VERŻJONI ELETTRONIKA

I assent.

(L.S.) **MARIE LOUISE COLEIRO PRECA**
President

28th July, 2015

ACT No. XXIV of 2015

AN ACT to regulate the formation, the inner structures, functioning and financing, of political parties and their participation in elections.

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) The short title of this Act is the Financing of Political Parties Act, 2015.

(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 purposes or provisions of this Act.

PART I
General

Interpretation.

2. In this Act, unless the context otherwise requires -

"auditor" shall have the same meaning assigned to it in article 2 of the Accountancy Profession Act;

Cap. 281.

"campaign expenditure" means expenses incurred within the parameters of article 46(1) of the Fourteenth Schedule of the General Elections Act, article 97 of the Third Schedule to the Local Councils Act and regulation 2 of the European Parliament Elections (Maximum Expenses) Regulations:

Cap. 354.
Cap. 363.
S.L. 467.01.

Provided that in the computation of campaign expenditure,

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where a political party or candidate charges a fee for participation in political activities or for any goods or services made available at such activities the amount of any such fees charged and properly accounted for shall be deducted from the total amount of campaign expenditure;

"candidate" means a person nominated for election to the House of Representatives, a local council or to the European Parliament, whether such person is standing as a member of a political party or not;

"Commission" means the Electoral Commission established in accordance with article 60 of the Constitution;

"donation" means any benefit received in furtherance of the activities or functions of a political party, by or on behalf of a political party, by a member of a political party, a candidate or by any organisation, whether corporate or otherwise, in which the political party, directly or indirectly exercises effective management and control and shall include, unless otherwise provided:

(a) any gift of money or other property;

(b) any sponsorship;

(c) any money spent by a donor or donors, as the case may be, in paying any expenses incurred directly or indirectly, by or on behalf of a political party, a member of a political party or candidate;

(d) any loan given on terms more favourable than ordinary commercial terms prevalent at the time when the loan was made;

(e) the cost price to the provider of property or services given otherwise than on commercial terms or below the market value:

Provided that property of whatever nature devolving to a political party *causa mortis* and voluntary and unpaid work whether manual, clerical or professional of any kind done for the benefit of a political party by its own members or by persons involved in the political party's activities or campaigns, shall not be considered as a donation for the purposes of this definition;

"election" means:

(a) a general election for members of the House of

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Representatives held in accordance with articles 52 and 56 of the Constitution of Malta; or

Cap. 363. (b) an election held in accordance with the Local Councils Act; or

Cap. 467. (c) an election held in accordance with the European Parliament Elections Act;

"European Parliament election period" means a period of six weeks before the date fixed for the European Parliament elections in Cap. 467. accordance with article 5 of the European Parliament Elections Act;

"financial year" means a period of twelve months with fixed dates for their beginning and their completion;

"general election period" means the period:

(a) beginning with the date on which the President of Malta dissolves Parliament, by Proclamation; and

(b) ending with the date of the result of the poll;

"local council election period" means a period of six weeks Cap. 363. before the date fixed in article 8(6) of the Local Councils Act;

"member of a political party" means a person who is a registered member of a political party in accordance with the requirements and formalities as provided in the statute of the political party;

"Minister" means the Minister responsible for Justice;

"nomination paper" means the application by a political party, a member of a political party or candidate, for names to be inserted in the election lists; and

"political party" means a free association of persons, the aims of which include the participation in the formation of the political will of the people by securing the election of one or more of its members to the House of Representatives, the European Parliament or Local Council, and ensuring a continuing active relationship between the people and the state institutions.

Constitutional status and functions of political parties.

3. There may be formed political parties in order to attain free democratic order in the formation of the people's political will, according to the Constitution, and the State shall, as a matter of public interest, favour the formation and operation of such political parties:

Provided that such formation and operation of political

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parties shall be within the parameters established by law.

Legality.

4. Political parties shall have a legitimate aim and shall conform to the Constitution and the laws of the State:

Provided that political parties may lawfully have, as their aim, amendments to the Constitution and to the laws of Malta:

Provided further that all amendments shall be brought about by legal means.

Equal treatment.

5. Political parties shall receive equal treatment by the State without prejudice to any law or regulation based on objective differences particularly those based on the size of the parties or which regulate the workings of the electoral process.

Persons' right to associate.

6. (1) No person shall be forced to join or belong to a political party against his will.

(2) No person shall be debarred from membership of a political party on the basis of gender, race, financial status, sexual orientation or gender identity.

(3) No person shall be discriminated against on the ground that the said person is a member of a political party:

Provided that the provisions of this sub-article shall not apply to persons, who by reason of their employment, are under a duty of discretion in political matters or who hold offices which are incompatible with the exercise of political activity, so long as such restrictions are necessary in a democratic society.

Members' rights.

7. (1) Without prejudice to the provisions of sub-article (2) of article 6, political parties shall decide freely on the admission of members in accordance with the relevant provisions of their statutes and the political party shall not be required to give reasons for any refusal of an application for membership.

(2) A member of a political party shall, at any times, be entitled to withdraw his membership from that political party and such withdrawal shall have an immediate effect.

(3) The exercise of voting rights within the party structures may be made conditional on members of the political party having paid their membership dues.

