

MINISTRY OF FINANCE, THE ECONOMY & INVESTMENT

Government Property Division

Auberge de Baviere, Valletta

POLICY ON THE DISPOSAL OF NON-RESIDENTIAL GOVERNMENT PROPERTY
THRO' LETTING, RE-LETTING & EMPHYTHEUTICAL CONCESSIONS

Effective from 1st August 2001
(Includes amendments made up to January 2006)

DISPOSAL OF NON-RESIDENTIAL GOVERNMENT PROPERTY THRO' LETTING, RE-LETTING & EMPHYTEUTICAL GRANTS

- Object 1. This policy relates to all government property which is **non-residential** and includes shops, stores, garages and boathouses. It shall apply to all new disposals and re-letting agreements entered into after 1st August 2001.
- Disposal method 2. Disposal is to be carried out in accordance with the Disposal of Government Land Act, and the Resolution approved by Parliament for the purposes of Article 3(1) (b) of same Act.
- Term of Lease 3. Unless otherwise directed by the Director General (Government Property), lettings are to be for a maximum period of fifteen (15) years, with a rental revision every five (5) years.
- and revision of rent
- 3.1 Revision of rental is to be carried out according to Index of Inflation.
- 3.2 Given that the Index of Inflation for a particular year is officially published the following year, the Index to be used for this purpose shall be those for the preceding year, both in respect of the base year and the year of revision.
- Purpose of Lease 4. Lease Agreements are to indicate the specific purpose of lease, e.g. shop, store, as declared in the tendering process.
- 4.1 Generic purposes such as “for commercial purposes” are to be avoided in the drawing up of lease agreements.
- 4.2 In the case of properties being leased as shops, the Lease Agreement need not specify the actual nature of the intended trading.
- 4.3 A condition has however to be included in Lease Agreement, that a change in the object of business as indicated in any trading license can only be carried out with the written permission of the Director Land and against an increase in rent in accordance with the Index of Inflation.
- Indemnity 5. Lease agreements are to ascertain that tenants shall indemnify and keep the government indemnified against all actions, proceedings, claims and demands brought or made against it, and all loses, damages, costs, expenses and liabilities incurred, suffered or arising directly or indirectly in respect of or otherwise in connection with anything related to the lease.
- Lease to entities 6. Lease Agreements involving properties leased to entities established under any law, such as established by Law. companies, corporations, societies, clubs etc. are to ascertain that individuals appearing in the name of the entity concerned are held responsible for any obligation or payment of rent under the agreement including any damage that can be incurred by government during the letting.
- 6.1 Any transfer “inter-vivos” of any shares in such entities shall require the written consent of the Director Land. This will only be granted against a revision in the rental in accordance with the Index of Inflation and the payment of a premium equivalent to the annual rent being paid or one thousand Malta liri [Lm1000.00] whichever is the highest.
- 6.2 The provisions in paras **6 & 6.1** are also to be reflected in the call for tenders if letting is being made by virtue of this instrument
- Transfer of Lease 7. Tenants of shops who wish to pass over their running tenancy to third parties, are permitted to enter into a lease transfer agreement with same third parties during the term of the lease.

- 7.1** Tenants entering such an agreement are to renounce to their tenancy rights prior to the issue of call for tenders.
- 7.2** Tenants are also to guarantee to Government that the rent being fetched at the time does not diminish until the end of the current lease.
- 7.3** The third party to the agreement is to be bound to respect all the conditions of the original Lease Agreement, unless otherwise specified.
- 7.4** In the eventual call for tenders, the third party is granted the right of first refusal, which right will also be indicated in same call.
- 7.5** The lease transfer agreement will specify a sum of money representing goodwill/improvements/furniture and fittings which the tenant expects to receive. The value of this will not be linked or in any way limited, but successful tenderer will be bound to pay to government 10% of the established value before the signing of the new Lease Agreement.
- 7.6** Calls for tenders may also be subjected to the lodging of a Bid-Bond, where this is considered necessary.

