A MODERN BUILDING & CONSTRUCTION REGULATION FRAMEWORK FOR MALTA

Public Consultation Paper

Kamra tal-Periti

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FOREWORD

In its seminal publication *The Urban Challenge – Our Quality of Life and the Built Environment*, the Kamra tal-Periti (2007, p. 50) had highlighted quality of construction as a key aspect. It had stated that “Quality of construction needs to be improved. New regulations are necessary and welcome but should be backed by adequate research and funding to ensure they truly provide value for money to society. The establishment of a ‘Construction Platform’ would provide a clearer reference point for developers, design professionals and the general public. Continual training and professional development, the certification of tradesmen and the licensing and classification of service providers will help ensure that construction practice improves. An adequate level of protection and cover for all stakeholders will ensure clients’ interests are better protected. Likewise, improved site management and project administration, and a greater awareness of Health and Safety issues will help to ensure that safety risks and inconveniences to neighbours are reduced.”

Ever since, the Kamra has been calling for an overhaul of the regulations that govern the construction industry. In the last quarter of 2018, the Ministry for Transport, Infrastructure and Capital Projects published a White Paper proposing the establishment of a Building and Construction Authority, a proposal which the Kamra tal-Periti welcomed with enthusiasm.

The Kamra has also pushed for the consolidation of the various fragmented pieces of legislation, bodies and departments regulating the industry under one legislative and administrative umbrella in order to ensure higher standards in the industry, to bring it in line with modern practice and standards, and to ensure the protection and sustainability of the significant investment made when properties are constructed, bought or rented out. This notion was also endorsed by Government in its proposals regarding the Building and Construction Authority.

Moreover, the Kamra has emphasised the need to separate planning and development permitting issues from those related to building standards and regulations, not just at inception stage, but right through to end-of-life considerations. Over the years, the planning process has reduced itself from one related to the achievement of overarching planning goals and policies, to one of development permitting, with a vast number of regulations pertaining strictly to the construction phase of a project becoming intertwined within the planning process itself. This not only burdens the planning permitting process unnecessarily by requiring technical detail which is premature at this stage of a project, but also detracts from the focus of what planning should be about. It has also resulted in the mistaken impression that obtaining a planning permit is the be-all and end-all of the perit’s existence, when in reality the more complex processes, and those for which the perit carries very onerous responsibilities, come after.

The Kamra has repeatedly called for the introduction of a comprehensive and contemporary suite of performance-based building and construction regulations, and a central Authority which, if backed by all the necessary human, financial and technological resources, has the potential to make a significant contribution towards a better quality in our built environment.

A major lacuna in the industry is the complete lack of adequately trained and qualified personnel.
Of all the professionals and tradespersons involved in a construction project, only four of the key figures, to one extent or another, are formally qualified. Foremost is the perit, or architect and civil engineer, who very often ends up getting the blame for anything that goes wrong on site and whose responsibilities are incorrectly assumed to cover everything from site cleanliness to structural integrity. The other is the mason, who is not only inadequately trained to deal with the complexity of contemporary building techniques and materials, but who is completely unregulated after obtaining a licence; not to mention the added complication that, to date, a formal list of licenced masons is not available in the public domain. Then there are the Mechanical and Electrical Engineers, who are often not involved in small to medium scale projects, and are very often engaged after the main structural works have been finalised, thus often resulting in conflicts which may also impact the structural aspects of the design as well as the overall performance of the finished building. The fourth figure is the Project Supervisor required to be appointed under the Occupational Health and Safety regulations, although the law also permits the developer to take on such role, as long as he or she deems themselves to be “competent” in this regard.

No other participant in the industry is regulated in the slightest manner. Article 1638 of the Civil Code places the responsibility for structural stability jointly on the perit and the contractor, however whereas periti carry a professional warrant and are subject to a Code of Professional Conduct, contractors are not regulated at all. This is especially worrying when it comes to demolition and excavation contractors. The absence of a registration system means that anyone with demolition or excavation plant can carry out such works, without any basic training, technical knowledge, or insurance cover. There is therefore an urgent need for registration and classification of contractors, which should be based on competences and qualifications as well as considerations relating to their workforce, their equipment and capacity.

The site manager required to be appointed under the Avoidance of Damage to Third Party Regulations is also not required to have any specific competences, not even as basic a requirement as being able to read. Yet the primary role of the site manager is to ensure that the construction method statement drawn up by the perit is adhered to. The law actually permits the developer, be it a seasoned developer or a private individual, to take on the role of site manager, when it is amply obvious that such person does not possess the necessary skills to carry the responsibilities imposed by such role.

This situation is unacceptable, and the industry cannot move forward until such glaring deficiencies are properly addressed. The Kamra tal-Periti has taken a pro-active role in ensuring that this important industry for the country’s economy not only performs well financially, but also, and more importantly, in terms of qualitative criteria. There is a limit to how much people are willing to pay for poorly built properties, and the main stumbling block here is the complete lack of adequate building regulations which set a benchmark for the performance of a building and its components.

The general principles underlying the proposals in this document already have the support of the profession, which endorsed this approach at an Extraordinary General Meeting in November 2018. This support is essential in ensuring its successful implementation and shows that the profession is conscious of the dire need to bring our industry firmly and squarely into the 21st century, and
willing to implement this vision. Discussions have already been held with other stakeholders, including the Ministry, the BICC and the BRO, and these proposals have also been positively received by these entities. In the coming weeks, the Council will also be referring this document to its members for further feedback on the detail, which input will be essential in assisting the Kamra tal-Periti in its discussions with Government on the way forward. I would therefore like to take this opportunity to invite all periti to contribute to this discussion and to come forward with their comments and proposals.

A few of the proposals in this document may appear to result in additional bureaucracy and responsibilities. This is, in my opinion, unfounded. The responsibilities we carry are there, with or without the supporting regulations. The regulations we have today are obsolete and are based on the limited typologies and materials available at the time of their coming into force. Today, the industry is completely different, yet our regulations have not been updated to reflect today’s realities, resulting not only in buildings which are not of an acceptable quality, but also rendering the construction process itself rife with risks to the health and safety of all those involved. These proposals seek to provide support to the profession and to the industry as a whole by formalising standards which, in general, reflect best practice approaches already generally followed by the profession despite them not being prescribed.

This document is intended to provide the legislator with a comprehensive basis for taking this important step forward. It includes a thorough review of the current situation, analyses the problems, and provides solutions which are also informed by research on systems which have been tried and tested in other countries.

All that is left, therefore, is the will to take this vision through. It will not be an easy task, but I am sure that, collectively, we have the necessary expertise to ensure a smooth and professional transition which will, ultimately, not only benefit the industry as a whole and the direct players within the industry, but, more importantly, the whole of society. The Kamra tal-Periti, as a key stakeholder in the whole process, is committed to provide its full assistance and support to ensure the implementation of this vision.

Perit Simone Vella Lenicker
President, Kamra tal-Periti

30 April 2019
BUILDING REGULATION WORKING GROUP

**André Pizzuto** graduated in engineering and architecture at the University of Malta in 2002, and was granted a professional warrant to practise as an architect and civil engineer in Malta in 2004. He successfully read for a master’s degree in Planning Policy & Practice at London South Bank University, an MBA in Real Estate and Construction Management at the University College of Estate Management, Reading, and a Postgraduate Diploma in Project Management at the Royal Institute of Chartered Surveyors.

Pizzuto is the Managing Director of Design Principle, an architecture firm he set up in 2004. He was also Executive Head of the Property Services Department at the Housing Authority of Malta between 2011 and 2013.

He was elected Vice-President of the Kamra tal-Periti in January 2019, after having served as Council Member since December 2014. He is also a Council delegate on Building Regulation in Malta since 2017 and represents the Chamber on the Building Industry Consultative Council (BICC) on matters related to building regulation. In 2017, he was also appointed Chairperson of the Chamber’s Building Regulation Working Group tasked with the formulation and development of a position paper on a comprehensive building regulation regime for Malta which is presented in this document.

**Karl Micallef** graduated with a Bachelor of Engineering and Architecture from the University of Malta in 2006, after which he worked with DeMicoli+Associates on various projects in Malta and Libya.

He read an MSc degree in earthquake engineering at Imperial College London and then successfully pursued a PhD, also at Imperial College London. His research investigated the response of plated structures to blast loading and how high-performance steels and novel polymeric composite materials can be used to mitigate damage.

After working at Foster+Partners for 2 years, Micallef joined the Structural Engineering group at the London office of Skidmore, Owings and Merrill in 2015, where he is currently an Associate and leading projects such as the new building forming part of the United Nations Offices at Geneva campus, the 245m Karlatornet in Gothenburg and Nine Elms Square development in London.

Micallef remains active in academia by delivering taught and design modules at the University of East London.

**Alvaro Ferreira**, of Portuguese nationality, is a Fire Engineer now based in Malta. He graduated in Civil Engineering, after which he pursued a master’s degree specialising in Urban Fire Safety at the University of Coimbra, Portugal. His main academic focus was performance-based fire
engineering as opposed to prescriptive regulations found in most countries.

He has working experience as a Fire Safety Engineer in Portugal, France and Malta. His interest in fire safety started at a young age when he joined the Firefighting Association of Pombal as a volunteer firefighter for around 13 years. Throughout his career, he has worked with several architectural companies and construction firms with roles varying from draughtsman to projects engineer and was involved in several residential and commercial projects of both small and large-scale nature.

Ferreira is a professional member of the Order of Engineers in Portugal and a member of the Institution of Fire Engineers, UK, and the Society of Fire Protection Engineers, US.

**Justin Zarb** received a bachelor's degree in engineering and architecture from the University of Malta (2013) and a master's in Integrated Building Systems from ETH Zurich (2018). The first Passivhaus conference in Malta in 2011 kindled his interest in sustainable architecture. After a two-year stint working on new buildings at UoM, publishing maltarail.org and being involved with Kamra tal-Periti and the iiSBE Malta chapter, he moved to Zurich on a scholarship to focus on the broad problem of energy use and quality in the built environment. He has researched adaptive comfort and passive building performance in a Maltese context as well as the accuracy of norm-based models used to assess residential energy performance and recommend interventions and now specialises in energy efficiency and building performance at Buro Happold, Berlin.

**Philip Grech** graduated with honours in architecture and civil engineering from the University of Malta and read for a master's degree in Water Resources Technology at the University of Birmingham, UK, holding a scholarship from the British Foreign and Commonwealth Office. He is also a member of the UK Chartered Institute for Water and Environmental Management.

He was Chief Engineer and later Director of the Drainage Department, from 1989 up to 1996. A major activity during this period was the draughting and publishing of the Sewerage Master Plan in 1992. He also worked at the Water Works Department from 1987-1989 on the establishment of their Planning and Development function, setting up the first computerised Distribution Network models.

Grech practiced in the U.K. with Rofe, Kennard and Lapworth, and from 1996-97 was consultant to the WSC in its preliminary studies for the preparation of the Stormwater Master Plan.

From 1996 to date he has provided services to both the public and private sectors. Besides establishing an architectural practice, he has carried out many hydrological studies and utility impact studies for Environmental Impact Assessments, design and supervision of both sewage and water irrigation systems besides situation troubleshooting.
Cliff Goodenough is a qualified firefighter and instructor since 1982, having a deep and up-to-date understanding of fire prevention design. He progressed from Lancashire county fire service to the Royal Air Force Crash Fire Rescue Service performing his duties in frontline military bases both in the UK and overseas. On exiting the Military, he became an Emergency Response Fire Fighting Instructor to the oil & gas industry for Petrofac Training working both on- and offshore. Being audited by the oil industry gave him a vast knowledge of working to very high standards of fire safety. In 2007, he opened a consultancy firm in Malta carrying out a variety of Fire Safety and Emergency Response Services such as Fire Risk Assessments, Emergency Response Procedures and all types of fire training to some of the largest companies in the country.

Amber Wismayer graduated from the Faculty for the Built Environment, University of Malta, in 2010, with a bachelor’s degree in engineering and architecture, and was granted a warrant to practise the profession of a perit in 2012. She later obtained an MSc degree from London in environmental studies and energy efficiency. Her areas of interest include policy, heritage architecture and environmental performance of buildings, and she participates actively, both locally and internationally, at various levels in this field.

Wismayer has held the post of Honorary Secretary of the Kamra tal-Periti since 2013. She represents the Kamra in the Architects’ Council of Europe’s Environment and Sustainable Architecture Working Group. She also represents the Chamber on the Building Industry Consultative Council (BICC) as the coordinator of the Regeneration of Property Working Group.

She established her own practice in 2012. Over the last four years, she has led the Sustainable Regeneration of Built Heritage Initiative, under the auspices of the President of Malta.

Professor Paolo Cucchi holds a master’s degree in architecture from IUAV - Venice. He is registered to practice in Italy, UK and Malta. He is also a member of the International Academy of Architecture since 2007.

In 1987 Paolo Cucchi founded PCA-PaoloCucchiArchitects, an international architectural practice, based in Italy and Malaysia. The firm operates at different levels, from attentively crafted interiors to large scale projects, embracing residential, hospitality, landscaping and urban planning. Between 2003 until 2010 he lectured at UTM (Universiti Teknology Malaysia) and NUS (National University of Singapore) on high rise and housing. He is also a visiting professor at UNIBO (University of Bologna Faculty of Architecture “Aldo Rossi”) and Tsinghua University, Beijing.

Milan Haluska, of Czech nationality residing in Malta, graduated from the Faculty of Mechanical Engineering of the Czech Technical University in Prague. He worked for 12 years in the USA in construction management, particularly in HVAC and energy conservation in public sector projects.
On his return to the Czech Republic, he set up a chemical production company for surfactants and polymeric products. He developed several construction chemicals, including crystalline waterproofing and other types of admixtures. He is experienced in the processes governing CE Marking of construction products in accordance with the Construction Products Directive.

Milan Haluska is retired but engaged in the construction field on a consulting basis.

Marco La Rosa is a warranted architect and civil engineer specialised in the transport sector. A Construction MBA graduate, he has worked in design and construction management in Italy, Spain and Malta. He is a resident engineer of the Marsa-Paola Junction project.

La Rosa is also specialised in contract management and BIM modelling.

The Building Regulation Working Group reported regularly to the Council of the Kamra tal-Periti. Perit Simone Vella Lenicker, current President of the Kamra, and Professor Alex Torpiano, Past President, were the main contact points between the Council and the Working Group, providing feedback and direction as required.

Simone Vella Lenicker received a bachelor’s degree in engineering and architecture from the University of Malta in 1999. She is currently Design Director at AP Valletta.

Vella Lenicker was elected President of the Chamber of Architects & Civil Engineers in January 2019, after occupying various posts within the Council since 2004, including those of Honorary Secretary and Vice President. She is the Editor of the Chamber’s quarterly journal, the Architect and represents the Chamber on various Boards and Committees, including the Users’ Committee of the Planning Authority and the Building Industry Consultative Council Advisory Board. She is also a member of the Building Regulation Board, as well as being a registered Energy Performance of Buildings Assessor.

Professor Alex Torpiano graduated in engineering and architecture at the University of Malta in 1977 and was granted a professional warrant to practise as an architect and civil engineer in Malta in 1979. He read for a Master of Science degree in Concrete Structures at Imperial College, University of London in 1979, and a PhD in 1987, with a thesis entitled On the Design of Masonry Shell Structures. He has had a long career as lecturer at the University of Malta, starting from Assistant Lecturer in 1979 to Professor in 2017. He has acted as Head of the Department of Civil and Structural Engineering, (previously Building and Civil Engineering) for about twenty years, and of the Department of Architecture and Urban Design since 2016. He was appointed Dean of the Faculty for the Built Environment (previously Architecture and Civil Engineering) in 2008. At the University, he has served as a member of the Council of the University, of Senate, and of a number
of Institutes including the Institute of Construction and Masonry Research, which he set up in 1994, the Institute of Sustainable Energy, the Institute of Climate Change and Sustainable Development, and the International Institute of Baroque Studies. He is a founding partner of TBA periti (1988-), and aoM partnership (2000-2013).

He has served the Council of the Kamra tal-Periti from 1990, acting as President between 1994 and 1996, Vice-President in 2016, and as President between 2017 and 2018. He currently serves as Immediate Past President. He has served on the Planning Appeals Board (1993-1997), and on the Periti Warranting Board between 1999 and 2001, and since 2009. He has also served as a member on a number of Boards related to the construction industry, including Malta Standardization Authority, BICC, the Construction Products Expert Group, the Eurocodes National Implementation Committee, the Civil Protection Scientific Committee, and the Valletta Rehabilitation Committee. In April of 2019 he was appointed as Executive President of Din l-Art Ħelwa.
1. INTRODUCTION

1.1. The Context

The Kamra tal-Periti has been concerned about the lack of adequate building and construction regulation for over a decade. Indeed, the issue of building regulation in Malta has been at the forefront of the Kamra tal-Periti’s agenda for a number of years. In 2004, it was involved in assisting the Building Regulation Office in the development of its first building codes. Unfortunately, this promising start was thwarted abruptly and only two codes were produced. Others, including one on structural integrity, were never published.

A number of factors led the Council of the Kamra tal-Periti to set up the Working Group that drew up this paper: the planning policy on building heights which was modified in 2015 leading to an increase in development potential on existing heights up to three additional floors without due consideration of this policy’s effects on structural stability, foundation engineering and seismic resistance; the approval of several high-rise towers since 2017 without adequate building regulations; the cosmetic update of the sanitary regulations of 2016 that was more about addressing illegality and accommodating more floors within the building height limitation than about achieving higher quality in buildings; and the Grenfell Tower disaster which demonstrated what can happen when building regulations are inadequate or obsolete. The review of the Commuted Parking Payment Scheme (CPPS) in May 2018 deepened the Kamra’s concerns further.

The current regulatory framework in Malta is characterised by fragmentation, alarming lacunae, obsolescence, and a complete lack of oversight. Meek and wholly ineffective attempts at regulating buildings and construction processes were attempted over the years by conflating building regulation and control with the planning permission processes over the past three decades. The demerger of the Malta Environment & Planning Authority (MEPA) in 2016, provided an opportunity to rethink building regulation and control, and to align our country’s regulatory framework with that of our European partners.

Despite reiterated attempts over the past decades, the Kamra was unsuccessful in convincing government to divorce the planning processes from building regulation altogether (Kamra tal-Periti, 2016a; Kamra tal-Periti, 2017). This seems to have changed last October when Government launched a White Paper to set up a Building & Construction Authority that is intended to consolidate the role of the BICC, BRO, BRB and Masons’ Board. The Kamra welcomed this development (Kamra tal-Periti, 2018).

