

**University of Malta  
Concession of parts of  
University House to the  
Kunsill Studenti Universitarji**

Report by the  
Auditor General

July 2012



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## Abbreviations

AG	Auditor General
KSU	Kunsill Studenti Universitarji
NAO	National Audit Office
PAC	Public Accounts Committee
ToR	Terms of Reference
UoM	University of Malta

## Executive Summary

This Investigation covers the concession awarded to the Kunsill Studenti Universitarji (KSU) with respect to Students' House, specifically analysing intended and (eventual) actual use of the conceded space.

The Terms of Reference (ToR) were agreed to by the Parliamentary Public Accounts Committee (PAC) in March 2012. These ToR mandated the Auditor General (AG) to determine KSU's rights/responsibilities where Students' House was concerned, and to analyse various issues related to the leasing of parts thereof. PAC's attention to the matter of KSU's leasing activities had been drawn by a letter from an Opposition Member of Parliament.

The Investigation was conducted in accordance with Para 9(a) of the Auditor General and National Audit Office Act, 1997 (XVI of 1997) and in terms of NAO practices.

Findings presented in the Report are based on meetings held with pertinent officers, examination of documentation related to the subject matter and other varied desk-based research and information collection/analysis.

The Report deliberates on the basis of the University of Malta's (UoM) concession to KSU, being '*precarium*' - namely a loan with the lender having the power to take back the thing lent when he pleases. On the basis of this, KSU legally never obtained any title over the space in question. It follows that KSU was never in a position to lease parts of the conceded space to third parties.

The Report further shows how KSU deviated from the originally-declared use of the conceded space. While this had been intended to be used exclusively as students' organisations meeting areas and related activities, eventually commercial use of parts of the space was made by third parties accorded such use by KSU.

The Report recognises the deficiencies/breaches in the prevailing situation, with KSU being *ultra vires*. It transpires that UoM has been attempting to 'clarify' the original agreement but to date has not concluded the exercise.

In the meantime an operational review revealed deficiencies in the way KSU manages the leasing function, namely: the selection process is not conducive to accountability and transparency as it does not promote a level playing field environment; processes are not formally documented; consistency is lacking even in contracts of lease where termination is involved.

UoM's abdication of a control and monitoring function over the administration of its property by third parties (KSU) is another major concern identified in the Report.

By way of recommendations, NAO proposes that UoM formulates a legal framework that will accurately define the concession and the rights/obligations of all parties concerned. NAO further proposes that such a framework should be supported by an administrative framework wherein processes and procedures are defined in detail. It is recommended that UoM should also exercise a monitoring function over KSU financial statements in view of the fact that a substantial part of the income is being generated through use of UoM's property and other (UoM) resources by KSU.

On a wider scale, the Report voices NAO's concern that prevailing legislation, namely the Disposal of Government Land Act, does not preclude autonomous bodies from disposing of immovable assets without the monitoring function of competent authorities.

## Chapter 1 - Introduction

### 1. Terms of Reference

On 29 February 2012, the Parliamentary Public Accounts Committee (PAC) mandated the Auditor General (AG) to investigate the concession awarded to the Kunsill Studenti Universitarji (KSU) with respect to Students' House, University Campus. This Investigation was triggered by a letter compiled by an Opposition Member of Parliament and addressed to the Chairman PAC. In this letter, the author stated that further to confirmation by Government in a Parliamentary Question, Students' House is property of the University of Malta (UoM) and was conceded to KSU on the basis of *mera tolleranza* for KSU to administer. The decision was taken by UoM Council on 30 March 1994. The letter, featuring as Appendix 1, described how KSU had temporarily rented or passed on areas of Students' House to a number of commercial entities in exchange of payments, lease payments or other forms of financial obligations. In this regard, the author of the letter alleged that public sector rules relating to award of tenders were not being adhered to. Furthermore, there appeared to be no specific criteria establishing selection of commercial entities, thus raising issues in connection with principles of transparency and good governance. On the basis of these allegations, the PAC called on the Auditor General to:

- a) determine whether KSU is obliged to adhere to administrative principles of good governance when passing on parts of Students' House to commercial entities which, in return, make some form of lease payment or are financially obliged towards KSU, and
- b) should it be determined that KSU is obliged to adhere to certain administrative principles of good governance, recommend ways that ensure administrative enhancements with regard to spaces belonging to government in the interest of the general public.

Subsequent to PAC's mandate to the AG to investigate this matter, the National Audit Office (NAO) submitted the following Terms of Reference (ToR):

- i. determination of KSU's rights and responsibilities with respect to the concession covering Students' House dated 30 March 1994 and established by the UoM Council decision;
- ii. analysis of the methodology adopted by KSU in the selection of third parties to be allowed use of parts of Students' House;
- iii. analysis of the instruments with which these third parties were/are allowed such use of parts of Students' House;



- iv. examination of the manner with which KSU is accounting for funds received through these transactions;
- v. Auditor General's opinion regarding benchmark rules to be adopted in this regard, and
- vi. recommendations to regularise the prevailing situation (if applicable) and to ensure compliance with applicable rules/regulations henceforth as necessary.

These Terms of Reference were accepted by the PAC.

Papers and correspondence relative to this Inquiry are recorded in NAO 105/2012.

## 2. Students' House Concession to KSU

In March 1994, the University Council decided to divide the building formerly known as "University House" into "University House" and "Students' House". This decision was reached during a Council meeting following the submission of a memorandum (suggesting the division) compiled by KSU (a copy of which can be found in Appendix 3 of this Report). As per the memorandum, all space being made available to KSU was to be distributed to/made use of by student associations as recognised by UoM.

"Subject to conformity with University Statutes and Regulations and the Maltese Law" (Council minutes 93/94), the University Council accepted KSU's request and granted use of the premises and authority to KSU to administer Students' House. The Maltese Civil Code (Chapter 16) defines loans as being either 'for use' (*commodatum*) or precarious (*precarium*). Article 1824 of the code defines *commodatum* as a contract whereby one of the parties delivers a thing to the other, to be used by him, gratuitously, for a specified time or purpose, subject to the obligation of the borrower to restore the thing itself. Article 1839 states that a precarious loan (*precarium*) is the same contract of loan for use defined in article 1824 with the only difference that the lender has the power to take back the thing when he pleases. Access to the selected space in "University House" ("Students' House") as allowed to KSU by UoM reflects a *precarium* as no exclusive right of use was transferred to KSU (*commodatum*) and the concession was not granted for a specified time. As accepted even by UoM authorities, the concession to KSU is on a '*mera tolleranza*' basis.

On the force of this reasoning, it is evident that KSU has, legally, no title of property where Students' House is concerned. It is in this light that KSU's eventual decision to veer from the originally-declared usage of the conceded space (to serve solely and exclusively students as offices/premises for associations as recognised by UoM) to the lease to third party commercial entities (running a commercial activity for gain) needs to be investigated.

Apart from the minute covering the University Council meeting held on 30 March 1994 (a copy of which can be found in Appendix 4 of this Report), no other formal agreement has been endorsed to sanction UoM's concession of Students' House to KSU. In particular, there has been no addendum covering general terms and conditions, KSU's rights and obligations towards UoM and/or references to leasing of parts of Students' House to third parties. KSU informed NAO, and UoM confirmed this, that discussions between UoM and KSU in relation to the concession of Students' House have been ongoing for the past years. In this regard, UoM stated that such discussions might lead to a clarification of the *modus operandi* of how KSU should liaise with the UoM within the remit of the concession granted by virtue of the Council decision of March 1994. This shall be discussed further on in this Report.

