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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*

## Memorandum

Meeting with Minister Ian Borg, Minister for Transport, Infrastructure and Capital Projects  
Chris Agius, Parliamentary Secretary for Planning and the Property Market

21st July 2017

### 1. Periti Act

#### 1.1 Background

Work on the new Periti Act has been on-going for nearly a decade. The primary objective of the amendments are to align the profession in Malta, with its particular traditions, with the professions in Europe. Although the “closeness” of architects and civil engineers is not unique to Malta, the model that has been adopted in Europe is derived from an Anglo-Saxon model of a complete professional separation between architects and civil engineers. In addition, **Directive 2005/36/EC, On the Recognition of Professional Qualifications**, (subsequently amended by **Directive 2013/55/EU**), has adopted completely different systems of professional qualification assessment for architects and civil engineers. The architectural profession is referred to as a **sectoral profession**, regulated by harmonized training requirements defined in the same Directive.

Upon accession, those professionals practising the profession of architect in Malta, (that is had the warrant of Perit) up to 1<sup>st</sup> May 2004, or who had begun a course of studies by 2006/2007, were given automatic recognition of their qualifications in other Member States (acquired rights, Annex VI), irrespective of course content. When this grace period expired, the University of Malta was required to notify the Commission of the course content of its academic programmes, to show that it conformed to the requirements of Art. 46 in the Directive. The B.E&A course, offered by the University of Malta up to some years ago, was hence included in Annex V. The amended Directive of 2013, however, opened up the possibility of EU member states reviewing critically the contents of existing courses, against amended criteria contained in the 2013 Directive. This was one of the reasons why the University of Malta changed its professional architecture course structure.

Civil Engineers, on the other hand, are regulated by the **General System** of mutual recognition of professional qualifications. Last year, discussions were initiated across the EU member states, to explore the establishment of what is referred to as a Common Training Framework for Civil Engineers, which would further simplify automatic mutual recognition of engineering qualifications. The Master of Engineering degree currently offered by the Faculty for the Built Environment conforms to the model under discussion.

The Services Directive, Directive 2006/123/EC, required further changes to the Periti Act approved in 2000. This Act, although a significant improvement on the 1920 Architects' Ordinance, was not deemed by the Commission to be properly aligned with either Directives.

The first 9 clauses of the proposed Periti Act address this alignment, and we believe that the Commission is now broadly satisfied with the current text.

## 1.2 One Warrant, two lists

The position of the profession and the industry remains that there should be only one Warrant, that of **perit**; the proposal is that such professionals be organized in two lists, that of **perit arkitett**, and of **perit inginier civili**. The question has been debated whether this "division" requires a better definition of what each type of perit does. After long discussions on this issue, the consensus is that the Periti Act should not be the place where any distinctions are outlined. The Periti Act only regulates access to the profession, and the organisation and regulation of the profession. Any requirements for specific expertise should be outlined in other legislation. For example, it should be the Building Regulations Act provisions that require specific qualifications, skills and experience, for different tasks, rather than this Act; and it should be the Cultural Heritage Act that defines the qualifications, skills and experience that are required for interventions on heritage buildings, and not the Periti Act.

## 1.3 Periti Warranting Board

It is proposed that the Periti Warranting Board composition remains unchanged from the current one. Our position on whether the Chairman should be a senior Perit or a senior Lawyer is very much that it should be a Lawyer. However, given the extensive duties that the Designated Competent Authority must fulfil, according to these Directives, we believe that a well-resourced permanent Secretariat is required, as is the case in other EU countries.

There are minor innovations that we would like to see introduced, such as electronic balloting for the elections to the Warranting Board, or the introduction of a professional Stamp, issued by the Board when the Warrant is awarded.

## 1.4 Kamra tal-Periti and Periti Professional Conduct Board

It is also proposed that the role and functions of the Kamra tal-Periti remain, more or less, as they currently are. The Kamra is one of the older self-regulating professional associations in Malta, and we believe that, if anything, this concept should be strengthened. Since the original 1919 legislation, the Kamra has been vested with the power to conduct enquiries into professional misconduct or malpractice or other violations of the Code of Professional Conduct. It is empowered to act as a Court of first instance, with appeals possible to the Court of Appeals. However, experience has shown that the Council ought not be the body that investigates and *also* decides on cases. It is therefore proposed that the Kamra will refer any investigations to a new Board, to be known as the Periti Professional Conduct Board, for independent determination.

During the discussions with the Government committee, we have not reached full agreement on the composition of this Board. Although, we agree with the proposal that the Minister should, in agreement with the Kamra, appoint the Chairman, we do not believe it is

appropriate that the Minister should also appoint two members of the panel of five (including Chairman). Our view is, rather, that the Kamra would appoint a pool of senior periti, from which four would be selected for specific cases, thus ensuring that there are no potential or perceived conflicts of interest. We believe that, within the philosophy of a self-regulating profession, there is need for less government involvement and not more.

## 1.5 Forms of Practice

The issue of the permissible forms of practice was one of the more contentious in the discussions with the Commission. The Commission insisted that professional services could be offered by any legal persona. We have argued that our Civil Law, and our tradition, as is the case in many European countries, envisages that professional liability, for issues such as structural integrity, could only be carried by a natural persona. The text that we have proposed seems to be a compromise acceptable to the Commission.

We are worried, however, by the perception that the Commission continues to push for deregulation of all professions, in the apparent belief that issues such as liability could be addressed by insurance or other alternative means, rather than by regulated professions and reserved services. We do not agree that it serves the consumers well to have to pursue remedies based on insurance, taken out in other member states, or in courts of other member states, given that it is now possible for professionals to offer their services without being established in Malta, and hence without a Warrant.

