

**CHAPTER 423****MALTA RESOURCES AUTHORITY ACT\***

*To provide for the establishment of an Authority to be known as the Malta Resources Authority and for the exercise by or on behalf of that Authority of regulatory functions regarding resources relating to water, energy and mineral resources, and to make provision with respect to matters ancillary thereto or connected therewith.*

2nd February, 2001

*ACT XXV of 2000, as amended by Acts XII and XXXII of 2007; Legal Notice 426 of 2007; Acts II and XXIII of 2009, and V of 2011; and Legal Notice 184 of 2012.*

**PART I - PRELIMINARY**

**1.** The short title of this Act is the Malta Resources Authority Act.

Short title.

**2.†** In this Act, unless the context otherwise requires -  
"advisory committee" or "committee" means an advisory committee established in accordance with article 25;

Interpretation.  
*Amended by:*  
*XII. 2007.3;*  
*XXXII. 2007.16;*  
*XXIII. 2009.101;*  
*L.N. 184 of 2012.*

"authorisation" includes any licence or permit however so described issued by or under this Act to operate, provide or carry out any activity or operation relating to resources and in relation to services and service providers means a permit, licence, warrant, appointment, concession or decision concerning access to a service activity or the exercise thereof relating to resources;

"authorisation scheme" means any authorisation or other procedure of an administrative nature, under which a provider or recipient is in effect required to take steps in order to commence the activity in question and obtain from a competent authority authorisation concerning access to a service activity or the exercise thereof;

"authorised provider" means any person who has a valid authorisation to operate, provide or carry out any activity or operation or to provide any service relating to resources;

"Authority" means the Malta Resources Authority established by article 3;

"Chairman" means Chairman of the Authority and includes, in the circumstances mentioned in article 3(3), the Deputy Chairman or other person appointed to act as Chairman:

Provided that, in relation to article 25, "Chairman" means the Chairman of an advisory committee;

"Chief Executive" means the Chief Executive appointed under

\* This Act has been repealed by Act XXV of 2015 except for the provisions reproduced hereunder, which are to remain in force until repealed with effect from such date as may be established by notice in the Gazette by the Minister responsible for resources - see article 43 of Act XXV of 2015.

† Still in force as applicable in terms of article 43(2) of Act XXV of 2015.

article 5;

"contractor" means a person acting in pursuance of an agreement entered into with the Authority or in accordance with article 5(5);

"decision" includes any determination, measure, order, requirement or specification however so described made by the Authority and the word "decision" shall be construed accordingly;

"directive" means a directive issued by the Authority in accordance with the procedures as prescribed by regulations made under this Act;

"Directorates" means such directorates as are or may be established under article 5;

"distribution" in relation to electrical energy, means the transport of electricity on the medium - voltage and low - voltage distribution systems with a view to its delivery to customers;

"electrical energy" means electrical energy when generated, transmitted, distributed, supplied or used for any purpose except the transmission of any communication or signal;

"employee" means a person employed by the Authority;

"energy" includes electrical energy, fuels, heat when transmitted as a commercial activity, and energy derived from renewable sources;

"establishment" means the actual pursuit of an economic activity as referred to in Article 43 of the Treaty, by a service provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;

"fuel" includes coal, all hydrocarbons or hydrocarbon derivatives normally used as fuels, including crude oil, fuels based on hydrocarbons or coal, gaseous fuel, petroleum substitutes in liquid form, liquids or gases produced from fermentation or similar processes when intended for use as fuels, fuels produced from solid waste; but does not include petroleum for the purposes of the [Petroleum \(Production\) Act](#);

"financial year" means any period of twelve months ending on the 31st December:

Provided that the financial year which commenced on the 1st October, 2007 shall be for a period of fifteen months and shall terminate on the 31st December, 2008;

"gas" means all hydrocarbons in gaseous form whether in their natural state or obtained from petroleum or produced chemically;

"Internal Market Information System" means the information system through which competent authorities exchange information in fulfilment of their obligations under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market;

"Member State" means a member state of the European Economic Area;

"Member State of establishment" means the Member State in

whose territory the provider of the service concerned is established;

"Member State where the service is provided" means the Member State where the service is supplied by a provider established in another Member State;

"mineral resources" means any mineral, rock or sediment constituted of organic or inorganic compounds or substances extracted, mined or otherwise derived from the earth, including the seabed and the subsoil thereof, but does not include water;

"Minister" means the Minister responsible for resources;

"overriding reasons relating to the public interest" means the reasons recognised as such in the case law of the European Court of Justice in relation to Articles 43 and 49 of the Treaty, as they may continue to evolve and including the following grounds:

- (a) public policy, public security, public safety and public health; provided that these grounds shall be interpreted within the meaning of Article 46 and Article 55 of the Treaty;
- (b) the maintenance of order in society;
- (c) social policy objectives;
- (d) the protection of the recipients of services;
- (e) consumer protection;
- (f) the prevention of fraud;
- (g) the prevention of unfair competition;
- (h) the protection of the environment;

"petroleum" means all natural hydrocarbons whether in liquid or gaseous form, including crude oil, and whether in a crude or natural state or in a processed or refined form and when used in relation to petroleum exploration and production it shall have the same meaning as is assigned to it by article 2 of the [Petroleum \(Production\) Act](#);

Cap. 156.

"public officer" in relation to article 11, has the same meaning assigned to it by article 124 of the [Constitution](#) but does not include a judge of the Superior Courts or a magistrate of the Inferior Courts;

"recipient" means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;

"resources" means the resources relating to water, energy and mineral resources regulated by or under this Act;

"service" means any self-employed activity performed for an economic consideration as referred to in Article 50 of the Treaty;

"services of a general economic interest" means those services declared by the Minister responsible for Competition as services of general economic interest in terms of article 30(3) of the [Competition Act](#);

Cap. 379.

"service provider" means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;

"transmission" in relation to electrical energy, means the transport of electricity on the high-voltage interconnected system with a view to its delivery to final customers or distributors;

"Treaty" means the Treaty establishing the European Community;

Cap. 490. "Tribunal" means the Administrative Review Tribunal established by article 5 of the [Administrative Justice Act](#);

"water" when used in relation to any practice, operation or activity which is regulated by this Act shall include drainage and sewage services, but shall not include bottled table water.

