

L-Onorevoli Jason Azzopardi, l-Onorevoli Marthese Portelli u l-Onorevoli Ryan Callus jipproponu:-

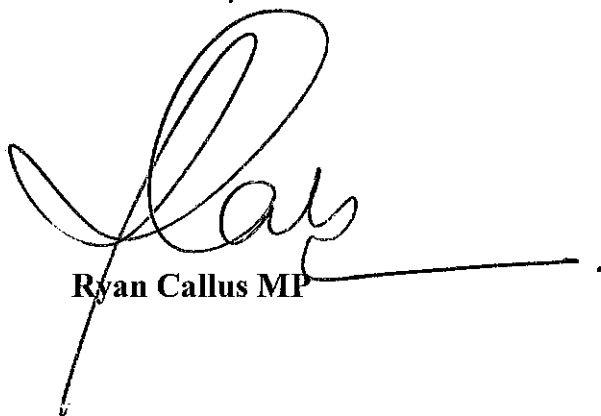
L-Ewwel Qari ta' Abbozz ta' Ligi msejjaħ Att tal-2015 li jemenda l-Kodici Ċivili, Kap. 16 tal-Ligijiet ta' Malta



Jason Azzopardi MP



Marthese Portelli MP



Ryan Callus MP

Marie Louise Coleiro Preca

President

I assent.

.....2015

A BILL

entitled

AN ACT to amend the provisions of the Civil Code (Cap. 16) relating to the law of things, defining the rules on the coastal perimeter and the foreshore, classifying property in ownership of the Government, defining and introducing rules on the concept of the public domain and rules on duties and limitations on the Government in its administration of property in the public domain, regulating the designation and declassification procedures and effects in relation to the public domain, introducing rules on the registration of property in the public domain and addressing the impacts of the amendments on private rights and on other existing cultural, environmental and other special laws affecting Government property.

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

Short Title.

1. The short title of this Act is the **Civil Code (Amendment) Act, 2015**, and this Act shall be read and construed as one with the Civil Code, hereinafter referred to as “the Code”.

Amendment to article 311 of the Code.

2. Article 311 of the Code shall be renumbered article 311(1) and new sub-articles shall be added as follows:

“(2) The “coastal perimeter” is that part of the land which lies fifteen metres from the shoreline inwards, whether it is foreshore, landmass or cliff or is a combination of them and, where the foreshore extends beyond fifteen metres, to the limit of the foreshore.

The “foreshore” is that part of the coastal perimeter, including where it exceeds 15

metres, which is normally covered by water due to the action of the waves and the use of which is restricted by this fact. The foreshore extends up to the reach of the largest wave and, even if it lies beyond the reach of the waves, to the limits of any beach.

In this sub-article:

- (a) a “beach” is that part of the land contiguous to the shoreline, irrespective of how far inland it extends, which is of its nature or characteristics destined for public use in accordance with its nature;
- (b) a “landmass” or a “cliff” is that part of the coastal perimeter which is elevated from the sea, is not accessible from the sea and, or is not subject to being covered by any wave; and
- (c) the “shoreline” is the land contour which is constantly in direct contact with the sea; *provided that* when the shoreline changes due to erosion or collapse, the baseline for calculation of the coastal perimeter shall be adjusted accordingly from time to time.

(3) Any private titles and rights to the foreshore shall be registered in the relevant registry in accordance with applicable law prior to the lapse of ten years from the designated date.

(4) Quays, wharfs and other constructions in harbours, ports, landing places and yachting centres for the berthing of ships, yachts and other vessels used in navigation, or of aircraft, or for the attachment thereto of pontoons, floating quays, or for dockyards, roads and access paths, or other similar structures in such areas, shall be regulated by the provisions of special laws governing such things and the terms “quays”, “harbours”, “ports”, “yachting centres” and other related terms shall have the meanings assigned to them by such special laws.

(5) Although contiguous to the sea, such quays and other constructions and the areas within harbours and ports:

- (a) shall be considered to be public property, saving private titles and rights thereon; and
- (b) shall not be considered to be part of the coastal perimeter for the purpose of this Code until such time as any part of such areas, belonging to the Government, are declared and registered as land in the public domain, saving private titles and rights thereon, as provided for in the Third Schedule to this Code.

