



MALTA UNIVERSITY CONSULTING

Reforming the Condominium Act A White Paper

Commissioned by the
Ministry for Public Works and Planning

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Ministry: Ministry for Public Works and Planning together with the Ministry for Justice

1. Background

Following more than two decades of the development and the experience acquired in the condominium sector and on the basis of feedback received from the Public after the launch of the Public Consultation of 4th February 2021, the time is ripe to take on board the Public's observations and suggestions to implement the necessary reform in the very important and evolving condominium sector.

The Public has made its observations and suggestions. Several valid contributions are being considered for adoption. In addition and as a consequence of the Public Consultation, the following legislative changes to the Condominium Act are required:

1. The establishment of a **Condominium** Regulator to oversee that the required standards in the sector are not prejudiced and continue to develop in the best interests of the condomini and their service providers.
2. More cost-effective procedures and remedies especially in cases of disputes between the condomini, the Administrator and third parties could be ensured by introducing a new **Condominium Affairs Tribunal** composed of legal and technical professionals.
3. A Co-owners' Association without share capital is constituted and given a **legal personality** managed by the Administrator in liaison with a committee of representatives of the co-owners / condomini elected annually by the General Meeting of the Condomini. The granting of legal personality will ensure that there is no disruption but continuity (for example the condominium's bank account would not need to be closed each time there is a change of an Administrator).
4. The **Office of the Administrator** continues to play an important role in the conservation and management of the condominium. The amendments will ensure that an individual and or a professional corporate service provider are competent to carry out the functions of Administrator and have no legal and or criminal circumstances impeding them from carrying out their role.
5. Cover through **Professional Insurance** for Administrators and **property insurance for the common parts** will be made obligatory.

2. Consultation matters:

Regulation: Condominium Regulator, Alternative Disputes Resolution (ADR), Online Dispute Resolution (ODR) and the Condominium Affairs Tribunal

2.1 Condominium Regulator:

Although the sector needs to be regulated based on the experience of more than twenty years, the Legislator needs to ensure a balance between the rights and responsibilities of the condomini between themselves and the Administrator keeping in mind the common purpose of preserving the condominium complex.

The introduction of a Regulator to be designated as the "Condominium Regulator" is now necessary. The Regulator would be constituted by Cap. 398 with functions *inter alia* to provide a Register of duly qualified Administrators [To be noted: should the condomini fail to appoint an Administrator, today according to Article 15 (1) the Arbitrator has the power to decide and appoint the Administrator himself. To date, however, no register of Administrators exists under the responsibility of a Competent Authority and as a consequence the Arbitrator could impose any Administrator he deems fit. Having a Register would certainly make things more transparent and ensure that an Administrator trained in matters concerning directly condominiums with good repute is appointed], provides information and training services covering the rights and obligations of the condomini, the committee of representatives of the condomini and Administrators, sets standards and provides guidelines / a code of ethics for Administrators. The Regulator will also have an advisory role to the Government. The composition of the board of directors of the Regulator will be similar to other competent authorities established by the Law and their appointment will be based on their expertise in condominium affairs. It will be necessary to appoint a Registrar and supporting staff.

2.2 Condominium Tribunal including ADR and ODR

Resolution of disputes through compulsory arbitration is contemplated under the current Cap. 398, with a right of appeal. The Legislator may opt to keep this ADR method of dispute resolution, albeit the process is expensive and at times as lengthy as a lawsuit referred to litigation. Alternatively, the Legislator could set up a Condominium Affairs Tribunal with competence to hear and decide all matters concerning the condominium. Complaints / disputes could be dealt with in two stages: (1) mediation and (2) if a settlement is not reached, then the Tribunal will take cognizance of the dispute and provide a speedy decision. Emphasis is to be laid on affordability and a quick remedy.

The Condominium Tribunal would have competence to consider and decide *inter alia* on matters of enforcing board resolutions of the General and Extraordinary Meetings of the Condomini, regulations, and concerns over procurement processes, procedures at Annual and / or Extraordinary General Meetings, access to records for verification purposes, default in payment of contributions. As in other jurisdictions, a platform providing access

to Online Dispute Resolution (ODR) of Condominium matters could be set up. Reference is made to the experiences of similar domestic competent authorities and tribunals [e.g. Consumer Affairs and Housing Authority settlement of disputes] offering speedy, practical and cost-effective dispute resolutions.

