there shall be inserted the word "Portugal"; and

(b) immediately after the words "United Kingdom", the words "- with regards to freezing orders provisionally attaching evidence" shall be deleted. |



APPENDIX III.6

SUBSIDIARY LEGISLATION 9.13**FREEZING ORDERS (EXECUTION IN THE
EUROPEAN UNION) REGULATIONS**

7th December, 2007

*LEGAL NOTICE 397 of 2007, as amended by Legal Notices 354 of 2009,
and 178 and 467 of 2010.*

1. The title of these regulations is the Freezing Orders (Execution in the European Union) Regulations. Title.

2. In these regulations, unless the context otherwise requires: Definitions.

"the Arrangement" means the Council Framework Decision 2003/577/JHA of the 22nd July, 2003 on the execution in the European Union of orders freezing property or evidence;

"certificate" means the certificate set out in Schedule 2;

"the European Union" means the European Union as referred to in the Treaty;

"evidence" means objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Schedule 1;

"executing State" means the Member State in whose territory the property or evidence is located;

"freezing order" means any order purporting to provisionally attach:

- (a) property that could be subject to confiscation; or
- (b) evidence;

"issuing State" means the Member State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;

"property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to, or interest in such property, which the competent judicial authority in the issuing State considers:

- (a) is the proceeds of a relevant offence or equivalent to either the full value or part of the value of such proceeds, or
- (b) constitutes the instrumentalities or the objects of a relevant offence;

"relevant offence" means:

- (a) a scheduled offence; or
- (b) any other offence liable to the punishment of imprisonment or of detention for a term of more than

one year;

"scheduled offence" is any offence in the list of offences set out in Schedule 1;

Cap. 460.

"the Treaty" shall have the same meaning assigned to it by Article 2 of the European Union Act.

Limitation.
Amended by:
L.N. 354 of 2009.

3. These regulations shall be limited to the transmission of freezing orders between Malta and a Member State of the European Union listed in Schedule 3 and shall apply to orders issued after the 2nd August 2005.

Competent
authorities.
Amended by:
L.N. 467 of 2010.

4. For purposes of these regulations:

- (a) the Attorney General shall be competent to receive freezing orders issued in the issuing State and to transmit to the executing State freezing orders issued in Malta by a court of criminal jurisdiction;
- (b) a court of criminal jurisdiction shall be competent to issue freezing orders.

Transmission.
Amended by:
L.N. 178 of 2010.

5. (1) A freezing order shall be transmitted with the certificate provided for in Schedule 2 and containing the information prescribed therein, by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

(2) The certificate shall be in either the Maltese or English language:

Provided that it shall not be necessary for the freezing order to be in either the Maltese or English language.

Details of freezing
orders.

6. (1) A freezing order shall contain a statement that the order relates to:

- (a) conduct which -
 - (i) is a scheduled offence; and
 - (ii) carries a sentence of imprisonment or another form of detention of a maximum period of at least three years in the issuing State;

Provided that in such cases there shall be no verification of the double criminality of the act; or

- (b) conduct which -
 - (i) would constitute an offence under the law of Malta if it occurred in Malta;
 - (ii) is punishable under the laws of Malta with imprisonment or another form of detention for a term of twelve months or a greater punishment.

(2) In determining for the purposes of this regulation whether an offence falls within the requirements of sub-regulation (1)(b)(i):

- (a) the description of the offence shall not be regarded as material if the offence under the law of Malta and the law of the issuing State are substantially of the same nature;

- (b) if the conduct relates to a tax or duty, it is immaterial that the law of Malta does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the issuing State;
 - (c) if the conduct relates to customs or exchange, it is immaterial that the law of Malta does not contain rules of the same kind as those of the law of the issuing State.
- (3) A freezing order shall indicate whether the order has been issued for the purpose of:
 - (a) securing evidence; or
 - (b) the subsequent confiscation of property.
- (4) The freezing order must be accompanied by:
 - (a) a request for the evidence to be transferred to the issuing State; or
 - (b) a request for confiscation requiring either enforcement of a confiscation order that has been issued in the issuing State or confiscation in the executing State and subsequent enforcement of any such order; or
 - (c) an instruction in the certificate that the property shall remain in the executing State pending a request referred to in paragraph (a) or (b) and the (estimated) date for submission of this request shall also be indicated.
- (5) Requests referred to in sub-regulation (4)(a) and (b) shall be submitted and processed in accordance with the rules applicable to mutual assistance in criminal matters and the rules applicable to international co-operation relating to confiscation.

7. (1) Where the Attorney General receives a freezing order within the meaning of these regulations the Attorney General shall, in his own individual judgement and subject to the provisions of regulations 8 and 9, issue a certificate to the effect that the authority which issued a freezing order has the function of issuing freezing orders in the issuing State and such certificate shall be conclusive of its contents.

Certificate by
Attorney General.

(2) Where the competent judicial authority of the issuing State has expressly indicated the formalities and procedures to be observed in the execution of the freezing order, the Attorney General shall direct the executing officer under regulation 10(2) to comply with these formalities and procedures unless the Attorney General is of the opinion that those formalities and, or procedures are contrary to the fundamental principles of law in Malta.

(3) The certificate issued under sub-regulation (1) together with the freezing order to which it refers shall be communicated to the Commissioner of Police for execution as provided in regulation 10.

8. (1) Subject to the provisions of sub-regulation (4), a freezing order shall not be recognized by the Attorney General if:

Grounds for non-
recognition.

- (a) the certificate provided for in Schedule 2 is not produced, is incomplete or manifestly does not correspond to the freezing order;
- (b) there is an immunity or privilege under the law of Malta which makes it impossible to execute the freezing order;
- (c) on the face of the record it appears that extending assistance in response to a request mentioned in regulation 6(4) would infringe the ne bis in idem principle;
- (d) the act on which the freezing order is based is not one falling within the list of scheduled conduct and does not constitute an offence under the law of Malta.

(2) Any decision to refuse recognition or execution received in terms of these regulations, shall be taken and notified to the competent judicial authorities of the issuing State by any means capable of producing a written record.

(3) In the event that execution of the freezing order is impossible due to the fact that the property or evidence has disappeared, been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, the competent judicial authorities of the issuing state shall be notified.

(4) Notwithstanding the provisions of sub-regulation (1)(a) the Attorney General may:

- (a) accept an equivalent document to the certificate;
- (b) exempt the issuing judicial authority from producing the certificate if he considers the information provided as sufficient; or
- (c) specify a deadline for the presentation, completion or correction of the certificate.

Grounds for postponement of execution.

9. (1) The Attorney General may postpone the execution of a freezing order transmitted in accordance with regulation 5 in the following cases:

- (a) where its execution might damage an ongoing criminal investigation, until such time as he deems reasonable;
- (b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;
- (c) where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in Malta and until that order is lifted.

