I assent.

(L.S.)

GUIDO DE MARCO
President

9th July, 2002

ACT No. X of 2002

AN ACT to amend the Attorney General and Counsel for the Republic (Constitution of Office) Ordinance, Cap. 90, setting up the office of Prosecutor General, and to make other provision, including amendment to the Constitution and other laws, consequential and incidental thereto.

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:-

PART I

Short title and commencement.

1. (1) The short title of this Act is The Attorney General and Counsel for the Republic (Constitution of Office) (Amendment) Act, 2002.

(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 difficult provisions and different purposes of this Act.

PART II

Amendment of the Attorney General and Counsel for the Republic (Constitution of Office) Ordinance, Cap. 90.

2. (1) This part amends the Attorney General and Counsel for the Republic (Constitution of Office) Ordinance, Cap. 90, hereinafter in this part referred to as "the Ordinance".

(2) This part shall be read and construed as part of the Ordinance.

Substitution of the title of the Ordinance.

3. For the title of the Ordinance there shall be substituted the following:

"To provide for the offices of Attorney General and Prosecutor General and to provide for matters consequential and incidental thereto.".

Amendment of article 1 of the Ordinance.

4. In article 1 of the Ordinance for the words "Attorney General and Counsel for the Republic (Constitution of Office) Ordinance" there shall be substituted the words "The Attorney General and Prosecutor General Act".

Substitution of article 2 of the Ordinance.

5. For article 2 of the Ordinance, there shall be substituted the following:

"Attorney General and Prosecutor General.

2. (1) The Attorney General 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. Where under any law the Attorney General is to act or exercise any power on his individual judgement he shall not be subject to the direction or control of any other person or authority.

(2) The Attorney General shall exercise his powers to institute, undertake or discontinue criminal proceedings through the Prosecutor General who shall be the chief prosecuting officer in Malta having such powers in connection with criminal proceedings as may from time to time be by law provided; in the exercise of his powers, the Prosecutor General shall act under the general direction of the Attorney General and shall not be subject to any direction or control of any other person or authority, save the Attorney General.

(3) The officers of the Attorney General and of the Prosecutor General shall when acting under the direction of the Attorney General or of the Prosecutor General, as the case may be, in anything in which the Attorney General or the Prosecutor General are to act in their own individual judgement, shall have the same protection at law as if the action done or omitted to be done were an act of the Attorney General or of the Prosecutor General.".

6. Article 3 of the Ordinance shall be amended as follows: Amendment of article 3 of the Ordinance.

(a) for the marginal note thereto there shall be substituted the following:

"Officers of the Attorney General and Officers of the Prosecutor General";

(b) subarticles (1) and (2) shall be renumbered as subarticles (3) and (4) respectively;

(c) Immediately before subarticle (3) thereof as renumbered there shall be inserted the following subarticle:

"(1) There shall be such officers to be styled "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 Officers of the Attorney General shall, unless the contrary intention appears, have the same protection and privileges as are by law imposed or given to the Attorney General.";

(d) in subarticle (3) thereof as renumbered, for the words "an officer to be styled" to the words "and "Counsel for the Republic" " there shall be substituted the words "such officers to be styled "Officers of the Prosecutor General" ";

(e) in subarticle (4) thereof as renumbered for the words "the Deputy Attorney General, the Assistants to the Attorney General, the Senior Counsel for the Republic and the Counsel for the Republic" there shall be substituted the words "the Officers of the Prosecutor General";

(f) immediately after subarticle (4) thereof as renumbered there shall be added the following subarticles:

"(5) The Office of the Attorney General and the Office of the Prosecutor General are hereby designated as Government Agencies and the provisions of subarticles (7) to (11) of this article shall apply to the said agencies.

(6) The Attorney General and the Prosecutor General may also act through such contractors as each 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 or the Prosecutor General, as the case may be.

(7) (a) The Office of the Attorney General and the Office of the Prosecutor General shall as government agencies respectively be headed by the Attorney General and the Prosecutor General and shall respectively be the medium through which the Attorney General and the Prosecutor General carry out their functions according to law.

