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L.N. 192 of 2019

**PUBLIC ADMINISTRATION ACT
(CAP. 595)
Building and Construction Agency (Establishment) Order, 2019**

IN EXERCISE of the powers conferred by article 36 of the Public Administration Act, the Prime Minister has made the following order:-

Title. **1.** The title of this order is the Building and Construction Agency (Establishment) Order, 2019.

Interpretation. **2.** In this order, unless the context otherwise requires:

Cap. 595. "the Act" means the Public Administration Act;

"Agency" means the Building and Construction Agency established by article 3;

"Authority" means the Building and Construction Authority that shall be set up by an Act, which will take over all the functions of the Agency once the Authority is set up;

"Minister" means Minister responsible for infrastructure; and

"Permanent Secretary" means the Permanent Secretary in the Ministry responsible for Infrastructure.

Establishment and functions of the Agency. **3.** (1) There shall be established an Agency, to be known as the Building and Construction Agency, hereinafter referred to as "the Agency".

(2) The Agency shall be a body corporate having a distinct legal personality and capable of entering into contracts, of acquiring and disposing of property of any kind for the purposes of its functions under this order and any other law, of suing and of being sued, and of doing all such things and entering into all transactions as are incidental to or conducive to the exercise or performance of its functions hereunder.

(3) The Agency shall achieve its objective through the performance, amongst others, of the following functions:

(a) the initiation of the design, implementation and dissemination of policies together with the consolidation and review of laws and regulations, in the form of a national building

code which aim to better management of the building and the construction sectors in the Maltese Islands and shall carry out all the necessary preparations to set up the Building and Construction Authority;

(b) all change management issues in relation to the employees engaged with the Building Regulation Office, the Building Industry Consultative Council, the Building Regulations Board, and the Masons Board; and

(c) the Agency shall be responsible for all processes related to the change in management required in the enforcement of national building code.

(4) The Agency shall have the power to formulate its own rules, schedules and administrative procedures.

(5) The Agency shall exercise any other function that may be assigned by the Minister responsible for Infrastructure.

(6) In fulfilling its functions, the Agency shall have the power to:

(a) collaborate with other agencies, corporations, authorities, government and non government entities and other persons for the carrying out of its functions;

(b) enter into arrangements with public bodies, public authorities, government departments, public corporations, and local councils in fulfilling its functions;

(c) manage its own finances; and

(d) with the consent of the Minister, enter into joint ventures or partnerships or other agreements for the purpose of fulfilling any of its functions.

4. The Minister responsible for infrastructure shall be the Minister responsible for the Agency.

Minister responsible for the Agency.

5. (1) The Agency shall be composed of a Chairperson appointed under article 8(3) and of the Board established under article 8(4), and any other unit necessary for the fulfilment of the powers and functions as outlined in this order.

Composition of the Agency.

(2) The Agency shall be governed by the provisions of Title II of Part III of the Act and shall be regulated thereby.

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Finances.
Cap.174.

6. (1) The Agency shall be governed by the provisions of the Financial Administration and Audit Act unless otherwise stated in the Agreement between the Permanent Secretary and the Agency, in which case the provisions of the Agreement shall prevail.

(2) Without prejudice to the following provisions of this order, the Agency shall so conduct its affairs that so much of the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.

(3) For such purpose the Agency shall levy all fees, rates and other payments prescribed or deemed to be prescribed by or under this order or any other law related to the powers and functions of the Agency.

(4) The Agency shall also be paid by the Government out of the Consolidated Fund such sums as the House, may from time to time authorise to be appropriated to meet any of its expenditure that cannot be met out of its revenue and the costs of specified works to be continued or otherwise carried out by the Agency.

Functions.

7. (1) The Agency shall, in consultation with the Minister, establish and re-organise units, divisions and sections as appropriate in order to exercise its functions.

(2) The operations of the Agency shall follow an Agreement which is to be agreed upon between the Minister and the Agency.

Composition of
the Board.

8. (1) The Agency shall be directed by a Board composed of seven (7) members.

(2) All the Directors shall be non-Executive Directors, each having one (1) vote.

(3) One (1) of the seven (7) Directors shall be a non-Executive Chairperson.

(4) The Minister shall appoint the Board of Directors which shall consist as follows:

(a) the Chairperson, who shall be appointed by the Minister for responsible infrastructure;

(b) one (1) member who shall be representing the Building Regulation Office;

(c) one (1) member who shall be representing the Building Regulations Board;

(d) one (1) member who shall be representing the Building Industry Consultative Council;

(e) one (1) member who shall representing the Masons Board;

(f) two (2) members shall be appointed by the Minister, one (1) of which shall be a person of a recognised standing in the auditing profession and another shall be a warranted advocate with experience of practicing in the field

(5) The members of the Board shall hold office for a period not exceeding two (2) years.

