

CHAPTER 588**AGENCY FOR INFRASTRUCTURE MALTA ACT**

AN ACT to make provision for the establishment of the Agency for Infrastructure Malta and to regulate such activities and provide for matters ancillary or incidental thereto or connected therewith.

4th September, 2018

[ACT XXVIII of 2018](#), as amended by Act [VI of 2020](#).

ARRANGEMENT OF THE ACT

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PART I
Preliminary

Short title. **1.** The short title of this Act is the Agency for Infrastructure Malta Act.

PART II
Agency for Infrastructure Malta

Objective. **2.** The provisions of this Part provide for the establishment of the Agency for Infrastructure Malta.

Interpretation.
Amended by:
VI.2020.2.
Cap. 499. **3.** (1) Unless otherwise provided in this Act, the provisions of article 2 of the [Authority for Transport in Malta Act](#) shall apply.

(2) In this Act unless the context otherwise requires, the following expressions have the meaning hereby assigned to them:

"Act" or "this Act" means this Act and includes any regulations made thereunder unless the context otherwise requires;

"Agency" means the Agency for Infrastructure Malta established under article 4 and includes any person acting on its behalf under powers delegated by the Agency to that person in accordance with the provisions of this Act;

"arterial and distributor road" means any road which has been classified and designated as such by the Authority for Transport in Malta, which classification and designation may be amended by the Authority for Transport in Malta from time to time;

"Board" means the Board of the Agency appointed in terms of article 8;

"carriageway" means that part of a road which is principally intended for vehicular traffic;

"Chairperson" means the Chairperson of the Agency and includes, in the circumstances mentioned in article 8, the deputy Chairperson;

"Chief Executive Officer" means the Chief Executive Officer of the Agency appointed under article 8;

"connected person" means a person who is connected to another person, in this definition referred to as a "Board member", by virtue of:

Cap. 571. (a) being a Board member's spouse or partner, child or step-child, parent, cohabitant of whatever nature in terms of the [Cohabitation Act](#) and any other

dependent of that Board member; or

(b) being a body corporate in which the Board member or any of the persons mentioned in paragraph (a) above or both:

(i) holds or hold shares of a nominal value equal to at least twenty per cent (20%) of the share capital of that body corporate; or

(ii) is or are entitled to control the exercise of more than twenty per cent (20%) of the voting power at any general meeting of that body corporate; or

(c) acting in a capacity as trustee of any trust, the beneficiaries of which include:

(i) the Board member, or any other person mentioned in paragraph (a) above; or

(ii) a body corporate as set out in paragraph (b) above; or

(d) acting in a capacity as a business partner of that Board member or of any person who, by virtue of paragraphs (a), (b) or (c) is connected with the Board member;

"financial year" means a period of twelve months beginning on the 1st day of January and ending on the 31st day of December of each year;

"footway" means the paved or surfaced area forming part of a road at one or both borders of a carriageway and which is intended for pedestrian traffic;

"Local Council" means a local council established under the [Local Government Act](#);

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"local road" means a road which is not designated as an arterial or distributor road and which is not a private road, and includes any road which has been classified and designated as such by the Authority for Transport in Malta, which classification and designation may be amended by the Authority for Transport in Malta from time to time;

"maritime infrastructure" includes any ports, piers, slipways, quays, jetties, landing places, port facilities, coastlines, piers, docks, mooring platforms, breakwaters and sea defences, and similar structures in or adjoining the same or similar places;

"Minister" means the Minister responsible for Infrastructure as may be vested with responsibility for the Agency;

"port" means port according to the dispositions in the Authority for Transport in Malta Act;

"private road" means any way on land, by whatever name called, which is not the property of the Government and over which there is generally no public right of passage at all times of the day but which is accessible to vehicles and, or pedestrians, whether intended for vehicular and, or pedestrian traffic or not;

"road" means any way on land, by whatever name called, over which there is a public right of passage (by whatever means) and consists of carriageways and footways, and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes, and any reference to a road includes any part thereof, including:

(a) the foundations, sub-surfaces and surface dressing thereof;

(b) central strips, roundabouts, traffic islands, footways and bicycle lanes; and

(c) road drainage works and access thereto, trenches and trenching works for utilities including access thereto, ducting, conducting and the like for the distribution of utilities or the provision of services, including works connected therewith or ancillary thereto and manholes or other means of access to such utilities or works;

"utility service provider" means an authority or an enterprise, the primary business of which is to provide electricity, gas or water, potable or second class water, including disposal or treatment of sewage, and drainage services to the public.

