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# Debt and Domination: Malta's Usurious Economy

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## Debt and Domination: Malta's Usurious Economy

Mary Grace Vella[§] and Yana Mintoff[¶]

### Abstract

In 2021, Malta was grey listed by the European Union's Financial Action Task Force for its administrative deficiencies and lack of adequate and transparent regulatory frameworks. Indeed, parallel to the formal economy, lies an equally strong informal economy, characterised by hot money, cheap and precarious labour, and enterprise in illicit activities.

In the Maltese Islands today, usury or the charging of interest on loans in excess of 8%, is considered an economic crime, yet despite its criminalisation in 2002, it remains a widespread though hidden phenomenon. Often concealed through bribery and extorted through violence, usury lies at the heart of corrupt societies. Yet, it is largely overlooked as an important issue in terms of socio-economic impact and development.

This paper examines the practice of usury within the Maltese Islands from a financial and macro-economic perspective. Based on qualitative interviews with stakeholders engaged in the field and a case review analysis of civil and criminal cases related to usury from 2011 to 2021, the paper presents an analysis of the financial and macro-economic causative factors and impact of usury on stability and economic development. This analysis leads to a number of implications for reform which would provide for adequate living income for all, measures to curb both legalised forms of usury and criminal usury, improved banking services, and enhanced administrative and regulatory and mechanisms.

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## 1. Introduction

Since the 2008 financial crisis, when a pyramid of global debt crashed, we have become more cognisant of the dangers inherent in unrestrained global financial capitalism. Despite this increased awareness, a growing synergy exists between big business, organised crime and political corruption. Usury is a main motor of this lucrative global cash flow economy.

Lending money at excessive interest rates has been practised from time immemorial (Graeber, 2014), but has always been a contentious issue. Usury has been condemned by major religions and criticised by philosophers and political scientists ranging from Aristotle and the Prophet Mohammed to Adam Smith and Karl Marx on a basis ranging from economic instability, social injustice, and immorality, to ecological destruction and inter-generational inequity. Indeed, usury "has been repeatedly condemned, prohibited, scorned and restricted, mainly on moral, ethical, religious and legal grounds" (Visser and McIntosh, 1998:175).

Laws regulating usury are among the oldest forms of government control of private transactions. Usury is generally considered an economic crime since the lender is charging excessive rates and is acting as a financial institution without the necessary authority, standards and regulations. Moreover, illicit financial activity is not regulated and subjected to taxation and other redistributive measures for the benefit of the State and society.

However, borrowing money has become a norm in today's global debt economy and the charging and paying of interest on loans have become an accepted state of affairs. Banks promote and advertise various loans at varying interest rates depending on expected repayment performance. Moreover, against a background of immediate gratification, demand for loans has increased in tandem with rising consumerism and risky investments. A main reason for indebtedness remains increasing inequalities and people's low income in conjunction with a rising cost of living.

Malta is not immune to these forces of neoliberalism, with the Malta government, household and corporate debt being relatively high and increasing. General Government Debt as a percentage of Malta Gross Domestic Product rose from 48.5% in 2017 to 64.6% in 2021 (IMF, 2021) and the budget deficit has risen inexorably to above 10% of GDP (O'Neill, 2021). Significantly, credit to the private sector rose to 139.15% of GDP in the second quarter of 2021 (Central Bank 2022). In this atmosphere of increased liquidity, controls on illicit money laundering and money lending would logically be tightened and regulations strengthened. However, despite the criminalisation of usury in 2002,[1] the illegal usurious business of both minor local lenders and major loan sharks, remains a reality on the Maltese Islands.

In 2021, the Financial Action Task Force (FATF) acting in the Anti-Money Laundering and Countering Financial Terrorism (AML/CFT) framework assigned Malta a prolonged placement on the grey list. In its recommendations, the FATF calls for urgent action to address deficiencies in Malta's tax administration, contingent liabilities, financial stability, risk, vulnerabilities from the corporate and real estate sectors, lack of data collection and lack of

[1] Section 298C Criminal Code Chapter 9 of the Laws of Malta

transparency in beneficial ownership and financial intelligence related to money laundering and tax evasion. This grey listing, the result of reckless financial games by the powerful elite, has led to significant impact on people and the national economy. One of its ramifications, is that it made it harder to get loans at a decent interest rate both locally and overseas, thus pushing more people onto the usurious loan market.

