

## DIKJARAZZJONI LILL-KUMITAT DWAR IL-KONTIJJET PUBBLICI

L-ERBGHA 7 TA' OTTUBRU 2015

1. Dan il-Kumitat Permanenti dwar il-Kontijjet Pubblici ("il-PAC") qiegħed jiddiskuti u jittrata r-rapport ta' l-Awditur Ġenerali intitolat "*An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement*" datat Lulju 2013 ("ir-Rapport"). F'pagna 9 tar-Rapport, l-Awditur Ġenerali speċifika li t-termini ta' referenza tal-verifika ta' l-Ufficcju tiegħu ("l-NAO") kienu kkoncentrati fuq ix-xiri tal-fuel mill-Korporazzjoni Enemalta għall-perjodu 2008-2013.
2. Għaldaqstant nibda billi nistqarr li fil-perjodu msemmi (ie 2008-2013) jien ma' kontx għadni nservi bhala membru tas-Segretarjat tal-Ministru ta' dakinhar Dr Austin Gatt jew f'xi kariga pubblika ohra b'rabta ma' l-operat tal-Korporazzjoni Enemalta.
3. Minkejja dan l-istat ta' fatt, jien qiegħed nagħmel din id-dikjarazzjoni quddiem dan il-Kumitat u dan għal flett ragunijiet ewlenin:
  - a. Minhabba li kont parti minn process li kien intiz biex jirriforma l-hidma ta' l-entitajiet tal-Gvern (fosthom il-Korporazzjoni Enemalta), irrid niehu l-opportunita' biex nispjega l-hidma li kient saret f'dan is-sens; hidma li nemmen li għandha rilevanza għall-kuntest tad-diskussjoni tar-Rapport.
  - b. Bhala Membru Parlamentari nhoss li għandhi d-dmir li nikkontribwixxi l-perspettiva tiegħi dwar il-materji msemmija fir-Rapport aktar u aktar meta minn din il-perspettiva tista' ssarraf f'kontribut lejn *policies* u prattici ahjar.
  - c. Finalment, nemmen li l-hidma ta' dan il-Kumitat u aktar u aktar l-ezitu tiegħu, huma process importanti hafna li jmur *oltre* s-suggett innifsu u jista' jservi biex jiddahhlu aktar processi li jsahhu l-governanza tajba u effettiva fl-amministrazzjoni pubblika.
4. Għal finijiet ta' struttura din id-dikjarazzjoni hija maqsuma f'erba' partijiet:
  - a. Ir-rwol amministrattiv tiegħi bejn l-2003 u l-2008.
  - b. Il-portafoll ta' l-entitajiet tal-Gvern fl-2003.
  - c. Il-hidma ta' riforma fl-Enemalta.
  - d. Il-politika (*policy*) tax-xiri fl-entitajiet.
5. Bhala membru ta' dan il-Kumitat, għazilt li ma' nkunx politiku u niffoka fuq il-materji ta' *policy* f'din id-dikjarazzjoni għaliex nemmen li l-Kumitat Dwar il-Kontijjet Pubblici għandu funzjoni essenzjali fit-tishih ta' l-amministrazzjoni finanzjarja. Filwaqt li nkun konciz ser nipprova nagħti l-kuntest u nispjega l-punti saljenti kollha sabiex dak li qed nispjega jkun

jista' jinftiehem fl-isfond tas-sustanza tar-Rapport. Madankollu, nitlob lill-Onorevoli Membri tal-Kumitat japprezzaw li ghaddew bejn seba' u tnax il-sena minn dak li qieghed nispejga aktar 'il isfel kif ukoll li m'ghandi access ghal ebda dokumentazzjoni ufficcjali ta' dak iz-zmien.

#### **IR-RWOL AMMINISTRATTIV TIEGHI BEJN L-2003 U L-2008**

6. Bejn l-2003 u l-2008 jien okkupajt il-kariga ta' Kap tas-Segretarjat tal-Ministru ghall-Investment, Industrija u IT. Bhala parti minn dan id-dekasteru kien hemm diversi entitajiet pubblici, fosthom il-Korporazzjoni Enemalta.
7. Simili ghall-mudell ta' *Chief of Staff* fis-sistema prezenti, fl-istruttura tal-Ministeru ta' dak iz-zmien, il-Kap tas-Segretarjat kellu funzjoni ta' koordinament bejn il-partijiet kollha involuti fil-hidma teknika u amministrattiva u kien il-punt ta' referenza ghat-twettiq tal-programm ta' hidma tal-Ministeru.

