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Strengthening the House of Representatives – The Case For Autonomy
Office of the Speaker

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01. Proposal

This Memorandum proposes the establishment of a Parliamentary Service as a distinct legal entity that is autonomous from the Public Service in determining its organisation, staffing and its internal operational policies and procedures. The need to establish the Parliamentary Service as an independent entity is not new. Indeed, as early as 1992 the Hon Lawrence Gonzi, Speaker of the House at the time, articulated the view that:

*"..Parliament should be structured in a way that is independent from the Executive. This means that the time will come when a Parliament Act needs to be passed setting it up as an independent body, completely segregated from the normal government administrative structure."*¹

More recently, this view was again expressed by the current speaker, the Hon Anton Tabone who made the case for the need for parliament to be granted autonomy in the same manner that The Office of the Auditor General; and that of the Ombudsman had been granted:

*"... inħoss li llum b'saħħa iżjed minn qabel nerga' nirriaferma l-ħtiega urgenti li l-istituzzjoni parlamentari tagħna ssegwi bla iżjed telf ta' żmien, il-passi ta' l-Uffiċċju ta' l-Ombudsman u dak ta' l-Awditur Generali. Infakkar li meta l-ombudsman u l-Awditur Ġenerali bdew jittqiesu bhala Uffiċjali tal-Parlament, akkwistaw l-awtonomija sħiħa fl-amministrazzjoni ta' l-istituzzjonijiet immexxija minnhom. Hekk ukoll għandu jigrri fl-amministrazzjoni tal-Parlament Malti."*²

Through such statements it is noted that the impetus for creating such a case has been building up for a reasonably long period of time and many sustain that the time is ripe for analyzing and proposing such a case for the autonomy of the national Parliament.

The desire for parliamentary autonomy reflects the need to strengthen the capacity of the House such that it may better meet its Constitutional and other roles, responsibilities and challenges in a modern democratic society that forms part of the community of the European Union.

In this context, this proposal calls for the setting up of a Parliamentary Service that would be responsible for, and that would have the necessary mechanisms with which to provide for, the necessary support to the House in the execution of its functions in a similar fashion as is currently provided by the Office of the Speaker and that of the Clerk.

02. Executive Summary

In establishing the House of Representatives as the legislative body of Malta, the Constitution also institutes the Office of the Speaker and the Office of the Clerk to provide it with the necessary administrative support services. These functions are further defined and elaborated on within the Standing Orders of the House.

Both with the evolution of the democratic system in Malta and as a result of an even closer relationship with its European partners, the House is facing new challenges that require it to evolve and strengthen its capacity to fulfil its obligations in this changing environment.

Compared to both its European counterparts and other developed democratic countries, the House appears to have a limited capacity to fulfil its democratic and international obligations. This is primarily

¹ Correspondence by Hon Lawrence Gonzi, Speaker (9th March 1992)

²Speech by Hon Anton Tabone MP - Speaker (7th June 2004)

reflected by the extent and organisation of its support structures. Basic comparison of organisation and resource allocation quickly highlights this observation.

Moreover, both modern and emerging European (and other) democracies all embrace the principle of autonomy of operation of the House administration from the Public Service. This is different in Malta where the Constitution states that the Clerk and the staff of the Office of the Clerk should be Public Officers and therefore members of the Public Service. Consequently, these are governed by the rules and regulations of the Public Service and are hence subject to the approval of the Public Service in order to recruit or secure the necessary budget to operate.

Whilst this arrangement has to date functioned with a degree of effectiveness it is regarded as sub optimal in that it renders the Parliamentary Office dependant on Public Service Structures and in this way, it is felt, hinders the evolution of the support structures to keep with the pace of new challenges or needs and demands on the House. This is particularly significant when one takes into consideration the apparent anomaly between the various Parliamentary Structures this being that other Offices of Parliament, namely the National Audit Office and the Office of the Ombudsman, are fully autonomous whilst the support services of the House are still dependent on the Public Service.

In this context, past as well as the present Speaker(s) of the House have repeatedly expressed their views that full autonomy should be afforded to the administrative offices of the House and that both the Office of the Speaker and the Office of the Clerk should become autonomous of the Public Service and empowered to regulate their own organisation and procedures; albeit under the direction and scrutiny of the House.

To this end, an evaluation of models for parliamentary structures that are adopted in foreign jurisdictions was carried out. On the basis of this review and the related findings three options have been identified.

