

I assent.

(L.S.)

GEORGE VELLA
President

6th April, 2021

ACT No. XIV of 2021

AN ACT to regulate and monitor the building and construction industry, to make provisions for the planning, management and control of the sector and for the establishment of an authority with powers relative to building and construction and for matters related therewith or ancillary thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

ARRANGEMENT OF THE ACT

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PART I
Preliminary

Short title and
commencement.

1. (1) The short title of this Act is the Building and Construction Authority Act, 2021.

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

Interpretation.

2. In this Act, unless the contents otherwise requires:

"Authority" means the Building and Construction Authority;

"Board" means the Building and Construction Authority Board established under Part II;

"building" means any structure resultant from a construction process;

"building services works" means the installation, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a building including any necessary contingent measures to carry out such works;

"Chief Executive Officer" means the Chief Executive Office of the Authority appointed under article 14;

"client" means the person in whose name the works are being undertaken;

"Code" means the National Building and Construction Code which shall set out the minimum standards for buildings and works;

"competent person" means a person who shall have experience and, or training and, or qualifications set out in regulations made under this Act;

"construction" means any act or engineering operation necessary for, or related to site improvement, fabrication, extension, alteration, repair of a building or structure and "constructed" shall be construed accordingly;

"contractor" means the person engaged by the client who

has the experience and, or training and, or qualifications set out in regulations made under this Act; and the term "contractor" shall, for the purpose of this Act, also include sub-contractors;

"contractor's equipment" means all apparatus, machinery, vehicles and other things of the contractor required for the execution and completion of the works and the remedying of any defects;

"demolition" means the pulling down or removal of structural elements and other non-structural building components including any necessary contingent measures to carry out such works;

"design" includes the preparation of plans, particulars, drawings, specifications, calculations and other expressions of purpose by a competent person according to which the permanent works are to be executed, but shall not include matters relating to development planning, urban design and aesthetics;

"enforcement notice" has the meaning assigned to it under Part VI;

"excavation" means the cutting or removal of natural material or human placed material on land or at sea, including any necessary contingent measures to carry out such works;

"finishing works" includes any works fixed within or to a building to make it fit for its intended use including any necessary contingent measures to carry out such works, but excludes demolition, excavation, construction and building services;

"functions" includes powers and duties;

"Minister" means the Minister responsible for the construction industry;

"operative date" means the day on which an instrument takes legal effect;

"permanent works" means all works to be executed by the contractor intended to form a continuing function after the completion of the works;

"prescribed" means prescribed by regulations made by the Minister under this Act;

"site" means the place where the works are to be executed

and to where the equipment and/or materials and/or workers are to be delivered;

"temporary works" means all temporary works of every kind required on site for the execution and completion of the permanent works and the remedying of any defects;

"Tribunal" means the Building and Construction Tribunal established under Part VIII;

"works" means the permanent works and the temporary works, or either of them as appropriate, and include excavation, demolition, construction, building services works and finishing works.

PART II

Establishment, Duty and Scope of the Authority

General objectives.

3. (1) It shall be the duty of every person and entity, whether public or private, to execute works on a building according to best industry practices and set standards that also include the respect and protection of the environment and the immediate surroundings, its users and the public in general and this after taking into consideration the respective level of responsibility and obligations expected from the person and, or entity as the case may be.

(2) It is also essential that any building and construction works give due regard to and respect the principles of sustainability, structural integrity, their quality and energy efficiency at its inception, during construction and use.

Interpretation.

4. The provisions of article 3 shall be applied in the interpretation of the other provisions of this Act, or of any other law relating to matters governed by this Act.

Establishment of the Authority.

5. There shall be an Authority, to be known as the Building and Construction Authority, which shall be responsible for the regulation, improvement and sustainable management of the building and construction industry in Malta.

Authority with a distinct legal personality and legal and judicial representation of the Authority.

6. (1) The Authority shall be a body corporate having a distinct legal personality and, subject to the provisions of this Act, it shall be capable of entering into contracts, of acquiring, holding and disposing of property of any kind for the purposes of its functions under this Act and any other law, of suing and of being sued, and of doing all such things and entering into all transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the borrowing of money.

(2) The legal and judicial representation of the Authority shall vest in the Board:

Provided that the Board may appoint any one or more of its members or any one or more of the officers or employees of the Authority to appear in the name and on behalf of the Authority in any proceedings and in any act, contract, instrument or other document whatsoever:

Provided further that in respect of any matter falling within the functions vested in the Chief Executive Officer, the legal and judicial representation of the Authority shall also vest in the Chief Executive Officer.

7. (1) The Authority shall be the principal means whereby the Government shall delegate its duties consequent or incidental to this Act. Functions and the scope of the Authority.

