TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

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National Report for

MALTA

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National Report for MALTA

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1. Housing situation

1.1. General Features

The Maltese archipelago consists of three islands: Malta, Gozo and Comino. The country, which bears the name of the largest island, obtained independence from Great Britain in 1964. The archipelago is situation in the centre of the Mediterranean Sea and it covers no more territory than 316 sq. km. With a population of 421,364 and an average annual growth rate of 0.9% it is the most densely populated country in the EU at 1,333 persons per sq. km.[1] Malta joined the European Union on the 1 May 2004 and four years later it also adopted the Euro.

The Maltese housing market is characterised by a high home ownership rate and it is usually classified within the Southern European or Mediterranean Welfare Model although 164 years of British rule have also lent it certain characteristics from the Liberal regime. Most planning policies that were implemented in the post-war period are also directly tracable to the popular British concepts of the time. A striking difference with its neighbouring countries, however, is the sustained direct involvement of the State in the provision of housing for the low-income sectors that ranks the Maltese social housing sector as the highest in its region.

1.2. Historical evolution of the national housing situation and housing policy

- **Please describe the historic evolution of the national housing situation and housing policies briefly.**
  - **In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatisation or other policies).**

Post-war developments

Before the Second World War housing supply was strictly speaking a monopoly in the hands of private developers. It was only the late 1940s and early 50s that witnessed the first large-scale Government intervention in the housing sector. Aerial attacks had razed to the ground thousands of buildings in the densely populated harbour area and as a result there were huge problems relating to housing shortages. The main challenges that the post-war period presented the Maltese administration were in fact the reconstruction of worst-hit zones and the provision of housing for those who were left stranded. At the time Malta was still governed by a Council[2] composed of elected and nominated members until the reintroduction of self-government in 1947. The Council had set a temporary repairs section of the

[1] Central Bank of Malta, Quarterly Review, 2013:4, 103.
[2] The Council of Government was under British rule.

Public Works Department, the aim of which was to render fit for habitation the thousands of houses damaged by the war. Yet the policy did not foresee any government-built programmes for the immediate future.[3] In 1943, the enactment of the Housing (Requisition) Act allowed Government to requisition[4] private properties for state use. This measure, although designed to be temporary lasted four decades. Building activity in Malta was limited to what was necessary.

The period of post-war reconstruction witnessed the budding proposals for a proper planning system in Malta. 1945 saw the establishment of the Housing Department, but by that year the number of households living in sub-standard dwellings had gone down considerably[5] (the last attack suffered by Malta was in November of 1942). During these years the Housing Department's clear focus was on allocating requisitioned dwelling houses to the war homeless. The late 1940s kept seeing attempts by the government to counter the spiraling rise of costs of living, but rent restriction proved to be only a temporary panacea since these measures had the counter-effect of discouraging prospective builders from developing new properties.[6] The only option for the government was the requisitioning of privately-owned premises which had been left vacant by their owners. By the beginning of the 1950s the problem of war homelessness had been effectively dealt with.

Housing was once again taken to the fore of the political agenda under the newly elected government of 1955. Mr. G. A. Atkinson, an advisor to the colonial office, estimated the need of 10,000 new dwellings in the island and his advice prompted the implementation of the three housing affordability schemes: the Second Storey Scheme, the Reconditioning of Sub-standard Housing Scheme and the Rental Housing Scheme.[7] Political turmoil with the Colonial Government, however, hampered the domestic attempts at rectifying the desolate situation. When the Colonial Administration took control of the island once again, it immediately addressed the crisis of the building industry and proceeding to draft an emergency Ordinance proposing the decontrol of all houses built after March 1959 or owner-occupied on that date. This had the effect of creating a new class of rentable buildings which were totally exempted from rent control and more importantly from the requisitioning powers of the state. The governmental action had the desired effects, however, it was also recognized that the private sector alone could not supply enough housing to meet the demand. Members of the population were therefore forced to seek their fortunes abroad whilst the Government decided to embark on a new project, inspired by the then popular English concept, of building new satellite towns.[8] This significant number of newly-built vacant

[3] A. Camilleri, "Building Trends and Policies 1943-1981", Dissertation submitted to the Department of Architecture and Civil Engineering, University of Malta, 1982.
[4] Requisition means an authoritative demand by the State to take over the property, usually temporarily, for public use.
[5] Ibid. no. 3.
[6] Malta Environmental and Planning Authority (MEPA), *Housing Topic Paper*, Planning Authority, Floriana Malta, 2002.
[7] Ibid. no. 3.
[8] A. Camilleri, *A Plea for Bi-partisan Consensus*. In BICC, *Housing Affordability in Malta,* (San Gwann: PEG, 2000).

houses made the government rethink its policies over allocation priority. In fact, families with younger children were given greater advantage and, through pressure of a religious movement, engaged couples also started being listed amongst the eligible applicants[9]. This marked a considerable change in policy. The new blocks of low cost housing also brought about quite a number of drastic changes from the conventional and older methods of house building. The dwellings that were being erected were planned to incorporate new principles of labour and space saving and therefore the tenants had to adapt themselves to this new home life which these variations brought about.[10]

Post-Independence (1964) period

Although in the later years the political efforts were dedicated mostly to the question of independence from the Colonial establishment, in 1962 the new administration introduced the *Home Ownership Scheme* (HOS). This scheme started distributing, under emphyteusis[11], building plots (terraced houses) at subsidized ground rents, grants and heavily subsidized house loans to engaged and married couples. The 1960s also witnessed a building boom that involved the urbanization of large areas, however, the private sector was unable to affordably accommodate the sector of the Maltese population that was in need of housing and this prompted successive governments to undertake an extensive programme for social housing construction. The new buildings extended along the peripheries of the existing towns and the latter type of developments included a mixture of flats, maisonnettes and terraced houses.[12] These were leased at subsidised rents and later sold to their tenant-occupiers, usually for 50% of their estimated market value. Heavily subsidised house loans accompanied these sales in order to enable the tenant-purchasers to pay for their transactions. Low-cost land also started being distributed. In 1976 an autonomous Housing Authority was set up and charged with the improvement of the housing conditions of the low-income groups and the promotion of home ownership. Lower-income groups were those who primarily benefited, since they were unable to compete in the open market.[13] Demand for home ownership was stepped up.[14]

The eighties saw a surge in activity and cheap finance was made available through the Lohombus Corporation (Loans for Home and Business) set up by the government to encourage people to build or buy their houses through relatively easy credit. This new entity was meant to solve the reluctance of the main local banks to lend money with long repayment terms. This was a very significant innovation at the time since people who had to borrow money to buy property were stigmatized and facilities to borrow money were both

[9] Ibid. no. 3.
[10] Report on the working of the Housing Department, 1960.
[11] Further reference to this particular tenure is made below.
[12] Report on the working of the Housing Department.
[13] D.G. Lockhart, *Public Housing Initiatives in Malta since 1955*, Scottish Geographical Magazine 103 (1987) No.1.
[14] S. Agius, *Private Rented Houses: Time to Revitalise the Market Again,* Dissertation submitted to the Faculty of Economics, Management and Accountancy, University of Malta, 1995.

restricted and restrictive.[15] During the 1980s, 73% of Lohombus loans went towards financing construction of homes on HOS plots.[16] In the meantime, through the reformation of the Housing Decontrol Act, tenants who did not enjoy protection were guaranteed the automatic renewal of their leases at tightly controlled rents. This decision predictably resulted in the stifling of the private rental market. Furthermore, during the same period, requisitioning powers started being used more vigorously.[17]

By 1980 the market invited people to purchase rather than rent, however, as the increase in demand was not met by an equally strong increase of supply there was a sharp increase in property values. The government thus responded to these surging costs with the introduction of maximum prices for labour, including concrete works and masonry works. It also supplemented its apprenticeship schemes in order to counter the problem of shortage of skilled workers in the building trade.[18] In 1983 the government passed a new law[19] through which it could purchase private land outside the development schemes at low prices, and then partition this land to allow for the development of private dwellings. The total disregard over such large-scale consumption led to the formation of the first environmental movement in Malta.[20] In addition to those schemes, the government also built new houses, flats and maisonettes which were leased at subsidized rents and later sold to their tenant-occupiers, usually for 50% of their estimated market value.[21] During the same period the Church distributed 1,067 plots to engaged and married couples.[22] In the coming decade the approach to social housing was to be totally revised.

Although public sector house building continued, it was largely aimed at existing urban areas rather than green field sites. The 1988 'Building Permits Act' drew up a development boundary and called for the preparation of a written statement of integrated land use policy. All the new housing was being built within the boundaries of existing development and the 'Building Development Areas Act' was replaced with a temporary scheme that restricted the housing development to zoned areas. Existing schemes, such as the 'Home Ownership Scheme', were slowly brought to a natural end.

[15] Mr. Joe M. Formosa as quoted in The Times (Malta) in 2004.
[16] MEPA, *Housing Topic Paper*, 2002.
[17] Ibid. no. 8.
[18] Ibid. no. 3.
[19] Building Development Areas Act
[20] Ibid. no. 8.
[21] P. V. Mifsud, *An Evaluation of Housing Patterns and Policies in Malta*, Dissertation submitted to the Department of Environmental Social Sciences, Keele University, 1997.
[22] The Curia, Floriana: Lands Registration Office.

The Structure Plan 'Report of Survey'[23] in 1991, was able to argue that the land development process was malfunctioning, amongst other things, because of new road patterns disrupting the old village cores, new development growing without any proper upgrading of community facilities and a general lack of proper infrastructure. The 1992 'Development Planning Act' finally called for the setting up of the Planning Authority whose primary aim was to reintroduce planning concepts in the country by implementing the 1990 Structure Plan. New schemes were launched to assist people buying or repairing their property whilst those whose residences were rented could avail themselves of fresh subsidies. However, property prices went up rapidly in the 90s, particularly where building land was concerned, and the values became incomparable to the income of the Maltese people. Moreover, whilst land and new buildings started becoming less affordable, the 1995 census revealed that there were 20,000 permanently vacant properties. In an effort to stimulate the rental sector, the Government removed requisition provisions for the Housing Act in 1995 and post-1995 rental agreements were freed from rent control. This certainly failed to have the desired effect of reviving the rental market, save for an increase in the rents for newly-built apartments. This was owed to a number of concurrent factors which characterized the Maltese market.