#### Leasing of Students' House

KSU is 'autonomous' and is not directly funded by Government or UoM. However, it is to be noted that, through "Students' House" concession and the leasing of parts thereof to third party commercial entities, KSU generates €43,964 per annum (as per audited financial statements for year 2011). This represents approximately 16 per cent of KSU annual income and is generated through the lease by KSU of resources administered by UoM<sup>1</sup>. Additionally, KSU uses parts of Students' House for its own activities. This usage naturally comes at a cost of which UoM is forfeiting the income, given the concession.

The relationships between KSU and third parties along with the use of space within Students' House fall within the remit of two KSU officers, namely the Vice-President and the General Secretary, in consultation with KSU's financial officer. In particular, together with the General Secretary, KSU's Vice-President is to coordinate and manage the rent of areas and/or spaces to commercial entities within Students' House. In this regard, the University's Secretary is the point of contact on the part of UoM.

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<sup>1</sup> Apart from this amount, €160,938 is being generated, directly or indirectly, through UoM resources other than the conceded space in University House.

According to KSU, for every area or space leased, a contract is signed between KSU and the commercial entity to operate from Students' House. KSU maintains that all contracts are in conformity with the Laws of Malta and University regulations, as per advice of KSU's legal expert. The lease term conceded to third parties varies from one contract to another. For existing contracts this ranges from two to eleven years.

UoM is aware of KSU's present lease agreements with third parties and feels that such an arrangement is mutually beneficial. In general, UoM believes that such conduct and entrepreneurial behaviour from the students is a good learning experience which develops students' capabilities and allows them to act responsibly in preparation for their career life. UoM also deems that such initiatives are more beneficial if administered by students rather than UoM itself. This is because KSU, being the organisation representing students' welfare and concerns, has a more direct interest to work in favour of obtaining the best possible leasing arrangements.

### UoM's Monitoring Role

One of the functions of the University of Malta, as stipulated in Article 72 of the Education Act, is "to establish entities with their own statutes and to monitor the administration of such entities as well as of other entities already existing or which may be created by others in the field of higher education". This implies that UoM is responsible for the monitoring of KSU's administration, both financially and in terms of the organisation's general performance. In this regard, UoM is responsible for the monitoring, *a priori*, of activities by KSU related to leasing out of space within Students' House.

### 3. Methodology

This Inquiry was conducted in terms of Para 9(a) of the Auditor General and National Audit Office Act, 1997 (Act XVI of 1997) and in accordance with generally accepted practices and guidelines applicable to the National Audit Office.

The main objectives of this Inquiry consisted of the following:

- a) to determine KSU's rights with respect to allocation of space to third parties of the conceded space within University House (Students' House);
- b) to ensure that all processes related to the use of the space in question are based on solid principles of accountability and transparency, and

- c) to ensure that UoM maintains adequate control over KSU's actions where such activity is concerned.

During the course of the inquiry, a number of meetings and interviews were held with key stakeholders, notably KSU and UoM. In particular, meetings were held with, incumbent Rector and UoM officials as well as KSU top officials in their role as current administrators of Students' House. Review of relevant information, such as national legislation and legal documents regulating both KSU and UoM was also carried out. Furthermore, advice from NAO's legal consultant was sought.

#### 4. Background Considerations

Early into 2012 KSU students' elections campaign, KSU was hit by media coverage regarding its administration when leasing parts of Students' House. Media alleged a particular conflict of interest relating to one of KSU's leasing agreements with a university student who owns other retail outlets in the vicinity of University. This alleged conflict of interest was even brought to the attention of the Prime Minister by the former tenant, following the termination of his lease agreement with KSU. In addition, it has been reported that despite the fact that an agreement with the new leaseholder was endorsed in March 2012, the tenant in question has been occupying the space since October 2011. In this regard, questions about whether KSU took the decision in conformity with its statute or code of ethics were raised.

Investigating the merits of who was responsible for this particular lease is not the objective of this Inquiry. However, the results of this Inquiry should serve as a practical learning experience as to how agreements involving university assets should be managed such that this is done in the most efficient, transparent and equitable manner possible.

## Chapter 2 - Conceptual Issues: Disposal of Public Land and/or Land for Public Use

### 1. Expansion of the Investigation Scope

As referred to in the Introductory Chapter of this Report, the University Council, on the basis of a decision taken on 30 March 1994, conceded space within University House, on campus, to the Kunsill Studenti Universitarji (KSU), an 'autonomous' university students' body with the main declared objective of furthering the academic interests of students.

The original Public Accounts Committee (PAC) request focused around governance issues in connection with KSU's lease of parts of the conceded space to commercial entities. However, in investigating the matter, NAO deemed it necessary and opportune to expand the investigation further by considering conceptual issues related to the leasing operation, specifically analysing the situation with particular emphasis on the rights accorded to KSU by University Council through the concession. This expansion of scope was communicated to PAC prior to the commencement of the investigation through the submission of proposed Terms of Reference (ToR) on 5 March 2012 (vide Appendix 2). PAC accepted these ToR during the meeting of 7 March 2012.

### 2. Government Land Disposal Act

The University of Malta is sited on land that is owned by the University itself, an autonomous body constituted by law. In this regard, it is pertinent to note that 'University' is not 'Government'; the land in question was not acquired by a corporate body from Government, and the land in question is administered by a public entity and not by Government.

Effectively, this renders the 'Disposal of Government Land Act' inapplicable in the case of University immobile property and in similar cases.

NAO notes, with concern, the lacuna that exists in this regard. Chapter 268 of the Laws of Malta, Disposal of Government Land Act, by definition "regulate(s) the grant on any title of immovable property belonging to or administered by the Government..."

"Disposal" is defined as "the transfer or grant of any land under any title whatsoever" and therefore includes lease, encroachment and any other right of use.

The Act goes on to establish and define the procedures to be followed for such disposal to take place. Hence, disposal of immovable property that is either owned or administered by Government (or both) is regulated through this Act.

However, any property that would have been purchased by (or in the name of) autonomous (public) bodies as is the case with land owned by the University does not fall within the scope of this Act.

The consequence of this is that the Disposal of Government Land Act does not preclude such autonomous bodies from disposing of immovable assets (to include outright sale) to non-public third parties under their own initiative and without the monitoring function of competent authorities.

NAO feels obliged to bring this deficiency to the attention of the policy makers, underlining the lack of a monitoring function that exists in the prevailing scenario.

### 3. Rights of UoM over its Property (Education Act)

While, as explained earlier, the Disposal of Government Land Act does not inhibit UoM from disposing of its immovable property, it is to be noted that University Council, as the body governing UoM, is accorded functions, with respect to property management, through Chapter 327 of the Laws of Malta, namely the Education Act. Specifically, Article 77a of the Act stipulates that the (University) Council ... “shall have the following functions... to administer and control all property, movable and immovable of the University”.