(2) If a postponement is deemed necessary, the Attorney General shall inform the issuing judicial authority of this fact and of the grounds for the postponement and, if possible, the expected

duration of the postponement.

(3) Once the grounds for postponement have ceased to exist, the provisions of regulations 7 and 10 shall apply and the Attorney General shall inform the issuing State accordingly.

10. (1) Where a certificate has been issued by the Attorney General under regulation 7, the provisions of this regulation shall apply.

Execution after
issue of certificate.

(2) Without the need of any further authority other than the authority conferred by this regulation the order shall be executed by a police officer not below the rank of Inspector.

11. (1) The following provisions of this regulation shall apply where a freezing order is executed by the police under regulation 10.

Effect of freezing
order.

(2) The freezing order shall have the same effect as an order as is referred to in article 22A(1) of the Dangerous Drugs Ordinance, hereinafter in these regulations referred to as "the Ordinance", and the provisions of the said article 22A of the Ordinance shall, subject to the provisions of sub-regulation (3) of this regulation, apply *mutatis mutandis* to the freezing order.

Cap. 101.

(3) The provisions of article 24C(2) to (5) of the Ordinance shall apply to a freezing order executed under this regulation as if it were an order made under the said article 24C.

(4) Any person who acts in contravention of a freezing order mentioned in these regulations shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding five thousand liri, or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and the court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

12. (1) Where a person is charged with a relevant offence, the Attorney General or the prosecution may apply to a court of criminal jurisdiction for a freezing order.

Issue of freezing
orders.
Amended by:
L.N. 467 of 2010.

(2) A freezing order shall contain a statement indicating that the order has been issued for the purpose of:

- (a) securing evidence; or
- (b) the subsequent confiscation of property.

13. (1) Upon the issue of a freezing order by a court of criminal jurisdiction, the Attorney General shall append to the order:

Appendices to the
order.
Amended by:
L.N. 467 of 2010.

- (a) a request for the evidence to be transferred to Malta; or
- (b) a request for confiscation requiring either enforcement of a confiscation order that has been issued in Malta or confiscation in the executing State and subsequent enforcement of any such order; or
- (c) instructions in the certificate that the property shall remain in the executing State pending a request

referred to in paragraph (a) or (b) and the (estimated) date for submission of this request shall also be indicated.

(2) The Attorney General shall sign and certify as authentic the contents of the certificate.

Schedule 1
(Regulation 6)

- participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,
 - illicit trafficking in narcotic drugs and psychotropic substances,
 - illicit trafficking in weapons, munitions and explosives,
 - corruption,
 - fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
 - laundering of the proceeds of crime,
 - counterfeiting currency, including of the euro,
 - computer-related crime,
 - environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
 - facilitation of unauthorised entry and residence,
 - murder, grievous bodily injury,
 - illicit trade in human organs and tissue,
 - kidnapping, illegal restraint and hostage-taking,
 - racism and xenophobia,
 - organised or armed robbery,
 - illicit trafficking in cultural goods, including antiques and works of art,
 - swindling,
 - racketeering and extortion,
 - counterfeiting and piracy of products,
 - forgery of administrative documents and trafficking therein,
 - forgery of means of payment,
 - illicit trafficking in hormonal substances and other growth promoters,
 - illicit trafficking in nuclear or radioactive materials,
 - trafficking in stolen vehicles,
 - rape,
 - arson,
 - crimes within the jurisdiction of the International Criminal Court,
 - unlawful seizure of aircraft/ships,
 - sabotage.
-

Schedule 2

(Regulation 5)

(a) The judicial authority which issued the freezing order:

Official name:

.....

Name of its representative:

.....

Post held (title/grade):

.....

File reference:

.....

Address:

.....

Tel. No.: (country code) (area/city code) (...)

.....

Fax No. (country code) (area/city code) (...)

.....

E-mail

.....

Languages in which it is possible to communicate with the issuing judicial authority

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence. (if applicable):

.....

(b) The authority competent for the enforcement of the freezing order in the issuing State (if the authority is different from the authority under point (a)):

Official name:

.....

Name of its representative:

.....

Post held (title/grade):

.....

File reference:

.....

Address:

.....

.....

Tel. No.: (country code) (area/city code) (...)

.....

Fax No. (country code) (area/city code) (...)

.....

E-mail

.....

Languages in which it is possible to communicate with the authority competent for the enforcement

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

.....

.....

(c) In the case where point (a) and point (b) have been filled, this point must be filled in order to indicate which/or both of these two authorities must be contacted:

- Authority mentioned under point (a)
- Authority mentioned under point (b)

(d) Where a central authority has been made responsible for the transmission and administrative reception of freezing orders (only applicable for Ireland and the United Kingdom):

Name of the central authority:

.....

.....

Contact person, if applicable (title/grade and name):

.....

.....

Address:

.....

File reference

Tel. No.: (country code) (area/city code)

.....

Fax No.: (country code) (area/city code)

.....

E-mail:

(e) The freezing order:

1. Date and if applicable reference number

2. State the purpose of the order

2.1 Subsequent confiscation

2.2 Securing evidence

3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable).

(f) Information regarding the property or evidence in the executing State covered by the freezing order:

Description of the property or evidence and location:

1. (a) Precise description of the property and, where applicable, the maximum amount for which recovery is sought (if such maximum amount is indicated in the order concerning the value of proceeds)

(b) Precise description of the evidence

2. Exact location of the property or evidence (if not known, the last known location)

3. Party having custody of the property or evidence or known beneficial owner of the property or evidence, if different from the person suspected of the offence or convicted (if applicable under the national law of the issuing State).

.....

(g) Information regarding the identity of the (1) natural or (2) legal person(s), suspected of the offence or convicted (if applicable under the national law of the issuing State) or/and the person(s) to whom the freezing order relates (if available):

1. Natural persons

Name:

.....

Forename(s):

.....

Maiden name, where applicable:

.....

Aliases, where applicable:

.....

Sex:

.....

Nationality:

.....

Date of birth:

.....

Place of birth:

.....

Residence and/or known address, if not known state the last known address:

.....

.....

Language(s) which the person understands (if known):

.....

2. Legal persons

Name:

.....

Form of legal person:

Registration number:

.....

Registered seat:

.....

.....

(h) Action to be taken by the executing State after executing the freezing order

Confiscation

1.1. The property is to be kept in the executing State for the purpose of subsequent confiscation of the property

1.1.1. Find enclosed request regarding enforcement of a confiscation order issued in the issuing State on (date)

1.1.2. Find enclosed request regarding confiscation in the executing State and subsequent enforcement of that order

1.1.3. Estimated date for submission of a request referred to in 1.1.1 or 1.1.2.

or

Securing of evidence

2.1. The property is to be transferred to the issuing State to serve as evidence

2.1.1. Find enclosed a request for the transfer

or

2.2. The property is to be kept in the executing State for the purpose of subsequent use as evidence in the issuing State.

