

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE ABELA
President

1 ta' Diċembru, 2009

ATT Nru. XXI tal-2009

ATT biex jemenda l-Ordinanza dwar l-Akkwist ta' Artijiet għal Skopijiet Pubbliċi.

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2009 li jemenda l-Ordinanza dwar l-Akkwist ta' Artijiet għal Skopijiet Pubbliċi, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Ordinanza dwar l-Akkwist ta' Artijiet għal Skopijiet Pubbliċi hawn iżjed 'il quddiem imsejha "l-Ordinanza prinċipali".

Titolu fil-qosor.

Kap. 88.

2. L-artikolu 2 tal-Ordinanza prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 2 tal-Ordinanza prinċipali.

(a) minnufih wara t-tifsira "awtorità kompetenti" għandha tizzied it-tifsira ġdida li ġejja:

" "bini storiku" tfisser art li :

(a) hija skedata skont l-artikolu 46 tal-Att dwar l-Ippjanar ta' l-Iżvilupp; jew

Kap. 356.

- Kap. 445. (b) tikkostitwixxi proprjetà kulturali għall-finijiet tal-Att dwar il-Patrimonju Kulturali hliet proprjetà kulturali tat-tip imsemmija fl-artikolu 52 tal-imsemmi Att; jew
- L.S. 445.01 (ċ) hija inkluża fl-elenku tal-bini, artijiet u fdalijiet li jkollhom importanza ġeoloġika, arkeoloġika, antikwarja jew artistika fl-iSkeda tar-Regolamenti dwar il-Protezzjoni ta' l-Antikitajiet; jew
- Kap. 445. (d) hija art li fuq il-parir tal-Kumitat ta' Garanzija imwaqqaf bl-artikolu 14 tal-Att dwar il-Patrimonju Kulturali, mogħti fi żmien xahrejn wara li dan ikun intalab il-parir mill-Ministru u ukoll wara li l-istess Kumitat ikun ta l-opportunità lil kull min ikollu interess fl-art li jagħmel is-sottomissjonijiet tiegħu, tkun art li jkun xieraq illi tiġi akkwistata għal skop pubbliku billi:
- (i) tkun ta' tali sinifikat storiku jew kulturali li jkun jixraq li tiġi hekk akkwistata biex jinżamm jew jittejjeb l-ambjent kulturali jew il-prodott turistiku ta' Malta; jew
- (ii) tkun marbuta sew mal-avvenimenti ta' importanza storika li jkunu ikkontribwew għall-memorja nazzjonali jew għall-iżvilupp tal-identità storika nazzjonali;" u

(b) fit-tifsira "skop pubbliku" minnufih wara l-kliem "jew ma' jew għall-ippjantar tal-ibliet jew ma' jew għar-rikostruzzjoni jew" għandhom jizdiedu l-kliem "għaż-żjieda fl-impiegi, jew għat-tkattir fit-turiżmu, jew għall-promozzjoni tal-kultura, jew għall-preservazzjoni tal-identità nazzjonali u storika, jew għall-ħarsien ekonomiku tal-Istat jew".

3. Fl-artikolu 3 tal-Ordinanza prinċipali minflok il-kliem "hija meħtieġa għal skop pubbliku." għandhom jidhlu l-kliem:

"hija meħtieġa għal skop pubbliku:

Iżda:

(a) meta l-art li għaliha tirreferi dik id-dikjarazzjoni tkun meħtieġa għal skopijiet pubbliċi minhabba fil-fatt li jkun bini storiku, dik id-dikjarazzjoni għandha ssemmi dak il-fatt; u

(b) bini storiku b'sid privat u li jkun miżmum fi stat tajjeb u li l-pubbliku għandu aċċess għalih, kemm bi hlas jew b'mod ieħor, fuq bażi regolari mis-sidien jew l-amministraturi tiegħu għal finijiet edukattivi, kulturali jew turistiċi m'għandux jiġi akkwistat bhala bini storiku taht din l-Ordinanza."