## PART II - ESTABLISHMENT, FUNCTIONS AND CONDUCT OF AFFAIRS OF THE AUTHORITY

Establishment and composition of the Malta Resources Authority.

3. (1) There shall be a body, to be known as the Malta Resources 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 subarticles (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.

4. (1)\* The Authority shall have the following functions:-

- (a) to regulate, monitor and keep under review all practices, operations and activities relating to energy, water and mineral resources;
- (b) to grant any licence, permit or other authorisation, for the carrying out of any operation or activity relating to energy, water and mineral resources;
- (c) to regulate and secure interconnectivity for the production, transmission and distribution of the services or products regulated by or under this Act;
- (d) to ensure fair competition in all such practices, operations and activities;
- (e) to establish minimum quality and security standards for any of the said practices, operations and activities and to regulate such measures as may be necessary to ensure public and private safety;
- (f) to secure and regulate the development and

Functions of the  
Authority.  
*Amended by:  
XII. 2007.4.*

\* Still in force in relation to mineral resources and to the legislation listed in the Second Schedule to Act XXV of 2015 only.

maintenance of efficient systems in order to satisfy, as economically as possible, all reasonable demands for the provision of the resources regulated by or under this Act;

- (g) to carry out studies, research or investigation on any matter relating to the resources regulated by or under this Act;
- (h) to provide information and issue guidelines to the public and to commercial and other entities on matters relating to the said resources;
- (i) to regulate the price structure for any activity regulated by this Act and where appropriate to establish the mechanisms whereby the price to be charged for the acquisition, production, manufacture, sale, storage and distribution thereof is determined;
- (j) to establish the minimum qualifications to be possessed by any person who is engaged or employed in any activity regulated by or under this Act;
- (k) to establish measures for the protection of the environment and to promote the efficient use of resources in the practices, operations and activities regulated by or under this Act;
- (l) to ensure that international obligations entered into by the Government relative to the matters regulated by or under this Act are complied with;
- (m) to advise the Minister on the formulation of policy in relation to matters regulated by this Act, and in particular in relation to such international obligations;
- (n) otherwise to advise the Minister on any matter connected with its functions under this Act;
- (o) to formulate and implement the policies and strategies with short-term and long-term objectives, in relation to the activities regulated by this Act;
- (p) promote the interests of consumers and other users in Malta, particularly vulnerable consumers, especially in respect of the prices charged for, and the quality and variety of the services and, or products regulated by or under this Act;
- (q) to determine disputes in relation to matters regulated by or under this Act;
- (r) to perform such other functions as may from time to time be assigned to it by the Minister.

(2) The Authority shall also:-

(a) *(Repealed by Act XXV. 2015.43).*

(b)\* in relation to water -

(i) secure and regulate the acquisition, production,

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\* in force in relation to the legislation listed in the Second Schedule only.

- storage, distribution or other disposal of water for domestic, commercial, industrial or other purposes;
- (ii) secure and regulate the conservation, augmentation and operation of water resources and the sources of water supply;
  - (iii) secure and regulate the treatment, storage, disposal, use or re-use, as appropriate, of sewage, waste water, sludge and storm water run-off;
  - (iv) secure and regulate the provision of adequate systems of public sewers and to ascertain their cleanliness, safety and efficiency;
  - (v) ensure the safe discharge, reception, treatment and disposal of trade effluent;
  - (vi) encourage and regulate the re-use of treated effluent;
  - (vii) ensure the proper and fit disposal of waste water sewage;
  - (viii) maximise the use of storm water run-off;
- (c) in relation to mineral extraction -
- (i) carry out such functions as may be authorised by the Minister in terms and for the purposes of the [Petroleum \(Production\) Act](#) and the Prime Minister in terms and for the purposes of the [Continental Shelf Act](#); Cap. 156.  
Cap. 535.
  - (ii) subject to the provisions of sub-paragraphs (i) of this paragraph, regulate all matters relating to petroleum extraction;
  - (iii) subject to the provisions of sub-paragraphs (i) and (ii) of this paragraph regulate all matters relating to the extraction of mineral resources;
  - (iv) ensure the optimum utilisation of mineral resources and regulate the quality and quantity of minerals extracted;
- (d) *(Repealed by Act XXV. 2015.43)*

(3)\* The provisions of this article shall be without prejudice to the exercise of the functions of any authority established by or under any law in relation to public health, the environment or any other matter falling within the functions of any such authority.

(4)† The Authority may require any authorised provider to provide it with any information, including financial information that the Authority considers necessary for the purpose of ensuring compliance with the provisions of this Act, regulations prescribed thereunder and decisions or directives made in accordance with this Act, regulations prescribed thereunder or any other law which the

\* in force as applicable.

† in force in relation to the legislation listed in the Second Schedule and to mineral resources only

Authority is entitled to enforce. Any person who fails or refuses to provide such information shall be in contravention of this Act and shall be liable to the imposition of an administrative fine as may be prescribed by the Authority.

Conduct of the  
affairs of the  
Authority.  
*Amended by:  
V. 2011.31.*

5.\* (1) Subject to the other provisions of this Act the affairs and business of the Authority shall be the responsibility of the Authority itself but save as aforesaid, the executive conduct of the Authority, its administration and organisation and the administrative control of its officers and employees, shall be the responsibility of the Chief Executive of the Authority, who shall also have such other powers as may from time to time be delegated to him by the Authority.

(2) The Authority shall, in consultation with the Minister, establish Directorates, Units, Divisions and Sections as appropriate, and vested with such responsibilities as it may decide and which it may vary from time to time, as it deems appropriate.

(3) The Authority shall exercise its functions through the Directorates, Units, Divisions and Sections so established and for such purpose it shall vest in each of the Directorates, Units, Divisions and Sections so established and subject to the overall supervision and control of the Chief Executive, such of its functions as relate or are ancillary to the matters for which it is responsible so as to enable the said Directorate, Unit, Division and Section to give effect to the policies of the Authority and to otherwise discharge effectively and efficiently the functions of the Authority in its respective area of operation.

