

Recommendations of the Malta Chamber of Commerce, Enterprise and Industry on the new draft Regulations on Excavation and Construction Practices

Introduction

The Malta Chamber of Commerce, Enterprise and Industry has already gone on record in the last few weeks stating the need to address forthwith the current situation.

The Chamber's view on the matter remains unchanged, as it advocates a high-quality economy where mediocrity and sub-standards are replaced by a culture of excellence, and where the current 'good enough' attitude is replaced by 'nothing but the best'.

The situation is now dire, and no more time can be wasted. The ethical standards and quality of our construction industry need to be raised immediately and brought in line with those in other developed countries. The Chamber has been advocating this principle since at least the publication of its economic vision for Malta 2014-2020 and we must say that very little has been implemented in terms of bringing the sector forward.

In October of last year, the Chamber welcomed the publication of the white paper to establish a new Building and Construction regulator. The Chamber welcomed the reasoning behind the creation of this authority, not least, as already noted, because our organisation believes that the construction and building industries are a crucial segment of the economy which require one focal point acting as a regulator to this industry. From the onset, the establishment of this new authority promised to raise the quality and standards in this sector through simplification and codification of the fragmented enacted legislation, among other things.

In terms of the proposed amendments to Legal Notice 72 of 2013, the Malta Chamber wishes to point out the following key issues.

Key Issues

- **General comment on the amendments and the legislative lacunae**

The Malta Chamber broadly welcomes any improvement to the sector but considers this Legal Notice to be a knee jerk reaction to the recent unfortunate incidents that have been happening on building sites. It is amply clear that the drafting of this law was carried out in a vacuum without due process to verify the relevance these amendments would have on other existing legislation. In the past, the Chamber had already made suggestions in this respect, stressing that Malta's Building Regulations require to be drafted, embraced and administered professionally and ethically. The Chamber is aware of the recent proposals made by the Kamra tal-Periti recently in this view, which the Chamber wishes to support in all for a including the Building Industry Consultative Council.

In broad terms this legal notice is considered to be a piecemeal approach which deals with excavation and demolition works as separate from the rest of the complete building process i.e. design, procurement, construction, building services, finishes and handover. The Malta Chamber appreciates the recent events background to the motivation for this LN in trying to act as a stop gap solution for the present situation but the LN should be just that - a short-term approach amendment.

In the Chamber's opinion, work should immediately start to overhaul the full legislative framework engaging all well-meaning stakeholders to contribute and finalise qualitative regulations based on serious ethical standards and focused on delivering qualitatively. Without entering into the specifics of which legislation requires amendments or should even be repealed, the Chamber feels that there is a clear need for a complete overhaul of the same body of laws which in many cases is outdated.

An independent analysis is needed to oversee the whole legislative framework impacting the industry. Once it has been concluded, any superfluous or outdated legal requirements must be repealed or amended to reflect the present situation. Finally, the Chamber recognises that amongst the serious players in the Building industry, there are a number that are nothing short of rouge and unethical. This part of the industry needs to be identified fast and appropriate actions taken. We cannot continue to tolerate unethical players and harm the industry, and worse still, endanger the lives and the wellbeing of society in general.

- **The focus on the site manager**

The amendments being proposed to define the site manager are unclear. The definition states that the site manager should be qualified as a 'Perit' or is an individual who is trusted by the Project's 'Perit' and who is capable of doing this work in accordance with the Building Regulation Act (CAP 513) and other relevant pieces of legislation. Given the lack of a proper definition of the qualifications and experience expected of a site manager, it is felt that the responsibilities and liabilities upon the main project's 'Perit' and the Developers themselves will probably not change much while the responsibility of the Mason is further driven away from clarity and accountability. While acknowledging that the role of the Site Manager on the construction site is very important, this should be made tangible, realistic and accountable through a proper definition of expected competence and extent of responsibilities and liabilities. The Chamber of Commerce does not believe that the Site Manger needs to be necessarily a Perit, but, notwithstanding, a definition of qualifications, experience and track record are essential.

The Chamber further notes that the Site Manager should form part of the Contractor's setup and not an independent body engaged by the Developer.

The proposed legislation, suggested that in the absence of a site manager appointed by the Developer of the site, the project's 'Perit' will assume this responsibility. The Chamber disagrees with this automatic responsibility. The project's 'Perit' cannot be expected to be available on site at all times. The Chamber believes that this suggestion is also tantamount to an unwarranted conflict of interest in the chain of responsibilities of a project team. This must be avoided.

It is clear that the definition of the role of site or project manager requires more clarity and definition. In the first instance, a proper register should exist on who is qualified to do such work. Furthermore, the Chamber suggests that a dedicated qualification be introduced for an individual to assume such an important role. Qualified Architects who wish to act as site managers could automatically be included in this new register, which should be publicly available. The Chamber is appreciative that such actions and proposals cannot be implemented overnight. However, it is here being suggested that the Industry's dire need to improve itself and regulate appropriately is the bigger picture that should form its objectives.

