

CHAPTER 377

PROFESSIONAL SECRECY ACT

To establish general provisions protecting professional secrecy and to make consequential amendments to other laws.

23rd September, 1994

ACT XXIV of 1994, as amended by Acts XVII of 1998, XVII of 2002 and X of 2004.

ARRANGEMENT OF ACT

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PART I

PRELIMINARY

- Short title. **1.** This Act may be cited as the Professional Secrecy Act.
- Interpretation. **2.** (1) Any reference in this Act to the revealing of information shall include references to the communication of such information in writing, by transmission of documents or electronic data, by signs, by negation or in any other way.
- (2) References in this Act to officials or employees of the State or to persons employed by the State include references to:
- (a) employees of the Government of Malta;
 - (b) employees of any body corporate established by law;
 - (c) any person, whether an individual or not, whether having corporate personality or not, acting as consultant or in any other similar contractual capacity with the Government of Malta or with a body corporate established by law; or
 - (d) any person whether an individual or not, whether having corporate personality or not exercising functions as an official or representative of the Government of Malta or of any body corporate established by law.
- (3) "Professional secret" or "secret" in this Act refers to information which falls under any of the following categories:
- (a) information which is to be considered secret under a specific provision of any law;
 - (b) information which is described as secret by the person communicating the information to a person falling within the scope of article 257 of the Criminal Code;
 - (c) information which has reasonably to be considered as secret in view of -
 - (i) the circumstances in which the information has been communicated and received, and
 - (ii) the nature of the information, and
 - (iii) the calling, profession or office of the person receiving the information, and of the person giving the information, where applicable.
- Cap. 9.

PART II

THE DUTY OF PROFESSIONAL SECRECY

- 3.** (1) The persons who, by reason of their calling, profession or office, fall within the scope of article 257 of the Criminal Code include the following: members of a profession regulated by the Medical and Kindred Professions Ordinance, advocates, notaries, legal procurators, social workers, psychologists, accountants, auditors, employees and officers of financial and credit institutions, trustees, officers of nominee companies or licensed nominees, persons licensed to provide investment services under the Investment Services Act, stockbrokers licensed under the Financial Markets Act, insurers, insurance agents, insurance managers, insurance brokers and insurance sub-agents, officials and employees of the State.
- Interpretation of article 257 of the Criminal Code.
Amended by:
XVII. 1998.70;
X. 2004.20
Cap. 9.
Cap. 31.
Cap. 370.
Cap. 345.
- (2) Subject to article 10, a person shall still remain subject to the provisions of article 257 of the Criminal Code after he has ceased to exercise the relevant calling or profession, or to occupy the relevant office.
- Cap. 9.
- (3) References in statutory enactments to "the duty of professional secrecy" or similar expressions shall henceforth be interpreted, unless the context otherwise requires, as references to the duty imposed by article 257 of the Criminal Code not to disclose a secret covered by that article.
- Cap. 9.
- 4.** (1) A person shall also be deemed to have become the depositary of a secret by reason of his calling, profession or office when he obtains such secret by reason of being an employee, or employer, a partner or assistant, of a person who falls within the scope of article 257 of the Criminal Code or by reason of having acted as interpreter or translator in the communication of such secret.
- Depositary of secret.
Cap. 9.
- (2) A person shall also be deemed to have become the depositary of a secret by virtue of his calling, profession or office where he obtains such secret during the course of his employment by the State.
- (3) Where a person entrusts secret information to an employee or employer of a person falling within the scope of article 257 of the Criminal Code by reason of such employee's relationship with his employer, such secret information shall be deemed to have been entrusted to the employer through the employee or to the employee through the employer, as the case may be, as mandatory.
- 5.** Any person who receives or acquires secret information by virtue of a power of investigation or enquiry conferred by law or by virtue of any enactment which requires information to be communicated shall be deemed to have become the depositary of such information by virtue of his calling, profession or office.
- Investigators.

PART III

EXCEPTIONS

Authorisation to disclose.
Cap. 9.

6. (1) It shall be a defence to a charge of disclosing secret information contrary to article 257 of the Criminal Code to show that the secret information was revealed by the person charged, only when authorised to do so by the person who entrusted him with the information.

(2) For the purposes of subarticle (1), a person who has received secret information from another shall not be able to give a valid authorisation for the disclosure of that information by a third party.

Permitted disclosures.
Added by:
XVII. 2002.224.
Cap. 9.