#### **IL-PORTAFOLL TA' L-ENTITAJIET TAL-GVERN FL-2003**

8. Kif semmejt aktar 'il fuq id-dekasteru kien jigbor fih diversi entitajiet pubblici kkontrollati mill-gvern. Fil-fatt id-dekasteru ta' dakinhar kellhu fih xejn inqas minn:
  - a. 44 entita ta' importanza materjali.
  - b. 64 entita' ohra li l-bicca kbira taghhom kienu sussidjarji jew kumpaniji zghar li kellhom anqas rilevanza.
9. Ghalkemm il-kumplessita, it-tip ta' amministrazzjoni u l-efficjenza fl-operat ta' dawn l-entitajiet pubblici kienu jvarjaw, kien evidenti li kien hemm sensiela ta' sfidi komuni li setghu jinbidlu f'opportuntajiet ghal titjib materjali fis-servizz li jinghata kif ukoll ghal frankar (*savings*) sostanzjali jekk entitajiet jaghrfu jahdmu aktar flimkien. Fl-istess hin, f'dak il-perjodu kien hemm agenda intensiva ta' hidma li kellha ssir mill-entitajiet rispettivi fid-dawl tad-dhul imminenti ta' pajjizna fl-Unjoni Ewropea.
10. Ghal kull entita' il-process uzat kien wiehed fejn, bl-ghajnuna teknika tal-MIMCOL, l-ewwel saret analizi dettaljata tas-sitwazzjoni finanzjarja, amministrattiva, teknika u (fejn applikabbli) kummercjali. Sussegwentament, kien gie fformulat pjan ta' hidma ta' hames snin ghal kull entita' li kien ibbazat fuq erba' ghanijiet ewlenin u komuni:
  - a. Li joperaw f'qafas sostenibbli fejn jilhqu bilanc bejn l-obbligi socjali ta' l-organizzazzjoni (bhala entita pubblika) u n-necessita' li ma' taghmilx telf u tispicca tkun ta' piz addizzjonali ghat-taxpayer;

- b. Li ttejjeb is-servizzi ta' l-organizzazzjoni lill-pubbliku u lili-intraprizi b'mod tangibbli u vizibbli;
- c. Li ssahhah l-efficjenza ta' l-organizzazzjoni fl-oqsma kollha tat-tmexxija u l-amministrazzjoni f'kultura ta' etika azjendali; u
- d. Li jsir sforz materjali biex titjib il-kwalita' tal-hajja fuq ix-xoghol tal-haddiema ta' l-entita fid-dawl tar-rwol centrali li l-impjegati ghandhom fil-kisba ta' dawn l-istess ghanijiet.

Dan il-pjan ta' hidma eventwalment kien jitressaq fuq livell politiku lill-Kabinett mill-Ministru.

11. Dawn l-ghanijiet kienu allaccati ma' sensiela ta' ghanijiet specifici ghal kull entita' li flimkien kienu jikkonvergu fil-*Business Plan* ta' kull entita' li kien responsabbilta' esklussiva tal-bord tad-diretturi ta' l-entita' rispettiva. Minn hemm 'il quddiem dan il-pjan ta' hidma kellhu jitwettaq fi sfond operattiv komuni li kien qed ifittex li jdahhal aktar il-kuncett ta' *Joined-Up Government* fejn oqsma u materji komuni bejn l-entitajiet ikunu jistghu jigu ttrattati u amministrati fuq binarji komuni ghaliex finalment l-entitajiet kienu kollha entitajiet pubblici li kellhom obbligi simili – jekk mhux identici – lejn it-*taxpayer*. Biex naghti ezempju prattiku ta' dan it-tip ta' amministrazzjoni nsemmi r-reklutagg u l-uzu effettiv tar-rizorsi umani, fejn minflok jigi permess (bl-iskuza ta' entita' pubblika separata mic-civil) li jsir ingagg f'entitajiet pubblici bla kontroll ta' xejn, iddahhlet sistema aktar dixxiplinata fejn biex isir reklutagg ried jigi pprezentat *business case* lill-MIMCOL fejn jigi ppruvat li hadd mill-entita' ma' seta' jimla l-post mitlub kif ukoll li hadd minn xi entita' pubblika ohra ma' seta' jigi ttrasferit (*redeployed*) biex jimla l-post. FI-2007, kien dokumentat li dan il-metodu (li ma' kienx popolari) kien iffranka l-ingagg minn barra ta' madwar 220 persuna bejn l-2003 u l-2007, bi ffrankar ta' aktar minn LM1.4 miljun fis-sena (€3.2 miljun). Eventwalment din is-sistema kienet giet addottata mill-Ministeru tal-Finanzi u l-Ufficcju tal-Prim Ministru u wasslet biex titwaqqaf dik li l-ewwel kien maghruf bhala RRAG (Illum PAHRO) u l-process li Illum jissejjah *Capacity Building Exercise*. Minbarra l-ingagg tal-haddiema minn barra s-settur pubbliku, kien hemm numru ta' oqsma ohra li fihom ippruvajna ndahhlu l-kuncett ta' *Joined-Up Government* bir-rata ta' success tvarja minn qasam ghall-iehor.
12. Naturalment, fuq livell operazzjonali, dan kollhu ma' setghax (u ma' kellux) jitwettaq mill-ufficcju tal-Ministru izda kellhom jinbnew jew jissahhu l-hiliet amministrattivi fl-entitajiet rispettivi sabiex ikunu jistghu jezekwixxu din il-hidma. Ghaldagstant mill-bidu nett tal-hidma f'dak id-dekasteru wiehed mill-ghanijiet ewlenin kien li jinstabu persuni kapaci u adattati biex iservu bhala diretturi mhux ezekuttivi tad-diversi bordijiet li kellhom il-funzjoni li

jiddentifikaw persuni kompetenti biex jassumu l-funzjonijiet ta' ufficjali eżekuttivi bhala kapjijiet eżekuttivi jew membri fis-*senior management*.

