



Ethical Business calls for change

A manifesto for
Good Governance by the
Malta Chamber of
Commerce, Enterprise
and Industry

JANUARY 2020

 THE MALTA CHAMBER
OF COMMERCE,
ENTERPRISE AND INDUSTRY

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PREAMBLE

Good governance, integrity and ethical business are amongst the core values of the Malta Chamber of Commerce, Enterprise and Industry. For this reason, in recent years it has taken an active role in making relevant public and private representations.

In December 2019, the Chamber's Council decided, in response to legitimate concerns raised regarding the state of good governance and the observance of the rule of law in Malta, to establish a multidisciplinary working group made up of a number of expert contributors, tasked with researching and formulating a policy document on Good Governance and Best Ethical Standards and Practices for the country, to serve as valuable guidance for the incoming Prime Minister, in his efforts to tackle, at the earliest, the need to implement the necessary reforms. If implemented, these measures will help accelerate the process of restoring Malta's reputation as a trusted and credible economic partner on the global scene.

Clearly, recent political and social events have created a climate of undue uncertainty within the local business community, causing a negative impact on business confidence and on the country's reputation in particularly sensitive sectors.

The new cabinet (once assembled) must heed the calls for change at all costs and avoid any additional risks to business and investment posed by any further uncertainty and reputational issues. For this reason, the Chamber has consistently



advocated the strengthening of the three main pillars of good governance namely:

(1) accountability, (2) transparency and (3) the rule of law.

In this light, it expects complete integrity in all persons serving in public office, whether elected or appointed. They must lead by example and take the indisputable moral high ground where legitimate concerns and/or doubts concerning their conduct or behaviour are raised. Politicians are elected for 5-year terms and their outlook is short-term. Business and investment has a longer time-span and politicians must ensure that their work and their actions are complementary to, and not out of step with, those of entrepreneurs who have a longer vision.

Much as it has been proactive in submitting its ideas and proposals for the upholding of the highest standards of good governance in the country, the Chamber stands prepared to offer its full support to the new Prime Minister and his government in its effort to deliver the required political, social and economic reforms.

The Chamber, as the flag bearer of good corporate governance and ethical business practices, looks forward to sustaining Malta's positive trend in

economic growth and stability and for this to take place, good governance must be given utmost priority – indeed, good governance must take place and be seen to take place. Similarly, adherence to the observation of the rule of law must reign supreme and all economic players must operate on the same level playing field.

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FRAMEWORK AND RECOMMENDATIONS

In governance, all kinds of governing activities take place, varying from short-term routine decisions to the development of strategic plans pertaining to major issues and long-term developments. Acts of governance are best visualised as a set of three layers, with each layer encompassing and acting on the layer below. Any governance reform in Malta needs to look at all three layers. Otherwise, any reform will be superficial and will not stand the test of time.

- The first-order of governance looks at solving problems and undertaking day-to-day management and is something that those governing would generally do. It takes place wherever people and their organisations interact in order to solve societal problems and create new opportunities.
- The second order of governance deals with the maintenance and design of institutions necessary to solve such problems and create new opportunities. It deals with developing the capacity to undertake first-order governance by providing the institutional design and set-up within which such interactions take place.
- In the third order, the main normative principles and values are articulated. These guide the behaviour of first and second-order governing. Without basic principles or values, no human relation or governing interaction can last and therefore any governance reform needs to start by addressing the values that underpin that society and how such values will underpin governance and economic activity.

The following tables look at the main orders of governance, the dimensions within each order and some recommendations to consider.