In the context of this socio-economic climate, this paper addresses the issue of usury from a local macro-economic perspective by taking Malta as a case study for institutional-level analysis. Adopting an evidence-based approach through qualitative interviews with a wide range of stakeholders,[2] and a quantitative review of Court cases relating to usury,[3] the paper presents a study of the causative factors and impact of usury on both the personal and national level.[4]

In considering how usury is both a driver and product of the institutional, historical and cultural dimension of the Maltese islands, the paper provides further insight on the issue and proposes policy reforms which Malta may set in place to address the challenges arising from its usurious economy.

## 2. Malta: Predators and Perpetrators of Extortion

The Maltese islands have a long history of colonial domination and religious control. Under false pretences, often posing as acting in the best interest of the subjugated people, many former imperial and religious leaders stole from their flock. Certainly, no redress was granted to the people by the authorities because the Colonial and Catholic hierarchy were the predators and the perpetrators of extortion.

Threats were often used to extort more labour or funds such as the threat of execution or enslavement, hell or purgatory. Thus, many people's only recourse was to submit to those in power and look for ways and means to survive the oppression. This pattern is replicated today in the usurer-victim bond and the fact that very few victims are empowered to report loan sharks, often preferring to endure the oppression, threats and extortion and even take personal culpability themselves.

Indeed, although Malta gained its independence from British colonial rule (1964 Independence and 1974 Republic), its freedom from foreign military occupation (1979), and

[2] Stakeholders consulted include: Foundation committee members and volunteer service providers at Caritas Foundation for the Victims of Usury (FVU), Former member and spokesperson at the FVU, The Central Bank of Malta, The Financial Intelligence Analysis Unit (FIAU), The Malta Financial Services Authority (MFSA), The Office of the Arbiter for Financial Services (OAFS), The Foundation for Social Welfare Services (FSWS), Parish-based Social Worker, The Kunsill Nutarili ta' Malta, The Economic Crimes Unit, Department of Probation and Parole Services, and The Corradino Correctional Facility (CCF).

[3] A total of 138 cases decided between April 2011 and April 2021 were reviewed and analysed in terms of the amount of the alleged loan and the interest charged, the factors leading to usury, its aggravation through the use of threats or violence, and the sentences handed out by the Courts. The majority (86 cases, including 22 appeals) were instituted in Civil Courts while 52 cases (including 7 appeals) were investigated in Criminal Courts.

[4] The research forms part of a wider study on usury initially undertaken on behalf of the Ministry for the Social Justice and Solidarity, the Family and Children's Rights in 2018.

its constitutional status as a neutral and non-aligned archipelago (1984), and although the Catholic Church no longer trades in lottery tickets and passages to heaven, the historic pattern of domination and servitude continues to be reproduced and reinforced in patron-client relationships. The contemporary political system, although supposedly democratic and transparent, is in fact opaque and rife with corrupt practices where the patron politician buys the allegiance of the voter through clientelism and nepotism with the promise of a monetary reward.

The insularity and strong interlinks between economics and politics characteristic of many island states (Baldacchino, 2011) may act in Malta as facilitating factors for the consolidation and immunity of usury. The patron-client relationships of "patronage, favouritism, and clientelism" (Baldacchino, 2009:153) which form a characteristic feature of Malta's political landscape, is to a large extent reproduced in the power dynamics between loan shark and borrower.