Property prices had in fact gone up because land remained an expensive asset and consequently property became one of the preferred forms of investment much to the detriment of a stagnating rental market. This perception was also adding an element of speculation to the price structure.[24] Other causes affecting prices were increased costs in building and finishing properties and delays in the issuing of development permits.[25] Despite the building frenzy, property owners were not willing to rent out their dwellings for a continued fear that a new administration would revert to the use of requisitioning powers and reintroduce the protection of tenants from eviction at the termination of the lease. Consequently, they felt safer keeping them vacant. Another factor affecting the Maltese market was in fact the restrictive regimes applying to rents negotiated before 1995, which hardly allowed landlords any significant amount of profit.[26] Moreover, the index of inflation had been totally ignored and whilst in Europe it was an accepted principle that households paid around 15% to 30% of their income on housing, in Malta up to 82.2% of the rented premises were being let out for less than €233 per annum[27]. The pre-1995 regime in fact gave the tenant an absolute and indefinite right to live in the rented property and it was effectively imposing the burden of social housing on the private sector rather than on the State.

As a matter of fact it was not necessarily the lower-income groups only that were benefiting from the situation. Tenants were afforded full protection against eviction regardless of their economic status. The situation regarding

[23] MEPA, <http://www.mepa.org.mt/lpg-structureplan>, 35.
[24] G. Cordina, *The Relatively High Costs of Housing in Malta: Implications for Economic Performance and Policy*, Bank of Valletta Review, 2000.
[25] J. Lupi, 'Property Leaders', *Malta Financial and Business Times*, 27 October 2012.
[26] Ibid. no. 21.
[27] Building Industry Consultative Council, *Property Market Report*, 2003.

commercial leases was so serious that the discrepancy between the price of controlled and liberalized leases was resulting in a blatant case of unfair competition.[28]

The increasing market prices, which strengthened the property investment mentality, and the discouraging regimes in relation to the renting out of property, brought about a soaring amount of vacant dwellings. According to the 1995 census, nearly 25% of the housing stock in Malta was in fact vacant with 74% of these dwellings being either newly constructed or in a good state of repair.[29] The lack of dwellings, which were readily available for rent, had the effect of shifting those people who were in search of property directly into the ownership market, thus, contributing to the further demand for property. This rise, however, was not accompanied by an equally strong increase in wages and this kept it very difficult for households to become owner occupiers.[30] Darmanin also recognised that the deterioration in housing affordability was in part due to the sharp increase in house prices and relatively constant level of disposable income throughout the period.[31] Malta's housing problem was not in numbers but in the distribution, affordability, outdated rent regulations and an artificially maintained housing market.[32]

Along a short span of time the idea of everybody building his own house changed and people became more conscious of the environmental issues. Camilleri noticed that between 1982-2008 affordable house[33] prices increased by 625%, doubling in price over the initial ten-year period, doubling again in price over the subsequent ten-year period and then nearly doubling again in price over the past immediate five-year period. Further, over the years, the affordable accommodation floor area started shrinking, with a three-bedroom apartment in 1982 having an average floor area of 135 sq m, reducing by 2008 to 115 sq m, whilst a two-bedroom apartment in 1982 had an average floor area of 95 sq m reducing to 80 sq. m by 2008. The same author demonstrates that the maximum market prices were achieved in 2007, with the tailing off in prices commencing in 2008. Property prices in Malta are estimated to have fallen by about 6.7% between 2007 and 2010.[34]

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[28] 'Controlled' or 'liberalised' refers to whether the lease was contracted before or after the 1st of June 1995. Whilst the former fell within the regulation of the special statutes, which set maximum rates and imposed automatic renewal, the latter were control-free.

[29] National Statistics Office (Malta), *Census of Population and Housing 1995*. The results of the 2011 Census were not yet available at the time of writing.

[30] Ibid. no. 21.

[31] J. Darmanin, 'The Computation of a Housing Affordability Index for Malta'*, Bank of Valleta Review*, No. 37, 2008.

[32] C. Vakili-Zad, *Housing Policy in Malta: Malta's Place in the Worlds of Welfare Capitalism*, (Valletta: YMCA, 2007), 149.

[33] When costs do not exceed 35% of gross household income.

[34] D. Camilleri, 'A long-term analysis of housing affordability in Malta', *International Journal of Housing Markets and Analysis*, 4 (2011) No. 1, pp.31 – 57.

Table A Affordable Property Rates for Malta (Prices € per square metre)[35]

Locality	1987	1992	1997	2002	2007	2010	% growth rate pa 2002-2010
Fgura/Paola/Zabbar	105	128	256	466	987	971	10.3%
M'scala	116	175	373	505	1001	826	7.2%
Mosta/Naxxar	186	198	291	524	1242	1154	11.2%
San Gwann	151	175	256	557	1092	965	7.8%
Sliema inner prime	210	338	443	883	1373	1263	5.0%
St. Julian's	186	233	408	687	1321	1311	9.0%
Swieqi	198	245	419	785	1473	1418	8.2%
Malta	**163**	**212**	**349**	**629**	**1211**	**1130**	**8.2%**

Moreover, with mobility in mind, a new trend started developing in favour of renting property. The way forward meant re-generating existing stock as against allowing the potential sprawl of new development on virgin land.[36] Prices eventually started decelerating from 2006 onwards and this was the case in most property types, particularly terraced houses, maisonnettes and finished flats.[37] However, the major problem in the Maltese context remained those premises which were being rented out under the pre-1995 regimes. In 2006, the Housing Authority entered the housing market with an initial amount of three million Maltese Liri (€6.83 million) to buy some of these old and vacant dwellings to be used as social housing and rented to applicants.[38]

The effect of EU accession (2004)

Another aspect that affected market prices was Malta's accession into the European Union. Due to Malta's small size and the existing housing problems it was felt that the situation in the property market would be exacerbated by the pressure rising from excessive foreign demand, which would have in turn led to lower housing affordability. Special arrangements were therefore negotiated to mitigate the possible impact of the opening of the market to all EU citizens. A minimum price threshold was set for holiday dwellings that could be purchased by non-Maltese EU citizens, however, no restrictions were attached to those wishing to settle permanently or those who would have lived in Malta continuously for at least five years. These negotiations led developers to invest in the construction of up market property in the Special Designated Areas where foreigners need no permission for purchasing property. Rental was also kept free of any restrictions and this had a positive effect on the market since there was a good number of foreigners who wanted

[35] DHI Periti in-house valuations: Camilleri (1999) updated table.
[36] J. Dalli, *The Need for Reform: Sustainability, Justice and Protection*, Ministry for Social Policy, 2008.
[37] Central Bank of Malta (2007), *Annual Report 2006*, p. 35
[38] S. Pace, 'Urban Regeneration Scheme to Boost Supply of Affordable Housing', *The Sunday Times*, 2 April 2006.

to live in Malta or needed to do so because of work.[39] Overall, the number of foreigners investing in property in Malta has been on the increase since Malta joined the EU. Malta is particularly popular with retiring English people even due to the fact that up till 1964 it was an English colony.

As Malta was preparing to join the European Union there was another factor which affected property prices. In 2005 the Government had in fact let its citizens repatriate undeclared funds held overseas at a nominal penalty rate.[40] This concession led to a significant amount of cash flooding back to Malta in a very short time and its effects were translated into a sudden property price boost. This situation had created an artificial demand for property, with estate agents increasing their prices and making it even more prohibitive for first time buyers to buy property.[41]

The rent reforms finally arrived in 2010 and they remedied, to some degree, the pre-1995 lease situation by enabling property to at last look forward to the phasing out of the indefinite pre-1995 leases. The Act imposed a minimum ceiling whereby no lease could be less than €185 per year unless the parties agreed otherwise and it also provided for an automatic increase in the value of the rent every three years by a proportion equal to the increase in the index of inflation. "Security of tenure" was kept, however, under stricter and better regulated conditions. Whether these amendments really had the desired effect can only be verified in the coming years.

Table B Growth of homeownership in Malta[42]

Year	1948	1957	1967	1985	1995	2005
Percent	23.1	26.1	32	53.9	68	75.2

- **In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)**

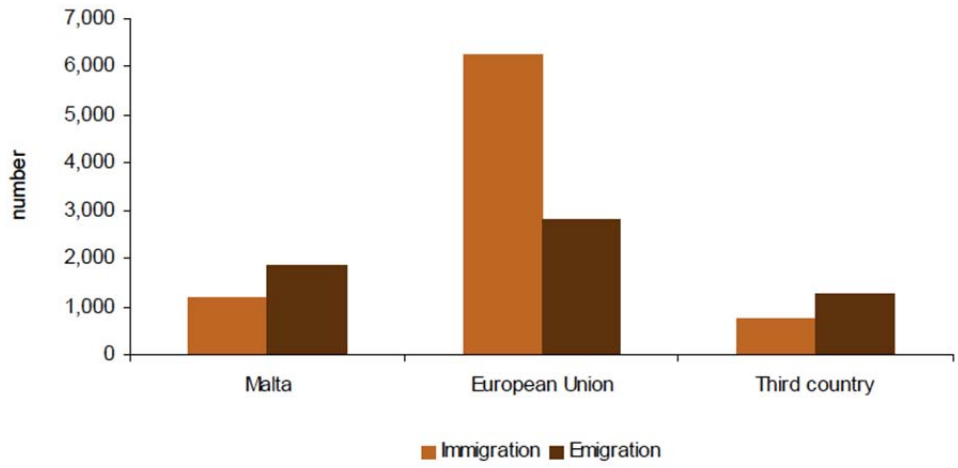
According to the Demographic Review[43] an estimated 8,201 persons migrated to Malta in 2010. This means that the number increased in comparison to the previous year, when the number had been inferior by 971 persons. The prevailing place of origin also changed. In fact whilst the number of returned migrants remained level at around 15%, more than three-fourths of the total immigrants in 2010 originated from EU Member States. This figure contrasts with the one registered in 2009 where only 42% were nationals of the

[39] A. R. Spiteri, *The Repercussions of the Liberalisation of the Rental Market in Malta on the Construction Industry*, Dissertation submitted to the Faculty of Economics, Management and Accountancy, University of Malta, 2005.
[40] L. Bianco, *Malta: Housing and Real Estate 1980-2005*, Architectural Design 76 (2006): 3.
[41] D. J. Micallef, *Housing policies in transition: Malta and Sweden*, Thesis submitted to the Faculty of Built Environment and Architecture, University of Malta, 2008.
[42] National Statistics Office (Malta).
[43] National Statistics Office (Malta), *Demographic Review 2010* (2011): xi.

European Union. The remaining 44% were third-country nationals. The high rate of the latter category in 2009 was owed to the wave of sub-Saharan migrants who come irregularly through the sea often departing from Libya. In most cases Malta would not be their desired destination but they would find themselves on the island following their rescue by the Maltese maritime squadron on the high seas. This influx was significantly reduced in 2010 although the figure was made up for by EU nationals.