4. L-artikolu 6 tal-Ordinanza prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 6 tal-Ordinanza prinċipali.

(a) l-artikolu preżenti għandu jiġi enumerat mill-ġdid bhala s-subartikolu (1) tiegħu, u fis-subartikolu msemmi minflok il-kliem "Hadd ma' jista' jitlob prova oħra ta' l-iskop pubbliku" għandhom jidhlu l-kliem "Bla ħsara għad-disposizzjonijiet tas-subartikolu (2) hadd m'għandu jitlob prova tal-iskop pubbliku";

(b) minnufih wara s-subartikolu (1) tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

Kap. 12.

"(2) Kull persuna li għandha interess fl-art li dwarha tkun saret dikjarazzjoni mill-President kif imsemmi fis-subartikolu (1), tista' tikkontesta l-iskopijiet pubbliċi ta' dik id-dikjarazzjoni quddiem il-Bord ta' Arbitraġġ dwar Artijiet permezz ta' rikors pprezentat fir-reġistru tal-imsemmi Bord fi żmien wiehed u għoxrin ġurnata mill-pubblikazzjoni ta' dik id-dikjarazzjoni u d-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Civili li japplikaw għas-smiġħ tal-kawżi quddiem il-Prim'Awla tal-Qorti Civili, inklużi d-disposizzjonijiet li jirrigwardaw appelli minn dawk id-deċizzjonijiet, għandhom japplikaw *mutatis mutandis* għad-deċizzjoni dwar l-imsemmi rikors:

Iżda l-preżentata ta' rikors skont dan is-subartikolu m'għandhiex tfixkel l-issoktar tal-proċeduri ta' esproprijazzjoni jew l-għemil ta' kull haġa li tista' ssir fuq dik l-art skont din l-Ordinanza, f'dak iż-żmien meta r-rikors ikun għad irid jiġi deċiż, bla ħsara għad-dritt tar-rikorrent li jingħata kumpens f'każ illi d-dikjarazzjoni tal-President tinstab li tkun mingħajr skop pubbliku."; u

(ċ) minnufih wara s-subartikolu (2) għandu jiżdied is-subartikolu ġdid li ġej:

"(3) L-awtorità kompetenti għandha sa mhux aktar tard minn erbat ijiem wara l-pubblikazzjoni tad-dikjarazzjoni tal-President ta' Malta twaħhal kif jidhrilha xieraq u jekk ikun fiżikament possibbli avviż ta' dik id-dikjarazzjoni fuq l-art li dwarha tkun inħarġet dik id-dikjarazzjoni.".

Emenda tal-artikolu 18 tal-Ordinanza prinċipali.

5. Fis-subartikolu (1) tal-artikolu 18 tal-Ordinanza prinċipali, minflok il-kliem "Art titqies li tkun art għall-bini" għandhom jidhru l-kliem "Art, ħlief bini storiku, għandha titqies li tkun art għall-bini".

Emenda tal-artikolu 22 tal-Ordinanza prinċipali.

6. Minnufih wara l-paragrafu (a) tas-subartikolu (11) tal-artikolu 22 tal-Ordinanza prinċipali għandu jidhru l-paragrafu ġdid li ġej:

"(aa) f'każ ta' bini storiku l-valur tiegħu għandu jiġi kkalkulat bħala l-ogħla minn dawn li ġejjin:

(i) il-valur sħiħ tal-bini storiku jekk mibjugħ fis-suq miftuħ bil-kondizzjoni li l-użu li jista' jsir minnu jkun limitat għal finijiet edukattivi, turistiċi jew kulturali u minnu għandu jitnaqqas l-ammont meħtieġ biex il-bini storiku jiġi restawrat skont linji gwida internazzjonali aċċettati u *standards* ta' artiġjanat u prattika sabiex jingiebu xieraq għal dak l-użu edukattiv, turistiku jew kulturali; jew

Kap. 158.

