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K A M R A T A L - P E R I T I

To support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community

ANNEX 1

Avoidance of Damage to Third Party Property Regulations

A PUBLIC CONSULTATION DOCUMENT PUBLISHED BY THE KAMRA TAL-PERITI

SUBMISSIONS BY KAMRA TAL-PERITI

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SUBSIDIARY LEGISLATION XXX.XX

**AVOIDANCE OF DAMAGE TO THIRD PARTY
PROPERTY REGULATIONS**

_____, 2021

LEGAL NOTICE _____ of 2021

1. The title of these regulations is the Avoidance of Damage Citation.

to Third Party Property Regulations.

2. (1) The scope of these regulations is to ensure that before the start of any type of works consisting of any demolition, excavation, or construction, methodologies that are technically secure are prepared in order to minimise the risk of damages to third party property or injury to persons that may result through the proposed works. Scope.

(2) The provisions of these regulations shall in no way be construed as having any bearing on the responsibilities related to the design of buildings and construction activity emanating from other legislative instruments.

3. In these regulations, unless the context otherwise requires:

"the Act" means the Building and Construction Authority Act;

"Building and Construction Authority" has the same meaning as the definition provided in the Act;

"building" shall have the same meaning as the definition provided in the Act;

"construction" shall have the same meaning as the definition provided in the Act;

"contiguous property" means an immediately adjacent third party property, including any building sharing a dividing party wall with the site, whether on the side or back of the site, or overlying or underlying third party property, or any property that falls within the excavation affected zone, excluding those listed in the First Schedule;

"contractor" means the person engaged by the developer in order to execute the works;

*AVOIDANCE OF DAMAGE TO
THIRD PARTY PROPERTY*

"demolition" shall have the same meaning as the definition provided in the Act;

"developer" shall have the same meaning as the definition of "client" in the Act;

"CEO" shall have the same meaning as Chief Executive Officer in the Act;

"enforcement notice" means the same as the definition assigned to it in the Act;

"excavation" shall have the same meaning as the definition provided in the Act;

"excavation affected zone" means, a zone adjacent to excavation works, which zone has a horizontal distance equivalent to the proposed depth of the excavation around the boundary of the excavation area, as shown in Figure 1;

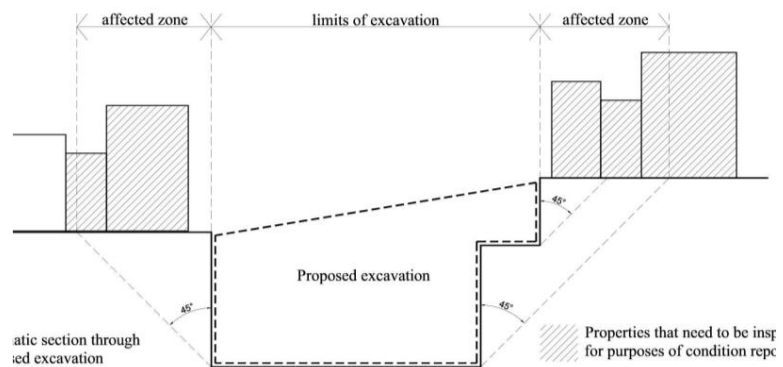


Figure 1 Definition of excavation affected zone.

"method statement" means a report prepared by the contractor carrying out the works, outlining the methodology to be employed in their execution having due regard to the works specification in accordance with the Third Schedule;

"Minister" shall have the same meaning as the definition provided in the Act;

"particulars of a person" includes the name and surname, Identity Card number, address and a twenty-four (24) hour contact number as well as the email address of a person;

"*perit* in charge of the project" means the *perit* who assumes professional responsibility for the works specifications of the works approved in the development permit;

Cap. 552.

"Planning Authority" means the Authority as established under the Development Planning Act;

"pneumatic drill" means equipment driven by compressed air or other means, used for drilling or breaking of hard materials such as rock or concrete;

"site technical officer" means a person carrying out the duty or duties derived from the provisions of these regulations. Such person shall be:

- (a) appointed by the developer from a list of licensed persons published by the CEO in accordance with the Fourth Schedule;
- (b) responsible for the enforcement of construction regulations published under this Act.
- (c) remunerated by the developer but answerable to the CEO.

