I assent,

(L.S.)

UGO MIFSUD BONNICI
President

13th September, 1994

ACT No. XIX of 1994

AN ACT to make provision for the prevention and prohibition of the laundering of money in Malta.

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:

Short title and commencement.

1. (1) This Act may be cited as the Prevention of Money Laundering Act, 1994.

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

Interpretation.

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 crimes listed in the Second Schedule to this Act;

"Minister" means the Minister responsible for finance;

"money laundering" means:

(i) the conversion or transfer of property knowing 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 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 of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iv) retention without reasonable excuse of property knowing 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 section 41 of the Criminal Code; Cap. 9

(vi) acting as an accomplice within the meaning of section 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); Cap. 9

"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 Maltese liri 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.

(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.

(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 subsection, "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.

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 Lm1,000,000 (one million Maltese liri), or to imprisonment for a period not exceeding 14 years, or to both such fine and imprisonment.

(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.

(3) Any property of or in the possession or under the control of any person who commits an offence under this section shall, unless proved to the contrary, be deemed to be derived from money laundering and liable to confiscation or forfeiture by the court.

Additional powers of investigation.

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 section 3 of this Act, 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, 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 five thousand Maltese liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subsection, 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 subsection (1) of section 642 of the Criminal Code or by subsection (1) of section 588 of the Code of Organisation 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 subsection (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 subsection (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 five thousand Maltese liri 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 subsection (1), apply to the Criminal Court for an 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.

(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 subsection (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 paragraph (a) of subsection (3).

(8) The provisions of paragraphs (a), (b) and (e) of subsection (1) of section 381 and of subsection (1) of section 382 of the Code of Organisation and Civil Procedure shall, *mutatis mutandis,* apply to the attachment order.

(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 five thousand Maltese liri 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 paragraph (a) of subsection (6) or in the transfer or disposal by the suspect of any movable or immovable property in contravention of paragraph (c) of subsection (6), the fine shall always be at least twice the value of the money or property in question.

(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 subsection (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 section 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 subsection (9).

(12) In the course of any investigation of an offence against section 3 of this Act, 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 subsection (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 section 554 of the Criminal Code; provided that such hearing shall always take place behind closed doors.

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

Freezing of property of person accused.

5. (1) Where a person is charged under section 3 of this Act, the Court shall at the request of the prosecution make an order -

(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 six thousand Maltese liri 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 subsections 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 paragraph (b) of subsection (2) of this section 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.

6. Any person who acts in contravention of a Court order mentioned in section 5 of this Act 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 any act so made in contravention of such court order shall be null and without effect at law.

Special Court proceedings.

7. (1) Where an order of forfeiture is made under subsection (3) of section 3 of this Act, 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 section 3 of this Act 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 section, 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.

(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.

Reversion of property ceasing to be forfeited.

8. When the Court allows the demand for a declaration as provided in subsection (1) of section 7 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.

Rules and regulations.

9. (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.

(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.

(3) Rules or regulations made under this section may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine *(multa)* of Lm20,000 (twenty thousand Maltese liri) or imprisonment for a term not exceeding two years or both such fine and imprisonment.

Matters to be prescribed by regulations.

10. Saving the provisions of section 9 of this Act, the Minister may, in consultation with the Minister responsible for justice,

(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.

FIRST SCHEDULE

(Section 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

(Section 2)

* An offence against the law relating to dangerous drugs or narcotics
* Illegal dealing in arms and armaments
* Procuring, or trafficking in men, women or young persons for immoral purposes
* Dealing in slaves
* Piracy
* Illegal arrest, detention or confinement of a person
* Wilful homicide
* Wilful grevious bodily harm
* Blackmail.

Passed by the House of Representatives at Sitting No. 303 of the 20th July, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.

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