The preferred model embraces the principle for autonomy. It empowers the House to recruit and decide on its internal organisation and operation (policies and procedures on recruitment, discipline, financial resources etc.). In this respect, the model proposes that the Office of the Speaker and the Office of the Clerk be organised within the newly established Parliamentary Service. As a result, the reporting relationship, powers, roles and responsibilities of each in respect of the provision of support services to the House would be more clearly defined. The establishment of the Parliamentary Service would also provide for greater flexibility in terms of the organisation and provision of support services to the House without the need to seek external approval from the Public Service.

The main identified benefit is that all members on both sides of the House would be administratively strengthened and hence in a better position to fulfil their parliamentary roles and responsibilities. However, this would also imply a corresponding wider function of the existing House Business Committee (HBC) and a more time consuming and demanding role of each member of the House. Furthermore, unless current resourcing remains a constant, the adoption of this proposal may also require additional financial resources.

03. Background

In line with Articles 51, 65 and 67(3) of the Constitution of Malta the Parliament of Malta is empowered to make laws for the peace, order and good government of Malta. It also has to establish Committees (e.g. Public Accounts Committee) to inquire into matters of general public importance. Moreover, the Prime Minister is obliged to keep the President of Malta informed about the general conduct of the Government of Malta.

Consequently, the House is not only to act as the legislator but also to ensure that the operation of Government (including the Public Service) is acting in the interest of the country and the general public. As a result, the House requires the administrative support in order to execute its functions.

In this respect, the Constitution provides for the establishment of the Office of the Speaker and the Office of the Clerk³ for whom the corresponding functions are defined in the Standing Orders. Amongst other functions, the role of the Speaker is to provide direction (via orders to the Clerk) to the Office of the Clerk. This Office is primarily responsible for the regulation of all matters connected with the business of the House and the provision of all the necessary support services to the House to ensure its effective and efficient operation. These functions of the Clerk are carried out under the direction of, and in accordance with any orders that may be issued by, the Speaker⁴

Although the Speaker has full authority over the Parliamentary administrative function, the Speaker is not empowered to establish rules of procedure, nor is he empowered to recruit staff in his Office. The Constitution (Article 64) establishes that "*the office of the Clerk to the House of Representatives and the offices of the members of his staff shall be public officers*".⁵ Consequently, the operation of the Office of the Clerk (including recruitment of staff, financial procedures etc) is governed by the same rules and regulations governing the operations of the Public Service.

This effectively constitutes an apparent anomaly with the evolution of the House support services being subject to the scrutiny and approval systems of the same Public Service that is a tool of the Executive rather than of the House. This is not considered ideal in terms of the capacity of the House to meet its Constitutional obligations or to reflect accepted international practice of the House in an evolved democratic society.

04. Rationale

Reflecting this line of thought, past and present Speakers of the House have expressed their view that the Office of the Speaker and the Office of the Clerk should be offered full autonomy from the Public Service. This would better reflect the fact that the Office of the Speaker and the Office of the Clerk are intended as offices of the House whilst the Public Service is primarily the tool of the Administration.

³ Article 59 and Article 64 of the Constitution respectively.

⁴ Standing Orders of the House of Representatives, Article 175

⁵ Article 64(1) and 64 (2) respectively.

Further to a request from the Speaker of the House, the Management Efficiency Unit (MEU) assessed the case for autonomy in the light of international practice. Consequently, MEU proposed a model for the institution and organisation of the Office the Speaker and the Office of the Clerk to more closely reflect international practice. This proposal is based on MEU research and analysis and consequent discussions and deliberations of this Office.

The primary observations made by MEU on the basis of their research and analyses are that:

01. When compared with similar European models, the functions of the Speaker and the Clerk are similar but they lack the autonomy from the Public Service that is a standard practice in these International models (refer to **Section 05**). Given this lack of autonomy, the House would be subject to rules, regulations or policies it has no direct control over (e.g. a general no recruitment policy currently applicable to the Public Service) and this may prove a barrier to the suitable evolution of support Offices of the House. As a result, the House could find itself in a position whereby it may not execute its functions with efficiency or effectiveness as a result of decisions on which it has no direct control.
02. The House has a more limited organisation and resource allocation in respect of the provision of its support services when compared to International models.
03. The House has; through specific Acts of law; already accepted the principle of autonomy of its offices from the Public Service through the institution of autonomous investigative bodies of Parliament. Namely, these are the Office of the Ombudsman (CAP 385 – Ombudsman Act⁶) and the Office of the Auditor General (Article 108 of the Constitution and by CAP 396 – National Audit and National Audit Office Act). Both these entities may act autonomously and have the power to recruit without reference to the Public Service Commission⁷. They also are empowered to establish means for their efficient and effective operation, albeit subject to direction from the House via legislative provisions.
04. Today the House is facing new demands and challenges. Some of these are a result of Malta's recent membership in the EU that significantly increased its involvement in the legislative process of the European Union effecting 25 Member States and millions of European citizens. Others are a result of increased public scrutiny and pressure to be more effective in its scrutiny of the operation of the Public Service and public entities to ensure that they run efficiently and act in the interest of the public.

