

**Position of the Chamber of Engineers on the proposal by the Ministry of Transport, Infrastructure and Capital Projects (MTIP) to field an amendment to Bill No. 205 at Committee Stage which seeks to explicitly state, in line with the present article 10 of the current act, that engineers employed in the public service are exempt from taking out insurance as it is considered that such activities undertaken as part of their service is already covered by Government.**

The Chamber has evaluated the proposal from MTIP and, given the subject of the amendment proposed, the Chamber sought to consult with *Union Periti u Inġiniera tas-Settur Pubbliku* (UPISP) given that the trade union directly represents the interests of *Inġiniera* employed with the public sector (i.e. Government). Therefore, this position is considered to reflect the feedback from UPISP and is being stated to ensure that the amended act also safeguards the rights of these *Inġiniera*.

The legislative text which MTIP proposed for inclusion in Bill 205 is identically quoted from Article 18(3) of the [Periti Act](#):

*“(3) The provisions of sub-article (1) shall not apply to a warrant holder who is employed by the public administration in respect of any activities or services, which according to the Laws of Malta may only be rendered by a warrant holder, and which he provides in the name of the public administration within the scope of his employment and this because the public administration is responsible for the obligations of the warrant holder that arise from sub-article (1), even if such employee does not remain employed in the public administration:*

*For the purpose of this sub-article, "public administration" means the Government of Malta including the ministries and departments, the specialised bodies and the agencies, Government entities and the organizations in which Government has a controlling interest, whether or not such organization is established by law.”*

The Chamber appreciates that Article 10 of the current Engineering Profession Act provides for an exemption to Government employees but remarks the following:

- Tied only to time during which the Inġinier is employed by Government
- Does not specify that the Government is responsible for providing indemnity to the Inġinier
- Does not specify the definition of “employed with the Government”.

Furthermore, Bill 205 as published on 30th March 2021, is not catering for this exemption. This amendment is received as an opportunity to preserve existing safeguards in Cap.321 and further consolidate Bill 205.

**The Chamber of Engineers agrees in principle with MTIP's proposal which shall ensure that Government provides *Inġiniera* it employs, including those in public entities, with the indemnity required with respect to their professional duties on behalf of the Government. This should mean that Government *Inġiniera* who do not perform private professional practice shall not need to**

**subscribe to professional liability insurance, and those who perform private professional practice will need to subscribe to such insurance solely covering their private practice.**

Further to the above, the MTIP is hereby requested to note the following recommendations for consolidation of this newly proposed amendment into Bill 205;

- The proposed amendment should be part of the provisions of Article 9 (*Provisions applicable to special licence*) of Bill 205 rather than Article 11 (*Prohibited Agreement*). The text is recommended to be added as subarticle (3) to Article 9. The existing subarticle (3), which includes the definitions for article 9, can then be renumbered as subarticle (4) and also include the definition of “public administration”. The result for article 9 would be as follows:
  - 9(1) establishes the requirement for insurance
  - 9(2) establishes the requirement to provide the Board with attestations of insurance cover for those persons to whom article 9(1) introduces an insurance obligation
  - 9(3) provides an exemption from 9(1) and by implication from 9(2) for Government employees
  - 9(4) defines terms for article 9 including the term "public administration".
- The explanatory text for Article 9 should be updated from *"Provisions applicable to special licence"* to a more appropriate title such as *"Provisions related to indemnity insurance applicable to warrant and special licence"*. Currently this gives the impression that indemnity insurance is required only to holders of “special licence”
- Article 9(2) in Bill 205 states that *"Every person established in Malta shall be bound to be covered by a professional liability insurance..."*. The words “shall be” are to be evaluated from a legal standpoint to ensure the mandatory provision does not conflict with the provision of exemption being introduced.
- The Chamber’s legal counsel recommends changing *"and this because the public administration is responsible for" shall be substituted by the words "owing to the public administration being responsible for..."* in view of use of the legal terms.

The Chamber of Engineers trusts the above feedback will be accurately considered as part of the continued dialogue on this important topic for the Engineering Profession.

As a Chamber, we will continue supporting the due process in place as regards the amendments to the Engineering Profession Act.



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