NAO sought and obtained legal advice regarding UoM’s position with respect to immovable property as defined above. According to the advice obtained, ‘administer’ includes, *inter alia*, leasing. However, such rights seemingly do not extend to permit an outright sale of immovable property. As opined by University legal counsel, (UoM) Council is withheld from transferring, revoking or waiving its own rights over property through Article 77(a) of the Education Act. This limitation according to UoM legal counsel emanates through the Article in question: The Article ... “does not even seem to allow Council to waive certain rights and titles over its own property, but only to administer and control it”.

Thus, UoM Council is empowered by law to make use of its property and to dispose of such property by way of lease or other arrangements for the use of such property. Effectively, this would allow UoM to lease property to third parties, to allow concessionary use to such third parties, but not to affect an outright sale transaction.

#### 4. The Concession

As described briefly in the Introductory Chapter, in March 1994 UoM Council, during (Council) Meeting 93/94, decided to allocate physical space within University House, re-designating this allocated space as Students' House.

Use of this allocated space was conceded to the Kunsill Studenti Universitarji (KSU). This concession is duly documented, albeit in a loosely defined manner, in the meeting's minutes:

136 ... (j) *Students' House*

*The Kunsill Studenti Universitarji (KSU) had submitted a memorandum regarding University House. They are proposing that it be divided into two sections, officially named Students' House and University House. The KSU are requesting that they administer Students' House.*

*The Council AGREED to the KSU's request naturally subject to conformity with University Statutes and Regulations, and Maltese Law.*

In view of the vagueness of the above minute, legal interpretation was sought.

According to Chapter 16 of the Laws of Malta, a 'loan' can be either:

- a) 'commodatum' defined in Article 1824 as "loan for use, is a contract whereby one of the parties delivers a thing to the other, to be used by him, gratuitously, for a specified time or purpose, subject to the obligation of the borrower to restore the thing itself."
- b) 'precarium' defined in Article 1839 as "the same contract of loan for use defined in Article 1824 with the only difference that the lender has the power to take back the thing when he pleases."

According to UoM legal counsel, the concession to KSU is a '*precarium*', hence the definition as a concession, rather than a '*commodatum*' (loan for use). This opinion is supported by NAO's own legal adviser.

It is for this reason that the concession is based on the concept of '*mera tolleranza*' - the concession is not granted for a specified time and it does not entail exclusive use of the property.

Legal advice prevailing is that no explicit right to use (*usus*) has been transferred or given to KSU. This leads to the implication that, while KSU was conceded use on the basis of mere tolerance, such concession never transferred any of UoM's rights over

the property in question to KSU. The concession solely implies an ability for the premises to be used by KSU. UoM remains entitled to intervene, terminate or control any such grant.

#### 5. Intended Use by KSU as per Memorandum of 1994

The keystone decision covering the KSU concession followed and was based on a memorandum submitted by KSU to UoM Council. The memorandum, featuring as Appendix 3 of this Report, was approved by the KSU Executive on 6 January 1994 and was duly submitted to UoM Council for discussion during the March 1994 (UoM Council) meeting.

The document proposed the division of the then University House into two sections, formally creating within the premises space designated for use by students. In its memorandum, KSU proposed to UoM Council that it (KSU) would assume responsibility for the management of the area being conceded. Such responsibility included the allocation of the space in question.

Referring to the proposed layout of the area being conceded (part of Appendix 3 of this Report), spread over two floors of the premises, it is to be noted that, without exception, all space was to be assigned to students' associations.

Furthermore, Point 3.1 of the Memorandum unequivocally stipulated that while the "allocation of rooms will be the responsibility of the KSU Executive", "the principles by which rooms will be allocated are set out in Appendix B" (of the Memorandum).

This Appendix to the Memorandum contemplates usage of the common room, defining this as available for use by all students' associations and by individual students. The Appendix goes on to stipulate the creation of a sub-committee (within KSU) that would assume the functions related to proposals for allocations of rooms/space to (student) associations.

The sub-committee was bound by the document to assign space solely to students associations recognised by UoM Senate, in formation for over a year at the time of the request and being representative of the entire campus.

The above considerations all point to the fact that, through the memorandum forwarded to UoM Council in 1994, KSU's declared intention regarding use of space to be conceded by UoM was solely and exclusively limited to students associations' needs and strictly related activities.

This is also in line with KSU's objectives as a student association. Reference to KSU Statute (2011) reveals that the aims of the association are all focused around students' needs with particular emphasis on academic-related issues.



It is pertinent to note that it is on the basis of this declared use that UoM Council conceded use of parts of University House, and the redefinition of these as Students' House, to KSU as a '*precarium*' on the basis of mere tolerance.

## 6. Change of Use

As at April 2012, KSU was utilising parts of Students' House in a manner that differed significantly and conceptually from the originally-declared use (as per (5) above). Four commercial entities were lodged within the premises as tenants paying rent to KSU. The leasing arrangement was, in each case, based on a contractual agreement signed between KSU (as lessor) and the lessees. From KSU records, it transpired that the KSU had been in fact leasing out parts of Students' House to third party commercial organisations at least since the year 2000.

This situation is deemed of concern to NAO for various reasons:

- a) No records were found to show that KSU requested UoM permission, as land owner, to endorse the change of use. In fact, the change of use was seemingly never formally authorised or even accepted by UoM;
- b) The sole instrument covering the UoM concession to KSU remains the 1994 Council Meeting minute, which, as described amply above is based on the assumption that KSU's usage of the conceded space was to consist exclusively of student associations' meeting places and activities areas;
- c) KSU, in deviating from the originally-declared change of use without obtaining the formal consent of UoM as owner of the land in question, fell in breach of the law: Article 1827 (2), Chapter 16, Laws of Malta - the Civil Code - clearly defines the duties of the borrower as: "He cannot, under pain of paying damages, apply the thing to any other use than that for which it is intended by its nature or by agreement";
- d) KSU, as a registered voluntary organisation and a separate juridical entity, being the representative of all students at UoM, is generating income from land belonging to a public entity and intended for a specific public use;
- e) The income thus generated (in the case of Students' Houses leases, amounting to €43,964 as per KSU's audited financial statements for year 2011) is not being monitored by UoM as the competent authority;
- f) KSU, even by its own statute, is not mandated to carry out property leasing activities - as explained above KSU's declared objectives as per the association's statute of 2011 do not cater for any administrative activities, and
- g) As advised by NAO's legal counsel: "It is pertinent to emphasise that use (either a '*commodatum*' or a '*precarium*') is use by the borrower himself. It is therefore not only inappropriate but not authorised under law to grant things borrowed for use under title of lease or otherwise to third parties".

Given the above concerns, NAO has reservations and can only comment negatively on KSU's omission to obtain permissions that were legally, rationally and ethically necessary from the land owner (UoM) *a priori* to affecting any change in use of the conceded space. This is further emphasised by the fact that the change as affected was a conceptual metamorphosis effectively converting parts of Students' House from the designated meeting place for students' associations to a shopping mall consisting of multiple outlets trading in diverse products and services and operated by commercial (private sector) entities for pecuniary gain.

NAO likewise finds fault with UoM Councils formed since KSU affected the described change in use of the conceded space within University House (at least since 2000). In this instance, NAO is concerned that the (UoM) Councils in question, over the years, although aware of the situation, did not take resolute and clear action to have the matter regularised.

On this matter, it is pertinent to note that, according to both UoM and KSU, for a number of years the two were engaged in talks aimed at clarifying the prevailing situation. According to KSU "negotiations had been underway, even before this investigation had commenced, between UoM and KSU regarding the drawing up of an agreement covering the concession. UoM Secretary had sent a draft agreement and KSU was working on it."

