

I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

31st May, 2018

ACT No. XXI of 2018

AN ACT to amend the National Interest (Enabling Powers) Act, Cap. 365, and to provide for matters ancillary or consequential thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

1. The short title of this Act is the National Interest (Enabling Powers) (Amendment) Act, 2018, and this Act shall be read and construed as one with the National Interest (Enabling Powers) Act, hereinafter referred to as "the principal Act".

Short title.

Cap. 365.

2. Article 2 of the principal Act shall be amended as follows:

Amendment of
article 2 of the
principal Act.

(a) immediately before the definition "Charter" there shall be added the following new definition:

" "the Board" means the Sanctions Monitoring Board established under article 7 of this Act;"

(b) immediately after the definition "Charter" there shall be added the following new definitions:

" " Council of the European Union" means the Council established by the Treaty;

"the European Union" means the European Union as referred to in the Treaty;

"freeze" means to prohibit the transfer, conversion, disposition or other movement of a property;" ;

(c) immediately after the definition "international treaty" there shall be added the following new definition:

" "the Minister" means the Minister responsible for foreign affairs;" ;

(d) immediately after the definition "prohibition" there shall be added the following new definition:

" "Regulation of the Council of the European Union" means any Council Regulation which from time to time may be published by the European Union imposing sanctions of whatever nature referred to in the Official Journal of the European Union,* and includes any amendment thereto, including any amendment or addition to any related list of designated persons or entities, and any repealing Regulation;" ;

(e) immediately after the definition "trade" there shall be added the following new definition:

Cap. 460. " "the Treaty" means the Treaty referred to in article 2 of the European Union Act;" ; and

(f) immediately after the definition "United Nations" there shall be added the following new definition:

" "United Nations Security Council Resolution" means any Council Resolution which from time to time may be published by the United Nations Security Council imposing sanctions of whatever nature, referred to in the yearly compendiums of United Nations Security Council

* <http://eur-lex.europa.eu/oj/direct-access.html/> or https://eeas.europa.eu/headquarters/headquarters-homepage/search/site/consolidated%20list_en

resolutions and decisions,* and includes any amendment thereto, including any amendment or addition to any related list of designated persons or entities, and any repealing Resolution."

3. Article 3 of the principal Act shall be amended as follows:

Amendment of article 3 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) immediately after the word "advices" there shall be added the word ", recommends" and after the word "advised" there shall be added the word ", recommended"; and

(ii) for the words "sub-articles (4), (7) and (8) of this article" there shall be substituted the words "sub-article (4)";

(b) sub-article (2) thereof shall be amended as follows:

(i) for the words "sub-articles (4), (7) and (8) of this article" there shall be substituted the words "sub-article (4)"; and

(ii) immediately after the word "advice" there shall be added the word ", recommendation";

(c) in sub-article (3) thereof, the words "and subject to the provisions of sub-articles (7) and (8)" shall be deleted;

(d) sub-article (4) thereof shall be substituted by the following:

"Domestic Restrictive Measures and Sanctions.

(4) (a) Whenever the Prime Minister considers that the national or international interests of Malta so require, he may, on the recommendation of the Sanctions Monitoring Board and of the Attorney General, by regulations under this Act, order -

(i) the designation of any person or entity;

* <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>
<https://www.un.org/press/en>

(ii) that any natural or legal person in Malta immediately freeze, without prior notice, all property of a designated person or entity or of any other persons or entities as may be indicated in the order;

(iii) that any natural or legal person in Malta immediately freeze, without prior notice, all property that is owned or controlled, whether wholly or jointly, directly or indirectly, by a designated person or entity; or property that is derived or generated from other funds or assets that are owned or controlled, directly or indirectly, by a designated person or entity; and property of any person or entity acting on behalf of or at the direction of a designated person or entity;

(iv) that no Maltese citizen or any person or entity located in Malta shall make available any property or financial services or other related services, directly or indirectly, wholly or jointly, to or for the benefit of a designated person or entity; or an entity owned or controlled, directly or indirectly, by a designated person or entity; or a person or entity acting on behalf of, or at the direction of, a designated person or entity, unless licensed, authorised or notified for such purpose;

(v) the investigation of any matter relating to the designation of any person or entity, the confiscation of property of any designated person or entity and the applicability, *mutatis mutandis*, or otherwise of any provisions of any other law including but not limited to the Criminal Code, the Dangerous Drugs Ordinance, the Medical and Kindred Professions Ordinance and the Prevention of Money Laundering Act in respect of the property of a designated person or entity, or of a person or entity who is subject to an investigation which may lead to the designation of that person or entity; or

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Cap. 373.