(4) Each of the Directorates, Units, Divisions and Sections so established shall be headed by an individual who shall either be a public officer detailed for duty with the Authority or an employee of the Authority or a person detailed to work for the Authority in accordance with an agreement made between the Authority and a public or private undertaking, in either case having adequate experience or knowledge in the respective area of operation.

(5) The Authority and each of the Directorates, Units, Divisions and Sections may exercise any one or more of their functions either directly or through any of their officers or employees or through an agency authorised for the purpose, or through a contractor or other person with whom an agreement for the performance of any one or more of such functions has been entered into:

Provided that nothing in this subarticle shall authorise the Authority to contract out any of its regulatory or licensing functions.

(6) Where in this Act anything is to be done by or against or with respect to the Authority, or any notice is to be or may be given to the Authority, any such thing or notice may also be done by or against or with respect to or be given to the Directorate, Unit, Division and Section under whose jurisdiction the matter falls by

\* this article is in force limitedly with reference to mineral resources and to the legislation listed in the Second Schedule to Act XXV of 2015.



reason of a delegation of function to such Directorate, Unit, Division and Section; and for the purposes aforesaid any reference in this Act to the Authority includes a reference to the appropriate Directorate, Unit, Division and Section.

(7) The Chief Executive and the heads of the Directorates, Units, Divisions and Sections shall be appointed by the Authority following consultation with the Minister for a period of three years and such period may be extended for further periods of three years each:

Provided that the first Chief Executive and the first head of each Directorate, Unit, Division and Section shall be appointed by the Minister.

(8) The Chief Executive shall attend all the meetings of the Board but shall not vote at such meetings:

Provided that the Authority may if it so deems fit require the Chief Executive not to attend any of the meetings or any part of a meeting.

(9) The Chief Executive shall be responsible for the implementation of the objectives of the Authority in the exercise of its functions and without prejudice to the generality of the foregoing he shall -

- (a) assume full responsibility for the overall supervision and control of the Directorates, Units, Divisions and Sections;
- (b) assign to each Directorate, Unit, Division and Section such duties which he considers necessary or expedient;
- (c) co-ordinate the workings of the Directorates, Units, Divisions and Sections;
- (d) develop the necessary strategies for the implementation of the objectives of the Authority;
- (e) advise the Authority on any matter it may refer to him or on any matter which he considers necessary or expedient; and
- (f) such other duties as the Authority may assign to him from time to time.

6.\* (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.

Relations between the Minister and the Authority.

(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

\* this article is in force limitedly with reference to mineral resources and to the legislation listed in the Second Schedule to Act XXV of 2015.

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 Prime 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.

7.\* (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 jointly vest in the Chairman and the Chief Executive:

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:

Provided further that in respect of any matter falling within the functions vested in a Directorate, the legal and judicial representation of the Authority shall also vest in the head of the Directorate or in such other member, officer or employee of the Authority, as the Authority may appoint or authorise for the purpose.

(3) Any document purporting to be an instrument made or issued by the Authority and signed by the Chairman or by the Chief Executive or by a head of a Directorate in relation to any matter vested in the relative Directorate 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.

8.\* (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

\* this article is in force limitedly with reference to mineral resources and to the legislation listed in the Second Schedule to Act XXV of 2015.

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 3(8).

### PART III - OFFICERS AND EMPLOYEES OF THE AUTHORITY

**9.** 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.

Staff appointments.

**10.** The Authority shall appoint and employ, at such remuneration and upon such time terms and conditions as it may, in accordance with article 9 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.

Appointment and functions of officers and employees of the Authority.

**11.** (1) The Prime 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 Prime Minister's direction.

Detailing of public officers for duty with the Authority.

(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 Prime Minister.

**12.** (1) Where any officer is detailed for duty with the Authority under any of the provisions of article 11, 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.

Status of public officers detailed for duty with the Authority.

(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

(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.

Cap. 93.  
Cap. 58.

(3) Where an application is made as provided in subarticle (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.

**13.** (1) The Authority may, with the approval of the Prime Minister, offer to any officer detailed for duty with the Authority under any of the provisions of article 11 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 Prime Minister offer substantially equivalent or greater benefits.

(3) Every officer who accepts permanent employment with the Authority offered to him, under the provisions of subarticle (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 subarticle (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.

Cap. 93.  
Cap. 58.

(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 IV - FINANCIAL PROVISIONS

**14.** (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.

Authority to meet expenditure out of 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 subarticle, 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 subarticle (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.  
*Amended by:*  
*L.N. 426 of 2007.*

**15.** (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 and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67), there shall be required the approval of the Minister in writing.

Advances from  
Government.

**16.** 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.

**17.** (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 subarticle (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 "Malta Resources Authority Loan Fund".

(5) Sums received by the Accountant General from the Authority, in respect of advances made to the Authority under subarticle (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.

**18.** (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:

Estimates of the  
Authority.

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.

Expenditure to be according to approved estimates.

**19.** (1) No expenditure shall be made or incurred by the Authority unless provision therefor been made in the estimates approved as provided in article 18.

(2) Notwithstanding the provisions of subarticle (1) -

- (a) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year, whichever is the earlier date, the Authority may make or incur expenditure for carrying on its functions under this Act not exceeding in the aggregate one-half of the amount approved for the preceding financial year;
- (b) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister given after consultation with the Minister responsible for finance, be made or incurred in respect of another head or sub-head of the estimates;
- (c) in respect of the first financial year, the Authority may make or incur expenditure not exceeding in the aggregate such amounts as the Minister responsible for finance may, after consultation with the Minister, allow;
- (d) if in respect of any financial year it is found that the amount approved in the estimates is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Authority may adopt supplementary estimates for approval by the Minister and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to the supplementary estimates.

Publication of approved estimates.

**20.** The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of the estimates and supplementary estimates of the Authority, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid on the Table of the House of Representatives.

Accounts and audit.

**21.** (1) The Authority shall cause to be kept proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the Authority shall be audited by an auditor or auditors to be appointed by the Authority and approved by the Minister:

Provided that the Minister responsible for finance may, after consultation with the Minister, require the books and accounts of the Authority to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other certifications as he may deem necessary.

(3) After the end of each financial year, and not later than the date on which the estimates of the Authority are forwarded to the Minister under article 18, the Authority shall cause a copy of the



statement of account duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the accounts of the Authority.

