



DEFAMATION

 **lecocq**associate

DEFAMATION

The purpose of this analysis is to compare the different limitation periods applicable to defamation offences in Switzerland, Malta and the United Arab Emirates, as well as the periods after which the entry of the offence in the criminal record can be removed.

Defamation is an offence constituting an attack on honour. The right to honour is part of the rights of the personality. The addressee of the defamatory statements must be a third party for the offence to be committed.

Both legal entities and natural persons can be defamed.

Switzerland, Malta and the United Arab Emirates have legislation on defamation. In Switzerland, defamation is defined in a general way and can be committed regardless of the medium and means of communication. Like Switzerland, the United Arab Emirates defines defamation in a general way and it can be committed regardless of the medium and means of communication. However, defamation through publication in a newspaper or printed matter is an aggravating circumstance in the UAE. Maltese law provides for the offence of defamation only through written publications in the media. In all three jurisdictions, any person who relays the defamatory statement, but is not the author, may be guilty. This would be the case of publishers, for example.

DEFINITION OF DEFAMATION UNDER **SWISS LAW**

Definition of Defamation under Swiss law	Legislation and legal provision	Source	Comments
The violation of article 173 of the Swiss Criminal Code supposes that the perpetrator has communicated offensive remarks about the victim to a third party.	Article 173 of the Swiss Criminal Code.	<p>Swiss Criminal Code: https://www.admin.ch/opc/en/classified-compilation/19370083/index.html</p> <p>HURTADO POZZO José, Droit pénal partie spéciale, p. 596 ss 2009.</p> <p>SCHÜRCH SIMONE, La prescription d'une DIFFAMATION par publication internet, [http://www.lawinside.ch/142/].</p> <p>CORBOZ Bernard, Les infractions en droit suisse, Volume I, p. 574 ss 2010.</p>	<ul style="list-style-type: none"> Article 173 of the Swiss Criminal Code is one of the three criminal offences against honor of the Swiss Criminal Code, with slander (Article 174 of the Swiss Criminal Code) and insult (Article 177 of the Swiss Criminal Code). The "offensive remarks" of the defamation may consist of a dishonorable behavior or any fact likely to prejudice the consideration of the person concerned. The clearest cases are those in which punishable or unlawful conduct is imputed to the victim, but it does not have to be a conduct provided for in a criminal law, it is sufficient for it to be morally reprehensible. For example, accusing someone of tax fraud (ATF 73 IV 30) or maintaining a charge of an offence against someone cleared of suspicion (ATF 102 IV 107) are offences against honor. If the victim of these offensive remarks is dead, Article 175 of the Swiss Criminal Code applies and allows his relatives to sue the perpetrator. Article 176 of the Swiss Criminal Code relates to defamation and slander in their written forms. The difference between article 173 of the Swiss Criminal Code and Article 174 of the Swiss Criminal Code is that slander supposes that the facts the perpetrator communicated are not true and that he knows they are not. Article 174 of the Swiss Criminal Code is a <i>lex specialis</i>.

Definition of Defamation under Swiss law	Legislation and legal provision	Source	Comments
			<ul style="list-style-type: none"> The offender in accordance to article 28 (1-3) of the Swiss Criminal Code: If an offence is committed and completed through publication in a medium, then only the author is liable to prosecution. If the author cannot be identified or if he cannot be brought to court in Switzerland, then the editor responsible in accordance with article 322 bis is liable to prosecution. If there is no responsible editor, then the person responsible for publication in accordance with article 322 bis is liable for prosecution. If the publication has taken place without the knowledge or against the will of the author, then the editor or, in his absence, the person responsible for publication is liable to prosecution as the offender. Concerning the criminal offences against honor, Article 178 of the Swiss Criminal Code provides that the statute of limitation is limited to 4 years. <p>The Federal Supreme Court retains as dies a quo the day of publication of the post and that there is no element of continuity in the case of a publication on the Internet (Swiss Criminal Code, article 98(a) ; ATF 142 IV 18 ; ATF 135 IV 6). It considers that a publication on paper and a publication on the Internet are both cases in which the defamatory text is visible for a certain period of time after its publication, and that the author has the possibility to intervene to block its publication or to correct the message.</p>

