



Partit Nazzjonalista

PN LEADERSHIP ELECTION DUE DILIGENCE REPORT

PANEL OF EXPERTS

12 SEPTEMBER 2020

Partit Nazzjonalista

Dar Centrali

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<https://www.pn.org.mt/>

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1. Introduction

The *Partit Nazzjonalista* (PN) has initiated the process for the Party Leadership Election in terms of its Statute, and in accordance with Articles 90, 135, 136 and 137 thereof due diligence needs to be carried out on each person who filed a declaration of interest with the Electoral Commission (“the Contenders”). This will enable the competent organs of the PN to assess whether the Contenders are suitable to be nominated as prospective candidates for the PN Leadership Election.

On the 4th August 2020, the PN Executive Committee adopted the 2020 Due Diligence Exercise Regulations (“the Regulations”) in terms of Article 137(1) of the PN Statute. These outline the salient requirements relating to the due diligence that should be carried out. Amongst others, the Regulations provide for the appointment of independent experts to assist the PN Candidates Commission in carrying out the due diligence exercise.

The following persons were appointed on the Panel of Experts (“the Panel” or “the Experts”) by the PN Candidates Commission on the 11th August 2020:

- Mr Antonio Ghirlando (Chairperson)
- Dr Clyde La Rosa (Member)
- Mr Mario P Galea (Member)

The Experts commenced their work immediately following their appointment, with a view to completing the exercise before the 21st September 2020 – in line with the PN Statute and the Regulations.

The Panel acted in an independent manner and regulated its own procedures. As such, the Experts carried out the work in the manner they deemed most appropriate in the context of their appointment.

2. Scope of Work

The Experts were tasked with assisting the PN Candidates Commission in assessing the suitability¹ of the two Contenders, namely:

- Dr Adrian Delia; and
- Dr Bernard Grech.

In line with the Regulations, the Experts were required to, amongst other matters, probe specifically on the financial and business affairs of the potential candidates. Wherever appropriate, this also included the interests of family members².

Note 1: Article 135(2) of the PN Statute describes a suitable person as a person “..... b’karattru personali integru u onest, li l-unika motivazzjoni tagħha hi li tkun ta’ servizz għall-poplu u għall-ġid komuni tiegħu, kompetenti, u li tkun issodisfat l-eżercizzju dwar diliġenza pruvata”.

Note 2: For the purpose of this exercise, family members has the same meaning as that outlined in Regulation 11(8) of the Prevention of Money Laundering & Funding of Terrorism Regulations (S.L. 373.01), i.e. “(i) the spouse, or a person considered to be equivalent to a spouse; (ii) the children and their spouses, or persons considered to be equivalent to a spouse; and (iii) the parents”.

3. Methodology

The Panel requested the two Contenders to complete an exhaustive questionnaire and to provide several documents in support. On their part, the Experts conducted their own research and held separate face-to-face interviews with each of the Contenders.

3.1 The Questionnaire

The questionnaire was appositely designed to collect the necessary information on each of the Contenders (and their family members, wherever appropriate). This included:

- Personal and contact details;
- Educational background;
- Current memberships, associateships and fellowships;
- Employment/ professional background; and
- Business and corporate affiliations.

More importantly, the questionnaire also included a thorough integrity assessment and probed on the financial soundness of the Contenders. These items constituted the primary focus of the due diligence exercise.

3.2 Documentary Evidence

The documentary evidence collected from the Contenders was similar to what would ordinarily be provided to a Competent Authority (e.g. the Malta Financial Services Authority) tasked with assessing the fitness and properness of a person selected to occupy a key position within a regulated entity.

Over and above, and in order to thoroughly test the financial soundness of the Contenders, the Panel requested:

- An audited statement of wealth;
- Certified true copies of Income Tax/ VAT returns; and
- Bank account statements for each bank account held (either in their own name or jointly with another one or more persons).

Bank accounts designated as 'Client Accounts' were reviewed on a needs basis, specifically in the context of self-employment.

