VERŻJONI ELETTRONIKA

PROTECTION OF THE WHISTLEBLOWER ACT, 2013

ARRANGEMENT OF ACT

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I assent.

(L.S.) GEORGE ABELA
President

19th July, 2013

ACT No. VIII of 2013

AN ACT to make provision for procedures in terms of which employees in both the private sector and the public administration may disclose information regarding improper practices by their employers or other employees in the employ of their employers and to protect employees who make said disclosures from detrimental action.

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
PRELIMINARY AND GENERAL

Short title and commencement.

1. (1) The short title of this Act is the Protection of the Whistleblower Act, 2013.

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

Definitions.

2. (1) In this Act, unless the context otherwise requires:

"authority" means the entities prescribed to receive external disclosures, as listed in the First Schedule;

"bribery" means any conduct in violation of articles 112 or 115 or of article 121 insofar as it extends the application of articles 112 and 115 of the Criminal Code; Cap. 10

"contract of service" means:

(i) an agreement whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for remuneration; and

(ii) an agreement, even if implied, whereby a person agrees to render services for or at the request of a voluntary organisation without remuneration;

"corrupt practices" has the same meaning as is assigned to it by article 6 of the Permanent Commission against Corruption Act; Cap. 326.

"detrimental action" includes:

(a) action causing injury, loss or damage; and, or

(b) victimisation, intimidation or harassment; and, or

(c) occupational detriment; and, or

(d) prosecution under article 101 of the Criminal Code relating to calumnious accusations and, or; Cap. 9.

(e) civil or criminal proceedings or disciplinary proceedings;

"disciplined force" has the same meaning as assigned to it in Article 47(1) of the Constitution;

"employee" means:

(a) any person who has entered into or works under a contract of service with an employer and includes a contractor or subcontractor who performs work or supplies a service or undertakes to perform any work or to supply services; or

(b) any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity to which an obligation of professional secrecy applies in terms of the Professional Secrecy Act when such work or service is not regulated by a specific contract of service and "outworker" means a person to whom articles, materials or services of any nature are given out by an employer for the performance of any type of work or service where such work or service is to be carried out either in the home of the outworker or in some other premises not being under the control and management of that other person; or

Cap. 371

(c) any person in employment in the public administration, including as a member of a disciplined force;

(d) any former employee;

(e) any person who is or was seconded to an employer; or

(f) any volunteer in terms of article 2 (1) of the Voluntary Organisations Act even when such work or service is not regulated by a specific contract of service;

Cap. 492.

(g) any candidate for employment only where information concerning a serious threat to the public interest constituting an improper practice has been acquired during the recruitment process or at another pre-contractual negotiating stage;

"employer" means any natural person, legal organisation or statutory body whether forming part of the public administration or the private sector who:

(a) enters into a contract of service with an employee; or

(b) who employs or engages or permits any other person in any manner to assist in the carrying on or conducting of his business; or

(c) who seeks to employ other persons,

and shall include a voluntary organisation in relation to volunteers who render services to such voluntary organisation on a voluntary basis or otherwise;

"external disclosure" is a disclosure made in accordance with Section 3 of Part III;

"External Whistleblowing Disclosure Unit" means with respect to the public administration, such section, body or unit as may be established to carry out the functions designated in article 17;

"guidelines" means the set of rules issued by an authority, from time to time for the further implementation of the provisions of this Act, and any regulations made hereunder;

"improper practice" means an action or a series of actions whereby:

(a) a person has failed, is failing or is likely to fail to comply with any law and/or legal obligation to which he is subject; or

(b) the health or safety of any individual has been, is being or is likely to be endangered; or

(c) the environment has been, is being or is likely to be damaged; or

(d) a corrupt practice has occurred or is likely to occur or to have occurred; or

(e) a criminal offence has been committed, is being committed or is likely to be committed; or

(f) a miscarriage of justice that has occurred, is occurring or is likely to occur; or

(g) bribery has occurred or is likely to occur or to have occurred; or

(h) a person above his authority; or

(i) information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed:

Provided that in the interpretation of this definition due account shall be given to the *de minimis* rule so that very minor or trivial matters shall not fall under the provisions of this Act;

