

### Explanatory Note

The transfer of commissions, projects and tasks from one perit to another is generally a delicate and potentially complex transition which can give rise to a number of issues related to ethics, commercial interests, and intellectual property rights.

In 2009, the Council of the Kamra had, at the behest of the General Meeting, issued the [Change of Perit Directive](#) that sought to govern the transition from an ethical perspective. The focus at the time was not to stifle the possibility for the incoming periti from delivering their professional services and not to unduly harm clients who may be victims of vexatious requests for payments from outgoing periti. As a result, [Directive 04/09](#) had stipulated that outgoing periti must hand over projects to the incoming perit even if there are outstanding payments due.

Over time, however, the original intentions of the directive were thwarted to the point where periti frequently end up not getting paid for their services by their clients, who exploit the directive to move projects from one perit to another, sometimes more than once, to avoid paying for professional services.

This directive seeks to strike a fairer balance between the rights of periti to get paid, and the protection of clients from vexatious claims for payment.

It is important to underscore that the rights and obligations outlined below pertain exclusively to the realm of professional and ethical conduct, and do not overrule or substitute civil law. It is thus recommended that in exercising the professional rights enunciated below, periti seek legal advice to ensure they do not expose themselves to civil claims for damages.

Members of the profession are also notified that this Directive was vetted by the Kamra's legal advisors.

# Directive

The Council of the Kamra tal-Periti hereby gives notice to all members of the profession of this Directive governing the transfer of commissions, or engagements to provide professional services, from one perit (or partnership of periti) to another.

This Directive outlines the processes to be followed in such cases, as well as the relative rights and obligations of the periti involved, and matters relating to liability.

Directives [DIR 04/09](#), [DIR 03/19](#) and Circular [CIR 02/09](#) are being hereby repealed.

## 1. PROCESSES

### 1.1. When a development application is still ongoing

When a commission is terminated **during the processing of a planning application**, the outgoing perit shall, in addition to the client and the Kamra, also notify the Planning Authority via eApps, requesting immediate suspension of the planning application process in terms of S.L. 552.13 reg 12 (1) to provide sufficient time for:

- the client to identify another perit;
- the outgoing and incoming periti (or partnership/s of periti) to satisfy their respective obligations as set out in this Directive;
- the compilation and submission of any forms that may be prescribed by the Planning Authority.

### 1.2. When works are underway

When a commission is terminated **after construction works have commenced**, the outgoing perit shall, in addition to the client, also notify the Kamra tal-Periti, the Building & Construction Agency<sup>1</sup>, the Planning Authority<sup>2</sup>, and the Commissioner of Police<sup>3</sup>, as well as the Superintendence of Cultural Heritage<sup>4</sup>, where applicable, to ensure that no works proceed without the general supervision of a perit, and the necessary forms as

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<sup>1</sup> Notification to the BCA can be effected via eApps (Avoidance of Damage tab) or via email [info@bca.org.mt](mailto:info@bca.org.mt)

<sup>2</sup> Notification to the PA can be effected via eApps (Submit Correspondence tab)

<sup>3</sup> Notification to the Commissioner of Police can be effected via email on [pulizija@gov.mt](mailto:pulizija@gov.mt)

<sup>4</sup> Notification to the SCH can be effected via email on [monitoring.sch@gov.mt](mailto:monitoring.sch@gov.mt)

may be prescribed by the Building & Construction Authority, Planning Authority, and any other relevant statutory bodies, are formally filed<sup>5</sup>.

### **1.3. In all other cases**

In all other cases where the statutory processes described above do not apply, the provisions in Sections 2 and 3 only shall be applicable.

## **2. RIGHTS & OBLIGATIONS OF THE OUTGOING PERIT**

### **2.1. Right to refuse release**

A perit may refuse to release a commission in the following circumstances:

- a) if the termination is being initiated by the client in cases where the perit has issued legitimate instructions to safeguard public safety, structural integrity of buildings, the protection of cultural heritage and the environment, compliance with planning permit conditions, and/or adherence with laws, regulations, directives and codes.
- b) if the perit has not been remunerated in accordance with the terms set out in a **written agreement**<sup>6</sup> with the client.

Provided that if any of the above circumstances exist, the perit shall immediately notify the Kamra providing details of such circumstances.

Provided further that once the outgoing perit has been remunerated, or a final decision is reached by a Court or other adjudicating body, the outgoing perit shall release the commission to the incoming perit and proceed with the handover in accordance with section 2.3.

