CHAPTER 461

INTERNAL AUDIT AND FINANCIAL INVESTIGATIONS ACT

To provide for the regulation of the internal audit and financial investigative functions, including the power to carry out effective independent internal audits and financial investigations, providing for the necessary safeguards to ensure the protection of the financial interests of Government including the funds it may receive or be required to manage under Malta's international obligations.

25th July, 2003

ACT VI of 2003, as amended by Act IX of 2005 and Legal Notice 427 of 2007 and XXI of 2020.

PART I

PRELIMINARY

Short title.

1. The short title of this Act is the Internal Audit and Financial Investigations Act.

Definitions. *Amended by: IX. 2005.6; XXI of 2020.*

2. In this Act unless the context otherwise requires -

"Audit Committee" means the Audit Committee established under article 7(3) of the Central Bank of Malta Act;

"auditee" means any entity which is or may be the subject of an internal audit and, or a financial investigation performed by the Director as provided for in this Act;

"Board" means the Internal Audit and Investigations Board;

"Cabinet" means the body to which article 79 of the Constitution refers;

"Central Bank of Malta" or "the Bank" means the Central Bank of Malta established by article 3 of the Central Bank of Malta Act; Cap. 204.

"compliance and assurance functions" means those functions within a Government department or ministry that ensure that financial and other related controls, systems, policies and procedures necessary for the proper functioning of that Government department or ministry are adhered to;

"conflict of interest" is a situation where any officer of the Directorate has a private or personal interest to influence, or appear to influence that which is effectively expected of him in the performance of his duties;

"Director" means the Director, Internal Audit and Investigations Directorate and includes, to the extent of the authority given, any person authorised in that behalf by the Director;

"Directorate" means the Internal Audit and Investigations Directorate referred to in Part IV of this Act;

"entity" includes both natural and legal persons, including any

body or association of persons, whether corporate or unincorporate;

"financial investigation" means the in-depth examination of all circumstances relative to irregularities and cases of suspected fraud, including the corruption of public officers, and, in that regard, the acquiring of records and, or, information and the carrying out of related assessments, analysis and recommendations, such "financial investigation" being limited in scope to the financial implications that could arise out of such an irregularity or suspected fraud;

"functions" includes powers and duties;

"internal audit" means an independent, objective assurance and consulting activity designed to add value and improve the operations of auditees, helping the auditee to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes;

"irregularity" means whichever act or omission which unlawfully diminishes public funds and whatever is not consonant with the proper management thereof;

"public funds" also includes funds that Government receives, pays, including funds to local councils, or is required to manage under Malta's international obligations, or under any other public funds arising under any other law;

"public officers" shall have the same meaning as is assigned to it in the Constitution of Malta, and includes officials of international organizations with whom Malta has international obligations, whilst performing their duties on Maltese territory.

"Secretary to the Cabinet" means the public officer to whom article 94 of the Constitution refers.

PART II

GENERAL PROVISIONS

Separate functions.

3. The Directorate shall have two separate and distinct functions: internal audit and financial investigations.

Internal audit.

4. An internal audit in the manner as may be prescribed by regulations may be carried out in any department of Government or any entity falling under the supervision of Permanent Secretaries, for the purpose of assisting them in the effective discharge of their duties.

Financial investigation.

5. A financial investigation may be carried out in terms of the provisions of this Act in any department of Government and in any other public or private entity which is in any way a beneficiary, debtor or manager of public funds, for the purpose of protecting public funds against irregularities and fraud, or otherwise to assess such public or private entities' liability to contribute to such funds.

PART III

THE INTERNAL AUDIT AND INVESTIGATIONS BOARD

The Board.

6. There shall be a Board, to be known as the Internal Audit and Investigations Board, which shall exercise the functions assigned to it by this Act.

Direct responsibility. *Substituted by: XXI of 2020.*

7. The Board shall be directly responsible to the Prime Minister.

Composition of Board. *Amended by: XXI of 2020.*

8. (1) The Board shall be composed of:

(*a*) the Secretary to the Cabinet as Chairperson;

(*b*) the Director;

(*c*) the Permanent Secretary in the Ministry of Finance;

(*d*) a person of recognised standing in the accounting and, or, auditing profession, who is not a public officer, and who shall be appointed by the Cabinet for such a period as it may determine; and

(*e*) one other member, who shall be appointed by the Cabinet for such a period as it may determine:

Provided that at least two members shall have expertise in disciplines related to public sector financial management.

(2) The Board shall meet at least quarterly and shall otherwise regulate its own procedure.

