I assent.

(L.S.)

PAUL XUEREB
Acting President

19th July, 1988

ACT No. XXII of 1988

AN ACT to make provisions for the establishment and functions of a Permanent Commission Against Corruption, and for purposes connected therewith.

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 Permanent Commission Against Corruption Act, 1988.

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

Interpretation.

2. In this Act, unless the context otherwise requires:—

"Commission" means the Permanent Commission Against Corruption established under section 3 of this Act;

"corrupt practice" has the meaning assigned to it in section 6 of this Act;

"public officer" means the holder of any public office or a person appointed to act in any such office, and includes not only the constituted authorities, civil and military, but also all such persons as are lawfully appointed to administer any part of the executive power of the Government, or to perform any other public service imposed by law, whether it be judicial, administrative or mixed, members of the House of Representatives; any person who is entrusted with or has functions relating to the administration of a

statutory body having a distinct legal personality, any council, board, panel, committee or other similar body established by any law, or who is employed with such a body; and includes, in relation to any act or omission during the tenure of such post, any person who, within a period of twelve years before or at any time after the coming into force of this Act, was a public officer;

"statutory body" means any corporation or other body corporate established by law.

Permanent Commission Against Corruption.

3. (1) There shall be a Commission, to be known as the Permanent Commission Against Corruption, which shall consist of a chairman and two other members, appointed by the President acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition.

(2) The chairman of the Commission shall be a person who:—

(a) holds, or has held, the office of a judge in Malta; or

(b) holds, or has held, the office of a magistrate in Malta, and has held that office and practised as an advocate in Malta for a period of not less than twelve years in the aggregate; or

(c) has practised as an advocate in Malta for a period of not less than twelve years.

(3) A person shall not be qualified to hold office as a member of the Commission if he is, or was, a Minister, Parliamentary Secretary, a member of the House of Representatives, a member of a local government authority, or if he is a public officer other than a public officer who is qualified to be appointed chairman of the Commission under subsection (2) of this section.

(4) Subject to the provisions of this section, the office of a member of the Commission shall become vacant:—

(a) at the expiration of five years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) A member of the Commission may be removed from office by the President, acting in accordance with the advice of the Prime Minister, but such member may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(6) If the office of a member of the Commission is vacant or if a member is for any reason unable to perform the functions of his office, the President acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, shall appoint a person who is qualified to be appointed to be a member to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of subsections (4) and (5) of this section, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(7) Any member of the Commission may be challenged or shall abstain in the same circumstances as a judge of the Superior Courts; and in any such case for that member there shall be substituted a person qualified in accordance with this section, as a member of the Commission appointed by the President acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, for the particular case or cases in respect of which the member has been challenged or has abstained.

(8) In the exercise of its functions the Commission shall not be subject to the direction or control of any other person or authority.

Functions of the Commission.

4. The functions of the Commission shall be:—

(a) to consider alleged or suspected corrupt practices and, where the Commission determines that there are sufficient grounds for holding an investigation, to investigate any such allegation or suspicion and to make a report thereon in accordance with section 11 of this Act;

(b) to investigate the conduct of any public officer, including any Minister or Parliamentary Secretary, which in the opinion of the Commission may be corrupt or may be connected with or may be conducive to currupt practices and to report thereon in accordance with section 11 of this Act;

(c) to investigate the conduct of any person who is or has been entrusted with, or has or has had functions relating to, the administration of a partnership or other body in which the Government of Malta, or any one or more of any other authority of the Government, a local government authority, a statutory body, or a partnership as aforesaid or any combination thereof, has a controlling interest or over which it has effective control, where such conduct, in the opinion of the Commission may be corrupt or connected with or conducive to corrupt practices, and to report thereon in accordance with section 11 of this Act;

(d) to examine the practices and procedures of government departments, local government authorities, statutory bodies or other bodies referred to in paragraph (c) in order to facilitate the discovery of any corrupt practices and to recommend the revision of methods of work or procedures which may be conducive to corrupt practices, and to report thereon in accordance with section 11 of this Act, and

(c) to instruct, advise and assist any person, on his request, on ways in which corrupt practices may be eliminated, provided that such request may only be made by a person who has ministerial responsibility or who is entrusted with, or has functions relating to, the administration of a government department, local government authority, statutory body or other body referred to in paragraph (c).

Allegations of corrupt practices.

5. Except where the Commission acts on its own initiative in holding an investigation under this Act, such investigation may be held on the allegation made and subscribed on oath by any person.

Corrupt practices.

6. (1) The following shall be corrupt practices under this Act—

(a) the acts or omissions which constitute the offences under sections 112 to 118, 120, 121, 124 to 126, and 138 of the Criminal Code,

(b) the acts or omissions which constitute an attempt to commit any of the aforesaid offences or which constitute complicity in any of those offences under sections 41 and 42 of the Criminal Code, and

(c) conspiracy to commit any acts or omissions which constitute any of the aforesaid offences. A conspiracy shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between two or more persons.

