# CHAPTER 268

## DISPOSAL OF GOVERNMENT LAND ACT

*To regulate the grant on any title of immovable property belonging to or administered by the Government, and to provide for matters ancillary thereto or connected therewith.*

11th July, 1977

*ACT XXXIII of 1976, as amended by Acts II of 1979, XIII of 1983, XIV of 1999, XVII of 2004; Resolution No. 178 of the 11th April, 2005; Legal Notice 423 of 2007; Resolution No. 318 of the 19th November, 2007; Act III of 2011; Resolutions No. 284 of the 14th December, 2011, No. 338 of the 6th December, 2012, and No. 227 of 2015 of the 22nd June, 2015; Act XVII of 2017.*

*Repealed by Act XVII of 2017.*

Short title.

**1.** The short title of this Act is the Disposal of Government Land Act.

Interpretation. *Amended by: II. 1979.2; XIV. 1999.2.*

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

"disposal" means the transfer or grant of any land under any title whatsoever, including, but without prejudice to the generality of the aforesaid -

(*a*) any lease or encroachment or other right of use as well as any grant of any real or personal right in or over any land;

(*b*) a renewal of any real or personal right in or over any land, whether tacit or expressed on new terms and conditions (provided that an increase in rent, ground rent or compensation for use shall not be deemed to be a new condition), but including a renewal of any real or personal right in or over any land originally made in pursuance of a special resolution of the House of Representatives, even when made on the same terms and conditions;

(*c*) any change of any condition included in the disposal of any land other than land disposed of by the Housing Authority or by the Government for housing purposes, as long as the land remains subject to the condition that it be used for housing purposes, or land disposed of by a local council established under the Local Councils Act: Cap. 363.

Provided that the transfer of any land acquired under any title under the provisions of the Land Acquisition (Public Purposes) Ordinance, where such land is no longer required for a public purpose, to the person from whom such land was so acquired, or to his successors in title, shall not constitute a disposal for the purposes of this Act where the transfer back is made for the consideration (including damages) paid by the Government on the acquisition together with interests at five *per centum per annum* from the date of the payment up to the date of the transfer back to Cap. 88.

such persons where such land was acquired by the Government under absolute ownership, and where the land is held by Government on public tenure or possession and use, the transfer back is made subject only to the cessation of the annual payment of the relative recognition rent or acquisition rent as the case may be;

"land" includes any property which is immovable either by its nature or by reason of the object to which it refers, as provided in articles 308, 309 and 310 of the Civil Code.

Cap. 16.

Government land to be disposed of in terms of this Act.
*Amended by: II. 1979.3. Substituted by: XIV. 1999.3. Amended by: XVII. 2004.2; III. 2011.7.*

**3.** (1) No land which belongs to or is administered by the Government shall be disposed of unless such disposal is made in accordance with one of the following provisions, that is to say -

(*a*) after a call for tenders published in the Gazette in respect of the property proposed to be disposed of; or

(*b*) after an announcement of an auction as published in the Gazette in respect of the property to be disposed of:

Provided that no land may be so disposed of unless it forms part of a Building Development Zone according to any law for the time being in force:

Provided further that the Minister responsible for land may by regulations establish the manner and procedure for the holding of any such auction;

(*c*) according to the policy applicable to the land being transferred, as shown in the Schedule, which Schedule can only be changed by virtue of a Resolution of the House of Representatives;

(*d*) in accordance with a special resolution of the House of Representatives which is in force at the time of the disposal; or

(*e*) to a body corporate established by law for the purposes of any function of such body:

Provided that any land disposed of to a body corporate, other than the Housing Authority or a local council established under the Local Councils Act, under this paragraph (including a disposal made to it by another body corporate as authorised by this proviso) shall not without the approval of the House of Representatives expressed in a resolution, or in accordance with this sub-article, be disposed of by any body corporate, other than the Housing Authority or a local council as aforesaid, except in favour of the Government or of another body corporate established by law; or

Cap. 363.

