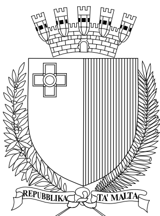
THE NEED FOR REFORM
Sustainability, Justice and Protection



MINISTRY FOR SOCIAL POLICY

Foreword: MINISTER JOHN DALLI

The President of Malta in his address on the occasion of the opening of the 11th Legislature states:

> "For the Government the attainment of sustainable development is a fundamental goal for the Maltese and Gozitan people. It is a conscious choice that in every decision we take we must not only consider our generation's interests, but also the interests of future generations. …
>
> The Government intends to adopt a holistic approach and amongst other matters will implement two reforms.
>
> One: the use of public land will be planned in a systematic manner and governed by the principles of sustainable development.
>
> The other: Concludes the reform relating to the regulation of rent with the intention to assure better use of property, and whilst affording protection to tenants, ensuring that justice with the landlord is secured."

This White Paper is directed to address the goals declared above by the President of Malta on 10th May 2008.

Malta, since the Second World War, has successfully addressed successive international and local challenges whilst at the same time securing an excellent standard of living and an effective social welfare system.

Yet today we face different challenges than those faced by our fore fathers. Amongst others we face the challenge of sustainable development – the balance between continued economic growth and wealth and the protection of our environment; as well as the challenge of demographic change which brings with it new demands of how we prepare and provide for social inclusion. We also face the challenge of assuring that the right to affordable and adequate housing is enjoyed by every member of our society.

In a small nation such as ours the optimised use of available housing stock is of fundamental importance – both in terms of rendering vacant housing stock productive; as well as in re-generating existing stock as against allowing the potential sprawl of new development on virgin land which would threaten our quest for sustainable development.

In searching for solutions we must recognise that the instruments introduced over 60 years ago and still in play today in terms of regulating urban dwellings no longer apply to today's problems. What was necessary subsequent to the devastation of housing stock as a result of war damage is no longer appropriate today in terms of assuring a functional housing market.

The lack of trust by landlords in past government's policy designs in terms of rental policy and the fear that future administrations may yet again resort to housing requisition policy to address social housing issues is a determining inhibitor that refrains landlords from placing their property on the market: preferring to leave such investment vacant so that these can be passed on unencumbered to their descendants.

As this White Paper shows the rights available to the landlord and the tenant for pre-1995 tenancies are such that these do not afford natural, as well as social justice to the landlord.

There is no doubt that the issue under consideration is complex: as the solutions must address, amongst others, social, housing, economic, and inclusion dimensions.

There is also no doubt, however, that reform must happen if we are to be successful in achieving sustainable development. In the preparation of the recommendations presented in this White Paper care has been taken to design a reform that balances and weaves the different dimensions in a manner that secures fairness, provides protection where so appropriate, and achieves social justice amongst the parties.

In articulating the recommendations presented in this White Paper we have, with intent, avoided an aggressive pace in the transition from the state of play today to a liberalised post-1995 market: which constitutes the rent governance framework benchmark in place today.

In articulating the reform of the pre-1995 rental framework we have adopted an incremental pace directed to over time achieve a smooth transition of bringing, to the extent possible, pre-1995 tenancies on the same footing as post-1995 tenancies.

It is my Ministry's desire that given the sensitivity of the issues under consideration my Ministry will only reach its final position on the recommendations to be presented to Government following a comprehensive consultation process. We thus seek an open consultation process on the White Paper to allow us to design the most appropriate reform of the rent legislation.

John Dalli
Minister for Social Policy

THE CONSULTATION PROCESS

The Ministry for Social Policy recognises that the reforms to the rent laws give rise to debate: by landlords who feel aggrieved as property that they own may have become a financial burden as against an investment for their as well their family's future posterity; by tenants who fear that changes will render them unable to afford adequate housing – with the debate transcending the poles of the roles that the State and the private sector, and thus the community at large, should play to provide affordable and adequate housing.

Indeed, the debate must embrace a far broader discussion as, in part, rent laws' issue is intertwined with the need to secure far better utilisation of existing housing stock – a large part of which, for varying reasons, remains unoccupied.

The dysfunction of the housing market, stems on the one hand, from socio-economic impacts that sought to address severe housing issues as a direct consequence of war damage, and, yet, continue to dictate market behaviour over 60 years later. On the other hand, it stems from the fear of landlords to enter the private rental market as a direct result of their mistrust in the State's intentions and behaviour; which in turn imbued a culture for preference for home ownership as against rental of adequate and affordable housing amongst successive generations.

The reform of the rent laws is, if successful, therefore, one very fundamental important variable that will relieve the pressures for the need of new development of housing stock with its consequential negative impacts on our limited territorial space. A housing market that balances new development and the rental of existing housing stock together with State intervention to assure social inclusion, with the aspirations of families to live in adequate and affordable housing will secure a far more sustainable, and potentially more affordable, environment for today's as well as future generations.

The process of reform to the rent laws requires rational debate. To achieve this, the Ministry for Social Policy will embark on a nine (9) week consultation process that will embrace at first instance discussion with the Social Affairs Committee of the House of Representatives and the Malta Council for Economic and Social Development, as well as consultation arising through:

- structured meetings with constituted bodies and Unions
- structured public meetings in various local councils
- receipt of electronic correspondence on the subject matter on **rentreform@gov.mt**
- participation on TV and radio discussion programmes.

In order to render the consultation process comprehensive the Ministry for Social Policy wishes to receive in writing responses by 31st August 2008 where the interested parties will:

- identify areas where they believe that the Rents Reform Working Group may have overlooked relevant information and issues;

- show where they agree with the statements and recommendations made;

- submit proposals as appropriate.

The written responses are to be sent to the:

The Chairperson
The Rent Reform Working Group
Ministry for Social Policy
Palazzo Ferreria
310 Republic Street
Valletta VLT 1110

or

email: **rentreform@gov.mt**

An analysis of all responses received will be published following the consultation and discussion process.

Electronic copies of the White Paper can be downloaded from the Website: **www.rentreform.gov.mt**.

EXECUTIVE SUMMARY

The basic goal of housing policy is to provide society with adequately equipped dwellings of suitable size in a well functioning environment of decent quality at reasonable cost. To render housing policy tangible, questions related to access to housing, affordability, adequacy, and social needs must be addressed.

There is no doubt that successive administrations in Malta have sought to secure these fundamental essentials. The Housing Authority, and previously the Department of Social Housing, have through various schemes such HOS Plots; provision of leased or for sale apartments and maisonettes; ownership of own residence; and rent subsidy achieved much in securing accessible affordable and adequate housing to persons in disadvantaged and low income groups.

A fundamental tenet of the issue underpinning the need for the reform of rental laws regulating the pre-1995 rental market is whether the original conditions that demanded State intervention to control tenancies is truly today a socially just policy instrument to secure the universally recognised principles for social housing or whether these have become an instrument of abuse for categories of cohorts who would not qualify for social housing under any circumstance.

Is the right to a pre-1995 regulated summer tenancy a legitimate social need? Is the right to an indefinite pre-1995 regulated commercial lease a legitimate social need? Is the perpetual successive inheritance of a pre-1995 regulated tenancy to descendents irrespective of their income a legitimate social need?

A second fundamental tenet is whether the pre-1995 laws have become a major obstacle that constrain the housing market from functioning properly across a tripod constituted of ownership; rental; and social inclusion. The extent to which the inability to 'flush' out onto the market unoccupied housing stock for rental is directly correlated to the phenomena of substantial increases in the cost of owning a terraced house or a maisonette cannot be lightly dismissed.

In addressing these, and other, issues, the report articulates its discussion and recommendations on:

- the one hand, on the need to stimulate a balanced housing market that orbits around ownership, rental, and social inclusion; and
- the other hand, on the need to assure that the premise of social justice in terms of the continued impacts of the pre-1995 rental laws are borne primarily by the party that is truly responsible for providing for social inclusion: the State, as well as by the tenant where it is so evident that possession of tenancy under the pre-1995 laws constitute a misuse of the original spirit of why these laws were introduced at the first instance.

Malta has through the enactment of the 1995 rental reforms established the national benchmark of what constitutes the essential rights and obligations of both the tenant and the landlord. Any reform of the pre-1995 rent laws must seek to bring, to the extent possible, the rights and obligations of tenants and landlords on the same footing as those enjoyed by post-1995 tenants and landlords.

Yet, social justice demands equitable and balanced solutions – and where obligations are wrongly placed, the gradual resolution of such obligations. Whilst there will be those who will argue for immediate rectification of wrongs – alleged or otherwise - committed over a period of decades, a socially just solution demands reasoned measures introduced incrementally in order not to destabilise society at large.

In designing the recommendations presented in the report, the following principles acted as the guiding baseline to seek a socially just reform of the pre-1995 rent laws:

- the right to housing is an universally accepted right; but the obligation to provide social housing belongs, primarily, to the State and not to the private sector.
- the provision of private tenancies should be based on balanced rights that secures justice and equity in the distribution of obligations and responsibilities between the landlord and the tenant.
- that reforms must be manageable and gradual to minimise negative impacts of a social nature.
- the right of the tenant to live in a rented property cannot be absolute or indefinite; and it is primarily the State's obligation to alleviate impacts that arise from reasonable market conditions.
- the use of private property for social housing cannot be such that places unreasonable demands on the landlord that impact his right to an adequate standard of living.

EXECUTIVE SUMMARY

The report presents the following recommendations:

Recommendation 01
It is important that unequivocal bi-partisan support that no party in government will resort to interventionist measures to address housing issues is attained if confidence in the private sector rental market is to be attained.

Recommendation 02
The Government should review the issue of housing stock that is vacant due to problems of inheritance; unknown owners; or due to the economic cost of rehabilitation with the objective to find a balanced solution to render such property into productive housing stock

Recommendation 03
The burden for the financing of the social dimension of providing affordable and adequate housing for those who legitimately are in need for it is primarily a responsibility of the State.

Recommendation 04
The Government should review mechanisms of how it can involve the private sector in the provision of social housing.

Recommendation 05
The various legislation regulating the rental market should be repealed and the new reforms should be codified within the Civil Code.

Recommendation 06
The ongoing permanency of the rent legislative regime has resulted in institutionalised misuse; and reforms must differentiate between tenants of residential dwellings and the economic status of such tenants; and tenants of non-residential dwellings who enjoy a net gain at the expense of the landlord or society at large.

Recommendation 07
The existing right of a lease enjoyed by a sitting tenant will be retained and will be extended to the spouse who is not legally or de facto separated, who in the event of the death of the sitting tenant will continue to enjoy the right to the tenancy as a matter of course which would not be deemed to be causa mortis inheritance.

Recommendation 08
A person will be designated as a beneficiary to a causa mortis inheritance of a lease of a sitting tenant and the spouse, if the person is:

(i) the natural and / or adopted and / or fostered child who lived with the tenant for a period of a minimum of five consecutive years before the death of the tenant and / or the natural and / or adopted and / or fostered child who would be younger than five years of age; or

(ii) an ascendant who is sixty years and older who lived with the tenant for a period of five consecutive years before the death of the tenant

Subject that the beneficiary would have fulfilled these eligibility criteria as at 1st June 2008.

Recommendation 09
The right of inheritance to occupants who qualify to causa mortis inheritance under the eligibility criteria proposed in this report is a **one time right only**.

Recommendation 10
Occupants who live with a sitting tenant or the spouse who do not meet the eligibility criteria proposed in the report as at 1st June 2008 will in the event of causa mortis of the tenant have no right of inheritance to the tenancy but will be afforded the right to continue to live in the residency for a period of not longer than five years from the date of the death of the tenant subject to the conditions that they will be governed by post-1995 rent legislation and will pay market value for the rent; with further extensions of the tenancy to be subject to agreement reached between the occupant and the landlord.

Recommendation 11
The introduction of transitional measures in the proposed reform are to secure social justice; which principle does not incorporate the continued 'subsidisation' by the landlord of beneficiaries who do not qualify for social support; and thus, with the exception of the spouse, the right of causa mortis inheritance to a beneficiary with an economic worth of Euro125,000 or an income of higher than Euro25,000 will no longer prevail although the landlord will be obliged to enter into a three year contract, subject to the conditions of the post-1995 rent legislation, for a rental value of a maximum of 3% of the value of the property; subsequent to which any further renewal will be subject to agreement between the landlord and occupant.

Recommendation 12
The conditions relating to Inter Vivos transfer should remain unchanged.

Recommendation 13
Tenants who are in long term residential care in government or private residence or institutionalised in, although medically discharged from, a hospital for a period that is longer than 6 months will either (i) inter vivos formally transfer the lease to a qualifying beneficiary in lieu of causa mortis inheritance; (ii) or in the event that there is no qualifying beneficiary the lease is automatically terminated and the title reverts back to the owner.

Recommendation 14
The implementation of the proposed reforms will give rise to exceptional circumstances, which primarily will be of a social nature, and the responsibility to provide the appropriate levels of protection to persons affected by such circumstances should rest with the State and not the landlord.

Recommendation 15
With effect from 1st January 2009 the minimum rent for pre-1995 rented property will, unless otherwise agreed to between the landlord and the tenant, be set at the 1960: 158.80 inflation base line - €185 (Lm79.40) per annum.

Recommendation 16
With effect from 1st January 2009 the value of the rent for pre-1995 rented property will increase by the rate of inflation between 1st January 2009 and 31st December 2012; and will continue to increase as such at the end of every three year cycle until the tenancy reverts back to the landlord.

Recommendation 17
All those affected by recommendations 15 and 16 who today are in receipt of a non-contributory Old Age Pension and social assistance will benefit from a scheme to be adopted by Government.

Recommendation 18
In order to secure a fairer balance between the financial cost of repair and economic return the responsibilities of the landlord in relation to repairs and maintenance will be limited to structural building and roof works respectively; with all other repairs and maintenance responsibilities to be borne by the tenant.

Recommendation 19
In order to ensure that the tenant does his utmost in terms of meeting his responsibilities to minimise arising structural damages to the building as well as to account for the arising costs to the landlord to finance the repairs::

(i) the rent will increase by 10% of the full cost of repairs at the time the repairs are completed; or

(ii) the tenant may choose to carry out the repairs subject that the tenant will have no right of partial or full compensation for the said repairs when the title of the tenancy reverts back to the landlord.

Recommendation 20
In order to assist tenants to finance repairs for which they will now be responsible they will be able to access all present and future Government schemes that are set up for this purpose.

Recommendation 21
Contracts for commercial property entered into by the parties that have an 'inbuilt' mechanism for inducing termination by abnormally increasing the value of the rent at a particular date will continue to be in effect for a sunset transition period of twenty years provided that in the event that during this period the 'inbuilt termination' clause is applied this will act as a de facto termination clause and the title of the property will revert back to the landlord.

Recommendation 22
The value of the rent paid for commercial leases should not continue to enjoy protection under the pre-1995 rent legislation and the value of the rent of such property is to reach full market value as follows:

- turnover =< €50,000 (Lm21,459): 1990 inflation indexed rates as at 1st January 2009 and will increase automatically every three years to 1996, 2002 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

- turnover => €50,001 (Lm21,459.6) but =< €500,000 (Lm214,592): established at 1995 inflation indexed rates as at 1st January 2009 and will increase automatically every three years to 2001, 2007 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

- turnover => €500,001 (Lm214,592.7): 2000 inflation indexed rates as at 1st January 2009 and will increase automatically following every three years to 2006, 2012 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

Recommendation 23
In order to provide the landlord of pre-1995 rented commercial property with rights of the landlord of similar property but governed under the post-1995 legislation as well as to secure a level playing field, all tenancies of pre-1995 commercial properties, unless otherwise agreed to by the parties, will terminate within 20 years from 1st June 2008; with the title of the property to revert back to the landlord.

Recommendation 24
Pre-1995 commercial property leased by legal entities listed on the Malta Stock Exchange will have the lease terminated as at 1st June 2009; with the title of the property to revert back to the landlord and with the future leasing of such property to be governed by post-1995 legislation.

Recommendation 25
The inter vivos transfer of 1 share of a legal entity or commercial partnership is to be considered as tantamount to a transfer of the lease of the commercial premises.

Recommendation 26
As from 1st June 2008 the sitting tenant or the beneficiary to whom the title of the lease has been transferred to will no longer, unless there is agreement between the parties enjoy the right to sub-let the property to a third party – with sub-letting to be re-defined to include the establishment of management agreements for pre-1995 commercial properties.

Recommendation 27
A third party enjoying a lease sub-letted to him by a sitting tenant prior to 1st June 2008 will, unless an agreement is in place with the landlord, continue to enjoy the said lease for a period of 10 years as from 1st June 2008, following which the lease will expire and the title of the lease will return to the landlord.

Recommendation 28
In the event that the title of the lease of commercial premises reverts back to the landlord, and the landlord intends to rent the premises, the occupants will have the right of first choice to continue to use the premises.

Recommendation 29
In the event that the landlord does not rent out the dwelling upon the expiry of the lease, the landlord will be prohibited from being provided with a commercial license for the said dwelling for a period of twelve (12) months other than for himself or his direct descendants or legal entities wholly owned by himself or his direct descendents.