Having acquired traditional loyalty, local politicians in this century have built the Maltese economy on cheap labour, now racially segmented and plagued by precarious work conditions. The financial and gambling sectors along with other transnational corporations drive Malta's contemporary economy, while money laundering and its concomitant money lending are widespread. As in the case of Britain's 'second empire'[5] (Shaxson, 2016), built and expanded on the synergy between organized crime and transnational corporations, and corrupt politicians, so are the Maltese and other Islands, such as Jersey and the Cayman, attractive locations for these operations. Tax evasion and deregulation of company governance are just two popular tools that ease capital mobility and corrupt hegemony. Malta advertises its tax avoidance facilities worldwide and also "handles illicit money out of North Africa" (Shaxson, 2016:25), while acting as a conduit for hot money. As commented by Shaxson (2016:304-6), Malta specialises in

> " setting up large numbers of hedge funds on the cheap. This is about as good an idea as helping people set up banks or insurance companies on a shoestring – a recipe for the worst elements in society to get up to mischief."

In fact, the underbelly of Malta's seemingly healthy GDP growth rate and its unprecedented wealth is an increasingly unequal and unstable economy, precarious work conditions and environmental degradation. Indeed, among the FATF's top recommendations are: reform of the corporate insolvency framework, labour market reforms and decarbonisation of the economy (Council of Europe, 2021). But few political leaders seem concerned with Malta's long-term stability and improved quality of life for all residents.

## 3. Usury: Debt and Entrapment

Systemic inequalities in Malta's economy are compounded by and in turn compound indebtedness. Wages, pensions and benefits have risen at a much slower rate than the cost of living for lower income households and so the inability to make ends meet inevitably leads

[5] See also: Oswald, M. (2017). The Spider's Web. Britain's Second Empire.

to debt. In 2020, 16.9 per cent of the number of people living in private households, amounting to 85,369 people, were at risk of poverty i.e. living below €9,744 (National Statistic Office, 2021).

However, the prevalence of usury is difficult to quantify. In fact, whereas the police on average prosecuted less than three cases a year between 2011 and 2021, the Caritas Foundation for Victim Support offers assistance to three to four victims of usury a week (i. e. almost 200 a year). Thus, the volume of illicit transactions is not easy to assess. Indeed, according to the Central Bank of Malta:

> "We urgently need enough insight so as to be able to prevent increasing usury. We realise there is a new section of society that is getting into debt. But it is opaque. Many times only informed guesses are possible concerning the hidden economy."

Usury is largely influenced by the macroeconomic environment, both in the demand for loans (push factors) and also in the supply of ready cash (pull factors). Due to various reasons, ranging from "an exponential growth in persons needing cash for daily needs... as well as due to the recent rises in property prices and rent...Financial lending has increased since the economic crises" (The Central Bank of Malta, Personal Communication, 2018).

Since the international bank crashes of 2007/8, commercial banks have become more careful to scrutinise loan applicants and have introduced more stringent conditions, such that loans cannot exceed 25% of total income or three times the annual salary of the applicant. Also, Malta's Central Bank has established a database of clients with bank loans to identify people with multiple loans.

Yet, more and more bank loans have not been honoured, as shown in the increased rate of non-performing loans, and the Central Bank shared its concern that: "these restrictions have a negative effect in that needy people will be driven to the hidden market of usury. It is a balancing act [between lowering risks on banks and lowering the interest rates]" (The Central Bank of Malta, Personal Communication, 2018). At the same time, as local banks decreased access to consumer credit, people seem to be making more extensive use of shop credit and hire purchase agreements (The Central Bank of Malta, Personal Communication, 2018). Against the contemporary background of rises in household, corporate and government debt, the Central Bank of Malta is concerned that "Malta's financial stability is threatened by the increased volume of illicit transactions" (The Central Bank of Malta, Personal Communication, 2018).

Focusing on the amount of non-performing loans (NPLs), the Central Bank of Malta (Personal Communication, 2018) has directed local banks to be more informed and circumspect with applicants for bank loans. The International Credit Rating Agencies give much significance to the size and trends of non-performing loans and their reduction has positive international repercussions. Whilst these steps have reduced systemic risks, one negative effect is that more people are denied low interest loans, which may lead them to turn to loan sharks. Increased restrictions on bank loans could lead to more use of the hidden market "encouraging usury unwittingly" (The Central Bank of Malta, Personal Communication, 2018).