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While the Working Group was instrumental in researching and shaping the overall direction of the proposals, members of the profession were also involved in the process. An Extraordinary General Meeting was held in November 2018 during which the initial proposals were presented. The feedback, which was very constructive and supportive, served to guide the Working Group in developing and refining certain aspects of the proposals contained in this document. The Council of the Kamra tal-Periti also had a determining factor in the final proposals that are herein being published.

There is wide recognition among members of the profession that the current status quo is no longer tenable. Members of the public look up to the perit as the guarantor of public safety and quality. However, the ever-increasing complexity of our buildings and the innovation in construction techniques have resulted in multidisciplinarity in both the design and oversight processes, with various periti and engineers providing their inputs during the design and execution of the same project. Other unregulated professional figures also began playing an important part in these processes. Meanwhile, contractors remain unregulated, and the Construction Products Directive was only brought into force on paper.

Our profession is completely exposed in this effectively lawless environment, compounded by one of the highest professional liability periods in the world. It is not legitimate to expect periti to shoulder the responsibility of the State to regulate buildings and construction processes. The efforts of the Kamra over the years, culminating with this document, were driven by the vision to align our industry to that of other European countries, to ensure that public safety and quality in buildings in Malta rise to acceptable standards, and to ensure that periti carry their fair share of responsibilities, but not that of the State or the other industry operators.

It is important to clarify the distinction between building and construction regulation. Building regulation deals with buildings as products that have effects on public safety throughout their lifetime. The purpose of building regulation is primarily that of securing the health, safety, welfare and convenience of people in and around buildings, and people who might be affected by those buildings, while also reducing their environmental impact, through the conservation of energy and water and the minimisation of pollution and contamination (Evans, 2015).

Construction regulation, on the other hand, focuses exclusively on the process of erecting, altering or renovating buildings.

This document is composed of five chapters. This chapter focuses on the context leading to the drafting of this document, and on the fragmentation of the regulatory oversight. Chapter 2 outlines the current situation regarding building regulation.
Chapter 3 outlines Malta’s current construction regulation regime. Chapter 4 reviews the regulatory frameworks in Europe, zooming in on two different models, the British and Swiss systems. Finally, Chapter 5 proposes a modern and comprehensive regulatory framework.

This is the third major attempt that the Kamra is spearheading over the past twenty years to bring about this long overdue reform of the industry. We trust that we will at last be successful in bringing Parliament, industry stakeholders and public opinion to recognise the urgency of these reforms, and the validity and thoroughness of our proposals.

1.2. An overview of existing regulatory bodies

The fragmentation of building and construction regulation in Malta is perhaps not widely appreciated outside the industry. The effects of this fragmentation are:

- Excessive bureaucracy;
- Significant delays in the various phases of a development cycle;
- Scope for conflicting prescriptive regulations;
- Lack of clarity on responsibility and liability;
- Diminished consumer rights.

Below is a comprehensive list of the various public entities that currently have a role in building and construction regulation.

1.2.1. BUILDING REGULATION OFFICE

The Building Regulation Office (BRO) was set up through the Building Regulation Act in 2011 with the following remit:

a) Administration of building regulations and building control regulations;
b) Issuance of licenses and registration of masons, building contractors and tradespersons;
c) Monitoring of the application of building regulations;
d) Endorsement of certificates of compliance;
e) Enforcement of building control regulations;
f) Provision of technical assistance to the Building Regulation Board (see 1.2.2).

In practice, however, the BRO is unable to fulfil all its remit because of severe restrictions in financial and human resources. Indeed, the annual budget of the BRO is €150,000, as much as the PR campaign European Mobility Week and less than the funds allocated for the Tal-Linja Card (€200,000) (MFIN, 2018). Meanwhile, the estimated €1,000,000 generated annually by the BRO through Energy Performance Certificates are not retained but passed on to the Consolidated Fund.
This lack of adequate resources places significant health and safety risks on public safety, including building occupants and third parties. As a result of these constraints, the BRO has been compelled into limiting its focus to the adherence of Malta to the European Directive on energy performance in buildings.

Indeed, the BRO has only been able to partially fulfil remits (a), (e) and (f) in the above list and has only begun working on planning for the implementation of (b) a few months before this publication.

The building regulations currently in force and administered by the BRO are merely those related to energy performance in buildings, and the provision of ICT infrastructure in buildings.

With respect to construction regulation, the BRO’s remit is limited to only two aspects of the construction processes:

- Avoidance of damage to third party properties; and
- Minimising nuisance and risk of injury to third parties.

The avoidance of damage to third parties is regulated through L.N. 72 of 2013, which stipulates the requirement of documentation at pre-construction stage to the BRO for works exceeding a minimum threshold, including:

a) Pre-construction condition reports of immediately contiguous properties;

b) A works method statement drafted by a perit outlining the methodology of the works;

c) Insurance cover for any damage caused to third-party property during the works.

The regulations also require the appointment of a site manager whose role is to enforce the implementation of the works method statement and ensure the adherence to the regulations as set out in the legal notice by the developers and contractors. In the absence of an appointed site manager, the developer assumes this role by default, in what is a manifest conflict of interest sanctioned by the law.

The Environmental Management Construction Site Regulations\(^2\), which came into force in 2007, have the purpose of:

- Limiting environmental degradation through appropriate construction management practices that cause the least nuisance to neighbours;
- Minimising the risk of injury to the public;
- Protecting the property belonging to the Government and Local Councils;

\(^2\) See L.N. 295 of 2007
• As much as possible reducing the hard to the environment.

At the outset, it is necessary to remark that while the enforcement of these regulations is undertaken by the BRO, they are in fact subsidiary to the Development Planning Act. The BRO has however confirmed that the remit was immediately assigned by Ministerial Order to the Building Construction Industry Department, later renamed BRO. Thus, the PA never had any role to play in these regulations since they came into force, which begs the question as to why this legal notice still forms part of the subsidiary legislation of the Development Planning Act.

Nevertheless, despite the PA having rightly never directly been given any role in the enforcement of these regulations, it recently began enforcing sub-regulations 9(1) and 9(2), which requires the site manager’s details and declaration of acceptance to be submitted with a commencement notice, through its own commencement notice process regulated through Art 72 (4) of the Development Planning Act. Despite the homonymous notices, there is no legal relation between the commencement notice in the Development Planning Act and that in the Environmental Management Construction Site Regulations.

1.2.2. BUILDING REGULATION BOARD

The Building Regulation Board (BRB) is independent of the BRO. Its functions include:

a) Advising the responsible Minister on building regulation;

b) Consulting with stakeholders on building regulation;

c) Setting the parameters by which the BRO shall evaluate eligibility of consultants, contractors and tradespeople for licensing;

d) Advise the Minister on the cancellation or withdrawal of such licenses;

e) Issue technical guidance;

f) Decide upon waivers on the application of building regulation on a case-by-case basis;

g) Act as an appeal body on decisions taken by the BRO.

The BRB, which meets only once a month at best, is clearly ill-equipped to fulfil the above functions. Its allocated budgets for 2018 and 2019 were a meagre €76,000 (MFIN, 2018). Not only does the BRB not have any adequate support staff to process and administer its functions on a daily basis, until recently it did not even have an office where to operate from, such is the failure of successive governments to provide it with adequate resources.
1.2.3. PLANNING AUTHORITY

Ever since the Planning Authority (PA) was set up in the early 1990s, it gradually filled a vacuum left behind by the dismantlement of the Building Notice system, which most closely resembled the building regulation process found in European member states and other industrialised countries.

The PA attempts to regulate buildings by tying in conditions to planning permits obliging developers to adhere to basic and primitive building regulation, by requiring post-completion compliance certification, or, in rare instances, revoking permits – making the situation even messier from legal and practical standpoints. Over time, the planning process, which is now well-established and relatively efficient, was exploited by a plethora of other authorities and departments to regulate specific aspects of buildings falling within their respective remits, including ventilation, accessibility, fire rescue, ventilation, and in the case of major projects, waste management.

Indeed, in 2016 there appears to have been an initial attempt at formally conflating planning and building regulation. Art 7 (2) (d) of the Development Planning Act, 2016, states that one of the functions of the PA following the demerger would be “to perform and succeed in the functions which were previously assigned to the Building Regulation Board and the Building Regulation Office under the provisions of the Building Regulation Act and which are now contained in this Act and to perform and succeed in the assets, rights, liabilities and obligations of the Building Regulation Board and the Building Regulation Office established under the provisions of the Building Regulation Act to the extent that the Minister may prescribe by regulations under this Act”.

Thankfully, this part of the law has not come into effect, not least because of strong protestations by the Kamra tal-Periti about how detrimental it would be, but also because of the eventual realisation of practically every actor in the industry of the adverse consequences of this step. The Kamra’s position has always been that the PA’s primary focus should be planning. Over time, however, it became solely focused on development control. Indeed, all its policy documents are geared to serve as development control references. The Strategic Plan for Environment and Development (SPED) and Local Plans are completely devoid of planning vision and detail, and are instead characterised by seemingly arbitrary development parameters without any consideration for translating any vision into an urban design or planning masterplan. The absorption of building control into its development control processes not only results in a disproportionate concentration of power, but also in the anathema of planning altogether.

Worse still, the PA’s approach of incrementally increasing building height limitations has a direct impact on structural integrity, seismic resistance, fire safety, and waste management of buildings. Moreover, the archaic and counter-productive planning policy of imposing minimum parking requirements, mostly accommodated in excavated underground carparks, further exacerbates risks to public safety.
Finally, it is worth pointing out that the PA is estimated to generate €16,000,000 in revenues in 2019 (MFIN, 2018). However, none of these funds are distributed to the other entities involved in the development permit application processes as external consultees, nor to the other entities tasked with enforcing building and construction regulation, most notably the BRO and the OHSA. This presents obvious problems for the industry whereby the approval of development permits in increasingly higher numbers is adding further strain on the building and construction oversight obligations of the latter entities which are not being matched with adequate funding. Meanwhile, the PA is flush with money which it is using to cosmetically mitigate for its failures to adequately plan through grants such as Irrestawra Darek for the conservation of heritage buildings, which falls under the remit of the Superintendence of Cultural Heritage.

1.2.4. SANITARY ENGINEERING OFFICE
A clear example of how the transfer of building regulation powers to the PA had already begun is the absorption of the Sanitary Engineering Office (SEO) within the PA.

Until 2016, the Sanitary Regulations, which regulate natural light, ventilation and drainage systems in buildings, formed part of the Superintendent of Public Health’s remit. All planning applications were reviewed by the Sanitary Engineering Office (SEO), which was independent of the then Malta Environment & Planning Authority (MEPA) despite having an office within its building. The statutory minimum dimensions of backyards, internal yards and clear internal heights were binding, and no allowances or discrepancies were permitted, unless approved by the General Services Board (GSB) in very particular cases.

The Development Planning Act 2016 brought about the absorption of the SEO within the PA. The effects of this were four-fold:

1) The SEO’s decisions could now be overruled by the Planning Commission;
2) A critical aspect of building regulation now forms part of the planning process, a decision which was strongly opposed by the Kamra as being short-sighted and detrimental to the establishment of proper building regulation;
3) It resulted in further consolidation of an archaic set of regulations, albeit marginally amended in 2016, based on arbitrary quantitative parameters - something which is nowhere to be found in the industrialised world;
4) The remit of drainage regulation was divorced from the SEO.

1.2.5. SUPERINTENDENT OF PUBLIC HEALTH
Following the amalgamation of the SEO with the PA, the Superintendent of Public Health (SPH) is now solely responsible for enforcing Article 97 of the Civil Code
dealing with waterproofing and drainage. Certification and enforcement of these critical building regulations is non-existent. There is legal uncertainty about whether this role has been taken over by the Environmental Health Directorate. Nevertheless, even before the transfer of the SEO to the PA, breaches in sanitary regulations were considered infringements of permit conditions and dealt with by the PA’s enforcement section - clearly a preposterous and unsustainable situation that has been endured for decades.

The SPH is also responsible for regulating sanitation in swimming pools through Swimming Pools Regulations published under the Public Health Act, and indirectly under the Control of Swimming Pools Regulations. These two sets of regulations, both covering different aspects of swimming pools, fall under separate ministerial responsibility.

1.2.6. ENVIRONMENTAL HEALTH DIRECTORATE
The Environmental Health Directorate (EHD) falls within the remit of the SPH. It has the specific function of safeguarding public health in the built environment. Its main contact with periti is in the regulation of sanitation in tourism and catering establishments, particularly the provision of adequate hygiene in bars and kitchens, and the design of adequate lobbies in restrooms.

It is also responsible for investigating reports of infection due to contaminated water supplies, drainage leakages, and the presence of hazardous materials. This function is, however, limited to reactive action to safeguard public health. This means that it has no executive powers on private residences, except when such residences are leased.

1.2.7. COMMISSIONER OF POLICE
As discussed in detail in the next chapters of this report, one of the main pieces of legislation currently regulating buildings is the Code of Police Laws. Most of the relevant provisions according to this law, however, fall under the remit of the Superintendent of Public Health, not the Commissioner of Police.

The Police’s role is primarily centred on enforcing public safety and criminal investigations where citizens are injured or lose their life, or property is damaged as a result of works due to partial or full collapse of structures or falling objects. It is worth stressing that the Police do not intervene if there is no death or injury, as the Kamra has all too often lamented.

3 See L.N. 129 of 2005.
4 See L.N. 146 of 1998.
5 Interview held with Clive Tonna, EHD Director on 18th October 2018.
1.2.8. SUPERINTENDENCE OF CULTURAL HERITAGE
The Superintendence of Cultural Heritage (SCH) was set up through the Cultural Heritage Act, 2002. The role of the SCH is that of fulfilling the State’s duty of:

1. encouraging the integration of conservation and management practices with respect to cultural heritage at all levels of government, local government, the private sector and voluntary sector;
2. ensuring that conservation, management and other initiatives affecting cultural heritage take account of policies of social inclusion;
3. ensuring that conservation, land planning and other initiatives affecting cultural heritage areas take into account the social fabric of existing communities and strive to improve the living conditions for all levels of society. Such initiatives should ensure, where possible, that they do not precipitate negative changes to the social fabric of the population of any given locality intervened upon;
4. promoting public awareness of the richness and extent of cultural heritage as an intrinsic part of humankind’s environment, and of the need to prevent the debasement of cultural heritage assets upon which depends the quality of that same environment, and of the cultural, economic and social reasons justifying its protection;
5. taking into consideration the special problems of cultural heritage conservation, maintenance and management in anti-pollution policies;
6. promoting fiscal and financial policies aimed at encouraging owners of cultural heritage to maintain, conserve, protect and make good use of such property.

As an external consultee of the development permit application process, the SCH has a strong influence on the development works that can be carried out in heritage buildings. Although the Planning Board and Commissions can overrule the SCH’s consultation replies, the opinion of the SCH is valued by both periti and the decision-making bodies, and development proposals are normally revised to address the SCH’s concerns.

The sixth duty listed above was in practice taken over by the PA through schemes such as Irrestawra Darek, the Marsamxett balcony grant, and the UCA stamp duty rebate.

While the Kamra recognises the paramount importance of the SCH in the protection of our cultural heritage, and in particular our built heritage, the Kamra is aware of a number of occasions where a narrow conservation paradigm was adopted, promoting absolute preservation with minimal intervention rather than promoting the re-use and adaptation of heritage buildings to meet modern requirements. This approach is not conducive towards achieving a balance between the need to conserve heritage buildings, and the protection of the building occupants’ health and safety, energy conservation and accessibility.
It is recognised that the SCH plays an important role in successfully implementing the reforms proposed in this document, and it is thus important that it engages actively in this process. To do this, it must be properly staffed, financed and resourced.

1.2.9. CIVIL PROTECTION DEPARTMENT

The Civil Protection Department (CPD) was set up in 1999 to draw up plans for and respond to natural, industrial, or other emergencies. This includes fire rescue and firefighting.

The design and fabrication of buildings is critical in fire-related emergencies. Well-designed buildings facilitate the efforts of firefighters in the evacuation and rescue of building occupants in case of a fire, as well as the extinguishing of same. Of equal importance, is the prevention of fires.

In 2004, the Building Industry Consultative Council (BICC) published a reference document “Design guidelines for fire and safety in Malta”. It provided periti with quantitative design parameters to be followed when drawing up project plans, including the siting and quantity of fire exits and stairwells, fire lifts and doors, the provision of fire-fighting infrastructure, such as water hoses and plumbing systems for the use of firefighters, access standards, etc. This document is now obsolete.

Compliance with these guidelines is assessed at planning application stage, by means of the submission of a fire-safety report by a fire engineer - generally a civil engineer (periti) or mechanical engineer - which is in turn reviewed by the CPD in its role as an external consultee of the PA. On approval of the development permit, the fire-safety report forms part of the development permit, and its implementation is mandatory for the issuance of the compliance certificate by the PA.

In 2017, the Civil Protection Act was amended to give powers “to take all necessary action, initiatives and setting of standards and code of practice as well as inspect and enforce regulations made in accordance with this Act for the prevention of fire in buildings of whatever nature, use or dimension”.

To this end, a committee chaired by the PA was set up in July 2017 to review its processes on the basis of recommendations drawn up the CPD. The Kamra was part of this committee.

The Kamra tal-Periti’s position has been consistently against the further consolidation of the current status quo characterised by inefficient fragmentation of building regulation and the ineffective post-occupancy checks. Indeed, there is currently no system in place for continued inspection and certification of fire-safety of buildings. Moreover, the current fire-safety design standards, which are now obsolete, are solely focused on fire rescue and the safety of building occupants when a fire starts, but is completely silent on the prevention of fires, including the
use of materials and fabrics. This is a grave shortcoming of our regulatory system, which the Kamra finds deeply concerning.

1.2.10. OCCUPATIONAL HEALTH & SAFETY AUTHORITY

The Occupational Health & Safety Authority (OHSA) is tasked with protecting the health and safety of workers. As such, the role of the OHSA in the construction industry is primarily that of protecting workers on construction sites, including builders, electricians, labourers and periti. It does so through the Work Place (Minimum Health and Safety Requirements for Work at Construction Sites) Regulations, 2018\(^6\).