3. Legal Personality of the Condominium

It is a common practice to include in contracts of sale an obligation on the purchaser to form part of an owners' association of the condominium. This practice existed before the Condominium Act came into force and it survived afterwards. In legal reality, the Condomini are co-owners or co-users of the common parts of a condominium but no association bearing legal personality has ever been constituted and registered. According to the Condominium Act, however, the rules regulating the condominium are registered at the Land Registry once approved by the General Meeting of the Condomini. The Condominium Act, however, vested legal and judicial representation of all the Condomini, in the office of the Administrator because the condominium has no legal personality. Several problems arose because of the absence of legal personality particularly when opening, operating, and keeping the bank account of the condominium. The problems may be resolved if the Condomini apart from registering the rules are allowed to register a legal entity which in their contracts is often referred to as an owners' association vested with legal personality expressly recognised by the Condominium Act having the Condomini as its members and managed and represented by the Administrator. A new Article may be added in the condominium Act providing for the creation of a legal person without share capital whose members are the Condomini. The legal person may be created by the deed of sale or a statute which includes the rules of the Condominium. The statute and or rules will be registered in accordance with the provisions of the condominium Act. The amendment will benefit especially large complexes or condominia. The legal person recognised by the Condominium Act may have a committee of representatives duly appointed each year by the General Meeting of the condomini vested with functions to serve primarily as a liaison / point of reference between the Condomini and the Administrator.

4. The Office of the Administrator

4.1 No doubt, an Administrator is appointed as a matter of trust and competence. The Condomini entrust him with the control and management of their condominium.

The Condominium Act will be amended to distinguish between a firm or individual providing the service of an Administrator on a professional basis and a co-owner who is elected to act as an Administrator on a non-professional basis.

A Register of Condominium Administrators will be established under the responsibility of the Regulator and certain basic criteria will be set which will entitle an individual or a professional service provider to have his name entered in this Register of Administrators. Hence, amendments to the Condominium Act will be introduced to ensure that:

- a. An Administrator is at least eighteen (18) years of age and is not interdicted nor incapacitated according to law.
- b. He must not be insolvent or bankrupt.
- c. An Administrator, for the very reason of stepping into such a role, will be bound by fiduciary obligations [vide Article 1124A of the Civil Code (Cap. 16, Laws of Malta)] which *inter alia* require the Administrator to carry out his functions with the diligence of a *bonus pater familias*, observe confidentiality and privacy rules and declare any conflicts of interest.
- d. Persons convicted of any of the crimes (e.g. fraud, theft, misappropriation) mentioned in Titles V, VI and IX of Part II of Book First of the Criminal Code in the previous ten years or persons who have been interdicted by order of any court in Malta in terms of the Criminal Code, or overseas under laws of equivalent effect, shall not be eligible for appointment to the office of Administrator.
- e. Persons convicted of any offence involving money laundering or the funding of terrorism shall not be eligible for appointment to the office of administrator or, if already appointed, shall not be eligible to retain such office.

4.2 An Administrator will be required to have the necessary level of education being not less than at being in possession of a school leaving certificate and certified to have obtained specialised training relating to condominium law, finance and property management as the Regulator may recognise from time to time.

4.3 Professional Indemnity insurance cover will become a requirement for service providers who carry out their functions on a professional basis.

4.4 Timeframes will be introduced particularly in a situation where there is a change in Administrator to ensure a speedy and efficient handover to the new appointee.

5. Insurance

Article 14 (5) and (7) grants the discretion to the Condomini to obtain insurance cover limitedly "in respect of damage and, or destruction" of the condominium. Consideration will be given to make the **obtaining** and **maintaining** of insurance cover of the common parts obligatory and the risks which could cause damage or destruction of the

condominium are to be better defined especially where third parties are involved. With the Condominium Act recognising the Association as having a legal personality of its own, it would be easier to have the insurance contract / policy concluded on its own behalf and on behalf of the owners.

6. Procedures of the Meeting of the Condomini

The procedures for holding General and Extraordinary Meetings of the Condomini also require updating particularly provisions dealing with notifications and the manner they are accomplished, proxies, participation in the meeting by physical presence, videoconference or by any other means of electronic communication which allows identification of the condominus concerned. New provisions will cover the appointment of the committee of representatives when a condominium of large complexes is concerned.

7. Documents

7.1 Not Applicable

8. Submission of feedback should be received through the following channels:

- **E-mail:** <https://publicconsultation.gov.mt>

9. Specify if this Public Consultation is Legislative (Green Paper / White Paper / Law to be amended / Legal Notices) or Non-Legislative (Policies / Projects / Initiatives / Strategies):

9.1 Legislative

Contact Person and email address:

Expert and email address:

A YouTube video url: Not applicable

Attach image / banner: Not applicable

Data Protection Statement the General Data Protection Regulation and the Data Protection Act (Chapter 586)

The General Data Protection Regulation and the Data Protection Act Chapter 586 regulate the processing of personal data whether held electronically or in manual form. The Ministry for Public Works and Planning collects only information which is necessary for it to perform its intended functions and is set to fully comply with the Data Protection Principles as set out in the Data Protection Legislation. Verification of the ID number provided will take place as deemed necessary. All personal data provided will be processed according to the General Data Protection Regulation and the Data Protection Act (Cap 586).

In addition, please be aware of:

- Disclosure under the Freedom of Information Act (Chapter 496)

As we are a public authority all documents we hold, including documents related to this public consultation process, may be released following a request to us under the Freedom of Information Act (Chap. 496), unless such request may be subject of an exemption arising from the same Act.