(2) The provisions of subsection (1) of this section shall apply to and in connection with every person mentioned in paragraph (c) of section 4 of this Act, in the same way as they apply to and in connection with public officers.

Investigation of other acts or omissions.

7. (1) Where during an investigation by the Commission of an alleged or suspected corrupt practice, an act or omission, other than the corrupt practice being investigated, is disclosed, the Commission may investigate that act or omission if in its opinion such act or omission is connected with that corrupt practice.

(2) For the purpose of subsection (1) of this section, there is such connection when —

(a) an act or omission has served as a means for the commission of the corrupt practice, or

(b) the proof of an act or omission or of a circumstance thereof has a bearing on the proof of the corrupt practice or of a circumstance thereof.

Police assistance.

8. The Commission may request the assistance of the Police in the conduct of investigations into alleged or suspected corrupt practices under this Act and the Police shall give the assistance requested but in giving that assistance the Police shall only have and exercise such powers as the Police are authorised to exercise under the Criminal Code or any other law.

Procedure in respect of investigations.

9. (1) Where on the evidence collected in an investigation the Commission has reason to believe that a person may have committed a corrupt practice under this Act, such person shall be afforded the opportunity to be heard, with oath, by the Commission in respect of that corrupt practice. During the hearing before the Commission, such person may be assisted by an advocate or legal procurator.

(2) Every such investigation shall be conducted in conformity with the principles of natural justice and in such manner as the Commission deems necessary for the discovery of the truth, but except as aforesaid the procedure for conducting an investigation shall be such as the Commission considers appropriate in the circumstances of the case. The investigation shall be conducted in private.

(3) Without prejudice to the generality of subsection (2) of this section, the Commission may obtain information from such persons and in such manner, and make such inquiries as it thinks fit, and for this purpose may require any officer of the authority, department or body concerned to furnish information or produce any documents relevant to the investigation notwithstanding the provisions of subsection (3) of section 637 of the Code of Organization and Civil Procedure.

Cap. 12

Summoning of witnesses and administration of oaths.

10. (1) The Commission shall have power, exercisable through its chairman —

(a) to summon witnesses who shall be heard on oath,

(b) to administer an oath to any witness and to any person concerned in the inquiry, and require them to give evidence.

(2) Summonses for attendance of witnesses may be in the form set out in the Schedule to this Act or in such other form as may be appropriate to the case, and shall be signed by the Chairman or secretary of the Commission.

(3) A summons may be served either by hand or by post. Where it is served by hand it shall be sufficient to prove service by evidence that the summons was left with a person over the age of 16 years at the place of residence or of business of the person summoned; and if served by post it shall be sufficient to prove service by evidence that the summons was properly addressed and posted.

(4) Any witness may be assisted by an advocate or a legal procurator.

(5) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause, to answer or to answer fully and satisfactorily, to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Commission, or refuses or fails, without sufficient cause, to produce any document he was required to produce by or with the concurrence of the Commission shall be liable on conviction to a fine (*multa*) not exceeding five hundred Maltese liri or to imprisonment not exceeding three months, or to both such fine and imprisonment:

Provided that, without prejudice to the generality of the provisions of paragraph (b) of subsection (1) of this section, no person giving evidence before the Commission may be compelled to answer any question which tends to expose him to any criminal prosecution, and every such person shall, in respect of any evidence given by him before the Commission be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

(6) No proceedings shall be commenced in respect of any offence against this section without the concurrence of the Attorney General.

Reports by Commission.

11. The Commission shall—

(a) at the earliest opportunity make a report of the results of every investigation to the Minister responsible for justice; and

(b) not later than the end of December of each year, or as frequently as it may deem expedient, make a report to the President on its activities and on matters considered by it, and may also make such recommendations as it may deem appropriate.

Persons assisting the Commission.

12. The Prime Minister may, whenever the Commission so requests, appoint a person or designate a public officer to assist it, in a consultative capacity, in the conduct of any of its investigations.

Secretary and staff.

13. (1) There shall be a Secretary to the Commission who shall be a person appointed as such by the Prime Minister or a public officer designated by the Prime Minister to perform the functions of Secretary.

(2) The Commission shall also have such other staff as the Prime Minister may deem necessary and appoint or designate as aforesaid.

Oath of office.

14. (1) Every person appointed to be, or to serve as, chairman or member of the Commission or appointed or designated to assist the Commission under section 12 of this Act, shall, before entering upon those duties, take and subscribe an oath in the form set out in the Schedule to this Act.

(2) Such oath shall be taken before any Commissioner for oaths and shall be deposited with the Attorney General.

Secrecy of information.