Legal status.

8. (1) Political parties shall enjoy a legal personality and the right to sue and be sued. Political parties shall also have all the rights of free expression which are competent to individuals

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according to the Constitution.

(2) Political parties shall have a written statute and the statute shall contain provisions on:

(a) the political party's name and any short form used and its objectives;

(b) members joining and leaving the political party;

(c) the rights and duties of its members;

(d) permissible sanctions against members, and their exclusion from the political party; and

(e) the political party's general structure and the officials which the party shall have.

(3) Political parties shall send a copy of their statute to the Electoral Commission and they shall also keep that statute updated with amendments which are made to the statute from time to time which shall also be sent to the Electoral Commission within one month from when they are enacted and the Commission shall render that statute and amendments available to the public.

(4) The names of officials of political parties shall be public.

Political party discipline.

9. Political parties shall ensure that the right of defence is respected in any internal disciplinary procedures taken with regard to their members.

Dissolution of political parties.

10. The statute of a political party shall provide for the manner in which the said party may be dissolved and for the manner in which the assets of the party shall be disposed of in the event of dissolution.

PART II
Registration

Political parties' register.

11. There shall be a register of political parties to be maintained by the Commission in such form as the Commission may determine.

Nominations for elections.

12. (1) A nomination in relation to an election may only be made:

(a) in the name of a registered political party; or

(b) by an independent person who does not purport to represent any political party:

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Provided that only registered political parties may nominate candidates for election under that political party's name:

Provided further that no independent candidate may make use of the name of a political party.

(2) For the purpose of sub-article (1) a person does not purport to represent any political party if either:

(a) the description of the candidate given in his nomination paper, is "independent"; or

(b) no description of the candidate is given in his nomination paper.

(3) For the purposes of this Act a person stands for election in the name of a registered political party if his nomination paper is confirmed by an officer authorised by the political party who shall be chosen in accordance with the procedures of the political party and for the purpose of this Act shall be considered as the "nominating officer".

Officials of political parties.

13. (1) Without prejudice to article 8, a political party shall not be registered in the register for political parties unless it has, in its statute, provision for the election of:

(a) the political party's leader or leaders by whatever name or designation the leader or leaders are referred to; and

(b) a political party's treasurer by whatever name the person performing the functions of treasurer is referred to.

(2) The person or persons registered as the political party's leaders shall be the overall leader of the party.

(3) It shall be the duty of the political party's treasurer to arrange the political party's finances in accordance with this Act including to:

(a) prepare the political party's annual accounts for audit and present them for the political party's approval at the annual general meeting of an appropriate party organ;

(b) ensure the political party's compliance with the relevant provisions of the accounting requirements and control of donations, and any other relevant financial transactions; and

(c) perform any other function in relation to the finances and financial reporting of the political party.

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Requisites for registration.

14. An application to the Commission for registration of a political party shall include:

(a) a declaration that it intends to present candidates for elections;

(b) a declaration by the political party indicating the political party's officials required in accordance with article 14; and

(c) the political party's name and registered address:

Provided that when the registered political party changes the location of its head office or changes its postal address, it shall, within fourteen days of such change, send notice thereof to the Commission.

Description.

15. (1) A political party's application for the purposes of registration may include a request for the registration of descriptions to be used on nomination or ballot paper.

(2) The Commission shall register the description supplied unless in its opinion the description is:

(a) the same as a registered description of another political party, member of a political party or candidate which has been registered before;

(b) likely to be confused by voters with a registered description of a political party, member of a political party or candidate which has been registered before;

(c) obscene or offensive; and

(d) of such a character that its publication would be likely to amount to the commission of an offence.

(3) For the purposes of this article "description" means the name of the party and the acronym in that language or languages that the party chooses.

Emblems.

16. (1) A political party's application for the purposes of registration may also include a request for the registration of the political party's emblem to be used by the political party on ballot papers.

(2) Where a request is made by a political party under this article in relation to an emblem, the Commission shall register the emblem as an emblem of the political party unless in its opinion the

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emblem is:

(a) the same as an already registered emblem of another political party;

(b) likely to be confused by voters with a registered emblem of a political party which is already registered;

(c) obscene or offensive;

(d) of such a character that its publication would be likely to amount to the commission of an offence; and, or

(e) would be likely, were it to appear on a ballot paper issued at an election:

(i) to result in an elector being misled as to the effect of his vote, or

(ii) to contradict, or hinder an elector's understanding of, any directions for his guidance in voting given on the ballot paper or elsewhere.

Changes to the register.

17. A political party may apply to the Commission to have its entry in the register amended. Such amendments may include:

(a) changing its registered name;

(b) the insertion, alteration, substitution or removal of a description;

(c) the insertion, substitution or removal of an emblem; and, or

(d) the insertion of any other information as may be prescribed by regulations made by the Minister, since:

(i) the time when the political party applied for registration, or

(ii) if a notification has been previously given for the confirmation of registered particulars in relation to the political party, the time when the last notification was given.

Appeal from refusal.

18. Where the Commission refuses an application or part thereof by a political party under any of the preceding articles it shall notify the political party of its reasons for refusing the application or part thereof and if the political party feels aggrieved by such refusal,

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the political party may contest against such refusal by sworn application filed in the First Hall, Civil Court:

Provided that the political party may also re-submit a modified application.

