

## CHAPTER 88

LAND ACQUISITION (PUBLIC PURPOSES)  
ORDINANCE

*To regulate the acquisition of land for public purposes and to establish the procedure to be followed in relation thereto.*

8th October, 1935

*ORDINANCE XL of 1935, as amended by Ordinances: III and XIII of 1936, VI of 1937, X of 1945, XLV of 1946, XXXI of 1947 and V of 1949; Act XXVII of 1956; Ordinances: IV of 1961 and XI of 1962; Legal Notice 4 of 1963; Acts: XIV and XXXI of 1966, XXIX of 1969, XXXIII of 1971, LVIII of 1974 and IV of 1975; Legal Notice 148 of 1975; Acts: XVII of 1979, XLIX of 1981, XI of 1989, VIII of 1990, XIX of 1993, XXXIV of 1995, VI of 2001, XI of 2002, III and XVII of 2004, and I and III of 2006; Legal Notices 181 of 2006 and 408 of 2007; and Act XXI of 2009.*

**1.** The short title of this Ordinance is Land Acquisition (Public Purposes) Ordinance. Short title.

**2.** In this Ordinance unless the context otherwise requires -  
 "acquisition rent" means the periodical payments to be made in terms of article 27(14), (15) and (16);  
 "agricultural or rural land" does not include the domestic garden of a house or building or any other land within the precincts of a house or building nor a building site nor waste land but includes farmhouses, buildings intended mainly for the keeping of store cattle or other domestic animals, and other structures of a kindred nature;  
 "Board" means the Board established under the provisions of this Ordinance;  
 "clearance rights" means the subjection of any land to the restrictive conditions referred to in article 29;  
 "competent authority" means the Commissioner of Land;  
 "dwelling house" has the same meaning as that assigned to it in the Rent Restriction (Dwelling Houses) Ordinance;  
 "historical building" means land which:

- (a) is scheduled in accordance with article 46 of the Development Planning Act; or Cap. 356.
- (b) constitutes cultural property for the purposes of the Cultural Heritage Act other than cultural property of the type referred to in article 52 of the said Act; or Cap. 445.
- (c) is included in the list of buildings, sites and remains having a geological, archeological, antiquarian or artistic importance in the Schedule to the Protection of Antiquities Regulations; or S.L. 445.01
- (d) is land which upon the advice of the Committee of Guarantee established by article 14 of the Cultural Cap. 445.

Heritage Act, given within two months after the said Committee receives a request for advice from the Minister and also after the said Committee has granted an opportunity to any person with an interest in the land to make his submissions, it is appropriate to acquire for a public purpose on the grounds that:

- (i) it is of such historical or cultural significance as to render it appropriate that it be acquired for the purpose of maintaining or augmenting the cultural environment or the tourism services provided in Malta; or
- (ii) is closely connected to events of major historical importance which have contributed to the national memory or to the national historical identity;

"land" includes any building, tree or anything fixed in the land and any portion of the shore, and any easement in or over land and other rights of user and any right of interference;

"lease" includes the right of occupation or use of any land by any title whatsoever;

"new urban tenement" means any urban building including dwelling houses, buildings in which trade is carried on, clubs, hotels and lodging houses, which, apart from fittings, decorations, and alterations, even if structural, was not complete or ready for use on the 31st March, 1939;

"old urban tenement" means an urban building including dwelling houses, buildings in which trade is carried on, clubs, hotels and lodging houses, which, apart from fittings, decorations, and alterations, even if structural, was complete or ready for use on the 31st March, 1939 provided that any repair of an old urban tenement made as a consequence of damage by enemy or counter-enemy action or any rebuilding of an old urban tenement the cost of which was recognized as being payable under the provisions of the War Damage Ordinance, 1943\* shall not change the "old" nature of the tenement. "Old dwelling house" and "old shop" shall be construed accordingly;

"owner" includes lessee or other person having an interest in the land;

"public purpose" means any purpose connected with exclusive government use or general public use, or connected with or ancillary to the public interest or utility (whether the land is for use by the Government or otherwise) or with or to town-planning or reconstruction or the generation of employment, the furtherance of tourism, the promotion of culture, the preservation of the national or historical identity, or the economic well being of the State or any purpose connected with the defence of Malta or connected with or ancillary to naval, military or air operations; and includes any other purpose specified as public by any enactment; and for the purposes

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\*Repealed by Act XXIX of 1980.

of this definition, where the purpose for the exercise of any right under this Ordinance is connected with the utilisation of any land or any right in connection or in relation therewith for any purpose connected with the supply, storage or distribution of fuels or other sources of energy, or in connection with the provision of any utility or municipal services or infrastructural project shall be deemed to be connected with or ancillary to the public interest or utility;

"public tenure" means the tenure of land by a competent authority, of which tenure the main qualities are set out in article 19(5), (6) and (7);

"recognition rent" means the periodical payments due in consideration of the holding of land on public tenure;

"subsoil rights" means the subjection of any land to the restrictive conditions regarding underground works and excavations referred to in article 29.

**3.** The President of Malta may by declaration signed by him declare any land to be required for a public purpose:

Provided that:

- (a) when land to which the said declaration refers is required for a public purpose on account of the fact that it is a historical building, the said declaration shall state the said fact; and
- (b) a historical building that is privately owned and kept in a good state of maintenance and to which access to the public, whether against payment or otherwise, is granted on a regular basis by its owners or administrators for educational, cultural or touristic purposes shall not be acquired as a historical building under this Ordinance.

Declaration by President that land is required for public purpose.  
Amended by:  
LVIII. 1974.68;  
XXI. 2009.3.

**4.** The President of Malta may for any public purpose declare by proclamation that any land is subject to clearance rights or to subsoil rights.

Proclamation by President declaring land to be subject to clearance rights.  
Amended by:  
V.1949.3;  
LVIII.1974.68.

**5.** The competent authority may acquire any land required for any public purpose, either -

- (a) by the absolute purchase thereof; or
- (b) for the possession and use thereof for a stated time, or during such time as the exigencies of the public purpose shall require; or
- (c) on public tenure:

Acquisition of land for public purposes.  
Amended by:  
XXXI. 1947.3;  
XXVII. 1956.3.

Provided that after a competent authority has acquired any land for possession and use or on public tenure the conversion into public tenure or into absolute ownership of the terms upon which such land is held shall always be deemed to be an acquisition of land required for a public purpose and to be in the public interest:

Provided also that, subject to the provisions of articles 14,

15 and 16, a competent authority may acquire land partly by one and partly by another or others of the methods in paragraphs (a), (b) and (c):

Provided further that where the land is to be acquired on behalf and for the use of a third party for a purpose connected with or ancillary to the public interest or utility, the acquisition shall, in every case, be by the absolute purchase of the land.

Declaration by President of public purpose to be conclusive.  
Substituted by: XLV. 1946.3.  
Amended by: LVIII. 1974.68; XXI. 2009.4.

**6.** (1) Without prejudice to the provisions of subarticle (2), no person shall require any proof of the public purpose referred to in articles 3 and 4 and in article 8(1) other than the declaration of the President of Malta.

(2) Any person who has an interest in land, in respect of which a declaration of the President as is referred to in subarticle (1) is made, may contest the public purpose of the said declaration before the Land Arbitration Board by means of an application to be filed in the registry of the said Board within twenty-one days from the publication of the said declaration and the provisions of the Code of Organization and Civil Procedure applicable to the hearing of causes before the Civil Court, First Hall, including the provisions regarding appeals from such decisions, shall, *mutatis mutandis*, apply to the determination of the said application:

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Provided that the filing of an application in terms of this subarticle shall not hinder the continuance of the expropriation proceedings or the doing of anything that may be done in respect of the land as provided in this Ordinance during the time when the application is still not determined, without prejudice to the right of the applicant to seek compensation in the event that the declaration of the President is found to be without public purpose.

(3) The competent authority shall by not later than four days after the publication of the declaration of the President of Malta affix as it deems appropriate and if physically possible a notice of the said declaration on the land about which that declaration was issued.

Power of competent authority to dispose of land.  
Added by: XXVII. 1956.4.

**7.** The competent authority may deal with and dispose of land acquired by it in such manner and subject to such conditions as it considers expedient having regard to the public interest or utility.

Preliminary investigation.  
Amended by: XLV. 1946.4; LVIII. 1974.68.

**8.** (1) Whenever the President of Malta considers it desirable that any land should be examined with a view to its possible acquisition for any public purpose, he may make a declaration signed by him to that effect, and thereafter it shall be lawful for any person either generally or specially authorised by the competent authority in that behalf, and for his assistants and workmen to do all or any of the following things:

- (a) to enter upon and survey and take levels of any such land;
- (b) to dig or bore under the subsoil;
- (c) to do all other acts necessary to ascertain whether the

land is adapted for such purpose;

- (d) to clear, set out and mark the boundaries of the land proposed to be taken and the intended line of work proposed to be made thereon:

Provided that no person shall enter into any building or upon any court or garden attached to any dwelling-house except with the consent of the occupier thereof, without previously giving such occupier at least seven days notice of his intention to do so.