In general, on the money supply side, the availability of ready cash has seen an increase in recent years (The Central Bank Central Bank of Malta, Personal Communication, 2018). The Central Bank of Malta notes that "the increase in national liquidity is significant and could lead to more usury" (Personal Communication, 2018). Growth in economic activity, including that in the hidden economy as well as expansion of the nexus of crime, may be responsible for increased availability of ready cash. As stated by a representative from the Notarial Council (Personal Communication, 2018):

> " People with a lot of cash do not know what to do with it…typical loaners have lots of cash like market hawkers, car dealers and property dealers. Many are people who do not have declared income and only want more money."

Various legislative systems attempt to protect vulnerable persons from the depravations of loan sharks or the trap of high interest credit. In line with EU trends, the average interest rate in Malta has been kept low, however it is expected to rise as inflation rises (The Central Bank of Malta, Personal Communication, 2018). The European Commission, since 2016 has issued a number of directives in an attempt to harmonise and control increased indebtedness, especially consumer credit.

In reality, structural and behavioural indicators in Malta's small island economy reveal a strong tendency toward unfair practises especially in the charging of high interest rates on loans. In its inquiry, the Malta Competition and Consumer Affairs Authority, Office for Competition (2015) found that competition between bank lenders is low, barriers for new and existing enterprises to expand are high, and most SME's[6] cannot make informed decisions about the cost of loans.

Although the Malta Government established the Malta Development Bank in 2017 to offer financial facilities to SMEs and large infrastructural projects, market failure in financial loans is still extant. Malta's weighted average interest rates that banks charge on loans to SMEs are amongst the highest in the EU whilst banks profitability indicators have been higher than the EU average, showing there is room for reductions in loan rates and fees (MCCAA, 2015). The Scots church collected seed money for a micro-financing unit to address the need for low-cost loans for starting businesses, but it is totally over-stretched. As yet, Malta has no legislative or administrative set-up in place to facilitate and enable micro-financing or social economy initiatives.[7]

Entrepreneurs of SMEs in the construction, property and hospitality sectors are susceptible to over-indebtedness and are thus most likely to turn to usury. Non-performing loans ratios (NPLs) are high in the quarrying and construction sectors while the manufacturing and real estate sector also report significant NPLs (IMF, 2017). In this regard, the IMF (2017) concludes:

> " Maltese SMEs, particularly in construction and manufacturing, appear vulnerable to shocks… [such] that (i) smaller firms are in general heavily leveraged, less profitable and less resilient to shocks; (ii) vulnerabilities in the

[6] Over 99% of Maltese enterprises were small or medium sized in 2015, with the majority of these having less than ten workers (Office for Competition, 2015).

[7] The Social Enterprise Bill, based on a white paper published for consultation in 2015, is currently in its second reading stage in the Malta Parliament.

> construction and manufacturing are elevated… [and] higher leverage weighs on firms' investment (in innovation) and makes investment less responsive to positive demand shocks. "

Indeed, the analysis shows that many businesspersons are victims of usury to a substantial amount of cash, for instance in the case of Catherine Farrugia vs Marcus and David Lauri, Fashion Retail Enterprises (case 203/17TA on 31/01/2018) usurious gains were found to amount to €695,000. In the case Il-Pulizija vs Mario Gauci, Doreen Magri, Anthony Borg, Mary Muscat, Carmel Mangion, Maurizio Zahra (case 849/2008 on 23/5/2016), a new catering enterpriser became entrapped by a ring of five money lenders until his alleged debts totalled Lm111,800.

Against this background of usury as a corollary of indebtedness, the market for usurious loans continues to thrive. Factors leading to the increased prevalence of domestic debt also work on the hidden market of usury: inability to meet day-to-day business or personal needs, relatively low incomes, wages, pensions and benefits; higher costs of living especially for food, travel, property and rents; increased consumerism; and unexpected events such as job loss, injury and sickness. Whilst the official financial sector has grown rapidly in parallel with the increased supply of national liquidity, so has the hidden market become infused with cash through soaring upper-class incomes, increased crimes of usury, money laundering and fraud, and growing gambling and crypto currency businesses. Indeed, Caritas corroborates the view that usury is on the increase with the Central Bank Directors estimating that the average illegal loan was over €80,000 in 2018.