The total emigration during 2010 stood at 5,954 which took the estimated net migration for 2010 to 2,247. The emigration rates for the previous year had recorded a higher 7,417 and a resultant net migration of -187. This drop was owed to an increased number of EU nationals who seemed to have remained in Malta. In fact, the figures for EU nationals went down by a significant 1,822 (from 4,642 in 2009 to 2,820 in 2010) whilst those of Maltese emigrants remained close for both years (1,863 in 2010 and 1,771 in 2009). Third country nationals who emigrated from Malta registered an increase of 335.

Figure 1 Migration flows by country of citizenship: 2010[44]



The recorded number of irregular immigrants who arrived in Malta between 2002 and 2009 was that of 13,130. In 2009, out of a total of 2,387 applications for asylum, 2,317 or 97.1% were made by African citizens with more than half of these applicants coming from Somalia (1,446). 64 applications were also received from Asian citizens. Those were unprecedented numbers for Malta and despite the declining influx[45] this phenomenon of irregular immigration has brought forth new social issues regarding ethnic minorities including that of housing. In 2010 this number plummeted to just 47 people who came aboard 2 boats.

There are currently four detention centres in Malta which house immigrants during the lengthy asylum determination period – one in Hal-Safi, two in Hal-Far, and one at Ta' Kandja – each accommodating a larger number of persons than originally planned. All of these centres are situated inside police

[44] National Statistics Office (Malta), *Demographic Review 2009* (2010): xi.
[45] I. Camilleri, 'No Frontex mission planned this year', *The Times (Malta)*, 4 February 2011.

or army barracks and they are forced to accommodate all asylum seekers either until their asylum application is determined, or until their detention period expires.[46] The living conditions within these detention centres have been criticised by various organisations, both at a local and European level.[47]

After an asylum seeker's detention period expires, or once the person is granted some form of protection, they are moved to open centres, where they are free to leave at will. At the end of 2010 there were 1,992 individuals living in Open Centres and other institutional households maintained by Agency for the Welfare of Asylum Seekers (AWAS). Of all the residents, 62% were Somalis and 11% were Eritreans. Other numerous nationalities were Sudanese, Ethiopian and Ivorian.[48] However, these open centres suffer from similar problems of over-crowding as detention centres. The Hal-Far open centre, in particular is practically a 'tent village' housing large numbers of persons in tents elevated onto concrete platforms. Smaller open centres (many of which are run by non-State entities) fare better, with fewer over-crowding problems and better living conditions.[49]

Although the conditions of both detention and open centres remain poor, certain efforts are being made to improve the situation. According to the latest figures supplied by the Commission, Malta is receiving almost €6 million through the European Refugee Fund for the 2008-2013 budgetary period to improve the conditions at its reception facilities. The Commission has also recently approved an additional €1.2 million in emergency funds for Malta, designed to improve conditions in both open and closed facilities.[50] In 2008 the NGO 'Fondazzjoni Suret il-Bniedem' also undertook to embellish the Marsa open centre and create various other facilities such as an education centre (including a library), improved medical services (a new clinic will provide medical care three times a week), and a new kitchen.[51] Similar NGOs such as the Emigrants Commission and Peace Lab work with immigrants who have been released from detention to live in the community, offering accommodation and a number of other essential services.

The overall economic condition of these migrants remains precarious. Asylum-seekers, persons with Temporary Humanitarian Protection and those with a Refugee Status can legally work in Malta and those who do not have a job are entitled to small financial allowance. In practice many migrants find it hard to have a stable job and are forced to search for temporary unskilled jobs

[46] Jesuit Refugee Service, *Civil Society on Administrative Detention of Asylum Seekers and Illegally Staying Third Country Nationals in the 10 New Member States of the European Union*, 2007.
[47] For more information on this refer to: European Parliament, *Report by the LIBE Committee delegation on its visit to the administrative detention centres in Malta,* 2006; *Amnesty International Report,* 2007; *European Commission against Racism and Intolerance, Third Report on Malta,* 2007; *European Network Against Racism Malta, ENAR Shadow Report 2007,* 2007
[48] National Statistics Office (Malta), *Demographic Review 2010*, 94.
[49] National Commission for the Promotion of Equality (2007-2013) *Research Report Voice for All*, VS/2007/0477.
[50] 'Brussels keeping an eye on Malta's reception facilities', *The Times (Malta)*, 3 March 2012.
[51] 'Marsa Open Centre to get makeover'*, The Times (Malta),* 3 October 2008.

in farms, hotels and in the construction industry. These circumstances make rent the only possible option for those who choose to abandon these centres. Towns such as St. Paul's Bay, Marsascala, Msida and Gzira are known to house numbers of immigrants and although no official study or research has been conducted to prove this occurrence, it does emerge, through the 2005 Census, that the said localities have all registered proportionately high vacancy rates in the category of apartments and penthouses and that there does exist a good amount of dwellings capable of being leased out.

A final factor which has to be taken into account when dealing with immigration is Malta's growing economic interests in the online gaming industry. With 500 registered online gaming companies by 2008, the share of revenue from gambling, technically known as Gross Gaming Revenue (GGR), amounted to 7.82% of its GDP for that year.[52] The sector is going through a steady growth and foreign investment is certainly bringing with it a reasonably significant work force. This could explain the strong influx of EU nationals referred to above. It is understood that even in the case of these workers rental is the preferred kind of tenure.

1.3. Current situation

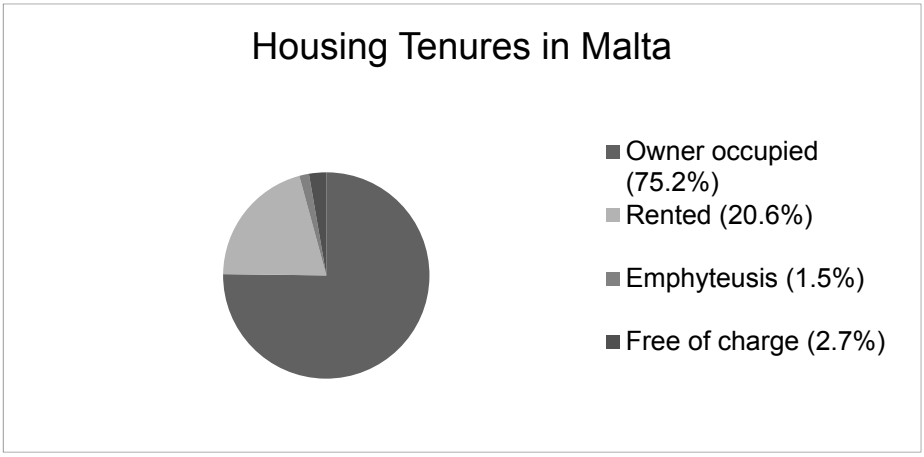
- **Give an overview of the current situation.**
- **In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?**

Recent findings have revealed that currently the Maltese are well housed. The 2010 EU-SILC (Survey on Income and Living Conditions)[53] indicates that the majority of occupied dwellings were owned. In fact out of an estimated number of 141,650 households, encompassing a total of 404,550 persons, the majority of main dwellings, 75.5%, were owner occupied. One has to note that the 2005 Census on Population and Housing had found out that from a similarly high percentage of 75.2 owner-occupied dwellings, 55.1% were owned freehold (*propjetà libera u franka*) whilst 20.1% were owned with ground rent (*propjetà soġġetta għaċ-ċens)*.[54] This high percentage is owed to

[52] I. Camilleri, 'Malta is Europe's gaming hub - Brussels', *The Times (Malta)*, 25 March 2011.
[53] National Statistics Office (Malta), 2012.
[54] This means that whilst the dwelling would be owned by the household (which in this case is the emphyteuta or 'inferior' owner), the land upon which the property would be built would still be subject to a yearly ground-rent. The differentiation is important since, whilst emphytheusis confers the rights of ownership, should the land ever return to the 'superior' owner (referred to as 'directum dominum') it would do so along with all the improvements made by the 'inferior' onwer or emphyteuta. In most cases the land would be granted to the emphyteuta in perpetuity (i.e. indefinitely) and the latter would have the option of 'converting the ground rent', by paying a lump sum equivalent to the value of the land or of the property, thereby becoming a 'freehold' owner.
This was the method with which the government and the Church were distributing plots of land to young couples and individuals in their effort to promote homeownership from the 1960s up to the late 1980s. Emphytheusis was deemed to be the ideal solution since it allowed the households to become the owners of their homes without subjecting them to any

the above-explained decisive state interventions in the housing market over the years. The number of rented dwellings is therefore much lower and in fact it stands at 20%. The figures are again very close to those of the 2005 Census with the exception of the latter, noting as well a segment of 1.5% out of the occupied dwellings that was held in emphyteusis.[55] Vakili-Zad outlines how the numbers are in line with the other countries that fall within the Mediterranean welfare state regime model which are characterized by a predominant homeownership culture.[56]

Figure 2 Distribution of housing tenure in Malta[57]



1.4. Types of housing tenures

- **Describe the various types of housing tenures.**
- **Home ownership**
- **How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)**
- **Restituted and privatised ownership in Eastern Europe**

In the case of home ownership the financing is typically arranged through banks. Housing finance and mortgages are a relatively new phenomena in Malta. Just a few years back getting a loan for the purchasing of a house was not accepted as it is today as it was seen as an act of humiliation.[58] However for the government schemes to work, there was a need for a mortgage bank. Initially it was the two commercial banks, Mid-Med Bank and Bank of Valletta, that provided the funding to the Lohombus bank since they were reluctant to

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overly onerous costs; the amount of groundrent paid in respect of the land, in fact, was usually very much within the reach of the households and they could channel their financial means directly into the actual construction of their dwelling (Emphyteusis will be explained further under the heading 'Intermediate tenures').

[55] In this case the property the emphyteutical grant would be temporary i.e. subject to expiration. Functionally, a temporary emphyteusis is identical to a lease although the rights conferred are real and not personal.

[56] Ibid. no. 32, 111.

[57] According to the NSO Census on Population and Housing 2005.

[58] Ibid. no. 32, 150.

lend out the money to the prospective property buyers themselves. Eventually in the mid-1990s the banks opened up to the mortgage market especially with the entry of HSBC, which had bought out Mid-Med and changed the lending procedures drastically, especially regarding the lender. Lohombus' loan was based on a man (husband) income, and had never considered lending to a woman. Under HSBC, that discriminatory practice was eliminated while the duration of the loan was extended from 25 to 40 years.[59] The maximum maturity granted is often linked to the retirement age and 40-year loans would be possible on condition that the loan is repaid before the borrower reaches the age of 65.[60] These innovative concepts led to quick developments in the mortgage market and competitors such as Bank of Valletta were forced to respond with the opening of their own Home Loans section. Vakili-Zad also highlights the change in the ratio of disposable income committed to housing loans which went up from 16.4% to 33.5% between 1994 and 2002. Another significant change related to the lowering of the minimum deposit (down payment) required. These reasons had started making ownership, in most cases, much cheaper than renting.

