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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

Our Ref: DIR 02/2018
Date: 8th October 2018

DIRECTIVE TO ALL WARRANT HOLDERS

Drawings, Design Documents and Intellectual Property

All warrant holders are hereby reminded about the scope of, and the implications raised by, the Kamra's Directive 01/2015 relating to "*Drawings, Design Documents and Intellectual Property of a Periti*".

In the light of the ever-increasing number of queries received by the *Kamra tal-Periti* from *Periti* and Clients alike, seeking to clarify the position as to their rights over the design-related documents created by a *Periti*, the *Kamra tal-Periti* recommends that such matters should be specifically dealt with, and agreed upon by the *Periti* and the Client, in the agreement / letter of engagement that should be entered into, in advance of the provision of the services in question.

In line with the guidance that is offered by Directive 01/2015, *Periti* should take the opportunity, when entering into the afore-said agreements / letters of engagement with their Clients, to clarify all matters concerning intellectual property (IP) rights which they enjoy over design-related documents which they create, in accordance with local and European legislation, including the *Periti's* right to retain ownership of the intellectual property (copyright), the Client's rights and limitations in regard to the use of design-related documents, the format in which the design-related documents are presented to the Client, etc.

The *Kamra tal-Periti* is of the opinion that if the above-mentioned recommended measures of good practice are put in place, this would allow *Periti* to avoid situations of conflict, or of ambiguity, arising with their Clients on matters concerning the ownership and/or use of design-related documents by the parties involved.

Below is the original text of Directive 01/2015 with some additional clarifications.

Drawings, illustrations and/or other design documents are considered to be the Intellectual Property (IP) of the *Periti* that prepared them, and there exists no obligation to provide these to a third party save for the purposes of statutory requirements, if any, and provision of a printed copy to the Client.

The legal basis for *Periti* to retain ownership of IP (copyright in this case) is the result of Article 11 of the Maltese Copyright Act (Chapter 415 of the Laws of Malta) which stipulates that, subject to an agreement to the contrary between the author of the work and the third party individual commissioning same (the Client in this case), the first ownership of copyright vests in the author thereof (i.e. the *Periti*). The works in question and which *Periti* may be deemed to create and to author at law are "artistic works", which term is defined

by Article 2 of the Copyright Act to include “drawings”, “plans” and “works of architecture in the form of buildings or models”.

While Clients reimburse *Periti* for professional services rendered as agreed between the parties, the Client is entitled solely to the use of designs, drawings and other design-related documents created by the *Perit*, and acquires no other rights over them.

Although not obliged to do so, *Periti* may choose to provide a copy of the relevant documents to the Client in locked digital format, but there exists no obligation to provide same in an editable digital format unless this is specifically established in the Agreement between the *Perit* and the Client. *Periti* should be aware that providing a work in an editable format would allow the work to be easily adapted, arranged, altered and/or reproduced, all of which actions are intrinsic to, and associated with, the exclusive rights that a copyright owner enjoys according to copyright legislation (Article 7 of the Copyright Act), and, hence, Clients of *Periti* should not have an expectation to receive the work in editable format unless there was an express agreement between the parties for this.

In the event that a *Perit* does decide (voluntarily and without obligation) to provide a Client or any other relevant third party with a copy of such documents in editable format, then s/he is within his/her rights to demand whatever remuneration they consider appropriate, over and above any other remuneration received in respect of professional services rendered, save where this is precluded by Agreement as outlined in the previous paragraph.

In the case of surveys of existing property, however, where the measurements are taken and the relevant drawings of the building or property in its *existing* state are prepared by the *Perit*, in this case alone, the Client has the right to request provision of such drawings in editable format from the *Perit*, given that such survey includes no additional input of creative design work or similar by the *Perit*, and is merely a record of the existing state of affairs.

The *Kamra tal-Periti* recommends that *Periti* pre-empt demands for the provision of design information in their letters of engagement / agreements with prospective Clients.

Prof Alex Torpiano
President