(2) As soon as conveniently may be after any entry made under subarticle (1), the competent authority shall pay for all damage done, and in case of dispute as to the amount to be paid, either the competent authority or the person claiming compensation may refer such dispute to the Board, whose decision shall be final.

**9.** (1) Whenever the President of Malta declares that any land is required for a public purpose, the competent authority shall cause a copy of such declaration (together with particulars sufficient for the purpose of identifying the land) to be published in the Government Gazette, in at least two local newspapers (one of which must be a newspaper published in English and the other a newspaper published in Maltese) and on the notice board of the office of the Local Council of the locality where the land is situated.

Notice of intention to take land.  
Substituted by:  
LV. 1946.5.  
Amended by:  
LVIII. 1974.68;  
XI. 2002.7.

(2) The competent authority shall also file a copy of the declaration and of the particulars in the registry of the Board, and shall cause a copy thereof to be served through the Board in the manner prescribed by the Code of Organisation and Civil Procedure on every owner of and on every other party having a legal interest in the land to which the declaration refers, of whose existence and identity the competent authority is aware.

Cap. 12.

**10.** When the owner or any of the owners of land to be compulsorily acquired by a competent authority is unknown or uncertain or is absent or a minor or an incapacitated person not legally represented or not known to the competent authority to be legally represented, proceedings under this Ordinance shall be instituted against curators to be appointed by the Civil Court, First Hall, to represent that owner or owners as provided in the Code of Organization and Civil Procedure.

Proceedings when owner is unknown, etc.  
Amended by:  
XLV. 1946.6;  
XXXI. 1947.4;  
L.N.148 of 1975.

Cap. 12.

**11.** (1) Where the land to be acquired by a competent authority belongs to a person interdicted, or to a minor, or to a person subject to any other disability, or is dotal or subject to entail or to usufruct or to use or habitation, or is the object of an emphyteutical grant of which the time is determined by reference to the duration of lives, no special judicial or other authorization shall be necessary, but any compensation payable in terms of this Ordinance, together with a sum amounting to 3% on the compensation assessed, shall be deposited in the Civil Court, Second Hall, and shall not be withdrawn without the authorization of the competent court. The provisions of article 2 of the Investment of Certain Moneys Ordinance shall apply in the case of property subject to entail unless the court shall otherwise provide.

Proceedings when land belongs to person subject to disability.  
Amended by:  
XLV. 1946.7;  
XXXI. 1947.5;  
L.N. 148 of 1975.

Cap. 26.

(2) In the case of the deposit of the compensation under the provisions of subarticle (1), the lawful expense of the proceedings for the withdrawal of the deposit shall be charged to the competent authority.

(3) The provisions of subarticles (1) and (2) shall apply similarly to acquisition rent and to recognition rent but so that in no case shall additional amounts, computed at 3% of each of the successive instalments deposited of acquisition rent or of recognition rent, be payable in respect of more than four instalments of acquisition rent or of recognition rent due in respect of any one acquisition for the possession and use of land or, as the case may be, on public tenure.

Rights of  
Government over  
land.  
Amended by:  
XLV. 1946.8;  
XXVII. 1956.5;  
XI. 2002.7;  
I. 2006.3;  
III. 2006.9.

**12.** (1) Within fourteen working days from the date of publication in the Government Gazette, required under article 9(1), of a declaration made under article 3, the owner and the occupier, if any, of the land shall yield up possession thereof to the competent authority:

Provided that if the land of which possession is so required, is a dwelling house actually occupied as such, the occupier shall not be required to yield up possession thereof before the lapse of fourteen days from the date when alternative accommodation, reasonably sufficient for the persons resident in that dwelling house, has been offered in writing by the competent authority to the said occupier.

(2) On the lapse of the time mentioned in subarticle (1) the competent authority may without any further formality enter upon and take possession of the land or authorize any person to enter upon and take possession of the land and, notwithstanding any restriction imposed on such land by any other law or by any instrument or otherwise, do or authorize any person to do in or upon or in relation to such land any work or other thing whatsoever which any person having an unrestricted interest in the land would be entitled to do by virtue of that interest saving the liability of the competent authority to re-instate the land or pay compensation for any damage caused if in the cases permitted by this Ordinance the acquisition is not completed.

(3) Without prejudice to the provisions of article 22(3), simple interest at the rate of five *per centum per annum* shall accrue on the value of the land in accordance with Schedule 2, and for the period indicated in such Schedule, in favour of any person having a right of compensation in respect of any land acquired by the absolute purchase thereof under this Ordinance:

Provided that where a notice to treat has been issued under this Ordinance, the interest shall accrue on the value determined in such notice, from the date of the taking of possession of the land by the competent authority up to the date of transfer by title of absolute purchase in favour of the Government of Malta:

Provided also that when a notice to treat has been issued and the person entitled to compensation elected not to accept the price offered therein, simple interest at the rate of five *per centum*

*per annum* shall accrue on the value of the land in accordance with Schedule 3, and for the period indicated in that Schedule, in favour of any person having a right of compensation in respect of any land acquired by absolute purchase thereof under this Ordinance.

**13.** (1) The amount of compensation to be paid for any land required by a competent authority may be determined at any time by agreement between the competent authority and the owner, saving the provisions contained in subarticle (2).

Amount of compensation may be fixed by agreement.  
*Amended by:*  
*XLV. 1946.9.*  
*Substituted by:*  
*XXXI. 1947.6.*  
*Amended by:*  
*L.N. 148 of 1975.*

(2) The compensation shall in the case of acquisition of land for temporary possession and use be an acquisition rent and in the case of acquisition of land on public tenure be a recognition rent determined in either case in accordance with the relevant provisions contained in article 27.

(3) Acquisition rent or recognition rent as the case may be shall be payable to the person who is entitled to receive, or is immediately entitled to let and receive, the rental on lease of the land affected or the tutor, curator, administrator, procurator or other representative of the person so entitled:

Provided that if the competent authority is not aware of the name and residence within Malta of the person to whom acquisition rent or recognition rent is so payable it may deposit such rent in the Civil Court in accordance with the provisions of article 11.

**14.** An owner shall not be required to sell or convey to the competent authority a part only of any house or other building, if such owner is willing and able to sell and convey the whole thereof.

Part of a house.

**15.** An owner shall not be required to sell or convey to the competent authority a portion only of a building site, if the remaining portion measures less than two hundred and twenty square metres, or if, in the opinion of the Board, the remaining portion, owing to its conformation and extension, will cease to be adaptable for building purposes under the laws and regulations relating to buildings; in any such case the competent authority shall acquire the whole site:

Portion of building site.

Provided that if the owner owns adjacent land, the Board may declare that the foregoing provisions of this article do not apply to the land to be acquired.

**16.** An owner shall not be required to transfer a portion only of any land if such portion exceeds three quarters of the area of the whole and the remaining portion measures less than one thousand one hundred and twenty-four square metres and that owner does not own any adjacent land.

Portion of land.

**17.** Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of compulsory acquisition as rural land or as wasteland, as the case may be:

Valuation of land not being a building site.  
*Amended by:*  
*XXXI. 1947.7.*  
*Substituted by:*  
*I. 2006.4.*

Provided that in determining such compensation, consideration shall be given to the value of any structures existing thereon and whether such structures are covered by a permit

according to law.

Building sites.  
Substituted by:  
XXVII. 1956.6;  
I. 2006.4.  
Amended by:  
XXI. 2009.5.

**18.** (1) Land, other than a historical building, shall be deemed to be a building site if it falls within the limits of a building scheme or as indicated and approved for development in a Structure Plan or subsidiary plan which has been adopted for the time being in force under any law relating to planning.

(2) In determining the compensation due for a building site, consideration shall be given to the use or development that can be made thereof or thereon in accordance with the provisions of subarticle (1).

Valuation of land  
expropriated prior  
to 2003.  
Added by:  
I. 2006.5.

**18A.** Notwithstanding the provisions of this or any other law, the value of any land -

- (a) still in the course of acquisition on the 1st January 2005;
- (b) in respect of which a declaration under article 3 was issued before the 5th March 2003, and
- (c) in respect of which a notice to treat was not issued before the 1st January 2005 under the provisions of this Ordinance as in force before the date mentioned in this paragraph,

shall, saving any interests due until payment is made under article 12(3), be its value as on the 1st January 2005.

Land occupied for  
ten years;  
application that it  
be purchased or  
acquired on public  
tenure, etc.  
Amended by:  
XLV.1946.10;  
XXXI.1947.8;  
IV.1961.12;  
XXXI.1966.2.

**19.** (1) When land has been acquired by a competent authority for use and possession during such time as the exigencies of the public purpose shall require, the owner may, after the lapse of ten years from the date when possession was taken by the competent authority, apply to the Board for an order that the land be purchased or acquired on public tenure or vacated within a period of one year from the date of the order, and the land shall either be vacated or acquired on public tenure or purchased upon compensation to be determined in accordance with the provisions of this Ordinance or of any Ordinance amending or substituted for this Ordinance.