"internal disclosure" is a disclosure made in accordance with Section 2 of Part III;

"member", in relation to a disciplined force, includes any person who under the law regulating the discipline of that force, is subject to that discipline;

"Minister" means the Minister responsible for justice;

"occupational detriment", in relation to the working environment of an employee includes:-

(a) being subjected to any disciplinary action including for breach of ethics or confidentiality;

(b) being dismissed, suspended or demoted except where administratively or commercially justifiable for organisational reasons;

(c) being transferred against his will or being refused transfer or promotion except where administratively or commercially justifiable for organisational reasons;

(d) being subjected to a term or condition of employment or retirement which is altered or kept altered to his disadvantage;

(e) being refused a reference or being provided with an adverse reference from his employer except where justifiable on the basis of performance;

(f) being denied appointment to any employment, profession or office; or

(g) being otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and work security;

"organisation" means any legal entity, whether having legal personality or not;

"person" means a natural person;

"protected disclosure" means an internal disclosure or an external disclosure of information, made in writing or in any format which may be prescribed;

"public administration" has the meaning as is assigned to it by article 2(1) of the Public Administration Act; Cap. 497.

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

"voluntary organisation" has the same meaning as is assigned to it by article 2(1) of the Voluntary Organisations Act irrespective of whether such organisation is enrolled in terms of the said Act; Cap. 492.

"whistleblower" means any employee who makes a disclosure to a whistleblowing reporting officer or a whistleblowing reports unit, as the case may be, whether it qualifies as a protected disclosure or not under this Act;

"whistleblowing reporting officer" means such officer within an employer charged with carrying out the functions designated by article 12;

"whistleblowing reports unit" means such officer, office or section within an authority to carry out the functions designated by article 17 and, with respect to the public administration, the External Whistleblowing Disclosure Unit.

(2) Where this Act refers to a matter which may be prescribed, unless this Act expressly designates the person authorised and the manner thereof, such matter may be prescribed by the Minister through regulations or by the authority through guidelines or by any one or all of them as may be determined, and in the case of any conflict, a regulation by the Minister shall prevail over a guideline.

(3) This Act shall not apply to members of a disciplined force, to members of the Security Service or to persons employed in the foreign, consular or diplomatic service of the Government until the Minister makes regulations regulating the manner in which the provisions of this Act will apply in their regard, and in so doing, the Minister may make not applicable or modify the provisions of this Act as necessary for the purpose of the protection of national security, defence, intelligence, public order and the international relations of the State.

PART II
PROHIBITION OF DETRIMENTAL ACTION

3. Subject to the exceptions stated in this Act, despite any prohibition of or restriction on the disclosure of information under any enactment, rule of law, contract, oath or practice a whistleblower may not be subjected to detrimental action on account of having made Prohibition of detrimental action.

a protected disclosure.

Protected disclosure Cap. 9.

4. (1) Notwithstanding the provisions of the Criminal Code or of any other law, a whistleblower who makes a protected disclosure is not liable to any civil or criminal proceedings or to a disciplinary proceeding for having made such a disclosure.

(2) The protection afforded to a whistleblower shall not be prejudiced on the basis only that the whistleblower making the disclosure was, in good faith, mistaken about its import or that any perceived threat to the public interest on which the disclosure was based has not materialised or that the person making the disclosure has not fully respected the procedural requirements of this Act or of any regulations or guidelines made under this Act.

No immunity to whistleblower if he was the perpetrator or an accomplice

5. (1) Subject to the provisions of the proviso to sub-article (2), and to the provisions of sub-articles (3) and (4), nothing in this Part shall prevent the institution of criminal proceedings against the whistleblower where the said whistleblower was the perpetrator or an accomplice in an improper practice which constitutes a crime or contravention under any applicable law prior to its disclosure.

