

**Common Provisions for the  
Regulation of Funds under  
Article 32 of the  
Environment Protection Act**

## Article 1. Definitions

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For the purposes of these Provisions:

‘Act’ means the Environment Protection Act (Cap. 549);

‘Applicant’ means the lead beneficiary who is applying for the grant;

‘Associated Beneficiary’ means the legal person, entity or organisation who is participating in the project in cooperation with the lead beneficiary;

‘Authority’ or “ERA” means the Environment and Resources Authority as established under the Act;

‘Beneficiary’ means the legal person, entity or organisation who is benefitting from the grant;

‘Committee’ means the Evaluation Committee set up under article 5 hereunder;

‘ERA Board’ or ‘Board’ means the Environment and Resources Authority Board as established under the Act;

‘Fund’ means the Environment Fund as established by article 32 of the Act or any other Fund established as per article 32(9) of the Act;

‘Lead Beneficiary’ means the main beneficiary and participant in the project;

‘Minister’ or ‘Ministry’ means the Minister or Ministry responsible for the environment;

‘Participant’ means the natural or legal person, entity or organisation who is participating in the project, including the beneficiary.

## Article 2. Role and Scope of the Fund

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(1) The Fund shall be administered by the Authority, both to finance its own activities in line with its remit, as well as to fund projects from external entities.

(2) The Fund shall be used to finance clear and concrete actions in terms of environmental improvement, including:

(a) Projects, programs and schemes related to, and costs intended to achieve and manage, the aims and objectives of the Act;

(b) Studies, as well as works which may be needed for that purpose or to remedy any harm caused to the environment; and

(c) Other related projects as the Authority may prescribe from time to time;

(3) The Fund covers, *inter alia*, the following themes:

- (a) Safeguarding ambient quality, including air quality, environmental noise, chemical and radiation;
- (b) Using resources efficiently and sustainably, including stone, fresh waters, coastal and marine areas, soil, land and waste;
- (c) Improving the local environment, including greening urban areas and quality of countryside;
- (d) Biodiversity and nature protection;
- (e) Geological, geomorphological, hydrological, edaphic and other features and areas containing them.

### **Article 3. Financial Provisions**

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(1) There shall be paid into the Fund:

- (a) any sums appropriated by Parliament for the purpose;
- (b) any donations or grants made to the Fund by individuals or institutions;
- (c) sums received by the Authority for the purpose of being placed in the Fund;
- (d) such other sums or monies as may from time to time be provided by or under the Act or any Regulations made thereunder.

(2) The Authority shall implement all relevant safeguards to ensure that the implementation of these provisions does not result in any actual or perceived conflict of interests in the performance of its regulatory functions, and does not otherwise tarnish its reputation or public trust. Such safeguards shall include, inter alia and as deemed most relevant:

- (a) appropriate functional and operational separation;
- (b) internal administrative firewalling; and
- (c) rejection of donations or grants offered to it, financially or in kind, which may introduce a likely or foreseeable conflict of interests.

### **Article 4. The ERA Board**

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(1) The ERA Board shall have proper administration of the Fund.

(2) In this regard, the role of the Board shall be:

- (a) to determine eligibility criteria of applicants;
- (b) to decide thematic and eligibility criteria for the selection of projects;

- (c) to issue calls for applicants;
  - (d) to oversee the setting up of a technical Evaluation Committee;
  - (e) to be informed of the final ranking list;
  - (f) to allocate funding and issue grant agreements accordingly; and
  - (g) to endorse disbursements, provided that this function may be delegated to the Chief Executive Officer of the Authority.
- (3) The decisions of ERA are not subject to reconsideration.

## Article 5. Evaluation Committee

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- (1) An Evaluation Committee will be set up each time a call is issued in order to undertake a technical evaluation of the applications received.
- (2) The Evaluation Committee shall be made up of five (5) or six (6) persons as follows:
- (a) one (1) chairperson to be nominated by the Authority;
  - (b) one (1) official from the Authority;
  - (c) two (2) experts as relevant to the call;
  - (d) one (1) nominee from ERA Board; and,
  - (e) one (1) nominee from the Ministry in the case of co-funding through the Ministry.