Amended -
7th Nov
2002

Disposal of a property already leased

- 8.** Tenants of a running lease/encroachees who renounce to their tenancy right/encroachment permit, so that tenders can be called for the disposal of the same property under any other title will be granted the right of first refusal. This right is to be reflected in the eventual call for tenders. In the case of encroachment, this provision shall only apply where the property in question has been held on encroachment terms for at least five years.

Amended
21st Oct 2004

Disposal of large property already leased

- 8.1** In tenancies, where the property consists of large entities within or immediately adjacent to development zones, same property is to be sub-divided into smaller developable properties (for example building plots), and the right of first refusal granted on only one of these sub-divided properties. Tenant has the right to choose that property on which he would prefer being given a right of first refusal.

Added -
26th Sept 2003

Extension of Lease to invest in property

- 8.2** Tenants of a running lease who intend to invest in the property leased to them may request to have this property granted on emphyteusis by means of a tender procedure, provided that all the obligations of the contract regulating the lease have been fulfilled. If this request is considered to be acceptable, the new emphyteutical grant shall be either for 25, 45 or 65 years duration linked directly to the value of intended permanent improvements as follows :-

Renumbered
26th Sept 2003

- improvements up to Lm150,000 will qualify for an emphyteutical concession of 25 years.
- improvements above Lm150,000 but below Lm350,000 will qualify for an emphyteutical concession of 45 years; and
- improvements above Lm350,000 will qualify for an emphyteutical concession of 65 years.

It will also be conditioned to :-

- (i) Improvements being carried out within 5 years from obtaining relative permits, such permits being applied for within a period of 6 months from commencement of emphyteusis.
- (ii) Ground rent being revised every 5 years according to the Index of Inflation.
- (iii) Grantee company (for as long as it does not become a public company with shares quoted on the Stock Exchange) remaining constituted by the present share holders (in the present proportions) and no transfer of shares by the present shareholders other than transmissions "causa mortis" being made without the prior approval of the Director Land, which approval will only be granted upon the payment of a sum of money equivalent to that proportion of the

current amount of groundrent being paid reflecting the number of shares transferred, plus 10% of the pro rata value of improvements and goodwill established as at (i) above. The share transfer shall also be subject to clearance by the Ministry responsible for Finance with regard to valuations of shares. (For the purposes of this condition, a 'share issue' other than an increase in shares in the same proportion as existing before the increase in shares, shall be considered as a transfer of the shares in the company, in the proportion that the new shares constitute in the shareholding of the company as enlarged).

- (iv) The emphyteutical immovable not being kept closed for a period greater than four continuous weeks per annum unless the prior written consent of Government is obtained.
- (v) The emphyteuta not being allowed to change nature of activity of business other than that stated in tender document, or enter into partnership, management, franchise or other similar agreements without the permission in writing of the Government. In such a case, and for each eventuality, Government will be entitled to a one time payment equivalent to that proportion of the ground rent being paid pro tempore, which reflects the area in square meterage being covered by such agreement as compared to the original area in square meterage contemplated in the original deed.
- (vi) The successful tenderer not being allowed to lease the immovable granted on emphyteusis without the prior written consent of Government, or to transfer part of the utile. In those cases where the whole of the utile is permitted to be transferred, a laudemium equivalent to one year's ground rent will be payable.

In such cases, the call for tenders will follow the same procedure as in para.7, 7.1, 7.4, 7.5 and 7.6. In the absence of a third party, the tenant will still be expected to renounce to his tenancy rights a priori and incur the payment envisaged in para. 7.5.

- 8.3. In the eventual call for tenders, ex-tenant/encroachee will have the option to specify a sum of money to reflect furniture and fittings intended to be left in the premises to form part of the new disposal. 90% of the sum will be paid by the successful tenderer to the ex-tenant/encroachee whilst the other 10% will be paid to government as payment for the service rendered. If the successful tenderer is the ex-tenant/encroachee, the 10% of the sum described above will still have to be paid to government.