(ii) meta l-bini storiku kien oriġinarjament tal-Gvern u mbagħad ġie trasferit mill-Gvern, billi jiġi aġġornat l-ammont li bih ġie akkwistat il-bini storiku mingħand il-Gvern minn sena bażi li ma tkunx qabel l-1946 skont l-indiċi ta' inflazzjoni ppubblikat fl-iSkeda tal-Ordinanza li Tneħħi l-Kontroll tad-Djar mid-data tal-imsemmi akkwist sad-data tad-Dikjarazzjoni tal-President ta' Malta magħmula skont l-artikolu 3 u jiżdied miegħu l-imgħax fuq l-ammont kif aġġornat bir-rata annwali ta' hamsa fil-mija mid-data meta l-imsemmi bini storiku ġie trasferit mill-Gvern sad-data tal-imsemmija Dikjarazzjoni tal-President ta' Malta flimkien mal-valur ta' kull miljorament li jkun sar għal dak il-bini mis-sid bejn l-imsemmija dati, bid-deprezzament applikabbli skont *standards tal-accountancy* stabbiliti:

Izda biex jiġi kalkolat il-kumpens skont dan is-subparagrafu:

Kap. 158.

1. meta l-bini storiku kien oriġinarjament tal-Gvern u ġie trasferit mill-Gvern u l-imsemmi trasferiment seħħ tletin sena jew aktar qabel id-data tad-Dikjarazzjoni tal-President ta' Malta fir-rigward ta' dak il-bini storiku, l-ammont li jirriżulta wara li l-valur tal-bini bbażat fuq l-ammont li bih ġie akkwistat il-bini storiku mingħand il-Gvern jiġi aġġornat sad-data tal-imsemmija Dikjarazzjoni tal-President ta' Malta skont l-indiċi ta' inflazzjoni ppubblikat fl-iSkeda tal-Ordinanza li Tneħħi l-Kontroll tad-Djar kif fuq premiss għandu jiġi mmultiplikat bi hmistax;

Kap. 158.

2. meta l-bini storiku kien oriġinarjament tal-Gvern u ġie trasferit mill-Gvern u l-imsemmi trasferiment seħħ inqas minn tletin sena iżda iktar minn għoxrin sena qabel id-data tad-Dikjarazzjoni tal-President ta' Malta fir-rigward ta' dak il-bini storiku, l-ammont li jirriżulta wara li l-ammont li bih ġie akkwistat il-bini storiku minghand il-Gvern jiġi aġġornat sad-data tal-imsemmija Dikjarazzjoni tal-President ta' Malta skont l-indiċi ta' inflazzjoni ppubblikat fl-iSkeda tal-Ordinanza li Tneħhi l-Kontroll tad-Djar għandu jiġi mmultiplikat b'għaxra;

Kap. 158.

3. meta l-bini storiku kien oriġinarjament tal-Gvern u ġie trasferit mill-Gvern u l-imsemmi trasferiment seħħ iktar minn għaxar snin iżda inqas minn għoxrin sena qabel id-data tad-Dikjarazzjoni tal-President ta' Malta fir-rigward ta' dak il-bini storiku, l-ammont li jirriżulta wara li l-ammont li bih ġie akkwistat il-bini storiku minghand il-Gvern jiġi aġġornat sad-data tal-imsemmija Dikjarazzjoni tal-President ta' Malta skont l-indiċi ta' inflazzjoni ppubblikat fl-iSkeda tal-Ordinanza li Tneħhi l-Kontroll tad-Djar għandu jiġi mmultiplikat b'ħamsa;

4. meta japplikaw il-paragrafi ta' qabel ta' dan il-proviso, l-imghax li għandu jithallas skont is-subparagrafu (ii) għandu jithallas biss fuq l-ammont kif aġġornat skont l-imsemmi subparagrafu u mhux ukoll fuq iż-żjeda li tirriżulta wara li jiġu applikati l-paragrafi 1, 2 jew 3; jew

Kap. 364.