Recommendation 30
In order to ensure that a benchmark of what constitutes a fair market value for the level of rent to be sought from a property the Government should identify and introduce an index mechanism that will establish the market value of the level of rent for a premises in a particular area and locality.

Recommendation 31
There is no rationale for which the principles of social justice can be applied for dwellings used as summer residences and garages and these should be liberalised with effect from 1st January 2010.

Recommendation 32
The derequisitioning process should be maintained.

Recommendation 33
The regulation and governance of the rental market should be placed with one entity in order to secure an effective instrument to legal solutions for such matters and that in this regard full jurisdiction should be provided to a restructured Rents Regulation Board.

It is pertinent to underline that the recommendations proposed in this report apply not only to tenancies of private landlords but as well as to Government in its capacity as a landlord of leased property as well as tenant of property leased from the private sector. In this regard, the report defines tenancies leased as health centres, police stations, et al as commercial premises.

TABLE OF CONTENTS

		Page No
Foreword		I
The Consultation Process		II
Executive Summary		III
01.	**Introduction**	**3**
01.1	Terms of Reference of the Rent Reform Working Group	3
01.2	The Constitution of the Rent Reform Working Group	3
01.3	The Methodology Applied by the Rent Reform Working Group	4
01.4	Acknowledgements	4
02.	**The Background**	**5**
02.1	The Rent Laws within the Context of Social Housing Provision	5
02.2	The Legislation Reviewed	8
	02.2.1 Protection of Security of Tenure to Tenants	8
	02.2.2 Rent Payable	10
	02.2.3 Structural Repairs and Alterations	10
02.3	Steps Towards Reform	11
02.4	An Overview of Rent Reform in Select EU Countries	15
	02.4.1 Spain	15
	02.4.2 Italy	15
	02.4.3 Greece	16
	02.4.4 United Kingdom	16
03.	**Understanding the Pre-1995 Rental Market**	**18**
04.	**Recommendations for the Reform of the Rent Laws**	**30**
04.1	Establishing a Rental Market as a Functioning Part of the Axis that Includes Ownership and Social Inclusion	30
	04.1.1 An Absence of Trust in Government Behaviour	32
	04.1.2 Inability to Bring Vacant Housing Stock to Market	32
	04.1.3 The Private Sector's Responsibility in Stimulating the Rental Market	33
04.2	Social Housing: Determining the Locum of Responsibility	34
04.3	Harmonising the Various Rent Legislation	35
04.4	Misuse of the Rental Regimes in Place	35
04.5	Inheritance of Leases of Residential Dwellings	36
	04.5.1 Eligibility for and Period of the Inheritance of the Lease	36
04.6	Rent Increases	40
04.7	Repairs and Maintenance	41
04.8	Commercial Leases	42
04.9	Establishing an Index for Determining the Market Value of the Level of Rent	45
04.10	Pre-1995 Rented Dwellings that have no Social Connotation	45
04.11	Requisitioned Property	46
04.12	Loci of Responsibility for Rent Regulation	46

TABLE OF CONTENTS

Page No

TABLES

Table 01:	Rented dwellings by rent paid and type of landlord	18
Table 02:	Rented premises, contract entered into in or prior to 1995	19
Table 03:	Rented dwellings by the amount of rent paid, 1995 – 2005	20
Table 04:	Heads of households by age and rent paid share of respective rent bracket in each age group	20
Table 05:	Elderly heads of households, aged 60 years and over, living in rented accommodation	21
Table 06:	Elderly heads of households, aged 60 years and over, living in private rented accommodation	22
Table 07:	Rented dwellings by rent paid	23
Table 08:	Rented dwellings by rent paid and household income	24
Table 09:	Pre- and Post- 1995 Contracts of Rented dwellings by rent paid and household income	24
Table 10:	Dwellings rented at €279.60 (Lm120) and less	25
Table 11:	Private households living in rented accommodation by type, 1995 – 2005	26
Table 12:	Private households living in rented accommodation by period when contract was signed and annual rent paid	27
Table 13:	Vacant dwellings as of 2005	29
Table 14:	Mortgages, 2003 – 2007	29
Table 15:	Ratio of Cost of Dwelling-to-Income	30
Table 16:	Average Mortgage	31
Table 17:	Vacant Property	32

01.1 TERMS OF REFERENCE OF THE RENT REFORM WORKING GROUP

On 1st April 2008 the Minister for Social Policy, under his stewardship, constituted a Rent Reform Working Group (RRWG) with the following terms of reference:

(i) to review all work carried out by successive administrations on rent laws reform.

(ii) to review existing legislation.

(iii) to identify the issues arising from the existing legislative framework; with the exception of agriculture leases and tenancies of dwellings used for social purposes such as band clubs, sports clubs, political clubs, et al.

(iv) to review reforms of countries in Europe which faced similar problems to those identified locally and to understand the reforms they embarked upon.

(v) to review relevant data stemming from the 1995 and the 2005 Census respectively.

(vi) to propose recommendations for Government's considerations.

01.2. THE CONSTITUTION OF THE RENT REFORM WORKING GROUP

The RRWG is constituted as follows:

Chairman	The Hon John Dalli Minister for Social Policy.
Members	Mr Joseph Ebejer Permanent Secretary, Ministry for Social Policy.
	Dr Anthony Abela.
	Dr Maria Scriha former Ministry of Family and Social Solidarity official.
	Dr Jeannine Giglio former Ministry of Family and Social Solidarity official.
	Mr David Spiteri Gingell former Executive Secretary to the Cabinet Committee for Social Policy.
	Dr Maya Miljanic Brinkworth Research Consultant at the Ministry for Social Policy.
Executive Secretary:	Ms Gladys Vella Assistant Private Secretary to the Minister for Social Policy.

01.3. THE METHODOLOGY APPLIED BY THE RENT REFORM WORKING GROUP

In preparing its report, the RRWG applied the following methodology:

(i) it carried out a review of the relevant legislation.

(ii) it reviewed public discussion on the subject matter as reported in newspapers and other documentation placed in the public domain.

(iii) it reviewed documentation of the Commission for the Revision of Rent Legislation set up on 18th September 1997 by the then Labour Administration.

(iv) it reviewed documentation of the Working Group on Rent Reform set up by the then Minister of Family and Social Solidarity (MFSS) in 2005.

(v) it reviewed statements made by local political parties on the subject matter.

(vi) it reviewed documentation relating to social housing in the European Union (EU).

(vii) it analysed reforms carried out in a select number of EU member states.

(viii) it reviewed the statistical analysis on the subject matter carried out by the then MFSS on the 1995 and 2005 Census respectively and the carrying out of further statistical analysis on the housing market.

(viii) it excluded from the study the review of agriculture leases / rents and tenancies of dwellings used for social purposes (band clubs, sports clubs, political clubs, et al).

01.4. ACKNOWLEDGEMENTS

The RRWG thanks all persons and organisations that assisted it through the provision of information and discussion of issues. The conclusions of the report are, however, the views of the RRWG.

02.1 THE RENT LAWS WITHIN THE CONTEXT OF SOCIAL HOUSING PROVISION

The basic goal of housing policy is to provide society with adequately equipped dwellings of suitable size in a well functioning environment of decent quality at reasonable cost. To render housing policy tangible, questions relating to access to housing, affordability, adequacy and social needs must be addressed.

It is pertinent to underline that the right to housing is a fundamental European principle. The European Social Charter signed in 1961 and revised in 1996 states:

> "The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:
>
> 30. everyone has the right to protection against poverty and social exclusion.
>
> 31. everyone has the right to housing."

More specifically, Article 31, the right to housing, states that:

> "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
>
> 1. to promote access to housing of an adequate standard;
>
> 2. to prevent and reduce homelessness with a view to its gradual elimination;
>
> 3. to make the price of housing accessible to those without adequate resources."

Furthermore, the First Joint Report by the Commission and the Council on social inclusion (Council 15223/01) of 12th December 2001 affirms that:

> "All member states recognise that the importance of access to decent quality housing is a key condition for social integration and participation in society … [and that] given the importance of housing expenditure in the total household budget (on average 25% in the EU), higher rents have particularly strong knock-on effects on residual incomes of lower income households, often pulling them far below the poverty line. …
>
> The thrusts of initiatives by Member States in their NAPs is geared essentially at overcoming the deficiencies in their national housing markets in order to assure lower income sections of the population access to decent and affordable housing … [and that] member states make use of a range of measures to stimulate and increase the supply of decent low cost housing. These include: provision of social housing subsidies by the majority of Member States …".

The NICE European Council for common objectives for the fight against exclusion, establishes:

> "… [the need for the implementation of] policies with the objective of providing access for every person to decent and healthy housing, as well as to the necessary essential services, taking into account the local context, and to a normal existence in that housing (electricity, water, heating, etc)."

Article 34 of the EU's Charter of Fundamental Rights:

> "… recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources …".

The ruling by the Courts of Justice of 18th January 2005 recognises the nature of general interest regarding social housing financing and develops the concept of 'general interest use' with respect to the savings allocated to social housing financing; whilst the European Court of Justice's ruling of 5th March 2002 (case C 515) recognises the nature of general interest "of the objective to maintain a supply of affordable main homes".

Despite the fact that the universal acceptance of the right to affordable housing to secure social inclusion has long been accepted, the EU itself has no common definition of social housing in Community Law.

A cursory review of EU Member States immediately brings this to light. Definitions, for example, may relate to ownership: notably non-profit organisations and local authorities (the Netherlands and Sweden); who constructs the dwellings (Austria and France); whether rents are below market levels (Ireland and Germany); and in almost all of the countries, the purpose for which housing is provided. In some countries social housing is formally available to all households (for example Austria and Sweden) but in most cases social housing is directed at those who cannot service their housing needs.

THE BACKGROUND
CHAPTER 02

There is universal agreement that the locum of responsibility for social housing rests primarily with the State: in that it is the State that normally intervenes to ensure that those members of its society who cannot afford access to adequate housing are provided such access in a manner that renders it affordable to them – and where special needs are so identified, marginalised groups are not socially excluded.

There is no doubt, that, successive administrations in Malta have sought to secure these fundamental essentials. The Housing Authority, and previously the Department of Social Housing, have through various schemes such HOS Plots; provision of leased or for sale apartments and maisonettes; ownership of own residence; and rent subsidy achieved much in securing accessible affordable adequate housing to persons in disadvantaged and low income groups.

It is pertinent to put some context into the historical background that raises questions on the need for rent law reforms.

In 1931, the then administration enacted the Reletting of Urban Property (Regulation) Ordinance. The Ordinance reflected a mixture of Roman law and laissez faire rules in play at the time. The Ordinance established the Rent Regulation Board (RRB), a special tribunal with the purpose of determining whether to allow the landlord to evict a tenant by not renewing an expired lease; or to change the conditions regulating the said lease. The general principle of this Ordinance was that it was unlawful for a landlord to refuse the request to renew the lease or to raise the rent or to impose new conditions for renewal without the RRB's permission. This Ordinance is still essentially in force today and is currently Chapter 69 of the Laws of Malta.

As experienced in most other European countries, the need to repair war damage, alleviate arising housing shortages, and ensure housing for persons who lost their property as a consequence of the war as well as the arising dislocation of society and the economy generally, demanded a policy response by the Government to meet what was then an emergency situation.

Thus in 1944 the Rent Restriction (Dwelling Houses) Ordinance, today Chapter 116 of the Laws of Malta, came into force to regulate the initial conditions of leases and laid down the maximum rent the landlord could introduce. The Ordinance sets the principle of 'fair rent': where-in a lessee could present an application before the RRB requesting it to assess the applicable rent and requesting that any excess rent paid to be refunded.

In 1949, the Housing Act, Chapter 125 of the Laws of Malta, was introduced – which established the principle that all residential units were subject to requisition by Government. This Act empowered the Director of Social Housing to requisition private property and to lease such property to third parties. It is pertinent to state that this Act was amended by Act III of 1995 where-in, with effect from 1st March 1995, this power of requisition was repealed. Nevertheless, the Act remains applicable to those residential units for which a requisition order was issued before 1st March 1995.

By 1959, it was recognised that the rent legal framework in place was negatively affecting the rental market as owners of private property had no incentive to place their property on the market. In response, the Housing (Decontrol) Ordinance, Chapter 158 of the Laws of Malta, was enacted in 1959 with the intention to provide the appropriate incentives to stimulate the rental market by creating a new classification of houses: decontrolled houses. The general provisions of the Civil Code, as opposed to the restrictive rent laws became applicable to these decontrolled houses – that is, the landlord regained the right that they could charge market prices and the obligation to renew upon termination of the lease was repealed. Moreover, these dwellings were excluded from being requisitioned.

Act XXII of 1979 amended this Ordinance by reverting rights towards the tenants; mainly: security of tenure in relation to the decontrolled dwelling houses; regulation of various aspects of lease of decontrolled houses such as repair and maintenance. In Act III of 1995, in order to encourage the rental of vacant property, the rental market for property rented after the coming into effect of the law was liberalised.

A fundamental tenet of the issue underpinning the need for the reform of rental laws regulating the pre-1995 rental market is whether the original conditions that demanded State intervention to control tenancies is truly today a socially just policy instrument to secure the universally recognised principles for social housing; or whether these have become an instrument of abuse for categories of cohorts who would not qualify for social housing under any circumstance.

Is the right to a pre-1995 regulated summer tenancy a legitimate social need? Is the right to an indefinite pre-1995 regulated commercial lease a legitimate social need? Is the perpetual succession of a pre-1995 regulated tenancy to descendents irrespective of their level of income a legitimate social need? To what extent should the private sector carry the burden of subsidising legitimate social housing, when this, primarily, is a State obligation?

A second fundamental tenet is whether the pre-1995 laws have become a major obstacle that constraints the housing market to function properly across a tripod constituted of ownership; rental; and social inclusion. The extent to which the inability to 'flush' out onto the market unoccupied housing stock for rental is directly correlated to the phenomena of substantial increases in the cost of owning a residential house cannot be lightly dismissed.

It is these and related questions that the RRWG seeks to address in this report. In doing so, it will articulate its discussion and recommendations on:

- the one hand, on the need to stimulate a balanced housing market that axis around ownership, rental, and social inclusion; and
- the other hand, the need to assure that the premise of social justice in terms of the continued impacts of the pre-1995 rental laws are borne by the party that is primarily responsible for providing for social inclusion: the State; as well as by the tenant where it is so evident that possession of tenancy under the pre-1995 laws constitutes a misuse of the original spirit of why these laws were introduced at the first instance.

It is pertinent to underline that Malta has through the enactment of the 1995 rental reforms established the national benchmark of what constitutes the rights and obligations of tenants and landlords. Any reform of the pre-1995 rent laws must seek to place, to the extent possible, the rights and obligations of landlords and tenants on the same level playing field as those enjoyed by post-1995 landlords and tenants.

Yet, social justice demands equitable and balanced solutions – and where obligations are wrongly placed, the gradual resolution of such obligations. Whilst there will be those who will argue for immediate rectification of wrongs – alleged or otherwise - committed over a period of decades; a socially just solution demands reasoned measures introduced incrementally in order not to destabilise society at large.

In this regard, the RRWG identified the following principles as the guiding baseline to seek a socially just reform of the pre-1995 rent laws:

- the right to housing is an universally accepted right; but the obligation to provide social housing belongs, primarily, to the State and not to the private sector.
- the provision of private tenancies should be based on balanced rights that secure justice and equity in the distribution of obligations and responsibilities between the landlord and the tenant.
- that reforms must be manageable and gradual to minimise negative impacts of a social nature.
- the right of the tenant to live in a rented property cannot be absolute or indefinite; and it is the State's obligation to alleviate impacts that arise from reasonable market conditions.
- the use of private property for social housing cannot be such that places unreasonable demands on the landlord that impact his right to an adequate standard of living.

02.2 THE LEGISLATION REVIEWED

The review of the legislation discussed in the previous sections is thematic – with references to the relevant law as appropriate in relation to lease agreements entered into pre-June 1995.

02.2.1 Protection of Security of Tenure to Tenants

02.2.1.1 Civil Code (Cap 16)

On the expiration of the lease it is the landlord that decides whether to renew or terminate the lease. Nevertheless, the term of the rent period is automatically extended for the same period of rent (that is if the rent is due in four months time, then the lease is automatically extended for the another four month period). This condition does not apply if the landlord would have informed the tenant that the lease would not be renewed upon expiry.

A resident tenant has a preferential right to extend the lease in the event that he or she meets the conditions that the landlord would agree with a potential new tenant. This right is tied to the person; and is not inheritable.

02.2.1.2 Reletting of Urban Property (Regulation) Ordinance (cap 69)

The landlord has no right to ask for the property when the lease expires. The definition of 'rental' (kirja) is broader than the definition found in the Civil Code; and includes: (a) emphytheusis concession for a period that does not exceed 16 years; (b) the agreement setting out payment; (c) any other agreement which provides a real or personal right to occupy the property for a period of time.

Thus, given that the property constitutes the place of residence, the landlord has no other option but to renew the lease with the same conditions and rent; unless justifiable reasons are made.