(2) The functions of the Authority shall include the following:

(a) to perform and succeed in the functions which were previously assigned to the Building Regulation Board and the Building Regulation Office under the provisions of the Building Regulation Act and which are now contained in this Act and to perform and succeed in the assets, rights, liabilities and obligations of the Building Regulation Board and Building Regulation Office established under the provisions of the Building Regulation Act to the extent that the Minister may prescribe by regulations under this Act; Cap. 513.

(b) to perform and succeed in the functions which were previously assigned to the Building and Construction Agency under the provisions of the Building and Construction Agency (Establishment) Order and are now contained in this Act and to perform and succeed in the assets, rights, liabilities and obligations of the Building and Construction Agency established under the provisions of the Building and Construction Agency (Establishment) Order to the extent that the Minister may prescribe by regulations under this Act; S.L. 595. 33.

(c) to perform and succeed in the functions which were previously assigned to the Masons Board under the provisions of the Code of Police Laws and are now contained in or under this Act and to perform and succeed in the assets, rights, liabilities and obligations of the Masons Board as established under the provisions of the Code of Police Laws to the extent that the Minister may prescribe by regulations under this Act; Cap. 10.

(d) to issue and enforce good practice guidelines and methodologies, policies and regulations aimed towards the improvement and sustainable management of building and construction practices in Malta;

(e) to assess requests made by or under this Act and decide whether to issue the relative certification, order, licence, permit or exemptions under such conditions as it deems reasonable, subject to any other provision of this or any other law;

(f) to provide a centralised office for the receipt and processing of complaints, reports and assessment of information related to alleged breaches of the provisions made by or under this Act, and, if need be, co-ordinate investigations with other competent authorities;

(g) to promote research, educational, training and public awareness programs relating to the improvement and sustainable management of the building and construction industry;

(h) to advise the Minister generally on any matter and action with regard to the improvement and sustainable management of building and construction practices in Malta;

(i) to establish long and short term objectives and strategies for the proper administration of the Authority and the building and construction industry in Malta;

(j) to monitor the performance, safety and quality of buildings and constructions in Malta;

(k) to keep a register of service providers;

(l) to keep a depository of documentation as provided by or under this Act;

(m) to collaborate with other agencies, corporations, authorities, government and non-governmental entities and other persons for the carrying out of its functions, including but not limited to enabling it to monitor the implementation of and compliance with the provisions of this Act;

(n) to enter into arrangements through joint ventures or partnerships or other agreements with public bodies, public authorities, government departments, public corporations, local councils, non-governmental entities, and other body corporates to assist it in fulfilling its functions, including but not limited

enabling it to monitor the implementation of and compliance with the provisions of this Act;

(o) to perform any other functions as may from time to time be delegated to it by Government notice by the Minister on behalf of any department or agency of Government, and other matters as may be necessary for the better carrying out of the provisions of this Act, including the functions required to give effect to any international obligation entered into by Malta relative to matters regulated by this Act.

8. (1) In the pursuance of its functions under this Act, the Authority shall seek to act in the public interest and in line with the best practices and standards.

Conduct and
affairs of the
Authority.

(2) The Authority shall have the power to regulate its own conduct including formulating its own rules, schedules and administrative procedures.

(3) The Authority shall execute its duties, functions and responsibilities in accordance with Government's strategic directions relating to the building and construction industry as communicated by the Minister.

9. (1) The Authority shall be governed by the provisions of the Public Finance Management Act.

Financial
administration.
Cap. 601.

(2) The Authority shall levy all fees, rates and other payments prescribed or deemed to be prescribed by or under this Act or any other law related to the powers and functions of the Authority.

(3) The Authority shall be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by the Authority:

Provided that any subvention received from Government shall be exempted from any liability for the payment of income tax and duty on documents under any law for the time being.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by the Authority to the formation of reserve funds to be used for the purposes of the Authority and without prejudice to the generality of the powers given to the 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

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part of the fees, rates and other payments levied in accordance with sub-article (2) or any such excess as aforesaid.

(5) Any funds of the Authority not immediately required to meet expenditure may be invested in such manner as may from time to time be approved by the Minister.

Documents.

10. (1) A document purporting to be a copy of an entry in a register or to be a copy of a document lodged with the Authority, and which is certified by an officer of the Authority, shall be deemed to be a correct copy of such entry or document and shall be *prima facie* evidence of the entry or the document of which it purports to be a copy and it shall not be necessary to prove the signature of such officer or that he was in fact such officer.

(2) Evidence of an entry in a register may be given by the production of a copy of such entry, certified in accordance with the provisions of sub-article (1), and it shall not be necessary to produce the register itself.

(3) In any proceeding or prosecution under this Act, a copy of any order, notice, decision or other document purporting to have been made under this Act and purporting to have been signed by the Chairman of the Board or any person authorised by the Board, shall be accepted as evidence of the order, notice, decision or other document, and of the facts appearing therein, without further proof.

(4) The Authority shall ensure that an audit trail of all files, including all documentation and reports are kept:

Provided that files, documentations and reports may be digitised and the Board may after digitisation dispose of hard copies of files, documentations and reports after a period of at least five (5) years from date of submission to or decision of the Authority or to any other previous entity carrying out the same functions:

Cap. 586.

Provided further that data kept manually or electronically as it may require from time to time is subject to the Data Protection Act and the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC.

The Board.

11. (1) There shall be a Board to be known as the Building and Construction Authority Board appointed by the Minister, which Board shall exercise all the functions assigned to the Authority or directly to it by or under this Act as well as those functions as may from time to time be delegated to it in writing by the Minister as may be necessary

for the better carrying out of the duties of this Act.

(2) The Board shall be composed as follows:

(a) a person who shall also be the Chairperson of the Board;

(b) a duly warranted *perit* with a minimum of seven (7) years experience;

(c) a duly warranted advocate with a minimum of seven (7) years experience;

(d) a duly warranted *inginier* with a minimum of seven (7) years experience;

(e) seven (7) persons chosen from amongst persons of known integrity and with knowledge and experience in any of the following subjects: commerce, economy, industry, planning and construction industry, development planning, environment, historical heritage, cultural heritage and community affairs.

(3) There shall also be a person appointed by the Minister who shall act as a secretary of the Board.

(4) The members of the Board and the secretary of the Board shall be remunerated as prescribed by the Minister and hold office for a period not exceeding three (3) years and may be reappointed for further periods, not exceeding a total of seven (7) years:

Provided that in the event that a member of the Board vacates his office prior to the expiration of his term of office, the person appointed in his stead shall be appointed for the remaining period of the original appointment.

(5) The Minister may designate one of the other members 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.

(6) 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 on grounds of inability to continue to perform the functions of office or any other reasonable cause.

(7) If a member resigns or on the expiration of term of office or if

the office of a member of the Board is otherwise vacant or if a 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 a member to be a temporary member of the Board, as the case may be; and any person so appointed shall 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 functions.

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

(9) The quorum at all meetings of the Board shall be not less than half of the voting members plus one.

(10) The decisions of the Board shall be taken by a simple majority of the votes of the members present during the meeting when the vote is taken. The Chairperson presiding at the meeting shall have a second or casting vote.

(11) 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.

(12) The Board may consult with any person as well require any department or agency of Government to provide it with such information as the Board may deem necessary for the proper execution of its functions.

(13) The Board may appoint consultants to assist it in the performance of its functions and invite such persons to attend its meetings.

(14) The Board may decide to hold its meetings in public and, or through such electronic or other viable means of communication as it deems appropriate.

(15) The Board may, by written communication, with the approval of the Minister, delegate any of its powers to any one of the members or a number of members and, or the Chief Executive Officer or any other administrative entity established by law or under a law in order to give effect and discharge effectively and efficiently any of the functions provided under this Act. The Board shall in its written communication state clearly the reasons supporting the delegation.

(16) The members of the Board, or any person to whom any duties

are delegated, shall not be personally liable for any damages to any person or property as a result of the performance of their duties, unless it is shown that such member or person has acted in bad faith.

12. (1) When the Board is required to determine an application or a request made by any person in terms of this Act, hereinafter referred to as "the applicant", the Board shall inform the person making the application or request of its decision.

Determination
of requests or
applications.

(2) Notice of the decision shall be published on the website of the Department of Information.

(3) A copy shall also be kept in a register which shall be available for inspection by the public.

(4) The Board has the power to suspend, withdraw, revoke or cancel any approval and shall immediately inform the applicant outlining the salient reasons justifying the suspension, withdrawal, revocation or cancellation, as the case may be.

(5) Notice of the suspension, withdrawal, revocation or cancellation, as the case may be, shall be published on the website of the Department of Information.

(6) A copy of the suspension, withdrawal, revocation or cancellation, as the case may be, shall also be kept in a register which shall be available for inspection by the public.

(7) Notwithstanding any other provision found in this Act, none of the powers contemplated in this article can be delegated to any entity or person that is not the Authority.

13. (1) The Board shall also appoint an internal auditor, who shall:

Internal auditor.

(a) oversee the systems of internal control and risk management of the Authority and assist and support the Authority in discharging its responsibilities in relation thereto;

(b) provide the communication link with external auditors and evaluate and coordinate the audit and financial reporting process of the Authority;

(c) scrutinise and evaluate any transaction to be entered into by the Authority with a value exceeding two hundred and fifty thousand euro (€250,000); and

(d) review and assess the effectiveness of the

management of the Authority in its compliance with policies and in the discharge of its regulatory and compliance functions in so far as financial matters are concerned.

(2) The internal auditor shall report directly and exclusively to the Board in accordance with procedures established by the Board.

Chief Executive Officer.

14. (1) There shall be a Chief Executive Officer appointed by the Board, following approval by the Minister, who shall be responsible for exercising the functions made by or under this Act as well those functions assigned to him by the Board.

(2) The Chief Executive Officer may exercise any one or more of the functions or responsibilities either directly or through the employees or officers within the directorates, units, divisions and sections which he may set up from time to time in order to assist his carrying out effectively and efficiently the duties assigned to him under this Act.

(3) The Chief Executive Officer may appoint any consultant or consultants to assist him in the performance of the duties assigned to him under this Act.

(4) The Chief Executive Officer, or his representative, shall have the right to be present and participate at all meetings of the Board:

Provided that the Chief Executive Officer shall not be present during meetings of the Board or any part thereof in cases of potential or actual conflict of interest, which he shall be obliged to disclose.

(5) The Chief Executive Officer and, or any person assisting him in the carrying out of his duties assigned to him under this Act, shall not be personally liable for any damages to any person or any property as a result of the performance of their duties, unless it is proven that such damage resulted from bad faith on their part.

Employment of officials.

Cap. 595.

15. (1) The Authority shall appoint and employ, at such remuneration and upon such terms and conditions as it may determine, such officers and employees of the Authority 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.

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

specified in the direction.

(3) Where a public officer is detailed for duty with the Authority such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the Authority 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 Authority shall be deemed to be service with the Government.

16. (1) Where any member of the Board, an employee, consultant, advisor or other person engaged by the Authority, has a personal or direct financial interest in any matter which is to be considered by the Authority through his direct involvement, upon becoming aware of such interest, he shall neither influence nor seek to influence the processing and the decision in relation to such matter and shall take no part in any consideration of such matter.

Conflict of interest.

(2) Where a person to whom sub-article (1) applies fails to make the required disclosure, the Board shall decide the appropriate action to be taken which may include, after concurrence from the Minister, the removal from office or termination of the contract of the person concerned.

17. (1) Without prejudice to the provisions of the Interpretation Act, any power conferred by this Act to issue licences, to make regulations, rules, orders, lists, schedules and any other instrument of like nature, includes the power from time to time to revoke, replace, amend, alter, add to or delete from any such instrument as aforesaid.

Power of the Minister to make regulations. Cap. 249.

(2) The Minister may, after consultation with the Board, make regulations in relation to any matter relating to the improvement and sustainable management of the building and construction industry in Malta so long as such regulations are in line with the objectives of this Act.

(3) Without prejudice to the generality of sub-article (2) such regulations under this article may provide for all or any of the following:

(a) delineate the obligations, duties and responsibilities of the various stakeholders in the building industry in Malta;

(b) prescribe the form of any notice, order, application form or other document authorized or required by this Act to be made, served or given;

(c) establish offences and the relative punishments in

relation to matters falling under Part V;

(d) provide for the procedures as may be required for the performance of the functions of the Authority as well as the fees and contributions chargeable therefor;

(e) prescribe what type of information held by the Authority shall be accessible to the public as well as to establish procedures for data processing, accessing, analysing, collection, verification and deletion of any information;

(f) give effect to any international treaty or instrument, including directives, regulations and decisions, relating to any matter governed by this Act;

(g) prescribe the setting up of a Third Party Protection Fund which shall be used to provide injured third parties with temporary accommodation and other basic needs when such needs are occasioned by an accident resulting from the works;

(h) prescribe regulations for any other purpose for which regulations are authorised or required to be made;

(i) prescribe regulations for any other matter relating to attaining the objectives of this Act.

(4) Regulations made under this article shall always contain provisions to outline:

(a) the types, classes or descriptions of buildings and constructions to which the regulations apply, including whether any provisions contained therein, may be made so as to apply generally, or with regard to any area specified in the regulations;

(b) the operative date on which the regulations come in force, which date shall be published in the Gazette;

(c) whether the provisions, or part thereof, apply retroactively or prospectively from the operative date.

PART III

National Building and Construction Code

National
Building and
Construction
Code.

18. (1) There shall be a National Building and Construction Code, which shall set out the minimum standards pertaining to buildings and works.

(2) The Code shall aim towards covering different aspects of

regulation, improvement and sustainable management of the building and construction industry in Malta, which should include, but not necessarily be limited to, building regulations, including structural integrity of sites and buildings, fire safety, site preparation and resistance to contaminants and moisture, demolition and excavation practices, dealing with toxic substances, resistance to the passage of sound, ventilation, sanitation, hot water safety and water efficiency, drainage and waste disposal, heat producing appliances and fuel storage system, protection from falling, collision and impact, conservation of fuel and power, access to and use of buildings, glazing (safety in relation to impact, opening and cleaning), electrical safety, security; materials and workmanship; and construction regulations, including health and safety in and around sites; site operations; execution of permanent and temporary works, including shoring, propping, scaffolding, hoarding, and formwork; noise abatement; environmental protection; waste reduction and disposal; machinery, plant and equipment.

(3) The Code shall be based on the principle that ensures the sustainable and safe execution of works and use of buildings and their management with the purpose of achieving the building's optimum use for its purpose, also taking account of the socioeconomic factor and other national policies and plans.

(4) (a) The Authority shall review the Code at least every ten (10) years to reflect the developments in the industry.

(b) Every such review shall be made in accordance with national needs and objectives as may be approved by the Minister and shall come into force on the date of publication on the Gazette.

(c) In order to achieve the objectives set out in this article, the Minister may take the necessary measures intended to coordinate and improve the impacts of other sectoral policies and their relation to, or inclusion in, the Code.

(5) The Authority shall be duly authorised to amend the Code as necessary to be in compliance with local or European Union regulations.

PART IV

Licence to provide certain services

19. No person shall carry out any of the activities which the Minister shall by means of regulations prescribe unless he is qualified to carry out such activities as required by these same regulations.

Requirement to be registered or in possession of a licence.

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A licence may be suspended, revoked or cancelled.

20. A licence may be suspended, revoked or cancelled as the case may be may if the holder has been found by the Authority to be in breach of the provisions of this Act due to any of the following:

(a) dishonesty, misconduct or negligence in the course of any undertaking in virtue of the licence;

(b) non-compliance with regulations, policies or guidance documents with respect to standards or practices; or

(c) failure to comply with any condition imposed or instructions made under the provisions of this Act; or

(d) where the holder of the licence or permit has been found guilty by a competent court of an offence under the provisions of this Act or of any regulations made thereunder.

PART V Exemptions

Applications.

21. (1) The Board shall, following a request from an interested person, consider that the adoption of a requirement consequent or incidental to this Act is unreasonable in relation to the particular case to which the request relates, and shall give a direction exempting from, dispensing or relaxing that requirement, subject to any additional conditions as it deems fit:

Provided that the said exemption is one of those prescribed by regulations issued by the Minister.

(2) An application pursuant to this article may be in such form and shall contain such particulars as may be prescribed.

(3) The application shall be made to the Board and it shall include justification outlining the reasons why an exemption or relaxation should be warranted by the Board.

(4) Before considering any request made in accordance with this article, the Board shall order the notification of all the persons who in its opinion to have a direct interest and subsequently shall receive the submissions from such persons.

(5) The Board shall process and determine the application within ten (10) working days from the filing of the application and a decision delivered within the next ten (10) working days. Nevertheless, the Board may on one occasion only extend each of the said terms by a further ten (10)-day term.

(6) The exemption, dispensation or relaxation may be:

(a) unconditional; or

(b) subject to compliance with any such condition as may be specified in the direction, being conditions on matters directly connected with the exemption, dispensation or relaxation.

(7) The exemption under this article:

(a) if it so provides, shall cease to have effect at the end of such period as may be specified in the exemption; and

(b) may be varied or revoked by a subsequent direction of the Board.

PART VI Enforcement

22. (1) The Authority shall have the power to assess whether any activity is compliant with the provisions of this Act and, or regulations made thereunder. Monitoring and enforcement.

(2) For the purposes of this article, the Chief Executive Officer or any person or persons authorised by him to that effect shall, upon production of proof of their identity, have the right to enter and inspect any building or site at all reasonable times without any other formalities required by any other law and request any information insofar as it is needed to ensure compliance with this Act or any regulations made under this Act, including to verify and audit any document submitted to the Authority:

Provided that in cases where the Chief Executive Officer believes that there is an imminent danger, any authorised person may enter the building or site at any time:

Provided further that nothing in this article shall empower an authorised person to enter into or to inspect any plans or documents relating to land or building which is in the occupation of the Armed Forces of Malta or the Malta Police Force, or Correctional Facilities or such other building that the Minister may designate in writing from time to time, if in the opinion of the respective commanding officers such inspection of documentation would breach security.

(3) Where the Chief Executive Officer or any person or persons authorised by him are prevented from exercising his power of entry into any land or building in the exercise of his powers under this

article, the Authority, as the case may be, may request the assistance of the police.

(4) Any verbal order issued the by the Chief Executive Officer or any person or persons authorised by him shall be followed in writing within twenty-four (24) hours by an enforcement order issued under articles 23, 24 and 25.

(5) The Chief Executive Officer or any person authorised by him may also:

(a) examine any article, product, or take samples of the materials used in the carrying out of any work or take such other action in relation to such construction work as may be necessary to establish whether the requirements set out in this Act or under this Act are being complied with in relation to the building and, or works;

(b) examine any article, product, or take samples of the materials used in the carrying out of any work or take such other action in relation to such construction work as may be necessary to establish whether the requirements of building regulations are being complied with in relation to the building and, or works;

(c) take surveys, photographs or video or use any type of equipment to help in the investigations which may be produced as evidence;

(d) give all necessary orders, including the immediate closure of a site or part thereof and cessation of works in part or in full in case of imminent danger or in the public interest;

(e) require the owner or occupier of the building, or any person responsible for the works, to provide such plans, documents and information as are necessary to establish whether the requirements of the matters regulated by this Act and regulations made thereunder are being complied with in relation to the building, development, works, installation and services;

(f) do anything that is ancillary or consequential thereto.

(6) For the purposes of this Act, the Chief Executive Officer or any authorised person shall not be personally liable for any damages to any person or any property as a result of the exercise of his powers under this article, unless it is proven that he has acted in bad faith.

(7) The Chief Executive Officer or any person authorised by him,

notwithstanding any other law, shall have the right to assist the police in the conduct of prosecution for offences under this Act and to plead the case on behalf of the prosecution.

23. (1) The Authority may issue and serve an enforcement notice where an activity is not compliant with the provisions of this Act and, or regulations made thereunder. Enforcement notices.

(2) An enforcement notice made under this article shall contain:

(a) a detailed description of the infringements being alleged;

(b) the date on which the notice takes effect;

(c) the instructions to be adhered to for compliance purposes;

(d) the amount of administrative fine, if applicable;

(e) the details of the person who is liable for the detected infringement;

(f) a period within which the Authority may allow the offender to remedy the situation without having to pay the administrative fine;

(g) indication that the notice may be appealed before the Tribunal within twenty (20) days from the date of publication of the notice on the website of the Department of Information and that where the notice orders the cessation of any work, it shall have effect immediately, and the effect of this notice will not be suspended by the lodging of an appeal.

(3) Without prejudice to the other provisions of this article, the instructions to be adhered to for compliance purposes may:

(a) require such steps as may be specified in the notice to be taken within such period as may be so specified for the purposes of ensuring compliance with this Act or regulations made thereunder, and such notice may require:

(i) the removal, alteration or making safe of any structure, service, fitting or equipment; or

(ii) the cessation of any works or the doing of any other thing as may be specified in the notice in relation to the building or works to which the notice relates;

(b) prohibit the use of a building, or a specified part of a building, for any purpose specified in the notice until the specified measures are taken to the satisfaction of the Authority, by the removing, altering or making safe of any structure, service, fitting or equipment or the cessation of any works or by the doing of any other thing in relation to such building or such specified part of a building that may be required by the notice;

(c) prohibit the use or the removal of any type of vehicle, plant or machinery that may contravene any of the provisions of this Act or regulations made thereunder:

Provided that when the illegal activity is limited to part of the site, the Authority may in its discretion issue a partial enforcement notice requiring the immediate cessation of the activity only in relation to that part of the site and not in relation to the whole site.

Serving and
notification of
enforcement
notice.

24. An enforcement notice shall be served on:

- (a) the owner of the site or building concerned; and, or
- (b) the occupier of the site or building concerned; and, or
- (c) the contractor; and, or
- (d) any other person who is responsible or involved in the monitoring or the execution of the works in the site or building concerned; and, or
- (e) the client:

Provided that "person" shall also include a legal person.

Publication and
service of
enforcement
notice.

25. (1) Where an enforcement notice is authorised under this Act, notice thereof shall be published on the website of the Department of Information.

(2) A copy of the notice shall also be served using any of the following methods:

- (a) where a person is known by name, by delivering it to him in person or leaving it at the address at which such person ordinarily resides or, where an address for service has been furnished, at that address or by sending it by registered mail at the address where such person ordinarily resides or, where an address for service has been furnished, at that address; or
- (b) where the address at which such person ordinarily

resides cannot be ascertained by reasonable enquiry and the enforcement notice is authorised to be given in respect of any particular building or works, by delivering it to a person residing in such building or carrying out such works or by affixing it in a conspicuous place on or near such building or works and keeping it so affixed for a period of not less than five (5) working days;

(c) where an enforcement notice is authorised by this Act to be served on or given to the owner of a building or works or a person who carried out or is carrying out the works to which building regulations apply, and the name of such person cannot be ascertained by reasonable enquiry, the notice may be addressed to "the owner", "the occupier", or "the person concerned executing the works", as the circumstances may require, without naming such owner or person.

(3) For the purpose of this article, serving of the notice to a body having a distinct legal personality shall be effected according to sub-article 187(4) of the Code of Organization and Civil Procedure.

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(4) A person who at any time after a notice is affixed pursuant to sub-article (2)(b) removes, damages or defaces the notice without lawful authority shall be guilty of an offence against this Act.

Notwithstanding the provisions of sub-article (2), a notice is deemed to have been served to the person or persons indicated in the notice on the day notice thereof is published on the website of the Department of Information.

26. (1) A person on whom an enforcement notice has been served shall comply with the terms of the notice within the period specified therein.

Non-compliance
with the notice.

(2) Where a person fails to comply with the requirements of an enforcement notice, the Chief Executive Officer, or his representative, may enter into any building or site to which the enforcement notice relates without any other formalities required by any other law and take any action or do anything required by the notice, including the closure or sealing off of the building or site, or other action as required by circumstances and may for such purpose request the assistance of the police which shall for such purpose exercise such powers as are vested in them for the prevention of offences and the enforcement of law and order.

(3) Notwithstanding the provisions of any other law and saving the provisions of article 46 of the Constitution and article 4 of the European Convention Act, no precautionary warrant or other order shall be issued or made by any court restraining the Authority from the

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exercise of any of the powers conferred upon it by this article.

(4) If any steps or other action, including any discontinuance, stoppage or similar requirement, required to be taken by an enforcement notice have not been taken within the time specified therein, the Authority may enter on the land or the area at sea and take such steps or other action as aforesaid without any other formalities required by any other law, including the disabling or removal of any equipment, machinery, tools, belongings, vehicles or other objects that may be on site and the carrying out of any works necessary to comply with what is requested in the enforcement notice and may for such purpose request the assistance of the Police Force, the Armed Forces, any local council, any department of Government or any agency of Government, and the Police Force and, or Armed Forces and, or other entity shall for such purpose exercise such powers as are vested in them at law, on the demand of the Authority for assistance.

(5) All expenses reasonably incurred by the Authority in the exercise of its powers with respect to enforcement notices shall be recoverable by the Authority.

Cap. 12. (6) The Authority may recover the costs involved in taking the action required under this Part as a civil debt, following the service of a judicial act, in terms of article 466 of the Code of Organization and Civil Procedure, which is either not opposed or the opposition of which is denied, and according to the provisions of the said article, shall constitute an executive title for all the effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

Cap. 296. (7) The Authority may register on the property in which the illegalities took place a caution on the property in terms of the Land Registration Act.

(8) The Authority shall have the power to impose, in respect of any person who infringes any provision of this Act, an administrative penalty according to the provisions in regulations made thereunder, which shall not exceed five hundred thousand euro (€500,000), and five thousand euro (€5,000) each day, in the case where the infringement persists:

Cap. 12. Provided that all the penalties provided for in this article shall be due to the Government as a civil debt and following the service of a judicial act, in terms of article 466 of the Code of Organization and Civil Procedure, which is either not opposed or the opposition of which is denied, according to the provisions of the said article, the same administrative penalty shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code

of Organization and Civil Procedure.

27. (1) Without prejudice to any other special provisions of this Act, the Minister may, after consultation with the Board, make regulations which prescribe that the breach of regulations made under this Act shall constitute a criminal offence and which prescribe penalties for criminal offences against any regulations made under this Act.

Power of Minister to make regulations in respect of criminal offences.

(2) Any such regulations may prescribe imprisonment and different fines (*multa*) for different offences and prescribe fines (*multa*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for:

(i) imprisonment for more than two (2) years, or a fine (*multa*) of more than two hundred thousand euro (€200,000); or

(ii) fines of more than five thousand euro (€5,000) for each day during which the offence persists.

28. Criminal proceedings for an offence against this Act shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts of criminal judicature.

Criminal proceedings. Cap. 9.

29. Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal from any judgement given by the Courts of Magistrates (Malta) or by the Court of Magistrates (Gozo) in respect of proceedings for any offence against this Act or any regulations made under this Act.

Right of appeal of the Attorney General. Cap. 9.

30. Notwithstanding any other law providing for the trial and punishment of offences, where the Authority believes that a person has committed an offence against this Act, the Authority may issue an enforcement notice in terms of articles 23, 24 and 25.

Issue of enforcement notice.

31. Any person who is convicted of a criminal offence in terms of or under this Act may also, at the request of the prosecution, be disqualified according to regulations made under this Act from providing his services which are recognised by, or under this Act.

Disqualification.

PART VII
Register

Keeping of
register.

32. The Authority shall keep a register of:

- (a) decisions taken by the Board in terms of article 12;
- (b) details of the registered service providers as established by regulations made under this Act and such details shall include disqualifications made in terms of article 31;
- (c) details of the exemptions granted in terms of article 21;
- (d) details of the enforcement notices issued under this Act;
- (e) decisions taken by the Tribunal;
- (f) copy of commencement notices, method statements, condition reports, compliance certificates;
- (g) any other documentation prescribed by or under this Act.

Register shall be
made available
to the public.

33. The register shall be made available for public inspection at such reasonable times as may be determined by the Authority.

PART VIII
Building and Construction Tribunal

Establishment
of the Building
and
Construction
Tribunal.

34. There shall be an independent and impartial Tribunal, known as the Building Construction Tribunal which shall hear and decide on appeals made by a person aggrieved on points of law and, or points of fact on any order, ruling or decision of the Authority. The Tribunal shall not be subject to the control or direction of any other person or authority.

Composition of
Tribunal.

35. The Tribunal shall be composed of an advocate, a *perit* and a warranted *inginier*, all of whom shall have a minimum of three (3) years experience. The said advocate shall act as Chairperson and shall preside over the sittings of the Tribunal.

Appointment of
members of the
Tribunal.

36. The members of the Tribunal shall be appointed by the President of Malta on the advice of the Prime Minister for a period of three (3) years, and may be reappointed for further periods as the Prime Minister may deem appropriate.

