

GANADO Advocates - 9th Annual Banking & Finance Law Seminar – 17th April, 2024

Opening Address by Dr. Conrad Portanier, Partner, GANADO Advocates

1. INTRODUCTION

Ladies and gentlemen, good afternoon. Thank you for attending this afternoon's seminar organised by Ganado Advocates in collaboration with the Malta Bankers' Association. My name is Conrad Portanier and I will be chairing this event for the afternoon.

2. ANNIVERSARIES AND EUROPEAN AUTHORITIES

2024 marks the 10th anniversary of our first banking seminar held at the Phoenicia Hotel (we missed two years due to the COVID restrictions).

2024 is indeed the year of a number of anniversaries:

- 60 years as an independent nation when Malta acquired full sovereignty in **1964**
- 50 years as a republic (when in the exercise of our sovereignty, Malta amended its Constitution to become a republic with a President in **1974**)
- 30 years since Malta launched itself as an international financial centre in **1994** (phasing out its previous offshore regime)
- 20 years since that momentous step when we joined the European Union in **2004**
- In our sector, 10 years since Malta joined the Banking Union in **2014**. Joining the Banking Union was a watershed moment for Malta's banking industry, since for the first time in our recent independent history, we ceded sovereignty to the European Central Bank over who is to obtain a new banking licence and who is allowed to become a qualifying shareholder in a Maltese bank. (My personal experience of the Banking Union can be said to be mixed. Malta has benefited from being part of a larger club of regulators who have helped Malta to up the game when it

comes to prudential regulation and supervision and this has added greatly to Malta's financial stability overall. It has also meant however that whenever there is a change in qualifying shareholding, the process is excruciatingly slow and painful, such that it is getting harder to buy or sell an equity stake in a Maltese bank).

It appears that another EU Authority is now coming our way, since on 13 December 2023, the EU Parliament and Council (of the EU) announced that they had reached 'provisional agreement' on the establishment of a new EU Agency, the Anti-Money Laundering Authority (AMLA), which will also be based in Frankfurt. AMLA will directly supervise a number of the highest risk cross-border financial sector firms to ensure their group-wide compliance with AML/CFT requirements. An interesting component will be an AML Regulation, which as we know is directly applicable and will leave much less room for discretion at Member State level.

3. GLOBAL ISSUES

On the world front, there are a number of challenges which, as financial institutions, we need to keep our tabs on. I will share a few thoughts on three key global themes: (a) Geopolitical Tensions, (b) Artificial Intelligence and (c) Climate-Related and Environmental Risks.

(a) **Geopolitical Tension.** 2023 was a year which amplified previous challenges. Besides the terrible war in Ukraine, we have seen a devastating surge in violence in the Middle East, all this with mounting human costs and unbearable suffering for thousands. Added to this, there is now the disruption of sea trade routes in the Suez Canal. This is leading to increased inflation and volatile markets. Senior commentators are now speaking of a potential restructuring of the global order.

(b) **Artificial Intelligence.** Jamie Dimon, CEO and Chairman of JP Morgan Chase, in his annual letter to shareholders, when outlining the most important issues facing his company, mentions the impact of artificial intelligence (AI). To quote: "*While we do not know the full effect or the precise rate at which AI will change our business — or how it will affect society at large — we are*

completely convinced the consequences will be extraordinary and possibly as transformational as some of the major technological inventions of the past several hundred years: Think the printing press, the steam engine, electricity, computing and the Internet, among others.” (Is the country and are our financial institutions adequately preparing for the challenges and opportunities AI might pose to us?)

(c) Climate-related and environmental risks

The far-reaching impacts of climate change and nature degradation are more apparent than ever: 2023 was the hottest year ever recorded. Increasingly these events also leave their mark on the economy. You will recall the floods in Slovenia last year: a couple of days of heavy rain led to damages equivalent to 16% of the country's GDP.

In a recent speech by Frank Elderson, Member of the Executive Board of the ECB, given to the European Banking Federation, Mr. Elderson said that climate risk events are not just one of the many standalone risks that banks face. They are instead a driver for each traditional type of risk reflected in the Basel framework (from credit risk, liquidity risk and market risk to reputational and operational risk, including legal risk).

The continental region most vulnerable to climate impacts — particularly extreme heat and drought — is Southern Europe. This was the message scientists from the European Environment Agency (EEA) sent to the European Union's leaders in March 2024, in the first-ever report on climate risks facing the bloc.

The latest scientific evidence suggests that we are not on a path to 1.5 degrees, but on a baseline trajectory towards average temperatures of 2.9 degrees Celsius above pre-industrial levels. So, Mr. Elderson concludes, the ECB needs to make sure that banks are sufficiently resilient to climate and nature risks.