First-order governance

Dimension	Recommendations
Strategic capacity	<ul style="list-style-type: none"> Consider further the issue concerning the employment of "persons of trust" within private secretariats – team members should be drastically reduced depending on the Minister/Parliamentary Secretariat and minimum qualifications need to be included in the regulations. The Chamber is aware that issues concerning potential conflict of interests of backbench members of Parliament (on both sides of the House) who hold positions within or provide contractual service to the Public Sector have already formed the subject of a detailed investigation and report carried out by the Commissioner for Standards in Public Life. <p>Whilst the Chamber does not endorse nor dispute the findings of such a report, it is encouraged that such issues are entering the public debate and are being looked into by the appropriate institutional and encourages further discussion, since this can only augur well for the country.</p>
Media and information	<ul style="list-style-type: none"> Ensure sufficient legal safeguards to preserve and protect the role of a free press. Look into the independence and impartiality of the national news broadcaster. Start a discussion on the future of political party channels. This discussion should be directly linked to party financing. Strengthen the procedures for obtaining information under the Freedom of Information Act.
Societal consultation	<ul style="list-style-type: none"> Strengthen the resources and independence from Government at MCESD. This entity needs to become a powerhouse of social dialogue

	<p>and policy-making and become totally independent from Government.</p> <ul style="list-style-type: none"> • The appointment of the MCESD Chairman should be decided by the social partners with no interference by Government.
Institutional networks	<ul style="list-style-type: none"> • Coordinate different ministries and agencies through a central strategic policy secretariat aimed at ensuring synergies between policies.
Policy implementation and enforcement	<ul style="list-style-type: none"> • Strengthen the Cabinet office for it to become the main coordinating policy-making body. • Ensure that enforcement agencies are free from political interference, adequately resourced and avoid human interaction as much as possible through the deployment of digital tools.



Second-order governance

Dimension	Recommendations
The state – electoral system	<ul style="list-style-type: none"> • Evaluate potential changes to the electoral system – identify potential systematic barriers to the emergence of any genuine third-party opposition. • Look into state and business financing of political parties with a possible retrenchment of commercial activities for the parties (TV/media) – stricter party financing rules – party financing needs to ensure that to be eligible, such parties need to have the right structures, corporate governance structures and dedicated research or evidence-based policy units • The Chamber will encourage its members to comply fully with party financing legislation, which legislation needs to be strengthened and improved. The Chamber should provide free training on the matter. • Electoral commission needs to be appointed by 2/3s majority in Parliament.
The state – the legislative	<ul style="list-style-type: none"> • Assess the current number of parliamentarians in Malta¹. The Chamber enquires whether these numbers are necessary and for the State to commission a study exploring the potential benefits of a reduced legislature. • Make it mandatory to become full-time MPs with the right salary package². • Equip parliament with a research unit. • Strengthen oversight committees and also include new commissioners that report to parliament such as a commissioner of good governance.

¹ Note: By comparison similar sized countries to Malta in the European Union such as Luxembourg (60 seats) and Cyprus (56 seats) have smaller sized parliaments.

² Note: Maltese Members of Parliament are amongst the lowest remunerated MPs in the European Union.

	<ul style="list-style-type: none"> • Public Accounts Committee (PAC) needs to be transposed into an authority that encompasses the National Audit Office (NAO) and has the ability to enforce and prosecute. • Hasten the additional prosecutorial functions being assumed by the office of the Attorney General. The Chamber positively notes the recent appointment of the new constitutional role of State Advocate who will be responsible for all government advisory and legal representation functions in the field of constitutional, civil and administrative law. • Identify weaknesses with respect to the investigation and enforcement of offences relating to bribery and corruption. Develop a consolidated Anti-Bribery Act similar to the UK model. Set up a National Anti-Corruption Authority (Malta currently has a 'Permanent Commission Against Corruption (PCAC)', which is not sufficiently independent of the executive and has little power in practice. The PCAC requires more resources). • Carry out a comprehensive assessment of Malta's current regulatory and legal frameworks to raise awareness of the laws and regulations already in place, identify weaknesses/possible improvements and propose feasible amendments. The focus should be on improving the existing legal tools (e.g. enforcement), both in the public and private sectors. Highlight that progress in the private sector can go a long way in repairing Malta's image internationally.
The state – the executive	<ul style="list-style-type: none"> • Clarify and reform the role of the President of the Republic to be allocated more executive powers. This will require reforms to the Constitution. • Increase salaries of Prime Minister and other cabinet members in line with leading CEO positions in Malta. • Introduce a number of Prime Ministerial Committees which include technocrats such as a national economic committee which reviews