Notification of changes in the political party's entry in the register.

19. (1) If at any time any particulars in a political party's entry in the register which relate to any relevant matter cease to be accurate, the person responsible for registering the political party shall notify the Commission in writing of such inaccuracy and such notification shall also specify the accurate particulars in respect of that matter.

(2) Where the Commission receives a notification under this article, it shall cause any change required as a consequence of the notification to be made in the political party's entry in the register, as soon as is reasonably practicable.

Political party ceasing to be registered.

20. Once a political party is registered, its entry may only be removed from the register if -

(a) the political party applies to have its entry removed from the register; or

(b) the political party shall not have nominated candidates for elections for ten years; or

(c) in any case where there is dissolution of a political party in accordance with article 11,

and in such case, the Commission shall remove the political party's entry from the register.

Time limit for compliance.

21. Political parties which are in existence at the time of the coming into force of this article shall have a period of six months from the said coming into force to comply with the requirements set out in this Part of this Act.

PART III
Accounting requirements

Principle of transparency.

22. (1) Political parties shall give account to the Commission in respect of their financial administration. The Commission may request information, on its own initiative, concerning the said financial administration as provided in this Act.

(2) Political parties which are found by the Commission to have infringed any of the provisions of this Act shall be subject to sanction:

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(a) by mere exposure and adverse comment being made public; and, or

(b) by the infliction of administrative fines.

Duty to keep accounting records.

23. (1) The treasurer of a political party shall ensure that the accounting records are kept, with respect to the political party, in accordance with the principles and accounting practices and in accordance with generally accepted audit standards and in such manner which is sufficient to show and explain the political party's transactions.

(2) The accounting records shall be kept in such manner that they:

(a) disclose, at any time, and with reasonable accuracy, the financial position of the political party at that time; and

(b) enable the treasurer to ensure that any statement of accounts prepared by him for the purposes of the annual statements of accounts comply with the principles and accounting practices and in accordance with generally accepted audit standards and with the relevant provisions of this Act.

(3) The accounting records must in particular contain:

(a) sufficient details to be able to identify all sources of income received and all disbursements made by the political party, and the matters in respect of which such receipts and expenditure takes place;

(b) a record of the assets and liabilities of the political party; and

(c) the details of entities including commercial enterprises which are related directly or indirectly to a political party or are otherwise under its effective management or control.

Annual statements of accounts.

24. (1) The treasurer of a political party shall prepare an annual statement of accounts, in respect of each financial year, of that political party, which statement must include:

(a) a statement of income and expenditure;

(b) the statement of the financial position as at the end of the financial year;

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(c) the statement of cash flows; and

(d) all supplementary notes and schedules related to paragraphs (a), (b) and (c):

Provided that for the purposes of this sub-article "financial year" means such a consecutive period of twelve months starting from the date chosen by the political party for the start of its financial year.

(2) The statement of accounts under this article shall also comply with such requirements as to its form and contents as shall be prescribed by regulations made by the Minister, as advised by the Commission.

(3) Any member of the political party, candidate, central or local party official shall provide the relevant information in accordance with the relevant provisions in this Act to the political party's treasurer, within a reasonable time, and in default he shall be guilty of an administrative offence punishable by the Commission with an administrative fine in an amount of between one hundred euro (€100) and two thousand euro (€2,000):

Provided that if any member of a political party, candidate, central or local party official provides any false information, he shall be liable to the punishments provided for false declarations, in accordance with article 188(2) of the Criminal Code.

Cap. 9.

Duty to preserve accounting records.

25. (1) The treasurer of a political party shall ensure that any accounting records and, or statement of accounts prepared for the purposes of this Part in respect of the political party are preserved for at least ten years from the end of the financial year to which the statement relates.

(2) Where a political party is dissolved within the mentioned period of ten years, the obligation to ensure that the accounting records and, or statement of accounts prepared for the purposes of this Part, shall continue to be discharged by the last treasurer of the political party, unless the Commission gives its authorisation for the records to be destroyed, or for the records to be otherwise disposed of, subject to any conditions that it may deem necessary to impose.

Annual audits.

26. (1) The accounts of a political party shall be kept in such form as may, from time to time, be provided in regulations made under this Act, and shall each year be audited by an auditor according to generally accepted auditing standards.

(2) Upon failure to submit audited accounts in accordance

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with the provisions of sub-article (1), the Commission may establish a further period of time for the submission and in default appoint an auditor of its choice to audit the political party's accounts.

(3) The expenses of any audit carried out by an auditor appointed by the Commission, including the auditor's remuneration, shall be recovered by the Commission, as a civil debt, from the funds of the political party concerned.

Supplementary provisions regarding auditors.

27. (1) An auditor appointed to carry out an audit for the purposes of annual audits:

(a) shall have a right of access at all reasonable times to the political party's books, documents and other records; and

(b) shall be entitled to require from the treasurer, any former treasurer and from any other political party official as the auditor deems fit, such information and explanations as he thinks necessary for the performance of his duty as auditor; and

(c) shall *mutatis mutandis* have all the powers and functions of an auditor who audits a commercial company.

