

The Government Lands Act 2017: What you need to know...

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In this article, Justine Xuereb discusses the Government Lands Act, which deals with the rights and obligations enjoyed by the public over property administered, or expropriated, by the Government.

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The Government Lands Act, a piece of legislation repealing the prior Land Acquisition (Public Purposes) Ordinance (which was formerly Chapter 88 of the Laws of Malta), came into force on the 25th April 2017. This Act provides for several rights and obligations enjoyed by the public over property administered, or expropriated, by the Government under any title, but does not deal with transfers to the private sector of properties belonging to the Government. At least five pieces of separate legislation were brought together through the promulgation of this Act.

Through this Act, numerous provisions which had become outdated over time were revised and arranged in order to apply to its specified strategic goals. Apart from this, new provisions were also added to the fold, with the aim of regaining the public's confidence in the matter.

Under this Act, new acquisitions of property by the Government may only be carried out in two ways:

1. *Outright purchase;*
2. *Title of possession use not going beyond 10 years.*

Of particular note is the fact that the Government may no longer acquire property through title of public tenure. Any property currently being held by the Government under this title must either be acquired via use and possession or absolute purchase, or must be relinquished back to its owner within 10 years from the date on which this Act came into force. Prior to this Act, the Government could retain a property for an indefinite period, and there have

even been cases where such period has exceeded 20 years.

Fortunately, some of the more prejudicial regulations which may have normally been found regarding the valuation of this property have been done away with by this Act. As a result, compensation for both new and old declarations is to be set at the determined open market value at the time such declaration is made. This is to be done after considering any adjustments that might need to take place in view of inflation.

In order to determine the market value (which is another new requirement under the Government Lands Act), an architect shall be hired to draw up an estimate and make clear the methodology put to use, whilst also referring to any comparable transactions. This architect must also highlight any planning or legal restrictions the action may face. On this note, any transaction valued over €400,000 must be backed up by a valuation report, having been signed by three externally-employed architects.

This Act stipulates that one may challenge the public purpose, thereby proceeding to challenge the actual expropriation, within 50 days as from the date of the declaration's publication. Furthermore, one may even move on to challenge the compensation being offered by the Government for such expropriation. This may be done within a longer time span, as the law allows a period of 5 years as from the declaration's publication for such an action to be put forward.

The above presents a significant change in comparison to the old law. The Act increases the Government's publication requisites as well as the time allotted to individuals

to contest the compensation offered or public purpose of the expropriation. Furthermore, there is no more need for the Government to present the property owner with a formal notification. This means that private individuals must pay attention and be aware of what is published in the Government Gazette and local newspapers in order and act accordingly should they learn new information regarding their land and the Government's intentions for it.

Various sections of this Act stipulate that, should one have property-related claims against the Government regarding acquisitions happening prior to the Act's coming into force, one may bring a claim for compensation before the Lands Arbitration Board for compensation. This may happen within a peremptory period of 5 years, of which 1 year would already have elapsed, except in special instances in which this period may be slightly extended. The remedies that one may receive differ according to three possible scenarios:

1. *In a case where the Government has both issued a notice to treat and made a declaration, but has not acquired the property, the owner may bring an action for compensation in the form of the property's market value on the declaration's date, increasing in accordance with the material and moral damages, index of inflation, and 8% interest (increasing with inflation), also on the declaration's date. Should the owner fail to contest the Government's declaration in accordance with the law, the value one may request is to be limited to the value offered by the Government.*

2. *If the Government does not acquire or use a property for which a declaration was issued in over 10*

years, the owner may request for the Government to revoke such declaration, along with material and moral damages to compensate for the years in which the owner could not make use of his property. However, the Government may counter this request by presenting reasonable explanations as to why that property was not used over this time, as well as reasons why it is still required.

3. *Should the Government make a declaration but never indicate the compensation being offered or even issue a notice to treat, the owner may demand compensation amounting to the property's market value on the declaration's issuance. This amount may further fluctuate depending on moral and material damages caused by the acquisition's delay, the inflation index and an increase amounting to 8% interest (increased with inflation) as from the declaration's date.*

However, one must take note of the limitations presented by these three actions. Prescription for these actions is limited to 30 years from the date of the declaration, or else, if the declaration dates back prior to the 25th April 1992, then such action must be brought forward before the 25th April 2022. Any of these actions are to be brought before the Lands Arbitration Board.

Another action available to an individual regards a situation where the Government would occupy land without having ever issued a declaration. In this case, the owner may request that the land be immediately acquired, resulting in compensation equalling the market value as on the case's opening before the Lands Arbitration Board to be due to him, coupled with moral and material damages

accrued throughout the years of occupancy by the Government. Such owner also has the option of requesting the land be released back to him in the state it was in prior to the expropriation. Either of these actions are strictly limited by a period of 5 years (until the 25th April 2022).

One must also be cautious with regards to the exchange of lands between a third party and the Government. According to the Government Lands Act, should the value of the Government's land be lower than that of the expropriated land being exchanged with the third party, such exchange would no longer be possible. Being a new legal addition, this would have resulted in numerous past transfers not taking place.

Another addition through this Act is that of the right of first refusal being granted to individuals being subjected to expropriation. Through the exercise of this right, a remedy may be found by persons who have not yet been granted an alternative site in place of the governmental property they have been requested to evacuate.

In conclusion, this Act comes with both advantages and disadvantages for individuals wishing to institute an action related to its provisions. For one, the owners are now endowed with the responsibility of keeping themselves updated with any strict deadlines imposed and underway regarding their actions. However, one should not disregard the fact that terms regarding compensation are much more favourable in comparison to those under the old law. This comes out in particular reference to the basing of valuation on market shares, as well as the introduction of material and moral damages which, under the old law, was not even possible.