"sub-contractor" means a person engaged by the contractor in order to assist in the execution of the works. Such a person has no juridical relationship with the developer. The sub-contractor is subject to the same obligations that are imposed on the contractor in these regulations, but shall be liable solely towards the contractor;

"third party" means a person having a legal title over or making use of a contiguous property by other lawful means, excluding those properties listed in the First Schedule.

"Tribunal" shall have the same meaning as the definition provided in the Act.

"works" shall have the same meaning as the definition provided in the Act.

"works specification" means the risk assessment and structural analysis prepared by a *perit* having due regard to the Second Schedule which is referred to the contractor for the preparation of the method statement.

4. These regulations shall be applicable to works that are contiguous to third party property, including: Applicability.

- (a) excavation that affects contiguous property; or
- (b) demolition that affects contiguous property; or
- (c) the building of additional storeys or load-bearing walls or structures over contiguous property; or
- (d) the construction of new buildings or additional storeys adjacent to contiguous property.

5. (1) The developer shall appoint a site technical officer, who will communicate such appointment to the CEO within seven (7) days. Responsibilities of developer

(2) If the developer has changed when works are still to be carried out or are being carried out, such new developer shall abide by these regulations.

(3) The developer shall take all reasonable precautions to ensure that the works will not result in any damage to contiguous properties, including damage that may result from the infiltration of water.

*AVOIDANCE OF DAMAGE TO
THIRD PARTY PROPERTY*

(4) The developer shall be liable for compensating third parties for any loss or damage resultant from the works he has commissioned.

Insurance and bank
guarantee.

6. (1) The developer shall ensure that demolition, excavation and construction works which fall under the provisions of these regulations shall be appropriately and adequately insured to cover any single occurrence or recurrence of damages sustained by third-party property, disability to persons or death as a result of the construction works or activity being undertaken by the developer and the contractors working on the site:

Provided that the insurance cover shall not be less than seven hundred and fifty thousand euro (€750,000) and shall continue to be renewed until such time when all demolition, excavation or construction work is certified as complete by the *perit* in charge of the project:

Provided that the developer shall carry out an appropriate and adequate assessment of the risks involved and if the said value of seven hundred and fifty thousand euro (€750,000) is not considered sufficient, the developer shall ensure that such coverage is duly increased.

Provided that the developer's insurer shall be entitled to recover any compensation for damages to third parties from other persons engage by him who may be materially responsible for the damages caused to the third parties.

(2) The developer shall submit to the CEO a copy of the insurance cover, in accordance with sub-regulation (1), together with a letter from the insurer:

(a) confirming that the works are adequately covered by an insurance policy; and

(b) stating the value of the excess of the relevant insurance policy.

The copy of the insurance and the statement from the insurer regarding the insurance cover and the amount of the excess shall be submitted to the CEO with the works specifications, method statement and condition reports.

(3) In addition to the provisions of sub-regulations (1) and (2), the developer shall submit a bank guarantee to the CEO, for all construction activities, other than those listed in regulation 26. The value of the bank guarantee shall be of three thousand euro (€3,000) for each storey of developed third party property or properties which is or are contiguous to a development site, for the first five (5) properties and a further one thousand euro (€1,000) for each additional contiguous property, up to a maximum of forty thousand euro (€40,000):

Provided that the CEO shall exempt the developer from the submission of a bank guarantee, as indicated, if the developer

submits to the CEO a certified statement issued by an insurance company attesting that the developer is insured in such a manner as to cover indemnity for damages to third party property, including damages of a minor nature:

Provided further that the developer shall submit in this case, a bank guarantee to the CEO, equivalent to the maximum amount in excess indicated in the insurance policy.

(4) Any third party having a claim for damages against the developer shall immediately inform the CEO and the developer. The CEO shall retain either the full bank guarantee up to the maximum of forty thousand euro (€40,000) calculated according to sub-regulation (3), or a part thereof equivalent to the amount being claimed by third parties until such time that a court of law or arbitral award decides on the matter, by means of a judgement or award, which is final:

Provided that in the case where an amicable settlement is reached with respect to such claim for damages, the parties shall submit to the CEO the settlement agreement, which shall also make a clear provision for the bank guarantee withheld by the CEO and its release.

(5) Should a court of law or arbitral award liquidate damages against the developer, the bank guarantee shall be forfeited in favour of the CEO, who will in turn, under the order of the court or in terms of the arbitrations award, shall effect payment to any party awarded damages, in accordance with the judgement of the court or the award of the arbitration.