2.2.2. Estimated date for submission of a request referred to in 2.1.1.

.....

(i) Offences:

Description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate:

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:

.....

1. If applicable, tick one or more of the following offences to which the offence(s) identified above relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least three years:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;

- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

2. Full descriptions of offence(s) not covered by section 1 above:

.....
.....

(j) Legal remedies against the freezing order for interested parties, including bona fide third parties, available in the issuing State.

Description of the legal remedies available including necessary steps to take

Court before which the action may be taken

Information as to those for whom the action is available

Time limit for submission of the action.

Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and translation is available:

Name

Contact person (if applicable):

Address:

.....

Tel. No.: (country code) (area/city code)

.....

Fax No. (country code) (area/city code)

.....

E-mail

.....

(k) Other circumstances relevant to the case (optional information):

.....

.....

(l) The text of the freezing order is attached to the certificate.

Signature of the issuing judicial authority and/or its representative certifying the content of the certificate as accurate:

.....

Name:

.....

Post held (title/grade):

.....

Date:

.....

Official stamp (if available)

Added by:
L.N. 354 of 2009.
Amended by:
L.N. 178 of 2010;
L.N. 467 of 2010.

Schedule 3
(Regulation 3)

Austria

Belgium

Bulgaria

Cyprus -with regards to freezing orders provisionally attaching evidence

Czech Republic

Denmark

Germany

Estonia

Finland

France

Latvia

Lithuania

Hungary

Ireland

Poland

Portugal

Romania

Slovakia

Slovenia

Spain

Sweden

The Netherlands

United Kingdom

APPENDIX III.7

328. Whosoever, through imprudence, negligence or unskilfulness in his trade or profession, or through non-observance of any regulation, shall cause any fire or any damage, spoil or injury as mentioned in this sub-title, shall, on conviction, be liable -

- (a) if the death of any person is caused thereby, to the punishments established in article 225;
- (b) if any grievous bodily harm with any of the effects mentioned in article 218 is caused thereby, to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37);
- (c) if any grievous bodily harm without any of the effects aforesaid is caused thereby, to imprisonment for a term not exceeding three months or to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69);
- (d) in any other case, to imprisonment for a term not exceeding three months or to a fine (*multa*) or to the punishments established for contraventions:

Provided that in the cases referred to in paragraph (d), except where damage is caused to public property, other than a motor vehicle, proceedings may be instituted only on the complaint of the injured party.

Involuntary fire or damage.

Amended by:

IV. 1856.17;

XI. 1900.48;

V. 1956.18;

XIII. 1980.11;

XIII. 1983.5;

L.N. 407 of 2007;

VII. 2010.24.

*Sub-title IV A **

OF ACTS OF TERRORISM, FUNDING OF TERRORISM AND ANCILLARY OFFENCES

Added by:

VI. 2005.2.

328A.(1) For the purposes of this sub-title, "act of terrorism" means any act listed in subarticle (2), committed wilfully, which may seriously damage a country or an international organization where committed with the aim of:

Acts of terrorism.

Added by:

VI. 2005.2.

- (a) seriously intimidating a population, or
- (b) unduly compelling a Government or international organization to perform or abstain from performing any act, or
- (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

(2) The acts to which reference is made in subarticle (1) are the following:

- (a) taking away of the life or liberty of a person;
- (b) endangering the life of a person by bodily harm;

*originally, as enacted by Act VI of 2005, this sub-title was numbered Sub-title V.

- (c) bodily harm;
- (d) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons;
- (g) research into or development of biological and chemical weapons;
- (h) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;
- (i) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person;
- (j) threatening to commit any of the acts in paragraphs (a) to (i):

Provided that in this subarticle "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them in article 314A(4).

(3) Whosoever commits an act of terrorism shall be guilty of an offence and shall be liable on conviction to the punishment of imprisonment from five years to life.

Terrorist groups.
Added by:
VI. 2005.2.

328B.(1) For the purpose of this sub-title "terrorist group" means a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences.

(2) In sub-article (1) "structured group" means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

(3) Whosoever promotes, constitutes, organises, directs, finances, supplies information or materials to, a terrorist group knowing that such participation or involvement will contribute towards the criminal activities of the terrorist group shall be liable -

- (a) where the said participation or involvement consists in directing the terrorist group, to the punishment of imprisonment not exceeding thirty years:

Provided that where the activity of the terrorist group consists only of the acts mentioned in article

328A(2)(j) the punishment shall be that of imprisonment for a period not exceeding eight years;

- (b) in any other case, to the punishment of imprisonment not exceeding eight years.

328C. (1) Whosoever, with the intention of committing any of the acts listed in article 328A(2)(a) to (i) or in article 328B -

Offences linked to terrorist acts.
Added by:
VI. 2005.2.
Amended by:
XI. 2009.6.

- (a) commits an offence of theft aggravated as provided in article 261; or
(b) commits the offence in article 113 or 250; or
(c) commits an offence of forgery or the offence in article 188,

shall be liable to the same punishment laid down in article 328A(3).

- (2) Whosoever, knowingly -

- (a) publicly provokes the commission of an act of terrorism;
(b) recruits or solicits another person to commit an act of terrorism;
(c) trains or instructs another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing an act of terrorism,

shall be liable to the same punishment laid down in article 328A(3).

(3) Whosoever contributes to the commission of an offence mentioned in article sub-article (2) by a group of persons acting with a common design, knowing that the contribution will further the group's criminal activity or criminal purpose to commit any such offence, shall be liable to the same punishment laid down in article 328B(3)(b).

(4) For the commission of an offence under this article it shall not be necessary that an act of terrorism be actually committed.

328D. Whosoever incites, aids or abets any offence under the foregoing articles of this sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence incited, aided or abetted.

Inciting, aiding or abetting.
Added by:
VI. 2005.2.

328E.(1) In this sub-title, "terrorist property" means -

Terrorist property.
Added by:
VI. 2005.2.

- (a) money or other property which is likely to be used for the purposes of terrorism, including any resources of a terrorist group,
(b) proceeds of the commission of acts of terrorism, and
(c) proceeds of acts carried out for the purposes of terrorism.

(2) In sub-article (1) -

- (a) a reference to proceeds of an act includes a reference

to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and

- (b) the reference to a group's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the group.

Funding of terrorism.
Added by:
VI. 2005.2.
Amended by:
L.N. 407 of 2007.

328F. (1) Whosoever receives, provides or invites another person to provide, money or other property intending it to be used, or which he has reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, and unless the fact constitutes a more serious offence under any other provision of this Code or of any other law, be liable to the punishment of imprisonment for a term not exceeding four years or to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to both such fine and imprisonment.

