

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

31st December, 2007

ACT No. XXXI of 2007

AN ACT further to amend the Criminal Code, Cap. 9, and various laws related to criminal matters

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 title of this Act is the Various Laws (Criminal Matters) (Amendment) Act, 2007.

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

PART I

Amendment of the Criminal Code. Cap. 9.

2. This part amends the Criminal Code and it shall be read and construed as one with the Criminal Code, hereinafter in this part referred to as “the Code”.

Amendment of article 23 of the Code.

3. Immediately after sub-article (3) of article 23 of the Code there shall be added the following new sub-article:

“(4) Notwithstanding the provisions of sub-articles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.”.

4. Article 23B of the Code shall be amended as follows:

Amendment of article 23B of the Code.

(a) immediately after sub-article (1) of article 23B of the Code, there shall be inserted the following new sub-articles:

“(1A) Any property, whether in Malta or outside Malta, of or in the possession or under the control of any person convicted of a relevant offence or in the possession or under the control of a body corporate as may become liable under the provisions of article 121D shall, unless proved to the contrary, be deemed to be derived from the relevant offence and be liable to confiscation or forfeiture by the court.

(1B) The provisions of article 7 of the Act shall *mutatis mutandis* apply so however that any reference in that article to “article 3(3)” shall be construed as a reference to sub-article (1A) of this article and any reference in the said article 7 to “an offence under article 3” shall be construed as a reference to a relevant offence.”;

(b) in sub-article (2) thereof, immediately after the words “proceeds of the offence.” there shall be inserted the words “The said fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.”; and

Cap. 12.

(c) in sub-article (3) thereof, for the definition “relevant offence” there shall be substituted the following:

“relevant offence” and “the Act” have the same meaning assigned to them by article 23A(1).”.

5. Immediately after article 23B of the Code, there shall be inserted the following new article:

Addition of new article 23C to the Code.

“Forfeiture of property derived from criminal activity.

23C. (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

(2) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A) (b) and (d) of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* in the circumstances mentioned in those paragraphs.”.

Amendment of article 49 of the Code.

6. In article 49 of the Code, for the words “another offence.” there shall be substituted the words “another offence:” and immediately thereafter there shall be inserted the following proviso:

“Provided that the court may, in determining the punishment, take into account a judgment delivered by a foreign court which has become absolute.”.

Amendment of article 102 of the Code.

7. Article 102 of the Code shall be amended as follows:

(a) in paragraph (b) thereof, for the words “two degrees.” there shall be substituted the words “two degrees;”; and

(b) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

“(c) where the subornation has been committed by the use of force, threats, intimidation or by promising, offering or giving of an undue advantage to induce false testimony, to the punishment mentioned in paragraph (a) increased by one or two degrees.”.

Amendment of article 121A of the Code.

8. In sub-article (2) of article 121A of the Code, for the words “who receives” there shall be substituted the words “who requests, receives”.

Addition of new article 121E to the Code.

9. Immediately after article 121D of the Code there shall be inserted the following new article:

“Applicability of article 248E (4) of the Code.

121E. The provisions of article 248E (4) shall apply *mutatis mutandis* to any person found guilty of any of the offences under this sub-title.”.

10. In article 127 of the Code, for the words “for his own private gain,” there shall be substituted the words “for his own private gain or for the benefit of another person or entity,”.

Amendment of article 127 of the Code.

11. Immediately after article 204 of the Code, there shall be inserted the following new articles :

Addition of new articles 204A to 204C to the Code.

“Instigation with violence of persons under age to prostitution or to participation in a pornographic performance.

204A. (1) Whosoever:

(a) with violence compels a person under age into prostitution or into participating in a pornographic performance, or

(b) knowingly makes any gain or derives any benefit from the conduct referred to in paragraph (a),

shall, on conviction, be liable to imprisonment for a term from two to six years, with or without solitary confinement.

(2) The punishment for the offence in article 204A(1)(b) shall be increased by one degree, with or without solitary confinement, in each of the following cases:

(a) when the offender wilfully or recklessly endangered the life of the person under age;

(b) when the offence involves violence or grievous bodily harm on such person;

(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).

Inducing persons under age to prostitution or to participation in a pornographic performance.

