The Government of Malta – Response to the European Parliament's Mission Report dated 11 January 2018

1. Introduction

The Maltese Government (the "**Government**") wishes to make clear at the outset that it is open to discussion on the improvement of its political, judicial and prosecution institutions, and welcomes recommendations which would lead to better governance. It has serious concerns, however, that many of the recommendations proposed in the Mission Report will not effectively serve this function as they are based on a report which fails to paint a true picture of the Government, media and regulatory bodies. The Government's key aim in providing this response is to open a constructive dialogue with the European Parliament so that, together, we can work towards a better Malta.

Summary

The Government's main observations on the Mission Report are as follows:

1. The Report shows a fundamental lack of understanding as to the roles of the various institutions in Malta which it describes, how those institutions perform their duties and their powers under statute.

2. Significant elements of the information relied on by the Members in drawing up their recommendations is out of date and/or inaccurate.

3. Criticisms are made of constitutional structures within Malta, or of decisions made by the Maltese government, even though other Member States operate similar systems or have made identical decisions.

4. The Government has brought about a significant amount of reform in the past 5 years and continues this work with dedication and diligence; this has not been sufficiently drawn out in the Mission Report.

5. Confidential information relating to the work of a criminal intelligence body (the FIAU) was disclosed in the Mission Report without any prior authorisation.

Note

Malta has certain doubts as to the legality of the ad-hoc delegation in view of its composition and the manner in which it operated. It did not wish those concerns to hold up its response to the factual allegations made in the Mission Report, but Malta reserves all and any rights in this respect.

2. The Attorney General's powers under Article 4 of the Maltese Prevention of Money Laundering Act

The Mission Report appears confused regarding: (1) what an investigation order is and when it can be obtained; and (2) the Attorney General's powers under Article 4 of the Maltese Prevention of Money Laundering Act 1994 (the "Money Laundering Act") in respect of investigation orders.

The Money Laundering Act

Article 4(1) of the Money Laundering Act defines an investigation order as:

> *"Where, upon information received, the Attorney General has **reasonable cause** to suspect that a person (hereinafter referred to as "the suspect") **is guilty** of the offence mentioned in Article 3, he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporated) named in the order who appears to be in possession of particular material or material of a particular description which is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with, the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order have the power to enter any house, building or other enclosure for the purpose of searching for such material."* (emphasis added)

Article 4(7) of the Money Laundering Act refers to the court's involvement in the granting of an investigation order:

> *"Before making an investigation order or an attachment order, the court may require to hear the Attorney General in chambers and shall not make such order –*
>
> *(a) Unless it concurs with the Attorney General that there is reasonable cause as provided in sub article (1); and*
> *(b) In the case of an investigation order, unless the court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates –*
>
> *(i) Is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and*
> *(ii) Does not consist of communications referred to in sub article (3)(a)* [i.e. communications covered by legal privilege or those between clergyman and confessor]*."*(emphasis added)

The Attorney General's powers under the Money Laundering Act

The main points to draw from the legislation are:

1. An investigation order is for the collection of material evidence; it is not an order to request the police to initiate an investigation. A police investigation would ordinarily be in progress before an investigation order is requested. Contrary to the suggestion in the Mission Report, the Attorney General has no power at all to 'press charges' nor to require the police to investigate alleged crimes.

2. As set out in article 7(b), the court will only grant the application for an investigation order when the evidential material requested is shown to be *"of substantial value (whether by itself or together with other material) to the investigation"*. There are two points to make on the interpretation of this statutory requirement: (1) prior to the grant of an investigation order there needs to already be an ongoing police investigation; and (2) in order for the Attorney General to identify with the requisite specificity the material which is of substantial value, the ongoing investigation must be reasonably advanced.

3. The Attorney General is only able to take steps to obtain an investigation order when he *"has **reasonable cause** to suspect that a person…**is guilty** of the offence"*. The investigation order will only be granted by the Court when it is satisfied that there is *"reasonable cause as provided in sub article (1)"* – which is that there is suspicion that a person is guilty.

Media Reports on Money Laundering

The Mission Report appears to criticise the Attorney General for not approaching the court for an investigation order on the back of various news articles alleging money laundering by Politically Exposed Persons. Investigation orders are highly intrusive and it is for that reason that they are only granted by the court and only in circumstances where the threshold of reasonable cause has been met. Therefore, the Attorney General will only make a request for an investigation order on the basis of a dossier of evidence, and not mere media reports. It is worth noting that media reports may spark a police investigation into an individual or organisation but, as set out above, such an investigation is not instigated either by the Attorney General or via an investigation order.

3. The Appointment and Dual Role of the Attorney General

The Attorney General's Appointment

Since Malta's independence in 1964, and even before that, when an Attorney General vacancy arises, the Attorney General appointed has always been the most senior lawyer in the Office of the Attorney General (normally the Deputy Attorney General). Therefore, whilst the Prime Minister is free to appoint any practising lawyer with at least twelve years' experience to the office of Attorney General, in practice, there has invariably been only one clear candidate. This ties in with the fact that the Attorney General's tenure does not come to an end upon a change of government; the Attorney General enjoys security of tenure until retirement age equivalent to that of a judge (unless he is guilty of misbehaviour or finds himself unable to act). The

appointment of the current Attorney General provides a clear example of how this works: Peter Grech was appointed as Attorney General on 9 September 2010 when the Nationalist Party was in Government; and on 9 March 2013 the Labour Party was voted into Government, yet Mr Grech remains in his post to this day.

For the reasons set out above, the Attorney General appointment procedure is transparent, fair and free from bias or political persuasion. The Office of the Attorney General has never suffered incidents of bribery or allegations of corruption and the Office enjoys high levels of public confidence (this fact has been recognised in the GRECO Fourth Evaluation report on Malta).

The Dual Role

The fact that the Maltese Attorney General wears two hats is common in other Member States, and does not impact in any way on his ability to properly and impartially perform his role.

Whilst the Attorney General is both the legal advisor to the Government and the public prosecutor, the Office of the Attorney General is divided into two separate units which perform the two separate functions. Those lawyers who work as prosecutors do not give constitutional or civil advice to the Government, and vice versa.

In the Attorney General's role as legal advisor to the Government, the Attorney General acts as guarantor for the legality of government actions, and not as a private lawyer to Ministers or other Politically Exposed Persons. The Attorney General's function as legal advisor to Government is no obstacle to his prosecuting function and does not suffer any interference by Government in prosecutions. Proof of this is the many prosecutions of those holding public office with the Government, including in the current administration. By way of example:

1. In June 2013, the Attorney General appealed a not guilty judgement of the Court of Magistrates dated 31 May 2013 (*Police vs. X* case number 850/11) in respect of allegations against a strong Labour candidate for the 2014 European Parliament. The appeal was upheld and the accused was found to be guilty by a judgment of the Court of Criminal Appeal made on 8 May 2014. The individual subsequently withdrew his candidature.

2. After the police sought the advice of the Office of the Attorney General, charges were brought against the Minister for Justice relating to a road traffic accident involving the Minister's private vehicle. The Minister for Justice was subsequently found not guilty.

Furthermore, in his role as constitutional advisor, the Attorney General has taken opposing positions to those taken by the party in Government or its close political allies. Two of the most notable are: (1) Application No. 57/2015 *"Perit Daniel Micallef noe et vs. Attorney General and Others"*; and (2) Application No. 33/2017 *"General Workers Union vs. Attorney General and Others"*.

The Government notes that there was no complaint or criticism of the Attorney General's dual role when Malta acceded to the Council of Europe, to the European Union or to the European

Convention of Human Rights. Furthermore, Malta is not the only member of the EU to have an Attorney General serving a dual role. For example, in the UK the Attorney General oversees the Crown Prosecution Service, the Serious Fraud Office and the UK Government Legal Department.

4. The Finance Intelligence Analysis Unit ("FIAU")/Pilatus Bank

This response should be read in conjunction with Malta's answers to the questionnaire sent to the Members, provided as Annex 3 to this Response. Malta's answers provide significant detail in respect of the role and structure of the FIAU, its powers and statistics relating to its work.

The FIAU is a highly effective organisation and carries out its work with diligence. This is reflected in the Mission Report by reference to the FIAU's investigations into Pilatus Bank and various reports produced by the FIAU identifying money laundering.

The criticisms which are levied against the FIAU appear to be based on a fundamental lack of understanding by the Members as to what the FIAU does and inaccuracies/omissions in the report.

Compliance Reports versus Analytical Reports

The Members appear to allege that by not providing compliance reports to the police, the FIAU is failing to report instances of money laundering, therefore curtailing investigations which could lead to criminal convictions. In this regard the Members refer to FIAU compliance reports which did not reach the police, but were leaked to the public. The Members also ask why the police did not start investigations based on the leaked compliance reports, insinuating that the police are not doing their jobs either.

In fact, compliance reports are never sent by the FIAU to the police; they are reports produced following the carrying out of supervisory work of an *administrative* nature. The reports may record breaches or potential breaches of AML/CFT legislation which can be dealt with administratively by the FIAU (which can now impose pecuniary penalties of up to EUR 5 million).

Article 16(1) of the Money Laundering Act provides that the FIAU is to send an **analytical report** (not a compliance report) to the Commissioner of Police if the FIAU *"has reasonable grounds to suspect that the transaction or activity is suspicious and could involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity."*

Therefore when the Mission Report refers to the police maintaining that the *"leaked FIAU reports were not backed by subsequent reports"*; this means that no subsequent **analytical report** was produced by FIAU and sent to the police. The Government does not interfere in the work of the FIAU, but the logical conclusion from the absence of an FIAU analytical report is that the FIAU concluded that it did not have reasonable grounds to suspect criminal activity. In circumstances such as those it would clearly be a waste of police resources to investigate.

The leaked *compliance* reports referred to relate to compliance breaches by Pilatus Bank which were subsequently remedied, and there is another compliance report recording that remedy.

The FIAU is an Intelligence Agency

Not all analytical reports made by the FIAU will necessarily lead to a criminal conviction. The FIAU is an intelligence agency; it does not conduct criminal investigations, as those are a matter for the police. Criminal investigations are invariably more challenging than FIAU intelligence investigations as the burden of proof to convict is "beyond all reasonable doubt" and the evidence gathered by the police to support a conviction needs to stand up to the scrutiny of the Court process.

The Maltese police force have been criticised for failing to investigate Maltese PEPs on the back of FIAU analytical reports sent by the FIAU to the police (or leaked)[1]. The Government does not interfere with the work of the police, and is not privy to its detailed reasoning in respect of individual decisions as to whether or not to prosecute. It can only infer that on police consideration of the FIAU reports there was simply not enough in the way of evidence to launch a full criminal investigation against the individuals in question. Examples referred to elsewhere in this document demonstrate that the Maltese police and other authorities have not been slow to progress prosecutions and/or investigations into politically sensitive matters. Furthermore, the Government understands that the police have assessed all information collected on all individuals involved in the Panama Papers and that information remains under review and on file.

The Government has every confidence in the Maltese police force and continues to support it by expending significant resources in strengthening the force, with a particular focus on growing the Money Laundering and Economic Crimes Unit.

The Speed of Investigations

The Mission Report questions why the prosecution of the Russian whistle-blower Ms Maria Efimova moved fast, whilst investigations concerning senior Government officials named in the Panama Papers and under suspicion based on the leaked FIAU reports are said to be moving slowly. The answer is simple: the allegations against Ms Efimova were of a straightforward nature (an illegitimate expense claim) and the evidence was unequivocal. In contrast, the allegations of money laundering and corruption are complex and the evidence is nuanced. If challenging investigations are rushed then mistakes will be made and the police would no doubt be criticised more.