(2) In this article a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether for consideration or not.

Use and possession.
Added by:
VI. 2005.2.

328G. (1) Whosoever uses money or other property for the purposes of terrorism shall, on conviction, be liable to the punishment of imprisonment not exceeding twelve years.

(2) Whosoever is in possession of money or other property intending it to be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, be liable to the punishment laid down in article 328F(1).

Funding arrangements.
Added by:
VI. 2005.2.

328H. Whosoever -

- (a) enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and
- (b) knows or has reasonable cause to suspect that the money or other property will or may be used for the purposes of terrorism,

shall on conviction be liable to the punishment laid down in article 328F(1).

Facilitating retention or control of terrorist property.
Added by:
VI. 2005.2.

328I. (1) Whosoever enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -

- (a) by concealment,
- (b) by removal from the jurisdiction,
- (c) by transfer to nominees, or
- (d) in any other way,

shall, on conviction, be liable to the punishment laid down in article 328F(1).

(2) It is a defence for a person charged with an offence under subarticle (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

328J. (1) The provisions of article 121D shall apply where a person is found guilty of an offence under this subtitle so however that the body corporate shall for such offence be liable to the punishment of a fine (*multa*) of not less than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) and not more than two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40).

Corporate criminal liability.
Added by:
VI. 2005.2.
Amended by:
L.N. 407 of 2007.

(2) The body corporate shall also be held liable for an offence under this sub-title where the lack of supervision or control by a person referred to in article 121D has made possible the commission of the offence for the benefit of the body corporate, which shall upon conviction be liable to the punishment laid down in subarticle (1).

328K. Without prejudice to any other punishment to which the offence may be liable under this Code or any other law, where the offender is a body corporate liable to punishment under the provisions of article 328J the Court may, at the request of the prosecution, order -

Other penalties.
Added by:
VI. 2005.2.

- (a) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;
- (b) the temporary or permanent closure of any establishment which may have been used for the commission of the offence;
- (c) the compulsory winding up of the body corporate.

328L. (1) The court by or before which a person is convicted of an offence under any of articles 328F to 328I may make a forfeiture order in accordance with the provisions of this article.

Forfeiture.
Added by:
VI. 2005.2.

(2) Where a person is convicted of an offence under articles 328F or 328G the court may order the forfeiture of any money or other property -

- (a) which, at the time of the offence, he had in his possession or under his control and,
- (b) which, at that time, he intended should be used, or which he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorism.

(3) Where a person is convicted of an offence under article 328H the court may order the forfeiture of the money or other property -

- (a) to which the arrangement in question related, and
- (b) which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorism.

(4) Where a person is convicted of an offence under article 328I the court may order the forfeiture of the money or other property to which the arrangement in question related.

(5) Where a person is convicted of an offence under any of articles 328F to 328I, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(6) Where a person other than the convicted person claims to be the owner of, or otherwise interested in, anything which can be forfeited by an order under this article, the court shall give him an opportunity to be heard before making an order.

Jurisdiction.
Added by:
VI. 2005.2.

328M. Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offences laid down in this sub-title where -

- (a) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;
- (b) the offender is a Maltese national or permanent resident in Malta;
- (c) the offender is a person suspected or convicted of an offence laid down in this sub-title and whose surrender or extradition to another country for such an offence is refused by Malta even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;
- (d) the offence is committed for the benefit of a legal person established in Malta;
- (e) the offence is an offence under article 328B or an offence under article 328D which involves a terrorist group even if the terrorist group is based or pursues its criminal activities outside Malta;
- (f) the offence is committed against the institutions or people of Malta or against an institution of the European Union or a body set up in accordance with the Treaties and based in Malta:

Provided that for the purposes of this paragraph:

"the European Union" shall have the same meaning assigned to it by article 2(1) of the European Union Act;

"the Treaties" means the Treaty establishing the European Community done at Rome on the 25th March, 1957 and the Treaty on European Union done at Maastricht on the 7th February, 1992, and the Protocols annexed thereto.

Cap. 460.

APPENDIX III.8

SUBSIDIARY LEGISLATION 365.14**SECURITY COUNCIL RESOLUTIONS
(TERRORISM) REGULATIONS**

21st June, 2002

LEGAL NOTICE 156 of 2002.

1. The title of these regulations is the Security Council Resolutions (Terrorism) Regulations. Citation.

2. For the purposes of article 3(4) of the National Interest (Enabling Powers) Act, Resolutions number 1269 (1999), 1368 (2001), 1373 (2001) and 1390 (2002) adopted by the Security Council of the United Nations on the 19th October 1999, on the 12th September 2001, the 28th September 2001 and the 16th January 2002 respectively, are being hereby published in the Schedule. Text of resolutions.

3. (1) Whenever the Government receives a request for cooperation as envisaged in a resolution, referred to in regulation 2, in connection with a relevant vessel by a foreign Government to take appropriate measures with regard to such vessels reasonably suspected to carry terrorists or to carry equipment or other material on behalf of or in order to aid terrorism, the Attorney General may, with the concurrence of the Prime Minister, authorise the taking of the said measures by the competent authorities of the said foreign Government subject to such conditions as may be agreed between such authorities and the Attorney General with the concurrence of the Prime Minister. Cooperation in fight against terrorism.

(2) Where authorisation has been given by the Attorney General as aforesaid, the competent authorities so authorised, subject to the conditions as may have been agreed as provided in this regulation, shall be authorised to take the appropriate measures and to exercise on board the vessel in regard to which appropriate measures have been authorised under this regulation all such powers of arrest, entry, search and seizure vested in the executive police of Malta.

(3) For the purpose of this regulation, "relevant vessel" means a ship or any other floating craft of any description, including hovercrafts and submersible crafts, flying the flag of Malta, or displaying any marks of registry of Malta and exercising freedom of navigation according to international law; and "appropriate measures" with regard to a vessel include the boarding of and carrying a search on such vessel as well as any other appropriate action with respect to the vessel, persons and cargo on board such vessel, if evidence of involvement of the vessel in acts of, or acts aiding, terrorism is found.