-Adde-
21st Oct 2004

- Vacation of premises under tender
 - 9. It is to be ascertained that property not occupied under a valid title which is to be let through a call for tenders, is vacated prior to the issue of same call, and keys deposited with the Estate Management Department.
 - 9.1 In the case where an applicant is being granted the right of first refusal in accordance with this policy, there is no need for the keys to be deposited at the Estate Management Department as long as ex-tenant/occupier declares in writing that he is prepared to:
 - open premises for inspection by interested parties every time he is requested to do so even by virtue of a telephone call.
 - vacate the premises within a week of being requested to do so in writing, in the eventuality that he is not the successful tenderer.
 - 9.2 Provisions of 9.1 also apply in the case where premises are used to house animals (e.g. a farm) or in those cases where vacation of property will result in the lessening of the value of the property.
- Valuation.
 - 10. Prior to the opening of tenders submitted in any call it is to be ascertained that a valuation relevant to that particular tender is prepared by an architect.
 - 10.1. The valuation is to be sealed and put in the tender box, to be opened at the same time as the opening of tenders.

10.2. In the case of “open” tenders being called, that is, where tenders are called without referring to a specific purpose, no valuation is to be prepared prior to the issue of call, but a certification indicating whether the highest tender is fair and reasonable to Government or otherwise, is to be prepared by two architects, immediately after the opening of submitted tender.

10.3. Where the valuation prepared prior to the issue of a call for tenders is either deemed inadequate by government or is not reached by the highest tenderer after the call is issued twice, two other architects are to be asked to prepare a second valuation, to confirm or otherwise the first valuation.

Amended
28th Sep 2004

Transfer of Lease to children **11.** Tenants of premises leased for commercial purposes, who attain the age of 61 years may renounce to their tenancy and transfer same to any of their children or grand-children under a new lease. The conditions of the latter will be identical to the original lease, except for the rental which will be increased by 10% for every period of ten years or part of, that would have passed since the original rental was established.

Amended
17th June
2005

Transfer of Lease of boathouses & garages **12.** Persons considered by law to be the legatee or heirs of tenants of boathouses or garages, who are legally entitled to be recognised as lessees are to be recognised as such under conditions identical to those existing, except that the rent will be increased by 10% for every period of ten years or parts of, that would have passed since the original rental was established.

Alternative accommodation **13.** A person who enjoys a tenancy and is evicted from the property in the course of a project may be given alternative accommodation directly under the same tenancy rights as those he enjoyed before, where possible.

13.1 The property is to have as much as possible the same floor area that the previous property enjoyed.

13.2 The property is to be used for the same purpose as the property the evictee previously enjoyed.

13.3 The rental value of the property being allocated is to be fixed at time of allocation; however, the first three years are to be leased at the rate the evictee was paying before eviction, and the second three years are to be leased at half the new rental value. The full rental as fixed is to be charged from the seventh year onwards.

Extension of emphyteusis to invest in property **14.** Emphyteuta of a running emphyteusis who intend to invest in the property for which they hold the “utile dominium” may request to have the property granted on new emphyteutical terms by means of a tender procedure, provided that all the obligations of the contract regulating the emphyteusis have been fulfilled, and provided that the immovable is still being enjoyed by the original emphyteuta or any successive utilista. If this request is considered to be acceptable, the new emphyteutical grant shall be either for 25, 45 or 65 years duration linked directly to the value of intended permanent improvements as follows :-

- Improvements up to Lm150,000 will qualify for an emphyteutical concession of 25 years.
- Improvements above Lm150,000 but below Lm350,000 will qualify for an emphyteutical concession of 45 years; and
- Improvements above Lm350,000 will qualify for an emphyteutical concession of 65 years.

It will also be conditioned to :-

- (i) Improvements having to be carried out within 5 years from obtaining relative permits, such permits being applied for within a period of 6 months from commencement of emphyteusis.
- (ii) Ground rent being revised every 5 years according to the Index of Inflation.