These regulations set out the several provisions to safeguard health and safety of workers on construction sites, including:

1. The developer is responsible for appointing a project supervisor, whose role is that of drawing up plans prior to the commencement of construction works to ensure the health and safety of workers on site, and to oversee that the plan is implemented. In the absence of such appointment, the developer is assumed to take on the legal responsibilities and liabilities of the role, whether s/he is qualified to do so or not. Domestic projects are in most cases exempt from this requirement.
2. The project supervisor is also obliged to retain on site a health & safety file, and to coordinate the works between different contractors to ensure the health and safety of workers.
3. The developer is responsible for ensuring that contractors maintain good order and cleanliness on site;
4. The developer is also responsible for maintenance, pre-commissioning checks and regular checks on installations and equipment;
5. Contractors are responsible for ensuring that workers are not exposed to excessive noise or work in temperatures that are “not appropriate for human beings”, without establishing minimum thresholds or providing clear definitions.

It is pertinent to once again point out that the project supervisor as defined in these regulations does not necessarily also fulfil the roles of site manager as defined in the previous section. In practice, it is seldom the case that the two (or three) roles are performed by the same person.

The OHSA also has an important role in building regulation insofar as safety in workplaces are concerned.

\(^6\) L.N. 88 of 2018
Legal Notice 44 of 2002 overlaps with regulations issued by other agencies, departments and authorities:

a) Regulations 5 and 7-9 regulate fire prevention, rescue, toxic fume generation, emergency signs and other similar aspects in workplaces. These regulations, which came into force before the BICC fire safety guidelines discussed above adopted by the CPD, provide further fragmentation and overlap, with scope for inconsistency between various pieces of legislation, conflicting responsibility for oversight and enforcement, duplication of roles, significantly more bureaucracy, and greater risk for error or omission at design, implementation and post-occupancy stage;

b) Regulation 6 requires certification from a perit that the structure of the building is adequate to support the plant and equipment placed within it;

c) Regulations 10, 11, 12, 13, 14 and 15 cover ventilation, thermal comfort, illumination, risk from falling, security, and access, respectively. These are all aspects of building regulation one would expect to find covered within a consolidated building code, providing far more detailed quantitative and qualitative standards.

Legal Notice 293 of 2016 also regulates goods lifts, escalators, moving walkways and boilers in workplaces, among other things. These are all building components that would normally otherwise be regulated through wider regulation also applicable to the general public.

1.2.11. COMMISSION FOR THE RIGHTS OF PERSONS WITH DISABILITY
The Commission for the Rights of Persons with Disability (CRPD) was established through the Equal Opportunities (Persons with Disability) Act in 2000, which was replaced by another act with the same name in 2016. The CRPD’s specific functions are set out in Article 22 of the Act. They are far reaching in terms of the protection and advancement of rights of persons with disability and combating discrimination against them. Despite not being explicitly laid out in the Act, the CRPD has taken on the role of regulating buildings in terms of access for persons with disability.

It does so by publishing a periodically updated design guidance document - the Access for All Design Guidelines. Despite the name, this document is prescriptive and mandatory in nature. It is enforced by the CRPD in the following ways:

a) As an external consultee in the Development Planning Act, the CRPD can object to any planning application that does not comply with the guidelines;
b) Permit conditions generally require compliance certification prior to occupation. CRPD inspectors and/or external consultants are brought in on practical completion of the project to inspect and report on the adherence to the Access for All guidelines. Any shortcomings would need to be rectified prior to the issuance of the compliance certificate;

c) The CRPD has the authority to inspect all public buildings at its discretion, whether in response to a report made by the public or otherwise, to ensure conformity with its Act.

While PA circulars\(^7\) limit the applicability of *Access for All* guidelines, the anti-discrimination powers conferred on the CRPD overrule any planning permission that may be granted by the PA. Indeed, the CRPD may intervene to shut down public buildings or spaces that limit access to persons with disability, despite any exemptions afforded by the PA.

1.2.12. MALTA COMPETITION & CONSUMER AFFAIRS AUTHORITY

The Malta Competition & Consumer Affairs Authority (MCCAA) Act, 2011 amended in 2015, brought about the merger of four separate public entities: the Malta Standards Authority, the Consumer & Competition Division, the Technical Regulations Department, and the State laboratories. The MCCAA is currently composed of four divisions:

1. Office for Competition;
2. Office for Consumer Affairs;
3. Technical Regulations Division (TRD);

This heterogenous authority has a direct impact on the regulation of buildings. Unlike other public entities, however, it is not an external consultee of the PA during planning application processing, which is indicative of the inconsistency with which building regulation is managed. Nevertheless, the *Kamra tal-Periti* is not advocating that the MCCAA should be listed as an external consultee.

The SMI is the national authority tasked with the responsibility of transposing European standards in Malta. This includes construction standards and Eurocodes which are used on a daily basis by *periti* in the exercise of their profession. The SMI is also equipped with laboratories for testing of building and infrastructure works carried out through public procurement, or by the Police for forensic investigations.

\(^7\) See PA Circular 2/14.
The TRD is the national body tasked with enforcing the Product Safety Act, 2001. This includes construction products, lifts, air-conditioning systems, and the eco-labelling of products.

Construction Products (Implementation) Regulations, 2011\(^8\) transposes European Regulation 205/2011 governing the safety of construction products in the European Market. Despite these regulations, there appear to be negligible oversight and enforcement of construction products manufactured locally. Indeed, virtually no products, whether masonry blocks, hollow concrete bricks, concrete precast products, wood shuttering, window apertures, timber products, asphalt mixes, aggregate, steel reinforcement, etc., are ever sold with the obligatory certification.

1.2.13. MALTA TOURISM AUTHORITY

The Malta Tourism Authority (MTA) is responsible for licensing hospitality establishments, including hotels, bars, restaurants and kiosks. The Tourism Establishment Regulations, 2012\(^9\), and Catering Establishment Regulations, 2004\(^10\), set out minimum requirements that must be met for the issuance of a licence to operate.

Among the requirements are specific regulations on the physical characteristics of buildings, such as layout and materials that affect health and safety of patrons and employees. Many of these aspects are already covered by the PA, EHD, CPD and OHSA regulations.

This type of multiple overlaps leads to lack of coordination and contradiction between various public entities.

1.2.14. ENEMALTA

Enemalta plc, Malta’s sole energy provider, also acted as the regulator for electricity installations in the country until 2016, when the Regulator for Energy and Water Services Act, 2015, came into being. The role of Enemalta included the enforcement of the electrical installation regulations, and the review of planning applications.

Despite legislative changes removing its regulatory powers, Enemalta is still listed as an external consultee of the Planning Authority and takes an active part in the planning application process, including imposing requirements for the inclusion of substations in proposed developments. Enemalta is a part-privatised publicly listed company since 2014, which makes it in turn subject to public regulation, exposing it to manifest conflicts of interest.

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\(^8\) See L.N. 462 of 2011.
\(^9\) See L.N. 351 of 2012.
1.2.15. WATER SERVICES CORPORATION
A similar regulatory situation to that of Enemalta exists with the Water Services Corporation (WSC). The main difference between the two organisations is that the latter is wholly owned by the State. Nevertheless, the WSC is itself also subject to regulatory oversight by the Regulator for Energy & Water Services, making its position as an external consultee of the Planning Authority highly questionable.

1.2.16. REGULATOR FOR ENERGY & WATER SERVICES
Article 5 of the REWS Act establishes the functions of the Regulator for Energy and Water Services (REWS) and gives wide ranging responsibilities to the Regulator, essentially involving the regulation of practices, operations and activities in the energy and water sectors. This includes the regulation of tradesmen and service providers such as electricians, installers of renewable energy systems and competent persons in the water and energy sectors.

REWS also provides incentive schemes for the implementation of energy efficiency measures in existing residential buildings (but not their common parts) used as primary residences, including the installation of photovoltaic panels, solar water heaters, insulation, double-glazing, rehabilitation of water cisterns, and heat pumps.

The schemes have one major flaw: they treat building components in isolation, rather than establishing minimum energy performance parameters to be attained following the retrofitting interventions in the buildings as a whole. Thus, the efficacy of the schemes is greatly diminished.

REWS is also responsible for issuing annual licences for swimming pools under the Swimming Pools (Control) Act and Control of Swimming Pools Regulations, which are primarily focused on the protection from effluent contamination of sea water.

1.2.17. ENVIRONMENT & RESOURCES AUTHORITY
The Environment & Resources Authority (ERA) was established in 2016 following the demerger of the Malta Environment & Planning Authority (MEPA). The Environment Protection Act, 2016, stipulates ERA’s functions, as follows:

- To mainstream environmental targets and objectives across Government and society;

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11 See L.N. 146 of 1998.
• To take the leading role in advising Government on environmental policymaking at the national level, as well as in the context of international environmental negotiations;
• To develop evidence-based policy; backed by a robust data gathering structure;
• To draw up plans, provide a licensing regime and monitor activities having an environmental impact and to integrate environmental considerations within the development control process.

ERA plays an important role during the planning application process, particularly in minimising the environmental impacts of large-scale Schedule 1 development by governing the EIA process.

It also had an indirect bearing on building and construction regulation since it is also tasked with waste management, treatment and disposal of hazardous waste, and the protection of groundwater. It is, however, directly responsible for issuing annual licences for swimming pools under the Swimming Pools (Control) Act and its subsidiary legislation, which are primarily focused on the protection from effluent contamination of sea water.

1.2.18. ENERGY & WATER AGENCY
The Energy & Water Agency (EWA) was set up in 2014 through L.N. 340 of 2016. Its responsibilities are:

• the design, development and cohesive coordination of conventional and alternative energy policies and measures together with water policy and secure governance across and within Ministries, Departments and government entities;
• the monitoring, reviewing and updating of conventional energy, alternative energy and water conservation in accordance with European Union and international requirements;
• leading and coordinating co-funded projects relating to conventional energy, alternative energy and water across Ministries;
• the design, development and management of a sustained knowledge, education, information and communications framework directed to influence behaviour with regard to alternative energy use;
• the drawing up of legislative proposals in support of national policies as necessary;
• any other initiative or activity that is complementary and conducive to the fulfilment of the responsibilities of the Agency; and
• the general regulation of its own procedures provided it does not violate the provisions of any other law.
It is unclear why the need was felt to set up a separate agency to fulfil a remit that is already largely covered by the BRO, BRB, PA, REWS and ERA.

1.2.19. BUILDING INDUSTRY CONSULTATIVE COUNCIL
The Building Industry Consultative Council (BICC) was set up as a forum for industry stakeholders, including public sector agencies, developers and professional chambers to advise Government on industry-related policy.

In 2013, it was reformed to take on a more executive role particularly in the establishment of the skill cards and training courses for various industry trades.

It has also recently been tasked with the formulation of the legislation for the setting up of the Building & Construction Authority.

1.2.20. COURTS OF JUSTICE
The Courts of Justice have an important role to play in building regulation, particularly in the current legal framework characterised by obsolescence and uncertainty about liability. The Courts establish liability in civil and criminal cases on the basis of due care and the exercise of the “art and profession”. Court-appointed experts, generally *periti* in construction related cases, tend to base their recommendations to the judiciary on foreign building codes or personal professional judgements. The establishment of unambiguous and up-to-date building regulations with clear lines of responsibility would greatly facilitate the Courts’ processes, in the Kamra’s view.

1.2.21. MASONS’ BOARD
The Masons’ Board is set up through Article 96 of the Code of Police Laws. It is empowered to examine applicants for a masons’ (or builder's) licence, but provides no detail whatsoever about the minimum course requirements, minimum skill and competence outcomes necessary, obligations of insurance, and critically the retention and publication of a register of licensed masons. Moreover, there are no provisions on how and in what circumstances a licence can be repealed.

It is also pertinent to point out that, Article 5 of the Building Regulation Act, 2011, states that “[t]he Building Regulation Office shall be the entity responsible to issue licences for masons”. The BRO has informed the Kamra that this section of the Law was never brought in effect. The Masons’ Board is still currently responsible for examining applicants, while licences are apparently issued by the Works Division. To date, a register of licenced masons is not available.

According to its records, the Kamra tal-Periti was never approached by the Masons’ Board or the BRO to assist in keeping the curriculum of masons’ courses updated.
1.2.22. LOCAL COUNCILS
Local Councils are empowered through L.N. 119 of 2002 to issue licences to developers and/or contractors for the following construction activities:

1. The deposit of building or other material in the street;
2. The deposit or use of crane or other machinery, including lifters and tower ladders, during the erection, construction, or demolition of a building;
3. Temporary road closures, whether partial or complete, to allow for machinery and equipment.

1.2.23. PROFESSIONAL CHAMBERS & WARRANTING BOARDS
The Kamra tal-Periti and the Chamber of Engineers (CoE) play a crucial role in the building and construction industry. They do this in a number of ways:

1. Advising Government on industry-related public policy;
2. Regulating members of their respective professions;
3. Providing professional guidance and organising continued professional development (CPD) courses;
4. Enforcing their respective Codes of Conduct (Kamra tal-Periti only);
5. Investigating professional negligence and misconduct, and recommending the suspension or withdrawal of professional warrants (Kamra tal-Periti only).

The Periti Warranting Board and the Engineering Board are the two national authorities tasked with assigning professional warrants on the basis of competence, which is assessed in accordance with the EU’s Professional Qualifications Directive\textsuperscript{12}, including course content, experience gained during a minimum one-year on-the-job professional training, and an oral examination.

\textsuperscript{12} See Directive 2013/55/EU
2. CURRENT BUILDING REGULATION IN MALTA

2.1. Building Laws in Malta
Malta’s building legislation largely dates back to the mid-19th Century when efforts were made throughout the British Empire to curb the devastating outbreaks of cholera caused by poor sanitation, overcrowding and environmental degradation. Edwin Chadwick’s Report on Sanitation Conditions (1842), which reviewed the urban condition in Greater London at the end of the First Industrial Revolution, was the precursor to Malta’s Sanitary Regulations of 1865, which remain largely unaltered to this day. The Code of Police Laws, of which the sanitary regulations were a part, also cover aspects such as damp proofing and drainage.

While in most Commonwealth countries sanitary regulations evolved into two separate and distinct public policy and regulatory frameworks, town planning and building regulation, in Malta the latter was never addressed comprehensively and coherently, while town planning is virtually non-existent with the focus being exclusively devoted to development control.

The result is a heavily fragmented regulation system which is deeply reliant on the planning application process for implementation. The effects of this are:

- A planning system which is over-focused on development control, rather than on actual planning and urban design outcomes;
- Multiple building control systems, each with inadequate human and financial resources, unable to regulate building performance and compliance post-occupation;
- Excessive reliance on the discretion, skill and experience of various operators in the construction industry, most notably the perit.

The term “is-sengha u l-arti” (skill and art) became a convenient legal substitute for a full suite of building regulations covering every aspect of health and safety in buildings. Indeed, the Laws of Malta are completely silent on various critical aspects of this field, most notably structure. While periti follow the relevant Eurocode standards for the design of building structures, there is no enabling legislation which requires periti to do so, as happens in other European countries. Thus, Maltese architects and civil engineers apply professional discretion each time they design buildings in accordance with Eurocode standards. The same applies for other building components, including, but not limited to, handrails, apertures, insulation, waterproofing, and plumbing systems, where no regulations exist. Whatever regulations exist are prescriptive and not performance-based, and therefore become rapidly obsolete, and irrelevant, as well as inhibiting innovation.

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13 See Section 1.4 for more detail.
This legal vacuum is no longer tenable, particularly in view of the sudden surge in the approval of high-rise buildings in Malta in recent months. The Grenfell Tower fire that occurred in London on 14th June 2017 ought to have further heightened the industry’s concern about the urgent need for comprehensive regulation and building control processes that monitor buildings during the construction and post-completion/occupation phases. The planning application processes are not equipped to fulfil this role, nor, in the Kamra’s view, should they.

2.2. Building Regulation in Malta

2.2.1. STRUCTURE

Readers of this report might be surprised to note that the structural integrity of buildings is completely unregulated in Malta. Indeed, there are no building regulations bringing into force the various Eurocodes on structural design and loading, the use of concrete, steel, timber, masonry, aluminium and composite materials in structural engineering, geotechnical engineering and foundations, and anti-seismic design. Needless to say, National Annexes for Malta on each of these key areas were never drawn up (Arrigo, 2017).

The absence of enabling regulations and institutional ownership of this critical aspect of public safety is alarming. The only indirect mention of structure in the Laws of Malta is found in Article 1638 (1) of the Civil Code which states that “[i]f a building or other considerable stone work erected under a building contract shall, in the course of fifteen years from the day on which the construction of the same was completed, wholly or in part, or be in manifest danger of falling to ruin, owing to a defect in the construction, or even owing to some defect in the ground, the architect and the contractor shall be responsible therefor.”

This open-ended article in the Civil Code places disproportionate liability on periti, not only in terms of duration but also scope. In an age of multi-disciplinarity and complex structures, the role of project periti has increasingly moved towards design management, coordinating the various professional inputs into a project from design architects, structural engineers, geotechnical engineers, building services engineers, fire engineers, interior designers, surveyors, and various other consultants. Furthermore, the basis for professional liability on a subjective term such as “defect” is grossly inadequate in the 21st Century - a time in which Malta is embarking on ever taller buildings and complex civil engineering projects. The approach to geotechnical problems when ever-deeper excavations are increasingly common, even adjacent to existing buildings, is based on outdated notions without reference to current knowledge of the science.
Indeed, while excavation is one of the riskiest processes undertaken in a construction project, it is not regulated at all. In the absence of any regulation, the Courts have latched onto a provision in the Civil Code that deals with easements\textsuperscript{14} to try to address this lacuna. Article 439 of the Civil Code states that “\textbf{it shall not be lawful for any person to dig in his own tenement, any well, cistern or sink, or to make any other excavation for any purpose whatsoever at a distance of less than seventy-six centimetre from the party-wall}”. It precedes Article 443 which regulates distances of windows and balconies from party walls.

The regulation was never intended to guarantee public safety nor to serve as a regulation on excavation works. Evidence of this lies in the fact that Article 560 provides for the acquisition of rights “by virtue of an agreement”. Indeed, various judgements\textsuperscript{15} clarify that legal distances are a private utility as per Article 439 and can be modified or renounced, even tacitly, by the parties. If the provisions of legal distances were about “public utility” or public safety, the obligations would not be extinguished in such a manner, but would subsist indefinitely or until such regulation is changed. Article 402 (1) further states that “\textbf{easements created by law for purposes of public utility are established by special laws or regulations}”. No such laws exist on structural design or excavation. Nevertheless, the Courts have consistently held that non-adherence to this requirements is a possible cause of damage or collapse, despite there not being any technical research to support this notion.

The lack of building regulation on structures, and the opacity and inconsistency in the existing laws and their interpretations place architects and civil engineers in an impossible position to practice their profession serenely. This is further compounded by the fact that they must make the discretionary choice of applying the relevant Eurocodes every time a new building or structural alteration is designed and built, rather than complying with a national regulation which makes those same Eurocodes mandatory, and therefore not discretionary.