SCHEDULE

RESOLUTION 1269 (1999)

Adopted by the Security Council at its 4053rd meeting, on 19 October 1999

The Security Council,

Deeply concerned by the increase in acts of international terrorism which endangers the lives and well-being of individuals worldwide as well as the peace and security of all States,

Condemning all acts of terrorism, irrespective of motive, wherever and by whomever committed,

Mindful of all relevant resolutions of the General Assembly, including resolution 49/60 of 9 December 1994, by which it adopted the Declaration on Measures to Eliminate International Terrorism,

Emphasizing the necessity to intensify the fight against terrorism at the national level and to strengthen, under the auspices of the United Nations, effective international cooperation in this field on the basis of the principles of the Charter of the United Nations and norms of international law, including respect for international humanitarian law and human rights,

Supporting the efforts to promote universal participation in and implementation of the existing international anti-terrorist conventions, as well as to develop new international instruments to counter the terrorist threat,

Commending the work done by the General Assembly, relevant United Nations organs and specialized agencies and regional and other organizations to combat international terrorism,

Determined to contribute, in accordance with the Charter of the United Nations, to the efforts to combat terrorism in all its forms,

Reaffirming that the suppression of acts of international terrorism, including those in which States are involved, is an essential contribution to the maintenance of international peace and security,

1. *Unequivocally condemns* all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security;

2. *Calls upon* all States to implement fully the international anti-terrorist conventions to which they are parties, encourages all States to consider as a matter of priority adhering to those to which they are not parties, and encourages also the speedy adoption of the pending conventions;

3. *Stresses* the vital role of the United Nations in strengthening international cooperation in combating terrorism and, *emphasizes* the importance of enhanced coordination among States, international and regional organizations;

4. *Calls upon* all States to take, *inter alia*, in the context of such cooperation and coordination, appropriate steps to:

- cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts;
- prevent and suppress in their territories through all lawful means the

preparation and financing of any acts of terrorism;

- deny those who plan, finance or commit terrorist acts safe havens by ensuring their apprehension and prosecution or extradition;
- take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts;
- exchange information in accordance with international and domestic law, and cooperate on administrative and judicial matters in order to prevent the commission of terrorist acts;

5. *Requests* the Secretary-General, in his reports to the General Assembly, in particular submitted in accordance with its resolution 50/53 on measures to eliminate international terrorism, to pay special attention to the need to prevent and fight the threat to international peace and security as a result of terrorist activities;

6. *Expresses* its readiness to consider relevant provisions of the reports mentioned in paragraph 5 above and to take necessary steps in accordance with its responsibilities under the Charter of the United Nations in order to counter terrorist threats to international peace and security;

7. *Decides* to remain seized of this matter.

Resolution 1368 (2001)

Adopted by the Security Council at its 4370th meeting, on 12 September 2001

The Security Council,

Reaffirming the principles and purposes of the Charter of the United Nations,

Determined to combat by all means threats to international peace and security caused by terrorist acts,

Recognizing the inherent right of individual or collective self defence in accordance with the Charter,

1. *Unequivocally condemns* in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and *regards* such acts, like any act of international terrorism, as a threat to international peace and security;

2. *Expresses* its deepest sympathy and condolences to the victims and their families and to the people and Government of the United States of America;

3. *Calls on* all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and *stresses* that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable;

4. *Calls also* on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999;

5. *Expresses* its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations;

6. *Decides* to remain seized of the matter.

Resolution 1373 (2001)

Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic

resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;
- (g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls upon* all States to:

- (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
- (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of

Terrorism of 9 December 1999;

- (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
- (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
- (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.

Resolution 1390 (2002)

Adopted by the Security Council at its 4452nd meeting, on 16 January 2002

The Security Council,

Recalling its resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

Reaffirming its previous resolutions on Afghanistan, in particular resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001,

Reaffirming also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and reiterating its support for international efforts to root out terrorism, in accordance with the Charter of the United Nations,

Reaffirming its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressing its determination to prevent all such acts, noting the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressing its determination to root out this network,

Noting the indictments of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar as Salaam, Tanzania,

Determining that the Taliban have failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000),

Condemning the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan,

Condemning the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property,

Reaffirming further that acts of international terrorism constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and *takes note* of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with paragraph 2 below, and decides to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999);

2. *Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as "the Committee":

- (a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial

assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory;

- (b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified;
- (c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related matériel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities;

3. *Decides* that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution;

4. *Recalls* the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts;

5. *Requests* the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

- (a) to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations;
- (b) to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary;
- (c) to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;
- (d) to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above;
- (e) to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;
- (f) to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001); 6. Requests all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above;

7. *Urges* all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with the Monitoring Group referred to in paragraph 9 below;

8. *Urges* all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and *invites* States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions;

9. *Requests* the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution;

10. *Requests* the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months;

11. *Decides* to remain actively seized of the matter.

APPENDIX III.9

SUBSIDIARY LEGISLATION 365.07**UNITED NATIONS SANCTIONS (TALIBAN)
REGULATIONS**

21st December, 1999

LEGAL NOTICE 214 of 1999, as amended by Legal Notices 22 of 2001, 72 and 212 of 2002, and 425 of 2007.

- 1.** The title of these regulations is the United Nations Sanctions (Taliban) Regulations. Citation.
- 2.** In these regulations, unless the context otherwise requires - Interpretation.
- "Act" means the National Interest (Enabling Powers) Act; Cap. 365.
- "aircraft" includes a military aircraft of the Taliban or in the service of the Taliban or an aircraft which, not being a military aircraft, is owned, leased or operated by or on behalf of the Taliban;
- "the Committee" means the Committee established in terms of paragraph 6 of the Resolution referred to in regulation 3;
- "person" includes a body or other association of persons, whether such body or association is corporate or unincorporate;
- "Taliban" means the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan.
- 3.** (1) For the purpose of article 3(2) of the Act, Resolution number 1267 (1999) adopted by the Security Council of the United Nations on the 15th October, 1999, is published in Schedule A. Text of resolution 1267 (1999).
Amended by:
L.N. 22 of 2001;
L.N. 212 of 2002.
- (2) For the purposes of article 3(4) of the Act, Resolution number 1333 (2000) adopted by the Security Council of the United Nations on the 19th December, 2000, is published in Schedule B. Text of resolution 1333 (2000).
- (3) For the purposes of article 3(4) of the Act, Resolution number 1390 (2002) adopted by the Security Council of the United Nations on the 16th January, 2002, is published in Schedule C. Text of resolution 1390 (2002).
- 4.** (1) Notwithstanding any other law, no citizen of Malta and no person in Malta shall - Application of sanctions.
Amended by:
L.N. 22 of 2001;
L.N. 72 of 2002;
L.N. 212 of 2002.
- (a) whether directly or indirectly, withdraw or attempt to withdraw or use or attempt to use any funds or other financial resources owned or controlled, directly or indirectly, by the Taliban, or by any undertaking owned or controlled by the Taliban, except as provided in the said Resolution;
- (b) whether directly or indirectly, pay or attempt to pay, to or for the benefit of the Taliban or any other undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorised by the Committee on a case by case basis on the

grounds of humanitarian need:

Provided that the provisions of paragraph (b) shall not apply to funds and other financial resources which may be authorized by the Committee on a case by case basis on the grounds of humanitarian need, provided that such funds and other financial resources are paid into separate accounts, with the Central Bank of Malta, exclusively for such funds.