(iii) meta l-bini storiku ma jkunx bini li kien originarjament tal-Gvern, l-ammont stabbilit bħala l-valur tal-bini mill-persuna li tkun sid il-bini fiż-żmien tal-pubblikazzjoni tad-Dikjarazzjoni tal-President ta' Malta f'dikjarazzjoni fir-rigward tat-trasferiment *causa mortis* tal-proprjetà ppreżentata skont l-Att dwar it-Taxxa fuq id-Dokumenti u Trasferimenti jew skont dikjarazzjoni magħmula għall-iskop ta' taxxa fuq is-suċċessjoni skont kull liġi oħra li minn żmien għal żmien irregolat jew tkun tirregola t-taxxa fuq is-suċċessjoni, aġġornata skont id-disposizzjonijiet tas-subparagrafu (ii), inkluż il-proviso tiegħu, li għandu japplika *mutatis mutandis*:

Iżda meta sehem indiviż jew ishma indiviżi biss ta' bini storiku jkunu gew hekk iddikjarati fir-rigward ta' trasferiment *causa mortis* jew mod ieħor għal skopijiet ta' taxxa fuq is-suċċessjoni, il-valur tal-bini kollu għall-finijiet ta' dan is-subparagrafu (iii) għandu jkun ibbażat fuq proġettazzjoni tal-valur dikjarat fir-rigward tal-imsemmi sehem jew l-imsemmija ishma li ssir medja tagħhom flimkien b'dak il-mod li jkopri mija fil-mija tal-valur tal-bini miżjud b'għaxra fil-mija;

(iv) meta l-bini storiku, sew jekk kien originarjament tal-Gvern kif ukoll jekk le, jew ma jkun qatt gie trasferit *causa mortis* jew wara li jkun gie trasferit *causa mortis* jkun gie trasferit *inter vivos* b'titolu oneruż, l-ammont li għalih dak il-bini jkun gie hekk trasferit permezz tat-trasferiment l-iktar qrib qabel id-data tal-pubblikazzjoni tad-Dikjarazzjoni tal-President ta' Malta, aġġornat skont id-disposizzjonijiet tas-subparagrafu (ii), inkluż il-proviso tiegħu, li għandhom japplikaw *mutatis mutandis*:

Izda meta l-Bord ta' Arbitraġġ dwar l-Artijiet fi proċeduri miġjuba quddiemu fit-termini ta' din l-Ordinanza dwar il-kumpens li għandu jithallas għall-akkwist ta' bini storiku jqis illi ma teżistix relazzjoni raġjonevoli ta' proporzjonalità bejn l-ammont ta' kumpens li jirriżulta bl-applikazzjoni tas-subparagrafi (i), (ii), (iii) jew (iv) u l-prezz fis-suq miftuħ li fil-fehma tal-Bord, wara li jkun ha in konsiderazzjoni l-kwistjonijiet rilevanti kollha ta' fatt u ta' ligi, dik il-proprjetà kienet iġġib kieku inbiegħet volontarjament *tale quale* fis-suq miftuħ, fiż-żmien tal-pubblikazzjoni tad-Dikjarazzjoni tal-President ta' Malta, il-Bord ikun jista` jawtorizza li jithallas ammont ta' kumpens bażat fuq il-medja bejn l-ammont komputat skont is-subparagrafi (i), (ii), (iii) jew (iv) u dak l-ammont li l-Bord jikkunsidra li huwa l-valur fis-suq miftuħ;

(v) minkejja d-disposizzjonijiet l-oħra ta' dan is-subartikolu meta l-valur tal-bini storiku, kif ikkalkolat skont is-subparagrafi (i), (ii), (iii) jew (iv) inkluzi l-proviso tagħhom jirriżulta f'ammont ogħla mill-valur fis-suq miftuħ tal-imsemmi bini fiż-żmien tal-pubblikazzjoni tad-Dikjarazzjoni tal-President ta' Malta fir-rigward tal-bini storiku, il-valur tal-bini storiku m'għandux jaqbez l-imsemmi valur fis-suq miftuħ;

(vi) f'dan is-subartikolu:

"il-valur sħiħ tal-bini storiku" tfisser :

(a) jekk il-bini storiku jkun proprjetà assoluta tal-persuna li mingħandha jkun ġie esproprjat, il-valur sħiħ ta' dak il-bini;