Nowadays the mortgage lending banks are in a fierce competition to offer easier loans to applicants and indirectly encouraging home ownership and helping to push the prices up. This means that customers, particularly first-time buyers, can buy earlier in their lives as the amount they need to save up is considerably smaller. Interest rates on house purchases have also gone down gradually and the figure recorded in the first quarter of 2012 was 3.42%, the lowest since the 2009 dip.[61] This may be owed to a lower demand for mortgages which was reported by two banks. During the same period the amount of outstanding loans by Monetary Financial Institutions to residents of Malta for house purchase was at €2,939.3 million, which once again continued to record a steady increase on the previous intervals.[62] These figures show that the Maltese continue to make major investments in housing and the growth in loans to the non-bank private sector was in fact almost entirely driven by lending to households – mostly to finance house purchases. Indeed, loans to households remained by far the largest single category of bank borrowing, making up almost half of total lending granted to the private sector.

Mortgage lending, which in turn makes up around four-fifths of loans to households, also registered rates of continuous expansion. Although the number went down slightly from the previous quarter, the figure registered by March 2012 was a reassuring 8.1%. The 2010 EU-SILC found out that out of the 109,800 households that owned their main dwelling, 80% were owners without any mortgage (on their main dwelling). Interestingly enough, having a mortgage was a characteristic more prevalent among households with dependent children (29%) than those without (13%).

[59] V. Macdonald, 'Home Sweet Home?', *The Times (Malta),* Business, 23 September 2004.
[60] European Central Bank, *Housing Finance in the Euro Area,* 2009.
[61] Central Bank of Malta, *Quarterly Review 2012/2*.
[62] Ibid. no. 61.

The Housing Authority has been also been financing the development of housing estates in efforts to promote home ownership. Its priority is in fact the latter. The principle scheme that it is responsible for is the right-to-buy scheme. This Scheme aims at encouraging residents of government owned property to become homeowners and to use such property as their ordinary house of residence. A subsidy on the purchase price may be granted according to a means-test and the price of sale is income related. Another scheme is that which allows persons hailing from low-income categories to make their own bank arrangements according to their own financial possibilities. This initiative, which was set in place in 2008, targeted applicants who were purchasing their first residence from the private sector. The grants given could rise to a maximum 30% of the annual loan payments given by a financial institution to the applicant as long as it did not exceed the amount of €850 per year. The grant was given for a period of ten years and was open for the first 300 applicants.[63]

The Authority was also active in enabling persons to purchase a share in their home even if they could not afford a mortgage on its whole value, by stepping in and buying the remaining share. These 'Shared Ownership' and 'Equity Schemes' constituted an intermediate type of tenure and will be discussed further below.

- **Intermediate tenures:**
- **Are there intermediate forms of tenure classified between ownership and renting? e.g.**
- **Condominiums (if existing: different regulatory types of condominiums)**
- **Company law schemes: tenants buying shares of housing companies**
- **Cooperatives**

In Malta there are several forms of intermediate tenures. Two of the types that have been mentioned above are ownership with ground rent, known in Maltese as '*propjetà soġġetta għaċ-ċens'* and emphyteusis also simply known as *'ċens'*. The 2005 Census recorded that 27,922 properties were owned with ground rent and 2,112 were held in emphyteusis. This represents 20.1% and 1.5% of all the occupied dwellings respectively.[64]

Emphytheusis is defined to mean ownership against an annual payment (*ċens*) for a defined period of time of any property. The contract which constitutes this right can be considered as one of almost complete transfer of ownership; the original owner, as a matter of fact, retains only the ground rent which is paid to him in recognition of his right, and the possibility of an eventual consolidation.[65] Where a grant in emphyteusis is made in perpetuity, the emphyteuta is given the option to redeem the ground rent (i.e. to acquire the dominus directum's interest in the land by paying, for instance, 20 times the amount of the yearly ground rent), even though the ground rent may be

[63] 'Housing Authority to offer 2,000 units for rent', *The Times (Malta)*, 11 June 2009.
[64] NSO, 2005 Housing and Population Census.
[65] V. Caruana Galizia, *Civil Law Notes: Law of Things*, Ghaqda Studenti tal-Ligi (GhSL).

revised at stated intervals of time. Ownership with ground rent similarly means that the property, which one owns and inhabits, is subject to a periodic payment to the dominus. A good number of the properties that are owned with ground rent, which is at times even subsidized, were distributed to engaged and married couples under the aforementioned Home Ownership Scheme (HOS).[66] Emphyteusis is regulated by the Civil Code, Articles 1494 to 1524.

Another kind of intermediate tenure, which was also referred to above, is Equity Sharing or Shared Ownership. This was a scheme by the Housing Authority which enabled applicants who could not afford the full price of a property to buy one-third or two-thirds of the equity instead. This scheme aimed to assist first-time buyers wishing to purchase property from both the government as well as the private sector but could not avail themselves so easily of banking facilities. The authority, in fact, offered to cover the shortfall between the borrowed sum and the actual price. This scheme was meant to give security to persons who had never been homeowners and who would have been unable to pay commercial rents once they retired. Through this scheme applicants were given the opportunity to purchase 1/3 or 2/3 of the residence offered for sale at a subsidized price and the beneficiaries only needed to take a bank loan for the amount covering the portion of the property being purchased. The Housing Authority financed up to a maximum of €16,306 on the purchase of residency in shell form, and up to €23,294 for completed dwellings. The authority would have become a shared owner in the property purchased. None of the beneficiaries would be obliged to purchase the Housing Authority's share in their residence before the lapse of ten years from the date of purchase, however, the Housing Authority would assess the financial state of the beneficiary after such period.[67] The Equity Sharing scheme was halted because the €5,823,433 allocated for a total of 203 applications had all been used up.[68]

Another '*Shared Ownership*' scheme had also been set up some years earlier, in 2005. Applicants could either choose to purchase one-third (Choice Two) or two-thirds (Choice One) of the property. The average subsidized prices were of €28,239 for the former and €56,495 for the latter. Eventually applicants could purchase the property if they afforded to buy it and they also had the right to purchase the other shares of the property within ten years at the same subsidized price.[69] Being government property, the remaining share would continue to be owned by the Housing Authority.

A fourth kind of contract that could be negotiated is lease with an eventual option to buy. This contractual trend seems to have earned popularity with

[66] Ownership with ground rent is not to be equated with the 'right to build'.
[67] M. Micallef, 'Equity sharing in the private sector', *The Sunday Times*, 11 February 2007. This means that if after ten years the household would be deemed sufficiently stable to afford the remaining share, then it could be obliged to carry on with its purchase. This is of course meant to prevent abuses on the part of beneficiaries should they be no longer remain deserving of such assistance.
[68] Housing Authority, Annual Report 2009.
[69] M. Micallef, 'Second Shared Ownership issue', *The Sunday Times*, 17 September 2006.

younger couples and individuals who prefer not to tie themselves down to a capital investment so early on in their lives. Should they, however, settle themselves well in the leased property and decide to proceed with its purchase, the contract would set off the total amount of installments paid, against the price of sale.[70]

As of 2002 Maltese law also regulates Condominiums, however, these cannot be property classified as intermediate tenures. In line with the Italian position, which was the prevalent source of the local Condominium Act (Chapter 298 of the Laws of Malta), condominiums are defined as buildings having separate units owned individually by one or more persons, with the ownership of other undivided parts being vested jointly in the same persons; therefore the position of the owner of the individual unit is identical to any other property owner. The Condominium Act provides for the administration of the parts owned in common and the regulation of the relationship between the various owners. There are currently 820 registered condominiums in Malta.[71]

- **Rental tenures**
  - **Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?**
  - **How is the financing for the building of rental housing typically arranged?**

In Malta property is rented either from the private sector or from the government. The latter takes the form of social housing. The government has been constantly active in providing adequate housing for the lower income families and as a result the population always seems to be expecting the Government to take the initiative. Vakili-Zad notices that despite the common rates of homeownership and vacancy rates, the major difference between Malta and the rest of the Southern European countries lies in the considerable percentage of its housing stock in social housing. He attributes this relatively high figure to the impact of the British housing policy in Malta, mostly through the early British studies conducted on housing conditions and the models such as those of slum clearance and social house building that were emulated in Malta. Even today, British housing initiatives continue to be adopted in Malta with the most recent being the Shared Ownership scheme.

The private sector may also be said to be participating in the provision of social housing although indirectly. The 2005 Census had identified that out of the rent paid to different landlords, the Government's and Church's share of rented dwellings stood at 28.02 and 1.89% respectively, whilst that of the private sector stood at 70%. This meant that, as a direct consequence of the frozen rates which were in place before the enactment of the reforms, the private landlord was renting property at what could only be termed as

[70] This relatives to private properties although, as will be discussed under the heading 'Subsidisation' the government also allows tenants to eventually move ahead with the purchase of their dwellings.
[71] Statistic gathered from the Lands Department on the 19 December 2012.

'subsidised' rental values since the economic return for him was insignificant when compared with the real value of the property.[72]

In addition to those dwellings there are also approximately 10,000 privately owned dwellings that have been requisitioned by the government and are rented to families with low income by the Department of Social Housing. If this were added to the units owned by the government it would bring the total number of social housing to 19,782, or 13% of the entire stock. However, in 2005 the government initiated a de-requisitioning exercise. Prior to this, vacant requisitioned properties were either re-allocated or handed over to the landlord or his/her children if they required it for personal use. Nowadays policy is to hand back requisitioned property to its owners if the property becomes vacant or where tenants are not perceived to undergo excessive difficulty if the property is de-requisitioned.[73]

Finally there are also a number of low-income families who receive subsidy renting privately owned dwellings. The amount of the subsidy depends on the income of the family; in the last ten years the Housing Authority received 4,646 applications for this subsidy.[74] Numbers in social housing, however, have changed due to projects of redevelopment and slum clearance and the return or sale of government owned units under the right-to-own scheme by the Housing Authority.

- **What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided? Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square meters or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)**

According to the 2005 Census on Population and Housing the most numerous type of occupied dwellings consisted of terraced houses. In fact, of all occupied dwellings, 54,714 units or 39.3% of the total were terraced houses. This was followed by flats and penthouses, with 32,569 units, or 23.4% and maisonettes with 30,894 units, or 22.2%. The proportion of terraced houses registered a decrease of 7.3 percentage points over the previous census conducted ten years earlier, whilst that of flats/penthouses and maisonnettes grew by 5.3 and 8.3 percentage points respectively. These figures certainly mirror the sharp rise of property prices that took place during the past years which oriented both construction entrepreneurs as well as home seekers towards smaller and more affordable buildings.