A national building regulation code on structures instead of Article 1638 and other scattered provisions in various laws would provide greater legal certainty to all stakeholders in the industry.

\textbf{2.2.2. FIRE}

The fragmentation of building regulation in Malta is all too apparent when it comes to fire safety. There are three sets of regulations that regulate this aspect - L.N. 44 of 2002 (Occupational Health and Safety Authority Act), S.L. 409.15 (Catering

\textsuperscript{14} Article 400 (1) of the Civil Code defines easement as “a right established for the advantage of a tenement over another tenement belonging to another person, for the purpose of making use of such other tenement or of restraining the owner from the free use thereof”.

\textsuperscript{15} Salvatore Vella vs Felice Camilleri; Carmelo Cassar Torregiani vs Giuseppe Scifo Diamantino; Vittoria Grima vs Paolo Vassallo; Nicola Caruana vs Dr John Cesareo.
Establishment Regulations), and S.L. 409.11 (Holiday Premises Regulations). There are also passing references to fire safety measures in S.L. 10.40 (Maintenance at Good order at Places of Entertainment) and L.N. 351 of 2012 (Malta Travel and Tourism Act).

The Development Planning Act 2016 identifies the Civil Protection Department (CPD) as an external consultee of planning applications. The CPD reviews fire engineer certifications submitted with planning applications to ensure compliance with the Design guidelines on fire safety for buildings in Malta published by the BICC in 2004, which is essentially a word-for-word transposition from the English building regulations. Fourteen years since its publication, this document was never revised. Meanwhile, European and international standards have been reviewed and updated several times since.

The main concern of the Kamra tal-Periti with the concept of regulating fire safety and fire prevention through the planning process is that it limits the ability of the State to ensure continued compliance with regulations throughout the building’s lifetime. It also denies the possibility of using modern fire engineering approaches to design of structures. Indeed, the fire safety regulations currently in place are mainly focused on fire rescue. Fire prevention is completely absent, arguably because it is impossible to implement through basic planning application drawings which are mere translations of design concepts, submitted to the Planning Authority prior to the preparation of detailed construction drawings.

The CPD Act 2017 regretfully further consolidates the status quo characterised by fragmentation of building regulation and a piecemeal approach to this sector.

2.2.3. SITE DECONTAMINATION

Regulations on site decontamination are important to protect building occupants from the risks arising from site contaminants, as a result of any substance, in solid, liquid, gaseous or vapourised state, which may be harmful to persons or buildings, including substances which are corrosive, explosive, flammable, radioactive, or toxic.

Site preparation regulations covering site investigations are also important to ensure the structural stability of the buildings. This includes geotechnical and laboratory testing of soil and rock formations, and sub-soil drainage. The latter is critical to prevent contamination of the building, its foundations or its services.

Malta has no such regulations to date despite the close proximity of industrial and agricultural activities, which are key sources of ground contamination, to areas zoned for residential and commercial activities.
2.2.4. **WATERPROOFING**
Waterproofing in buildings is regulated through Article 97 of the Code of Police Laws (Chap. 10). These regulations date back to the mid-19th Century and are now obsolete, having been surpassed by advances in material and construction technology. Indeed, these regulations still make reference to building materials which are no longer in use, such as lead, vitrified bricks and asphalt, and building techniques such as ventilated basements and cavity walls for the restriction of damp from the ground and through external walls, respectively.

The only regulation covering waterproofing of roofs is a generic requirement to lay an impervious surface to falls to avoid puddling.

2.2.5. **TOXIC MATERIALS AND SUBSTANCES**
Some construction materials present in buildings have been found to be hazardous, posing a very serious risk to building occupants. The most notable of these are asbestos and lead. While the importation of these materials is restricted, there are no regulations covering risk mitigation or elimination to exposure of these and other toxic materials.

Moreover, certain types of insulation and other building materials produce toxic fumes, such as urea formaldehyde, requiring specific regulation for their inclusion in the building fabric.

The only existing regulation on toxic materials in buildings is L.N. 323 of 2006 which treats the exposure to asbestos as a workplace hazard, rather than a hazard inherent to a building which exposes its occupants to health and safety risks. Moreover, this regulation falls under the remit of the OHSA, which deals with workplaces. Asbestos in residential properties are not covered by this regulation.

Toxic substances are also used in buildings on a regular basis as a matter of necessity. They include chlorine in swimming pools, and fertilisers and pesticides in landscaped areas. There are currently no regulations on how to prevent such substances from contaminating the ground and nearby buildings by means of specific measures at design and construction stage.

2.2.6. **SOUND INSULATION**
The contemporary living environment is characterised by low-quality sound that has little or no importance. The sounds of cars, planes, cooling systems, ventilation, machines, electronically amplified music and announcements are constantly present. Gating out these sounds can consume a significant fraction of cognitive resources, and the body is frequently triggered in vain to prepare for fight-or-flight. Moreover, the information carried by this sound – mainly related to its source – influences our appraisal of our person-environment relationship. The feeling of not being in control of one’s living environment can lead to additional
stress particularly in the absence of coping resources or mechanisms. Both the autonomous response and stress path could eventually lead to negative effects on health and wellbeing, such as an increased risk of high blood pressure or circulatory disease (European Commission, 2015). Noise pollution can contribute to various health problems, including:

- Tension or anxiety;
- Decreased performance;
- Reduced productivity;
- Eardrum damage or hearing difficulties;
- Increased blood pressure or stress levels;
- Coronary failure;
- Psychological damage.

The World Health Organisation (WHO) reports that sleepers that are exposed to night noise levels above 40dB on average throughout the year can suffer health effects like sleep disturbance and awakenings. Above 55dB long-term average exposure, noise can trigger elevated blood pressure and lead to ischaemic heart disease (WHO, 2018).

To date, Malta has no regulations to curb noise generation or to limit its impact within buildings. The importance of introducing noise control building regulation cannot be stressed enough. The Kamra tal-Periti understands that the government has set up a Commission for Noise Pollution. A spokesman of the Ministry for the Environment is reported by the Times of Malta as having said that a draft bill will be presented proposing “regulatory framework aimed at minimising noise inconvenience” (Caruana, 2018).

The Kamra trusts this will not lead to yet another regulatory body governing buildings which will further exacerbate the unsustainable fragmentation of building regulation in Malta.

2.2.7. VENTILATION

Ventilation is regulated primarily through the Health & Sanitary Regulations, 2016, which provide prescriptive dimensions and layouts for residential and commercial developments. They are essentially a slight modification of the Sanitary Regulations found in the Code of Police Laws, articles 97, 99, 104 and 108, written in the mid-19th Century, echoing similar regulations brought into force throughout the British Empire at the time. It is pertinent to point out that the aforementioned articles in the Code of Police Laws have not been repealed with the introduction of the 2016 regulations, providing some degree of ambiguity.

The 2016 regulations form part of the 2016 Development Planning Act subsidiary legislation, and as such fall under the Planning Authority’s remit, despite the fact that they have no direct relevance to planning, aesthetics or land use.
The main novelty in the 2016 regulations is the possibility to deviate from prescriptivity in non-residential buildings through certification “by a warranted engineer that [the proposed design] can achieve acceptable levels of ventilation in accordance with recognised building codes and standards”.

There are a number of considerations to be made on this point:

1. There are no building codes or performance standards on ventilation in Malta. Thus, there is a complete reliance on foreign codes, which do not cater for local climate, environment, materials and construction methodology;
2. It is unclear what the term “recognised” means. Who should they be recognised by? Neither the Kamra tal-Periti nor the Chamber of Engineers - the only two professional bodies that represent warranted engineers in Malta - officially recognise any foreign building codes and standards. It is thus incumbent on the warranted engineer to exercise discretion and professional judgement in the choice of foreign building codes and standards;
3. Foreign building codes vary widely both in substance and in effect. Many are performance-based, while only a few are prescriptive. In both cases, however, they frequently rely on continued or periodic review and certification, none of which occurs in Malta in a systematic manner;
4. Civil engineers expose themselves to additional and wholly unnecessary degrees of professional liability through the current regulatory regime in Malta. Not only do they carry the normal liability as their foreign peers in applying the building code correctly, but they also carry the responsibility of selecting the code to be applied. In all advanced industrialised countries, it is the State that carries responsibility for the latter.

2.2.8. SANITATION, PLUMBING & HOT WATER
Regulations for sanitation in Malta are found in the Code of Police Laws Article 97 (g) which states that “every house\textsuperscript{16} shall be provided with a privy”. Clearly archaic even in terminology, the regulations focus primarily on ventilation, wastewater and drainage in privies, but make no reference to the supply of water in bathrooms, kitchens, washrooms, and landscaped areas.

The provision of just one toilet per house (including homes, hotels and offices) as required in the Law is clearly insufficient in the 21st Century. However, the provision of sanitation in hotels and catering establishments is regulated through the respective licensing regimes, while that of workplaces is regulated through L.N.

\textsuperscript{16} The term “house” includes any premises used, or intended to be used, either wholly or partially for habitation purposes, or for purposes of animal husbandry, any hotel or catering establishment, and any shop other than a stall or kiosk.
44 of 2002. The provision of sanitary facilities in homes generally follows market demand.

The regulatory fragmentation is manifest with various authorities regulating sanitation in some building types, but not others, with some scope for overlap. The Malta Tourism Authority (MTA) is responsible for regulating sanitation in hotels and catering establishments, while Occupational Health & Safety Authority (OHSA) regulates workplaces.

2.2.9. WATER CONSERVATION
Malta has no specific building regulation aimed at reducing water consumption. Regulation 10 of the Health & Sanitary Regulations, 2016, however stipulates that “[a]ll new development should be provided with a water reservoir to store and re-use rainwater run-off from the built-up area and having a volume that is established in Technical Guidance Document F”.

The link between sanitation and water reservoirs is not immediately apparent; however, there is a probable explanation in the historic origins of the current sanitary regulations’ regime, which as explained earlier, dates back to the mid-19th Century. The high demand for water that characterised British Rule caused by increased urban densities and improved standards of living, led to the introduction of legal provisions in the Civil Code and Code of Police Laws aimed at conserving water and preventing its contamination (Sapiano, 2008).

Over the last four decades, it has become common practice for each tenement to have a water tank placed on the roof. This practice, which emerged as a result of severe shortages in tap water in the post-Independence period leading up to the 1990s, survives to this day despite water shortages no longer being a concern due to the significant infrastructural investments in reverse-osmosis plants in the 1990s and 2000s.

Despite there being two sets of regulations published and administered by two different public entities (SPH and REWS) about swimming pools, there are no requirements for water conservation measures in pools, such as the use of harvested water.

2.2.10. SEWERAGE
Sewerage systems are regulated by the Code of Police Laws and subsidiary legislation “Construction of Houses and Drains” published in the British Colonial Period. They are largely ignored by the industry today due to their obsolete requirements for iron or glazed stoneware pipework, privies, cesspools, and stone seats instead of toilets.
Nevertheless, the existing drainage regulations restrict the application of more contemporary installation techniques such as closed systems, and other more innovative solutions such as self-powered treatment plants, and recycling of greywater.

2.2.11. WASTE MANAGEMENT AND DISPOSAL

There are currently no formal building regulations about waste management and disposal. There is however an interim measure currently in place in the PA’s Development Control Design Policy, Guidance and Standards 2015 (DC15). Policy P46 states:

“New multiple dwellings and high-density residential development serving 16 or more units will be required to make provision for a refuse room catering for the whole development which must be easily accessible from street level. The size of the room will be dependent on the number of dwellings being served and will be equipped with both organic waste and recycling bins.

“This policy is an interim policy pending the approval of the Building Regulations.”

 Needless to say, four years on no building regulations have been brought in force.

The Abandonment, Dumping and Disposal of Waste on Streets and Public Places or Areas Regulations17 regulate the system of domestic waste collection, including Local Council waste collection times and the type of waste that can be left on pavements for such collection. Non-domestic waste, all catering waste and swill, irrespective of quantity, and building waste cannot be deposited in streets and collected with domestic waste. It is thus incumbent on commercial operators to organise private waste collection in accordance with the Waste Regulations18.

The above implies that all non-domestic developments, irrespective of size or scale of operation, should accommodate a waste storage facility within the site. There are no regulations or guidance documents on the size of such facilities or on related measures for fire prevention, ventilation and prevention of ground contamination.

Informal discussions with private waste collection operators have confirmed that the reason why commercial waste collection has never taken off is because Local Council tenders are cheaper when domestic and non-domestic waste is collected together, never mind the fact that the two types of waste should be treated separately, and are contributing to the general shabbiness of our urban

17 L.N. 344 of 2005.
18 L.N. 184 of 2011.
environment. Unfortunately, Local Councils are breaching the law to the detriment of the environment for financial gain.

2.2.12. COMBUSTION APPLIANCES & FUEL STORAGE SYSTEMS
Article 128 to 132 of the Code of Police Laws regulate combustion appliances, such as ovens, furnaces, boilers, fireplaces, and fuel storage systems. These legal provisions, however, provide no design standards or guidance other than prohibiting their positioning along party walls. The only quality verification that is required by the law is that of the appointment of an engineer by the Minister to inspect and test boilers on the second and fourth quarter of each year, at a preposterous fee of €2.33 per inspection. It is also unclear against which standards and regulations the engineer is expected to certify the boiler installation. The extent to which this section of the law is observed is dubious.

2.2.13. PROTECTION FROM FALLING, COLLISION AND IMPACT
A key aspect in building design and fabrication is ensuring that users are not exposed to risks from falling, collision or impact. This includes regulating:

a) Geometry of stairs, handrails, fixed ladders, and guarding;
b) Ramps and guarding;
c) Protection from falling, including from accessible roofs, wall openings, and slab edges;
d) Vehicle barriers and loading bays;
e) Protection from impact with glazing;
f) Design of external openings to ensure safe opening, and safe access for cleaning.

The only guidance that is provided on this aspect is found in three official documents or regulations:

1. DC15 guidance G46 (e) states that “where desirable, balcony railings should have a vertical orientation in order to ensure safety”. This is clearly inadequate to safeguard the safety of building users, as there is no mention of the minimum impact load a railing is to sustain whichever way it is manufactured, nor other important safety factors such as the spacing between the vertical rails.
2. L.N. 44 of 2002 regulation 13 stipulates that “[t]he employer shall take all the necessary steps to ensure that all floors, steps, stairs, passages, gangways and traffic routes are of sound and suitable construction and properly maintained, and they shall be kept free from any obstruction, from any defect in the surface, and from any substance
likely to cause persons to slip, trip, fall or otherwise cause accidents.”
There is no mention, however, of any performance- or prescriptive-based criteria on how this is ensured.

3. L.N. 79 of 2016, which transposes European lift regulations EN 81-20:2014, establishes specific minimum performance criteria of impact loads to be withstood by lift wells and doors. It also specifies design criteria for protection from falling of lift technicians inside lift shafts.

2.2.14. ENERGY CONSERVATION

The Energy Performance in Buildings Regulations\(^\text{19}\) transposes the provisions in European Directive 2018/844 which came into force on 9th July 2018. They set out comprehensive regulation on minimising the energy demand of buildings as part of the EU’s 2020 agenda and the Paris Accord to reduce CO\(_2\) emissions across the European Union.

The main provisions of these regulations include:

a) The methodology for calculating energy performance in buildings;
b) Making the BRB responsible to establish minimum energy performance in buildings, including cost-optimisation criteria;
c) The obligation for new-builds to meet Document F requirements, placing greater responsibility for adherence to its provisions on periti and engineers, including the requirement for periti and/or engineers to submit compliance certification within one-month from completion, and before building occupation;
d) The enforcement of the provisions to ensure that all public buildings achieve near-zero energy building status (nZEB) by end 2018, and all other buildings by end-2020;
e) Empower the BRO to provide financial incentives and address market barriers to promote nZEB stock (presumably replacing REWS in this role);
f) The reinforcement of obligations to produce EPCs for design and asset ratings, and obligation to display such certificates;
g) A system for regular inspection of heating and cooling systems under the remit of the BRO (presumably instead of the MCCAA);

Compliance with and enforcement of European Directive on nZEB is virtually nil.

The principal deficiency in the energy performance rating is the calculation software, known as EPRDM software, which makes use of outdated efficiency constants, and does not cater for vernacular passive design solutions.

The Energy Performance in Buildings Regulations makes reference to the application of minimum requirements for the energy performance of existing buildings which are subject to renovation. Existing buildings are defined as any

\(^{19}\) L.N. 47 of 2018.
building constructed, in the course of construction, earmarked for construction, or having a valid development permit, prior to the coming into force of these regulations. Heritage buildings, therefore, fall within the category of existing buildings and a certificate of compliance with minimum energy performance requirements, drawn up by an assessor, must be submitted to the Building Regulation Office within one month of completion of works or before the use of the building.

L.N. 47 of 2018 specifies that the Building Regulation Board must differentiate between new buildings, existing buildings and different categories of buildings. Therein lies the opportunity to address the anomalies particular to the eco-refurbishment of heritage buildings in the local context. The heritage building typology, prolific in Malta, is characterised by inherent passive strategies designed to improve internal comfort conditions. Although it has been shown to offer huge potential in reducing energy demand at a national level, several components must be considered in the design of eco-refurbishment interventions (Wismayer, et al., 2016).

The Sustainable Regeneration of Built Heritage (SRBH) Initiative has identified and assessed integral aspects in the process of sustainably intervening on heritage buildings through field research on San Anton Palace (Schembri Orland, 2019). One of the main recommendations of the SRBH project is the development of a national framework within which a balanced strategy may be effectively implemented, and through which interventions on heritage buildings may be founded on evidence-based data. The principles outlined by this initiative should be referenced in the formulation of building regulations for minimum energy performance requirements of heritage buildings.

2.2.15. ACCESS
As outlined in earlier parts of this report, access is regulated through various pieces of legislation and regulations as follows:

- a) Planning design guidance: DC15 (PA);
- b) Access for persons with disability: Access for All Design Guidelines (CRPD);
- c) Lifts: Lifts Regulations (MCCAA);

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20 The SRBH Initiative was led by Perit Amber Wismayer under the auspices of former President Marie-Louise Coleiro Preca
In addition to the above, external consultees in the planning application process, such as Transport Malta, also have an influence on the design of site access.

Regulatory fragmentation characterises the safeguarding of building users’ safety when accessing buildings and moving within them.