(6) In this article:

- (a) the term “designated date” shall be that established by the Minister responsible for Lands by means of a legal notice issued for such purpose under the Public Registry Act (Cap. 56, Laws of Malta) and, or the Land Registration Act (Cap 296, Laws of Malta) and, or any other applicable law;
- (b) the term “public domain” shall have the meaning given to it in the Third Schedule to this Code;

- (c) the term “public property” shall have the meaning given to it in article 327 of this Code; and
- (d) “relevant registry” means the Public Registry or the Land Registry or any successor registry.”

Deletion of article 327 and insertion of new sub-title IIA.

3. Article 327 of the Code shall be deleted and substituted by the following new article forming part of a new Title IIA of Part I of Book Second of the Code:

“Title IIA

OF PROPERTY BELONGING TO THE GOVERNMENT

327. (1) The Government is the owner of:

- (a) all things which it acquires pursuant to the provisions of this Code or any other special law, herein referred to as “public property”; and
- (b) all things forming part of the public domain, which it holds as a result of its sovereignty, herein referred to as “public domain”.

(2) Vacant property belongs to the Government.

(3) Property belonging to the Government may be subject to private rights in the manner and to the extent stated in this Code and other special laws.”

Transitory provisions.

4. (1) Where private titles or rights are claimed in any civil or administrative proceedings, commenced at any time prior to the coming into force of this Act, in relation to land in the public domain, such private titles or rights shall be determined in accordance with the law applicable prior to the coming into force of this Act until they are finally determined by the relevant court or tribunal or by any agreement between the parties.

(2) Where any private titles or rights over land considered to be in the public domain belonging to the Government are not registered or preserved in accordance with the Public Registry Act (Cap. 56, Laws of Malta), the Land Registration Act (Cap 296, Laws of Malta) or any other applicable law having such effect, or are not claimed in any proceedings as stated in sub-article (1) commenced not later than ten years from the designated date, such titles or rights shall be presumed to be mere encroachments to the extent they are being tolerated or shall not be considered to exist as a matter of law or to otherwise lapse.

The amendments introduced by this Act shall apply to all the land in the public domain, saving titles or rights which are so registered or preserved.

(3) The “designated date” shall be that established by the Minister responsible for Lands by means of a legal notice issued for such purpose under the Public Registry Act (Cap. 56, Laws of Malta) and, or the Land Registration Act (Cap. 296, Laws of Malta) and, or any other applicable law.

(4) The provisions of article 311 shall apply, in accordance with their terms, with effect from the 1st January, 2016 to anything done on or after such date over the coastal perimeter or land in the public domain, as defined in this Code.

New Schedule.

5. Following the Second Schedule to the Civil Code there shall be inserted a new Third Schedule with Titles and Sub-Titles and with the names and provisions as follows:

“THIRD SCHEDULE

Title I

PRELIMINARY

Sub-Title I

DEFINITIONS, PRESERVATION OF PRIVATE RIGHTS

Definitions.

1. In this Schedule:

(i) “administrative act” includes licences, permits, concessions, authorisations or encroachments, grants which are made under tolerance or other precarious title and any other licence which may be issued by the Government in terms of regulations which may be issued from time to time, and different departments or entities within the term “Government” shall be treated as distinct persons;

(ii) the “Code” shall mean the provisions of the Civil Code apart from this Schedule;

(iii) “designated date” shall be the date of the coming into force of this Schedule;

(iv) “Government” shall include all departments and agencies of Government, all local councils, all statutory authorities and corporations and all organisations controlled by the Government;

(v) “land” in this Schedule shall include the seabed and the sub-soil;

(vi) “private rights” are those titles or rights which arise under any law or agreement and which, if subject to registration or preservation according to applicable law, are so registered or preserved in the manner and within the time required by applicable law;

(vii) “relevant date” means the 1st January, 2016;

(viii) “relevant registry” means the Public Registry or the Land Registry or any successor registry;

(ix) “special law” means acts of parliament or regulations and other acts constituting law other than the provisions of the Code which deal with particular matters relevant to any provisions of this Schedule.

Existing private rights.

2. (1) Land in the public domain which is subject to private rights, in virtue of laws enacted or agreements validly entered into prior to the relevant date shall continue to be subject to the terms and conditions of such laws or agreements until such land is, if ever, acquired by the Government free from such private rights.