The landlord can only request the property back subject to the submission of a request to the RRB on the basis of the following conditions:

(a) action by the tenant relating to:

- failure to pay the rent in two consecutive terms
- major damage to the property
- failure to meet conditions of lease
- use of lease for reasons other than those signed on to
- sub-lease of property without the consent of the landlord.

(b) structural changes to the property are considered as breach of contract in the event that they do not satisfy the following conditions: (a) improvement to the property; and (b) the property can be reverted to its original state.

(c) in the event that the landlord requires the property for his or his dependencies use. In this regard the RRB would only accept such a request if (a) the tenant finds alternative accommodation; and (b) such accommodation is next to the tenant's place of work. It is pertinent to underline that there were instances where the Courts of Malta have included summer residences under this definition.

(d) Protection to the right of use of the property is provided not only to the tenant who would have signed the original lease contract but also to (a) in the event of his or her decease-, to the widowed spouse if the parties would not have been legally or 'de facto' separated; and (b) those members of the family who would have lived in the property at the time of the death of the tenant – which basically means perpetual inheritance of the tenancy.

02.2.1.3 Housing (Decontrol) Ordinance (Cap 158): Act XXIII of 1979

02.2.1.3.1 Decontrolled Property

Upon the termination of a lease of the decontrolled property the landlord has no right to get the property back if on its expiration (a) the tenant is a Maltese citizen; and (b) the tenancy is his ordinary place of residence.

Whilst the law indicates that the lease is extended on an annual basis, the Courts of Malta have issued judgement stating that the lease is extended for 15 years, within which period no amendments to the rent payable can be made.

Lease is defined to include (a) an emphytheutical or sub-emphytheutical grant for a period not exceeding 16 years; (b) notwithstanding any stipulation to the contrary, any agreement in pursuance of which any person has been accommodated in consideration of payment periodically recurrent in any dwelling house; and (c) any agreement whereby any real or personal rights or any dwelling house, which right includes that of occupation of that dwelling house, is granted under an onerous or commutative title for a period of time, whether such time is established by fixing a certain specified day or whether it can be established by reference to a certain or to an uncertain future event.

The landlord has the right to increase the rent on expiry of the lease on the basis of inflation between the period of when the previous lease was entered into and the year of when the lease is extended. This cycle repeats itself at the end of each 15 year period. The landlord can also request that any improvements to the property are carried out by the tenant subject to the condition that prior to or on the date of the extension of the lease the landlord presents to the RRB an architect certified statement that the property is in good condition as accepted by the tenant or as approved by the RRB.

The landlord can only refuse to extend the lease and to re-assume the title to the property if the tenant during the term of the lease carried out the following action:

- failed to pay the rent in two consecutive terms within 15 days or more from when the landlord would have requested payment
- caused major damage to the property
- failed to meet conditions of the lease
- used the lease for reasons other than those signed on to.

Tenant is defined to mean: (a) in the event of his death, the widowed spouse if the parties would not have been legally or ‘de facto’ separated; and (b) sons, unmarried brother(s) or sister(s) of tenant who would have been living with the tenant, and any other ascendants living with the tenant.

02.2.1.3.2 Concessions to Temporary Emphytheusis

There are three categories of such temporary emphytheusis: (a) concessions for a term of not longer than 30 years which would have taken place prior to 21st June 1979; (b) concessions for a term of longer than 30 years which would have taken place prior to 21st June 1979; (c) any other type of concession that would have taken place before or after 21st June 1979 (though not after 1st June 1995).

Not More than 30 years

Emphytheusis is defined to mean ownership against an annual payment (cens) for a defined period of time of any property which can be part or whole of the building structure in which the holder will have access to his residence. For the purpose of this exercise emphytheusis is defined to include sub-emphytheusis.

The holder on expiry of the emphytheusis can continue to occupy the property given that (a) he is a Maltese citizen; and (b) the tenant would be occupying the property as his place of abode.

In the event that on the date of the expiry of the emphytheusis the property is leased, therefore the right of occupation shall rest with the occupier and not with the emphytheusis on the condition that the tenant (a) is Maltese; and (b) will be occupying the premises as his ordinary place of residence.

In the event that on the expiry of the emphytheusis the property is occupied by a person who has a title of usufruct or habitation, then the right to continue to occupy the premises will rest with the person holding such title.

In the event that the person occupying the house on the expiry of the emphytheusis is not the person who occupied the house prior to 21st June 1979, such person can only continue to occupy the said house if (a) the person who occupied the house until 21st June 1979 did so until his death; (b) the current occupant used to live with the original occupant and met all conditions to be considered a tenant.

The persons who have the right to hold the title for the renting of the premises are subject to the following conditions: (a) a rent that is equal to the rent paid prior to the expiry of the emphytheusis doubled at the date of its conversion into a lease and after every 15 years thereafter on the basis of inflation between the date of the expiring emphytheusis and the new lease – subject that the increase cannot be more than the value of the lease; (b) together with any other conditions agreed between by the parties or as arbitrated by the RRB in the event of failure of agreement.

The law does not provide conditions that allow the landlord to refuse conversion of the emphytheusis into a lease. The existing laws then apply.

More than 30 years

If on the expiry of the emphytheusis the emphyteuta is Maltese, then he has the right to convert the temporary emphytheusis into a perpetual one. In the event that the property is in the hands of the sub-emphyteuta, then this right is enjoyed by him. The law places no demand that the property must be the place of abode of the emphyteuta. It is pertinent to add that this right is being contested at law, however, legislation is being considered to do away with this.

At the point of conversion of the emphytheusis into a perpetual one, the ground rent payable is multiplied by six (6). In the event that the tenant is the holder of sub-emphytheusis, than the multiplication of the factor of six is on the basis of the value of sub-emphytheusis. Subsequent increases take place every 15 years on the basis of inflation in so far that the increase is not higher then the value of the previous lease.

The right to convert the emphytheusis is to take place within six months from the date set for this right to be exercised. The person exercising such right, can demand a notarial contract; in which event the contract will be governed by the Civil Code. If this option is not taken up by the emphyteuta and there is a tenant, then such tenant may demand the conversion in his name.

02.2.2 Rent Payable

Chapter 116 sets out the principle of ‘fair rent’; regulation of the initial conditions of the leases; and establishes the maximum rent which could be requested by the landlord. The principle of fair rent was set on the basis of whether the dwelling house was an old house (dar qadima); a new house (dar gdida); or a scheme house (dar ta’ progett).

In terms of an old house – that is a dwelling house which was complete or ready for use as of 31st March 1939 - the rent established was based on the average rents prevalent on the day as shown in the registers of the Land Valuation Office in respect of comparable dwelling houses in the same or in comparable localities.

In terms of a new house - that is a dwelling house which was not complete or ready for use as of 31st March 1939 – the rent was established on the basis of a sum equivalent to a return of 3% a year on the freehold value of the site, and 3+1/4% on the capital outlay on construction (excluding any sum which was paid or was still payable by way of a grant by the government and any interest on loans or in respect of idle capital) as proven by the landlord to the satisfaction of the RRB, or in default as assessed by the RRB.

In respect of a scheme house, the established rent was an annual sum to be determined by agreement with the Government. This Ordinance does not provide for any increase in the rent payable as a result of the cost of living or inflation increases.

02.2.3 Structural Repairs and Alterations

02.2.3.1 Repairs

The Civil Code states that it is the responsibility of the landlord to maintain a property designated for rental in a good state of repairs so that it may be made available for rental.

The landlord is responsible to carry out all repairs other than ordinary internal maintenance; with all other maintenance to be carried out by the tenant – unless deterioration would be such that it would require replacements; in which event responsibility would rest with the landlord.

The tenant is responsible for expenses relating to wear and tear and damages which would have occurred during the period of the lease unless the tenant can prove that such damages were not due to negligence through his fault.

In the cases of tenancy on the basis of emphytheusis all expenses relating to repairs are borne by the tenant. Nevertheless, the court with regards to repairs requiring major expenditures in relation to temporary emphytheusis can demand, on the request of the tenant, that the landlord meets part of the said expenditure – the quantum depending on the nature of the case.

In the case of non decontrolled rented property, Cap 158 establishes that when the landlord is ordered to effect repairs, or carries out such repairs in agreement with the tenant, the landlord could demand an increase in the level of the rent payable to a maximum of 10% of the repairs carried out subject to the condition that the increase does not exceed the value of the rent. The law afforded the landlord the possibility to avoid such expenditure on the basis that the property is sold to the government at a price equivalent to capitalisation of the rent receivable at 6% (Lm6 (Euro13.97) sold at €100.

In the case of decontrolled property the landlord cannot state in the lease contract that the responsibility for repairs will rest with the tenant unless there is an annex to the contract containing a certification by an architect of the tenant's choice that the property is in a good state of repair.

In the event that the lease is being renewed, the landlord can relinquish responsibility for repairs only if at the time of renewal he presents a certification as mentioned above, and such certificate is accepted either by the tenant or the RRB.

02.2.3.2 Alterations

The Civil Code establishes that the tenant cannot carry out any structural changes unless appropriate consent is provided by the landlord; and the tenant has no right for compensation in the event that such changes are carried out without the appropriate consent.

The tenant on the termination of the lease and unless otherwise specified has the right to remove all improvements as long as he can re-instate the property into its original state and that in so doing he does not cause undue damage to the said property and can prove that he has use for such improvement.

In the event of property that is not decontrolled, the landlord has the right to request a reasonable increase in the value of the rent payable should alterations have been carried out with the formal consent of the tenant. Appropriate authority would be required from the RRB. The annual increase would be of 6% of the costs incurred subject to a maximum of €1,165 (Lm500).

In terms of decontrolled property there is no condition which establishes whether the landlord can request an increase in the value of the rent.

In terms of emphytheusis, structural alterations carried out by the lessor will be owned by lessor for the duration of the emphytheusis. The tenant cannot destroy such alterations without the consent of the landlord.

02.3 STEPS TOWARDS REFORM

The major step towards reforming the rental market was taken in 1995 where the Government by means of Act XXXI of 1995 rendered the special rent laws to be no longer applicable to contracts of lease entered into on or after 1st June 1995. This meant that the parties entering into a contract of lease after such a date were no longer regulated by the special rent laws. In essence, therefore, the 1995 reforms established a new legal framework for the regulation of the rights and obligations of landlords and tenants – one based on a liberalised environment. The 1995 reforms, thus, establish the benchmark that reforms of the pre-1995 rent laws must seek to attain in terms of the rights of landlords and tenants of pre-1995 tenancies.

In May 1996 the Permanent Law Reform Commission (PLRC) and its Ad Hoc Committee presented a report to the then Minister of Justice and the Arts titled 'Report and Draft Bill Re Condominium and Community of Property'.

The report of the PLRC presented two sets of proposals directed to: (i) amend the provisions regulating co-ownership; and (ii) introduce a "new institute into Maltese Civil Law, namely that of condominium."

In terms of the "institute of Co-ownership in the Civil Code", the PLRC proposed the following amendments to the Civil Code:

"(a) to remove the right of the co-owner not to share in the expenses for the preservation of the common property by abandoning his right of co-ownership;

(b) to make it possible for those co-owners who own more than fifty per cent of the common property to effect alterations to such property;

(c) to stipulate that the co-heirs or co-legatees of an inheritance or a legacy are to be regarded in respect of each and everything or right included in the inheritance or legacy as being co-owners in respect of each and every single thing or right included in the said inheritance or legacy as the case may be;

(d) to empower the Court to authorise those co-owners who own more than fifty per cent of common property to transfer by title of sale such property or, alternatively, to authorise one of the co-owners to acquire the shares of all the other co-owners (or, if two or more co-owners are interested in acquiring the shares of the common property, to order its sale by licitation);

(e) to better define the amount payable by a co-owner in a partition when there is inequality of value of the share."

THE BACKGROUND
CHAPTER 02

In September 1997, the Labour Administration, through the Minister for Housing, established a Commission for the Revision of Rent Laws on 18th September 1997. The Terms of Reference set for the Commission were:

- to propose innovative changes in rent laws, particularly with regards to urban tenements and especially housing with the objective of adapting rental contracts in accordance to prevailing circumstances;

- to consolidate the various rent laws into one law.

The terms of reference of the Commission were subsequently amended to include the review of vacant housing and how these could be brought into the market – in particular (i) property co-owned by various persons, some or all of whom are not resident in Malta; (ii) properties which are the subject of court litigation, particularly but not limited to the division of inherited property; (iii) property belonging to persons unknown or absent from Malta; and (iv) property which is not habitable and which requires such costly expenses for repairs that the owners have practically abandoned such property.

The Commission which was chaired by Dr (now Judge) Joseph R Micallef met for seventeen times between its constitution and 19th August 1998. In carrying out its work, the Commission created three sub groups; tasked to review:

(01) (a) the basic concepts of a contract lease and (b) the formalities that this contract is subjected to.

(02) (a) the contract of lease in the Civil Code; (b) the content of the lease in the special rent laws; (c) the integration of the dispositions of the Civil Code and the special laws.

(03) (a) the Housing Act; (b) the Ordinance that removed Housing Control; (c) the Constitutional aspects of a contract of lease and the control of the use of property; (d) the Government as a lessor; (e) the value of the rent.

The Commission drew up the following Working Papers:

(a) Government Housing and Commercial Leases.

(b) Housing: The Social Perspective.

(c) The Right to Housing and the Right to Contracts: A Few Considerations.

(d) Notes relating to: Definition of Rent; Definition of Tenant; Contractual Framework; Harassment of the Tenant.

(e) Formation of the Contract.

The Commission did not submit a final report and hence it is not possible to assess which of the recommendations proposed in these Working Papers would have been submitted to Government.

Nevertheless, a review of the Minutes of the Commission seems to show that the Commission had reached agreement on the following principles:

(i) legislation is required to regulate the relationship between an owner and a tenant.

(ii) leases should not remain subject to various legal regimes which take effect in accordance with the date of the lease or when the building was built although a transitory period is required.

(iii) contracts of leasing should be in writing and should identify certain basic fundamentals such as owner, date of commencement and expiry, etc.

(iv) inheritance of leases should no longer take place since persons who are not tenants cannot be considered as such; and although persons who lived in the property before the lease expired should be protected there should be limitations on the number of times a lease may be inherited.

(v) in the event of leases made by a temporary owner, an evaluation should be made as to whether the lease was made under fair conditions and if so to continue with the lease for a limited period.

(vi) the rent payable should no longer remain tied to the situation prevailing pre and in the immediate post-war years and a mechanism should be introduced which will allow the level of the rent to increase gradually.

(vii) a better definition is required of repairs which should be carried out by the owner and those by the tenant; whilst the responsibilities of the tenant should increase.

(viii) a legal basis should be provided for the tenant to finance all repairs subject to the condition that the tenant can purchase the property at the end of the lease at market prices on the basis that half of the rent paid up to the date of purchase is offset against the purchase price.

(ix) the tenant should not be permitted to make structural alterations to the premises without the owner's permission subject to appeal to the RRB if consent is not provided.

(x) the reasons of eviction during a lease should be specified and should apply to all types of leases and the competence of ordering eviction from a leased tenement shall always rest with the RRB; and that the fact that the owner requires the premises for his own use or for that of a member of the family should no longer qualify as a reason for eviction.

(xi) that in terms of requisitioned premises, in order that such buildings are not allowed to fall in a state of abandonment the issue of quantum of compensation payable to the owner requires revision.

On 6th November 1997, the Commission submitted an interim report titled 'Proposed Action to be taken in respect of Unoccupied Dwelling Houses'. The report proposed a number of recommendations; mainly:

(a) Fiscal incentives and disincentives to encourage their lease. These included:

- total or partial exemption from tax on income from leases, or from certain types of leases made after an established date.
- deduction from taxable income of expenses incurred in repairs to leased dwellings.
- the imposition of a tax / penalty on owners who leave houses vacant (minority report on this matter).

(b) Administrative, Legal and Juridical Measures. These included:

- strengthening of the Housing Authority schemes for the repair of old or substandard dwellings.
- introduction of schemes by means of which substandard housing are repaired in whole or in part by the lessee and / or by the public authority on condition that the tenant could make use of the premises for a determined period whilst guaranteeing that the owner could take back the premises after that period of time.
- the introduction of provisions in the law enabling that the tenement co-owned by several persons may be leased upon the decision taken by the qualified majority.
- the introduction of a simple judiciary procedure so that the co-owners of a tenement are authorised to lease the property.
- measures to regularise the allocation of premises for habitation occupied only by persons residing permanently in government homes for the elderly.

On 29th November 2004 the then Minister for MFSS presented a Memorandum to Cabinet articulated work carried out up till then together with an articulation of the deliberations of the afore mentioned Commission on the Revision of the Rent Laws. This was followed by a Memorandum to Cabinet titled 'Rent Laws Reform' which the then Minister for MFSS presented on 21st July 2005. The Memorandum which was directed to "initiate discussion with Cabinet for guidance and direction" stated that the "status quo does not seem to be an option any longer".

The Memorandum identified three main axis: (i) dwelling houses used as a primary residence; (ii) commercial premises such as shops and warehouses; and (iii) other urban property such as garages for private use and summer residences. The issue of agricultural leases was also identified.