[72] Ministry for Social Policy, *The Need for Reform: Sustainability, Justice and Protection* (2008), 34.
[73] Ibid. 32, 176.
[74] Parliamentary Question 76, XII Legislature, Sitting no. 65 (22 October 2013): "Awtorita tad-Djar - applikazjonijiet milqugha".

The number of multiple private households living in the same residence has decreased by 77.1% in the intercensal period: from 1,710 households in 1995 to 392 households in 2005. This statistic reveals another trend since up until some years ago it was much more common for elderly relatives to move in with their younger relatives. This drastic drop is owed mostly to social changes since it has become much more common for the elderly to move into institutional and community care or for them to receive domiciliary services. This makes them less dependant on the younger members of the family. The current trend is that the size of households will continue to decline, and two-person households (25.7%) have become the most common, followed closely by three-person (22.3%) and four-person (22.1%) households.[75] The next important trend is the growth of single person households which by 2009 had reached 18.8%. In the Southern Harbour, the rate of such households was 23.3%. The discrepancy of almost 4 percentage points is probably due to the aging population in the area.

In November 2005, there was an average of 2.5 rooms per person living in occupied dwellings. This figure is only inferior to that of the Netherlands (2.6) out of those of the European Union Member States.[76] Those living in fully detached houses had most space. In fact, residents living in fully-detached houses had an average of 3.1 rooms per person, compared to 1.5 rooms per person for those living in other kinds of dwellings and 2.1 rooms per person for those living in a suite of rooms forming part of a housing unit. It resulted that 107,582 dwellings, or 77.3% of occupied dwellings, had between 4 to 7 rooms. The average number of rooms per dwelling in Malta was calculated at 5.7 including kitchen.[77]

The majority of occupied dwellings were constructed between 1971 and 1990. In fact, out of all the occupied dwellings that were enumerated in the 2005 Census, 49,107 units, or 35.3%, were constructed in this period. Vakili-Zad notes that a total of 51,889 dwellings were constructed during the twenty-four-year frame between 1961and 1985 and another 40,424 in the much narrower span of five years between 1986 and 1991. On a closer analysis of the type of dwellings that were built between 1961 and 1991, it emerges that 34.4% of these buildings consisted of terraced houses, whilst 36.2% consisted of apartments.[78] The survey also shows that the lowest figure recorded (4,744) represented the number of occupied dwellings constructed during the most recent 2001-2005 interval. It was also revealed that 34.8% of occupied dwellings that were constructed prior to 1919 had a reference person aged 70 years or more, whilst out of those which were constructed between 2001 and 2005 there were only 4.2%.

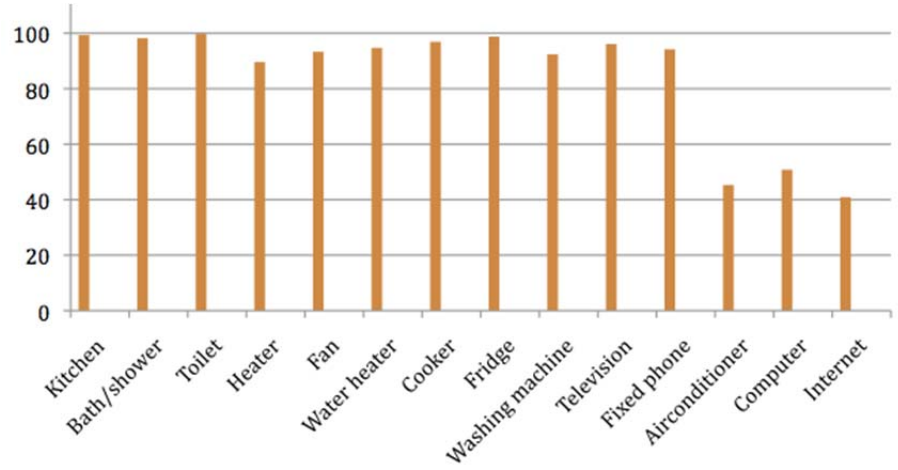
In 2005, the majority of dwellings were perceived to be in a good state of repair. In fact a total of 107,433 units, or 55.9% of the total were recorded to be in a good state of repair. The highest figure was registered in the category of flats and penthouses with 65.3% whilst the terraced houses perceived to be

[75] NSO, *Survey on Income and Living Conditions (EU-SILC)*, 2010.
[76] Eurostat, Housing Statistics of the European Union, 2010.
[77] Ibid. no. 76.
[78] Ibid. no. 32, 158.

in the same state of repair were only 52.0%. On an analysis by district it also emerges that only 48.0% of all dwellings in the Southern Harbour district were considered to be in best state and this is probably owed to the number of old buildings characterizing the capital cities and the surrounding villages.

The figures of the availability of the individual amenities confirm the above results. According to the same census, the majority of occupied dwellings (99.3%) had a kitchen or kitchenette. A very close figure (98.2%) represented the number of dwellings which had a bath and/or shower installed whilst only 297 occupied dwellings did not have any toilet system installed, meaning that 99.8% of occupied dwellings had at least one toilet available. The majority of occupied dwellings had a flush toilet installed (99.8%). Again, almost all the dwellings (98.2%) were connected to the public sewage. Most of the rest were connected to a cesspool whilst 208 dwellings were not connected to any sewage disposal system. Nearly all occupied dwellings had a heater (89.6%), fan (93.3%), water heater (94.7%), cooker (96.9%), fridge/fridge-freezer (98.8%), washing machine (92.4%), television (96.1%) and a fixed telephone line (94.2%). About half of the occupied dwellings had air-conditioning (45.3%) and computer (50.8%). Also, 56,878 occupied dwellings, or 40.9% had access to the Internet. Of these, 39,814 occupied dwellings, or 70.0% of occupied dwellings with Internet access, had a broadband connection.

Figure 3 Availability of amenities inside dwellings[79]



- **Which actors own these dwellings (private persons, profit or non-profit organisations, etc.)?**

In Malta buildings are either private or public. The possibility of developing new blocks through Public Private Partnerships has been considered by the Housing Authority, however, no such project seems to have taken off. Moreover, philanthropic investment has been absent and there are no non-profit or cooperative housing.

The only non-governmental stakeholder in the development of social housing in Malta is the Church. Currently there are 2,196 units that are owned by the

[79] According to the NSO Census on Population and Housing of 2005.

Church but have been transferred to the government following the 1991 agreement entered into between Malta and the Holy See. This figure took the total number government owned social housing units at 9,782 by 1995, representing around 6.3% of the total dwellings (155,202) in 1995. The immovable property belonging to the ecclesiastical entities and not required for pastoral purposes was transferred to the state in exchange for several million Maltese Liri worth of stocks issued by the Government in favour of the Church. These properties are managed by the Joint Office, an agency set up by the Church-State agreement. Over the years, the agency gained a permanent status, however, it was decided that it should move under the umbrella of the Government Property Division. This has enabled the alignment of property strategies, objectives, policies and procedures.

There is also the voluntary presence of NGOs that work in order to provide shelter, mostly in forms of rooms or apartments, to persons facing serious social challenges. However, these aim to provide temporary shelter or, at most, a bridge to complete autonomy. YMCA deals exclusively with the homeless, whilst *Caritas Malta* and The Richmond Foundation are organizations that house persons during the rehabilitation from substance abuse and women suffering from mental illness. The concept of semi-independent living has been given great emphasis during the recent years as it is capable of providing the perfect bridge to society for people who are not yet ready to lead autonomous lives due to the particular situations which they would be in or to the traumas which they would have suffered. Usually these people are given accommodation at a very affordable rate in order to draw closer to the conditions they would find in the open market. *Fondazzjoni Mid-Dlam Ghad-Dawl* is a voluntary organization which houses ex-prisoners who find themselves homeless after serving their sentence and *Dar Merhba Bik* shelters women victims of violence and their children. Inspire, an organisation which helps both adults and children with disability works through its own premises. *Dar Qalb ta' Gesu* is a shelter and integrated service centre which also refurbished an apartment that serves as passageway temporary accommodation for families and victims of domestic violence.

1.5. Other general aspects of the current national housing situation

- **Are there lobby groups or umbrella groups active in any of the tenure types? If so, how are they called, how many members, etc.?**

In the absence of landlord or tenant associations, the only active groups within the local housing scene are the associations of developers and the estate agents. Their respective associations are not regulated by law but they are either affiliated with the Malta Chamber of Commerce, Enterprise and Industry or simply have close links with it.[80] Through their membership within this Chamber the associations would acquire representation in the Malta Council for Economic and Social Development (MCESD), an advisory council

[80] The members in the Chamber are the Malta Bankers' Association and the Federation of Building and Civil Engineering. The Federation of Estate Agents is closely affiliated to the Real Estate Business Section.

that issues opinions and recommendations to the Maltese government on matters of economic and social relevance. Despite this presence, the Malta Developers' Association, the Federation of Building and Civil Engineering Contractors and the Federation of Estate Agents have insisted, in a joint statement, that their sector should be represented autonomously on the MCESD.[81]

The Malta Developers' Association (MDA) represents the real estate developers. It aims to promote the interests of its members generally through liaising directly with the government. The Association is mostly active in providing recommendations to promote real estate development and in seeking solutions to practical problems in the property market. 165 real estate developers are enrolled in this association.

The Federation of Building and Civil Engineering Contractors (FOBC) has as its object that of bringing about improvements to the Construction Industry in Malta. The association was formed by twenty-two major building contractors with the aim of strengthening their recognition by Government and other members of the private sector.

The Federation of Estate Agents was established to work hand in hand with the government and the various entities related to the real estate industry. Its members represent a large majority of estate agents on the Maltese islands. The primary objectives of the federation include the promotion of its members' interest vis-à-vis laws and policies concerning the industry.

In addition to those there is also the Malta Bankers' Association (MBA); a co-coordinating and lobbying body, for banks operating in Malta. Membership in the Association is open to all banks which are authorised to operate in Malta. Following Malta's accession to the European Union in May 2004, the Association became a full member of the European Banking Federation (EBF). There are 25 member banks including the country's major ones. The Association has the object of maintaining harmony and coherence on issues that touch on the common interest of its members and of lobbying and negotiating with the authorities in favour of the category.

One may finally mention the Consumers' Association and the Competition and Consumer Affairs Authority that could assist tenants in the case that their landlords were professional entities. This possibility is, however, very remote since neither the tenants nor the association itself seem to be aware of this competence.