Part I: Constitution and functions of the Agency for Infrastructure Malta

Agency to be a
body corporate.

4. The Agency shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, of acquiring, holding and disposing by whatever title any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise of its functions under this Act,

including the borrowing of money.

5. (1) Without prejudice to any other power or function conferred to it by this Act or by any other law, it shall be the function of the Agency:

Functions.
Amended by:
VI.2020.3.

(a) to implement national plans for road and maritime infrastructure construction and road infrastructure strategies;

(b) to implement, whether by itself or through any person or group of persons, in accordance with the provisions of this Act, applicable strategies or master plans however so described, relating to road construction and road and maritime infrastructure;

(c) to occupy, plan, design, construct, re-construct, repair, widen and renew any road, maintain the upkeep of, improve, manage, administer restore any road and maritime infrastructure and to manage and control any necessary road works, to do any works however so described, including but not limited to the planning and programming thereof and the planning and programming for the rebuilding and restoration of any existing roads and maritime infrastructure:

Provided that the property and undertakings owned by the Authority for Transport in Malta, or owned by the Government and used by the said Authority, on which the Agency shall undertake the mentioned works, shall remain the Authority's assets:

Provided that where the maintenance of any local road is by law the responsibility of a local council, the maintenance of such road shall not, to the extent of such responsibility, be the function of the Agency:

Provided further that the Agency shall have no obligations in relation to any private roads;

(d) to erect, construct, develop and maintain on any road, the following:

(i) poles and light fittings;

(ii) road traffic safety and management facilities, including signs or signals, road markings and traffic calming measures, traffic control and management equipment, related lighting equipment and other road traffic facilities used for traffic management and control:

Provided that the operation and

maintenance of permanent electronic road traffic signs or signals, electronic traffic measures, electronic traffic control equipment and related lighting equipment and any other electronic road traffic facilities used for road safety and traffic management shall be vested in, and shall be the sole responsibility of, the Authority for Transport in Malta;

(e) to advise the Government on the formulation of policies relating to road infrastructure in Malta and to make recommendations to the Government on action which in the opinion of the Agency would be expedient in relation to matters within its functions.

(2) Without prejudice to the above, the Minister may, from time to time, give to the Agency directions, not inconsistent with the provisions of this Act, to be followed by the Agency in the carrying out of its functions under this Act, and the Agency shall, as soon as practicable, give effect to all such directions.

(3) It shall be the responsibility of the Minister to ensure that the Agency is fully informed of strategic directions of Government in relation to this Act, and it shall be the duty of the Agency through its proper organs to properly execute such policies.

(4) For the proper performance of its functions under this Act, the Agency shall consult with the relevant local council and be empowered to collaborate with any other person, including other agencies, public authorities and Government departments, and to make arrangements for mutual exchange of information and for other forms of assistance.

(5) In pursuance of its functions under this Act, the Agency shall regulate its own procedure.

Powers.

6. (1) The Agency shall have such powers as may be necessary or conducive for the proper performance and attainment of all its functions under this Act, and without limitation to the generality of the foregoing, but subject to any requirements under any other law, shall have the power and authority to:

(a) acquire, construct, reconstruct, maintain and operate road installations and equipment;

(b) acquire, take the necessary measures in terms of the [Land Acquisition \(Public Purposes\) Ordinance](#) and the [Lands Authority Act](#) to acquire, any property under any title which the Agency considers necessary for the purposes of constructing, extending or maintaining any road or road installation in accordance with the functions of the Agency in terms of this Act;

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Cap. 563.

- (c) hold and administer any assets from time to time;
- (d) do all acts and things necessary for the opening and, or breaking up of the surface of any road;
- (e) carry on, whether as principal, as agent or as a contractor, all such activities as may appear to the Agency necessary, advantageous or convenient to be carried on for, or in connection with the proper performance or attainment of any of the functions of the Agency under this Act or in order to make the best use of the assets of the Agency;
- (f) contract road works where such road works are to be commissioned by a utility services provider, the Government or any authority:

Provided that where such works are contracted by the Agency, this shall be done on behalf and at the expense of the utility service provider or the Government or any authority concerned;

- (g) exercise, perform, discharge and delegate all such rights, powers, duties and functions as are by or under this Act vested in or assigned to the Agency;
- (h) do all such other acts as are incidental to or consequential upon the exercise, proper performance and discharge of its powers, duties and functions, or for the attainment of its functions, under this Act.

(2) For the purposes of the proper performance or attainment of the functions of the Agency under this Act, the Agency may grant to any third party the right to carry on, engage in, perform, whether in whole or in part, and whether as operator, concessionaire, manager, agent, independent contractor or otherwise, any functions, activities, operations, duties or transactions which the Agency is authorised and empowered or obliged to carry on or engage in or perform under or in accordance with this Act:

Provided that this sub-article shall not be construed as exempting the Agency from complying with the requirements of any applicable law, directive, authorisation, licence or permit.

(3) In carrying out its functions, the Agency shall:

- (a) ensure that it is in possession of any licences, permits or authorisations howsoever described as may be required by law and that it complies with any conditions as may be imposed in any such licences, permits or authorisations however so described;
- (b) be subject to and abide by any laws, orders,

directives, standards and any other legal requirements however so described, as may be imposed by or under this Act or any other law.

(4) Notwithstanding the provisions of any other law, the use, administration and operation of all roads falling under the responsibility of the Agency in terms of this Act are vested exclusively in the Agency.

(5) The Agency shall, in the carrying out of its functions, consult with any relevant public authority, including local councils, and any private entities and establish processes and procedures as well as working practices, to ensure efficient processes for any road works that are to be undertaken by the Agency and for any permits to be issued by any relevant public authority for road works in accordance with the applicable law.

Conduct of affairs.

7. (1) The Agency shall be governed by a Board appointed in accordance with the provisions of this Act.

(2) The Board shall be responsible for the business of the Agency and for the formulation and implementation of the policy and strategy of the Agency, and shall give to the Chief Executive Officer such directions as it deems proper for the proper performance by the Agency of its functions.

(3) In particular, but without prejudice to any other duty assigned to the members of the Board, whether individually or collectively by this Act or any other law, the members of the Board shall:

(a) act honestly and in good faith and promote the best interests of the Agency;

(b) be obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person having both:

(i) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that Board member in relation to the Agency; and

(ii) the knowledge, skill and experience that that Board member has;

(c) not make any profit from their position, nor make personal gain or give any advantage to any third party from confidential Agency information;

(d) ensure that their personal interests are not in conflict with the interests of the Agency;

(e) not use any property or information of the Agency for their own benefit or for the benefit of any other persons, nor obtain benefit in any other way in connection with the exercise of their powers;

(f) exercise the powers they have only for the purposes for which the powers are conferred and not misuse such powers.

8. (1) The Board shall consist of seven (7) members appointed by the Minister, including the Chief Executive Officer.

Composition of
Board of the
Agency.

(2) The Minister shall designate one of the appointed members as Chairperson and another member as deputy Chairperson. The deputy Chairperson shall have all the powers and perform all the functions of the Chairperson during his absence or in the event that the office of the Chairperson becomes vacant.

(3) The Minister shall select the members from among persons who appear to him to be qualified by reason of having had experience of, and shown capacity in, matters relating to the functions of the Agency under this Act.

(4) The members shall receive such remuneration as the Minister may from time to time determine.

9. (1) There shall be appointed a secretary to the Board, who shall be appointed for a period of three (3) years and shall, on the expiry of the term of appointment, be eligible for re-appointment. If the secretary is appointed at any time after any one or more members have already been appointed, the term of appointment of the secretary shall end on the date being three (3) years after the appointment of the first member appointed as a member of the Board. The secretary shall be appointed by the Board.

Secretary to the
Board.

(2) The secretary to the Board appointed in terms of sub-article (1) above shall not be a member of the Board, but shall have the right to attend Board meetings.

(3) The secretary to the Board shall be responsible for maintaining the minutes of meetings of the Board and for keeping and maintaining such registers and records as the secretary may be required to keep by the Board.

(4) The secretary to the Board shall ensure that:

(a) adequate prior notice of all meetings is given to all members of the Board; and

(b) all returns and other documents of the Agency are prepared and delivered in accordance with the requirements of any applicable law and regulations.

(5) The provisions of article 12 shall apply to the secretary of the Board.

Duration of
appointment to
Board.

10. (1) Subject to the provisions of sub-article (3) and article 12, the members of the Board shall hold office for a period of up to three (3) years and on such terms and conditions as the Minister may deem appropriate:

Provided that a member shall, on the expiry of this term of appointment, be eligible for re-appointment.

(2) The Minister may at any time terminate the appointment of any member of the Board if the Minister considers that such member is unfit to continue in office or has become incapable of properly performing the duties of a member of the Board.

(3) If a member is appointed at any time after any one or more other members have already been appointed, the term of appointment of all members shall end on the date being three (3) years after the appointment of the first member appointed as a member of the Board.

Disqualification
from being a
member of the
Board of the
Agency.

11. (1) A natural person shall be disqualified for appointment to, or to remain a member of the Board if such person:

(a) is a Minister or Parliamentary Secretary; or

(b) is a Judge or Magistrate of the Courts of Justice;

or

(c) is legally incapacitated or interdicted; or

(d) has been declared an undischarged bankrupt or has made a composition or arrangement with his creditors; or

Cap. 386.
S.L. 601.03.

(e) is subject to disqualification under article 320 of the [Companies Act](#) or is subject to black-listing as provided in the [Public Procurement Regulations](#); or

(f) has any personal financial or business interests in any business, enterprise or activity which is connected to any of the functions of the Agency and which is likely to affect his independence or objectivity in the proper discharge of his functions as a member of the Board; or

(g) is a connected person to the person mentioned in sub-article (f) above.

(2) Notwithstanding the above or any other provision of this Act or of any other law, no person occupying a public office or any office in any agency or body established by law or a company in which the Government has a controlling interest, shall be disqualified from occupying the office of Chairperson of the Agency, member of the

Board of the Agency or Chief Executive Officer of the Agency.

12. (1) Any member who has a direct or indirect interest in any contract, proposed contract or in any transaction or arrangement (whether or not constituting a contract) made or proposed to be made by or with the Agency, not being an interest which disqualifies such member under article 11 above from being or remaining a member, shall disclose the nature of such interest, or, if applicable, the nature of the interest of a connected person, at the first meeting of the Board after the relevant facts have come to the knowledge of such member.

Conflicts of interests.

(2) After the disclosure has been recorded in the minutes of the meeting of the Board, that member shall withdraw from that part or parts of the meeting at which such contract, proposed contract, transaction or arrangement however so described is discussed or decided on by the Board and, in any event, that member shall be prohibited from voting on such contract, proposed contract, transaction or arrangement.

(3) If the Board is of the view that an interest disclosed to it under article 12(1) is such that it satisfies the grounds for disqualification of a person from being a member of the Board in terms of article 11(1)(f) or (g) above, the Board shall notify the Minister in writing, and the Minister shall take such steps as he may deem necessary in such circumstances, including either (i) notifying the Board that he disagrees with the Board giving his reasons therefor or (ii) terminating the appointment of such member pursuant to article 10(2).

13. (1) A member of the Board may resign from office at any time, by letter addressed to the Chairperson and copied to the Minister.

Resignation from the Board and publication of appointment and termination of office.

(2) The appointment of any person as member of the Board and the termination of office of any such member shall be notified in the Gazette.

14. (1) The meetings of the Board shall be called by the Chairperson, either on his own initiative or at the request of any two (2) other members of the Board.

Provisions with respect to proceedings of the Board.

(2) A minimum of four (4) members of the Board shall constitute a quorum at any meeting. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairperson shall have an initial vote and, in the event of an equality of votes, a casting vote.

(3) Subject to the provisions of this Act, the Board may regulate its own procedure.

(4) Subject to the foregoing provisions of this article, no act or proceeding of the Board shall be invalidated merely by reason of the existence of any vacancy among the members, provided that the

minimum number of Board members in terms of sub-article (2) has been satisfied.

(5) Notwithstanding that there occurs some defect in the appointment of or qualification to be appointed as a member of the Board, all acts done by a person acting in good faith as a member of the Board shall be valid as if he were a member duly appointed and, or qualified.

Powers of the Minister in relation to the Agency and duties of the Board towards the Minister.

15. (1) The Minister may, in relation to matters that appear to him to affect the public interest, from time to time, give to the Agency directions of a general or of a specific character, not inconsistent with the provisions of this Act, on the policy to be followed or other action to be taken in the carrying out of the functions vested in the Agency by or under this Act, and the Board shall, as soon as practicable, give effect to all such directions.

