

OBSERVING THE RULE OF LAW AND THE STRENGTHENING OF JUDICIAL SYSTEMS IN MALTA

MARCH 2021

In the past 15 months, the Maltese Government has implemented substantial changes to further strengthen the rule of law in Malta.

The government also implemented significant reforms to strengthen democracy and the institutions that deliver it.

These include the following milestone achievements:

- The Commissioner of Police was appointed after a public call by the Public Service Commission, and following the approval by Parliament's Public Appointments Committee in line with a revised Police Act;
- Major Constitutional and Institutional reforms were implemented, with the endorsement by the Venice Commission, which have led to the Prime Minister relinquishing his power to appoint members of the judiciary, amongst other important legislative amendments;
- The Chief Justice will also be appointed following a two-thirds majority vote in Parliament;
- The President of the Republic will now be appointed following a two-thirds majority in Parliament rather than a simple majority. This is an important step taking into account the newly assigned executive powers with regard to the appointment of judges and magistrates.
- Such appointment will take place after having received three recommendations from individual members of the Judicial Appointments Committee.

NEW LEGISLATIONS RELATED TO THE STRENGTHENING OF THE INSTITUTIONS

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- The security of **tenure of the Attorney General**, along with the newly created **constitutional role of the State Advocate** was reinforced. Apart from enjoying the same tenure as the judiciary, they may now only be removed from their role following a two-thirds approval from Parliament;
- **The powers of Malta's main institutions** are being enhanced further. The Permanent Commission Against Corruption; the Office of the Commissioner for Standards in Public Life; the Office of the Auditor General; and the Office of the Ombudsman has the power by law to report any sort of corrupt practice directly to the Attorney General, as well as being considered as injured party in case of no prosecutions;
- Apart from the statutory reinforcement of the **Permanent Commission Against Corruption**, investments have been made to provide this entity the necessary funds and resources requested by the Permanent Commission Against Corruption (PCAC), including new premises. The PCAC is consequently undergoing a capacity building process.
- **Prosecutorial functions in specified serious crimes** were transferred to the Office of the Attorney General from the Malta Police Force, thus creating an important and more noticeable distinction between the roles of investigator and prosecutor;
- **A new Attorney General and a new State Advocate** were also appointed following public call and a report by an Appointment Commission.
- **Permanent Secretaries within the public service will** be appointed by the President of the Republic after having received recommendations from Cabinet Ministers who would have consulted the Public Service Commission before submitting their recommendation;
- **The Principal Permanent Secretary** will be appointed by the President of the Republic after having received recommendations from Cabinet Ministers who would have consulted the Public Service Commission before submitting their recommendation.

LEGISLATIVE WORK RELATED TO THE FIGHT AGAINST ORGANISED CRIMES AND MONEY- LAUNDERING

MARCH 2021

- Act V of 2021 was recently enacted by Parliament, known as the **Proceeds of Crime Act**. This Act provides for the recovery of proceeds of crime. The Act set up and restructure the Asset Recovery Bureau also defining the structure of the said Bureau and defining its relationship with and independence from the Government. The Act also provides the basis for the harmonisation of the procedures enacted under various laws in respect of proceeds of crime;
- The Proceeds of Crime Act also establishes a section of the Civil Court for the purpose of regulating disputes relative to **the confiscation of the proceeds of crime** and for civil procedures for the recovery of assets constituting proceeds of crime;
- Act VIII of 2021 - Various Revenue Acts (Amendment) Act, are amending a number of provisions in the revenue acts in order to strengthen the powers of the Commissioner for Revenue in the **fight against tax evasion** by giving more powers of investigation and allowing for the sharing of information;
- Act L of 2020 - Company Service Providers (Amendment) Act, is amending the **Company Services Providers Act** in order to further strengthen the regulatory framework in relation thereto;
- **An Act to regulate the legal profession**, with amendments in the Cap. 12 – the Code of Organisation and Civil Procedure together with the strengthening of the Commission for the Administration of Justice;
- The Cash limitation legislation in LN 81 of 2021 under the Prevention of Money Laundering Act providing **for limitation of €10,000 in cash payments**;

ONGOING EFFORTS TO ACHIEVE MORE EFFICIENCY IN THE COURTS AND THE JUDICIAL SECTORS

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- A recruitment process leading to the largest number of Judges and Magistrates that ever served in Malta's Judicial Bench is under way. The process is coordinated by the Judicial Appointments Committee in line with the constitutional amendments instituted last year. The process is for the **appointment of 4 new Magistrates and 4 new Judges**;
- This is complimented by the **recruitment of the necessary support staff**, including an additional 17 deputy registrars (around 14% increase) and around 30 clerical staff (around 28% increase).
- Extension in the **retirement age of the Chief Justice, Judges and Magistrates** from 65 to 68 upon their free own will;
- A new Parliamentary Act aims to reduce the **backlog of cases** before the Court of Appeal. This is being progressed in the House of Representatives through Bill 166;
- A new Bill is being drafted to continue the reform in the **field of criminal justice**. The Bill shall introduce a disclosure and pre hearing process and to remove the inquiry phase in order to reduce the delays in criminal proceedings;
- An investment is currently underway for the **extension of the Court building** that shall be providing 4 new court halls and 25 new offices; there are currently eight chambers fully equipped for digitalised proceedings. By the end of 2021 the plan is to have all chambers fully digitalised;
- Preparations of **Malta's first Digital Justice Strategy** are under way;
- New offices and increase in budgets for **the mediation centre** with also the provision of new professional mediators;
- New offices and investment in **Human Resources in the Legal Aid Agency**, through also the recruitment of more lawyers;

