I assent.

(L.S.) **GEORGE VELLA**
President

19th July, 2019

ACT No. XXV of 2019

AN ACT to continue implementing reform in the Justice Sector (Attorney General).

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

ARRANGEMENT OF THE ACT

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A 1262

Part I
State Advocate Act

Short title and commencement.

1. (1) The short title of this Act is the State Advocate Act, 2019.

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

(3) A notice under sub-article (2) may make such transitory provisions, without limitation, as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought or to be brought into force.

The State Advocate.

2. (1) The State Advocate shall be the Chief Legal Advisor to the Government and shall have the judicial representation of the Government in judicial acts and actions where the law does not provide that such representation shall vest in some other person or authority.

(2) In giving legal advice the State Advocate shall act in the public interest and shall safeguard the legality of actions of the State.

(3) Where under any law the State Advocate is to act or exercise any power in his individual judgment he shall not be subject to the direction or control of any other person or authority.

(4) The officers of the State Advocate when acting under his direction in anything in which he is to act in his own individual judgment, shall have the same protection at law as if the action done or omitted to be done were an act done or omitted to be done by the State Advocate.

Procedure for appointment of State Advocate.

3. When a vacancy occurs in the office of State Advocate the procedure for the appointment of a State Advocate shall be the following:

(a) The Minister responsible for justice shall establish an Appointment Commission, consisting of a Chairperson and not less than two (2) and not more than four (4) members, to be composed of persons who in his opinion are respected and trusted by the public and are technically qualified to examine whether candidates for the office of State Advocate have the appropriate qualifications and other merit and suitability requirements to occupy the said office.

(b) The Appointment Commission shall issue a public call for applications open to persons who have the necessary qualifications and experience required to be appointed to the office of State Advocate.

(c) After examining the candidates the Appointment Commission shall submit a report to the Prime Minister through the Minister responsible for justice expressing its views on the eligibility, suitability and merit of the candidates. In the said report the Commission may either limit itself to giving an opinion on the candidates or it may rank them in order of preference.

(d) In deciding upon his recommendation to the President in terms of article 91A of the Constitution for the appointment of the State Advocate the Prime Minister shall give due consideration to the recommendations of the Appointment Commission.

Deputy State Advocate and other officers.

4. (1) There shall also be a Deputy State Advocate and other officers of the State Advocate, who shall exercise and perform all such powers, functions and duties as may be delegated or assigned to them by the State Advocate.

(2) In the exercise and performance of the powers, functions and duties delegated or assigned to them as aforesaid, the Deputy State Advocate and other officers of the State Advocate shall, unless the contrary intention appears, have the same obligations and enjoy the same protection and privileges as are by law imposed on or given to the State Advocate.

(3) The Office of the State Advocate is hereby designated as a Government agency and the provisions of sub-articles (5) to (9) shall apply to the said agency.

(4) The State Advocate may also act through such contractors as he may from time to time appoint:

Provided that such contractors shall at all times act in accordance with such instructions as may be given to them by the State Advocate.

(5) (a) The Office of the State Advocate shall as a Government agency be headed by the State Advocate and shall be the medium through which the State Advocate carries out his functions according to law.

(b) The said agency shall be a body corporate having a

distinct legal personality and shall be capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations and of suing and of being sued.

(c) The legal and judicial representation of the Office of the State Advocate shall lie in the State Advocate or in any other person who he may designate.

(d) The said agency shall enter into an agency performance agreement with the Government whereby the funding of the agency as well as the tasks to be addressed and achieved by it are determined:

Provided that the Minister responsible for the agency shall, subject to the provisions of any law to the contrary, be entitled to give directions in writing to the agency and the agency and its head shall be bound to observe such directives:

Provided further that the provisions of the above proviso shall not apply where the State Advocate is in accordance with any law to act in accordance with his own individual judgement, in which case the agency is to act according to the sole directions of the State Advocate.

(6) The State Advocate and the employees of the said agency 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 State Advocate shall with the concurrence of the Minister responsible for the agency draw up service values and Codes of Ethics in respect of the agency to supplement any public service Code of Ethics.

(7) (a) The State Advocate shall keep proper books of account in such manner as the Minister responsible for finance may from time to time direct. Such accounts shall be audited by an auditor appointed for the purpose by the State Advocate with the concurrence of the Minister responsible for finance and shall moreover be subject to audit by the Auditor General.

(b) The financial year of the Office of the State Advocate shall commence on the 1st January and shall end on the 31st December:

Provided that the first financial year shall commence upon the coming into force of this sub-article and shall end on the 31st

December of the following year.

(c) The State Advocate shall not later than six (6) weeks after the end of each financial year present to the Minister responsible for the agency the audited accounts together with a report on the workings of the agency, which report shall state the manner in which the agency has operated to fulfil its functions and its plans for the future.