## 4. The Macro-Economic and Financial Impact of Usury

As the root causes of usury are various, ranging from macro-economic and structural dynamics to personal circumstances and vulnerabilities, the negative impact of usury is wide-ranging, traversing financial, social, psychological, and emotional aspects, both on the micro and macro level.

Usury is indeed a vicious cycle that exacerbates over-indebtedness. As discussed above, usury is a complex issue shaped by both demand and supply forces, but above all it arises from unequal power relationships which reinforce systemic inequalities, in the process impacting on economic and financial stability which in turn impacts on social solidarity and cohesion.

Financial stability is an essential element of a healthy, transparent economy. Usury directly undermines financial stability due to its opacity, volatility and connections to other crimes in the hidden economy. Indeed, "from the point of view of national economic stability, usury is all negative" (The Central Bank of Malta, Personal Communication, 2018).

Usury is institutionalised in the hidden economy and lending at excessive interest rates has become more widely accepted alongside gambling, financial secrecy and speculation. Organised crime is strengthened through various illegal enterprises such as loansharking, extortion, gambling, blackmail, political corruption and drugs (Grima, 2011). According to Kaplan and Mattheis, "loansharking is the second highest source [of income] for organized crime" (1967: 241). Thus, usury is a significant contributor to the destabilisation of Malta's economy, apart from the fact that "unsavoury predatory lending is of real social concern" (The Central Bank of Malta, Personal Communication, 2018).

With usury, the hidden economy is strengthened and the formal economy is weakened by the divergence of capital from productive investment and innovative enterprises. In addition, public funding is reduced due to the non-payment of taxes on usurious transactions. The peonage system of usury, based on mounting debts and ultimately the inability to repay extortionate loans, makes the economy unstable and unsustainable. Society benefits from those who contribute to it through productive work, while the usurer takes accelerating rates as compound interest by doing no productive work at all. "Usury on a large scale can generate large sums of money" (Dalli, 2005:i). As a result, it also carries a huge negative impact on financial stability and the economic system in general. Predatory lending transgresses the regulatory parameters of Central Bank policy, but its impact on economic stability is difficult to monitor. As stated by the Central Bank of Malta (Personal Communication, 2018), quantifying the impact of usurious loans on financial stability is a huge challenge in the absence of adequate knowledge on "the volume of illicit transactions."

This usurious system is ultimately built on the inability to repay extortionate loans, exacerbating the weak link in finance capital that leads to major recurring crises. As the financial system spirals downwards under the weight of multiple unsustainable debts, it is the poorest people who are most vulnerable, and the smaller enterprises more likely to collapse.

Indeed, apart from not contributing to the local economy through taxation and productive employment, due to undeclared income, certain loan sharks also benefit from social welfare benefits. As a result, loan sharks engage in individual gain without being subject to taxation and other regulatory frameworks, while reaping benefits which could go to those who are truly in need. Thus, they are in multiple ways, parasites on the system.

The negative impact on social solidarity and cohesion is indeed significant as usury exacerbates existing socio-economic injustices, intensifies criminality and corruption, and undermines democracy and good governance. The effects on the individual level are devastating and diverse, leading to material deprivation and psycho-social and emotional trauma for victims and their significant others. The power differential between the loan shark and the borrower leads to community fragmentation as the victims become increasingly isolated and entrapped in the vicious cycle of usury.

Macroeconomic and financial drivers are central to understanding increases in predatory money lending and money laundering. As global illicit financial flows increase and more off-shore and in-shore islands compete for capital investments through increased deregulation, legal loopholes, and secrecy, the elite benefit while people with few resources suffer.