13. Tajjeb li nsemmi wkoll li minhabba li l-*policy* tal-Ministeru kienet li ma jidholx fil-*management* ta' kuljum ta' l-entitajiet kif ukoll sabiex tigi regolata ahjar ir-relazzjoni bejn dawk kollha involuta fl-amministrazzjoni fl-entitajiet pubblici, kienu gew stabbiliti sensiela ta' parametri ta' amministrazzjoni bazici (bil-miktub) li kienu ntizi biex jiggwidaw lil kull Chairperson, Direttur, Kap Eżekuttiv, General Manager, Chief Officer u/jew Senior Manager dwar il-hidma taghhom. Fil-kuntest tat-termini ta' referenza tar-Rapport, qieghed nikkwota *verbatim* sensiela minn dawn il-parametri u qieghed nipprezenta kopja tal-parametri kollha safejn ghandhi record taghhom jien<sup>1</sup>:

- *The necessity for the early understanding by the Board and senior management that ultimately they are Government appointees and that they are utilising public funds. The fact that they have a company-status does in no way waive their public obligations, which should be amply reflected in the discharge of their duties. This applies also to those entities which do not receive a subvention from Government due to the fact that they collect funds from the public in the form of utilities, fees, contributions, etc;*
- *The responsibilities of the Board of Directors and the executive management should be clearly demarcated. The dilution of the roles does not contribute to the sustainability of healthy corporate governance in the companies and exposes the company to serious criticism. This does not mean that the board should be detached from the reality of the company. To the contrary, it should be exercising its role of policy-maker, high-level business planner, progress bench-marker and monitor of the executive management;*
- *The professional conduct of the Board of Directors and the executive management reflects the character of the company. This conduct will be scrutinised and compliance to Government-published guidelines and codes of conduct will be closely monitored to ensure compliance;*
- *Notwithstanding the strength of its balance sheet, companies are not to embark on projects which do not have a sound business plan, a cost-benefit analysis and a positive investment appraisal. The country simply cannot afford the luxury of white elephants. [...];*
- *The principle that "nothing comes for free" has to be ingrained in the culture of all the entities. Apart from the straight-forward financial cost, the board and the executive management have to realise that there are also political, economic and social costs to any decision they take. [...];*

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<sup>1</sup> Jista' jkun li wara l-2008 dawn il-parametri gew riveduti.

- *Full, detailed and transparent accounts should be the order of the day for all entities, irrespective of their size. In this context, it is expected that management accounting and unbundled accounts should be adopted as a matter of policy.*

Dawn il-parametri kienu l-linji gwida ewlenin, komunikati bil-miktub, li fuqhom kienu mistennija li joperaw l-entitajiet kollha.

14. Sabiex dawn il-funzjonijiet ikunu jistghu jithaddmu fuq livell komuni bejn l-entitajiet, il-Ministeru kien ghazel li jassenja lill-MIMCOL sensiela ta' responsabbiltajiet teknici u ta' verifika li jkopru l-oqsma ta' strategija, finanzi, *business planning*, rizorsi umani u fattibilita'. Permezz tar-rwol tal-MIMCOL, minbarra li kienu gew iffrankati ammonti sostanzjali ta' flus f'konsulenzji esterni, beda jitwettaq il-kuncett ta' *Joined-Up Government*.
15. Fid-dawl ta' dak li kien diskuss f'dan il-Kumitat ta' min wiehed isemmi wkoll li minbarra dak li huwa mitlub legalment, moralment u etikament minnhom, *ic-chairpersons* u d-diretturi kellhom josservaw linja gwida cara dwar kunflitti ta' interess li qed nikkwota *verbatim* parti minnha u qiegħed nipprezenta l-estratt shih ta' din il-linja gwida kif kienet applikabbli dak iz-zmien.

*Directors shall not use their position for an improper purpose, shall not take personal advantage of the organization's opportunities or assets or allow their personal interest to conflict with the interests of the organization.*

*It shall be the duty of directors, at all times, to avoid actual or potential conflicts of interest between their personal interests and their duties towards the organization, and to ensure that they are free from any business, family or other relationship that may create an actual or potential conflict of interest with their duties as director or which may interfere with the exercise of their independent and impartial judgment.*

*In the event that an actual or potential conflict of interest arises during the tenure of his post as director, a director shall disclose the conflict in writing, in full and in time, to the board and the board shall determine whether or not that director should participate in the discussion. In any event, the director shall refrain from voting on the matter.*

16. *ic-chairpersons* u d-diretturi kienu mitluba wkoll jiffirmaw Confidentiality Undertaking (li qed nipprezenta) u fil-kaz ta' kunflitt ta' interess (attwali jew potenzjali) kellhom jiffirmaw dikjarazzjoni ufficcjali (li qed nipprezenta wkoll).
17. Finalment, l-entitajiet kellhom ukoll l-obbligu li minbarra li kellhom jahtru *Internal Auditor* (li jirraporta direttament lejn il-Bord tad-Diretturi), kellhom ukoll iwaqqfu *Audit Committee* bl-ghan principali tieghu jkun li jeleva l-funzjoni tal-verifika interna u l-osservanza ta' governanza tajba fl-ogħla livell tat-tmexxija ta' l-entitajiet rispettivi. Qed nipprezenta l-abbozz tat-

termini ta' referenza ta' l-Audit Committees li kellhom jaddattaw l-entitajiet.

18. Dan kollhu kien japplika ghall-Enemalta, bl-istess mod li kien japplika ghall-entitajiet pubblici li kienu jiffurmaw parti mid-dekasteru.