(b) The said agencies shall each 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 and of the Office of the Prosecutor General shall lie in the Attorney General and the Prosecutor General respectively.

(d) The said agencies shall each 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 each said agency are determined:

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

Provided further that the provisions of the above proviso shall not apply where the Attorney General or the Prosecutor General, as the case may be, are in accordance with the Constitution or any other law to act in accordance with their own individual judgement, in which case the agency is to act according to the sole directions of the Attorney General and the Prosecutor General, as the case may be.

(8) The Attorney General and the Prosecutor General and the employees of the said agencies 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 and the Prosecutor General shall with concurrence of the Minister responsible for the respective agency draw up service values and Codes of Ethics in respect of their respective agencies to supplement any public service Code of Ethics.

(9) (a) The Attorney General and the Prosecutor General shall keep proper books of account in such manner as the Minister of Finance may from time to time direct. Such accounts shall be audited by an auditor appointed for the purpose by the respective head of the agency with the concurrence of the Minister of Finance and shall moreover be subject to audit by the Auditor General.

(b) The Attorney General and the Prosecutor General shall each not later than six weeks after the end of each financial year present to the Minister responsible for the respective Agency the audited accounts together with a report on the workings of each respective agency which report shall state the manner in which the agency has operated to fulfil its functions and its plans for the future.

(c) The reports referred to in subarticle (2) 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.

(10) (a) Without prejudice to the provisions or any other law to the contrary each agency may, with the concurrence of the Minister responsible for the agency, have a Management Board which shall consist of the Head of the agency as chairman and not less than two but not more than four members as the Minister responsible for the agency may by direction establish and appoint:

Provided that the Attorney General shall have the right to be present at any meeting of the Management Board of the Office of the Prosecutor General.

(b) Any direction so made may be amended, substituted or revoked by another direction.

(c) Where such a Management Board exists, the head of the agency shall, subject to a law to the contrary and to any directives issued by his Minister, act in accordance with the general direction and control of that Board.

(11) (a) The Prime Minister may by direction detail a public officer for duty with any of the said agencies 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 an agency such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the head of the agency, 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 such 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 he 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 offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.".

Amendment of article 4 of the Ordinance.

7. In article 4 of the Ordinance for the words from "The Attorney General" to the words "and the Counsel for the Republic" there shall be substituted the words "The Attorney General, the Officers of the

Attorney General, the Prosecutor General and the Officers of the Prosecutor General".

PART III

8. (1) This Part amends the various Laws referred to in the various articles contained therein. Consequential amendment to various Laws.

(2) Each article of this part shall be read and construed as one with the Code, Act, Ordinance or other law amended by the said article.

9. The Criminal Code shall be amended as follows: Amendment of the Criminal Code, Cap. 9.

(a) for the words "Attorney General" wherever they appear in article 93 thereof, including the marginal note thereto, there shall be substituted the words "Attorney General, the Prosecutor General";

(b) for the words "Attorney General" in the marginal note to article 94 thereto, there shall be substituted the words "Attorney General, the Prosecutor General"; and

(c) in subarticle (3) of article 516 thereof, for the words "the Attorney General" there shall be substituted the words "the Attorney General, the Prosecutor General".

10. The Code of Organization and Civil Procedure shall be amended as follows: Amendment of the Code of Organization and Civil Procedure, Cap. 12.

(a) in subarticle (1) of article 29 for the words " the Attorney General" there shall be substituted the words "the Attorney General, the Prosecutor General";

(b) in article 521 and in subarticle (2) of article 611, for the words "Attorney General" there shall be substituted the words "the Attorney General acting in his individual judgement"; and

(c) in subarticle (2) of article 786, for the words "the Attorney General in any action in which he is specially authorised by law to appear or where he is authorised", there shall be substituted the words "the Attorney General or the Prosecutor General in any action in which they are specially authorised to appear, or the Attorney General where he is authorised".

