

WHITE PAPER



MALTA'S PROPERTY CODE AND REGULATIONS

20
16



PARLIAMENTARY SECRETARIAT FOR
COMPETITIVENESS AND ECONOMIC GROWTH



**“A MAN TRAVELS THE WORLD
OVER IN SEARCH OF WHAT
HE NEEDS AND RETURNS
HOME TO FIND IT.”**

GEORGE MOORE



WHAT IS THE PURPOSE OF THIS WHITE PAPER?

THE PURPOSE OF THIS WHITE PAPER IS TO PRESENT THE FINDINGS OF AN ASSESSMENT, CARRIED OUT ON BEHALF OF THE PARLIAMENTARY SECRETARY FOR COMPETITIVENESS AND ECONOMIC GROWTH, TO ANALYSE THE INSTITUTIONAL, REGULATORY AND LEGAL CONTEXT RELATED TO THE VARIOUS FORMS OF PROPERTY EXCHANGE.

Buying a property is, for most buyers, one of the most important decisions of their life. It is, therefore, necessary to ensure that the professionals managing this process conduct their work in an ethical manner. Buyers need peace of mind that they are protected against inexperienced practice that can lead to loss of personal wealth. Notwithstanding this intent, buyers should also understand they are making out the biggest purchases of their life and they may need the input of other professionals, not just a property negotiator.

In the estate agency sector there are substantial differences across the EU in the levels of professional requirements and regulations. The debate is whether to regulate or deregulate with arguments for and against. What is not debatable is the need to ensure high quality in the services rendered by professionals.

It is vital that estate agency professionals stay aware of the market and satisfy their customers. In this respect it would be opportune to consider the provision of proper education and training that will lead to entry into the profession. This can be provided through the establishment of a minimum programme of training for both agents and property managers. There exist curricula such as the one established by the European Council for Real Estate Professionals (CEPI) that can be integrated into educational programmes at post secondary institutions. This does not imply that existing agents and managers are not professional, indeed a certification for the people currently working in the industry could be drawn up to recognise their experience and contribution at the same time that a continuous professional development programme was launched. Improving the quality of property agents and managers can further open new opportunities beyond our borders.

The aim of the White Paper is to invite public debate on these considerations in order to draw up a proposal to establish an institutional and legal framework together with a code of conduct and real estate educational program.



DOES THE WHITE PAPER PROPOSE SOLUTIONS?

WHAT KINDS OF PROPERTY NEGOTIATIONS ARE ANALYSED IN THIS WHITE PAPER?

The White Paper looks at the following practices: Residential Sales & Lettings, Commercial Sales & Lettings, Condominium Management, International Sales Agents. It also considers the creation of a body to regulate the property negotiation profession and to serve as a forum for developers and negotiators to discuss the promotion of high quality properties with a special focus on market sustainability. The work of property professionals covers land and buildings which are affected by increased legislation designed to protect the environment. Consequences for property transactions can include restrictions on the use of land and the obligation to identify and remedy past environmental damage.

The White Paper will lead to a legal framework that establishes a code of practice for estate agents in the execution of their work. The White paper will assess the need for an organisation that will manage the framework; promote the profession through membership both at agency level and individual level; provide for professional education and training; and establish a dispute redress scheme.

At the moment 12 EU countries have regulation in this area. Regulation is also recognised at EU Level by the Directive on the Recognition of Professional Qualifications adopted in 2005. However, it is important to consider the possibility of not regulating, since regulations may make it difficult for a professional to exercise the right of free movement, guaranteed by EU Law.

Regulated or not, real estate professionals need to be familiar with various rules such as Energy Performance on Buildings, the Insurance Mediation Directive and the Third Anti-Money Laundering Directive. The latter directive pre-supposes a requirement to carry out criminal checks on those wishing to access the profession. These are all forms of indirect regulation.

They may lead to the consideration of self-regulation, where self-regulatory bodies, appointed by the authorities, govern professionals, taking into account the public interest.



WHAT ARE THE MAIN SHORTCOMINGS IN THE PRESENT SYSTEM?

Today, although the majority of agents perform their work in an ethical and transparent fashion, there is no regulation governing the establishment of estate agents and virtually anybody can present himself/herself as a property negotiator. This leads to an erosion of trust that may impact negatively the sales of property.



SO WHAT DOES THE WHITE PAPER PROPOSE TO ADDRESS THESE SHORTCOMINGS?

We intend to address shortcomings in this industry with firm proposals, and bring together industry stakeholders to actively participate.

We are proposing for consultation the following:

- 1] An act to regulate Estate Agencies, agents, property consultants, and Property Managers to safeguard the interests of consumers, to promote public confidence in the performance of estate agency work and/or management to make provision with respect to matters ancillary or incidental thereto or connected therewith;
- 2] A Code of Ethics covering conduct between agencies as well as conduct with clients;
- 3] An organisation to coordinate the efforts of Estate Agencies, other agents, property consultants, and Property Managers that promotes high quality estate in Malta; and
- 4] International training programmes.

How can I comment on the White Paper?

Through written submissions either at

Real Estate Agents White Paper Feedback
Parliamentary Secretariat for Competitiveness and Economic Growth
Palazzo Spinola
St Christopher Street
Valletta, Malta

or

email reagents.whitepaper.meib@gov.mt

What are the next steps after consultation on the White Paper is closed?