3.3 Research

In addition to conducting extensive internet searches making use of different web browsers, different search engines and an array of specialist search techniques, the Experts also scanned various open source materials, databases and websites, including but not limited to:

- Regulatory websites (including the Malta Financial Services Authority, the Financial Intelligence Analysis Unit and the Malta Gaming Authority);
- Sanction lists (including sanctions imposed by the United Nations Security Council, European Union, and other major jurisdictions and international bodies);
- Regulatory enforcement watchlists (including Interpol, the International Criminal Court, the United Nations, the World Bank and other international, regional and national bodies);
- Fitness and probity watchlists (listing individuals who have been disqualified or otherwise restricted from holding certain positions or participating in certain activities due to regulatory or code of conduct breaches);
- Adverse media datasets; and
- Other specific sources (including the Malta Business Registry, the local eCourts website, the Asset Recovery Bureau website, the Offshore Leaks Database provided by the International Consortium of Investigative Journalists or ICIJ).

The information gathered was carefully examined by the Panel for accuracy, relevance and materiality. The necessary follow-up was conducted, as appropriate.

3.4 Interviews

The interviews were primarily held in order to obtain a better understanding of the information gathered and to help clarify specific issues.

It should be noted that both Contenders were asked to submit additional documentation covering specific areas following the interviews. This served to verify the information provided in the questionnaire as well as during the interview itself.

4. Limitations

The work of the Experts was limited by a number of factors, including the:

- Access to information;
- Lack of resources; and
- Time limitation.

Each of these is discussed briefly in the following sub-sections:

4.1 Access to Information

Since the Panel is not a regulatory, supervisory, law enforcement, judicial or any other competent authority it was not in a position to statutorily request information itself from any local or international government authority/ department/ agency or private sector body/ entity. As a result, it had to rely heavily on the information, documents and data provided by the PN organs and the individual Contenders themselves.

Besides being unable to access key data, the provision of incomplete or inaccurate data would have also impacted on the analysis and resultant conclusions.

Over and above, the Panel did not have the legal status to mandatorily request third parties to provide additional information, explanations or specific materials.

4.2 Lack of Resources

The lack of resources did not allow the Experts to:

- Engage other professionals (for example architects) to independently double-check the veracity of certain claims; and
- Employ assistants to carry out further research and to go through additional data that could have been requested had this been an option.

4.3 Time Limitation

Although a six-week period might seem sufficient, due diligence specialists would readily agree that such timeframe is inadequate in many circumstances – more so given the more complex task of assessing the suitability of a person that will hold a significant Constitutional role such as Leader of the Opposition, and possibly also as Prime Minister of the Republic of Malta.

Coupled with the lack of resources, the Panel had no other option but to necessarily limit the exercise to what it considered as being absolutely essential.

5. Timeline

The following charts the progress of the due diligence exercise carried out:

11/08/2020	-	Appointment of the Panel
12/08/2020	-	1 st Meeting of the Panel
13/08/2020	-	Circulation of questionnaire and documentary requirements
13 to 24/08/2020	-	Internet searches/ research
24/08/2020	-	Submission of questionnaires and documentation
25/08/2020	-	2 nd meeting of the Panel
26 to 31/08/2020	-	Review of questionnaires, documentation and research
01/09/2020	-	3 rd meeting of the Panel
03/09/2020	-	Interviews with the Contenders
03/09/2020	-	4 th meeting of the Panel
03/09/2020	-	Further documentary request
08/09/2020	-	5 th and 6 th meetings of the Panel
10/09/2020	-	Submission of further documentation
11/09/2020	-	7 th and 8 th meetings of the Panel
12/09/2020	-	9 th meeting of the Panel
12/09/2020	-	Finalisation of Report
12/09/2020	-	Presentation of Report to PN Candidates Commission

It should be noted that the report is based on the information, documentation and data that has been provided and collected by the 10th September 2020.

6. Audience

This report is specifically prepared for the sole benefit and use by the PN Candidates Commission to enable this Commission to carry out its duty under the PN Statute. It is understood that it might also be sent to the Administrative Council and the Electoral Commission of the PN in terms of its Statute.

Any further use or dissemination of this report, with the exception of the Contenders themselves, is strongly discouraged. However should the Candidates Commission, any competent organ of the PN or the Contenders themselves decide to ignore the Panel's recommendation, it is only proper to disseminate a complete version of the report and not a summary thereof because there is a strong possibility that a summary can give a distorted version of the report itself.

It is pertinent to point out that the publication of the report beyond the intended audience is likely to have a detrimental effect on future due diligence exercises as persons would, in all likelihood, be conditioned and adopt a more cautious approach before deciding to participate.

Notwithstanding the limited circulation of the report, certain granular data reviewed by the Experts (for example particulars relating to income, expenditure, settlements, audits, bank statements) have not been included in view of privacy law considerations. This does not, however, impact on the suitability of the report.