Although not the only option available (please refer to **Section 06**), it may be concluded that full autonomy from the Public Service may be required for the House to be in a position to better orient and arm itself with the necessary structures to allow it to better meet these new challenges, roles and responsibilities.

05. International comparison

The MEU has researched international models, practices and general policies and compared these to the local scenario. Amongst countries reviewed are Italy, France, United Kingdom, Latvia, Andorra, Cyprus and Finland.

In addition, the project team also referred to the websites of other countries including Belgium, Luxembourg, Finland, Sweden, Portugal, Scotland and Iceland. However, these jurisdictions are adequately reflected in the findings emanating from the above-mentioned countries.

Table 01 below provides a summary outline of the main findings and the common themes identified on international models of the MEU project team. Given that the terminology used is different between one country and another although essentially referring to similar posts or functions, the project team has opted to use the Maltese equivalent terminology.

⁶ Article 3 of the Act provides that the Ombudsman shall be an Officer of Parliament, thus emphasising the fact that the Office is a body of Parliament.

⁷ In respect of the Auditor General, this power is provided to him via CAP 396 – National Audit and National Audit Office Act. In the case of the Ombudsman, Article 10(1) of CAP 385 – Ombudsman Act, provides for this.

Table 01 outlining the local and foreign practice in the organisation and function of the Office of the Speaker and the Office of the Clerk

Feature	Foreign	Local	Observation
Legislation	<p>Establishes a Parliamentary Office that is autonomous and independent and reports to the House.</p> <p>Generally establishes 'Board of Directors' type of Parliamentary Committee (PC) that is responsible for regulating the operations of the Parliamentary Office. The Speaker chairs this PC.</p> <p>Defines the roles and functions of the Speaker and the Clerk</p>	<p>Provides for the establishment of Office of the Speaker and the Office of the Clerk.</p> <p>Establishes that Clerk and the staff of his office should be Public Officers and members of the Public Service.</p> <p>Defines some of the roles of the Speaker and the Clerk and these are more extensively determined via Standing Orders.</p>	<p>The functions of the Speaker and the Clerk are similar in most aspects with the exception of their role in the management of their respective Office and their reporting relationship.</p> <p>In all foreign jurisdictions, the House has complete 'control' over the organisation and rules of procedure of its support services. This is not the case in Malta as staff is considered to be a part of the Public Service.</p>
Functions of the Speaker	<p>President of the House</p> <p>Spokesperson of the House</p> <p>Statutory Head of the Parliamentary Office</p>	<p>Chairperson of the House</p> <p>Oversees and provides direction to the Office of the Clerk</p>	<p>Similar functions except in respect of the management of the Office of the Clerk.</p>
Functions of the Clerk	<p>In larger countries (and parliaments) generally acts as the CEO of the Parliamentary Office and is responsible for day-to-day administration of the PO.</p> <p>Is responsible for administration and secretarial services during the sittings of the House.</p>	<p>Provides the necessary administration to the House of Representatives.</p> <p>Responsible for the day-to-day running of the administration and support offices.</p>	<p>Similar functions except in the reporting relationship with the Speaker, where locally the Clerk reports directly to the Speaker, whereas in foreign jurisdictions, the Clerk reports to the Parliamentary Committee including the Speaker in his capacity as chairperson of the Parliamentary Committee.</p>
Reporting (and control Structure) and Autonomy	<p>Speaker is usually chairperson of the Parliamentary Committee regulating the operation of the Parliamentary Office. The PC has the right to establish its own operational policies, functional structure, recruit its own staff, and administer its own budget etc albeit under scrutiny of the House.</p> <p>The Clerk acts as the Chief Executive of the PO and reports to the PC.</p> <p>The various heads of the sub departments in the Office of the Clerk report to the Clerk</p>	<p>The Speaker presides over both the House and the administration and support offices. However, has limited influence on the execution of a number of functions of the Clerk and has little control on the administration of the Office that is part of the Public Service.</p>	<p>The Office of the Speaker and the Office of the clerk are not granted similar degree of autonomy in determining their organisation & procedures. In some aspects, they are subject to rules and regulations of the Public Service. This is not found in any other country reviewed.</p>

Conclusion

The main roles and functions of both the Speaker and the Clerk compare favourably with the international models. They are in fact almost identical.