(2) Nothing in this Schedule shall affect private rights over land in the public domain except and only to the extent that:

(i) when the land was acquired from the Government or otherwise, it was subject to express reservations;

or

(ii) the land is subject to reasonably implied restrictions on use or enjoyment attributable to its specific public domain nature; *Provided that* for the avoidance of doubt, private rights shall continue to be fully enjoyed and shall only be subject to reasonable limitations which arise from the public domain nature of the particular land, keeping in view its particular characteristics, uses and functions and the public utility it provides;

or

(iii) by virtue of the owner's consent, until withdrawn, the land has been made available for public utility;

or

(iv) the law as it stood prior to the relevant date so provides;

or

(v) the land was granted by the Government on mere encroachment and such concession is withdrawn.

(3) Private rights granted by the Government by means of any written instrument prior to the relevant date shall be governed by the terms of such instrument and applicable law and any limitations on the capacity of the Government to make such grant due to the public domain nature of the subject matter shall not affect the validity of such instrument.

(4) Subject to sub-article (3), nothing in this Schedule shall operate so as to:

(i) grant or recognise private rights or entitlements over land in the public domain to any person who, as of the relevant date, does not have valid and enforceable title,

possession or other rights to land in the public domain;

- (ii) impinge on the Government's right to pursue any or all legal remedies and, or to exercise any or all of its powers under current law in relation to any person claiming any right to land in the public domain where such claim is not recognised as valid by the Government;
- (iii) affect the operation of articles 2114 and 2115(2) of this Code relating to the non-applicability of the provisions on prescription against things which are *extra commercium* or with regard to rights or actions of the Government.

(5) Privately owned land shall be presumed not to be in the public domain unless it is property of the type referred to in sub-article (1) of article 4 or is the subject of a Public Domain Act as defined in sub-article (2) of article 4.

(6) If the continuing exercise of private rights, as are preserved by this article, materially endangers land in the public domain as aforesaid or where the exercise of such rights is in material conflict with the principles established in this Schedule in so far as the use of such land and its future preservation are concerned, apart from enforcing any agreement or applicable law in that regard, it shall be lawful for the Government to request amendment to any grant, concession or other agreement with the holder of such rights to ensure the respect of the provisions of this Schedule.

Notwithstanding the terms of any agreement, the court shall have the power to issue orders, as appropriate, on the use and future preservation of the property in question for the duration of the agreement.

Sub-Title II

OF THINGS BELONGING TO THE GOVERNMENT PUBLIC PROPERTY AND PUBLIC DOMAIN

Presumptions.

3. (1) Things belonging to the Government shall be presumed to be public property.

(2) Things in the public domain shall be presumed to belong to the Government unless they are privately owed.

(3) Things shall be considered to be in the public domain, if:

(a) they are of the type referred to in sub-article (1) of article 4;

or

(b) after the relevant date, they are the subject of a declaration, made in terms of sub-article (2) of article 4, and, where possible, are registered in accordance with applicable law.

(4) The things, and their fruits and accessories, belonging to the Government which

may be the subject of a declaration that they form part of the public domain are the following:

- (a) waterways, aqueducts, lakes, natural springs and valleys;
- (b) harbours, ports or parts thereof;
- (c) public roads, public squares, all streets, alleys and lanes and access routes, by whatever name called, to other public places, including those leading to the coastal perimeter or areas declared to be in the public domain in accordance with this Schedule;
- (d) woods, parks and other areas of ecological or environmental importance;
- (e) sites of cultural, social or historical importance including bastions, fortifications and other similar structures;
- (f) areas which serve the national security, such as airports;
- (g) the open countryside, including any cliff which does not constitute part of the coastal perimeter;
- (h) res sacrae, res sanctae and res religiosae;
- (i) movable things having cultural, social, archeological, artistic, ecological, environmental or historical importance, including collections of museums, art galleries, archives and libraries; and
- (j) generally things belonging to the Government which serve direct and immediate public and collective utility or which should be preserved for future generations because of their public nature, common social, historical or cultural nature, environmental importance or natural or strategic importance.

(5) Any such declaration shall be subject to any private rights which may exist over such property.

(6) The property of the type referred to in sub-paragraphs (a), (d), (e) and (g) which is privately owned may also be the subject of a declaration that they form part of the public domain.

Sub-Title III

OF PUBLIC DOMAIN

Things in the public domain.

4. (1) The following things, and their fruits and accessories, shall be considered as property in the public domain by virtue of this Schedule and without the need of any further declaration, registration or other formality:

- (a) the coastal perimeter;
- (b) internal waters such as bays, coves and other areas which lie between the coastal perimeter and the baselines from which the territorial waters are measured and the relative seabed and subsoil and the overlying water-column and its airspace provided they are not harbours or ports;

and

- (c) the seabed and subsoil underlying the territorial seas beyond the baselines from which the territorial waters are measured and the relative seabed and subsoil and the overlying water-column and its airspace.