MEPA Circular 2/14 outlines exemptions from conformity with access requirements specified by the CRPD. It makes no specific reference to buildings of historic or architectonic value. Building regulations should support an inclusive and sustainable society, which allows for all its members to enjoy and participate in the social, economic and cultural assets of the nation. However, there may be instances when the architectural, cultural or heritage value of a building is such that physical interventions are not appropriate. In such cases, the already established Test of Reasonableness Board (TORB) may consider and recommend management solutions which do not necessitate alterations to the building, thus adopting a balanced approach.

2.2.16. ELECTRICITY

Electricity supply and installations in buildings are regulated by the *Electricity Supply Regulations*\(^{21}\) and *Electrical Installations Regulations*\(^{22}\) which falls under the remit of REWS. These regulations contain three peculiarities:

1. They stipulate that Malta’s technical design regulations are entirely based on the UK’s Institute of Electrical Engineer’s wiring regulations. The institute, which since 2006 was amalgamated into the Institution of Engineering & Technology, is the British institution tasked with publishing and updating the UK’s national standard on electrical installations, BS 7671, together with the British Standards Institute (BSI). Through Malta’s regulation, any changes in the British Standard are automatically adopted locally. It is pertinent to note, however, that BS 7671 follows the IEC 60364 very closely. Indeed, the IEC’s standard is widely adopted across the European Union member states, with some variances in language and traditional practice. It would thus appear to be more appropriate for Malta to adopt the IEC standard directly and apply any local variances that may be necessary through an electrical code, rather than adopt the British Standard.

2. Enemalta was identified in Malta’s regulations as a regulator until 2016, a highly inappropriate situation considering it is a private company which should have itself been subject to regulations set out by a national regulator, particularly in view of its monopolistic market position. This has been rectified through the 2016 amendment to the legal notice, which established REWS as the regulator. Nevertheless, Enemalta is still

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\(^{21}\) See G.N. 223 of 1940.
\(^{22}\) See L.N. 225 of 2010.
identified in the Development Planning Act as an external consultee in the planning application process, assessing proposed development in terms of regulation and internal company policy. In the Kamra’s view, this is also highly inappropriate, not only because planning applications should not be burdened by building regulation matters, but also because as explained earlier it provides a private company, and its shareholders, with undue dominance and control over the construction industry.

2.2.17. SECURITY
There exist no regulations in Malta about ensuring security within buildings from unauthorised access. Most European countries provide regulation to provide for adequate resistance from unauthorised access to dwellings, and flats within an apartment block. Building components that are regulated include:

- Doors and windows;
- Locks;
- Letter plates;
- Hinges;
- Means of viewing outside front doors, such as door viewers, clear glass panels, intercoms, door chains, etc.

The only official document traced that deals with security is the PA’s DC15. Guidance G22 of DC15 covers this purely from an urban design point of view, by providing for security through natural surveillance and the elimination of dead frontages. This is indeed a planning issue, which should continue to be governed by the Planning Authority.

2.2.18. ICT
L.N. 226 of 2016, the In-Building Physical Infrastructure (Access to Electronic Communication Services) Regulations, transposes European Directive 2014/61/EU into Maltese law. The objective of this directive is that of reducing the cost of deploying high-speed electronic communication networks (fibre optic, cable) by ensuring that all new buildings and those undergoing major renovation works since 2016 provide high-speed-ready physical infrastructure within such buildings for ICT companies to connect their services. This includes providing access points for each individual unit, or apartment, within the building.

These regulations fall under the remit of the BRO, which in 2018 carried out preliminary consultation discussions with the Kamra tal-Periti on how to implement, raise awareness, and enforce these regulations. These discussions never proceeded further.
2.2.19. MATERIALS & WORKMANSHIP

Construction products are regulated through L.N. 462 of 2011, which transposes EU Regulation 305/2011 on construction product safety and marketability.

The EU Regulation established harmonisation across EU member states on the declaration of performance certification and CE marking of construction products by economic operators, including manufacturers, importers, distributors, owners and operators.

The declaration of performance must include:

1. the reference of the product-type for which the declaration of performance has been drawn up;
2. the system or systems of assessment and verification of constancy of performance of the construction product, as set out in Annex V;
3. the reference number and date of issue of the harmonised standard or the European Technical Assessment which has been used for the assessment of each essential characteristic;
4. where applicable, the reference number of the Specific Technical Documentation used and the requirements with which the manufacturer claims the product complies;
5. the intended use or uses for the construction product, in accordance with the applicable harmonised technical specification;
6. the list of essential characteristics, as determined in the harmonised technical specification for the declared intended use or uses;
7. the performance of at least one of the essential characteristics of the construction product, relevant for the declared intended use or uses;
8. where applicable, the performance of the construction product, by levels or classes, or in a description, if necessary based on a calculation in relation to its essential characteristics determined in accordance with Article 3(3);
9. the performance of those essential characteristics of the construction product which are related to the intended use or uses, taking into consideration the provisions in relation to the intended use or uses where the manufacturer intends the product to be made available on the market;
10. for the listed essential characteristics for which no performance is declared, the letters ‘NPD’ (No Performance Determined);
11. when a European Technical Assessment has been issued for that product, the performance, by levels or classes, or in a description, of the construction product in relation to all essential characteristics contained in the corresponding European Technical Assessment.

Construction products or materials produced locally that are accompanied with such declarations and/or CE markings are extremely rare. These products include *franka* blockwork, prestressed concrete planks, structural timber and formwork, aluminium apertures, railings, and tiles. Moreover, it is not customary for suppliers and importers of European construction products to supply clients and/or *periti* with
the required documentation to ensure compliance with European Construction Product Safety standards.

It is thus evident that L.N. 462 of 2011 was only transposed on paper but never enforced, undermining consumers and building occupants, and exposing periti and their consultants to undue liability.

The only construction product regulation that appears to be largely observed is the Building Stone Order dating to 1976, which regulates the size of a masonry block: one size for Malta and another for Gozo. There is no mention, however, of minimum load bearing capacity; chemical, weathering, thermal, and fire resistance; texture and colour; porosity, and other important characteristics of construction products.

The aforementioned European Technical Assessments generally also stipulate the workmanship that is required to ensure that the construction products and materials bearing a CE marking are utilised correctly to achieve the required performance. Most European building regulation frameworks thus also require that workmanship is certified by building contractors to having conformed with the required standards.

None of these processes exist in Malta yet. Moreover, the absence of registered contractors, and skill certifications allows for amateurs and unskilled labourers to offer services to consumers with often tragic consequences. This situation is compounded by the Courts' general presumption that the ultimate responsibility for certification and oversight rests exclusively with the perit in charge. This situation is no longer tenable for the profession nor sustainable in the context of the ever-increasing complexity of the industry and must be addressed with urgency.

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23 The industry is producing additional sizes of blockwork not contemplated in the regulations.

24 See section 3.3
3. CURRENT CONSTRUCTION REGULATION IN MALTA

Fragmentation of construction regulation in Malta is less evident than that of building regulation. This is in part due to the fact there are serious lacunae and missing regulations, reducing the scope for multiplicity and overlaps. This chapter provides a brief oversight about the current state of construction regulation in Malta, characterised by incompleteness, lack of enforcement and training, inconsistency, and an absence of lines of responsibility.

3.1. Processes

The processes governing construction works are outlined below.

3.1.1. PRE-CONSTRUCTION PHASE

There are several entities involved in the pre-construction phase.

The Development Planning (Procedure for Applications and their Determination) Regulations, 2016\(^{25}\), state that “[p]rior to the commencement of any works relative to a valid permit, the perit must submit the relative commencement notice on behalf of the applicant to the [Planning Authority] within the period of five days in advance to the date of commencement of works or utilization of permission.”

The PA provides a specific Commencement Notice form, wherein the perit is required to provide the details of the developer, site manager\(^{26}\), and licensed mason\(^{27}\). The Kamra tal-Periti had strongly objected to the process (Kamra tal-Periti, 2016b) for a number of reasons, including:

a) The responsibility to submit the commencement notice according to the Development Planning Act rests with the applicant, not the perit;

b) The notification of commencement of works is unrelated to planning, and should be administered exclusively by the BRO;

c) If the PA requires any commencement notice at all, it should be submitted by the applicant solely for the purposes of notifying the PA that the permit is being utilised. All other construction-related matters are of no consequence to the PA.

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\(^{25}\) See L.N. 162 of 2016

\(^{26}\) See section 3.2.3.

\(^{27}\) See section 3.3.1.
d) The commencement notice was touted as a one-stop shop process, but this was proven not to be the case since all the legal obligations for prior notification to other entities was never repealed, thereby adding unnecessary bureaucracy to the process;

e) There are significant inconsistencies among various pieces of legislation on the minimum prior notification of commencement. The PA’s 5-day prior notice is, indeed, the shortest, and thus the one-stop-shop concept was not possible without reviewing all other legislation;

f) Article 1638 places the onus of responsibility on the contractor, together with the perit, not the licensed mason. Moreover, there exists no register of contractors nor licensed masons;

g) The perit should not be held responsible for the content of the Commencement Notice, including the verification that the mason is indeed licensed, since no publicly available register exists.

The Avoidance of Damage to Third Parties Regulations, 2013\(^{28}\), establish another pre-construction process that must be followed by developers prior to the commencement of most types of works:

1. The developer must appoint a site manager\(^{29}\), and notify such an appointment to the BRO together with the submission of a declaration of acceptance signed by the site manager;

2. The developer must take adequate insurance cover for “any single occurrence or recurrence of damages sustained by third parties, disability to persons or death as a result of the construction works or activity being undertaken by the developer and the contractors working on site”.

3. The site manager must submit a works method statement drawn up by the perit in collaboration with the site manager and the contractor/s, not less than eight weeks prior to the commencement of works. The BRO is meant to place a digital copy of the method statement online and forward a hard copy to the PA for public scrutiny. The online publication of method statements was never put in place. The developer is also responsible for submitting a copy of the method statement to the owners of third-party contiguous properties;

4. The developer is to submit condition reports drawn up by the perit describing the condition of contiguous third-party properties to the BRO and their respective owners.

5. The third-party owners have up to 3 weeks to submit any objections on the method statement or condition report.

\(^{28}\) See L.N. 72 of 2013
\(^{29}\) See section 3.2.3.
The Environmental Construction Site Management Regulations, 2007\textsuperscript{30}, which as explained in Chapter 1 are subsidiary to the Development Planning Act but fall under the remit of the BRO\textsuperscript{31}, set out a separate pre-construction process:

1) The developer is to submit the notification of commencement to the PA (even though the regulations fall under the remit of the BRO) providing details about the site manager falling under these regulations. It is pertinent to point out that the definition, role and responsibilities of the site manager provided in these regulations are different from those in L.N. 72 of 2013;

2) Three weeks prior to the commencement of any construction works expected to last longer than 4 weeks, the developer is required to affix a notice board providing the names and contact numbers of the owner, site manager, perit, and contractor/s;

3) The site manager is responsible for ensuring that hoarding, barricades, safe passages and covered ways, in line with the regulations, are set up prior to the commencement of demolition, excavation or construction works;

The OHSA has yet another pre-construction process in place governing health and safety of workers on site. Indeed, L.N. 88 of 2018 establish the following pre-construction procedures:

1) The developer is to appoint a project supervisor\textsuperscript{32} for the design and execution of the works;

2) The developer is responsible for ensuring that a health and safety plan\textsuperscript{33} is drawn up prior to the commencement of works;

3) When the project size and duration exceed specific parameters in the regulations, the project supervisor is to notify the OHSA about the commencement of works at least 4 weeks in advance.

When works are to be carried out in heritage buildings or in archaeologically sensitive sites, a specific condition in the planning permit requires the developer to also notify the SCH prior to the commencement of any works. This may also involve the appointment of an independent archaeological monitor from a list of registered persons published on the SCH website.

\textsuperscript{30} See L.N. 295 of 2007.
\textsuperscript{31} See section 1.2.1.
\textsuperscript{32} See section 3.2.4.
\textsuperscript{33} L.N. 88 of 2018 reg 5 (2) establishes that “the health and safety plan shall set out the rules applicable to the construction site concerned, taking into account where necessary the industrial activities taking place on the site”
3.1.2. CONSTRUCTION PHASE

Only a few disjointed and incoherent regulations govern the construction phase.

Firstly, L.N. 72 of 2013 requires that the site manager\textsuperscript{34} takes responsibility for the implementation of the method statement drawn up by the \textit{perit}.

The regulations also specify that the details that need to be included in the method statement in the following cases:

1. Demolition works;
2. Excavation works, including the need for geological investigations exceeding 3m in depth, or within 5m from the boundary of a contiguous site;
3. The setting up of cranes, and relative inspection certificates\textsuperscript{35}.

The main characteristic of these regulations is that, rather than the BRO establishing specific regulation on how demolition, excavation and craneage works are to be undertaken, they shift the responsibility to the \textit{perit}. The absence of clear regulation on how such works are to be undertaken also makes it difficult to establish courses for excavation and demolition contractors on which a registration system could be implemented. It also makes it difficult to challenge proposed methods in the absence of standard regulations.

The site manager appointed by virtue of L.N. 295 of 2007, on the other hand, is responsible for ensuring that the \textit{Environmental Construction Site Management Regulations} are implemented. The regulations include subjects such as:

- Cutting of stones and bricks;
- Transportation and deposit of loose building material;
- Obstruction to pedestrian and vehicular traffic;
- Site cleanliness;
- Rodent control;
- Operating hours;
- Moratorium of construction works in tourist areas;
- Dust emissions, sanding, and fair facing of stone;
- Noise abatement;
- Health and hygiene on site;
- Disposal of waste;
- Prevention of contamination of the site and neighbouring properties through hazardous material;
- Prevention of contamination or damage caused to road infrastructure by storm water flowing through or out of the construction site.

\textsuperscript{34} See section 3.2.3.
\textsuperscript{35} No detail on what the certificates should cover is provided.
It is pertinent to highlight a deficiency in one of the items in the above list, which is characteristic of the inadequacy of the regulations.

On noise abatement, for example, the regulation is silent on the maximum noise levels that can be emitted from a construction site. It only specifies that the maximum noise levels between 2pm and 4pm must not exceed 65dB. It is unclear why these specific hours are identified as meriting such specific noise abatement, while it is effectively a free-for-all at all other hours.

When works require partial or complete temporary road closures, developers and/or contractors are legally required through L.N. 119 of 2002 to pay “for the services of a community officer to control the traffic”. Community officers, or wardens, are, however, not always available and frequently replaced by police officers or Transport Malta officials.

The Kamra tal-Periti is unaware of any instances where wardens, police officers or Transport Malta officials assigned to control traffic have ever intervened when other construction site regulations, such as the generation of excessive dust or noise, were breached, or unsafe construction practices witnessed.

Project supervisors, commonly referred to as health and safety inspectors, are responsible for regularly monitoring construction sites to ensure compliance with the health and safety plan, and specific provisions of the health and safety regulations.

3.1.3. COMPLETION PHASE

L.N. 72 of 2013 states that on completion of works “[t]he developer shall, within two weeks, submit a certification issued by the perit in charge of the project that the works have been completed.”

Completion is defined as “the completion of all structural and other works including the roof screed of roofs, terraces and yards, the closure of apertures (sic) and other works to render the building sealed against the ingress of water”.

This is a very narrow definition of completion, in that it only covers civil works but not other works that may still cause damage to third-party properties, or even damage to the structure under construction. Moreover, the certification does not cover quality, but is a mere statement about the conclusion of the construction operation.
On receipt of such completion certificate, the BRO shall notify the owners of the contiguous properties within two weeks informing them about their right to file a request for compensation caused by the works within 3 months.

The PA has a separate process on the completion of projects that in some cases triggers other public entities in reviewing compliance. Development permits are issued subject to a number of conditions. These conditions normally include compliance with specific requirements made by external stakeholders during the processing of development permit applications, and may include CPD, CRPD, SEO, EHD and SCH, depending on the nature of the project.

This process culminates with the issue of a Compliance Certificate by the PA, which is used either to confirm compliance of development prior to occupation, or as a mandatory requirement when applying for utility meters. The PA’s external consultees that may be involved in these processes, and respective circumstances are illustrated in Table 1.

Table 1 Role of PA’s External stakeholders in completion procedures

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPD</td>
<td>to confirm compliance with fire safety report through certification by fire engineer</td>
</tr>
<tr>
<td>CRPD</td>
<td>to confirm compliance with <em>Access for All</em> guidelines through a physical inspection by CRPD appointed perit</td>
</tr>
<tr>
<td>SEO</td>
<td>to confirm compliance with specific conditions regarding natural light and ventilation</td>
</tr>
<tr>
<td>EHD</td>
<td>to confirm compliance with catering regulations prior to the application for an MTA catering licence</td>
</tr>
<tr>
<td>SCH</td>
<td>to confirm compliance with Restoration Method Statement and conditions related to monitoring prior to release of bank guarantee</td>
</tr>
<tr>
<td>Local Councils</td>
<td>to confirm compliance with condition regarding restoration of street on completion of works in accordance with regulation 16 of L.N. 295 of 2007</td>
</tr>
</tbody>
</table>

The main deficiencies with this process is that:

1. The process is disjointed, fragmented and cumbersome;
2. Tying in building regulation conditions in a planning permit creates legal grey areas in the case of non-compliance since the PA has no jurisdiction in matters not regulated by the Development Planning Act;
3. Once a Compliance Certificate is issued there is no system in place for post-occupancy verification and certification.

### 3.1.4. POST-OCCUPANCY PHASE

Post-occupation regulations in Malta are very limited. The most widely known and established system is that governing lifts. The *Inspection of Lifts Regulations*[^36]

[^36]: See L.N. 231 of 2007.
provide a very detailed and comprehensive process which ensure the safety of users of lifts, and the long-term durability of the machinery itself.

The *Electrical Installation Regulations*[^37] provide REWS with regulatory powers to request inspections of installations, particularly when malpractice is suspected.

### 3.2. Professional Figures

#### 3.2.1. PERITI

The Laws of Malta reserve certain professional activities, related to the construction industry, to persons who hold a warrant of *perit*, awarded by the State for this purpose. These activities are reserved to warranted professionals generally because of the need to protect the public interest, particularly in relation to issues of public health and safety, such as the structural integrity of buildings and structures, and public sanitation issues, but also the protection of the urban environment and of cultural heritage. The *perit* owes a duty of care towards his client, but also towards society and the environment in general.

Article 1638 of the Civil Code of the Laws of Malta, for example, establishes that should a building or "a considerable stonework perish, wholly or in part, or be in manifest danger of falling to ruin", the *perit* and the contractor, are held jointly responsible. This responsibility covers events that occur within fifteen years after the date of completion, and even includes situations that arise from "defects in the ground". The *perit* is generally responsible for the design and for the supervision of the construction of buildings and works, and the contractor for the execution of the works; however, it would be up to the Courts to decide on the relative attribution of blame.