7. The Contenders

This section of the report outlines the salient information on each of the Contenders under three separate sub-sections, that is:

- Adverse Media Reports³;
- Business Interests; and
- Financial Affairs.

Note 3: The role of the media in any functioning democracy is of crucial importance. This Panel would like to stress the essential role which the Maltese media has played and continues to play, on a daily basis, in safeguarding the rule of law and democracy in Malta by, amongst other matters, holding politicians, political parties, persons holding a public function and public institutions to account, uncovering any wrongdoing by them and in general keeping the public at large fully informed of events as they occur.

Journalists in Malta carry out this function in challenging and difficult circumstances as the murder of Ms Daphne Caruana Galizia in October 2017 has clearly shown. Like all other freedom loving persons we are grateful for the role journalists fulfil in Malta. However, we must also emphasise that any media reports to which we shall refer to in dealing with adverse media reports, whilst carrying substantial weight, are not and should not be considered as unchallengeable and absolute truths.

7.1 Dr Adrian Delia

Dr Adrian Delia was born on the 8th August 1969. He is a lawyer by profession. He commenced his professional career as a lawyer with Mid-Med Bank Limited. He then became a partner in the legal firm Aequitas Legal. He has been involved in local football and served as President of the Birkirkara Football Club from May 2015 until June 2017. He subsequently successfully contested for the leadership of the PN and became leader on the 17th September 2017. In October 2017 he was appointed as Leader of the Opposition, a constitutional role which he holds up to this date.

7.1.1 Adverse Media Reports

As one would expect, the media reports on a person who has played a prominent political role for the past three years have been extensive. For the purposes of this exercise the adverse media reports in relation to Dr Adrian Delia have been categorised into the following four main classifications:

- A. Jersey Bank Account Allegation;
- B. Boris Arcidiacono Episode;
- C. Miroslav Kopric Episode; and
- D. Yorgen Fenech Allegation.

These are discussed in some detail hereunder. Every issue incorporates both the:

- (i) Background and Allegation (essentially summarising the press reports); as well as
- (ii) Comments (including those presented by Dr Delia during the interview and those of the Panel).

It should be noted that the adverse media reports relating to Dr Delia's personal finances and taxation are discussed under the section dealing with "Financial Affairs".

A. Jersey Bank Account Allegation

(i) Background and Allegation

In August 2017, during the campaign for the leadership of the PN, the journalist Ms Daphne Caruana Galizia reported that Dr Adrian Delia had an offshore account with Barclays International, in Jersey, a secretive jurisdiction, which had allegedly been utilised to channel the illegal earnings of a prostitution racket in Soho, London. Dr Delia immediately denied these allegations.

In relation to these allegations, the local press has claimed that a report drawn up by the Financial Intelligence Analysis Unit (FIAU) in March 2018 determined that there was sufficient information to conclude that Dr Delia and his bank account in Jersey “may have been used for money laundering”. The press reports also claim that the FIAU Report was handed over to the Police and a Police investigation is being conducted. The press reports further claim that the FIAU Report indicates that the said Jersey bank account was opened in February 2001 and was closed in October 2004. During this period £346,000 were deposited into the said bank account for the benefit of two companies. The beneficial owner of one of the said two companies has been convicted of human trafficking, running a brothel and money laundering in Malta. It has been alleged that the amounts which were deposited into the said bank account were not fixed regular payments and therefore could not constitute regular rent payments. Money from the said Jersey bank account was sent to two Swiss bank accounts.

Dr Delia denied any wrongdoing and insisted that his only involvement in the matter was as a legal advisor and representative for a Maltese national who was not accused, let alone convicted of human trafficking, running a prostitution racket or money laundering. Dr Delia even alleged that his signature had been forged in some documents, which although not directly related to the matter, have a bearing on the involved parties. Dr Delia has reported the alleged forgery to the Police. A Magisterial Inquiry on the matter is being held. Dr Delia has never been called to give evidence. He has stated in our interview with him that it is most unfair to taint him with the behaviour alleged when his only involvement was in assisting a client, especially since his client was not involved in improper, let alone illegal behaviour.

(ii) Comments

The allegation being made by the press is a most serious one. Such a serious allegation would cast a dark shadow over any person, let alone a prominent politician. What is particularly of concern is the allegation made in the press reports that an investigation has been conducted by the FIAU which has allegedly concluded that Dr Delia and his bank account in Jersey “may have been used for money laundering”. Any report by the FIAU would only be made after an investigation has been carried out on the matter.