Once the consultation process is concluded a proposal will be forwarded to Cabinet for consideration

APPENDIX 1



An act to regulate Real Estate Agencies, agents, property consultants, and Property Managers to safeguard the interests of consumers in respect of transactions that relate to real estate, to promote public confidence in the performance of real estate agency work and/or management to make provision with respect to matters ancillary or incidental thereto or connected therewith.

PART I

Preliminary

Citation, coming into force and scope.

1. [1] The short title of this Act is the Real Estate Agencies and their Agents Act 2014.

[2]The provisions of this Act shall come into force on such date as the Minister responsible for trade may by notice in the Gazette appoint, and different dates may be so established for different purposes and for different provisions of this Act.

[3] The purpose of this Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work and furthermore this Act achieves its purpose by:

- [a] regulating agents and, or agencies and property consultants;
- [b] raising industry related standards;
- [c] providing accountability through a disciplinary process that is independent, transparent, and effective.

Interpretation.

2. [1] In this Act, unless the context otherwise requires:—

“Agreement” means any agreement under which an agent, property consultant or property manager is authorised to undertake real estate agency work for a client in respect of a transaction;

Cap. 16.

“Agent” means a real estate agency holding, or deemed to hold, a current licence granted under article 3 to act as an agent under this Act, and the general rules contained in the provisions os Title XVIII of the Civil Code, shall, mutatis mutandis, apply to the relationship between an agent and a client;

“Authority” means the Real Estate Agents Authority established under article 8;

“Client” means the person on whose behalf an agent, property consultant or property manager carries out real estate agency work;

Cap. 16.

“Contractual document”, in relation to a transaction, and subject to the provisions of Sub-title 1 of Title VI of the Civil Code, means a document that contains or records an agreement or a proposed agreement to enter into or effect the transaction, and includes a document that contains or records an offer that, on its acceptance, gives rise to such an agreement;

"commission" means remuneration by way of commission, fee, gain, or reward for services provided by an agent, property consultant or property manager in respect of a transaction as may be agreed upon in writing between both parties in connection with the purchase, rental or management of any property;

Cap. 16.

Provided that, in the absence of a signed sales mandate agreement, the commission shall not in any way exceed 5% + VAT of the purchase price of the mentioned property; or one month's rent in the case of a rental agreement and the provisions of article 1362 of the Civil Code shall not apply;

"Chairman" means the Chairman of the Authority;

"FEA" means the Federation of Estate Agencies duly established by the statute, officially enrolled in the records of Notary Roberta Bizazza on the 12th April, 2006, as such statute may officially be amended from time to time;

"Financial year" means any period of twelve months ending on the 31st December;

Provided that the financial year which commenced on the 1st ____, 2016, shall be for a period of ----- months and shall terminate on the 31st December, 2017;

Cap.16

"immovable property" shall have the same meaning as is assigned to it by articles 308 to 311 [both inclusive] of the Civil Code;

"licence" means a licence to operate granted under this Act by the Authority;

"licensee" means an agent and, or an agency or a property consultant or a property manager duly licensed to act as an agent and, or an agency, and, or a property consultant and, or property manager under this Act;

"Minister" means the Minister responsible for trade;

"Property" includes any property used, or intended to be used exclusively and principally for commercial or residential purposes respectively;

"property consultant" means a property consultant employed by an agent, holding, or deemed to hold, a current licence granted under article 5 to act as a property consultant under this Act;

"property management work" means:

[a] work done on behalf of a property owner or owners for the purpose of management and administration of residential or commercial property or group of properties; or

Cap. 398.

[b] acting as administrator in line with the Condominium Act.

"property manager" means an individual or real estate agency holding, or deemed to hold, a current licence granted under article 5 to act as a property manager under this Act;

"Public officer" has the same meaning assigned to it by article 124 of the Constitution but does not include a Judge or a Magistrate;

Cap. 386.

"Real estate agency" means an organisation, entity, partnership or company duly registered under the Companies Act, and duly set up for the sole purpose of the sale, transfer, letting and management of immovable property according to the provisions of this Act;

"Real estate agency work" or "Agency work":

[a] means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and

[b] includes any work done by a property consultant or property manager under the direction of, or on behalf of an agent to enable the agent to provide the services described in this Act;

[c] includes the sale, transfer, letting and management of immovable property. However it shall not include:

- [i] the provision of general advice or materials to assist owners to locate and negotiate with potential clients; or
- [ii] the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or
- [iii] the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or
- [v] the provision of investment advice; or
- [vi] the provision of any conveyancing;

"Sole agency agreement" means an agreement between an agent and a client in which the client agrees not to instruct any other agent to act for the client in respect of any transaction subject to a commission;

Cap. 16.

"Transaction" means the sale, grant, purchase, transfer or other disposal or acquisition of immovable property, whether residential or commercial, in accordance with the modes of transfer of immovable property referred to in the Civil Code;

Cap. 490.

"Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;

"village broker", commonly known as 'sensar', means an individual who, in conducting property transactions –

- [a] does not advertise his services on any social/media networks;
- [b] restricts his services to occasional transactions; and
- [c] does not employ persons in the conduct of his business.

PART II

Licence to operate

Persons may not carry out real estate agency work unless licensed.

3. [1] No person shall carry out any real estate agency work unless the person is licensed under this Act and acts within the scope of that licence:

Provided that the village broker shall be exempt from the provisions of this Act as long as he acts within the parameters referred to in the definition "village broker" in article 2.

[2] No person may hold himself out to the public as ready to carry out any agency work unless that person is licensed under this Act. For the purposes of this Act, it is immaterial whether or not a person carries out any agency work as a business in its own right or as part of, or in connection with, any other business.

