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# GOVERNMENT PROPERTY DIVISION

## Land Department

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### INTRODUCTION

The Land Department's role within the Government Property Division is the legal aspect of government property management. This means that after the Estate Management Department or Joint Office has decided on the best possible use of a particular property, the issue is taken over by the Land Department for the actual disposal of the property under the procedures permitted in the Disposal of Government Land Act.

In general terms, the formal disposal of government property requires either the issue of a call for tenders or else an *ad hoc* Parliamentary Resolution. It is the Land Department's task to prepare tender documents, publish them and award the disposal. Likewise *ad hoc* Parliamentary Resolutions are prepared by the department. Subsequent to the disposal of a property through lease agreements/contracts, the Land Department is then responsible for the follow-up and enforcement of any conditions imposed on the transferee. These include the payment of rent and the proper maintenance of the property but may also contain other special conditions such as the development of structural improvements within specified time limits. The finalisation of contracts also includes those related to the acquisition of private property for a public purpose under the auspices of the Land Acquisition (Public Purpose) Ordinance. Indeed the expropriation of private property is a primary task of the Land Department, one which enables government to carry out major infrastructure works and other projects of benefit to Maltese society.

The Land Department is organisationally split up into two branches, namely the Enforcement Branch and the Contracts Branch; between them, these cater for the wide ranging roles entrusted to the department. As the names suggest, the former is responsible for all enforcement measures required to better manage government property, whilst the latter takes care of the formal requirements of leasing or selling/purchasing property and finalising related contracts.

### Enforcement

The enforcement of contractual conditions is essential if property management is to be given any significance. Within this aspect a very small number of Enforcement Officers carry out site checks to ensure that conditions of lease are being honoured. Non-compliance is met by counter measures to ensure that defaulters are brought back on track. These measures include formal warnings, the issue of prohibitory injunctions and also eviction proceedings. In this regard Chapter 228 of the Laws of Malta - Land (Compulsory Eviction) Act – gives the Land Department extensive powers to evict persons who occupy government property without title. This power is used with caution but the Land Department is committed to ensure that no abuse is made of government property..

The enforcement section incorporates the collection of rent due on leased property. The non-payment of rent is monitored through periodical invoices and also through individual demand letters. Persistent non-payment leads to judicial action that may include executive warrants, the termination of leases and, in the more serious cases, eventual eviction.

During 2007, over 23,000 payments which represent 51% of the total payments of rent, were effected at Local Councils, while 1,000 payments, which represent 2.22% of the total payments were made through the Government Property Division's web site ([www.gpd.gov.mt](http://www.gpd.gov.mt)). Clients have three options

for the payment of rent:- at the department by cheque or bank draft, at the Local Councils by cash, cheque or bank draft and from their homes by credit card through the GPD's web site.

## **Contracts Branch**

The role of this branch is the formalisation of any disposal or acquisition of property.

As already indicated, the Disposal of Government Land Act stipulates that government property can generally be disposed of either through tenders or through a special Resolution of the House of Representatives.

The publication of tenders necessitates continuous liaison with the Estate Management Department and the Joint Office to ensure that the appropriate conditions are set out in the tender. To ensure maximum publicity to tenders, relative adverts are made on a number of local newspapers apart from the Government Gazette. Transparency is ensured by opening all tender documents in public.

Government has for decades made use of the provisions of the Land Acquisition (Public Purpose) Ordinance (LAO) to enable it to take over private property without having finalised acquisition proceedings. The lack of property ownership information in Malta makes the whole acquisition process cumbersome and time consuming. It is one thing declaring a property to be required for a public purpose under the aegis of the LAO, but a completely different matter to actually enter into a deed of transfer. The whole process formerly involved the identification of owners (perhaps the most difficult part of the whole process), their root of title, the issue of a notice to treat to offer a specific price for the property, litigation in front of the Land Arbitration Board, agreement on the compensation due and the final settlement through the publication of an acquisition contract. Upon publication of the contract government must pay damages based at 5% per annum on the price from date of taking over of the property up to the date of publication of contract. The damages are calculated on the price specified in the notice to treat, which price is estimated on the market value at the time the notice to treat is issued. Due to delay in establishing the root of title, the price of property inclusive of damages has through the years resulted in outstanding exorbitant acquisition debts.

Since 1994, the department has limited the growth of the acquisition debt by requiring government departments that originate the need for the acquisition, to provide up front the full estimated value of the effected property. This ensures the payment on demand for any acquired property.