We are not clear on what is being suggested that the 'assumed' qualified and nominated site manager should be present on site when key decisions are taken which impact the work being carried out in accordance to the submitted method statement. The reason for this is that some decisions need to be taken during the course of the works and not at a predetermined time. The role of the Site Manger will be to make sure that all actions on site are reflective of Method Statement intentions and that

any deviations or developing site conditions are assessed by this responsible site role in real time.

- **The role of the stone mason is completely overlooked**

The amendments speak at length of the new responsibilities of the project's 'Perit', site manager, developer, contractors and sub-contractors but do not seem to mention at all the role of the stone mason which admittedly is covered in separate legislation and in the Act itself. Potentially, this in itself is an admittance from the policy makers that the current masons' license and legislation requires an overhaul to modernise this role and bring it in line with the true nature of construction projects of the 21st century.

- **The Contractors' Register**

The amendments refer to the registered contractors and contracting companies as defined in the main Act (CAP 513) in articles 4 and 5. The responsibility of maintaining this register falls onto the Building Regulations Office (BRO). Up to this day, this register is not available. We need to act fast to make sure this register is in place as soon as possible since professionals and operators in the sector have been waiting for well over a decade for the register to be formulated and made public.

- **The new authority**

The draft amended law makes reference to the "*I-Ufficcju dwar ir-Regolament tal-Bini*", which the Chamber assumes to be the Building Regulations Office at present and which will eventually be taken over by the new authority. The Chamber requires clarifications in this respect.

The Chamber is hopeful that the new authority will be established later on this year and will amalgamate the responsibilities of the BICC, BRB, BRO and Stone Masons Board to form the new Building and Construction Authority. It is important to note that this merger will not result in more efficiency and less fragmentation unless the right resources are supplied to the new entity. Further to this we believe that the four entities will only form the basis of the new authority and that said authority will also need to recruit more professionals with the right skills and that a non-compromising budget should be allocated to it in the upcoming national Budget. This will be an essential pre-requisite for the entity to start operating on the right footing from day one.

- **This law does not address present sites**

The amended law speaks of future excavation and demolition works but says little to nothing on whether these rules apply to sites which are under construction at this moment. As an example, is the geotechnical design report required for sites currently under construction? Clarification is required on whether the law will apply retroactively as indicated in article 1 (2), which states that the law is applicable from 1st May 2013 when some of the rules which will be enforced have only been introduced now. The same applies to the current site managers. Will those who have been appointed be asked to resign or will they be able to retain their current role? This also requires further clarification.

- **Definition of what constitutes construction work is unclear**

The definition in Article 4 of this amendment, which refers to the construction works these rules apply to, is not clear and does not cover all the types of work in this field.

- **Who will be the ultimate responsible person for the method statement and geotechnical design report?**

In Article 10, the new law refers to the different responsibilities held in terms of the method statement and the geotechnical design report. The way the article is drafted, places the potential responsibility on four different individuals, namely the 'Perit' who prepares the method statement, the 'Perit' - who could be different from the previous one - who prepares the geotechnical design report, the site manager who, once again, could be a different person (and potentially another Perit), and the contractor. These responsibilities are not clear with potential risks to accountability, responsibility and liability.

- **Enforcement is key**

There is a clear need for all authorities and departments responsible for this sector to have a strong centralised regulator. At present, many foreign operators are working in Malta without the necessary licensing or authorisations to operate locally. This is creating an unlevel playing field between local and foreign operators. The enforcement cannot be limited to the builders or contractors' level as the situation is more widespread and we need to extend it further to include controls on stone masons, service providers and also professionals such as site managers and 'Periti'. An effective enforcement unit needs to be put in place once the new authority is operational. Enforcement is a matter that is frequently discussed and similarly often

overlooked. Without enforcement, we are not able to ascertain quality and ethics. The Building Industry needs a good dose of such standards.

Conclusion

It is clear that with any reform of these proportions, concrete results will only be achieved, first and foremost, if there is the will from all stakeholders to change and most importantly, to improve. The Chamber advocates that the highest of standards in design, engineering, management and construction are advocated as the true objectives. Secondly, this reform cannot be just a tick-the-box exercise but rather a holistic review of our regulatory and practices framework to truly modernise the industry and change the current situation.

The reform must not stop at this law or at establishing the new authority and amalgamate the current fragmented agencies that exist in this field. That would be purely a cosmetic change. The new authority must strive to regulate and enforce, educate and motivate the industry and the general public to make this industry excel in its delivery and sustainable in its objectives. The days of complacency should be long gone.

That is why the Chamber is once again calling on the policy makers to hasten the process to reform this sector once and for all. We must not stop once the new authority has been established but we should all strive to ensure that Quality and Safety Targets are met. The Chamber of Commerce is willing to contribute to this process to ensure that this change truly happens.

The Chamber has been successful in working to develop new industries or transform existing industries into regulated, qualitative and thriving ones. Let the Building Industry be the next that will benefit from objective and positive motivations for regeneration and growth. The Chamber is happy to champion this target.