(*f*) where a change of any condition included in the disposal of any land consists of a modification to the conditions of a lease or to the conditions of a contract of emphyteusis or sub-emphyteusis which is made for a public purpose as defined in the Land Acquisition (Public Purposes) Ordinance, which change shall not affect property exceeding a footprint of one hundred

Cap. 88.

square metres (100 sq.m), such disposal may also be made without adherence to any of the procedures or formalities prescribed in this article but in such case it shall only have effect after the following conditions ar satisfied:

(i) that the Minister shall within four weeks from the conclusion of a conditional agreement to make the modification or if the House of Representatives is not in session at the end of the said period within four weeks from the date when the House next meets, lay a copy of the contract of lease or emphyteusis or sub-emphyteusis indicating the modifications proposed on the table of the House; and

(ii) the modification aforesaid shall only be valid and come into effect if, after the procedure stipulated in sub-paragraph (i) has been completed, the House does not within a period of twenty-eight days after the completion of the said procedure resolve that the modification shall be rejected or amended, and immediately upon the expiry of the said period of twenty-eight days the modification shall, unless it is rejected as aforesaid, come into effect as originally proposed or as amended by means of the said resolution; or

(*g*) in accordance with any other law for the time being in force.

(2) A Resolution of the House of Representatives approved in terms of subarticle (1)(*d*) and (*e*) will remain valid for one year from the date of approval, but such Resolution can be extended by virtue of another Resolution or other Resolutions proposed after another period of one year.

(3) A disposal of land to which subarticle (1) applies, made in accordance with the provisions of this article, shall not require any further authority or sanction.

(4) Before notice of a motion proposing a resolution, as is referred to in subarticle (1)(*d*), is given to the Clerk of the House by a Minister, such Minister shall cause such motion to be referred to the National Audit Office Accounts Committee established under Part IV of the Second Schedule to the Auditor General and National Audit Office Act, and no notice of a motion as aforesaid may be given before the said committee shall have discnssed the motion and reported thereon to the House.

Cap. 396.

(5) Not later than fifteen days after a Minister shall have caused a notice as is referred to in subarticle (4) to be referred to it, the National Audit Office Accounts Committee shall meet to discuss the draft deed or writing or notice, as the case may be, and shall not later than one month after the said draft deed or writing or notice, as the case may be, has been referred to it, report thereon to the House:

Provided that where the said Committee fails to report to the House in a final manner within the said period of one month, the Minister may proceed to give notice to the Clerk of the House proposing a resolution as is referred to in subarticle (1).

(6) When the Committee referred to in the preceding subarticle is convened for the purposes of this Act, two additional members of the House of Representatives, one appointed by the Prime Minister, the other by the Leader of the Opposition, shall have the right to attend, and take part in the debate in this Committee, without the right to vote.

(7) Where the report of the National Audit Office Accounts Committee on a motion is unanimous, the House shall proceed to vote on such motion and on any amendments proposed in the said report without debate.

Disposals not in accordance with Act to be null and void.

**4.** (1) Any disposal of land to which article 3 applies made otherwise than in accordance with the provisions of that article shall be null and void.

(2) The nullity of a disposal made in contravention of the article aforesaid may be demanded also by the Attorney General or by any person who is a member of the House of Representatives at the time of the demand.

Disposal not in accordance with Act to constitute offence.
*Amended by: XIII. 1983.5; L.N. 423 of 2007.*

**5.** (1) Any person who enters into or appears on any deed, instrument or contract (whether in his own name or on behalf of others) in contravention of any of the provisions of article 3, and any person who induces any other person to enter into or appear on any such deed, instrument or contract as aforesaid or the making thereof, or aids or abets any of the aforesaid acts, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment not exceeding six months or to both such fine and imprisonment:

Provided that it shall be a defence for any person to prove that he took reasonable steps to ascertain that the deed, instrument or contract would not, where made, be in contravention of the provisions aforesaid.

(2) For the purposes of any proceedings under subarticle (1), a declaration made by a court of competent jurisdiction that a disposal is null and void on the ground that it was made in contravention of any of the provisions of article 3, or a mere declaration that it was so made, shall be conclusive evidence that the disposal was made in contravention of these provisions; and where any action for any such declaration has been taken, the period of prescription in respect of any offence against this article shall be suspended until a final judgment on the issue is given or the action is abandoned.

SCHEDULE

(Article 3)

Policy relating to the Transfers of Government Land

*Added by: XVII. 2004.3. Amended by: Resolution No. 178 of the 11th April, 2005; L.N. 423 of 2007; Resolution No. 318 of the 19th November, 2007; Resolution No. 284 of the 14th December, 2011; Resolution No. 338 of the 6th December, 2012. Resolution No. 227 of the 22nd June, 2015; XXVII. 2016.6.*

Interpretation

1. In this document the words 'land' and 'transfer' shall have the same meaning as is given to them by this Act; and any reference to 'government land' or 'government building' includes a reference to any land or building administered by Government.