(2) The Government may, from time to time, declare by means of an Act of Parliament (hereafter a "Public Domain Act") any property of the type referred to in sub-articles (4) or (6), as the case may be, of article 3 as property forming part of the public domain. In the case of immovables such Act shall be effective from the date on which the declaration is registered in the relevant registry.

(3) On receipt of each demand or request, including from any environmental organisation, to have public property land be declared and registered as public domain land, the Government is bound to inform the person or entity making such request or demand its official position and motivation thereunder within a maximum period of four months from date of receipt of such demand or request and shall declare within the stated period of time, by means of a notice published in the Government Gazette, by when it intends to enact the relevant Public Domain Act in the case of its consent to said request or demand;

(4) Every Public Domain Act shall, as a minimum:

- (a) identify the property, its fruits and accessories;
- (b) identify any Government powers or third party titles or rights which shall continue to be enjoyed over the thing, and the manner in which they are to be exercised or enjoyed, notwithstanding the declaration;
- (c) identify special laws or provisions thereof, if any, which restrict the public access or enjoyment of such property in accordance with this Schedule and which shall continue to apply to such property notwithstanding the declaration;

and

- (d) where applicable, be accompanied by a plan or general map, based on the official map of the Land Registry, identifying the property and the accessories which are affected by such declaration.

(5) All Public Domain Acts shall be registered in the relevant registry by the Minister responsible for Lands within 30 days of the coming into force of the Act of Parliament by which a declaration contemplated by this article is made.

(6) Saving private rights and any concessions which may validly exist, things in the public domain belonging to the Government shall be *extra commercium* unless they are declassified in accordance with the provisions of Sub-Title VI of this Title, in which case they shall no longer be treated as *extra commercium* but only to the extent and for the purposes mentioned in the relevant Declassification Act.

Provided that things which have been declared to be in the public domain by a Public Domain Act which are privately owned shall not be considered as being *extra commercium* and they may continue to be subject to transactions in accordance with the Code or any other applicable law even if not declassified.

(7) Things in the public domain belonging to the Government which have been declassified as provided for in this Title may be subject to concessions or private rights in accordance with this Schedule.

(8) The acquisition of any right by any private interest over any thing in the public domain belonging to the Government which is not declassified, other than by concession under article 7, shall be *ipso iure* null and void.

(9) Things in the public domain shall be subject to public domain obligations, even when declassified, and no acquirer may plead good faith so as to acquire free from such obligations.

(10) Actions and remedies enjoyed by the general public shall only be those provided under public law.

(11) The principal obligation, which burdens an owner of a thing in the public domain, whether owned by the Government or by a voluntary organisation or by a private interest is to preserve its substance with regard both to matter and to form.

(12) Without prejudice to any private rights thereon, or as otherwise expressly stated in any Declassification Act, things in the public domain belonging to the Government are also subject to a burden being the utility derived by the general public and which is enjoyed by every person on mere sufferance. Public utility includes collective rights such as public access, use, public enjoyment of the fruits and accessories, accommodation to necessities of trade, transit and communication or recreation and any other use and subject to such restrictions as may be prescribed by regulations made from time to time requiring a thing in the public domain to be subject to such burden.

(13) Without prejudice to any private rights thereon, or as otherwise expressly stated in any Declassification Act, nothing in the preceding sub-articles shall imply that any person may, in or over land in the public domain:

- (a) drive or ride any vehicle except over paths which prevent damage to such property;

- (b) light any fire or do any act which is likely to cause a fire;
- (c) wilfully damage anything thereon or therein;
- (d) wilfully injure, remove or destroy any plant, shrub, tree or root or any part thereof;
- (e) affix or write any advertisement, bill, placard or notice;
- (f) deposit any rubbish or leave any litter;
- (g) engage in riotous, disorderly or indecent conduct; or
- (h) wilfully disturb, annoy or obstruct any person engaged in any lawful activity.

(14) Unless it is contrary to law or the declared or apparent destination of the thing in the public domain prohibits it, or it is otherwise prohibited by the Government in accordance with law, things in the public domain belonging to the Government, or their fruits and accessories, may be used or enjoyed, on sufferance, in any amount necessary for an individual's own personal use or consumption. Where special laws require Government authorisation also for personal use or enjoyment of things in the public domain, such authorisation shall be a condition for public use and enjoyment.