SIGNIFICANT IMPROVEMENTS IN COMBATting MONEY LAUNDERING AND TERRORISM FINANCING

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A) Training and Development

- In September 2020, the Financial Crimes Investigations Department relocated to new premises in Santa Venera. The new premises have better **training facilities**.
- In line with its new Code of Ethics and Anti-Fraud and Corruption Strategy, the Malta Police Force is to provide training in corruption prevention, ethics integrity and professional standards. **Specialised training on anti-money laundering and counter terrorism financing** was given to more than 95 police officers to further enhance the awareness of money laundering and terrorism financing risks and how to have more effective investigations.
- The FIAU created a specialised unit that offers **education and training** services to employees within the financial services industry and beyond, to increase overall awareness and understanding of prevention, mitigation, identifying red flags and the risks implications of money laundering and terrorism financing.
- Training on anti-money laundering and counter terrorism financing has been given to address ongoing fitness and proper checks by the **dealers in precious metals and stones (DPMS) and to real estate agents**.

B) Risk Assessments

Sector-based risk assessments were carried on:

- Terrorism Financing
- Legal persons and Legal Arrangements and Voluntary Organisations
- Virtual assets

C) Enhanced cooperation between local entities and their foreign counterparts

Malta has **47 Memoranda of Understanding (MoUs)** in place between the competent authorities that enhance further cooperation and information sharing.

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D) Investment in human resources and skills

The **human resources capacity** in the competent authorities have increased substantially between 2018 to 2020:

- An expansion of almost 80% in the human resources at the Financial Crimes Investigation Department (**FCID**), growing from 34 to 98 members of staff operating from new offices and facilities.
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- An increase of around 128% in the **FIAU's human resources**.
- An increase of around 90% in the **MBR's human resources**.
- An increase of around 41% in the **MFSA's human resources**.

Between January and September 2020, **MFSA carried out 100 inspections** more than it did in the same period of the previous year.

E) Investigations and Prosecutions

The top priority for the FCID (Police Force) in 2020 was to **bolster its Anti Money Laundering Unit** which grew from 4 investigative teams to 12 investigative teams. A new team was established to **investigate tax crimes** whilst 8 other teams operate within the Financial Crimes Investigations Department investigating other crimes such as fraud and corruption.

This means that the police force now has **95 officers** assigned to the Department tasked with **investigating financial crime**, a **63%** increase in human resources since December 2019.

The Unit is now the **largest Investigative Unit** within the Malta Police Force and now comprises of **4.4% of the total workforce**.

SIGNIFICANT IMPROVEMENTS IN COMBATTING MONEY LAUNDERING AND TERRORISM FINANCING

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- The total Suspicious Transaction Reports received by the FIAU increased by **208%** from 2018 to 2020.
- The number of cases prosecuted for stand-alone money laundering increased from 1 in 2018 to 12 by 22nd March 2021.
- The number of legal persons prosecuted for money laundering increased from nil to 20 by 22nd March 2021.
- The number of natural persons prosecuted for stand-alone money laundering increased from three in 2018 to 24 by 22nd March 2021.
- The number of legal persons prosecuted for stand-alone money laundering increased from nil to 18 by 22nd March 2021.
- The Police Force investigated a total of 138 persons on money laundering offences in 2020 alone.
- The Customs Department recorded an increase in cases of undeclared cash from 10 in 2018 to 36 in 2020. This resulted in an increase in confiscated cash of 222.5% from 2018 to 2020.
- Statistics related to Money Laundering Prosecutions till 22nd March 2021

	2018	2019	2020	2021*
Number of Cases	10	9	21	8
No. Of Persons (Physical and Legal) Prosecuted for ML	28	13	48	42
No. Of Legal Persons prosecuted for ML	0	1	17	20
No. Of Cases prosecuted for stand-alone ML	1	0	11	1
No. Of natural persons prosecuted for stand-alone ML	3	0	20	4
No. Of Legal Persons prosecuted for stand-alone ML	0	0	17	1

**till 22nd March*

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F) High profile prosecutions on Money Laundering case

- 11 people were brought before the Courts of Magistrates in a **high profile prosecution on fraud and money laundering** in March 2021;
- Such prosecution was coordinated between the Malta Police Force and the Office of the Attorney General;
- Investigations were led by the **Economics Crime Squad** of the Malta Police Force;
- 10 out of the 11 prosecuted persons were **denied bail** and are being kept under arrest at the Corradino Correctional Facility;
- The investigations were carried following the conclusion of two Magisterial Inquiries;
- The prosecutions involved a former chief of staff in the office of the prime minister and prominent figures from the financial sector;
- In a separate case from the above, an auditor is being accused of being the brains behind the **laundering of illicit funds** for an organised criminal group allegedly involved in fuel smuggling together with Libyan militias and the Italian mafia;
- The auditor is being linked to a **multimillion euro fuel smuggling ring** out of Libya allegedly involving former Malta two other prominent persons. The two persons are also on preventive arrests;