It is worth mentioning that on the 9 April 2024, in a historic ruling, the European Court of Human Rights in Strasbourg found that Article 8 of the European Convention on Human Rights (which provides for the right to respect for private and family life) includes a right to effective protection by the State authorities against the serious adverse effect of climate change on the lives, health, well-

being and quality of life of citizens. The Court found that Switzerland had failed to act in a timely and efficient manner to adopt and implement relevant legislation and measures to mitigate climate change. We are yet to understand what the implications of this historic judgement will be on other countries, including Malta.

4. MALTA

Turning to Malta, last year, I highlighted three major legislative areas where Malta needs to focus its urgent attention on: (a) the Construction Industry, (b) the Taxation Regime and (c) the Legal and Judicial System.

(a) Construction Industry – following the stoic efforts of Jean-Paul Sofia’s family and the public inquiry which followed, we are seeing the first seeds of a proper reform. Pressure on the Government should be relentless to ensure a meaningful transition to a more regulated environment. We in the financial services industry know a thing or two about independent regulation and supervision and we cannot but look with concern at half-hearted measures which only serve to temporarily placate public anger.

(b) Revision of Taxation system - The Government has an enormous challenge to lay out a new international taxation system which does not reduce Government revenue, whilst also retaining a competitive edge to attract foreign investment. The European Union Directive which implements a global minimum tax framework under Pillar 2 allows Member States the option not to apply it for a maximum of 6 years and Malta has exercised its right to defer the implementation of these rules. Contrary to previous statements, the Budget Speech also confirmed that the tax system in Malta will remain that of the full imputation system. We continue to look forward to further information being published by the Government, conscious that it is currently in negotiations with the European Commission.

(c) Legal and Judicial System – we keep harping on the challenges being faced by the legal and judicial system.

There continue to be significant delays, both in the criminal and the civil courts. The Government has announced proposed reforms to reduce delays in criminal proceedings, especially during the stage of ‘compilation of evidence’(*kumpilazzjoni*) and magisterial inquiries. The Budget Speech for the year 2024 also announced that work is being undertaken towards the creation of a Commercial Court.

We look forward to quick implementation and welcome the Government’s initiatives. The Malta Bankers Association and Ganado Advocates have, since 2016, been pushing for a reform to speed-up the enforcement of hypothecs on commercial property through a court-sanctioned private sale of the property since 2016. We are patient and will persist.

We also have unresolved constitutional issues surrounding our administrative law framework, since the practice of imposing large administrative penalties by bodies such as the FIAU, the MFSA etc. is being challenged by several operators as running contrary to the Constitution of Malta, which requires that any criminal charge can only be heard by an independent and impartial Court. We have had at least 8 judgements at first instance confirming that these administrative penalties are unconstitutional. It appears that the FIAU and the Government are now waiting for the first Court of Appeal judgement to come to fruition before deciding whether to undertake a wholesome reform.

(d)EU Proposals Screening

To these legislative challenges, we add the need to implement a proper functioning EU Proposals Screening Mechanism, a role previously performed by MEUSAC – the Malta-EU Steering Action Committee.

The application of the EU Emissions Trading Scheme hit Malta disproportionately with no one seemingly realizing before it is too late. (We had other very close misses, including almost permanently damaging the Maltese shipping register in virtue of the EU preventive restructuring directive.) Clearly the administrative infrastructure to identify possible issues in forthcoming EU legislation is not functioning suitably and efforts to

improve this must start immediately, both by increased private efforts, but also through a Government platform.

CONCLUSION

I would like to conclude with a few other thoughts.

We note positively that Malta has returned to being a notable contributor to the international community. All this enhances Malta's reputation internationally, which in turn facilitates the so-called 'soft power' of a country:

- Roberta Metsola's ascent to one of the highest positions in the European Union.
- Malta became a non-permanent member of the UN Security Council and currently we are actually chairing the UN Security Council. Malta is also simultaneously chairing the OSCE (the Organisation for the Security and Cooperation in Europe) following agreement between Russia and the Western states.
- Next year Malta will assume the Presidency of the Council of Europe and Malta is also seeking to step up its efforts to join the OECD organisation.

As a firm we keep on pushing for proper legislative reforms, including further constitutional reforms. The benefits of the constitutional reform were recently tangibly felt with the nomination by unanimity of H.E. President Myriam Spiteri Debono.

Reading her inaugural speech of the 4th April 2024 was, in a way, refreshing since she referred to issues such as financial greed, good governance, respect for the media, right to protest and others. Maybe Her Excellency's speech impressed not because of what she really said, but rather because the country seems to be so deprived of leaders with long-term vision.

I am often asked, how can I help in the pursuit of a better society and the rule of law in my daily job, be it in law, banking, accounting and other commercial spheres? The answer is we can always contribute to a better society by maintaining the highest ethical and professional standards in all our dealings in our respective profession and business.

Thank you for your attention.