(15) In addition to any rights or powers it may have under any law, licence, contract or otherwise, the Government may entertain any civil or administrative action against any person who damages, or by his actions threatens to damage, things in the public domain.

Registration of private rights to things in the public domain.

5. (1) When things in the public domain as defined in this Schedule are subject to private rights, they shall remain public domain and shall generally be burdened by public domain obligations which arise due to their nature, limited by such private rights in a manner consistent with their nature and subject to any applicable law.

(2) Any person enjoying an existing title to or right over land in the public domain shall register such title or right with reference to the specific land in accordance with and subject to the provisions of the Public Registry Act (Cap. 56, Laws of Malta), the Land Registration Act (Cap. 296, Laws of Malta) or any other applicable law having such effect, prior to the lapse of ten years from:

- (i) the designated date with reference to property referred to in sub-article (1) of article 4;
- or
- (ii) the date on which any Public Domain Act is registered in the relevant registry with reference to a specific land;

and subject to the right of the Government or any other person who may have an interest to contest such title or right in terms of any applicable law.

(3) Any person acquiring titles or rights over things in the public domain following declassification, shall register such title or right in accordance with and subject to the provisions of the Public Registry Act (Cap. 56, Laws of Malta), the Land Registration Act (Cap. 296, Laws of Malta) or any other applicable law having such effect within the period prescribed by law.

Sub-Title IV

DISPOSAL OF THINGS IN THE PUBLIC DOMAIN

Disposal of things in the public domain.

6. (1) Apart from complying with the requirements established by this Schedule in relation to declassification the disposal of things forming part of the public domain shall comply with the provisions of the Disposal of Government Land Act (Cap. 268, Laws of Malta) or any regulations issued thereunder, to the extent and in the manner they so require.

(2) The term “disposal” shall have the meaning attributed to it by the said Act and the provisions of the said Act shall apply to public domain *mutatis mutandis*.

Sub-Title V

CONCESSIONS AND GRANTS OF PUBLIC DOMAIN

Administrative Acts in relation to things in the public domain.

7. (1) The Government may grant rights over any things in the public domain by an administrative act on condition that such things in the public domain must be used consistently with their nature.

(2) It shall not be necessary to declassify things in the public domain in order for them to be the subject of an administrative act.

(3) Subject to more detailed terms or conditions which may be prescribed by regulations issued by the Prime Minister from time to time regarding administrative acts, when an administrative act refers to things in the public domain, notwithstanding any provisions of any agreement to the contrary, such grant shall be:

(a) personal to the grantee thereof and shall not be assignable nor shall it be capable of division and when the grant is made to a legal organisation or a trust which has shareholders or beneficiaries, as the case may be such shareholders or beneficiaries shall be subject to the same conditions together with the legal organisation or trust during the duration of such grant;

(b) revocable by the granting authority upon written notice;

(c) subject to public domain obligations and conditions as outlined in this Schedule; and

(d) initially granted for not more than 10 years, and when renewed, for

not more than 10 years at a time.

Provided that when the grant by the Government is made to an enrolled voluntary organisation the purposes of which reflect the same principles of this Schedule relating to the manner of administration of any property in the public domain, the conditions mentioned above may be modified or waived.

(4) Administrative acts granting rights over the public domain shall be registered in the relevant registry if their term exceeds 2 years. Such registration shall not give to the grantee any ownership or possessory rights and the rights remain as stated in the preceding sub-article and applicable law.

Lawful grants to private interests over things in the public domain.

8. (1) Saving any grant which is made pursuant to a special law which may expressly modify the conditions hereunder specified, when things in the public domain are the subject of a grant by the Government to private interests, the following conditions shall apply:

- (a) except when the Declassification Act expressly authorises the declassification to be for an indefinite term because of its evident irreversibility, the grant shall be for a specified term not exceeding 100 years and shall be, as far as reasonable:
 - (i) proportionate to the nature of the interest or benefit to be gained by the general public and to the length of time during which such interest or benefit actually subsists;
 - (ii) sufficient to fulfil the authorised use;
 - (iii) inversely proportionate to the extent to which the general public is restricted access and use, so that the greater the restriction on public use, the shorter the period; and
 - (iv) inversely proportionate to the disruption of the public function the thing used to serve, so that the greater the disruption to public function of the thing, the shorter the period;

and in any case shall not exceed the term for which the thing was declassified;

