

In view of the 22 September United Nations Office on Drugs and Crime letter to Malta's Permanent Mission to the United Nations we would like to point out the following legislation that covers or implement the United Nations Convention Against Corruption (UNCAC) provisions, as found in the Criminal Code, Chapter 9 of the Laws of Malta and other relevant legislation. This can be seen below:

- ***UNCAC Article 15 – Bribery of national public officials***: This is covered by Article 115 and Article 120 of the Criminal Code.

- ***Article 16(1) – Bribery of foreign public officials and officials of public international organizations***: Article 121(4) of the Criminal Code applies to this.

- ***Article 17 – Embezzlement, Misappropriation, or other diversion of property by a public official***: This is covered by Article 127 (1), Article 293 and Article 294 of the Criminal Code.

- ***Article 18 – Trading in Influence***: These are covered by Article 121A of the Criminal Code.

- ***Article 19 – Abuse of functions***: This is covered by Article 112 of the Criminal Code.

- ***Article 20 – Illicit Enrichment***: is covered by Article 112, Article 293 and Article 294 of the Criminal Code.

- ***Article 21 – Bribery in the private sector***: This is covered by Article 121(1) of the Criminal Code.

- ***Article 23 – Laundering of Proceeds of Crime***: This is covered under the Prevention of Money Laundering Act, being Chapter 373 of the Laws of Malta and the Proceeds of Crime Act, Chapter 621 of the Laws of Malta.

- **Article 25 – Obstruction of justice:** This is covered by Articles 102, 103, 104, 105, 108, 110 and 111 of the Criminal Code.
- **Article 26 - Liability of legal persons:** This is covered through Article 121D.
- **Article 27 – Participation and attempt:** is covered by Title III and Title IV of Part I, Book First of the Criminal Code.
- **Article 29 – Statute of Limitations:** This is covered under Title VI, Part III of Book Second of the Criminal Code
- **Article 32 – Protection of witnesses, experts, and victims:** the Protection of the Whistle Blower Act, Chapter 527 of the Laws of Malta, covers this.
- **Article 42 – Jurisdiction:** This is covered under article 5 and Article 121C of the Criminal Code.

Moreover, one is to look at how the roles and functions of the Office of the Attorney General are laid under the Attorney General Ordinance, Chapter 90 of the Laws of Malta. This, in turn, was amended through Act XXV of 2019 whereby the role and functions of the Office changed and shifted to being the Public Prosecutor’s Office separate from that of the State Advocate. Subsidiary Legislation 90.01 provided a list of offences that are to be dealt with and prosecuted by the Office, to which such includes offences covering corruption as per the ones referred to under UNCAC, as per Schedule (1)(e) of the Subsidiary Legislation.

Furthermore, it is to also be considered that at the moment efforts are underway by the EU Commission and Council to harmonize corruption offences and penalties throughout the 27 EU Member States by use of Directive entitled “*Proposal for a Directive of the European Parliament and of the Council on combatting corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or Officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council.*”

Having looked at all this, it is to be noted that the UN Convention against Corruption is the preferred legal basis used in corruption cases where international cooperation needs to be requested from countries who have also ratified this Convention. This is the case when international cooperation is sought from countries outside the EU especially and therefore in cases where the method for requesting assistance is through requests for mutual legal assistance.

When dealing with EU countries, Directive 2014/41 of the EU, known as the EIO Directive as it deals with European Investigation Orders, is used even if the case concerns corruption. This is so as seen in past requests concerning primarily money laundering investigations, but which involve also suspicion of corruption, have also been sent based on this Convention.