2. The cases in which government land may be transferred according to policy as contained in this schedule are additional to the cases in which government land may be transferred according to article 3(1)(*a*), (*b*), (*d*), (e) and (*f*) of this Act.

Transfer by title of sale or redemption

3. Government land may be sold or the perpetual or temporary *dominium directum* burden thereon may be redeemed if such land consists of flats, houses or garages which are offered by means of a public notice to be bought or redeemed by a person who resides therein in the case of flats or houses, or by the recognized emphyteuta or tenant in the case of garages, under such conditions as are shown in that notice.

3a. The perpetual *dominium directum* of government land, where the ground-rent is revisable, may be redeemed by the recognised emphyteuta, in accordance with any conditions contained in a public notice.

3b. Government land which had originally been granted by Government on title of lease or title of emphyteusis, even if such emphyteusis has expired, and which is used for commercial purposes only may, by means of a public notice or scheme in force, be granted on a new title of lease or emphyteusis to the present tenant or person occupying the said tenement.

Transfer by title of emphyteusis

4. Government land may be transferred by title of emphyteusis:

(*a*) if it consists in land which is offered for development under a 'Home Ownership Scheme' by means of a public notice containing the conditions of the transfer and the manner of choice of the person who is making an offer;

(*b*) if it consists in land which is offered for an industrial project after applicant would have satisfied Government about the benefit which the project would render to the country's economy and that it would create

an adequate number of jobs;

(*c*) if it consists in land which is offered for twenty-five (25) years for the building of kiosks according to plans approved by the Planning Authority, to such persons who in 1996 had a valid permit issued by the Department of Lands to operate a kiosk in such same locality;

(*d*) if it consists of land granted for a period of fifty (50) years to licensed livestock farmers in the dairy and/or pig-breeding sectors for the running of farms.

5. Emphyteutical grants given previously under the 'Home Ownership Schemes' for a definitive period, may be converted into perpetual emphyteusis.

Transfer by title of lease

6. Government land may be given by lease:

(*a*) if it consists in a new building (not being a building for commercial use) which is offered on a points system after the issue of a public notice indicating, at least in a general manner, the criteria on which the allocation of points will be made;

(*b*) if it consists in an old building (not being for commercial use) which is offered according to the merits of the case to whosoever is listed on the registers of the government department which is responsible for such matters;

(*c*) if it consists in a factory which is offered for an industrial project after applicant would have satisfied Government about the benefits which the project would render to the country's economy and that it would create an adequate number of jobs;

(*d*) if it consists in agricultural land:

(i) which is offered on agricultural lease to whosoever would be cultivating it although such person may not have any title thereto:

(ii) in respect of which, following the death of the tenant, there is no other person who qualifies as a tenant or who is able to continue the lease in terms of the Agricultural Leases (Reletting) Act, then such agricultural lease may be given to the brothers or sisters or to the sons or daughters of the said brothers or sisters of the said tenant whether individually or *in solidum* between them or between any of them who at the time of the tenant's death was a *bona fide* professional farmer.

For the purposes of this paragraph "professional farmer" means a person who is registered with the Director for Agriculture and who satisfies the following conditions:

(*a*) is registered as a full time farmer with Jobsplus;

(*b*) has a minimum annual turnover of at least €20,000 calculated on the last three calendar years, that is supported by proof of sale and from the declarations made in the Value Added Tax returns:

Provided that the turnover shall be based on sales originating from the agricultural land held by that person and that the turnover shall exclude any income originating from the provision of agricultural services including the contracting or subcontracting of machinery or work, of income from pruning, of income from grafting, of income

from the delivery or transport of agricultural products, of income from the transport of water or manure, of income from the pressing of grapes or olives and of income not originating from the agricultural land that is held by that person; and

(iii) is a member of an agricultural cooperative, of a producer organisation or of a recognized farmers' association. For the purposes of this paragraph "agricultural land" means land which is mainly leased or rented for the growing of agricultural crops, flowers, fruit-trees or vines and for related agricultural purposes, including the erection of glasshouses, the assembly of cloches or cold frames but does not include grazing grounds;

(*e*) if it consists in land which is directly allocated:

(i) to a lotto receiver;