(b) jekk il-bini storiku jkun fil-pussess tal-persuna li minghandha jkun gie esproprjat b'titolu ta' enfitewsi perpetwa l-valur shih ta' dik l-enfitewsi perpetwa fiz-żmien tad-Dikjarazzjoni tal-President ta' Malta;

(c) jekk il-bini storiku jkun fil-pussess tal-persuna li minghandha jkun gie esproprjat b'titolu ta' enfitewsi temporanja jew b'xi titolu temporanju ieħor il-valur shih ta' dak it-titolu ta' enfitewsi temporanja jew ta' dak it-titolu temporanju ieħor fiz-żmien tad-Dikjarazzjoni tal-President ta' Malta;

"kien oriġinarjament tal-Gvern" tfisser li l-bini storiku kien possedut mill-Gvern taht titolu ta' proprjeta', ta' enfitewsi perpetwa jew in forza ta' xi dritt reali ieħor temporanju f'xi żmien mis-27 ta' Lulju, 1925 'il quddiem;

"trasferit mill-Gvern" tinkludi kull trasferiment ta' dritt reali fuq proprjeta' immobbli inkluz trasferiment taht titolu ta' bejgh u ta' enfitewsi kemm jekk fil-perpetwita' kif ukoll jekk temporanjament;

"l-ammont li bih gie akkwistat il-bini storiku minghand il-Gvern" tfisser:

(a) fil-każ ta' trasferiment b'titolu ta' bejgh, il-prezz imhallas fuq il-bejgh;

(b) fil-każ ta' trasferiment b'titolu ta' enfitewsi perpetwa jew b'titolu ta' enfitewsi temporanja għal perjodu ta' aktar minn tmienja u disgħin sena l-ammont ta' *premium* imhallas għall-konċessjoni ta' dik l-enfitewsi, jekk ikun hemm, imnaqqas b'wiehed fil-mija għal kull sena li tkun għaddiet mindu saret il-konċessjoni, miżjud bl-ammont li jirriżulta wara li ċ-ċens pagabbli kull sena jiġi kapitalizzat bir-rata ta' hamsa fil-mija;

(ċ) fil-każ ta' enfitewsi temporanja għal żmien ta' tmienja u disgħin sena jew anqas jew ta' dritt ieħor reali temporanju għal dak iż-żmien, l-ammont ta' *premium* imhallas għall-konċessjoni ta' dik l-enfitewsi jew għal dak id-dritt reali temporanju ieħor, jekk ikun hemm, imnaqqas b'wiehed fil-mija għal kull sena li tkun għaddiet mindu saret il-konċessjoni jew mindu gie trasferit dak it-titolu, miżjud bl-ammont illi jirriżulta wara li ċ-ċens pagabbli kull sena jiġi kapitalizzat bir-rata ta' tmienja fil-mija;

"enfitewsi" tinkludi sub-enfitewsi;

"imghax" tfisser imghax sempliċi."

Emenda tal-artikolu 23 tal-Ordinanza prinċipali.

7. Fis-subartikolu (4) tal-artikolu 23 tal-Ordinanza prinċipali, minnufih wara l-kliem "lista ta' Arkitetti u Inġinieri Ċivili", għandhom jiżdiedu l-kliem "sabiex jassistu l-Bord fil-valutazzjoni tal-art u f'affarijiet tekniċi oħra. L-imsemmija lista ta' Arkitetti u

Inġinieri Ċivili għandhom jiġu maħtura".

8. Fis-subartikolu (3) tal-artikolu 24 tal-Ordinanza prinċipali, minflok il-kelma "sentejn" għandhom jidhlu l-kliem "tliet snin".

Emenda tal-artikolu 24 tal-Ordinanza prinċipali.

