

THE SUNDAY TIMES OF MALTA

Web offset printed and published by Alhed Newspapers Ltd.

May 15, 2016

Battle lines taking shape

With another 22 months to the next general election, the political battle lines are being drawn. At this point in the electoral cycle, good governance versus good stewardship of the economy seem implicitly to be the grounds on which the next election will be fought.

It could hardly be otherwise. Both the government and the Opposition will wish to play to what they perceive to be their electoral strengths. Their objective will be to reinforce the support of their core voters and, more importantly, to capture the votes of that all-important segment of the electorate that will decide the election.

This segment is largely made up of floating voters who, from the evidence of the last election, appear to be growing in number. One assumes that these are thinking voters who put the long-term interests of the country above those of the traditional party or self-interest. It is this crucial demographic to which both parties will seek to appeal.

Running on its record, the government will aim to put public disillusion at the broken promises on meritocracy, *Malta Faghna Lkoll*, its maladministration and poor governance – let alone the lingering stench of the Panama Papers – behind it. Instead, it will highlight its undoubted success in economic performance.

Those who argue that the Labour government simply inherited a successful economy from their Nationalist predecessors underestimate how easy it is for poor stewardship to wreck even a good economy. The government will underline the good management essential for Malta to come through the continuing global economic turbulence unscathed and stronger.

Since 2012, GDP has increased by €1.6 billion in three years. Economic growth has risen to 6.3 per cent from 2.6 per cent, albeit this is forecast to reduce slightly over the next two years. GDP per head has grown by over €3,000 since 2012. This is an excellent record to be taking into a general election. As Bill Clinton famously put it: "It's the economy, stupid". This will be the government's battle cry.

But this may not be enough. Thinking voters, dismayed by the misgovernment that has been the hallmark of this Labour administration, may well consider that the scandals that have tarnished it can only be swept clean by electing a fresh political broom. The Nationalists' rallying cry will be that proper governance should trump economic performance in the long-term interests of the country.

The Opposition will insist that only a new Nationalist government can make the basic necessary improvements to the way Malta is governed to overcome the malaise and demoralisation gripping the country.

Rightly grasping that this is the government's Achilles heel, it has consistently attacked the abuse of executive power displayed by the government. It has launched a document, "Restoring Trust in Politics", which sets out a range of proposals for introducing good governance to Malta. It will no doubt be honing and improving these proposals to make them more credible and workable.

Many commentators have pointed out that the Nationalists in power were equally culpable and venial. Indeed, it was precisely this that brought them down three years ago. But this is not a valid reason for not supporting what they are promising to do if elected.

In the final analysis, a successful democracy and a thriving economy must be founded on the twin pillars of a well-governed, cohesive working State and the rule of law. The electoral battle in 2018 will be won or lost on a judgement by thinking voters of whether, in the absence of good governance, economic success on its own will suffice.

Arbiter: solution or problem?



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Act XVI of 2016, which is now in effect, has paved the way for the creation of the Office of the Arbiter for Financial Services. From a consumer protection point of view, this should be a good thing. This was a Labour electoral promise and a predictable reaction to the fallout and controversies in the wake of the Bank of Valletta property fund and other mishaps. Reno Borg has been appointed as the first arbiter.

The arbiter will assume the roles formerly vested in the Consumer Complaints Manager (CCM) and take them to a new higher level. The CCM has been criticised as being toothless and unable to enforce his own recommendations. This was unfair. The CCM was modelled on the functions that had been assigned to the director of Consumer Affairs in the Consumer Affairs Act of 1994. The director could only mediate in disputes between consumers and traders, and his recommendations were unenforceable.

But judges and arbiters are different. Their decisions are binding, they are not employees and are not subject to anyone's direction while exercising their core decision-taking function.

It is not clear what role the Arbiter's Office will play in consumer education, and whether it makes sense to engage in an activity that would distract from its core judicial function. Maybe the CCM should retain this mission.

The Act is a considerable improvement on the original Bill, which was poorly conceived and drafted. The various vital amendments

inserted in the committee stage have not, however, succeeded to disguise or resolve all the original deficiencies. The Act remains unsatisfactory in places and unnecessarily overloaded and complex in others; evidently copied from an inappropriately chosen foreign model, not suited to Malta's much smaller size and particular consumer expectations.

The creation of a board, partly distinct from the Office, seems quite an unnecessary and costly complication. This board's functions include determining accounting policies and preparing estimates and so-called strategic plans.

The law assigns to the arbiter competence over disputes dating back to 2004. Some disputes may have become prescribed by the passage of time. Ideally, the arbiter's competence started with the coming into force of the Act.

Rules on prescription cannot be ignored because acquired vested rights need to be considered. It would be most unfortunate to find the new arbiter grappling and struggling from day one with claims and disputes regarding prescription. Endless appeals might ensue.