This episode has certainly created serious problems in Dr Delia’s political career, both before and after he became the leader of the PN. In our interview with Dr Delia he has once again stated that his only involvement in the matter was as a lawyer to a client who purchased a property in London and subsequently rented it out to another person who then made use of the property for prostitution purposes. His client was never accused, let alone convicted of being a party to a prostitution ring. Dr Delia does not recall to having opened, let alone operated the said bank account. He has also made efforts with Barclays International to confirm whether such bank account ever existed and that Barclays International has never confirmed the existence of such bank account because the Bank’s record keeping policy does not extend to the period in question. Dr Delia has also stated that he has never been questioned by the Police on the matter.

It is clear that if the allegations made by the press reports are proved to be true, in particular if the allegations made by the press that the FIAU has investigated the matter and issued a Report which has concluded that Dr Delia had a bank account in Jersey which “may have been used for money laundering” are true, would in itself certainly render Dr Delia unfit for public office. On the other hand, if Dr Delia’s rebuttals are correct and the press reports are incorrect, then Dr Delia would have had his reputation unjustly tarnished.

B. Boris Arcidiacono Episode

(i) Background and Allegation

The local press has reported that in June 2009 Mr Boris Arcidiacono, a businessman and Dr Adrian Delia's client, took a loan of €800,000 from HSBC Bank Malta plc ("HSBC Bank"). The purpose of the loan was to settle outstanding debts and disputes with third parties.

Mr Arcidiacono alleges that he had been requested by Dr Delia and his partner at a legal firm for a success fee of €116,500 (other reports indicated €120,000) which Mr Arcidiacono refused to pay. Mr Arcidiacono further alleges that after the payments made to third party creditors, the balance of €86,210 was paid by HSBC Bank to Dr Delia without his consent.

Dr Delia has stated that the payments made by HSBC Bank had been agreed upon with Mr Arcidiacono and that payments had also been made with his consent. He has further stated that a complaint made to HSBC Bank and to the Chamber of Advocates had been investigated and both HSBC Bank and the Chamber of Advocates had concluded that Dr Delia had done nothing irregular.

Mr Arcidiacono sued HSBC Bank on the 23rd May 2011 on the matter. He did not sue Dr Delia, however on the 20th June 2012 Dr Delia was also joined in the lawsuit by HSBC Bank.

Furthermore in our interview with Dr Delia he made it clear that his professional services did not consist in merely assisting his client in applying for and obtaining a bank loan but in negotiating and reaching an agreement with various creditors, drafting such agreements with Mr Arcidiacono's creditors and executing them.

(ii) Comments

The concept of charging a “success fee” for procuring a loan from a commercial bank is, at best, ethically dubious. A person or business requiring a loan should not have to depend on any third-party legal professional for its procurement. A bank decides whether to give a bank loan or not to a client on a client’s own merits.

In this matter it is also very pertinent to note that:

- Boris Arcidiacono never sued Dr Delia for reasons unknown to the Panel;
- The press reports state that HSBC Bank and the Chamber of Advocates have investigated the matter and found no wrongdoing by Dr Delia; and
- Dr Delia has stated that the professional services offered to his client were not related to merely applying for and obtaining a loan from a commercial bank but also involved negotiating with various creditors and drafting and executing various agreements with his creditors who were to be paid from the said bank loan and therefore the payment for his firm’s professional fees were not a “success fee” for procuring such loan.

The nature and extent of the professional services provided by Dr Delia to Mr Arcidiacono could not be ascertained by the Panel.

C. Miroslav Kopric Episode

(i) Background and Allegation

As indicated earlier on in this Report, Dr Adrian Delia occupied the post of President of the Birkirkara Football Club for the period between May 2015 until June 2017.

In January 2016 Mr Miroslav Kopric, a 31-year-old Croatian goalkeeper, joined Birkirkara FC. The local press alleged that on the 19th December 2016, that is during the time when Dr Delia occupied the post of President of Birkirkara FC, a group of seven officials of Birkirkara FC, including Dr Delia, took Mr Kopric to a garage in Dingli where they ordered him to divulge wrongdoing in his performances with the football club. Other newspaper reports indicated that the garage was situated in Bugibba.