9. L-artikolu 25 tal-Ordinanza prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 25 tal-Ordinanza prinċipali.

(a) fis-subartikolu (3) tiegħu, minnufih wara l-kliem "kif iċ-*chairman* jista' jordna.", għandhom jiżdiedu l-kliem "Ir-rapport għandu ikun aċċessibbli għall-partijiet li għandhom jingħataw l-opportunità li jressqu mistoqsijiet bil-miktub dwaru lill-membri tal-lista u li jikkumentaw fuqu lill-Bord:

Iżda l-partijiet, mingħajr pregudizzju għad-dritt tagħhom illi waqt l-istadju tal-provi iressqu x-xhieda ta' esperti *ex parte*, ma jkollhomx id-dritt li jitolbu l-hatra ta' periti addizzjonali.";

(b) minnufih wara s-subartikolu (3) tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

"(3A) Meta r-rapport imsemmi fis-subartikolu (3) jkun jikkonsisti f'valutazzjoni, ir-rapport għandu jsemmi:

(a) id-data tal-valutazzjoni;

(b) id-data li saret riferenza għaliha meta giet valutata l-proprjetà;

(ċ) l-istat li jiġi kkalkulat li l-proprjetà kienet fih fid-data li saret riferenza għaliha meta giet valutata l-proprjetà;

(d) l-użu li kien qed isir mill-proprjetà fid-data li saret riferenza għaliha meta giet valutata l-proprjetà, inkluża l-informazzjoni dwar jekk il-proprjetà kenitx fl-istess żmien sugġetta għal drittijiet ta' terzi bħal ma huma enfitewsi, użu, użufrutt jew kera;

(e) l-operazzjonijiet paragonabbli, jekk ikun hemm, li l-proprjetà tkun giet valutata b'riferenza għalihom.

Il-membri tal-lista għandhom jagħmlu l-aħjar li jistgħu biex jivvalutaw il-proprjetà fuq bażi ta' riferenza għal operazzjonijiet paragonabbli."

(ċ) fis-subartikolu (4) tiegħu minnufih wara l-kliem "meta dak il-każ ikun qiegħed jinstema' mill-Bord" għandhom jizdiedu l-kliem "kif huwa jqis xieraq jew";

(d) is-subartikolu (5) tiegħu għandu jiġi sostitwit bis-subartikolu li ġej:

"(5) Iċ-*Chairman* għandu jiddeċiedi l-kwistjoni huwa stess wara li jkun ikkunsidra b'mod xieraq ir-rapporti taż-żewġ membri tal-lista u kull att ieħor rilevanti pprezentat jew sottomissjonijiet magħmula."; u

(e) fis-subartikolu (7) tiegħu, il-kliem "minn punt ta' dritt" għandhom jithassru.

Emenda tal-artikolu 27 tal-Ordinanza prinċipali.

10. Fil-paragrafu (iv) tal-proviso tas-subartikolu (1) tal-artikolu 27 tal-Ordinanza prinċipali, minflok il-kliem "li jkunu ġiebu dawk ix-xogħlijiet.", għandhom jidhlu l-kliem "li jkunu ġiebu dawk ix-xogħlijiet;", u minnufih wara għandu jizdied il-paragrafu ġdid li ġej:

"(v) il-kumpens fir-rigward ta' bini storiku għandu jiġi stmat skont l-artikolu 22(11)(aa).".

Emenda konsegwenzjali għall-artikolu 21 tal-Att dwar it-Tiġdid ta' Kiri tar-Raba'. Kap. 199.

11. L-artikolu 21 tal-Att dwar it-Tiġdid ta' Kiri ta' Raba' għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "Ħadd ma jista' jitlob prova oħra ta' l-iskop pubbliku", għandhom jidhlu l-kliem "Bla ħsara għad-disposizzjonijiet tas-subartikolu (2A), ħadd ma jista' jitlob prova oħra tal-iskop pubbliku"; u

(b) minnufih wara s-subartikolu (2) tiegħu, għandu jizdied is-subartikolu ġdid li ġej:

Kap. 12.