- **What is the number (and percentage) of vacant dwellings?**

In drawing a comparison with most of the other Southern European countries the same Vakili-Zad notices the same patterns as regards high rates of homeownership and vacant dwellings. According to the most recent statistic

[81] 'Developers, estate agents warn of slowdown, layoffs', *The Times (Malta)*, 16th February 2012.

the Maltese percentage of the latter out of the whole dwelling stock was in fact the highest amongst the EU27 with 27.6%.[82] The 2005 survey, which excluded boathouses, farmhouses and some other kinds of dwellings, revealed that most vacant dwellings consisted of flats and penthouses. In fact 24,295 or 45.7% belonged to the latter category. Furthermore, there were 13,872 vacant terraced houses and 9,857 vacant maisonnettes. Most of these dwellings were in a good state of repair (43.4%) or needed only minor repairs (21.3%) whilst 10.8% of all vacant dwellings were in shell form. The same census identified 10,028 holiday dwellings in Malta and more than 75% of those are located in the Northern and Gozo and Comino Districts (the less crowded, more rural part of Malta). Over half of the holiday dwellings (9,295 or 91.9%) were owned. This proved that the segment of holiday accommodations for rental was in decline. Vakili-Zad further comments that in Malta a dwelling has to be ready for occupancy at the day of enumeration (census) to be declared vacant, no matter for what purpose the unit was built (i.e., summer homes, secondary homes, etc.), which excludes dwellings undergoing modernization, repairs, conversion or awaiting demolition. In 2005 the number of permanently vacant dwellings (i.e. vacant premises which were not considered summer residences) was of 43,023 or 22.3% of the whole dwelling stock. The survey also shows that the Northern district has the highest concentration of vacant dwellings (25.8%) which is probably due to the very high number of holiday dwellings; St. Paul's Bay alone registered 8,762 vacant dwellings out of the 13,687 of the whole district and 6,696 of these were in fact flats and penthouses.

Rent restriction laws, that became more rigorous by the year when compared to the soaring house prices, have certainly discouraged landlords from renting out their dwellings. The proportion of vacant dwellings was also growing exponentially due to the buying frenzy that saw people purchasing homes simply due the rising price of land rather than the intention of entering the private rental market. According to the *The Need for Reform* paper published by the Ministry of Social Policy prior to the 2010 amendments, the estimated value of the 2005 vacant housing stock, excluding holiday dwellings, stood at around €7.93 billion.

Table C Post-War Rates of Vacant Dwellings in % of all housing stock

Year	1957	1967	1985	1995	2005
Percent	4	14.9	19.2	23	27.6

- **Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?**

Contracts of lease between landlords and tenants do not need to be registered in Malta. The government has often voiced its intentions to introduce a register of rented properties, however, no such action has been

[82] Housing Statistics in the European Union 2010. Secondary dwellings were included.

taken in this regard.[83] Although there are no figures to prove this occurrence it is known that this situation gives rise to various irregularities.

Summary table 1 Tenure structure in Malta 2005[84]

Home ownership	Renting			Interme-diate tenure	Other	Total
		Renting with a public task, if distinguished	Renting without a public task, if distinguished			
75.2%[1]	20.6%	6%[2]	14.6%	1.5%[3]	2.7%[4]	100%

[1] 20.1% owned with groundrent
[2] In Malta the rental social housing is represented by Government owned dwellings and the estimated figure stands at 6% of the total housing stock (Figure obtained from: CECODHAS, *Housing Europe Review 2012: The nuts and bolts of European social housing systems*, 2011. Estimation based on Housing Statistics in the European Union 2010, Kees Dol and Marietta Haffner, and Housing Europe 2007)
[3] Held on emphyteusis
[4] Used free of charge

2. Economic, urban and social factors

2.1. Situation of the housing market

- **What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?**

The general belief in Malta is that the housing problem lies not in availability but rather in affordability.[85] With the country running out of land for development, the solution lay in encouraging landlords to bring back the vacant units onto the market. The 1995 revision of the rent regulation had failed to regenerate the rental market mostly because the owners feared that a new government would have reverted to requisitioning powers and reintroduced forms of security of tenure for tenants. On the other hand, tenants saw the new law as giving them limited protection, since no minimum time frames were set for lease agreement to be valid. The 2010 amendments were certainly a step in the right direction and the policy of

[83] Further reference to this will be made below under the heading 'Taxation'.
[84] Figures taken from 2005 Census on Population and Housing.
[85] Ibid. no. 8.

filling up privately owned vacant dwellings has also been taken up by the Housing Authority in one of its most recent schemes. This initiative called *Skema Kiri* (Rent Scheme), which is going to be discussed further on, also answered the question posed by Miljanic Brinkworth and Vella who supported idea of bringing the vacant units back to the market but raised the concern of 'who would be purchasers of these units?'[86] The main preoccupation was that since those who were facing the affordability problem, like those on the Social Housing waiting list, would not be able to buy these properties, let alone refurbish them. The *Skema Kiri*, however, incentivised property owners to free up their vacant property for beneficiaries of Social Housing who would in turn have their rent subsidised by the Housing Authority.

- **How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?**

The most recent study on demographic developments in Malta was the Demography Topic Paper commissioned by the Malta Environmental and Planning Authority (MEPA) in preparation for the Structure Plan Review.[87] This set of population projections covers the period 1995 to 2020. The population in 2020 was estimated to reach 434,260 with the household number expected to keep rising to 159,926. The paper however predicted a smaller household size of 2.7 persons on average. The increase to the number of households is attributed to increased female independence, continued secularisation of Maltese society and a greater number of separations. The introduction of divorce in 2012 will predictably have an aggravating effect with an increase in demand for one-bedroom apartments. Another contributing factor is the growing number of single parents, particularly mothers. Single motherhood tends to occur either among young females or among older economically independent females seeking motherhood. Co-habitation in Malta, although on the increase was not held to be as widespread as it is in Europe but the number may increase after the imminent introduction on legislation regulating civil partnerships.

Therefore, no stabilisation or decline in number of households is forecasted. This estimate, however, does not take into account Malta's accession into the European Union and its implications on demography, mainly, the increasing influx of immigrants from outside the Union as well as the number of Maltese emigrants who choose to pursue their careers in the larger Member States.

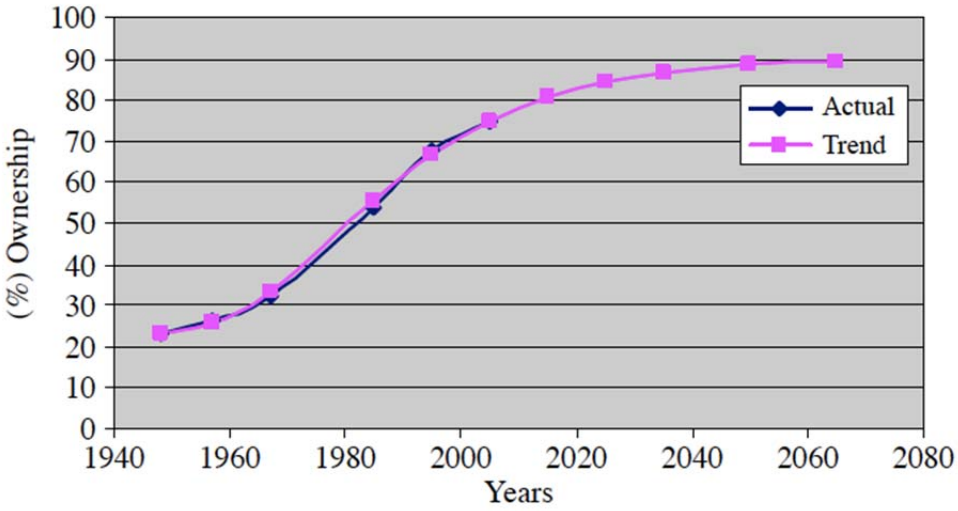
The dynamics of demographic change in Malta follow that of the other European Union member states. Besides evidence of population growth there were also indications of ageing, the prediction for the over 60 category

[86] M. Miljanic Brinkworth & S. Vella, *Can Social Housing Applicants Afford Market Prices*, Paper presented at the Housing Affordability Conference, October 30-November 1, Malta, 1999.
[87] MEPA, *Demography Topic Paper*, 2001.

in 2020 is as high as 25%. The birth rate has gradually gone down contrary to the share of the elderly, whilst population growth was registered due to migration. In 2010 Malta had the second largest crude migration increase in the EU in 2010, more than three times the bloc's average. The majority is known to enter the territory illegally and they originate mostly from sub-Saharan Africa. The figure was up by 5.4 per thousand.[88] Despite these variables the projections of the topic paper seem to keep in line with the figures registered in the national surveys.

Camilleri also predicts a declining growth rate in homeownership with the maximization of the latter occurring at 90% in the year 2065. His findings are displayed in the table below.[89]

Figure 4 Homeownership in Malta as predicted by Camilleri



- **What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?**

In Malta the number of households in need is much higher than the public perception. According to the sources from the Social Housing Department inside the Housing Authority there were 2656 applicants on the waiting list (327 were already housed but they were requesting exchange) as at 31 October 2012.[90] Out of these applicants, 689 were prioritized due to different reasons varying from overcrowding, lack of sanitary facilities, prolonged stays at homeless institutions, social cases referred from agencies and disability.

Although still lower than the EU average, poverty among the Maltese is estimated to affect one in every five people. According to Eurostat, some

[88] I. Camilleri, 'Migration biggest factor in population growth', *The Times (Malta)*, 29 July 2011.
[89] Ibid. no. 34, 33.
[90] Housing Authority, *Monthly Return on Alternative Accommodation Applications*, Department of Social Housing, October 2012.

89,000 people, or 21.4% of the Maltese population, were at risk of poverty or were severely materially deprived in 2011, an increase of 1.1% over 2010. Those considered at risk of poverty in Malta, even taking into account all the social benefits they were eligible for out of public funds, amounted to 15.4% of the population, 0.1% less than in 2010. However, this marginal improvement was completely wiped out by a rise in the 'materially socially deprived' category, which in 2011 reached 6.3%, up from 5.7% registered the year before.[91]

The fact that poverty seemed to be on the rise was confirmed by YMCA[92] chairman Jean Paul Mifsud, who confirmed that throughout 2011, his organisation assisted twice as many homeless people as it had done in 2010, when comparing to the January-to-September quarters.[93] Leonid McKay, head of Caritas Malta's Community Outreach[94], said poverty tended to affect specific groups of people especially single parents with dependant children.[95] Poverty also tended to have a geographic dimension with the region in most apparent difficulty being that of the southern harbour region[96] where it was estimated that one out of every three children was at risk of poverty. This region fared worse also in other policy areas, namely unemployment and educational attainment.[97]

The EU defines people at risk of poverty as those living in a household with an equivalent disposable income below the risk-of-poverty threshold, which is set at 60% of the national median.[98] The sudden rise in the 'materially socially deprived' category is preoccupying because the computation of this figure involves the consideration of four out of nine deprivation items, amongst which there is the inability to afford to rent, mortgage or utility bills on time.