(2) The Board shall afford to the Minister facilities for obtaining information with respect to the property and activities of the Agency and furnish him with returns, accounts and other information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

Legal and judicial representation.

16. (1) The legal and judicial representation of the Agency shall vest in the Chairperson:

Provided that the Agency may appoint any one (1) or more persons to appear in the name and on behalf of the Agency in any proceedings and in any act, contract, instrument or other document whatsoever, with such powers, authorities and under such terms and conditions as the Board may determine from time to time, which powers shall include the power of delegation.

(2) Any document purporting to be an instrument made or issued by the Agency and signed by the Chairperson or by any officer delegated by the Board on behalf of the Agency shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Agency.

Executive conduct of Agency.

17. (1) The Chief Executive Officer shall be a member of the Board and shall be the most senior executive of the Agency and shall be responsible and accountable directly to the Board for the executive conduct of the Agency.

(2) Without limitation to the generality of the foregoing, the responsibilities of the Chief Executive Officer shall include:

- (i) the administration and organisation of the Agency;
- (ii) the administrative control of the officers and

other employees of the Agency;

(iii) the implementation of the business plan of the Agency, its objectives and budget;

(iv) upholding, promoting and fostering among the Agency, its officers and its employees, the public service values and those specific to the role of the Agency; and

(v) such other functions as may from time to time be conferred or delegated to him by the Board.

(3) The Chief Executive Officer shall have such powers as are necessary from time to time for the performance of the functions vested in him by this Act, and such other powers as may be conferred or delegated to him by the Board.

18. (1) Without prejudice to the other provisions of this Act, the appointment of officers and other employees of the Agency shall be made by the Chief Executive Officer, in accordance with the policies and directions of the Board from time to time.

Staff appointments.

(2) The Chief Executive Officer shall appoint and employ, at such remuneration and upon such terms and conditions as may be determined by the Board, such officers and employees of the Agency as may from time to time be necessary for the due and efficient discharge of the functions of the Agency.

(3) Notwithstanding the provisions of this article, the Prime Minister may, from time to time on the recommendation of the Chief Executive Officer of the Agency, direct that any public officer shall be detailed for duty with the Agency in such capacity and with effect from such date as may be specified in the direction of the Prime Minister.

19. (1) Where any public officer is detailed for duty with the Agency under article 18(3) above, such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Agency but he shall for all intents and purposes remain and be considered and treated as a public officer.

Status of public officers detailed for duty with the Agency.

(2) Without prejudice to the generality of the foregoing, a public officer detailed for duty as aforesaid:

(a) shall not during the time in respect of which he is so detailed:

(i) be precluded from applying for a transfer to a Government department however so described in accordance with the terms and conditions of service attached to the appointment held by him under the

Government on the date on which he was so detailed for duty; or

(ii) receive remuneration and be subject to conditions of service which are less favourable than those attached to the appointment under the Government held by him on the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Agency; and

Cap. 93.
Cap. 58.

(b) shall be entitled to have his service with the Agency considered as service with the Government for the purposes of any pension, gratuity, or benefit under the [Pensions Ordinance](#) and the [Widows' and Orphans' Pensions Act](#) and for the purpose of any other right or privilege to which he would have been entitled, and responsible for any liability for which he would have been answerable, but for the fact of his being detailed for duty with the Agency.

(3) Where an application is made as provided in sub-article (2)(a)(i) above, the same consideration shall be given thereto as if the applicant had not been detailed for service with the Agency.

(4) The Agency shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Agency as aforesaid during the period in which he is so detailed.

Offer of permanent employment with the Agency to public officers detailed for duty with the Agency.

20. (1) The Agency may, with the approval of the Prime Minister, offer permanent employment with the Agency to any officer detailed for duty with the Agency under article 18(3) at the remuneration and on terms and conditions not less favourable than those enjoyed by such officer on the date of such offer.

(2) The terms and conditions of any permanent employment offered by the Agency under the provisions of sub-article (1) shall not be deemed to be less favourable merely because they are not in all respects identical or superior to those enjoyed by the public officer concerned on the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

Cap. 93.
Cap. 58.

(3) Every public officer who accepts permanent employment with the Agency offered to him under the provisions of sub-article (1) shall, for all purposes other than those of the [Pensions Ordinance](#) and of the [Widows' and Orphans' Pensions Act](#), and saving the provisions of article 21, be deemed to have ceased to be in service with the Government and to have entered into service with the Agency on the

date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Agency shall be deemed to be service with the Government within the meanings thereof respectively.

(4) Every such public officer as aforesaid who, immediately before accepting permanent employment with the Agency was entitled to benefit under the [Widows' and Orphans' Pensions Act](#), shall continue to be so entitled to benefit thereunder for all intents as if his service with the Agency were service with the Government. Cap. 58.

(5) The Agency shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted permanent employment with the Agency as aforesaid during the period commencing on the date of such officer's acceptance.

21. The members of the Board of the Agency and all officers and employees detailed with the Agency under the provisions of article 18(3), but excluding any officer who accepts permanent employment with the Agency in accordance with the provisions of article 20, shall be deemed to be public officers or employees within the meaning of the [Criminal Code](#). Persons deemed to be public officers. Cap. 9.

Part II: Financial Provisions

22. (1) The Agency shall cause to be prepared in every financial year, and shall not later than four (4) weeks after the end of each such year adopt, estimates of the income and expenditure of the Agency for the next following financial year and submit them for the consideration of the Minister in accordance with norms and practices established by the Minister responsible for finance. Finance.

(2) The Agency shall be funded by the Government out of the Consolidated Fund through such sums as the House may from time to time authorise and through such sums as may be authorised by any other law, to be appropriated to meet the cost of its operational and capital expenditure identified in its financial business plan or budget.

(3) Any excess of revenue over expenditure shall, subject to such directives as the Minister may, after consultation with the Minister responsible for finance, from time to time give, be applied by the Agency to the formation of reserve funds to be used for the purposes of the Agency, and without prejudice to the generality of the powers given to the Minister by this sub-article, any directive given by the Minister as aforesaid may order the transfer to the Government, or the application of such funds in such manner as may be specified in the directive.

(4) Any funds of the Agency not immediately required to meet expenditure may be invested in such manner as may from time to time

be approved by the Board.

Accounts and
audit.

23. (1) The Agency shall keep proper accounts and other records in respect of its operations and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the Agency shall be audited by an auditor or auditors to be appointed by the Agency and approved by the Minister:

Provided that the Minister responsible for finance may, after consultation with the Minister, require that the books and accounts of the Agency be audited or examined by the Auditor General who shall for this purpose have the power to carry out such physical checking and any other certifications as he may deem necessary.

(3) After the end of each financial year, and not later than six (6) months, the Agency shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister and to the Minister responsible for finance, together with a copy of any report made by the auditors on that statement or on the accounts of the Agency.

(4) The Minister shall cause a copy of every such statement and report to be laid on the Table of the House as soon as practicable.

Annual reports.

24. (1) The Agency shall, not later than six (6) months after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance, a report dealing generally with the activities of the Agency during that financial year and containing an audited statement of accounts together with such information relating to the proceedings and working of the Agency as either of the Ministers may from time to time require. The Minister shall cause a copy of every such report to be laid on the Table of the House as soon as practicable.

Exemption from
taxation.

25. The Agency shall be exempt from any liability for the payment of income tax and duty on documents under any law for the time being in force.

Part III: Liability for injury or damage

Liability for injury
or damage.

26. (1) In any action in respect of injury or damage sustained by any person or property resulting from the failure to maintain a road, such actions shall be instituted against:

(i) the Authority for Transport in Malta in relation to any injury or damage sustained by any person or property at the time when before the order in article 27(1) the relevant road fell within its responsibility in terms of applicable legislation;

(ii) the Agency in relation to any injury or damage sustained by any person or property at the time when after the order in article 27(1) the relevant road is within its responsibility

in terms of applicable legislation; and

(iii) a local council in relation to any injury or damage sustained by any person or property at the time when the relevant road is within its responsibility in terms of applicable legislation and the orders in article 27(2) and (3) respectively as applicable:

Provided that where a road is classified as a local road in accordance with applicable legislation and is to any extent the responsibility of a local council in terms of the [Local Government Act](#), the responsibility for such local road shall not, to the extent of such responsibility, be the function of the respective local council if the works are of an extraordinary nature and in such case the Agency will be responsible thereof.

Cap. 363.