The nominees from the Authority and the experts will be appointed by the Chief Executive Officer of the Authority.

- (3) The functions of the Evaluation Committee shall be:
- (a) to technically evaluate all applications received; and
  - (b) to make final recommendations on the applications through a report with rankings which should be adopted upon consensus or failing which, through a majority vote.
- (4) A secretariat within ERA will oversee the evaluation process and will attend meetings of the evaluation committee and act as committee secretary, in order to ensure the correct application of these Provisions and applicable Guidelines.

## Article 6. Calls for Applications and Eligibility Requirements

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- (1) The ERA Board shall issue calls for applications through the Authority's website or by other means of publication.

(2) The call for applications shall include details on the type of projects required, the thematic area of focus in line with article 2(3) of these Provisions, eligibility criteria for applicants, and the closing date.

(3) The applicant must satisfy the following minimum requirements to be eligible for further assessment:

- (a) The applicant must be eligible in terms of article 7(3) and (4) of these Provisions;
- (b) The proposed project must directly address one or more of the focus areas outlined in the call for applications;
- (c) The applicant must present a complete Application Form; and
- (d) The applicant is required to submit a copy of any environment and/or development permit required by national law for the proposed project.

The above eligibility criteria are further defined and detailed in the 'Guidelines for Applicants'.

(4) Applicants shall be notified as to whether their proposal shall be considered eligible or not within one (1) month following the closing date of the call for applications.

## **Article 7. Eligible Participants**

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(1) Projects under the Fund must involve a lead beneficiary, and may also, but not necessarily, involve the participation of associated beneficiaries, co-financiers and sub-contractors.

(2) The Applicant for such projects will take over the function as lead beneficiary should the project be accepted/granted. The relevant participants will act as associate beneficiaries with the exception of co-financiers and sub-contractors.

(3) Beneficiaries must be either, or a combination, of the following:

- (a) public entities, including Local Councils and bodies and associations governed by public law;
- (b) private companies, partnerships or any other body corporate lawfully established and which has legal personality distinct from that of its members;
- (c) voluntary organisations established in accordance with the Voluntary Organisations Act (Cap. 492); and
- (d) public or private educational institutions.

Provided that the lead beneficiary shall in all cases registered or otherwise governed by the Laws of Malta.

(4) The call for applications may specify the target beneficiary type, as applicable.

## Article 8. Role and Obligations of the Beneficiaries

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(1) The lead beneficiary shall:

- (a) monitor that the project is implemented in accordance with the grant agreement;
- (b) be the intermediary for all communications between the beneficiaries and the Authority, and notify the Authority promptly of any change in the name, address, legal representation as well as in the legal, financial, technical, organisational or ownership situation of any of the beneficiaries;
- (c) conclude with all associated beneficiaries, agreements describing their technical and financial participation in the project in accordance with the grant agreement;
- (d) report directly to the Authority on the technical and financial progress of the project as per the grant agreement;
- (e) make the appropriate arrangements for providing any financial guarantees required under the grant agreement;
- (f) if applicable, find the necessary resources to ensure correct implementation of the project if an associated beneficiary or co-financier reduces its financial contribution; and
- (g) receive payments on behalf of all of the beneficiaries and ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay.

(2) The lead beneficiary shall not subcontract any part of its management responsibilities referred to in paragraph 1 above to the associated beneficiaries or to any other party.