(ii) to a person who has relinquished his place of residence or any other premises occupied by him for commercial purposes or for any other use, and would either have been evicted by Government for any public purpose or would have relinquished such premises due to its dangerous state;

(*f*) if it consists in a building (comprising land accessory thereto) which is mainly offered for a specific commercial use which may be only carried out under a licence issued by the Government for such use under a special law;

(*g*) if it consists in commercial premises which are directly allocated by Government on a new lease to such children or grand-children as the preceding tenant would have renounced in their favour (and then only if such tenant would have reached the age of sixty-one years or is in receipt of an invalidity pension under the Social Securtity Act (Cap. 318)). The rent of the premises shall be fixed on the basis of the previous lease increased by ten per cent for each period of ten years and/or part thereof which would have passed from the date of the last fixing of the rent of the preceding lease;

(*h*) if it consists in commercial premises leased on a yearly basis, which was in the past given by title of lease for an established period exceeding one year, to the same tenant. The lease of the premises is given to the same tenant, under the conditions of the original title, other than for the rent which is fixed again, sohowever that no lease may exceed a period of fifteen (15) years;

(*i*) if it consists of land which formed part of a larger land and is being allocated directly by Government on a new lease to the preceding tenant under the same conditions but at a different rent;

(*j*) if it consists of a concession under a temporary title for a maximum period of time of ten years of land situated outside Malta.

Servitudes, encroachments and other permits.

7. Servitudes and other similar rights may be created on government land whenever such rights are required for the proper use of any other land by any other person, and it would not be the case that such right is given on encroachment terms. In any other case such rights may and shall be given on encroachment terms.

8. Encroachment terms are also allowed as regards:

(i) stretches of shore land as 'beach concessions';

(ii) land adjacent to coffee-shops and similar establishments for the placing of tables and chairs; and

(iii) other similar concessions.

9. Permits may also be granted for the temporary or specific use of government land.

Right of first refusal

10. Offers for the transfer of government land may be made subject to the right known as the right of first refusal in any instance where Government deems it appropriate that such right should be conceded to any person.

Sub-lease in a lease agreement

11. Permission may be granted for the sub-lease of part of a larger building for commercial use connected with or accessory or ancillary to use made by the Government of the building of which the leased premises form part.

Transfer of land on the sea shore

12. Government land situated on the sea shore on which a room or any other building has been built or which is being used for the siting of a caravan thereon may be transferred by title of lease for not more than ten years at a rent fixed according to a valuation made by the Commissioner of Lands and which may in no case be less than €93.17 annually;

Sohowever that the building together with all improvements made thereon, other than existing movables, shall revert to Government on the expiration of the lease without any right of compensation.

Land given by exchange

13. Government land may be given by exchange with any other land which is declared as required for a public purpose under Chapter 88 of the Laws of Malta, to the owner of the land which has been so declared. Provided that when a difference exists in the value of the two plots of land given by exchange, such difference shall be balanced with also giving an additional sum of money. Sohowever that the exchange may not be effected if the value of the government land to be given exceeds thirty per cent of the value of the expropriated land. Any damages sustained due to the expropriation of such land shall form part of the value of the same land.

*Tale quale* transfer for relative compensation

14. Any plots of land comprised in such Building Development Areas, also including such plots of land in Building Development Areas which have been revoked, and which have not been utilized and[or there is apparently no use for them for a public purpose, may be transferred by title of exchange to the owners of the rights for relative compensation for each plot of land which is so transferred and for which an application has been submitted, with money's worth for each plot of land, of the rights for compensation regarding the same land, and when the person to whom the land shall be transferred was not the absolute owner of such land prior to its expropriation by Government, with money's worth also of an equivalent amount for each right of any other compensation relating to such land, free and exempt from any burden, hypothec or privilege, and also every right for any other interests or damages which may be due.

The person in whose favour the land is transferred is bound, on the same deed of transfer, to reconstitute on the land so transferred to such person any

hypotech, privilege, easement, usufruct, use or any other real right which had existed on the same land prior to such land being declared a Building Development Area according to Act I of 1983 and which are presently incumbent on the compensation rights, until such time as such rights have not been erased by agreement between the parties prior to the reverse transfer; the person to whom such land is transferred shall also be obligated to bind itself on the same deed to recognize any right ta' rural lease and any other right which was incumbent on such land prior to such land being declared a Building Development Area in terms of the said Act I of 1983.

The expenses relating to the deed of transfer shall be paid by the Government of Malta.