A Working Group was constituted and directed to:

(i) draw up a profile of the tenants and owners in order to assess the social and economic implications of reforms options. Chapter 3 of this report represents the key findings of the work carried out by the Sub-Group assigned to this task.

(ii) review of the pre-1995 legislations and presentation of recommendations. The options considered by the Sub-Group assigned to this task are incorporated in Chapter 4 of this report.

The Working Group also commissioned reviews of reforms carried out in a select number of EU countries. The conclusions of these reviews are presented in Section 02.4 of this report.

The Memorandum to Cabinet identified the following as areas towards which the reform should primarily focus:

(a) Inheritance of the lease.

(b) Rent payable.

(c) Dissolution of contracts of lease.

(d) Repairs to leased premises.

(e) Commercial leases.

(f) Structural changes and improvements.

(g) Premises rented by Government to private owners.

(h) Requisitioned property.

(j) Government owned housing.

(k) Decontrol.

(j) Eviction of Tenant.

(l) Incentives and Disincentives.

The Memorandum added:

> "The issue, without any doubt, is a particularly thorny one with social and economical implications and repercussions that must be handled with care and with caution. Government's statements have always emphasised the underlying principle that, while change must come, it must do so within the context of an environment where injustices are removed without creating more problems than are solved."

On 16th January 2006, the Minister presented a draft White Paper for Cabinet Consideration. In late 2007, the MFSS presented a revised draft White Paper to the Office of the Prime Minister.

02.4 AN OVERVIEW OF RENT REFORM IN SELECT EU COUNTRIES

02.4.1 Spain

Spain experienced a similar situation to Malta. Under the former Urban Leases Act of 1964, tenants under lease agreements (both for housing and for other purposes) were entitled to extend the term of agreement for as long as they desired.

Although reforms introduced by the 1964 Act provided for a fairly liberal regime in relation to rents and rents' reviews the 1964 law did not achieve the goal of ending the freeze on levels of rent established by previous legislation. In April 1985 a new decree was enacted which entered into force on 9th May 1985 and remained in force until 1st January 1995. This decree substantially amended the 1964 Act in an attempt to promote the urban leasing market by seeking to suppress the tenant's mandatory extension of the title of the lease and the power to convert residential tenancies into commercial ones.

The 1985 decree, however, did not achieve the goal of promoting the urban leasing market and is perceived to have created instability in the housing rental market – as a result of short term leases and significant rent increases.

On 1st January 1995, the current Urban Lease Act was enacted: the purpose being that of promoting the urban rental market and achieving a balance between the rights and obligations of tenants and landlords. Of note, two main reforms achieved by the Act relate to the term of the lease and review of the level of the rent – with the new parameters setting different conditions for residential and commercial leases respectively.

With regards to residential leases, the reforms took into account the circumstances of the tenant by factoring matters such as family situation; financial position; and whether the tenant is the original tenant or an heir of the original tenant. Of particular note is the following:

(i) mandatory extension of the lease was no longer permissible.

(ii) inter vivos subrogation was repealed and causa mortis inheritance suppressed progressively.

(iii) all frozen rents were updated to account for inflation variations for the period since the lease agreement was signed or renewed: on the principle of quicker updates for rents of buildings holding higher values.

In terms of lease agreements for commercial premises the reforms removed mandatory extensions and established periods for the termination of leases – with periods ranging between 5 and 20 years – with the extent of the period depending on the income generated and whether the tenant is an individual or a legal entity.

02.4.2 Italy

The Italian Tenancy Act (Law 392/78) provided for a special regime applying to the lease of properties for residential and commercial use – notwithstanding the different provisions contained in the lease agreement. Law 392/78 regulated the relevant aspects of the tenancy relationship, such as duration and rent, in order to confer on tenants of residential and commercial properties protected tenancy rights.

This Law was amended by Law 359/92 which allowed for contractual provisions on rent by way of derogation to the law – provided that the landlord waived the right of withdrawing from the lease agreement on the first expiration date.

Law 431/97 repealed a number of articles in the two aforementioned Laws. As a result, the legislation currently in force in relation to leases for commercial purposes is still contained in Law 392/78; whereas the legislation currently in force applying to residential leases is contained in both Law 431/98, and residually in parts of Law 392/78.

Law 431/1998 identifies two types of lease agreements for residential use where mandatory provisions on rent and duration are combined. The first, contemplates the possibility for the parties to the lease to freely agree the amount of the rent subject, however, to a mandatory duration of the lease for a minimum period of 4 years with extension of the lease for a further period of 4 years failing the provision of notice for non renewal. The second contemplates a duration of 3 years which may be further extended to 5 years in the event of failure of reaching agreement for renewal – where-in the amount of rent paid is establish by agreement between trade associations of tenants and landlords.

02.4.3 Greece

The basic legislation regulating the leases of residential and commercial property in Greece since the 1970s protected tenancy rights of the lessees. In terms of residential leases, the minimum duration was established, and remains, at 3 years with rent established on a formula that accounts for the value of the property. Rampant inflation during the 1980s and 1990s, however, rendered the condition regulating the level of the rent a major issue for landlords. The legislation, with the exception of the 3 year obligatory duration of residence leases, was repealed in 1994.

In terms of commercial leases the basic legislation is L813/1978 which provided for a minimum obligatory 6 year duration (extended to 9 years in the 1980s), compensation to the lessee if the lessor reclaims back the property for self use (16 to 30 monthly rents) or to develop the property (12 to 18 months). It also provided for rent adjustments every 2 years. Nevertheless, as a result of the high level of inflation, the Courts allowed only low increases at the end of the 2 year cycle. The result was market distortion where lessees' of commercial leases under the old regime were paying low rates whilst new entrants were paying high market rates.

To overcome this issue, in 1992, the Greek Government enacted legislation where-in the rent of commercial leases could not be less than 6% of the value of the property; and if no rent adjustment was agreed to between the parties, the rent would be adjusted to a minimum of 75% of the inflation rate of the previous 12 months.

In 1997 new legislation was introduced where-in all old rents were terminated (unless otherwise agreed by the parties) – with a compensation to the lessee of 12 monthly rents. In 1999 new legislation was introduced that established the minimum duration of commercial leases to be 12 years with the lessee having the right of 24 monthly rents compensation if evicted; and 16 years with no compensation for the lessee. The lessee only had the right to terminate the lease before the 12 years would have passed – with appropriate compensation to the lessor.

02.4.4 United Kingdom

The general trend of English Law on rent control for sitting tenants is to allow rents to be agreed between the landlord and the tenant on a commercial basis unless there is an issue of social need which is addressed either by the Housing Trust or the Council.

Rent control law prior to January 1989 is generally governed by the Rent Act 1977 where-in a tenancy under which a dwelling house (including part of a house) let as a separate dwelling before 15th January 1989 was (and will remain so until the tenancy is terminated) a protected tenancy; unless that tenancy was excluded from the Rent Act. The exclusions from protection include (a) tenancies of high value dwellings; (b) tenancies at low rents; (c) holiday lettings; (d) lettings by resident landlords; (e) lettings by local authorities or housing associations; (f) business tenancies; and (g) licences.

Tenancies entered into after January 1989 are now regulated by the Housing Act 1988. Under the Rent Act, it is for the tenant to apply to a rent officer for determination and registration of a 'fair rent' in which case the fair rent will be the maximum legally recoverable amount – and an application for revision of fair rent can only take place two years after registration.

A County Court Order is necessary to recover possession from a tenant who has security of tenure under the Rent act. For the Court to provide such an order it must be satisfied that suitable alternative accommodation is available to the tenant or that grounds set in Schedule 15 to the Act are met. Schedule 15 differentiates between discretionary and mandatory grounds. In terms of discretionary grounds the landlord must not only prove the existence of the said ground but he must also satisfy the Court that it is reasonable in all circumstances to make an order for possession.

A protected tenancy is a 'proprietary right' leading to causa mortis inheritance on the death of the tenant, subject to the rights of transmission of the tenancy to a member of the tenant's family. A 'statutory' tenancy is not a proprietary right and cannot pass by will or on intestacy or to a trustee in bankruptcy since it is neither an estate in land nor a proprietary right. On transmission the tenancy is converted into an 'assured' tenancy – which is defined in the Housing Act 1988. Only lettings entered into on or after 15th January 1989 are being designated as assured tenancies.

The Housing Act 1988 was amended by the Housing Act 1996 to provide governance for assured shorthold tenancies entered into on or after 28th February 1997. An assured shorthold tenant can apply to the local Rent Assessment Committee for determination of the rent which in the Committee's opinion the landlord might reasonably be expected to obtain under the shorthold tenancy. With both the old and the new shortholds, once the rent has been determined by the Committee, no further application for fixing of a different figure can be made by either the landlord or the tenant.

The current security of tenure provisions for tenants under long leases are contained in Schedule 10 of the Local Government and Housing act 1989. This provides that tenants of dwellings who were granted certain long tenancies at a low rent have a right to stay in possession after the end of their leases as assured tenants. The Acts applies where long tenancy was granted after 1st April 1990 and to those granted before this date but which expire after 15th January 1999.

The findings of the 1995 and the 2005 Census of Population and the 2005 and 2006 Survey on Income and Living Conditions (EU-SILC) provide the statistical background, the analysis of which enables a detailed profiling of the pre-1995 rental market.

The analysis seeks to apply both the 1995 and the 2005 data, where so possible, to obtain as accurate as possible an understanding of changing trends and behaviour over the past decade. The EU-SILC 2005 data was, also, used to access the socio-economic position of the landlords. It is pertinent to underline that whilst the 2005 Census provides data that allows categorisation of whether the landlord was a private landlord, the State or the Church, the 1995 Census did not provide such data. The 2005 Census also provided data relating to the date when a contract of lease was entered into.

During the inter-censal decade 1995 - 2005, the following trends are observed:

- The total number of private households increased from 119,479 in 1995 to 139,178 in 2005.
- Home ownership increased from 68.0% in 1995 to 75.2% in 2005.
- Renting appeared to be the less preferred tenure option in 2005. Both the EU-SILC 2005 and the 2005 Census reported that the number of rented premises decreased from the 33,781 tenant households in 1995 to 28,760 enumerated in 2005: that is a decline of 5,021 rentals or 14.9%. The 2005 Census also reports a reduction of 5,833 rented premises in the lowest rent brackets €2.33 (Lm1) to €116.50 (Lm50), while an overall decline of 8,079 premises rented at €2.33 (Lm1) - €233 (Lm100) was observed during the 1995 - 2005 decade.
- In 2005 there were 72,998 persons living in 28,760 rented dwellings, while in 1995 there were 97,192 persons living in 33,781 rented dwellings – a decline of 24,194 persons or 24.9%.
- By the year 2005 the number of rental contracts entered in the year 1995 and before amounted to 18,654 or 64.86% of all rented premises.
- The 2005 Census identifies the rent paid to the different landlords. This is shown in Table 01. The following observations can be noted:
  - the Government's and Church's share of rented dwellings stands at 28.02% and 1.98% respectively; whilst that of the private sector stands at 70%.
  - 11,510 of the properties in 2005 are rented at €116.50 (Lm50) or below – that is 40% of the rental stock. This has reduced from 17,343 – or 51.3% - of the rental stock in 1995.

TABLE 01: Rented dwellings by rent paid and type of landlord

Rent Paid in Lm	Rent Paid in Euro	1995 Total	2005 Total	2005		
				Government	Private Landlords	Church
1 – 10	2.33 – 23.3	2,362	1,411	276	1,078	57
11 – 20	25.63 – 46.6	5,525	3,295	518	2,667	110
21 – 30	48.93 – 69.9	4,028	2,634	588	1,966	80
31 – 40	72.23 – 93.2	2,895	2,253	732	1,456	65
41 – 50	95.53 – 116.5	2,533	1,917	612	1,269	36
51 – 60	118.83 – 139.8	2,988	2,172	1115	1,024	33
61 – 70	142.13 – 163.1	1,796	1,436	899	528	9
71 – 80	165.43 – 186.4	2,297	1,751	949	781	21
81 – 90	188.73 – 209.7	1,070	814	381	425	8
91 – 100	212.03 – 233	1,521	1,253	310	923	20
101 – 110	235.33 – 256.3	434	308	118	188	2
111 – 120	258.63 – 279.6	747	628	99	519	10
121 – 130	281.93 – 302.9	245	236	64	169	3
131 – 140	305.23 – 326.2	280	328	125	200	3
141 – 150	328.53 – 349.5	484	481	119	352	10
151 – 200	351.83 – 466	1,085	1,525	558	952	15
201 – 250	468.33 – 582.5	472	639	224	409	6
251 – 300	584.83 – 699	336	503	142	353	8
301 – 350	701.33 – 815.5	93	185	76	108	1
351 – 400	817.83 – 932	189	326	55	266	5
401 – 450	934.33 – 1,048.5	95	113	29	84	2
451 – 500	1,050.83 – 1,165	184	173	15	156	2
501 – 550	1,167.33 – 1,281.5	78	71	15	56	0
551 – 600	1,283.83 – 1,398	192	255	9	242	4
601 – 650	1,400.33 – 1,514.5	12	36	3	30	3
651 – 700	1,516.83 – 1,631	74	59	1	57	1
701 – 800	1,633.33 – 1,864	215	308	5	300	3
801 – 1000	1,866.33 – 2,330	223	740	2	731	7
1,001 – 1,200	2,332.33 – 2,796	150	973	8	952	13
1,201 – 1,500	2,798.33 – 3,495	72	589	2	581	6
1,501 – 2,000	3,497.33 – 4,660	76	661	5	648	8
2,001 +	4,662.33 +	113	687	7	659	21
Total		33,781	28,760	8,061	20,129	570

Source: 1995 and 2005 Census of Population and Housing

- 93.98% of all lease contracts entered into before 1946 were at €279.60 (Lm120) per annum or less; and similarly, lease contracts entered into before 1946 with the same rent cost, represented 94.69% of all contracts signed with private landlords in the same period.

- Of those premises rented in 1945 or earlier, 80.30% were at €116.50 (Lm50) and less annually, 12.39% were at €118.83 - €233 (Lm51-100) annually and a further 1.29% was between €235.33 (Lm101) and €279.60 (Lm120).

- The respective shares of property rented from private landlords before 1946 stood at 82.89% for property rented at €2.33 - €116.5 (Lm1 – Lm50); 10.54% for property rented at €118.83 - €233 (Lm51 - Lm100); and 1.25% for property rented at €235.33 - €279.60 (Lm101 – Lm120).

- Table 02 shows that of 18,654 premises rented before 1996, 48.26% were at €116.50 (Lm50) and less.

TABLE 02: Rented premises, contract entered into in or prior to 1995

Rent in Lm	Rent in Euro	Contracts Entered into in or Prior to 1995	
		Number	Percentage
1 – 10	2.33 – 23.3	1,105	5.92
11 – 20	25.63 – 46.6	2,614	14.01
21 – 30	48.93 – 69.9	2,109	11.31
31 – 40	72.23 – 93.2	1,720	9.22
41 – 50	95.53 – 116.5	,1454	7.79
Subgroup 1-50	Subgroup 2.33 – 116.5	9,002	48.26
51 – 60	118.83 – 139.8	1,707	9.15
61 – 70	142.13 – 163.1	1,155	6.19
71 – 80	165.43 – 186.4	1,457	7.81
81 – 90	188.73 – 209.7	653	3.50
91 – 100	212.03 – 233	899	4.82
101 - 110	235.33 – 256.3	214	1.15
111 - 120	258.63 – 279.6	445	2.39
121 - 130	281.93 – 302.9	161	0.86
131 - 140	305.23 – 326.2	234	1.25
141 - 150	328.53 – 349.5	322	1.73
151 - 200	351.83 – 466	959	5.14
201 - 250	468.33 – 582.5	401	2.15
251 - 300	584.83 – 699	300	1.61
301 - 350	701.33 – 815.5	108	0.58
351 - 400	817.83 – 932	139	0.75
401 - 450	934.33 – 1,048.5	37	0.20
451 - 500	1,050.83 – 1,165	57	0.31
501 - 550	1,167.33 – 1,281.5	24	0.13
551 - 600	1,283.83 – 1,398	55	0.29
601 - 650	1,400.33 – 1,514.5	7	0.04
651 - 700	1,516.83 – 1,631	12	0.06
701 - 800	1,633.33 – 1,864	38	0.20
801 – 1,000	1,866.33 – 2,330	81	0.43
1,001 – 2,000	2,332.33 – 2,796	66	0.35
1,201 – 1,500	2,798.33 – 3,495	30	0.16
1,501 – 2,000	3,497.33 – 4,660	48	0.26
2,001 +	4,662.33 +	43	0.23
Total		18,654	100.00

Source: 2005 Census of Population and Housing

- Table 03 shows a decline in the share of dwellings rented at €116.50 (Lm50) and less, between 1995 and 2005.