(2) Subject to the provisions of sub-paragraph (ii) of sub-article (3), nothing in this Part shall be interpreted as providing immunity to any person making a disclosure about an improper practice from any disciplinary or civil proceedings or liability arising from his own conduct:

Provided that:

(i) any court or tribunal taking cognizance of proceedings instituted against any whistleblower based on the fact that the said person was the perpetrator or was an accomplice in the improper practice reported by the said person shall, in giving its judgement or decision take into due account the fact that the disclosure was made by such person in such manner as it deems appropriate and the punishment of such whistleblower may be mitigated or remitted and the court or tribunal shall expressly refer to the provisions of this article in its judgement; and

(ii) in any civil proceedings instituted against a whistleblower based on the fact that the said person was the perpetrator or was an accomplice in the improper practice reported by the same person, the court shall, if it finds that the whistleblower is responsible for the payment of damages only hold him liable for such part of the damage as he may have caused and shall, notwithstanding the provisions of articles

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1049, 1050 and 1051A of the Civil Code or of any other law, hold not him liable jointly and severally with others:

Provided that the exemption from joint and several liability provided for in this sub-paragraph shall not apply in the case of damages resulting from wilful homicide or from grievous bodily harm; and

(iii) where the whistleblower is an employee of the public administration and disciplinary proceedings are instituted against him based on the fact that he was the perpetrator or was an accomplice in the said improper practice reported by him, the public administration shall endeavour to mitigate the effects of any punishment, and shall, where possible, not seek dismissal as the punishment inflicted in the said disciplinary proceedings.

(3) Notwithstanding the provisions of this article, where in criminal proceedings as provided for in sub-article (1) instituted against a whistleblower,

(i) the prosecution declares in the records of the proceedings that the accused has disclosed an improper practice which constitutes a criminal offence liable to a punishment of imprisonment of more than one year which has helped the police to apprehend the person or persons who committed the said criminal offence; or

(ii) the whistleblower proves to the satisfaction of the court that his whistleblowing report has so helped the police,

the punishment for such crime shall be diminished as regards imprisonment by one or two degrees and as regards any pecuniary penalty by one-third or one-half:

Provided that the court may, if it considers that the circumstances of the case so merit, after hearing all the evidence and after convicting the whistleblower either further reduce the punishment or exempt the whistleblower from punishment completely:

Provided further that when it applies the above proviso to exempt the whistleblower from punishment completely the court shall make a report to the President of the Republic stating the reasons for its action and shall expressly refer to the provisions of this article in its report.

(4) The Attorney General, after having consulted the Commissioner of Police and a judge of the superior courts who at the time of the consultation is not a judge assigned to take cognizance of criminal trials, may, if in his individual judgement he is satisfied of the advisability to do so, whether unconditionally or under such conditions as he deems fit, issue a certificate in writing exempting any whistleblower to which sub-article (1) applies from any criminal proceedings as provided for in sub-article (1) and in such case the Attorney General shall make a report to the President of the Republic stating the reasons for his action and shall expressly refer to the provisions of this article in his report.

Prohibition of disclosure of information to identify the whistleblower.

6. (1) Every whistleblowing reporting officer or whistleblowing reports unit to whom a protected disclosure is made or referred must not disclose information that identifies or may lead to the identification of the whistleblower unless the whistleblower expressly consents in writing to the disclosure of that information.

(2) The whistleblowing reports unit shall not communicate the contents of the disclosure to other departments within the authority of which it forms part until it has duly investigated the disclosure and it has established that it is necessary or appropriate in the public interest for further investigation to be carried out by such other departments or with the police in relation to an improper practice which constitutes a crime or contravention under any law. Notwithstanding any other law, the authority shall not be restricted in any manner in sharing information with the whistleblowing reports unit about its investigations from time to time for the whistleblowing reports unit to determine whether it has any relevant information on the subject matter under investigation.

(3) Guidelines may be issued by each authority setting out –

(a) the duties of communication between the whistleblowing reports unit and the whistleblower and the restrictions thereon; and

(b) the rules for disclosure to other departments of the authority or to other authorities or entities of the State.

(4) The protection provided for in this article shall not be subject to any exceptions and no court may order the disclosure of the identity of any whistleblower without his consent.

Application to the Civil Court.

7. (1) A person who believes that detrimental action has been taken or is to be taken against him in reprisal for a protected disclosure may file an application to the First Hall, Civil Court for -

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(a) an order requiring the person who has taken the detrimental action to remedy that action; or

(b) an injunction.

(2) The court, pending the final determination of an application under this article may

(a) make an interim order; or

(b) grant an interim injunction.

