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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

CIRCULAR 08/2019

2nd July 2019

RE: Updated position regarding Legal Notice 136 of 2019

Dear Colleagues,

During the meeting held last Thursday with the Minister, the Council made its position clear on the various aspects of the new Legal Notice with which it was not in agreement, as have already been outlined in our various correspondence and press releases. At the end of the meeting, the *Kamra* was invited to submit its proposals for amendments to the Legal Notice, which it did on Sunday 30th June 2019. In general, these amendments will clarify the role and responsibility of the *perit*, of the contractor and of the developer, and clarify the role and competences of the site technical officer. A meeting was held on Monday morning with Government to discuss these proposed amendments and hopefully reach agreement on the changes required. We are now awaiting further feedback from Government.

Meanwhile, the Council notes with satisfaction that its instructions to *periti* to faithfully abide by the Legal Notice were adhered to. Regrettably only about 20% of building sites are now operative on the basis of exemptions granted under regulations 25 and 26 of Legal Notice 136 of 2019. The *Kamra's* objective is to return to a state of normality with all sites back in operation as before, even if the rest of the industry generally remains oblivious to the significance of the responsibilities implied.

Of course, it will be necessary for some sites to remain closed for a while longer until they are brought into line with the requirements of the Legal Notice, however there are a number of situations where more sites can be brought back in operation as outlined below.

In addition, the undersigned also held meetings with the President of the Malta Developers Association over the weekend, to discuss the interim period until the required changes to the Legal Notice come into place. The meetings were very fruitful and it was agreed that the *Kamra* would be able to issue clear guidance on the way forward, on the assumption that our proposals to Government will also be agreed to, including the positions approved in our last EGM. Unfortunately this has not happened.

Until a final position is published, you are advised to proceed in accordance with the guidance below, and to inform your clients and respective contractors that we are still awaiting the application forms and a formal guidance note from BRO to be published.

The below guidance notes supercede the FAQs published under Circular 07/2019 and are intended to address certain works that may proceed under the new Legal Notice.

Guidance regarding Regulation 26 of Legal Notice 136 of 2019

The below guidance notes supercede the FAQs published under Circular 07/2019 and are intended to address certain works that may proceed under the new Legal Notice:

- (1) If, in your professional opinion, the “*structural interventions will not affect third party property*”, then you are to follow the provisions of Regulation 26 of the Legal Notice. This has to be done before any works may continue on any ongoing site, including works which were previously covered by the exemptions of LN 72 of 2013 (which are now no longer exempt).
- (2) In your assessment, it is important to consider whether the execution of the works may cause a risk of damage to third parties, as a result of the structural interventions. This generally means that:
 - there are no excavations which, even though not directly abutting third party property, could affect, in some way, third party property;
 - that there are no demolition works adjacent to existing buildings, even if not directly in contact with such building, which could affect such adjacent buildings; or
 - that there are no construction works that could, in some way, impact any adjacent or underlying existing buildings, even if the intention is to build separate party walls.
- (3) The use of this Regulation appears straight forward enough, however the Kamra tal-Periti has received legal advice that the way this exemption is formulated does not provide legal clarity. We have requested that this regulation clearly states that phrase “that the structural interventions will not affect third party property” is changed to state that this is barring any minor damages such as ingress of water, movement cracks, damage to finishes, etc. So far, this has not been addressed. Nevertheless, your professional judgement prevails.
- (4) In situations where *periti* are being pressured to issue declarations on the basis of Regulation 26, and where this is, in their professional judgement, not justified, you are advised to following the same procedure outlined in Directives 03/2019 and 04/2019.
- (5) If you decide to proceed under Regulation 26, you are advised to fill in the respective form which may be downloaded from the Planning Authority website, and to upload it onto Eapps.

Guidance regarding Regulation 25 of Legal Notice 136 of 2019

- (6) Requests for exemptions on the basis of Regulation 25 should, in general, be made where a risk to third party properties does exist, but where there is an urgency to carry out the works, since delays may increase the relative risks.
- (7) In such cases, *periti* are to fill in the respective form which may be downloaded from the Planning Authority website, ticking the “*Request to effect emergency works*” option. Works under this category may include the following, which are given only as examples for guidance purposes:

- Shoring up or replacement of dangerous structures, subject to the standard clearance having been received from the Planning Authority;
 - Closing off of excavation sites where exposed third party foundations are at risk, especially where the exposed rock or land formation shows evidence of possible instability;
 - Bracing of partly constructed walls, such as in the case where the loadbearing walls have partly or completely built, but require the casting of the ceiling structure to ensure their stability;
 - Construction of parapet walls for safety purposes;
 - Casting of roof screeds and waterproofing works;
 - And similar cases.
- (8) Regulation 25 also allows requests for exemptions to be made even when the work is not urgent. Typical examples of requests that may be considered are:
- Restoration works as long as these are limited to stone replacement, cleaning and pointing works on facades, and the replacement of façade features (eg. balconies, windows, etc);
 - Minor internal structural alterations that are not considered to have an impact on third parties;
 - Internal alterations that are not of a loadbearing nature;
 - And similar cases.
- (9) *Periti* are reminded that even when such exemption is given, a mason still needs to be appointed, while a contractor is to be nominated to take responsibility for the requirements of LN293/16.
- (10) In the case of Regulation 25 exemptions, a response from the Building Regulation Office is required.

Additional Guidance

- (11) Road works fall within the definition of “*construction work*” and therefore if they pose a danger to third party property, should be compliant with the Legal Notice. The *Kamra* has been informed that works within a certain distance of third party property are to comply with the Legal Notice. We are seeking clarification on the actual distance.
- (12) Any requests for exemptions granted by the BRO prior to the coming into force of Legal Notice 136 of 2019 are to be resubmitted in order to confirm their compliance with the new Regulations, if applicable. It is important to keep in mind that all requirements of the Legal Notice should be in place, including insurances to be taken out by the respective parties.

The *Kamra tal-Periti* has requested the BRO to publish clear guidelines as to other circumstances where Regulation 25 can be used, and also to amend the forms in line with our discussions of the past days.

All Directives and Circulars are being sent to all *periti* who are on the *Kamra's* database. If you meet colleagues who are not receiving such communications, kindly ask them to send an email to buildingregs@kamratelperiti.org so that the records can be updated.

Perit Simone Vella Lenicker
President