# MALTA

**ATT Nru. XVII ta' l-2004**

ATT maħruġ b'liġi mill-Parlament ta' Malta.

**ATT biex jemenda l-Att dwar it-Trasferiment ta' Artijiet tal-Gvern, Kap. 268.**

**ACT No. XVII of 2004**

AN ACT enacted by the Parliament of Malta.

**AN ACT to amend the Disposal of Government Land Act, Cap. 268.**

I assent.

**(L.S.)** EDWARD FENECH ADAMI
President

23rd December, 2004

**ACT No. XVII of 2004**

*AN ACT to amend the Disposal of Government Land Act, Cap 268.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

**1.** The short title of this Act is the Disposal of Government Land (Amendment) Act, 2004, and it shall be read and construed as one with the Disposal of Government Land Act, hereinafter referred to as "the principal Act".

Amendment of article 3 of the principle Act.

**2.** Article 3 of the principal Act shall be amended as follows:-

(a) in subarticle (1) thereof, paragraphs (b), (c), (d) and (e) shall be renumbered as paragraphs (c), (d), (e) and (f) respectively;

(b) immediately after paragraph (a) of subarticle (1) thereof, there shall be inserted the following new paragraph:

" (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) instead of subarticle (c) as amended, there shall be inserted the following:

" (c) according to the policy applicable to the land being transferred, as shown in schedule attached to this Act, which schedule can only be changed by virtue of a Resolution of the House of Representatives."

(d) subarticle (2) thereof, shall be substituted with the following:

" (2) A Resolution of the House of Representatives approved in terms of paragraphs (d) and (e) of subarticle (1) will remain valid for a 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."

(e) In subarticle (4) thereof, the words "in paragraph (c)" shall be changed to "in paragraph (d)"

**3.** Immediately after article 5 of the principal Act there shall be added the following Schedule: Addition of Schedule to the principal act.

"SCHEDULE

(Article 3)

Policy relating to the Transfers of Government Land

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 paragraphs (a), (b), (d), (e) and (f) of subarticle (1) of Article 3 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 or houses which are offered by means of a public notice to be bought or redeemed by a person who resides therein under such conditions as are shown in that notice.

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.

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 which is offered on agricultural lease to whosoever would be cultivating it, although such person may not have any title thereto;

(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). 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.

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 Lm40 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.".

Amendment of the Land Acquisition (Public Purposes) Ordinance, Cap. 88.

**4.** (1) The Land Acquisition (Public Purposes) Ordinance, (hereinafter in this Article referred to as "the Ordinance") shall be amended as follows:

(a) article 25 thereof shall be amended as follows:

(i) immediately after subarticle (1) thereof there shall be inserted the following proviso:

"Provided that, the amount of compensation to be assessed by the Board in accordance with the provisions of paragraph (e) of this subarticle, shall not exceed the higher amount of compensation as proposed by any of the parties.";

(ii) for subarticle (7) thereof, there shall be substituted the following:

"(7) An appeal on a point of law shall lie from the decision of the Board on any of the above matters. Such appeal shall be filed by means of an application before the Court of Appeal within twenty days from such decision; and the party against whom the appeal is filed may file his reply within twenty days from the date of service upon him of the said application. The provisions of the Code of Organization and Civil Procedure relating to appeals, cross-appeals and the regulation of proceedings before the Court of Appeal shall apply *mutatis mutandis* to any appeal made in terms of this subarticle."; and

(b) article 31 thereof shall be amended as follows:

(i) subarticles (2) and (4) thereof shall be deleted, and subarticles (3) and (5) shall be renumbered as subarticles (2) and (3) respectivley;

(ii) in subarticle (2) as renumbered, the words, "but less than that claimed by the owner", shall be deleted.

Transitory provision.

(2) The provisions of articles 25 and 31 of the Ordinance as amended by this article, shall apply to any proceedings relating to any land covered by any Declaration issued under article 3 of the Ordinance even if issued prior to the date of the coming into force of this article.

———

Passed by the House of Representatives at Sitting No. 215 of the 17th December, 2004.

ANTON TABONE
*Speaker*

RICHARD J. CAUCHI
*Clerk to the House of Representatives*

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*
Prezz 32c – *Price 32c*