(vi) the amendment or revocation of any order made under sub-paragraphs (i), (ii), (iii), (iv) and (v) as may be stated in the regulations.

(b) Nothing shall preclude the application of the measures referred to in this Act with respect to organizations or factions in any country or countries or part thereof, as may be stated in the regulations.

(c) For purposes of this Act:

"person" shall include a body or association of persons, whether corporate or incorporate; and

"property" shall mean assets, including but not limited to financial assets, economic resource, including oil and other natural resources, property of every kind, whether tangible or intangible, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, and any interest, dividends, or other income on or value accruing from or generated by such funds or other assets, and any other assets which potentially may be used to obtain funds, goods or services.";

(e) in sub-article (5) thereof, for the words "under this article" there shall be substituted the words "under this Act";

(f) in sub-article (6) thereof, for the words "under this article" there shall be substituted the words "under this Act"; and

(g) sub-articles (7) and (8) thereof shall be deleted.

4. Immediately after article 3 of the principal Act there shall

Addition of new articles to the principal Act.

be added the following new articles:

"European
Union
Regulations.
Cap. 460.

4. (1) For the purposes of this Act and of article 3 of the European Union Act, Regulations of the Council of the European Union imposing sanctions or applying restrictive measures of whatever nature, or which advise, recommend, direct or order Member States of the European Union to take such action as may be advised, recommended, directed or ordered, whether published before or after the coming into force of this article, shall be binding in their entirety in Malta and shall be part of the domestic law thereof under conditions laid down in the Treaty.

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(2) The provisions of article 3(4)(e) of the Interpretation Act shall apply to Regulations of the Council of the European Union referred to in this Act and to any amendment thereto and any repealing Regulation.

United Nations
Security
Council
Resolutions.

5. (1) For the purposes of this Act, United Nations Security Council Resolutions imposing sanctions or applying restrictive measures of whatever nature, or which advise, recommend, direct or order Member States of the United Nations to take such action as may be advised, recommended, directed or ordered, whether published before or after the coming into force of this article, shall be automatically binding in their entirety in Malta and shall be part of the domestic law thereof.

Cap. 249.

(2) The provisions of article 3(4)(e) of the Interpretation Act shall, *mutatis mutandis*, also apply to United Nations Security Council Resolutions referred to in this Act and to any amendment thereto and any repealing Resolution; and the reference, in the said article, to publication in the Official Journal shall, in the case of United Nations Security Council Resolutions, be construed as a reference to publication in the yearly compendiums referred to in article 2.

Offences and
penalties.

6. (1) Any person who acts in violation of regulations made under this Act or of a Regulation of the Council of the European Union or of a United Nations Security Council Resolution shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term from twelve months to twelve years or to a fine (*multa*) of not less than twenty-five thousand euro (€25,000) and not exceeding five million euro (€5,000,000), or to both such imprisonment and fine.

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(2) The provisions of article 121D of the Criminal Code shall, *mutatis mutandis*, apply to the offences under this Act, so however that the punishment to which the body corporate shall be liable under this sub-article shall be that of the payment of a fine (*multa*) of not less than eighty thousand euro (€80,000) and not exceeding ten million euro (€10,000,000).

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(3) The body corporate shall also be held liable for an offence under this Act where the lack of supervision or control by a person referred to in article 121D of the Criminal Code has made possible the commission of the offence for the benefit of the body corporate, which shall upon conviction be liable to the punishment laid down in sub-article (2).

(4) Without prejudice to any other punishment to which the offence may be liable under this Act or any other law, where the offender is a body corporate liable to punishment under the provisions of sub-articles (2) and (3), the Court may, at the request of the prosecution, order -

(a) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;

(b) the temporary or permanent closure of any establishment which may have been used for the commission of the offence;

(c) the compulsory winding up of the body corporate;

(d) exclusion from entitlement to public benefits or aid.

(4A) Where an offence against the provisions of this Act is committed by a body corporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body corporate, shall be guilty of an offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Cap. 37.

(5) (a) Where an item the export, transit or transshipment of which would be contrary to restrictive measures in force, such item shall be forfeited in accordance with the provisions of the Customs Ordinance on the forfeiture of prohibited goods and of goods the importation of which is restricted, including in accordance with the provisions relating to the claiming back of the seized goods in the same Ordinance. Such forfeiture shall be made following the recommendation of the Board.