Amendment of the Commercial, Code, Cap. 13.

11. In articles 29, 47 (2), 71 (6) and 91 (1) of the Commercial Code, for the words "Attorney General" wherever they occur, there shall be substituted the words "Attorney General acting in his individual judgement".

Amendment of the Civil Code, Cap.16.

12. In articles 299 (1) and 661 (1) of the Civil Code, for the words "Attorney General" wherever they occur, there shall be substituted the words "Attorney General in his individual judgement".

Amendment of the Notarial Profession and Notarial Archives Act, Cap. 55.

13. For the words "Attorney General" in article 13 of the Notarial Profession and Notarial Archives Act, there shall be substituted the words "Prosecutor General" and for the words "Attorney General" in articles 112, 115 and 125 of the same Act there shall be substituted the words "Attorney General acting in his own individual judgement".

Amendment of the Commissioners for Oaths Ordinance, Cap. 79.

14. The Commissioners for Oaths Ordinance shall be amended as follows:

(a) subarticle (1A) of article 3 thereof shall be deleted; and

(b) for article 6 thereof, there shall be substituted the following:

"Commissioners for Oaths *ex officio*.

6. (1) The Attorney General and the Prosecutor General and such of their officers as the Attorney General and the Prosecutor General, as the case may be, may from time to time designate by notice in the Gazette, as well as the magistrates, shall *ex officio* be Commissioners for Oaths.

(2) The designation referred to in subarticle (1) may be made by reference to a person or persons or by designation of the office or ranks held.".

Amendment of the Pensions Ordinance, Cap. 93.

15. The Pensions Ordinance shall be amended as follows:

(a) in subarticle (1) of article 9 thereof:

(i) for the words "other than a judge" there shall be substituted the words "other than a judge or the Attorney General or the Prosecutor General or a magistrate";

(ii) for the words "other than a judge, Attorney General or magistrate" in paragraph (i) to the proviso thereto there shall be substituted the words "other than a judge, Attorney General, Prosecutor General or magistrate"; and

(b) in paragraph (3) and (4) of regulation 3 contained in the Schedule thereto for the words "Attorney General" wherever they appear, there shall be substituted in each case the words "Attorney General or Prosecutor General";

(c) in the proviso to paragraph (1) of regulation 4 contained in the Schedule thereto, for the words "Provided that if an officer" there shall be substituted the words "Provided that if an officer, other than a judge or the Attorney General or the Prosecutor General, or a magistrate".

Amendment of the President of Malta and other Officers (Salaries) Act, Cap. 186.

16. For the reference to "Attorney General" in the first column of the Schedule to the President of Malta and other Officers (Salaries) Act, there shall be substituted the references "Attorney General and Prosecutor General".

Amendment of Prisons Act, Cap. 260.

17. In subarticle (5) of article 8 of the Prisons Act for the words "the Chief Justice, the judges, the magistrates and the Attorney General" there shall be substituted the words "the Chief Justice, the Attorney General, the Prosecutor General, the Judges and the Magistrates".

Amendment of the Disposal of Government Land Act, Cap. 268.

18. In subarticle (2) of article 4 of the Disposal of Government Land Act, for the words "Attorney General" there shall be substituted the words "the Attorney General acting in his individual judgement".

Amendment of the Value Added Tax, Cap. 406.

19. In subparagraph (6) of paragraph 1 of the Ninth Schedule to the Value Added Tax Act, for the words "Attorney General" there shall be substituted the words "Attorney General acting in his individual judgement".

General amendment.

20. (1) For the words "Attorney General" wherever they appear in any law other than in the articles of law (or parts of law however called) listed in subarticle (2), there shall be substituted the words "Prosecutor General".