## IL-HIDMA TA' RIFORMA FL-ENEMALTA

19. Meta wiehed jtkellem fuq riforma huwa importanti li jifhem il-kuntest li fih kellha titwettaq dik ir-riforma. Mill-entitajiet pubblici kollha, il-Korporazzjoni Enemalta probabbilment kienet il-wahda li kellha l-aktar cirkustanzi kumplikati u problemi endemici. Il-Korporazzjoni kienet gejjja minn tlett snin ta' telf *in fila* u ghas-sena 2003/4 kienet qed tipprogetta telf iehor ta' LM5.1m (ara Tabella 1). Fis-sena li kienet ghada kemm spiccat, bejnithom, id-divizjonijiet ta' l-elettriku u tal-gass kienu tilfu LM10.5m (€25m) il-bicca kbira ta' liema telf kien jaghmel tajjeb ghalih il-qliegħ tad-divizjoni tal-petroleum.

	'99/'00	'00/'01	'01/'02	'02/'03	Est '03/'04
	Lm '000	Lm '000	Lm '000	Lm '000	Lm '000
Profitt/(Telf) mill-Operat	2,883	(4,646)	(981)	(7459)	(2557)
Profitt/(Telf) qabel it-Taxxa	745	(6,778)	(3377)	(2503)	(5112)

Tabella 1: Rizultati finanzjarji ta' l-Enemalta 1999-2003 (Enemalta)

20. Il-Korporazzjoni kienet evolviet fi ggant pubbliku b'karratteristici, pratici u kulturi li tista' tqishom li huma l-oppost ta' dawk li suppost thaddan organizzazzjoni li ghandha lil kull cittadin u lil kull intrapriza bhala klijenti tagħha. Bizejjeđ nghid li l-Enemalta:

- a. Kienet entita' li ddawwar mal-LM 120m (€280m) ma' kellhiex pjan strategiku;
- b. L-ebda vizibbilta' ta' kif it-tariffi ta' l-elettriku setghu jibdeu ikopru l-ispiza tal-generazzjoni u d-distribuzzjoni u kif setghu jinbdeu jinbnew rizervi adegwati biex isir investiment fl-infrastruttura u jithallas lura d-dejn li kellha l-Korporazzjoni;
- c. Sistema ta' xiri kaotika – mill-memorja niftakar li fis-sena ta' qabel (2002-3) kienu nghataw aktar minn 300 direct order;
- d. Struttura ta' *management* mhux adegwata u qafas ta' *financial management* batut hafna bi problema teknika enormi ta' l-*unbundled accounts*;

- e. L-ebda separazzjoni bejn ir-rwol ta' *Chairperson* u Kap Ezekuttiv;
- f. Mekkanizmu ta' gbir ta' flus inefficjenti, b'*billing system* antikwata li wasslu ghal *debtor days* ta' aktar minn 200 gurnata u mal €100m jingabru aktar minn sitt xhur tard;
- g. *Losses* ta' elettriku ta' aktar minn 15% ta' dak generat;
- h. L-ebda pjan car ta' infrastruttura u investment necessarju biex il-Korporazzjoni tkun tista' taggorna l-impjant tal-generazzjoni u l-infrastruttura tad-distribuzzjoni taghha. L-infrastruttura kienet aktar topera fuq bazi ta' traqqar u *crisis-management*;
- i. Fl-Enemalta kien hemm aktar minn 200 grad ta' haddiema differenti, sitwazzjoni li kienet twassal ghal nuqqas qawwi ta' flessibilita' fl-operat; u
- j. L-ebda funzjoni ta' awditjar intern.

21. Wara li l-Kabinett kien approva d-direzzjoni strategika ghall-Korporazzjoni, kien inghata bidu ghal process shih ta' riforma u trasformazzjoni tat-tmexxija u l-operat tal-Korporazzjoni. Dan kien beda bl-ingagg tat-*top management team* kompost mill-Kap Ezekuttiv (Mr Ray Attard), *Chief Financial Officer* (Mr Pippo Pandolfino) u *c-Chief Information Officer* (Dr Konrad Mizzi). Bil-hatra ta' dawn l-ufficjali setghet issir id-demarkazzjoni tar-responsabbilitajiet bejn il-bord u l-*management*. L-ingagg ta' dawn il-persuni gab moviment ta' bidla bla precedent u beda jdahhal kultura radikalment gdida fl-Enemalta.

22. Meta jkun qiegħed jikkunsidra dawn il-bidliet kollha, wieħed ma' jistgħax ma' jqisx ukoll il-kuntest taz-zidiet fil-prezzijiet taz-zjut fuq skala globali. Bejn April 2003 u April 2008 il-prezz taz-zejt (Brent) zdiegħ b'470% minn USD 23.68 għal USD 111.36. Din iz-zieda u l-impatt tagħha fuq il-familji u l-intraprizi Maltin kienet ugiegħ ta' ras kontinwu li hadet il-prijorita' fuq il-bqija tal-pjan ta' hidma.

23. Kien f'dan il-kuntest li l-Ministru kien waqqaf il-*Fuel Procurment Advisory Committee* immexxi minn persuni professjonali ta' l-oghla livell u assistiti minn persuni teknici u esperti sabiex ikunu jistgħu jfasslu l-politika li biha l-Enemalta kellha tikkuntratta x-xiri taz-zjut. Iz-zewg kumitati (kemm dak immexxi minn Profs Falzon kif ukoll dak immexxi mis-Sur Chalmers) taw kontribut imprezzabbli fic-cirkustanzi diffiċili li kienu qed jevolvu. Ta' min insemmi li l-Oppozizzjoni kienet mistiedna tinnomina persuna fuq dawn il-kumitati, liema stedina qatt ma' giet accettata.