(b) Items which are forfeited in accordance with paragraph (a) shall be disposed of in accordance with the recommendation of the Board. In giving its recommendation, the Board shall consider the most economically advantageous option for disposal in full adherence with the laws and regulations in force in Malta.

(c) The provisions of this sub-article shall also apply to all goods which are in Malta at the time of the coming into force of this Act, irrespective of the date of their arrival in Malta.

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(6) The provisions of articles 21 and 28A of the Criminal Code and the provisions of the Probation Act shall not apply in respect of any person convicted of an offence under this Act.

Cap. 9.

(7) Without prejudice to the provisions of article 5 of the Criminal Code, the Maltese courts shall also have jurisdiction over the offences referred to in this Act where:

(a) only part of the action giving execution to the offence took place in Malta; or

(b) the offender is a Maltese national or habitual resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or

(c) where the gain from the commission of the offence was received in Malta; or

(d) where a person in Malta knowingly assisted or induced another person to commit the offence.

Sanctions
Monitoring
Board,
composition
and functions.

7. (1) There shall be a Sanctions Monitoring Board having the functions set out in this Act.

(2) The Sanctions Monitoring Board shall be composed of a representative of the Ministry for Foreign Affairs who shall be Chairman, the Attorney General or his representative, the Commissioner of Police or his representative, a representative of the Office of the Prime Minister, a representative of the Financial Intelligence Analysis Unit, a representative of the Malta Security Service, a representative of the Ministry responsible for home affairs, a representative of the Ministry responsible for defence, a representative of the Ministry responsible for finance, a representative of the Ministry responsible for the economy, a representative of the Trade Department, a representative of the Customs Department, a representative of the Central Bank of Malta, a representative of the Malta Financial Services Authority, a representative of the Ministry responsible for maritime affairs, a representative of the Ministry responsible for aviation matters, a representative of the Ministry responsible for lands and a representative of the Ministry responsible for immigration matters.

(3) A Deputy Chairman shall be appointed by the Minister from among the members of the Board.

(4) There shall be a Secretary to the Board appointed from among serving officers of the Ministry for Foreign Affairs, on the advice of the Chairman. The Secretary shall take the minutes of Board meetings.

(5) (a) The Board shall have the function to:

(i) monitor the implementation and operation of sanctions imposed by regulations made under this Act, Regulations of the Council of the European Union and United Nations Security Council Resolutions and, where applicable, to harmonise practice thereon with that followed by other states;

(ii) propose persons or entities to be designated by the United Nations Security Council, or by the Council of the European Union or for a designation by order under article 3(4)(a) of this Act;

(iii) propose the delisting of any designated person or entity, by the United Nations Security Council or by the Council of the European Union or by order under article 3(4)(a) of this Act, or the unfreezing of property of any person or entity which property was frozen in accordance with the provisions of this Act;

(iv) receive and consider applications from designated persons or entities for delisting, or unfreezing of property, where the criteria for designation or freezing are not met, or are no longer met, and from persons or entities who have been erroneously or inadvertently designated, and make recommendations in accordance with paragraph (iii); and

(v) authorize access to frozen funds or other assets which the Board determines to be necessary for basic expenses, for the payment of reasonable costs and fees for legal, medical, professional or other essential services, or for documented extraordinary expenses.

(b) The Board shall, in the exercise of its functions, have the power to take decisions, make recommendations, grant authorisations, issue rulings, issue guidance and notices, and refer to the relevant authorities for action, assistance or information.

(c) The Board shall have such other functions as may be assigned to it by the Prime Minister, by regulations made under this Act.

(6) The Board shall at the end of each year, or earlier if so requested, make a report of its activities to the Prime Minister and to the Minister responsible for foreign affairs.

Powers and
functions of the
Deputy
Chairman.

8. The Chairman shall be the Head of the Board and the Deputy Chairman shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or while he is on vacation or during any vacancy in the office of Chairman.

Meetings of the
Board.

9. (1) The Board shall meet within one month from its constitution and as often as may be necessary or expedient thereafter, but in no case less frequently than twice in each year. The meetings of the Board shall be called by the Chairman on his own initiative or at the request of any two of the other members.

(2) The Board shall not act unless a *quorum* consisting of the Chairman or Deputy Chairman and not less than two other members is present.