204B. (1) Whosoever in order to gratify the lust of any other person engages a person under age to practise prostitution, or to participate in pornographic performances, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years, with or without solitary confinement.

(2) The offence shall be punishable with imprisonment for a term from two to six years, with or without solitary confinement, in each of the following cases:

(a) when the offender wilfully or recklessly endangered the life of the person under age;

(b) when the offence involves violence or grievous bodily harm on such person;

(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).

Participation
in sexual
activities
with persons
under age.

204C. (1) Whosoever takes part in sexual activities with a person under age shall, on conviction, be liable to imprisonment for a term not exceeding two years, with or without solitary confinement.

(2) The offence shall be punishable with imprisonment for a term from two to six years, with or without solitary confinement, in each of the following cases:

(a) if the offence is committed with violence;

(b) where money or other forms of remuneration or consideration is given as payment in exchange for the child taking part in sexual activities and any of the circumstances mentioned in paragraph (d) occurs;

(c) where the offender abuses of a recognised position of trust, authority or influence over such person and any of the circumstances mentioned in paragraph (d) occurs;

(d) the circumstances referred to in paragraph (b) and (c) are the following:

(i) the offender wilfully or recklessly endangered the life of the person under age;

(ii) the offence involves violence or grievous bodily harm to such person;

(iii) the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).”.

(a) for subarticle (1) thereof, there shall be substituted the following:-

“(1) Any citizen or permanent resident of Malta, whether in Malta or outside Malta, as well as any person in Malta, who takes or permits to be taken any indecent photograph, film, video recording or electronic image of a minor, or produces, distributes, disseminates, imports, exports, offers, sells, transmits or shows such indecent photograph, film, video recording or electronic image, shall, on conviction, be liable to imprisonment for a term from twelve months to five years.”;

(b) immediately after subarticle (1) thereof there shall be added the following new subarticles:-

“(1A) The offence in subarticle (1) shall be punishable with imprisonment for a term from two to eight years, with or without solitary confinement, in each of the following cases:

(a) when the offender wilfully or recklessly endangered the life of the person under age;

(b) when the offence involves violence or grievous bodily harm on such person;

(c) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).

(1B) Any person who acquires or is in possession of an indecent photograph, film, video recording or electronic image of a minor, shall, on conviction, be liable to imprisonment for a term not exceeding two years.

(1C) For the purposes of subarticle (1) the expression “permanent resident” shall have the same meaning assigned to it by article 5(1)(d).”; and

(c) for subarticle (3) thereof, there shall be substituted the following:

“(3) Where the offences in subarticles (1) and (1B) are committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by any other person charged, even though temporarily, with the care,

education, instruction, control or custody of the person under age shown in the photograph, film, video recording or electronic image, or where such person under age has not completed the age of nine years:

(a) in the case of the offence in subarticle (1), the punishment shall be of imprisonment for a term from eighteen months to seven years, and

(b) in the case of the offence in subarticle (1B), the punishment shall be of imprisonment for a term from three months to three years,

and the provisions of article 197(4) shall also apply.”.

Addition of new article 208B to the Code.

13. Immediately after article 208A of the Code there shall be added the following new article:

“Provisions applicable to articles 204 to 204C and 208A of the Code.

208B. (1) The following provisions shall apply to the offences under articles 204, 204A to 204C, both inclusive, and article 208A(1) and (1A).

(2) In addition to the punishment established for the said offences, the Court may order that the offender be temporarily or permanently prevented from exercising professional activities related to the supervision of children.

(3) The provisions of articles 121D and 248E(4) shall apply *mutatis mutandis*.

(4) The provisions of articles 13 and 14 of the White Slave Traffic (Suppression) Ordinance, shall apply *mutatis mutandis*.

(5) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the said offences 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 permanent resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or

(c) the offence was committed by means of a computer system accessed from Malta notwithstanding that such computer system may be outside Malta.

(6) Notwithstanding any other provision of this Code or of any other law, the period of prescription shall run from the day on which the victim attains the age of majority.”.

14. Immediately after sub-article (5) of article 248E of the Code, there shall be added the following new sub-articles: Amendment of article 248E of the Code.