TABLE 03: Rented dwellings by the amount of rent paid, 1995-2005

	Total	Rent Lm50 and Less	Rent €116.50 and Less	Rent at Lm51 and Over	Rent at €118.83 and Over
1995	€76,573.12 (Lm32,864) 100.00%	17,343 51.34%	40,409.19	15,521 45.95%	36,163.93
2005	€67,010.8 (Lm28,760) 100.00%	11,510 40.02%	26,818.3	17,250 59.98%	40,192.5

Source: 1995 and 2005 Census of Population and Housing

- Table 04 shows the heads of households in 1995 and 2005 respectively, grouped by age and the amount of rent paid:

TABLE 04: Heads of households by age and rent paid, share of respective rent bracket in each age group

Age Group Years	1995 * €116.5 (Lm50) and Less	2005 €116.5 (Lm50) and Less	1995 * €233 (Lm100) and Less	2005 €233 (Lm100) and Less
15 – 19	30.50%	20.75	54.90%	31.13
20 – 24	30.50%	22.54	54.90%	42.03
25 – 29	27.80%	18.46	57.20%	37.08
30 – 34	32.10%	20.75	63.70%	39.07
35 – 39	33.60%	20.29	68.20%	42.45
40 – 44	34.20%	26.37	75.90%	50.15
45 – 49	36.40%	31.59	77.00%	59.01
50 – 54	43.80%	31.33	79.30%	64.84
55 – 59	55.40%	34.95	84.00%	69.74
60 – 64	64.60%	41.35	88.90%	72.58
65 – 69	71.70%	51.91	90.40%	78.70
70 – 74	73.70%	59.84	88.90%	81.02
75 – 79	75.40%	65.86	89.40%	84.11
80 – 84	77.10%	68.40	90.10%	84.50
85 – 89	80.70%	70.34	89.50%	86.01
90 – 94	67.10%	70.90	86.10%	91.04
95 – 99	N/A **	60.00	N/A	73.33

Source: 1995 and 2005 Census of Population and Housing
* The first age group figure of the 1995 Census refers to the 18 – 24 age bracket.
** Not applicable

- In 1995, 12,944 dwellings were rented to heads of households aged 60 years and over. A reduction of 733 such dwellings was recorded in 2005 with 12,211 heads of households in this age bracket.

- The situation of the elderly living in low-rent accommodation is particularly significant as Table 05 hereunder shows:

TABLE 05: Elderly heads of households, aged 60 years and over, living in rented accommodation

Rent in Lm	Rent in Euro	Percentage in this Rent Group who were 60 years of age and above	Number of Dwellings, heads 60 years of age and above	Average amount of rent collected annually in Lm (mid-point based)	Average amount of rent collected annually in Euro (mid-point based)	Percentage in this Rent Group who were below age 60
1 - 10	2.33 – 23.3	64.14	905	4,977.5	11,597.57	35.86
11 - 20	25.63 – 46.6	64.43	2,123	32,906.5	76,672.14	35.57
21 - 30	48.93 – 69.9	63.40	1,670	42,585	99,223.05	36.60
31 - 40	72.23 – 93.2	53.44	1,204	42,742	99,588.86	46.56
41 - 50	95.53 – 116.5	48.67	933	42,451.5	98,910.83	51.33
51 - 60	118.83 – 139.8	40.15	872	48,396	112,762.68	59.85
61 - 70	142.13 – 163.1	34.12	490	32,095	74,781.35	65.88
71 - 80	165.43 – 186.4	41.01	718	54,209	126,306.97	58.99
81 - 90	188.73 – 209.7	39.93	325	27,787.5	64,744.87	60.07
91 - 100	212.03 – 233	38.39	481	45,935.5	107,029.71	61.61
101 - 110	235.33 – 256.3	43.18	133	14,031.5	32,693.39	56.82
111 - 120	258.63 – 279.6	39.81	250	28,875	67,278.75	60.19

Source: 2005 Census of Population and Housing

- There were 6,835 heads of households aged 60 years and over who were paying the rent of €116.50 (Lm50) and less, 2,886 paying between €116.50 - €233 (Lm50 – Lm100). The share indicates the prevalence of low rents among older heads of households. It is evident that the highest concentration of these heads of households is within lowest rent brackets, namely €25.63 - €46.6 (Lm11 – Lm 20) and €2.33 - €23.3 (Lm1 – Lm10) rent bracket.

- Elderly heads of households, who pay rent of €116.5 (Lm50) and less, represent 41.91% of all heads of households living in privately rented accommodation (Table 06 below).

TABLE 06: Elderly heads of households, aged 60 years and over, living in private rented accommodation

Rented from a private owner at Lm 50 and less, by age of head of household	Percentage in this age group	Number
60 - 64	45.43	949
65 - 69	55.36	1,090
70 - 74	61.00	1,131
75 - 79	66.49	980
80 - 84	67.75	712
85 - 89	69.52	292
90 - 94	71.93	82
95 - 99	50.00	5
Total	41.91	8,436

Source: 2005 Census of Population and Housing

Due to the social implications involved the rent paid is considered to be the most sensitive aspect of the whole issue of Rent Reform. For the purpose of this exercise it was essential to analyse the composition of families living in rented accommodation. The results are:

- In 2005 there were 116 shared dwellings (two households living under the same roof, not sharing the expenses): 45 rented from Government, 67 from private landlord and 4 from the Church. Of all shared dwellings 98 (84.48%) were enjoying rentals of €279.60 (Lm120) and less. Of these, 58 were renting from the private landlord.

The 2005 Census shows that of all married children who were living with their parents 57.49% were 25-39 years of age, while 26.87% were 40 years old and over.

- 46.42% of married children living with their parents reside in government leased premises, while 51.63% reside in premises leased from private landlords. Only 1.95% reside in dwellings rented from the Church. Married children aged 25 and over who reside with parents and were living in Government premises amounted to 237 cases (45.75%); in privately-owned rented premises there are 271 cases (52.32%) and in Church owned premises there are only 10 (1.93%). Considering the major events on the life-cycle, married children 25-39 years of age are even more significant, their numbers in premises rented from Government were 169 (59.30%), private rented 180 (56.78%) and 4 (33.33%) in properties rented from the Church.

- In 1995, 51.34% of rented premises were at €116.5 (Lm50) and less, while in 2005 this share decreased to 40.02%.

TABLE 07: Rented dwellings by rent paid

Rent Payable (Lm)	Rent Payable (Euro)	1995	2005	% of Total in 1995	% of Total in 2005
1 – 10	2.33 – 23.3	2,362	1,411	6.99	4.91
11 – 20	25.63 – 46.6	5,525	3,295	16.36	11.46
21 – 30	48.93 – 69.9	4,028	2,634	11.92	9.16
31 – 40	72.23 – 93.2	2,895	2,253	8.57	7.83
41 – 50	95.53 – 116.5	2,533	1,917	7.50	6.67
51 – 60	118.83 – 139.8	2,988	2,172	8.85	7.55
61 – 70	142.13 – 163.1	1,796	1,436	5.32	4.99
71 – 80	165.43 – 186.4	2,297	1,751	6.80	6.09
81 – 90	188.73 – 209.7	1,070	814	3.17	2.83
91 – 100	212.03 – 233	1,521	1,253	4.50	4.36
101 – 110	235.33 – 256.3	434	308	1.28	1.07
111 – 120	258.63 – 279.6	747	628	2.21	2.18
121 – 130	281.93 – 302.9	245	236	0.73	0.82
131 – 140	305.23 – 326.2	280	328	0.83	1.14
141 – 150	328.53 – 349.5	484	481	1.43	1.67
151 – 200	351.83 – 466	1,085	1,525	3.21	5.30
201 – 250	468.33 – 582.5	472	639	1.40	2.22
251 – 300	584.83 – 699	336	503	0.99	1.75
301 – 350	701.33 – 815.5	93	185	0.22	0.64
351 – 400	817.83 – 932	189	326	0.56	1.13
401 – 450	934.33 – 1,048.5	95	113	0.28	0.39
451 – 500	1,050.83 – 1,165	184	173	0.54	0.60
501 – 550	1,167.33 – 1,281.5	78	71	0.23	0.25
551 – 600	1,283.83 – 1,398	192	255	0.57	0.89
601 – 650	1,400.33 – 15,14.5	12	36	0.04	0.13
651 – 700	1,516.83 – 1,631	74	59	0.22	0.21
701 – 800	1,633.33 – 1,864	215	308	0.64	1.07
801 – 1,000	1,866.33 – 2,330	223	740	0.66	2.57
1,001 – 1,200	2,332.33 – 2,796	150	973	0.44	3.38
1,201 – 1,500	2,798.33 – 3,495	72	589	0.21	2.05
1,501 – 2,000	3,497.33 – 4,660	76	661	0.22	2.30
2,001 +	4,662.33 +	113	687	0.33	2.39
No Amount Given	No Amount Given	917	-	2.71	-
Total		33,781	28,760	100.00	100.00

Source: 1995 and 2005 Census of Population and Housing.

- The EU-SILC 2005 data shows that 67% of all tenants reported a household income of €13,980 (Lm6,000) and less. Those renting at a very low rent, that is €233 (Lm100) and less, represent 52.49% of all tenants.

- Table 08 provides details on the household income and the rent payable by each household.

TABLE 08: Rented dwellings by rent paid and household income

Rent Payable	€2.33 - €233 (Lm1 – Lm100)	€235.33 and over (Lm101 and over)	Total
Income Less Than €13,980 (Lm6,000)	52.49%	14.30%	66.79%
Income of €13,980 (Lm6,000) and over	28.36%	4.85%	33.21%
Total	80.85%	19.15%	100.00%

Source: EU-SILC 2005

- Table 09 differentiates between pre-1995 and post-1995 rented dwellings in terms of the household income and the rent payable by each household.

TABLE 09: Pre- and Post-1995 Contracts of Rented dwellings by rent paid and household income

Tenants	Rent Paid Annually			
	€116.5 (Lm50) and Less	€118.83 - €233 (Lm51-Lm100)	€233 (Lm100) +	Total
Contracts 1995 and prior				
Income in Euro (Lm)				
€13,980 (Lm6,000) and less	€18,824 (Lm8,079)	€8,446 (Lm3,625)	€5,212 (Lm2,237)	€32,482 (Lm13,941)
More than €13,980 (Lm6,000)	€5,410 (Lm2,322)	€9,916 (Lm4,256)	€1,831 (Lm786)	€17,158 (Lm7,364)
Total	€24,234 (Lm10,401)	€18,356 (Lm7,881)	€7,043 (Lm3,023)	€49,640 (Lm21,305)
Contracts after 1995				
Income in Euro (Lm)				
€13,980 (Lm6,000) and less	€1,845 (Lm792)	€498 (Lm214)	€2,854 (Lm1,225)	€5,198 (Lm2,231)
More than €13,980 (Lm6,000)	€193 (Lm83)	€484 (Lm208)	€904 (Lm388)	€1,582 (Lm679)
Total	€2,038 (Lm875)	€983 (Lm422)	€3,758 (Lm1,613)	€6,780 (Lm2,910)

Source: EU-SILC 2005

A sensitivity analysis was carried out to gauge the impact of changes on the most vulnerable categories.

- Several scenarios of households which rely on social benefits are presented below. The minimal increase from €2.33 – €23.3 (Lm1- Lm10) rent paid currently (taken at a mid-range value of €12.82 [Lm5.5]) to the €116.5 (Lm50) minimum threshold as proposed by several contributors to the reform process as a first step and indicator of political commitment would mean an increase as follows:

  (a) Age Pension: the €116.5 (Lm50) rent would mean an increase from 0.13% to 2.85% of the 2005 median income based solely on Age Pension.

(b) Disability Pension, from 0.33% to 2.96%.

(c) National Minimum Disability Pension from 0.28% to 2.52%.

(d) National Minimum Pension increase from 0.29% to 2.66%.

(e) Two-Thirds Pension increase from 0.19% to 1.76%.

(f) Widow's Pension, increase from 0.21% to 1.87%.

The percentage share of income possibly spent on a minimal rent increase to €233 (Lm100) annually would double.

The relative shares of income possibly spent on the increased rent are still rather low when compared to any reasonable market housing cost. Even from this perspective, such an increase is seen as justified. Nevertheless, due consideration should be given to subsidising increased rental expense in an effort to eliminate increased living costs to tenants living on low incomes. Furthermore, the majority of these cases are old rentals, which means that the multiplicative beneficial effect of these old contracts was the highest.

A point of significant interest in the analysis of EU-SILC 2005 data shows that:

- 35% of all home-owners paid less than 11% of their household income towards mortgage (loan + interest) paid annually – on average a home loan share of 6.7%.
- 31.5% paid between €25.63 - €46.60 (Lm11 - Lm20); an average, 15.4% of the household income.
- 15.6% paid between €48.93 – 69.90 (Lm21 - Lm30); on average, 25.5% of the household income.
- 7.7% paid between €72.23 – €93.20 (Lm31 - Lm40); on average, 35.9% of the household income.
- 6.3% paid €95.53 (Lm41) and over; on average, 55% of the household income.
- 3.9% related to missing data.

This analysis gives a relatively fair picture of the distribution of households according to their mortgage commitment. All EU-SILC 2005 figures presented here, were statistically significant.

The date of commencement of those lease agreements for which the rent payable is that of €279.60 (Lm120) or less annually is shown in the table below.

TABLE 10: Dwellings rented at €279.60 (Lm120) and less

Period of Rent Contract	Total	Government	Private Landlord	Church
1945 or earlier	2,686	406	2,192	132
1946-1955	1,473	323	1,209	37
1956-1965	2,066	398	1,634	42
1966-1975	2,865	1,097	1,734	62
1976-1985	3,922	2,394	1,637	30
1986-1995	2,520	1,826	1,295	49
1996-2005	2,096	1,241	1,334	37
Do not have a fixed contract	2,244	467	1,789	62
Total	19,872	8,061	12,824	451

Source: 2005 Census of Population and Housing

From both Censuses, it is evident that furnished properties represented a minority of all rented dwellings, albeit an increase by 1,420 in 2005. In 2005, a decrease of 6,441 was seen in the number of unfurnished rented premises when compared to the 1995 data.

TABLE 11: Private households living in rented accommodation by type, 1995 – 2005

Private Households	1995 Census	2005 Census
Furnished	2,957	4,377
Unfurnished	30,824	24,383
Total	33,781	28,760

Source: 1995 and 2005 Census of Population and Housing

In terms of 'Old' summer residencies and garages the statistical analysis shows:

- A total of 349 housing units were rented as holiday dwellings; of which 175 (50.14%) units were rented as furnished, and 174 (49.86%) were rented as unfurnished.

- The majority of all holiday dwellings rented, 338 (96.85%) were privately owned premises, while 7 (2.01%) were owned by the Government and only 4 (1.15%) were owned by the Church.

- The number of rented garages amounted to 12,552. The distribution of garages by rent indicates that more than a half (53.90%) of all garages are rented at €351.83 (Lm151) or more.

- Paradoxically, when compared with garages, a huge share of residential premises (69.09%) are at an annual rent below €281.93 (Lm121). This shows that in some instances tenants pay higher rents for garages than for their main residences and the claim that Rent Reform has long been overdue is strengthened.

- The structure of post-1995 private rentals shows marked difference in distribution, when compared to the pre-1996 situation. The distributions depicting these two segments of the private rental market are diametrically opposite, with modal values at €2,330 (Lm1,000) and over annually, in case of 1995 - 2006 rent contracts matching the modes attributed by cheapest rentals in case of pre -1996 contracts (Table 12 below).

TABLE 12: Private households living in rented accommodation by period when contract was signed and annual rent paid

		Privately owned			
Rent (Lm)	Rent (Euro)	Rented pre-1996	Rented 1996-2005	Rented pre-1996%	Rented 1996-2005 %
1-10	2.33 – 23.3	1,005	73	6.80	1.37
11-20	25.63 – 46.6	2,535	132	17.15	2.47
21-30	48.93 – 69.9	1,876	90	12.69	1.68
31-40	72.23 – 93.2	1,335	121	9.03	2.26
41-50	95.53 – 116.5	1,095	174	7.41	3.25
51-60	118.83 – 139.8	911	113	6.16	2.11
61-70	142.13 – 163.1	431	97	2.92	1.81
71-80	165.43 – 186.4	666	115	4.51	2.15
81-90	188.73 – 209.7	329	96	2.23	1.80
91-100	212.03 – 233	733	190	4.96	3.55
101-110	235.33 – 256.3	143	45	0.97	0.84
111-120	258.63 – 279.6	431	88	2.92	1.65
121-130	281.93 – 302.9	125	44	0.85	0.82
131-140	305.23 – 326.2	166	34	1.12	0.64
141-150	328.53 – 349.5	269	83	1.82	1.55
151-200	351.83 – 466	706	246	4.78	4.60
201-250	468.33 – 582.5	290	119	1.96	2.23
251-300	584.83 – 699	235	118	1.59	2.21
301-350	701.33 – 815.5	70	38	0.47	0.71
351-400	817.83 – 932	155	111	1.05	2.08
401-450	934.33 – 1,048.5	49	35	0.33	0.65
451-500	1,050.83 – 1,165	85	71	0.57	1.33
501-550	1,167.33 – 1,281.5	35	21	0.24	0.39
551-600	1,283.83 – 1,398	112	130	0.76	2.43
601-650	1,400.33 – 1,514.5	11	19	0.07	0.36
651-700	1,516.83 – 1,631	24	33	0.16	0.62
701-800	1,633.33 – 1,864	116	184	0.78	3.44
801-1,000	1,866.33 – 2,330	251	480	1.70	8.98
1,001-1,200	2,332.33 – 2,796	253	699	1.71	13.08
1,201-1,500	2,798.33 – 3,495	134	447	0.91	8.36
1,501-2,000	3,497.33 – 4,660	117	531	0.79	9.93
2,001+	4,662.33 +	90	569	0.61	10.64
Total		14,783	5,346	100.00	100.00

Source: 1995 and 2005 Census of Population and Housing

- Based on the weighted mean calculation, the average rent paid by tenants who signed their rental contract with private landlords during the 1996 - 2006 period, i.e. after the introduction of 1995 Rent Law amendments, stood at €1,963.54 (Lm842.72) annually (based on mid-point rent brackets values)[1], which is in stark contrast to the average rent enjoyed by tenants whose rental contract was signed before 1996, as their average annual rent stood at mere €351.69 (Lm150.94) per year. Similarly, for all properties irrespective of type of landlord, there is a marked difference in rental cost pre and post Rent Law amendments: pre 1996 average stood at €214.88 (Lm92.22) while average rent paid on contracts signed between 1996-2005 stood at €1,338.73 (Lm574.56).