The September letter from FIAU

[1] Page 27 of the Mission Report on *"AML"* sets out that *"none of the FIAU reports regarding Maltese PEPs were investigated by the Police, even though the FIAU concluded that "a reasonable suspicion of money laundering and/or the existence of proceeds of crime subsists" in the case of the Prime Minister's Chief of Staff, Mr Keith Schembri, in relation to the Individual Investor Programme and his link to NEXIA BT's Brian Tonna. The reports had been forwarded to the police "for any action the police may consider appropriate"".*
Page 28 of the Mission Report on *"AML"* sets out that *"The leaked +/- 130 pages "working document" of the FIAU on Minister Konrad Mizzi (of which 4 pages of conclusions were leaked) did not yet lead to an investigation.*

There are several notable inaccuracies/omissions in the Mission Report's account of the events which led to the FIAU issuing the letter in September 2016 to Pilatus Bank.

Following an on-site visit to Pilatus Bank, the FIAU raised multiple compliance concerns and produced an initial findings compliance report in May 2016. In response to this report, Pilatus Bank contested the initial findings and substantiated its submissions with two external audit reports produced by KPMG and Camilleri Preziosi Advocates (a law firm). In light of Pilatus Bank's response (supported by the two external audit reports), the FIAU and MFSA carried out a further on site examination. During this further examination, additional documents were made available to the FIAU and MFSA which were not provided on the first visit.

By letter dated 26 September 2016, the FIAU confirmed that the shortcomings identified in the first visit were no longer present, but expressed concern that information found on site during the follow-up visit was not available during the first visit. The FIAU explained to Pilatus Bank that this concern would be kept on record and that FIAU reserved the right to carry out future supervisory work. Any contention by the Members that the FIAU were unconcerned by the Pilatus Bank activity and just "closed the case" is wholly inaccurate. Pilatus Bank remains under surveillance by FIAU and as long as it is operating as a bank, it always will do.

The Mission Report states that *"Members also asked about the timing of the FIAU letter stating Pilatus was compliant, as it coincided with the resignation of the then head of the FIAU, Mr. Manfred Galdes"* – however the Mission Report fails to record Malta's reply. The Government's response is that the two are entirely unrelated.

5. The Commissioner of Police

The Mission Report calls into question the Commissioner of Police's independence. The allegations are raised in the context of a perceived failure to investigate suspicions of money laundering raised in FIAU reports relating to the Prime Minister's Chief of Staff. It is inferred that this perceived failure has something to do with the Commissioner of Police being appointed by the Prime Minister. This allegation is baseless for two reasons:

1. As explained in detail above: there was no ***failure*** to investigate. The Government understands that a decision was made by the police to not launch a full investigation due to insufficient grounds provided in the FIAU reports to warrant a full criminal investigation.

2. To say that the Commissioner of Police is appointed by the Prime Minister is an artificial explanation of the process. The Commissioner of Police has always been appointed from amongst the longest serving and highest ranking police officers, who will have served under different administrations. The only exception in the last 50 years was for a short period in 1987-1988 when the newly elected (Nationalist Party) administration brought in the Head of the Armed Forces to take charge of the police force.

The current Commissioner of Police, Mr Lawrence Cutajar, began as a Constable in the police in 1979. By 2000 Mr Cutajar rose to the rank of Superintendent and in February 2014 he was promoted to Assistant Commissioner and given charge of the Police Immigration Branch. On 1 August 2016, Mr Cutajar was appointed as Commissioner of Police; after 37 years in the police force.

6. Media

The Media Bill

The Mission Report recounts discussions with journalists relating to the defamation and libel laws in Malta. The law is changing. The latest Bill on the updating of the regulation of media and defamation matters is dated 22 November 2017 and provides a framework modelled largely on the UK's Defamation Act 2013, which was introduced in the UK in order to strengthen the protection of free speech. The latest Bill is a significant step towards providing safeguards for free press and freedom of expression which Malta sees as essential to the state as a whole.

The regulation of the media is an extremely difficult task and one which is being hotly debated in governments all over the world, not least the European Parliament. However, instead of facilitating a debate with Maltese journalists about the current Bill and possible improvements in the drafting, it appears that the discussion led by the ad-hoc delegation of MEPs was focused on the past. We do not understand the relevance of criticisms based on old laws or earlier versions of the Bill; by definition a "Bill" is a draft tabled for discussion by the legislature. The Government's focus is on improving its media and defamation laws; it is discussing its legislative changes openly with relevant stakeholders and moving forwards towards further guaranteeing a free and safe media.

Broadcasting

The Mission Report attacks the independence of broadcasters and newspapers by stating they are *"owned by political parties"* and *"under the control of the government"*. This is a further example of a lack of proper research and a deeper analysis of facts.

The ownership of certain broadcasters by political parties in Malta stemmed from a historic distrust between the right and left. Historically, broadcasters were therefore set up by those both in Government and in Opposition to ensure that the people of Malta heard both sides' views. Whilst some broadcasters remain owned by political parties (each political party owns one radio and one television broadcasting service), all other radio and television broadcasting services belong to either the public service broadcaster (of which there are two radio and two television broadcasting services), or are privately owned and run. The public broadcaster is bound by a legal duty of impartiality in matters of political or industrial controversy. In order to ensure such neutrality is maintained, the public broadcaster employs journalists from the whole political spectrum and is regulated by the Broadcasting Authority (which is a regulatory authority established by the Constitution). Media plurality is secured by the range of different ownership interests in the major Maltese broadcasters and the majority of programming is politically neutral.

7. The Caruana Galizia Murder

The Mission Report refers to "*concerns on the absence of protection measures for Daphne Caruana Galizia*". As the delegation is well aware, Ms Galizia was offered police protection but it was refused. If the Mission Report is suggesting that a journalist should be subject to police protection against their will then we would consider this a dangerous step in terms of media freedom.

The police investigation into Ms Galizia's murder was the most intensely worked and costly that Malta has ever seen. The investigation was extremely complex and had the pressure of the world watching, but despite that the Maltese police charged three individuals with murder and with being members of a criminal organisation on 5 December 2017. A pre-trial hearing took place on 19 December 2017 during which evidence was presented to the Court by the police. During the hearing all three suspects pleaded not guilty and the Magistrate ordered that the suspects were to face a full trial on the basis of the evidence before her. The Attorney General must now draw up the precise charges with a full trial set to take place as soon as the committal proceedings are completed.

8. Mr. Ferris

As a matter of national security, all FIAU officials and employees (both past and present) are bound to strict confidentiality obligations. Criminal intelligence agencies across the world operate under confidentiality obligations, and the Maltese FIAU is no different. As such, the Government is unable to confirm the veracity of any statements made by Mr Ferris concerning FIAU and its case work. Mr. Ferris' statements are his personal account and cannot be taken to reflect the FIAU's position.

9. Non-Government Organisations

All participants in the round table discussion with non-government organisations (of which there were many) are either former activists of the Nationalist Party, which is the Government's main opposition party, or are known to be sympathetic to its political views. Whilst that is not a reason to discount their views necessarily, it should be noted that this is not a diverse group and certainly not representative of all *"non-government organizations active in the field of Rule of law and the fight against corruption"*.

Despite the polarised political stances of the participants and the Government, we note that during the interview *"trust was expressed in the judiciary system and in particular in magistrates and courts"*.

10. The Judiciary and Justice Reform

Judicial reform, including Constitutional amendments, has been a focus of the Government since 2013. This has resulted in significant improvements in legislation concerning the appointment of members of the judiciary and maintaining judges' impartiality. Such continuing

improvements are a demonstration of the importance the Government places on upholding the rule of law in Malta.

We refer to Annexes 1 and 2 to this response, which provide detailed information on the position of the judiciary under the Constitution of Malta and the various legal and practical measures taken in the justice sector to strengthen the rule of law in the last five years:

Annex 1: The process of Justice Reform and Other Democratic Reforms in Malta

Annex 2: The Position of the Judiciary

11. Other Subsidiary Issues

Separation of Powers: The Government refutes any suggestion that Malta has *"unclear separation of powers"*, implying systematic interference by the Executive with the judiciary. Cases involving human rights follow the judgments of the European Court of Human Rights and several cases are decided against the Government every year. Furthermore, a Constitutional Court granted the Opposition party two additional seats in Parliament, clear evidence that the judiciary is entirely independent from the Government.

Implementation of anti-money laundering legislation: The Government has expended significant resources on strengthening the police force and FIAU. Some of those resources have been deployed in significantly increasing the work force in the Money Laundering and Economic Crimes Units in the police force. This continues to be a primary focus of the Government.

The impartiality of civil service appointments, including the FIAU: civil service appointments are made by the Public Service Commission (a constitutional body). The Board of Governors of the FIAU is appointed from the Office of the Attorney General, The Malta Financial Services Authority, the police and the Central Bank. FIAU employees are offered jobs pursuant to an open call guaranteeing equality of access to employment. The process is mandated by Article 110(6) of the Constitution of Malta, and is the same for all other public sector organisations.

The Individual Investor Programme ("IIP"): This programme has been given the provocative name of "Sale of Passports" in the Mission Report. The grant of citizenship under the IIP is subject to very strict due diligence processes. Those granted passports will have come under detailed scrutiny and are subject to limitations which relate to "good conduct" requirements. It is also worth noting that programmes such as the IIP are not unique to Malta; with the appropriate checks and balances these schemes can improve societies by increasing diversity.

Malta's compliance with the European Anti-Money Laundering Directive: As of December 2017, this Directive is fully implemented in Maltese law. The European Anti-Money Laundering Directive was transposed through the Prevention of Money Laundering

(Amendment) Act, 2017 (Act XXIX of 2017 enacted on 1 December 2017) and through the publication of five Subsidiary Legislation Instruments on 20 December 2017[2].

Malta's compliance with the Capital Requirements Directive: The Capital Requirements Directive was transposed through amendments to the Banking Act 1994 (Chapter 371 of the Laws of Malta), the Investment Services Act 1995 (Chapter 370 of the Laws of Malta), with twelve further Regulations and Banking Rules[3]. The EU Commission recently identified some issues with the legislation and the Malta Financial Services Authority is currently working on amending legislation in full co-operation with the EU Commission.

The Whistleblower Protection Act 2013: The Mission Report recommends that the Act should be revised to cover workers in the public sector. The Whistleblower Protection Act *is already* applicable to workers in the public sector, and has been since 2014. Furthermore, the Criminal Code puts in place procedures which make it possible for civil society organisations to provide evidence of white collar crime to the police and inquiring Magistrates.

Libyan Petrol: As far as the Maltese police are aware, the smuggling of Libyan petrol does not take place within the Maltese territory or territorial waters. The Maltese Judiciary, police and Trade Authorities are already fully cooperating with Italian and Libyan authorities in their investigations.

Malta's participation in the European Public Prosecutors Office ("EPPO"): The Government has no objection in principle to joining the EPPO and is in fact currently working on preparing the necessary preparatory work. The Government does wish to point out that joining to EPPO is purely voluntary and out of the 28 Member States, only 20 have joined the EPPO.

The Tax Compliance Unit: Annex 3 contains information regarding the Tax Compliance Unit. The Tax Compliance Unit handles tax-related investigations and is currently investigating 29 cases of tax related offences arising out of the Panama Papers, with another 20 cases at the pre-audit stage. The Government is committed to strengthening the Tax Compliance Unit and is currently looking into ways in which it can achieve this goal.

Magistrate Inquiries: The Maltese legal system provides a route for any person or organisation, even a private individual, to request that a judicial authority carry out an investigation into a

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[2] *The five Subsidiary Legislation Instruments are:* (1) LN 372/2017: Prevention of Money Laundering and Funding of Terrorism Regulations, 2017; (2) LN 373/2017 Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2017; (3) LN 374/2017 Companies Act (Register of Beneficial Owners) Regulations, 2017; (4) LN 375/2017 Civil Code (Second Schedule) (Register of Beneficial Owners – Associations), Regulations, 2017; and (5) LN 376/2017 Civil Code (Second Schedule) (Register of Beneficial Owners – Foundations), Regulations, 2017.