(2) When land which has been in the possession and use of a competent authority is vacated, the competent authority may remove all buildings, erections, or other improvements erected or made thereon during the period of occupation, making such compensation to the owner of the land for the damage which may have been caused by the erection of such buildings or otherwise, as may be agreed between the competent authority and the owner or as, in default of agreement, shall be assessed by the Board.

(3) When a competent authority has acquired any land for possession and use or, as the case may be, on public tenure and subsequently converts into public tenure or, as the case may be, into absolute ownership the title upon which such land is held, in assessing for purposes of that conversion of title the amount of the recognition rent or, as the case may be, of the compensation for the acquisition of the absolute ownership, no regard shall be had to any building, erection or other improvement erected or made on the

land after the date upon which the possession thereof was taken by the competent authority and for purposes of such assessment the land shall be deemed not to have been altered in any material particular as from the first day of such possession.

(4) When the ownership of land which is in the possession and use of a competent authority or is held by it on a public tenure is transferred by its owner to a third party, such transfer shall not affect in any way the subsisting possession or tenure by the competent authority, except that as from the first due day of an instalment of acquisition rent or of recognition rent following service on the competent authority of a judicial letter sent by the transferor and by the transferee jointly and containing full information of the transfer effected or, alternatively, following the submission of proof by the transferor or by the transferee to the satisfaction of the competent authority that the transfer has in fact taken place in a form valid according to law, the acquisition rent or the recognition rent shall be paid to the transferee.

(5) Public tenure shall of its nature endure in perpetuity, without prejudice to any consolidation by mutual consent or otherwise according to law of that tenure with the residual ownership of the land; and the recognition rent payable in respect thereof shall in every case be unalterable, without prejudice to the effects of any consolidation, total or partial. The residual ownership of land held on public tenure with the inherent right to receive recognition rent, shall, for all purposes of law, be deemed to be an immovable right by reason of the object to which it refers and shall be transferable according to law at the option of the owner, from time to time, of that right.

(6) The competent authority shall not be under any restriction as to the use it may make from time to time of land held by it on public tenure, saving its liability to pay any recognition rent that may be due thereon; it may demolish and not replace any structures thereon, and it may alter in any manner the use to which the land was previously put; it shall be entitled to any benefit whatsoever which every parcel of land held by it on public tenure may yield, including treasure trove found thereon, saving in this case such portion thereof as, according to law, may be due to the finder; and it shall have the right to recover any such land from any holder, even if such holder is entitled to a recognition rent in respect of the same land.

(7) The person entitled or the persons jointly entitled to receive a recognition rent shall not in any case be bound to carry out in or on the land or in or on any part of the land, in respect of which he or they are entitled to that recognition rent, any work imposed by law on an owner of land; nor shall his or their right to the recognition rent be affected in any way by the destruction in whole or in part and from whatsoever cause of any or all structures originally or subsequently erected on the land.

(8) The competent authority may, at any time, put up for sale by tender any block of urban tenements or one or more urban tenements capable of separate occupation or any parcel of land, in

each case held by the competent authority on public tenure; and in connection with such or any other purpose it shall be lawful for the competent authority to apportion, as it deems fit, to any specified lot or lots comprising part of a parcel of land originally acquired as subject to a single recognition rent, a part or the whole of that recognition rent. Any such sale, however, shall be subject to the following special provisions:

- (a) the recognition rent apportioned to any plot shall not exceed one half of the income which in the opinion of the Director of Public Works that plot might reasonably be expected to yield at the time of disposal, and the certificate of the Director of Public Works shall be final;
- (b) in respect of each such case the proposed sale shall be notified by letter on behalf of the competent authority to the person at the time entitled or to the persons at the time jointly entitled to receive the original recognition rent or any part of it who appears or appear as such on the administrative books of the competent authority; but so that any default of such notification shall not in any case invalidate a sale or render it voidable;
- (c) if a person who is at that time entitled to receive the original recognition rent or any part of it and appears as such on the administrative books of the competent authority, makes a tender lower than the highest tender by not more than ten *per centum* of that highest tender, and if, within six working days of the notification made to him in writing by the competent authority of the availability to him of the option hereunder and of the offer contained in the highest tender, that person declares in writing to the competent authority his intention of availing himself of the option hereunder, that person shall be allowed to augment the tender made by him to a parity with the highest tender. On an equality of tenders, either original or following the exercise of the option aforesaid, the tender of the person entitled to receive the recognition rent or a part thereof shall be preferred to the tender made by a person not so qualified;
- (d) on completion of such a sale, the liability of the competent authority to pay the recognition rent to which the land sold is subject and any charge of that recognition rent on the Consolidated Fund shall cease, but a special privilege on the immovable sold, ranking and governed in every other way on a parity with the privilege competent to the "*dominus*" over the "*dominium utile*" under article 2010 of the Civil Code, shall obtain on the immovable in favour of the person entitled or of the persons jointly entitled to the recognition rent thereon and who is not the purchaser or are not the joint purchasers of the immovable;

- (e) a sale made by the competent authority of a part of a parcel of land held by it on public tenure, as subject to an apportioned part of the recognition rent due in respect of the whole of that parcel of land, shall not as a consequence bring about the obligation of the competent authority either to guarantee payment of that part of the recognition rent apportioned to the part thus transferred of the parcel of land or to purchase absolutely the residual ownership of any other part of the same parcel of land, and no joint and several action shall lie in respect of the different portions of the original recognition rent;
- (f) on any such sale as aforesaid no fine or other acknowledgement fee shall be due to the person entitled or persons jointly entitled to receive the recognition rent;
- (g) the relations between the purchaser or joint purchasers of land previously held by the vendor on public tenure and the person entitled or the persons jointly entitled to receive a recognition rent thereon shall be governed by the law of emphyteusis as set out in the Civil Code.

Cap. 16.

**20.** (1) When land, other than rural land, has been acquired by a competent authority, either absolutely or for a time, or on public tenure, and that land is subject to a lease other than an emphyteutical lease, then, no compensation for the termination of the lease shall be paid to the tenant or occupier, if a full year's notice to quit is given by the competent authority to such tenant or occupier.

Termination of lease: compensation. Amended by: XXXI. 1947.9; XXIX. 1969.2.

(2) If less than a year's notice to quit is given, due compensation shall be paid to the tenant or occupier.

(3) Compensation for the termination of the lease shall in no case exceed the fair rent of the land for a period of two years.

(4) In fixing the amount of compensation within the limit aforesaid, regard shall be had to the remaining period of the lease and to all the circumstances of the particular case.

**21.** (1) When rural land has been acquired by a competent authority either absolutely or for a time or on public tenure, and that land is subject to a lease other than emphyteutical lease, there shall be paid to the tenant or occupier of such land a fair compensation in respect of any agricultural improvements carried out by the tenant or occupier or by a member of the family in the said rural land during the period of eight consecutive years preceding the date of termination of the lease and an amount equal to the value of the products gathered by the tenant, occupier or by a member of the family from the said rural land, after deduction of the expenses incurred towards its cultivation in the last four years immediately preceding the date of such termination:

Termination of lease of rural land: compensation. Added by: XXIX. 1969.3.

Provided that there shall not be deducted as part of the said expenses the cost of the tenant's or occupier's own labour or the

labour of any member of the family in the rural land.

(2) Notwithstanding the provisions of the last preceding subarticle, if the compensation in respect of improvements referred to in the said subarticle, or a part thereof, is payable to the owner of the rural land in terms of the agreement governing the contractual relations between such owner and the tenant or occupier of the rural land, such compensation or the part thereof which is so payable shall not be paid to the said tenant or occupier:

Provided that the total aggregate sum payable to the tenant or occupier of the rural land under the last preceding subarticle shall in no case be less than the fair rent of the rural land for a period of two years.

(3) In this article "member of the family" means a lineal ascendant, a lineal descendant, a widow or a widower, a son-in-law, and a widowed daughter-in-law while not remarried, of the tenant or occupier.

Procedure.  
Amended by:  
*XLV. 1946.11;*  
*XXXI. 1947.10;*  
*XI. 1989.2.*  
Substituted by:  
*XI. 2002.7.*  
Amended by:  
*I. 2006.6;*  
*XXI. 2009.6.*

**22.** (1) If the competent authority and the owner agree as to the amount of compensation for any land, the Board, on the application of any one of the parties, shall make an order carrying the agreement into effect:

Provided that the amount of acquisition rent or recognition in rent, as the case may be, shall be determined in terms of the relevant provisions of article 27.

(2) Where the land is to be acquired by the absolute purchase thereof (including the acquisition by conversion from possession and use or public tenure into absolute ownership), the President's Declaration issued for the purposes of article 3, shall state the amount of compensation which the competent authority is willing to pay for the land to which the declaration refers. The Declaration shall have attached with it a valuation drawn up by an architect and where available a site plan of the land described in the Declaration.