The action of the Birkirkara FC officials was described as “kidnapping” by Mr Kopric to a Serbian website. Mr Kopric alleges that the Birkirkara FC officials took away two mobile phones and a laptop belonging to him and handed them over to the police. Other newspaper reports indicated that the said laptop and two mobiles were handed by Mr Kopric himself to the Birkirkara FC officials. It was also alleged in other newspaper reports that Dr Delia carried out an interrogation in the garage. Mr Kopric denied any wrongdoing and subsequently Birkirkara FC reported the matter to the police. The press also reported that the police had arrested Mr Kopric for 48 hours but never charged him in Court.

Mr Kopric subsequently sued Birkirkara FC before the Maltese Courts and the European Court of Human Rights alleging that the false accusations by the Birkirkara FC officials had ruined his career, his life and affected his family. Mr Kopric also lodged an action against Birkirkara FC with FIFA, the world football governing body, for not paying his salary.

When the press reports surfaced, Birkirkara FC denied that Mr Kopric was coerced in any way or that its officials had acted unlawfully. In our interview with Dr Delia he described his continuous efforts in combating corruption in football at the time he was an official and later President of the Birkirkara FC. He also informed us that what had been described as a garage in Dingli was in fact the dressing room of the Birkirkara FC training grounds in Dingli, where the Birkirkara FC players regularly trained. He stressed that at no time was Mr Kopric held against his will or that he was put under any moral pressure.

(ii) Comments

Independently of the motives which had induced the Birkirkara FC officials, including Dr Delia, to investigate the behaviour of one of their players, the matter could and should have been handled much better.

Had the probe into Mr Kopric's alleged improper behaviour been tackled in a more formal and professional manner, any perception of intimidatory behaviour in relation to Mr Kopric would have been untenable. It would certainly have been more appropriate to confront Mr Kopric on the matter in a more congenial location, such as the premises of the football club, give him the opportunity to defend himself and if such defence was unsatisfactory to report the matter to the police.

Although Mr Kopric alleges that the behaviour of the Birkirkara FC constituted "kidnapping", this does not seem to be the case because nowhere in the press does Mr Kopric allege that he was taken to Dingli against his will nor that he was kept against his will. It is the manner of confronting a person being accused of wrongdoing that was inappropriate in this case.

D. Yorgen Fenech Allegation

(i) Background and Allegation

The press had reported that Mr Yorgen Fenech was the beneficial owner of the company “17 Black” which is alleged to have made/ was in the process of making illicit payments to Mr Keith Schembri, formerly the Chief of Staff to the Prime Minister at the time, and to the former Energy Minister Dr Konrad Mizzi. The daily sum of €5,000 for each one of these two prominent public persons was often and is often mentioned in the press and by spokespersons of the PN. Mr Fenech is also currently undergoing criminal proceedings where he is being accused of being a conspirator in the murder of the journalist Ms Daphne Caruana Galizia.

The PN has continuously alleged that the relationship between the company “17 Black” and government officials as being tainted with large scale corruption. Mr David Casa is a member of the European Parliament and was elected on the PN ticket. He is a vocal anti-corruption crusader who has attacked the company “17 Black”, Mr Keith Schembri and Dr Konrad Mizzi.

On the 5th July 2020, an article in “The Times” reported that Mr Yorgen Fenech had exchanged WhatsApp messages with Dr Adrian Delia. Amongst the messages exchanged Mr Fenech is alleged to have invited Dr Delia for a casual lunch. Dr Delia is alleged to have replied that he would ask Mr Pierre Portelli, the former Head of the PN Media, to organise the same. This exchange of messages was alleged to have been conducted after Mr Fenech had been identified as the beneficial owner of the company “17 Black” but before he was accused or even implicated in the murder of Ms Daphne Caruana Galizia.

Although this exchange of messages was commenced by Mr Fenech, it was conducted when the press had already identified Mr Fenech as being the beneficial owner of the company “17 Black”. Prior to this date Dr Delia had denied any communication with Mr Fenech after he had been identified as the beneficial owner of the company “17 Black” and subsequently but prior to the 5th July 2020 Dr Delia denied any communication “of relevance” with Mr Fenech. Dr Delia has stated that this exchange of messages was a fabrication. There was no record of it in his mobile phone and this was stated by Dr Delia in the interview which the Panel had with Dr Delia. Dr Delia has also been on record as saying that this was the action of criminals within the Labour Party who were trying to divert attention from their wrongdoing. Dr Delia has asked the Commissioner of Police to investigate the leaked WhatsApp messages which were passed on to the media as this constituted a breach of the Criminal Code.