[3] *The eight Regulations are:* SL. 204.06 Central Bank of Malta (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2013; SL. 371.05 Administrative Penalties, Measures and Investigatory Powers Regulations, 2015; SL. 371.11 European Passport Rights for Credit Institutions Regulations; SL. 371.15 Supervisory Consolidation Regulations, 2015; SL. 371.16 Banking Act (Supervisory Review) Regulations, 2015; SL. 371.13 Banking Act (Capital Adequacy) Regulations, 2012; SL. 370.15 Investment Services Act (Supervisory Review) Regulations, 2014; and SL. 370.25 CRD (Administrative Penalties, Measures and Investigatory Powers) Regulations, 2014.

The four Banking Rules are: Banking Rule BR/01 – Application Procedures and Requirements for Authorisation of Licences for Banking Activities under the Banking Act 1994; Banking Rule BR/07 – Publication Of Annual Report And Audited Financial Statements Of Credit Institutions Authorised Under The Banking Act 1994; Banking Rule BR/12 – The Supervisory Review Process Of Credit Institutions Authorised Under The Banking Act 1994; and Banking Rule BR/15 – Capital Buffers Of Credit Institutions Authorised Under The Banking Act 1994.

suspected crime. This access to the judiciary is open to anyone and requires no prior approval from the police, Attorney General or the Government. The Mission Report (page 27) refers to five such investigations.

Some of the Key Legislative and Constitutional developments in Malta since 2013 (in date order):

- Removal of the prescription of corruption offences committed by politicians. Implemented by: The Criminal Code (Amendment) Act, 2013 (Act IV of 2013) enacted on 14 June 2013; and The Protection of the Whistleblower Act, 2013 (Act VIII of 2013) enacted on 19 July 2013.

- Enacted various laws to grant wider civil liberties and gender equality. Implemented by:

    - Civil Unions Act, 2014 (Act IX of 2014) enacted on 17 April 2014;
    - Gender Identity, Gender Expression and Sex Characteristics Act, 2015 (Act XI of 2015 of 14 April 2015 as amended by Acts XX of 2015 and LVI of 2016);
    - Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, 2016 (Act LV of 2016) enacted on 9 December 2016;
    - Cohabitation Act, 2017 (Act XV of 2017) enacted on 7 April 2017;
    - Marriage and Other Laws (Amendment) Act, 2017 (Act XXIII of 2017) enacted on the 1 August 2017.

- Introduced the right of appeal from decisions of the Attorney General on the choice of court in case of arraignment for drug and money laundering crimes. Implemented by: The Various Laws (Criminal Matters) (Amendment No 2) Act, 2014 (Act XXIV of 2014) enacted on 1 August 2014.

- Reformed its drug laws to focus on assisting genuine victims of addiction. Implemented by: The Drug Dependence (Treatment not Imprisonment) Act, 2015 (Act 1 of 2015) enacted on 20 February 2015.

- Increased Trade Union Rights. Implemented by: The Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 (Act IV of 2015) enacted on 20 February 2015.

- Imposed the legal regulation of political party financing. Implemented by: The Financing of Political Parties Act, 2015 (Act XXIV of 2015) enacted on 28 July 2015.

- Prevented the lengthy detention of irregular migrants. Implemented by: The Reception of Asylum Seekers Regulations as amended by the Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations, 2015 (LN 417 of 2015) enacted on 11 December 2015; and The Procedural Standards for Granting and Withdrawing

International Protection Regulations, 2015 (LN 416 of 2015) enacted on 11 December 2015.

- Strengthened the rights of people with disabilities. Implemented by: The Equal Opportunities (Persons with Disability) (Amendment) Act, 2016 (Act XXIV of 2016) enacted on 10 May 2016.

- Introduced the rights of disclosure, translation and interpretation to suspects and those held under arrest. Implemented by: The Various Laws (Criminal Matters) (Amendment) Act, 2014 (Act IV of 2014) enacted on 18 March 2014 and the Criminal Code (Amendment) Act, 2016 (Act XXXVII of 2016) enacted on 19 July 2016.

- Liberalised its laws on artistic freedom. Implemented by: The Criminal Code (Amendment) Act, 2016 (Act XXXVII of 2016) enacted on 19 July 2016.

- Strengthened the Commission for Administration of Justice by entrenching it in the Constitution, establishing the Judicial Appointments Committee, and establishing the Committee for Judges and Magistrates as a completely independent organ within the judiciary (and only including members of the judiciary) to take charge of disciplinary cases involving members of the judiciary (see Annex 2). All of these measures were implemented by: The Constitutional Reforms (Justice Sector) Act, 2016 (Act XLIV of 2016) enacted on 5 August 2016.

- Introduced the right to be assisted by a lawyer during police interviews: Implemented by: The Criminal Code (Amendment No. 2) Act, 2016 (Act LI of 2016) enacted on 28 November 2016.

- Implemented the Fourth Anti-Money Laundering Directive and Capital Requirements Directive. Implemented by: The Prevention of Money Laundering (Amendment) Act, 2017 (Act XXIX of 2017) enacted on 1 December 2017 and the following five Legal Notices (Subsidiary Legislation Instruments) enacted on 20 December 2017:

    - LN 372/2017: Prevention of Money laundering and Funding of Terrorism Regulations, 2017;
    - LN 373/2017 Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2017;
    - LN 374/2017 Companies Act (Register of Beneficial Owners) Regulations, 2017;
    - LN 375/2017 Civil Code (Second Schedule) (Register of Beneficial Owners – Associations) Regulations, 2017; and
    - LN 376/2017 Civil Code (Second Schedule) (Register of Beneficial Owners – Foundations) Regulations, 2017.

- Recently passing a law providing for pre-appointment parliamentary hearings with respect to important public appointments to Ambassadorships and to leading roles in

regulatory authorities. This will be implemented by: an Amendment to the Public Administration Act, which received the final Third Reading in the House of Representatives on 30 January 2018.

Annex 1: The process of Justice Reform and Other Democratic Reforms in Malta

This Annex aims at giving a general description of various legal and practical measures taken in the justice sector, *inter alia*, to strengthen the rule of law, the separation of powers, the independence of the judiciary, the justice system and media freedom in Malta over the last five years.

From the onset of the administration elected in March 2013, the Government of Malta has given great importance to reform the justice system.

Both the general public and the business community expect an efficient justice system, which does not hinder the enforcement of individual rights and economic growth, but rather complements and facilitates them.

The Justice Reform Commission and the Stockholm Programme measures

By the end of 2013, the Justice Reform Commission presented a report containing 450 proposals for a wholesome reform in the Justice system.

At the same time the new Government had the duty to implement the pending measures from the Stockholm program which had not yet been implemented. The Government therefore embarked on a two-pronged exercise of implementing both the pending Stockholm program measures and proposals from the final report of the Justice Reform Commission in a consistent and expedited manner.

Concurrently, the Government kept all channels of communication open with the key stakeholders. Priority was given to proposals aimed at expediting legal procedures in the civil and criminal sphere and to those pending measures from the Stockholm program which was nearing the statutory deadlines for implementation.

New systems and new rights which have been introduced have already made a significant difference from a quantitative perspective (in terms of the efficiency of Court procedures) and from a qualitative point of view (in terms of new rights under law):

1. The right of disclosure upon arrest which gives people under arrest and those facing criminal proceedings the right to request access to the information held about them, normally by the police. This would enable the suspects to contest their arrest and better prepare their defence.

2. Prompt implementation of the relevant directives relating to Sexual Exploitation of Minors, Management and recovery of assets deriving from criminal activity, and those relating to new procedural rights (information and translation) in case of arrest.

3. The right of appeal from decisions of the Attorney General on the choice of court in 'either way' proceedings in case of arraignment for drug-related crimes. Prior to this introduction of a right of appeal, the Attorney General could unilaterally choose whether the accused was to be tried in the Court of Magistrates as a Court of Criminal Judicature or whether the accused should undergo a trial by jury in the Criminal Court. Accused persons have now been given a new right to appeal from the decision of the Attorney General. Moreover, a set of guidelines has been drawn up in order to regulate the exercise of the Attorney General's discretion in a foreseeable manner.

4. The implementation of the concept of plea-bargaining in all criminal courts. This possibility, previously only limited to the most serious offences, has been extended to

all criminal courts, thus expediting procedures. Through this concept, the accused and prosecution can propose a punishment which can be given by the Courts should the accused decide to plead guilty. The punishment to be awarded is subject to the agreement of the Court.

5. The implementation of the concept of early sentencing upon entering a guilty plea in committal proceedings without the need to undergo the whole committal process. Before this amendment was put into place, a person accused of a serious crime had to go through all the committal proceedings regardless of the plea which one registered during those proceedings.

6. Substantial reforms were implemented in the drug laws which focus on assisting the genuine victims of addiction as patients rather than treating them as criminals. With this reform, persons charged with simple possession for personal use of a small quantity of an illicit substance shall appear in front of a specialised board which will have the discretion to either impose fines or recommend rehabilitation programs;

7. The strengthening of the Witness Protection Program in order to incentivise key witnesses to volunteer information to the Police to crimes which may have been committed and which do not fall within the ambit of the Protection of the Whistleblower Act.

8. The implementation of the new Succession Regulation which greatly facilitates succession that involves an inter-state dimension as explained in the relevant Regulation.

9. The right to be assisted by a lawyer was extended to the interrogation stage, implementing the EU Directive **2013/48 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. This strengthens the rights of the accused or suspected persons whilst at the same time ensuring that justice is duly served.**

Other Legislative Amendments

Various Laws (Justice Reform) (Civil Procedure) Act

On 15 February 2016, the various Laws (Justice Reform) (Civil Procedure) Act was brought into force after being unanimously approved by the House of Representatives. In effect, this piece of legislation amends the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) to implement further proposals taken from the Justice Reform Commission Report, simplifying substantially civil procedure and increasing the remit of the Civil Courts.

In effect this Act:

- Increases the competence of the Small Claims Tribunal to EUR 5,000 (from EUR 3,494.50);
- Increases the competence of the Court of Magistrates (Civil Jurisdiction) to EUR 15,000 (from EUR 11,646.87);
- Facilitates the notification of judicial acts without the need to seek authorisation of the Courts in case of unsuccessful notification;
- Grants additional powers to the Court of Civil Appeals – to effect corrections in judicial acts without the need to send back the relevant case to the court of First Instance, to fast track cases which are apparently frivolous and vexatious, and to fast track cases in which the parties to the

case decide – on a voluntary basis – to restrict the submission of their pleas and counter-pleas to written submissions (as opposed to written and oral submissions);
- Facilitates judicial sales by auction;
- Facilitates the process of interdiction and incapacitations;
- Introduces the concept of *ex-tempore judgments* in the Small Claims Tribunal and in warrants of prohibitory injunctions; and
- Facilitates, as explained above, the cancellation of existing powers of attorney.

The Civil Code (Amendment No2) Act 2016

Another piece of legislation which was approved and brought into force on the 1st April, 2016, is Act XIV of 2016. This Act aims to facilitate procedures concerning the sale of immovable property held in co-ownership by a number of co-owners.

The Act was very well received by the public at large as it addresses a situation where immovable property is held in co-ownership and where the owners would find it difficult to agree on its terms of sale. This lack of agreement would lead to properties being left vacant and derelict. This legislation decreased drastically – to 3 years from 10 years or, in some cases, 5 years - the number of years for which the majority of the shareholders of the co-owned property had to wait before filing an application in Court asking it to authorise the sale of the property notwithstanding the objection of the minority, subject to the Court's ascertainment that the conditions of sale are fair and just.