(2) In either of the cases mentioned in sub-article (1) above in relation to the Authority for Transport in Malta, the Agency or local council as the case may be, it shall be a defence to prove that:

(a) the Authority for Transport in Malta, the Agency or local council, as the case may be, had taken such care as in the circumstances was reasonably required to secure that the part of the road to which the action relates was not dangerous for traffic; or

(b) that the injury or damage resulted -

(i) from works carried out on or under that part of the road to which the action relates; and

(ii) from an event which occurred before the completion of the re-instatement or making good of that part of the road in accordance with any relevant requirement.

(3) For the purposes of a defence under sub-article (2)(a) above, the court shall in particular have regard to the following:

(a) the character of the road, and the traffic which was reasonably expected to use it;

(b) the standard of maintenance appropriate for a road of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the road;

(d) whether the Authority for Transport in Malta, Agency or local council, as the case may be, knew or could reasonably have been expected to know that the condition of the part of the road to which the action relates was likely to cause

danger to users of the road;

(e) where the Authority for Transport in Malta, the Agency or local council, as the case may be, could not reasonably have been expected to repair that part of the road before the cause of action arose, what warning notices of its condition had been displayed:

Provided that for the purposes of such a defence, it shall not be relevant to prove that the Authority for Transport in Malta, the Agency or local council, as the case may be, had arranged for an authorised contractor to carry out or supervise the maintenance of the part of the road to which the action relates, unless it is also proved that the Authority for Transport in Malta, the Agency or local council as the case may be, had given that contractor written instructions with regard to the maintenance of the road and that it had carried out the instructions.

Part IV: Transitory Provisions

Transfer of
functions and
powers to the
Agency.

27. (1) The Minister shall by order in the Gazette, bring into effect articles 5, 6 and Part III of this Act and thereby automatically transfer such functions and powers set out in articles 5 and 6 which are currently vested in the Authority for Transport in Malta to the Agency in accordance with the provisions of this Act. As of the date upon which the functions or powers so transferred from the Authority for Transport in Malta to the Agency become effective, the Authority for Transport in Malta shall have no further liability or responsibility for the discharge or carrying out of such functions or powers.

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(2) The Minister shall, by order in the Gazette and after articles 5 and 6 and Part IV of this Act become effective, transfer to the Agency such functions and powers with respect to roads which are vested in local councils under the [Local Government Act](#), in accordance with the provisions of this Act. The Minister may affect such transfer in either one or a series of schemes with respect to such roads as are to be set out in the order in the Gazette, and in such manner as the Minister considers most appropriate and expedient for the better attainment of the objectives of this Act:

Provided that until such time as the responsibility for a road is transferred to the Agency in accordance with the provisions of this article, the responsibility for that road shall remain with the local council vested with that responsibility in accordance with applicable legislation.

(3) The Minister may, from time to time by legal notice, re-transfer certain functions and powers for the maintenance and upkeep of local roads to local councils if it appears to the Minister that such re-transfer of those functions and powers is appropriate or expedient

for the better maintenance and upkeep of those local roads:

Provided that where a road is classified as a local road in accordance with applicable legislation and is to any extent the responsibility of a local council in terms of the [Local Government Act](#), the responsibility for such local road shall not, to the extent of such responsibility, be the function of the respective local council upon the transfer thereof by the Agency, until such date as the Minister so prescribes pursuant to a legal notice re-transferring such responsibilities under this Act.

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28. Where before the date of the coming into force of any part of this Act there are any pending contracts concluded by the Authority for Transport in Malta with third parties relating to any of the functions transferred to the Agency by or under this Act, any such contract shall be transferred to the Agency who shall, as from the date of coming into force of this Act as aforesaid, substitute the Authority for Transport in Malta as a party to the respective contract.

Transitory provisions.

29. Where before the date of the coming into force of any part of this Act there are any pending lawsuits, claims, final court judgments, damages, penalties, fines, liabilities, demands and, or losses, against the Authority for Transport in Malta relating to any of the functions transferred to the Agency by or under this Act as from the date of the coming into force of this Act as aforesaid, the Authority for Transport in Malta shall remain solely responsible therefor, without any liability on the part of the Agency:

Pending lawsuits, claims, final court judgments, etc.

Provided that, save for the provisions of article 26, if a claim, sanction, or recovery order is made with respect to a project in connection to any road that was undertaken by the Authority for Transport in Malta, then any liability, cost, or expense that may eventually arise with respect to such project shall remain at the charge of the Authority for Transport in Malta.