On the other hand, according to UoM: "Discussions (rather than negotiations) with KSU in relation to the use of Students' House have been ongoing for the past years and are still being held. Rather than leading to an agreement, these might lead to the approval of a text of a Council Minute which would clarify the relevant Council Minutes of Meeting 3/93-94 held on 30 March 1994. This text would be intended to clarify the *modus operandi* of how KSU should liaise with UoM within the remit of the concession granted by virtue of the Council decision of 30 March 1994".

A copy of the document in question was forwarded to NAO. However, it was deemed to be of an interim nature, subject to substantial change. UoM comments in this regard clearly classify the document as works in progress and declare the intention to await (NAO) report completion prior to finalising the document. For this reason, NAO refrained from commenting on the contents of the document for the purposes of this Report.

## 7. Rights passed to KSU via the Concession

NAO holds legal advice to the effect that KSU has no title at law to grant any parts of Students' House to third parties. Such grants do not give any secure title to the grantee as evidently the grantor had no good title under which to make the grant.

This is amply demonstrated through the considerations made above.

(NAO) legal advice continues: "The loan only implies an ability for the premises to be used by the organisation itself and not by others".

UoM legal counsel supported this opinion: "... no explicit right to use [*usus*] has been transferred or given to KSU because the Council minute does not refer to such 'right of use'. The same may be said about the (KSU) Memorandum which only refers, albeit indirectly, to the concept of use... no terms such as 'loan' or 'loan for use' are used anywhere, both in the Memorandum and in the Council minute itself".

This, in itself, coupled with UoM's statement that it had been attempting to clarify the position with respect to the concession for a number of years, is sufficient evidence of the fact that University itself is aware of the need for the prevailing situation to be remedied and regularised. In this light, the fact that such efforts have not produced a positive outcome despite years of endeavour seems to be indicative of the need for more vigorous attention to be paid to the matter with the aim of finding remedies to the prevailing situation.

## 8. The Prevailing Situation

As illustrated above, the prevailing situation can be summarised as follows:

- UoM is within its rights to lease/grant concessionary use of its property;
- UoM availed itself of these rights by granting KSU a 'precarium' covering parts of University House, renamed Students' House, on the basis of mere tolerance;
- KSU deviated from the originally-declared use of the conceded space by leasing out parts thereof to commercial entities, on a rental basis, for financial consideration;
- The leasing activity is not covered by UoM formal acknowledgement or approval;
- Such deviation put KSU in breach of legislation which precludes a borrower from deviating from the declared use of the property he is borrowing;

- KSU is annually generating a substantial amount of income through the management of public resources conceded to it (for other uses). KSU's accounts are not being monitored in any manner by UoM;
- UoM likewise does not monitor and oversee KSU's actions when the latter is engaged in leasing this property to third party commercial organisations;
- KSU does not hold any legal title over the property in question. For this reason, all rental agreements reached between KSU and lessees are null and void.

#### 9. Suggested Way Forward (Regularising the Position)

NAO takes cognisance of the prevailing situation and of the deficiencies/breaches therein. On the basis of the above-reported findings and views, NAO opines that the current situation puts KSU *ultra vires* with respect to administration and management of Students' House. KSU is also in breach of the law as the change of use of the conceded assets was never declared to the owner and the owner never sanctioned such change in use. For this reason, it is recommended that UoM formulates a legal framework agreement that clearly defines the concession and the rights/obligations of all parties involved.

## Chapter 3 - Issues related to KSU's Leasing Activity

### 1. Introduction to Issues related to KSU's Leasing Activity

By virtue of the decision of the University Council of March 1994, KSU's request regarding the concession of Students' House as a base for students' association activities - limited solely and exclusively to students' associations' needs and related activities - was approved. As at April 2012, however, KSU was utilising parts of Students' House in a manner that differed significantly from the originally-declared use (as per Memorandum proposed by KSU and Council's decision of March 1994) in that four commercial entities are now tenants within Students' House paying rent to KSU. Legal issues pertinent to this deviation have already been deliberated upon in the previous Chapter. This Chapter will concentrate on the operational aspects, including a framework, of such an activity. Specifically, the following salient topics will be addressed:

- criteria for selection of lessees;
- leasing arrangements, and
- communication between UoM and KSU related to KSU's operations and activities.

KSU affirms that income generated from the leasing of parts of Students' House is required for a degree of financial stability for KSU to remain 'autonomous'. Defining KSU as being financially autonomous of UoM is, however, incorrect in view of the fact that the income referred to by KSU (a substantial chunk of KSU's annual income) is in fact generated via rental of UoM's resources. In 2011, KSU generated €43,964 from leases of parts of Students' House. UoM assets are also a source of income for KSU whenever the latter organises various activities such as careers conventions (UoM provides the use of electricity) and the Campus Fest and Students' Fest (UoM grants the use of UoM grounds and electricity). In total €204,902 of the €268,135 (2011 KSU income) was generated, directly or indirectly, using UoM assets.

### 2. Criteria for Selection of Entities

In the letter (to PAC Chairman) that triggered this Investigation, it has been alleged that there are no specific criteria applied when selecting commercial entities as lessees by KSU. When questioned, KSU stated that since its first lease to a commercial entity, areas and spaces within Students' House have always been awarded to the highest and most advantageous offers presented to the Council. KSU further affirms that apart from financial considerations, the main criteria taken into

consideration when selecting a commercial entity to avail itself of leased space within Students' House include the following:

- provision of high quality services/products catering for the student population. Items which are not related to student life (such as beauticians and hairdressers) are not considered for the leasing of outlets;
- commitment of the potential tenant to provide a long-term service to students, employing staff that can tend to students' needs;
- items sold must ideally all be Smart Card refundable, and
- opening hours of the outlet must reflect academic life, meaning that shop hours are also to cover evening courses and exam periods.

As pointed above, when dealing with leasing terms, KSU claims that it tries to establish long-term commitment so as to increase its financial stability. This is in conflict with the opinion held by UoM, who would prefer if commitments were to be kept to a minimum (time wise). With regard to leasing terms, NAO cannot but express concern - in the case of all leasing arrangements and even more so in this instance of the (relatively) longer-term lease agreements. The Office feels it pertinent to point out that the risk level is elevated in such cases, in view of the legal situation referred to in Chapter 2, namely that KSU does not hold any legal title over the property in question and that all rental contracts signed by KSU and lessees are null and void.

### Selecting Third Parties

As stated above, KSU claims that when going through the process of selecting potential tenants, KSU's Executive - responsible for the evaluation of offers by third parties - acts in such a way so as to ensure that the spaces available within Students' House are used to the best interest of students.

According to KSU, the Council is usually approached by interested parties in relation to the rental of outlets. Meetings between KSU and interested parties are held to discuss details concerning the lease of premises and a proposal, including a standard lease agreement, is suggested by KSU. Following negotiations, a vote is taken by the KSU Executive, members of which are elected by UoM students, to determine selection of a third party to be lodged within Students' House. A contract endorsing the leasing is signed by KSU and the selected party, as per KSU Statute which stipulates that a contract is signed for every deal exceeding the sum of €2,000, irrespective of the type of contract.