## 1.6 Liability and Professional Indemnity

The related issues of professional liability and professional indemnity insurance are also complicated. Malta is probably the only country in Europe where professional liability for structural integrity extends for a period of 15 years, plus the two years prescription period. The norm in the EU is between 8 and 10 years. This puts our professionals at a severe commercial disadvantage when compared to their colleagues in the European Union. Indeed, it has been commented that such a legislative requirement is discriminatory against local professionals.

In addition, it is practically impossible to buy insurance for a liability period of 17 years. When the relative clauses were discussed with the insurance industry, two important points emerged:

- (i) periti should not accept mandatory professional indemnity unless the period of liability was aligned with what was the norm in the Europe. (We have proposed 8 years, the Government side has proposed 10 years);
- (ii) given that the Civil Law considers both periti and contractors as liable for structural integrity, it is anomalous that periti are required to take out insurance for the said period of liability, whilst contractors are not.

There are indeed other complex issues, related to PII, which we would need to discuss in detail, over the next couple of years, such as, how professionals, employed with Contractors undertaking Design-and-Build contracts, could be covered by insurance when the projects are completed, and they are no longer employed by the Contractor; or how professionals employed with Government, or other public entities, could be covered by insurance.

## 2. Building Regulations and Standards

As it has repeatedly expressed in public, the Kamra is very concerned that the country still does not have a proper regime of Building Control, grounded in modern Building Regulations.

The Kamra has noted with regret that, although practically everybody in the profession, the construction industry, and within industry organisations such as the BICC, would agree that **Building Regulations** have a completely different function from Planning Control Regulations, in the last legislature, a lot of time was wasted because the government was mis-advised on this matter, before this distinction was finally acknowledged by the Prime Minister himself.

The Building Regulatory processes should be completely separate from those of Planning, and Planning Control. The **Building Regulation Office** should be given much better resources than it currently has.

In addition, the country needs to prepare and promulgate a full set of **modern Building Regulations**. We need to avoid the same mistakes as have been done in the past. Modern Building Regulations should be *performance-based*, rather than prescriptive. The Regulations should, for example, prescribe the level of ventilation required in specific premises, rather than prescribe the size of the openings. Prescriptive requirements should only be used as “deemed-to-satisfy” documents, thus allowing innovation in design and technology, if it can be scientifically demonstrated that the required performance could be achieved by alternative provisions.

We have noted that, in the wake of the Grenfell Tower disaster, the CPD is preparing new regulatory requirements, which, however, seem to only address the requirements of the Fire Service. This is legitimate but not sufficient. What we have seen up to now seems to fall short of a modern suite of Fire Regulations, addressing, for example, issues such as building materials that emit noxious gases, fire spread between adjacent buildings, fire engineering techniques.

An issue related to Building Regulations and Standards is that of the **training and licensing of operatives**. The country sadly remains behind in the availability of operatives with the skills required for modern building construction, and for handling modern construction materials. The licence of the “mason” is the only formal licensing that currently exists in Malta; and this is primarily based on knowledge of stone masonry construction, and some basic concrete technology. And yet, the licensed mason is expected to be responsible for dangerous operations such as excavating adjacent to existing properties or dismantling of existing buildings.

The Kamra tal-Periti offers all its resources, both local and international to assist Government in the formulation of modern Building Regulations and Standards.

## 3. Planning and Planning Control

The Kamra tal-Periti is mindful of the reforms that have been undertaken within the Planning Authority, but some serious concerns remain.

The Planning Authority continues to ignore the special role that was defined, in the relative planning legislation, for the Kamra tal-Periti and the Chamber of Planners, when it comes to discussions on proposed modifications to planning rules, and to planning processes. The Kamra tal-Periti is not just any other interested party; it represents the profession that is the prime customer for the Authority.

For example, the Planning Authority has ignored our observations that it does not make sense that specific technical requirements, (often related to building regulations), which emerge from other Laws, are included in the list of conditions which are attached to development permission. In the first instance, it is bad practice to render the need to observe a building regulation, or to obey a law, into a development permit condition. In addition, the situation can arise where the breaking of the regulation not only leads to the sanctions envisaged by the relative regulations, but, in addition, implies a breach of a permit condition, which automatically renders the permit void, and the whole construction without development permission!

There are a number of procedural issues that are either irksome, or do not make sense. There are situations when the text used in some application forms does not make sense, or is based on a very narrow understanding of how the industry works today.

We reiterate our view that the Design Advisory Committee is intrinsically a bad idea, firstly, because of its anomalous composition, open as it is to potential conflicts of interest; but secondly because of the arbitrary way by which its advice is sought (and then, sometimes, ignored).

The Planning Authority is effectively focused on Development Control and not Planning; this is to the detriment of what should be its primary role, that of planning, long-term vision and strategy, drawing up of development and local plans, and promotion of sustainable development. Malta needs a more integrated approach to transport, land-use, water resources, and landscape.

#### **4. Road Design and Urban Quality**

The Kamra tal-Periti notes that one of the main tasks the Ministry has been entrusted with, is that of reconstructing and resurfacing most of the roads in Malta and Gozo. This is a laudable objective. We would like to urge that this exercise, which will undoubtedly require major public investments, take into account more than just the road surface, as is required for vehicular traffic.

We believe that this is an opportunity for the integration of vehicular and pedestrian traffic (including cyclists), the integration of services (so that, one day, we will rid our towns and villages of the blight of hanging power and telecommunication cables), as well as for the installation of properly designed urban furniture. We would suggest urban designers be engaged to work in conjunction with road engineers to produce the leap in quality that we understand this mission aims to achieve. We urge that design competitions be held to give opportunities for young creative professionals to contribute to the transformation required.

Once again, we are ready to help.

Prof.Alex Torpiano

President