(4) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such statement and report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause every such statement and report to be laid on the Table of the House of Representatives.

**22.** (1) All monies accruing to the Authority shall be paid into a bank or banks appointed as bankers of the Authority by a resolution of the Authority. Such monies shall, as far as practicable, be paid into any such banks from day to day, except such sum as the Authority may authorise to be retained to meet petty disbursements and immediate cash payments.

Deposit of revenues and payments by the Authority.

(2) All payments out of the funds of the Authority, other than petty disbursements not exceeding a sum fixed by the Authority, shall be made by such officer or officers of the Authority as the Authority shall appoint or designate for that purpose.

(3) Cheques against and withdrawals from any bank account of the Authority shall be signed by such officer of the Authority as may be appointed or designated by the Authority for that purpose and shall be countersigned by the Chairman, or such other member or officer of the Authority as may be authorised by the Authority for that purpose.

- (4) The Authority shall also make provision with respect to -
- (a) the manner in which and the officer or officers by whom payments are to be authorised or approved;
  - (b) the title of any account held with the bank or banks into which the monies of the Authority are to be paid, and the transfer of funds from one account to the other;
  - (c) the method to be adopted in making payments out of funds of the Authority;

and generally with respect to any matter which is relevant to the proper keeping and control of the accounts and books, and the control of the finance, of the Authority.

**23.** Without prejudice to any directions communicated by the Minister under article 6(1), the Authority shall not, except with the approval of the Minister granted for special reasons and after consultation with the Minister responsible for finance, award or enter into any contract for the supply of goods or materials or for the execution of works, or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to exceed six thousand and nine hundred and eighty-eight euro and twelve cents (6,988.12) or such other amount as the Minister responsible for finance may by regulations prescribe, except after notice of the intention of the Authority to enter into the contract has been published and competitive tenders have been issued.

Contracts of supply of works.  
Amended by:  
L.N. 426 of 2007.

Annual report.

24. The Authority shall, not later than six weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Authority during that financial year and containing such information relating to the proceedings and policy of the Authority as either of the said Ministers may from time to time require. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause a copy of every such report to be laid on the Table of the House of Representatives.

## PART V - MISCELLANEOUS\*

Appointment and functions of advisory committees.

25. (1) The Minister may from time to time appoint advisory committees in respect of such sector or sectors as he may determine.

(2) An advisory committee shall, for the better carrying out of the provisions of this Act, advise the Authority on such matters and perform such other functions as the Minister may specify in the instrument of appointment.

(3) The members of the committee shall be appointed by the Minister and shall hold office for such period and on such terms and conditions as the Minister may deem appropriate.

(4) Each committee shall consist of one member representing the Authority as Chairman and such other members as the Minister may deem fit to appoint.

(5) The provisions of paragraph of subarticle (4)(a), article 3(5) and (8) shall *mutatis mutandis* apply to the members of the advisory committees.

(6) Each advisory committee shall keep minutes of all its meetings and shall forward copies of such minutes to the Authority. The provisions of article 8 shall *mutatis mutandis* apply to the committee and its members.

Licensing, etc., of activities.  
Amended by:  
XII. 2007.5;  
L.N. 426 of 2007.

26. (1) Save as may otherwise be prescribed, no person shall carry out any activity or operation, or be engaged in such activity or operation, relating to energy, water and mineral resources unless such person is in possession of a licence, permit or other authorisation of the Authority under this Act:

Provided that in relation to the exploration and production of hydrocarbons, power to exercise the issue of a licence under this Act shall be subject to an authorisation of the Minister in terms of the [Petroleum \(Production\) Act](#).

Cap. 156.

(2) Any person who carries out any such activity without a licence or who acts in breach of any condition of such licence, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding one hundred and sixteen thousand and four

\* the articles in this Part are in force in relation to mineral resources and to the legislation listed in the Second Schedule to Act XXV of 2015 only.

hundred and sixty-eight euro and sixty-seven cents (116,468.67) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) Saving the provisions of article 469A of the [Code of Organization and Civil Procedure](#) no appeal shall lie from any decision of the Authority under subarticle (1). Cap. 12.

(4) The provisions of this article shall not apply to any cistern or well in any dwelling house, which is required to be constructed under any law, and the provisions of this article shall not be deemed to require any licence or permit for the construction and maintenance of any such cistern or well, so however this construction shall not preclude the Authority from exercising any of its functions and powers under this Act for the purpose of ensuring that water is not wasted or misused and that no damage is caused to the aquifer or elsewhere.

(5) An authorisation granted to a person under this Act shall not relieve such a person from the requirement at law to apply for any other authorisation however so described, or from any other obligation arising under any other law.

**27.** The members of the Authority, the members of the advisory committees and all officers and employees of the Authority shall be deemed to be public officers within the meaning and for the purposes of the Criminal Code. Persons deemed public officers.

**28.** (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. Power to make regulations.  
Amended by:  
*XII. 2007.6;*  
*L.N. 184 of 2012.*

(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 authorisation under this Act including where applicable the grant, renewal, transfer, suspension, cancellation and duration of any such authorisation, the manner in which applications for such authorisations is to be made, the content and form of such applications and how they may be granted, renewed or transferred, the fees payable, and the manner in which renewals or transfers thereof is to be indicated;
- (b) for the regulation of any aspect relating to imposition of public and, or universal service obligations, however so described, in respect of any operation, activity or service regulated by this Act;
- (c) for the regulation of price structures for resources and where appropriate for the regulation and determination of tariffs, price mark-ups and charges for the supply, storage and distribution of resources and for the use of any systems used in the distribution and transmission of resources;
- (d) for securing adequate reserves, where applicable, and