(2) If any person fails to provide an auditor with any access, information or explanation to which the auditor is entitled by virtue of sub-article (1), the Commission shall give that person such written directions as it considers appropriate for securing that the default is made good.

(3) A person guilty of lack of compliance to any directions of the Commission under sub-article (2) shall be guilty of an offence under this Act and shall be liable to an administrative fine of between one thousand euro (€1,000) and ten thousand euro (€10,000) and to suspension from holding an office in a political party for a period of not more than three months by way of administrative sanction.

(4) Any person who knowingly or negligently makes a representation, whether written or oral, to an auditor appointed to carry out an audit for the purposes of annual audits, which conveys any information or explanation which is materially misleading, false or deceptive and to which the auditor is entitled by virtue of sub-article (1), shall be guilty of an offence and shall be liable to an administrative fine of between one thousand euro (€1,000) and ten thousand euro (€10,000) and to suspension from holding an office in a political party for a period of not more than three months by way of administrative sanction.

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Delivery of statements of accounts and other relevant documents to the Commission.

28. (1) The treasurer of a political party shall, within four months of the end of that financial year, deliver to the Commission the audited accounts prepared for that financial year for the purposes of annual statements of accounts which shall also include accounts related to election campaigns.

(2) If a political party fails to comply with the requirements of sub-article (1) the Commission shall have the right to issue an order whereby the treasurer of the political party shall be obliged to deliver to the Commission by not later than seven days after the end of the period allowed for the audit of the accounts:

(a) the documents mentioned in sub-article (1); and

(b) a copy of the auditor's report.

(3) When the Commission considers that there exist special reasons for doing so, which reasons shall be listed in the notice hereunder referred to, it may, on an application made to it before the end of the period otherwise allowed under this article for delivering a political party's documents according to sub-articles (1) or (2) for any financial year, by notice, extend that period for a further period specified in the notice.

(4) Any documents delivered to the Commission under this article shall be kept by the Commission for such further period as it may deem fit.

Public inspection of political parties' statements of accounts.

29. Where the Commission receives any audited accounts, as a result of the obligation of delivery of statements of accounts to it, it shall, within one month after receiving the statement, make a copy of the statement available for public inspection and it shall post the said statement on the website of the Commission and keep it available for public inspection and on the said website for the period for which the statement is kept by it.

Penalty for failure to submit proper statement of accounts.

30. (1) If in the case of a political party -

(a) any requirements of regulations as to the form and contents of a statement of accounts are, without reasonable cause, not complied with in relation to any statement of accounts delivered to the Commission by way of a legal obligation; or

(b) any statement of accounts, notification or auditor's report required to be delivered to the Commission under this Part is, without reasonable cause, not delivered to it before the end of the relevant period,

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the political party shall be liable to an administrative fine of not more than ten thousand euro (€10,000).

(2) For the purposes of sub-article (1) "relevant period" means the period allowed by law for delivering the statement, notification or report to the Commission or, if that period has been extended, or further extended, according to law, that period as so extended.

False statements.

31. Any person who knowingly or negligently makes a statement to the Commission on behalf of a political party, or of a member of a political party for any purpose of this Act, which statement is false in any material particular in which it is made, or purports to be made, shall be liable to an administrative fine not exceeding ten thousand euro (€10,000) and to suspension from holding office in a political party for a period not exceeding three months by way of administrative sanction.

Revision of defective statements of accounts.

32. (1) If it appears to the treasurer of a political party that any statement of accounts for any financial year of the political party has not complied with any requirements of regulations relating to the delivery of prescribed documents, he may prepare a revised statement of accounts which revised statement shall also be in compliance with the other provisions of this Act.

(2) Where the audited accounts have already been delivered to the Commission, the revisions shall be confined to:

(a) the correction of those parts in which the accounts do not comply with the prescribed requirements; and

(b) the making of any necessary consequential alterations.

(3) If it appears to the Commission that there is, or may be, a question whether any audited accounts delivered to it according to law complies with the prescribed requirements, it may give notice in writing to the treasurer of the political party in question indicating where it appears to it that such a question arises or may arise.

(4) The notice shall specify a period of not more than one month for the treasurer to give the Commission an explanation of the statement of accounts or prepare a revised statement.

(5) If at the end of the specified period, or such longer period as the Commission may allow, it appears to the Commission -

(a) that no satisfactory explanation of the statement of accounts has been given; and

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(b) that the statement has not been revised so as to comply with the prescribed requirements,

it may make an application to the First Hall, Civil Court, in accordance with sub-article (6).

(6) The Commission may make an application to the First Hall, Civil Court:

(a) for a declaration that the statement of accounts does not comply with the prescribed requirements; and

(b) for an order requiring the treasurer of the political party to prepare a revised statement of accounts.

(7) If the First Hall, Civil Court, orders the preparation of revised accounts, it may:

(a) give such direction as it thinks fit; and, or

(b) order that all or part of the costs of, and incidental to, the application are to be borne by the treasurer of the political party.

(8) The Minister may by regulations make provision with respect to the application of the provisions of this Act in relation to the preparation and auditing of statements and of revised statements of accounts, and their delivery to the Commission, and may in particular make provision for any matter for which provision may be made by regulations under this Act with respect to the non-applicability, to such extent or in such circumstances, or both, as regulations under this sub-article may specify, of any of the provisions of this Act with regard to administrative fines and sanctions for failure to submit proper statements or revised statements of accounts.