“Exemption for acts under compulsion. (6) The offences committed under this sub-title shall not be liable to punishment if the offender was compelled thereto by another person where the provisions of paragraph (b) of article 33 do not apply.

Inapplicability of Immigration Act. Cap. 217. (7) The provisions of article 14 of the Immigration Act shall not apply until the lapse of thirty days from the date that the Principal Immigration Officer has reasonable grounds to believe that the person concerned is a victim of any of the offences under this sub-title.”.

15. In article 310A of the Code, for the words “article 121D” there shall be substituted the words “articles 121C, 121D and 248E(4)”. Amendment of article 310A of the Code.

16. Article 399 of the Code shall be amended as follows: Amendment of article 399 of the Code.

(a) for subarticle (1) thereof, there shall be substituted the following:

“399. (1) When the court decides that the examination of any witness or any other process of the inquiry by an authority outside Malta is indispensably necessary, the letter of request and the court’s decision shall be served on the Attorney General who may within five working days make any submissions in writing as he may deem appropriate. The provisions of articles 618 and 619 of the Code of Organization and Civil Procedure shall apply.”; and

(b) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article:

“(3) The provisions of article 622B of the Code of Organization and Civil Procedure shall apply to a request for the examination of any witness under this article.”.

Addition of new article 402A to the Code.

17. Immediately after article 402 of the Code there shall be inserted the following new article:

“Terms under article 402(1) to run anew.

402A. Where in respect of a person charged before the Courts of Magistrates as a court of criminal inquiry a court has made an order for his temporary surrender to a foreign State requesting his extradition or to any other foreign competent authority requesting his surrender, the terms referred to in sub-article (1) of article 402 shall, from the date of his return to Malta, recommence to run anew.”.

Amendment of article 435A of the Code.

18. In the Maltese text of sub-article (1) of article 435A, for the words “bis-saħħa ta’ dan is-subtitolu bhallikieku” there shall be substituted the words “bis-saħħa ta’ dan is-subartikolu bhallikieku”.

Addition of new articles 435AA and 435AB to the Code.

19. Immediately after article 435A of the Code, there shall be added the following new articles:

“Issuing of monitoring order of banking operations.

435AA. Where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence (hereinafter referred to as “the suspect”) he may apply to the Criminal Court for an order (hereinafter referred to as a “monitoring order”) requiring a bank to monitor for a specified period the banking operations being carried out through one or more accounts of the suspect. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring.

Temporary surrender of person in custody to foreign country.

435AB. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody for the purpose of an investigation to be carried out or being carried out by a judicial, prosecuting or administrative authority of any place outside Malta at the request of a judicial, prosecuting or administering authority in Malta.

(2) The person surrendered shall be kept in custody in the place outside Malta to which he has been surrendered.

(3) Any time spent in custody in the place outside Malta shall be deemed to be time spent in custody in Malta.”.

20. Sub-article (1) of article 435B of the Code shall be amended as follows:

Amendment of article 435B of the Code.

(a) for the words “a judicial or prosecuting authority of any place outside Malta” there shall be substituted the words “a judicial, prosecuting or administrative authority of any place outside Malta or by an international court”;

(b) for the words “hereinafter in this article” there shall be substituted the words “hereinafter in this article and in article 435BA”; and

(c) and for the words “suspected by that authority” there shall be substituted the words “suspected by that authority or court”.

21. Immediately after article 435B of the Code, there shall be inserted the following new articles:

Addition of new articles 435BA and 435BB of the Code.

“Issuing of monitoring order of banking operations.

435BA. Where the request referred to in the preceding article is made for the purpose of monitoring the banking operations being carried out through one or more accounts of a suspect, the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 435AA shall apply “*mutatis mutandis*.”.

Temporary surrender of person in custody to Malta.

435BB. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody in a foreign State for the purpose of investigations to be carried out or being carried out in Malta at the request of a judicial, prosecuting or administrative authority of that State.

(2) The provisions of article 30C of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to a person temporarily surrendered to Malta under sub-article (1).”.

22. In sub-article (1) of article 435C of the Code, for the words “a judicial or prosecuting authority of any place outside Malta” there

Amendment of article 435C of the Code.

shall be substituted the words “a judicial, prosecuting or administrative authority of any place outside Malta or by an international court”, and for the words “before the courts of that place” there shall be substituted the words “before the courts of that place or before the international court”.