(3) If, in determining the application under sub-article (2) the court is satisfied that a person has taken or intends to take detrimental action against a person in reprisal for a protected disclosure, the court may:

(a) order the person who took the detrimental action to remedy that action and determine the amount of damages, including, but not limited to, moral damages as the court may determine, due to the person who suffered the detrimental action; or

(b) grant an injunction in any terms the Court considers appropriate.

(4) Notwithstanding the provisions of the Code of Organization and Civil Procedure, an injunction granted in terms of sub-article (3)(b) shall be for an indefinite period until an application for its revocation is made and need not be followed by an action on the merits. The provisions of articles 873 and 875 of the Code of Organization and Civil Procedure shall apply to warrants issued under sub-article (3)(b). Cap. 12.

(5) The provisions of articles 829 to 838B of the Code of Organization and Civil Procedure shall not apply to injunctions granted in terms of sub-article (3)(b). Cap. 12.

(6) Notwithstanding the provisions of Schedule A of the Code of Organisation and Civil Procedure, no registry fees shall be charged on an application filed in the First Hall of the Civil Court by the person referred to in sub-article (1) but, if granted, an award on costs shall be made against the respondent. Cap. 12.

8. Any person who may have suffered detrimental action as a result of making a protected disclosure shall, without prejudice to any other right under any other law, have a right to compensation for any damage caused. Right to compensation after detrimental action.

PART III
DISCLOSURES

SECTION 1
PROTECTED DISCLOSURES

Protected disclosure.

9. (1) A disclosure is a protected disclosure if -

(a) it is made in good faith; and

(b) the whistleblower reasonably believes, at the time of making the disclosure based on the information he has at that moment, that:

(i) the information disclosed, and any allegation contained in it, are substantially true;

(ii) the information disclosed tends to show an improper practice being committed by his employer, another employee of his employer or by persons acting in the employer's name and interests; and

(c) the disclosure is not made for purposes of personal gain.

(2) The protections conferred by this article do not apply to an employee who knowingly discloses information which he knows or ought to reasonably know is false and any person or organisation, other than the employer or officers or shareholders of the same when an organisation, which is prejudiced by the disclosure of such false information given in a disclosure made under this Act shall not by virtue of this Act be hindered in the exercise of any legal action or in the enforcement of any legal remedy available to that person or organisation under any other law in respect of the said prejudice:

Provided that such remedy shall only be available if the identity of the whistleblower has been obtained or otherwise disclosed in accordance with the provisions of this Act.

Cap. 9.

(3) It shall be an offence punishable in accordance with article 101 of the Criminal Code to knowingly provide false information in terms of this Act.

Information protected by legal professional privilege. Cap. 377.

10. Saving the provisions of article 6A (c) of the Professional Secrecy Act, nothing in this Act authorises a person to disclose information protected by legal professional privilege and a disclosure of such information is not a protected disclosure for the purposes of this Act.

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11. (1) Disclosures made anonymously shall not be considered as protected disclosures in terms of this Act. Anonymously made disclosures.

(2) A whistleblower reporting officer or whistleblowing reports unit may receive and process an anonymous disclosure and may take such a disclosure into account in determining whether an improper practice has occurred:

Provided that where the whistleblower reporting officer or the whistleblowing reports unit, after having taken into account all the relevant circumstances consider that the anonymous information received by them is likely to be defamatory or libellous they shall discard such information.

SECTION 2
INTERNAL DISCLOSURES

12. (1) Every employer must have in operation internal procedures for receiving and dealing with information about improper practices committed within or by that organisation; such internal procedures must at least identify the person or persons within the organisation, in this Act referred to as the whistleblowing reporting officer, to whom a protected disclosure may be made. Internal procedures for receiving and dealing with protected information.

(2) Information about the existence of the internal procedures, and adequate information on how to use the procedures must be published widely within the organisation and must be republished at regular intervals.

(3) An internal disclosure is a protected disclosure made in accordance with the provisions of this Act if it is made by an employee to an employer substantially in the manner established by internal procedures established by the employer for receiving or dealing with such disclosures.

(4) For purposes of Part III Section 2, "employer" shall have the meaning as is assigned to it in the Second Schedule.

13. (1) The whistleblowing reporting officer must, within a reasonable time after receiving an internal disclosure, notify the whistleblower of the status of the improper practice disclosed or such matters as may be prescribed. Notice to whistleblower.

(2) For the purposes of article 16, where it is apparent from external action that action has been taken to rectify the improper practice it will not be necessary for the whistleblowing reporting officer to notify the person who made the disclosure.

(3) In the event that a disclosure under this Part leads to the detection of an improper practice which constitutes a crime or contravention under any applicable law, the whistleblowing reporting office may refer the report received to the police for investigation thereof:

However, should the subject matter of the report have been rectified no provision of any law shall be interpreted as imposing an obligation on the whistleblowing reporting officer to report such matter.

Internal disclosure may be made to the head or deputy head of the organisation.

14. An internal disclosure may be made to the head or deputy head of the organisation, who is hereby deemed to be the whistleblowing reporting officer and subject to the provisions of articles 6 and 13, if:

(a) the organisation has no internal procedures established and published for receiving and dealing with information about an improper practice; or

(b) the whistleblower believes on reasonable grounds that the whistleblowing reporting officer is or may be involved in the alleged improper practice; or

(c) the whistleblower believes on reasonable grounds that the whistleblowing reporting officer is, by reason of any relationship or association with a person who is or may be involved in the improper practice alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.

SECTION 3
EXTERNAL DISCLOSURES

Protection of external disclosure.

15. Except as provided in this Part, an external disclosure shall only be protected if an internal disclosure in accordance with Section 2 of this Part has already been made or attempted to be made.

External disclosure made to the whistleblowing reports unit.

16. (1) An external disclosure may be made to the whistleblowing reports unit of the authority as provided in the First Schedule if the whistleblower believes on reasonable grounds –

(a) that the head of the organisation is or may be involved in the improper practice alleged in the disclosure; or

(b) that immediate reference to the authority, is justified by the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or

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(c) at the time he makes the external disclosure, that he will be subjected to an occupational detriment by his employer if he makes an internal disclosure; or

(d) that it is likely that evidence relating to the improper practice will be concealed or destroyed if he makes an internal disclosure; or

(e) that although an internal disclosure has previously been made, the whistleblower has not been informed on the status of the matter disclosed or it is reasonably evident to the whistleblower that there has been no action or recommended action on the matter to which the disclosure relates within a reasonable time from the making of the disclosure.

(2) In determining for the purposes of sub-article (1) whether it is reasonable for the whistleblower to make the disclosure to the authority, regard shall be had, in particular, to:

(a) the seriousness of the alleged improper practice;

(b) whether the improper practice is continuing or is likely to occur in the future;

(c) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person;

(d) in a case falling within sub-article 1 (e), any action which the employer has taken or might reasonably be expected to have taken as a result of the previous disclosure; and

(e) whether in making the disclosure to the authority, the employee complied with any procedure whose use by him was authorised by the employer in accordance with article 12 (1).

(3) If a person makes a disclosure to an authority in accordance with this Part, the authority must within forty-five (45) days after receiving the disclosure consider and reach a conclusion as to whether it is appropriate for the disclosure to be made externally.

(4) If the authority concludes that a disclosure should not have been made externally, then it must within a reasonable time, not exceeding 45 days, notify in writing the whistleblower that an internal disclosure in accordance with Section 2 of this Part must be made and that it will not be dealing further with the disclosure.

(5) If the authority concludes that a disclosure has been

properly made, then it must within a reasonable time notify in writing the person who made the disclosure of the status of the improper practice disclosed or such matters as may be prescribed.

Setting up of whistleblowing reports unit.

17. (1) All authorities referred to in the First Schedule shall set up a whistleblowing reports unit.

(2) The whistleblowing reports unit shall be charged with receiving and processing any external disclosures relating to the activities of persons operating within the sector regulated by the relevant authority as set out in the First Schedule so as to determine whether the disclosures should be referred for further investigation and the conditions under which such referral should take place.

Reference of information to another authority.

18. (1) Where the authority to whom a protected disclosure is made considers that the information disclosed can be better investigated by another authority or in the case of an improper practice which constitutes a crime or contravention under any applicable law by the police, the authority to whom the disclosure is made may, within not more than 30 days, refer that information to such other authority or the police, as the case may be, and immediately inform in writing the whistleblower accordingly:

Provided that the identity of the whistleblower shall not be disclosed except with his prior consent in writing.

(2) A protected disclosure does not, by reason of its referral to another authority or the police, cease to be a protected disclosure.

PART IV
OFFENCES AND PENALTIES

Threatens to use violence.

19. Any person who, for the purpose of compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing under the provisions of this Act, wrongfully or without legal authority –

(a) uses or threatens to use violence against such person, or the wife, husband or child of such person, or a member of his household, or causes or threatens to cause damage to his property;

(b) persistently follows such other person from place to place;

(c) watches or besets the house or other place where such other person resides or the approaches to such house or place;

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(d) deprives such person, or in any matter hinders him in the use of, any tools, clothing or other property owned or used by such other person,

shall be guilty of any offence and be liable on conviction to imprisonment for a period not exceeding one year or to a fine (multa) of not less than five hundred euro (€500) and of not more than five thousand euro (€5,000) or to both such imprisonment and fine, without prejudice to any heavier punishment to which the offence may be liable under any other enactment:

Provided that where as a result of his conduct the person convicted has achieved his aim the punishment of imprisonment shall be increased by one to two degrees and the fine (multa) shall not be less than one thousand five hundred euro ((€1,500) and not more than ten thousand euro (€10,000).

PART V
REGULATIONS AND GUIDELINES

Regulations and guidelines.

20. (1) In addition to the matters on which the Minister is empowered to prescribe rules under the provisions of this Act, the Minister may from time to time make regulations, generally for the better implementation of this Act and to:

(i) establish the internal procedures which employers must have in operation for receiving and dealing with information about improper practices committed within or by that organisation;

(ii) establish the procedures which an authority in terms of the First Schedule needs to have in place to receive and process external disclosures;

(iii) lay down the rules for disclosure between the whistleblowing reports unit and the other departments within the authority of which the whistleblowing reports unit forms part;

(iv) set out the duties of communication between the whistleblowing reports unit and the whistleblower and the restrictions thereon; and

(v) lay down rules for the better implementation of this Act.

(2) An authority may, in furtherance of any of its functions under this Act, from time to time issue and publish guidelines on all

matters in respect of which the Minister may issue regulations including guidelines setting out the procedures which are available in terms of law to those who wish to disclose an improper practice.

(3) Guidelines issued by an authority shall be binding on all organisations whose activities are regulated by such authority.

(4) Except for amendments to the guidelines which are purely administrative in nature, and are expressly declared to be so by the authority, which come into force immediately upon the posting thereof on the official website of the said authority, any new guidelines or amendments to guidelines shall come into force on the lapse of fifteen days after they are posted on the official website of the authority or on such later date as may be stated therein.

PART VI
MISCELLANEOUS

Conflict between contract of service and the provisions of this Act.

21. Any provision in a contract of service or other agreement between an employer and an employee is void in so far as it-

(a) purports to exclude any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract; or

(b) purports to preclude the employee or has the effect of discouraging the employee from making a protected disclosure in terms of this Act.

Persons or class of persons exempt.

22. The Minister may, for the purpose of the protection of national security, defence, public order and the international relations of the State, by notice in the Gazette exempt any person or class of persons without retrospective effect from all or any of the provisions of this Act on any ground which to him may seem sufficient. Any such exemption may be made subject to such conditions or to the fulfilment of such other procedures, formalities or obligations, as the Minister may deem appropriate.

Applicability of this Act.

23. This Act shall apply to disclosures of information made after the coming into force of this Act, irrespective of whether or not the improper practice being the subject of a disclosure has occurred before or after the coming into force of this Act.

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PART VII
AMENDMENTS TO THE POLICE ACT

Amendment of the Police Act. Cap. 164

24. This Part amends the Police Act and it shall be read and construed as one with the Police Act, hereinafter in this Part referred to as "the principal Act".

Adds new article to the principal Act.

25. Immediately after article 90 of the principal Act there shall be added the following new article:

"Protection of identity.