(9) The provisions of this Act regarding the public inspection and posting on the website of the Commission of political parties' statements of accounts shall apply in relation to any revised statement of accounts received by the Commission in accordance with regulations made under sub-article (8) as applied in relation to any statement of accounts received by it according to law.

(10) The provisions of this article apply equally to statements of accounts that have already been revised, in which case the references to revised statements of accounts shall be read as references to further revised statements.

PART IV

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Control of donations to registered parties

Funding of political parties.

33. Political parties shall be entitled to accept donations, which shall include contributions made by the members themselves.

Non-permissible donations.

34. Political parties shall not receive donations:

(a) which are evidently made in the expectation of, or in return for, some specific financial or political advantage; and, or

(b) from any public corporation or any parastatal body, company, or entity in which the State has a controlling interest:

Provided that political parties shall be permitted to receive services from State sources only under a special law which shall regulate:

(i) assistance in kind (such as air-time, access to means of communication and related matters);

(ii) the proportions on the basis of which such assistance is to be provided to different political parties; and

(iii) the timing of the assistance given before elections, after elections, during the European Parliament election period, the Local Council election period, the general election period and during referendum campaigns;

(c) given anonymously;

(d) given confidentially and subject to the condition that the source shall not be revealed to third parties although the source of the donation is known to the political party in an amount exceeding five hundred euro (€500) from the same source in any year;

(e) in excess of twenty-five thousand euro (€25,000) during one calendar year from the same source:

Provided that for the purposes of this paragraph companies forming part of the same group of companies or which directly or indirectly are controlled by each other or by the same person or group of persons, shall be considered as a single source;

(f) consisting of a loan on more favourable terms than

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ordinary commercial terms at the time when the loan was made, where the interest in respect of a period of twelve months which would have been payable by the political party had the loan been taken on ordinary commercial terms would have exceeded the interest actually owed for the same period by the political party to the person making the loan by an amount in excess of twenty-five thousand euro (€25,000);

(g) From a foundation, trust or a body corporate where the ultimate beneficial owner is not identifiable.

Value of donation.

35. (1) The value of any donation in the form of a gift to the political party, other than money, shall be taken to be the cost price to the donor of the gift or property in question.

(2) Where, however, any gift to the political party, is such that:

(a) any money or other property is transferred to the political party, pursuant to any transaction or arrangement involving the provision by or on behalf of the political party, of any property, services or facilities or other consideration of monetary value; and

(b) the total value in monetary terms of the consideration so provided by or on behalf of the political party, is less than the amount transferred to the political party or, as the case may be, the cost to the transferor of the property transferred, the value of the donation shall be taken to be the difference between:

(i) the amount of money or cost to the transferor of the property in question; and

(ii) the total value in monetary terms of the consideration provided by or on behalf of the political party.

(3) The value of any donation or services made by way of any sponsorship provided in relation to the political party shall be taken to be the amount of the money or, as the case may be, the cost to the donor of the property transferred as a donation; and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question shall be disregarded.

(4) The value of any donation consisting of the provision, otherwise than on commercial terms, of any property, services, loans or facilities for the use or benefit of the political party, shall be taken to be the amount representing the difference between:

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(a) the total value in monetary terms of the cost to the donor in respect of the provision of the property, services or facilities; and

(b) the total value in monetary terms of the consideration, if any, actually so provided by or on behalf of the political party.

Sponsorship.

36. (1) For the purposes of this Act sponsorship shall be deemed to be made, in relation to a political party where:

(a) any money or property is transferred to the political party; and

(b) the purpose or one of the purposes of the transfer is or may be, having regard to all the circumstances, reasonably be assumed to be:

(i) to help the political party meet, to any extent, any expenses incurred or to be incurred by or on behalf of the political party; or

(ii) to secure that, to any extent, any such expense is not so incurred.

(2) For the purposes of sub-article (1) expenses may include, among others, expenses incurred or to be incurred in connection with:

(a) any conference, meeting or other event organised by or on behalf of the political party;

(b) the preparation, production or dissemination of any publication by or on behalf of the political party; or

(c) any study or research organised by or on behalf of the political party.

(3) The following shall not, however, constitute sponsorship by virtue of sub-article (1):

(a) the making of any payment in respect of:

(i) any charge for admission to any conference, meeting or other event; or

(ii) the purchase price of, or any other charge for access to, any publication;

(b) the making of any payment in respect of the

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inclusion of an advertisement in any publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in any such publication; and, or

(c) the provision, on commercial terms, for any property, services or facilities for the use or benefit of the political party.

Registration of donations by source.

37. (1) Any donations exceeding the amount of five hundred euro (€500) from the same source shall be recorded together with the amount of the donations, the donor's name and address, or company registration details, in the case when the donor is a registered company, the date on which the donation was received and the date on which the donation was accepted and any other relevant details:

Provided that when a donation is collected during a manifestation or during an event organized by the political party or by the independent candidate and in the case that the donation does not exceed the amount of fifty euro (€50) the donation shall not be recorded.