(6) On completion of the project, the developer shall, within two (2) weeks, submit a certification issued by the *perit* in charge of the project that the works have been completed. For the purpose of this sub-regulation, project completion shall mean the completion of all structural and other works including the roof, screed of roofs, terraces and yards, the closure of apertures and other works to render the building sealed against the ingress of water.

(7) The CEO shall, as soon as he is in receipt of the certification from the *perit* in charge of the project, mentioned in sub-regulation (6), immediately place on a website prescribed by the CEO, a notice giving the date of notification of project completion. The developer shall also within (2) two weeks, notify all the owners and occupiers of those properties for which a condition report had been submitted by the developer's *perit*, with the details of such certification regarding project completion.

(8) Following a request made by the owner of a contiguous property, the CEO shall retain the bank guarantee in those cases where such owner submits proof that judicial or arbitral proceedings for compensation of damages caused to the property have been initiated.

(9) Unless such a request from the owner is received by the CEO within three (3) months from the date of notification of project completion, the CEO shall release the bank guarantee:

Provided that a bank guarantee shall be released if the CEO has been informed in writing by the owners of the contiguous property, as indicated in the method statement, that they do not have ulterior claims.

Submission of
works
specifications,
method
statements and
condition reports.

7. (1) Not later than four (4) weeks before the commencement of any works of excavation, demolition or construction, the *perit* in charge of the project shall submit on behalf of the developer:

- (a) The works specifications;
- (b) The method statement/s;
- (c) A report on the condition of each contiguous property in accordance with the Fifth Schedule.

(2) A third party may request the CEO to review any method statement that is submitted provided the third party submits a detailed report drawn up by a *perit* indicating the technical reasons which may be of concern to the safety of such third party or his property.

Provided that the expenses borne by the third party, including professional fees shall be reimbursed to the third party by the developer up to a maximum of €500 excluding Value Added Tax per contiguous property within seven (7) days from receiving a fiscal receipt from the third-party.

Provided further that the CEO shall not authorise the commencement of works until the third party receives such reimbursement in full.

(3) Following a written request by a third party, the CEO may request from the developer the submission of a partial method statement at any stage. Such method statement shall be submitted within three (3) weeks from the date when the developer receives the request. In his request, the CEO shall indicate the details that are to be included in the partial method statement.

(4) The developer shall also be required to submit to the CEO, a separate report on the condition of each contiguous property, on a website prescribed by the CEO, by not later than two (2) weeks before the works are commenced.

(5) The developer shall also send a copy of work specifications, the method statement/s and the relative report to each respective third party by means of registered letters or by email informing them of their right to contest them with the CEO within two weeks from receipt, and shall retain evidence of his compliance with this sub-article until the bank guarantee is released by the CEO.

(6) If the third party does not agree with the method statement or condition report of the property, he shall give notice to the CEO within two (2) weeks. If no objections are submitted to

the CEO within such time from receipt thereof by the third party, it shall be understood that the third party agrees with the condition report submitted by the developer.

(7) In the eventuality of an objection being submitted by third parties, the CEO may, at his discretion, ask the developer to address the objection through a revision of the condition report and resubmit it to the CEO for his final review.

(8) Where a third party refuses entry to the developer's *perit* and contractor/s, or where the *perit* in charge of the project and the contractor/s are unable to obtain access to contiguous property, or where the identity of the owner or, occupant of contiguous property is unknown or cannot be traced, for the purpose of preparing the works specifications, method statements and condition reports, the developer shall make a written declaration giving details of his attempts to be allowed access to the neighbour's property, including the notification or attempts of notification by registered mail, for the purpose of preparing the works specifications, method statements and condition reports and include such details in the method statement.

(9) If the third party is not the owner, he shall:

a. inform the owner that the developer, his *perit*, and/or his contractor/s, have requested access to the property for the purposes of satisfying the requirements of these regulations; and

b. forward the works specifications, method statement/s and condition report to the owner upon their receipt from the developer.

8. (1) The works specifications shall be prepared by a *perit* appointed for such purpose by the developer.

Form and content of the works specifications.

Provided that the *perit* shall be solely liable to the developer for the contents of the works specifications.

(2) The works specifications shall include the information requested in the Second Schedule.