(3) Each associated beneficiary shall:

- (a) inform the lead beneficiary immediately of any change likely to affect or delay the implementation of the project, and of any change in its legal, financial, technical, organisational or ownership situation and of any change in its name, address or legal representation;
- (c) submit to the lead beneficiary:
  - (i) the data needed to draw up the reports, financial statements and other documents provided for in the grant agreement;
  - (ii) all the necessary documents in the event of audits or other checks; and
  - (iii) any other information to be provided to the Authority according to the grant agreement;
- (d) benefit from the financial contribution from the Authority according to the agreement under paragraph 1(c) above;
- (e) be jointly and severally responsible for carrying out the project in accordance with the terms and conditions of the grant agreement.

(4) The lead beneficiary and the associated beneficiaries shall maintain up-to-date books of accounts. For the sake of traceability of expenditure and income, an analytical accounting system (cost centre accounting) shall be put in place. The lead beneficiary and the associated beneficiaries shall retain, throughout the project and for at least five (5) years after the last payment, all appropriate supporting documentation for all expenditure, income and revenue for the project as reported to the Authority, such as tender documents, invoices, purchase orders, proof of payments, salary slips, time sheets and any other documents used for the calculation and presentation of costs. This documentation shall be clear and precise, and shall be submitted to the Authority when requested. The lead beneficiary shall retain copies of all supporting documents of all the associated beneficiaries.

(5) The lead beneficiary and the associated beneficiaries shall ensure that all invoices include a clear reference to the funded project.

(6) The lead beneficiary and the associated beneficiaries shall not act, in the context of the project, as subcontractor or supplier to other beneficiaries.

(7) The lead beneficiary and all associated beneficiaries undertake to take all the necessary measures to prevent any risk of conflicts of interest that could affect the impartial and objective performance of the grant agreement.

(8) Within one (1) month from the termination of the grant agreement, the lead beneficiary is obliged to submit to the Authority:

- (a) a detailed report of the activities undertaken;
- (b) the aim and what field of work or activity was carried out;
- (c) the methodology employed; and
- (d) the outcome and results achieved in connection with the project.

(9) Where the implementation of the action requires the procurement of services for specific tasks of a fixed duration or a purchase of durable goods, the beneficiaries may enter into agreements with subcontractors, who shall not be considered as associated beneficiaries. In this regard, beneficiaries must adhere to the Public Procurement Regulations (S.L. 174.04). The subcontractor shall not benefit from any intellectual property rights arising directly from the project. All invoices issued by subcontractors must bear a clear reference to the funded project.

## **Article 9. Grant Agreement**

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(1) After an applicant has been chosen for funding, a grant agreement shall be established.

The relationship between the Authority and the participants of a project shall be governed by such grant agreement and shall specify:

- (a) the details of the approved project and the participants;
- (b) the start and end date of the project;
- (c) the reimbursement rate;
- (d) the details of the financial guarantee; and
- (e) any conditions that the Authority deem fit.

(2) The lead beneficiary must inform the Authority without delay of any changes to the project as detailed in the grant agreement. Changes that would fundamentally alter the overall objectives of the project, or that would call into question the grant award decision or that would be contrary to the equal treatment of applicants will not be accepted.

(3) Postponement of the start or end date of a project may be granted only in unforeseeable, exceptional circumstances that make the implementation of one of more project actions impossible for a certain period of time.

(4) If the grant agreement is terminated prior to its completion by the beneficiaries for a justifiable cause, payments by the Authority are limited to actual costs incurred by the beneficiaries and the actual level of implementation of the action on the date when the termination takes effect. If termination is deemed unjustified, the Authority must specify the grounds thereof, and may recover amounts paid, in proportion to the gravity of the failings in question.

(5) The grant agreement, or the participation of one or more of the beneficiaries, may only be terminated by the Authority in the following circumstances:

- (a) if a change in a beneficiary's participation or legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the grant agreement substantially or calls into question the decision to award the grant;
- (b) if the beneficiaries fail to comply with any obligation incumbent on it under the terms of the grant agreement;
- (c) if it becomes manifestly clear that the project will not achieve its objectives;
- (d) if a beneficiary or any natural person who has the power to represent the beneficiary or to take decisions on its behalf, has been found guilty of professional misconduct proven by any means, or has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity; or
- (e) if the Authority has evidence that a beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant agreement.