Amendment of article 435E of the Code.

23. Article 435E of the Code shall be amended as follows:

(a) in the English text of sub-article (3) thereof, for the words “investigations into criminal investigations” there shall be substituted the words “investigations into criminal offences”; and

(b) immediately after sub-article (5) thereof, there shall be added the following new sub-articles:

“(6) For purposes of this article “competent authorities of another country” and “official from another country” shall be construed as including officials of bodies set up pursuant to the Treaty on European Union as defined in article 2 of the European Union Act.

Cap. 460.

(7) Where the Attorney General has authorised the setting up of a joint investigation team as provided in sub-article (3) of this article, the foreign officials participating in the said investigation shall be entitled to be present when investigative measures are being taken and, if so authorised by the competent officer of the Executive Police, to take investigative measures.”.

Addition of new article 647B to the Code.

24. Immediately after article 647A there shall be added the following new article:

“Sending of documents or any act to person in a foreign country.

647B. Pursuant to and in accordance with any treaty, convention, agreement or understanding between Malta and another country or which applies to both such countries or to which both such countries are a party, procedural documents or any act of the proceeding may be sent directly by post to a person who is in the territory of the foreign country in a language which that person understands:

Provided that procedural documents shall be accompanied by a report indicating to the said person the remedies available and that information about his rights and obligations concerning the document may be obtained from the issuing authority or from another competent authority in Malta.”.

25. Article 649 of the Code shall be amended as follows:-

Amendment of
article 649 of the
Code.

(a) in sub-article (1) thereof, for the words “the judicial, prosecuting or administrative authority of any place outside Malta” there shall be substituted the words “a judicial, prosecuting or administrative authority of any place outside Malta or by an international court”, and for the words “by the said authority or otherwise,” there shall be substituted the words “by the said authority or court or otherwise,”;

(b) in sub-article (2) thereof, for the words “by the foreign judicial, prosecuting or administrative authority” there shall be substituted the words “by the foreign judicial, prosecuting or administrative authority or by the international court”, and for the words “between Malta and the country” there shall be substituted the words “between Malta and the country, or between Malta and the court,” and for the words “which applies to both such countries or to which both such countries are a party” there shall be substituted the words “which applies to both such countries or to which both such countries are a party or which applies to Malta and the said court or to which both Malta and the said court are a party”; and

(c) immediately after sub-article (5) thereof, there shall be inserted the following new sub-article:

“(5A) If the request cannot, or cannot fully, be executed in accordance with the formalities, procedures or deadlines indicated by the requesting foreign authority, the requesting authority shall be informed indicating the estimated time within which or the conditions under which execution of the request may be possible.”.

PART II

26. This part amends the Code of Organization and Civil Procedure and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this part referred to as “the principal law”.

Amendment of
the Code of
Organization
and Civil Procedure.
Cap. 12.

27. In article 619 of the principal law, for the words “may be executed.” there shall be substituted the words “may be executed:” and immediately thereafter there shall be inserted the following proviso:

Amendment of
article 619 of
the principal law.

“Provided that the court may dispense with the requirement of this article where any treaty, convention, agreement or

understanding, between Malta and another country or which applies to both such countries or to which both such countries are a party, provides for direct transmission of letters of request between judicial authorities.”.

PART III

Amendment of the Medical and Kindred Professions Ordinance. Cap. 31.

28. This part amends the Medical and Kindred Professions Ordinance and it shall be read and construed as one with the Medical and Kindred Professions Ordinance, hereinafter in this part referred to as “the principal law”.

Amendment of article 120A of the principal law.

29. Article 120A of the principal law shall be amended as follows:

(a) in subarticle (2B) of the principle law for the words “article 22(3A) and (7)” there shall be substituted the words “article 22(3A), (3B) and (7)”; and

(b) immediately after sub-article (8) of article 120A thereof, there shall be added the following sub-article:

“(9) Where an offence against this Ordinance in respect of which a person has been found guilty consists in any of the offences referred to in article 120C(1) or of the offence of possession of a drug contrary to the provisions of this Ordinance under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, the provisions of articles 121D and 248E(4) of the Criminal Code shall apply *mutatis mutandis*.”.