(3) The meetings of the Board shall be chaired by the Chairman or, in his absence, by the Deputy Chairman.

(4) The decisions of the Board shall be adopted by a simple majority of the votes of the members present and voting and in the event of an equality of votes the member presiding at the meeting shall have and exercise a second or casting vote.

(5) Any vacancy among the members of the Board, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the Board.

(6) Subject to the provisions of this Act, the Board may regulate its own procedure.

(7) The Chairman may, following consultation with Board members, invite observers on the Board as and when required provided they have the necessary security clearance.

(8) All acts done by any person acting in good faith as a member of the Board shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered.

Decisions in
cases of
emergency.

10. In cases of emergency, decisions shall be taken by at least two members of the Board, one of whom shall be the Chairman or Deputy Chairman.

Sanctions
Monitoring
Board Ruling.

11. A person may, in writing, request the Board to give a ruling on whether an action intended by him falls to be prohibited by any particular regulation made under the Act, or by any Regulations of the Council of the European Union, or by any United Nations Security Council Resolutions and no liability shall attach under any such regulations or Regulations of the Council of the European Union or United Nations Security Council Resolutions where a person has acted in conformity with any such ruling. A ruling in terms of this article shall be given within such time as may be prescribed by the Minister.

Exemption
from liability.

12. No liability, criminal or civil, shall attach to any member of the Board for any action done, or omitted to be done, in good faith in the discharge or purported discharge of any function as a member thereof.

Secrecy.

13. The members of the Board shall regard any matter coming to their knowledge in any request under article 11 as secret and confidential, and shall not in any report made in accordance with article 7(6), reveal the names or other identifying particulars known to them in connection with any such request.

Legal and
judicial
representation.

14. (1) The legal and judicial representation of the Board shall vest in the Chairman and, in his absence, in the Deputy Chairman:

Provided that the Board may appoint any one or more of its other members or of its officers or employees to appear in the name and on behalf of the Board in any judicial proceedings and in any act, contract, instrument or other document whatsoever.

(2) Any document purporting to be an instrument made or issued by the Board and to be signed by the Chairman or by the Deputy Chairman on behalf of the Board shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Board.

Co-operation
with Board.

15. (1) Without prejudice to the generality of the provisions of this Act, the Board shall, in the exercise of its functions under this Act, co-operate with competent law enforcement authorities, the Security Service, the Financial Intelligence Analysis Unit, public and regulatory authorities, Government Ministries, departments, agencies and entities and regulatory authorities to ensure that regulations made under this Act, Regulations of the Council of the European Union and United Nations Security Council Resolutions are observed.

(2) Without prejudice to the special provisions of any other law applicable to them, the authorities and entities mentioned in sub-article (1) shall extend all assistance and co-operation to the Board in the fulfilment of its functions and responsibilities under this Act, and where necessary, in accordance with any memorandum of understanding that the Board may conclude with any of the aforementioned authorities and entities, taking into account the domestic and international obligations of the same authorities, entities and the Board.

Power of the Board to request information.

16. (1) Notwithstanding anything contained in any other law, the Board may, in the exercise of its functions under this Act, request from any person, physical or legal, and any authority or entity, any information it deems necessary, relevant and useful for the purpose of pursuing its functions under this Act.

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(2) Notwithstanding anything contained in the Professional Secrecy Act and any obligation of secrecy or confidentiality under any other law, any person, physical or legal and any authority or entity from whom information is demanded by the Board in pursuance of its functions under this Act, shall communicate without delay the information requested to the Board, and for the purposes of article 257 of the Criminal Code any such disclosure shall be deemed to be a disclosure of information to a public authority compelled by law:

Cap. 9.

Provided that nothing in this article and in article 15 shall place or imply any obligation on the competent law enforcement authorities, the Security Service and the Financial Intelligence Analysis Unit to communicate to the Board any information which is deemed to be of a privileged nature or the communication of which may be in breach of their domestic or international obligations or otherwise hinder or prejudice the proper exercise of their functions; and any communication of information by the said authorities to the Board shall be in accordance with Memorandum of Understanding that shall be concluded for this purpose between the Board and the said authorities, taking into account their domestic and international obligations. When a Memorandum of Understanding is not in force the Board and the said authorities, shall exchange information by mutual agreement and in accordance with the principles of this article:

Provided further that nothing in this article and in article 15 shall imply any obligation on the Attorney General to communicate to the Board any information which in any way relates to or is connected with or came into his possession as a result of the exercise by him of any powers referred to in article 91(3) of the Constitution or any obligation on any person to communicate to the Board any information which would in legal proceedings be protected from disclosure by article 642(1) of the Criminal Code or by article 588(1) of the Code of Organization and Civil Procedure.