1 The last open ended interval mid-point taken as Lm2,250. The analysis of micro-data necessary in order to obtain the exact result.

- When compared to the private landlords, the Government post-1995 rental prices are significantly lower, on average €313.46 (Lm134.53). Rent paid to the Government on leases signed before 1996, stood at €174.75 (Lm75) which is also much lower than in case of privately leased premises. Church properties albeit in small numbers, follow the pattern similar to privately rented properties being on average at €176.39 (Lm75.70) pre-1995 and €1,943.6 (Lm834.16) during the 1996 - 2006 period.

- The EU-SILC 2006 based statistics indicates that 19% of all tenants in Malta are at-risk-of-poverty[2], against 13% in case of home-ownership. Although it comes at a price (see chapter below on mortgages), home-ownership is a safety-net against poverty exposure. However the level of protection enjoyed by the Maltese tenants can be seen also when compared with other countries[3]: in the Netherlands the tenants are at 18% risk of poverty, three times more than the home owners 6%, in Sweden the rates are 22% as against 8% respectively, in the UK 33% as against 14%, and the average for EU25 stood at 23% and 14% (Eurostat estimate).

- Value of property market measured by price growth rate indicates a steady decline in price growth from 20.29%[4] all property price inflation rate in June 2006 to 7.02% in March 2007. Marked differences appear by type of dwelling, with a very steep decline in inflation rate of apartments, from 22.73% to 3.69% in the same period. Terraced houses and maisonettes remained almost unaffected.

- Given the continuous increase in the number of vacant dwellings (53,136 in 2005), it was felt opportune to make an attempt to estimate their value. Based on the asking prices as they appear in the local newspapers advertisements (these figures ultimately carry an element of bias) the median prices were obtained[5] and weighted averages of these median values were calculated in order to match the types of vacant dwellings as they appear in the 2005 Census results. The estimated value of the 2005 vacant housing stock stands at around €9.32 (Lm4) billion. However, once the holiday dwellings are excluded, the estimates made for the remaining 43,108 dwellings registered in 2005; result in a value of around €7.93 (Lm3.4) billion.

- Flats and terraced houses represent a major chunk of all vacant dwellings in Malta. Two thirds of all holiday dwellings are flats (Table 13 below).

2 Below 60% of the median national equivalised income, EU-SILC 2006.
3 Data http://ec.europa.eu/employment_social/spsi/common_indicators_en.htm
4 Based on All Property Price Index (APPI, December 2001=100), contracts price data, no quality adjustments for location, state of repair etc. NSO News Release 117/2007 of July 2007.
5 2005 Data Central Bank of Malta .

TABLE 13: Vacant dwellings as of 2005

Vacant Dwellings, Census 2005	Vacant dwellings		Holiday dwellings		Vacant dwellings other than holiday dwellings	
Vacant Dwellings as per Census 2005	Number	%	Number	%	Number	%
Terraced Houses	13,872	26.11	744	7.42	13,128	30.45
Semi-detached house	922	1.74	127	1.27	795	1.84
Fully - detached house	702	1.32	96	0.96	606	1.41
Ground-floor tenement	3,226	6.07	449	4.48	2,777	6.44
Maisonette	9,857	18.55	1,832	18.27	8,025	18.62
Flat/Penthouse	24,295	45.72	6,767	67.48	17,528	40.66
Suite of rooms forming part of a housing unit	262	0.49	13	0.13	249	0.58
Total	53,136	100.00	10,028	100.00	43,108	100.00

Source: 2005 Census of Population and Housing

- The ratio of property lending to total bank lending has been increasing continuously since 1982, and the most recent data show the value of over 50%6. The total number of mortgages7 is on the increase from 38,538 in 2003 to 48,516 in 2007 with total stock value increasing from €1,030.33 (Lm442.2) million to €2,015.45 (Lm865.0) million in the same period. The home loans do not come by any cheaper, as the interest rate has been increasing from 4.47% in 2003 to 5.39% in 2007, with a brief dip to 4.30% in 2004.

TABLE 14: Mortgages, 2003-2007

Year	Number of mortgages (accounts)	Total amount in Lm ('000s)^	Total amount in Euro ('000s)^	Interest Rate (%)
2003	38,538	442,245	1,030,430	4.47
2004	41,981	539,092	1,256,084	4.30
2005	44,990	653,136	1,521,806	4.49
2006	47,055	759,837	1,770,420	4.95
2007	48,516	865,005	2,015,461	5.39

Source: Central Bank of Malta
Note: ^stock value.

6 "Proposals to Increase Housing Affordability in Malta" by Professor Joseph Falzon, Department of Banking and Finance, University of Malta, Report prepared for the Building Industry Consultative Council, the 8th of October 2007,
7 Data: Statistics office, Central Bank of Malta, total amounts in Lm indicate stock values in the respective calendar years.

RECOMMENDATIONS FOR THE REFORM OF THE RENT LAWS
CHAPTER 04

The report demonstrates that a case for reform exists. The challenges lie in articulating a reform that:

- brings into the rental market the considerable stock of unoccupied housing in order to secure rental as an alternative to ownership for persons aspiring to live in adequate and affordable housing; and
- clearly establishes the locum of responsibility for the provision of social housing; and
- secures social justice by balancing, on the one hand, the rights of the landlord to enjoy his property and to have a realistic return on his investment, with, on the other hand, the rights of, and the provision of appropriate protection to the tenant.

This part of the report proposes recommendations directed to meet these challenges. It is pertinent to underline that the recommendations proposed in this report apply not only to tenancies of private landlords but as well as to Government in its capacity as a landlord of leased property as well as tenant of property leased from the private sector. In this regard, the report defines tenancies leased as health centres, police stations, et al as commercial premises.

04.1. ESTABLISHING A RENTAL MARKET AS A FUNCTIONING PART OF THE AXIS THAT INCLUDES OWNERSHIP AND SOCIAL INCLUSION

Chapter 3 provides a detailed analysis of market behaviour and its key characteristics. The analysis leads one to conclude that the market is dysfunctional.

The table[8] below shows that since 1982 the cost of flats, maisonettes and terraced housing has increased at a far faster rate than income. In essence, whilst the ratio of cost-to-income to buy a terraced house in 1982 stood at 8.092 this more than doubled by 2006 – where it now stood at 17.214. The same is true for maisonettes. The ratio of cost-to-income for flats has also increased; albeit at a lower rate.

TABLE 15: Ratio of Cost of Dwelling-to-Income

	Annual Income	Flats Finished	Masiontt Finished	Terrace Housing	Flats/Income	Masiontt/ Income	Terrace/ Income\
1982	2,292	14,339	12,934	18,549	6.256	5.643	8.092
1985	2,182	9,703	11,462	15,664	4.446	5.252	7.177
1990	2,745	15,382	15,799	26,478	5.603	5.755	9.644
1995	4,543	22,210	26,606	42,619	4.888	5.856	9.380
2000	5,781	31,699	38,913	61,684	5,483	6.731	10.670
2005	6,759	59,347	68,755	109,610	8.793	10.187	16.3240
2006	6,911	66,492	78,120	118,972	9.621	11.303	17.214

Table 16 below shows that over the same period the average amount of mortgage taken by a person who is acquiring a house has also increased.

8 Proposals to Increase Housing Affordability in Malta: Report Prepared for the Building Industry Consultative Council, Professor Joseph Falzon, 8th October 2007

TABLE 16: Average Mortgage

Table Home owners currently paying mortgage* on their prime residence, by share of mortgage in total household annual income					
(annual loan payment) Deciles	Number of households	Total income	Total loan	Percentage in each decile	Percentage of households
missing	732	4,217,721.70			3.95
0-10	6,478	66,897,183.27	4,455,047.002	6.7	35.02
11-20	5,803	48,060,631.48	7,409,042.636	15.4	31.37
21-30	2,884	19,813,788.59	5,061,327.475	25.5	15.59
31-40	1,422	8,648,917.46	3,102,341.69	35.9	7.69
41-50	565	2,670,822.05	1,217,286.682	45.6	3.05
51-60	274	1,487,847.74	839,514.4561	56.4	1.48
61-70	95	523,855.26	329,963.453	63.0	0.51
71-80	89	233,261.43	177,109.2102	75.9	0.48
81-90	83	189,698.82	158,070.945	83.3	0.45
91-100	75	151,240.48	170,981.631	113.1	0.40
Total	18,500	148,677,246.6	22,920,685.18		100.00

Mortgage = (loan +interest) paid annually

Table 14, discussed in Chapter 3, shows that the number of mortgage accounts increased from 38,538 in 2003 to 48,516 in 2007 – an increase of 9,978 accounts. This is consistent with the preference for and the increase in home ownership - from 68% in 1995 to 75.2% in 2005.

The value of the mortgage accounts during the same period increased from €1,030,430,850 (Lm442,245,000) to €2,015,566,500 (Lm865,005,000): that is, it practically doubled between 2003 and 2007. The per capita (on number of mortgage account holders) value of the mortgage account stood at €26,738.04 (Lm11,475.55) in 2003. This increased to €41,542.20 (Lm17,829.27) by 2007 – an increase of 55.37%.

The above lead one to conclude that new entrants are paying more for the acquisition of a dwelling than persons who entered the market only 4 years earlier in 2003. It so follows that the increase in the cost of buying a residence for new entrants onto the market is generating increased financial (and social) pressures as incomes have not increased at the same pace.

The increase in the price of property and, subsequently, in the increased mortgage has occurred whilst the available vacant housing stock on the market has increased dramatically; as is shown in Table[9] 17 below:

9 Economic Aspects of House Prices: 1980 – 2006; Professor Joseph Falzon.

TABLE 17: Vacant Property

	Vacant	Total	%
1957	4,632	75,610	6.13
1967	12,980	88,315	14.7
1985	24,065	125,574	19.16
1995	35,723	155,202	23.03
2005	**53,136**	**192,314**	**27.63**

And as the 2005 Census shows, the reforms carried out in 1995 have not had the desired effect: as the rental market has in fact shrunk – from the 33,781 tenant households in 1995 to 28,760 tenant households in 2005.

Why is the rental market, despite the post-1995 reforms, not functioning? What is required to attain a functioning rental market? The report believes that there are three primary issues that must be addressed. These are discussed below.

04.1.1 An Absence of Trust in Government Behaviour

The introduction of Act XXIII in 1979 following steps taken in 1959 to improve the rental market through the enactment of the Housing (Decontrol) Ordinance shows that successive administrations may change the 'rules of the game' taken by previous administrations, and resort to interventionist instruments to force the private sector to act as the supplier of social housing; rather than introducing a balanced policy framework directed to meet the needs of most people; with the State to provide the necessary safety net to avoid social exclusion arising from a person's inability to access adequate and affordable housing.

It is believed, that property owners continue to be suspicious of political commitment to a deregulated or to a light regulatory regime in relation to the rental market. The immediate and direct consequence is that property owners are still reluctant to place on the market their property for rental – preferring to keep it unoccupied to allow for unencumbered transference to their direct dependents.

The slow pace by which successive administrations have failed to address the issues arising from the pre-1995 legislation seem to reinforce the perception that successive governments seem to prefer to retain the status quo and finance social housing through investments made by private landlords. It seems that the private landlord does not trust the rental market particularly given that the intentions of successive administrations have been unclear.

An investor demands stability and continuity in policy design and implementation within the respective polity domain – otherwise the risk for entry into the market is far too high.

It is argued that unequivocal bi-partisan agreement that no party in government will resort to interventionist measures to address housing issues is of fundamental importance so that the necessary confidence to rebuild the rental market is attained.

Recommendation 01

It is important that unequivocal bi-partisan support that no party in government will resort to interventionist measures to address housing issues is attained if confidence in the private sector rental market is to be attained.

04.1.2 Inability to Bring Vacant Housing Stock to Market

The reasons why landlords refrain from placing housing stock onto the market vary. A sizeable proportion of this vacant stock is a second residence of owners who already own a residential dwelling – either as a summer residence; a retreat in Gozo; or for investment purposes. A sizeable proportion relates directly to speculation: an investment which is held onto by the owner until market conditions are such that render it attractive for the owner to place the property on the market. Table 17, shows that current vacant stock stands at 53,136 properties – of which 10,028 are known to be as summer or holiday dwellings.

Amongst the remaining 43,108 vacant housing stock (that is 81.13% of the total vacant stock) there are two categories of vacant stock that definitely fall outside of the market due to inherent constraints.

The first relates to inherited housing stock. The beneficiaries are either not in a position to agree on the property bequeathed to them or the inheritors have emigrated and cannot be traced. The net impact is that property that could have a positive contribution to the housing market becomes fallow; at times falling beyond economic repair.

The issues that should be considered are various: should the State intervene in such circumstances to bring such stock onto the market? Does the State have a legitimate right to intervene for the social good? What should the mechanisms for such intervention be and how will the rights of the persons directly involved be protected? Should the State buy out the inheritors? And if so, at what price? Should the State establish a Trust or Property Fund within which the dwelling is placed and to which an owner, if traced, would resume title of the property subject to payment of repairs made by the Trust or Property Fund to render the property habitable? Should the share of inheritors who would be deceased pass onto the State or on the remaining inheritors?

The answers to such questions are complex, and potentially controversial. Yet one underlying premise remains true: there is no net benefit to the economy and society at large when such a vacant housing stock remains unproductive – potentially suffering damages due to the closure of maintenance - whilst at the same time:

- the State faces fiscal pressures to continue to invest to supply social housing;

- new entrants on the market face fiscal pressures to meet increasing prices for the acquisition of property; and

- there is unaccounted yet real costs on the sustainable development of the Island.

A solution needs to be found. It is thus proposed that this matter is studied with an aim to find a way forward to render such stock productive whilst taking into account the sensitivity of the issues involved.

The second relates to vacant housing stock which has been abandoned by its owners due to the uneconomic repairs required to render them into habitable dwellings. The questions are similar to the ones raised above.

Should such dwellings be allowed to continue to degenerate further – with the consequential impacts of safety and environment hazards: with the cost potentially being borne by the State and society? Should the State procure these dwellings? Should it enter into private public partnerships to render these dwellings productive? Should it be by owner's choice or direct intervention? Should market rules be observed or should an element of social cost be factored? Should a Trust or Property Fund be established with such dwellings to be considered as assets, and if so, how should the asset value be distributed amongst Government and the owners? Should the share arising to the State in the event that such dwellings are rendered productive be a source of revenue to finance social housing? Here too, a solution must be found.

Recommendation 02

The Government should review the issue of housing stock that is vacant due to problems of inheritance; unknown owners; or due to the economic cost of rehabilitation with the objective to find a balanced solution to render such property into productive housing stock

04.1.3 The Private Sector's Responsibility in Stimulating a Rental Market

A functioning rental market is not dependent solely on supply: it is dependent also on demand. The measures discussed above are supply oriented. Yet, as already mentioned, the 2005 status shows that Maltese persons aspire to own as against rent property. There is no doubt that the success reached in this regard stems from the policy objective, sustained by successive administrations to encourage people to become owners of their residential properties.

The attraction to rent as against to own a residential, or for the matter a commercial property, is primarily an economic decision. The attraction rests on whether the rental value is more attractive than the mortgages as well as the rate of appreciation in the value of the owned property (or the land upon which it is built) which, one can argue, increasingly is rendering itself into a person's pension plan. In essence, the attraction to rent must be such that the value of the rent as against the mortgage that would be paid for the acquired property would provide the tenant with increased disposable income to enjoy a better quality of life whilst allowing him to plan for his and his family's future.

Economic rationale would dictate that as the stock of property available for rental increases, the value of the rent payable would render itself far more attractive for a person to consider the rental option as an alternative to ownership. Will this, however, happen? The responsibility for successfully stimulating the demand side of a rental market to secure a functioning market primarily rests with the private sector by means of establishing values of the rent payable that are sufficiently attractive to render rental as against ownership an alternative in an individual's choice to secure affordable and adequate housing.