## IL-POLITIKA (POLICY) TAX-XIRI FL-ENTITAJIET

24. Ghalkemm kull bord kien finalment jaddotta l-procedura rispettiva tieghu, f'dak li ghandhu x'jaqsam mal-politika (fis-sens ta' *policy*) dwar ix-xiri fl-entitajiet (b'mod partikolari ix-xiri li jinvolvi cifri sostanzjali) kienet imsejjsa fuq tlett punti kardinali:
- a. L-entita' kellha tallinja l-processi taghha kemm jista' jkun mal-*Public Contract Regulations*; u
  - b. L-ebda *chairperson* u/jew direttur ma' kellhom jippartecipaw b'mod dirett fl-evalwazzjoni u/jew l-agjudikazzjoni ta' *tenders* u dan sabiex il-bord kien dejjem jibqgghal l-fakulta' li jiskrutinja r-rakkomandazzjonijiet li jaghmel il-*management* ta' l-entita'; u
  - c. Li fil-process ta' l-evalwazzjoni jkun hemm struttura ta' *checks and balances* dokumentati li jstghu jippermettu awditjar effettiv ta' kull decizjoni li tkun ittiehdet.
25. Kienet *policy* cara li l-Bord u/jew il-*management* ma' kellhux jiddiskuti l-processi tax-xiri barra mill-entita nffiisha inkluz mal-Ministru jew ma' ufficjali ohra tal-Ministeru. Ix-xiri hija funzjoni amministrattiva u mhux strategika u ghaldaqstant ma' kienx hemm lok ghal tali diskussjonijiet.
26. Fid-dawl ta' dan kollhu, meta tara l-mod ta' kif kienu jinzammu r-records tal-laqgħat (Appendix A tar-Rapport) il-frustrazzjoni hija kbira hafna. Meta tara li haga daqstant bazika (li fl-opinjoni tieghi hija rekwiżit legali fuq id-diretturi u l-*management* u mhux biss materja ta' governanza) ma' kienetx tinzamm kif suppost, huwa naturali li wiehed jithasseb dwar kif kien isir il-process. Minkejja kull skuza li tista' tingieb, is-sempliċi fatt li ma' setghetx issir verifika kif suppost huwa dizappuntanti hafna, speċjalment meta tqis li l-persuni appuntati fuq dawn l-organi ta' l-Enemalta kienu persuni professjonali u b'esperjenza twila.

## KONKLUZJONI

27. Il-mistoqsija naturali hija jekk dan kollhu li sar kienx bizzejjed u jekk l-istrutturi stabbiliti kienux adekwati għac-cirkostanzi. Nemmen li saru qabziet kbar u l-progetti, riformi u strutturi li dahlu kienu sisien importanti biex fuqhom seta' jinbena l-futur tal-Korporazzjoni. Probabbilment, il-pass li bih kienet qed isir il-bidla seta' kien mghaggel wisq speċjalment fil-kuntast tal-kultura tal-Korporazzjoni minn ottika aktar wiesgħa. Probabbilment ukoll, li l-bidliet aggressivi li kienu qed jiddahhlu kienu qed iservu biex materja bħal din ma' titighax fil-wicc.
28. Izda zgur li l-akbar tagħlima (jew ahjar *reality check*) minn dan kollhu hija li minkejja l-istrutturi, il-linji gwida, is-sistemi u l-processi dawn kollha jibqgħu jiddependu fit-totalita' tagħhom mill-impenn tal-persuni li jkunu



fdati fit-tmexxija u fl-operat, l-osservanza tal-linji gwidi li jinholqu u mill-lealta' li huma jkollhom lejn il-missjoni tal-entita' u lejn l-interess komuni.

29. Dan johloq dilemma kbira fl-amministrazzjoni pubblika ta' fejn trid issir id-demarkazzjoni bejn il-*micro-management* tal-politiku u t-tmexxija professjonali vestita fil-*management* ta' l-entita' taht id-direzzjoni tal-bord tad-diretturi. Zgur li aktar infurzar igib aktar *compliance* izda jista' jgib ukoll sens ta' nuqqas ta' fiducja bejn il-partijiet, li jista' jwassal biex persuni validi ma' jaccettawx li jidhlu ghal certi karigi, speċjalment dawk mhux eżekuttivi.

30. Zgur ukoll li rwol aktar estensiv u b'sahhtu ta' l-NAO jista' jimla hafna minn dan il-*vacuum* ta' governanza u verifika. L-NAO la ghandu interessi kummerċjali u wisq anqas jiddependi mill-Gvern tal-gurnata għall-operat tieghu u fic-cirkostanzi jibqa' ufficċju li ghandu r-reputazzjoni u jgawdi r-rispett tal-partijiet kollha.

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## **BASIC OPERATIONAL PARAMETERS FOR MINISTRY FOR INVESTMENT, INDUSTRY AND INFORMATION TECHNOLOGY**

Another important element in the strategic setting of the entities is the introduction of a set of basic operational parameters, which are intended to clearly demarcate the turf within which the Ministry will be conducting its business. These parameters are also meant to create an operational framework within which misinterpretations can be minimised and doubts in the day-to-day operations and interaction between all the players involved, substantially avoided.

The basic operational parameters are:

- The necessity for the early understanding by the Board and senior management that ultimately they are Government appointees and that they are utilising public funds. The fact that they have a company-status does in no way waive their public obligations, which should be amply reflected in the discharge of their duties. This applies also to those entities which do not receive a subvention from Government due to the fact that they collect funds from the public in the form of utilities, fees, contributions, etc;
- The Ministry's role in the development and implementation of policy is consequential to the simple fact that it is the Minister who has to shoulder the responsibility for the companies' conduct in Parliament and with the electorate;
- As a matter of principle, public companies should not compete in areas where the private sector can flourish and add value to the nation's economy. Companies should focus on their core business and the excuse of re-structuring should not be brought into play to facilitate the creation of subsidiaries, which are clearly using public funds to drive out the private sector from the respective markets;
- The responsibilities of the Board of Directors and the executive management should be clearly demarcated. The dilution of the roles does not contribute to the sustainability of healthy corporate governance in the companies and exposes the company to serious criticism. This does not mean that the board should be detached from the reality of the company. To the contrary, it should be exercising its role of policy-maker, high-level business planner, progress bench-marker and monitor of the executive management;
- The professional conduct of the Board of Directors and the executive management reflects the character of the company.

This conduct will be scrutinised and compliance to Government-published guidelines and codes of conduct will be closely monitored to ensure compliance;

- Notwithstanding the strength of its balance sheet, companies are not to embark on projects which do not have a sound business plan, a cost-benefit analysis and a positive investment appraisal. The country simply cannot afford the luxury of white elephants. Coupled to this is the introduction of the opportunity-cost evaluation, wherein the cost for the alternative foregone is calculated and factored in the decision-making grain of the company;
- The principle that “nothing comes for free” has to be ingrained in the culture of all the entities. Apart from the straight-forward financial cost, the board and the executive management have to realise that there are also political, economic and social costs to any decision they take. This culture has to be also reflected in the accounting methods used, particularly in those entities which still favour bundled accounts;
- Companies should sponsor and facilitate the creation and maintenance of a sound consultation framework with all their internal and external stakeholders. Key players in this framework are the Unions, the employees and the clients of the organisation;
- Full, detailed and transparent accounts should be the order of the day for all entities, irrespective of their size. In this context, it is expected that management accounting and unbundled accounts should be adopted as a matter of policy;

The Boards and the executive management of the companies should strive to attain synergies with other players (especially other Government entities) which may have congruent objectives. Duplication of efforts and costs (especially by public entities) will not be tolerated and the “working together” concept will be aggressively

## **DIRECTORS' DECLARATION OF INTEREST LETTER**

**Company Secretary**

**<Address>**

**<Date>**

To: The Company Secretary

I, <Name>, <Identity Card>, residing at <Address>, hereby confirm that I have a business, family or other relationship with the following entities or persons, its controlling persons, where applicable, or the management of either:

<b>Name Conflicting Entity Individual</b>	<b>of /</b>	<b>Address</b>	<b>Company Number / I.D. Card Number</b>	<b>Reason Potential Conflict Interest</b>	<b>for of</b>

that could create a conflict of interest such as to jeopardise the exercise of my free judgment.

I further confirm that during the tenure of my appointment I shall immediately disclose any further business, family or other relationship with any entities or persons, controlling persons thereof, where applicable, or the management of either, that could create a conflict of interest such as to jeopardise the exercise of my free judgment.

Yours sincerely

**<Director Name>**

**<Identity Card Number>**

**Director**

## **CONFLICT OF INTEREST GUIDELINE**

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Directors shall not use their position for an improper purpose, shall not take personal advantage of the organization's opportunities or assets or allow their personal interest to conflict with the interests of the organization.

It shall be the duty of directors, at all times, to avoid actual or potential conflicts of interest between their personal interests and their duties towards the organization, and to ensure that they are free from any business, family or other relationship that may create an actual or potential conflict of interest with their duties as director or which may interfere with the exercise of their independent and impartial judgment.

In the event that an actual or potential conflict of interest arises during the tenure of his post as director, a director shall disclose the conflict in writing, in full and in time, to the board and the board shall determine whether or not that director should participate in the discussion. In any event, the director shall refrain from voting on the matter.

In particular, and without prejudice to the generality of the foregoing provisions, it shall be the duty of the director to disclose in writing to the board his interest in any contract entered into by the company as well as any other financial or other interest which could directly compromise the performance of their duties.

A director having a continuing material interest that conflicts with the interests of the organization should, following consultation with the chairman, take effective steps to eliminate the grounds for conflict. In the event that such steps do not eliminate the grounds for conflict then the director should tender his resignation.

It shall be the duty of a director to limit the number of any other directorships held in other companies to be able to apply the necessary time and attention to his post of director and to ensure the proper performance of his duties.

## **CONFIDENTIALITY UNDERTAKING**

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### **STRICTLY PRIVATE & CONFIDENTIAL**

<Entity>

<Address>

<Date>

Dear Sirs,

1. In respect of my appointment to act as director of <Entity> Limited (hereinafter referred to as the "Company"), I the undersigned (hereinafter referred to as the "Director") with effect from the date here above, and for the duration of my appointment to this office, and for a period of two years following the termination therefrom for whatever reason in connection with any information which relates to administrative, technical, legal, commercial, financial, operational or personnel matters of the Company and any information of a secret or a proprietary nature or which is expressly stated by the Company to be confidential (hereinafter referred to as the "Confidential Information") hereby undertake as follows:
  - 1.1 to maintain the Confidential Information in strict confidence and, save as provided herein, not to divulge or disclose, or permit the disclosure, of any of the Confidential Information, in whole or in part, to any third party and not to communicate, indicate or suggest any of the Confidential Information to any third party without the express authorization of the Company;
  - 1.2 not to make use of the Confidential Information other than for the sole purpose of carrying out the function of Director in furtherance of the interests of the Company;
  - 1.3 to acknowledge the Company's propriety rights in the Confidential Information; and that all Confidential Information whether embodied in original documents or other forms of media (including electronic media) copies of such, or documents or other media prepared or produced using Confidential Information shall remain the property of the Company and nothing in this agreement shall be deemed to grant the Director any rights in or to the Confidential Information disclosed or any part thereof;

#### *Permitted Disclosure and Use*

2. The above undertakings shall not apply to Confidential information which:

- 2.1 has already become generally available to the public other than as a result of a breach of this agreement;
- 2.2 the Director can demonstrate was in his possession prior to the time it was disclosed to him and which was lawfully acquired other than from the Company;
- 2.3 was lawfully acquired from others who did not obtain it in circumstances which give rise to any obligation of confidentiality (express or implied) owed to the Company, or as a result of any breach of any agreement with the Company;
- 2.4 is disclosed with the prior written approval of the Company (to the extent any for the purpose so approved) or pursuant to an order of a court of competent jurisdiction.

*Disclosure required by law*

3. Nothing herein shall restrict the Director from disclosing any Confidential Information pursuant to a judicial order, but only to the extent of such order or as may otherwise be mutually agreed.

*Return of Materials*

4. Following the termination from the office of Director, any and all documents (in whatever form) in the possession of the Director shall be returned to the Company forthwith.

*Non-Competition with the Company*

- 5.1 The Director binds himself and agrees that he will not during his term of office and for a period of two years following the termination thereof for any reason, directly or indirectly compete in Malta with the Company in a similar activity to that carried on by the Company.
- 5.2 The Director binds himself and agrees that he will not during his term of office and for a period of two years following the termination thereof for any reason, seek to solicit any client of the Company in Malta (as the case may be).
- 5.3 The Director further binds himself and agrees that he will not during and for a period of two years following the termination of his office persuade or attempt to persuade any employee, officer or director of the Company to leave or otherwise terminate his employment or relationship with the Company in Malta.
- 5.4 The Director shall not directly or indirectly during and for a period of two years after the termination of his office for any reason whatsoever,

hold any interest in any business or commercial activity which is or shall be wholly or partly in competition with the Company;

*Disclosure of Interest*

6. The Director undertakes to declare to the Board of Directors any interest, gain or advantage accruing to him, directly or indirectly (including but not limited to any shareholding, directorship or consultancy he may hold) with any third party.

*Severability*

7. If any term or provision in this Agreement (or any part of such a term or provision) shall be held by any Court or Tribunal of competent jurisdiction to be unenforceable, under any enactment or rule of law, such term or provision or part shall to that extent be deemed severable and not to form part of the Agreement, but the validity and enforceability of the remainder of the Agreement shall not be affected.

*Applicable Law and Jurisdiction*

- 8.1 The construction, validity and performance of this Agreement shall be governed in all respects by Maltese Law.
- 8.2 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the rules of the Malta Arbitration Centre as at present in force. The appointing authority and administrator shall be the Malta Arbitration Centre. The number of arbitrators shall be one. The place of arbitration shall be Malta. The language to be used in the arbitral proceedings shall be English. Arbitration in terms of this Clause shall constitute the sole and exclusive remedy for the resolution of disputes, controversies of claims arising out of or relating to this agreement, or the breach, termination or invalidity thereof.

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**<Director>**



## **TERMS OF REFERENCE OF THE AUDIT COMMITTEE**

The Board of Directors (the '**Board**') is hereby constituting new terms of reference for the Audit Committee (the '**Committee**') to support it in its responsibilities in dealing with issues of control and governance; and associated assurance.

These are the terms of reference of the Audit Committee that establish the composition, role and function of the Committee, the parameters of its remit as well as the basis for the processes that it is required to comply with. The Committee is a sub-committee of the Board and directly responsible and accountable to the Board. The Board reserves the right to change these terms of reference from time to time subject to the requirements of Maltese law.

### **1. Membership of the Audit Committee**

- 1.1 The Audit Committee shall consist of 3 members and shall be appointed by the Board of Directors. The members of the committee shall be appointed from amongst the non-executive directors of the Entity.
- 1.2 The appointment of members to the Audit Committee shall remain effective for such time as the appointment is terminated by the Board, provided that the Board shall at least review the composition of the Committee after the lapse of three years.
- 1.3 The Chairman of the Audit Committee shall be appointed by the Board from amongst the non-executive directors appointed to the Committee. The Chairman of the Committee shall be entrusted with reporting to the Board on the workings and findings of the Committee to the Board.
- 1.4 The Committee shall be supported in its task with secretarial support by the office of the Company Secretary. In addition the Audit Committee shall have available all the Companies consultants and advisers as it may consider appropriate to consult in the proper performance and discharge of its duties. In the event that the Audit Committee shall require independent advice on any matter the Board shall make sufficient funds available to enable the Committee to seek the advice it considers necessary at the expense of the Entity.

### **2. Meetings**

- 2.1 Subject to what is provided hereunder the Committee may regulate its own procedure.
- 2.2 The procedures for meetings shall be as follows:

- (a) the Committee shall meet at least six times a year preferably every two (2) months. The Chairman of the Committee may convene additional meetings of the Committee as and when he/she considers it appropriate. In addition the Board may also ask the Committee to convene further meetings with a view to discuss, consider and report to the Board on any matters which the Board may consider the advice or recommendations of the Committee as necessary or desirable;
- (b) the quorum for the dispatch of business of the Committee shall be 2 members.
- (c) Committee meetings should be attended by each of the Chief Finance Officer or equivalent officer within the Entity (or his representative); the Internal Auditor or Head of the Internal Audit Department (or his representative); and a representative of the external auditors;
- (d) the Committee may request any other officer of the Entity to attend its meetings to assist it with its discussions and considerations on any particular matter;
- (e) the Committee may ask any or all of those who attend its meetings but are not members thereof to withdraw from meetings to facilitate open and frank discussions of particular matters.
- (f) the Committee shall at least once in each financial year meet the external auditors without the presence of any members of management to discuss matters relating to its remit and any issues arising from the audit.

### **3. Role and Responsibilities**

3.1 The Committee shall be expected to deal with and advise the Board on:

- (a) its monitoring responsibility over the financial reporting processes, financial policies and internal control structures;
- (b) maintaining communications on such matters between the board, management, the independent auditors and the internal auditors; and

3.2 In the discharge of this role, but without prejudice to the generality of the foregoing, the Committee shall inter alia have the responsibility:

- (a) to review the significant financial reporting issues and judgments made in connection with the preparation of the Entity's financial statements, interim reports, preliminary announcements and related formal statements. The audit committee should also review the clarity and completeness of disclosures in the financial statements
- (b) to review the Entity's internal financial controls and the Entity's internal control systems and the effectiveness of the Entity's internal audit function
- (c) to monitor and review the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board
- (d) to make recommendations to the board in relation to the appointment of the external auditors and to approve the remuneration and terms of engagement of the external auditors with the aim of requesting shareholder approval;
- (e) to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process;
- (f) proposals for the development and implementation of a policy on the engagement of the external auditors to provide non-audit services to the Entity
- (g) to monitor and scrutinise large transactions as provided hereunder.

#### **4. Remuneration**

All members of the Committee shall, in addition to their remuneration as non-executive directors, be paid such reasonable remuneration to recompense them for the additional responsibilities as members of the Committee. The Board shall from time to time fix the remuneration of the members of the Committee taking into account the role, responsibility, time spent and the added value that the Committee provides to the Entity.

#### **5. Relationship with the Board**

- 5.1 The Committee is a sub-committee of the Board and its role remains one of assisting the Board to comply with and discharge its statutory and fiduciary obligations. As such, it is for the Board to decide and determine the exact nature and role of the Committee and its terms of reference. The Committee shall at all times be accountable to the

Board. The Committee shall through its Chairman report to the Board at regular intervals on its activities and shall highlight any matters in respect of which it considers that action or improvement is necessary and to make such recommendations as to the steps to be taken as may consider appropriate.

- 5.2 The Board shall, on a regular basis review the terms of reference of the Committee and the effectiveness of the Committee within the ambits of the operations and business activities of the Entity as these may change from time to time. The Committee may itself make recommendations to the Board for the review of its terms of reference where it is of the opinion that its effectiveness can be improved.

## **6. Large Transactions**

- 6.1 The Committee shall also have the role and function to scrutinize and evaluate any proposed transaction to be entered into by the Entity with a value exceeding <AMOUNT> to ensure that the execution of any such transaction is at arm's length and on a commercial basis and ultimately in the best interests of the Entity
- 6.2 References to the Committee shall be made in writing by the CEO or equivalent officer through the chairman of the Committee and shall contain such information as may be necessary or desirable to enable the Committee to evaluate the proposed transaction. The chairman of the Committee shall convene a meeting of the Committee within 10 days from the receipt of the reference made by management.
- 6.3 Any member of the Committee who may himself have an interest in the context of the proposed transaction or whose connection with the Entity, shall declare an interest to the chairman forthwith upon receipt of the notice convening the meeting of the Committee and the Chairman shall thereupon, in consultation with the Chairman of the Board appoint another non-executive director who has no interest in the transaction to be appointed on an ad hoc basis to the Committee for the purposes of discussing and considering the proposed transaction.
- 6.4 In its evaluation of the proposed transaction the Committee shall at all times be guided by the best interests of the Entity and its general body of shareholders taken as a whole. In this context the Committee may call in to the meeting such officers of the Entity and advisers as it may consider appropriate to enable it to make a proper and exhaustive assessment of the proposed transaction.
- 6.5 The Committee shall report to the Board on its findings and make its recommendations to the Board as to whether the transaction should be entered into in the first place and to make such further

recommendations as to any matters that, in the opinion of the Committee need to be reviewed or improved in the proposed transaction or any of its terms to ensure that the best interests of the Entity are properly safeguarded.

- 6.6 The Committee shall ensure that the proposed transaction and the terms thereof shall be at arm's length and based strictly on sound commercial terms in line with market practice for transactions of its nature.