**Provided further that if no circumstances as described above exist, the perit shall not withhold the release of his commission unless otherwise authorised by the Council of the Kamra tal-Periti.**

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<sup>5</sup> The PA's Change of Perit form and the BCA's Change of Responsibility form are to be submitted by the outgoing perit.

<sup>6</sup> For the purposes of this Directive, a written agreement, which can be in the form of a contract, letter of engagement, or quotation approval (including via email), shall include **as a minimum**:

- confirmation that the client has accepted the perit's offer to provide clearly specified services;
- the remuneration the perit will receive from the client in exchange for the services agreed upon;
- the date of such agreement.

## **2.2. Obligation to notify**

The outgoing perit shall in all circumstances, follow the processes set out in section 1 of this directive, as applicable.

Provided further that if the commission is being terminated by the outgoing perit, s/he shall keep a record of the relative written notification to the client of the termination.

## **2.3. Obligation to provide handover**

Upon being notified in writing by the incoming perit that s/he was engaged by the client to take over the commission, the outgoing perit shall provide the incoming perit a full handover within a reasonable amount of time, which handover shall include information about the design, site conditions, site survey, the client brief governing the services s/he had hitherto provided, photographs of the works, instructions and reports about the works, communication with the various authorities until the time the original perit was still entrusted with the commission, and any other relevant information necessary to safeguard public safety, structural integrity of buildings, the protection of cultural heritage and the environment, compliance with planning permit conditions, and/or adherence with laws, regulations, directives and codes, as may be applicable depending on the nature of the commission.

Provided that such handover excludes the transfer of intellectual property belonging to the original perit, including any digital information such as CAD drawings, 3D models, and other similar data, unless agreed to by the outgoing perit at his/her discretion or as may have agreed in a prior written agreement between the outgoing perit and the client.<sup>7</sup>

Provided further that the outgoing perit may request payment for the transfer of his/her intellectual property, unless otherwise specified in a written agreement between the original perit and the client.

Provided further that the outgoing perit may request additional remuneration and/or termination fees from the client to provide a handover as long as this is already provided for in the written agreement.

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<sup>7</sup> Periti are advised to refer to Directives [DIR 01/15](#) and [DIR 02/18](#) for further detail on intellectual property rights held by periti.

### **3. RIGHTS & OBLIGATIONS OF THE INCOMING PERIT**

#### **3.1. Obligation to notify**

Upon being approached by the client to take over the commission from another perit, the incoming perit shall notify in writing the outgoing perit of this requesting the initiation of the handover process.

#### **3.2. Obligation to refrain from taking over a commission**

A perit shall refrain from accepting to take over a commission originally commenced by another perit in the following circumstances:

- a) If the original perit is being substituted for issuing legitimate instructions to a contactor to safeguard public safety, structural integrity of buildings, the protection of cultural heritage and the environment, compliance with planning permit conditions, and/or adherence with laws, regulations, directives and codes.
- b) If the original perit has not been remunerated in accordance with the terms set out in a written agreement with the client.

**Provided that if no such written agreement exists, the incoming perit will not be impeded from taking over the commission as long as other sections of this directive are followed.**

- c) If the incoming perit has not notified the original perit in writing and requested a comprehensive handover from the outgoing perit.

For the purposes of this Directive, taking over a commission shall include the submission of Change of Perit Forms, or other equivalent forms, to any authority. Incoming periti are prohibited from filing such forms.

**The Council of the Kamra tal-Periti shall consider any actions by a perit to take over the commission of another perit before resolving such disputes as constituting “supplanting” in terms of Provision 4 of the Code of Professional Conduct.**

Provided that an incoming perit shall not be impeded from taking over a commission, if the outgoing perit chooses to waive his/her rights outlined in section 2.1.

#### **4. PROFESSIONAL LIABILITY WHEN TRANSFERRING COMMISSIONS**

- 4.1. Under no circumstance shall a transfer of a commission constitute the transfer of liabilities between periti (or partnerships of periti).
- 4.2. The outgoing perit shall remain liable for the professional services s/he has completed until the date of the transfer becomes effective.
- 4.3. The incoming perit shall be liable for the professional services s/he provides from the date the transfer becomes effective onwards.
- 4.4. The handover information should be sufficiently detailed to clearly demarcate the liabilities of both outgoing and incoming periti, and is to include a clear indication of all services rendered and works erected by the effective termination date.



**Perit André Pizzuto**  
President