(2) Any donation which by itself does not exceed the amount of five hundred euro (€500) but which, when added to any other donations or benefits accruing to the political party from the same source within the same calendar year, exceeds the said amount shall be recorded at that point in which the said amount is reached.

(3) Whosoever maliciously, with intent to conceal the origin and amounts of donations, divides a donation into smaller amounts, or in order to circumvent the recording and reporting requirements provided for in this Act shall be guilty of an offence and shall be liable to an administrative fine not exceeding ten thousand euro (€10,000).

(4) The Commission shall, where it considers it necessary for the proper enforcement of the provisions of this Act and subject to its obligation to act in a proportionate manner, have the power to investigate and demand to be provided with all information as it may require from any political party, individual, legal person, body, including any financial institution and, or any telecommunication service provider, who may be in possession of such information to determine the source of any donation received by political party:

Provided that political parties shall not be under an obligation to reveal to the Commission the source of any donation of

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not more than five hundred euro (€500) made to them confidentially unless the Commission provides proof that there are reasonable grounds to believe that the amount actually donated confidentially in a period of one year from the same source exceeds the sum of five hundred euro (€500).

(5) An independent candidate shall be subject to the provisions of sub-articles (1), (2), (3) and (4).

Reports to be made by political parties, an official or member of a political party or candidate.

38. (1) The treasurer of a political party shall, each year, prepare a donation report showing the amount received by the political party by way of donation, in respect of each of the following periods -

(a) January to April;

(b) May to August; and

(c) September to December;

which shall be compiled in one report submitted annually to the Commission.

(2) The donation reports drawn up by the party treasurer for any year shall, in the case of each donor from whom any donation is accepted by the political party or anyone on its behalf during that year, comply with the relevant provisions of this Part so far as they require any such donation to be recorded in a donation report.

(3) A donation shall be reported with reference to its source:

(a) if it is a donation of more than seven thousand euro (€7,000); or

(b) if, when it is added to any other benefit or benefits, the aggregate amount exceeds seven thousand euro (€7,000), from the same source, in one calendar year.

(4) A donation to which sub-article (3) applies shall:

(a) in the case of a donation provided for in paragraph (a) thereof, be reported in the donation report for the reporting period in which it is accepted; or

(b) in the case of a donation provided for in paragraph (b) thereof, be reported in the donation report, together with any other relevant donation or donations included in the aggregate amount of seven thousand euro (€7,000) from the same source,

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in the donation report for the reporting period in which the benefit which causes that aggregate amount to be more than seven thousand euro (€7,000) accrues.

(5) A donation report shall also include every donation which has been refused in accordance with this Act, during the reporting period, and the report shall contain a statement to that effect, together with the manner on which the donation was made, the date on which the donation was received and the date in which the donation was returned and any relevant details.

(6) An independent candidate shall, prepare a donation report showing the amount received by way of donations in respect of the period commencing from the time of the nomination of the independent candidate for election until the election, which report shall be submitted to the Commission.

Submission of donation reports to Commission.

39. (1) A donation report made in accordance with article 38 shall be delivered to the Commission by the treasurer of the political party within the period of sixty days beginning with the end of the annual reporting period to which it relates:

Provided that in the case of an independent candidate, the donation report shall be delivered by the independent candidate to the Commission within the period of sixty days beginning from the date of the election.

(2) Any person being a treasurer of a political party or an independent candidate who, without reasonable excuse, fails to comply with the requirements of sub-article (1) shall be guilty of an offence and shall be liable to an administrative fine of not more than twenty thousand euro (€20,000).

(3) Any person, being a treasurer of a political party or an independent candidate, who, without reasonable excuse, delivers a donation report to the Commission which is not in conformity with the requirements of article 38 shall be guilty of an offence and shall be liable to an administrative fine of ten thousand euro (€10,000).

(4) Where the First Hall, Civil Court, is satisfied, on an application made by the Commission, that any failure to comply with any such requirements in relation to any donation to a political party or an independent candidate was attributable to an intention on the part of any person to conceal the existence or true amount of the donation, the Court may order the forfeiture in favour of the government by the political party or independent candidate of an amount equal to the value of the donation.

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Declaration by treasurer and independent candidate in donation report.

40. (1) A donation report under article 38 shall, when delivered to the Commission, be accompanied by a declaration, made by the treasurer of the political party, which complies with sub-articles (2), (3) or (4):

Provided that in the case of an independent candidate, such declaration shall be made by the independent candidate.

(2) In the case of a report made in accordance with the relevant provisions of this Act, other than one making a nil return, the declaration must state that, to the best of the treasurer's or independent candidate's knowledge and belief:

(a) all the donations recorded in the donation report as having been accepted by the political party or independent candidate are from permissible donors; and

(b) during the reporting period:

(i) no other donations required to be recorded in the report have been accepted by the political party or independent candidate; and

(ii) no donation from any person or body other than a permissible donor has been accepted by the political party or independent candidate.

(3) In the case of a nil return, the treasurer or independent candidate shall file a declaration together with the report which shall state that, to the best of the treasurer's or independent candidate's knowledge and belief, no donations have been received and accepted by the political party or independent candidate, during the reporting period and such statement is accurate.

(4) Whosoever knowingly or negligently makes any inaccurate declaration under this article shall be liable to an administrative fine of ten thousand euro (€10,000).