9. (1) A separate method statement shall be prepared for demolition, excavation and construction, as applicable, by the contractor/s appointed by the developer to execute the works.

Form and content of the method statement.

Provided that the contractor/s issuing the method statement/s shall be solely liable to the developer for the contents of their respective method statement.

(2) Each method statement shall include the information requested in the Third Schedule.

(3) It shall not be lawful, next to contiguous property, to:

(a) excavate flush along third party walls, without prior excavation of central sections of the development site, or without underpinning or shoring;

(b) use a pneumatic drill to excavate the volume of rock contiguous with third party buildings, located within a distance of 0.76m from the face of the party wall fronting the development site at the surface of the natural rock face, which distance increases at a proportion of 1:1 as the depth of the excavation increases, as illustrated in Figure 2.

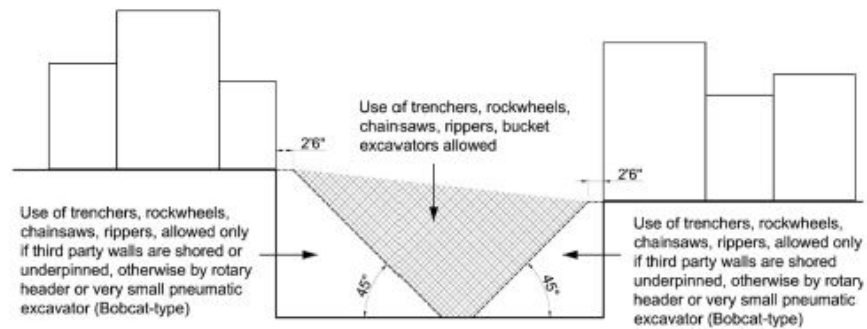


Figure 2 Use of excavation machinery

Compliance with
method statement
or enforcement
notice.

10. (1) When the site technical officer is in doubt about compliance of the works with these regulations, he shall stop the works and request direction from the CEO.

(2) The site technical officer shall ensure that the contractor is complying with all their obligations as provided for in these regulations. If the site technical officer notices any violation of these regulations, he shall immediately stop the works and notify the CEO, developer, *perit(i)* in charge and the contractor/s.

(3) Upon being served with an enforcement notice issued by the CEO, the developer shall direct the *perit* and contractor to ensure that this order is complied with.

Responsibilities
of the CEO.

11. The CEO shall, for works which fall within any one (1) category of the works listed in regulation 4:

(a) review the works specifications, method statement/s and condition reports and verify that they have been submitted in accordance with these regulations;

(b) review any objection from a third party regarding the method statement/s and/or condition reports/s, and issue instructions to the developer as may be required;

(c) verify that the works are covered by a third party insurance policy and a bank guarantee, in accordance with these regulations; and

(d) monitor the methodologies being carried out on site and see that they are in line with the method statement submitted and in accordance with these regulations through the site technical officer.

12. (1) The CEO shall authorise the commencement of works only when the provisions of articles 4, 5, 6, 7, 8, and 9 have been complied with. Such authorisation shall be withheld in any one (1) of the following circumstances: Power of the CEO to authorize commencement of works.

(a) if the works specifications, method statement/s and/or condition report/s have not been submitted in accordance with these regulations; or

(b) if no third party insurance or bank guarantee is submitted for the construction works in accordance with these regulations.

13. (1) The CEO shall have the authority to issue an enforcement notice upon the developer in any one (1) of the following circumstances: Power of the CEO to issue an enforcement notice.

(a) if the demolition, excavation or construction works are not being carried out in accordance with the method statement or in accordance with regulations; or if, irrespective of the adherence or otherwise to the method statement and relevant regulations, the CEO is of the opinion that the demolition, excavation or construction works are likely to cause material damage to third party property or will result in danger to workers or to third parties.

(b) if, irrespective of the adherence or otherwise to the method statement and relevant regulations, the Director is of the opinion that the demolition, excavation or construction works are likely to cause material damage to third party property or will result in danger to workers or to third parties.

(2) The CEO may delegate to officers of the Building and Construction Authority the power to issue on his behalf an enforcement notice.