DEFINITION OF DEFAMATION UNDER **MALTESE LAW**

Definition of Defamation under Maltese law	Legislation and legal provision	Source	Comments
Defamatory words in written media shall be deemed to be published and to constitute libel.	Defamation and Media Act, Chapter 579 Laws of Malta, Article 3	https://legislation.mt/eli/cap/579/eng/pdf	<p>Defamation is a civil claim:</p> <p>Defamatory statements give rise to an action in libel before the competent court and the provisions of the Code of Organization and Civil Procedure relating to actions filed before the court shall apply to such action.</p> <p>Statements are deemed defamatory if they cause serious harm or likelihood of causing serious harm to the reputation of person making the claim.</p> <p>Harm to the reputation of a body that trades for profit is not serious harm unless it has caused or is likely to cause serious financial loss.</p>

DEFAMATION UNDER UAE LAW

Definition of Defamation under UAE law	Legislation and legal provision	Source	Comments
Whoever attributes to another, through a means of publicity, a fact that makes him object of punishment or of contempt.	Article 372 of the Federal Law No. 3 of 1987 concerning the Penal Code (the " Penal Code ")	https://www.lexismiddleeast.com	
Whoever insults another person, by any means of publicity, which harms his honour or dignity, without attributing any specific incident.	Article 373 of the Penal Code	https://www.lexismiddleeast.com	
Whoever insults or accuses another person of a matter of which he shall be subject to punishment or being held in contempt by others, by using a computer network an information technology means.	Article 20 of the Federal Decree-Law No 5 of 2012 on Combating Cyber Crimes (the " Cyber Crime Law ")	https://www.lexismiddleeast.com	Any owner or operator of a website or computer network can be held liable for deliberately and knowingly saving or making available any illicit content or failing to remove or block access to this illicit content within the period determined in the written notice addressed by the competent authorities indicating the illegal content and being available on the website or the computer network (Article 39 of the Cyber Crime Law).



OUR EXPERIENCE

lecocqassociate provides a full range of financial regulatory, corporate and commercial advice in relation to the structuring and incorporation of entities. The group is gaining a reputation for outstanding service in the areas of data protection and online reputation management, as well as cyber security, blockchain and crypto asset regulation.

This newsletter is for information purposes only. It does not constitute professional advice or an opinion. Please contact Mr. Dominique **Lecocq** on drl@lecocqassociate.com for any questions.

Our Adjustment service tackles online reputation management from a legal and technological perspective.

Click to see our new website regarding our Adjustment services:

www.kyc-central.com

ADJUSTMENT POWERED BY **LECOQASSOCIATE**
You are your greatest asset



GENEVA

Boutique Law Firm

Ave de la Gare des Eaux-Vives
 28, CH-1208 Geneva,
 Switzerland

t: +41 22 707 93 33
 f: +41 22 786 14 68

MALTA

Regulatory Advisory Practice

Swiss Urban Factory, The
 Regulatory Suite, 5, Saint
 Frederick Street, Valletta VLT 1470
 Malta

t: +356 22482900
 f: +356 22482919

DUBAI

Structuring Advisory Practice

Central Park Offices, Office 15-32,
 Dubai International Financial Cen-
 tre (DIFC), P.O.Box 506652, Dubai,
 UAE

t: +971 4 242 7843
 f: +971 4 242 8081

ABU DHABI

Legal Consultants

Al Sila Tower, Office 2435, Al
 Maryah Island, Abu Dhabi Global
 Market Square, P.O.Box 128666,
 Abu Dhabi, UAE

t: +971 2 6948693
 f: +971 2 6948694