Amendment of article 120C of the principal law.

30. In paragraph (d) of sub-article (1) of article 120C of the principal law, for the words “120A(1D),” there shall be substituted the words “120A(1D), or” and immediately thereafter there shall be added the following new paragraph:

“(e) is guilty of the offence of possession of a drug contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender,”.

Amendment of article 120D of the principal law.

31. In sub-article (1) of article 120D of the principal law, for the words “120C(1)(a), (b), (c) and (d)”, there shall be substituted the words “120C(1)(a), (b), (c), (d) and (e)”.

32. In sub-article (1) of article 120E of the principal law, for the words “120C(1)(a), (b), (c) and (d).”, there shall be substituted the words “120C(1)(a), (b), (c), (d) and (e).”.

Amendment of article 120E of the principal law.

33. In sub-article (3) of article 120F of the principal law, for the words “120C(1)(a), (b), (c) and (d).”, there shall be substituted the words “120C(1)(a), (b), (c), (d) and (e).”.

Amendment of article 120F of the principal law.

PART IV

34. This part amends the Dangerous Drugs Ordinance and it shall be read and construed as one with the Dangerous Drugs Ordinance, hereinafter in this part referred to as “the principal law”.

Amendment of the Dangerous Drugs Ordinance. Cap. 101.

35. Article 22 of the Dangerous Drugs shall be amended as follows:

Amendment of article 22 of the principal law.

(a) immediately after sub-article (3A) thereof, there shall be inserted the following new sub-article:

“(3B) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.”;

Cap. 12.

(b) immediately after sub-article (14) thereof, there shall be added the following:

“(15) Where an offence against this Ordinance in respect of which a person has been found guilty consists in any of the offences referred to in article 24A(1) or the offence of possession of a drug contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, the provisions of articles 121D and 248E(4) of the Criminal Code shall apply “*mutatis mutandis*.”.

Amendment of
article 22A
of the principal law.

36. In sub-article (1) article 22A of the principal law, immediately after the words “subarticle (1C) of the same article,” there shall be added the words “or with the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender,”.

Amendment of
article 22B
of the principal law.

37. In article 22B of the principal law, immediately after the words “paid or delivered in contravention of that court order.” there shall be added the words “Any transfer or other disposal of any immovable property made in contravention of the said court order shall be null and without effect at law.”.

Amendment of
article 24A
of the principal law.

38. Article 24A of the principal law shall be amended as follows:

(a) in paragraph (d) of sub-article (1) thereof, for the words “article 22,” there shall be substituted the words “article 22, or” and immediately thereafter there shall be added the following new paragraph:

“(e) is guilty of the offence of possession of a drug contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender.”;

(b) in sub-article (6) thereof, for the words “paragraphs (a) to (d)” there shall be substituted the words “paragraphs (a) to (e)”;

(c) in sub-article (10) thereof, for the words “property in question.” there shall be substituted the words “property in question:”, and immediately thereafter there shall be added the following new proviso:

“Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.”; and

(d) in sub-article (11) thereof, for the words “paragraphs (a) to (d)” there shall be substituted the words “paragraphs (a) to (e)”.

39. In sub-article (1) of article 24B of the principal law, for the words “(a), (b), (c) and (d) of” there shall be substituted the words “(a), (b), (c), (d) and (e) of”.

Amendment of article 24B of the principal law.

40. In sub-article (1) of article 24C of the principal law, for the words “(a), (b), (c) and (d) of” there shall be substituted the words “(a), (b), (c), (d) and (e) of”.

Amendment of article 24C of the principal law.

41. Article 24D of the principal law shall be substituted as follows:

Amendment of article 24D of the principal law.

(a) immediately after sub-article (9) thereof, there shall be added the following new sub-article:

“(9A) When the foreign confiscation order consists in the requirement to pay a sum of money, the court shall convert the amount thereof into Maltese currency at the rate of exchange ruling on the date of the decision ordering the enforcement.”; and

(b) in sub-article (12), in the definition “relevant offence”, for the words “(a), (b), (c) and (d)” there shall be substituted the words “(a), (b), (c), (d) and (e)”.