90A. (1) Notwithstanding the other provisions of this Title where the Commissioner is of the opinion that the identity of a person merits to be protected, in circumstances where such person is willing to give the Police reliable information and documents relating to the commission of a crime consisting of an improper practice as defined in the Protection of the Whistleblower Act which information and documents constitute reliable evidence which can be used in criminal proceedings and which provide a reasonable chance of conviction of another person for the commission of such an offence, he may recommend to the Attorney General that such person be admitted to the witness protection programme only to the extent and for the purpose that his identity as the source of the said information and documents be protected.

(2) If the Attorney General after receiving a request in accordance with sub-article (1) and acting in his own individual judgement, agrees that such protection of identity should be granted, whether subject to conditions or unconditionally, he shall issue a certificate to that effect and the Commissioner shall be entitled to protect the identity of the said person and not to give any information in any court on the identity of the said person on the basis the said certificate.

(3) When a certificate as referred to in sub-article (2) is issued, no proceedings may at any time be taken 'ex officio' against the person in favour of whom the certificate is issued only on the basis of the information and documents supplied by that person to the Police.

(4) It shall be lawful for the Attorney General acting in his own individual judgement and after consulting the Commissioner to revoke the said certificate, either from the original date of issue or from the date of revocation if he is satisfied that the said certificate was obtained fraudulently or on the basis of materially incorrect or misleading information having been given to the Commissioner by the person in whose favour the certificate was issued or by any other person on his behalf. In exercising his power under this sub-article the Attorney General shall give reasons for his decision.

(5) A revocation made in terms of sub-article (4) shall be without prejudice to any criminal or civil liability of any person involved in wrongfully obtaining the said certificate.

(6) Nothing in this article shall be interpreted as a derogation from any right of the Police to protect its informers in general as may result from any law in force or applicable from time to time.".

FIRST SCHEDULE
[Articles 16, 17 and 20]
Authorities Prescribed To Receive External Disclosures

Part 1 – Private Sector

Authority	Description of Matters
Auditor General	Failure to observe laws, rules and regulations relating to public finance and misuse of public resources.
Commissioner for Revenue	Income tax, corporation tax, capital gains tax, stamp duties, national insurance contributions, value added tax or "revenue acts" as defined in the Commissioner for Revenue Act.
Commissioner for Voluntary Organisations	Activities of a voluntary organisation
Financial Intelligence Analysis Unit	Money laundering or financing of terrorism in terms of the Prevention of Money Laundering Act.
Malta Financial Services Authority	The business of credit and financial institutions, the business of insurance and the activities of insurance intermediaries, the provision of investment services and collective investment schemes, pensions and retirement funds, regulated markets, central securities depositories, the carrying out of trustee business either in a professional or a personal capacity and such other areas of activity or services as may be placed from time to time under the supervisory and regulatory competence of the Malta Financial Services Authority.
Ombudsman	(i) Conduct involving substantial risk to public health or safety or the environment that would if proved, constitute a criminal offence; and (ii) All matters which constitute improper practices and which are not designated to be reported to any other authority
Permanent Commission Against Corruption	corrupt practices

Part 2 – Public Administration

External Disclosure Whistleblowing Unit within the Government of Malta

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SECOND SCHEDULE
[Article 12]

Subject Persons:

For the purposes of Section 2 of Part III of this Act, an "employer" is:

(1) Each ministry of the Government of Malta;

(2) Any organisation within the private sector which, according to its last annual or consolidated accounts, meets at least **two** of the following criteria:

- an average number of employees, during the financial year, of more than 250;

- a total balance sheet exceeding forty-three million euro (€43,000,000); and

- an annual turnover exceeding fifty million euro (€50,000,000).

(3) Any voluntary organisation which annually raises more than five hundred thousand euro (€500,000) from public collections and other donations.

The Minister may from time to time prescribe regulations, amend this Schedule or any part thereof, for the better implementation of the provisions of this Act and any regulations made thereunder.

VERŻJONI ELETTRONIKA

A 221

Passed by the House of Representatives at Sitting No. 53 of 16th July, 2013.

ANĠLU FARRUGIA

Speaker

RAYMOND SCICLUNA
Clerk to the House of Representatives