- (b) the purpose of the grant and subsequent use of the thing shall be exclusively that for which the thing was declassified;
- (c) if reasonably possible, suitable alternatives are provided to the general public which has been deprived of the things it formerly used or enjoyed;
- (d) except when the Declassification Act expressly authorises the declassification to be for an indefinite term because of its evident irreversibility, any constructions, improvements or alterations made to things in the public domain are to be removed on the lapse of the term, unless the Government approves the retention, for its own benefit or as it may consider in the public interest, of such constructions, improvements or alterations at

the time of the declassification or any time thereafter;

- (e) except when the Declassification Act expressly authorises modification of any thing in the public domain, any damages, destruction or modification or exploitation other than that expressly permitted, shall be made good at the expense of the grantee;
- (f) unless expressly permitted by the Declassification Act, and in such case subject to the express conditions of the grant, the grant shall:
 - (i) be personal to the grantee thereof and shall not be assignable and when the grant is made to a legal organisation or a trust which has shareholders or beneficiaries, as the case may be such shareholders or beneficiaries shall be subject to the same conditions together with the legal organisation or trust during the duration of such grant;
 - (ii) not be capable of division; and
 - (iii) not be capable of being the subject of security in favour of a third party.

Provided that when the grant by the Government is made to an enrolled voluntary organisation the purposes of which reflect the same principles of this Schedule relating to the manner of administration of any property in the public domain, the conditions mentioned above may be modified or waived.

(2) The preceding sub-article shall be subject to the following additional rules of interpretation:

- (a) should a grant be made for more than 100 years, it shall be valid only for 100 years;
- (b) should the grant exceed the term stated in the Declassification Act, then the term of the grant shall be reduced *ipso iure* to the term stated in the Declassification Act;
- (c) should the grant be made for a purpose not specified in the Declassification Act, than such grant shall be null and void and no rights whatsoever shall accrue to any party by virtue thereof.

(3) Nothing in this Schedule or any Declassification Act shall hinder the imposition by the Government of more onerous or restrictive conditions at the time of any grant or disposal of the relevant property in the public domain in order to better protect or preserve the public domain nature of the property.

Reversion to public domain.

9. (1) When a thing in the public domain has been subjected to private rights, on the termination, howsoever this occurs, of such private rights, such thing shall revert *ipso iure* to the public domain. On reversion, the thing shall be free from all rights and claims, both personal and real.

(2) Such reversion shall also occur following the expiration of the stated term or the impossibility or exhaustion of the purpose and use for which the thing was

declassified or granted, as the case may be.

(3) Any thing which has, within the term of the original Declassification Act, reverted to public domain in accordance with this article may be re-granted for the remaining period of the original grant without a new declassification provided it is so re-granted within 12 months of the reversion.

(4) When a declassified thing reverts to the public domain after the lapse of the specified term of the grant the Government shall seek to return the property into the public domain for at least 25 years before declassifying it again, unless with the support of a resolution of the House of Representatives.

(5) When immovable property in the public domain is declassified and the declassification is expressly declared to be indefinite in duration due to the irreversibility of the intended use permitted by declassification, reversion to public domain shall not take place and the property shall remain private or public free of any public domain obligations including those referred to in sub-article (10) of article 4.

Sub-Title VI

OF DECLASSIFICATION OF THE PUBLIC DOMAIN

Declassification.

10. (1) All things which are in the public domain, by nature or by operation of the law, can be designated to be available for:

(a) the use and administration of such property by the Government as public property;

or

(b) the grant of titles or rights in favour of private interests;

in accordance with the use to which the thing can lend itself, generally without permitting the permanent alteration of its nature. Such designations shall be for a purpose or purposes which are specifically defined, being in the public interest and shall be made by an Act of Parliament. Such things shall be referred to as declassified things.

(2) Following declassification, the declassified things shall still retain their nature as public domain and, to the extent not incompatible herewith, shall still be subject to the rules in this Schedule. Declassification, however, may impose restrictions on continuing public enjoyment to the extent that public administration or private use is subsequently permitted.

(3) Declassifications cannot take place in relation to classes of things or the totality of such type of thing but can only be made with reference to specific things susceptible to individual designation and description.

(4) Declassification cannot take place except after a minimum period of five years

has elapsed, with regard to any public domain property, from the date of enactment of a Public Domain Act with regard to that property in particular, as mentioned in article 4(2) above;

(5) Declassified things belonging to the Government become capable of being the subject of a contract for the period of declassification and are rendered susceptible to real rights and charges and other encumbrances.