Economists, however, advise attention in the analysis of these statistics since the at-risk-of-poverty indicator does not measure wealth or poverty but low income in comparison to other residents and that it did not necessarily imply a low standard of living.[99] Such studies are also unable to take account of undeclared income. Malta, in fact, has a very negative record in relation to the 'shadow economy' with conservative estimates of the black market reaching a figure as high as 25.8% of the GDP.[100]

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[91] Eurostat, <http://europa.eu/rapid/press-release_STAT-12-171_en.htm>.
[92] An NGO that works exclusively with the homeless.
[93] S. Carabott, 'Poverty is on the increase', *The Times (Malta),* 23 January 2012.
[94] A branch within the NGO Caritas dedicated to the eradication of poverty and social exclusion.
[95] Ibid. no. 93.
[96] The district is composed of Valletta, Cottonera and the surrounding localities.
[97] Ibid. no. 93.
[98] Eurostat, retrieved on the 7 of January 2013 from: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:At-risk-of-poverty_threshold
[99] Ibid. no. 98.
[100] F. Schneider, *'Size and development of the Shadow Economy from 2003 to 2012: some new facts',* 2011.

There are no official figures or statistics regarding the specific number of immigrants benefiting from social housing, however, according to the abovementioned sources of the Social Housing Department, the prioritised number for social accommodation included 18 refugees.[101]

2.2. Issues of price and affordability

- **Prices and affordability:**
- **What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).**

In Malta one cannot readily provide a reasonable calculation of the rent to income ratio. This is because in many cases, rents from private landlords have not followed the market prices and, until recently, had been frozen at post-war levels. This situation becomes clearer upon an analysis of the results obtained in the Census on Population and Housing. On average, in 2005, households which rented the dwelling where they resided paid €719.78 per annum and most occupied dwellings were being rented at less than €465.87 per annum. In fact, 21,905 occupied dwellings, or 76.2% of rented occupied dwellings, fell in the latter category. On the other hand, only 13.9% of rented dwellings were being rented at €1,603.56 per annum or more. These rates become more revealing of the situation when compared to the average household gross income of €24,403 registered in 2007[102] and the minimum wage which currently stands at €8,160 annually (excluding allowances).[103] The current rate of unemployment is 6.9%.[104]

The problem was that rents negotiated decades earlier had not followed the index of inflation due to excessive government protection throughout the years. The same survey in fact reveals that 93.98% of all lease contracts entered into before 1946 were at €279.60 per annum or less; and similarly, lease contracts entered into before 1946 with the same rent price, represented 94.69% of all contracts signed with private landlords in the same period.[105] In total, 48.26% of all the premises rented before 1996 were rented at an annual €116.50 and less. With repairs not entitling the landlord to raise the rent by any significant amount, this situation also contributed to most of these properties falling into a state of neglect.

By comparing the EU-SILC results of 2005 as well as those of the 2005 Census the Report also outlined how 28.36% of those earning €13,980 p.a. or more were paying a rent between €2.33 and €233. Therefore, in certain cases the rent to income ratio was extremely favourable to the tenant, and

[101] Housing Authority, *Monthly Return on Alternative Accommodation Applications*, Department of Social Housing, October 2012.
[102] NSO, 2009.
[103] Eurostat, Last updated October 2012.
[104] Eurostat, Last updated November 2012.
[105] Ibid. no. 72.

this was bringing about injustice onto the underpaid landlord.

The situation was partly rectified by the introduction of the mild rent reforms of 1995. In fact the average rent paid by tenants who signed their rental contract with private landlords during the 1996 – 2006 period, i.e. after the amendments to the Rent Law, stood at €1,963.54 annually, which was 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 per year. A marked difference was also noticed in the rental cost for all properties irrespective of type of landlord: pre-1996 average stood at €214.88 whilst average rent paid on contracts signed between 1996-2005 stood at €1,338.73. When compared to private landlords, Government post-1995 rental prices were significantly lower on average, however they also registered an increase.

The definitive reforms were finally introduced in 2010 and a minimum ceiling of €185 per annum, unless the parties agreed otherwise, was imposed onto all residential property leased prior to the 1st of June 1995, unless the parties agreed otherwise. Moreover the new law also provides for an automatic increase in the value of the rent every three years by a proportion equal to the increase in the index of inflation - the first increase shall be made on the 1st January of 2013. The law clearly set out to gradually phase out those pre-1995 residential leases, specifically through a number of provisions that denied the right of automatic renewal to certain relatives and heirs. The 'security of tenure' for the tenant was ensured, however, under stricter and better-regulated provisions.

The EU-SILC reveals that in 2010, the average monthly rent on the main dwelling stood at €52. The average rent for households without dependent children was €43, while for those with dependent children it was higher by €35 per month. It also emerged that tenants had an average disposable income of €15,670, which was considerably lower than the €22,173 registered by households that owned their main dwelling. The same survey found out as well that housing costs, which include interest payments on mortgage, electricity, gas, house insurance, maintenance and rent added up to a monthly average of €161. In general, households with a lower disposable income had lower housing costs when compared to those that fell in the higher end of the disposable income groups but only 1,390 or 3% of households having mortgage or rent expenses had been in arrears.[106]

- **To what extent is home ownership attractive as an alternative to rental housing**

The preference of the Maltese has always lay in home ownership and figures keep showing that there was no abrupt shift in favour of another form of tenancy. There is no doubt that the present situation stems from the policy objectives, sustained by successive administrations to encourage people to

[106] NSO, 2012.

become owners of their residential properties. The recent reforms, however, have taken on the challenge of bringing 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.[107] A factor, which is also taken into consideration by the Ministry for Social Policy, is the appreciation in the value of the owned property, or the land upon which it was built, which is arguably rendering itself into a person's pension plan. This will always contribute to render mortgages more attractive than rent. The reforms, however, are expected to increase the property available for renting, which would in turn bring about a reduction in the value of rent payable. By thus leaving the tenant with more disposable income to enjoy a better quality of life whilst allowing him to plan for his and his family's future, rent would finally become a much more worthwhile consideration.

When dealing with mortgages one must also consider that further to the monthly payments, expenses accumulate due to the normal present 10% deposit anticipated, down from the 20% deposit which normally used to be requested in the earlier years.[108] Maltese Banks do not give 100% home loans.[109] This deposit, however, does not seem to constitute enough of a barrier since in certain cases parents come in to guarantee their children's loan. In addition to the down payment, one must add purchase expenses such as stamp duty plus notaries and survey fees but in this case favourable rates are made to apply for first time buyers.[110]

Camilleri notes that rental has become increasingly attractive over the past years. In fact, increases from 1999 up to 2003 for affordable property were minimal[111] and this indicates that it might be indeed cheaper to rent out an affordable property since the rental payments could be substantially less than the mortgage payments. Having said this, one also has to keep in mind that this differential has been reduced due to the low mortgage interest era that followed the global recession. Camilleri illustrates how the renting of a three-bedroom apartment is currently equivalent to 75% of the necessary mortgage payments as against the 100% in 1997.[112]

When analysing this data one has to keep in mind that children leave their parents' house relatively late. Women in Malta become independent at an average age of over 29 whilst men leave the parental home even later at an average age of around 31. Both genders registered amongst the highest rates in Europe.[113] The reason for this is that marriage in Malta occurs relatively late. For brides as well as grooms the most frequent age of marriage was between 25 and 29 years (43.5% and 40.7% respectively).

[107] Ibid. no. 105.
[108] Ibid. no. 34.
[109] Personal correspondence with Dr. Mariosa Vella Cardona, Assistant Secretary General at Malta Bankers' Association.
[110] Further reference to this will be made below under the heading 'Taxation'.
[111] BICC, *State of the Construction Industry Report, BICC*, Floriana (2005).
[112] Ibid. no. 34.
[113] Eurostat, *Youth in Europe: A statistical portrait,* (Luxembourg: Publications Office of the European Union, 2009), 30.

The second most popular for brides was between 20 and 24 years with 22.4% whilst for grooms it was between 30 to 34 years with 28.5%.[114] This leads one to the fair assumption that before deciding to purchase a house young people would have already accumulated some capital.

- **What were the effects of the crisis since 2007?**

In Malta the crisis had a generally positive effect on housing since it increased affordability. The global credit crunch seemed to benefit particularly first-time homeowners since mortgage rates were lowered simultaneously with the decline in property values.[115] This was confirmed by the financial results of one of the country's two main banks that in 2012 registered an increase of €119.5 million in loans and advances over the previous year. This rise was attributed to the increasing demand for mortgages on the part of first-time buyers.[116]

The Ministry of Finance had noted these patterns in an article which aimed to estimate the price to income ratio (PIR).[117] The PIR is the basic affordability measure for housing in a given area. This research found out that residential prices had increased at a faster rate than income levels between 2002 and 2006, which the paper considered to be an indication of overvaluation in property prices. The onset of the international financial crisis in 2007 caused a downward movement in the PIR and the decline in this ratio was held to be the result of a combination of falling house prices and rising incomes. The article calculated that, assuming a moderate per capita income growth of two percent per annum and assuming an equilibrium PIR equivalent to 2002 levels, the gap from equilibrium in respect of residential property prices in 2012 hovered between 20 and 30%. Of course this gap could be closed gradually if income levels rose faster than property prices, other things remaining equal.

2.3. Tenancy contracts and investment

- **Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?**
- **In particular: What were the effects of the crisis since 2007?**

The Ministry of Finance[118] has revealed that in 2010 the economy showed signs of recovery after the period of downturn experience in 2009. The statistics showed that commercial property prices increased between 2006 and 2008, while the rent index moved in the opposite direction. As a result,

[114] NSO, *Demographic Review 2010*, 71.
[115] Ibid. no. 34.
[116] J. Ripard, 'BoV's record profits: €110.7m in pre-tax profits', *The Times (Malta)*, 27 October 2012.
[117] Economic Policy Division, Ministry of Finance, *Residential and commercial property prices in Malta*, *The Times (Malta)*, 30 August 2011.
[118] Ibid. no. 117.

the rental yield went down over the period preceding the 2009 downturn. The 2009 environment in Malta may have reduced demand for commercial property with the price of commercial property almost reverting to the 2006 level. In the meantime the rent index recovered, possibly reflecting the substitution of demand for the purchase of commercial property with the demand for rent. The rental yields consequently increased. As the economy recovered in 2010, the demand for both owning and renting a commercial property recovered while national counts data suggest that construction activity remained subdued. As a result both the price and the rental index increased.