Licences to operate as agent and trading licences.

S.L. 441.07

4. [1] Without prejudice to the provisions of the Trading Licences Regulations, all licences to operate as agents shall only be granted by the Authority.

[2] No person shall act as an agent or provide services as a real estate agency, or use the title "agent" or "real estate agency" unless he is licensed or recognised to be licensed as such by the Authority in terms of this Act and such licences, with respect to any transaction, shall only be granted if the Authority is satisfied that:

- [a] the annual fee of five hundred euro (€500) has been duly paid; and
- [b] the annual fee of two hundred and fifty euro (€250) for every extra office.

[3] All licences granted to agents or agencies by the Authority shall be displayed prominently in a public part of the office where the agent operates.

[4] All agents shall submit their agencies' annual statistics to the National Statistics Office upon the renewal of the abovementioned annual licence.

[5] The Authority shall keep a register of all agents legally allowed to act as such. Such register shall be made public by the Authority.

[6] Any estate agency who enters into a franchising agreement must give notice to the Authority within thirty days after the agreement is entered into, where both parties will be jointly and severally liable if guilty of an offence against this Act.

Permanent/temporary licences to operate as property consultants.

S.L. 441.07

5. [1] Without prejudice to the provisions of the Trading Licences Regulations, all permanent licences to operate as a property consultant shall only be granted by the authority.

[2] No person shall act as a property consultant or property manager use the title "property consultant"

or "property manager" unless he is licensed or recognised to be licensed as such by the Authority in terms of this Act and such permanent licences, with respect to any transaction, shall only be granted if the Authority is satisfied that the property consultant:

- [a] has duly paid the annual fee of two hundred and fifty euro (€250); and
- [b] has more than two (2) years' experience working in an estate agency;
- [c] has not been convicted of a serious criminal offence of a voluntary nature within the last ten (10) years.

Temporary licence.

[3] Any new applicant or any property consultant or property manager having, before the date of the coming into force of this Act, less than two years' experience, shall be bound to successfully undergo a relevant training course, in which case, a temporary licence shall be granted following an induction course of training for a fee of fifty euro (€50) for a maximum of one year.

[4] Upon the successful completion of the exam mentioned in sub-article [3], a permanent licence will thereafter be granted subject to the provisions of sub-article [2].

[5] The Authority shall keep a register of all temporarily or permanently licensed property consultants legally allowed to act as such. Such register shall be made public by the Authority.

Applications for licences.

6. [1] Applications in connection with licences shall be:

- [a] made on such forms as may be prescribed by the Authority from time to time, and they shall be signed or marked by the applicants; and
- [b] accompanied by such proof, information and, or documentation set out in the articles 4[2] and 5[2], together with such other information or documentation which may be requested by the Authority.

[2] Licences shall be personal and may not be handed over by the licensee to another person nor may they be used by any person other than the licensee.

[3] The Authority may further require applicants for a licence to pay, in addition to the annual fees referred to in articles 4[2][a] and 5[2][a], the actual costs incurred by the Authority for the purpose of:

- [a] conducting investigations into such applicant's background, suitability and qualifications for being granted and for retaining a licence; and
- [b] verifying the information submitted by such applicant in terms of this Act.

Exemption for licensed auctioneers.

Cap. 342.

7. A person who is registered as an auctioneer under the Auctioneers Act may sell or offer to sell any land by auction according to the provisions of that same Act.

PART III

ESTABLISHMENT, FUNCTIONS AND CONDUCT OF AFFAIRS OF THE AUTHORITY

Establishment and composition of the Real Estate Agents Authority.

8. [1] There shall be a body, to be known as the Real Estate Agents Authority, which shall consist of a Chairman and not less than four and not more than six other members.
- [2] The members of the Authority shall be appointed by the Minister for a term of one year or for such longer period as may be specified in the instrument of appointment subject to a maximum of three years but the members so appointed may be re-appointed on the expiration of their term of office.
- [3] The Minister may designate one of the other members of the Authority as Deputy Chairman and the member so designated shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or while the Chairman is on vacation or during any vacancy in the office of chairman; and the Minister may also, in any of the circumstances aforesaid, appoint another person to act as chairman and in such case the foregoing provisions shall apply in respect of such person.
- [4] A person shall not be qualified to hold office as a member of the Authority if he -
 - [a] is a Minister, Parliamentary Secretary or a member of the House of Representatives;
 - [b] is a judge or magistrate of the courts of justice; or
 - [c] has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Authority;
- Provided that the Minister may waive the disqualification of a person under this paragraph if such person declares the interest and such declaration and waiver are published in the Gazette.
- [5] Subject to the provisions of this article, the office of a member of the Authority shall become vacant -
 - [a] at the expiration of his term of office; or
 - [b] if any circumstances arise that, if he were not a member of the Authority, would cause him to be disqualified for appointment as such.
- [6] A member of the Authority may be removed from office by the Minister if, in the opinion of the Minister, such member is unfit to continue in office or has become incapable of properly performing his duties as a member.
- [7] If a member resigns or if the office of a member of the Authority is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Authority; and any person so appointed shall, subject to the provisions of sub-articles [5] and [6], cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.
- [8] Any member of the Authority who has any direct or indirect interest in any contract made or proposed to be made by the Authority, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Authority after the

relevant facts have come to his knowledge, such disclosure shall then be recorded in the minutes of the Authority, and the member having an interest as aforesaid shall withdraw from any meeting at which such contract is discussed. Any such disclosure shall be communicated to the Minister without delay. Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Minister and tender his resignation.