Cap. 9.

Cap. 12.

Freezing
measures.

17. (1) Notwithstanding the provisions of this Act or of any other law, when regulations are made under article 3(4)(a) or when a United Nations Security Council Resolution or a Regulation of the Council of the European Union is published imposing freezing measures on property of a person or entity designated by the said Resolution or Regulation or in annexes thereto, such regulations, Resolution or Regulation shall immediately upon publication be tantamount to a freezing order having the force of law in Malta.

(2) A freezing order as is mentioned in sub-article (1) shall have the effect of:

(a) attaching, without delay or prior notice, all property due or pertaining or belonging to the designated person or entity, or that is wholly or jointly owned or controlled, directly or indirectly, by the designated person or entity;

(b) attaching, without delay or prior notice, all property that is derived or generated from property that is owned or controlled, directly or indirectly, by the designated persons or entities;

(c) attaching without delay or prior notice all property of persons and entities acting on behalf of or at the direction of the designated person or entity;

(d) prohibiting the transfer, conversion, movement, pledging, hypothecating or otherwise disposing of any property under paragraphs (a) to (c);

(e) prohibiting any Maltese citizen or any person or entity located in Malta from making property, or financial services or other related services available, directly or indirectly, wholly or jointly, to or for the benefit of a designated person or entity; or an entity owned or controlled, directly or indirectly, by a designated person or entity; or to any person or entity acting on behalf of, or at the direction of, a designated person or entity, unless licensed, authorised or notified in accordance with the relevant United Nations Security Council Resolution or Regulation of the Council of the European Union or order issued under article 3(4)(a).

(3) Such order shall become operative and binding on all third parties immediately upon the publication of the regulations, Resolution or Regulation mentioned in sub-article (1), and shall remain in force:

(a) in the case of an order made by regulations under article 3(4)(a), until it is revoked according to the provisions of article 3(4)(a)(vi); and

(b) in the case of a Regulation of the Council of the European Union or a United Nations Security Council Resolution, until the delisting of the designated person or entity is made by the United Nations Security Council or by the Council of the European Union, as the case may be.

(4) Where any money is or becomes due to a designated person or entity from any person while a freezing order under this article is in force, such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the designated person or entity.

(5) When such order ceases to be in force as provided in sub-article (3)(b), a note of cancellation of the registration of that order shall be entered in the Public Registry.

Cap. 373. (6) Any legal or natural person conducting a relevant activity or relevant financial business as defined in the Prevention of Money Laundering Act shall be required to:

(a) regularly check the list of designations by the United Nations, the European Union, and the Board, and to screen their client databases against those lists on a regular basis and immediately after a change to any of these lists occurs;

(b) have in place and effectively implement internal controls and procedures to ensure compliance with the obligations arising from this Act and any relevant United Nations or European Union Resolutions or regulations; and

(c) immediately notify the Board in case targeted property is identified, and of the actions taken in relation to such property in compliance with the requirements under this Act, including in relation to any attempted transactions.

Cap. 373. (7) Any legal or natural person conducting a relevant activity or relevant financial business as defined in the Prevention of Money Laundering Act shall be prohibited from informing the customer or any third party in advance that a freezing measure pursuant to this Act is to be applied.

Appeal. 18. An appeal from an order issued under article 3(4)(a) of this Act, can be lodged through an application in the First Hall Civil Court."

General amendment in the principal Act.

5. (1) For the words "Kunsill tas-Sigurezza" wherever they appear in the Maltese text of the principal Act, there shall be substituted the words "Kunsill tas-Sigurtà".

(2) For the words "Nazzjonijiet Uniti" wherever they appear in the Maltese text of the principal Act, there shall be substituted the words "Nazzjonijiet Magħquda".

Revocation and consequential amendments. S.L. 365.08

6. (1) All subsidiary legislation made under the principal Act, as in force on the date of the coming into force of this Act, is hereby revoked, without prejudice to anything done thereunder.

(2) Any reference in any law to the "Sanctions (Monitoring Board) Regulations" shall be construed as a reference to the

principal Act.

Passed by the House of Representatives at Sitting No. 121 of the
30th May, 2018.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