(3) Within fifteen working days from the publication of the President's Declaration as is referred to in subarticle (2) in the Gazette the Government shall deposit in an interest bearing bank account (which will guarantee a minimum of interest per annum as the Minister responsible for lands may by regulation under this subarticle prescribe) a sum equal to the amount of compensation offered in the President's Declaration. Such sum shall be freely withdrawn together with any interests accrued thereon by the person or persons entitled to such compensation upon evidence to the entitlement thereto, in a manner satisfactory to the competent authority:

Provided that in cases where the President's Declaration refers to the acquisition by conversion from possession and use or public tenure into absolute ownership, the government shall not be bound by the time-limit established in this subarticle with respect to the deposit of a sum equal to the amount of compensation offered in the President's Declaration, and may deposit such amount any time thereafter; and in such cases simple interest at the rate of five *per centum per annum* shall be paid annually on the

sum declared in the President's Declaration up to the date of the eventual deposit in the Bank:

Provided further that in such cases, any proceeds from the sale, alienation or the creation of any real and personal right on such land, and any proceeds from any rent or other annual payment over such land, shall be retained by the Commissioner for Land and reserved for the payment to the rightful owners of the sum and interests referred to in the previous proviso and only such proceeds or payments in excess of such sum shall be transferred to and received by the Consolidated Fund.

(4) The competent authority shall signify its acceptance or otherwise of the evidence submitted by the persons referred to in the immediately preceding subarticle, by means of a judicial act within two months from the submission of such evidence.

(5) The amount deposited as provided in subarticle (3) together with any interests accruing thereon may be withdrawn as provided in the said subarticle whether or not the sum deposited as compensation has been accepted as the amount of compensation due, and the withdrawal of such deposit interests shall not prejudice the right competent to any person to take action according to this Ordinance for the purpose of determining any further compensation that may be payable to him in accordance with this Ordinance.

(6) Where the person entitled to compensation does not accept that the amount deposited is adequate, such person may apply to the Board for the determination of the compensation in accordance with the provisions of this Ordinance. Such application shall, on pain of nullity, state the compensation that in the opinion of the applicant is due.

(7) Such application shall be filed in the Registry of the Board within twenty one days from the notification of the judicial act by the competent authority accepting proof of evidence in accordance with subarticle (4). The Board shall determine such compensation and shall give all necessary orders and directives in accordance with this Ordinance.

(8) Upon the making of a Declaration by the President in accordance with this Ordinance that any land is to be acquired by the absolute purchase thereof, the absolute ownership of the land to which the declaration refers shall be deemed to be a registration area for the purposes of the Land Registration Act and the absolute ownership thereof shall by virtue of this Ordinance and without any further assurance or formality, be transferred to and be acquired by the competent authority free and unencumbered from any charge, hypothec or privilege and with all the appurtenances thereof, and the competent authority shall cause such land to be registered in the Land Registry in its name in accordance with the Land Registry Act within three months from the issue of the Declaration of the President.

Cap. 296.

(9) The right to withdraw the compensation deposited in accordance with subarticle (3) and to any further compensation that may be due under this Ordinance (hereinafter referred to as "the compensation rights") shall be deemed to be an immovable right by

reason of the object to which it refers and shall be transferable accordingly. Any charge, hypothec or privilege which prior to the acquisition of the land by the competent authority attached to such land, shall continue to attach to the compensation rights with the same ranking and priority as it attached to the land.

(10) Where the compensation payable in respect of land acquired by the absolute purchase thereof is determined, whether by agreement or by decision of the Board, any sum due as compensation over and above any sum deposited in accordance with this article together with interests thereon in accordance with article 12(3), shall be paid to the person entitled thereto by the competent authority not later than three months from the date on which such compensation was determined as aforesaid.

(11) The compensation due for the acquisition by absolute purchase of any land, and the sum to be deposited in accordance with this article shall be:

- (a) in cases other than those falling under paragraphs (b) and (c), such compensation as is established in accordance with the provisions of this Ordinance regard being had to the value at the date of publication of the Declaration by the President in the Gazette;
- (aa) in the case of a historical building the value thereof shall be calculated as the higher of the following:
  - (i) the full value of the historical building if sold on the open market subject to the condition that the use that can be made thereof shall be limited to use for educational, touristic or cultural purposes less the amount required for the historical building to be restored in accordance with internationally accepted guidelines and standards of craftsmanship and practice for the purpose of rendering it suitable for such educational, touristic or cultural use; or
  - (ii) where the historical building was originally Government-owned and transferred by Government, by updating the amount for which the said historical building was acquired from the Government commencing from a basis year not earlier than 1946 according to the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance from the date of the said acquisition until the date of the Declaration of the President of Malta made in terms of article 3 and adding thereto interest on the amount as updated at the rate of five per cent per annum from the date when the said historical building was transferred by the Government until the date of the said Declaration of the President of Malta, plus the value of any improvements made to the building by the owner between the said dates, depreciated according to

established accountancy standards:

Provided that in calculating the compensation in accordance with this subparagraph:

1. where the historical building was originally Government-owned and transferred by Government and the said transfer took place thirty years or more before the date of the Declaration of the President of Malta in respect thereof, the amount resulting after the value of the building based on the amount for which the said historical building was acquired from the Government is updated until the date of the said Declaration by the President of Malta in accordance with the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance as aforesaid shall be multiplied by fifteen; Cap. 158.
2. where the historical building was originally Government-owned and transferred by Government and the said transfer took place less than thirty years but more than twenty years before the date of the Declaration of the President of Malta in respect thereof, the amount for which the said historical building was acquired from the Government is updated until the date of the said Declaration by the President of Malta in accordance with the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance shall be multiplied by ten; Cap. 158.
3. where the historical building was originally Government-owned and transferred by Government and the said transfer took place more than ten but less than twenty years before the date of the Declaration of the President of Malta in respect thereof, the amount for which the said historical building was acquired from the Government is updated until the date of the said Declaration by the President of Malta in accordance with the index of inflation published in the Schedule to the Housing (Decontrol) Ordinance shall be multiplied by five; Cap. 158.
4. where the foregoing paragraphs of this proviso apply, the interest payable according to subparagraph (ii) shall only be payable on the amount as updated according to the said subparagraph and not also on the increase resulting after paragraphs 1, 2 or 3

are applied; or

- (iii) where the historical building is not a building which was originally Government-owned, the amount established as the value of the building by the person who is the owner of the building at the time of publication of the Declaration of the President of Malta in a declaration in respect of the transfer *causa mortis* of the property filed in accordance with the Duty on Documents and Transfers Act, or according to the declaration made for succession duty purposes according to any other law which has from time to time governed or is governing succession duty, updated in accordance with the provisions of subparagraph (ii), including the proviso thereto, which shall apply *mutatis mutandis*:

Cap. 364.

Provided that where only an undivided portion or undivided portions of a historical building have been so declared in respect of a transfer *causa mortis* or in any other manner for succession duty purposes, the value of the whole building for the purposes of this subparagraph (iii) shall be based on the projection of the value declared in respect of the said portion or portions averaged out together in such a manner as to cover one hundred per cent of the value of the building increased by ten per cent;

- (iv) where the historical building, whether it originally belonged to Government or not, either has never been transferred *causa mortis* or after being transferred *causa mortis* was transferred *inter vivos* under an onerous title, the amount paid for such transfer by means of the most recent transfer prior to the date of publication of the Declaration of the President of Malta updated in accordance with the provisions of subparagraph (ii), including the proviso thereto, which shall apply *mutatis mutandis*:

Provided that where the Land Arbitration Board in proceedings filed before it in terms of this Ordinance on the compensation to be paid for the acquisition of a historical building, considers that no reasonable relationship of proportionality exists between the compensation amount resulting from the application of paragraphs (i), (ii), (iii) or (iv) and the open market price which in the opinion of the Board, after taking into consideration all relevant issues of fact and of law, that property would have fetched had it been sold voluntarily *tale quale* on the open market, at the time of publication of the Declaration of the President of Malta, the Board may authorise payment of a compensation

amount based on the average between the computed amount in terms of paragraphs (i), (ii), (iii) or (iv) and such amount as the Board would consider to be the open market value;

- (v) notwithstanding the other provisions of this subarticle, where the value of a historical building as calculated in accordance with subparagraphs (i), (ii), (iii) or (iv) including the provisos thereof, shall result in an amount that is higher than the open market value of the said building at the time of publication of the Declaration of the President of Malta in respect thereof, the value of the historical building shall not exceed the said open market value;

- (vi) in this subarticle:

"the full value of the historical building" means:

- (a) if the historical building belongs in absolute ownership to the person from whom it has been expropriated, the full value of that building;
- (b) if the historical building is possessed by the person from whom it has been expropriated under title of perpetual emphyteusis, the full value of such perpetual emphyteusis at the time of the Declaration of the President of Malta;
- (c) if the historical building is possessed by the person from whom it has been expropriated under title of temporary emphyteusis or under any other temporary title, the full value of such title of temporary emphyteusis or of such other temporary title at the time of the Declaration of the President of Malta;

"was originally Government-owned" means that the historical building was possessed by Government under a title of full ownership, perpetual emphyteusis or by virtue of any other temporary real right at any time from the 27th July 1925 onwards;

"transferred by Government" includes any transfer of a real right over immovable property including transfer under title of sale and emphyteusis whether in perpetuity or temporarily;

"the amount for which the said historical building was acquired from the Government" means:

- (a) in case of a transfer under a title of sale, the price paid for the sale;

- (b) in case of a transfer under a title of perpetual emphyteusis or under a title of temporary emphyteusis for a period exceeding ninety-eight years, the premium amount paid for the concession of that emphyteusis, if any, less one per cent for each year that passed from the time of the concession, incremented by the amount resulting after the ground rent payable annually is capitalised at a rate of five per cent;
- (c) in case of a temporary emphyteusis for a period of ninety-eight years or less or of another temporary real right for such time, the premium amount paid for the concession of such emphyteusis or for such real temporary right, if any, less one per cent for each year that passed from the time of the concession or from the time of transfer of such title, incremented by the amount resulting after the ground rent payable annually is capitalised at a rate of eight per cent;

"emphyteusis" includes sub-emphyteusis;

"interest" means simple interest.