The three year period had immediate application, meaning that any property which was held in co-ownership on the 1 April 2013 or any time before that could thereafter be sold in a more expedite manner. In a small island like Malta, this measure will certainly lead to important environmental sustainability benefits.

The Constitutional Reform (Justice Sector) Act, 2016 (Act No. XLIV of 2016)

This Act, decided upon unanimously by the House of Representatives, is based on three pillars:

- Transparency and Independence of the Judiciary
- Accountability of the Judiciary
- Enhancement of the conditions of the Judiciary

On the part relating to the accountability of the members of the Judiciary, special attention has been given to the need to respect the crucial principle that the Judiciary must be judged by its own peers.

As of 2015, one Judge and one Magistrate have been appointed following this new mechanism of appointment.

This Act:

- Strengthens the Commission for Administration of Justice by entrenching it in the Constitution;
- Introduces a Judicial Appointments Committee as a Sub-Committee of the Commission for the Administration of Justice composed of the Chief Justice, Attorney General, Ombudsman, Auditor General and President of the Chamber of Advocates, all sitting *ex*

officio. The Judicial Appointments Committee has the function of receiving and examining expressions of interest from persons interested in being appointed to the post of Judge or Magistrate other than persons occupying one of those positions and to keep a permanent register of such expressions; to conduct interviews or assessments of candidates; to advise the Prime Minister through the Minister responsible for Justice on its evaluation of such candidates; to advise (the Prime Minister when so requested) on persons who already hold an office as established in the Constitution with regard to their eligibility and merit to be appointed to an office in the judiciary; to advise on appointment to any other judicial office or office in the Courts as the Minister responsible fo Justice may from time to time request.

This effectively improves the current scenario whereby the members of the Judiciary are appointed directly by the President, acting upon the advice of the Prime Minister.

- Introduces a second sub-committee under the Commission for the Administration of Justice called "Committee for Judges and Magistrates", which shall consist of three members of the Judiciary elected by the judiciary itself. The Committee shall exercise discpline on Judges and Magistrates, having the right to issue warnings, impose pecuniary penalties on the Members of the Judiciary or suspend Judges and Magistrates from duty for breach of the provisions of the Code of Ethics for members of the Judiciary.

  This effectively improved on the previous scenario whereby members of the Judiciary, in the case of a breach of the Code of Ethics, could either be summarily warned by the Commission for the Administration of Justice or be referred to Parliament for impeachment with no effective middle ground to relatively serious breaches of the Code of Ethics which, however, do not merit impeachment.

- Incorporates the Members of the Judiciary (Pensions) Act which introduces the right to a service pension, and gratuity to members of the Judiciary and the Attorney General. This will vastly improve the conditions of employment of the Judiciary.

The criteria upon which the Judicial Appointment Committee evaluates the applicants were issued by the Committee itself with the approval of the Minister for Justice.

The criteria for eligibility are the following:

1. A number of years practicing as an advocate as established by the Maltese Constitution;
2. During the evaluation period, the applicant has to have a valid warrant that enables the applicant to practice as a lawyer in Malta and the applicant cannot be subject to any legal impediment to occupy a judicial role.

The criteria for evaluation are:

1. Capacity to express oneself in Maltese and English and to communicate in both languages in a clear manner;
2. Integrity, correctness and honesty in public and private life;
3. Knowledge of the law, procedure of the Courts and professional experience;
4. Hardworking, capacity to work under pressure, due diligence, analytical and decisive capacity;
5. Impartiality and independence;

6. Absence of involvement in commercial activities or business or a financial situation that casts doubt on the capacity of the person to hold judicial office;
7. Capacity to work in a team; and
8. Knowledge of the code of ethics for the members of the judiciary and willingness to undertake further professional and continuous development.

Modernisation of the Justice System

Concurrently, a number of new technological and procedural systems have been introduced to cut down on bureaucracy and delays in the civil courts.

1. Information sent to lawyers via SMS in case of postponements in the Civil Courts;
2. The transmission of decrees and transcripts of evidence of witnesses of the Civil Courts by e-mail to lawyers;
3. E-filing of applications in the Small Claims Tribunal and Appeals from those decisions. Later this was extended also to applications in the Adminsitrative Review Tribunal;
4. Email notification to lawyers and legal procurators of information as to whether summons to witnesses have been duly served or not;
5. Online access to acts, warrants and court case information available to legal professionals in the civil sphere;
6. Online access granted to citizens to view acts related to their case;
7. All these benefits of IT-improvements are given as a free service to legal practitioners and the general public;
8. An enhanced online facility for advocates and legal procurators to access all judicial acts linked to their names. This system aids legal professionals to virtually track of all acts presented in their names. A system of tagging the cases in which an advocate or a legal procurator has an interest, even though he/she may not be party to the case. The system automatically updates legal professionals with any developments relating to the case in question;
9. The introduction of the possibility for legal practitioners to update their contact details online with the introduction of the sixth phase of the 'Lecam' online case management system;
10. The introduction of an online register for testamentary searches was created in order to facilitate searches of public and secret wills;
11. An electronic register for the termination of mandates (powers of attorney) was created bringing to an end the cumbersome and unclear procedures previously invovled in such termination. With the introduction of the electronic register, an easier and more efficient process to terminate mandates came into existence. This also means that expenses involved to terminate mandates were reduced considerably from around €1,500 – 2,000 euro to a mere €50 euro; and

12. Fines imposed by the Magistrates or judges can now be paid online instead of being paid at the Court. This created an efficient system for the payee while at the same time ensuring that the identity of the individual is protected.

Additional technological tools are expected to be introduced. These include:

1. E-filing of appplications to legal entities in the Court of Magistrates. This initiative is a follow up of previous initiatives that continue to create a culture of electronic interactions with the Court.
2. Extension of the pilot project initiated in traffic sittings regarding notification of citations and witnesses to other halls. This will help reduce the backlog benefitting the citizen, the persons in the legal profession as well as the police department.
3. Electronic register listing companies and persons declared solvent will be created.

As of 1 May 2016, all acts presented to the First Hall of the Civil Court are being scanned in order to minimise space requirements, to facilitate access for both legal practitioners and parties, and to prevent any mishaps where the file is misplaced or at times lost.

In addition, as of the end of June 2016, legal practitioners can submit and pay online fees for judicial letters which do not require confirmation on oath. This will aid legal practitioners to present such acts instantaneously with more efficiency, without the requirement of their physical presence in the Court Registry.

Concurrently, the Government has also increased the physical space in the Law Courts with the opening of the new Judiciary Building which now houses the Judges' chambers. This was a decision undertaken not only to cater for the needs of the present Judiciary but also with the prospect of gradually and sustainably increasing the number of members of the Judiciary which currently amount to less than the average number of members of the judiciary per given unit of population in the EU. Moreover, the Judiciary requires infrastructure which enables the judiciary to hear more cases as well as to decide more cases. To facilitate this, three new halls are currently being built, one of which is already being used. For this to occur, it was necessary to relocate the Court Archives of the Civil Court from the Main Courts in Valletta to a place in Floriana as well as to relocate the training room and the library to make space for these three new halls. In addition, a new enlarged Family Court Registry was opened. This will provide ample space to increase the number of staff at the Court Registry and facilities for the legal profession and the public.

Analysis of Statistical Data

2016

Malta started analysing court data using the efficiency parameters employed by the Commission in the Justice Scoreboard. This process enabled the analysis of the efficiency trends since 2011 and their comparison with present performance.

2011 – 2016 annual data: Civil Courts

Clearance Rate

	2011	2012	2013	2014	2015	2016
Constitutional Court	120	80	139	85	110	100
Court of Appeal, Superior Jurisdiction	66	50	57	80	80	82
Court of Appeal, Inferior Jurisdiction	51	56	74	82	112	141
Civil Court, First Hall	104	113	115	103	106	102
Civil Court, Family Court	116	109	106	90	105	104
Court of Magistrates, Civil Jurisdiction	118	115	102	90	104	120
Administrative Review Tribunal	25	40	40	149	411	114
Small Claims Tribunal	120	117	100	123	123	106
Land Arbitration Board	103	167	536	137	115	562
Rural Leases Control Board	125	145	205	157	167	106
Rent Regulation Board	89	122	103	139	81	123
Overall CR	***99***	***99***	**98**	***102***	***112***	***107***

Disposition Time						
	2011	**2012**	**2013**	**2014**	**2015**	**2016**
Constitutional Court	332	451	257	394	301	254
Court of Appeal, Superior Jurisdiction	1192	1635	1674	1286	1539	1356
Court of Appeal, Inferior Jurisdiction	705	711	917	841	545	385
Civil Court, First Hall	1034	926	879	947	875	873
Civil Court, Family Court	791	525	576	677	528	503
Court of Magistrates, Civil Jurisdiction	835	765	908	958	843	782
Administrative Review Tribunal	1755	1463	2036	1408	495	1464
Small Claims Tribunal	345	377	445	284	156	252
Land Arbitration Board	2373	1119	835	1797	1857	290
Rural Leases Control Board	2245	1435	837	3020	1139	1521
Rent Regulation Board	1434	1202	1206	1030	1443	715
Overall DT	***831***	***777***	***834***	***812***	***668***	***703***

Following the excellent performance of the civil courts throughout 2015, 2016 shows a minor reduction in the overall efficiency of the same courts. The Clearance Rate across all civil courts (1st and 2nd Instance) decreased from 112% in 2015 to 107% in 2016, but this rate is still encouraging because for the first time since 2011, only one civil court registered a negative Clearance Rate below 100% (at the same time, this court registered the best Clearance Rate since 2011). Any Clearance Rate over 100% indicates that the courts are still resolving more cases than their incoming case load, testifying to the efforts of the judiciary to address the pending caseload. In fact, the most rewarding result achieved in 2016 relates to the reduction of the pending caseload beyond the 10,000 case benchmark. For the first time since data has

been collected in the year 2000, the civil courts closed 2016 with a pending caseload of 9815 cases. In all civil courts except one, there was a reduction in the pending caseload over that of 2015.

2016 also sees a minor increase in the length of proceedings, from 668 days in 2015 to 703 days in 2016. This increase in length of proceedings is not pervasive throughout all the civil courts, but results from an increase in the length of proceedings within three specific first instance courts. This increase is mainly due to circumstantial issues, whilst the remaining civil courts registered varying degrees of improvement in their length of proceedings over the previous years.