(2) Notwithstanding any other law, no permission shall be granted for any aircraft to take off from, land in or overtly Malta if that aircraft has taken off from, or is destined to land at, a place in the territory of Afghanistan designated by the Committee as being under Taliban control:

Provided that the provisions of this subregulation shall not apply to flights which have been approved in advance by the Committee on the grounds of humanitarian need, including religious obligations such as the Hajj, or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan or is likely to promote Taliban compliance with the Resolutions referred to in regulation 3(1) and (2).

(3) Notwithstanding any other law, no citizen of Malta and no person in Malta shall:

- (a) whether directly or indirectly supply, sell or transfer to the territory of Afghanistan under Taliban control as designated by the Committee, any arms or related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment or spare parts for the aforementioned, or use any vessel or aircraft registered in Malta for the purposes referred to in this paragraph;
- (b) whether directly or indirectly, whether from Malta or elsewhere, sail, supply or transfer to the territory of Afghanistan under Taliban control as designated by the Committee, technical advice, assistance, or training related to the military activities of the armed personnel under the control of the Taliban:

Provided that the measures imposed by paragraphs (a) and (b) shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee, or to protective clothing, including flak jackets and military helmets, exported to Afghanistan by United Nations personnel, representatives of the media, and humanitarian workers for their personal use;

- (c) sell, supply or transfer the chemical acetic anhydride to any person in the territory of Afghanistan under Taliban control as designated by the Committee or to any person for the purpose of any activity carried on in, or operated from, the territory under Taliban control as designated by the Committee.

(4) Any funds or other financial assets or economic resources of Usama bin Laden and individuals and entities associated with him as designated by the Committee, including those in the Al-Qaida organization, and funds either derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, are immediately frozen and cannot be in any way transferred to the persons or entities herein before referred to.

(5) Notwithstanding any other law, no citizen of Malta and no person in Malta shall, whether directly or indirectly, transfer any funds or other financial or economic resources as are referred to in subregulation (4) the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden or individuals and entities associated with him, including the Al-Qaida organization.

(6) Notwithstanding any other law, no citizen of Malta and no person in Malta shall:

- (a) whether directly or indirectly supply, sell or transfer to the individuals, groups, undertakings or entities as designated by the Committee, any arms or related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, or spare parts for the aforementioned, or use any vessel or aircraft registered in Malta for the purposes referred to in this paragraph;
- (b) whether directly or indirectly, whether from Malta or elsewhere, sell, supply or transfer to the individuals, groups, undertakings or entities as designated by the Committee, technical advice, assistance or training related to military activities.

5. Any person found guilty of an offence against these regulations shall, on conviction, be liable to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67) or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

Penalty.
Amended by:
L.N. 212 of 2002;
L.N. 425 of 2007.

6. (1) Where any provision of any regulation made under the National Interest (Enabling Powers) Act, requires any person or any other entity, hereinafter "a subject person", to carry out the identification of funds or assets belonging to or in the possession of persons or entities as may be identified or identifiable under any regulations made in terms of the Act, or the freezing or blocking of such funds or assets, any subject person whose activities are subject to a licence, as described in subregulation (2), shall without delay notify in writing any relevant information it may have regarding persons, entities, assets or funds affected by the requirements of identification or freezing and blocking of funds to its licensing authority within the meaning of subregulation (2); and such licensing authority shall pass such relevant information to the Sanctions Monitoring Board established under the said Act, or to such other public authority as may be prescribed, for the purposes of the Act.

Notification about
freezing of assets.
Added by:
L.N. 212 of 2002.
Cap. 365.

(2) In this regulation -

Cap. 371.
Cap. 370.
Cap. 403.
Cap. 404.
Cap. 345.

(a) "licence" means any licence or other form of authorisation required to be issued under the Banking Act, the Investment Services Act, the Insurance Business Act, the Insurance Brokers and Other Intermediaries Act, the Financial Markets Act and such other licence or authorisation as may be prescribed from time to time; and

(b) "licensing authority" means the competent authority or other regulatory body authorised to issue any of the licences mentioned in paragraph (a).

Cap. 377.

(3) The disclosure of any information within the terms and requirements of this regulation shall not constitute a breach of the Professional Secrecy Act, where applicable, or of any other confidentiality obligation arising from a contract or any other law.

SCHEDULE A
Regulation 3(1)
RESOLUTION 1267 (1999)

*Amended by:
L.N. 22 of 2001.*

The Security Council,

Reaffirming its previous resolutions, in particular resolutions 1189 (1998) of 13 August 1998, 1193 (1998) of 28 August 1998 and 1214 (1998) of 8 December 1998, and the statements of its President on the situation in Afghanistan,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

Reiterating its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium, and stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

Strongly condemning the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and **reaffirming** its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

Deploring the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

Noting the indictment of Usama bin Laden and his associates by the United States of America for, *inter alia*, the August 1998 bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

Determining that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constitutes a threat to international peace and security,

Stressing its determination to ensure respect for its resolutions,

Acting under Chapter VII of the Charter of the United Nations,

1. **Insists** that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice;

2. **Demands** that the Taliban turn over Usama bin Laden without further delay

to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

3. **Decides** that on 14 November 1999 all States shall impose the measures set out in paragraph 4 below, unless the Council has previously decided, on the basis of a report of the Secretary-General, that the Taliban has fully complied with the obligation set out in paragraph 2 above;

4. **Decides** further that, in order to enforce paragraph 2 above, all States shall:

- (a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as the performance of the Hajj;
- (b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;

5. **Urges** all States to cooperate with efforts to fulfil the demand in paragraph 2 above, and to consider further measures against Usama bin Laden and his associates;

6. **Decides** to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

- (a) To seek from all States further information regarding the action taken by them with a view to effectively implementing the measures imposed by paragraph 4 above;
- (b) To consider information brought to its attention by States concerning violations of the measures imposed by paragraph 4 above and to recommend appropriate measures in response thereto;
- (c) To make periodic reports to the Council on the impact, including the humanitarian implications, of the measures imposed by paragraph 4 above;
- (d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the measures imposed by paragraph 4 above, identifying where possible persons or entities reported to be engaged in such violations;
- (e) To designate the aircraft and funds or other financial resources referred to in paragraph 4 above in order to facilitate the implementation of the measures imposed by that paragraph;
- (f) To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by

the International Air Transport Association (IATA) to the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services;

(g) To examine the reports submitted pursuant to paragraph 9 below;

7. **Calls upon** all States to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraph 4 above;

8. **Calls upon** States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraph 4 above and to impose appropriate penalties;

9. **Calls upon** all States to cooperate fully with the Committee established by paragraph 6 above in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;

10. **Requests** all States to report to the Committee established by paragraph 6 above within 30 days of the coming into force of the measures imposed by paragraph 4 above on the steps they have taken with a view to effectively implementing paragraph 4 above;

11. **Requests** the Secretary-General to provide all necessary assistance to the Committee established by paragraph 6 above and to make the necessary arrangements in the Secretariat for this purpose;

12. **Requests** the Committee established by paragraph 6 above to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 4 above;

13. **Requests** the Secretariat to submit for consideration by the Committee established by paragraph 6 above information received from Governments and public sources on possible violations of the measures imposed by paragraph 4 above;

14. **Decides** to terminate the measures imposed by paragraph 4 above once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligation set out in paragraph 2 above;

15. **Expresses** its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving the full implementation of this resolution;

16. **Decides** to remain actively seized of the matter.