PART V

42. This part amends the Prevention of Money Laundering Act and it shall be read and construed as one with the Prevention of Money Laundering Act, hereinafter in this part referred to as “the principal Act”.

Amendment of the Prevention of Money Laundering Act. Cap. 373.

43. In the definition “money laundering” in article 2 of the principal Act:

Amendment of article 2 of the principal Act.

(a) in subparagraph (i) thereof, for the words “knowing that” there shall be substituted the words “knowing or suspecting that”;

(b) in subparagraph (ii) thereof, for the words “knowing that” there shall be substituted the words “knowing or suspecting that”; and

(c) in subparagraph (iii) thereof, for the words “the acquisition of property knowing that” there shall be substituted the words “the acquisition, possession or use of property knowing or suspecting that”.

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

(a) immediately after sub-article (2) thereof, there shall be inserted the following new sub-article:

“Direction by
the
Attorney
General.

(2A) (a) Every person charged with an offence against this Act shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall be liable –

(i) on conviction by the Criminal Court to the punishment of imprisonment for a term of not less than three years but not exceeding fourteen years, or to a fine (*multa*) of not less than Lm10,000 (ten thousand liri) but not exceeding Lm1,000,000 (one million liri), or to both such fine and imprisonment; or

(ii) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) to the punishment of imprisonment for a term of not less than six months but not exceeding nine years, or to a fine (*multa*) of not less than Lm1,000 (one thousand liri) but not exceeding Lm50,000 (fifty thousand liri), or to both such fine and imprisonment.

(b) Notwithstanding that the Attorney General has directed in accordance with the provisions of subarticle (1) that a person be tried in the Criminal Court, he may, at any time before the filing of the bill of indictment or at any time after filing the bill of indictment before the jury is empanelled, and with the consent of the accused, direct that that person be tried before the Court of Magistrates, and upon such direction the Court of Magistrates as a court of criminal judicature shall become competent to try that person as if no previous direction had been given. Where the Attorney General has given such new direction after the filing of the bill of indictment, the registrar of the Criminal Court shall cause the record to be transmitted to the Court of Magistrates, and shall cause a copy of the Attorney General’s direction to be served on the Commissioner of Police.

(c) Notwithstanding the provisions of article 370 of the Criminal Code and without prejudice to the provisions of subarticle (2), the Court of Magistrates shall be competent to

try all offences against this Act as directed by the Attorney General in accordance with the provisions of subarticle (1).”;

(b) the present provision of sub-article (5) thereof shall be renumbered as paragraph (a) thereof and for the words “by the court:” there shall be substituted the words “by the court even if in the case of immovable property such property has since the offender was charged passed into the hands of third parties, and even if the proceeds of property, movable or immovable, are situated in any place outside Malta:”;

(c) immediately after paragraph (a) of sub-article (5) as renumbered, there shall be inserted the following new paragraphs:

“Forfeiture of proceeds.

(b) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine shall be recoverable as a civil debt and for this purpose the sentence of the court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

Cap. 12.

Forfeiture of property derived from criminal activity.

(c) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.”; and

(d) immediately after sub-article (6) thereof, there shall be inserted the following new sub-article:

“(7) The provisions of Article 248E(4) of the Criminal Code and those of article 22(3A)(b) and (d) of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to the offences under this Act.”.

45. Article 4 of the principal Act shall be amended as follows:

Amendment of article 4 of the principal Act.

(a) in the proviso to sub-article (10) thereof, for the words “property in question.” there shall be substituted the words

“property in question:” and immediately thereafter there shall be inserted the following new proviso:

“Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.”; and

(b) in sub-article (11) thereof, for the words “from the date on which it is made, in which case the Attorney General shall, by notice in writing, inform the suspect and the garnishees in the manner provided for in sub-article (9),” there shall be substituted the words “from the date on which it is made;”.

Amendment of
article 6
of the principal Act.

46. In article 6 of the principal Act, for the words “null and without effect at law.” there shall be substituted the words “null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the person charged the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.”.

Amendment of
article 7
of the principal Act.

47. In sub-article (1) of article 7 of the principal Act, for the words “under article 3(3)” there shall be substituted the words “under article 3(5)”.

Passed by the House of Representatives at Sitting No. 602 of 12th December, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives