L.N. 117 of 2023

PUBLIC ADMINISTRATION ACT (CAP. 595)

National Agency for the Performing Arts (Establishment as an Agency) Order, 2023

IN EXERCISE of the powers conferred by article 26 of the Public Administration Act, the Prime Minister has made the following order:-

Citation and commencement.

1. (1) The title of this order is National Agency for the Performing Arts (Establishment as an Agency) Order, 2023.

(2) This order shall enter into force on the 30th of June, 2023, hereinafter referred to as "the appointed date".

Interpretation.

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

"Act" means, unless otherwise indicated, the Public Administration Act; Cap. 595.

"Agency" means the National Agency for the Performing Arts established by article 3;

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

"Chairperson" means the Chairperson of the Board appointed in terms of article 4(2)(a);

"Council" means the Arts Council Malta, the body corporate established in terms of article 3 of the Arts Council Malta Act; Cap. 542.

"Executive Head" means the Executive Head as provided for in article 6;

"Executive Team" means the Executive Team as provided for in article 6(4);

"financial year" means the period of twelve (12) months, starting 1st January and ending 31st December:

Provided that the financial year which commenced on the appointed date shall terminate on the 31st December 2024;

Cap. 249.

"Gazette" means the same as the meaning assigned to it in article 3 of the Interpretation Act;

"Malta" means the same as the meaning assigned to it by article 124 of the Constitution of Malta;

"Minister" means the Minister responsible for culture;

"national choir" means the Malta national choir, the specialised performing arts initiative undertaken by the Council in the year 2018, better known as "Kor Malta";

"national dance *ensemble*" means the Malta national dance *ensemble*, the specialised performing arts initiative undertaken by the Council in the year 2014 and established as ŻFIN Malta, better known as "Żfin Malta";

"national theatre company" means the Malta national theatre company, the specialised performing arts initiative undertaken by the Council in the year 2016 and managed as a theatrical company, not in terms of the Companies Act, for cultural and not commercial purposes, better known as "Teatru Malta";

Cap. 386.

"Permanent Secretary" means the person, appointed in terms of article 92 of the Constitution of Malta who is assigned and acts in the role of Permanent Secretary as described in the Act within the Ministry responsible for culture;

Cap. 542.

"Public Cultural Organisations" means the same as the meaning assigned to it in article 2 of the Arts Council Malta Act;

Cap. 542.

"sector" means the cultural sector and refers to activities carried out by individuals, organisations and enterprises that operate in any of the activities listed in the Arts Council Malta Act;

S.L. 542.04.

"ŻFIN Malta" means the ŻFIN Malta Agency established by regulation 3 of the ŻFIN Malta Regulations.

Establishment of the Agency.

3. (1) There shall be an Agency, that shall be known as the National Agency for the Performing Arts, for the primary purposes of promoting performing arts, provide national platforms for the performing arts sector in Malta and serve as the organisational and administrative framework for the Żfin Malta Unit, the Teatru Malta Unit and the Kor Malta Unit, nurture regular audiences and establish new ones, and cultivate a sense of artistic culture among the people.

(2) The Agency shall be a body corporate having a distinct

legal personality and shall be capable, subject to the provisions of this order, of entering into contracts, of employing personnel, of acquiring, holding and disposing of any property for the purpose of its functions, of suing and of being sued, of doing all such things and entering into all such transactions as are incidental or conducive to the exercise and performance of its functions under this order, and any other function or operation of government as may be assigned under law.

(3) The legal representation of the Agency shall be vested in the Chairperson:

Provided that the Chairperson may, from time to time and under such terms and conditions and with such powers as he determines in writing and presents in a meeting of the Board, and which are approved by the Board, appoint any one (1) or more of the members of the Board, or any one (1) or more of the officers or employees of the Agency, to appear in the name and on behalf of the Agency in any judicial proceedings or on any act, contract, instrument or other document whatsoever.

The Board of the Agency.

4. (1) The Agency shall have a Board of Management, with the primary role of overseeing the management of the Agency administratively and artistically.

(2) The Board shall be composed of the following members:

(a) the Chairperson, who shall be appointed by the Minister after consultation with the Permanent Secretary;

(b) the Deputy Chairperson, who shall be appointed by the Minister after consultation with the Council;

(c) not less than three (3) and not more than seven (7) ordinary members, appointed by the Minister,

who shall possess professional qualifications, or technical expertise, or knowledge or experience in the performing arts sector, or show that they have skills in matters related to the performing arts sector, or have skills and competences that by means of which, they may aid the Board in the fulfilment of its role:

Provided that the Minister shall ensure that the Board has:

(i) a member who specializes in the art of dance;

(ii) a member who specializes in the art of theatre;

(iii) a member who specializes in choral music art; and

(d) the Secretary, who shall be appointed by the Minister after consultation with the Chairperson.

(3) A person shall not be eligible to serve as member of the Board or shall be disqualified from continuing to serve as member of the Board:

(a) where such person is convicted of any of the crimes mentioned in Titles V, VI and IX of Part II of Book First of the Criminal Code;

Cap. 9.

(b) where such person is subject to a disqualification under article 320 of the Companies Act;

Cap. 386.

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

(d) where such person is legally interdicted or incapacitated;

(e) where such person is a Judge or Magistrate of the Courts of Justice;

(f) where such person is a member of the Cabinet in terms of article 79 of the Constitution of Malta or a Parliamentary Secretary appointed in terms of article 88 of the Constitution of Malta; or

(g) where such person has a financial or any other interest in any enterprise or activity which is likely to affect the discharge of his functions as Board member.

(4) All members of the Board, regardless of their role, shall:

(a) in the execution of their duties, act with prudence, diligence, attention and observe the utmost good faith;

(b) abide by the Code of Ethics for Board members in the Public Sector issued by the Office of the Prime Minister; and

(c) sign an understanding outlining his duties as Board members, including the duty of confidentiality and regulating

conflicts of interest.

(5) The term of office for the members of the Board shall expire after a period of three (3) years from appointment:

Provided that the term of office of a member of the Board may also end upon the death or resignation of that member or the disqualification of that person from continuing to serve as a member.

The meetings of the Board.

5. (1) The quorum necessary for the operation of the Board shall be half the members in office together plus one (1):

Provided that a person, with the approval of the Chairperson, may be invited by any member of the Board or by the Minister to attend a meeting of the Board as an observer, with the right and time to speak as may be provided by the member chairing the meeting:

Provided further that the Executive Head and the Executive Team shall have the right to request to attend a meeting of the Board as an observer to make presentations on any matter relating to the conduct of the Agency's affairs or the performance of the Agency's functions.

(2) The Board shall endeavour to meet at a minimum of once every two (2) calendar months, on such date and at such time set by the Chairperson after consultation with the other members of the Board:

Provided that the Chairperson shall make the necessary effort and arrangements to enable all the members to attend the meeting on the set date and time.

(3) In the absence of the Chairperson, the meetings shall be chaired by the Deputy Chairperson.

(4) The Secretary shall also be responsible for taking minutes of all the procedures of the meetings of the Board, and for keeping a record within such minutes of all the questions raised, the correspondences and documents submitted, and any declarations of the directions taken in the books kept for that purpose.

(5) When the circumstances so require:

(a) that a vote shall be taken, each member of the Board shall have an original vote, except for the Secretary who shall be a non-voting member of the Board;

(b) that a tie-breaking vote shall be taken, the member

chairing the meeting shall be vested with a casting vote;

(c) that a member or observer is to be removed during one (1) or more meetings, the member chairing the meeting shall have the power to order the removal of such member or observer;

(d) that the term of office of a member is to be suspended temporarily, the member may suspend himself or be suspended by the Minister:

Provided that:

(i) in the case of self-suspension, the member shall write to the Board and the Minister informing them of the self-suspension; and

(ii) in the case of a member being suspended by the Minister, the Minister shall write to the member being suspended and to the Board explaining the reasons for the suspension:

Provided further that the members shall not be allowed to take a vote ordering the suspension of the term of office of a member;

(e) that a member is to be removed from office, the member may be removed by the Minister:

Provided that the Minister shall write to the member being removed from office and to the Board, explaining the reasons for the removal:

Provided further that the members shall not be allowed to take a vote ordering the removal of a member from office.

(6) The Board shall afford to the Minister facilities for obtaining any information with regard to the property and activities of the Agency, and shall furnish the Minister with returns, accounts and other information with respect to its functions, and afford facilities for the verification of any information furnished, in such manner and at such times as the Minister may so require.

(7) Without prejudice to the provisions of this order, the Board may regulate its own procedure generally and, in particular, regarding the holding of meetings of the Board, the notice shall be given of such meetings, the proceedings in relation to them, the keeping of minutes, the custody, production and inspection of those minutes and the

opening, keeping, closing and audit of accounts.

(8) 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.

The conduct of affairs of the Agency.

6. (1) The affairs and work of the Agency shall be the responsibility of and shall be managed by the Executive Head:

Provided that, for the purposes of the Act, the Executive Head is the Chief Executive Officer.

(2) The Executive Head, shall be responsible in particular, but not limited to:

(a) the day-to-day running of the Agency;

(b) the overall organisational supervision, general operational control of the Agency, and the coordination of work of the Units of the Agency;

(c) the implementation of the performance agreement and the development of strategies necessary for the implementation of the Agency's objectives;

(d) the collection, and to provide information and the carrying out of preparatory work for the purpose of reports on the operation of the Agency;

(e) the internationalisation, and the development of a relationship, collaboration and coordination with the Council and other Public Cultural Organisations, and from the Agency's part in the sector;

(f) the management of the Executive Team.

(3) The Agency shall be composed of the following Units:

(a) the Administrative Unit, managed by the Administrative Director, and which shall be responsible, but not limited to:

(i) the financial supervision, and the business plan and the budget of the Agency, and the commercialisation of the operation of the Agency;

(ii) human resources;

(iii) the communication of the Agency;

(iv) the administrative support to the Board and the Executive Team;

(v) the logistical support to the Units of the Agencies;

(b) the Żfin Malta Unit, managed by the Artistic Director (Dance), and which shall be responsible, but not limited to:

(i) the artistic program, operation, logistics and artistic development of the national dance *ensemble*;

(ii) the training and educational initiatives related to the art of dance;

(iii) the coordination with the members of the national dance *ensemble*; and

(iv) the management of communication, public relations, and marketing of the national dance *ensemble*;

(c) the Teatru Malta Unit, managed by the Artistic Director (Theatre), and which shall be responsible, but not limited to:

(i) the artistic program, operation, logistics and artistic development of the national theatre company;

(ii) the training and educational initiatives related to the art of theatre;

(iii) the coordination with persons involved in the national theatre company; and

(iv) the management of communication, public relations, and marketing of the national theatre company;

(d) the Kor Malta Unit, managed by the Artistic Director (Choir), and which shall be responsible, but not limited to:

(i) the artistic program, operation, logistics and artistic development of the national choir;

(ii) the training and educational initiatives related to choral music art;

(iii) the coordination with the members of the national choir; and

(iv) the management of communication, public relations, and marketing of the national choir.

(4) In the execution of his role, the Executive Head shall be assisted by the Executive Team:

(a) which shall be managed by the Executive Head, and shall be composed of the following members:

(i) the Administrative Director;

(ii) the Artistic Director (Dance);

(iii) the Artistic Director (Theatre);

(iv) the Artistic Director (Choir);

(v) the Secretary, appointed by the Executive Head from amongst the officers or the employees of the Agency, who shall be a non-voting member of the Executive Team, and who shall be responsible for the taking of minutes of the meetings of the Executive Team;

(b) which shall meet at a minimum of once every calendar month (1).

(5) In the exercise of his power to appoint or re-appoint persons to the position of Executive Head or to any one (1) of the positions referred to in sub-article (4)(a)(i), (ii), (iii) and (iv), the Minister shall make sure that the chosen person has suitable qualifications and competences, and may appoint an Evaluation Committee for Appointments, with the role of managing the selection process, and evaluating the candidates who have submitted their names for the vacant position:

Provided that the Evaluation Committee for Appointments shall be composed of persons with skills and competences related to the management of the Agency, and who are not members of the Board or under any disqualification set out in the provisions of sub-articles (3) and (4) of article 4.

(6) The provisions of sub-articles (3) and (4) of article 4 and of paragraphs (d) and (e) of sub-article (5) of article 5 shall apply *mutatis mutandis* for persons serving in the position of Executive Head or any of the positions referred to in sub-article (4)(a)(i), (ii), (iii) and (iv).

(7) Persons serving in the position of Executive Head or any one (1) of the positions referred to in sub-article (4)(a)(i), (ii), (iii) and

(iv), shall hold office for a period of four (4) years:

Provided that the term of office may also end upon the death or resignation of that person or the disqualification of that person from continuing to serve in the position.

The functions of the Agency.

7. (1) It shall be the function and objective of the Agency to:

(a) promote performing arts in Malta through, but not limited to, the performance of these functions, and promote knowledge, awareness, appreciation and enjoyment of the performing arts, involve existing audiences and develop new audiences;

(b) develop and maintain a national and international profile in the field of performing arts through the Żfin Malta Unit, Teatru Malta Unit and Kor Malta Unit;

(c) bring the art of dance, theatre and choral music closer to the people and cultivate a sense of artistic culture among the people;

(d) publish annually the respective artistic programs drawn up by its Units, that should include productions of a high artistic level addressed to different audiences, through, but not limited to, the commissioning of new work and the creation of innovative and stimulating productions and co-productions, while prioritizing the use of the Maltese language and culture, even in the European context whenever possible;

(e) provide what is necessary to make it easier to attend activities and events of its Units, and increase the participation and involvement of the audience, and make use of technology, communication and collaboration for the full support of the same activities and events;

(f) choose places in different localities in Malta for the creations of such productions, and collaborate with and utilize the theatres or other adequate spaces in the community;

(g) foster a relationship between the field of performing arts in Malta and that of other countries, through, but not limited to, the promotion and availability of its work on an international level, and the support of the Malta's position as a hub for performing arts in Europe and the Mediterranean, and as an international partner in the cultural and creative fields;

(h) support the strengthening of the various skills and talents in performing arts, taking into account the cultural diversity and the local resources of the performing arts in Malta;

(i) assist and support, by collaborating with the educational authorities, the teaching of performing arts in primary, middle and secondary schools, and collaborating with training institutions for the professional development of performing arts in Malta;

(j) organize educational, training and development initiatives;

(k) build the performing arts part in the field of cultural promotion of Malta and in the field of local cultural tourism;

(l) contribute and collaborate in the national culture calendar of arts and culture, which offers a consolidated program and spurs greater synergies, impact and alignment with Public Cultural Organizations and private ones;

(m) establish a strong network of affiliations with local and international cultural organizations, which may also include partnerships in local, regional and international concerts, events and festivals;

(n) determine further recognition of the individual brands of the Units of the Agency;

(o) do those things that may be considered ancillary to the functions provided for in this article.

(2) For the purpose of carrying out its functions, the Agency:

(a) may collaborate with Ministries, Departments, authorities, corporations and agencies of Government, local councils, regional councils, non-governmental organisations, Public Cultural Organisations and private ones, and other persons;

(b) may enter into agreements, contracts and obligations with natural as well as legal persons, public entities and local, national and international organisations:

Provided that the Agency, by a resolution of the Board endorsed by the Executive Team, shall seek the consent of the Minister before taking part in negotiations leading to and before taking part in the formation of a company or partnership

or entering into a joint venture.

The employees of the Agency.

8. (1) From the appointed date, the employees of the Council and of ŻFIN Malta assigned to work:

(a) with the national dance *ensemble*;

(b) with the national theatre company;

(c) with the national choir,

shall become employees of the Agency under the same terms and conditions as they exist on the appointed date, and relevant contracts of employment concluded by the Council, and which still active and valid on the appointed date, shall remain in force as if these contracts had been concluded by the Agency.

(2) All employees of the Agency shall be considered as employees of the Agency from the appointed date.

(3) Without prejudice to the provisions of the Constitution of Malta, and of any other law applicable thereto, and without prejudice to the other provisions of this order and any applicable directives, the appointment of employees of the Agency who are necessary for the proper and effective performance of its functions, shall be made by the Agency itself, with that remuneration and under those terms and conditions which may be determined by the Agency.

(4) (a) In accordance with the provisions of the Act and with the approval of the Prime Minister, the Agency may request from time to time and after consultation with the Minister, that any public employee shall be detailed for duty with the Agency in such capacity and with effect from such date as may be specifically requested, agreed or approved.

(b) During the time within which a public officer is detailed for duty with the Agency, while he is under the administrative direction and control of the Agency, he shall remain and retain all the rights and obligations of a public officer, and for the purposes of any law relating to pensions for service with the Government, service with the Agency shall be regarded as 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 within 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, and 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 in the opinion of the Prime Minister such terms and conditions, taken as a whole, offer substantially equivalent or greater benefits.

(c) The Agency shall follow the applicable directives, and shall use the salary scale and grading structure adopted by the Council:

Provided that no position shall be classified in a grade higher than Grade 3 of the service with the Government or any other grade that the Minister responsible for finance may from time to time by notice in the Gazette establish.

Transition of rights and obligations.

9. Rights and obligations arising from service contracts entered into by the Government or the Council or ŻFIN Malta prior to the entry into force of this order for the purposes and objectives through which this order is being listed as a function of the Agency, and which are still active and valid on the appointed date, shall, from the appointed date, be assigned to the Agency and shall be considered to have been entered into by the Agency.

Financing, financial control and accountability of the Agency. Cap. 601.

10. (1) The Agency shall be regulated by the provisions of the Public Finance Management Act, as provided for in article 31 of the Act.

(2) For the performance of its functions, the Agency shall receive from the Government, from the Consolidated Fund, those amounts that may from time to time be authorized for allocation to properly perform its functions or for specific works that shall be continued or that shall be otherwise executed by the Agency.

(3) Subject to the provision in sub-article (2), the Agency shall also apply its income, including that from the commercialisation of its operation, for the proper performance of its functions.

(4) Subject to any decision which the Minister may from time to time make after consultation with the Minister responsible for finance, any excess of income over expenditure shall be applied by the Agency to the formation of reserve funds which shall be used for the objectives of the Agency:

Provided that the Minister and the Minister responsible for finance may, in writing, order the Agency:

(a) to transfer to the Government that excess on income; or

(b) to apply such excess revenue in such manner or for such purpose as may be specified.

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

(6) The Agency, in the performance of its functions, may impose fees, rates and other charges as may be published or agreed upon with third parties.

(7) The Executive Head and the Administrative Director shall be responsible for administrating the Agency within the financial parameters of the Agency.

(8) (a) The Agency shall prepare an annual report where it shall render an account of its operation, activities, and financial situation in respect of each financial year.

(b) In its annual report, the Agency shall provide:

(i) an overview of the Agency's operation during that financial year, including reference to the implementation of the incorporated functions and the Agency's corporate governance; and

(ii) a financial statement and the report of the auditor or auditors, appointed by half of the members of the Board plus one (1), containing a statement:

(aa) on the financial position;

(bb) on the financial performance;

(cc) on the changes in net assets or equity;

(dd) on the cash flow;

(ee) of the comparison between the estimates prepared for the financial year under examination and the actual expenditure of the financial year under examination, and between the actual expenditure of

the financial year under examination and the actual expenditure of the previous year;

(ff) containing the opinion of the auditor or auditors on the procurement management, financial position and performance of the Agency;

(gg) containing notes, including a summary of significant accounting policies and other explanatory notes:

Provided that the contract of service with the appointed auditor or auditors shall be concluded within one (1) month from the end of the financial year and the auditor or auditors shall be bound to conclude their work and provide the Agency with the report within five (5) months from the date of conclusion of the contract of service.

(c) The Agency shall, within five (5) working days of receipt of the audit report from the auditor or auditors, transmit and present the annual report to the Minister and the Permanent Secretary.

(d) The Minister shall, within five (5) working days after the receipt of the annual report of the Agency, lay the annual report on the Table of the House, or if at any time during that period the House is not in session, within one (1) week from the beginning of the next following session.

11. In the Fourth Schedule to the Act, immediately after the item: Amends the Fourth Schedule to the Act.

"Malta International Contemporary Art Space Agency	To be responsible for strengthening and ensuring the achievement of the highest quality in contemporary art"

there shall be added the following new item:

"National Agency for the Performing Arts	To promote performing arts, provide national platforms for performing arts in Malta and serve as the organizational and administrative framework for the Żfin Malta Unit, the Teatru Malta Unit and the Kor Malta Unit, nurture regular audiences and establish new ones, and cultivate a sense of artistic culture among the people".

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