In its efforts to speed up the acquisitions process the Land department has between 1996 and 2002 farmed out to lawyers in private practice the task of carrying out legal researches to prove the root of title. This has had positive results by reducing related time wastage but still the establishing of the root of title depended on third parties claiming to be the owners in making available the required documents in order to prove their title. The 5% damages was guaranteed and third parties took advantage by prolonging submission of the required information in order to benefit from the ever increasing property market prices on which the 5% damages per annum are payable. Lack of funds and lack of human resources have also contributed to this situation in that the department was constrained to limit the issue of notice to treat since once a notice to treat is served, payment must then be made. However in an attempt to extinguish the accumulation of the acquisition debts, during the last five years additional funds have been provided, and between 2002 and 2007 over €57 million (Lm24.5 million) have been paid for expropriated property.

In 2002, Government amended the Land Acquisition (Public Purpose) Ordinance in order to minimise the problem and once and for all stop the financial haemorrhage. Under these amendments the value is part of the President's Declaration and Government becomes the owner immediately when the President's Declaration is published in the Government Gazette. Within a period of 15 days the department deposits the value in an interest bearing account at a Bank. It would then be up to the owners to prove title to the property. When the owners prove their title, the department concludes the

contract and pays the money deposited plus accrued interest. At the same time the owners may still proceed to the Land Arbitration Board to contest the price.

In accordance with the provisions of these amendments, the department can also (a) process past outstanding acquisitions in the manner set out above thereby stopping the accumulative 5% damages, (b) purchase property acquired under the title of *possession and use* by capitalising the yearly rent at 1 % and (c) purchase property acquired under title of *public tenure* by capitalising the yearly ground rent at 1.4%.

These amendments which came into force in March 2003 will not only minimise the expropriation debt but will enable government to draw up the long outstanding H.O.S. plots contracts and dispose of residences within Housing Estates constructed on land still under acquisition. Under these amendments a total of 147 bank accounts have been opened in 2007. The total sum deposited amounts to €57,069,648 (Lm3,047,664).

## **2007 HIGHLIGHTS**

In 2007 the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268) which regulates the disposal of property through a 'direct allocation' in certain circumstances, without the need of going to tenders or an *ad hoc* Parliamentary Resolution, has been amended to allow:-

- (a) the transfer of leased commercial premises to children or grandchildren directly involved in the business by the tenant before reaching retirement age;
- (b) the redemption of property held in perpetuity and subject to a revision of the ground rent prior to the date of revision of such ground rent.

The Land Department continued in its efforts to maximise the use and return on government property. The major efforts include the following.

### ***Revenue Collection***

During 2007, no less than 69,000 rent invoices, 230 judicial letters, and 56 lease termination warnings were issued to ensure timely recovery of rent dues. To these one has to add other efforts such as telephone contacts and on site collections by the department's enforcement officers. About 67 repayment agreements were also negotiated with defaulters. This has resulted in a total revenue in 2007 of €21,411,600 (Lm9,192,000) excluding sales.

### ***Evictions***

These constitute a strong deterrent against abuse of government property. A total of 157 evictions were carried out with the full co-operation and assistance of the Commissioner of Police and the Ministry for Resources & Infrastructure when demolition of property was involved.

### ***Tenders, Leases and Sales***

The Land Department advertised a total of 276 tenders for the lease of government property. These resulted in 76 lease agreements and 100 contracts. A total of 395 lease agreements were concluded in terms of the Agricultural Scheme. 297 encroachment permits were issued. These included permits for Mobile Kiosks and permits for the placing of tables in public areas. The Land Department also completed the sale of government land/property resulting in a revenue for 2007 of €12,633,822 (Lm5,423,700).

### ***Acquisition***

The Department finalised a number of acquisition deeds paying a total of €13,312,750 (Lm5,715,000) to owners of expropriated property. 77 new President's Declarations for the expropriation of land mainly for Road formation being financed by the Italian Protocol have been issued. 66 President's Declarations of past outstanding acquisitions in order to compensate the owners in accordance with the amendments made to the Land Acquisition (Public Purpose) Ordinance (Chapter 88) have also been issued.

### ***Releases***

A total of 43,518 square meters of land in various localities formerly acquired in virtue of the Land Acquisition (Public Purpose) Ordinance (Chapter 88) has been released back to the private owners.

### ***Euro Change over***

As a result of the Euro changeover the Land Department in conjunction with the Estate Management Department and MITTS carried out the necessary conversion changes to the Revenue Collection System. A new invoice template was introduced and a machine for the folding and insertion of invoices in envelopes was purchased.

### ***Free of Charge Services***

The Land Department has continued to provide, free of charge, agency services to the Housing Authority. Within these services, the total sum collected on behalf of the Housing Authority was €326,811 (Lm140,300). The sum of €61,262 (Lm26,300) was collected as rent for sports facilities on behalf of the Sports Council.

## **CONCLUSION**

The Land Department's role in ensuring that the use of government property is appropriately controlled is considered to be of utmost importance. This will help in inducing a rationalisation culture that appreciates the true potential value of government property and its possible uses. The other major task, which the department is tackling seriously, is the Acquisition debt problem and in 2008 the department shall continue to explore further avenues in order to extinguish payments for land expropriated in the past.

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