The selection process being adopted by KSU is looked upon in askance by NAO, as it neither adheres to public sector procurement procedures, nor follows good business practice as applied within the private sector. The fact that space available for leasing

is not publicly advertised effectively limits the spread of potential lessees. The practice of choosing between 'interested parties' who would have expressed their interest in leasing is crippling what should be a level playing field, with the opportunity to lease made available to any commercial entity, at least up to the stage of a bid submission. Filtering of entities and of products/services marketed comes as a second stage, as part of what should be a pre-defined selection criterion.

NAO notes further flaws in the selection process as adopted by KSU. While KSU describes the process as being pre-defined, there is no evidence that such a process is followed meticulously during each and every lease. KSU does not operate any mechanism similar to tendering whereby the selection process would be formally documented, parameters defined and quantified and selection criteria weighted. Failure to adopt such a methodology will invariably lead to different weights and measures being applied to different bidders, especially in view of the fact that any two leases may be handled by different students occupying council posts. Equity and transparency are in no way guaranteed and the process is prone to produce results that are perverse as the level playing field environment, deemed so critical a component in such transactions, is easily distorted.

NAO opines that should it be decided that KSU continues to lease out parts of the conceded Students' House through a revamped and formalised agreement with UoM, such an agreement should be backed up by documented procedures detailing steps to be followed when such as lease is to be awarded. While it is not within the scope of this Report to develop such procedures, NAO advises UoM that same should keep in view the fact that assets and property designated specifically for public use are being managed by third parties for (substantial) monetary consideration. Thus the procedures should be detailed enough and robust enough to ensure that each and every transaction conducted is based on principles of equity and transparency and that there should be zero tolerance to discriminatory or favourable treatment.

### Leasing Arrangements

One of the very initial leasing agreements between KSU and third parties stated that *"By virtue of the decision of the Council of the University of Malta date 30<sup>th</sup> March 1994, the KSU allocates to (name of commercial entity), who accepts, the room in Student House ...<sup>2</sup>"* By means of such a declaration, KSU could have argued that the third party agreeing to operate from Students' House was made aware that the leasing activity was not covered by UoM's formal approval. Such a declaration implies that the third party in question was officially aware that KSU held no legal title over the property in question. This, however, by no means makes KSU's leasing out to third parties legal.

Nowadays, reference to UoM's Council decision relating to Students' House concession is no longer included in leasing agreements. Instead, some of the leasing agreements between KSU and third parties include references such as the following:

*"Should the University Administration instruct the occupiers of areas within House, to vacate the premises for the partial or whole demolition of students House for the purposes of reconstruction, the First Party (KSU) shall offer an alternative premises for management should such alternative premises be available. To this effect, the parties hereby agree that should the First Party not have available enough alternative premises to satisfy all possible current incumbents of Students' House, then the First Party shall commence negotiations with the Second Party (commercial entity) for the best possible alternative. If no alternative is found within three (3) months from the commencement of such negotiations, this contract is deemed to be suspended until a suitable alternative arrangement can be made during the duration of this agreement".*

Yet another approach to leasing out of parts of Students' House included the following condition:

*"On termination, for whatever reason, of the present agreement, the Lessor shall have the right to take immediate material possession of the Premises and the Lessee binds itself to hand over such possession and not to obstruct in any way the Lessor. The Lessee shall incur a penalty of ten Malta liri (Lm10) per day, and this for mere delay, in respect of any calendar day of delay in which the Lessee fails to handover immediately the Premises or any part thereof and/or in any other way obstructs the Lessor from taking material possession of the Premises or any part thereof. The amount of the said penalty shall automatically increase in proportion to the increase to the official minimum wage<sup>2</sup>".*

The above are a few of a number of variations between contracts, implying that KSU is not even consistent in its contractual agreements. Such differences highlight non-equity issues where treatment of lessees is concerned, questioning fair play during the selection process when choosing between 'interested parties' who would have expressed their interest in operating from Students' House.

With reference to the second extract above, leasing agreement between KSU and the third party in question stipulates that were UoM to instruct tenants to vacate the premises for demolition of Students' House for reconstruction purposes, KSU *"shall offer an alternative premises for management should such alternative premises be available"* and if no alternative were to be found contract is deemed to be suspended *"until a suitable alternative arrangement can be made during the duration of this*

---

<sup>2</sup> This is sourced through expired contracts.



*agreement*". This suggests that further to Students' House, over which it holds no legal right, KSU is assuming a position that allows it to offer other alternative premises, spaces which it does not own. Through the declaration above included, KSU is not only *ultra vires* in leasing out a space within Students' House over which it does not hold a title, but it is further impinging on UoM's rights by stipulating the possibility of assigning presumably other UoM property as alternative premises to the lessee should vacation of Students' House be necessary.

NAO expresses its concern that such conditions should be included in lease contracts and feels it pertinent to criticise UoM Council for not having intervened effectively, given this illicit use of property owned by UoM to which KSU has only mere access.

### 3. Communication between UoM and KSU related to KSU's Operations and Activities

In view that KSU is leasing out property belonging to UoM, the University has to, as a minimum, ensure that the resources to which KSU is allowed access are utilised properly, in a manner that befits resources which serve a public scope.

As affirmed by both KSU and UoM, communication between the two parties takes place on a constant but informal basis. Meetings between the two parties usually deal with issues of an administrative nature, relating to events organised by KSU and, at times, individual student's cases. NAO opines that further to meetings related to KSU's general operations and activities, UoM has to be more actively involved in issues relating to the leasing mechanism adopted by KSU, in particular: free spaces within Students' House, selection of tenants and income generated from use of UoM's resources. Such involvement is to include formal monitoring and control both *a priori* and post events, to ensure that the resources in question are put to good use for the general benefit of UoM students. The need for a framework structure and agreement backed up by documented procedures has already been referred to earlier in this Report.

#### Lack of Involvement on the part of UoM

As reported earlier on in this Chapter, leasing agreements are drawn up exclusively between KSU and the selected third party. UoM claims that the University is not involved in the selection process, not even by way of vetting leasing agreements prior to these being signed. In addition, UoM claims that it has no access to/records of leasing agreements between KSU and third parties and is thus not aware of the length of lease commitments agreed to by KSU. This constitutes a serious deficiency and implies abdication on the part of UoM, as rightful and responsible owner of the

resources to effectively ensure that the resources it is allowing third parties to use are being administered in a manner that is proper and appropriate.

Monitoring of KSU's financial activity is also lacking on the part of UoM. As per claims by KSU officials, financial statements were submitted to UoM for year 2011 but prior to that had not been presented to the University for a number of years. KSU also claims that following submission of financial statements, it did not receive any kind of feedback or related comments from the University.

UoM confirms that the University does not evaluate KSU's financial statements. In this regard, UoM states that as per UoM's Guidelines for the Recognition of Student Societies approved by University Senate on 17 June 2010 (a copy of which can be found in Appendix 5 of this Report), *"proper records of all financial transactions shall be kept by the student society and may be viewed at any time, by the Director of Finance of the University of Malta and/or his delegate"*. As a result, UoM claims that the University is not legally obliged to review KSU's financial statements. While this may hold good for Students' societies that are totally independent of UoM financially, circumstances in the case of KSU are very different.

As opined above in the case of UoM's responsibility to monitor and control KSU's activities with respect to leasing property, NAO similarly opines that UoM is duty bound to effect monitoring of KSU's financial activity since the major share of KSU's funds are generated through utilisation of UoM resources.