In our interview with Dr Delia, he claimed that such leaks could only have come from the Police and laments the fact that out of the thousands of WhatsApp messages exchanged by Mr Fenech with various prominent Government ministers and officials, it was only this exchange of messages, which he continued to doubt, which was leaked. In our interview Dr Delia has also stressed that he never had any business relationship with Mr Fenech and that the only time he remembers dining with him was together with approximately fifteen other Maltese businessmen, at a dinner which was organised by the PN in its efforts to strengthen the ties between the PN and the business community in Malta.

It is also pertinent to note that a Magisterial inquiry is currently being conducted to gather evidence of claims that the PN leadership was offered €50,000 by Mr Yorgen Fenech if one of the PN's candidates Mr David Casa failed to get elected. This inquiry is also investigating the allegation that Mr Fenech provided €20,000 a month to the PN with a view to stop Mr Casa from getting elected and that Mr Pierre Portelli, the PN's former Head of Media, was the intermediary between the leadership of the PN and Mr Fenech. Dr Delia has not only strongly denied these serious allegations but has also supported such denial with an affidavit. The allegations regarding the payment of €50,000 and the monthly payment of €20,000 are subject to a Magisterial inquiry. These are very serious allegations, but we have seen no proof to sustain them.

(ii) Comments

It is a well-known fact that political parties in Malta have close ties with the business community. It is often alleged that such ties are at times too close and lead to many conflicts of interest situations. Impropriety is also alleged in some cases.

While the panel is also concerned that certain aspects of the close relationships between prominent businessmen and politicians can give rise to the perception, if not the reality, that certain elements of the business community have too much influence on local politicians, it is however not the scope of this Report to enter into this aspect of Maltese politics and business. It is sufficient to say that in principle having a prominent Maltese politician communicating with a prominent Maltese businessman does not in itself constitute inappropriate behaviour. It is the content of the discussion between the parties which is relevant in this case, rather than the fact of the communication itself.

However, the behaviour being alleged is not the mere communication between a prominent politician and a prominent businessman. The businessman in question was a leading investor in the energy consortium which took over the energy sector in Malta. The PN, the press and various non-governmental organisations have alleged that the taking over of the energy sector in Malta by the business consortium of which Mr Yorgen Fenech formed part was tainted with large scale corruption. The company "17 Black" was accused of being a channel for this corrupt behaviour. Communications with the beneficial owner of "17 Black" should have been terminated abruptly once Mr Yorgen Fenech had been identified by the press as being the beneficial owner of this company, at least until such time as the allegations made had been cleared. To communicate with Mr Fenech, let alone to consider taking up his offer for lunch, after he had been identified as being beneficial owner of "17 Black", if proved to be true, would constitute a serious lack of judicious behaviour on Dr Adrian Delia's part which would undermine his credibility and that of the party which he leads in its fight against corruption.

7.1.2 Business Interests

Dr Adrian Delia remains a shareholder in the following two companies:

- Mgarr Developments Limited; and
- Carnaby Limited.

The salient comments relating to these are detailed hereunder, together with a brief note relating to the other companies and entities in which Dr Delia was somehow involved.

Mgarr Developments Limited

Mgarr Developments Limited (C 38168) was incorporated on the 9th March 2006. The company has a number of shareholders, including Dr Adrian Delia and his estranged wife – who jointly hold 9% of the issued share capital. Dr Delia had initially served as one of the Directors (as well as a legal and judicial representative) but had resigned his position in September 2017.

The company had taken out two separate loans from HSBC Bank Malta plc (HSBC Bank) in its first month of operation in order to construct a building development consisting of a number of flats and garages at a site previously occupied by a hotel in Mgarr, Gozo.

On the 26th July 2017 HSBC Bank and all shareholders of the company, including Dr Delia, formalised a contract of constitution of debt for the sum of approximately €7.2 million, bringing together in one sum the outstanding loan capital and the related unpaid interest.

In the aforementioned deed Dr Delia stood surety, jointly and severally, with the company and the other sureties listed in the deed for the total sum due of just over €7.2 million. This effectively exposed Dr Delia to a liability of over €7.2 million should HSBC Bank decide to exercise its rights in terms of law. This does not preclude Dr Delia from seeking to recover the share of debts pertaining to the other shareholders.

