

26<sup>th</sup> February 2021

Chairman Dr Robert Aquilina  
55 Melita Street,  
Valletta VLT 1121

Dear Dr Aquilina

**Re: Repubblika**

I write on behalf of the Commissioner for Voluntary Organisation and with regard to the subject in caption. I would like to bring to your attention that the Statute of your organisation entitled "Repubblika" is in breach of the Voluntary Organisations Act, hereinafter referred to as "the Act", for the reasons outlined below.

**Article 4(f) of the Statute**

Although article 4(f) of the Statute regarding the right to seek and secure resources allows in itself for the organisation to seek funds for legal sources, nonetheless this does not entitle the organisation the right to materially prejudice the achievement of the purposes and objective of the organisation or to legally seek funds from legal sources, when such funds may be obtained by other means, or that such legal resources be such as to burden the human and financial resources of such organisation beyond its means. Hence, the Office of the Commissioner for Voluntary Organisation is enquiring whether the organisation is paying exorbitant rates and expenses out of its funds when such purposes and objective could be obtained by other means as mentioned above.

In view of and further to the preceding paragraph, paragraphs (4), (7) and (9) of the First Schedule to the Act as reproduced hereunder respectively apply:

*"Rules, Principles and Guidelines on the Non-Profit Making requisite as used in this Act*

*The principle purpose of this Schedule is to ensure that any material private interest in any voluntary organisation is avoided in view of the public support and trust vested in such organisations on the basis of their non-profit making qualities.*

Provided further that:

*4. An organisation shall be considered to be non-profit making when:*



*(d) except as permitted under this Schedule or the Second Schedule to the Civil Code, no part of the income, capital or property is available directly or indirectly to:*

*(iii) any other private interest:*

*7. An organisation shall continue to be deemed as non-profit making notwithstanding that:*

*(d) it is established for the promotion of the social role, ethics, education and professional values exercised by its members, provided it does not promote the private interests of its members or private individuals.*

*9. The reservation by the founder of any right over the assets of the voluntary organisation shall not prejudice the non-profit making status of the organisation.*

#### The Statute of the Organisation – General Provisions

It is clear from the Statute of the Organisation that there is a strong element of private interest in the running of operations carried out by the enrolled voluntary organisation in question. Reference here should be made to the attached Document 1 including the relevant articles in highlighted text for ease of reference, and which articles reflect article 31B of the Second Schedule to the Civil Code (Cap. 16), hereinafter referred to as “the Second Schedule”, and which refers to private interest foundations. Notwithstanding the fact that the organisation is enrolled with the Office of the Commissioner for Voluntary Organisations as an Association and not as a Foundation, it has a legal personality status, and therefore the articles of the Second Schedule concerning legal organisations vested with legal personality apply *mutatis mutandis* to associations conferred with legal personality. For ease of reference Article 31.B (3) and (6) are being reproduced hereunder:

*“31.B (3) In addition to the activities referred to in sub-articles (1) and (2), a private interest foundation may:*

*(a) hold assets as an investment portfolio and to do all such acts ordinarily carried out in such context;*

*(b) carry out any specific actions with shares it may hold as may be designated in the statute of the foundation for the achievement of any designated purpose, transaction or for the protection of any designated interests;*

*(c) own, establish, grant, and license a franchise, a trademark or other intellectual property which gives rise to income: ...; and*



(6) A foundation may be used in the context of the following transactions and any transactions connected or ancillary thereto:

(a) securities offerings, whether to the public or for private placement, portfolio management and custody of investment instruments;

(b) the grant of real or personal security interests, including hypothecs, mortgages, privileges, pledges and quarantees;

(c) collective loan agreements and other multi-creditor banking facilities;

(d) insurance policies and the payment of proceeds thereunder;

(e) timeshare and multi-property structure; and

(f) such other commercial transactions....".

In view of the above provisions which are similarly provided in the Statute of the organisation, it is unequivocal that the organisation does not qualify as a voluntary organisation but as a private interest foundation in terms of article 31B. of the Second Schedule, and therefore it is in breach of the Voluntary Organisations Act (Cap.492).

#### Political Involvement

It also results from the Documents 2 and 3 attached to this letter, that the said organisation is highly involved in political matters and is instigating a political propaganda and publicity. The organisation should be aware that in order to qualify as a voluntary organisation it shall not be politically affiliated or related in any other manner whatsoever and shall be independent from government involvement.

From the attached Documents 2 and 3 attached, it transpires that the said organisation is in breach of article 2 of the Act which clearly provides *inter alia*:

*"controlled by, related or affiliated to a political party" or similar terms means, ... in the case of a political party, that a political party as defined in the Financing of Political Parties Act, whether registered under the said Act or otherwise:...*

*(iii) is the beneficiary of the purposes of the organisation, including the promotion of the specific vision, policies and goals of the political party or its candidates.*

Then:

*"political party" shall have the meaning assigned to it by article 2 of the Financing of Political Parties Act and, for the purpose of this Act, shall include any other organisation, of whatever legal form, which is controlled by, related or affiliated to the political party, and the terms "political candidate" and "political organisation" shall be construed accordingly;*



## Offences

In view of the preceding information, both articles 13 and 19 of the Act subsequently apply as provided hereunder.

The fourth proviso of article 13(5) of the Act relating to the enrolment of an application provides: *"13. (5) ... Provided further that if, however, the Commissioner determines, after enrolment under this article, that the element of a public purpose or public benefit in terms of these provisions is absent in the relevant organisation, he may by notice in writing, order the suspension or the cancellation of the enrolment of the voluntary organisation by the issue of a Suspension Order or a Cancellation Order, as appears appropriate in the circumstances, solely on such basis."*

Then article 19 clearly stipulates:

*"19. (1) The Commissioner may order:*

*(a) the suspension of the activities of an enrolled voluntary organisation by the issue of a Suspension Order, for such period as shall be specified in such Suspension Order which period shall not exceed thirty (30) days in any single Suspension Order; **or***

*(b) the cancellation of the enrolment of a voluntary organisation by the issue of a Cancellation Order, which shall come into effect thirty (30) days from the date on which the sole administrator or at least one of the administrators was notified of such order...*

*(2) The orders referred to in subarticle (1) may be issued if the voluntary organisation –*

*(a) is not pursuing the purposes stated in the statute and in so doing it is misleading the general public; ...*

*(c) carries out unlawful activities or is repeatedly acting in contravention of the provisions of any law which are mandatory; ...*

*(e) is misapplying funds, or is using funds or benefits received for purposes other than those for which such funds or benefits were granted; ...*

*(i) does not have a public purpose or its public purpose does not meet the sufficient requirements, whether this is determined by the Commissioner after the enrolment of the organisation in accordance with article 13(5) or otherwise; and in such a case the provisions of article 13 (4) relating to the provision of reasons for such a decision and the opportunity to make representations shall apply mutatis mutandis.*



**Office of the Commissioner**  
for Voluntary Organisations

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*(8) In the case of a Cancellation Order based on the grounds specified in sub-article (2)(a) to (e), the Commissioner shall have the power to order the organisation to desist from carrying out any further activities. In all other cases the Cancellation Order shall include all determinations under such terms and conditions as the Commissioner may consider appropriate in the circumstances...".*

This legal letter is being sent for all legal intents and purposes and for the sake of the organisation to regulate itself and acts in terms of law, *inter alia* to amend the mentioned articles in the Statute, so as to avoid further legal proceedings which may be instituted in this regard.

Avv Maria Scicluna Criminale  
Office of The Commissioner for Voluntary Organisations  
f/t Commissioner for Voluntary Organisations