## 5. Malta's Usurious Economy: A Call for Reform

Usury is influenced and in turn influences several aspects of economic and social life by interacting within the economic and financial, legal and administrative, and social and cultural realms on both the systemic/macro and personal/individual level. Despite the fact that various entities[8] are actively involved in addressing the problem of usury, on both a preventative and interventionist level with the aim of minimising its occurrence, impact and consequences, much more needs to be done to effectively counteract usury.

This section focusses on the economic, financial and governmental implications arising from Malta's usurious economy, in particular by referring to the need to address low or precarious incomes, to end legalised usury, to improve banking services, and to consolidate administrative and regulatory structures to enhance governance mechanisms to target usury.

Moreover, in order to enhance cost-effectiveness, such actions need to operate on a preventative, interventionist and harm-reduction level with the aim of combatting the ill effects of usury in the here and now, as well as address those factors that affect long term and intergenerational transmission. It is essential that actions are taken to address both the demand and the supply side of usury, since "it would be better to totally remove the reasons for resorting to usury. We need to eliminate the causes that lead someone to resort to usury" (Community social worker, personal communication 2018)

*5.1 Living Income*

People living on low or precarious income such as the working poor, the unemployed, pensioners, and social welfare beneficiaries are confronted with stiff challenges to cover basic expenses, especially when they are faced with sudden unexpected costs. Living on a low and precarious income is already a challenge that can lead to debt, but when macroeconomic factors such as rises in food, housing and utility costs and pandemics are added, usury becomes the only viable option for certain people. In this regard, a main challenge within the Maltese Islands is the availability, affordability and adequacy of housing, particularly in the private rental sector[9].

The research shows that economic hardship is a main contributing factor leading a person with few resources to resort to usury. Although, usurious loans may provide temporary relief, they often lead to a usury trap, resulting in greater distress and poverty.

Apart from inadequate income, financial illiteracy and financial irresponsibility constitute important indicators for over-indebtedness and recourse to usurious lending, such that a strong relationship exists between lack of good financial management, usury and addictive behaviour, in particular gambling (be it legal or illegal). The proliferation of betting shops and

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[8] These entities can be clustered into three types of services, namely:

- Financial services that include the Malta Financial Services Authority (MFSA), the Central Bank of Malta, Malta Microfinance, and Social Investment Schemes by APS Bank and BOV Bank;
- Legal enforcement and monitoring services that include the Office of the Arbiter for Financial Services (OAFS), the Economic Crimes Unit, the Financial Intelligence Analysis Unit (FIAU)[8] and Probation Services;
- Social Services that include the Foundation for the Victims of Usury (FVU) at Caritas, the Foundation for Social Welfare Services (FSWS), parish priests and social workers.

[9] Whilst government housing schemes offer an important opportunity for those on very low income to benefit from home ownership and rental schemes, the eligibility criteria in terms of minimum annual income of households and housing cost restrict access for a large segment of vulnerable people.

the online gambling industry in Malta in recent years has augmented the problem of gambling by making it more easily accessible.

In view of this, as enumerated below, the implications for reform are to ensure a living income for all, enhance financial literacy and responsible financing:

- Minimum income (wages, pensions and benefits) rises in accord with a revised Cost of Living Adjustment (COLA);
- More timely and adequate social benefits provisions;
- Improved employment conditions and economic mobility for all workers;
- Increased public ownership, transparency and democratic control of industry and finance;
- Increased awareness, education and training on financial skills development amongst the general public;
- More accessibility, affordability, and adequacy of housing through: (i) greater regulation of the private rental sector and real estate; (ii) increased investment in government housing in terms of both provision and maintenance; (iii) more availability of low-cost housing through public-private partnership; and (iv) more measures to facilitate the lease of private dwellings into the market.
- Regulation of the gaming industry through the; i) establishment of more control on the operation of betting shops and online gambling entities; ii) addressing of existing loopholes regarding self-banning and iii) establishment of fixed ceilings for the Maltco Lotto Super 5 Jackpot.