The fact that a bank would resort to a constitution of debt indicates that the creditor bank deemed it appropriate to request and obtain an executive title to safeguard its credit and that the debtor company and its sureties, including Dr Delia, were placed in a situation where they acceded to the banks request in spite of the potential serious consequences which an executive title could have in their regard.

During the interview with the Panel, Dr Delia stated that the company should have finalised the sale of three other apartments in the building development by the end of the year, and that promise of sale agreements have already been signed in this regard. Dr Delia also stated that subsequently, that is once the remaining two apartments and nine garages are sold, the company would be able to pay any outstanding liabilities with HSBC Bank and cancel any security given to the bank by the company and its sureties. Mgarr Developments Limited would also be left with a small surplus of funds.

Dr Delia has supported these statements with a written declaration signed by the two directors of the company dated the 7th September 2020. No further documentation was provided to the Panel to corroborate the statements.

The Panel finds it unusual that a project of this nature extended over 14 years (when one would ordinarily expect a significantly shorter period), and that accumulated losses had been recorded for most of the period in spite of the favourable market conditions.

In his initial submission Dr Delia indicated that the company was considering the possibility of listing on the Malta Stock Exchange. It is the considered view of the Panel that the company would need to overcome serious legal and regulatory hurdles beforehand. Additionally, the Experts questioned the rationale given the fact that the project is supposedly nearing completion.

[Carnaby Limited](#)

Carnaby Limited (C 14279) was incorporated on the 29th September 1992. The company is jointly owned by Mr Anthony Debono and Dr Adrian Delia, with the latter holding 40% of the issued share capital. Dr Delia resigned his position as one of the Directors (as well as a legal and judicial representative) in September 2017.

During the interview Dr Delia indicated that he is in the process of selling his shares in the company and provided a draft agreement in this regard. Although he owes the company a sum of money for products purchased on credit, this amount should be largely repaid as soon as he disposes of his shares.

Other Companies

Dr Delia has been involved in several other companies and ventures, including those related to the legal practice he was involved with prior to assuming the leadership of the PN. He has since divested his interest from these. This was completed through a specific agreement between the involved parties.

In addition to the above, Dr Delia offered professional services to a number of companies. His involvements included shareholder, director, legal/ judicial representative and/ or company secretary. Most of the companies involved have been struck off as defunct, but in view of the restricted information available on the Malta Business Registry and the limited time available, it was not possible to determine the reasons and manner in which such companies have been liquidated. This would have been particularly relevant in the context of 10 seemingly interlinked companies where the exact nature of the relationship and professional independence required further clarification.

7.1.3 Financial Affairs

In Dr Delia's 2019 annual financial filings to Parliament he had declared that he had outstanding loans of approximately €600,000. This is largely in line with what the Experts calculated from the statements of the numerous bank loans and overdrafts that had been made available to them. To this, one would need to add the current/ potential business exposures as detailed earlier in the report. This financial state of affairs has been the subject of continued attention by the media.

The Panel has seen the 2017 and the 2020 Statement of Affairs together with the supporting documentation presented by Dr Delia. These statements and documentation suggest that meeting current financial commitments is an ongoing task being faced by Dr Delia. During the interview Dr Delia informed the Panel that the larger part of his financial commitments would be extinguished should he dispose of a second property which he owns.

There have been various reports in the media alleging that Dr Delia has been negligent in filing his income tax returns in a timely manner and that he has not effected the tax payments due within the statutory time frames. The Panel has seen undated Income Tax Returns for the years of assessment 2018, 2019 and 2020 presented by Dr Delia. The Panel has also seen a letter issued by the Commissioner for Revenue dated 14th May 2018 certifying that Dr Delia has, up to this date, no pending tax, FSS and SSC balances due. In terms of a Statement of Affairs dated the 31st July 2020 presented by Dr Delia to the Panel, Dr Delia has declared that he has material tax balances due as well as interest and charges on the tax balances due.

The Panel would like to emphasise that besides being a legal obligation, every citizen has a moral and ethical duty to file tax returns and pay all tax due in a timely manner. In this regard politicians should lead by example and, if anything, should be judged by higher standards.

7.2 Dr Bernard Grech

Dr Bernard Grech was born on the 8th June 1971. He is a lawyer by profession. He started his own private practice following his graduation in 1996. He operates as a sole practitioner from two offices, namely his office in Mosta, which is also part of his family home and his office in Birżebbuġa which is a converted garage belonging to his parents. His main legal practice is in civil law.