- (b) in the case of conversion from possession and use into absolute purchase a sum arrived at by the capitalisation at the rate of one *per centum* of the annual acquisition rent due under the provisions of this Ordinance;
- (c) in the case of conversion from public tenure into absolute purchase a sum arrived by the capitalisation at the rate of one point four *per centum* of the annual recognition rent due under the provisions of this Ordinance.

Cap. 358.

(12) Property regulated by the Ecclesiastical Entities (Property) Act, shall notwithstanding any provision of this Ordinance continue to be governed by the provisions of the said Act, and the procedures and criteria therein established for the determination of compensation and the payment thereof shall apply accordingly.

- 23.** (1) There shall be a Board to be known as the Land Arbitration Board. Constitution of the Board and appointment of Panel.
- (2) The Board shall consist of a Chairman who shall be appointed by the President of Malta. The Chairman shall be a person who holds or has held the office of judge or a person who holds the office of magistrate. *Amended by:*  
*III. 1936.2;*  
*XLV. 1946.12;*  
*XXXIII. 1971.2;*  
*IV. 1975.2;*  
*L.N. 148 of 1975;*  
*XVII. 1979.2.*  
*Substituted by:*  
*XIX. 1993.2.*  
*Amended by:*  
*XXI. 2009.7.*
- (3) The President of Malta may appoint several such judges or magistrates to sit on the Board, but only one such judge or magistrate shall sit in any one case.
- (4) The President of Malta shall also appoint a Panel of Architects and Civil Engineers for the purpose of assisting the Board in the valuation of land and in other technical matters. The said Panel of Architects and Civil Engineers shall be appointed from among persons who hold the warrant to practice as architect and civil engineer according to the provisions of the Architects Ordinance and who have practised that profession in Malta for not less than seven years. Cap. 44.
- (5) The provisions of articles 733, 734, 735, 737 and 739 of the Code of Organisation and Civil Procedure shall apply to the Chairman and to the members of the Panel and any exception to any member of the Panel shall be decided by the Chairman and shall not be subject to appeal. Cap. 12.
- 24.** (1) Where the Chairman is a person who has held office of judge but no longer holds such office he shall take and subscribe an oath before the Attorney General to exercise his functions under this Ordinance with impartiality and in accordance with the law. Oath to be taken by Chairman and members of the Panel  
*Substituted by:*  
*XVII. 1979.3;*  
*XIX. 1993.2.*  
*Amended by:*  
*XXI. 2009.8.*
- (2) The members of the Panel shall not enter upon the duties of their office unless they have taken and subscribed an oath before the Chairman to exercise their functions under this Ordinance with impartiality and in accordance with the law.
- (3) The members of the Panel shall be appointed for a period of three years and may be reappointed.
- 25.** (1) The Board shall be competent - Powers of Board.  
*Amended by:*  
*XXXI. 1947.11;*  
*L.N. 148 of 1975;*  
*XIX. 1993.2;*  
*XXIV. 1995.360;*  
*XVII. 2004.4;*  
*XXI. 2009.9.*
- (a) to order immediate possession of any land to be given to the competent authority;
- (b) to order the transfer of any land to the competent authority in absolute ownership or on public tenure;
- (c) to order the subjection of land to any easement;
- (d) to order the termination of any lease;
- (e) to assess the amount of compensation payable under any of the provisions of this Ordinance and for that purpose to declare whether any area is a building site or agricultural or waste land;
- (f) to order the execution of its own decisions:
- Provided that the amount of compensation to be assessed by the Board in accordance with the provisions of paragraph (e), shall not exceed the higher amount of compensation as proposed by any

of the parties.

- Cap. 12. (2) (a) The Board shall have the same powers as are by law vested in the Civil Court, First Hall, and, subject to the provisions of this Ordinance, the provisions contained in the Code of Organization and Civil Procedure shall, as far as practicable, be applicable to the Board.
- (b) All acts shall be issued in the name of the Board and signed by the Chairman.
- (c) The Chairman shall decide all questions in regard to the admissibility of evidence, the competence of witnesses, and all other questions relating to procedure.
- (d) The Registrar of Courts or any other person deputed by him shall be the registrar of the Board, and all acts brought before the Board shall be kept in the Registry of the Superior Courts which shall be the registry of the Board.
- Cap. 12. (e) All acts shall be filed, issued and served in accordance with the provisions of the Code of Organization and Civil Procedure, subject to any rules made under this Ordinance.

(3) Whenever a question arises before the Board requiring the valuation of any land or any other technical opinion in connection with any case before the Board, the Chairman shall assign two of the members of the Panel to examine the land in question, or to take cognizance of the record of the case relative to the matter in which the technical opinion is requested; and such two members shall present their report to the Chairman during the sitting or file the said report in the Registry of the Board as the Chairman may direct. The report shall be accessible to the parties who shall be granted the opportunity to put questions in writing thereon to the members of the Panel and to comment thereon to the Board:

Provided that the parties, without prejudice to their right to bring during the evidence stage their own expert witnesses *ex parte*, shall not be entitled to request the appointment of additional referees.

(3A) When the report referred to in subarticle (3) consists of a valuation it shall state:

- (a) the date of the valuation;
- (b) the date with reference to which the property was valued;
- (c) the state which it is calculated that the property was in on the date with reference to which the property was valued;
- (d) the use which was being made of the property on the date with reference to which it was valued, including information as to whether the property was at the said time subject to rights of third parties such as emphyteusis, use, usufruct or lease;

- (e) the comparable transactions, if any, with reference to which the property was valued.

The members of the Panel shall employ their best efforts to value the property on the basis of reference to comparable transactions.

(4) The Chairman may also require the members of the Panel assigned to a case to attend the sitting of the Board when that case is being considered by the Board as he may deem appropriate or if the said members require additional information from the parties or need to hear any particular witnesses.

(5) The Chairman shall decide the matter himself after giving due consideration to the reports of the two members of the Panel and any other relevant acts presented or submissions made.

(6) The parties shall be heard on a day to be fixed by the Board.

(7) An appeal 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.

Cap. 12.

**26.** Where, out of the proceedings before the Board, there arises any question which is not included under article 25(1), the Board shall reserve such question to be decided by the Civil Court, First Hall, and shall fix a time-limit for the party raising such question to bring it forward by sworn application before the said court; the Board shall then adjourn the proceedings until final judgment thereon has been given by the civil courts or until the expiry of the said time-limit, whichever shall be the earlier:

Questions to be decided by chairman as judge. Amended by: XXXIII. 1971.3; L.N. 148 of 1975; L.N. 181 of 2006.

Provided that, if the party raising such a question before the Board does not bring forward the relative action as aforesaid before the Civil Court, it shall be lawful for the other party to bring forward the action in the same manner as hereinbefore stated, and in such case the proceedings before the Board shall not be resumed until after the final judgment of the civil courts:

Provided further that -

- (a) the reservation of any point of law or fact shall not be an obstacle to the competent authority obtaining possession of any land within the period fixed by the Board;
- (b) the competent authority shall not be bound to intervene in any dispute which may arise between co-owners; nor shall the competent authority bear any additional expense due to the apportionment of the compensation between the parties interested in the land.

Assessment of compensation by Board.

*Amended by:*  
*XLV. 1946.13;*  
*XXXI. 1947.12;*  
*XXXI. 1966.2;*  
*LVIII. 1974.68;*  
*XIII. 1983.5;*  
*XIX. 1993.2;*  
*XI. 2002.7;*  
*L.N. 408 of 2007;*  
*XXI. 2009.10.*

**27.** (1) Without prejudice to any special provision contained in this Ordinance, in assessing compensation the Board shall act in accordance with the following rules:

- (a) no allowance shall be made on account of the acquisition being compulsory;
- (b) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realize:

Provided that -

- (i) the value of the land shall be the value as at the time when the President's Declaration was served, without regard to any improvements or works made or constructed thereafter on the said land and where the land was in the possession of the competent authority immediately prior to the service of the President's Declaration no regard shall be had, in assessing the value of the land, to any improvements or works made or constructed by the competent authority while in possession of the land;
- (ii) where a part only of the land belonging to any person is taken under this Ordinance, any enhancement of the value of the residue of the land by reason of the proximity of any improvements or works made or constructed by the competent authority within eighteen months before the publication of the President's Declaration, or to be made or constructed by the competent authority within eighteen months after the publication of the President's Declaration shall be taken into consideration;
- (iii) the damage, if any, sustained by the owner by reason of the severance of the land from other land belonging to such owner or other injurious effect upon such other land by reason of the exercise of the powers conferred by this Ordinance, shall be taken into consideration;
- (iv) where damage has been sustained by reason of any works done in or upon the land, regard shall be had to any increase in the value of the land by reason of any improved drainage and any other advantage derived from any such works;
- (v) compensation in respect of a historical building shall be assessed in accordance with article 22(11)(aa).