- for securing the adequate provision of the resources regulated by or under this Act;
- (e) for the compulsory acquisition and distribution of any such resources during periods of scarcity;
  - (f) for the minimum standards to be adopted in, and any other matter related to the conservation, acquisition, supply, sale, storage, generation, distribution, transmission, export, treatment, re-use or disposal and any other practices, operations and activities, regulated by or under this Act including the means by which such resources are to be protected, acquired, supplied, sold, stored, generated, distributed, transmitted, exported, treated, re-used or disposed of;
  - (g) for the quality of service targets and the establishment and maintenance of an efficient customer service by authorised providers for consumers;
  - (h) to secure and regulate the conservation, augmentation, operation and use of sources of energy, water and mineral resources as well as the promotion and the harnessing, generation and use of all forms of resources;
  - (i) for ensuring fair competition in all practices, operations and activities related to resources;
  - (j) for the undertaking of studies, research or investigation on any matter relating to the resources regulated by or under this Act and the provision of information, the issue of guidelines to the public and to commercial entities on matters relating to the said resources;
  - (k) to give effect to any international obligation entered into by Government in relation to the resources regulated by or under this Act;
  - (l) for regulating the services that may be required in relation to energy, water or mineral resources and the time, manner, place and condition in which or under which such services are to be provided;
  - (m) for the regulation of the qualifications to be possessed by persons who are employed in any activity regulated by or under this Act;
  - (n) for matters concerning the construction, condition and maintenance of any facilities, apparatus and other equipment utilised in the provision of any of the said resources or services related thereto;
  - (o) for prescribing the information to be retained by authorised providers under this Act and the provision of statistical data by such authorised providers, and on any other matter relating to provision of information by authorised providers to the Authority;
  - (p) for the making of any deposit or the giving of any guarantee to ensure the performance of any obligation

by any person imposed as a condition of any permit, authorisation or licence under this Act;

- (q) for prescribing the practices to be adopted in regard to safety, and the protection of the environment in relation to any matter regulated by this Act, including any norms in relation to the liability of any person who causes damage to the environment as a result of any activities regulated by or under this Act undertaken by that person;
- (r) regarding a contingency plan in the event of any crisis relating to any matter regulated by this Act;
- (s) for complaint processing procedures to be implemented by an authorised provider, and for any matter relating to the resolution of any disputes and, or complaints, however so described, relating to any matter regulated by this Act;
- (t) in regard to administrative infringements and fines;
- (u) regarding cooperation with other authorities and the relationship between the Authority and other public authorities including consultations, provision of information and any other matter of mutual interest;
- (v) *(deleted by Legal Notice 184 of 2012)*;
- (w) for the procedures to be followed in regard to the settlement of disputes;
- (x) for the enforcement powers required by the Authority to perform its functions under this Act;
- (y) for prescribing anything which may be or is required to be prescribed by this Act.

**29.** (1) The execution of all works in connection with any services provided under a licence issued under this Act shall be carried out in such manner as may be agreed between the service provider and the person receiving such services.

Powers of service provider.

(2) The provider of any service for which a licence is required under this Act and any employee duly authorised by him may at all reasonable times enter any premises for the purpose of -

- (a) ascertaining that the services are being used in accordance with the conditions under which they are supplied;
- (b) maintaining or repairing any equipment supplied by him in relation to such service;
- (c) ascertaining such data or information that may be required in connection with the provision of such service:

Provided that any such service provider shall repair all damage caused by such entry.

(3) Any person who obstructs or impedes any person in the exercise of his duties under subarticle (1) hereof shall be guilty of an offence against this Act.

Enforcement powers of the Authority.

*Added by:*

*XII. 2007.9.*

*Amended by:*

*L.N. 426 of 2007.*

**30.** (1) Any officer or employee of the Authority so authorised may, at all reasonable times, enter any premises, vehicle, vessel or any other place, for the purposes of -

- (a) the making of such inspections, tests, measurements, lifting of samples or to ascertain that nothing contrary to the provisions of this Act, to the regulations made thereunder or to any term or condition attached to any licence, permit or authorisation issued under this Act is being carried out;
- (b) ascertaining or reproducing such data or information as the Authority may require.

(2) Any person who obstructs or impedes any officer or employee of the Authority in the exercise of his duties under this Act shall be guilty of an offence and shall, on conviction, be liable to imprisonment not exceeding eighteen months or to a fine (*multa*) of not more than sixty-nine thousand and eight hundred and eighty-one euro and twenty cents (69,881.20) or to both such fine and imprisonment.

Imposition of administrative fines.

*Added by:*

*XII. 2007.9.*

*Amended by:*

*II. 2009.58.*

**31.** (1) The Authority may impose an administrative fine upon any person who infringes any provision of this Act, regulations prescribed thereunder or of any other law which the Authority is entitled to enforce, or who fails to comply with any directive or decision given by the Authority whether under this Act, regulations prescribed thereunder or under any other law which the Authority is entitled to enforce, or who fails to comply with any condition of any authorisation granted under this Act.

(2) An administrative fine imposed under subarticle (1) shall not exceed one hundred thousand euro (€100,000) for each contravention and, or six hundred euro (€600) for each day of non-compliance, from the date of the decision given by the Authority.

Proceedings when imposing administrative fines.

*Added by:*

*V. 2011.32.*

*Amended by:*

*L.N. 184 of 2012.*

**31A.** (1) The Authority, before imposing an administrative penalty upon any person who infringes or fails to comply with -

- (a) any provision of this Act;
- (b) regulations made thereunder;
- (c) any other law which the Authority is entitled to enforce;
- (d) any directive or decision given by the Authority whether under this Act, regulations made thereunder or under any other law which the Authority is entitled to enforce; or
- (e) any condition of any authorisation granted under this Act,

shall by judicial letter to the person concerned -

- (i) give notice of the administrative penalty that may be imposed by the Authority;
- (ii) give notice of the specific reason why such penalty may be imposed;
- (iii) give notice of the amount of the penalty;

- (iv) demand that the person concerned rectify the acts or omissions committed by such person and, or make submissions to the Authority within a specified time:

Provided that such time may not be of more than twenty days and of not less than five days from the date of service of the judicial letter:

Provided further that the person, against whom an administrative penalty may be imposed, shall be given a reasonable opportunity during such period of time as may be stipulated in the judicial letter to make submissions to the Authority and to propose any remedies that rectify the acts or omissions required by the Authority to be so rectified.

(2) In the judicial letter mentioned in subarticle (1), the Authority may impose such conditions as it may consider reasonable in the circumstances.