Articles 1031-1033 of the Civil Code, in addition, also establish personal liability for any damage caused through negligence, imprudence or lack of the appropriate attention to the tasks commissioned, on the basis of tort.

These liabilities could, therefore, only be carried by a "natural" person, that is, by the *perit*, on a personal basis. Article 10 of the Periti Act (Chap.390 of the Laws of Malta) provides, however, for the possibility that a professional partnership be set up, through a private agreement, so that two or more professionals agree to assume joint and several liability, for any loss or damage occurring as a result of the action of each professional partner. This means that the professional partnership assumes the responsibility for the action conducted by any of the partners, in the name of the partnership.

[^37]: See L.N. 225 of 2010.
The Code of Police Laws places the onus\textsuperscript{38} on the \textit{perit} to ensure, \textit{inter alia}, the provision of proper damp proof courses in the construction, the provision of sanitary facilities, and proper connection to the public sewers.

The Development Planning Act requires the submission of an application for development permission to be submitted by a \textit{perit} on behalf of the client. Other pieces of legislation, for example, require that the valuation of immoveable properties, fair rents and agricultural leases be carried out by a \textit{perit}. The Cultural Heritage Act requires that interventions on heritage buildings can only be carried out by \textit{periti} who have specialist conservation and restoration skills. The Building Regulation Act requires that a \textit{perit} certify that the construction of a building has been carried in conformity with the Building Regulations, even though virtually no such regulations are yet in place.

The \textit{Kamra tal-Periti} was set up in 1920 to embody the entire professional body of \textit{periti}. The Periti Act and the \textit{Chamber of Architects Regulations}\textsuperscript{39} set out the following main functions of the \textit{Kamra}:

1. To ensure the well-being and the progress of the profession of architects and civil engineers in Malta;
2. To correspond with Government and vice-versa on all matters concerning the profession, as well as other subjects of public interest;
3. To enforce the observance of the Code of Professional Conduct\textsuperscript{40} by all \textit{periti};
4. To enquire into the professional practices of architects and civil engineers which are considered inconsistent with the dignity of their profession, and into abuses or failures imputed to them in the exercise of their profession or in connection with professional affairs;
5. To meet the obligations and fulfil the powers, functions and responsibilities attributed to a competent authority in terms of the Services (Internal Market) Act, in particular in the case where non-established architects and civil engineers pose a threat to public safety.

Discussions between the \textit{Kamra tal-Periti} and Government have been ongoing since 2007 to update the Periti Act with the purpose of modernising the profession further and align it with the Services Directive and the Professional Qualifications Directive. It is trusted that the Government will finally present the Act for Parliamentary approval in the immediate future.

\textbf{3.2.2. ENGINEERS}

The Engineering Act defines the eligibility for the warrant as well as the duties and obligations pertaining to a warrant holder. The engineering profession is structured slightly differently from that of \textit{periti}, particularly in the case of professional conduct,

\begin{footnotesize}
\textsuperscript{38} Articles 97 & 100\\
\textsuperscript{39} See G.N. 202 of 1920\\
\textsuperscript{40} See First Schedule of G.N. 202 of 1920
\end{footnotesize}
A Modern Building & Construction Regulation Framework for Malta

which is handled by the Engineering Board not the Chamber of Engineers (Chamber of Engineers, 2017).

Engineers have a critical role in the construction of buildings, particularly in relation to electrical installations, mechanical ventilation systems, lifts and other mechanical plant, and are important collaborators of periti. It is pertinent to point out that Civil Engineers are granted a warrant under the Periti Act. All other engineers, subject to minimum qualification criteria as set out in the Engineering Act and the review of applications by the Engineering Board, are eligible for the warrant of an engineer.

3.2.3. SITE MANAGERS

The site manager in the Avoidance of Third Party Damage Regulations is not the same as the one in the Environmental Management Construction Site Regulations. Indeed, in the latter set of regulations the site manager is defined as “a person carrying out the duty or duties derived from the provisions of these regulations. Such person shall be nominated by, and responsible on behalf of, the owner for ensuring the correct implementation of these regulations”.

The regulations state that a site manager may be either “the owner himself, the project supervisor [under the health & safety regulations, a perit, or any other competent person]”, whatever that means. Regulation 9(c) states that the Minister may issue specific regulations to create a register of site managers, including the establishment of minimum qualifications, a code of conduct and a continuous professional development programme. In the eleven years that these regulations have been in place, however, no such register was ever created.

It is pertinent to point out that, despite their great responsibility, there exist no minimum qualifications for site managers. Indeed, site managers may very well be unable to understand construction drawings or even have sufficient literacy skills to read and understand the regulations or the works method statement they are responsible for enforcing.

Such is the inadequacy of Malta’s construction regulation.

3.2.4. PROJECT SUPERVISORS

L.N. 88 of 2018 defines a project supervisor as “[a]ny natural or legal person responsible for health and safety supervision or a project, appointed by a client”. Regulation 5 sets out the duties of a project supervisor:

1. Take account of the general principles of prevention concerning health and safety referred to in the Act and subsidiary regulations as appropriate, during the various stages of designing and preparing the project, in particular:
i. when architectural, technical and/or organisational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession;
ii. when estimating the period required for completing such work or work stages.

2. Co-ordinate the implementation of the provisions of this regulation, and shall draw up a health and safety plan prior to the setting up of a construction site;

3. Prepare a file appropriate to the characteristics of the project containing relevant health and safety information to be taken into account during any subsequent works;

4. Coordinate the implementation of the general principles of prevention and safety:
   i. when technical and, or organizational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession;
   ii. when estimating the period required for completing such work or work stages;

5. Coordinate the implementation of the relevant provisions of these regulations in order to ensure that employers and, if necessary, for the protection of workers, self-employed persons:
   i. apply the principles referred to in regulation 9 in a consistent manner;
   ii. where required, follow the health and safety plan referred to in sub-regulation (4) of regulation 5;

6. Make, or cause to be made, any adjustments required to the health and safety plan referred to in sub-regulation (4) of regulation 5 and the file referred to in sub-regulation (4) of regulation 5 to take account of the progress of the work and any changes which have occurred;

7. Organize cooperation between contractors, including successive contractors on the same site, coordination of their activities with a view to protecting workers and preventing accidents and occupational health hazards and reciprocal information as provided for in regulation 7 of the General Provisions for Health and Safety at Work Places Regulations, ensuring that self-employed persons are brought into this process where necessary;

8. Coordinate arrangements to check that the working procedures are being implemented correctly;

9. Take the steps necessary to ensure that only authorized persons are allowed onto the construction site.

3.2.5. PROJECT MANAGERS

Project managers are key figures in modern construction sites, particularly in larger, more complex developments. Their role is to coordinate the works and the inputs from the various periti, engineers and other professionals involved in the design and implementation phases, and to control costs and time delivery. A high
degree of skill and technical knowledge is required for them to adequately fulfil their role.

The Kamra tal-Periti is not advocating that project managers should become a regulated profession. It is indeed unlikely that the European Commission would allow for the regulation of this or other professions due to the Services Directive. Nevertheless, it is essential that the role of project managers be better regulated through service agreements signed with developers, and that specific skill card courses be provided to ensure they can contribute to ensuring good site behaviour.

3.3. Contractors

Article 1638 of the Civil Code states that “[i]f a building or other considerable stone work erected under a building contract shall, in the course of fifteen years from the day on which the construction of the same was completed, wholly or in part, or be in manifest danger of falling to ruin, owing to a defect in the construction, or even owing to some defect in the ground, the architect and the contractor shall be responsible therefor.”

This article in the Civil Code does not establish clear lines of responsibility, which are generally decided by the Courts when incidents occur, depending on the particular circumstances of each case. Moreover, whereas periti carry a professional warrant and are subject to a Code of Professional Conduct, contractors are not regulated at all. This is especially worrying when it comes to demolition and excavation contractors. The absence of a registration system means that anyone with demolition or excavation plant can carry out such works, without any basic training, technical knowledge, or insurance cover.

The Kamra tal-Periti is aware of the BRO’s efforts to draft regulations for the registration of contractors. Consultations are underway with all stakeholders through the BICC’s Building Regulation Working Group. The draft regulations intend classifying contractors by type of activity and economic capacity. There are also proposals for the introduction of compulsory insurance and minimum standards.

The Kamra views this development favourably, however, is dubious about its efficacy in the context of the virtually complete absence of building and construction regulation. The Kamra’s position on these draft regulations is that the registration of contractors must be seen as part of a more holistic reform that includes the introduction and consolidation of building and construction regulations. Contractors who wish to register under one of the trades, say demolition works, would first need to undertake courses covering the relevant building and construction regulations.
Until the regulations are in place, no such courses can be provided, rendering the exercise of registering contractors meaningless.

The only two trades that are currently regulated in Malta are masons and electricians.

3.3.1. MASONS

Article 95 of the Code of Police Laws states that:

“95. (1) It shall not be lawful to exercise the trade of mason without a licence from the Director of Public Works.

(2) Such licence shall not be granted except to persons of good conduct who shall have proved their skill in an examination to be conducted by the Masons Board constituted under article 96.”

Moreover, the Building Regulation Act states that:

“5. (1) The Building Regulation Office shall be the entity responsible to issue licences for masons, and to register fire consultants, other consultants in the building industry, building contractors and building tradespersons.

(5) The Director, Building Regulation Office, shall keep a register or registers of masons, building contractors and building tradespersons according to the categories or subcategories established in sub-article (4).”

The Kamra tal-Periti has been for many years requesting the list of licensed masons. It is essential for periti to ensure that masons entrusted with construction works, and with whom they share liability in terms of Art 1638 of the Civil Code for a period of 15 years, are qualified and competent to execute the works as instructed.

Various requests were made to the Masons’ Board over the years. Each was dismissed on the grounds that publishing the list of licensed masons would breach their data protection. This preposterous justification is not supported by the law. There is a clear public safety interest for publishing such a list which overrides any privacy considerations.

The impacts of this situation on the industry are serious, and the potential consequences numerous. By way of illustration, reference is made to the Court sentence in the case Marianna Cini pro et noe v. Paolo Galea et of the 27 October 1958, which declared that it is the perit’s duty to ensure that any masons working under his or her direction are licenced (“huwa dmiru li jara li l-benneija li jkunu se jaħdmu taħtu jkunu liċenzjati …”). This principle has been cited in subsequent
decisions. The question automatically arises as to how a perit is meant to verify that a person does in fact hold a valid licence when there is no register which is publicly available.

Another issue relates to the Commencement Notice required to be submitted to the Planning Authority, which is to be signed by the “licenced builder”. Periti are required to declare that the “licenced builder … signed this Commencement Notice in my presence…”. The Kamra has repeatedly asked the Planning Authority to remove this part of the declaration from the form, firstly because it is impractical and pointless, and secondly and more importantly because making this declaration may be interpreted as meaning that the perit had in fact verified that the person signing the form is a “licenced builder” (or mason), particularly by the Courts. To date, the Planning Authority has refused such requests.

The subject raises several parallel and equally pressing concerns, including that masons are not adequately trained in contemporary building technologies, materials, and practices. They expose themselves, neighbouring properties, and the general public to serious risks.

3.3.2. ELECTRICIANS

Regulation 5 of the Electrical Installations Regulations\(^{41}\) sets out two levels of authorisation for electrical installations:

a) **Authorisation A** for the installation, alteration, extension and certification of single-phase electrical installations; and

b) **Authorisation B** for installation, alteration, extension and certification of single-phase electrical installations and three-phase electrical installations rated up to 300Amps per phase. The holder of an authorisation B may also carry out installation, alteration, extension and certification work on three-phase electrical installations rated more than 300Amps per phase but may not certify such electrical installations

The regulation also establishes minimum requirements, including specific courses, examinations and licence regime administered by REWS, for electrical engineers and electricians to be able to apply for the two levels of authorisations. Warranted electrical engineers only are authorised to design and certify installations rated above 300Amps\(^{42}\).

\(^{41}\) See L.N. 225 of 2010

\(^{42}\) See Regulation 15.
3.4. General Observations

Constructions sites are generally characterised by poor oversight, discipline and professionalism leading all too frequently to loss of life, injury, accidents, and environmental degradation. There is a general sense of lawlessness where neither the public nor the private sectors shoulder any responsibility for the current state of affairs. The Kamra tal-Periti strongly believes that this situation needs to be urgently addressed and is putting forward its proposals in the final chapter of this document.
4. CASE STUDIES OF FOREIGN FRAMEWORKS

This chapter delves into the structure of regulatory bodies and frameworks in other European countries providing insight on international best practice.

4.1. Building regulations in Europe

4.1.1. REGULATORY FRAMEWORK

In most European countries, building regulation is governed by a Building Act. There are some exceptions such as Austria, where there is no central building regulatory law, and Belgium, France and Portugal where the technical building regulations are not regulated by a central act. Some countries such as Bulgaria, Czech Republic, Finland, Germany and Sweden have combined Building and Planning Acts (Pedro, et al., 2010).

4.1.2. REGULATORY RESPONSIBILITY

The responsibility to lay down the technical building regulations normally rests with central authorities. In some countries, additional regulations are added by local or regional authorities to cater for specific climatic or cultural specificities (Pedro, et al., 2010).

4.1.3. ORGANISATION

The technical requirements in most countries are implemented through building acts that detail the minimum requirements for subjects like health, safety, energy efficiency and others (Meijer & Visscher, 2007).

Most countries also complement their technical requirements with official documents that regulate the standards to be followed, approved solutions and administrative procedures (Meijer & Visscher, 2007).

Pedro et al. (2011) identified three main types of organisation of the technical building regulations in the European countries:

- The technical requirements set in one main document with sub-regulations complementing some subjects with technical details;
- The technical building regulations organised in a coordinated set of documents;
- The technical building regulations contained in separate legal documents.
In England and Wales, there is one main document that sets the functional requirements and a set of coordinated documents with deemed to satisfy solutions (Pedro, et al., 2011).

In countries like France and Portugal, the technical building regulations are set in separate legal documents (Pedro, et al., 2011).

4.1.4. FORMULATION
Pedro et al. (2011) classify in three categories the formulation of the requirements of the technical building regulations:

- **Functional** – the main objectives are defined by the requirements, the determination methods performance levels and reference to solutions or materials are not defined;
- **Performance** – the performance level is expressed in quantitative terms by the requirements and the determination methods are defined;
- **Prescriptive** – specific designs or construction solutions are laid down by the requirements.

In general, the formulation of the requirements is performance based in combination with functional or prescriptive requirements (Pedro, Meijer and Visscher, 2010).

In England and Wales, the technical building regulations have a functional formulation and the approved documents are the official documents with deemed to satisfy solutions (Pedro, et al., 2011).

Other countries adopt a performance-based formulation combined with some prescriptive requirements (e.g. Czech Republic, Denmark, Germany, Finland, Ireland, The Netherlands, Romania, Spain and Sweden), (Pedro, et al., 2011).

There are some countries that still adopt a prescriptive formulation, but new technical building regulations are generally performance-based (e.g. Austria, Belgium, Bulgaria, France, Italy, Latvia and Portugal, Cyprus, Luxembourg and Malta) (Pedro, et al., 2011).

In some European countries (e.g. Spain, Czech Republic, France, Slovakia, Slovenia, England and Wales) there are official documents which provide guidance to the technical building regulations (Pedro, et al., 2011).

These documents normally provide deemed-to-satisfy solutions to comply with the requirements. The solutions contained in these documents are for guidance and there is no obligation to adopt them, as there may be other alternatives to achieve compliance (Pedro, et al., 2011).
In Denmark, Finland and Sweden the building regulations include mandatory performance requirements and guidelines (which are not mandatory) with more detailed information for their implementation (Pedro, et al., 2011).

### 4.1.5. REGULATIONS FOR EXISTING BUILDINGS

Specific technical building regulations for existing buildings are not common in European member states. In the countries where they do exist, they normally apply to specific situations (Pedro, et al., 2011).

Pedro, Meijer and Visscher (2010) have identified two main approaches for construction works in existing buildings:

- All construction works are regulated by the general building regulations but there are some exceptions or less restrictive provisions for existing buildings (e.g. Austria, Cyprus, France, Latvia and The Netherlands);
- All new buildings, reconstruction, extensions or change in use of existing buildings are regulated by the general building regulations (e.g. Ireland, Portugal, Slovenia, England and Wales).

### 4.2. Building permit procedures

#### 4.2.1. TYPES OF PROCEDURES

According to Pedro, Meijer and Visscher (2011) building permit procedures can be illustrated in Table 2.

<table>
<thead>
<tr>
<th>Regular Procedure</th>
<th>Construction works requiring a building permit and compliance with building regulations for all the technical requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Procedure</td>
<td>Construction works that require a building permit and compliance with only part of the technical requirements of the building regulations</td>
</tr>
<tr>
<td>Building Notice</td>
<td>Construction works that can be carried out without a building permit but must be notified to the building authority</td>
</tr>
<tr>
<td>Exemptions</td>
<td>Construction works that are exempt from the permit procedure but must meet the planning demands and the technical requirements</td>
</tr>
</tbody>
</table>

Table 3 illustrates the different procedures for the different construction work categories.
### Table 3 Categories of construction works for different procedures (Meijer & Visscher, 2007)

<table>
<thead>
<tr>
<th>Category</th>
<th>Exemptions</th>
<th>Light procedure</th>
<th>Full procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>yes, listed</td>
<td>urban planning permit: simple file</td>
<td>urban planning permit: extensive file</td>
</tr>
<tr>
<td>Denmark</td>
<td>yes, listed</td>
<td>notification system</td>
<td>two types of building permit: small dwellings and other buildings</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>yes, listed</td>
<td>building notice (newly built houses and alterations)</td>
<td>full plans</td>
</tr>
<tr>
<td>France</td>
<td>yes, listed</td>
<td>building notice</td>
<td>building permit</td>
</tr>
<tr>
<td>Germany</td>
<td>yes, listed</td>
<td>simple permit</td>
<td>building permit</td>
</tr>
<tr>
<td>Netherlands</td>
<td>yes, listed</td>
<td>light permit</td>
<td>regular permit</td>
</tr>
<tr>
<td>Norway</td>
<td>yes, listed</td>
<td>building notice</td>
<td>general and start permit</td>
</tr>
<tr>
<td>Sweden</td>
<td>Yes, listed</td>
<td>building notice</td>
<td>building permit</td>
</tr>
</tbody>
</table>

Table 3 provides an overview of the main features of the building permit procedures in Europe.