2011 – 2016 annual data: Criminal Courts

Clearance Rate						
	2011	**2012**	**2013**	**2014**	**2015**	**2016**
Criminal Court of Appeal, Superior Jurisdiction	42	67	133	214	500	67
Criminal Court of Appeal, Inferior Jurisdiction	66	65	91	78	61	77
Criminal Court	196	167	78	105	112	267
Court of Magistrates, Criminal Jurisdiction	98	99	106	99	101	101
Overall CR	***97***	***98***	***106***	***98***	***100***	***100***

Disposition Time						
	2011	**2012**	**2013**	**2014**	**2015**	**2016**
Criminal Court of Appeal, Superior Jurisdiction	1265	1237	704	462	633	1168
Criminal Court of Appeal, Inferior Jurisdiction	623	760	638	851	1277	1022
Criminal Court	624	608	1069	1285	1518	973
Court of Magistrates, Criminal Jurisdiction	291	290	279	305	335	293
Overall DT	***300***	***302***	***291***	***321***	***358***	***315***

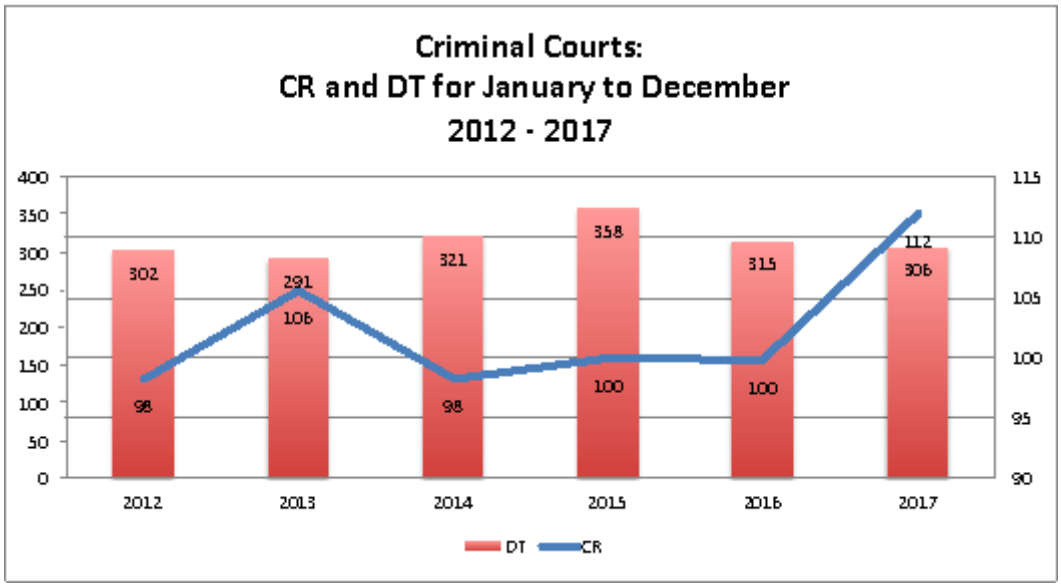
2016 saw an increase in the incoming and resolved caseload of the criminal courts. Despite this increase, the Court of Magistrates, Criminal Jurisdiction that accounts for 96% of the incoming caseload of 2016 managed to retain a Clearance Rate of 101% just like that of 2015. In addition, two other courts registered an improved Clearance Rate in 2016, but unfortunately, this improvement was not enough to counterbalance the decrease in the performance of the Criminal Court of Appeal (Superior Jurisdiction), thereby yielding an overall criminal courts' Clearance Rate of 100%. Whilst in principle this means that the courts are just about managing their incoming caseload, in effect, there was still a marginal increase in the pending caseload over that of 2015 by 66 cases. That being said, the rate of increase of the pending caseload has been consistently slowing down since 2014, and this bodes well for a reduction in the pending caseload of the criminal courts in 2017.

The increase in the number of resolved cases has mainly to account for the reduction in the length of proceedings. In fact, in 2016 the criminal courts registered the lowest Disposition Time in the past three years. Three out of the four criminal courts managed to decrease their Disposition Time, including the Court of Magistrates that has the biggest caseload. This result is very encouraging, and highlights the need to assist the courts of first instance to further their success and obtain higher levels of efficiency, whilst at the same time, addressing the factors that might be contributing to the decrease in performance in the courts of second instance.

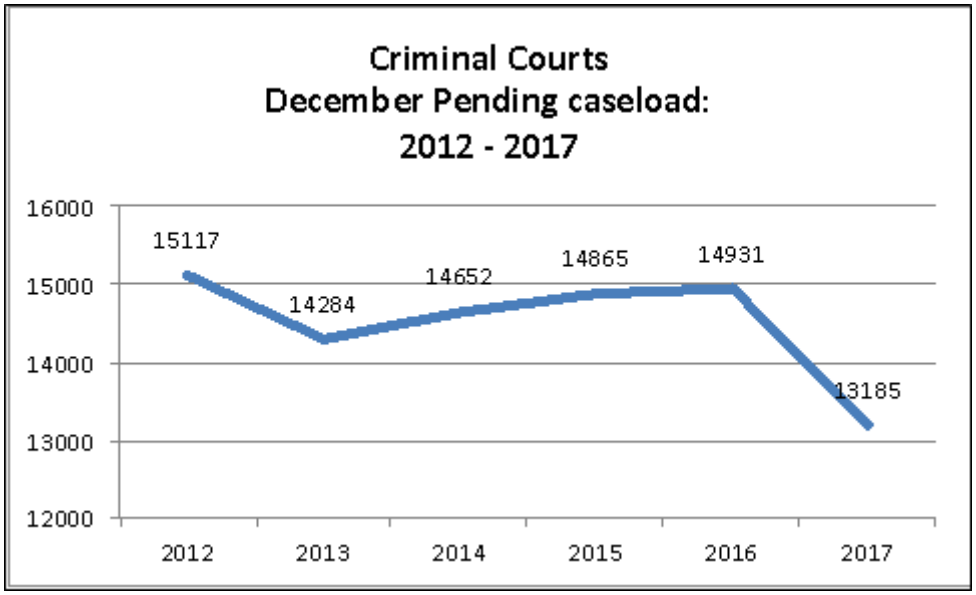
2017

Criminal Courts

The 2017 data for the Criminal Courts is very encouraging given that there was a marked improvement in all three parameters used to assess the efficiency of the courts.



When comparing data over the past six years, we see that 2017 registered the highest Clearance Rate at 112%. This means that the difference between the number of resolved cases and the number of incoming cases was significantly in favour of the resolved caseload, thereby contributing to this optimal result data, this means that overall there was a 13% reduction in the number of pending cases in front of the criminal courts.

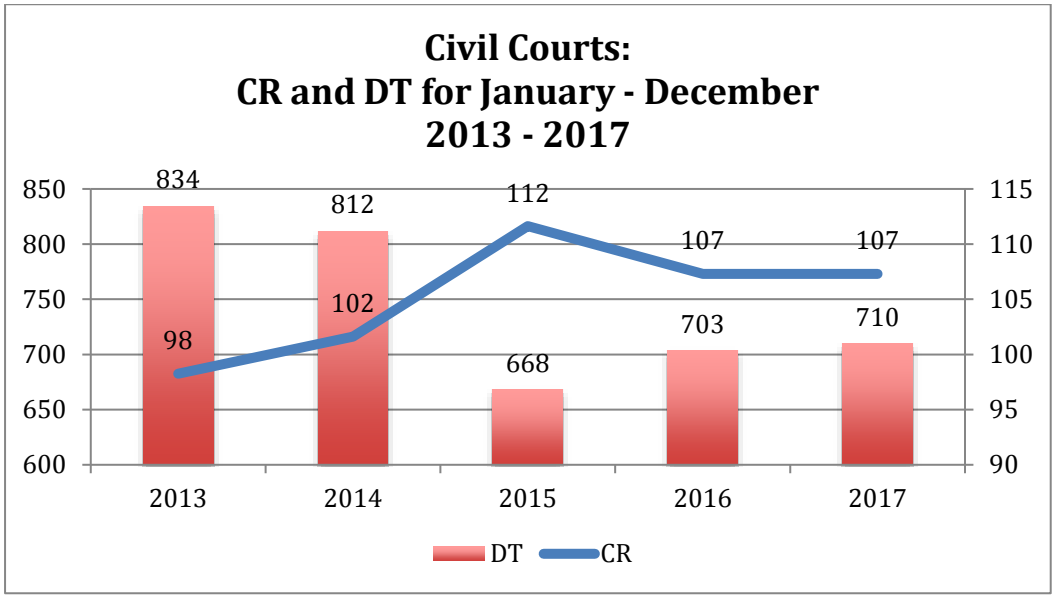


The drop in the number of pending cases contributed to the overall improvement in the length of proceedings. Indeed, despite the fact that the number of resolved cases in 2017 was less than that registered in 2016, the overall disposition time decreased from 315 days in 2016 to 306 days in 2017. This was the 3rd consecutive year in which the criminal courts registered an improvement in the length of proceedings, and all efforts need to be made in order to sustain this improvement and, possibly, surpass it in the coming years.

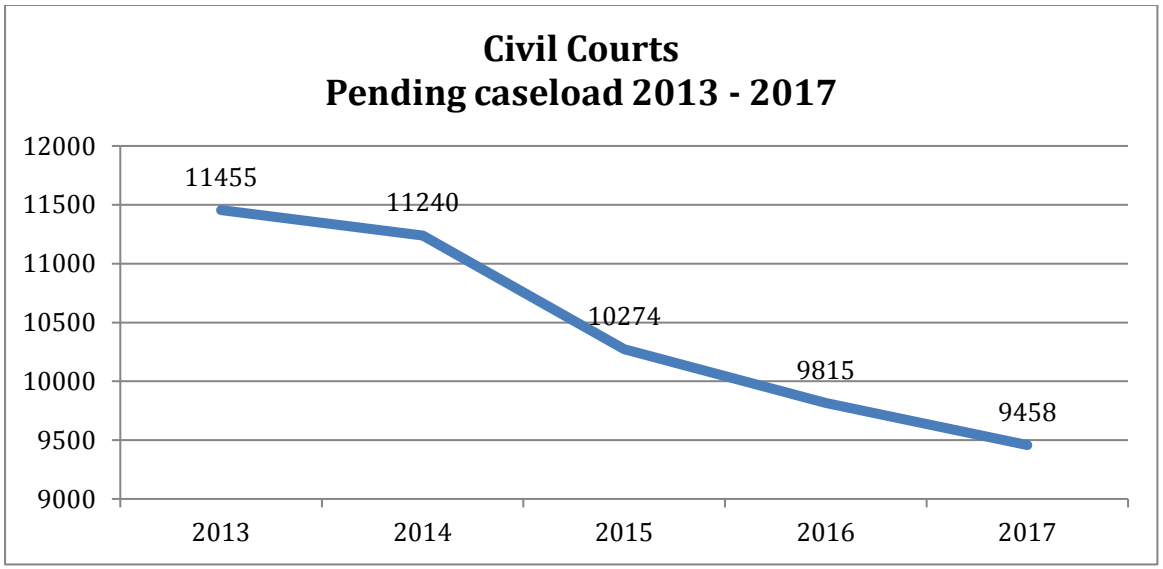
2017: Civil Courts

The following is an outline of the main efficiency parameters of the civil courts for 2017 and a comparison of these results with the results obtained since 2013.

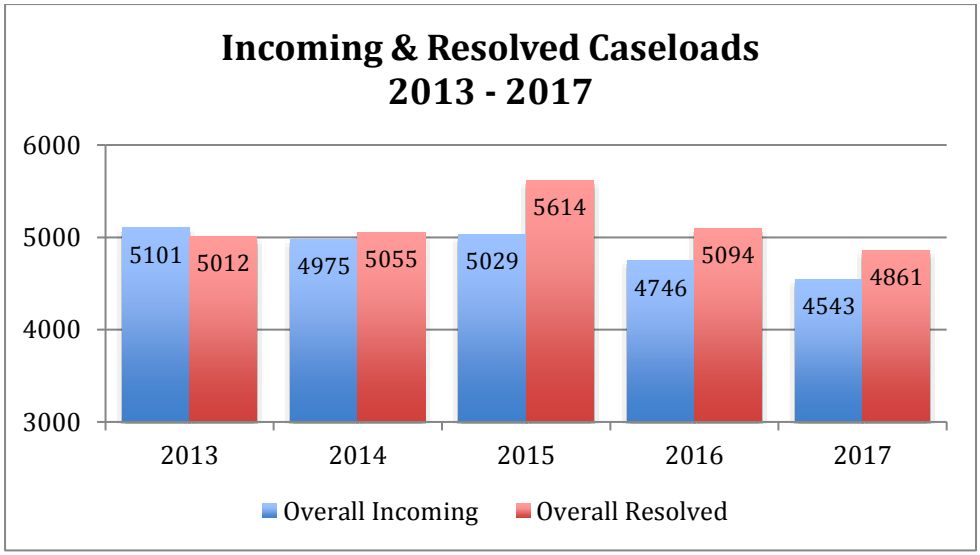
Overall Clearance Rate, Disposition Time and Pending caseload



The overall Clearance Rate for the civil courts for 2017 remained stable at 107% which means that throughout the past year, the number of resolved cases superseded the number of incoming cases. This also means that despite the changes in the number of incoming and resolved caseloads over the past year (see below), the judiciary retained the same ratio of resolved cases to incoming cases. The positive Clearance Rate resulted in a continued diminishing of the pending caseload, with the closing pending balance in 2017 being that of 9458 cases.