*5.2 Putting an End to Legalised Usury*

Shop credit and hire purchase agreements have increased recently in the Maltese Islands (The Central Bank of Malta, Personal Communication, 2018). Many sales outlets use deferred payments with interest rates that legally exceed the 8% limit, however, few customers realise the 'bona fide time-price' (Giles, 1978) of repayment, is a far higher total amount paid. Local banks are also enabled to charge over 8% interest on certain credit card facilities as well as on certain loans. Foreign financial companies established in Malta are in fact authorised by the MFSA to offer 'usurious loans' (e.g. payday loans of over 8% interest) to foreigners.

The court cases analysis shows that some private banks[10] as well as official bodies such as the Inland Revenue[11] and VAT Departments have been taken to court by private individuals who have been charged more than 8% on deferred payments. In a number of cases, the claimant's petition was upheld and the departments had to lower the relevant interest rates and/or fines and penalties. However, in many other cases, the claim was rejected.[12]

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[10] Banif Bank vs Ronnie Mangion, case 313/2017 held on 30/1/2019 in the Magistrates Court; Dr Debono for Paribas Suisse vs Jean Pierre sive Jean Borg case 1096/15 in the Appeal Court on 30/09/2016

[11] Angelo Zahra vs Attorney General and Prime Minister case 68/2017 in the Civil First Hall of the Constitutional Court 25/06/2018; Robert Ciantar vs Attorney General, Prime Minister, VAT Commissioner and Police Commissioner case 14/11 JZM in the Civil First Hall of the Constitutional Commissioner and Police Commissioner in the Civil First Hall of the Constitutional Court 30/09/2016.

[12] Bank of Valletta vs Anatole Baldacchino case 20/2003 in QCPA on 30/10/2014
Transport Malta vs Jurgen Bugeja case 425/2010 in the Magistrates Court 12/12/2011
Transport Malta vs Carmelo Richard case 398/2010 in the Magistrates Court 30/11/2011

Lack of knowledge regarding the true cost of loans and also the reliability of certain investments is widespread. Despite the EU MFID2 (Markets in Financial Instruments Directive II) that aims to provide guidelines to protect small investors, many Maltese investors in financial products may be unaware of the true nature and complexity of these products. Indeed, various local sellers are not professional investors and may have hidden charges such as a 15% commission on sales. Lack of sufficient information as well as outright misinformation further disempowers the client. A more stringent and regulated market is needed to address these forms of legalised usury.

These challenges could be addressed through the institution of various measures, including:
- official loans in excess of 8% interest are discontinued both in the case of Maltese citizens and foreigners;
- authorised usury by local and foreign companies be no longer permitted;
- no public (e.g. VAT, ARMS or Transport Malta) or private entity (including service providers and commercial outlets) be allowed to charge interest, surcharge and penalties that in the aggregate exceed 8% per annum;
- clear and comprehensive information regarding financial investments, penalties and interest rates is provided to clients before every undertaking and subsequent transaction;
- regulation and monitoring of credit terms are enforced in line with the latest EU Directives.

### *5.3 Banking Services*

Prior to engaging in a usurious loan, most borrowers would have initially sought recourse to a formal loan with a financial institution. However, given the circumstances of their personal financial status, risk factors, or the nature of the requested loan, the loan is not granted.

Various measures could be set in place to promote greater financial inclusion within the banking sector and provide increased financial and support services to enable people to enter into legitimised debts instead of usury. The greater the increase in bank restrictions, the greater the exclusion criteria to vulnerable groups who are more likely to be considered as high risk groups for usury. A most simple and viable option to prevent recourse to usurious loans would be to increase the availability of lower interest rate loans to vulnerable persons. This would offer more accessibility to bank services, especially for persons who are presently considered by banks to be high risk.[13]

Another practice which could help to prevent recourse to usury by persons who have multiple loans is that of loan combination whereby a person with various bank loans could make one collective repayment on a regular basis.

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Bank of Valletta vs CF Melfar, J&B Farrugia, C&C Farrugia in QCPA cases 471/20017 and 472/2007 on 18/10/2011

[13]Such examples of social loans include the MFCS guarantee on APS loans operated through Caritas and the tailored house loans operated through LEAP and APS.