(2) When the compensation to be assessed is in respect of the possession and use only of an old urban tenement and not also of the ownership thereof, the amount of the acquisition rent shall be assessed at the yearly rent of the tenement as shown on the registers of the Land Valuation Office.

- (3) Where, however, -
- (a) the fair rent of an old dwelling house as unfurnished has been assessed by the Rent Regulation Board under the provisions of the Rent Restriction (Dwelling Houses) Ordinance, or Cap. 116.
  - (b) the rent of an old urban tenement let unfurnished at a rent not in excess of ninety-three euro and seventeen cents (93.17) a year has, after the 31st March, 1939, been assessed by the Rent Regulation Board under the provisions of the Reletting of Urban Property (Regulation) Ordinance on consideration of the reports of the two members of the Panel assigned to that case by that Board or the report of the technical members of that Board, as the case may be, following an inspection by them of the building, or Cap. 69.
  - (c) the rent of an old dwelling house let unfurnished at a rent in excess of ninety-three euro and seventeen cents (93.17) but not in excess of one hundred and sixteen euro and forty-seven cents (116.47) a year or of an old shop (within the meaning of the Reletting of Urban Property (Regulation) Ordinance) let unfurnished at a rent in excess of ninety-three euro and seventeen cents (93.17) a year has, at any time between the 1st April, 1939, and the 11th June, 1940, been increased under the provisions of article 14(2) of the Reletting of Urban Property (Regulation) Ordinance, or Cap. 69.
  - (d) the rent of an old dwelling house let unfurnished at a rent in excess of one hundred and sixteen euro and forty-seven cents (116.47) a year has been increased at any time between the 1st April, 1939, and the 11th June, 1940,

the yearly rent so assessed, or mutually agreed upon, shall constitute the assessment of the acquisition rent payable in respect of the possession and use of the old urban tenement concerned.

(4) Where two or more determinations in respect of the same building have been given by the Rent Regulation Board (referred to in subarticle (3)) the assessment made by the last determination shall constitute the assessment of the amount of the acquisition rent if that determination was given following an inspection of the building by the two members of the Panel assigned to that case by that Board, or by the technical members of that Board, as the case may be, and on consideration of their report.

(5) Where a determination has been given by the Rent Regulation Board subsequently to an increase of rent referred to in subarticle (3)(d) the rent fixed by that Board shall constitute the assessment of the amount of the acquisition rent, if that determination was given following an inspection of the building by the two members of the Panel assigned to that case by the Board, or the technical members of that Board, as the case may be, and on consideration of their report.

(6) Where the yearly rent of an old urban tenement has not been assessed by the Rent Regulation Board as set out in subarticles (3), (4) and (5) and the competent authority or the owner proves that the average yearly rent of the building during the five years from the 1st April, 1934, to the 31st March, 1939, was different to that shown on the registers of the Land Valuation Office, such average yearly rent shall constitute the assessment of the amount of the acquisition rent instead of the rent as shown on the registers of the Land Valuation Office.

(7) For purposes of this Ordinance, any determination referable to any part in use of an urban tenement damaged or partly demolished by enemy or counter enemy action, which may have been made by the Rent Regulation Board upon consideration of that damage or partial demolition, shall be deemed to be inoperative.

(8) The acquisition rent to be assessed in respect of the possession and use of a new urban tenement shall be equal to the yearly rent determined by the appropriate board under the provisions of the Rent Restriction (Dwelling Houses) Ordinance, or in default of any such determination, by the Land Arbitration Board in accordance with the rules contained in the said Rent Restriction (Dwelling Houses) Ordinance, applicable to the assessment of the yearly rent of a new urban tenement.

Cap. 116.

(9) The amount of the acquisition rent in respect of the acquisition for possession and use of building sites not being urban tenements, of agricultural lands, or of waste lands shall be assessed at the estimated yearly rental value thereof as on the 31st March, 1939.

(10) For the purpose of assessing acquisition rent under subarticle (9) land shall be considered as agricultural land, a building site or waste land as the case may have been on the 31st March, 1939, and no consideration shall be taken of contingencies through which its nature or its value may have been altered since the 31st March, 1939, provided that the provisions contained in subarticle (12) shall apply to such structural additions as may have been effected on the land, between the 1st April, 1939 and the 28th November, 1946.

(11) For the purpose of subarticle (9) the yearly rental value of a building site means the estimated yearly ground rent at which that site could reasonably have been granted on 31st March, 1939, on emphyteusis in perpetuity; and the yearly rental value of waste land means the estimated yearly ground rent at which that land could reasonably have been granted on the 31st March, 1939, on a ninety-nine year emphyteusis inclusive of the emphyteuta's undertaking to improve the land for agricultural purposes.

(12) In the case of structural alterations or additions effected on the land between the 1st April, 1939, and the date of the declaration made by the President of Malta under article 3, the acquisition rent as fixed in the foregoing articles - not being rent previously fixed or revised by the Land Valuation Officer or previously fixed by the Rent Regulation Board after the alterations or additions were carried out - shall be revised by the competent authority and the

owner, and, in case of disagreement, by the Board on the submission of either of them.

(13) The compensation in respect of the acquisition of any land on public tenure shall be equal to the acquisition rent assessable in respect thereof in accordance with the provisions contained in subarticles (2) to (12), inclusive, of this article, increased (a) by forty *per centum* (40%) in the case of an old urban tenement and (b) by twenty *per centum* (20%) in the case of agricultural land.

(14) The first payment of acquisition rent in respect of land of which possession and use is required for a public purpose shall be due as from the date of acquisition by the competent authority of possession of that land.

(15) Acquisition rent payable by the Government of Malta shall be a charge on the Consolidated Fund without any further appropriation than this Ordinance.

(16) Acquisition rent shall be fixed on a yearly basis but shall be paid half yearly in advance:

Provided that the competent authority at its option may at any time pay a broken amount in respect of any one or more parcels of land in order to regulate the due dates of payment thereafter in respect thereof.

(17) Recognition rent payable by the Government of Malta shall be a charge on the Consolidated Fund without any further appropriation than this Ordinance.

(18) The provisions concerning acquisition rent contained in subarticles (14) and (16) shall apply *mutatis mutandis* to recognition rent.

(19) Besides the acquisition rent or, as the case may be, recognition rent to be assessed in accordance with the provisions of this Ordinance, the competent authority in the circumstances set out hereunder, but not otherwise, shall in addition pay in one lump sum to the person from whom possession of the land has been compulsorily acquired a sum to be mutually agreed upon between the parties concerned, or, in default of agreement, to be assessed by the Board and in every case in the first instance the amount which the competent authority is offering for the purposes of this subarticle shall be included in the President's Declaration together with the statement as to the amount of compensation referred to in article 22(2). Such an additional sum shall not be payable except to -

- (a) the possessor of the things which, on the date of the declaration referred to in article 3, were *bona fide* serving for the furnishing of a dwelling house acquired by the competent authority and subject to the provisions contained in article 20(2), (3) and (4) not being applicable, and in such case the additional payment shall be equal to the reasonable cost of removing those furnishings to the dwelling house or to the place of storage reasonably selected by the same possessor; and

- (b) the occupier of a *bona fide* trading establishment acquired by the competent authority and subject to the provisions contained in article 20 not being applicable, and in such case the additional payment shall be equal to the value of the goodwill of the same establishment computed at not more than the net profits made at that establishment by the same occupier during the two years ending on the date of the declaration referred to in article 3 if on that date the same occupier has been in occupation of those premises for not less than thirty months, or, in default of such occupation for at least thirty months, at not more than the net profits that would be likely to be made at that establishment by the same occupier during two years beginning on the termination of six months from the day when that occupier first started business in that establishment:

Provided that if the provisions of article 20(2), (3) and (4) are applicable in respect of the occupier of a *bona fide* trading establishment, the additional compensation payable shall not exceed the amount provided in subarticle (3) of that article or the amount provided in paragraph (b), whichever is the greater.

Compensation for  
land damaged by  
enemy action.  
Added by:  
XXXI.1947.13.  
Amended by:  
LVIII.1974.68;  
XLIX. 1981.6.