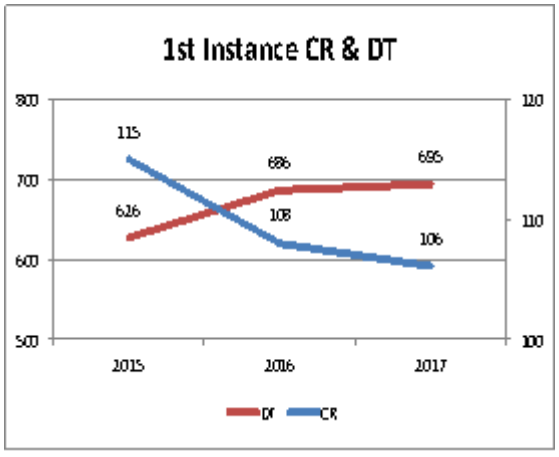


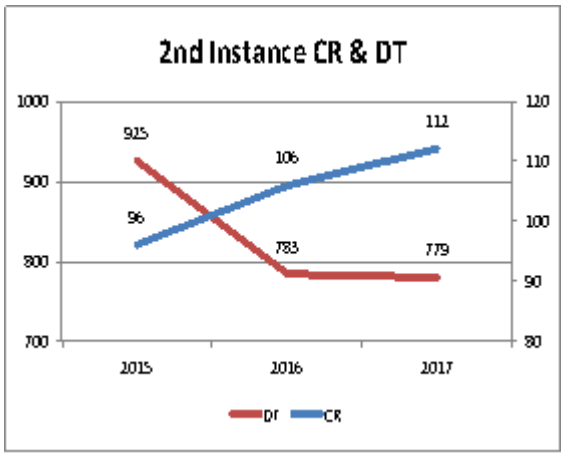
Notwithstanding the above, the length of proceedings has increased marginally by seven days from 703 days in 2016 to 710 days in 2017. This mainly results from a decrease in the number of resolved cases, which at 4861 cases, is the lowest since 2013. Hence as one can see, the number of incoming and resolved cases for 2017 indicates that despite the positive Clearance Rate, the number of incoming and resolved cases were both comparatively lower than those of previous years. Thus, despite a decrease in the number of incoming cases, the decrease in the number of resolved cases directly impacts the length of proceedings.



Comparative analysis of efficiency indicators according to Instance

When analysing the efficiency parameters of the first Instance courts with those of the second Instance courts, we realise that over the past three years, a consistent pattern has been emerging.





Indeed, the reversal of patterns in the above charts indicates that whilst the Clearance Rate and Disposition Time of the second Instance courts have been improving year after year, those of the first Instance courts have been regressing. Given that the majority of the cases lie within the first instance courts, it can be surmised that the increase in the overall length of proceedings

of the civil courts is heavily influenced by the increase in the Disposition Time of the first instance courts.

Legal Aid

In 2015, former office of the Advocate for Legal Aid was transformed into an agency in order to ensure that it is fully sustainable and independent. In fact, being a fully self-sufficient Agency it is no longer paid through the budget of the Attorney General's Office, avoiding any potential appearance of conflict of interest that may arise. In order to strengthen this Agency and ensure that a good service is provided to the beneficiary of such service, the honoraria to which legal aid lawyers are entitled have nearly trebled. Moreover, a Head Legal Aid Lawyer has been appointed full-time ensuring that he is fully independent. Remuneration for legal aid lawyers has been increased to ensure that a better service is provided for all citizens.

Court Experts

Until recently there was no data regarding court experts who may be appointed by the Court, except for that required explicitly by law. Therefore, the Justice Department embarked on an exercise to create such lists for both the civil and criminal law fields. This was compiled after examining details of those who have already been appointed by the court. An expression of interest was moreover issued for those who are interested to be eligible for appointment as court experts. Applicants were obliged to complete a due diligence form and a compiled list was then submitted to the judiciary.

Mediation

The Government has also enacted amendments to the Mediation Act by means of Act VIII of 2017 enacted on the 24th February 2017. The aim of these amendments is to further incentivise the use of ADR procedures.

The amendments will, inter alia, empower the Minister responsible for Justice to introduce compulsory mediation. Moreover, it introduces the use of Mediation in lease disputes. Another introduction is the use of videoconferencing or any other technological means to faciliate long-distance communication. It also empowers the Courts to determine whether a dispute before them is best tackled through mediation.

The Government is committed to expand the Mediation Centre, and remains committed to see that recourse to mediation will be successful. In fact, the fees for mediation have remained at minimal cost and a mediation process can be lodged with the mediation centre for the sum of €50. Lawyers and advocates shall also be entitled to their professional fees according to the taxed bill of costs so this will also incentivise members of the legal profession to encourage their clients to seek mediation, when this is possible. Moreover, in order to further bolster the system, where a dispute is settled in full during the mediation process the parties are entitled to a refund amounting to 50% of the registration fee.

Strengthening the Court Human Resources

The Government further invested in human resources in the courts. In the past two years, Judges of the Civil Courts were assigned with an experienced full-time lawyer (called Court Attorney) chosen by the judges themselves, with the duty of assisting in the drafting of judgements (on average three judgements per week), writing memoranda on pending lawsuits and assisting the Judge in the drafting of court orders. The intention is to keep building on this project which has been very successful so far.

The Court is in the process of engaging 23 new court assistants and 15 judicial assistants tasked, inter alia, with the collection and transcription of evidence. All new court staff are being given in-house training upon engagement and are also expected to attend additional training courses throughout the year.

Judicial Studies Committee

The Judicial Studies Committee has been strengthened with more personnel. Also, the Committee entered into a program driven by the International Organisation of Migration, assisted by the Irish Government, to give specialised training on migration matters for the judiciary and prosecutors.

Representation of the Sexes in the Judiciary

With the Government's impetus in favour of more women in the Judiciary the percentage of women in the Judiciary has increased. In fact earlier in 2016 Madam Justice Edwina Grima became the first woman to preside over a trial by jury.

Increasing transparency

Apart from Justice Reform, the Government gave full priority to the need to implement new legislation which leads to better governance and more transparency.

Since 2013 other crucial laws were approved by the House of Representatives: a law excluding prescription in case of criminal charges of corruption involving politicians, an ambitious Protection of the Whistleblower Act and a Financing of Political Parties Act, regulating donations to political parties, which came into force effect on 1 January 2016.

Freedom of the Media

The Bill on the Media and Defamation which is currently at Committee Stage in Parliament mainly aims at updating and re-writing the Maltese law on libel and slander in a manner which strengthens respect for the right to freedom of expression in a substantial manner.

The right to freedom of expression is the basis of all media activity and is also one of the main pillars of the democratic system.

Previous amendments to the Criminal Code (enacted by Act XXXVII of 2016 on the 19 July 2016) have already widened the freedom of artistic expression. The Bill will widen freedom of journalistic expression extensively.

The Bill will introduce the following main changes:

1. For words to be defamatory these must be such as to cause, or be likely to cause, serious harm to a person's reputation. This should discourage the filing of actions in libel and slander on the basis of statements which do not bring about serious consequences to a person's reputation;
2. The defences to an action for defamation are being strengthened to be brought into line with the latest case law of the European Court of Human Rights. At the same time the privacy of individuals is going to continue being protected, so however that such protection will not extend to public figures where what is said has significant relevance to the individual's public functions or to persons who although not being public figures are involved in incidents of public interest;
3. The list of publications which are privileged since they report on events in respect of which there is a public interest for the public to be informed, and which leads to more journalistic freedom, is going to be extended;
4. The Media and Defamation Act will include no criminal offences and the few criminal offences currently found in the Press Act which will be retained will be transposed in the Criminal Code. A large number of criminal offences which interfere with freedom of expression and which are currently found in the Criminal Code are to be repealed;
5. The maximum amount of damages which can be awarded in an action for libel is going to remain the same as provided at present under the Press Act (EUR 11,640);
6. Defamation by words and not by publication is not going to remain a criminal offence but will give rise to a civil action where the maximum amount of damages awardable will be €EUR 5000;
7. In the hearing of causes for libel and slander a system of preliminary hearing will be introduced whereby the Court will consider whether a case can be decided summarily. Alternative means of dispute resolution and settlement in this field such as through explanatory statements, apology or mediation, are encouraged;
8. In establishing the amount of damages the Court will also be obliged to take into account the effect which the payment of the damages will have on the person ordered to pay. This measure aims at better safeguarding the principle of proportionality;
9. Editors of websites will have additional defences at their disposal which are different to those available to editors of the written press and to broadcasters and this due to the specific nature of websites which receive comments from the public;
10. When a statement has already been published or when the same statement is published several times, specific rules will regulate the time barring of the action and the possibility to file a collective action in respect of the same statement;
11. The right of reply will be retained but failure to respect this right will now give rise to a civil rather than a criminal remedy;

12. A new article will make provision in respect of the defamation of deceased persons when such a defamation has an effect on living persons;

13. Registration of editors, other than editors of broadcasting services, and publishers will be on a voluntary basis and will not apply to editors and publishers of websites. The possibility of having the Media Register administered by the media itself is also provided for;

14. Due to the sensitive nature of regulations in the media field, regulations enacted under the Act will require prior approval by parliamentary resolution before they can come into force;

15. The protection of sources will apply to every editor, publisher, author, operator of a website or broadcaster;

16. The Code of Organisation and Civil Procedure will be amended to prohibit the issue of precautionary warrants in respect of actions for defamation;

17. The Electronic Communications Regulation Act will be amended so that merely defamatory statements written or spoken on a website and which give rise to an action under the new law will no longer constitute an offence against the Electronic Communications Regulation Act; and

18. Actions for criminal libel which will be pending at the time when the new Act comes into force will be discontinued.

Annex 2: The Position of the Judiciary

The following provisions outline the position of the judiciary under the Constitution of Malta.

1) **Appointment of Judges**
   Article 96 of the Constitution of Malta deals with the appointment of judges and sub-article (1) thereof states that judges of the Superior Courts are appointed by the President acting in accordance with the advice of the Prime Minister. Sub-article (3) of Article 96 of the Constitution provides that before the Prime Minister gives his advice in accordance with sub-article (1) in respect of the appointment of a judge of the Superior Courts, other than the Chief Justice, the evaluation of the Judicial Appointments Committee established by Article 96A of the Constitution shall have been made. The only exception to this rule is provided in sub-article (4) of Article 96 of the Constitution[i].

2) **Article 96A of the Constitution** establishes the **Judicial Appointments Committee** which is responsible for giving advice to the Prime Minister through the Minister for Justice based on its evaluation on the eligibility and merit of candidates for appointment to the Office of judge of the Superior Courts (other than the office of Chief Justice) or of magistrate of the Inferior Courts.

   The Offices of judge and magistrate are separate and a magistrate is not promoted to the office of judge automatically. An expression of interest by a Magistrate to be appointed to the Office of Judge can only be referred to the Judicial Appointments Committee by the Prime Minister. The same provision applies in respect of a person occupying the office of Attorney General, Ombudsman and Auditor General.

3) **The Committee for Judges and Magistrates** established in terms of **Article 101B of the Constitution** exercises discipline on judges and magistrates and if the said Committee finds that the judge or magistrate has breached the Code of Ethics for members of the judiciary it may suspend the member of the judiciary for a period of not more than six months on half pay or when it is of the opinion that the case merits removal of the member of the judiciary, it reports its findings to the Commission for the Administration of Justice for the latter to investigate the findings and pending the outcome of such investigation the Commission for the Administration of Justice shall suspend the member of the judiciary.