Acceptance of donations.

41. (1) Where a donation exceeding five hundred euro (€500) is offered to a political party, a member of a political party or candidate, it shall be their duty to take all reasonable steps to carry out due diligence in order to verify:

(a) the identity of the donor; and

(b) whether the donation is a permissible donation.

(2) If the donation is offered by a donor who is not a

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permissible donor or the donor has not been sufficiently identified, after reasonable steps have been taken in accordance with sub-article (1), the political party, the member of a political party or candidate, shall refuse such donation.

(3) In the case where a donation has been accepted by the political party, the member of a political party or candidate and the donee discovers that, notwithstanding that such reasonable steps have been taken in accordance with sub-article (1), the donor was not a permissible donor or that the identity was false, the donee shall within thirty (30) days return the donation to the donor or to the person purporting to be the donor or deposit the amount of the donation in Court.

(4) Whenever a political party, a member of a political party or a candidate, as the case may be, does not act in conformity with the provisions of sub-articles (1), (2) or (3), he shall be liable to an administrative fine of five thousand euro (€5,000).

Evasion of restrictions on donations.

42. Whosoever knowingly does any act in furtherance of any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of donations to a political party or candidate, by any person or body other than by a permissible donor, shall, be liable to an administrative fine of not more than twenty thousand euro (€20,000).

Public inspection of donation reports.

43. The Commission shall keep a record of all donation reports received by the political parties in accordance with this Act and such reports shall be made accessible to the public within such time and in such format as the Minister may establish by regulations from time to time and shall also be posted on the website of the Commission as soon as they are made accessible to the public.

Power of the Minister to make regulations.

44. (1) The Minister may, in agreement with the Commission, make regulations for the better carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may make provisions, not inconsistent with the provisions of this Act:

(a) for prescribing any form or procedure for which no express procedure is contained in this Act, and for amending any forms that may be required under this Act;

(b) for providing for administrative fines and sanctions in respect of any breaches of the provisions of this Act or of regulations made thereunder;

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(c) to provide for the procedure for the imposition of administrative fines and sanctions, for the procedure for the exercise of rights of appeal in respect of such fines and sanctions to the courts of civil jurisdiction and for the conditions under which such fines and sanctions shall become an executive title in terms of the provisions of the Code of Organization and Civil Procedure or of any other law in force from time to time: Cap. 12.

Provided that any administrative fines or other sanctions provided for in regulations made under this Act shall not amount to more than fifty thousand euro (€50,000) in respect of each offence, to more than five thousand euro (€5,000) for each day during which the offence continues or to the suspension of any official of a political party for a period of more than five years;

(d) to change, notwithstanding the provisions of this Act or of any other law, the maximum amount of permissible campaign expenditure by candidates in any general election, in any election of members of the European Parliament or in any local council election;

(e) to provide for the format in which campaign expenditure is to be accounted for, to provide for the forms to be used for such purpose and to issue guidelines to the Electoral Commission concerning the methodology to be used and the matters to be taken into consideration in the examination of returns of election expenses by candidates at any general election, an election of members of the European Parliament or a local council election.

(2) Political parties and other interested persons may contest the finding of any breach of the provisions of this Act and the infliction of administrative fines and sanctions by the Commission in the First Hall, Civil Court, by means of a sworn application filed within thirty (30) days from the imposition of such fine or sanction:

Provided that the provisions of the Code of Organization and Civil Procedure shall apply to such sworn application. Cap. 12.

PART V
Performance of functions by the Commission

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Auditors to assist the Commission.

45. (1) For the purpose of the execution of its functions under Parts III and IV the Commission shall appoint one or more auditors who shall assist it in the execution of the said functions.

(2) Both the said auditors and the Commissioners shall be bound by the duty of confidentiality with regard to the information received by them by virtue of this Act which shall not have been made available for the information of the public.

(3) The auditors referred to in sub-article (1) shall upon their appointment take the oath of office set out in the Schedule.

PART VI
Miscellaneous

Amendment to article 55 of the Constitution.

46. Immediately after paragraph (f) of sub-article (1) of article 55 of the Constitution there shall be added the following new paragraph:

"(ff) if the Constitutional Court decides that an elected candidate has given information which is false in the return of election expenses or that an elected candidate has incurred election expenses in an amount exceeding the amount permissible by law;".

Amendment to article 63 of the Constitution.

47. Immediately after paragraph (c) of article 63 of the Constitution there shall be added the following new paragraph:

"(d) the seat of a Member of Parliament has become vacant in terms of paragraph (ff) of sub-article (1) of article 55,".

Amendment of Twelfth Schedule to the General Elections Act. Cap. 354.

48. In the Twelfth Schedule to the General Elections Act the words from "FORM OF DECLARATION BY AN ELECTION AGENT" to the words "Magistrate/Commissioner for Oaths" situated immediately above the words "FORM OF DECLARATION BY CANDIDATE" shall be deleted.

Substitution of article 46 of the Fourteenth Schedule to the General Elections Act. Cap. 354.