It is UoM's opinion that the University does not "interfere with student matters and tries to settle matters with students to maintain a healthy, amicable relationship".

NAO acknowledges the fact that UoM should try to ensure that a "healthy, amicable" environment reigns over campus. However, the Office opines that, from embracing such an objective to taking it so far as to "not interfere" can hardly be termed as best practice. In this regard, UoM's abdication is evident from the fact that the University was not even aware that KSU had entered into lease contracts spanning over an eleven-year period.

In concluding this Chapter,

- KSU's *ultra vires* position emanating from the deviation of use as specified originally has, despite an effort lasting a number of years, prevailed.
- In the meantime, the approach to selection of lessees as deployed by KSU was found not to be conducive to accountability and transparency.
- Discriminatory treatment, even of lessees, was identified where contract termination is concerned.

- Communication between UoM and KSU needs improving, especially so where monitoring and control of KSU leasing-related activities and income generated therefrom are involved.

By way of recommendations,

- a) a legal agreement that clearly defines the concession and the rights/obligations of all parties involved (as explained in Chapter 2 of this Report) needs to be drawn up. This must be supported and complemented by an administrative framework agreement wherein processes and procedures are defined in detail.
- b) through the administrative agreement in (a) above, UoM, as owner of the resources in question, must be empowered to maintain a priori control over any entity benefitting from any concession granted by UoM. Such control will, inter alia, cover any activity (potentially) leading towards the leasing of property to third parties on the part of the beneficiary.
- c) UoM is also to devise and deploy a monitoring function that will enable the University to analyse KSU's financial activity, in view of the income being generated through use of public resources by the student association.
- d) it is in the interests of both UoM and KSU that a higher degree of communication is maintained between the two organisations, where matters related to University/Students' House and other UoM property to which KSU is granted access are concerned.

## APPENDICES

APPENDIX 1

KAMRA TAD-DEPUTATI



HOUSE OF REPRESENTATIVES

Illum id-19 ta' Dicembru, 2021

Lilli-Onor. Carmel Mangion  
Chairperson  
Kumitat għall-Komijiet Pubblici  
Kamra tar-Rappreżentanti  
Valletta

Qed nikkli skont il-jedd mogħti lli bhala Membru tal-Kamra tar-Rappreżentanti taħt l-Ordinjiet Permanenti tal-Kamra biex nikkli lill-kumitat tiegħek li jinkariga lill-Awditur Ġenerali u/jew l-Uffiċju Tiegħu liex ssir investgazzjoni fuq materja li tolgot fondi pubbliċi li jien jidher li l-kumitat investgazzjoni sabiex isir tiġib fl-operat għall-għd tal-erariju pubbliku u l-interess nazzjonali.

Il-fatti tal-materja li jien qed nitlob taħt rikjesta għal investgazzjoni mill-Awditur Ġenerali u/jew l-Uffiċju Tiegħu huma s-segwenti:

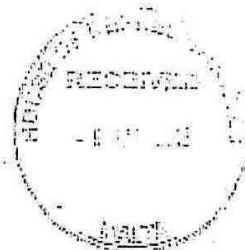
Skont risposta tal-Ministru responsabbli mill-Edukazzjoni, l-Onor. Dolores Cristina għal domanda parlamentari numru 28852 li jien ghamilt, imzulta li l-blokk ta' l-Universita' ta' Malta li jismha Dar l-Istudent fi hda l-Universita' ta' Malta hija proprjeta' ta' l-Universita' ta' Malta. Dina l-blokk giel konnessa lill-Kunsill tal-Istudenti Universitarji b'mera tolleranza u dana sabiex "jamministraw parti mill-blokk hekk imsejja 'Students' House' ... u dan sar permezz tad-deċjżjoni tal-Kunsill tal-Universita' tat-30 ta' Marzu 1994."

Peress li partijiet ta' Dar l-Istudent, partikolarment fil-pjan sotteran, gew mikrija jew mogħtija temporanjament mill-istess Kunsill tal-Istudenti Universitarji li numru ta' entitajiet kummerċjali biex minnhom joperaw negozju u din il-kirja jew għatja sarat li hlas ta' konsiderazzjoni jew kirja jew xi forma oħra ta' obbligazzjoni finanzjarja mill-entitajiet kummerċjali de quo favur l-istess Kunsill u peress li l-dawna n-negozju kollha ma gewx segwiti r-regoli rigonzi stabbiliti mill-Gvern li għoti tal-kuntratti tant li l-ghaxxa tal-entitajiet kummerċjali de quo sarat u ssir b'mod mill-iklar arbitrarju da parti tal-istess Kunsill u peress li r-regoli stabbiliti mill-Gvern li għoti tal-kuntratti huma intizi biex jassiguraw trasparenza u amministrazzjoni tajba tal-assi li huma pubbliċi, jiena qed nitlob il-jigi stabbiliti:

- 1) Jekk il-Kunsill Studenti Universitarji huwifex obbligat li jimxi skont il-principji ta' good governance amministrattiva fil-mod ta' kif jagħtu partijiet ta' Dar l-Istudent li entitajiet li jingestixxu negozju ta' hlas ta' konsiderazzjoni jew kirja jew xi forma oħra ta' obbligazzjoni finanzjarja mill-istess entitajiet kummerċjali favur il-Kunsill Studenti Universitarji?
- 2) Jekk jimzulta li l-Kunsill Studenti Universitarji għandu jkun obbligat li jimxi skont certli principji ta' good governance amministrattiva - kif wiehed jithem li huma digi riflessi (regoli finanzjarji li jingolaw l-għoti tal-kuntratti fis-settur pubbliku - x'rakkomandazzjonijiet jagħmel l-Awditur Ġenerali u/jew l-Uffiċju Tiegħu u/jew il-Kumitat tiegħek biex ikun assigurat tiġib fl-amministrazzjoni ta' spazji proprjeta' ta' entitajiet Governattivi li-interess ta' l-erariju pubbliku u l-interess nazzjonali?

Nirringrazzjak u nselli għalik,

Onor. Owen BONNICI  
Membru tal-Kamra tar-Rappreżentanti



## APPENDIX 2



National Audit Office  
Notre Dame Ravelin  
Floriana FRN 1600  
Malta

Phone: (+356) 22065555  
Fax: (+356) 21220708  
E-mail: [nao.malta@gov.mt](mailto:nao.malta@gov.mt)  
Website: [www.nao.gov.mt](http://www.nao.gov.mt)

*Auditor General*

Our Ref: NAO 105/2012  
Your Ref:

5<sup>th</sup> - March 2012

Hon. Dr Charles Mangion, LL.D., MP  
Chairman  
Public Accounts Committee  
House of Representatives  
The Palace  
Valletta

### **Kunsill Studenti Universitarji (KSU) Concession - Students' House, University Campus**

Reference is made to PAC Session No. 41 dated 29 February 2012 during which a communication addressed to the Chair PAC dealing with the subject matter in caption was tabled.