(3) Should the developer who is served with an enforcement notice fail to abide by the provisions of that notice or cease operations as requested in the notice, the CEO or his delegated representative shall call for the presence of the Force of Order who shall for such purpose exercise such powers as are vested in them at law to assist the server of the enforcement notice in ensuring that the said notice is complied with:

Provided that should the CEO or his delegated representative decide not to issue an enforcement notice, this shall not be construed as a form of endorsement of the method statement, nor shall it be construed as an endorsement of the work methodology being carried out on site.

(4) All expenses reasonably incurred by the CEO in the exercise of his power under this regulation shall be recoverable as a civil debt by the CEO from the developer to whom the enforcement notice is issued, subject to such right of recovery which the developer may have against any other person.

Interim measures.

14. (1) Where the CEO holds that an infringement of these regulations presents a serious threat to the safety of third parties or to the safety of third party property, he may take urgent *interim* measures which may include requesting the developer to remedy the situation in advance of reaching a final decision, or the imposition of administrative fines, or both.

(2) If any steps or other action, including discontinuance or stoppage required by an enforcement notice issued, to stop any construction activity from being started or to cease all or part of a construction activity, have not been taken within the time specified therein, the CEO may enter the construction site and take such steps or other action he deems necessary, including the disabling or removal of any equipment, machinery, tools, belongings, vehicles or other objects that may be on the site and the carrying out of any works that may be necessary to comply with what is requested in the enforcement notice and may for such purpose request the assistance of the force of order to exercise such powers as are vested in them at law.

(3) All expenses reasonably incurred by the CEO in the exercise of his powers under this regulation shall be recoverable as a civil debt by the CEO from the developer subject to such right of recovery which the developer may have against any other person.

(4) The CEO, or any delegated official acting on his behalf, shall not be liable for any damages as a result of the exercise of his powers under this regulation unless it is proved that such damage resulted from gross negligence on the part of the CEO or his delegate.

15. (1) The Director shall, before proceeding to take any of the measures envisaged under regulation 14, inform the developer, keeping in copy the *perit* in charge of the project, the site technical officer and the contractor, warning him of the measure that may be taken and the specific reason as to why it may be taken. The CEO may order the developer to cease or to rectify any act or omission and, or to make submissions thereto within such period of time not being less than seven (7) days, which period may be abridged if the CEO considers that the continuance of the infringement presents an immediate and serious threat to public safety or public health, and, or warrants the immediate intervention of the Building and Construction Authority:

Procedure when taking a measure under regulation 15.

Provided that where the measure is or includes an administrative fine the developer concerned shall also be informed of the amount of the fine:

Provided further that when issuing a warning under this sub-regulation, the CEO may impose such conditions as he may consider reasonable in the circumstances.

(2) If the developer remedies the infringement within the period established by the CEO in accordance with sub-regulation (1), and agrees in writing to abide with any condition that the CEO may impose, the CEO may desist from proceeding any further, without prejudice to any regulatory measures that may have already been imposed.

(3) If, after the lapse of the period mentioned in sub-regulation (1), the CEO considers that the developer has not given any valid reasons to demonstrate why no measure should be taken against him, the CEO shall notify in writing, specifying the nature of the infringement, stating the measure being taken and, if the measure is or includes an administrative fine, stating the amount of the fine being imposed:

Provided that the notification mentioned in this sub-regulation shall be in the form of a judicial act and the fines provided for in these regulations 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 fine 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. 12.

Cap. 12.

Responsibility of a delegated official.

16. (1) The CEO may delegate to another person the responsibilities pertaining to the CEO in regulations 13 and 14, and the person thus delegated shall be responsible for such delegated matters.

(2) The CEO or any delegated official or representative shall only issue an enforcement notice to stop the construction works after verifying and taking into consideration the provisions of regulation 14.

(3) Where an enforcement notice is issued by the delegated official or representative, a copy of the enforcement notice shall be submitted to the CEO as soon as possible, after the serving of the notice, but not later than close of business of the first full working day after the serving of the notice.

Form and content of enforcement notices.

17. (1) An enforcement notice shall include:

a. an instruction to the developer, copied to the site technical officer and the contractor and the *perit* in charge of the project, not to initiate any works or to cease all or part of the works;

b. the reasons as to why the notice is being issued, including where necessary for technical reasons, a technical report supported by photos of the works which are deemed to be unsafe, or not in accordance with these regulations;

c. instructions (if any) to prevent further damage or danger to the public or to third parties.