(6) The Minister may designate any one (1) other member of the Board as Deputy Chairperson and the member so designated shall have all the powers and perform all the functions of the Chairperson during the Chairperson's temporary absence or inability to act as Chairperson, or while the Chairperson is on vacation, or during any vacancy in the office of Chairperson.

(7) The Chairperson or any other member of the Board may be removed from office by the Minister prior to the expiry of his term of office where, in the opinion of the Minister, he has:

(a) been guilty of misconduct; or

(b) on ground of inability to continue to perform the functions of office, due to infirmity of mind or of body; or

(c) of misbehaviour; or

(d) any other reasonable cause.

(8) (a) The Board may act notwithstanding any vacancy among its members:

Provided that a quorum is present at each meeting;

(b) (i) the quorum at all meetings of the Board shall not be less than half of the voting members plus one (1);

(ii) in the absence of the Chairperson at any meeting of the Board, the Deputy Chairperson shall act as Chairperson; in the absence of both the Chairperson and the Deputy Chairperson, the members present may select from amongst themselves a person to act as chairperson at the meeting;

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(c) the decisions of the Board shall be taken by a majority of the votes of the members present and voting. The Chairperson presiding at the meeting shall have a second or casting vote;

(d) the Board shall hold such number of meetings as may be necessary for the performance of its functions, and shall meet not less than once a month. The Chairperson of his own motion or any two (2) of the voting members may at any time convene a meeting of the Board.

(9) The Minister shall appoint a person to act as secretary of the Board.

(10) The remuneration paid to the members of the Board shall be in accordance with the Framework for the Categorisation, Classification and Remuneration Structure for Government Appointed Boards and Committees or any other document superseding the same.

(11) The Board may regulate its own procedure generally, and, in particular, regarding the holding of meetings of the Board, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and audit of accounts.

(12) Any member of the Board shall abide by the Code of Ethics for Board members in the Public Sector issued by the Office of the Prime Minister. Any member of the Board, shall also sign an understanding outlining his duties as Board member, including the duty of confidentiality and regulating conflicts of interest.

Appointment of
the Chief
Executive
Officer.
Cap. 595.

9. (1) The Board may, with the approval of the Minister, appoint a Chief Executive Officer after a call for applications is issued by the Agency to this effect or, in the case where no such call is issued, the provisions of the Public Administration Act shall apply insofar as the appointment of the Chief Executive Officer is concerned.

(2) The Chief Executive Officer shall be invited to the meetings of the Board but shall not have a vote at such meetings:

Provided that the Chief Executive Officer shall not be present during meetings of the board or any part thereof in cases of potential and actual conflict of interest.

Legal
representation.

10. (1) The legal and judicial representation of the Agency shall vest in the Chief Executive Officer:

Provided that the Agency may appoint by means of a

written board resolution any one (1) or more of its members or officers or employees to appear in the name and on behalf of the Agency in any judicial proceedings and in any act, contract, instrument or other document whatsoever.

11. (1) Subject to the provisions of the Constitution, any other enactment applicable thereto, and without prejudice to the other provisions of this order, the appointment of employees of the Agency shall be made by the Agency itself. The terms and conditions of employment shall be established by the Agency with the concurrence of the Minister: Staff appointment.

Provided that when the Building and Construction Authority is set up, such workers shall be automatically considered to be as employees of the Authority.

(2) The Agency shall appoint and employ, at such remuneration and upon such terms and conditions as it may determine, such officers and employees of the Agency as may from time to time be necessary for the due and effective discharge of its functions, in accordance with directives issued under the Public Administration Act. Cap. 595.

(3) In accordance with the provisions of the Public Administration Act or with the approval of the Prime Minister, the Agency may request, after consultation with the Minister, from time to time, that any public employee shall be detailed for duty with the Agency in such capacity and with effect from such date as may be specified in the direction. Cap. 595.

(4) Where a public officer is detailed for duty with the Agency such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the Agency but shall otherwise remain and retain all rights and duties as a public officer, and for the purpose of any law relating to government service pensions, service with the Agency shall be deemed to be service with the Government:

Without prejudice to any other law, where on the date of the coming into force of this order, arrangements which should have been made with respect to public officers that have been detailed in terms of any applicable law have not been finalised, the Prime Minister may issue regulations with the purpose of resolving any administrative difficulties that may arise in the interim, between the time that a public officer has been detailed until the aforementioned arrangements are finalised.

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Functions to be transferred to the Authority.

12. The functions of the Agency shall be transferred to the Authority once it is set up and consequently the Agency will cease to operate.

Amends the Fourth Schedule of the Act.

13. In the Fourth Schedule of the Act, immediately after "Aġenzija Żgħażaġħ" there shall be added the following:

"Building and Construction Agency

Responsible for all processes related to the change in management required in the enforcement of national building code".