	<p>data and policies and gives recommendations for future actions.</p> <ul style="list-style-type: none"> • Improve Ministers' and Parliamentary Secretaries' secretariat structure with set organisational structures and requirements for roles while limiting political appointments. • Reassign power of appointment of key roles such as Attorney General, Judges and other members of the judiciary, Police Commissioner, Army, Security Service, FIAU, Chairman of the Public Broadcasting Authority, Ombudsman and Electoral Commissioner amongst others from the Prime Minister to a two-third's majority in Parliament. In case where the 2/3 majority would not be achievable, it is suggested to explore other mechanisms of appointments or potentially refer the matter to the President of the Republic once the latter is given more executive powers. • National Audit Office – Auditor General - examine current powers and terms of reference. Apply method of appointment³ of National Audit Office (already appointed by 2/3 majority of the House of Representatives), to other roles. • Introduce lobbying legislation, including a Register of Lobbyists and a meeting log between politicians/senior officials and businessmen made available to the public. If genuine confidentiality is required (such as in cases where national security could be compromised), the Ombudsman should be informed. • Introduce a transparency register (Ireland is the gold standard in this view): Government ministers should only meet interest representatives who have signed up to this register. The Chamber will promote this practice among its members.
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³ cf. Article 108 Constitution of Malta and National Audit Office Act of 1997.

	<ul style="list-style-type: none"> • Lobby for tightening of ministerial and parliamentary secretaries' code of ethics and introduce methods of enforcement of this code or sanctioning of its breach. • Introduce register of interests beyond declaration of assets. Introduce methods of sanctioning in cases of breach, with the most serious cases leading to automatic dismissal. • Bar Members of Parliament from having executive posts to reduce the risk of subservience to Government in their role as monitors. • Introduce measures to eliminate nepotism and clientelism⁴.
The state – the judiciary and law enforcement	<ul style="list-style-type: none"> • Look into the appointment mechanisms of members of the Judiciary, and study alternative modes of appointing them. • Police commissioner to be appointed by two-thirds majority of Parliament (already mentioned in the previous section titled the state -the executive). In the case where there is failure to reach agreement, it is suggested to explore other mechanisms of appointments or refer the matter to the President of the Republic, once the latter is given more executive powers. • Hasten the establishment of the specialised financial organised crimes agency to complement the Police economic crimes unit. • Reform Security Service Act – Head to report to the President and the Committee is also attended by the Leader of Opposition. • Establishment of a truly independent public prosecution service.

⁴ Note: See recommendations made by the Council of Europe's Group of States against Corruption (GRECO) evaluation report about Malta published in April 2019 <https://rm.coe.int/grecoeval5rep-2018-6-fifth-evaluation-round-preventing-corruption-and-/168093bda3>