"(2A) Kull persuna illi għandha interess f'xi art li fir-rigward tagħha saret dikjarazzjoni tal-President ta' Malta kif imsemmi fis-subartikolu (1) tista' tikkontesta l-iskop pubbliku tal-imsemmija dikjarazzjoni quddiem il-Bord ta' Arbitraġġ dwar Artijiet permezz ta' rikors ipprezentat fir-registru tal-imsemmi Bord fi żmien wiehed u għoxrin gurnata mill-pubblikazzjoni ta' dik id-dikjarazzjoni u d-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Civili li japplikaw għas-smiġħ tal-kawżi quddiem il-Prim'Awla tal-Qorti Ċivili, inklużi id-disposizzjonijiet li jirrigwardaw appelli minn dawk id-deċiżjonijiet, għandhom, *mutatis mutandis*, japplikaw għad-deċiżjoni dwar l-imsemmi rikors:

Iżda l-prezentata ta' rikors skont dan is-subartikolu m'għandhiex, tfixkel l-iżgumbrament ta' kull persuna mill-art jew milli ssir kwalunkwe haġa li tista' ssir fuq dik l-art mis-sid tagħha skont il-liġi, f'dak iż-żmien meta r-rikors ikun għad irid jiġi deċiż, bla hsara għad-dritt tar-rikorrent li jingħata kumpens f'każ illi d-dikjarazzjoni tal-President ta' Malta tinstab li tkun mingħajr skop pubbliku."

12. (1) Id-disposizzjonijiet tal-artikolu 24(3) tal-Ordinanza prinċipali kif emendati b'dan l-Att għandhom japplikaw sa mid-data tan-nomina tal-membri tal-lista ta' Arkitetti u Inġiniera Ċivili li n-nomina tagħhom tkun għadha *in vigore* fid-data tad-dhul fis-seħħ ta' dan l-Att b'mod illi dawk il-membri tal-lista għandhom jitqiesu li bla-har nomina tagħhom ġew nominati għal perjodu ta' tliet snin.

Disposizzjonijiet transitorji.

(2) Id-disposizzjonijiet tal-artikolu 9 ta' dan l-Att li jemendaw l-artikolu 25 tal-Ordinanza prinċipali għandhom jidhlu fis-seħħ kif ġej:

(a) l-artikolu 25 tal-Ordinanza prinċipali kif emendat bid-disposizzjonijiet tal-paragrafi (a), (b), (ċ) u (d) tal-artikolu 9 ta' dan l-Att għandhom japplikaw għall-kawżi kollha li fid-data tad-dhul fis-seħħ ta' dan l-Att ikunu pendent quddiem il-Bord tal-Arbitraġġ dwar l-Artijiet, hlief għal dawk il-kawżi illi f'dik id-data jkunu jinsabu differiti għas-sentenza finali;

(b) id-disposizzjonijiet tal-paragrafu (e) tal-artikolu 9 ta' dan l-Att għandhom jidhlu fis-seħħ immedjatament mad-

A 764

dħul fis-seħħ ta' dan l-Att.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 171 tal-25 ta' Novembru, 2009.

LOUIS GALEA
Speaker

PAULINE ABELA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE ABELA
President

1st December, 2009

ACT No. XXI of 2009

AN ACT to amend the Land Acquisition (Public Purposes) Ordinance

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

1. The short title of this Act is the Land Acquisition (Public Purposes) Ordinance (Amendment) Act, 2009, and this Act shall be read and construed as one with the Land Acquisition (Public Purposes) Ordinance, hereinafter referred to as "the principal Ordinance".

Short title.

Cap. 88.

2. Article 2 of the principal Ordinance shall be amended as follows:

Amendment of article 2 of the principal Ordinance.

(a) immediately after the definition "dwelling house" there shall be added the following new definition:

" "historical building" means land which:

(a) is scheduled in accordance with article 46 of the Development Planning Act; or

Cap. 356.

- Cap. 445. (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
- S.L. 445.01 (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
- Cap. 445. (d) is land which upon the advice of the Committee of Guarantee established by article 14 of the Cultural 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;"; and

(b) in the definition "public purpose" immediately after the words "or with or to town-planning or reconstruction or" there shall be added the words "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".

Amendment of article 3 of the principal Ordinance.

3. In article 3 of the principal Ordinance for the words "be required for a public purpose." there shall be substituted the following:

"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."

4. Article 6 of the principal Ordinance shall be amended as follows:

Amendment of article 6 of the principal Ordinance.