04.2 SOCIAL HOUSING: DETERMINING THE LOCUM OF RESPONSIBILITY

Whilst the social welfare model adopted in Malta is one of inter- and intra-generational support that involves the community at large – government, enterprise and the individual citizen – through the creation of a social net that embraces health to social housing financed by the national public budget, there is recognition that current state of play vis-à-vis landlords of pre-1995 properties creates a social injustice as the private landlord has assumed a primary social housing provider role.

As the census data shows, the private sector, as a direct consequence of the existing pre-1995 legislative regimes, accounts for 70% of the pre-1995 property rented at what can only be termed to be "subsidised" rental values: an insignificant economic return given today's values particularly when once considers that the main burden for the maintenance of such property remains with the private landlord; with maintenance and repairs carried out at current prices.

Whilst the report strongly underlines that the principle that every person should have access to adequate and affordable housing is one that must be safeguarded the burden of financial responsibility for ensuring that this principle is met cannot, as is the case today with regards to pre-1995 properties, be placed mainly on the private landlord.

It is, primarily, the responsibility of the State to take the necessary policy measures and to finance such measures to secure housing protection for those who legitimately are in need of it. The measures that the State adopts to secure this principle, however, cannot be such that they place unreasonable fiscal and other pressures directly onto the private sector landlord.

Recommendation 03

The burden for the financing of the social dimension of providing affordable and adequate housing for those who legitimately are in need for it is primarily a responsibility of the State.

The State in meeting the responsibility of providing affordable and adequate housing to those who legitimately are in need of it should actively consider entering into partnerships with the private sector to achieve this responsibility.

The questions that arise is how should such partnerships come into play. One option is through the establishment of a Property Fund wherein the State provides land, at its real value, as part of its shareholding; with the private sector providing the capital to develop the property. Questions do, however, arise. Would such a Property Fund be sufficiently attractive to the private sector? What would the expected rate of return be? How will the value of rents be set to render such private investment attractive? Would it contain a subsidised element financed by the State? Would the development on the land contain commercial and residential development at commercial rates; in order to render participation in such a Fund attractive? Would, in such an event, the State be exposed to accusations of speculation?

A second option would be through the creation of social housing on the basis of traditional public private partnership mechanisms – where-in the State would provide the land at its real value, and the private investor the development and the management of the property; with the property reverting to the State after a determined span of time.

This report is of the considered opinion that the Government should review potential mechanisms of how to involve the private sector in the provision of social housing.

Recommendation 04

The Government should review mechanisms of how it can involve the private sector in the provision of social housing.

04.3 HARMONISING THE VARIOUS RENT LEGISLATION

As this report shows in Chapter 02, the various legislation that regulate the rental market create a complex legislative framework. For reasons, most probably justifiable at the time of drafting, there is no consistency amongst the laws on various fundamentals: definition of tenant, mechanism for rental increase, inheritance of property et al.

Undoubtedly this further complicates what constitutes a complex issue. Simplification in legislation is important: so that reforms are transposed into legislation succinctly and consistently. To the extent possible, the various legislation should either be codified in one law, and the preference in this regard is to codify the various legislation into the Civil Code, or to harmonise the fundamental elements across the various appropriate legislation.

Recommendation 05

The various legislation regulating the rental market should be repeated and the new reforms should be codified within the Civil Code.

04.4 MISUSE OF THE RENTAL REGIMES IN PLACE

As shown in this report, the State interventionist policy introduced by successive post-war administrations was directed to secure resolution to the scarcity of housing stock following war damage. There is no doubt that the original intention is laudable. There is also no doubt that the drafters of these policies perceived such instruments as temporary until stability and equilibrium in the housing market was attained

The ongoing permanency of these measures have however resulted in institutionalised misuse of what was considered to be a temporary social measure undertaken in extreme circumstances. There exists, however, no raison d'être why persons who earn a high income pay a 'social' rent for pre-1995 residences owned by a private landlord whilst expecting the landlord to maintain his responsibilities in terms of the tenancy. There is no rationale that can be applied to designate 'summer residencies' as 'social' housing, with the tenants enjoying at a 'social' rate a residence as a holiday dwelling at the expense of the landlord. Nor can garages be designated as 'social' housing.

Unfair competition arises as a result of the fact that some enjoy commercial leases at rates set 60 years ago; whilst new entrants have to pay at current market rates.

The reform of the regulation of the pre-1995 rental market must distinguish between, on the one hand, measures that affect tenants of residential dwellings and the economic status of such tenants; and on the other hand measures that affects tenants of non-residential dwellings who enjoy a net gain at the expense of the landlord or society at large.

Recommendation 06

The ongoing permanency of the rent legislative regime has resulted in institutionalised misuse; and reforms must differentiate between tenants of residential dwellings and the economic status of such tenants; and tenants of non-residential dwellings who enjoy a net gain at the expense of the landlord or society at large.

04.5 INHERITANCE OF LEASES OF RESIDENTIAL DWELLINGS

There is no doubt that the issue relating to the inheritance of the title of a residential dwelling is one of the sensitive issues that a reform of the rent laws must address. The sensitivity arises from two matters. First, who is eligible to inherit the lease? Second, should the title of the lease be inherited by successive generations or should the title of the lease return to the landlord upon the death of the tenant – which is what actually happens with leases entered into following the post-1995 reforms.

There is also a third dimension that must be considered. Given the misuse of pre-1995 rented property, should mechanisms for the inheritance of the lease be ubiquitous of the social designation of the tenant or should it be tied to the economic status of the tenant? These issues are discussed below.

04.5.1 Eligibility for and Period of the Inheritance of the Lease

The broader the definition of those persons who are eligible to benefit through the causa mortis inheritance of the lease the less realistic is the possibility that the tenancy returns to the private landlord. The definitions in the pre-1995 legislation are so broad that, currently, it is practically impossible for the title of the tenancy to revert back to the owner.

The options for consideration range from immediate termination of the tenancy upon the death of the tenant to the inclusion of spouse, brothers, sisters, unmarried siblings, grandchildren et al.

Moreover, the question arises whether different rules should be set for different classes of tenants: tenants who are yet to inherit the tenancy; tenants who have already inherited the tenancy once; and tenants that have inherited the tenancy through successive generations.

Whilst it is recognised that legislative frameworks in EU countries, such as Spain for example, have adopted such a differentiated regime in the reforms they have introduced, this report argues that the introduction of rules for different type of categories of tenants will graft a degree of complexity which would render the successful attainment of the reforms far more difficult to achieve.

A fundamental cornerstone of the reform of the pre-1995 rent laws thus rests in how a tenant is defined and how and what to degree is the title of the tenancy inherited.

In establishing a solution that moves from the current state of play to a reformed scenario care must be taken to achieve a balance that on the one hand protects the rights of sitting tenants whilst on the other hand initiating a process that would see the title of the tenancy reverting back, over time, to the landlord.

The report argues that such a balance can only be achieved if the right of the sitting tenant is extended to his or her spouse who is not legally or de facto separated.

The extension of the protection of the right of the sitting tenant to his or her spouse, where-in the spouse will continue to enjoy the right to the tenancy as a matter of course which would not be deemed to be causa mortis inheritance would ensure that the spouse would not suffer any social and economic dislocation in the process leading to the reform of the pre-1995 rent laws?

Recommendation 07

The existing right of a lease enjoyed by a sitting tenant will be retained and will be extended to the spouse who is not legally or de facto separated, who in the event of the death of the sitting tenant will continue to enjoy the right to the tenancy as a matter of course which would not be deemed to be causa mortis inheritance.

04.5.1.1 Eligibility of Causa Mortis Inheritance

The conditions of eligibility to the right of causa mortis inheritance of a lease enjoyed by a sitting tenant must, however, be clearly defined.

As stated earlier a tenant of a residential dwelling is defined separately in the various legislation which regulate the pre-1995 tenancies.

Chapter 69, the Reletting of Urban Property (Regulation) Ordinance, defines tenant to include:

"(a) the widow or widower of a tenant provided husband and wife were not, at the time of death of the tenant either legally or defacto separated;

(b) in the case of a dwelling – house, where the tenant leaves no widow or widower, such members of the tenant's family as were residing with him or her at the time of his or her death"

Act XXIII of 1979 through article 2 (c) amended the definition of tenant as established in Article 10 (c) of the Housing (Decontrol) Ordinance defines tenant:

"include children, unmarried brother or sister of the tenant who would be living with the tenant at the time of his or her death, and the ascendant of tenant who would be living with the said tenant."

The above definitions of tenant have made it practically impossible for a landlord to retain a title to a tenancy as there is no qualification on the key phrases of beneficiaries "living with the tenant at the time of his or her death."

In essence this has led to a situation where in the event that an eligible to causa mortis inheritance beneficiary resides with the tenant on the eve of his or her death; the eligible beneficiary will causa mortis inherit the title to the property.

This report argues that whilst there is merit in retaining a broad category of beneficiaries to account for family structures the right to causa mortis inheritance to such beneficiaries cannot be open ended and unconditional.

In this regard the report argues that eligibility should be defined to mean the following category of persons who are living with the tenant and the spouse and meet the following criteria as at 1st June 2008:

(i) his or her natural and / or adopted and / or fostered children with whom the tenant lived for period of a minimum of five consecutive years before his or her death and / or his or her natural and / or adopted and / or fostered children who would be younger than 5 years of age; or.

(ii) ascendants of sixty years and older who lived with the tenant for a period of a minimum of five consecutive years before his or her death.

Recommendation 08

A person will be designated as a beneficiary to a causa mortis inheritance of a lease of a sitting tenant and the spouse, if the person is:

(i) the natural and / or adopted and / or fostered child who lived with the tenant for a period of a minimum of five consecutive years before the death of the tenant and / or the natural and / or adopted and / or fostered child who would be younger then five years of age; or

(ii) an ascendant who is sixty years and older who lived with the tenant for a period of five consecutive years before the death of the tenant

subject that the beneficiary would have fulfilled these eligibility criteria as at 1st June 2008.

04.5.1.2 The Right of Causa Mortis Inheritance to Successive Generations

As shown above, the current legislative conditions allow for a permanent right of causa mortis inheritance – from one generation to the next in perpetuity. In essence, the current conditions negate the fundamental right of the landlord to 're-own' his tenancies for the benefit of his and his family's well being – whilst at the same time placing considerable pressure on his financial resources due to the obligations established by law on repairing and maintaining the rented property.

There is no doubt that this perpetual right to causa mortis inheritance to successive generations is unjust.

The report, thus, argues that the right of causa mortis inheritance to occupants who qualify as beneficiaries is **a one time right only**: that is, the lease is automatically terminated on the death of the beneficiary; and the title of the lease automatically reverts back to the landlord.

Recommendation 09

The right of inheritance to occupants who qualify to causa mortis inheritance under the eligibility criteria proposed in this report is a **one time right only**.

Occupants living in tenancies who do not meet the eligibility criteria as at 1st June 2008 will not be eligible to the right of inheritance in the event of causa mortis of the tenant. Nevertheless to negate against social dislocation such occupants will be afforded the right to continue to live in the residency for a period of not longer than five years from the date of the death of the tenant subject to the conditions that they will be governed by post-1995 rent legislation and will pay market value for the rent. Further extensions of the tenancy would be subject to agreement reached between the tenant and the landlord.

Recommendation 10

Occupants who live with a sitting tenant or the spouse who do not meet the eligibility criteria proposed in the report as at 1st June 2008 will in the event of causa mortis of the tenant have no right of inheritance to the tenancy but will be afforded the right to continue to live in the residency for a period of not longer than five years from the date of the death of the tenant subject to the conditions that they will be governed by post-1995 rent legislation and will pay market value for the rent; with further extensions of the tenancy to be subject to agreement reached between the occupant and the landlord.

04.5.1.3 Securing Social Justice with the Landlord

The principle of allowing causa mortis inheritance to beneficiaries of the tenant must be based on the principle of social justice: that is to provide protection to beneficiaries to continue to live in the residence without being subject to social and economic upheaval.

It is thus argued that the principle of social justice does not apply to the beneficiary – with the exception of the spouse - of a tenant who has a high economic wealth or value.

Thus, in order to secure the principle of social justice, and protect the landlord from carrying the burden of 'subsidising' the rent and tenancy of beneficiaries who under no rationale circumstances can be designated to be in need of transitional protection on the basis of social inclusion, the report recommends that:

(i) there is no eligibility to the inheritance of a lease on causa mortis of the tenant to a beneficiary **who is not the spouse** where-in the beneficiary has an economic worth of Euro125,000 (Lm53,648) or an income of higher than Euro25,000 (Lm10,729).

(ii) the tenancy will revert to the landlord who, however, will be obliged to lease the tenancy to the beneficiary, subject to regulation under the post-1995 rent legislation, for a period of three years for a rent set at a maximum of 3% of the value of the property.

(iii) any subsequent rentals upon the expiry of the lease will be subject to agreements as reached between the landlord and the occupant and will be subject to regulation under the post-1995 rent legislation.

Recommendation 11

The introduction of transitional measures in the proposed reform are to secure social justice; which principle does not incorporate the continued 'subsidisation' by the landlord of beneficiaries who do not qualify for social support; and thus, with the exception of the spouse, the right of causa mortis inheritance to a beneficiary with an economic worth of Euro125,000 or an income of higher than Euro25,000 will no longer prevail although the landlord will be obliged to enter into a three year contract, subject to the conditions of the post-1995 rent legislation, for a rental value of a maximum of 3% of the value of the property; subsequent to which any further renewal will be subject to agreement between the landlord and occupant.

04.5.1.4 Inter Vivos Transfer

The report proposes that the current condition that inter vivos transference of a lease takes place only with the consent of the landlord is maintained. The report also proposes that the current exception where in the event of a separation the spouse of the tenant is entitled to the tenant's rights and obligations is maintained.

Recommendation 12

The conditions relating to Inter Vivos transfer should remain unchanged.

04.5.1.5 Tenants in Residential Care

Longevity arising from increased life expectancy adds one other important dimension that a reform on pre-1995 rent laws must consider. The number of elderly tenants who vacate their homes and seek elderly residential care in government or private residences is on the increase. Within the context of the reform this has two impacts.

First, a tenancy which could be a productive housing unit is left vacant, at times for years, until the tenant passes away. Second, the landlord has no right to the tenancy even if the tenant has no beneficiary and the dwelling is uninhabited until such time that the tenant passes away.

The report thus recommends that in the event that a tenant would have been in residential care or institutionalised, although medically discharged, in a hospital for a period of longer than six months that either:

(i) the tenant inter vivos formally transfers the lease to an eligible beneficiary without the consent of the landlord in lieu of causa mortis inheritance; or

(ii) in the event that there is no eligible beneficiary the tenant automatically loses the right to the tenancy and the title reverts back to the landlord.

Recommendation 13

Tenants who are in long term residential care in government or private residence or institutionalised in, although medically discharged from, a hospital for a period that is longer than 6 months will either (i) inter vivos formally transfer the lease to a qualifying beneficiary in lieu of causa mortis inheritance; (ii) or in the event that there is no qualifying beneficiary the lease is automatically terminated and the title reverts back to the owner.

04.5.1.6 Exceptional Circumstances

The implementation of the measures may give rise to exceptional circumstances that will impact occupants in residencies of sitting tenancies to which they will have no right for causa mortis inheritance.

Circumstances may range from occupants who suffer from disabilities; minors; separated persons who would have sought harbour with their parents or relatives.

Though it is not possible to attempt to anticipate all permutations of exceptional circumstances the fact that these will arise is acknowledged.

The report argues that whilst such circumstances must be dealt with sensitivity, the onus for addressing such circumstances should not rest with the landlord. Exceptional cases will primarily be of a social nature. Responsibility for social support, as discussed earlier, rests primarily with the State. It is thus proposed that it is the State which should assume responsibility for arising exceptional circumstances and provide the appropriate level of protection.

Recommendation 14

The implementation of the proposed reforms will give rise to exceptional circumstances, which primarily will be of a social nature, and the responsibility to provide the appropriate levels of protection to persons affected by such circumstances should rest with the State and not the landlord.

04.6 RENT INCREASES

Of the 18,654 premises rented before 1996, 48.26% were at €116.50 (lm50) and less. There is no doubt that such levels of rent values today no longer represent the economic return to the landlord that they did when the tenancies were originally leased. There is also no doubt, that in most circumstances, these level of rents have a minimal impact on the disposable income of the tenants.

The report thus recommends that a minimum level of rent for pre-1995 property is introduced. In determining the minimum level of rent, once again, careful attention must be given between establishing a rent that does not constitute economic hardship to the tenant yet on the other hand constitutes an adequate base that would allow the landlord to, over a transitional period, receive fair compensation for his property.

The National Statistics Office Index of Inflation establishes the inflation base as 100 : 1946. If the level of an annual rent of €116.5 (Lm50) base 1946 is placed at 2007's inflation base of 712.68; the value of the rent would increase to €830.27 (Lm356.34). The report argues that such an aggressive approach is not to be considered as this will give rise to social and economic negative impacts. Following various modeling, the report proposes that with effect from 1st January 2009, the minimum rent level for a property, unless otherwise agreed to by the parties, would be on the basis of the 1960: 158.80 inflation base: which would establish the annual minimum rent level to €185 (Lm79.40).