In compliance with your proposal and subsequent PAC approval that my Office investigates this matter further, NAO proposes the following terms of reference to cover the exercise in question:

- a. Determination of KSU rights and responsibilities with respect to the concession covering Students' House dated 30 March 1994 as established by the pertinent University of Malta Council decision;
- b. Analysis of the methodology applied by KSU in the selection of third parties to be allowed use of parts of Students' House;
- c. Analysis of the instruments with which these third parties were/are allowed such use of parts of Students' House;
- d. Examination of the manner with which KSU is accounting for funds received through these transactions;
- e. Auditor's opinion regarding benchmark rules to be adopted in this regard; and
- f. Recommendations:
  - to regularise the prevailing situation if applicable, and
  - to ensure compliance with applicable rules/regulations henceforth as necessary.

The above are deemed to satisfy the demand as raised by Hon. Owen Bonnici LL.D, MP.

A.C. Mifsud

## APPENDIX 3

### MEMORANDUM - STUDENTS' HOUSE

The KSU proposes that this Council approves the following resolutions :

#### **Preamble :**

1. That the building which is till now officially known as UNIVERSITY HOUSE be divided into two sections as shown in Appendix A and will be officially named as STUDENTS' HOUSE and UNIVERSITY HOUSE.

2. The University shall in short time approve the extension of Students' House in the knowledge of the ever increasing student population . The KSU through its representatives on Council will be responsible to make adequate proposals by next Council meeting.

#### **Management:**

3. The KSU will continue to be responsible for the management of Students' House.

3.1. The allocation of rooms will be the responsibility of the KSU executive. (The norms which are clearly set out the principles by which rooms will be allocated are to be found in Appendix B).

3.2. KSU will be in charge of all services which are offered in Students' House

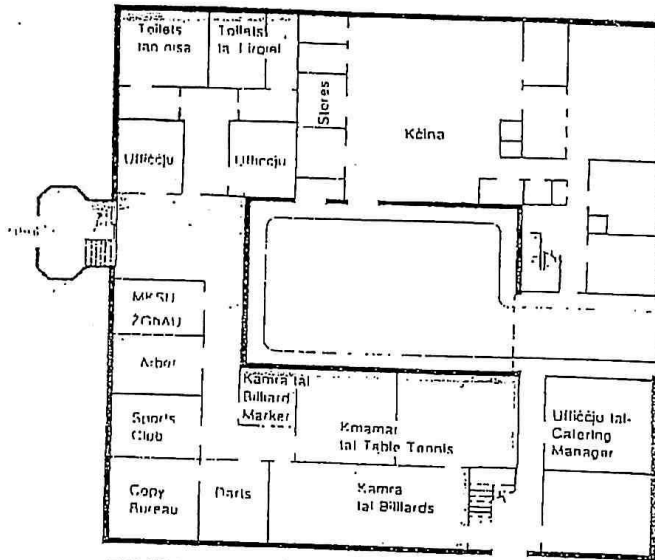
3.3. The KSU will also be responsible for the management of the Junior Common Room at all times. The management of University House on approval of KSU, could allocate the Junior Common Room to third parties with preference being given to students' activities

4. The cleaning and the maintenance of all Student House will be provided by the University as it is in other University Buildings.

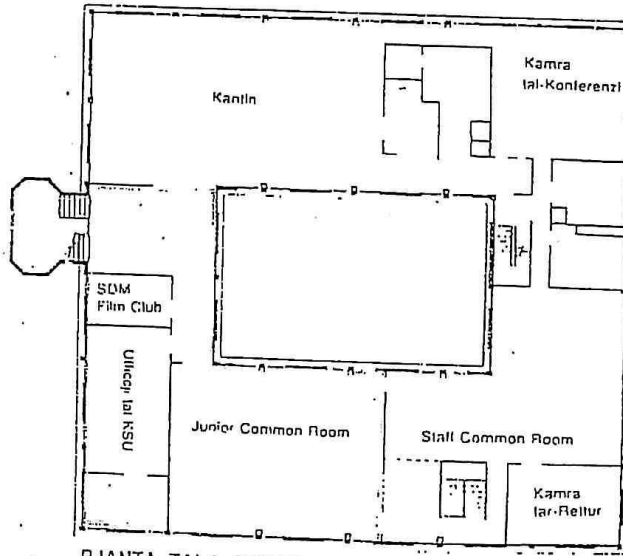
Approved by the KSU Executive on the 6th day of January of this year 1994

  
**TRUE COPY**

### PJANTA TA' DAR L-ISTUDENT



PJANTA TAS-SULAR T'ISFEL



PJANTA TA' L-EWWEL SULAR  
DAR L-ISTUDENT

~~TRUE COPY~~



## **APPENDICI B**

### **KAMARA KOMUNI**

F' Dar L-Istudent ikun hemm kamra ( li tista' tkun dik ta' hdejn l-ufficju tal-KSU) li tista' tintuza mill-ghaqdiet kollha ta' l-istudenti għall-laqgħat tal-kumitati u għat-thejjijiet ta' xi attivita'.

Din il-Kamra tista' tintuza mill-ghaqdiet ta' l-istudenti li ma jkollhomx kamra f'Dar l-Istudent kif ukoll minn studenti individwali.

Hi fid-diskrezzjoni tal-KSU jekk jaccettax jew le t-talbiet li jsiru biex tintuza din il-kamra minn dawk imsemmija f' (b).

L-iskop ta' din il-kamra hu li jkun hemm spazju bizzegjed biex isiru laqgħat tal-kumitati, peress li l-ispazju fil-kmamar ta' l-ghaqdiet se jkun limitat.


### **SOTTO-KUMITAT U KRITERJI**

Ikun hemm kumitat mahtur mill-KSU li c-Chairperson tiegħu i/tkun is-Segretarju/a Generali u li jkollu/jkollha dawn il-funzjonijiet :

- a) iressaq proposti lill-Ezekuttiv dwar l-ghaqdiet li għandhom jingħataw kamra/parti minn kamra f'Dar L-Istudent.
- b) ikollu il-poter li jiddeciedi fuq kwistjonijiet ta' amministrazzjoni tal-facilitajiet, disgwid bejn l-ghaqdiet fuq il-kmamar, ecc.
- c) wara konsultazzjoni ma' l-ghaqdiet jiddeciedi fuq "grouping" ta' l-istess ghaqdiet fil-kmamar allokati.
- d) jinforzza r-"Regolamenti għall-uzu tal-facilitajiet f'Dar l-Istudent" li hemm bhalissa.

Dan il-kumitat irid jagħzel l-ghaqdiet li għandhom jiehdu kamra/parti minn kamra skont il-kriterji li gejjin:

1. L-ghaqda tkun rikonoxxuta mis-Senat ta' L-Universita'
2. Tkun ilha mwaqqfa mill-inqas sena,
3. Tkun wahda generali (mhux tal-Fakulta')

  
**TRUE COPY**

naqda ma tissodisfax xi wahda min dawn il-kriterji ma ghandhiex tinghata f'Dar l-Istudent.

Il-kaz li jkun hemm numru kbir ta' ghaqdiet li jissodisfaw dawn il-kriterji u ma jkunx hemm bizzejjed spazju ghalihom, tinghata prijorita' lil dawk l-ghaqdiet li huma l-aktar attivi u li-jahdmu l-aktar.

Minkejja dan, l-ghaqdiet li ma jinghatawx kamra xorta qed jinghataw l-opportunita' li jaghmlu uzu minn kamra f'Dar l-Istudent, kif provdut fil-paragrafu "KAMRA KOMUNI"

### **FTEHIM**

Il-KSU ser ikollu d-dmir u r-responsabilita' li jamministra Dar l-Istudent. Ghaldaqstant kull ghaqda qabel ma tinghata il-kamra, ghandha tiffirma ftehim li jirregola l-kundizzjonijiet kollha tal-kamra.

