VERŻJONI ELETTRONIKA

L.N. 427 of 2018

ARTS COUNCIL MALTA ACT
(CAP. 542)

Valletta Cultural Agency (Establishment) Order, 2018

BY VIRTUE of the powers conferred by articles 14 and 36(1)(d) of the Arts Council Malta Act, the Minister for Justice, Culture and Local Government has, in consultation with the Arts Council Malta, made the following Order:-

Citation and commencement.

1. (1) The title of this Order is the Valletta Cultural Agency (Establishment) Order, 2018.

(2) This Order shall come into force on such date as the Minister responsible for Culture may by notice in the Gazette establish, and different dates may be so established for different provisions of this Order.

Definitions.

2. In this Order, unless the context otherwise requires:

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"Act" means the Arts Council Malta Act;

"Agency" means Valletta Cultural Agency as set up by article 3;

"Board" means the Board as established by article 4;

"Council" means the Arts Council Malta;

"Foundation" means the Valletta 2018 Foundation established by public deed in the acts of Notary John Spiteri published on the 17th October 2011, as subsequently amended by public deed in the acts of Notary Myriam Spiteri Debono by deed published on the 10th November 2014;

"Minister" means the Minister responsible for Culture.

Establishment of Agency.

3. (1) There shall be established an Agency, to be known as Valletta Cultural Agency, to implement the objectives and perform all those functions established in this Order and to carry forward the legacy of the Foundation.

(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

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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 aforesaid.

(3) The Agency shall be composed of the Chairperson appointed under article 4(3) and of the Board established under article 4(2), and any other unit necessary for the fulfilment of the powers and functions as outlined in this Order.

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

(5) The Agency shall achieve its objectives through the performance, amongst others of the following functions, based on the legacy of the Valletta 2018 Foundation:

(a) to create a comprehensive cultural plan for Valletta that is sustainable, inclusive and equitable, and to oversee its implementation;

(b) to develop and produce an annual cultural programme for Valletta, also in collaboration with other Public Cultural Organisations, to further stimulate inclusion, access and participation while enabling the development of creative skills;

(c) to further support, value and enable traditional cultural community celebrations which are an important part of the social fabric;

(d) to further encourage broad and equitable distribution of and participation in cultural activities throughout Valletta;

(e) to administer funding programmes and budgets in order to assist artists and Public Cultural Organisations based, operating and, or working in Valletta;

(f) to commission temporary works of art for public buildings and sites throughout Valletta;

(g) to protect and promote Valletta's cultural and artistic heritage;

(h) to establish and uphold standards of excellence for cultural events taking place in Valletta;

(i) to coordinate the bidding process for the next Capital City of Culture title for the Maltese islands; and

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(j) to exercise any other function that may be assigned by the Minister responsible for Culture.

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

(a) collaborate with Public Cultural Organisations, local councils, non-governmental cultural organisations 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; and

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

Composition of the Board.

4. (1) The Board shall consist of a Chairperson and not less than four (4) and not more than ten (10) voting members.

(2) The members of the Board shall be appointed by the Minister.

(3) The Minister shall designate one of the members of the Board as non-Executive Chairperson.

(4) Each member of the Board shall occupy such post for a term of three (3) years and the members may be eligible for re-appointment on the expiration of their term of office.

(5) The Minister may designate any one 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:

Provided that if the Chairperson's absence is permanent or is such so that the functioning of the Board is affected, the Minister may appoint any other person as Chairperson and in such case the foregoing provisions shall apply in respect of such person.

(6) A person shall not be qualified to hold office as Chairperson or as member of the Board if that person:

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(a) is a judge or magistrate of the courts of justice; or

(b) is legally interdicted or incapacitated; or

(c) is convicted of an offence affecting public trust, or of theft or fraud, or of knowingly receiving property obtained by theft or fraud or of bribery or of money laundering; or has otherwise been sentenced to a term of imprisonment for a term not less than three (3) months;

(d) is subject to disqualification under article 320 of the Companies Act; Cap. 386.

(e) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of these functions:

Provided that the Minister may waive the disqualification of a person under this paragraph if such person declares the interest, and such declaration and waiver are published in the Gazette.

(7) Subject to the provisions of this Order, the office of a member of the Board shall become vacant:

(a) on the expiration of the member's term of office;

(b) if any circumstances arise that, if he were not a member of the Board, would cause him to be disqualified for appointment as member; or

(c) if the member resigns or in the eventuality of the circumstances mentioned in sub-article (9) arising.

(8) 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 been guilty of misconduct or on ground of inability to continue to perform the functions of office, due to infirmity of mind or of body, of misbehaviour, or any other reasonable cause.

(9) If the office of a member of the Board is vacant, or if a Board member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed as Board member to be a temporary member of the Board; and any person so appointed shall, subject to the provisions of sub-articles (7) and (8), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those

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functions.

(10) (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;

(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;

(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 of the voting members may at any time convene a meeting of the Board.

(11) The remuneration paid to members of the Board shall be in accordance with the applicable directives and guidelines issued by the Government from time to time.

(12) The Board shall appoint one of the Agency's officers to act as Secretary of the Board for such period as it shall deem appropriate.

(13) 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.

(14) 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.

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5. (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. Appointment of Chief Executive Officer. Cap. 497.

(2) The executive conduct of the Agency, its administration and organisation and the administrative control of its officers and employees, shall be the responsibility of the Chief Executive Officer who shall also have such other powers as may from time to time be delegated to the him by the Agency and, without prejudice to the generality of the foregoing, shall:

(a) assume full responsibility for the overall supervision and control of the units, divisions and sections of the Agency;

(b) assign to each unit, division and section such duties which he considers necessary or expedient;

(c) co-ordinate the work of the units, divisions and sections;

(d) develop the necessary strategies for the implementation of the objectives of the Agency; and

(e) perform such other duties as the responsible Minister may assign to him from time to time.

(3) The Chief Executive Officer may attend the meetings of the Board but shall not have a vote at such meetings:

Provided that the Agency may, if it deems fit, require the Chief Executive not to attend any of the meetings or attend only any part thereof.

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

Provided that the Agency may appoint by means of a written board resolution any one 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.

(2) Any document purporting to be an instrument made or issued by the Agency and signed by the Chief Executive Officer shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Agency or the Chief

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Executive Officer.

Staff appointment.

7. (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:

Provided that all the employees of the Foundation shall be considered as employees of the Agency on the establishment of the Agency.

(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. 497.

Cap. 497.

(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.

(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:

Provided that in assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions, no account shall be taken of any allowances, bonuses or gratuities paid to such officer by the Agency in excess of what he is entitled to as a public officer:

Provided further that during the time in respect of which he is so detailed to perform duties with the Agency his terms and conditions of service shall not be less favourable than those which are attached to his appointment with the Government during the period aforesaid. Such terms and conditions shall not be deemed to be less favourable because they are not in all respects identical or superior to those enjoyed by the officer concerned at the date of such detailing, if

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in the opinion of the Prime Minister such terms and conditions, taken as a whole, offer substantially equivalent or greater benefits.

(5) (a) For the purposes of calculating pensionable emoluments, posts and salary grades with the Agency shall be classified in the most nearly corresponding grades and incremental levels in the services of the Government of Malta by reference to job descriptions, skills, responsibilities and other analogous factors.

(b) For the purposes of calculating pensionable emoluments no post shall be classified in a grade higher than that of a Grade 3 in the service of Government or such other grade that the Minister responsible for Finance may from time to time, by notice in the Gazette, determine.

(c) 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.

Financial arrangements. Cap. 174.

8. (1) The Agency shall be governed by the provisions of the Financial Administration and Audit Act.

(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.

(5) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister of Finance, may 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

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Minister by this sub-article, any direction given by the Minister as aforesaid may order the transfer to the Government or the application in such manner as may be specified in the direction, of any part of the fees, rates and other payments levied in accordance with sub-article (3) or any such excess as aforesaid.

(6) 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 Minister.

Advances from Government.

9. The Minister of Finance may, after consultation with the Minister, make advances to the Agency of such sums as he may agree to be required by the Agency for carrying out any of its functions under this Order, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister of Finance out of the Consolidated Fund, and without further appropriation other than under this Order, by warrant under his hand authorising the Accountant General to make such advance.

Other applicable provisions.

10. The rules and provisions contained in Part V of the Act shall, *mutatis mutandis*, apply to the Agency.

Amends the Fourth Schedule to the Public Administration Act. Cap. 497.

11. In the Fourth Schedule of the Public Administration Act, immediately after the item "The Registry of Companies" there shall be added the following new item:

"Valletta Cultural Agency	To perform functions based on the legacy of the Valletta 2018 Foundation".

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