*Added by:
L.N. 22 of 2001.*

SCHEDULE B
Regulation 3(2)
RESOLUTION 1333 (2000)

Adopted by the Security Council at its 4251st meeting, on 19 December 2000
The Security Council,

Reaffirming its previous resolutions, in particular resolution 1267 (1999) of 15 October 1999 and the statements of its President on the situation in Afghanistan,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

Recognizing the critical humanitarian needs of the Afghan people,

Supporting the efforts of the Personal Representative of the Secretary-General for Afghanistan to advance a peace process through political negotiations between the Afghan parties aimed at the establishment of a broad-based, multi-ethnic, and fully representative government, and *calling for* the warring factions to cooperate fully with those efforts to conclude a ceasefire and begin discussions leading to a political settlement, by moving forward promptly in the process of dialogue to which they have committed themselves,

Noting the December 2000 meeting of the Afghan Support Group which emphasized that the situation in Afghanistan is a complex one that requires a comprehensive, integrated approach to a peace process and issues of narcotics trafficking, terrorism, human rights, and international humanitarian and development aid,

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

Strongly condemning the continuing use of the areas of Afghanistan under the control of the Afghan faction known as Taliban, which also calls itself the Islamic Emirate of Afghanistan (hereinafter known as the Taliban), for the sheltering and training of terrorists and planning of terrorist acts, and *reaffirming* its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

Noting the importance of the Taliban acting in accordance with the 1961 Single Convention, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the commitments of the 1998 Twentieth Special Session of the General Assembly on Narcotic Drugs, including to work closely with the United Nations Drug Control Programme,

Noting that the Taliban benefits directly from the cultivation of illicit opium by imposing a tax on its production and indirectly benefits from the processing and trafficking of such opium, and *recognizing* that these substantial resources strengthen the Taliban's capacity to harbour terrorists,

Deploing the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

Noting the indictment of Usama bin Laden and his associates by the United States of America for, *inter alia*, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar as Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

Reiterating its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium,

Stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

Determining that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) and in paragraph 2 of resolution 1267 (1999) constitutes a threat to international peace and security,

Stressing its determination to ensure respect for its resolutions,

Reaffirming the necessity for sanctions to contain adequate and effective exemptions to avoid adverse humanitarian consequences on the people of Afghanistan, and that they be structured in a way that will not impede, thwart or delay the work of international humanitarian assistance organizations or governmental relief agencies providing humanitarian assistance to the civilian population in the country,

Underlining the responsibility of the Taliban for the well-being of the population in the areas of Afghanistan under its control, and in this context *calling on* the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control,

Recalling the relevant principles contained in the Convention on the Safety of United Nations and Associated Personnel adopted by the General Assembly in its resolution 49/S9 of 9 December 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. *Demands* that the Taliban comply with resolution 1267 (1999) and, in particular, cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate objective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with international efforts to bring indicted terrorists to justice;

2. *Demands also* that the Taliban comply without further delay with the demand of the Security Council in paragraph 2 of resolution 1267 (1999) that requires the Taliban to turn over Usama bin Laden to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

3. *Demands further* that the Taliban should act swiftly to close all camps where terrorists are trained within the territory under its control, and calls for the confirmation of such closures by the United Nations, *inter alia*, through information made available to the United Nations by Member States in accordance with paragraph 19 below and through such other means as are necessary to assure compliance with this resolution;

4. *Reminds* all States of their obligation to implement strictly the measures imposed by paragraph 4 of resolution 1267 (1999);

5. *Decides* that all States shall:

- (a) Prevent the direct or indirect supply, sale and transfer to the territory of Afghanistan under Taliban control as designated by the Committee established pursuant to resolution 1267 (1999), hereinafter known as the Committee, by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related *matériel* of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned;
- (b) Prevent the direct or indirect sale, supply and transfer to the territory of Afghanistan under Taliban control, as designated by the Committee, by their nationals or from their territories, of technical advice, assistance, or training related to the military activities of the armed personnel under the control of the Taliban;
- (c) Withdraw any of their officials, agents, advisers, and military personnel employed by contract or other arrangement present in Afghanistan to advise the Taliban on military or related security matters, and urge other nationals in this context to leave the country;

6. *Decides* that the measures imposed by paragraph 5 above shall not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee, and *affirms* that the measures imposed by paragraph 5 above do not apply to protective clothing, including flak jackets and military helmets, exported to Afghanistan by United Nations personnel, representatives of the media, and humanitarian workers for their personal use only;

7. *Urges* all States that maintain diplomatic relations with the Taliban to reduce significantly the number and level of the staff at Taliban missions and posts and restrict or control the movement within their territory of all such staff who remain; in the case of Taliban missions to international organizations, the host State may, as it deems necessary, consult the organization concerned on the measures required to implement this paragraph;

8. *Decides* that all States shall take further measures:

- (a) To close immediately and completely all Taliban offices in their territories;
- (b)* To close immediately all offices of Ariana Afghan Airlines in their territories;
- (c) To freeze without delay funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the Committee, including those in the Al-Qaida organization, and including funds derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, and to ensure that neither they nor any other funds or financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly for the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden or individuals and entities associated with him including the Al-Qaida organization and requests the Committee to maintain an updated list, based on information

*The measure established under paragraph 8 (b) of United Nations Security Council Resolution 1333 (2000) is hereby terminated in accordance with Resolution 1388 (2002) as adopted by the United Nations Security Council on the 15th January, 2002.

provided by States and regional organizations, of the individuals and entities designated as being associated with Usama bin Laden, including those in the Al-Qaida organization;

9. *Demands* that the Taliban, as well as others, halt all illegal drugs activities and work to virtually eliminate the illicit cultivation of opium poppy, the proceeds of which finance Taliban terrorist activities;

10. *Decides* that all States shall prevent the sale, supply or transfer, by their nationals or from their territories, of the chemical acetic anhydride to any person in the territory of Afghanistan under Taliban control as designated by the Committee or to any person for the purpose of any activity carried on in, or operated from, the territory under Taliban control as designated by the Committee;

11. *Decides also* that all States are required to deny any aircraft permission to take off from, land in or over-fly their territories if that aircraft has taken off from, or is destined to land at, a place in the territory of Afghanistan designated by the Committee as being under Taliban control, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligations such as the performance of the Hajj, or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan, or is likely to promote Taliban compliance with this resolution or with resolution 1267 (1999);