Functions of the Authority.

9. [1] The Authority shall have the following functions:-
 - [a] to administer the licensing regime for agents and property consultants including the granting and renewal of licence applications;
 - [b] to ensure that the register of licensees is established, kept, and maintained;
 - [c] to prescribe the training courses and examinations, leading the grant of a temporary licence, to new applicants and other persons referred to in article 5;
 - [d] to supervise estate agents and persons involved in the industry of sale, transfer, letting and management of immovable property;
 - [e] to develop practice rules for the Minister's approval and maintain these rules for licensees, including ethical responsibilities;
 - [f] to set fees and levies;
 - [g] to develop consumer information on matters relating to real estate transactions, including approved guides on agency agreements and sale and purchase agreements;
 - [h] to develop and provide consumer information on matters relating to the provision of real estate services, including providing the public with information on how to make a complaint;
 - [i] to set professional standards for agents;
 - [j] to investigate and initiate proceedings in relation to offences under this Act and any other enactment;
 - [k] to investigate of its own motion any act, omission, allegation, practice, or other matter which indicates or appears to indicate unsatisfactory conduct or misconduct on the part of a licensee;
 - [l] to provide procedures for the lodging of complaints;
 - [m] to receive complaints relating to the conduct of licensees;
 - [n] to advise the Minister on any matter connected with its functions under this Act;
 - [o] to carry out any other function that the Minister may direct the Authority; and
 - [p] to carry out any other functions that may be conferred on the Authority by this Act or any other law.

- [2] Any complaints against agents, property consultants or property managers, shall be accompanied by a fee of fifty euro (€50) and the decision of the Authority on any such complaint shall be subject to appeal to the Administrative Review Tribunal as provided in article 25.

- [3] The Authority may, where it considers it appropriate to do so, consult with representatives of the FEA about any matter that relates to the functions of the Authority.

Conduct of the affairs of the Authority.

10. [1] Subject to any other provisions of this Act, the Authority may regulate its own procedure.

- [2] The Authority shall meet as often as may be necessary but in no case less frequently than once every calendar month.

[3] The Authority may exercise its functions notwithstanding any vacancy in its membership, as long as such vacancies do not exceed two in number and provided there is a quorum present at the meeting consisting of the Chairman or Deputy Chairman and not less than half the number of the other members constituting the Authority at the time of the meeting.

[4] Meetings of the Authority shall be convened by the Chairman, or by the Deputy Chairman, in the absence of the Chairman, either on his own initiative or at the written request of any three of the other members of the Authority.

[5] [a] Decisions shall be taken by a simple majority of votes of the members present and voting.

[b] The Chairman or, in his absence, the Deputy Chairman, or other person appointed to act as Chairman, shall have an initial vote and, in the event of an equality of votes, a casting vote.

[c] Without prejudice to the other requirements of this Act, no decision shall be valid unless it is supported by at least three members of the Authority.

[6] All acts done by any person acting in good faith, as a member of the Authority, shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered.

[7] No act or proceeding of the Authority shall be questioned on the ground of the contravention, by a member, of the provisions of article 8[8].

Duties of the Authority.

11. [1] Without prejudice to any other duty assigned to it by this Act or any other law or regulations, the Authority shall have the following duties:

[a] to determine the policies to be pursued by the Authority within the context of the policies established by Government and in line with the functions set out in article 7 and to ensure their proper and effective implementation by the entities;

[b] to publish the business plan after its approval by the Minister following consultation with the Minister responsible for Finance;

[c] to collect, maintain and publish statistics pertaining to its members and the real estate industry;

[d] to publish the annual report;

[e] to approve upon any rules regulating the conduct of affairs between real estate agents, any Memorandum of Understanding, bilateral or multilateral agreements proposed; and

[f] to advise, make proposals and recommendations to the Minister on any matter connected with its functions.

[2] The Board may, with the approval of the Minister, appoint ad hoc advisory boards and committees to assist it in the performance of its functions.

Relations between the Minister and the Authority.

12. [1] The Minister may, in relation to matters that appear to him to affect the public interest, from time to time give to the Authority directions in writing of a general character, not inconsistent with the provisions of this Act, on the policy to be followed in the carrying out of the functions vested in the Authority by or under this Act, and the Authority shall, as soon as may be, give effect to all such directions.

[2] The Authority shall afford to the Minister facilities for obtaining information with respect to its property and activities and furnish him with returns, accounts and other information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

[3] If the Authority fails to comply with any directions issued under this article, the Minister may make an order transferring to the Minister in whole or in part any of the functions of the Authority.

Legal personality and representation of the Authority.

13. [1] The Authority shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, or suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

[2] The legal representation of the Authority shall vest in the Chairman or the Deputy Chairman: Provided that the Authority may appoint any one or more of its members or of the officers or employees of the Authority to appear in the name and on behalf of the Authority in any judicial proceedings and in any act, contract, instrument or other document whatsoever:

[3] Any document purporting to be an instrument made or issued by the Authority and signed by the Chairman or by the Deputy Chairman in relation to any matter vested by the Authority shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Authority.

Provisions with respect to proceedings of the Authority.

14. [1] The meetings of the Authority shall be called by the Chairman as often as may be necessary but at least once a month either on his own initiative or at the request of any two of the other members.

[2] Half the number of members for the time being constituting the Authority shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairman, or in his absence the Deputy Chairman or other person appointed to act as chairman, shall have an initial vote and in the event of an equality of votes, a casting vote. Without prejudice to the other requirements of this Act, no decision shall be valid which is not supported by at least two members of the Authority.

