CHAPTER 201

MORTMAIN ACT

To make new provision in respect of Mortmain, in substitution for the provisions of Mortmain Law.

(1st September, 1967)*

ACT XXVI of 1967 as amended by Act LVIII of 1974; Legal Notice 148 of 1975; Acts XIII of 1983, XIV of 1991 and IV of 1992; and Legal Notice 411 of 2007.

Short title.

1. The short title of this Act is the Mortmain Act.

Interpretation.
Amended by: XIV. 1991.2.

2. In this Act, unless the context otherwise requires -

"architect" includes a civil engineer;

"certified purpose" means the use specified in the certificate issued by the competent ecclesiastical authorities for the purpose of subarticle (1) of article 8;

"competent ecclesiastical authorities" means in relation to the Roman Catholic Church, the Archbishop of Malta or the Bishop of Gozo according to whether the immovable property is situate within the territorial limits of the diocese of Malta or of Gozo, and in relation to any other church or other pious or religious institution belonging to a denomination other than the Roman Catholic Church, the highest authority of that denomination in Malta as may be recognised by the Attorney General for the purposes of this Act;

"extended period" means any period as extended under article 4 or the period which is to run from the date of restoration referred to in article 9;

"immovable property" means any land or building, and includes the *dominium directum*, the *dominium utile*, the *nuda proprietas* or the right of usufruct of any land or building;

"Malta" means the Island of Malta, the Island of Gozo and the other Islands of the Maltese Archipelago;

"prescribed period" means -

(*a*) in relation to any immovable property which is acquired by any church or other pious or religious institution subject to the temporary right of usufruct in favour of one or more persons not being a church or other pious or religious institution, one year from the day of the cessation of such usufruct and its consolidation with the *nuda proprietas*;

(*b*) in relation to any immovable property which is acquired by any church or other pious or religious institution subject to the right of use in favour of one or more persons not being a church or other pious or

**See* Government Notice No. 573 of the 1st of September, 1967.

religious institution or subject to the right of habitation in favour of one or more persons, one year from the day of the cessation of such right of use or habitation;

(*c*) in relation to any immovable property, not falling under paragraph (*a*) or (*b*), which is acquired by any church or other pious or religious institution by title of legacy, one year from the day on which such church or other institution is given possession of such property or two years from the day of the death of the testator, whichever is the earlier;

(*d*) in relation to any immovable property not falling under paragraph (*a*), (*b*) or (*c*), one year from the day of acquisition of such property by the church or other pious or religious institution.

Immovable property acquired by churches or by other pious institutions to be disposed of within prescribed period.

3. No immovable property situate in Malta shall be considered as alienable to, or shall, under any title, be acquired by, any church or other pious or religious institution, except under the express condition that such property shall, within the prescribed period, be definitely and absolutely disposed of, by such church or institution, to some person or persons not subject to the above limitation.

Extensions of prescribed period.

4. Where it is proved, to the satisfaction of the Prime Minister, that it is not possible for a church or other pious or religious institution to dispose of any immovable property falling under the provision of the last preceding article within the prescribed period, the Prime Minister may, on application in writing by the administrator or other lawful representative of such church or institution, grant extensions of the prescribed period which do not exceed in the aggregate the total period of three years:

Provided that the Prime Minister may, on recommendation by resolution of the House of Representatives, grant further extensions beyond the said period of three years.

Forfeiture of immovable property in default of disposal.

5. Where any immovable property falling under the provisions of article 3 has not been absolutely sold or disposed of, as laid down in that article, within the prescribed period or, if such period has been extended, within the extended period, then, at the expiration of the prescribed period or of the extended period, as the case may be, such property shall *ipso facto* be forfeited to the Government.

Attorney General entrusted with the execution of the Act.
Amended by: LVIII. 1974.68; XIII. 1983.5; L.N. 411 of 2007.

6. (1) The Attorney General is entrusted with the execution of this Act.

Duties of notaries.

(2) Any notary who receives any deed *inter vivos* purporting to convey or assign any immovable property to a church or other pious or religious institution, shall, within fifteen days from the date of any such deed, transmit to the Attorney General a certificate

signed by the notary himself, stating the date on which the deed was received, the nature thereof, the name of the parties thereto and the immovable property to which it relates.

(3) Notwithstanding the provisions of articles 128 and 131 of Notarial Profession and Notarial Archives Act, any notary who contravenes the provision of the last preceding subarticle shall be liable to a fine (*multa*), to be awarded by the Court of Revision of Notarial Acts in the exercise of its functions under that Act, from eleven euro and sixty-five cents (11.65) to forty-six euro and fifty-nine cents (46.59). Cap. 55.

7. The provisions of articles 3 and 5 shall not apply - Immovable property exempt from the provisions of articles 3 and 5 of the Act. *Amended by: LVIII. 1974.68; L.N. 148 of 1975; XIII. 1983.5; L.N. 411 of 2007.* Cap. 88.