(2) The articles of law referred to in subarticle (1) are those amended by the foregoing articles of this Act and the following:

(i) articles 91 and 101A of the Constitution;

(ii) articles 77, 181B, 436, 437, 440(1), 441, 443(1), 445(1), 446, 447, 461, 462 and Form No. 18 contained in Schedule B of the Code of Organization and Civil Procedure, Cap. 12;

(iii) article 4 of the Exportation of Certain Articles (Prohibition) Ordinance, Cap. 24;

(iv) Article 9 of the Petroleum (Importation, Storage and Sale) Ordinance, Cap. 25;

(v) article 18 of the Goldsmiths and Silversmiths Ordinance, Cap. 46;

(vi) articles 10, 89, 90, 100, 111, 114 and 150 of the Notarial Profession and Notarial Archives Act, Cap. 55;

(vii) article 6(2) of the White Slave Traffic (Suppression) Ordinance, Cap. 63;

(viii) article 3 of the Commissioners for Oaths Ordinance, Cap. 79;

(ix) article 24 of the Land Acquisition (Public Purposes) Ordinance, Cap. 88;

(x) article 7(2)(b) of the Department of Health (Constitution) Ordinance, Cap. 94;

(xi) article 2 of the Existing Laws (Reprint) Act, Cap. 180;

(xii) article 5(6) ofthe Agricultural Leases (Reletting) Act, Cap. 199;

(xiii) the Mortmain Act, Cap. 201, (all articles wherever they appear);

(xiv) articles 37(7) and 38(2) of the Central Bank of Malta Act, Cap. 204;

(xv) article 9(5) of the Civil Aviation (Air Operators' Certificates) Act, Cap. 218;

(xvi) article 32D(l) of the Referenda Act, Cap. 237;

(xvii) article 6(3) of the Immovable Property (Acquisition by Non-Residents) Act, Cap. 246;

(xviii) article 37 of the Press Act, Cap. 248;

(xix) article 29(3) of the Industrial Relations Act, Cap. 266;

(xx) article 5(2) of the Inquiries Act, Cap. 273;

(xxi) articles 5(2)(a) and (3) of the War Damage (Repeal) Act, Cap. 289;

(xxii) article 4(9) of the Commissioners for Justice Act, Cap. 291;

(xxiii) article 2(5) of the Public Curator Act, Cap. 299;

(xxiv) article 107(2) of the Social Security Act, Cap. 318;

(xxv) article 6(1) of the European Convention Act, Cap. 319;

(xxvi) article 28(3) and 33(1)(a) of the Business Promotion Act, Cap. 325;

(xxvii) article 14(2) ofthe Permanent Commission Against Corruption Act, Cap. 326;

(xxviii) article 18(3) and article 37(3) of the Trusts Act, Cap. 331;

(xxix) article 3(4) of the Employment and Training Services Act, Cap. 343;

(xxx) article 8 of the General Elections Act, Cap. 354;

(xxxi) article 4 of the Local Councils Act, Cap. 363;

(xxxii) article 3(2)(a)(ii) of the Commission for the Administration of Justice Act, Cap. 369;

(xxxiii) article 19 of the Consumer Affairs Act, Cap. 378;

(xxxiv) article 6 of the Small Claims Tribunal Act, Cap. 380;

(xxxv) article 7(2) of the Controlled Companies (Procedure for Liquidation) Act, Cap. 383;

(xxxvi) articles 260, 320 and 411 of the Companies Act, Cap. 386;

(xxxvii) article 4(3) of the Arbitration Act, Cap. 387;

(xxxviii) article 3(4)(c) of the Notarial Acts (Temporary Provisions) Act, Cap. 408;

(xxxix) article 45(5) of the Copyright Act, Cap. 415;

(xl) article 10(4) of the Pesticides Control Act, Cap. 430; and

(xli) article 19(5) of the Code of Conduct for Computerised Reservation Systems Act, Cap. 434.".

Transitory provision.

21. Any act made by or with respect to the Attorney General before the coming into force of this Act, which in accordance with this Act should be made by or with respect to the Attorney General or the Prosecutor General, as the case may be, shall be deemed to have been made by or with respect to the Attorney General or the Prosecutor General respectively.

Passed by the House of Representatives at Sitting No. 764 of 2nd July, 2002.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives