

NCFHE: DECISION ON THE FUTURE OF THE AMERICAN UNIVERSITY OF MALTA

Ladies and gentlemen of the media, welcome to the National Commission for Further and Higher Education. I am the Chairman of the Board of this Commission.

The members of my Board are: Mr Alex Manche (Deputy Chairman); Mr Lawrence Ancilleri; Mr Charles Caruana Carabez; Dr Jennifer Casingena Harper; Dr Cory Greenland; Mr Ian Mifsud; Professor John Portelli; and Professor Tanya Sammut Bonnici.

The Chief Executive Officer is Ms Edel Cassar and she is with me here today.

1. Introductory Remarks

Given the intense interest which this project has generated, I have called you here today to announce the decision reached by the National Commission for Further and Higher Education on the future of the American University of Malta (AUM), currently known as the American Institute of Malta (AIM).

I should start by reminding you that the Commission is an independent Commission under the Education Act. The judgement which has been reached by the Board on whether or not to grant a licence for the accreditation of the American University of Malta is a totally independent decision.

It is unaffected by what the government has committed itself to do in its contract with Sadeen Education Investment Ltd regarding property, land and other issues. Those are matters which - while we have to acknowledge that they have influenced the views of many members of the public about this project on environmental grounds - lie totally outside the Commission's remit.

Indeed, I must underline right at the start that, so far as the Commission is concerned, the question of land at Zonqor Point and at No 1 Dock has had no bearing on the decision we have been tasked to reach under the law on whether or not the American Institute of Malta should be given a licence to operate as a university in Malta, beyond the consideration of appropriate planning permission for its use as an institute of learning - an issue I shall cover later.

Nor have we been influenced by the views which have been expressed either by some over-zealous government officials not responsible for making this decision, or by the Opposition, on the desirability or not of acceding to this application. Or by the various interventions made by academics, educational commentators, the media or others - many of which have been ill-informed and self-serving.

I say all this because it is a decision - as I hope to show you today - which has been reached by the Board after the most rigorous educational and financial due process with no lowering of standards in any way, shape or form.

The methodology we have adopted has been evidence-based, objective, non-partisan and strictly within the rules for such licenses as laid down in the law.

The Board and I have been absolutely determined from the start to be guided by a desire for total transparency, complete adherence to due process and full accountability.

Before announcing our decision, therefore, I am going to set out for you every element of the process followed by us in this case. And I shall only come finally to our decision after I have spelt out for you clearly, simply, objectively and transparently every step we have followed.

We are personally committed as a Board to ensuring that each one of you here – and through you, every single member of the Maltese public – will know exactly how and why we have reached our decision.

Indeed, I must record here that I am extremely proud of the way every member of the Board, the Chief Executive Officer and every member of the staff of the Commission who has worked on this project, and every independent member of the Quality Assurance Committee and Reviewing Expert Panel that has advised us, has conducted themselves throughout this process in the face of some fairly unusual media, political and public scrutiny.

I hope, in your turn, that I can rely on you to report the decision fully and accurately. It is a decision too important to be politicised in the way it has been in some quarters over the last fourteen months since last April.

I shall be giving you a copy of this Speaking Note in full after I have announced our decision so you can draw on it as you wish; and we shall also be circulating it in a soft copy to the media.

The Project Bid

Before I turn to the detailed description of the methodology we have used in reaching our decision, I should start by describing to you exactly what the project bid to set up an American University in Malta consists of.

The Sadeen Group is the company behind the project to set up the American University of Malta. It is a multinational group of companies, based in Jordan. The Group operates in a diverse number of industries, such as engineering, property development, hospitality, education and others.

The Group has set up a company in Malta called Sadeen Malta Holding Company Limited, which plans to operate two subsidiaries: Sadeen Education Investments Limited and the American University of Malta Foundation.

Sadeen Education Investment Limited (or SEIL for short), the operating company within the structure, will carry out the development of the Project and will be responsible for the ancillary commercial operations. The Foundation – and may I stress this – the Foundation will be responsible for the university's academic operations.

All these companies have been the subject of a thorough financial due diligence process, which has been carried out by independent international auditors, PricewaterhouseCoopers. I shall be giving you the results of that due diligence process shortly.

The American University of Malta is a proposed private, American-style institute. Hence its name as the “American University of Malta” in line with other such universities around the world which offer similar American-type higher education, such as the American University of Cairo, the American University of Lebanon, the American University of Paris and the American University of Rome, to name but a few. They are so named because they offer American-style higher education.

The American University of Malta proposes to offer undergraduate programmes, including Bachelor of Science and Bachelor of Arts degrees, and also a small number of Masters and Ph.D. degrees. It also intends to offer a number of scholarship programmes each year, targeting students from around the world, including Malta. I shall say more in detail later what these will consist of.

It expects to attract students from the Middle East, Malta, Europe and Russia. Within the projected period outlined in its Business Plan (which has again been the subject of a rigorous financial due diligence process by an international accountancy firm, as I shall report later), the American University of Malta proposes to establish five Schools, or Faculties as we would call them: the School of Business & Management; the School of Engineering; the School of Information Technology; the School of Arts; and the School of Arts & Sciences.

If a university licence is awarded to the American Institute of Malta by the Commission, it plans to begin operations for its first semester in September this year.

The proposed plan – if the Institute is offered a University licence – is that it will operate two campuses from two different locations: at Dock No. 1 in Cospicua, and Zonqor Point in Marsasclala. The campus at Dock No. 1 will comprise the old British Building, the Knights Building and a newly developed building.

The campus at Zonqor Point is planned to be developed over approximately five years, with construction beginning during 2017. The five Schools, or Faculties, will be split between the two sites, with the Zonqor Point campus hosting the majority of the students.

As to its academic operations, the University plans to host approximately 4,600 students in its five Schools within ten years of starting operations, gradually building up throughout this period. The enrolment is expected to increase over the first four years from 100, to 350, to 710 and 1,220 students respectively. It will build up to 4,600 by the tenth year.

If given a licence to operate as a University, the institution intends to engage a number of academic and non-academic staff to organise and direct the number of students. The number of academic staff for the first four years of operation is expected to rise in stages from approximately 8 to 22 to 46 and 79, slowly building up in line with the number of expected students, reaching up to 271 academic staff in the tenth year.

Non-academic staff will be engaged during the early stages of operation starting at about 40 employees for the first two years and about 43 employees for the remainder of the ten year projection period.

Apart from operating a university, the Group's plan is also to run some commercial operations. The major commercial operation will be the running of the dormitories. The Group has assumed that it will charge a monthly rental, and it is expected that about 1,000 students (22% of students attending AUM), will make use of the dormitories once a capacity of 4,600 students has been reached.

Other commercial activities consist of a Sports Complex and the rental of a number of shops, such as a Food Court, Book Store, and other similar operations required by students.

So that, in outline, is what the project which has been submitted to us for educational due diligence and financial due diligence purposes consists of.

Outline of the Speaking Note

For the purposes of describing the rigorous processes we have followed throughout this exercise, my Speaking Note is divided into five parts:

- First, I shall set out the procedures we have adopted for this and every other application for a license for University accreditation which has been received by the Commission.
- Second, I shall spell out in detail how these procedures were conducted in the specific case of the American University of Malta.
- Third, I shall describe the rigorous financial due diligence conducted by independent international accountants.
- Fourth, I shall go through with you the check-list which we have followed to ensure that due process of this application was fully and properly conducted.
- And fifth, I shall announce our decision and why we have reached it.

2. Procedures for University Accreditation

The procedure for the accreditation of universities is set out clearly in the Accreditation Manual of Procedures, a copy of which is in your briefing pack. From the very first moment we received the AUM application for a licence, we have followed a number of distinct steps. Each of those steps is made known to the applicant when they start.

Once an application has been received and the relevant administrative fees have been paid, the Quality Assurance Committee (QAC) of the Commission appoints a Review Expert Panel to evaluate the application in detail. No application is refused outright.

The names of the members of the Quality Assurance Committee, which is made up of educational experts appointed by the Board to advise it, are as follows: Professor John Portelli, who is also a member of the Commission Board, acts as Chairman of the QAC. The other members alphabetically by surname are: Dr Tatyana Chircop; Dr Alex Grech; Professor Chris Haslam; Dr Alex Rizzo; Professor Tanya Sammut Bonnici; and Professor Alfred Vella.

The Review Expert Panel is composed of three academics, who are recognised experts in one or more of the sectors of interest of the application, and/or are experts in quality assurance. It is chaired by a member of the QAC.

As a sub-committee of the QAC, the Review Expert Panel reports its findings and recommendations to the QAC which may request further clarification or review before it makes its final recommendation to the Board.

The exercise is an outstanding example of scrupulous checks and balances, the focus of objective expertise and total transparency of process and accountability.

In the case of the American Institute of Malta's (or AIM) application to become a university, the Chairman of the Expert Panel was Professor John Portelli of the University of Toronto. He has been indefatigable in his work as chairman of the Panel, ably supported by the members of his Expert Panel: Professor John Baldacchino of the University of Dundee in Scotland and Dr Tatyana Chircop of MCAST who, as I have already indicated, is also a member of the QAC.

All the Expert Panels reviewing applications for university accreditation received since the setting up of the QAC in 2014 have been chaired by the Chairman of the QAC, Professor John Portelli, to ensure continuity and uniformity of standards in the processing of these applications. The Panel is assisted in its work by the Secretariat of the NCFHE, which in effect constitutes an additional level of technical screening of the application.

In its work, the Panel is guided by Legal Notice 296 of 2012, which mandates appropriate due diligence and compliance review procedures to ensure that the quality assurance of higher education in Malta is compatible with the high standards required by the Bologna process for higher education provision in the European Higher Education Area, which includes all EU countries (and many more) and to which Malta is a signatory.

This Legal Notice was amended by Legal Notice 150 of 2015. In legal terms these two Notices and any future amendments are referred to as Subsidiary Legislation 327.433, which is how I will refer to it from now on in this presentation.

To address the misunderstandings that arose from the text of this subsidiary legislation, in July 2015 the Commission had announced that the NCFHE would formulate explanatory guidelines to ensure that the process of university accreditation in the subsidiary legislation was understood and interpreted in the spirit of the legislation in its totality, and this would be binding on the QAC and its Expert Panel. These guidelines were in fact issued in October 2015 and have guided the findings of this application. These explanatory guidelines have been included in your briefing pack.

The first task of an Expert Panel is to assess whether the application is eligible for consideration by presenting seven due diligence tests of eligibility in terms of the background of the applicant as a higher education provider.

The applicant is therefore requested to provide detailed information in response to the following questions, based on Regulation 47 of the subsidiary legislation:

- In what way are higher education, teaching, research and dissemination of knowledge the primary activities of the applicant?
- How can the applicant demonstrate that it has the staff, an academic library, stable research training and stable research and development activities of a high standard?
- Which are the applicant's representative bodies of staff and students, if any? The applicants were asked to provide the statutes and the description of each.
- What is the organisation and infrastructure that the applicant has for providing higher education and undertaking research?
- What independent competence does the applicant have in setting up the components of higher education and undertaking research? Does the applicant have an independent right to award degrees with respect to such programmes?
- To which international networks in connection with higher education and research is the applicant affiliated, if any? The applicant was invited to provide details of this networking.
- How does the applicant participate in national and international cooperation in teaching and research? The applicant was invited to provide information about the resultant activities in both cases.

The applicant has to pass these tests in order for the application itself to be considered. Once the applicant has passed this test of eligibility, the fitness for purpose of the actual application is considered. This includes the physical premises and resources, as well as the soundness of the quality assurance procedures in place, the courses to be offered and the academic staff and senior administrative structure of the proposed university.

The purpose of this educational due diligence is to ensure that the high standards of delivery and quality assurance that Malta lays down - which are an absolute pre-requisite for any application to the Commission - can be reached and sustained.

The Review Expert Panel normally expects applicants to be able to demonstrate past experience and consistent good practice in the delivery of higher education. Although applications for start-up operations – as in the case of AUM - are not excluded and are a successful reality in other countries, the standards of due diligence for such start-up institutions are naturally higher, again in line with international practice.

Since the American University of Malta was a new start-up operation, this is what we have followed in this case. Indeed, this situation is clearly addressed in the Guidelines to Regulation 47 that I just mentioned. I quote:

"The primary activities' requirements (higher education, teaching, research and dissemination of knowledge) as well as all other references in Regulation 47 to academic and administrative experience, may be fulfilled if the applicant can demonstrate that he has a strategic contractual and institutional relationship with an accredited and established Higher Education Institution with the aim of implementing the strategic academic plan of the applicant as approved by the Commission.

Such a plan would need to be of at least 5 years' duration and be in operation so as to ensure that services and provision are fit for purpose in time for the admission of the first cohort of students. This strategic relationship shall ensure due process for all the quality assurance procedures and integrity of outcomes in all core administrative and academic operations of the applicant. After the termination of this contractual

relationship, the applicant shall undergo a review by the Commission to determine whether he can sustain the continued quality of service”

In essence, the Guidelines allow for a university-level provision through a partnership in which the guarantee for the quality of processes, procedures and outcomes is given by a reputable, established and accredited university or equivalent, in a sustainable fashion that provides the confidence and peace of mind of students and other national stake-holders about the academic standards of the university.

The fundamental reason for this is to ensure that quality of provision can be guaranteed and sustained. Specifically, the applicant would need to demonstrate that they have a strategic contractual relationship with an experienced and reputable higher education institution that ensures due process for all quality assurance procedures, as well as integrity of outcomes in all the core administrative and academic operations of the applicant.

I shall come back to this in detail later to show how this has been done in the case of AUM.

As to the routine mechanics of the process, the Review Expert Panel can make any investigation and request any documentation it deems fit to be able to fulfil its appointed task. This may include face-to-face meetings with the applicants to ensure that the intentions of the applicants and the questions, concerns and requests of the Panel are fully understood by both sides.

Once the Panel makes its written recommendations to the Quality Assurance Committee, it in turn makes its own deliberations and may ask the Panel to investigate further. Once the QAC is satisfied that a conclusion has been reached, it makes its written recommendation to the Board of the NCFHE. The Board may either endorse this recommendation or request the QAC to reconsider, citing its reasons. The final decision rests with the Board.

Every licence issued after accreditation, if approved, is subject to general and specific conditions in line with the regulations. As you would expect, the license for a start-up university operation would include stricter specific conditions, including spot-checks and short-cycle external quality audits, to monitor compliance. As the American University of Malta is a start-up university project (that is, one which is setting up totally from scratch) , we have taken appropriate specific steps in the conduct of the process as I shall set out in a moment.

In all cases, these spot-checks and external audits constitute the second phase of the quality assurance process of the Commission to ensure high standards of provision. When applicants are offering courses that have been developed locally and have been accredited by the Commission, these courses also undertake an external quality audit after their first cycle of provision.

Thus, to sum up thus far, the due diligence process of applications for a university licence passes through four separate screening mechanisms:

- The Commission’s Secretariat;
- The Expert Reviewing Panel;
- The Quality Assurance Committee;
- And, finally, the Board, which makes the decision.

Two mechanisms, as I have already mentioned - the Expert Reviewing Panel and the QAC - include independent technical higher education experts with an international background to further ensure transparency and due process. This is also in line with the procedures of ENQA, the European Association for Quality Assurance in Higher Education, of which the Commission is presently an affiliate member and is aiming to become a full member soon.

The system is quite deliberately set up to ensure appropriate checks and balances within the Commission as a whole, retaining independence of judgment from the government of the day in line with international practice, whilst being guided by the government's national policies in higher education.

This procedure has been meticulously followed in the application for the accreditation of the American University of Malta.

3. Implementation of Procedures for the AUM Application

So, how did we implement these procedures in the case of the AUM application? In the light of this process – which consists of an iterative process (that is, one which involves a regular exchange of information which goes back and forth between the applicant and the Commission's Secretariat and Expert Panel) - the Review Expert Panel met twenty-one times over a period of fourteen months, had six formal face-to-face meetings, and communicated formally with AUM several times, requesting more documentation and information or clarifications. All this apart from a significant number of informal skype or phone calls for specific clarifications. The major milestones have been as follows:

- a) The applicant had been in discussions with the NCFHE on the intention to set up a university in Malta since late 2014. The applicant was advised from the word go, and reminded a number of times throughout the process, that it would be better for them to first apply as a Higher Education Institution because it was a start-up operation.
- b) The applicant first submitted their application for University accreditation, along with applications for course accreditation, on the 4th of May 2015.
- c) Since the AUM had submitted its application prior to the issuance of the revised Legal Notice, the NCFHE asked the applicant – in the light of legal advice - whether they would prefer to be evaluated under the revised Legal Notice. This procedure was followed with other applicants as well. In May 2015 the applicant confirmed that it wished the application for University accreditation to be assessed in light of the revised Legal Notice. But it did not request to invoke the 'National interest' clause in the revised Legal Notice.
- d) On the 25th May 2015 the applicant delivered its two agreements with DePaul University following a request by the Panel. In the meantime, other documentation was also submitted as requested by the Panel.
- e) On the 12th June 2015 the applicant was informed that the documentation submitted, including their replies to the seven eligibility criteria, was not satisfactory and needed to be revised. Additionally they needed to provide guarantees to ensure due process for all quality assurance procedures, as well as integrity of outcomes.

- f) On the 30th June 2015 the applicant was informed that they needed to enter into a contractual relationship with an experienced third party that would guarantee probity and due process in its Quality Assurance (QA) procedures, as well as integrity of outcomes.
- g) There was a hiatus of three months, from July to September 2015, during which time the applicant reconsidered its position.
- h) Once discussions re-commenced in October 2015 with the newly-hired Vice President and Provost of the proposed AUM, Professor John Ryder, all the relevant documentation was reviewed and resubmitted. Professor Ryder has extensive experience in American-type universities, and was previously Vice President and Provost (roughly the equivalent to the Rector in the University of Malta) of the American University of Ras Al Khaimah in the United Arab Emirates.
- i) On the 20th October 2015 the NCFHE issued the Interpretation Note already mentioned with respect to Regulation 47 of the Subsidiary Legislation, which provided administrative direction to the Panel and the QAC in the consideration of requests for University accreditation.
- j) On 6th November 2015 the applicant informed the NCFHE that it wished to change its university accreditation application to a Higher Education Institution accreditation application as a first step towards achieving university accreditation.
- k) Intensive discussions between the Panel and the applicant, leading to regular iterative revisions of the key documentation, took 5 months, from October 2015 to the beginning of March 2016.
- l) In the meantime the Commission continued to process the Higher Education Institute application. And on the 26th January 2016, the NCFHE granted a Higher Education Institution licence to the American Institute of Malta (AIM), as a first step towards its accreditation as the American University of Malta.
- m) The final two key documents requested by the Panel for the university accreditation - the contractual agreement with Clemson University (in addition to DePaul University) - and the Business Plan, were submitted by AUM in February 2016. The Business Plan was sent for due diligence assessment as I shall be explaining in more detail below. The contract with Clemson University was reviewed and additional clauses were requested. These were provided through an addendum to the main contract on 13 May 2016.
- n) On 20th June 2016 the Panel was informed of the conclusions of the financial due diligence by independent international auditors, PricewaterhouseCoopers.
- o) On 21st June 2016 the Panel submitted its report to the QAC.
- p) On 22nd June 2016 the QAC submitted its recommendation to the NCFHE Board.
- q) On 28th June 2016 the NCFHE Board informed the government and the applicant of its decision.

As can be seen, the Expert Panel undertook a long journey with the applicant in which the technical support that was provided to ensure that the application was fit for purpose did not in any way diminish the rigour and thoroughness of the due diligence process.

No compromise was made with the expected standards of probity and quality. All the CVs of proposed academics and senior administrators were scrutinised for fitness for purpose, and the persons involved were contacted independently by the NCFHE to confirm their interest in giving service.

Apart from the full quality assurance (QA) procedures, the applicant was requested to present a full set of supporting documentation that included the Academic Plan, the Business Plan, the Policies and Procedures Manual, the Faculty (Staff) Manual and the Students' Manual.

As part of the process, the applicant was supported throughout to undertake the rigorous journey to upscale the application to the required standards. When the original application was deemed to be unsatisfactory, the applicant was guided as to what needed to be done by them to ensure a successful application - which included applying as a Higher Education Institution and seeking an additional contractual arrangement, in addition to that already drawn up with DePaul University - that would provide the necessary guarantees as to the quality of teaching, learning and research processes and outcomes at university level.

The applicant now has contractual relationships with two well established and reputable American institutions. DePaul University has provided the technical support for the development of the courses accredited by the NCFHE, as well as access to its resources and documentation.

Additionally, AUM has a contractual agreement with Clemson University to guarantee the quality of processes, procedures and outcomes, and to support AUM in accessing international networks.

For your background information, DePaul University in Chicago is the largest private Catholic university in the United States. It was founded over a century ago, in 1898. It is accredited by the New England Associate of Schools and Colleges, and the North Central Association of Colleges and Schools. DePaul is ranked the twenty-first most innovative school among US national universities, with an overall ranking of one hundred and twenty-three. National universities are institutions (both public and private) that offer a full range of undergraduate majors, plus Master's and Doctoral programmes.

Clemson is a public University in South Carolina and was founded in 1889, 127 years ago. It is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) to award the Bachelor's, Master's, Education Specialist and Doctoral degrees. Clemson is ranked the sixteenth most innovative school amongst US national universities, with an overall ranking of sixty-one.

It is worth noting that there are over four thousand public and private universities or equivalent in the United States. Both DePaul University and Clemson University have a special focus on excellence in teaching and solid academic and research profiles. The Commission is satisfied that, if AUM were granted a licence, these institutions are fit for purpose as its partners to support its initial years of development.

I should add that all I have just described as the way of proceeding by the Expert Panel is in line with the philosophy of the Commission to fully support the internationalisation agenda of the government with respect to further and higher education, whilst upholding the highest appropriate standards of quality, which in fact are the best guarantee for the success of this agenda.

You should also please note that the applicant for the American University of Malta did not request exemption from presenting Ph.D. programmes, so the NCFHE did not need to consider whether it would accept the applicability of the relevant “national interest” proviso of Regulation 47 in the subsidiary legislation. The issue simply did not arise. In any case, the Interpretation Guidelines the Board has issued clearly indicate that the decision whether or not to apply this proviso rests with the NCFHE Board, according to very tight, specifically defined parameters.

To ensure comprehensiveness, transparency and objectivity in its deliberations, the Expert Panel made use of a battery of due diligence instruments that looked at:

- The eligibility of the application in terms of the Interpretations Guidelines issued by the Board.
- The fitness for purpose of the Quality Assurance Manual.
- The probity of the personnel involved in the governance of the proposed entity.
- And the fitness for purpose of the application as a whole.

The template of these instruments is included in your pack. The report that the Expert Panel presented to the QAC was based on this template.

4. Financial Due Diligence

Which brings me now to the financial due diligence aspects of this application. Given the start-up nature of the application, the Commission was also obliged under Article 39(3) of the subsidiary legislation to carry out a financial due diligence (“a provider quality audit”), which included a review of the applicant’s structure, strategy, policy, procedures, financial matters, management and facilities. The review also included a financial probity check on the applicant.

In line with the legislative requirements, we engaged leading international auditors PricewaterhouseCoopers (PwC) to carry out the financial aspects of this. PwC were formally engaged by the Commission on 25th January 2016. They held an initial meeting with the Sadeen Education Investment Ltd’s (SEIL) financial advisers and submitted a formal request for the information they required to conduct the due diligence on 9th February.

PwC received a copy of the Business Plan on 23rd February from SEIL’s financial advisers, and subsequently requested further information. A meeting was held with SEIL’s legal representative and their financial and legal advisers to discuss the preliminary findings and a number of outstanding matters on 11th May. Between 26th May and 9th June, in response to requests for further information and supporting documentation, a number of further letters were received from SEIL’s prospective funding providers and their Bank. A revised Business Plan was also submitted by SEIL’s financial advisers. PwC’s final due diligence report was delivered to the Commission on 20th June.

The Commission’s objective was straightforward. It was to ensure the probity of the investors and that the American University of Malta, if granted a licence, would be a financially viable

operation. The Commission was acutely aware that Sadeen Education Investment Ltd (SEIL) had applied for a licence on the basis of a project and business plan which they themselves had prepared, a plan which required funding at an amount they themselves had estimated (consisting of a project amounting – as the Prime Minister indicated in a speech in May 2015 - to about 120 million Euros, of which several million Euros would be raised from equity funding and the balance of several million Euros from debt funding). As the regulator we were fully in order, therefore, to ask for evidence that the funding was in place before considering any licensing of the project.

PricewaterhouseCoopers conducted basic probity checks on the investors and reviewed the Business Plan submitted to assess its robustness and to determine whether the proposed funding appeared to be sufficient to execute the project proposed. Their examination focused on three main areas:

- First, basic due diligence on the investors in AUM, consisting of a Thomson Reuters World-Check on the investors and directors and on other connected companies registered in Malta, together with an assessment of the financial strength of AUM, its shareholder and connected companies based on financial information provided by AUM.
- Secondly, a review of the Business Plan, its comprehensiveness and whether the level of detail included in it was commensurate with the size and complexity of the project; the financial feasibility of the project taking into account the educational standards that AUM would be required to meet; the key performance indicators extracted from the Business Plan, including the projected peak number of students; the key assumptions on which financial feasibility was based, such as the capital expenditure assumptions and the revenue and cost assumptions; and the risk and sensitivity analysis included in the Business Plan, including an assessment of critical success factors affecting the Business Plan.
- Thirdly, a review of the Funding Plan for the project, including whether the proposed funding that would be made available appeared sufficient to meet the projected requirements and the extent to which the funding plan provided for any possible project capital expenditure over-runs; whether the funding mix was reasonable in the context of the project's nature and size; the extent to which debt funding was supported by a letter of support from lenders and the extent to which such a letter was binding on the respective parties; and the extent to which the proposed equity funding could be traced to AUM's shareholders' financial statements, or to other financial information supporting the shareholders' ability to provide such equity funding.

Before I report on the outcome of the financial due diligence, I should state that, in line with normal custom and procedure, I am not at liberty to disclose commercially or financially confidential matters. But it is already public knowledge what the broad size of the project amounts to since, as I said a moment ago, the Prime Minister had indicated in a speech in May 2015 that it was worth roughly 120 million Euros. That rough figure therefore gives you an indication of the scale of funding I shall be talking about. But I shall not be able to divulge precise numbers on grounds of applicant-regulator financial confidentiality.

While I am not at liberty to divulge any financially confidential information, I can none-the-less fully report that the conclusions of PricewaterhouseCoopers' financial due diligence exercise have resulted in a number of recommendations to the Commission directly affecting whether or not a licence should be granted to Sadeen Education Investment Ltd for the operation of a university and, if so, the conditions under which it may be issued.

All the recommendations made by PwC have been accepted by the Board, which agreed that, if it were decided that the applicant was to be offered a university licence, the recommendations made by them would be included as specific conditions for compliance by AUM.

The Board was therefore content, based on the expert advice and the most thorough financial due diligence conducted by PwC that, subject to the Commission laying down a number of conditions in the terms of the licence to ensure the Sadeen Education Investment Ltd delivered fully on the funding commitments which it had promised, the Commission's responsibilities under Article 39 of the Regulations had been satisfactorily addressed.

5. Decision on University Accreditation Application

Over the last forty-five minutes or so, I have outlined for you in the greatest detail every step we have taken in this process. We have been transparent and objective in everything that has been done, shining a searchlight on both the educational due diligence process and the financial due diligence.

What has been the Board's decision?

In making its decision, the Board has had to weigh up two key factors:

- First, has the Sadeen Group fulfilled all the necessary educational criteria of the educational due diligence process?
- Secondly, has it fulfilled all the criteria of the financial due diligence process? In other words, is this a financially viable operation and an educational investment in Malta for the long term?

But, in addition, the Board was not simply engaged in a straight-forward assessment of criteria, a ticks-in-the-box exercise. It also had to weigh in the scales a number of broader factors of our experience of dealing with the Sadeen Group.

- Did they win our trust? How much confidence could we place in them? In this respect, we took note of the fact that the Commission had had to impose a fine on the Sadeen Group for a persistent breach of rules preventing it from advertising as a university, an issue which was, however, ultimately satisfactorily settled by them under the law. But we were also very conscious that we were dealing here with a start-up university application, not an already established university. Whereas all our earlier experience lay in dealing with universities with an established track record – with all their courses and programmes, internal quality assurance procedures, student records, reputation,

already in place – in this case the applicant was starting from scratch. He had to adapt to the high standards Malta demands, which entailed a steep learning curve.

- Moreover, how did their application fit into the government's policy to encourage greater internationalisation and pluralism of Further and Higher education in Malta?
- And were there any wider implications of a geo-political or security nature which we felt duty-bound to draw to the government's attention?

Starting with the **educational due diligence**. The check-list my Commission uses to ensure due process of applications for university accreditation, and which has been adapted for the start-up situation of this applicant, comes up with the following answers in the case of the American University of Malta.

- a) Was the Evaluation Panel set up according to QAC procedures? Answer Yes.
- b) Has the Expert Panel met regularly and been in regular communication to ensure that due consideration has been given to the AUM application? Answer Yes.
- c) Was the applicant informed of requests for information or clarification in a timely manner? Answer yes.
- d) Has the panel considered all the tests of eligibility of Regulation 47 for the consideration of a University application? Answer Yes.
- e) In considering the seven tests for eligibility, has the Expert Panel been guided by, and has it adhered to, the guidelines issued by the NCFHE board for the correct interpretation of Subsidiary Legislation 327.433? Answer yes.
- f) Specifically, has the applicant demonstrated that they have a strategic contractual relationship with an experienced and reputable higher education institution that ensures due process for all quality assurance procedures and integrity of outcomes in all core administrative operations of the applicant? Answer yes, as I have already outlined in its relationship with Clemson University.
- g) Was the applicant's application in line with the requirements for: top administrative and top academic staff that are named and fit for purpose; the minimum number of accredited courses/ programmes required for an application for university accreditation? Answer Yes. As I have already mentioned, Professor Ryder, the Provost. The other senior administrative staff who will be employed from the start are the Directors for Human Resources and Quality Assurance. Both are experienced and fit for purpose. The courses that have been accredited are: BA in Graphic Design and Animation; BSc Accountancy; BSc in Game Development; BSc in Business Administration; Masters in Business Administration; PhD in Computer and Information Science. Other course applications are presently being processed, but this list is sufficient in terms of the regulations to allow for licensing.
- h) Are the premises to be used with immediate effect fit for purpose and in line with planning regulations? Answer: we are laying down specific conditions about this as I shall explain in a moment.
- i) Does the applicant have a viable and sustainable quality assurance system that is fit for purpose? Answer yes. The check-list that was used to evaluate the quality assurance system is included in your pack. Additionally, the main task to be performed by Clemson University will be to support the AUM in this key function.
- j) Does the applicant have a viable and sustainable academic strategic plan, related procedures and manuals, and a related detailed budget forecast? Answer Yes. The Panel reviewed the academic strategic plan in detail and compared it with the proposed policies

and procedures, faculty and student manual and business plan to check for congruence, continuity and completeness.

- k) Did the recommendations made by the Expert Panel in its Report specifically address these issues, giving findings for each aspect and reasons for each recommendation? Answer Yes. The Expert Panel was in constant communication with the applicant giving detailed feedback on what needed to be addressed and revised. The detailed report that the Panel presented to the QAC based on the template in your pack gave detailed recommendations.
- l) Did the Board have sufficient time to consider these QAC recommendations? Answer Yes.
- m) Was the final decision of the Board communicated to the applicant? Answer Yes. It has been communicated orally. A formal offer will be delivered today.

We concluded that, subject to the imposition of certain conditions, the **educational due diligence** satisfactorily met all the criteria required under our law.

As to the **financial due diligence**, the conclusions of PwC's due diligence exercise have resulted in a number of recommendations to the Commission about the conditions under which a licence may be offered to the applicant, including as they affect the viability of the Business Plan, which we have taken fully on board.

Which brings me lastly, therefore, to the terms of our decision.

Following an intense and detailed scrutiny of the application lasting fourteen months, the Board has therefore decided that the Commission will offer a University licence to the American Institute of Malta subject to their agreement that the following specific conditions will be complied with:

- **First**, Clemson University is to undertake a yearly audit as part of the applicant's internal quality assurance process, starting from the date of issue of the licence (or from the commencement date of their operations), of the implementation and effectiveness of policies and procedures of the AUM in line with its Academic Plan, Quality Assurance Manual and other relevant documentation. The audit shall include, but not be limited to, face to face feedback from the University stakeholders. The Commission shall approve the format and parameters of the yearly audit and shall be provided with a copy of the audit report. This condition shall remain in place for the first five years of operation of the AUM, with the possibility of extension.
- **Second**, moreover, the Commission is to conduct spot-checks at least once a year on any aspect of the operations, processes and outcomes of AUM. These spot-checks will include, but shall not be limited to, the integrity and economic viability of student intakes, the quality of student services and student support, and verification of effective mechanisms for the representation of staff and students. This condition will remain in place for the first five years of operation of AUM with the possibility of extension.
- **Third**, the Commission is to conduct external quality audits of AUM after the second and fourth academic year. The first external quality audit will be an institutional audit which will be conducted twenty-four months after the date of issue of the licence (or from the commencement date of their operations). It will examine all

academic, administrative and service operations of the provider and its associated entities, including the verification of effective mechanisms for the representation of staff and students within the structures of AUM in line with its approved policies and procedures. The second external quality assurance audit will be a programme quality audit of all courses that have been concluded by the fourth year of operation, as well as of the operations, processes and outcomes of the School of Graduate Studies and Research. These audits are to be tied to expected benchmarks of performance to be established by the Commission in line with Article 4(2) of S.L. 327.433.

- **Four**, the frequency of further external quality audits will be decided by the Commission in the light of the outcomes of the Quality Assurance procedures in points One, Two and Three above.
- **Five**, as to the funding, the licence will be conditional upon the applicant showing evidence that he has put in the equity of at least the equity amount of [a specific amount of tens of millions of Euros will be included in the licence conditions] provided in the Business Plan to be invested during this period within the first 24 month period from the date of issue of the licence (or from the commencement date of operation).
- **Six**, the licence will be conditional upon the applicant providing, within the first 24 month period from the date of issue of the licence, signed term sheets by a reputable financing institution, clearly indicating the terms agreed by AUM with such an institution or institutions, for an amount of [a specific amount of tens of million of Euros will be included in the licence conditions].
- **Seven**, the applicant is to provide written assurances within the first 24 months of operation (or from the commencement date of their operations) that if the unrecoverable input VAT on the project's capital expenditure exceeds the [specific amount of low millions of Euros to be included in the licence conditions] indicated in the Business Plan, this funding shortfall will be financed by way of additional equity provided by the applicant.
- **Eight**, AUM is to submit to NCFHE a copy of the audited consolidated financial statements of the corporate structure and the audited financial statements of the Foundation on an annual basis, starting from those for the year ending 2016. These are to be provided on request in the shortest reasonable time, and in any event not later than three months from such a request.
- **Nine**, before the licence is issued, the applicant is to give written assurance that any future proposed material change (more than 10%) in the shareholding of AUM's corporate entities (including those set up in the Netherlands) and any proposed change in the list of Beneficiaries of the Foundation will not be permitted without the prior approval of NCFHE.
- **Ten**, before the licence is issued, the applicant must provide a full list of Beneficiaries of the Foundation and the benefits that will accrue to them.
- **Eleven**, before the licence is issued, the applicant must give written assurance that the AUM Foundation has been registered with the Registry for Legal Persons and that the Board of Administration has been registered in line with the Trusts and Trustees Act under Maltese law.
- **Twelve**, before issuing the licence, the Commission must receive written assurance from the applicant undertaking that the Commission may request a copy of the financial statements for any company or companies within the Sadeen Group

(and/or any company or companies in which the applicant is a significant shareholder) that provide debt and/or equity financing for the project. Such written assurance must also stipulate that these will be provided on request in the shortest reasonable time, and in any event not later than three months from such request.

- **Thirteen**, AUM is to seek prior approval from NCFHE for any change or additions in its academic faculty and its senior administrative staff during the first twenty-four months of its operation. The Commission will assess whether the qualifications and experience of the proposed personnel are commensurate with those expected from a university start-up team and may seek changes accordingly.
- **Fourteen**, AUM is not to begin operating from its proposed university site at Dock No 1 until the NCFHE has received the relevant Compliance Certificate from the Planning Authority showing that the accommodation is fit for purpose and in line with the relevant planning regulations. In the meantime, AUM will operate from premises approved by the Commission as having planning permission and is fit for purpose for its intended use in line with Commission regulations. The Commission will be monitoring the effective fitness for purpose of the interim premises to be used by AUM and may withdraw the licence if these are not satisfactory.
- **Fifteen**, AUM is to seek the prior approval of NCFHE for any future change of premises.

Moreover, Sixteen, prior to the acceptance of any student, AUM is to submit to the Commission for its approval the template for the Student Agreement in line with Article 26 of the Regulations, which would include provisions for student contingency arrangements to complete their course of studies should it cease to operate. Additionally, prior to acceptance, AUM is to submit evidence to the Commission of approval by the Principal Immigration Officer of its procedures for the fulfilment of Articles 24 and 25 of the Regulations with respect to the enrolment and attendance of Third Country Nationals.

In line with the requirements of Article 24 of the Regulations, we have also recommended to the government that, given the majority of students at the American University of Malta will probably be of non-European Union origin, the tightest scrutiny of student visa applications of prospective students to the AUM should be conducted by Identity Malta and the police immigration authorities in line with the practice already being exercised by them with other institutions of Further and Higher Education.

Finally, the Commission believes that, subject to AUM agreeing to meet the stringent conditions which have been laid down by the Commission in offering it the grant of a licence, its accreditation would be in line with the government's policy of encouraging and ensuring greater internationalisation and pluralism of higher education in Malta. Once the academic plan of AUM is fully in operation and, most importantly, subject to the applicant satisfactorily meeting the conditions laid down in this licence, this project will add value to the niche market in tertiary education which Malta is seeking to attract and which Education Malta has been established to promote.

I have communicated the Board's decision to the applicant and the government accordingly.

My last word to you is this. Now that you have heard openly and transparently, attributably and on the record, the way this Commission has conducted this exercise in due diligence, I hope you will agree that it has been a thorough, professional, evidence-based and objective exercise in transparency and accountability. I very much hope that it will serve as a bench-mark for any such future exercises.

I shall now give you a copy of my Speaking Note for you to study and take away.

Are there any questions?