   A member of the judiciary may be removed from office in accordance with Article 97 of the Constitution. Sub-article (2) thereof provides that a judge of the Superior Courts shall be removed from his office by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members of the House and seeking for such removal on the grounds of proved inability to perform the functions of his office, whether arising from infirmity of body or mind or any other cause, or proved misbehaviour. Article 100 (4) of the Constitution provides for the application of Article 97 (2) of the Constitution to the office of magistrate and Article 91(5) applies the same provision to the Attorney General.

When a notice in accordance with Article 97 (2) of the Constitution is given in the House of Representatives on the basis of misbehaviour or inability to perform the functions of the office of judge or magistrate, such a motion is referred, in terms of Article 9 of the **Commission for the Administration of Justice Act (Chapter 369 of the Laws of Malta)** to the **Commission for the Administration of Justice established by Article 101A of the Constitution** for investigation.

4) **The Judicial Appointments Committee** is established in terms of Article 96A of the Constitution of Malta and consists of five members that qualify as members on the basis of the office that they occupy. These are:

(a) the Chief Justice who acts of Chair;
(b) the Attorney General;
(c) the Auditor General;
(d) the Commissioner for Administrative Investigations (Ombudsman); and
(e) the President of the Chamber of Advocates.

The members are not appointed for a period of time and they enjoy full security of tenure.

5) The Commission for the Administration of Justice is established in accordance with Article 101A of the Constitution of Malta and consists of ten members being:

(a) the President of Malta who acts as Chairman of the Committee;
(b) the Chief Justice who shall be the Deputy Chairman and presides over the Commission in the absence of the Chairman;
(c) the Attorney General, ex officio;
(d) two members elected for a period of four years by the judges of the Superior Court from among themselves;
(e) two members elected for a period of four years by the magistrates of the Inferior Courts from among themselves;
(f) two members appointed for a period of four years are appointed by the Prime Minister and the other by the Leader of the Opposition, being in each case, a person of at least forty five years of age, and who enjoys the general respect of the public and a reputation of integrity and honesty; and
(g) the President of the Chamber of Advocates, ex officio.

The **Committee for Judges and Magistrates** established in accordance with Article 101B of the Constitution of Malta consists of three members of the judiciary. These members cannot be members of the Commission for the Administration of Justice and are elected from amongst judges and magistrates according to regulations issued by the Commission for the Administration of Justice. In the case of disciplinary proceedings against a magistrate two of the three members of the Committee shall be magistrates and in the case of disciplinary proceedings against a judge two of the three members of the Committee shall be judges. The election of the members of the committee is regulated by the

provisions of the Committee for Judges and Magistrates (Election of Members) Regulations (SL. Const. 07).

6) Qualifications

Article 96 (2) of the Constitution of Malta provides that "(2) A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years during which he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served". Article 100 (2) of the Constitution of Malta provides that "(2) A person shall not be qualified to be appointed to or to act in the office of magistrate of the inferior courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years".

In accordance with Articles 96 (3) and 100 (5) of the Constitution of Malta the Judicial Appointments Committee shall evaluate the candidates for the office of judge or magistrate. The Judicial Appointments Committee conducts interviews and evaluations of candidates for the offices of judge or magistrate as to their eligibility and merit and for this purpose it may also request information from any public authority.

7) Condition of service and security of tenure of judges;

The remuneration of members of the judiciary is paid from the Consolidated Fund in accordance with Article 107 of the Constitution. The salary is established in accordance with the Judges and Magistrates (Salaries) Act (Chapter 175 of the Laws of Malta). Moreover, upon retirement from office, the members of the judiciary are eligible for a pension in accordance with the Members of the Judiciary (Pensions) Act (Chapter 564 of the Laws of Malta).

Members of the judiciary enjoy security of tenure of their offices. Article 97 (1) of the Constitution provides "(1) Subject to the provisions of this article, a judge of the Superior Courts shall vacate his office when he attains the age of sixty-five years". Article 97 (2) of the Constitution provides for the instances when a judge may be removed from office: "(2) A judge of the Superior Courts shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and requesting for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour". Article 100 of the Constitution deals with the appointment of Magistrates and Articles 100 (3) and (4) provide that "(3) Subject to the provisions of sub-article (4) of this article, a magistrate of the inferior courts shall vacate his office when he attains the age of sixty-five years; (4) The provisions of sub-articles (2) and (3) of article 97 of this Constitution shall apply to magistrates of the inferior courts".

If a motion in terms of Article 97 or 100 is passed against a member of the judiciary, the charges against the member of the judiciary are investigated by the Commission for the Administration of Justice.

8) Transfer of judges;

The distribution of duties of judges and transfer of judges is regulated by Article 11 of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta). Article 11 (1) provides that "(1) The President of Malta shall assign to each of the judges his duties by assigning to him the court or the chamber of the court or section in which he is to sit ordinarily, and may transfer a judge from one court or chamber or section of a chamber to another; Provided that a judge may be assigned to sit ordinarily in more than one court or more than one chamber or section of one or more courts".

Article 11 (3) of Chapter 12 of the Laws of Malta provides that "(3) Where more than one judge is assigned to sit ordinarily in a court, or in a chamber or section of a court, the distribution of duties in general between the said judges shall be made by the Chief Justice, and the registrar shall assign cases and other judicial acts to the judges as directed by the Chief Justice, provided that, except where cases or judicial acts are assigned according to general directives or according to rules made pursuant to sub-article (6), where the Chief Justice may be challenged or may abstain from taking cognizance of a case for any of the reasons mentioned in article 734 (1) (a), (b), (c), (d) (ii) and (iii), (e) and (g), the assignment of such a case shall be made by the Senior Administrative Judge referred to in sub-article (11)".

Article 101A (13) of the Constitution provides as follows:

"(13) The powers of the President under any law with regard to the subrogation of judges and magistrates and to the assignment of duties of judges and magistrates shall be exercised on the advice of the Minister responsible for justice, so however that, the Minister shall, in advising the President, act in accordance with any recommendation on the matter by the Chief Justice:

Provided that where the Chief Justice fails to make a recommendation to the Minister, and in any case where the Minister deems it so appropriate, the Minister may advise the President on the matter, in any manner which, in the circumstances, he considers appropriate:

Provided further that in any such case he shall immediately publish in the Gazette, a notice of that fact together with the reasons therefor, and he shall make a statement of such fact in the House of Representatives not later than the second sitting immediately after he has so advised the President."

9) Disciplinary proceedings against judges.

The discipline of judges and magistrates is regulated by Article 101B of the Constitution of Malta. The Committee for Judges and Magistrates exercises discipline on judges and magistrates in the manner prescribed in Article 101B of the Constitution.

Article 101B (5) of the Constitution provides that "(5) Disciplinary proceedings against a judge or a magistrate shall be commenced upon a complaint in writing and containing definite charges made to the Committee by the Chief Justice or by the Minister responsible for justice, for breach of the provisions of the Code of Ethics for Members of the Judiciary or of a code or disciplinary rules for members of the judiciary promulgated according to the same procedure according to which the said Code of Ethics is promulgated which are from time to time applicable to the members of the judiciary. The complaint shall also include the grounds upon which each of such charges is based". If, the Committee following prima facie consideration of the complaint considers that there are not sufficient grounds to commence disciplinary proceedings, the Committee refrains from further consideration of the case (Article 101B (5) of the Constitution). If, on the other hand, following the consideration of the complaint, the Committee considers that there are sufficient grounds to continue disciplinary proceedings the Committee shall appoint a date for the hearing of the proceedings (Article 101B (8) of the Constitution). If the Committee finds that the judge or magistrate has breached the Code of Ethics for Members of the Judiciary it can impose any one of the sanctions provided in Article 101B (10) of the Constitution.

[i] "(4) Notwithstanding the provisions of sub-article (3), the Prime Minister shall be entitled to elect not to comply with the result of the evaluation referred to in sub-article (3):
Provided that after the Prime Minister shall have availed himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:
(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and
(b) make a statement in the House of Representatives about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House to be held after the advice was given to the President in accordance with sub- article (1):
Provided further that the provisions of the first proviso to this sub-article shall not apply in the case of appointment to the office of Chief Justice"

ANNEX 3

1. Definition of Money Laundering

Money Laundering is criminalised under the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta). Pursuant to Article 2 of the Prevention of Money Laundering Act (the "**PMLA**"), Money Laundering is defined as:

(i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or from the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code; or

(vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v).

The Prevention of Money Laundering Act also defines the term "criminal activity" (under article 2) as any activity, whenever or wherever carried out, which under the law of Malta or any other law, amounts to a criminal offence. This means that under Maltese law money laundering may subsist from the commission of any criminal offence, which also includes tax evasion, whenever or wherever committed.

Acts of money laundering are punishable, under article 3(1) of the PMLA, by: (i) imprisonment for a term of up to 18 years; (ii) a fine not exceeding €2,500,000; or (iii) both. It is important to note that both legal persons (i.e. companies and corporations) and the officers of legal persons at the time of the commission of the offence can be found guilty of money laundering. This is provided for under articles 3(2) and 3(4) of the PMLA.

2. Entities responsible for handling suspicious transactions reports in Malta

2.1 Name and mission statement

The Financial Intelligence Analysis Unit (the "**FIAU**") is the sole entity responsible for the handling of Suspicious Transaction Reports ("**STRs**") in Malta. The FIAU is a government agency set up under article 15 of the PMLA, having its own distinct legal personality and is operationally independent and autonomous.

Article 16(1) of the PMLA sets out the general responsibility of the FIAU, being the collection, collation, processing, analysis and dissemination of information with a view to combatting money laundering and the funding of terrorism. The same article also lays down the specific functions of the FIAU, as follows:

(a) to receive reports of transactions or activities suspected to involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitute the proceeds of, criminal activity made by any subject person in pursuance of any regulation made under article 12, to supplement such reports with such additional information as may be available to it or as it may demand, to analyse the report together with such additional information and to draw up an analytical report on the result of such analysis;

(b) to send any analytical report as is referred to in paragraph (a) to the Commissioner of Police for further investigation if having considered the report received under paragraph (a), the Unit also has reasonable grounds to suspect that the transaction or activity is suspicious and could involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity;

(c) to monitor compliance by subject persons and to cooperate and liaise with supervisory authorities to ensure such compliance;

(d) to send to the Commissioner of Police together with any analytical report sent in accordance with paragraph (b) or at any time thereafter any information, document, analysis or other material in support of the report;

(e) to instruct any subject person to take such steps as it may deem appropriate to facilitate any money laundering or funding of terrorism analysis in general or the analysis of any particular report received by the Unit under paragraph (a);

(f) to gather information on the financial and commercial activities in the country for analytical purposes with a view to detecting areas of activity which may be vulnerable to money laundering or funding of terrorism;

(g) to compile statistics and records, disseminate information, make recommendations, issue guidelines and advise the Minister on all matters and issues relevant to the prevention, detection, analysis, investigation, prosecution and punishment of money laundering or funding of terrorism offences;

(h) to promote the training of, and to provide training for, personnel employed with any subject person in respect of any matter, obligation or activity relevant to the prevention of money laundering or funding of terrorism

(i) to consult with any person, institution or organization as may be appropriate for the purpose of discharging any of its functions;

(j) to advise and assist persons, whether physical or legal, to put in place and develop effective measures and programmes for the prevention of money laundering and funding of terrorism;

(k) upon request or on its own motion, to exchange information with any foreign body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in this subarticle and with any supervisory authority in Malta or with any supervisory authority outside Malta which it deems to have equivalent or analogous functions as a supervisory authority in Malta, subject to such conditions and restrictions as it may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or other agreement, to regulate any such exchange of information, where that information may be relevant to the processing or analysis of information or to investigations regarding financial transactions or activities related to money laundering or the underlying criminal activity, or funding of terrorism and the natural or legal persons involved; and

(l) to report to the Commissioner of Police any activity which it suspects involves money laundering or the underlying criminal activity, or funding of terrorism and of which it may become aware in the course of the discharge of any of its functions.

