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

- Honourable members of the judiciary, ladies and gentlemen, good afternoon. Thank you for attending this afternoon's seminar organised by GANADO Advocates in collaboration with the Malta Bankers' Association. For those of you who do not know me, my name is Conrad Portanier, and I will be chairing this event for the afternoon.

- This is now the fifth banking and finance law seminar being organised by the firm in collaboration with the Malta Bankers' Association. Prior to every seminar, I sit down quietly to look through some of the major legal amendments which would have been passed in the previous 12 months and the pace of legislative amendments keeps amazing me.

- In 2017, we have had 31 Acts, 413 Legal Notices, and not counting laws being enacted at European Union level, some of which have a direct effect in Malta. The last Act being Act XXXI of 2017, the Various Financial Services Laws (Amendment) Act, 2017, a lengthy piece of legislation amending seven laws.

- Just to highlight a few of the more recent relevant developments we have seen on a local level:

    - A new law has now set up the **Malta Development Bank** by statute, a welcome development in the banking scene. The Bank (with a paid-up capital of EUR 30million) will give particular consideration to the needs of SMEs and large infrastructural projects that contribute to important regional or national development.

    - Amendments to Art. 34 of the Banking Act (dealing with Confidentiality) have widened the safe harbours allowing disclosure of information. Although confidentiality in the banking industry remains critical, the realities of today's world necessitate a wider cross-border flow of information between groups of companies, particularly for risk management purposes. We also understand that further safe harbours are being contemplated legislatively.

    - Article 29A of the Banking Act has created a ranking hierarchy in the event of insolvency of a bank. In particular, deposits from individuals and SMEs over and above the EUR100,000 guaranteed by the Depositor Compensation Scheme enjoy a ranking before other ordinary unsecured creditors.

- We have seen significant amendments to our prevention of money laundering laws in order to transpose the IV Money Laundering Directive, including the requirement to create a Register of Beneficial Owners and the need to file this information with the Registry of Companies.

- We have seen the Arbiter for Financial Services taking shape and awarding EUR3.4million + interest in damages against Bank of Valletta. Of particular note, the Arbiter concluded that any private settlement agreement reached with consumers and which limited the liability of the bank was not effective since such limitations were deemed to be 'unfair terms' under the provisions of the Consumer Affairs Act.

- We have seen changes which will mean a drastic change to civil law aspects of persons, such as the Cohabitation Act.

- We are also seeing massive legislative waves of EU origin which include MiFID II, PSD II, GDPR, but more on that by David Borg Carbott later on.

- And we have also seen one of the first major cases of bank whistle-blowing in Malta, but I leave that to my good old friend David Fabri later this afternoon.

To think that a lawyer up to the nineties only had to contend with a few Codes and a few Acts here and there.

It is a view shared by many that most of our legislative amendments are generally knee-jerk reactions to problems, quick fixes, little tweaks here and there, or else simply the transposition of EU laws into our legislation. The depth of thought underlying some laws is often shallow, not to mention the absence of meaningful parliamentary debates on such laws. By way of example, I can mention the recent Act 1 of 2018 (most of which is not yet in force). Effectively, amendments to the COCP have been enacted which will create a new section of the First Hall, Civil Court called the **Civil Court (Commercial Section)**.

They have taken a very narrow interpretation of its jurisdiction *ratione materiae,* since the Commercial Section will be assigned "*applications falling within the competence of the Civil Court and which relate to matters regulated by the Companies Act*".

Neither the Commercial Code nor any financial services law was deemed worthy of the Civil Court (Commercial Section) .... these remain to be heard by the normal First Hall, Civil Court. And what if a legal dispute matter emanates from the Civil Code but relates to companies?

Beyond these legislative tweaks, we would like to see more **legislative vision**. We are aware that the Government, together with the financial services industry, is working assiduously to protect our taxation system. However, for the past ten years or so, it has been our constant complaint that not enough attention is being given to the private commercial law sphere.

We keep calling for a thorough overhaul of our insolvency laws. May I remind you that in November 2016, Malta was ranked 28$^{th}$ out of the EU Member States when it comes to the effectiveness of its insolvency proceedings. Act XI of 2017 introduced some amendments to the Companies Act, including:

- reducing the period of the Company Recovery Procedure from **12 months to 4 months**

- for 'Company Reconstruction' provisions, the value of creditors required to agree on a compromise and arrangement has been reduced from **3/4ths to 2/3rds**

We hardly expect such tweaks to improve our rankings.

In this vein, we have invited Jean-Francois Adelle, a partner from the renowned French law firm Jeantet, to come and give us a synopsis of one of the major reforms to the French law of obligations since the enactment of the Code Napoleon in 1804. This will give us a glimpse of how France has amended its Civil Code to reflect modern realities, particularly when you think that the Code Napoleon was drafted at a time when the Industrial Revolution had not yet reached Continental Europe.

To conclude, I cannot not make reference to the elephant in the room. When it comes to the enforcement of certain laws, in particular insofar as concerns the prosecution of money laundering offences, Malta's track record leaves much to be desired. To take a leaf from the Chief Justice's book, the Courts are impotent without an effective executive arm.

And clearly we cannot isolate all this from the banking industry. We all know that we are threading dangerous grounds in Frankfurt and all this might have serious consequences for the local banking scene. Only recently, on the February 13, 2018, we have seen how the US Treasury issued a notice accusing the Latvian Bank ABLV (Latvia's third largest bank) of money laundering. ABLV was promptly denied U.S. dollar funding. Simultaneously, depositors rushed to remove their money. On February 24th, 2018, the European Central Bank announced that ABLV was "*failing or likely to fail in accordance with the Single Resolution Mechanism Regulation*." It will be wound up under Latvian law, and its subsidiary ABLV Bank Luxembourg will be wound up under Luxembourg law.

We have worked assiduously over decades to build our reputation and to compete with much larger jurisdictions, but as a country we are not working half as hard to protect our reputation.