(3) If the person concerned remedies the infringement within the period established by the Authority in accordance with subarticle (1), and agrees in writing to abide with any conditions that the Authority may impose, the Authority shall desist from proceeding any further:

Provided that if the person concerned, after having been bound in writing as stated above, fails to remedy the infringement within the period established by the Authority in accordance with subarticle (1) or fails to abide with any conditions agreed to in writing, the Authority shall impose against such person an administrative penalty for such failure, in addition to the administrative penalty which may be imposed for the infringement itself.

(4) If, after the lapse of the period mentioned in subarticle (1), the Authority considers that the person concerned has not given any valid reasons to demonstrate why no administrative penalty should be imposed against such person, the Authority shall proceed to impose such administrative penalty.

(5) Notwithstanding any other provision of this article, where the Authority has *prima facie* evidence that the infringement -

- (a) represents an immediate and serious threat to public safety or public security or public health; or
- (b) creates or may create serious economic or operational problems for other providers of resources or for consumers,

the Authority may shorten the periods mentioned in subarticle (1):

Provided that the person against whom such administrative penalty is imposed shall be given a reasonable opportunity to state any views and propose any possible remedies.

Cap. 12

(6) The judicial letter referred to in subarticle (1), upon the expiry of the time limit for appeal therefrom, and upon the service of a copy thereof by means of a judicial act on the person liable to the payment of the administrative penalty, shall constitute an executive title for all effects and the purposes of article 253(a) of the [Code of Organization and Civil Procedure](#):

Provided that if the person, against whom the judicial letter has been issued, files an appeal before the Administrative Review Tribunal, and concurrently with or before the filing of the appeal requests the Administrative Review Tribunal to suspend the effects of the judicial letter, then the Authority shall desist from issuing a judicial act as referred to in this subarticle until the request of suspension has been determined, withdrawn or otherwise dealt with:

Provided further that the Administrative Review Tribunal shall determine any requests for suspension referred to in this subarticle expeditiously. Before determining any such request the Administrative Review Tribunal shall give the Authority a reasonable opportunity to reply and make its submissions, within a period not less than three working days.

(7) Interest at the rate of eight per cent per annum shall run as from the date set by the Authority for the payment of any administrative penalty imposed by it. In cases where the Administrative Review Tribunal or the Court of Appeal, as the case may be, after having upheld an application to suspend the penalty pending proceedings, finally decides that the administrative penalty as imposed by the Authority is due, such administrative penalty shall be due together with any interests accrued thereon as from the date originally set by the Authority for payment including the period during which the payment of the said penalty was suspended.

(8) The Authority shall give its reasons for any decision taken under this article.

(9) Notwithstanding the provisions of any other law, no precautionary warrant or order shall be issued by any court restraining the Authority from the exercise of any of the powers conferred upon it under this Act in relation to administrative penalties.

(10) In all cases where the Authority imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(11) An administrative penalty imposed by the Authority upon any person shall be considered a civil debt.

(12) If any person knowingly avoids, obstructs or refuses service of any judicial act issued under this article, such person shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not more than seventy thousand euro (€70,000).



**31B.** Where an administrative infringement breaches -

- (a) any provision of this Act;
- (b) regulations made thereunder;
- (c) any other law which the Authority is entitled to enforce;

Administrative  
infringements by  
bodies corporate.  
*Added by:*  
*V. 2011.32.*

or any person -

- (i) fails to comply with any directive or decision given by the Authority whether under this Act, regulations made thereunder or under any other law which the Authority is entitled to enforce; or
- (ii) fails to comply with any condition of any authorisation granted under this Act, and the infringement is committed by a body corporate and is proved to have been committed with the consent, or involvement of, or to be attributable to, any gross negligence on the part of a person being a director, manager, secretary or other officer, however so described, of such body corporate or a person who was purporting to act in any such capacity,

such person and such body corporate, shall be responsible for the said infringement and shall be jointly and severally liable for the payment of any administrative penalty imposed by the Authority as a consequence thereof.

**32.** Without prejudice to any other provision of this Act the Minister may, after consultation with the Authority, make regulations prescribing penalties for criminal offences against any regulations made under this Act, and such regulations may:

- (a) prescribe imprisonment and different fines (*multi*) for different offences;
- (b) prescribe fines (*multi*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for:

- (i) imprisonment for more than eighteen months, or a fine (*multa*) of more than sixty-nine thousand and eight hundred and eighty-one euro and twenty cents (69,881.20); or
- (ii) one thousand and three hundred and ninety-seven euro and sixty-two cents (1,397.62) for each day during which the offence persists.

**33.** (1) The provisions of the [Administrative Justice Act](#), in so far as they apply to the Administrative Review Tribunal, shall apply to any proceedings before the said Tribunal and the words "public administration" in the said enactment shall be construed as a reference to the Authority.

Power of Minister  
to make  
regulations in  
relation to criminal  
offences.  
*Added by:*  
*XII. 2007.9.*  
*Amended by:*  
*L.N. 426 of 2007.*

Administrative  
Review Tribunal.  
*Amended by:*  
*XII. 2007.8.*  
*Substituted by:*  
*L.N. 184 of 2012.*  
Cap. 490.

- (2) The provisions of article 25 of the [Administrative Justice Act](#)

Cap. 490.

shall apply to any proceedings pending before the Resources Appeals Board constituted under article 33, as the said article stood prior to the coming into force of this article, and any such proceedings shall be assigned to the Administrative Review Tribunal in terms of the aforesaid article 25 with effect from 1st July, 2012.

Appeals.  
Amended by:  
XII. 2007.10;  
V. 2011.33;  
L.N. 184 of 2012.

**34.** (1) An appeal shall lie to the Administrative Review Tribunal on any decision of the Authority in accordance with the provisions of this Act and any regulations made thereunder, and the right to appeal shall be competent to any person aggrieved by such decision.

(2) An appeal to the Administrative Review Tribunal may be filed on any of the following grounds:

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that an error of law has been made;
- (d) that there was some material illegality, including unreasonableness or lack of proportionality.

(3) The Administrative Review Tribunal shall give reasons for its decision and shall cause such decisions to be made public omitting, if it deems it appropriate for reasons of confidentiality, the names of the persons involved.