37. The Tribunal may appoint any other suitably qualified person having qualifications or experience on the subject in dispute to act and assist it in the proceedings:

Appointment of qualified and experienced persons by the Tribunal,

Provided that the Tribunal shall not be bound to abide by the opinion of the said appointed persons.

38. The Tribunal shall have an administrative secretariat, consisting of a secretary and such other officers or employees as may be necessary for a prompt and efficient determination of the matters within the Tribunal's jurisdiction. The secretary and the other members of the secretariat shall be appointed by the Minister.

Administrative secretariat of the Tribunal.

39. The expenses incurred in connection with the administration of the Tribunal, including the payment of the honorarium to the Chairperson and members of the Tribunal and the salary of the Tribunal's Secretary and the Tribunal's staff shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

Payment of salaries.

40. The Tribunal shall hold its hearings in public, physically or by virtual means, and may establish its own procedure, however in full adherence with the principles of good administrative behaviour found in the Administrative Justice Act.

Hearings of the Tribunal.

Cap. 490.

41. The Tribunal shall have the power to administer the oath to any witness or person appearing before it.

Power of the Tribunal to administer oath.

42. The parties to the appeal may be represented by any agent and also assisted by any agent.

Representation of parties during the appeal.

43. (1) An appeal shall be made not later than a period of twenty (20) days after notice of the order, ruling or decision is made on the website of the Department of Information.

Appeal to the Tribunal.

(2) The date of the first hearing shall not be later than twenty (20) days from the date the appeal is filed.

(3) The Tribunal shall grant its final decision on the appeal within one hundred and twenty (120) days from when it holds the first hearing, which period may be extended only once by a further period of thirty (30) days in exceptional circumstances, in the interest of justice.

44. (1) The appeal shall be in a form of an application, and shall:

Form of appeal.

(a) make reference to the Authority's decision appealed from, and a copy thereof;

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(b) distinctly state the heads of the decision complained of under different headings, together with reasons under each heading for which the appeal is entered;

(c) state specifically the manner in which it is desired that the decision be varied under each heading;

(d) include all documentation which is relevant for the grounds of appeal; and

(e) be accompanied with the payment of the appeal fee as may be prescribed by regulations made under this Act.

(2) Notice of such an application shall be served on the Chairperson of the Board who, in turn, shall be entitled to file a written reply not later than ten (10) days before the date of the first hearing.

Decision of appeal.

45. An appeal shall not suspend the effects of the appealed decision:

Provided that the appellant may request the suspension of the order, ruling or appealed decision pending the determination of the appeal.

Decision of the Tribunal.

46. The Tribunal may, in whole or in part, confirm, annul or vary the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal and published on the website of the Department of Information.

Appeal from decision of the Tribunal.

47. The decisions of the Tribunal shall be final except that there may lie an appeal to the Court of Appeal (Inferior Jurisdiction) on a point of law, which appeal shall be made within twenty (20) days from the day the decision is delivered in public by the Tribunal. Such appeals shall be regulated by such rules of court as may be made in accordance with article 29 of the Code of Organization and Civil Procedure.

Cap. 12.

Repeal provisions.
Cap. 513.
S.L. 595. 33.

48. The Minister may, with effect from such date as may be established by notice in the Gazette, repeal the Building Regulation Act and the Building and Construction Agency (Establishment) Order:

Provided that different dates, rules and procedures may be so established for the revocation and, or applicability of different provisions thereof.

Cap. 513.

(a) Any order, rule, regulation, bye-law, notice, plan or policy or other instrument having the force of law made under the authority or kept in force under any of the provisions of the

Building Regulation Act shall continue to be in force and shall continue to have effect as if made under this Act and may be amended, substituted or revoked accordingly:

Provided that in the case of any such licence, permission, order, notice or certificate issued as operative for a specific period, such licence, permission, order, notice or certificate shall remain operative for such a period from the date such licence, permission, order, notice or certificate was issued.

(b) The provisions of the Building Regulation Act and any subsidiary legislation enacted under the said Act, as in force prior to the coming into force of this Act, shall continue to apply in respect of any civil or criminal action, right of action or obligation relating to or arising out of payments due or made in respect of any material or work supplied or done, prior to the coming into force of this Act. Cap. 513.

(c) In so far as consistent with the generality of the provisions contained in this Act, nothing in this Act shall prejudice, or be held or construed as prejudicing, the validity of any act done, or exempt any one from doing anything omitted to be done, or any vested rights arising under any law repealed by this Act, or any regulation, directive, order or rule made thereunder:

Provided that the effect of any such act or omission shall continue, on the coming into force of this Act, as if done hereunder.

(d) Any reference in any law to the Building Regulation Act or to any regulation, directive, order or rule made thereunder shall be deemed to be a reference to this Act or any other law which may from time to time amend, supplement or substitute it. Cap. 513.

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Passed by the House of Representatives at Sitting No. 445 of the
24th March, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