Provided that any real rights, charges and other encumbrances shall terminate *ipso iure* on the expiration of the contract term or on the lapse of the declassification period, whichever is the earlier.

(6) The modification or conversion of things in the public domain following declassification may be permitted by a Declassification Act on condition that such modification or conversion shall seek an outcome where the gain achieved by the general public is clear and unambiguous.

Procedure for Declassification.

11. (1) Declassification of things in the public domain shall be made by means of the issue of an Act of Parliament, hereinafter referred to as a “Declassification Act”.

(2) Every Declassification Act shall, as a minimum:

- (a) identify the property, its fruits and accessories;
 - (b) identify the term, unless indefinite in scope in which case it shall state so, the purpose and the use for which declassification is taking place;
 - (c) declare what the projected existing or future public rights or benefits are to be and what suitable alternatives, if any, will be provided for any loss of use or enjoyment of the thing by the public;
 - (d) identify any known Government powers or third party rights which shall continue to be enjoyed over the thing notwithstanding the declassification, *provided that* this is without prejudice the general powers of the Government under any law and to private titles or rights which may be registered within the time period prescribed by law;
 - (e) seek to identify special laws or provisions thereof, if any, which restrict the public access or enjoyment of such property in accordance with this Schedule and which shall continue to apply to such property notwithstanding the declassification;
- and
- (f) where applicable, be accompanied by a plan or general map, based on the official map of the Land Registry, identifying the property and its accessories which are affected by such declassification.

(3) All Declassification Acts shall be registered in the relevant registry by the Minister responsible for Lands within 30 days of the coming into force of the Act.

(4) Any grant made by the Government pursuant to a Declassification Act shall be

registered in the relevant registry in accordance with applicable law.

(5) Any amendments or revocations made to Declassification Acts shall be registered by the Minister responsible for Lands in the relevant registry within 30 days from when such amendments or revocations are made.

Termination of rights and of effects of declassification.

12. (1) In the following cases:

- (a) where the thing has reverted to its former public use without objection of the title or rights holder for a continuous period of two years;
- (b) where it is used for a purpose which does not fall within the parameters for which the declassification was made;
- (c) where the term for which it was declassified expires;
- (d) where there is a substantial breach of the terms of any grant, concession or an abuse of right;

the grantee shall be notified by judicial letter and, upon the lapse of thirty days from such notification, the thing shall revert to the public domain, unless such reversion is formally contested in a court, in which case the effects are suspended until the court decides the matter or the parties agree that compliance has been achieved; *provided that* during any such contestation the duty of the grantee to pay any agreed compensation and to perform all public domain obligations shall not be affected in any manner and in the event of breach *pendente lite*, the court shall, even without demand on the part of the Government, order the reversion to the public domain on the basis of such breach without the need to determine the issues under contestation.

(2) Where it is established by a final judgement of a court of civil or criminal jurisdiction that the declassification was the fruit of corruption, the declassification shall be invalid and all rights accruing to any person pursuant thereto shall be null and void.

(3) Any person formerly vested with title to or rights over a thing in the public domain shall, upon the events in the preceding sub-articles, *ipso iure* become a mere holder and shall have no further rights from the moment of notification and, without prejudice to any other rights competent at law, the Government shall have a right to register the reversion of the thing to the public domain in the relevant registry.

(4) Where the Government is notified that a third party will be granted or has lawfully been granted an interest dependant on the title or right of the person enjoying the title or right, if so authorised by the Declassification Act, the Government may agree to such terms intended for the protection of such third party rights in the event of default by the holder of the title or rights.

Provided that the third party shall not enjoy such protection if he consents to or participates in the breach giving rise to the default or does not otherwise act in good faith when seeking protection under this article.

Rights not to attach to accessories.

13. (1) When third party rights are granted on declassified immovables, the rights shall attach only to the things fastened to the site and any improvements thereto as well as to its use but not to any fruits or accessories to such immovables unless expressly agreed.

(2) On termination of a grant of declassified things, the person who enjoyed the rights to the use and enjoyment of the things shall, at his expense, take all such action as is necessary to ensure that things which may have been constructed or fastened to the property shall be removed and the thing be restored to its condition prior to the declassification or to as near a condition as possible, such assessment to be made by the Government, unless the Government approves their retention in accordance with article 8(1)(d) of this Schedule or consents to their permanent modification or conversion in the Declassification Act.