15. (1) Information obtained by the members of the Commission, any person appointed under section 12 of this Act or any other of its officers in the course of or for the purpose of an investigation under this Act shall not be disclosed except for the purposes of the investigation and of any report to be made thereon under this Act, or for the purpose of any proceedings relating to the investigation or under section 10 of this Act, and the members of the Commission and its officers shall not be called upon to give evidence in any proceedings, other than such as aforesaid, of matters coming to their knowledge in the course of an investigation under this Act.

(2) Section 133 of the Criminal Code shall apply to and in relation to members and officers of the Commission as they apply to or in relation to a public officer or servant referred to in section 133 of the Criminal Code.

Expenses of administration.

16. Any salary or expense payable in carrying this Act into effect shall be defrayed out of the Consolidated Fund without any further appropriation other than under this Act.

Investigation of past matters.

17. An ivestigation under this Act may be conducted in respect of matters which arise on or after the date of the coming into force of this Act or which arose within a period of twelve years before such date, so however that no investigation may be commenced in connection with any act or omission after the lapse of five years from the date of the coming into force of this Act, if that act or omission occurred before the coming into force of this Act, and after the lapse of five years from the date of such act or omission where that act or omission occurred on or after the date of the coming into force of this Act.

Privileged communications.

18. No action shall lie at law in connection with any matter as is herinafter mentioned, that is to say—

(a) the making of any report or request made by the Commission or the Attorney General in accordance with the provisions of this Act, and any publication of such report; and

(b) the giving in good faith of any information to the Commission for the purpose of this Act.

Attorney General may grant exemption from criminal proceedings.

19. (1) Subject to the provisions of this section, the Attorney General may, if in his individual judgement he is satisfied of the advisability so to do, issue a certificate in writing exempting any person mentioned therein from any criminal proceedings on condition that such person gives evidence according to law of all the facts known to him relating to any corrupt practice or any offence connected therewith, before the Commission and, or, any court of criminal jurisdiction, and on the issue of such certificate and the giving evidence in accordance therewith by the person to whom it refers, no proceedings before a court of criminal jurisdiction may be taken or continued against him in connection with such corrupt practice or any offence connected therewith.

(2) The Attorney General may grant the certificate mentioned in subsection (1) of this section either after a request to that effect by the Commission, or without any such request whenever the necessity so to do is otherwise brought to his notice.

(3) The request by the Commission shall be made in writing and shall contain all the pertinent details as may be requested by the Attorney General, and such a request shall be sent to the Attorney General in confidence and such request by the Commission shall not be deemed to be a breach of the provisions of section 15 of this Act.

(4) The certificate issued by the Attorney General under the provisions of this section shall:

(a) when the evidence is first to be given before the Commission and the certificate is issued at the request of the Commission be kept in the records of the Commission;

(b) when the evidence is first to be given before the Commission and the certificate is issued by the Attorney General without a request from the Commission, shall be transmitted by the Attorney General to the Commission together with a report on the facts as known to him of the corrupt practice requiring investigation and the Commission shall either hear such witness in any investigation before it on such alleged corrupt practice or, if such investigation is not yet initiated, initiate the same accordingly. The Commission shall keep such certificate in its records;

(c) when the evidence is first to be given before a court of criminal jurisdiction, be exhibited in court by a representative of the Attorney General.

(5) A copy of any certificate issued by the Attorney General under the provisions of this section and kept in the records of the Commission shall be produced at the request of the witness in any proceedings against him before a court of criminal jurisdiction.

(6) The Attorney General my issue a certificate under the provisions of this section notwithstanding any opposition by the witness.

(7) For the purpose of this section "court of criminal jurisdiction" includes any court-martial under the Malta Armed Forces Act, 1970. Act No. XXVII of 1970.

20. For subsection (3) of section 639 of the Criminal Code there shall be substituted the following: Amendment of the Criminal Code, Cap. 9

"Evidence by accomplice

(3) When the only witness against the accused in any proceeding for any offence other than those under sections 112 to 118, 120, 121, 124 to 126, and 138, is an accomplice whose evidence is not sufficiently corroborated by other circumstances, the evidence of such single witness shall not be sufficient for the conviction of the accused.".

SCHEDULE

(Section 14)

A. Form of oath to be taken by chairman or member of Commission or person assisting Commission.

I, having been appointed to be Chairman/Member of/person assisting the Permanent Commission Against Corruption do swear/solemnly affirm that I will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by virtue of the said appointment.

So help me God.

(Section 10)

B. Summons to Witnesses

(The Permanent Commission Against Corruption Act, 1988)

To A.B. (name of person summoned and residence)

You are hereby summoned to appear before

at (place) on (date and time)

and to give evidence respecting (the matter of the inquiry).

Given under my hand this day of 19

(Signature of Chairman or other member)

Passed by the House of Representatives at Sitting No. 125 of the 7th July, 1988.

JIMMY FARRUGIA
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – Kastilja — *Published by the Department of Information – Kastilja*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*
Prezz 6c — *Price 6c*