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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

DIRECTIVE 06/2019

26th June 2019

RE: Legal Notice 136 of 2019

Legal Notice 136 of 2019 regarding Avoidance of Damage to Third Party Property Regulations, 2019, came into force on the 25th June 2019.

As outlined in Circular 05/2019, the Legal Notice as published does not address the concerns raised by the profession at its EGM of the 21st June 2019.

Furthermore it does little to guarantee public safety primarily because it further confuses the responsibilities on site. This, coupled with the fact that the requirement for registration and licencing of contractors has not been brought into force, results in a situation where effectively the Site Technical Officer (STO) is being made to bear the shortcomings of Government to regulate the sector.

The myriad of implications that this Legal Notice raises are widespread and very delicate. As a result of the rushed coming into force of this Legal Notice, without any lead time for studying and understanding, the serious ramifications of its provisions cannot be quantified. This includes implications regarding Professional Indemnity Insurance with respect to compliance with the Legal Notice. It also makes no provision for existing contractual obligations between *periti* and their clients, and between contractors and developers *qua* owners. The implications of what happens if these existing contracts are in conflict with the Legal Notice may be serious, and may also possibly lead to litigation.

The main legal function of the *Kamra tal-Periti* is to safeguard *“the wellbeing and the progress of the profession”*, and is constituted *“for the advancement of the profession, the defence of its rights and for keeping high its prestige,”* while its mission statement is to *“support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community.”*

Thus:

- (i) In its capacity to ensure that all members of the profession are safeguarded in discharging their services to their clients, and in view of the provisions of the Legal Notice which no member of the profession has had adequate time to assess and fully understand the implications thereof; and
- (ii) In light of the approval of Motion 6 by the last Extraordinary General Meeting of the *Kamra tal-Periti*, which empowered the Council to *“issue any Directives as it deems necessary in relation to the matters discussed during this Extraordinary General Meeting, and to consider a breach of said Directives by Warrant Holders to constitute a breach of the Code of Professional Conduct”*;

Now, therefore, the Council of the *Kamra tal-Periti* is hereby issuing the following Directives:

1. *Periti* are to immediately inform their clients of the coming into force of the Legal Notice, and to advise them to bring themselves and the works in line before any works can continue.
2. *Periti* are notified that upon the coming into force of the new regulations, any applicable works, including demolition, excavation and construction, which are not in line with all its provisions are effectively suspended. This includes works which were previously exempt under Legal Notice 72 of 2013. In view of this, *periti* are to issue notifications of suspension of works to their clients and to the contractors immediately. If *periti* become aware that works are ongoing without the provisions of the Legal Notice being in place, they are to immediately notify in writing the Building Regulation Office and the Commissioner of Police, keeping the *Kamra tal-Periti* in copy.
3. Until further notice, no *perit* is to assume the position of STO as provided in the Regulations, unless they are currently contractually bound to do so.
4. *Periti* who were contractually bound to take on the role of STO as described in the Legal Notice prior to the coming into force of the Legal Notice, and as long as this is clearly stipulated in their contract of employment / engagement, and they are fully cognisant of any additional legal implications being placed on them by the Legal Notice, are to immediately advise the *Kamra* of their position.
5. *Periti* who are approached to submit the Site Management Responsibility Form as outlined in the PA Notice issued on the 25th June 2019, are to immediately inform the *Kamra tal-Periti* of said request, and to refrain from uploading it until they receive further direction from the *Kamra tal-Periti*.

In addition, the *Kamra tal-Periti* recommends that:

- a. *Periti* engaged under Design and Build Contracts should seek legal advice regarding the potential implications of the Legal Notice on their responsibilities and indemnity; and
- b. *Periti* employed in the Public Service should seek guidance from the *Union Periti u Inġiniera fis-Servizz Pubbliku*. The *Kamra tal-Periti* has already met with the Union prior to the issuance of the Legal Notice and will be scheduling another meeting with such Union in the coming days.

Directives 03/2019 and 04/2019 remain in force.

Perit Simone Vella Lenicker
President