- (iii) Grantee company (for as long as it does not become a public company with shares quoted on the Stock Exchange) remaining constituted by the present share holders (in the present proportions) and no transfer of shares by the present shareholders other than transmissions “causa mortis” being made without the prior approval of the Director Land, which approval will only be granted upon the payment of a sum of money equivalent to that proportion of the current amount of groundrent being paid reflecting the number of shares transferred, plus 10% of the pro rata value of improvements and goodwill established as at (i) above. The share transfer shall also be subject to clearance by the Ministry responsible for Finance with regard to valuations of shares. (For the purposes of this condition, a ‘share issue’ other than an increase in shares in the same proportion as existing before the increase in shares, shall be considered as a transfer of the shares in the company in the proportion that the new shares constitute in the shareholding of the company as enlarged).
- (iv) The emphyteutical immovable not being kept closed for a period not greater than four weeks per annum unless the written consent of Government is obtained.
- (v) The emphyteuta not being allowed to change nature of activity of business other than that stated in tender document or enter into partnership, management, franchise or other similar agreements without the permission in writing of the Government. In such a case, and for each eventuality, Government will be entitled to a one time payment equivalent to that proportion of the ground rent being paid pro tempore which reflects the area in square meterage being covered by such agreement as compared to the original area in square meterage contemplated in the original deed.
- (vi) The successful tenderer not being allowed to lease the immovable granted on emphyteusis without the prior written consent of Government, or to transfer part of the utile. In those cases where the whole of the utile is permitted to be transferred, a laudemium equivalent to one year’s ground rent will be payable.

In such cases, the call for tenders will follow the same procedure as in para. **7, 7.1, 7.4, 7.5 and 7.6**, except that the percentage payable to government will not be as in **7.5** but as follows:-

- 30% share of the sum so declared as representing goodwill / improvements / furniture and fittings, if more than 10 years still remain from the original emphyteutical concession.
- 40% share of the sum so declared as representing goodwill / improvements / furniture and fittings, if more than 5 years and less than 10 years still remain from the original emphyteutical concession.
- 50% share of the sum so declared as representing goodwill / improvements / furniture and fittings, if less than 5 years remain from the original emphyteutical concession.

In the absence of a third party, the tenant will still be expected to renounce to his tenancy rights prior and incur the payment envisaged above.

Property subject to emphyteusis

15. At the end of an emphyteutical grant where premises are occupied by the recognised emphyteuta, the premises will be disposed of through a call for tenders with the same emphyteuta being granted the right of first refusal. This right is to be reflected in the eventual call for tenders.

15.1. In the eventual call for tenders, ex-emphyteuta will have the option to specify a sum of money to reflect furniture and fittings not forming part of the emphyteutical grant but intended to be left in the premises to form part of the new disposal. 90% of the sum will be paid by the successful tenderer to the ex-emphyteuta whilst the other 10% will be paid to government as payment for the service rendered. If the successful tenderer is the ex-emphyteuta, the 10% of the sum described above will still have to be paid to government.

Offer tendered below estimated value

16. In a call for tenders, if all submissions are below the estimate prepared by the architect appointed by the department, then all of these are to be refused and a new call re-issued.

- 16.1.** In a call for tenders, where there is only one submission, the sole tenderer is to be requested to match the estimate, on the assumption that there was no other person who showed interest in submitting an offer.
- 16.2.** In a call for tenders, where it is being declared in the call itself that a right of first refusal will be granted, the tenderer to whom this right is being offered is to be requested to raise his offer to match the highest one, or in the case of **16** above, to match the estimate. Amended - 11th Dec 2001
- 16.3.** All adjudicated tenders except those for properties being **leased** for a value of five hundred Malta Liri [Lm500] or less are to be referred to the Director of Contracts. Amended - 17th June 2005
- 16.4.** Calls for tenders may also be subjected to the lodging of a Bid-Bond, where this is considered necessary. Added - 11th Dec 2001