(2) When the CEO or his delegated representative deems that the cessation of works is to be immediate because of imminent severe damage to contiguous properties or danger to the public, or third parties, the enforcement notice and the required preventive measures may be issued on site in a verbal manner and later confirmed in writing within twenty-four (24) hours of the issuance of the said notice.

Withdrawal of enforcement notice.

18. An enforcement notice may only be withdrawn by the CEO, provided that a new method statement indicating all necessary remedial works and precautionary measures is submitted to replace the original method statement.

Contestations of method statements.

19. Members of the public may submit to the CEO contestations on any method statement, or complaints relating to the lack of safety of a construction activity:

Provided that the CEO may decide not to consider complaints or contestations which do not provide a technical justification for the contestation or concern.

20. (1) The developer shall take all reasonable precautions^{Onus of proof.} to ensure that the construction activity will not result in damage to contiguous properties, including damage that may result from the infiltration of water.

(2) Any dispute regarding works, not being one in connection with a claim for personal injuries, but being a dispute arising from damage to third party property resulting from construction activity on a contiguous site shall be referred to arbitration. The rules contained in the Arbitration Act or made thereunder relating to mandatory arbitration shall apply: ^{Arbitration.} ^{Cap. 387.}

Provided that:

(a) the damage incurred by the third party does not impair the stability of his property nor endangers its users; or

(b) the cost of damages being claimed by the third party does not exceed one million euro (€1,000,000).

21. (1) Any developer who acts in contravention of the provisions of regulation 6 shall be guilty of an offence in terms of these regulations and shall be liable on conviction to a fine (*multa*) not exceeding five hundred euro (€500) and in the case of a continuing offence, to a further fine (*multa*) of one hundred euro (€100) for each day the offence continues. ^{Offences and penalties.}

(2) The submission of works specifications, method statements or condition reports which, in the opinion of the CEO, are significantly lacking when compared to the requirements as set out in these regulations shall also be considered as an offence in terms of sub-regulation (1) and shall be liable to the fines set out in the said sub-regulation.

Provided that the CEO shall immediately refer any such deficient document that is drawn up by a *perit* to the Kamra tal-Periti to initiate professional conduct investigations in accordance with the Periti Act. ^{Cap. 390}

(3) If the works fail to comply with a method statement in terms of these regulations without prior consultation with the site technical officer, the developer shall be liable, on conviction, to a fine (*multa*) not exceeding ten thousand euro (€ 10,000) and in the case of a continuing offence, to a further fine (*multa*) of five hundred euro (€500) for each day the offence continues.

(4) A developer who fails to abide by the provisions of an enforcement notice in terms of these regulations or to cease operations as requested in the notice or adopts any *interim* measures without the permission of the CEO or in any other manner acts in contravention of regulations 14 and 15, shall be guilty of an offence in terms of these regulations and shall be liable, on conviction, to a fine (*multa*) not exceeding fifty thousand euro (€50,000) and in the case of a continuing offence, to a further fine (*multa*) of one thousand euro (€1,000) for each day the offence continues.

(5) A developer who makes a false declaration for the purposes of these regulations shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding one thousand five hundred euro (€1,500), without prejudice to any other punishment for which the applicant may have become liable under any other law.

Provided that the CEO shall immediately refer any involvement of a *perit* in the preparation of a false declaration for the purposes of these regulations to the *Kamra tal-Periti* to initiate professional conduct investigations in accordance with the Periti Act.

Cap. 9.

(6) Notwithstanding the provisions of the Criminal Code, proceedings for an offence against these regulations are to be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and they shall be in accordance with the provisions of the Criminal Code that regulate the procedure of those as courts of criminal judicature.

Cap. 9.

Cap. 9.

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

Administrative penalties.

22. (1) Without prejudice to regulation 16 and any other provisions under these regulations which the CEO is entitled to enforce, the CEO may impose an administrative penalty in accordance with the provisions of this regulation, upon a developer who infringes any provision of these regulations, or who fails to comply with any directive or decision given by the CEO.

(2) Any developer who fails to comply with the provisions of regulations 6, 7, 8, 9 and 10 or refuses to comply with an enforcement notice or the method statement and any person who fails or refuses to adopt urgent *interim* measures in terms of these regulations or shall commit an infringement of these regulations, shall be liable to the imposition of an administrative fine from the CEO.