[3] Subject to the provisions of this Act the Authority may regulate its own procedure.

[4] Subject to the foregoing provisions of this article, no act or proceeding of the Authority shall be invalidated merely by reason of the existence of any vacancy among the members.

[5] All acts done by any person acting in good faith, as a member of the Authority shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered. No act or proceeding of the Authority shall be questioned on the ground of the contravention, by a member, of the provisions of article 8[8].

PART IV

OFFICERS AND EMPLOYEES OF THE AUTHORITY

Staff appointments.

15. Without prejudice to the other provisions of this Act, the appointment of officers and other employees of the Authority shall be made by the Authority. The terms and conditions of employment shall be established by the Authority with the concurrence of the Minister.

Appointment and functions of officers and employees of the Authority.

16. The Authority shall appoint and employ, at such remuneration and upon such time terms and conditions as it may, in accordance with article 10 determine, such officers and employees of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Detaileding of public officers for duty with the Authority.

17. [1] The Minister may, at the request of the Authority, from time to time direct that any public officer shall be detailed for duty with the Authority in such capacity and with effect from such date as may be specified in the Minister's direction.

[2] The period during which a direction as aforesaid shall apply to any officer specified therein, shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or unless a different date is specified in such direction, cease to have effect after one year from the effective date of such direction unless the direction is revoked earlier by the Minister.

Status of public officers detailed for duty with the Authority.

18. [1] Where any officer is detailed for duty with the Authority under any of the provisions of article 17 such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Authority but he shall for other intents and purposes remain and be considered and treated as a public officer.

[2] Without prejudice to the generality of the foregoing, an officer detailed for duty as aforesaid –

[a] shall not during the time in respect of which he is so detailed –

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at a date on which he is so detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Authority; and

Cap. 93.

Cap. 58.

[b] shall be entitled to have his service with the Authority considered as service with the Government for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and the Widows' and Orphans' Pensions Act and of any other right or privilege to which he would be entitled, and liable to any liability to which he would be liable, but for the fact of his being detailed for duty with the Authority.

[3] Where an application is made as provided in sub-article [2][a][i] the same consideration shall be given thereto as if the applicant had not been detailed for service with the Authority.

[4] The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Authority as aforesaid during the period in which he is so detailed.

Offer of permanent employment with the Authority to public officers detailed for duty with the Authority.

19. [1] The Authority may, with the approval of the Minister, offer to any officer detailed for duty with the Authority under any of the provisions of article 17 permanent employment with the Authority at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer.

[2] The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Minister offer substantially equivalent or greater benefits.

Cap. 93.

Cap. 58.

[3] Every officer who accepts permanent employment with the Authority offered to him, under the provisions of sub-article [1] shall for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, and saving the provisions of sub-article [6], be deemed to have ceased to be in service with the Government and to have entered into service with the Authority on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Authority shall be deemed to be service with the Government within the meanings thereof respectively.

[4] Every such officer as aforesaid who, immediately before accepting permanent employment with the Authority was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be so entitled to benefit thereunder to all intents as if his service with the Authority were service with the Government.

[5] The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted performance employment with the Authority as aforesaid during the period commencing on the date of such officer's acceptance.

[6] For the purposes of the Pensions Ordinance the pensionable emoluments of such public officer on retirement shall be deemed to be the pensionable emoluments payable to an officer in Government service in a grade and at an incremental level corresponding to the post and incremental level at which the officer retires from the Authority.

[7] [a] For the purposes of this article posts and salary grades with the Authority shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government of Malta by reference to job description, skills, responsibilities and other analogous factors.

[b] The classification referred to in paragraph [a] shall be carried out by a board composed of a chairman appointed by the Ministry responsible for finance and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the Authority. The classification shall be subject to the final approval of the Minister responsible for finance.

[c] Such classification shall take place within three months of any adjustment of salaries of employees in Government service and, or, of employees of the Authority.

[d] No post shall be classified in a grade higher than that of a Grade 3 in the service of the Government or such other grade that the Minister responsible for finance may from time to time by notice in the Gazette determine.

[e] Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification.

PART V

FINANCIAL PROVISIONS

Authority to meet expenditure out of revenue.

20. [1] Without prejudice to the following provisions of this article, the Authority shall so conduct its affairs that so much of the expenditure required for the proper performance of its functions shall, as far as possible, be met out of its revenue.

[2] For such purpose the Authority shall levy all fees, rates and other payments prescribed or deemed to be prescribed by or under this Act or any other law related to the powers and functions of the Authority.

[3] The Authority shall also be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet any of its expenditure that cannot be met out of its revenue and the costs of specified works to be continued or otherwise carried out by the Authority, being works of infrastructure or a similar capital nature.

[4] Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by the Authority to the formation of reserve funds to be used for the purposes of the Authority; and without prejudice to the generality of the powers given to the Minister by this sub-article, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees, rates and other payments levied in accordance with sub-article [2] or any such excess as aforesaid.

[5] Any funds of the Authority not immediately required to meet expenditure may be invested in such manner as may from time to time be approved by the Minister.

Power to borrow or raise capital.

21. [1] For the purpose of carrying out any of its functions under this Act, the Authority may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

[2] The Authority may also, from time to time, borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of one hundred thousand euro (€110,000), there shall be required the written approval of the Minister.

Advances from Government.