12. *Decides further* that the Committee shall maintain a list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, including the United Nations and its agencies, governmental relief agencies providing humanitarian assistance, the International Committee of the Red Cross and non-governmental organizations as appropriate, that the prohibition imposed by paragraph 11 above shall not apply to humanitarian flights operated by, or on behalf of, organizations and governmental relief agencies on the list approved by the Committee, that the Committee shall keep the list under regular review, adding new organizations and governmental relief agencies as appropriate and that the Committee shall remove organizations and governmental agencies from the list if it decides that they are operating, or are likely to operate, flights for other than humanitarian purposes, and shall notify such organizations and governmental agencies immediately that any flights operated by them, or on their behalf, are thereby subject to the provisions of paragraph 11 above;

13. *Calls upon* the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control, and *underlines* that the Taliban must provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel;

14. *Urges* States to take steps to restrict the entry into or transit through their territory of all senior officials of the rank of Deputy Minister or higher in the Taliban, the equivalent rank of armed personnel under the control of the Taliban, and other senior advisers and dignitaries of the Taliban, unless those officials are travelling for humanitarian purposes, including religious obligation such as the performance of the Hajj, or where the travel promotes discussion of a peaceful resolution of the conflict in Afghanistan or involves compliance with this resolution or resolution 1267 (1999);

15. *Requests* the Secretary-General in consultation with the Committee:

- (a) To appoint a committee of experts to make recommendations to the Council within sixty days of the adoption of this resolution regarding how the arms embargo and the closure of terrorist training camps

demanded in paragraphs 3 and 5 above can be monitored, including inter alia the use of information obtained by Member States through their national means and provided by them to the Secretary General;

- (b) To consult with relevant Member States to put into effect the measures imposed by this resolution and resolution 1267 (1999) and report the results of such consultations to the Council;
- (c) To report on the implementation of the existing measures, assess problems in enforcing these measures, make recommendations for strengthening enforcement, and evaluate actions of the Taliban to come into compliance;
- (d) To review the humanitarian implications of the measures imposed by this resolution and resolution 1267 (1999), and to report back to the Council within 90 days of the adoption of this resolution with an assessment and recommendations, to report at regular intervals thereafter on any humanitarian implications and to present a comprehensive report on this issue and any recommendations no later than 30 days prior to the expiration of these measures;

16. *Requests* the Committee to fulfil its mandate by undertaking the following tasks in addition to those set out in resolution 1267 (1999):

- (a) To establish and maintain updated lists based on information provided by States, regional, and international organizations of all points of entry and landing areas for aircraft within the territory of Afghanistan under control by the Taliban and to notify Member States of the contents of such lists;
- (b) To establish and maintain updated lists, based on information provided by States and regional organizations, of individuals and entities designated as being associated with Usama bin Laden, in accordance with paragraph 8 (c) above;
- (c) To give consideration to, and decide upon, requests for the exceptions set out in paragraphs 6 and 11 above;
- (d) To establish no later than one month after the adoption of this resolution and maintain an updated list of approved organizations and governmental relief agencies which are providing humanitarian assistance to Afghanistan, in accordance with paragraph 12 above;
- (e) To make relevant information regarding implementation of these measures publicly available through appropriate media, including through the improved use of information technology;
- (f) To consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as may be required to enhance the full and effective implementation of the measures imposed by this resolution and resolution 1267 (1999) with a view to urging States to comply with relevant Council resolutions;
- (g) To make periodic reports to the Council on information submitted to it regarding this resolution and resolution 1267 (1999), including possible violations of the measures reported to the Committee and recommendations for strengthening the effectiveness of these measures;

17. *Calls upon* all States and all international and regional organizations, including the United Nations and its specialized agencies, to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any

contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above;

18. *Calls upon* States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraphs 5, 8, 10 and 11 above and to impose appropriate penalties;

19. *Calls upon* all States to cooperate fully with the Committee in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;

20. *Requests* all States to report to the Committee within 30 days of the coming into force of the measures imposed by paragraphs 5, 8, 10 and 11 above on the steps they have taken with a view to effectively implementing this resolution;

21. *Requests* the Secretariat to submit for consideration by the Committee information received from Governments and public sources on possible violations of the measures imposed by paragraphs 5, 8, 10 and 11 above;

22. *Decides* that the measures imposed by paragraphs 5, 8, 10 and 11 above shall come into force at 00.01 Eastern Standard Time, one month after the adoption of this resolution;

23. *Further decides* that the measures imposed by paragraphs 5, 8, 10 and 11 above are established for twelve months and that, at the end of this period, the Council will decide whether the Taliban has complied with paragraphs 1, 2 and 3 above, and, accordingly, whether to extend these measures for a further period with the same conditions;

24. *Decides* if the Taliban comply with the conditions of paragraphs 1, 2 and 3 above, before the twelve-month period has elapsed, the Security Council shall terminate the measures imposed by paragraphs 5, 8, 10 and 11 above;

25. *Expresses* its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving full implementation of this resolution and resolution 1267 (1999), inter alia, taking into account the impact assessment referred to in paragraph 15 (d) with a view to enhancing the effectiveness of sanctions and avoiding humanitarian consequences;

26. *Decides* to remain actively seized of the matter.

Added by:
L.N. 212 of 2002.

SCHEDULE C
Regulation 3(3)
RESOLUTION 1390 (2002)

Adopted by the Security Council at its 4452nd meeting, on 16 January 2002

The Security Council,

Recalling its resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

Reaffirming its previous resolutions on Afghanistan, in particular resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001,

Reaffirming also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and reiterating its support for international efforts to root out terrorism, in accordance with the Charter of the United Nations,

Reaffirming its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressing its determination to prevent all such acts, noting the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressing its determination to root out this network,

Noting the indictments of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar as Salaam, Tanzania,

Determining that the Taliban have failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000),

Condemning the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan,

Condemning the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property,

Reaffirming further that acts of international terrorism constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and takes note of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with paragraph 2 below, and *decides* to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999);

2. *Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as "the Committee":

(a) Freeze without delay the funds and other financial assets or economic

resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory;

- (b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified;
- (c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related *matériel* of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities;

3. *Decides* that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution;

4. *Recalls* the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts;

5. *Requests* the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

- (a) to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations;
- (b) to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary;
- (c) to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;
- (d) to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above;
- (e) to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;
- (f) to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001);

6. *Requests* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above;

7. *Urges* all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with the Monitoring Group referred to in paragraph 9 below;

8. *Urges* all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and *invites* States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions;

9. *Requests* the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution;

10. *Requests* the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months;

11. *Decides* to remain actively seized of the matter.