In the above cases, the Authority may recover amounts paid to the beneficiaries.

(6) Neither party shall be entitled to claim compensation on account of a termination by the other party.



(7) A beneficiary declared to be in grave breach of its obligations under the grant agreement shall be liable to penalties under article 16 of these Provisions.

(8) The Authority may carry out an audit upon completion of the project and this will be financed by the grant itself (a percentage of the grant awarded [2-5%] will be retained by ERA for auditing purposes).

## **Article 10. Financial Contribution to the Project**

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The amount of the financial contribution shall be determined by applying the reimbursement rate specified in the call for applications to the eligible costs actually incurred as approved by the Board.

## **Article 11. Eligible Costs**

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(1) To be considered eligible, costs must be:

- (a) provided for in the budget of the project or have been authorised through an amendment to the grant agreement;
- (b) directly linked to, and necessary for, carrying out the project covered by the grant agreement;
- (c) reasonable, justified and compliant with the principles of sound financial management, in particular in terms of economy and efficiency;
- (d) compliant with applicable tax and social legislation; and
- (e) actually incurred during the lifetime of the project, as defined in the grant agreement, be recorded in the coordinating beneficiary's or any associated beneficiaries' accounts or tax documents, and be identifiable and verifiable.

(2) Employee salaries and other similar costs as outlined in the 'Guidelines for Applicants' are not eligible for funding.

## **Article 12. Method of Payment**

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The financial contribution from the Authority shall be paid in two (2) or more instalments:

- (a) A first pre-financing payment, up to a maximum of 70% (depending on the size of the grant) of the total Fund's financial contribution to be paid within 30 days commencing on the day of the receipt of:
  - (i) the grant agreement signed by the Authority and the beneficiaries;

(ii) the signed payment request stating the name and address of the lead beneficiary, the name and address of the bank, the bank account details, and the project reference;

(iii) a financial guarantee, where applicable; and

(iv) any other documentation that may be required by the Authority.

(b) The balance shall be paid in one (1) or more instalments subject to the scope and duration of the said project, as well as the Fund's total financial contribution, and further subject to the receipt of the required reports.

(c) In all cases, a final disbursement of 30% or more shall be made on the approval of the final report and deliverables.

### **Article 13. Confidentiality**

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(1) The Authority, the Evaluation Committee and the beneficiaries undertake to preserve the confidentiality of any document, information or other material communicated to them in confidence, disclosure of which could harm another party, and to respect any rules on copyright in this regard in accordance with the Copyright Act (Cap. 415). The parties shall remain bound by this obligation for five (5) years after termination of the grant agreement. All applicable national and EU copyright rules must be respected.

(2) In no case may the following information be kept confidential:

(a) the name and address of the beneficiaries;

(b) the site or area involved;

(c) the aim and purpose of the project;

(d) the benefits arising from the project;

(e) the evaluation of foreseeable effects, including any harmful effects on the environment.

### **Article 14. Public Access to Environmental Data and Information**

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(1) Without prejudice to article 13 of these Provisions, in the case of requests for environmental information relating to projects or grants, the provisions of the Freedom of Access to Information on the Environment Regulations (S.L 549.39), including the definitions and rights of refusal referred to therein, will apply.

(2) If the request concerns data or information in the course of completion, the Authority may state the name of the lead beneficiary preparing the requested information and the estimated time needed for completion in accordance with regulation 7(1)(c).

## **Article 15. Civil liability**

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(1) The Authority may not, under any circumstances or for any reason whatsoever, be held liable in the event of claims deriving from the grant agreement concerning any damage or injury while the project is being carried out.

(2) The lead beneficiary and associated beneficiaries shall assume sole liability towards third parties, including for damage of any kind sustained by them while the project is being carried out.

## **Article 16. Penalties**

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In cases of breach of the grant agreement, contractual penalties shall apply as contained within the grant agreement.