22. The Minister responsible for finance may, after consultation with the Minister, make advances to the Authority of such sums as he may agree to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for finance out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advance.

Borrowing from Government.

- 23.** [1] The Minister responsible for finance may, for any requirements of the Authority of a capital nature, contract or raise loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.
- [2] Notice of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be given to the House of Representatives as soon as practicable and, in any case, not later than eight weeks after such loan, liability or advance is made, or if at any time during that period the House is not in session, within eight weeks from the beginning of the next following session.
- [3] Pending the raising of any such loan as is mentioned in sub-article [1], or for the purpose of providing the Authority with working capital, the Minister responsible for finance may, by warrant under his hand, and without further appropriation other than this Act, authorise the Accountant General to make advances to the Authority out of the Treasury Clearance Fund under such terms as may be specified by the Minister upon the making thereof.
- [4] The proceeds of any loan raised for the purposes of making advances to the Authority, and any other moneys to be advanced to the Authority under this article, shall be paid into a fund specially established for the purpose and which shall be known as the "Real Estate Agents Authority Loan Fund".
- [5] Sums received by the Accountant General from the Authority, in respect of advances made to the Authority under sub-article [3] shall be paid, as respects of amounts received by way of repayment into the Treasury Clearance Fund and, as respects of amounts received by way of interest into the Consolidated Fund.

Estimates of the Authority.

- 24.** [1] The Authority shall cause to be prepared in every financial year, and shall not later than six weeks after the end of each such year adopt, estimates of the income and expenditure of the Authority for the next following financial year:

Provided that the estimates for the first financial year of the Authority shall be prepared and adopted within such time as the Minister may by notice in writing to the Authority specify.

- [2] In the preparation of such estimates the Authority shall take account of any funds and other monies that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this Act or an appropriation Act or of any other law; and the Authority shall so prepare the said estimates as to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its revenue account including, but without prejudice to the generality of that expression, depreciation.
- [3] The estimates shall be made out in such form and shall contain such information and such comparison with previous years as the Minister responsible for finance may direct.
- [4] A copy of the estimates shall, upon their adoption by the Authority, be sent forthwith by the Authority to the Minister and to the Minister responsible for finance.
- [5] The Minister shall, at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Authority approve the same with or without amendment after consultation with the Minister responsible for finance.

PART VI

ADMINISTRATIVE TRIBUNAL

Right of appeal.

Cap. 490.

- 25.** The Administrative Review Tribunal established by article 5 of the Administrative Justice Act shall be competent to hear and determine:
- [a] appeals made by any person aggrieved by any decision of the Authority not to grant or renew, or to suspend or to revoke an authorisation, or a licence, or to impose conditions, limitations or exclusions therein or therefor;
- [b] appeals made by any person aggrieved by an administrative or any other penalty imposed on that person by the Authority;
- [c] appeals from decisions from decisions of the Authority in connection with complaints made by any person relating to services given under the provisions of this Act:

Provided that, unless otherwise prescribed by law, an appeal lodged in terms of this sub-article to the Administrative Review Tribunal shall be filed within twenty days from the receipt of the Authority's decision.

Rules regulating conduct of affairs.

- 26.** The conduct of affairs between estate agencies shall be regulated by the rules contained in the Schedule.

PART VII

PENALTIES

Offences and penalties.

27. Subject to the provisions of article 28, any person who carries any real estate agency work without a licence or who acts in breach of any condition of such licence or in breach of any of the provisions of this Act, shall be guilty of an offence and shall be liable on conviction to a fine [multa] not exceeding twenty thousand euro [€ 20,000] or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Administrative penalties.

28. [1] The Authority shall have the power to impose in respect of any person who infringes any provisions of this Act or of any regulations made thereunder, or who fails to comply with any directive or decision given by the Authority, an administrative fine using such procedures as may be established in this Act or regulations made thereunder.

[2] An administrative fine imposed under sub-article [1] shall not exceed five hundred euro [€500] for each contravention or twenty five euro [€ 25] for each day of non-compliance, from the date of the decision of the Authority.

Recognition of qualification.

29. The issuing of a licence by the Authority may be subject to:

[a] the submission and evaluation of documents and other prescribed information as may be deemed necessary in order to ensure fulfilment of licence requirements in accordance with articles 4 and 5

Cap. 451.

[b] compliance with terms and conditions as may be prescribed, including the possession of relevant qualifications in line with the Mutual Recognition of Qualifications Act and of any regulations made thereunder:

Provided that the Authority may require the applicant to prove his competence to carry on the relevant commercial activity by means of other qualifications for reasons of overriding public interests, in terms of Directive 2006/123 of the European Parliament and of the Council of 12 December, 2006 on services in the internal market:

Provided further that where a person is legally established to carry on in another Member State a commercial activity falling under the implementing provisions of Directive 2006/123 of the European Parliament and of the Council of 12 December, 2006 on services in the internal market and is seeking a licence in Malta, the Authority, in compliance with same Directive, shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to which such person may already be subject to in another Member State.

Power to make regulations.

30. [1] The Minister may, after consultation with the Authority make regulations in respect of any of the functions of the Authority or for the better carrying out of any of the provisions of this Act.