**28.** (1) When the land has been damaged by enemy or counter-enemy action and the owner thereof was thereby entitled or might have been entitled to compensation under the War Damage Ordinance, 1943,\* the compensation payable in accordance with the provisions of this Ordinance in respect of the compulsory acquisition of the full ownership or of the public tenure of the land or of the conversion into either title of the possession and use or of the public tenure of the land previously held by the competent authority, shall, where such compensation is computed by reference to the value of the land undamaged, be deemed to include full consideration in respect of the assignment by the owner to the competent authority of all claims competent to the owner under the War Damage Ordinance, 1943,\* aforesaid up to the day when the competent authority takes possession of the land. In every case such assignment as aforesaid shall be deemed to be an integral part of any compulsory acquisition.

(2) In the case of land so damaged, however, the competent authority shall be entitled to deduct from any compensation payable under this Ordinance -

- (a) any balance not yet fallen due of the ten half yearly direct contributions, if any, payable in respect of that land under the said War Damage Ordinance, 1943\*, and any arrears of such contributions which may have fallen due by the owner in respect thereof;
- (b) any sum or sums which may have been advanced by the War Damage Commission to the owner when the works, on the date of the declaration made by the President of Malta under article 3, have not been

\*Repealed by Act XXIX of 1980.

carried out, or, when only a part of the works have been carried out on that day, a proportionate part of the sum or sums so advanced.

(3) Where the owner of any land to which the provisions of subarticle (1) apply establishes that but for those provisions he would have been entitled to claim interest upon a value payment from the War Damage Commission, there shall be payable to him by the competent authority a sum equal to the amount of the acquisition rent which would have been payable to him under the provisions of article 27 if the land had been compulsorily acquired for temporary possession and use as at the date upon which such interest would begin to accrue and continuing up to the date at which the land was in fact acquired.

(4) If in any case to which the provisions of subarticle (3) apply the owner has during the relevant period received rent from a tenant who was a tenant at the commencement of the said period, the sum payable to the owner in lieu of interest shall be reduced by the amount of rent so received during the said period and the difference shall be payable to the tenant.

**29.** (1) When for any public purpose any land is declared to be subject to clearance rights, no owner shall build or erect any structure on any land declared to be so subject or increase the height of any existing structure without the permission of the Board.

Clearance rights.  
Amended by:  
V. 1949.4, 5, 6, 7, 8,  
9, 10;  
XIII. 1983.5;  
III. 2004.152;  
L.N. 408 of 2007.

(2) When for any public purpose any land is declared subject to subsoil rights, no owner shall make any new or extend any existing underground work or excavation without the prior permission, in writing, of the Board.

(3) When for any public purpose any land is declared to be subject to clearance rights or to subsoil rights, no compensation shall be payable by reason only of the subjection of the land to such rights or to the possession, by the competent authority, of any underground work or excavation made or constructed by any competent authority, but the following provisions shall apply.

(4) The demand for the permission referred to in subarticle (1) and subarticle (2) shall be made by filing an application together with a plan showing the buildings or other structures proposed to be erected and the work or excavation proposed to be made. The Board shall forthwith cause notice of the application to be given to the competent authority.

(5) If the competent authority shall not oppose the application within twenty-one days after notice of the application shall have been given to the competent authority, the application shall be granted by the Board.

(6) If the competent authority shall oppose the grant of the permission, the Board shall, on the application of the person requiring the said permission, determine the compensation payable by reason of the refusal of the competent authority to allow the erection of the proposed buildings or other structures or the making of the proposed underground work or excavation. When

compensation is paid under the provisions of this article, the Board shall specify the area in respect of which the compensation is granted, and in such case no further compensation shall at any time thereafter become payable for clearance rights or subsoil rights, as the case may be, in respect of that area, saving the provision of the last part of subarticle (9).

(7) No compensation shall be payable unless it is shown to the satisfaction of the Board -

- (a) that the proposal to build or to increase the height of existing buildings or to make any new or extend any existing underground work or excavation is a genuine intention on the part of the owner;
- (b) that no alternative proposal can be adopted which, while not detrimental to the owner, is acceptable to the competent authority.

(8) Where any land has been declared subject to clearance or subsoil rights, any person who makes, builds or erects any structure or increases the height of any structure on the land or who makes any new or extends any existing underground work or excavation in such land, without the prior permission, in writing, of the competent authority, shall, within ten days after due notice in writing has been given to him in that behalf by the competent authority -

- (a) remove any structure so made, built or erected or any such increased part of a structure; and
- (b) fill in any new or extended underground work or excavation, and restore the land to its condition prior to the making of the new or extended work or excavation,

and in the event of the notice not being complied with, the competent authority may order such part of a structure to be demolished, or such work or excavation to be filled in and the land restored, at the expense of the person erecting such structure or increased part of a structure or making such new or extended underground work or excavation, without any compensation to such person, and such expense shall be recoverable from him in the same manner as a fine, and he shall be liable, on conviction therefor, to a fine (*multa*) not exceeding forty-six euro and fifty-nine cents (46.59) for non-compliance with such notice.

(9) Land subject to clearance rights under this article may be released by the competent authority from such rights, provided the owner consents to accept the release and pays to the competent authority such fair compensation as may be agreed upon or, in default of agreement, as may be fixed by the Board. Payment of compensation for the release from clearance rights may only be demanded by the competent authority where compensation has been paid for the subjection of the land to clearance rights in accordance with this article. Land released from clearance rights may again be declared subject to such rights.

(10) Where any land is declared subject to subsoil rights, the

competent authority may retain the possession of any underground work or excavation which was constructed by the competent authority therein prior to the coming into force of this subarticle and may make or extend therein any underground work or excavation and use it for such purposes as it considers necessary:

Provided that the competent authority shall take all reasonable precautions to ensure the safety and stability of any buildings or other structures on the surface of such land and any well, cellar or other underground structure used and enjoyed in connection with the occupation of such surface, and in case of injury to any such structure shall either repair and restore it to its former condition or pay compensation to the owner for any loss sustained by him by reason of such injury and the amount of such compensation shall, if the parties fail to agree thereto, be referred to and determined by the Board.

(11) Where any land has been declared subject to any rights in favour of the Government in virtue of this article, the Government may transfer any such rights over such land to any other person or authority:

Provided that the exercise by the transferee of the right so transferred shall continue to be so exercised for a public purpose.

**30.** (1) The President of Malta may by notice in the Government Gazette order the evacuation of any area where danger to life or limb is possible as a result of naval, military or air operations, and while such order is in force the danger area and all houses and buildings within that area shall be vacated by the tenants or occupiers and by any other person, and no responsibility shall lie with the naval, military or air authorities in consequence of any personal injury which may derive to any person within the danger area as a result of the said operations. Any person remaining in the danger area while any such order is in force shall, on conviction by the Court of Magistrates, be liable to a fine not exceeding four euro and sixty-six cents (4.66).

Right to order temporary evacuation of land.  
*Amended by:*  
*LVIII. 1974.68;*  
*XIII. 1983.5;*  
*VIII. 1990.3;*  
*L.N. 408 of 2007.*

(2) Compensation for temporary evacuation shall be paid to any person who has incurred loss or expense in consequence of the evacuation.

(3) In the event of any compensation payable under this article not being agreed upon between the competent authority and the claimant, the amount thereof shall be determined by the Board in the manner provided in this Ordinance.

**31.** (1) Where the competent authority has made an offer in writing of any sum whether payable periodically or as a lump sum as compensation to an owner and the sum awarded by the Board to that owner does not exceed the sum offered, the Board shall order the owner to bear his own costs and to pay the costs of the competent authority so far as they were incurred after the offer was made.

Costs.  
*Amended by:*  
*XXXI. 1947.14;*  
*XI. 2002.7;*  
*XVII. 2004.4.*

(2) Where an owner does not accept the offer of the competent authority and claims that the amount due as compensation should

be higher, indicating such sum, whether payable periodically or as a lump sum, as compensation, and has complied with the provisions of articles 9 and 12, and the sum awarded is more than that offered by the competent authority, then all costs shall be borne by the parties in proportion that the difference in the amount offered by the competent authority and that determined by the Board has to the difference in the amount claimed by the owner and the amount determined by the Board.

(3) Where the Board orders the owner to pay the costs or any part of the costs of the competent authority, the competent authority may deduct the amount so payable by the owner from the amount of the compensation payable to him.

Competent authority not compelled to complete acquisition of land.

**32.** (1) Nothing in this Ordinance shall be taken to compel the competent authority to complete the acquisition of any land unless the competent authority shall have entered into possession of the land or have failed within one month of the decision of the Board to intimate to the Board that the competent authority do not intend to proceed with the acquisition:

Provided that the owner of the land shall be entitled to receive from the competent authority all such costs as may have been incurred by him by reason or in consequence of the proceedings for acquisition and compensation for the damage (if any) which he may have sustained by reason or in consequence of the notice of intended acquisition.

(2) The amount of such costs and compensation shall, in default of agreement, be determined by the Board.