The research provides clear evidence of the vulnerability of entrepreneurs and small companies to escalating indebtedness and bankruptcy. Thus, more favourable governmental schemes and bank services specifically targeting SMEs would prevent them resorting to usury.

On the supply side, a situation which could be indirectly contributing to usury is the relatively low interest rates that are currently in place for savings and certain fixed accounts. This factor may disincentive people from placing their money in a bank for interest return with the result of more cash on the market.

The research substantiates the view that usury and money laundering are connected, both stemming from the availability of abundant undeclared and unaccounted cash. Money laundering often includes complicated international and online transactions, the prevention of which requires international cooperation.

Addressing these implications entails that measures are set in place to provide for:

- increased access to loans at a low interest rate particularly for vulnerable groups;
- expansion and consolidation of micro-credit facilities;
- establishment of a legal framework and operating structure for social economy initiatives;
- loan combination schemes;
- the establishment of a community/social bank;[14]
- socially and environmentally responsible investor and saving schemes which provide a high return on investment;
- specific schemes to assist small businesses and entrepreneurs in terms of financial pressures and management;
- enhanced transparency of capital flows across jurisdictions and elimination of secrecy jurisdictions;
- enhanced international cooperation to raise accounting, legal and banking standards and promote tax payment justice;
- recognition of usury as a predicate crime to money laundering.

### *5.4 Good Governance: Relinquishing a Usurious Economy*

[14]This social bank could be financed by a 0.1% levy on banks and build on the experience of St. Andrews Church Micro Finance initiative that offers loans for up to one year at no interest. Such a bank would work closely with MFCS so that people on low incomes, especially pensioners do not fall into the usury trap. On the same principle that Maltacom pays a hefty sum annually to the Government in order to finance the Responsible Gaming Agency, banks would make their contribution towards this new fund as they benefit from credit activities. If for example a bank makes a profit of €50,000,000, its contribution would be €50,000; since there are five major banks the annual contribution to this fund would be €250,000 euros. This calculation is very conservative since most of the major banks make higher annual profits. The individuals applying for a loan would be carefully assessed and the repayment programme spread over a period of time. Repayment could even be made by deducting the monthly instalment from social security benefits or pensions. An ongoing process of contact between the administrators of the fund and its clients is necessary. A maximum of say €10,000 euros is to be established for each loan.

Given the need for both vertical and horizontal action across a wide range of policy areas, the success of these initiatives is dependent on addressing usury across all levels of society. Action on usury thus needs to be grounded within a sturdy participatory governance structure which acts through both a bottom-up approach (through more community action and involvement) and a top-down approach (through adequate economic, legal and administrative structures and service provision). This participatory framework co-ordinated through an anti-usury, multi-disciplinary governance mechanism would ensure the prevention and reduction of usury and affiliated crimes, while pledging commitment towards a sound economic system that is owned by all.

Good governance with clear long-term goals to improve the holistic well-being of all island residents necessitates an economic transition from dependence on financial schemes or scams and from subservience to the nexus of organised crime, bad business and corrupt politics. For, as commented by Shaxson in his chapter entitled 'Offshore after the Panama Papers', "you can't get involved in offshore and ring-fence your own economy and politics from the murk. It will, inevitably, leak into and corrupt your own system" (2016: 309).

Pro-active financial and economic domestic reform is vital. Attracting business on the basis of tax avoidance and evasion, lack of meaningful regulations and accounting, and secret loopholes is a recipe for disaster. To build a sound and sustainable Maltese economy, improved human capital, equality and investment in the new green deal are crucial. It is only through the consolidation of a smart, inclusive, just and sustainable economy that Malta can relinquish its usurious economy and unite with other progressive leaders and citizens against the spiders-web of de-regulatory and criminal activities. Maltese people, in unity with other:

> "developing and middle-income countries can find a voice to articulate their concerns about this system for transferring wealth from poor to rich, and work together… If there were ever a movement that could unite the citizens of developing and wealthy countries in one cause, this is it."
>
> (Shaxson,2016:284)

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