(3) The decisions of the Board shall be taken by a majority of votes and the Chairperson shall have both an original and a casting vote in case of an equality of votes.

(4) Any communication issued or declaration made by the Secretary to the Cabinet on behalf of the Cabinet for the purposes of sub-article (1) shall be taken as a statement of the views or decisions of the Cabinet, unless the contrary is proved.

Functions of the Board.

9. The Board shall have the following functions:

(*a*) to serve as an independent and objective body to monitor the public internal financial control function in Malta;

(*b*) to oversee the work of the Directorate;

(*c*) to safeguard the continued independence of the Director and officers of the Directorate;

(*d*) to endorse or otherwise plans, budgets and schedules as proposed by the Director for the proper administration of the Directorate;

(*e*) to require the Directorate to carry out specific tasks as provided under this Act, as and when necessary;

(*f*) to set policies, procedures and methods for the proper functioning of public internal audit and for the carrying out of financial investigations.

PART IV

THE INTERNAL AUDIT AND INVESTIGATIONS DIRECTORATE

The Directorate.

10. The Internal Audit and Investigations Directorate, shall be the body charged with exercising and performing the functions assigned to it under this Act. The Directorate shall be headed by the Director.

Public officers.

11. (1) The officers of the Directorate shall be public officers.

(2) The Director and the other officers of the Directorate shall, before entering upon their duties, take an oath in the form as set out in the Schedule to this Act, in the hands of the Attorney General, that they will faithfully and impartially perform the duties of their office, and that they will not divulge any information acquired by them under this Act, except in those circumstances specified in this Act.

Independence.

12. In the fulfilment of their functions under this Act, the Director and other officers of the Directorate shall not be subject to any direct or indirect influence or control by the auditee and shall not themselves influence or control the auditee.

PART V

FUNCTIONS OF THE OFFICERS OF THE DIRECTORATE

Management.

13. The Director shall be responsible for the day-to-day management of the Directorate.

Report.
Amended by: IX. 2005.6.

14. (1) The Director shall, as soon as may be, after concluding a financial investigation or an internal audit, transmit a report thereof to the Permanent Secretary under whose supervision the auditee falls. The Director may also transmit a copy of such report to the auditee.

(2) Within one month of receipt of such report, the Permanent Secretary shall give such instructions to the auditee as may be necessary to remedy any shortcomings, and shall inform the Director accordingly.

(3) Notwithstanding subarticles (1) and (2), where the auditee is the Central Bank of Malta, any report of a financial investigation carried out at the Bank shall be presented to the Chairman of the Audit Committee of the Bank who shall, within one month of the receipt of such report, give instructions to the Governor of the Bank as may be necessary to remedy any shortcomings, and shall inform the Director accordingly.

Follow-up reviews.

15. The Director shall conduct such follow-up reviews as may be necessary after an internal audit and financial investigation.

Suspicion of irregularity.

16. If an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director, and shall supply to the Director all information in his possession relating thereto.

Conflict of interest. *Amended by: L.N. 427 of 2007.*

17. (1) Where the Director or the Board considers that there would be a conflict of interest if the Director himself were to conduct an internal audit or a financial investigation, the Board may appoint a senior public officer from amongst the officers of the Directorate to conduct that investigation in his stead.

(2) It shall be the duty of every officer of the Directorate who has any form of a conflict of interest in any internal audit or financial investigation, he is assigned to work upon, whether such conflict is direct or indirect, to immediately disclose to the Director his interest and refrain completely from involving himself in that particular case:

Provided that any officer of the Directorate who knowingly acts in contravention of this subarticle shall be guilty of an offence against this Act and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), and shall also be subject to disciplinary proceedings as provided for in the Public Service Commission (Disciplinary Procedures) Regulations.

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Suspected cases of irregularity or fraud. *Amended by: IX. 2005.6.*

18. Whenever, and as soon as, the Director firmly establishes the existence of suspected cases of irregularities and, or suspected cases of fraud concerning the responsibilities of the auditee under review, the Director shall, if he is of the opinion that the irregularity, if proved, would constitute a criminal offence, immediately inform the Attorney General; otherwise, if the Director is of the opinion that the irregularity is of an administrative nature, he shall inform the Permanent Secretary of the auditee:

Provided that in the case of the Central Bank of Malta, where the Director is of the opinion that the irregularity is of an administrative nature, he shall inform the Chairman of the Audit Committee of the Bank.

Annual report.