[2] Without prejudice to the generality of the aforesaid power such regulations may, in particular provide -

[a] for any aspect relating to the procedure and conditions that may be imposed in relation to any licence to be granted under this Act including where applicable:-

- [i] the grant, renewal, suspension, cancellation and duration of any such licence, the manner in which applications for such licences is to be made;
- [ii] the content and form of such applications and how they may be granted or renewed;
- [iii] the fees payable; and
- [iv] the manner in which renewals thereof is to be indicated;

[b] prescribing the manner and form in which complaints about licensees may be made to the Authority;

[c] exempt any person or class of persons from the requirement to be licensed under this Act and prescribing any terms and conditions of such an exemption;

[d] amend, revoke, add to or substitute the Schedule to this Act;

[e] in regard to administrative penalties;

[f] regarding cooperation with other authorities, entities and agencies and the relationship between the Authority and other authorities, entities and agencies including consultations, provision of information and any other matter of mutual interest;

[g] for the enforcement powers required by the Authority to perform its functions under this Act;

[h] for prescribing anything which may be or is required to be prescribed by this Act.

PART VII

CONSEQUENTIAL AMENDMENT TO THE MUTUAL RECOGNITION OF QUALIFICATIONS ACT

Amendment of the Mutual Recognition of Qualifications Act.

Cap. 451.

- 31.** In the Schedule to the Mutual Recognition of Qualifications Act immediately after the item "Dental Surgeons" there shall be added the following:

"Agents, agencies or property consultants	Real Estate Agents Authority	Real Estate Agencies and the Agents Act."
---	------------------------------	---



APPENDIX 2



SCHEDULE

[Article 26]

Rules regulating conduct of affairs

Rules regulating agents, agencies, property consultants or property managers must meet all their legal obligations when conducting their business. These include:

Making financial checks. An estate agent and/or property consultant must ask prospective clients, if they are the seller of a property, to provide proof of identity, as required by the Money Laundering Regulations 2007. The estate agent may also ask buyers for similar information to ensure that their records are complete and especially if they are providing the buyer with another service, for example, help in arranging a bank loan.

Duty of care. An estate agent, property consultant and or property manager must always work in the best interests of the client, that is to say the person who is paying for the services [usually the property owner]. An estate agent should also treat fairly, and with courtesy, all those involved in the proposed sale or purchase. If the estate agent or one of the staff, has any personal or business interest in the property, the buyer or seller must be told as soon as possible in writing.

Impartial advice. An estate agent, property consultant and/or property manager will offer appropriate advice, explanations and assistance to all regardless of age, race, religious belief, gender, sexuality, ethnicity, or disability.

Terms of business. All estate agents, property consultants and/or property managers must give their clients written Terms of Business with an explanation of terms used. The estate agent, property consultants and/or property managers must also explain all fees and charges and tell their clients if any fee will be payable if the client withdraws instructions.

Fees and charges. An estate agent must inform their clients in writing, before they agree to use the service, what fee [including VAT] is payable and when the fee is due. It must be stated clearly whether the fee is a fixed price regardless of the achieved selling price or expenses incurred or whether it is calculated as a percentage.

Marketing your property. The estate agent, property consultant must describe the property as accurately as possible and not misrepresent the details.

'For Sale' boards. Boards must not be displayed in areas where this is not permitted. The estate agent must also ask if the seller wants a 'For Sale' board to be displayed and ensure that only one board of the correct size is displayed for each property.

Access. If the estate agent holds the keys, staff from the agency must accompany those who are viewing and anyone else requiring access on behalf of the buyer, unless the seller gives authorisation to the contrary.

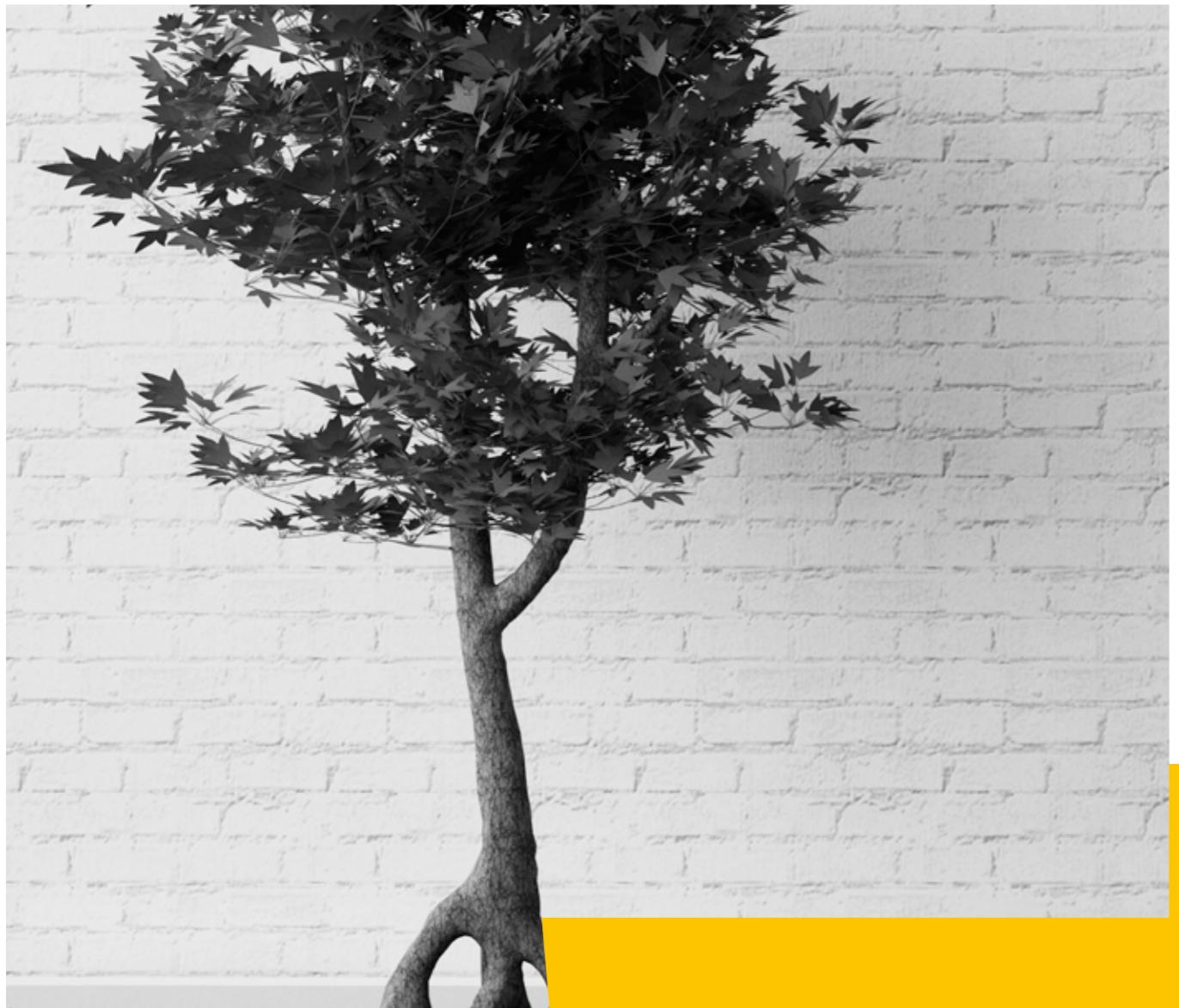
Viewings. The estate agent must follow the seller's instructions on how viewings should be conducted.