(d) The accounts and report mentioned in paragraph (c) shall be laid on the Table of the House by the Minister not later than six (6) weeks after its receipt, or when the House is during the period not in session not later than the second week after the House resumes its sittings.

(8) (a) The Prime Minister may by direction detail a public officer for duty with the said agency for such term and under such conditions as may be established in relation to the officer so detailed.

(b) The Prime Minister may at any time revoke any such direction.

(c) Where any officer is detailed for duty with the agency such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the State Advocate, but shall otherwise remain, and retain all rights and duties as, a public officer, and for the purposes of any law relating to government service pensions, service with the agency shall be deemed to be service with the Government:

Provided that no account shall be taken in assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions of any allowances, bonuses or gratuities paid to such officer by the agency in excess to what he is entitled to as a public officer:

Provided further that during the time in respect of which such officer is so detailed to perform duties with the agency, the terms and conditions of his service shall not be less favourable than those which are attached to his appointment under the Government during the period aforesaid. Such terms and conditions shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such direction, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(9) Any public officer serving exclusively in the Civil, Constitutional and Administrative Law Unit or in the Legislation Unit of the Office of the Attorney General on the date of the coming into force of this sub-article shall, from such date, be deemed to have been detailed for duty with the Office of the State Advocate as a government agency under the provisions of sub-article (8), and thereupon the provisions of the same sub-article shall apply to such officer who shall continue to be detailed for duty as aforesaid until such time as the Prime Minister may revoke such direction as provided in sub-article (8)(b):

Provided that where the Prime Minister revokes any direction as aforesaid the officer in whose respect the direction is revoked shall retain such grade in the public service which he held immediately before being detailed for duty with the Office of the State Advocate as a government agency by virtue of this article or shall occupy such other higher grade which he would have occupied had he not been detailed as aforesaid.

(10) On such day as may be appointed by order of the Minister responsible for justice, the Office of the State Advocate shall take over all employees, rights, duties, undertakings, contracts, causes, orders, judgements, documents and working arrangements which, immediately prior to the appointed day, shall pertain to the Office of the Attorney General Agency and relate to the Civil, Constitutional and Administrative Law Unit, or with the Legislation Unit of the Office of the Attorney General Agency, in such manner and according to such time-scale as the Minister may designate.

Power to administer oaths.

5. (1) The State Advocate and the Deputy State Advocate and other advocates or legal procurators, performing duties as officers of the State Advocate, shall have power to administer oaths.

(2) Wherever a law provides that an oath is to be taken before the State Advocate, that oath may also be taken before the Deputy State Advocate or before another officer of the State Advocate as delegated by the State Advocate.

Power to delegate authority.

6. No nullity or other legal defect shall ensue when a document relating to court proceedings which is to serve as evidence of any order, consent, approval or direction given by the State Advocate is signed by the Deputy State Advocate, or by an officer of the State Advocate on behalf of the State Advocate.

Interpretation and power to make regulations.

7. (1) Where any law, other than a law of a criminal nature, provides that any act may be done by the Attorney General, that act may also be done by the State Advocate with the authorisation of the Attorney General. Without prejudice to the validity of the said

authorisation as from the time when it is given, notice of the authorisation shall be given in the Gazette.

(2) The Minister responsible for justice may make regulations providing for any matter relating to the better implementation of the provisions of this Act and, without prejudice to the generality of the foregoing, may also by regulation amend any law, other than the Constitution and any other law of a criminal nature or relating to prosecution powers or a law which regulates the conditions of service particular to the holders of the offices of Attorney General or of State Advocate, for the purpose of substituting any reference to the Attorney General with a reference to the State Advocate or of adding any reference to the State Advocate to a reference to the Attorney General or vice-versa.

Applicability of the Members of the Judiciary (Pensions) Act to State Advocate. Cap. 564.

8. The expression "Attorney General", wherever it occurs in the Members of the Judiciary (Pensions) Act, shall for all intents and purposes of law, be deemed to also include a reference to the person holding the office of State Advocate appointed in terms of the provisions of article 91A(1) of the Constitution and any reference to the "Office of the Attorney General" shall also be deemed to include a reference to the Office of the State Advocate.

Part II
Amendments to the Constitution

Amendments to the Constitution.

9. This Part amends the Constitution and it shall be read and construed as one with the Constitution, hereinafter in this Part referred to as "the Constitution".

Addition of new article 91A to the Constitution.

10. Immediately after article 91 of the Constitution there shall be added the following new article 91A:

"State Advocate.

91A. (1) There shall be a State Advocate whose office shall be a public office and who shall be appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to hold office as State Advocate unless he is qualified for appointment as a judge of the Superior Courts.