<p>The state – the civil service</p>	<ul style="list-style-type: none"> • Enhance and streamline civil service grades. • No political intervention regarding appointment of Permanent Secretaries. These need to be career roles. • Complete reform and overhaul of the public service including the introduction of eligibility criteria for holding certain public offices and a proper delivery of e-government services. • The above statement should also apply to Ambassadors and other diplomats who ideally should be career diplomats. Nevertheless, the Malta Chamber also proposes that each embassy has a commercial or trade attaché whose main role would be that of promoting the country's exports and seek business opportunities for local companies whilst encouraging Foreign Direct Investment to Malta. • Look at including an integrity certification for key positions whereby such persons undergo yearly training and examination on public procurement rules, etc. • Consider competency certification for Authority/Agency chairpersons and board members. • Reform tendering into a more transparent process whereby companies are pre-registered and move away from cheapest-bid wins. Example: the structured UK system of Open Book Contract Management (OBCM), which ensures financial transparency between government and suppliers through sharing of data on costs, charges and performance (value for money). This serves to extend the principle of 'open government' from contracting to service delivery. Chamber members (suppliers) should be informed/trained on the matter by contracts department or other contracting authorities.
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	<ul style="list-style-type: none"> • Limit and exercise a tighter control on direct orders. • All government contracts should be subject to public scrutiny by means of mandatory publication. However, some restrictions may be allowed for genuine confidentiality reasons such as in the cases of national security, defence and energy amongst others. • Increase transparency and consistency whilst undertake further reviews in the planning sector. Without going into too much detail, as this would merit separate representations in relation to the Planning Authority (PA), the Chamber suggests to review the appointment of the PA's Chairperson by making it completely independent and at arm's length from the Minister concerned. This role needs to be appointed by 2/3s majority in Parliament. In case where the 2/3 majority would not be achievable, it is suggested to explore other mechanisms of appointments or potentially refer the matter to the President of the Republic once the latter is given more executive powers. <p>Furthermore, it is suggested that this appointment should be limited to a maximum period of six years or two terms without the possibility of further extension.⁵ The above should apply to all members of the Executive Council of the PA. Furthermore, people appointed on the executive council should be vetted for any conflicts of interests.</p> <ul style="list-style-type: none"> • The Environment and Resources Authority (ERA) needs to be adequately resourced and be further strengthened on a par of the planning authority.
The market participants	<ul style="list-style-type: none"> • Increase penalties and fines with respect to money laundering and corruption.

⁵ See Article 37(1) of the Development Planning Act (CAP 552) which states that "the Minister shall appoint an Executive Chairperson. Such appointment shall be for a period of three years which may be extended for further periods of three years each"

	<ul style="list-style-type: none"> • More enforcement and increased education in terms of warranted professionals. The MFSA consultation document on Company Service Providers⁶ is a step in the right direction. • Companies and their Ultimate Beneficial Owners (UBOs) that are found guilty of abusing the system need to be blacklisted. • A national effort which should be spearheaded by the Malta Chamber and the wider business community needs to be undertaken to strengthen and focus good corporate governance. The MFSA guidelines need to be revisited and increase educational requirements and Continuous Professional Education (CPEs) training for company directors. • Business-led collective action to reduce corruption through initiatives such as the promotion of transparency, compliance guidance, campaign contributions etc. Any initiative to prevent, manage, investigate or combat corruption in the private and public sector should be evidence-based and policy-oriented. The UK Anti-Corruption Strategy 2017-2022⁷ serves as a best practice example. • The Whistle Blowers' Act needs to be strengthened further in order to allow the reporting of corrupt practices by all citizens to become the norm and part of our culture. The Chamber further suggests to make reporting of such practices as safe as possible without any possibilities of repercussions. Checks and balances must also be put in place to ensure that such reports are indeed real and are not being used to slander a particular individual due to any personal or business interest.
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⁶ https://www.mfsa.mt/wp-content/uploads/2019/10/20191017_CSPconsultation_final-.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/667221/6_3323_Anti-Corruption_Strategy_WEB.pdf



Third-order governance

Dimension	Recommendations
Values as a country	<ul style="list-style-type: none"> • Start a proper discussion at the national level and inviting stakeholders from all sections of Maltese Society on the values that make us Maltese – this initiative needs to form part of the constitutional reform and should be spearheaded by the President of the Republic. • The constitutional reform should bolster the separation of powers mechanism. • Start rebuilding Malta's reputation on an international level by introducing reforms first not the other way around. Formulate a comprehensive memorandum prepared with the participation of pertinent bodies from public and private sectors, outlining an integrated and comprehensive action plan to repair Malta's image and reputation internationally. • Undertake national and sectoral coordinated initiatives. • Encourage “responsible political discourse” – it is understood and even healthy for a democracy to have a multitude of ideas and to disagree on policies but the language of political discourse should not be calculated or orchestrated so as to divide the voters.
Values in business	<ul style="list-style-type: none"> • Establish the concept of codes of conduct including ethical business. By way of an example, this could be based on the UK Financial Conduct Authority's handbook⁸ which lists 11 key principles by which the regulator expects all regulated companies to abide to namely: 1: Integrity 2: Skill, care and diligence