(*a*) to any immovable property acquired by any church or other pious or religious institution, while there is in force in relation to such property a declaration made by the President of Malta under article 3 of the Land Acquisition (Public Purposes) Ordinance:

Provided that, where the Prime Minister notifies in writing the administrator or other lawful representative of the church or other pious or religious institution concerned that the property or any part thereof is no longer required under the said declaration, the provisions of articles 3 and 5 shall apply as if such property or part thereof had been acquired by the church or other pious or religious institution concerned on the date of the receipt by its administrator or other lawful representative of the said written notice;

(*b*) to any immovable property acquired by any church or other pious or religious institution or part of such property while it is held by the Government by title of possession and use or by title of public tenure under the provisions of the Land Acquisition (Public Purposes) Ordinance:

Provided that, where the property or any part thereof ceases to be held by the Government by title of possession and use, the provisions of articles 3 and 5 shall apply as if such property or part thereof had been acquired by the church or other pious or religious institution concerned on the day on which the administrator or other lawful representative of such church or other institution has received from the Prime Minister written notice of that cessation;

(*c*) to any immovable property acquired by any church or other pious or religious institution by title of exchange against the transfer of other immovable property and -

(i) the immovable property given in exchange by such church or other institution is exempt from the provisions of articles 3 and 5 for any reason other than under article 8;

(ii) the value of the immovable property received in exchange by such church or other institution

does not exceed the value of the immovable property given in exchange by more than five *per centum* and there is annexed to the deed of exchange a declaration signed by an architect certifying such fact and signed also by the Director of Public Works accepting such fact;

(*d*) to any immovable property acquired under any title, other than a title of exchange in which case the provisions of the last preceding paragraph shall apply, by any church or other pious or religious institution from another church or pious or religious institution, if such property was held by the transferor exempt from the provisions of articles 3 and 5 other than under article 8;

(*e*) to the reversion, for any reason, of the *dominium utile* of any immovable property and consolidation with the *dominium directum* in favour of any church or other pious or religious institution which, prior to the granting of such property by title of emphyteusis, held it exempt from the provisions of articles 3 and 5 other than under article 8;

(*f*) to any immovable property purchased by a church or other pious or religious institution, by the payment, as purchase money, of the amount of compensation which such church or institution shall have received in respect of the transfer to the Government of any immovable property held by it exempt from the provisions of articles 3 and 5 other than under article 8; provided such compensation is not less than two hundred and thirty-two euro and ninety-four cents (232.94), and the following provisions are observed:

(i) the administrator or other lawful representative of the church or institution desiring to invest, in the acquisition of any immovable property, the sum so paid to him by way of compensation shall, by an application to the Civil Court, Second Hall, within the time of six months to be reckoned from the day on which he shall have received payment of the compensation, (which time may, for just cause, be enlarged by the said court), apply for authority to acquire the immovable property proposed to be purchased on behalf of the church or other institution by the payment of the said compensation as purchase money;

(ii) the application shall be accompanied by a copy of the deed of transfer of the immovable property to the Government and by a valuation, made by an architect, of the immovable property proposed to be acquired;

(iii) the court, being satisfied that the value of the immovable property to be acquired does not

exceed the amount of the compensation received by the church or other pious or religious institution for the transfer to the Government of its immovable property, or that it exceeds it only by five *per centum* and not more, shall allow the application;

(iv) in order to ascertain the value of the property proposed to be acquired, the Court may appoint one or more architects, of its own choice, requiring from them a declaration on oath that they have faithfully and with exactness performed the duty entrusted to them.

Immovable property acquired for certain specified purposes also exempt. *Amended by: LVIII. 1974.68.*

8. (1) Subject to the provisions of subarticles (2), (3) and (4), the provisions of articles 3 and 5 shall also not apply -

(*a*) to any site which has been acquired, under any title whatsoever, by any church or other pious or religious institution for the purpose of the construction thereon of a church or the building of a pious or religious institution, or for the extension thereon of any such church or building, or for the use of churches, or for the construction or extension thereon of a parochial house, a seminary or a house for any religious community or for the construction of cemeteries, provided that a certificate of the approval of the use for any of the said purposes, given by the competent ecclesiastical authorities, is received by the Attorney General within ninety days of the date of publication of the deed by virtue whereof such acquisition was made;

(*b*) to any building which has been acquired, under any title whatsoever, by any church or other pious or religious institution for any of the said purposes, provided that a certificate as referred to in the last preceding paragraph is received by the Attorney General within the period therein prescribed.*

(2) Except where the site or the building referred to in the last preceding subarticle has been acquired for the purpose of the construction or the extension thereon of a church, such site or building shall be forfeited *ipso facto* to the Government unless it has been applied to the use specified in the certificate of the competent ecclesiastical authorities within two years, in the case of a site, or within one year, in the case of a building, from the date on which, but for the provision of the said subarticle, the prescribed period would commence to run, or within such further period, which may not exceed two years, as the Prime Minister, on application of the administrator or other lawful representative of

Act XIV of 1991 (transitory provision): The term of ninety days referred to in article 8(1)(b)* shall, in relation to immovable property acquired by a church or other pious or religious institution belonging to a denomination other than the Roman Catholic Church, at any time after the 1st day of January, 1990, but before the 12th July, 1991, be deemed to commence to run as from the 12th July, 1991.

the church or other pious or religious institution concerned, may have allowed in writing before the lapse of the original period.