Offers. The estate agent must record all offers received and pass a written copy of the offer promptly to the seller. The estate agent must not conceal or misrepresent offers made on the property to the seller and where relevant to prospective buyers.

Services to buyers. If the estate agent offers services to the buyer, he must inform the seller in writing of those services. The estate agent should also provide in writing terms and conditions prior to showing a property.

Fair competition. Estate Agents should avoid to negotiate or discuss the transfer or letting of any particular property with a client who had viewed the same property not more than three months previously with another licensed agent, unless previous permission in writing stipulating terms and conditions for such permission has been duly obtained beforehand.





APPENDIX 3

Real estate educational programmes

Education and training from universities and professional training institutes should be the main way to conduct programmes that will lead future real estate professional to get into the profession. Professional qualification is thus a major challenge for professionals if they wish to stay aware of the needs of the market and to ensure the quality of their services to consumers.

The White Paper has looked at the educational programme prepared by European Council for Real Estate Professionals [CEPI] for real estate agents and property managers. Such programmes may be developed by universities, colleges and professional training institutes.

International recognition of such courses should be sought and the educational institutions offering these courses can apply for a CEPI Eur label confirming that their activities comply with the similar international programmes.

Education requirements – Property agents

Duration and level

A post-secondary course in a high vocational school, business school or university leading to qualification on successful completion. There will be a diploma, certificate or other evidence of formal qualification, awarded by a State recognised Body or education Establishment designated in accordance with its own laws, regulations or administrative provisions.

Topics covered

Law: National legal system, contracts, taxation, commercial, property planning, land law, all other relevant matters of legal nature, basic understanding in relevant European legal system (Treaty of Rome, Maastricht, Amsterdam, Nice) and functioning of the EU bodies.

Economics: National economics, basic understanding of European economics, provision of knowledge on the function and operation of economics, national taxation, understanding of investment and finance criteria, basic accounting procedures.

Practice knowledge: Office procedures, information technology, quality assurance, marketing, structure and operation of the real estate market, real estate transactions, communication, business ethics, code of conduct, consumer protection.

Technical: Methods of building construction, identification of building styles and finishes, interpretation of drawings, services, environmental factors, building regulations and town planning, health and safety in the workplace.

Valuations: Theory and framework of valuation methods, principles of investment pricing, valuation appraisals, approved European valuation standards.

Business management: Communication and practices of management, business accounting, marketing, data processing and data banks.

Education requirements – Property managers

Duration and level

A post-secondary course in a high vocational school, business school or university leading to qualification on successful completion. There will be a diploma, certificate or other evidence of formal qualification, awarded by a State recognised Body or education Establishment designated in accordance with its own laws, regulations or administrative provisions.

Topics covered

Law & economics: As per above mentioned.

Investing in real estate: Types of investments, actual developments in public policy pertaining real estate, property appraisal systems, integral quality care and property qualification systems/programme of demands, property indices [performance measuring systems], financing investments - financing and yield calculations - financial arithmetic.

Sorts of management: Portfolio management, property management, asset management [facility management], residential real estate, office buildings, shops and shopping centres, parking lots.

Maintenance management: Introduction, maintenance policy, property management, life cycle of real estate, long-range maintenance planning, inspection, measuring technical quality, mechanical/technical and data installations.

Structural building engineering: Building and development projects, building law and regulations, building defects.

Business management: Communication and practices of management, business accounting, marketing, data processing and data banks.



20 16

MALTA'S PROPERTY CODE AND REGULATIONS



Real Estate Agents White Paper Feedback
Parliamentary Secretariat for Competitiveness and
Economic Growth
Palazzo Spinola
St Christopher Street
Valletta, Malta

PARLIAMENTARY SECRETARIAT FOR
COMPETITIVENESS AND ECONOMIC GROWTH
reagents.whitepaper.meib@gov.mt