19. The Director shall, not later than the first three months of each year, compile and transmit to the Board an Annual Report dealing generally with the activities of the Directorate during the previous year and containing such information relating to the activities of the Directorate as the Board may from time to time require. The Board shall determine the distribution of such a report as and when required.

Power of entry.

20. (1) Except as may be expressly provided by any law, the Director shall, for the purpose of carrying out his functions under this Act, have the power -

(*a*) to enter and inspect any premises of an auditee in order to conduct an internal audit and, where he has reason to suspect that irregularities and, or fraud, have occurred or are occurring, to enter any premises of an auditee for the purpose of conducting a financial investigation:

Provided that, if access is required to any premises occupied in whole or in part for the purpose of habitation, such access shall require the prior issue

of a warrant signed by a Magistrate:

Provided further that entry shall take place during daytime;

(*b*) to require the auditee to produce any books, records, files, accounts, documents or information including any computer data in any form and or part thereof, including contracts, bills, vouchers and receipts relating to them, and if deemed necessary by the Director, for the latter to retain such documents in the original, and to ensure that copies or extracts are made thereof without paying any fee therefor notwithstanding any law or regulations to the contrary.

(2) Without prejudice to subarticle (1)(*b*), and for the purpose of his functions under this Act, the Director may rely on any of the records kept or made by any audit or investigative unit of any entity including the person or unit discharging the compliance and assurance functions within the Government department or ministry concerned.

Assistance.

21. When conducting an internal audit or a financial investigation concerning funds managed by Malta in terms of its international obligations, the Director may be assisted by representatives of the international organisation concerned, who may participate jointly with the Director in the audit or investigation, as the case may be, and for such purpose such representatives shall be considered to be under the same obligations as officers of the Directorate and shall, before entering upon their duties, take the oath specified in the Schedule to this Act.

Information furnished by auditee.
Amended by: IX. 2005.6.

22. (1) All information furnished by an auditee during the course of any internal audit or financial investigation shall at all times be treated as confidential and shall be solely used by the Directorate for the purpose of carrying out the internal audit and, or financial investigation.

(2) The Director shall treat internal audit reports and reports of financial investigations as strictly confidential and shall, except for the purpose of any criminal investigation or prosecution, only disclose their contents to the Permanent Secretary or, as the case may be, the Chairman of the Audit Committee of the Central Bank of Malta, and, if necessary, to the Board, or to the Auditor General.

(3) Without prejudice to the rights of the Auditor General under any law, no information obtained in any way under this Act shall be disclosed except:

(*a*) for the purposes of the financial investigation and the prosecution of a criminal offence;

(*b*) to officers of the Directorate in the course of their duties under this Act; and

(*c*) in matters which under this Act arise out of Malta's international obligations, to the relevant foreign audit and control authorities.

PART VI

MISCELLANEOUS

Co-ordinating Committee.

23. For the purposes of article 9(a), the Board shall appoint a Co-ordinating Committee, to be chaired by the Director, in order to co-ordinate the activities of, and to facilitate the exchange of information between, different entities charged with the protection and safeguarding of public funds; the terms of reference of the Co-ordinating Committee shall be determined by the Board.

Offences and penalties. *Amended by: L.N. 427 of 2007.*

24. Any person who wilfully obstructs the Director in the performance of his functions under this Act, or who fails, when requested, to grant access to any premises or to produce any records to the Director, or who fails to comply with the provisions of article 16, shall, without prejudice to any other liability under any other law, be guilty of an offence against this Act and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment for a term of not more than three months, or to both such fine and imprisonment.

Review.

Cap. 281.

25. (1) The Board shall, once every three years, appoint auditors or firms of auditors, duly certified under the provisions of the Accountancy Professions Act, to conduct reviews of the Directorate's operations.

(2) The auditors or firms of auditors appointed under subarticle (1) shall be independent of the Director and the work of the Directorate and, on completion of the review, shall submit a written report to the Board.

Regulations.

26. The Prime Minister may from time to time make regulations for the better giving effect to any of the provisions of this Act.

SCHEDULE

(Articles 11 and 21)

Oath of Officers of the Internal Audit and Investigations Directorate

"I ……., solemnly swear/affirm that I will honestly and diligently fulfil my duties as an officer of the Internal Audit and Investigations Directorate in conformity with the requirements of the Internal Audit and Financial Investigations Act, and that I will not, except as provided by law, at any time disclose or make known any matter which comes to my knowledge by reason of my service as such.

So help me God.

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Signature of person taking oath

Sworn and signed before me this ..... day of ..... of the year ..... at .....

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Attorney General