### Table 4 Main features of the building permit procedure (Meijer & Visscher, 2007)

<table>
<thead>
<tr>
<th>Category</th>
<th>Pre-consultation</th>
<th>Inspection of design</th>
<th>Start building</th>
<th>Inspection during Construction</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>voluntary</td>
<td>Yes</td>
<td>after permit is granted</td>
<td>by private inspection bodies</td>
<td>no</td>
</tr>
<tr>
<td>Denmark</td>
<td>voluntary</td>
<td>structural work</td>
<td>after permit is granted</td>
<td>sample checks</td>
<td>approval for use</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>voluntary</td>
<td>structural work/type approval</td>
<td>after permit is granted</td>
<td>regular inspection points, obligatory notice</td>
<td>Completion Certificate</td>
</tr>
<tr>
<td>France</td>
<td>voluntary</td>
<td>No</td>
<td>after permit is granted</td>
<td>No</td>
<td>Completion Certificate</td>
</tr>
<tr>
<td>Germany</td>
<td>voluntary</td>
<td>structural work/type approval</td>
<td>after permit is granted</td>
<td>inspection of structural work</td>
<td>approval for use</td>
</tr>
<tr>
<td>Netherlands</td>
<td>voluntary</td>
<td>structural work</td>
<td>after permit is granted</td>
<td>regular inspection points</td>
<td>No</td>
</tr>
<tr>
<td>Norway</td>
<td>obligatory</td>
<td>inspection plans</td>
<td>within 4 weeks of detailed plans</td>
<td>supervision of inspection plan</td>
<td>completion certificate</td>
</tr>
<tr>
<td>Sweden</td>
<td>obligatory</td>
<td>inspection plans</td>
<td>3 weeks after notice</td>
<td>supervision of inspection plan</td>
<td>completion certificate</td>
</tr>
</tbody>
</table>
4.2.2. PRE-CONSULTATION
Pre-consultation is voluntary in almost every European country and is regulated by law (Pedro, et al., 2011).

During pre-consultation, any planning or technical requirements and the tasks and responsibilities of the parties involved can be discussed and clarified (Pedro, et al., 2011).

In some countries, the local authorities can be bound to agreements or consultation replies provided (e.g. Belgium, Cyprus, Hungary, Italy, Latvia, Portugal and Sweden).

4.2.3. PLANNING PERMIT PROCEDURE
Depending on the regulatory framework present in each EU member state, permit procedures for development control (planning) and building control (building regulations) can be separate or combined (Pedro, et al., 2011).

Where the permit procedures are separate, the planning permit is not binding on the issuance of building permits, and it does not authorise commencement of construction works (Pedro, et al., 2011).

4.2.4. PHASING
In some countries it is possible to phase the building permit procedure, which is usually split in three stages (Pedro, et al., 2011):

- Preliminary design;
- Technical Design;
- Construction drawings.

In some countries, the building permit procedure is not formally phased as above, however, the sequential processes of planning permits, voluntary pre-consultation and building permits constitute an informal phased process (Pedro, et al., 2011).

4.2.5. SUBMISSION
In all European countries, except Malta where building permits do not exist, there are statutory submission requirements which must be met prior to the assessment of the building design and issuance of the building permit (Pedro, et al., 2011).

4.2.6. PLAN APPROVAL
In most European countries, the extent of the technical requirement checks depends on building complexity and use. In France, for example, only the technical requirements for fire safety and access for disabled people are checked; while in
Portugal, only spatial requirements are checked and all the designers are required to submit a liability declaration to attest compliance of the building design with relevant building regulations (Pedro, et al., 2011).

During the plan approval phase, objections can be raised to a building permit being granted. Building permits generally allow for additional measures or minor changes to be done before or during the construction phase (Pedro, et al., 2011).

4.2.7. COMMENCEMENT OF CONSTRUCTION WORKS
Construction works can normally only start after the building permit is granted and the building authority is notified of the intention to start works. There are some exceptions in some countries (e.g. Bulgaria, Denmark, Italy, Latvia, Portugal and Finland) where the construction works can start earlier, however it is limited to special authorisations, partial building permits or early construction works such as demolition and excavation or peripheral earth retaining structures (Pedro, et al., 2011).

In all European countries, building permits normally include commencement and completion dates. If works are not completed within the allotted construction period, a fresh permit or an extension request must be submitted (Pedro, et al., 2011).

4.2.8. SITE INSPECTIONS
Site inspections during construction works are carried out by public or private building inspectors, or a combination of both.

In some EU member states, building surveyors and designers perform inspections during specific phases of the construction works according to a plan of works pre-agreed with the client. In others, random site inspections are carried out by the building authorities (Pedro, et al., 2011).

A logbook recording the daily progress of construction works is normally legally required on site and made available to public building inspectors during the random site visits (Pedro, et al., 2011).

4.2.9. COMPLETION
There are two main types of processes governing the completion of construction works (Pedro, et al., 2011):

1. Building authorities perform a final site inspection to verify compliance with the building regulations, approved building design and permit, or;
2. Building authorities do not perform the final inspection and rely on declarations by the private entities that were assigned to follow or inspect the building works (e.g. Austria, Denmark, Ireland, Portugal, Slovenia and Sweden).
In France, only buildings open to the public and high-rise buildings require a final site inspection by the building authorities.

In England and Wales, the applicant can request a copy of the completion certificate from the local building authorities, whether the works are supervised by local authority building inspectors or approved private inspectors, who are responsible for certifying final compliance of the works.

The most important aspect of this process is that when construction works are completed, a building can be put into use until the mandatory completion certificate or use permit is issued (Pedro, et al., 2011).

4.3. Building Control

4.3.1. QUALITY CONTROL
There has been a tendency for governments across Europe to simplify building permit procedures and outsource quality control processes to private entities to reduce the burden of building regulation on the industry (Meijer & Visscher, 2017).

Building control processes have developed into certification and recognitions systems for the building industry to ensure that private controllers and building professionals satisfy the technical requirements, perform their responsibilities and provide quality services.

Private parties are normally responsible for supervising the implementation of the technical requirements (building control), while planning control remains the responsibility of the local authorities (Meijer & Visscher, 2017).

4.3.2. QUALITY CONTROL PROCEDURES
The full quality control procedures are normally only applied in the more complex buildings. Some types of construction work only require prior notification to the building control authorities, and full quality control is not required. Small construction works with no risks and no planning or safety issues are normally exempt (Meijer & Visscher, 2017).

Table 5 below summarises the building control procedures according to the different construction categories in seven European countries.
4.3.3. CHARACTERISTICS OF QUALITY CONTROL PROCEDURES

The main characteristics of the quality control procedure for constructions in the seven European countries studied by Meijer and Visscher (2017) are shown in Table 6. It summarises the different phases of the construction process, starting with design and building permit application to the construction and completion phase. In practice, the full quality control procedures illustrated in the table are only implemented in a small part of the construction projects.
Meijer and Visscher (2017) observed that although there are some variations with regard to public and private control, private controllers have a significant role in quality control process in most European countries. Other research studies have also shown a trend of transferring local building control to private parties.

Notwithstanding minor variances in the detail of the legislation, every European country (except Malta) has a system in place for inspection of works and the issuance of a completion certificate or approval on completion of the project. The completion certificate is normally issued by the local building authority after a declaration of compliance by the quality controller, or directly by the quality controller (Meijer & Visscher, 2017).
4.4. Qualification Requirements for Private Controllers

It is a universal requirement in all countries that private controllers must have certification, recognition or approval and be registered and controlled by their respective supervising bodies (Meijer & Visscher, 2017).

The three types of supervising bodies identified in various countries (Table 7) are the following (Meijer & Visscher, 2017):

- Professional organisations or bodies (England, Ireland and Germany);
- National Accreditation Organisations (France and Sweden);
- Governmental organisations (Norway and The Netherlands).

Table 7 Supervising bodies of private controllers (Meijer & Visscher, 2017)

<table>
<thead>
<tr>
<th>Country</th>
<th>Type of Bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>England</td>
<td>Approved Inspectors</td>
</tr>
<tr>
<td>France</td>
<td>Private control bureaus</td>
</tr>
<tr>
<td>Germany</td>
<td>Architects, engineers and recognized experts</td>
</tr>
<tr>
<td>Ireland</td>
<td>Assigned certifiers</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Quality control instrument</td>
</tr>
<tr>
<td>Norway</td>
<td>Responsible designer, builder and supervisor</td>
</tr>
<tr>
<td>Sweden</td>
<td>Private controller</td>
</tr>
</tbody>
</table>

Table 8 illustrates the minimum qualification requirements for the registration of private controllers (Meijer & Visscher, 2017), including:

- A professional or academic degree (architects and engineers);
- Practical experience which must be proven by statements, examples and/or an examination;
- Proper professional liability or indemnity insurance;
- An independent status with no ties or relationships with other parties involved in the design or construction controlled by them.
Table 8 Minimum requirements for Private Controllers (Meijer & Visscher, 2017)

<table>
<thead>
<tr>
<th>Country</th>
<th>Quality controller</th>
<th>Demands on:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Education</td>
</tr>
<tr>
<td>England</td>
<td>Approved inspectors</td>
<td>✓</td>
</tr>
<tr>
<td>France</td>
<td>Private control bureaus</td>
<td>✓</td>
</tr>
<tr>
<td>Germany</td>
<td>Architects, engineers and recognized experts</td>
<td>✓</td>
</tr>
<tr>
<td>Ireland</td>
<td>Assigned certifiers</td>
<td>✓</td>
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<td>Netherlands</td>
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<td>Norway</td>
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<td>✓</td>
</tr>
<tr>
<td>Sweden</td>
<td>Private controller</td>
<td>✓</td>
</tr>
</tbody>
</table>

4.5. Case Study 1: Switzerland

4.5.1. BEHIND THE SUCCESS STORY

With Zurich having the fourth highest level of quality of life in the world (NUMBEO, 2018), Switzerland serves as a useful case study of a construction and real estate industry which is regulated effectively and transparently, contributing to a built environment which positively impacts the lives of all citizens. From policies (at a cantonal level) down to the highly skilled labour force, everything has an important contribution to quality in the Swiss built environment. The following insights are taken from the book *Economy and Architecture* (Odgers, et al., 2015).

Swiss projects are found to achieve better value for money as the architect controls building work, as opposed to the case in the UK, where sub-consulting and risk management tends to increase costs and arguably diminish architectural quality. Swiss architects are responsible for producing cost information within a very well-structured convention. They are also responsible for coordinating work on site. This includes ensuring that the different building trades are on site at the right time and that their work is well executed.

In Zurich and other Swiss cities, it is only possible to buy or rent a flat if it is used as a primary residence. In spite of its housing shortage, the increase in property prices in Zurich is relatively low and stable. The Swiss housing market is regulated and controlled by legislation, and as a result does not follow the boom-and-bust
model that is typical of the UK. The Swiss economy operates with a degree of autonomy and independence from the European Union and this attitude is applied to building and homeownership.

In Zurich – as in many other continental European cities – many years have been devoted to developing an urban plan that is democratically approved. This means that it takes time to change this plan, but developers are never in any doubt as to what volume it is possible to construct on any given site, at a given moment in time, and to what standards of construction. This allows them to quantify building potential, and thus the biggest element of risk is removed.

Clients tend to be aware of the need to be accountable to society and recognise that something well-built will last for a very long time. In contrast to this, the British tend to consider capital costs and financial returns as a much bigger priority.

The SIA (Swiss Engineers’ and Architects’ Institute) has developed a very reasonable and robust fee charging structure. There are a number of factors that need to be agreed (degree of difficulty, building type and applicable hourly rates), but it is recognised that architects perform a complex and demanding role in the making of buildings, and should be remunerated accordingly.

4.5.2. THE SWISS SOCIETY OF ENGINEERS AND ARCHITECTS (SIA)

With over 16,000 engineers and architects (approximately 329 citizens per member), SIA is the main regulating body for the Swiss built environment (SIA, 2018a). The organisation represents architects, civil and structural engineers, building system engineers and environmental engineers. Around 200 committees within the organisation are responsible for developing the standards. SIA is divided regionally into 18 sections, and one international section which ensures that SIA’s concerns are met at a local and regional level. Specific technical issues are dealt with by 24 specialist associations.

<table>
<thead>
<tr>
<th>Table 9 Broad organigram of the SIA Committee Structure (SIA, 2018b)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Body in charge of standards</strong></td>
</tr>
<tr>
<td>Subordinate sectoral committees which direct individual standards committees</td>
</tr>
<tr>
<td>Structural Services and Energy Standards</td>
</tr>
</tbody>
</table>

Around 200 subcommittees
4.5.3. ORGANISATION: STEERING COMMITTEE

The SIA steering committee currently has 12 members (including a president, two vice presidents, and treasurer). These include, at the time of writing (2018), HVAC engineers, civil engineers, architects and one geologist. The members are elected by the Delegates’ Meeting for a four-year term (which can be renewed no more than twice). Furthermore, the Managing Director plays an advisory role on the Steering Committee.

Table 10 Organigram of the SIA Head Office. Number of staff shown in brackets (SIA, 2018a)

<table>
<thead>
<tr>
<th>Association Policies (11)</th>
<th>Norms (24)</th>
<th>Services (10)</th>
<th>Communication (17)</th>
<th>Central Services (14)</th>
</tr>
</thead>
<tbody>
<tr>
<td>administration 1pax</td>
<td>Norms 10pax</td>
<td>SIA-Form</td>
<td>Media/redaction</td>
<td>HR</td>
</tr>
<tr>
<td>professional groups/</td>
<td>Order (performance, competitions, work contracts, 7pax</td>
<td>SIA-Service</td>
<td>Projects/Events</td>
<td>Finance</td>
</tr>
<tr>
<td>specialised associations/networks 5pax</td>
<td>Administration 2pax</td>
<td></td>
<td>Customer Relationship</td>
<td>IT</td>
</tr>
<tr>
<td>themes/projects/tasks 5pax</td>
<td>Publishers 2pax</td>
<td></td>
<td></td>
<td>Infrastructure</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Reception</td>
</tr>
</tbody>
</table>

4.5.4. ORGANISATION: PROFESSIONAL GROUPS

Table 11 SIA Membership (SIA, 2018a)

The SIA consists of four professional groups which autonomously handle issues related to their profession. Each group forms its own professional group council made up of 9 members who hold a four-year term. Specialist groups are represented within this council by their own board members.
Tasks include:

- Drawing up professional profiles;
- Supporting SIA’s further and continuing training policy;
- Representing the interests of their profession;
- Helping formulate SIA standards and regulations in their area of expertise.

4.5.5. ORGANISATION: SPECIALIST ASSOCIATIONS

SIA currently has 22 specialist associations (SIA, 2019). An association must consist of at least 100 members and is affiliated with one professional group. Specialist associations are open to non-SIA members, which allows them to receive assistance in coordinating and consolidating their activities.

4.5.6. STANDARDS

The standards and the corresponding codes of practice and documentation are drawn up based on parity by planners, building owners, contractors, suppliers and public authorities, universities and colleges.

Main themes:

- Energy;
- Education;
- Spatial Planning;
- Public Procurement;
- Planning and building process;
- Building culture;
- International;
- Natural hazards;
- Society and planning.

4.6. Case Study 2: United Kingdom

4.6.1. THE BUILDING PERMISSION SYSTEM

In the United Kingdom (UK), the granting of permission for carrying out building work (or alterations to existing buildings) comprises two approval regimes, which in theory are not mutually exclusive but in most cases one implies the other. The approval routes are:

- Planning;
- Building Control.
Detailed information can be obtained from the following website https://www.planningportal.co.uk/, the salient aspects of which are described hereunder.

4.6.2. PLANNING
The present PA setup in Malta essentially mirrors the UK Planning entity, whereas many other aspects which implicitly or explicitly are related to being granted full “buildability” permit which fall under the UK Building Control (BC) are typically handled by various different bodies (e.g. CRPD for accessibility, etc). In some cases, some issues which in Malta fall under the umbrella of the PA, in the UK fall under the BC domain; a case in point is sanitary engineering.

There may be unusual circumstances when a development does not require planning (e.g. a small garden extension) but it may require BC approval (e.g. design and construction of foundations).

The role of planning is to verify compliance with local plans and associated policies. Small-scale projects are typically dealt with directly by the design architect (who, more often than not, is also the architect of record), but for large and complex projects, even large practices would hand over the planning process to a specialist consultant, who would be more well versed and acquainted in handling the various planning nuances. Whilst there exists a national planning framework, boroughs or councils handle applications for developments within their boundaries and each will have its own borough/council specific regulations and planning conditions.

There are different planning routes e.g. full consent or outline consent with reserved matters.

At the concept stage of design, a project (of a considerable size) may, in the first instance, be granted outline consent i.e. general heights, volumes, uses etc. and also possibly establish a project design code which will then inform the detailed planning submissions (e.g. materials, appearance etc.).

Outline planning consent is granted subject to seeking approval for conditions (hence the reserved matters) which are fed progressively. These are typically reports, studies, etc., from various specialist consultants which inform better the design as it develops. They can be anything from transport strategies to waste management and dispensation by geotechnical surveys to show there is no hazardous waste being discarded or no archaeological remains present.

If significant changes to the outline consent are required, rather than a reserved matters application, the planners would require a non-material amendment application, which essentially is a distilled version of an entirely new planning application.

As noted above, a planning application is submitted to the borough/council in which the site is located; the process is thus decentralised. Thus there may be some
planning requirements which are very borough-specific (e.g. a riverside borough in London, say Wandsworth, will typically require flood risk assessments to be submitted and evidence of how this is addressed in the design, say by having certain FFLs above a predicted flood water level or flood barriers at basement entry points). Some of the data from the planning application (e.g. a civil engineering report) could inform or supplement items at BC (e.g. with the flood example stated above, this will then define the height of water for which basement RC retaining walls are designed).

4.6.3. BUILDING CONTROL

On the other hand, BC is intended to ensure that the Building Regulations are adhered to. The Building Regulations cover mainly technical aspects ranging from structure, fire, thermal, noise and drainage and also "architectural" items such as accessibility, servicing (wiring, ventilation etc.) and so on. Essentially, BC covers all the remaining aspects of the project which ensure that the building would "work" and "stand".

BC is managed either through the borough/council itself or else by submitting the required documentation to an "approved inspector" (in a public-private-partnership setup) from a list of pre-qualified professionals in the private sector. These are submitted as part of the overall planning application and typically would include calculations, reports (e.g. daylighting, thermal etc.) and any other documentation, including drawings, to demonstrate that the requirements of the Building Regulations are satisfied.