(3) The State Advocate shall be the advisor to Government in matters of law and legal opinion. He shall act in the public interest and shall safeguard the legality of State action. The State Advocate shall also perform such other duties and functions as may be conferred upon him by this Constitution or by any law. In the exercise of his functions, the State Advocate shall act in his individual judgment and he shall not be subject to the direction or control of any other person or authority.

(4) Subject to the provisions of sub-article (5), the State Advocate shall vacate his office when he attains the age of sixty-five (65) years.

(5) Article 97(2) and (3) shall apply to the State Advocate.".

Part III

Amendments to the Code of Organization and Civil Procedure

Amendments to the Code of Organization and Civil Procedure. Cap. 12.

11. This Part amends the Code of Organization and Civil Procedure and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code".

Amendment of article 181B of the Code.

12. In sub-articles (2) and (3) of article 181B of the Code the words "Attorney General" wherever they occur shall be substituted by the words "State Advocate".

Amendment of article 436 of the Code.

13. In article 436 of the Code and in the marginal note thereto, the words "Attorney General" shall be substituted by the words "State Advocate".

Amendment of article 437 of the Code.

14. In article 437 of the Code the words "Attorney General" shall be substituted by the words "State Advocate".

Amendment of article 440 of the Code.

15. In article 440 of the Code the words "Attorney General" shall be substituted by the words "State Advocate".

Amendment of article 441 of the Code.

16. In article 441 of the Code and in the marginal note thereto, the words "Attorney General" shall be substituted by the words "State Advocate".

Amendment of article 443 of the Code.

17. In article 443 of the Code and in the marginal note thereto, the words "Attorney General" shall be substituted by the words "State Advocate".

Amendment of article 445 of the Code.

18. In article 445 of the Code the words "Attorney General" shall be substituted by the words "State Advocate".

19. In article 446 of the Code the words "Attorney General" shall be substituted by the words "State Advocate". Amendment of article 446 of the Code.

20. In article 447 of the Code the words "Attorney General" shall be substituted by the words "State Advocate". Amendment of article 447 of the Code.

21. In paragraph (d) of article 521 of the Code the words "Attorney General" shall be substituted by the words "State Advocate". Amendment of article 521 of the Code.

22. In sub-article (2) of article 611 of the Code the words "Attorney General" shall be substituted by the words "State Advocate". Amendment of article 611 of the Code.

23. Sub-article (2) of article 786 of the Code shall be substituted by the following: Amendment of article 786 of the Code.

"or Attorney General or State Advocate

(2) Nor may such plea be raised against the Attorney General or against the State Advocate in any action in which they are especially authorised by law to appear, or where they are authorized by the competent authority to appear in regard to any action touching public policy, and in so far as the public interest is concerned.".

24. In Form No. 18 in Schedule B to the Code the words "Attorney General", wherever they occur, shall be substituted by the words "State Advocate". Amendment of Form No.18 in Schedule B to the Code.

Part IV
Amendments to the Civil Code

25. This Part amends the Civil Code and it shall be read and construed as one with the Civil Code, hereinafter in this Part referred to as "the Code". Amendments to the Civil Code. Cap. 16.

26. In sub-article (1) of article 299 of the Code the words "Attorney General" shall be substituted by the words "State Advocate". Amendment of article 299 of the Code.

27. In sub-article (3) of article 1124E of the Code the words "Attorney General" shall be substituted by the words "State Advocate". Amendment of article 1124E of the Code.

28. In sub-article (5) of article 7, in paragraph (c) of sub-article (4) of article 32A, in sub-article (22) of article 33, in sub-article (9) of article 42, in sub-article (3) of article 43 and in sub-article (8) of article 48A of the Second Schedule to the Code the words "Attorney General" shall be substituted by the words "State Advocate". Amendments to the Second Schedule of the Code.

Part V
Amendments to the Attorney General Ordinance

Amendments to the Attorney General Ordinance. Cap. 90.

29. This Part amends the Attorney General Ordinance and it shall be read and construed as one with the Attorney General Ordinance, hereinafter in this Part referred to as the "principal Ordinance".

Amendment of article 2 of the principal Ordinance.

30. Article 2 of the principal Ordinance shall be amended as follows:

(a) sub-article (1) thereof shall be deleted and sub-article (2) shall be renumbered as sub-article (1); and

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

"Procedure for appointment of Attorney General.

(2) Without prejudice to the validity and duration of any appointment to the office of Attorney General made prior to the coming into force of this sub-article, when a vacancy occurs in the office of Attorney General the procedure for the appointment of an Attorney General shall be the following:

(a) The Minister responsible for justice shall establish an Appointment Commission, consisting of a Chairperson and not less than two (2) and not more than four (4) members, to be composed of persons who in his opinion are respected and trusted by the public and are technically qualified to examine whether candidates for the office of Attorney General have the appropriate qualifications and other merit and suitability requirements to occupy the said office.