- Right of first refusal **17.** In all calls for tender made for the letting of government property, the right of first refusal will be granted in the following cases:-
- (i) in the disposal of garage/garage sites, to the owner/emphyteuta/tenant of an adjacent dwelling house which can be intercommunicated with the same garage/garage site;
 - (ii) in the disposal of small areas that are not economically developable on their own, or that make more planning sense if amalgamated with adjacent property, to the owner of the adjacent property;
 - (iii) in the disposal of side/front/back gardens especially when the adjacent property enjoys servitudes on same, to the owner of the adjacent property;
 - (iv) in the disposal of sites required for street alignment, even if such property is developable on its own, to the owner of the property beyond the property offered for tender, if he has a legal right of access over such property;
 - (v) in the disposal of a property which is intended as an alternative to another property, where owner/tenant does not qualify for a direct allocation;
 - (vi) in the disposal of property which is required by authorities/corporations/companies in which government has a majority shareholding;
 - (vii) in the disposal of property required by Non-Governmental Organisations;
 - (viii) in the disposal of a Directum Dominium, to the emphyteuta/sub-emphyteuta currently enjoying the emphyteusis. Added - 7th Nov 2002
 - (ix) in the disposal of property required as an extension for an existing business, once tenderer requesting the right of first refusal convinces Government of the benefits which the economy of the country would derive from such an extension. Added - 29th Mar 2005
 - (x) in the disposal of property where a tenderer is entitled to be preferred under Section 1591, 1592, 1593 and 1594 of the Civil Code, unless, previously, a renunciation has been made to such right of preference by that tenderer. Amended - 19th Jan 2006

All other requests for the granting of a right of first refusal will be decided upon according to the merits of the request.

- Reletting of property originally contracted for more than one year **18.** At the end of a lease contracted for a period of more than one (1) year, the property may be relet to the same tenant without the necessity of a new call for tenders. The new lease has to be under identical conditions as the original one, except for the rental which will be fixed according to an ad-hoc valuation to be carried out by an architect at time of reletting; so however that such increase, under no circumstances, may be less than that reflected in the Index of Inflation. Added - 9th Jan 2002

18.1 In the reletting of premises, which are the subject of a lease granted by an ex-emphyteuta during a temporary emphyteutical grant which has since terminated, the property may be relet to the same tenant without the necessity of a new call for tenders. The new lease has to be under identical conditions as the original one, except for the rental which will be fixed according to an ad-hoc valuation to be carried out by an architect at time of reletting; so however that such increase, under no circumstances, may be less than that reflected in the Index of Inflation. This will apply only to tenancies originated at least ten years prior to the termination of the emphyteutical grant and involving tenants who are not ascendants or descendants in the direct line or spouses, or have any direct connection with the emphyteuta.

18.2 In the reletting of premises, originally granted as alternative accommodation, for a period of more than one (1) year, the property may be relet to the same tenant without the necessity of a new call for tenders. The new lease has to be under identical conditions as the original one, except for the rental which will be increased proportionately in accordance to the Index of Inflation.

Added -
28th Sep
2004

18.3 In all other cases, reletting can only be carried out through a call for tenders, giving the sitting tenant the right of first refusal, which right is to be reflected in the call.

Renumbered
28th Sep 2004

Reimbursement
of expenses

19. A call for tenders for the disposal of a property made following a request by an individual, will include as a condition, the payment of a sum of money, which is equivalent to the expenses incurred by that individual in procuring MEPA approval to permit development on same property. For this purpose, individual will be expected to submit official receipts and will only be reimbursed if he is not the successful tenderer.

Added -
28th Sep 2004

Perit John Sciberras
Director General (Government Property)

20th January 2006

N.B. Original Policy approved on 1st August 2001
Clarifications at **Para 16.2 & 16.4** amended on 11th December 2001
Para 18, 18.1 & 18.2 inserted on 9th January 2002
Para 7.5 amended on 7th November 2002
Para 17 viii inserted on 7th November 2002
Para 8.1 (new) inserted on 26th Sep 2003
Para 8.2 renumbered (formerly 8.1) on 26th Sep 2003
Para 10.3 amended on 28th September 2004
Para 18.2 (new) inserted on 28th September 2004
Para 18.3 renumbered (formerly 18.2) on 28th September 2004
Para 19 inserted on 28th September 2004
Para 8 amended on 21st October 2004
Para 8.3 inserted on 21st October 2004
Para 17 ix inserted on 29th March 2005
Para 11 amended on 17th June 2005
Para 16.3 amended on 17th June 2005
Para 17 x inserted on 17th June 2005
Para 17 x amended on 19th January 2006