The BC setup also ensures that a number of site inspections (dependent on project size but typically 2 to 3 for a relatively small job) take place.

The Building Regulations themselves provide a lot of useful information which inform the design. Demonstrating compliance with these regulations for the very common situations is sufficient through a “deemed to satisfy” framework which can be used by, say, architects or even builders without resorting to a civil or structural engineer for, say, a small garden extension.

For instance, the structural document has many rules-of-thumb-type sizes based on height, use etc. (be it wall thickness for load-bearing walls or load-span tables for basic houses with timber floors or even depths/widths of strip footings etc).

Similarly, tabulated, easy-to-use information to establish gutter sizes without any detailed civil engineering calculation; the size is simply obtained from a UK map to establish rain load and then read from tables for various roof pitch angles etc.

In some cases, for example, electrical cabling, the work does not need vetting by BC if the work is done by a certified professional. The responsibility would lie entirely with the electrician who carried out the wiring.
4.6.4. OTHER BODIES

Over and above planning and BC, there are other bodies regulating health and safety and construction design management regulations, i.e. the Health and Safety Executive, which apply to most projects. This is essentially the role of OHSA in Malta.

Another important role in the construction industry is that of insurers (e.g. National House-Building Council), which are much more demanding and stringent in terms of submittals required. In addition to drawings, specifications, detailed calculations etc., insurers would also require, say, all concreting records, site investigation reports etc. Similar requirements would exist for, say, waterproofing, drainage, finishes, etc.
5. PROPOSED REGULATORY FRAMEWORK

The Kamra tal-Periti envisages this document as the starting point for meaningful and radical transformation of the regulatory framework underpinning the construction and real estate industry. It is no longer acceptable for the country to undertake development in the 21st Century with the outdated and fragmented regulations that are currently in place. These proposed changes will bring profound benefits to citizens’ quality of life, set standards equivalent or superior to competing real estate markets, and provide legal certainty to property owners, developers and designers. Most importantly, however, a modern building and construction regulation framework will more comprehensively safeguard public safety.

The Kamra is proposing the consolidation of building regulation under a single Act, with building codes published and enforced by a single entity, in consultation and with the participation of the other public entities discussed in Chapter 1 that currently fulfil this role. There should, however, be a single regulatory body that governs building regulation – be it a reformed and fully resourced Building Regulation Office as the Kamra has been proposing for several years, or a new purposely set up body as Government proposed in the White Paper it published in November 2018 regarding the setting up of a Building & Construction Authority (BCA).

The Kamra, indeed, welcomed this White Paper as a step in the right direction. Political commitment has, for decades, been the main hurdle for the critical development of the industry towards higher standards and greater professionalism.

5.1. Principles of the Reform

The Kamra is proposing a broad reform of the building and construction regulation regime that cover all areas of building and construction regulation in a simple yet comprehensive system, catering for small and large projects alike in a flexible manner, while ensuring that regulations can be easily updated as innovations in technologies and methodologies are introduced in the construction industry.

The system the Kamra tal-Periti is proposing is based on the following principles:

1. Building Codes for each aspect of buildings as outlined in section 5.2.1 are set out, establishing minimum performance requirements.
2. A set of Approved Documents would also be concurrently published to serve as guidelines for industry stakeholders. Buildings that follow the guidelines in the Approved Documents would be “deemed to satisfy” the regulations.
3. Projects would be classified in four types as per section 4.2.1, namely:
   a. Regular procedure;
   b. Light procedure;
   c. Building notice;
   d. Exempt.

Further classification may be required for existing buildings, in particular heritage buildings.

4. Completion certification by the perit-in-charge confirming compliance with the Approved Documents together with as-built construction drawings submitted to the BCA at post-completion stage would in most small- to medium-scale projects suffice.

5. In cases where the perit or engineer is of the professional opinion that the minimum performance requirements set out in the building regulations can be better achieved in a manner other than that suggested in the Approved Documents, a pre-approval process, or building permit, for the proposed alternative method through the BCA would be required.

6. In the case of large-scale development, including high-rise developments, the construction drawings, especially those pertaining to structure and fire safety, would be subjected to independent review and mandatory pre-approval through the BCA.

7. Contractors and suppliers would be required to certify their workmanship, materials and products as being compliant with the building code on Materials, Products & Workmanship, similar to the system currently in place for electrical system certifications.

8. Construction codes covering various aspects of the construction process as outlined in section 5.2.2 would be put in place.

9. Post-occupancy certifications, similar to those currently in place for lifts, would be introduced ensuring compliance of all buildings with regulations throughout their life cycle. The frequency of the post-occupancy checks would depend on the size of the project and the associated risks, with low frequency for small-scale housing projects, to high frequency in large-scale public buildings.

10. The roles of the various professional figures involved in a development project described in section 5.3, including a few new ones, would be clearly defined and the liabilities unambiguously established with minimal to no overlap.
11. Liabilities would be far clearer and based on the inputs (such as drawings and specifications) and certifications of the various project consultants.

12. A significantly less cumbersome and faster development permit application process at the PA, which will assess projects solely on the basis of land use, volume, aesthetics, and impacts on the environment and heritage.

5.2. Codes
The Kamra’s proposal is based on a system of certifications and Approved Documents, bringing about clarity, accountability, and simplicity.

The Kamra is also recommending the consolidation of pre-, peri-, and post-construction administrative processes, including the submission of documentation relative to the appointment of registered contractors and professionals, third-party damage prevention regulations, EPC design rating, commencement notice, health and safety files, and compliance certification, among others, under the BCA.

5.2.1. BUILDING CODES
The Kamra is recommending that building codes be put in place covering, as a minimum, the following components:

A. Structure;
B. Fire Safety & Prevention;
C. Site Decontamination;
D. Waterproofing;
E. Toxic Materials & Substances;
F. Sound Insulation;
G. Ventilation;
H. Sanitation, Plumbing & Hot Water;
I. Water Conservation;
J. Drainage;
K. Waste Management & Disposal;
L. Combustion Appliances & Fuel Storage;
M. Protection from Falling, Collisions and Impact;
N. Energy Conservation;
O. Access;
P. Lifts, Escalators & Travellators;
Q. Electricity;
R. Security;
S. Information & Communications Technology;
T. Illumination;
U. Materials, Products & Workmanship.
5.2.2. CONSTRUCTION CODES

The Kamra tal-Periti is proposing the consolidation and development of the following construction codes:

A. Health & Safety in and around Construction Sites;
B. Demolition Works;
C. Ground Investigation;
D. Earthworks;
E. Construction & Alteration Works;
F. Noise Abatement;
G. Environmental Protection;
H. Machinery, Plant & Equipment;
I. Insurance.

5.3. Professional Responsibilities

5.3.1. PERITI & ENGINEERS

The role of periti and engineers will be more focused on design, the setting of specifications, monitoring the implementation of the works, and certifying compliance at completion stage in accordance with the Building Codes.

Professional liabilities of the various professionals involved in the design, monitoring and certification of the works will be clearly set out. Liability periods will be aligned with the European average.

5.3.2. PRINCIPAL SUBMITTING PERSON

There shall be one perit who will assume the role of the Principal Submitting Person (PSP). The role of the PSP shall be that of:

1. Overseeing the works and coordinating the inputs of the various consultants, including other periti and engineers;
2. Submitting requests for building permits to the BCA at pre-construction stage;
3. Submitting the final certificate of completion to the BCA, which would include the as-built construction drawings, and the certifications of the various professionals and contractors involved in the works confirming compliance with the Building Codes.

This role will follow closely the PSP role introduced in Malaysia in 2007 (Cheong, 2007).
5.3.3. ENGINEERING CERTIFIERS
The Kamra is also proposing that in very large projects, such as high-rise towers, and some public buildings, such as hospitals, the structural and fire engineering drawings are independently reviewed by firms that do not engage in project work. This system would follow closely the Certification of Design adopted in Scotland in 2003 (SER Scotland, 2019).

5.3.4. BUILDING & CONSTRUCTION INSPECTORS
The Kamra is proposing the establishment of a new professional figure who would be responsible for the day-to-day monitoring of construction sites to enforce compliance with the Construction Codes.

There shall be minimum qualification requirements similar to those in place for private controllers in various European countries to ensure competence and public safety. The Building and Construction Inspectors (BCIs) will absorb the roles currently held by site managers and project supervisors, taking on the role of what traditionally was referred to as the clerk of works.

BCIs will be completely independent parties and appointed by the developer from a list of registered BCIs published by the BCA.

5.4. Contractors
The Kamra tal-Periti has been calling for the registration of contractors for several years. The success of this reform proposal is also dependent on raising the quality and standards of those tasked with executing the works.

As discussed in section 3.3, a system of registration and classification of contractors based on competence can only happen once a comprehensive set of building and construction regulations, relative training programmes, and mandatory insurance are put in place.

Specifically regarding builders, there should be a distinction between contractors, who should carry the liability, and masons and other labourers employed by contractors to carry out works. Moreover, courses should be developed for different types of civil works, including traditional and vernacular techniques, but also concrete, formwork, metal frame structures, welding, excavation and demolition. There should also be different technical levels, from technical supervisors to apprentices, with different degrees of responsibility.

The Kamra is also proposing that contractors certify their own work to ensure that products, materials and workmanship employed is in line with relative regulations, and the specifications set out by the periti and engineers.

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43 See section 4.3
5.5. Processes

5.5.1. PRE-CONSTRUCTION
The Kamra is proposing a streamlined pre-construction process depending on the type of the project as discussed in section 5.1.3 that would broadly encompass the following steps, particularly in the more onerous construction type:

1. Appointment of PSP;
2. Submission of building permit application, together with construction drawings and specifications in accordance with the Building Codes; identification of the various professionals involved in the project at design stage;
3. Grant of building permit;
4. Appointment of BCI;
5. Submission of commencement notice, including particulars of BCI and the various professionals and contractors involved in the project at implementation stage; and all other requirements set out in the Construction Codes.

5.5.2. COMPLETION
It is proposed that the completion process includes the following steps:

1. Submission of completion certification by PSP, including as-built drawings and the various certifications drawn up by the professionals and contractors involved in the project;
2. BCA, after reviewing the submission, issues a Compliance Certificate which would include the following information:
   a. Confirmation that the building is safe for occupation;
   b. Authorisation to the contractor/s to hand over the site to the developer for occupation;
   c. The requirement for post-occupancy review and certification of the building, indicating type and frequency.

5.5.3. POST-OCCUPANCY
A critical aspect of this proposal is the introduction of post-occupancy certification to ensure safety of buildings throughout their lifetime. The frequency and building components to be certified will vary depending on building use, construction methodology, size and other factors.

Section 3.1.4 illustrates existing post-occupancy certifications, such as that of lifts which are now well-established. It is envisaged that post-occupancy certification system will not only provide benefits to public safety, but also greatly enhance the long-term quality of buildings, particularly at design and construction stage to ensure durability of materials and fabrication.
5.6. **Implementation**

The proposed reform would require the following sequence of institutional and legal measures to occur:

1. The removal of all building regulation and control from the planning application process, including sanitary engineering;
2. The complete transfer of the building regulation remit to the BCA;
3. The complete transfer of construction regulation remit, including health and safety in construction sites, to the BCA;
4. The repeal of various legal provisions, including those found in the Civil Code and Code of Police Laws, and concomitant drafting of a comprehensive suite of building codes, that also cover areas which remain completely unregulated to this day;
5. The establishment of streamlined pre-construction processes, including the independent review of civil engineering inputs, such as structural analysis and design, and fire prevention and fire safety of major projects and some public buildings;
6. The establishment of a register of independent professional building and construction inspectors (BCIs) that will be responsible for monitoring the correct implementation of the Construction Codes. It is envisaged that the system of appointment of BCIs would be similar to that currently utilised by the Superintendence of Cultural Heritage for archaeological monitors, and will replace the roles of site manager and project supervisor scattered in various pieces of legislation;
7. The proper implementation and enforcement of the regulations concerning certification of building products and materials manufactured locally in accordance with relevant European Directive;
8. The development and expansion of skill card courses for all labourers and technicians operating in the construction industry, including masons and electricians, as well as a corresponding card issued by the respective Chambers for professionals visiting construction sites (architects, engineers, quantity surveyors, project managers etc.) to establish a minimum threshold of good site behaviour and practices across the entire industry;
9. The establishment of a register of contractors classified according to technical capacity, and the mandatory requirement for insurance cover for all operators in the industry;
10. The establishment of a post-completion building certification system, including a repository for construction and engineering drawings. This may, over time, be substituted, in part or entirely, by the submission of an electronic BIM model of the entire building, which includes architectural, structural, MEP and any other information recorded for posterity; such requirements may initially be required for major projects and public
buildings, and gradually include all projects above a minimum size. Issues of intellectual property (IP), copyright and audit trails would need to be resolved;

11. The establishment of post-occupancy periodic certification systems, similar to the system the MCCAA currently has in place for certification of lifts;

12. Consolidation of liability periods within the building regulation system, and the development of systems for clear identification of chain of responsibility for various design and construction processes.

5.7. Managing Change

The Kamra recognises that such an upheaval requires careful change management to ensure that the impact on the industry and the livelihood of thousands whose employment depends directly and indirectly on it are not adversely affected. Indeed, it is the Kamra’s considered view that this reform will create new jobs, generate real and significant value to the property market, promote public safety, and mitigate the environmental impacts of the construction industry.

The Kamra is fully committed to supporting Government and other stakeholders in bringing about this change, putting at Government’s disposal all its resources, technical capacity, and expertise, including through its affiliations to international organisations such as the Architects’ Council of Europe and the European Council of Civil Engineers.

This section outlines a series of proposals on how this change could be implemented.

Change management can be approached in one of two way: the Big Bang Approach, and the Incremental, or Phased-In, Approach. Both have their merits and drawbacks, which are outlined in Table 1 below.

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<th>Big Bang</th>
<th>Incremental/Phased-In</th>
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<tr>
<td>Immediate implementation of the vision</td>
<td>A more gradual roll-out of reforms over an extended period of time</td>
</tr>
<tr>
<td>Requires all regulation to be up-to-date, published, and stakeholders adequately trained</td>
<td>Regulation can be redrafted and rolled out over a longer period, affording greater time for research and training of stakeholders</td>
</tr>
</tbody>
</table>
A shorter implementation period will ensure that the original vision and drive accompany the reform through to completion

A more gradual implementation may be undermined with a change in leadership or political direction, or result in incoherent outcomes

A significant amount of resources must be made available as quickly as possible

Financial and human resources can be gradually increased in unison with the planned phasing-in of the regulatory changes

Sudden change risks mounting resistance from internal (civil servants) and external stakeholders (periti, engineers, developers, tradesmen) due to uncertainty if not planned carefully, undermining the entire endeavour

Gradual change provides time for stakeholders to adjust and modify their processes, costings, contractual arrangements, fees, etc., and become aware of any changes in responsibilities.

The *Kamra tal-Periti* is proposing a short phased-implementation approach, which would be completed within not more than 3 years. This will provide sufficient time to legislate and consolidate all the disparate building and construction regulations outlined in Chapters 2 and 3 into a series of Building and Construction Codes. A lengthier implementation period risks being undermined by fatigue and other externalities.

The *Kamra* is proposing a phased implementation of this reform as outlined below.

### 5.7.1. PHASE 1A - TRANSFER OF REMIT

**Start:** Month 0  
**End:** Month 6

The first phase will consist in the transfer of the various building regulation remits from a number of public entities discussed in Chapter 1 to the BCA. In this first phase, building regulation will continue to be exercised through the planning regime as at present. However, the BCA will be the sole external consultee, other than the SCH, Transport Malta and the Local Councils, on planning applications.

This would entail amending L.N. 162 of 2016 Schedule 3, which lists the external consultees in the planning application process. The *Kamra* is proposing that the consultative roles of the CRPD, OHSA, WSC, Enemalta, CPD, and EHD be replaced with the BCA.
The certification of lifts and air-conditioning systems and the registration of ACABs is also to be transferred from the Technical Regulations Division of the MCCAA to the BCA.

The above entities will in turn become consultees of the BCA, with the exception of WSC and Enemalta which should be replaced by REWS, in the formulation of new or updated regulations that affect their respective remits. However, the process of reviewing planning applications in accordance with existing building regulation and guidance documents, such as the Access for All Guidelines, the Design guidelines on fire safety for buildings in Malta, and the Health & Sanitary Regulations would be transferred to the BCA.

Grant schemes for energy efficiency currently administered by REWS would be replaced with new schemes establishing minimum performance improvement targets for buildings, rather than providing grants for specific components, and administered by the BCA. Other grant schemes for retrofitting of measures to improve fire safety, access for persons with disability, energy conservation, waste management and water conservation would start being introduced.

The roles and functions currently held by the BRO, BRB and Masons’ Board will be consolidated under the BCA. The skill cards scheme courses currently organised by the BICC will also be transferred to the BCA.

These initial changes will ensure that the BCA firmly establishes its role as the central organisation for building regulation, while leaving industry stakeholders largely unaffected by the transition in these critical early stages. It is essential, however, that extensive consultations and discussions be carried out with public sector employees’ unions to ensure that employment rights and working conditions of the affected civil servants are safeguarded, if not improved.

It is envisaged that this first phase would be concluded within 6 months, provided adequate financial resources are allocated, and the relevant primary and subsidiary legislation are swiftly amended to accommodate these changes.

5.7.2. PHASE 1B – DRAFTING OF CODES
Start: Month 0  
End: Month 24

The BCA will immediately embark on the development of new Building and Construction Codes in partnership with the Kamra tal-Periti and the Chamber of Engineers. This process should be concluded within 24 months. The CRPD, CPD, REWS, and other public agencies will be key consultees throughout the process during which the Civil Code, Code of Police Laws and various other pieces of primary and subsidiary legislation are cleaned up to ensure that obsolete or fragmented regulation be consolidated under the new codes.
5.7.3. PHASE 2 – REGISTRATION OF CONTRACTORS

Start: Month 24  End: Month 36

On completion of Phase 1B, the focus of the BCA would shift to the setting up of a register of contractors, and training courses for all stakeholders.

Concurrently, the Development Planning Act is to be amended to eliminate all processes concerning building regulation, including consultation with the BCA during the planning application process, the submission of commencement notices, and the application for compliance certificates. The PA’s permitting process will be solely concerned with land use, density, transport, environmental impacts, building heights, and other planning related issues. It is envisaged that the processing of planning applications for Non-Schedule 1 developments, from the end of the public consultation period to the publication of the Case Officer’s Report, should not exceed 4 weeks as a result, barring the requirement for changes as a result of consultations.
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