6A. No offence shall be committed against section 257 of the Criminal Code or this Act by -

- (a) a person disclosing in good faith secret information in the course of and for the purpose of obtaining advice or directions from the body regulating his profession;
- (b) a person disclosing in good faith secret information to a public authority or before a court or tribunal to the extent that is proportionate and reasonably required for the specific purpose of:

- (i) defending himself against any claim with regard to professional work in connection with which the secret information has been obtained by him; or
- (ii) initiating and maintaining judicial proceedings seeking the recovery of fees or other sums due to him or the enforcement of other lawful claims or interests;

Cap. 9.
Cap. 12.

- (c) saving the provisions of article 642(1) of the Criminal Code or article 588(1) of the Code of Organization and Civil Procedure, a person, who in good faith discloses secret information to a competent public authority in Malta in the reasonable belief that such disclosure is reasonably necessary for the purpose of preventing, revealing, detecting or prosecuting the commission of acts that amount or are likely to amount to a criminal offence, or to prevent a miscarriage of justice.

Obligation to disclose.
Added by:
XVII. 2002.224.
Cap. 9.
Cap. 12.

6B. Saving the provisions of article 642(1) of the Criminal Code and of article 588(1) of the Code of Organization and Civil Procedure, a person shall disclose information otherwise covered by professional secrecy when required to do so:

- (a) by a competent law enforcement or regulatory authority investigating a criminal offence or a breach of duty;
- (b) by a magistrate in the cause and for the purposes of *in genere* proceedings; and
- (c) by a court of criminal jurisdiction in the course of a

prosecution for a criminal offence.

7. (1) Unless the person who entrusted the secret information stipulates to the contrary, he shall be deemed to have authorised the communication of the secret information to employees, partners and assistants of the person to whom the information was entrusted, or to any other person falling within the scope of article 257 of the Criminal Code, where such communication is necessary for the performance of services requested by the person who entrusted the information.

Necessary communication to employees, etc.

Cap. 9.

(2) Two or more persons falling within the scope of article 257 of the Criminal Code who exercise power of effective management and control in a limited liability company set up for the purpose of exercising their profession shall for the purpose of this article be considered as partners.

8. For the purposes of article 257 of the Criminal Code, a person shall not be deemed to be compelled by law to give information to the public authority unless there is a statutory requirement to that effect.

Disclosure compelled by law.
Amended by:
XVII. 2002.225.
Cap. 9.

9. Saving the provisions of article 642(1) of the Criminal Code and of article 588(1) of the Code of Organization and Civil Procedure, a court may authorise or make an order requiring the disclosure of secret information pursuant to an express provision of law for the specific purposes for which that provision was enacted, or for the specific purpose of preventing, disclosing or detecting the commission of acts that amount or are likely to amount to a criminal offence:

Court orders for disclosure.
Amended by:
XVII. 2002.226.
Cap. 9.
Cap. 12.

Provided that in the absence of any specific provision in relation to any particular calling, profession or office, nothing in this article shall be construed as modifying the existing rules of law in relation to the courts' power to release a witness in court belonging to any such calling, profession or office from the duty of professional secrecy:

Provided further where the court authorises or requires such disclosure such evidence shall be held *in camera* and shall only be accessible to the court and to the parties:

Provided further that nothing in this Act shall be construed as affecting the provisions of the Code of Organization and Civil Procedure in relation to garnishee orders.

Cap. 12.

10. It shall be a defence to a charge of disclosing secret information contrary to article 257 of the Criminal Code to show that, at the time the information was revealed, the information had entered the public domain and had done so legitimately.

Information in the public domain.
Cap. 9.

11. (1) It shall not be a breach of article 257 of the Criminal Code for a person employed by the State to communicate secret information to another person employed by the same entity or to the Minister responsible for that entity, where such communication is directly necessary for the carrying out of their respective functions.

Intergovernmental communications.
Cap. 9.

(2) For the purposes of this article, the following are separate entities:

- (a) any body corporate established by law;
- (b) the Department of Inland Revenue;
- (c) all departments or divisions of the State, to the exclusion of the entities in paragraphs (a) and (b) above.

PART IV

SUPPLEMENTAL PROVISIONS

Savings for privileged communications.

12. Nothing in this Act shall restrict or limit, or be deemed to restrict or limit, the laws or custom on the protection of privileged communications.

References in other enactments.

13. Any reference in an enactment, whether passed before or after the date of entry into force of this Act, to an obligation to observe secrecy or confidentiality, shall be interpreted as imposing a duty at least as strong as the duty of professional secrecy, without prejudice to any other requirements of such enactment.

Criminal proceedings. Cap. 9.

14. (1) No proceedings for an offence under article 257 of the Criminal Code shall be commenced without the sanction of the Attorney General.

(2) When the act committed by an offender constitutes a more serious offence under any other law, the provisions of that other law shall apply in respect of that act.