

Annual Report 2019 – Chamber of Advocates

I am pleased to present to members at this annual general meeting the audited financial statements of the Chamber for the financial years 2018 and 2019. Following the adoption of the new statute in the annual general meeting of 2017, the Council is now obliged to submit to members at the annual general meeting a set of audited financial statements in accordance with generally accepted accounting and auditing principles. These are the first set of accounts being submitted to you under this requirement. We have now geared ourselves up internally to be able to present to members a set of audited financial statements on an annual basis.

What follows is a brief report to members of the Chamber of the work undertaken by Council over the course of 2019. In November 2018, the President of the Council, Avv. George Hyzler resigned to take up office as the Commissioner for Standards in public life. I take this opportunity once again to auger Avv. Hyzler well in his new endeavours and to thank him for the sterling contribution that he has made to the Chamber over the years.

The year 2019 has been a significantly challenging year. 2020 however, seems to be well on its way to surpass those challenges and bring new ones.

The Chamber has continued to pursue, over the course of 2019, the introduction of a law to regulate the legal profession with the Government of Malta. The challenges have been substantial, and this is possibly a law that has been in the offing for too long a time. It is certainly a time when the profession needs it and indeed a time when the whole local environment needs it. We need to secure a strong independent profession that is attuned to the needs of the 21st century market for legal services but which remains firmly entrenched in its core values of integrity, competence and independence. The time during which discussions have been ongoing has been well spent. Indeed, the draft of the bill has had significant improvements made to it since its inception and when it was introduced in parliament as Bill No.123 in 2012. Discussions with Government have been ongoing, and it seems that we are now closer to having this Bill presented to the House much sooner than one thinks. This will be a significant achievement for the profession as a whole that will have a regulatory framework that reflects the demands being made of the profession in the 21st century, that will combat the reputational issues of the profession, that was considered by Moneyval in its report on Malta, as a significant risk to the

jurisdiction. This law will however only provide us with a framework within which to work, a framework that endows the Chamber with the necessary tools to work towards a profession that will heighten its standards of integrity and competence; but that will also create new challenges for the Chamber going forward, to handle in the most appropriate manner its regulatory function within the framework of the new law. In preparation for this, the Chamber shall over the next few months start to organise itself better in terms of human resources and technology with a view of undertaking its new role under the law in an appropriate manner.

Within the precincts of matters that fall within the remit of the Chamber, over the course of 2019, the Chamber launched a consultative paper with the profession on the liberalisation of what have traditionally been termed “advertising rules” – an area that the Chamber believes requires significant reform. The Chamber issued a position paper on the matter, invited members to a discussion of that position and to make representations, and then received feedback from a number of practitioners. The Council will take a final view on the matter in the course of 2020 but is awaiting the fate of the new law to regulate the profession, to conduct one thorough and comprehensive review of the publicity aspects within the profession.

In 2019, the MFSA issued a consultative paper in connection with corporate service providers, an area in which a number of lawyers are involved. The Council made two sets of representations to the MFSA and has expressed its disagreement with the manner in which the MFSA seems to be proceeding in this respect – by requiring lawyers to submit to additional licensing requirements to conduct activities which are predominantly in the nature of legal services. The Council remains firmly against any legislation that will attempt to re-classify what are properly legal services under any other head or guise that would artificially oust such services from the remit of legal practitioners, or to impose any further requirement for legal practitioners to conduct what remains fundamentally legal work.

Mindful of the challenges that the profession is likely to face in both the short term and the medium term, whether within a new regulatory framework or without, the Council of the Chamber commissioned a study by KPMG on the expected challenges that the Chamber as a professional body and as a future regulator of the profession is indeed likely to be facing. The study focuses on the manner in which other professional bodies both in the legal and other professions has reacted to those challenges in other European jurisdictions as well as to ensure that the Chamber remains relevant to a changing profession in a new

socio-economic dimension, which brings to the fore challenges that we have not traditionally been accustomed to addressing.

During the period under review, the Chamber has been actively involved in the debate, both locally and with international institutions, about Malta's rule of law credentials - articulating its views on the matter as and when required in different fora. We have been consulted by the Government of Malta in formulating the responses to the Venice Commission, in particular on the judicial appointments and the role of the judicial appointments committee and we are pleased to note that almost all of our recommendations have been adopted in the response document of the Government of Malta and have received positive reactions by the Venice Commission.

We have increased the level of training for lawyers with a particular emphasis on AML/CFT regulation, sensitizing the profession to the need for strict compliance in this area through seminars and training sessions. In this area we have also collaborated with the FIAU in the preparation of sectorial guidance for lawyers to continue to enhance the knowledge base of lawyers and to provide proper guidance.

We now look forward to the rest of 2020, characterised as it has been so far by the COVID-19 pandemic, that has seen the profession challenged like never before in a number of different ways. We look forward to re-establishing full normality of the courts' functions after the summer recess, with the least possible restrictions in the manner that our courts will operate. However, we cannot allow COVID-19 to go by without learning from our experiences and from the challenges that we have experienced. We realise that we are lagging behind in terms of our digital capabilities, both with respect to the court registry, as well as in court sittings that remain firmly ingrained in and based on the need of physical presence in a registry or courtroom. The COVID-19 pandemic has highlighted the vulnerabilities of the system, not only in terms of extent but also in terms of sheer depth. Addressing these vulnerabilities is not something that the Chamber can undertake in any solo effort, although it intends to take a pro-active stance in so doing and requires the collaboration of all those concerned in the judicial process. The Chamber has already launched this as a major challenge for the coming few months. We need to revisit old and obsolete working practices; we need to emphasise more on the importance of written pleadings that do not require our presence in court but can be substituted by a fully functional digital registry with e-notification systems that are secure, binding and effective; we need to co-operate in having separate case management hearings which can be done virtually, in essence we

need a comprehensive review of the whole system that will allow courts to provide a public service without necessarily having to be housed in a building – or at least to have a system which relies on physical presence in a building, only to the extent that is necessary, but to allow remote systems to take over those parts of the process that may efficiently and effectively be undertaken remotely through the use of modern technology. This will not, at least initially, be an all or nothing process, but a hybrid one that will depend less and less on physical presence and more on digital and remote technology.

I trust that before the year 2020 is out, we will be able to share with you a new law to regulate the profession and that will usher the basis for our profession to update itself to a new socio-economic dimension in which it is being required to work today.

Louis de Gabriele
President
June 2020