Estratti mill-Memorandum approvat mill-Ezekuttiv tal-KSU nhar it-22ta'Novemru 1990

  
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## APPENDIX 4

(j) **Students' House**

the Kunsill Studenti Universitarji (KSU) had submitted a memorandum regarding University House. They are proposing that it be divided into two sections, officially named Students' House and University House. The KSU are requesting that they administer Students' House.

The Council AGREED to the KSU's request, naturally subject to conformity with University Statutes and Regulations, and Maltese Law.

The Secretary informed members that the Billiard Room and the table-tennis facilities are to be housed in the Sports Complex, thus providing more office space for students.

Following a query by Mr A Galea, the Secretary confirmed that the position of members of the non-academic staff in the Sports Section would be safeguarded whether this Complex is run by the University as at present or by a Company.

Mr A Galea also suggested that there should be a games' room for members of the non-academic staff.

## APPENDIX 5



### UNIVERSITY OF MALTA

#### GUIDELINES FOR THE RECOGNITION OF STUDENT SOCIETIES

##### 1. Pre-Requisites for Recognition

- 1.1 The Senate may, after due application made to it, recognize a society as a 'student society' provided its membership and its executive committee are either principally or exclusively composed of students registered at the University of Malta. For the avoidance of doubt, the word 'principally' denotes that at least three-fourths of the members (75 %) be University of Malta students.

Provided that the Senate will not proceed to recognize a society as a student society unless that society satisfies, in the opinion of the Senate, the requirements laid out in these Guidelines.

- 1.2 When a student society does not satisfy all criteria set out in these Guidelines for recognition, the Senate may still opt to grant interim (provisional) recognition to such society, but in this event, the society will not be entitled to receive University grants. Such temporary recognition shall not exceed the period of 6 months.

##### 2. Application

Every society applying to the Senate for recognition must so apply in writing attaching together with such application:

- (i) a certified copy of the Statute of the Society;
- (ii) a statement whether the society is organized on a Faculty or University level;
- (iii) an updated list of members of the society at the time of its application, together with a declaration by an authorized representative of the society, confirming authenticity of signatures of its registered members;
- (iv) an indication of the date when the society came into being and
- (v) a brief statement setting out the aims and purposes of the society.

For the avoidance of doubt, a faculty-level society, for the purposes of these Guidelines, shall include a society at departmental level. Such faculty-level societies may also be constituted within an Institute or Centre of the University of Malta.

##### 3. Criteria for Recognition

- 3.1 The Statute of every student society must, for the purposes of recognition by Senate as such, include:

- (i) a clear statement of the aims and/or activities of the society, provided that the aims of the society are not in conflict with any provision of the Laws of Malta;
- (ii) provision for the composition of the executive committee;

- (iii) a brief definition of the functions and associated duties of each of the officers comprising the executive committee;
  - (iv) a democratic mode of election of the executive committee, which system ought to be duly implemented;
  - (v) provision for the holding of annual general meetings;
  - (vi) procedures to be adopted in connection with annual general meetings;
  - (vii) procedures to be adopted in connection with other general meetings; and
  - (viii) procedures to be adopted when amendments are made to existing statutes.
- 3.2 A student society which no longer satisfies the conditions contained in these Guidelines or which, in the opinion of the Senate, has not conducted its affairs in a proper manner may have its recognition revoked by Senate.

#### 4. **Adoption of Statutes**

Student societies shall adopt a Statute in adherence to these Guidelines, which Statute shall be promptly sent to Senate upon adoption.

#### 5. **Membership**

- 5.1 A student society may be organised either on a University level (that is, the membership is open to ALL University students) or on a Faculty level in terms of Clause 2 of these Guidelines.
- 5.2 When a student society is organised on a University level its minimum membership shall be of 100 members.
- 5.3 When a student society is organised at Faculty level, its minimum membership shall be 33% of the students in the Faculty.

#### 6. **Dormancy**

- 6.1 No society shall be eligible for recognition unless it has been functioning for a minimum period of three calendar months.
- 6.2 Societies which do not hold an annual general meeting or do not hold any activity throughout a whole year shall be deemed to be dormant. There shall be a presumption that societies which do not inform the Registrar to the effect that they have held an Annual General Meeting, or at least an activity throughout the year following the last Annual General Meeting, shall be dormant. Such information shall be provided faithfully, either by the President or by the Secretary of the Society. The presumption referred to here above shall be of a rebuttable nature and therefore subject to evidence to the contrary.

6.3 Should a society be declared dormant, it may re-activate its status by remedying the omission/default, after which a fresh application to re-activate the status shall be sent to Senate for its consideration. Senate may revoke membership of societies which have been dormant for two years.

6.4 A society may not re-activate its status :

after having been declared dormant as a result of a substantial change in its purposes, functions and/or objectives. ; and/or

further to its non-disclosure of the absence of an annual general meeting and/or the absence of any activity.

For the purposes of clause 6 the phrase “an activity” shall be construed to mean functions which are either substantial in nature in that they involve considerable participation or functions which have been reported within the media (excluding the Internet).

7. **Senate Approval**

No student society shall be officially recognised unless and until it receives Senate’s approval.

8. **Financial Affairs**

Proper records of all financial transactions shall be kept by the student society, and may be viewed at any time, by the Director of Finance of the University of Malta and/or his delegate.

9. **Relevant Information for University records.**

9.1 A student society shall, within a month following its Annual General Meeting, submit to the Registrar of the University an Annual Return containing the following information:

- (i) a brief report of the activities of the society during the year;
- (ii) the names of the persons forming the Executive Committee of the Society;
- (iii) a detailed statement of the income and expenditure of the society, supported by receipts. The Accounts so submitted shall be subject to audit by the Finance Office of the University;
- (iv) an updated list of its members.

In addition, the Registrar shall keep:

- (i) a list of societies
- (ii) the status of these societies
- (iii) dates of respective Annual General Meetings of these societies
- (iv) a copy of statutes with highlighted changes (if any) ; and
- (v) details of contact persons of societies, namely of the President or Secretary

9.2 Failure to submit the information mentioned in Clause 9 of these Guidelines shall entail initially the suspension by the Registrar of such recognition. In the event that the society remains in default of filing such information for a period of six months from notice being given to it that it has failed to file such information, then Registrar may recommend to Senate the revocation of recognition enjoyed by the society. Revocation shall, *ipso facto* have the effect of striking off the student society from the registered list of student societies.

10. **Other Reports**

A society shall file with the Registrar of the University a report detailing any changes within its Statute or Constitutive Instruments, and in the members forming its Executive Committee within a month from the happening of such changes. Any changes/amendments that shall not have been brought to the formal cognisance of the Senate shall be deemed not to have been effected. The failure to disclose such change/amendment shall constitute a material breach of the student society's obligations emanating from these Guidelines, on pain of revocation of the recognition. The status of student societies shall be revisited by Senate every five years.

11. **Legal Representation**

Unless otherwise provided in the Statutes of the society, the legal representation of the society shall be vested in the President and Secretary of the society.

*Approved by Senate on 17 June 2010*