(4) In determining an appeal the Administrative Review Tribunal shall take into account the merits of the appeal, and may in whole or in part, confirm annul or vary the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

(5) The effect of a decision to which an appeal relates shall not, except where the Administrative Review Tribunal or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.

(6) The right of appeal to the Administrative Review Tribunal shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Administrative Review Tribunal shall also require a direct interest in impugning the decision or directive appealed from.

(7) Without prejudice to the provisions of article 31A -

- (a) an appeal from a decision or directive of the Authority shall be made by application and shall be filed with the secretary of the Administrative Review Tribunal within twenty days from the date on which the said decision or directive has been notified in writing to the party appealing or published in the Gazette whichever is the earlier, as the case may be; and
- (b) the application of appeal shall be served on the Authority, which shall not later than twenty days from such service file its reply thereto with the secretary of the Administrative Review Tribunal.

**35.** (1) The Administrative Review Tribunal shall be competent to hear and decide any appeal made to it in accordance with the provisions of this Act and any regulations made thereunder; and, subject to article 36, the decisions of the said Tribunal shall be final and binding.

Grounds of appeal.  
*Amended by:*  
*XII. 2007.11.*  
*Substituted by:*  
*L.N. 184 of 2012.*

(2) In the exercise of its functions, the Tribunal may summon any person to appear before it and give evidence and produce documents; and the chairperson shall have the power to administer the oath. The Tribunal may also appoint experts to advise the Tribunal on any technical issue that may be relevant to its decision.

(3) For the purposes aforesaid the Tribunal shall have the same powers as are competent to the First Hall, Civil Court according to law.

(4) The procedure to be followed before the Tribunal, the time within which and the manner in which an appeal to the Tribunal is to be made shall be such as may be prescribed; and subject thereto, and to any other applicable provision of this Act, the Tribunal may establish its own procedure.

**36.** (1) Any party to an appeal to the Tribunal who feels aggrieved by a decision of the Tribunal, or the Authority if it feels dissatisfied with any such decision, may on a question of law appeal to the Court of Appeal in terms of the [Administrative Justice Act](#).

Appeal to the  
Court of Appeal.  
*Amended by:*  
*XII. 2007.12.*  
*Substituted by:*  
*L.N. 184 of 2012.*  
Cap. 490.

(2) The appeal shall be made by means of an application filed in the registry of that court within twenty days from the date on which that decision has been notified.

**37.** (1) Any subsidiary legislation prescribed under any of the provisions of the enactments listed in the Schedule shall continue in force and any such subsidiary legislation shall have effect as if made under this Act and may be amended, substituted or revoked accordingly.

Savings.  
*Amended by:*  
*XII. 2007.13;*  
*V. 2011.34.*

(2) Any licence, permission, authority or order granted or made under any of the provisions of the enactments listed in the Schedule, and still in force immediately before the coming into force of this Act, shall continue in force thereafter as if it were a licence, permission, authority or order granted or made under a corresponding provision of this Act, and any such licence, permission, authority or order as aforesaid shall be treated and dealt with accordingly.

(3) The penalties prescribed under article 45(g)\* of the [Water Services Corporation Act](#) shall, until regulations are prescribed under article 32, be deemed to be the penalties prescribed under this said article 32.

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**38.** The members, officers and employees of the Authority in the performance of their functions under this Act or any other law administered by the Authority, shall not be liable for any loss or damage suffered by any person by reason of anything done or

Exemption from  
liability.  
*Added by:*  
*XII. 2007.14.*

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\*Deleted by this Act.

omitted to be done in good faith in the course of the administration of this Act or of any other law.

Service providers.  
Added by:  
XXIII. 2009.102.  
Amended by:  
L.N. 184 of 2012.  
Cap. 500.

**39.** (1) In regulating access to service activities falling under this Act and, or the exercise thereof, the Authority shall, where such service activities fall within the scope of the [Services \(Internal Market\) Act](#):

- (a) act objectively, transparently, efficiently and in a timely manner;
- (b) provide information and assistance to service providers and recipients subject to the provisions of this Act;
- (c) make it possible to complete all procedures and formalities relating to access to a service activity and to the exercise thereof, available electronically through the designated point of single contact:

Provided that the requirement to make it possible to complete all procedures and formalities electronically through the point of single contact shall not apply to the inspection of premises from which the service is provided or of equipment used by the service provider.

(2) When a service provider is already established in another Member State, and seeks access to a service activity or the exercise thereof in Malta:

- (a) where the service activity is subject to an authorisation scheme or the fulfilment of other requirements regulating establishment in Malta, the Authority shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose which a service provider may already be subject to in another Member State where he is already established;
- (b) where the Authority requires a service provider to supply a certificate, attestation or document proving that a requirement has been satisfied in terms of this Act or regulations made thereunder:
  - (i) it shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied;
  - (ii) it may not require a document from another Member State to be produced in its original form or as a certified copy or certified translation save in the cases provided for in a Community instrument or where such a requirement is justified by an overriding reason relating to the public interest, including public order and public security:

Provided that the provisions of this paragraph shall not affect the right of the Authority from requesting a non-

certified translation of documentation in the Maltese or in the English language.

(3) Where the number of authorisations available for a service activity is limited because of the scarcity of available natural resources, technical capacity or if justified by an overriding reason relating to public interest, the Authority shall apply a selection procedure to potential candidates in order to ensure impartiality, transparency, conditions of open competition, including in particular, adequate publicity about the launch, conduct and completion of the procedure. In establishing the rules for the selection procedure, the Authority may give consideration to issues relating to public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, and other overriding reasons relating to the public interest, in conformity with Community law.

(4) An authorisation granted to a service provider shall be for an indefinite period, except where:

- (a) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;
- (b) the number of available authorisations is limited in terms of sub-article (3);
- (c) a limited authorisation period can be justified by an overriding reason relating to the public interest:

Provided that in cases referred to in paragraph (b), an authorisation shall be granted for an appropriate limited period enabling the service provider to recover the cost of investment and to make a fair return on the capital invested, which authorisation may not have an excessive duration, be open to automatic renewal nor confer any other advantage on the service provider whose authorisation has just expired or on any person having any particular links with that provider.