(3) An administrative penalty imposed under this regulation shall not exceed one-half of the maximum fine (*multa*) which the offender may be liable to, for the corresponding offence, in accordance with the provisions of regulation 21:

(4) In all cases where the CEO imposes an administrative penalty in respect of anything done or omitted to be done in terms of these regulations and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence:

Provided that all the fines provided for in this regulation shall be due to the Building and Construction Authority 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 the effects and purposes of the Code of Organization and Civil Procedure, Book Second, Part I, Title VII.

Cap. 12.

Cap. 12.

(5) The payment of an administrative fine as a penalty shall not prejudice the duty of a person to undertake any measure which may be requested of him, whether such duty arises out of these regulations, or out of an order issued by the CEO through an enforcement notice or to adopt an interim measure in terms of these regulations.

23. Where, following the payment of a penalty, the violation of any provision of these regulations persists, regardless of any instructions the CEO may have given for the redress of same, the CEO may refer the matter to the police to institute proceedings referred to in regulation 22 for such continuing violation.

Continuing offence.

24. Without prejudice to the provisions of regulations 15, 16 and 23, any decision taken by the CEO in terms of these regulations shall be subject to the right of appeal before the Tribunal, in terms of Part VII of the Act.

Appeal procedure.

25. When the works are of a minor nature, before the start of works, the developer may request that the CEO waive in whole or in part the provisions of regulations 5, 6, 7, 8 and/or 9, giving clear reasons for such request.

Exemptions from submission.

Provided that the CEO shall determine such a request in writing within seven (7) days, providing justification for his decision.

FIRST SCHEDULE

(Regulation 3)

1. Public footpaths and pavements.
2. Services underlying public footpaths and pavements, within the immediate vicinity of the frontage of the construction site.

SECOND SCHEDULE

(Regulations 7 and 8)

(Works Specifications)

1. A comprehensive risk assessment including:
 - (a) The identification of the risks involved, after taking account of the structural condition of the construction itself and contiguous buildings, including:
 - (i) Description of the structure system used for floors (e.g reinforced concrete slabs, stone slabs on timber beams, concrete frame, etc).
 - (ii) Description of the structure system used for transmitting vertical load (e.g. masonry walls, concrete columns, foundations, etc).
 - (iii) Sketch plan of each contiguous building.
 - (b) Where additional construction over an existing building or part thereof is to take place:
 - (i) Checks showing that any existing floors are capable of sustaining the additional load being imposed by the new construction these should include:
 - 1) an estimate of existing and proposed loads in every floor, and a declaration that the structural elements of each individual floor are capable of sustaining the additional loads when checked in accordance with established codes of practice;
 - 2) a description of any additional reinforcement work that may be necessary in each floor.
 - (ii) Checks showing that the foundations of the building are capable of sustaining any additional loads placed over the existing storeys. These should include:
 - 1) an estimate of the existing and proposed loads at foundation level;
 - 2) information about the nature of the foundations of the building, including type and dimensions, or where this is not available, a statement about the design assumptions in accordance with codes of practice;
 - 3) information on the nature of the ground, supported by the respective ground investigation reports that shall be attached to the works specifications.

- (c) Where excavation is to take place:
- (i) A description of the loads acting on the ground within the excavation affected zone, including:
 - 1) Clear identification of the structural system of the building, within this zone, describing how load is transmitted to the foundations.
 - 2) An estimate of the load reaching foundation level, in kN/m or kN.
 - 3) Identification of the type and dimensions of foundations within this zone.
 - 4) An estimate of the bearing pressure at foundation level in kN/m² in the case of strip footings, pad footings and raft foundations.
 - (ii) A description of the excavation affected zone, explained schematically inclusive of a dimensioned plan that includes the following:
 - 1) the limits of excavation;
 - 2) the depth of each part of the excavation;
 - 3) the affected zone of the excavation, shown shaded and dimensioned;
 - 4) the properties and buildings belonging to third parties that fall within the affected zone of the excavation.
 - (iii) A description of the ground conditions. This should include the following:
 - 1) identification of ground materials through the geological map of the Maltese Islands;
 - 2) information from any ground investigation reports that fall within the immediate surroundings, specifically within the affected zone;
 - 3) information from other *periti* who have built or supervised excavation in the immediate surroundings, after having obtained the necessary consent to use this information;
 - 4) if information requested in items (2) or (3) is not available, information from a ground investigation that would need to be commissioned for the proposed project. This investigation shall be carried out from within the site that is to be excavated. In the case of excavations not exceeding 2m in depth, such information may be obtained from trial pits, whereas borehole drilling with full recovery shall be required for all other proposed excavation depths. If agreement is reached with the neighbouring third parties within the affected zone, boreholes shall be drilled, inclined, from within the site that is to be excavated, into the ground beneath the neighbouring third party properties.