⁸ <https://www.handbook.fca.org.uk/handbook/COCON.pdf>

	<p>3: Management and control 4: Financial prudence 5: Market conduct 6: Customers' interests 7: Communications with clients 8: Conflicts of interest 9: Customers: relationships of trust 10: Clients' assets 11: Relations with regulators</p> <p>Furthermore, the UK Corporate Governance Code⁹ published in July 2018 by the Financial Reporting Council is also a document the Chamber refers the authorities to.</p> <p>The MFSA's code of principles of good corporate governance currently applicable to listed companies¹⁰ could also serve as a guideline in drafting a more generic code of conduct for business entities.</p> <ul style="list-style-type: none"> • Strengthen ethics in warranted professionals and include harsh penalties and fines if breached. • Introduce a code of ethics for government-business relations.
Values in education	<ul style="list-style-type: none"> • Include a stronger component of values and ethics in mainstream education from a young age. • Renew efforts to educate and raise widespread awareness on the true extent of the destructive effects of corruption, also with ordinary citizens. For example, ordinary citizens ultimately pay for bribes and kickbacks through higher prices.

⁹ <https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>

¹⁰ <https://www.mfsa.mt/wp-content/uploads/2019/02/Code-of-Principles-of-Good-Corporate-Governance-for-Listed-Entities.pdf>

IMMEDIATE WAY FORWARD AND CONCLUDING REMARKS

The Chamber respectfully submits that this policy document should be endorsed and adopted, as a suitable road map for reform, by the Government and by the Opposition, thereby demonstrating a serious and significant expression of political commitment towards ensuring that Malta is truly committed to the transparent, ethical and professional standards required to rise above the current predicament and move forward with confidence, to restore stability and the country's reputation, in the shortest time possible.

The country cannot expect to experience similar rates of economic expansion and long-term economic stability without good governance and at the same time business cannot thrive without economic and political stability. The Chamber, as it has consistently done since the Panama Papers revelations, continues to insist on the unequivocal upholding of the three main pillars of good governance, namely Accountability, Transparency and the Rule of Law.

For this reason and with the knowledge that some of the above-mentioned recommendations will require a long-time frame to implement, the Chamber proposes the following items during the first 100 days of the new Prime Minister's term:



“The new Prime Minister should address, the concerns/allegations concerning major contracts/concessions signed or entered into the last six-seven years, save for those already subject to review, investigation or which are the subject matter of on-going or pending judicial proceedings.”

The nomination of a new Minister for Good Governance in the new cabinet who will ensure standards in public office, promote good governance and the rule of law across the board and implement the major reforms the country requires at present.

The new Prime Minister should address, the concerns/allegations concerning major

contracts/concessions signed or entered into the last six-seven years, save for those already subject to review, investigation or which are the subject matter of on-going or pending judicial proceedings. If there is proof enough to warrant further investigation, these should be free from any state and political interference and concluded in an expedient manner.

Suspend temporarily the Malta Individual Investor Programme (IIP) to ascertain that any necessary investigations and due diligence is being carried out and ensure that the high standards and requirements imposed under the IIP and other residence/citizenship laws are fully adhered to.

Carry out an evaluation of the mode of appointment of positions of national importance and/or offices or positions created pursuant to or contemplated

under the Constitution (e.g. the Attorney General) or under specific legislation (e.g. the Commissioner of Police under the Police Act) and to reform such modes of appointment in accordance with democratic principles and the doctrine of the rule of law.

The document was approved and endorsed by the Council of The Malta Chamber of Commerce, Enterprise and Industry on the 9th of January 2020.

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