49. Article 46 of the Electoral (Polling) Ordinance included in the Fourteenth Schedule to the General Elections Act shall be substituted by the following new article:

"46. (1) The maximum sum paid and, or expenses incurred by or on behalf of a candidate at an election of members of the House of Representatives, and, or by his election agent, whether before, during, or after an election on account of or in respect of the conduct of such election, shall not exceed the sum of twenty thousand euro (€20,000) from every

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electoral district:

Provided that a candidate contesting two electoral districts shall not be obliged to spend the total amount of permissible campaign expenditure as aforesaid, equally between the two districts but may apportion the said permissible campaign expenditure between the two districts in such a manner as the candidate deems fit:

Provided further that in the computation of campaign expenditure as aforesaid, where a candidate charges a fee for participation in political activities or for any goods or services made available at such activities the amount of any such fees charged and properly accounted for shall be deducted from the total amount of campaign expenditure.

(2) Any candidate or election agent who knowingly acts in contravention of this article shall be guilty of an illegal practice.".

Amendment of article 50 of the Fourteenth Schedule to the General Elections Act. Cap. 354.

50. Article 50 of the Electoral (Polling) Ordinance, included in the Fourteenth Schedule to the General Elections Act, shall be amended as follows:

(a) in sub-article (1) thereof:

(i) for the words "the election agent of every candidate" there shall be substituted the words "every candidate";

(ii) for the words "a return of the election expenses of such person" there shall be substituted the words "a return of his election expenses";

(iii) for the words "signed both by the candidate and by his election agent" there shall be substituted the words "signed by the candidate";

(iv) the words "by a duly appointed representative." shall be substituted by the words "by a duly appointed representative:" and immediately thereafter there shall be added the following proviso:

"Provided that in the case of candidates who have been elected:

(i) the time limit for the transmission of the return of election expenses to the commissioners shall be of ten days from the date when the candidate

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was declared elected irrespective of the date of publication of the official result in the Gazette;

(ii) the commissioners shall, notwithstanding the other provisions of this Act or of any other law, proceed and shall complete the said examination within one month from when they receive them and the provisions of article 52(3) shall apply in respect of such returns and of such elected candidates.";

(b) in sub-article (2) thereof for the words "he or his election agent" there shall be substituted the word "he";

(c) in sub-article (3) thereof the words "and his election agent" shall be deleted; and

(d) in sub-article (4) thereof the words "or election agent" shall be deleted.

Amendment of article 52 of the Fourteenth Schedule to the General Elections Act. Cap. 354.

51. Immediately after sub-article (2) of article 52 of the Electoral (Polling) Ordinance, included in the Fourteenth Schedule to the General Elections Act there shall be added the following new sub-article:

"(3) Notwithstanding but without prejudice to the provisions of sub-articles (1) and (2) where the commissioners, after examining the return of the election expenses of an elected candidate in terms of article 50, determine that an elected candidate has *prima facie* given information which is false in the return of election expenses or that an elected candidate has incurred election expenses in an amount exceeding the amount permissible by law, the Electoral Commission shall forthwith file an application in the Constitutional Court asking that Court to determine the question as to whether the seat of the said elected candidate has become vacant in terms of paragraph (ff) of sub-article (1) of article 55 of the Constitution. The Constitutional Court shall hear and determine such case with urgency.".

Amendment of regulation 2 of the European Parliament Elections (Maximum Expenses) Regulations. S.L.467.01.

52. The provisions of the European Parliament Elections (Maximum Expenses) Regulations shall, notwithstanding the provisions of any other law, be amended as follows by virtue of this Act:

for the words "eighteen thousand, six hundred and thirty-four euro and ninety-nine cents (€18,634.99)." in regulation 2 of the European Parliament Elections (Maximum Expenses) Regulations there shall be substituted the words "fifty thousand

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euro (€50,000):" and immediately thereafter there shall be added the following proviso:

"Provided further that in the computation of campaign expenditure as aforesaid, where a candidate charges a fee for participation in political activities or for any goods or services made available at such activities the amount of any such fees charged and properly accounted for shall be deducted from the total amount of campaign expenditure.".

Amendment of regulation 97 of the Third Schedule to the Local Councils Act. Cap. 363.

53. Regulation 97(1) of the Third Schedule to the Local Councils Act shall be substituted by the following:

"(1) Subject to such exception as may be allowed in pursuance of these regulations, no sum shall be paid and no expense shall be incurred by a candidate at an election, whether before, during, or after an election on account of or in respect of the conduct or management of such election in excess of five thousand euro (€5,000):

Provided further that in the computation of campaign expenditure as aforesaid, where a candidate charges a fee for participation in political activities or for any goods or services made available at such activities the amount of any such fees charged and properly accounted for shall be deducted from the total amount of campaign expenditure.".

SCHEDULE
(Article 46)

Form of Oath of Office to be taken by auditors assisting the Commission for the purposes of this Act

I, ..., do swear/affirm that I will faithfully perform my duties as auditor to assist the Electoral Commission in the execution of its functions under the Financing of Political Parties Act according to law and with impartiality and that I will not reveal to any third party any information which comes to my knowledge in the execution of my duties except as obliged or authorised by law or as required for the execution of my duties. (*So help me God.*)

VERŻJONI ELETTRONIKA

A 868

Passed by the House of Representatives at Sitting No. 294 of the 20th July, 2015.

ĊENSU GALEA
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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