(3) Where the site or the building referred to in subarticle (1) has been acquired for the purpose of the construction or the extension thereon of a church, such site or building shall be forfeited *ipso facto* to the Government unless the structure of the church or the extension thereof has been erected within three years from the date on which, but for the provision of the said subarticle, the prescribed period would commence to run, or such longer period, which may not exceed six years, as the competent ecclesiastical authorities will have specified for that purpose in their certificate referred to in subarticle (1).

(4) Where a site or building, which is exempt from the provisions of articles 3 and 5 under subarticle (1), ceases to be used for the certified purpose -

(i) the administrator or other lawful representative of the church or other pious or religious institution to which such site or building belongs shall, under penalty of *ipso facto* forfeiture to the Government, within three months of the date when the site or building has ceased to be so used, notify in writing of such fact the Attorney General; and

(ii) except where it has been forfeited to the Government owing to the default of notice in accordance with the provision of the last preceding subparagraph, such site or building shall be deemed, for the purposes of this Act, to have been acquired by the church or other pious or religious institution to which it belongs on the day on which it has ceased to be used for the certified purpose and, thereupon, the provisions of articles 3 and 5 shall apply accordingly.

(5) Without prejudice to the provisions of subarticles (2), (3) and (4), the expressions "building", "parochial house", "seminary" and "house for any religious community", in subarticle (1), shall be deemed to include any such open land annexed to any of the said constructions and included in the certificate of the competent ecclesiastical authorities as the Prime Minister in his discretion may approve:

Provided that the Prime Minister's approval shall not be required in respect of any courtyard or other similar open space which may normally form part of a building.

Power of the Prime Minister to restore forfeited property.

9. Where any immovable property has been forfeited to the Government for non-compliance with any of the provisions of this Act and the administrator or other lawful representative of the church or other pious or religious institution by whom such property has been forfeited shows satisfactorily that such non-compliance was reasonably justified, it shall be lawful for the Prime Minister, on the recommendation by resolution of the House

of Representatives, to order the restoration of such property to the church or other institution concerned, and in such case the period for compliance with the provisions of this Act shall run from the date of such restoration unless the property be restored as exempt from the provisions of this Act:

Provided that no order for restoration shall be made in respect of the property forfeited and already disposed of by the Government or in respect of profits on property restored under this article which have been already received by the Government up to the day of the restoration.

Power of the Prime Minister to exempt property from the operation of this Act.

10. It shall be lawful for the Prime Minister, on the recommendation by a Resolution of the House of Representatives, and with the concurrence in writing of the competent ecclesiastical authorities, to exempt by order any church or other pious or religious institution from the operation of this Act in respect of any determinate immovable property, and from the date of such order the church or institution so exempted shall be free to hold and enjoy such property without the restrictions laid down in this Act.

Restoration of forfeited property. *Amended by: L.N. 148 of 1975.*

11. (1) Any immovable property which, at any time before the coming into force of this Act, has been forfeited to the Government owing to non-compliance with any of the provisions of the Mortmain Law, is by virtue of this Act restored to the church or other pious or religious institution to which such property belonged immediately before it was so forfeited and the provisions of this Act shall apply to such property as if it had been acquired by the church or other pious or religious institution on the coming into force of this Act:

Provided that, where any such property has been disposed of before the coming into force of this Act in accordance with the provisions of the Mortmain Law, although not within the time established therein or thereunder, the provisions of this Act shall be deemed to have been complied with and any such disposal shall be deemed to have been validly made.

(2) The provision of the last preceding subarticle shall not apply to any immovable property which was declared to have been forfeited to the Government by a judgment of the superior courts or which, having been forfeited to the Government, has been disposed of by the Government before the coming into force of this Act, and such property shall remain so forfeited notwithstanding the repeal of the Mortmain Law.

Right of Church or other pious or religious institutions to own and administer property. *Added by: IV.1992.11.*

12. (1) With effect from such date as the Prime Minister may by notice in the Gazette establish* (hereinafter referred to as the effective date) any church or other pious or religious institution shall, subject to the provisions of any law dealing with the acquisition of immovable property by non-residents and of any other ordinary law of general applicability have the right to acquire and hold possession of immovable property in Malta without any obligation to dispose of the same within any period and without any

* 18th February, 1993 - *see* L.N. 58 of 1993.

restriction arising out of this Act as to its use and may continue to hold any immovable property, which may have been acquired by it before the effective date, without any such obligation or restriction.

(2) The provisions of article 6(2) shall not apply to any deed therein referred to published on or after the effective date.

(3) Any immovable property which on or before the effective date may have been forfeited to the Government in virtue of this Act, and which on the effective date was still in the possession or detention of a church or other pious or religious institution is hereby restored to the church or other pious or religious institution to which it belonged before it was so forfeited:

Provided that where any such property has been disposed of before the effective date in accordance with the provisions of this Act, although not within the time established therein or thereunder, the provisions of this Act shall be deemed to have been complied with and any such disposal shall be deemed to have been validly made.