Effect of service of notice.  
*Amended by:*  
*LVIII. 1974.68;*  
*XI. 2002.7;*  
*I. 2006.7.*

**33.** The fact that any notification has been served upon any person shall not be taken as an admission by the competent authority that the person on whom such notice has been served or any other person has any estate or interest in the land or any part of the land specified in the notice, and shall not debar the competent authority from alleging in any proceedings under this Ordinance or otherwise that all rights in or in relation to such land are vested in the Government of Malta.

Penalty for obstruction.  
*Amended by:*  
*XIII. 1983.5;*  
*L.N. 408 of 2007.*

**34.** Any person who shall wilfully hinder or obstruct any person duly authorized from entering upon or taking possession of or using any land in pursuance of the provisions of this Ordinance, or who shall molest, hinder or obstruct any such person shall be liable to a fine not exceeding one hundred and sixteen euro and forty-seven cents (116.47) or to imprisonment for a term not exceeding three months.

Rules.  
*Amended by:*  
*L.N. 4 of 1963;*  
*XIX. 1993.2;*  
*VI. 2001.9.*

**35.** (1) The Minister responsible for justice may make rules, including rules as to forms, costs, and fees, for carrying this Ordinance into effect; and unless and until other provision shall be made under this Ordinance, the forms contained in the Schedule to this Ordinance shall have effect:

Provided that no nullity shall ensue if another form is used which complies substantially with the requirements of the forms in the Schedule.

(2) Without prejudice to the generality of subarticle (1), the Minister responsible for justice may by notice prescribe -

- (a) the fees payable to the members of the Panel;
- (b) the fees due to advocates and legal procurators for any proceedings before or in connection with the board; and
- (c) the fees payable to the registry of the board:

Provided that until fees are prescribed by the Minister under paragraphs (b) and (c), the fees established in Schedule A to the Code of Organization and Civil Procedure shall apply. Cap. 12.

**36.** Nothing in this Ordinance contained shall affect any rights acquired by a competent authority under the Order-in-Council of the 26th October, 1896.<sup>\*\*</sup> Saving.

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Transitory provisions

Article 7(2) of Act XI of 2002:<sup>†</sup>

"(a) With respect to land subject to a declaration by the President before the coming into force of this article<sup>‡</sup>, or land which before the coming into force of this article was taken over by Government but no declaration was issued by the President in respect thereof prior to the coming into force of this article, article 12(3) of the Ordinance as amended by this article shall apply, so however that interest as therein indicated shall accrue from the date of taking over by the Government up to the date when compensation therefor is paid or deposited as the case may be:

Provided that the interests as aforesaid shall be calculated on the value of the land on the date of the President's Declaration or where no such Declaration was issued prior to the coming into force of this article on the date of taking over by Government of the land in question.

- (b) (i) The President may in relation to any land subject of a Declaration issued before the coming into force of this article issue a fresh Declaration wherein shall be stated the amount of compensation which the competent authority is willing to pay for the land to which the Declaration refers. The said Declaration shall have attached with it a valuation drawn up by an architect and where available a site plan of the land described in the Declaration:

Provided that when such fresh Declaration is issued the compensation shall be determined on the basis of the value of such land on the date of the service of any notice to treat in respect of such land, and where no such notice to treat has been so served, on the date of the issue of the fresh Declaration by the President.

- (ii) For the purpose of determining whether land is to be valued as a building site, agricultural or rural land or waste land for the purposes of this subarticle the relevant date shall be the

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<sup>\*\*</sup>This Order-in-Council was published in Malta by Govt. Not. No. 183 of the 19th November, 1896.

<sup>†</sup>This subarticle was repealed by Act I. 2006.14, subject to the following proviso:  
 "Provided that when in relation to any land a fresh President's Declaration was issued under the provisions of sub-article 7(2) repealed by this article such Declaration shall continue to be governed by the provisions of the same sub-article 7(2) as if it had not been repealed by this article".

<sup>‡</sup>5th March of 2003 - article 7 of Act XI of 2002 amended articles 9, 12, 22, 27, 31, 33 and the Schedule of this Ordinance.

date when the original Declaration was issued by the President before the coming into force of this article.

- (iii) Any fresh Declaration issued in virtue of this paragraph shall, subject to the provisions of this subarticle, as a Declaration issued under the provisions of article 22 of the Ordinance as amended by this article, and thereupon the provisions of article 22(3) to (12) of the Ordinance as so amended shall apply.

(c) Article 31 of the Ordinance, as amended by this article, shall apply to any proceedings relating to any Declaration even if issued prior to the date of the coming into force of this article."

Transitory provision

Article 4(2) of Act XVII of 2004:

"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."

Transitory provision

Article 9 of Act I of 2006:

"9. (1) The provisions of article 4 of this Act\* shall only apply to land in respect of which a declaration under article 3 of the Ordinance was issued after the coming into force of this Act.

- (2) (a) The President may in relation to any land subject of a Declaration issued before 5th March 2003, issue a fresh Declaration wherein shall be stated the amount of compensation which the competent authority is willing to pay for the land to which the Declaration refers. The said Declaration shall have attached with it a valuation drawn up by an architect and where available a site plan of the land described in the Declaration:

Provided that when such fresh Declaration is issued the compensation shall be determined on the basis of the value of such land on the date of the service of any notice to treat in respect of such land, and where no notice has been so served, in accordance with the value of the land as on 1st January 2005.

- (b) For the purpose of determining whether land is to be valued as a building site, agricultural or rural land or waste land for the purpose of this sub-article the relevant date shall be the date when the original Declaration was issued by the President, in accordance with the criteria established by the law in force at the time of the issue of the original Declaration.
- (c) Any fresh Declaration issued in virtue of this article shall, subject to the provisions of this sub-article be deemed as a Declaration issued under the provisions of article 22 of the principal law and the provisions of the said article as amended by this Act shall apply thereto."

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\*that is, of Act I of 2006, which article substitutes articles 17 and 18 of the Ordinance.

SCHEDULE 1

(ARTICLES 3, 4, 8, 9, 12, & 35)

DECLARATION BY PRESIDENT OF MALTA

Amended by:
XXXI. 1947.15;
V. 1949.11;
XI. 1962.3;
XIV. 1966.3;
LVIII. 1974.68;
XIII. 1983.5;
XI. 2002.7.
Substituted by:
L.N. 408 of 2007.

I hereby declare that the undermentioned land is required by the competent authority for a public purpose in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88)\* and that the acquisition thereof is to be / by absolute purchase. / for the possession and use thereof for a period of ..... years. / for the possession and use thereof for such time as the exigencies of the public purpose require. / by way of public tenure. / by way of the imposition thereon of an easement (here state the easement to be imposed); or namely in order that it may be examined with a view to its possible acquisition.

The compensation / recognition rent / acquisition rent offered is € ..... / € ..... per annum as per valuation herein attached drawn up by architect .....

I further declare that the possession of the land is required by the competent authority within ..... days from the date on which this Declaration shall be served on the owner or owners of the land.

DESCRIPTION OF LAND

- 1.
2.
3.

\*Omit whichever does not apply.

President

Notice of President of Malta's Declaration and of particulars of land.

In the Land Arbitration Board.

Date.....

To (*here insert name of owner or owners*).

A.B. in his capacity as Commissioner of Land hereby serves on you a copy of a Declaration by the President of Malta (Exhibit A) declaring that the land is required for a public purpose in the manner specified therein. The land referred to is the following: (*here insert particulars of land*).

**PROCLAMATION BY PRESIDENT OF MALTA**

WHEREAS by virtue of Article 4 of the Land Acquisition (Public Purposes) Ordinance (Chapter 88) it is provided that the President of Malta may for any public purpose declare any land to be subject to clearance rights or to subsoil rights:

AND WHEREAS the property shown in the Schedule hereto is required to be declared subject to ..... \*

NOW THEREFORE I, in pursuance of the said article 4 of the said Ordinance, do hereby proclaim that the property shown in the Schedule hereto is subject to ..... \*

**SCHEDULE**

.....  
 .....

The Palace, Valletta, this

day of 20

**SCHEDULE 2**

Article 12(3)

*Added by:  
 I. 2006.8.  
 Amended by:  
 III. 2006.11.*

$$\left[ \frac{A + B}{2} \right] \times \left[ \frac{5}{100} \right] \times \left[ \frac{C}{365} \right]$$

where "A" is the value of the land at the time when the competent authority took possession of the land;

"B" is the value of the land at the time when the land was transferred by title of absolute purchase in favour of the Government of Malta; and

"C" is the number of days between the dates of "A" and "B".

\_\_\_\_\_  
 \*Note: here insert -  
 "clearance rights"  
 "subsoil rights", or  
 "clearance and subsoil rights"  
 as the case may be.

SCHEDULE 3

*Added by:  
III. 2006.12.*

Article 12(3), second proviso

$$\left[ \frac{P + Q}{2} \right] \times \left[ \frac{5}{100} \right] \times \left[ \frac{R}{365} \right]$$

where "P" is the value of the land determined in the notice to treat;

"Q" is the value of the land determined by the Land Arbitration Board; and

"R" is the number of days between the date of taking of possession of the land by the competent authority, and the date of transfer by title of absolute purchase in favour of the Government of Malta.

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