CHAPTER 90

ATTORNEY GENERAL ORDINANCE

Amended by: IV. 2004.3.

Substituted by: IV. 2004.2.

To provide for the Office of Attorney General.

29th December, 1936

ORDINANCE XXX of 1936, as amended by Acts: LVI of 1948, XXIV of 1956; Legal Notice 46 of 1965; Acts: XVIII of 1971, LVIII of 1974; Legal Notice 148 of 1975; and Acts XVII of 1988 IV of 2004 , XXV of 2019 and XXXIV of 2024.

Short title. *Amended by: L.N. 46 of 1965; LVIII.1974.68; L.N. 148 of 1975; IV. 2004.3.*

1. This Ordinance may be cited as the Attorney General Ordinance.

Attorney General. *Amended by: L.N. 46 of 1965; LVIII. 1974.68. Substituted by: IV. 2004.4. Amended by: XXV.2019.30.*

2. (1) The Attorney General shall be the Chief Prosecuting Officer in Malta having such powers in connection with criminal proceedings and as may from time to time be by law provided. In the exercise of his powers to institute, undertake or discontinue criminal proceedings the Attorney General is to exercise such powers in his individual judgement.

Procedure for appointment of Attorney General. *Added by: XXV.2019.30.*

(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.

(3) Where under any law the Attorney General 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 Attorney General when acting under the direction of the Attorney General in anything in which the Attorney General 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 Attorney General.

Powers of the Attorney General. *Added by: XXV.2019.31.*

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;

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(*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

*Came in force on 1st October, 2020. See Legal Notice 386 of 2020.

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.

Deputy Attorney General and other officers.
Amended by: LVI. 1948.2; XXIV.1956.2. Substituted by: XVIII.1971.2. Amended by: LVIII.1974.68; L.N. 148 of 1975; XVII. 1988.2; IV. 2004.5. Renumbered and Amended by: XXV.2019.31,32; XXXIV.2024.2.

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

(2) In the exercise and performance of the powers, functions and duties delegated or assigned to them as aforesaid, the Deputy Attorneys General and other Officers of the Attorney General 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 Attorney General.

(3) The Office of the Attorney General is hereby designated as a Government Agency and the provisions of subarticles (5) to (9) shall apply to the said agency.

(4) The Attorney General 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 Attorney General.

(5) (*a*) The Office of the Attorney General shall as a government agency be headed by the Attorney General and shall be the medium through which the Attorney General 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 Attorney General shall lie in the Attorney General 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 Attorney General is in accordance with the Constitution or any other 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 Attorney General.

(6) The Attorney General 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 Attorney General 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 Attorney General 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 Attorney General 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 Attorney General 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 subarticle and shall end on the 31st December of the following year.

(*c*) The Attorney General shall not later than six 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 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.

(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 Attorney General, 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 in the Office of the Attorney General on the date of the coming into force of this Act shall from such date be deemed to have been detailed by direction of the Prime Minister for duty with the Office of the Attorney General as a government agency under the provisions of subarticle (8), and thereupon the provisions of the same subarticle 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 subarticle (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 Attorney General 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.

Power to administer oaths. *Amended by: LVI.1948.3; XXIV.1956.3. Substituted by: XVIII.1971.3. Amended by: LVIII.1974.68; L.N. 148 of 1975; XVII.1988.3; IV. 2004.6. Renumbered by: XXV.2019.31,33. Substituted by: XXXIV.2024.3.*

5. (1) The Attorney General and the Deputy Attorneys General and other Officers of the Attorney General shall have the power to administer oaths.

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

Power to delegate authority. *Added by: XXV.2019.34. Amended by: XXXIV.2024.4.*

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 a Deputy Attorney General, or by an officer of the Attorney General on behalf of the Attorney General.