However, there is a significant departure in respect of the autonomy granted to these Offices in determining their organisation and rules of procedure. All foreign jurisdictions reviewed provide the House with full autonomy in this respect. In Malta, this is not the case given that the Office of the Clerk is subject to the rules and regulations governing the Public Service. This may restrict the capacity of these Offices to provide the House with the necessary services to ensure that the House executes its functions with the necessary efficiency, effectiveness and importantly, autonomy.

06. Identified Options

Three primary Options for the structuring of the Office of the Speaker and the Office of the Clerk have been established. These have been identified in view of international evidence and the local scenario as follows:

- Preserving the *status quo*;
- Establishing an autonomous Parliamentary Office reporting to the House; or
- Establishing an autonomous Parliamentary Office reporting to the President of Malta.

Table 02 below summarises the general cost-benefits of each option.

Primary Costs	Primary Benefits
Option 1 – Preserving the Status Quo	
<p>The House does not have full authority and autonomy in executing its functions and is subject to the rules and regulations of the Public Service for the administration of the Office of the Clerk. This may compromise its capacity to adapt suitably and in a timely manner to its changing functions, roles and responsibilities.</p> <p>Unclear reporting relationship between the Office of the Speaker and the Office of the Clerk remains.</p> <p>The lack of autonomy of the House in regulating the organisation and procedure of its administrative and support services may negatively influence its efficiency, effectiveness and timeliness of its functioning and operation.</p>	<p>No change is required to any aspect concerning the functioning of the Office of the Speaker or the Office of the Clerk. Hence, there will be no potential disruption of current service levels.</p> <p>There is no uncertainty related to the need to change.</p> <p>No additional costs are involved and which may be related to the setting up or amending of any structures or organisation of the Offices or the changing of work conditions.</p> <p>No statutory amendments are necessary.</p>
Option 2 – Establishing an autonomous Parliamentary Service reporting to the House	
<p>Introduction of the element of uncertainty that is associated to the change process.</p> <p>Potential increase in recurrent expenditure that may be related to an increase in staff complement or improved work conditions for staff of the PS (as a result of the need to attract suitable staff or as an incentive to current staff to accept redeployment with the PS).</p> <p>Additional burden on members of the House due to the increased responsibility for administering its</p>	<p>The House would have complete autonomy to regulate and govern all aspects of its operations, both administrative and otherwise. This would provide both sides of the House with the necessary empowerment to be flexible and in a position to operate efficiently, effectively and be dynamic to react in a timely manner to changes in its roles or functions.</p> <p>The House could become more effective in executing its role as required by the Constitution as it has increased control on reforming and</p>

Primary Costs	Primary Benefits
<p>organisation and rules of procedure. This is especially relevant for members of the HBC.</p> <p>Increased effort that is required to develop and maintain internal rules of organisation and procedures pertaining to the PS (especially on members of the HBC).</p> <p>MPs of both sides of the House in fact would become directly responsible for the utilisation of public funds and resources made available to them. This would increase the possibility of direct public scrutiny (and risk of criticism) on their capacity to manage these resources with efficiency and in a manner that reflects their public statements (e.g. on the need to restrain public expenditure).</p> <p>The need to develop and enact the necessary statutory provisions to reflect these changes.</p> <p>Potential duplication of effort made by the administration (Public Service) and the Parliamentary Service.</p> <p>Provisions are necessary to provide for the redeployment of the current staff complement from within the Public Service to the Parliamentary Service. This may also need negotiations with Unions or staff representatives. There is the risk of staff resistance to this change in status leading to their resignation (or non-deployment with the PS) from the service. This could represent a significant handicap to the smooth operation of the House due to the loss of staff and expertise.</p>	<p>restructuring its internal operations.</p> <p>The organisation and operation of the House would more closely reflect standard international practice in developed democracies.</p> <p>The House would be completely autonomous of the Administration (Public Service and Ministers in this capacity) and could hence better execute its function in overseeing and scrutinising the operation of the Administration in implementing the provisions of enacted laws and ensuring the proper utilisation of public assets.</p> <p>The increased autonomy in the management of its operations and execution of its function could facilitate an increase in public confidence in the Institution.</p>
<p>Option 3: Establishing an autonomous Parliamentary Service reporting to the President of the Republic</p>	
<p>Increased workload on the President and the Office of the President.</p> <p>The President would have a more direct influence and responsibility on the operation of the House and would be more exposed to public scrutiny in this respect.</p> <p>This is a significant departure from the roles and functions traditionally attributed to the President of Malta and could thus be difficult to introduce.</p> <p>The Office of the Speaker and the Office of the Clerk would no longer be considered as part of the House but become part of Parliament. This represents a significant departure from the interpretation of their roles and functions both locally and internationally.</p>	<p>The role of the President would manifestly become more significant in the functioning of Parliament.</p>