2.2 Powers of the FIAU

The PMLA allocates various powers to the FIAU to enable it to carry out its functions in an effective and efficient manner. A brief explanation of the most important powers available to the FIAU follows:

- Power to impose sanctions for AML/CFT breaches - The FIAU is empowered by Regulation 21(3) of the Prevention of Money Laundering and Funding of Terrorism Regulations (the "**PMLFTR**") to impose administrative sanctions for breaches of anti-money laundering and counter-financing of terrorism obligations, as well as breaches of lawful requirements, orders or directives issued by the FIAU.

- Power to publish administrative sanctions - Article 13A of the PMLA requires the FIAU to publish the administrative sanctions it imposes, when such sanctions equal or exceed €1,500 in value. Publication takes place on the FIAU's website.

- Power to postpone the execution of suspicious transactions - The FIAU is authorised to delay the execution of suspicious transactions for a maximum period of 3 working days and under Article 28 of the PMLA.

- Power to issue monitoring orders - Article 30B of the PMLA enables the FIAU to request obliged entities to monitor transactions carried out through particular account/s and to transmit information to the FIAU.

- Power to issue directives in writing and order the termination of business relationships - In pursuance of its functions at law and in accordance with the terms of Article 30C of the PMLA, the FIAU may issue directives in writing requesting obliged entities to do or to refrain from doing any act. More specifically, by virtue of Regulation 18 of the PMLFTR, the FIAU may order the termination of a business relationship established by an obliged entity.

- Power to demand information to pursue its functions - The FIAU has the authority at law to request the production of information and/or documentation from any person for the purpose of carrying out its analytical function (Article 30 PMLA & Regulation 15(11) PMLFTR) and all its other functions at law (Article 30A PMLA). Obliged entities must respond to such requests for information within 5 working days (Regulation 15(11) PMLFTR) and in a timely manner or within a timeframe indicated by the FIAU with respect to all other persons. Article 26(2) also empowers the FIAU to compel the production of documents from obliged entities when monitoring their compliance with AML/CFT obligations.

2.3 The FIAU's structure and resources

The FIAU consists of a Board of Governors, which sets out the policy to be adopted by the Unit and oversees its implementation, and a Director who oversees the operation of the FIAU. In fulfilling his tasks the Director is assisted by a deputy director and permanent staff members organised in four different sections, these include the analysis section, the compliance section, the legal and international relations section and the administration and IT section. Each section has its own manager. The total staff of the FIAU consists of 30 employees, with further human resources expected to be recruited shortly.

2.4 Interaction with other competent authorities

In pursuance of its analytical functions the FIAU cooperates closely with the Malta Police. Cases in which the FIAU identifies a reasonable suspicion of money laundering or funding of terrorism are passed on to the Malta Police for further investigation. This procedure is set out and regulated by Article 31 of the PMLA. For this purpose the FIAU forwards the analytical report compiled following the conclusion of the FIAU's analytical exercise. Moreover the FIAU and the Malta Police cooperate on an ongoing basis through the exchange of information to assist each other in their functions at law. A police liaison officer (who is the FIAU's point of reference within the police force) is appointed to facilitate the cooperation between the two authorities. The FIAU also cooperates with other authorities in carrying out its analytical functions and, as mentioned before, the FIAU has the power to request the production of information and documents from any government ministry, authority and department.

In its capacity as a supervisory authority for AML/CFT purposes, the FIAU interacts and cooperates with various other supervisory authorities. The FIAU currently has memoranda of understanding to regulate cooperation with the Malta Financial Services Authority (the "**MFSA**") (which is the prudential supervisor of various financial sector entities) and the Malta Gaming Authority (responsible for the regulation of the gaming sector). A newly set-up AML/CFT Unit within the MFSA carries out AML/CFT on-site compliance visits of financial sector operators on behalf of the FIAU. Currently talks are underway to extend this *modus operandi* between the FIAU and the Malta Gaming Authority for a more effective oversight of the gaming sector given the wider range of gaming operators that will be covered with the transposition of the 4th EU Anti-Money Laundering Directive. Article 27 of the PMLA, which regulates the FIAU's cooperation with supervisory authorities, authorises the FIAU to request other supervisory authorities to assist it in monitoring obliged entities for AML/CFT purposes.

It is also worth mentioning the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism, which is an ad-hoc committee chaired by the FIAU. This Committee, which meets four times a year, brings together the various domestic competent authorities involved in the fight against money laundering and funding of terrorism as well as

representatives of obliged entities subject to AML/CFT obligations. The Committee serves as a platform for the discussion of various issues relating to AML/CFT. The competent authorities, apart from the FIAU, represented on this Committee include the Malta Police, the Attorney General's Office, the Malta Financial Services Authority, the Malta Gaming Authority and Customs.

3. Statistics on the FIAU's activities

3.1 Statistics on suspicious transaction reports (STRs)

In 2015 the FIAU received a total of 281 STRs. More detailed statistics and distribution of reports per sector can be found on the FIAU's Annual Report which is published on a yearly basis. A link to the 2015 Annual Report can be found here:

(http://www.fiumalta.org/library/PDF/annualreports/AnnualReport2015.pdf)

So far in 2016 the total number of STRs received amount to 493.

AML/CFT On-site Visits Statistics

In 2015 the FIAU and the MFSA carried out 71 on-site AML/CFT compliance visits on financial sector operators and non-financial businesses and professions. Figures are being presented in the below table. Further detailed information can be found on the FIAU's 2015 Annual Report.

On-site Compliance Visit Statistics: 2015

	MFSA	**FIAU**
Financial Institutions	24	28
DNFBPs		19
Total	**24**	**47**

Given that the Enforcement Unit within the MFSA, which is responsible for the conduct of on-site compliance visits, started operating as of January 2016, it is not possible to further sub-divide the visits carried out by the said authority in the course of 2015 between Financial Institutions and DNFBPs.

On-site Compliance Visit Statistics: 2016

	MFSA	**FIAU**	**Total**
Accountants/Auditors		17	17
Legal Professionals		12	12

Company Service Providers	7	2	9
Credit Institutions	2		2
Financial Institutions	4		4
Fund Administrators	1		1
Fund Manager	1		1
Insurance Broker	1		1
Investment Service Providers	6	1	7
Notaries		15	15
Real Estate Agents		13	13
Retirement Scheme Administrator			
Tied Insurance Intermediaries	6		6
Trustees &Fiduciaries	6		6
Total	34	60	94

It is to be noted that a number of entities subject to on-site visits carried out in 2016 also carry out additional activities. Thus, an investment services provider also carries out the activity of a credit institution, nine of the accountants/auditors also provide tax advisory services, nine of the legal professionals visited also act as company service providers as do sixteen of the accountants/auditors visited.

3.2 Statistics - Administrative Sanctions

Infringements of AML/CFT obligations that are identified during these on-site compliance examinations as well as off-site monitoring and other information obtained from supervisory authorities are subject to administrative sanctions which are imposed by the FIAU.

During the year 2015, the FIAU imposed a total of 56 administrative penalties and 20 reprimands in writing. The total figure for penalties levied in 2015 amounted to €160,100. The figure includes two aggregate penalties of €40,900 and €40,100 imposed separately on two investment services companies for breaches of their customer due diligence obligations. Other administrative sanctions (including both administrative penalties and reprimands) were imposed on trustees and fiduciaries, advocates, accountants and auditors, notaries, insurance brokers, credit institutions, company service providers and providers of investment services.

Administrative Penalties: **2016**

Sector	**Administrative Penalties**	**Amount**	**Reason for breach**
Credit Institutions	4	€ 77,650	a) failure to carry out ongoing monitoring to ensure consistency with the customer profile and to establish source of funds of a PEP; b) failure to obtain sufficient supporting information and documentation to establish the source of the funds; c) failure to gather sufficient information on the source of wealth and the source of funds of the transaction; d) failure to submit a Suspicious Transaction Report; e) applicants for business or the beneficial owners were not adequately identified and/or verified; f) failure to apply an Enhanced Due Diligence measure as laid out by Regulation 11(2); g) failure to ensure that all data, information and documentation on the beneficial owners are kept up to date; h) failure to establish a Customer Acceptance Policy;
Financial Institutions	1	€ 5,500	a) failure to reply to a request for information; b) replied late to a request for information; c) failure to submit the Annual Compliance Report.
Accountants & Auditors	16	€ 4,000	failure to submit the Annual Compliance Report
Notaries	10	€ 3,250	a) failure to submit the Annual Compliance Report b) failure to retain a copy of the customer due diligence documents

			c) failure to establish a Customer Acceptance Policy
Company Service Providers	12	€ 3,000	failure to submit the Annual Compliance Report
Trustees & Fiduciaries	5	€ 2,875	failure to submit the Annual Compliance Report
Real Estate Agents	7	€ 1,750	failure to submit the Annual Compliance Report
Collective Investment Schemes - PIF	4	€ 1,000	failure to submit the Annual Compliance Report
Legal Firms	1	€ 1,000	failure to submit a Suspicious Transaction Report
Insurance Brokers	1	€ 250	failure to submit the Annual Compliance Report
Investment Services - Category 1A	1	€ 250	failure to submit the Annual Compliance Report
Various subject persons*	106	€ 26,500	failure to submit the Annual Compliance Report
	168	**€ 127,025**	
** A further 106 Administrative Penalties have been issued in 2016 in relation to non-submission of ACR2016, amounting to €26,500. These penalties are still not segregated by Sector since internal data processing exercises are still ongoing.*			

3.3 The Revenue Departments

a) The Income Tax Acts provide for a number of instances (as per attached list in Annex A) where a tax related default is considered a criminal offence and the Commissioner for Revenue may request the Commissioner of Police to take action against an individual who is in breach of the Acts;

b) Within the Inland Revenue Department and the VAT Department lies the Tax Compliance Unit which handles tax-related investigations. Tax related crimes are prosecuted by the Police. There is no particular organisation which deals specifically with tax-related crime. However, the Police Department has an Economics Crimes Unit which deals with financial crime;

c) Police officers prosecute charges on tax crimes and the penalty regime is listed in the attached document (Annex A). Individuals who are prosecuted are mainly those who collect monies on behalf of the Government of Malta and fail to submit such proceeds to the Inland Revenue Department or the Value Added Tax Department. Individuals employing other persons and directors of companies (which act as employers) have been found guilty of committing a crime against the Revenue Acts both at the level of the courts of first instance (the Court of Magistrates) and at the level of the courts of second instance (The Court of Criminal Appeal). Problems have been encountered as a result of some to Constitutional Court decisions whereby it was decided that additional taxes imposed for late filing and non-payment of taxes were, because of their severity, to be considered to be punitive in nature and therefore, in the nature of criminal penalties. It was held at Constitutional Court level that In circumstances where such penalties were imposed by the tax authorities, the Commissioner of Police was precluded from initiating criminal prosecution because of the *ne bis in idem* principle as the imposition of high additional taxes (penalties) was considered to constitute a criminal punishment (irrespective of whether such fine had been paid or otherwise at the time of prosecution);

d) Since 2010 the Commissioner of Police, on behalf of the Commissioner for Revenue, has prosecuted 4042 employers who failed to submit documents and payments after deducting tax from the wages of their employees. To date 291 judgements were delivered. During 2016, the VAT Department prosecuted 392 persons who held a VAT number but failed to submit their return / returns including payment and 163 judgements were delivered. Criminal procedures by the VAT Department have been carried out since 1995;

e) With regards to the Panama Papers, the Tax Compliance Unit is currently investigating 29 cases and another 20 cases are at pre-audit stage;

f) The Inland Revenue Department has no information with regards to the Bahama Leaks.