7.2.1 Adverse Media Reports

Dr Grech has never held a prominent public function and therefore the media reports concerning him were sparse prior to his decision to be nominated as a prospective candidate for the PN Leadership Election.

Adverse media reports in relation to Dr Grech only emerged on the 6th September 2020, that is at a time when the Panel was in the process of commencing the conclusion of this Report. These relate to the failure of Dr Grech to submit his tax returns and pay his tax on time. Since this adverse media relates to financial matters, this shall be dealt with under sub-section 7.2.3 below.

7.2.2 Business Interests

As indicated above Dr Grech is a sole legal practitioner. During their review, the Experts noted that Dr Grech had committed minor procedural shortcomings with the management of his Clients Account as a lawyer. The Panel did not detect any wrongdoing but only minor oversights which consisted in not fully segregating his professional Clients Account and personal bank accounts, which matter was later rectified.

Dr Grech also informed the Panel that the competent authorities had informed him that he had submitted an application for a “PE” number as an employer and was therefore under a statutory obligation to file the relative returns with the competent authorities, which he had failed to do. Dr Grech stated that he had never made any such application and that he never had the intention to employ nor has he ever employed any person. The Panel feels that this incident is a result of an unintended oversight which was not resolved in a timely manner.

7.2.3 Financial Affairs

On the 6th September 2020 press reports alleged that Court records showed that in June 2006 the Inland Revenue had requested Dr Bernard Grech to settle a bill for unpaid taxes for the years from 1990 up to 1996 and further that in June 2012 the Inland Revenue had requested Dr Grech to settle a bill for unpaid taxes for the years from 1999 up to 2011 (except for the years 1997 and 1998). The press reports also claimed that Dr Grech was recently requested to settle assessments for value added tax (VAT) due for the years from 2014 up to 2019. The press reports also stated that Dr Grech had settled his pending tax issues on the 10th August 2020. It was claimed in such press reports that the Inland Revenue warnings were ignored for a number of years.

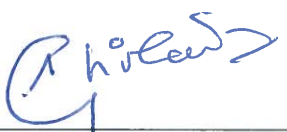
The questionnaire submitted by Dr Grech to the Panel indicated issues which Dr Grech had with the Inland Revenue but such completed questionnaire and the interview which the Panel had with Dr Grech did not provide the Panel with a complete picture of his tax issues. The Panel has been given Dr Grech's income tax returns for the years of assessment 2016, 2017 2018, 2019 and 2020. The Panel has also been provided with a Compliance Certificate issued by the Office of the Commissioner for Revenue dated the 2nd September 2020 which states that (a) regarding income tax, Dr Grech has submitted all income tax returns and has no pending liabilities (b) regarding his PE number Dr Grech has submitted all returns and has no pending liabilities and (c) regarding VAT Dr Grech has submitted all returns and has no pending liabilities. The Panel notes the regularisation of Dr Grech's tax position as declared by the Inland Revenue, however also notes with regret that such regularisation was only effected after a number of years. Such regret has also been expressed by Dr Grech himself in public.

The Panel would like to emphasise once again what it has highlighted under sub-section 7.1.3 that besides being a legal obligation, every citizen has a moral and ethical duty to file tax returns and pay all tax due in a timely manner. In this regard politicians should lead by example and, if anything, should be judged by higher standards.


8. Concluding Remarks

- The Panel believes that the requirement to conduct due diligence on persons occupying any role within the PN or those who seek to be elected on the PN ticket is a step in the right direction. It is one of many steps which need to be adopted in Malta to ensure that only persons of integrity and competence are allowed to seek and hold prominent public positions.
- Following on from the above, the relevant PN organs have a significant responsibility in ensuring that only suitable persons are appointed and/ or allowed to represent the PN. They need to act in an independent manner at all times, free from any political considerations or pressures.
- The Panel feels that the PN Candidates Commission's earlier declaration that both Contenders for the forthcoming leadership election were considered suitable was premature and without any basis. Every effort should be made to avoid any repeat incidents, which also serve to sow confusion amongst party members (*tesserati*) and the general public alike.
- Similarly, the PN's assertion that the due diligence mandated in terms of the PN Statute would only become obligatory from future elections was also out of place. If anything, this served to demoralise members of the Panel.

Finally, the Experts would like to thank the PN Candidates Commission and the Party as a whole for having entrusted them with this important exercise, and for the support that has been afforded to them.



Antonio Ghirlando



Clyde La Rosa



Mario P Galea