"The attempt to make the arbiter a one-stop-shop does not seem successful"

From a practical angle, a temporary or substitute arbiter could have been appointed to deal with the disputes arising prior to 2016. This would allow the arbiter to concentrate exclusively on new cases, and avoid his new office being overwhelmed and burdened by potentially numerous older disputes.

The arbiter need not be a lawyer and he may apply equity (being reasonable, just and fair) rather than apply strict law to decide cases brought before him. Equity as opposed to actual law is not to be resorted to lightly. It is not a sort of easy discretionary solution tailored for adjudicators not sufficiently well versed in the law. Equity supplements and complements the law and does not replace it.

In the wrong hands, the distinction between judicious equity and uninformed discretion may become blurred. The responsibility to determine

the civil rights of opposing litigating parties requires a steady head and a legally trained mind – it is not the place for amateurs.

Seeing that the competence of the new office extends to €250,000, it becomes even more important and necessary that within our system a person well trained in the law should be responsible to head the adjudicating arm of the office. Happily, Dr Borg is a lawyer.

The attempt to make the arbiter a one-stop-shop does not seem successful. Article 19 requires careful attention. Is the arbiter expected to receive complaints, give information, mediate, advise, assist and then pretend these have not happened and put on his judicial gown and play the independent adjudicator? Independent means one does not find oneself unnecessarily involved in preliminary investigations or assisting parties in any way.

The office will probably have to put in place within its own organisation degrees and measures of segregation unfamiliar to our culture and practice and which may prove insufficient to satisfy constitutional requirements. The different functions shall require specialised skills to be exercised presumably by different people.

Ultimately, the buck stops with the arbiter, the recipient of a potentially confusing and distracting range of duties, including drawing up an annual report and preparing summaries and statistics of complaints received and decisions taken. Moreover, article 12 wrongly renders the office accountable to the Finance Minister.

Consumers are best served by clear, workable and coherent legislation and mechanisms which can guarantee legally sound decisions taken by independent and competent adjudicators in a short time. The consumer is not well-served by the risk of confronting endless, time-consuming and distracting disputes and appeals on jurisdiction, the application of prescription, on the potentially conflicting roles of the arbiter and his assistants, the constitutional independence of this new office, the potentially misguided resort to equity rather than law, etc.

The law is now in force. Time will tell whether problems and difficulties lie in wait for the unsuspecting consumer and whether this new mechanism will prove a success. Hopefully, the arbiter shall prove beneficial to financial services consumers.

Quotes of the week

"It is unacceptable that a member state set to take the EU rotating presidency in January should have a minister and chief of staff with secret Panama companies."

Opposition leader Simon Busattil calling on the Prime Minister to sack Konrad Mizzi and Keith Schembri as any delay would further damage Malta's reputable financial industry.

"The scale of the proposed development would undermine the value of the landscape... with no scope for mitigation."

An environmental planning assessment on the impact of the proposed 40-storey hotel at Fort Cambridge would have on Sliema.

"The fact he is not associated with the sector, means he is not hampered by bias."

Public Policy Department head George Vial Zammit on how the new Environment Minister José Herrera's lack of expertise in the environmental field could actually be helpful.

"The heavy pruning was necessary to remove excessive branch decay."

Landscapist Manuel Ciantar insisting the pruning of mature olive trees surrounding the university's race track was needed because the trees were diseased.

"Where is all the money coming from if PBS is millions in the red?"

Observers questioning the 'limitless' budget allocated to the State broadcaster to boost Tra Losco's chances of winning this year's Eurovision Song Contest.

"This scheme simply isn't right."

Tourism Minister Edward Zammit Lewis not excluding closing legal loopholes allowing the Opposition to receive loans under the Skema Codoli.

"I followed his orders fearing I would lose custody of my children."

A woman admitting to perjury in court after she was threatened by her estranged partner, who stands accused of running a woman over with a bus, to act on his instructions for fear of losing her children.

Fifty years ago

May 15, 1966

Poisoned whisky case
Guzeppe Caruana, 27, of Zabbar, who is charged with having caused serious offences detrimental to the health of several people because of spirits he distilled and which contained methyl alcohol, (some of these people later died), yesterday gave evidence before Magistrate Dr J. Salamone Reynaud.

Pilot was under treatment
The pilot of an aircraft which crashed in Oklahoma last month killing 77 US soldiers and six crew was under treatment for a heart condition that had not been reported to the Federal Aviation Agency, officials said.

Soviet-Romanian relations strained
The Kremlin maintained silence today on why Leonid Brezhnev rushed mysteriously to Bucharest last week but the terse announcement suggested deep strains remain in Soviet-Romanian relations. Brezhnev's three-day visit followed a speech last Saturday by Nicolae Ceausescu, the Romanian Communist party's general secretary, which contained a strong reassertion of Romania's independence and some unusually frank criticisms of Russian pre-war policy.