*AVOIDANCE OF DAMAGE TO
THIRD PARTY PROPERTY*

- (iv) Identification of the risks involved in carrying out the excavation, taking into account the expected strength of the ground materials, the presence or otherwise of fissures, and the loads within the affected zone.

2. Requirements regarding the content of the method statement/s, including:

- (a) Any recommendations the *perit* deems necessary regarding the sequence of works to be undertaken on the basis of the risk assessment.

Provided that in the case of excavation, this should include:

- (i) where the excavation is to be started from;
 - (ii) any phasing required to achieve the required rock buttressing;
 - (iii) the levels that should be attained in each stage of the excavation.
 - (iv) Subject to the provisions of the Civil Code (Cap. 16.), where underpinning is to be undertaken, full details of how the underpinning works are to be executed, supported by scaled plans, sections and detailed drawings. A description of how the underpinning works are to be phased in relation to other excavation work needs to be described.
- (b) Any project-specific measures the *perit* deems necessary to safeguard the stability of the works being undertaken, the stability of contiguous structures or terrain as the case may be;
 - (c) the precautions and safeguards to be adopted, including:
 - (i) against instability of the structure;
 - (ii) for parts thereof being demolished or altered;
 - (iii) for any contiguous structures;
 - (iv) any monitoring readings that are required to be undertaken during demolition and excavation, describing where, how and what is to be measured and what results are to be tolerated prior to taking ulterior action.

THIRD SCHEDULE

(Regulations 7 and 9)

(Method Statement)

1. The commencement date of the works.
2. The proposed detailed methodology, supported by any other documentation as may be required, which should specify:
 - (a) A detailed account of the sequence of works broken down into chronological steps, specifying the methodology to be employed to address the works specifications.
 - (b) The type of machinery and plant to be proposed to be utilised during the works, including:
 - (i) if applicable, excavation machinery to be utilised, including relative certification;
 - (ii) if applicable, the type of crane to be used, the location where this is to be set-up, the methodology for setting up the crane, information about ground conditions below the proposed crane locations, and other relevant information relating to the crane that may be supported by certification by a warranted engineer;
3. Procedure to be adopted for the loading and carting away of the resulting debris.
4. The precautions and safeguards to be adopted:
 - (a) against instability of the structure;
 - (b) for parts thereof being demolished;
 - (c) for any contiguous structures;
 - (d) measures to safeguard the stability of the works being undertaken, the stability of contiguous structures or terrain as the case may be
5. Health and safety measures to be adopted in and around the construction site to protect public safety.

FOURTH SCHEDULE

(Regulation 3)

(Competence of Site Technical Officer)

A person will qualify to be licensed by the CEO to act as a site technical officer if:

1. he is a citizen of Malta, or a citizen of a Member State, or a third-country family member of European Union citizens, or a citizen of a third country entitled to live and work permanently in Malta, by virtue of any other legislation;
2. he is legally established in Malta;
3. he is of good conduct, as can be confirmed by a full and valid conduct certificate from the relative national authority, issued not more than three (3) months before the date of submission of his request for registration to the CEO;
4. he is of full legal capacity;
5. he has sufficient knowledge of one of the official languages of Malta, to the extent necessary for the practice of the role;
6. he is in possession of an academic qualification in civil or construction engineering at MQF level 6, or equivalent;
7. he has undertaken a course approved by the CEO which shall, as a minimum, cover all building and construction regulations in force at the time, risk awareness of works, achieving a high level of competence in understanding, interpreting, communicating and enforcing works specifications, method statements and other project documentation.

FIFTH SCHEDULE

(Regulation 7)
(Condition Reports)

1. Details of property.
2. Brief description of finishes and their general condition.
3. Brief description of the condition of existing services, including, but not limited to, any leakages, blockages etc.
4. List of observed defects, by room, cross-referenced to photos.

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