(a) the present article shall be re-numbered as subarticle (1) thereof and in the said subarticle, for the words "No person shall require any proof of the public purpose" there shall be substituted the words "Without prejudice to the provisions of subarticle (2), no person shall require any proof of the public purpose";

(b) immediately after the subarticle (1) thereof, there shall be added the following new subarticle:

Cap. 12.

"(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:

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."; and

(c) immediately after subarticle (2) there shall be added the following new subarticle:

"(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."

Amendment of article 18 of the principal Ordinance.

5. In subarticle (1) of article 18 of the principal Ordinance, for the words "Land shall be deemed to be a building site" there shall be substituted the words "Land, other than a historical building, shall be deemed to be a building site".

Amendment of article 22 of the principal Ordinance.

6. Immediately after paragraph (a) of subarticle (11) of article 22 of the principal Ordinance, there shall be added the following new paragraph:

"(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

Cap. 158.

(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:

Cap. 158.

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;

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

Cap. 364.

(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*:

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."

7. In subarticle (4) of article 23 of the principal Ordinance, immediately after the words "a Panel of Architects and Civil Engineers", there shall be added the words "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".

Amendment of article 23 of the principal Ordinance.

8. In subarticle (3) of article 24 of the principal Ordinance, for the words "two years" there shall be substituted the words "three years".

Amendment of article 24 of the principal Ordinance.

9. Article 25 of the principal Ordinance shall be amended as follows:

Amendment of article 25 of the principal Ordinance.

(a) in subarticle (3) thereof, immediately after the words "as the Chairman may direct.", there shall be added the words "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.";

(b) immediately after subarticle (3) thereof, there shall be added the following new subarticle:

"(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."

(c) in subarticle (4) thereof, immediately after the words "when that case is being considered by the Board" there shall be added the words "as he may deem appropriate or";

(d) subarticle (5) thereof shall be substituted by the following subarticle:

"(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."; and

(e) in subarticle (7) thereof, the words "on a point of law" shall be deleted.

Amendment of
article 27 of the
principal
Ordinance.

10. In paragraph (iv) of the proviso to subarticle (1) of article 27 of the principal Ordinance, for the words "from any such works.", there shall be substituted the words "from any such works;", and immediately thereafter there shall be added the following new paragraph:

"(v) compensation in respect of a historical building shall be assessed in accordance with article 22(11)(aa).".

11. Article 21 of the Agricultural Leases (Reletting) Act shall be amended as follows:

Consequential amendment to Article 21 of the Agricultural Leases (Reletting) Act. Cap. 199.

(a) in subarticle (2) thereof, for the words "No person shall require any proof of the public purpose", there shall be substituted the words "Without prejudice to the provisions of subarticle (2A), no person shall require any proof of the public purpose"; and

(b) immediately after subarticle (2) thereof, there shall be added the following new subarticle:

"(2A) Any person who has an interest in land in respect of which a declaration of the President of Malta 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:

Cap. 12.

Provided that the filing of an application in terms of this subarticle shall not hinder the eviction of any person from the land or the doing of anything that may be done in respect of the land by its owner according to law 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 of Malta is found to be without public purpose."

12. (1) The provisions of article 24(3) of the principal Ordinance as amended by this Act shall apply as from the date when the members of the Panel of Architects and Civil Engineers whose appointment is still in force on the date of coming into force of this Act were appointed so that those members of the Panel shall be deemed to have been appointed by virtue of their last appointment for a period of three years.

Transitory provisions.

(2) The provisions of article 9 of this Act which amend article 25 of the principal Ordinance shall come into force as follows:

(a) article 25 of the principal Ordinance as amended by the provisions of paragraphs (a), (b), (c) and (d) of article 9 of this Act shall apply to all causes which on the date of the coming into force of this Act are pending before the Land Arbitration Board except for those causes which on the said date stand adjourned for final judgement;

(b) the provisions of paragraph (e) of article 9 of this Act shall come into force immediately upon the coming into force of this Act.

Passed by the House of Representatives at Sitting No. 171 of the 25th November, 2009.

LOUIS GALEA
Speaker

PAULINE ABELA
Clerk to the House of Representatives