Recommendation 15

With effect from 1st January 2009 the minimum rent for pre-1995 rented property will, unless otherwise agreed to between the landlord and the tenant, be set at the 1960: 158.80 inflation base line - €185 (Lm79.40) per annum.

The recommendations proposed in this report provide for causa mortis inheritance from the current sitting tenant or spouse to his or her beneficiary – in essence to one further generation that will benefit from the right to continued enjoyment of the tenancy.

In the event of tenancies that have been enjoyed by causa mortis inheritance for successive generations the possibility exists that the current tenant may be middle aged – which in essence means that the landlord will not be in a position to reclaim the tenancy for many years to come.

It is recognised that the transitional causa mortis inheritance should not continue to be subject to rental levels set over the past 60 years, with the tenant enjoying benefits of major structural repairs at today's real costs. The financial burden carried by the majority of landlords will not be sustainable.

The report, therefore, argues that the existing regime relating to the revision of rents of pre-1995 property is not tenable as it does not afford social justice to the landlord. It is thus proposed that with effect from 1st January 2012 the rents of all pre-1995 property will increase by the rate of inflation between 1st January 2009 to 31st December 2011; and will continue to increase as such at the end of every three year cycle until the tenancy reverts back to the landlord.

Recommendation 16

With effect from 1st January 2009 the value of the rent for pre-1995 rented property will increase by the rate of inflation between 1st January 2009 to 31st December2011; and will continue to increase as such at the end of every three year cycle until the tenancy reverts back to the landlord.

The sensitivity analysis, discussed in Chapter 3, on the impact of rental increases on various social categories, shows that persons who are in receipt of a non-contributory Old Age Pension and social assistance benefits may be negatively impacted by the reforms proposed in this section. In this regard the report recommends that persons in these two categories should benefit for assistance from a scheme to be specifically adopted by Government to mitigate against such a possibility.

Recommendation 17

All those affected by recommendations 15 and 16 who today are in receipt of a non-contributory Old Age Pension and social assistance will benefit from a scheme to be adopted by Government.

04.7 REPAIRS AND MAINTENANCE

In seeking to bring about reforms in the rent laws the issue of the financial prejudice suffered by landlords who are still held liable for the expensive maintenance and repairs of properties undertaken at current rates which have been leased at a level of rent set over the past 60 years must be addressed.

Although the basic principle that everyone is entitled to a place of residence must be respected, it should also be acknowledged that it is unjust for the owner to receive a minimal rental value for the property whilst carrying the burden of effecting expensive repairs at current costs.

The recommendations relating to the level of the value of the rent and its review as proposed in this report are such that the transitional process to reach market rental levels is spread over the long term period.

This report thus argues that the current landlord and tenants respective responsibilities relating to repairs and maintenance must be overhauled to secure a fairer balance between the financial cost of repair and economic return. In the absence of such a balance the landlord's financial viability to continue to own the property without having to recur to expensive loans or dispose of the dwelling to the tenant in order to release himself from such a financial responsibility will be seriously jeopardised.

It is thus proposed that responsibilities of the landlord and tenant are defined as follows:

(a) In terms of the landlord:

- structural works relating to the building.
- structural works relating to the roof.

(b) In terms of the tenant:

- to be responsible for all other works relating to the maintenance of the external and internal parts of the building.
- to cover the dwelling with an insurance to protect the building against damages or destruction by fire, tempest, flooding,and other perils normally included in home and/or commercial policies; with all costs associated to the insurance to be borne by him; and in the event of failure to take such insurance the tenant is to ensure that the property is returned to its original state prior to such damage or destruction.

- to inform the landlord in a reasonable time vis-à-vis repairs relating to the structure of the building and the roof in order to minimise arising damage to the property.
- to carry out general care of the premises.
- to be responsible for any damages to the structure of the building and roof caused by himself – wilfully or otherwise.
- to maintain all aspects of the internal and external decorations of the dwelling.
- to ensure that all structural alterations are carried out with the landlord's consent.

Recommendation 18

In order to secure a fairer balance between the financial cost of repair and economic return the responsibilities of the landlord in relation to repairs and maintenance will be limited to structural building and roof works respectively; with all other repairs and maintenance responsibilities to be borne by the tenant.

In most instances, landlords revert to financial loans to be able to carry out repairs. It is thus argued that in order to ensure that the tenant does his utmost in terms of meeting his responsibilities to minimise arising structural damages to the building as well as to account for the arising costs to the landlord to finance the repairs it is proposed that the:

(i) rent will increase by 10% of the full cost of repairs at the time the repairs are completed; or

(ii) tenant may choose to carry out the repairs subject that the tenant will have no right of partial or full compensation for the said repairs when the title of the tenancy reverts back to the landlord.

Recommendation 19

In order to ensure that the tenant does his utmost in terms of meeting his responsibilities to minimise arising structural damages to the building, as well as to account for the arising costs to the landlord to finance the repairs, the:

(i) rent will increase by 10% of the full cost of repairs at the time the repairs are completed; or

(ii) tenant may choose to carry out the repairs subject that the tenant will have no right of partial or full compensation for the said repairs when the title of the tenancy reverts back to the landlord.

In order to assist tenants to finance repairs for which they will now be responsible they will be able to access all present and future Government schemes that are set up for this purpose.

Recommendation 20

In order to assist tenants to finance repairs for which they will now be responsible they will be able to access all present and future Government schemes that are set up for this purpose.

04.8 COMMERCIAL LEASES

The arguments raised in the discussion of a tenant's rights to causa mortis inheritance, and the value of the rent, may also apply with regards to commercial leases. Indeed, with regards to commercial leases there is one other important dimension. Tenants of pre-1995 commercial leases have an unfair competitive advantage over commercial tenants who entered into the market following the post-1995 regime: as the former unlike the latter enjoy rents the levels of which do not reflect the real market value. It can thus be argued that there is no level playing field.

The options to address this issue range from immediate full market liberalisation to many variants of incremental reforms.

In determining the reforms to be applied, the report is conscious of the fact that contracts for commercial leases are in place today and have been entered into freely between the parties. Nevertheless, the current contract mechanism, for pre-1995 commercially leased property, is such that termination of the lease was governed by means of an inclusion of a clause which

stipulated that at a particular date the rent of the contract would increase by an above normal amount. In the absence of the ability to set a definite contract this mechanism was implied to act as an in-built termination clause: the rationale being that the above normal increase in the rent would induce the tenant of the commercial property to return the title back to the landlord.

Over time, however, due to inflationary impacts, the ability of such a clause to act as a leverage to induce the termination of the lease has mainly lost its significance; and in essence, such leases have become indefinite lease contracts with the landlord's ability to regain the title of the lease being substantially diminished.

The report recognises that intervention in this regard, given that the contract has been entered into freely by either party, would constitute forced market intervention. On the other hand, the report recognises that given that the law does not allow for termination of contracts, the induced in-built termination clause acts as a 'tacit' approval by the party taking on the lease that the contract has an expiry term.

In this regard, the report recommends that such contracts will remain in effect for a sunset transition of twenty years provided that in the event that during this period the 'inbuilt' termination clause comes into effect this become a de facto termination clause and the contract between the commercial tenant and the landlord will be terminated. Upon termination, the title of the commercial property will revert back to the landlord.

Recommendation 21

Contracts for commercial property entered into by the parties that have an 'inbuilt' mechanism for inducing termination by abnormally increasing the value of the rent at a particular date will continue to be in effect for a sunset transition period of twenty years provided that in the event that during this period the 'inbuilt termination' clause is applied this will act as a de facto termination clause and the title of the property will revert back to the land-lord.

The value of the rent paid to the landlord, however, should not continue to enjoy protection under the terms of the pre-1995 rent legislation. The report argues, that the value of the rent should reach market value for all types of pre-1995 contracts, including those discussed above, within 12 years from 1st January 2009. The report further argues that the transition to the payment of the full market value of the rent, the rental value adjustments through out the period of transition should take into account the turnover of a commercial entity. In this regard the following is proposed:

(a) legal entities that have a turnover of less than €50,000 (Lm21,459) annually will be established at 1990 inflation indexed rates as at 1st January 2009 and will increase automatically every three years to 1996, 2002 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

(b) legal entities that have a turnover of more than €50,001 (Lm21,459.6) annually but less than €500,000 (Lm214,592) will be established at 1995 inflation indexed rates as at 1st January 2009 and will increase automatically every three years to 2001, 2007 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

(c) legal entities that have a turnover of more than €500,001 (Lm214,592.7) annually will be established at 2000 inflation indexed rates as at 1st January 2009 and will increase automatically following every three years to 2006, 2012 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

Recommendation 22

The value of the rent paid for commercial leases should not continue to enjoy protection under the pre-1995 rent legislation and the value of the rent of such property is to reach full market value as follows:

- turnover =< €50,000 (Lm21,459): 1990 inflation indexed rates as at 1st January 2009 and will increase automatically every three years to 1996, 2002 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

- turnover => €50,001 (Lm21,459.6) but =< €500,000 (Lm214,592): established at 1995 inflation indexed rates as at 1st January 2009 and will increase automatically every three years to 2001, 2007 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

- turnover => €500,001 (Lm214,592.7): 2000 inflation indexed rates as at 1st January 2009 and will increase automatically following every three years to 2006, 2012 and so forth – that is six year steps - until full market value is reached over the 12 year transition period.

In order to provide the landlord of pre-1995 rented commercial property with rights of the landlord of similar property but governed under the post-1995 legislation as well as to secure a level playing field amongst commercial entities, all tenancies of pre-1995 commercial properties, unless otherwise agreed to by the parties, will terminate within 20 years from 1st June 2008; with the title of the property to revert back to the landlord.

Recommendation 23

In order to provide the landlord of pre-1995 rented commercial property with rights of the landlord of similar property but governed under the post-1995 legislation as well as to secure a level playing field, all tenancies of pre-1995 commercial properties, unless otherwise agreed to by the parties, will terminate within 20 years from 1st June 2008; with the title of the property to revert back to the landlord.

The recommendations proposed above do not apply to pre-1995 commercial property leased by legal entities that are listed on the Malta Stock Exchange. The title of such property will terminate and revert back to the landlord with effect from 1st June 2009; with the lease of such property to be governed by post-1995 legislation.

Recommendation 24

Pre-1995 commercial property leased by legal entities listed on the Malta Stock Exchange will have the lease terminated as at 1st June 2009; with the title of the property to revert back to the landlord and with the future leasing of such property to be governed by post-1995 legislation.

The report further argues, that for the further safeguarding of the rights of the landlord the inter vivos transfer of 1 share of a legal entity or commercial partnership is to be considered as tantamount to a transfer of the lease of the commercial premises.

Recommendation 25

The inter vivos transfer of 1 share of a legal entity or commercial partnership is to be considered as tantamount to a transfer of the lease of the commercial premises.

As at 1st June 2008 the sitting tenant or the beneficiary to whom the title of the commercial property has been transferred to will no longer, unless there is agreement between the parties, enjoy the right to sub-let the property to a third party. The report strongly recommends that the current practice of establishing 'management agreements' for pre-1995 leased property is, for all intents and purposes, a means of subletting the premises and should thus be deemed as such .

Recommendation 26

As from 1st June 2008 the sitting tenant or the beneficiary to whom the title of the lease has been transferred to will no longer, unless there is agreement between the parties, enjoy the right to sub-let the property to a third party – with sub-letting to be re-defined to include the establishment of management agreements for pre-1995 commercial properties.

In the event that the sitting tenant would have prior to 1st June 2008 sublet the commercial lease inter vivos to a third party; the third party will, unless an agreement is in place with the landlord, continue to enjoy the lease for a period of 10 years from 1st June 2008, following which the lease expires and the title of the lease returns to the landlord.

Recommendation 27

A third party enjoying a lease sub-letted to him by a sitting tenant prior to 1st June 2008 will, unless an agreement is in place with the landlord, continue to enjoy the said lease for a period of 10 years as from 1st June 2008, following which the lease will expire and the title of the lease will return to the landlord.

In the event that the title of the commercial premises reverts back to the landlord, and the landlord intends to rent out the premises, the occupants of the commercial premises will be provided with the right to have first choice to continue to use the premises.

Recommendation 28

In the event that the title of the lease of commercial premises reverts back to the landlord, and the landlord intends to rent the premises, the occupants will have the right of first choice to continue to use the premises.

Should the landlord decide not to rent out the commercial premises upon the expiry of the said lease, the landlord will be prohibited from being provided with a commercial license for the said premises for a period of twelve (12) months other than for himself or his direct descendants or legal entities wholly owned by himself or his direct descendents.

Recommendation 29

In the event that the landlord does not rent out the dwelling upon the expiry of the lease, the landlord will be prohibited from being provided with a commercial license for the said dwelling for a period of twelve (12) months other than for himself or his direct descendants or legal entities wholly owned by himself or his direct descendents.

04.9 ESTABLISHING AN INDEX FOR DETERMINING THE MARKET VALUE OF THE LEVEL OF RENT

The report recognises that the reforms it proposes may result in a new form of injustice: primarily what constitutes a fair market value for the level of rent to be paid for a tenancy which reverts to the landlord, and to which under the proposed recommendations, the outgoing tenant, now the occupant, would have a right of first choice to.

The danger exists, that the landlord may negate this right of choice by requesting an unreasonable level of rent. Securing regulation in this regard by requesting arbitration from a regulatory body is not seen to be an appropriate solution. An administrative decision based on the discretion of a regulatory board taken in the absence of reliable data and information does not necessarily translate into a fair decision.

In this regard, the report proposes that the Government, through its appropriate bodies, introduces an index that will establish the market value of the level of rent in a particular area; as well as the locality within that area.

Various models are applied in overseas jurisdictions. The report recommends that a review is carried out of such models and an appropriate index mechanism is identified and calibrated as appropriate and subsequently implemented.

Recommendation 30

In order to ensure that a benchmark of what constitutes a fair market value for the level of rent to be sought from a property the Government should identify and introduce an index mechanism that will establish the market value of the level of rent for a premises in a particular area and locality.

04.10 PRE-1995 RENTED DWELLINGS THAT HAVE NO SOCIAL CONNOTATION

Lease agreements of holiday dwellings and garages for domestic use have been afforded a wider definition by the Courts other than a secondary accommodation. This decision created a precedent when defining the term ‘letting’ whereby such lease agreements entered into pre-1995 are considered to be ‘an extension to the residential home’ affording the tenants the same protection and control stipulated under the pre-1995 rent reform.

The report strongly argues that tenants of pre-1995 dwellings that are not used for residential and commercial purposes, and within this context neither a summer house nor a garage is defined as a residential or commercial dwelling, should enjoy at best a limited transitional provision as there is no legitimate social need for the tenant to have subsidised access to such a dwelling.

Moreover, continued enjoyment by a tenant of such a dwelling only takes place at the expense of the landlord.

It is thus proposed that with effect from 1st January 2010 all dwellings designated as summer residence as well as are fully liberalised.

Recommendation 31

There is no rationale for which the principles of social justice can be applied for dwellings used as summer residences and garages and these should be liberalised with effect from 1st January 2010.

04.11 REQUISITIONED PROPERTY

Originally, the legislator had intended the requisition of property to be an emergency measure and a solution to housing problems experienced at a time when Malta was ravaged by the Second World War blitz. Brought into effect after the Second World War it then developed into a means of providing affordable housing for those in need.

By virtue of the Housing Act of 1949, the Director of Social Housing was empowered to take possession of private property by virtue of a Requisition Order for the purpose of allocating it to third parties to provide residential dwellings. The Housing Act applied only to houses and buildings used, or capable of being used, for residential purposes, whether they were vacant or occupied at the time of requisition. The landlord had to accept the person to whom the Director transferred the tenement.

The only dwelling houses which were not subject to being requisitioned were decontrolled dwellings. The Nationalist administration in power at the time amended the Housing Act whereby, with effect from the 1st March 1995, the Director for Social Housing was divested of his power to requisition property. The provisions of the Housing Act, however, remained applicable to all pre-1995 requisitioned dwellings.

A derequisitioning exercise is currently underway and since 1998 thousands of premises have been derequisitioned upon vacation of the premises or where the landlord recognised the tenant. This exercise has progressed at a considerable pace which has seen the number of requisitioned properties reduced to approximately 5,200 dwellings from over 13,000 dwellings in 1998.

Recommendation 32

The derequisitioning process should be maintained.

04.12 LOCI OF RESPONSIBILITY FOR RENT REGULATION

The current legislative framework divides recourse to conflict to the Courts and the Rent Regulations Board. This report argues that such separation creates unnecessary complexities.

Thus, it is proposed the as a part of the reforms, rent matters are removed from the jurisdiction of the Courts and that a single administrative entity is constituted with full jurisdiction over the regulation and governance of the rental market in order to ensure that related matters are addressed effectively. This report recommends that such responsibility should rest with a restructured Rents Regulations Board.

Recommendation 33

The regulation and governance of the rental market should be placed with one entity in order to secure an effective instrument to legal solutions for such matters and that in this regard full jurisdiction should be provided to a restructured Rents Regulation Board.

Printed at the Government Press

www.rentreform.gov.mt

email **rentreform@gov.mt**