Conclusion

In view of the identified costs and benefits, the international models reviewed and traditional local practice, the project team is of the opinion that the preferred model is that outlined in above whereby an autonomous Parliamentary Service reporting to the House is established.

07. Political Perspective

Given that the proposal aims to strengthen the operational capacity that supports both sides of the House, it is recommended that the adoption and implementation of the proposed model would be adopted only if it is supported and approved by both sides of the House.

The primary political implication is most probably reflected in the potential strengthening of the House in terms of its capacity to obtain information to more effectively scrutinise the operation of Government. This is an advantage in terms of the effective operation of democratic safeguards. In addition, the adoption of this model could result in a significant increase in the workload and demands on some or all Members of the House.

Furthermore, the facilitation of a mechanism by which the House can autonomously administer its organisation and operation would increase public scrutiny and accountability. Representatives would thus not only become accountable to political issues and decisions but could be held accountable for the means by which the House administers itself and its operations (e.g. suitable use of public funds).

08. Cross Policy Implications

The adoption and implementation of this model will bring about a separation between the House and the Executive. Consequently, the latter could come under greater and more effective scrutiny of members from both sides of the House.

09. HR Issues

Given the change in work conditions of current public officers working in the Office of the Clerk, there is the potential risk of staff resistance to the change (to become employees of the Parliamentary Service) unless there are adequate statutory safeguards and that the change is effectively communicated and managed to limit the degree of this resistance. In the case that the transition is not well managed, there could be a loss in expertise due to some current employees opting not to continue providing their services to the House. This could be avoided through effective change management and communication.

Although it could be assumed that in the short term there would be no additional recruitment, it is clear that the implementation of the model could easily result in increased pressure to strengthen the HR complement, especially in view of almost obvious lacunae in the current HR resource capacity. This may result in an additional burden on public finances. It may also put additional strain on accessibility to sometimes-limited national technical expertise in certain areas. This is especially true if the operations and functions of the Parliamentary Service and the Public Service are not co-ordinated to ensure that there is no overlap or duplication in function or activities.

Furthermore, the adoption of the model may bring about a public perception that the House is creating two-tiers of public officers (i.e. employees remunerated out of public finances). This would be exacerbated if officers of the Parliamentary Service were to be provided with work conditions that are manifestly better than those for the Public Service. Pressures from the current staff to align work conditions with those of staff of the Ombudsman and the Auditor General could be expected and this could fuel such perception. This could be avoided through HR policies of the Parliamentary Service that consider the specific competencies sought to fill the positions required.

10. Financial Implications

Assuming that the current organisation, staffing and general work conditions are preserved, no additional financial implications are envisaged in the short-term. However, as indicated above, it could be expected that the change may increase pressures for additional financial investment in respect of staff (complement, wages etc.) and resources in the medium to long-term.

Also as indicated above, it is imperative that duplication of investment (by the Parliamentary Service and the Public Service) is avoided at all costs.

11. Legislative Implications

The current legal provisions do not provide the House with the necessary empowerment to recruit and determine the organisation, policies and procedures of its support offices and services. Hence, new statutory provisions are required. In this respect, a draft Bill has been prepared.

12. Recommendations

It is recommended that the **Cabinet**

- approves the Memo whereby initiating the process of establishing the Parliamentary Service and providing autonomy to the House to determine its organisation, staffing and operational policies and procedures;
- initiates consultation between both sides of the House and secure approval; and
- review or otherwise the draft Bill when delivered and finalise for reading and enactment.

Anton Tabone MP
Speaker

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