(b) The Appointment Commission shall issue a public call for applications open to persons who have the necessary qualifications and experience required to be appointed to the office of Attorney General.

(c) After examining the candidates the Appointment Commission shall submit a report to the Prime Minister, through the Minister responsible for justice, expressing its views on the eligibility, suitability and merit of the candidates. In the report the Commission may either limit itself to giving an opinion on the candidates or it may rank them in order of preference.

(d) In deciding upon his recommendation to the President in terms of article 91 of the Constitution, for the appointment of the Attorney General, the Prime Minister shall give due consideration to the recommendations of the Appointment Commission.".

Addition of new article 3 to the principal Ordinance.

31. Articles 3 and 4 of the principal Ordinance shall be renumbered as articles 4 and 5 respectively and immediately after article 2 there shall be added the following new article:

"Powers of the Attorney General.

3. Without prejudice to the provisions of article 2 the Attorney General shall have the following functions and powers:

(a) to demand that the Commissioner of Police:

(i) investigate any crime;

(ii) give the Attorney General any information about the investigation of any crime;

(iii) issue any charge for any crime;

(b) notwithstanding anything provided in any other law, and in his discretion, to prosecute any offence, alone or together with the Executive Police or together with any other authority having prosecution powers, or to assist in the prosecution of any offence, before the Court of Magistrates whether as a court of criminal judicature or as a court of criminal inquiry, for which a person shall have been charged before such court:

Provided that for the purpose of the implementation of what is provided in this paragraph, any article in the Criminal Code or in any other law which confers a function or power on the conduct of court proceedings in the prosecution of offences before the Court of Magistrates in the Executive Police or in any other authority having prosecution powers shall be deemed to also confer that function or power in the Attorney General;

Cap. 9.

(c) the decision as to whether a prosecution for a crime subject to a punishment exceeding the original jurisdiction of the Court of Magistrates as a court of criminal judicature is to be commenced shall be taken by the Attorney General:

Provided that any transitory measure issued from time to time in terms of article 1 of the State Advocate Act, 2019 or regulations issued by the Minister responsible for justice under this article may provide for transitory arrangements for the implementation of the provisions of this article. Without prejudice to the generality of the foregoing such transitory measures and arrangements may include provisions which from time to time provide that:

(a) the powers and functions of the Attorney General provided for in this article shall only apply to certain crimes and, or only to crimes liable to imprisonment for a term as may be prescribed being a term of imprisonment exceeding the original jurisdiction of the Court of Magistrates as a court of criminal judicature;

(b) the power of the Attorney General to delegate, subject to those conditions, orders, reservations, and derogations which he may from time to time provide, the power to take the decision to prosecute or to conduct the prosecution before the Court of Magistrates in terms of this article to the Commissioner of Police or to any other public authority having prosecution powers under any law from time to time in force.".

Amendment of article 4 as re-numbered of the principal Ordinance.

32. In paragraph (c) of sub-article (5) of article 4 as renumbered of the principal Ordinance immediately after the words "shall lie in the Attorney General" there shall be added the words "or in any other person who he may designate".

Amendment of article 5 as re-numbered of the principal Ordinance.

33. Article 5 as renumbered of the principal Ordinance shall be renumbered as article 5(1) and immediately thereafter there shall be added the following new sub-article:

"(2) Wherever a law provides that an oath is to be taken before the Attorney General, that oath may also be taken before the Deputy Attorney General or before another officer of the Attorney General, as delegated by the Attorney General.".

Addition of new article 6 to the principal Ordinance.

34. Immediately after article 5 as renumbered of the principal

Ordinance there shall be added the following new article:

"Power to delegate authority.

6. No nullity or other legal defect shall ensue when a document relating to criminal or civil proceedings which is to serve as evidence of any order, consent, approval or direction given by the Attorney General is signed by the Deputy Attorney General, or by an officer of the Attorney General on behalf of the Attorney General.".

Part VI

Amendments to the Appeals Committee Regulations

Amendments to the Appeals Committee Regulations. S.L. 343.05.

35. This Part amends the Appeals Committee Regulations and it shall be read and construed as one with the Appeals Committee Regulations, hereinafter in this Part referred to as the "principal regulations".

Amendment of regulation 2 of the principal regulations.

36. In regulation 2 of the principal regulations the words "before one of the officers mentioned in article 4 of the Attorney General Ordinance" shall be substituted by the words "before one of the officers mentioned in article 5 of the Attorney General Ordinance or one of the officers mentioned in article 4 of the State Advocate Act".

Passed by the House of Representatives at Sitting No. 248 of the 10th July, 2019.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

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