(5) An authorisation granted by the Authority shall enable the service provider to have access to the service activity or the exercise thereof throughout Malta including by means of the setting up of agencies, subsidiaries, branches or offices, except where the authorisation for each individual establishment or a limitation of authorisation to a certain part of the territory is justified by an overriding reason relating to public interest:

Provided that the service provider shall be required to inform the Authority of the creation of subsidiaries, branches, offices or agencies whose activities fall within the scope of the authorisation scheme.

(6) In the fulfilment of its authorisation function in terms of this article, the Authority shall:

- (a) acknowledge all applications requesting authorisation;
- (b) in case of an incomplete application, inform the applicant as quickly as possible of the need to supply any additional information, together with the

consequences which ensue should the applicant delay in providing the said information or requirements;

- (c) process an application for an authorisation as quickly as possible and in any event within a time period which shall be fixed and made public in advance failing which it shall be deemed that the authorisation has been granted. The period will start to run from the day when all due information has been submitted and any other requirements and formalities have been completed in order for the Authority to process the application:

Provided that the time period may be extended once for a limited time when justified by the complexity of the issue. The extension and its duration shall be duly justified and given to the applicant before the original period has expired:

Provided further that the Authority may make different arrangements where objectively justified by overriding reasons relating to the public interest including a legitimate interest of third parties;

- (d) provide information regarding the means of redress available in case of non-acceptance of an application;
- (e) grant an authorisation as soon as the applicant fulfils all requirements, without prejudice to the right of the Authority to revoke or modify an authorisation when the conditions for authorisation are no longer met by the service provider;
- (f) in the case of rejected applications due to failure to comply with the required procedures or formalities, inform the applicant of the rejection as soon as possible;
- (g) except in the case of the granting of an authorisation, a decision from the Authority, including refusal or withdrawal, shall be fully reasoned and shall be open to challenge before the Administrative Review Tribunal.

(7) With the exclusion of service activities and matters which are declared to be services of a general economic interest, which *inter alia* may include -

- (a) in the electricity sector, services covered by [Directive 2003/54/ EC](#) of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;
- (b) in the gas sector, services covered by [Directive 2003/55/EC](#) of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas;
- (c) water distribution and supply services and waste water services,

the Authority shall respect the right of service providers that are

lawfully established and providing services in another Member State to provide services in Malta, and may not prevent them from providing such service activities by imposing requirements which are discriminatory, unnecessary or disproportionate:

Provided that the Authority may impose requirements with regard to the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment:

Provided also that in establishing whether a service provider is exercising his freedom to provide services within the meaning of this article and Article 49 of the Treaty, or is an establishment case, or whether a service provider is abusively taking advantage of the freedom to provide services, the Authority shall assess and decide each case on its individual merits and in conformity with Community legislation and rulings of the European Court of Justice.

(8) Without prejudice to sub-article (7), in exceptional cases only, the Authority may, in respect of a service provider established in another Member State, take measures in order to ensure the safety of services provided in Malta. When taking such measures, the Authority shall follow the procedure established under the Fourth Schedule to the [Services \(Internal Market\) Act](#), and ensure the fulfilment of the following conditions:

Cap. 500.

- (a) the national provisions, in accordance with which the measures are taken, have not been subject to Community harmonisation in the field of the safety of services;
- (b) the measures taken provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;
- (c) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those requested by the Authority and as referred to in paragraphs 2 and 3 to the Fourth Schedule to the [Services \(Internal Market\) Act](#);
- (d) the measures are proportionate:

Cap. 500.

Provided that the Authority, upon gaining actual knowledge of any conduct or specific acts by a service provider established in Malta and which provides services in other Member States, which, to its knowledge, could cause serious damage to the health or safety of persons or to the environment, shall inform all other Member States and the European Commission within the shortest possible period of time through the Internal Market Information System.

- (9) (a) The Authority shall require service providers established in Malta and falling under its area of competence to keep it updated at all times with the information it identifies as necessary and objectively justified for it to fulfil its supervisory function of services in terms of this Act and the [Services \(Internal](#)

Cap. 500.

Market) Act.

Cap. 500.

- (b) The Authority shall exercise its supervisory functions on service providers established in Malta, and falling under its area of competence, whether the service is provided in Malta or in another Member State.
- (c) In executing its supervisory functions, when a service is being provided in another Member State by a service provider established in Malta, the Authority shall assist the relevant competent authority of that other Member State in terms of the procedure established in the Second Schedule of the Services (Internal Market) Act. In doing so, the Authority shall not refrain from taking supervisory enforcement measures in Malta on the grounds that a service has been provided or caused damage in another Member State:

Provided that the Authority shall not be bound to carry out checks and controls in the Member State where the service is being provided.

Cap. 500.

- (d) When a service is being provided in Malta, in the event of a temporary movement by a service provider established in another Member State:
  - (i) the Authority shall participate in the supervision of the service provider in accordance with the procedure set up in the Second Schedule to the Services (Internal Market) Act;
  - (ii) when the Authority has imposed requirements in terms of the first proviso to sub-article (7), it shall assume responsibility for the supervision of that service provider in Malta in order to ensure compliance with those requirements.
- (e) The Authority shall exchange requests and information with the relevant competent authorities of another Member State through the Internal Market Information System.

Cap. 500.

- (f) Without prejudice to the limitations imposed by any other law, the Authority shall supply information to the relevant competent authority of another Member State on disciplinary or administrative actions, or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud, which directly concern a provider, and which are directly relevant to the provider's competence or professional reliability, in terms of the procedure contemplated under the Third Schedule of the Services (Internal Market) Act.

Debt recovery  
procedure.  
Added by:  
V. 2011.35.  
Cap. 12.

**40.** The provisions of article 466 of the Code of Organisation and Civil Procedure shall apply to the Authority in the same manner as they apply to Government Departments.



SCHEDULE  
(Article 37)

*Amended by:  
XII. 2007.15;  
V. 2011.36.*

[Petroleum \(Importation, Storage and Sale\) Ordinance](#), Cap. 25.

[Enemalta Act](#), Cap. 272.\*

[Water Services Corporation Act](#), Cap. 355.

[Bunkering \(Fuels\) Tax Act](#), Cap. 381.

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\*repealed by Act XXXIV of 2014.