(3) In the event that the thing is not restored to the appropriate condition, the Government shall have the power to clear the property of any constructions, fastening or any other thing whatsoever and shall have the power to administer and dispose of the same. Additionally, the Government shall enjoy a special privilege over such things and to any proceeds coming from the lease, operation or sale of such things. The Government shall be entitled to take from such proceeds any sum equivalent to the costs and expenses incurred in restoring the thing to its original condition but shall have no interest whatsoever in any excess proceeds which shall be kept on trust for the grantee.

Furthermore, subject to the terms of the grant, following the termination of a grant, the Government may, at its discretion, acquire any immovable thing remaining on the property upon payment of a fair price to the grantee or relevant owner of the immovable, such price to be determined by agreement or by the court in case of disagreement.

Reclamation.

14. (1) When property becomes part of the coastal perimeter by human intervention, including excavation or development or conversion into a marina, promenade, breakwater or otherwise, it shall not thereby become public domain but shall be subject to:

(a) any special conditions which may be imposed in any Declassification Act or any permit for such intervention;

and

(b) any special laws which may be applicable to its development and use.

(2) When any part of the seabed is reclaimed, any Declassification Act shall expressly declare that the purpose of the declassification is the reclamation of the area, giving full description thereof, and

(a) the area so reclaimed shall no longer be considered to be public domain; and

(b) the coastal perimeter which is lost in the reclamation shall be substituted *ipso iure* by the new coastal perimeter emerging as a

result of the reclamation.

Regulations.

15. (1) The Prime Minister shall have the power to issue such regulations as may be necessary so as to better regulate the matters contained in this Schedule in relation to particular types of property falling within the public domain or generally or for the better functioning of the provisions of this Schedule including without prejudice to the foregoing:

- (a) matters relating to registration of Acts, titles, rights and other matters referred to in this Schedule in the relevant registry;
- (b) defining in further detail the things described in sub-article (4) of article 3 of this Schedule;
- (c) establishing the methodology to determine the baselines for the calculation of the coastal perimeter;
- (d) publication in the Gazette, the Government's website or otherwise of information in addition to that in the relevant registry;
- (e) specifying the uses of things in the public domain, any public domain obligations and any public and private rights thereon, and any reservations and restrictions on such things so as to better achieve the purposes of any Public Domain Act or any Declassification Act;
- (f) actions competent under this Schedule;
- (g) the rights and remedies to protect private interests in any things affected by any process implementing the provisions of this Schedule;
- (h) penalties and offences in relation to public domain things, including offences relating to the unauthorised occupation and use of things in public domain, deprivation of access or use by the public and related rights to damages and re-imburement of any gains; and
- (i) the interplay between the provisions of this Schedule, the provisions of the Code and the provisions of other special laws.

(2) Nothing in this Schedule shall affect the provisions of or anything done or which could be done under the:

- (a) Petroleum (Production) Act (Cap 156, Laws of Malta);
- (b) Disposal of Government Land Act (Cap 268, Laws of Malta);
- (c) Land (Compulsory Eviction) Act (Cap 228, Laws of Malta);
- (d) Authority for Transport in Malta Act (Cap 499, Laws of Malta);
- (e) Environment Protection Act (Cap 435, Laws of Malta);
- (f) Environment and Development Planning Act (Cap. 504, Laws of Malta);

- (g) Crimes Against the Environment Act (Cap 522, Laws of Malta);
- (h) Cultural Heritage Act (Cap. 445, Laws of Malta); and
- (i) any regulations, guidelines or notices issued under any of the above;

and other special laws which may be designated by the Minister responsible for Lands by Notice in the Gazette, and such Minister may, from time to time, in consultation with the Minister designated in such laws, if different, issue regulations to establish the operation of any of the provisions of such special laws in the light of the provisions of this Schedule so as to ensure the achievement of the aims of this Schedule and such laws and the compatible application thereof.”

Objects and Reasons

The Objects of this Bill are to amend the provisions of the Civil Code (Cap. 16) relating to the law of things, defining the rules on the coastal perimeter and the foreshore, classifying property in ownership of the Government, defining and introducing rules on the concept of the public domain and rules on duties and limitations on the Government in its administration of property in the public domain, regulating the designation and declassification procedures and effects in relation to the public domain, introducing rules on the registration of property in the public domain and addressing the impacts of the amendments on private rights and on other existing cultural, environmental and other special laws affecting Government property.