The net return for landowners was estimated by Camilleri to be at 3%. This figure is constituted by the deduction of an estimated 0.65% maintenance costs from the average residential rental capitalization rate of 3.65%.[119] The fluctuations of the net rental return in the areas of Sliema, St. Julians and St. Paul's Bay over the past years is contained in Table D (below).

Table D Rental values for various localities as a percentage of property market value[120]

Locality	Rental value as % of market value - 1997	Rental value as % of market value - 2004	Rental value as % of market value - 2007
Bugibba - internal	8	3.6	3.25
Qawra - internal	8.5	4.3	2.75
Sliema front	5.5	2.0	3.5
Sliema inner	5.5	4.1	4.5
St. Julians	7.5	3.5	3.75
Swieqi	7.0	4.15	4.175

- **To what extent are tenancy contracts relevant to professional and institutional investors?**
- **In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?**
- **Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?**

[119] Ibid. 34. The same author also estimates the landlord's capital return on the value of the property; which was previously said to be at 7.5% p.a. but appears to have now fallen to 3.25% p.a. following the slowdown in the construction industry.
[120] DHI Periti in-house valuations in Camilleri (2011).

No such investments currently exist in Malta, however, the possibility of establishing a Property Fund was explored by the Rent Reform Working Group in its 2008 White Paper. In identifying ways though which vacant dwellings could be rendered productive, the paper proposes the establishment of partnerships between the state and the private sector. One of the proposals moved forward the idea of the State establishing a Trust or Property Fund within which the dwelling would be 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. Another option involving the setting up of a public-private partnership would be that of a Property Fund wherein the State would provide land at its real value as part of its shareholding, with the private sector providing the capital to develop the property. The paper however leaves several questions open regarding the distribution of asset value and the possible element of housing subsidy financed by the State.[121] Such initiatives would most probably be regulated by the Investment Services Act (Chapter 370 of the Laws of Malta).

2.4. Other economic factors

- **What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?**

In the absence of specific legislation the landlord may either opt to insure both the building as well as the home contents and then pass on the relative cost of the policy to the tenant, or else choose to insure the building himself and leave it up to the tenant to insure the contents of the premises. In any case a common home insurance policy would not cover any liability if the property were being rented out. The policies that are offered to landlords are the 'Fire and Special Perils' (FSP), which is meant to cover damage to the property in general (fire, explosion, smoke, escape of water, storm, impact by vehicle etc.), and the 'Public Liability Policy' that covers liabilities for which the insured would be legally liable to pay third parties (e.g. fire spreading to adjacent premises). Neither of the parties is obliged to insure the premises although where the landlord would have failed to do so it might be expedient for the tenant to open a policy himself in order to put his mind at rest.[122]

Landlords may also opt for a Rent Guarantee insurance policy that covers loss of rent up to a maximum period (usually 12 months) if the building becomes uninhabitable due to any insurable loss. The same policy would cover the landlord in case of default on the part of the tenant, including any judicial fees incurred in his eviction. A tenant might similarly opt for a policy

[121] Ibid. no. 105.

[122] Sections 1561 to 1563 of the Civil Code lay down that the lessee is liable for any deterioration or damage which would have occurred during his enjoyment unless he would be capable of proving that they did not occur due to any fault of his own. The lessee would similarly be liable for any damages caused by fire unless he could prove his extraneousness to the event, a fortuitous or irresistible force or its origination in a neighbouring tenement. Moreover, the lessee would be liable for any deterioration or damage to which any members of his family or any of his guests or sublessees would have been responsible for.

that covered his rent payments in the case that any unforeseeable event prevented him from fulfilling his legal obligations.

Maltese insurance business is governed by the Insurance Business Act and the Insurance Intermediaries Act (Chapters 403 and 487 of the Laws of Malta respectively). There were 52 insurance companies registered in Malta in 2010.

- **What is the role of estate agents? Are their performance and fees regarded as fair and efficient?**

The sector of estate agencies is not regulated in Malta and the only representative body for the category is the Federation of Estate Agents (FEA). Estate agents are simply perceived as intermediaries in a business transaction by their Maltese clients,[123] however, their role in the property boom that preceded Malta's entry into the European Union was active and they are known to have pushed the asking prices up, thus creating difficulties for those who were buying property for the first time.[124]

A recent study on immigrants and housing has additionally revealed that, in finding a property, the tenants' experience with the Estate Agents appears to be "slightly more positive than with property owners".[125] It has also emerged that European nationals are more likely to use the services of an estate agent than migrants from Sub-Saharan Africa, North Africa and the Middle East. The study also reported cases where tenants would be deterred from using the services of estate agents because of the fees and commissions involved.[126]

2.5. Effects of the current crisis

- **Has mortgage credit been restricted? What are the effects for renting?**

The patterns of mortgage lending remained steady even during the years of economic downturn since interest rates were adjusted to the new rules of the game. Malta's banking sector is highly exposed to the mortgage market which is estimated to make up the bulk of the island's local banking business.[127] Whilst consumer credit was reported to have dipped abruptly, as did loans to the real estate activities sector and the construction industry, mortgages did not. According to the Inflation Report published in 2011, household mortgages increased significantly during 2010 and remained the

[123] National Commission for the Promotion of Equality (NCPE), "I'm Not Racist, But...", December 2012, 59. Retrieved online from: <https://secure3.gov.mt/socialpolicy/admin/contentlibrary/Uploads/MediaFile/imnrb_research%281%29.pdf>
[124] D. J. Micallef, *Housing policies in transition*, 2008.
[125] Ibid. no. 123, 59.
[126] Ibid. no. 123.
[127] I. Camilleri, 'Mortgage rules to be tightened: Banks will bear costs', *The Times (Malta)*, 13 June 2012.

largest single category of bank borrowing by residents.[128] Until the second quarter of 2012 growth of loans to the non-bank private sector had been once again almost entirely driven by lending to households – mostly to finance house purchases. The 2011 Annual Report underlined that during the previous three years mortgage lending had expanded at an average annual growth of 6%, as against the much weaker 1.4% per annum recorded by consumer credit.[129] These figures were confirmed by the most recent Quarterly Review that reported an expansion rate of 8.1% for mortgage lending, down from 8.5% in December 2011.[130] The Annual Report also noted that at the end of 2011 total household debt as a percentage of GDP increased to 56% from 54.5%, but remained below the level recorded in the euro area (66%). With household income rising in line with growth in outstanding debt, the interest burden on households remained stable in 2011.

These sustained figures were owed to the domestic banks' timely response to the demand for loans with lower lending rates. In fact the interest rates on mortgages had been increasingly on the rise with average rates going up from 4.47% in 2003 to 5.39% in 2007. The rates plummeted to 4% in 2008 and went further down by another fifty base points the following year. In 2010 and 2011 the average interest rate stabilized at 3.6%.[131]

The same could not be said of enterprises within the construction sector, which continued to face more difficult business conditions. The growth rate in gross value added of the construction and real estate industries remained positive during the period 2009 to 2011, but the sector performed well below the average of the economy. The property prices appeared to have remained stable, with the average year-on-year quarterly growth rates in the Central Bank of Malta's House Price Index slightly positive over the year, however, sources such as the Central Bank of Malta's Real Estate Market Survey (REMS) indicated that the volume of property sales declined during 2011. The subdued conditions in the construction and real estate sectors is also evidenced by the number of building permits issued by Malta Environments and Planning Authority (MEPA), which is a leading indicator of future activity. These fell by 11% compared with 2010. These factors have probably brought prices closer to their sustainable values and reduced the extent of overvaluation in house prices. In view of slower business conditions in the construction and real estate sector, banks have become more cautious in their lending activity vis-à-vis this industry. In fact, in 2011 lending by core domestic banks to construction and real estate activities rose by a marginal 0.7%, while their exposure to the construction and real estate sector continued to account for almost one-third of resident corporate loans.

- **Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?**

[128] Economic Policy Department, *Inflation Report March 2011.*
[129] Central Bank of Malta, Annual Report 2011.
[130] Central Bank of Malta, *Quarterly Review* 45 (2012) No. 2.
[131] Central Bank of Malta, *Financial Stability Report 2011*.

As said before, the crisis did not affect the mortgage market, however, through the downward correction of property prices it certainly made rent more profitable for landlords. The numbers of the Housing Authority do reveal that 64 persons are in need of social housing fall under the category of homelessness due to eviction.[132] Although they are not split into official figures this group comprises people who were either forced to leave their properties because of inability to pay rent, or because of seizure of their properties by the banks following their failure to meet a mortgage payment. Although the number is not alarmingly high it sheds light on a reality which will very rarely emerge in public since they carry with them great stigma.

- **Has new housing or housing-related legislation been introduced in response to the crisis?**

No specific legislation was introduced in response to the crisis. However, 2010 saw the finalisation of the rent law revisions that had long been in the pipeline. Although these were not enacted as a direct response to the economic downturn one can argue that the reforms could not have been timelier. The gradual bringing into the market of these vacant properties secured rental as an alternative to ownership to households that were more exposed to economic vulnerability.

Summary table 2 Economic factors

	Landlord	Tenant
Crisis effects	+	
Return on investment	+	
Affordability		+
Local differences (in need, RoI and affordability)	+	+
Insurance		

2.6. Urban and social aspects of the housing situation

- **What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)**

On a closer analysis of the districts, as reported by the 2005 Census on Population and Housing, one finds out that the proportions of ownership and rent are not evenly distributed across the whole territory. Compared to the figures mentioned in Table 1, the 2005 district-by-district statistics show that whilst certain areas registered much more elevated percentages of home

[132] Housing Authority, *Monthly Return on Alternative Accommodation Applications*, Department of Social Housing, October 2012.

ownership others had a considerably higher proportion of rented dwellings. The Southern Harbour was in fact the district with the highest percentage of rented dwellings. This is probably due to the fact that it is a historic area containing relatively old dwellings. This district alone, in fact, used to house the majority of the population until the Second World War when private rental was the dominant tenure system. Although the most prevalent type of tenure was home ownership, the rate was 13.9 percentage points lower than the national average of 75.2%. Rental, on the other hand, was up by 14.7%. Predictably, the location with the most contrasting figures was the capital city, Valletta, with a percentage as high as 75.3 of rented dwellings. The other ancient cities surrounding the port also registered similar rates with Senglea and Cospicua recording 68.3 and 68.2% rented dwellings respectively. The rental figures for Vittoriosa (62.9%) and Floriana (61.4%) were slightly lower. It seems like only recently have purchasers set their eyes back onto the walled cities mostly for reasons of investment. Most of these dwellings would require substantial repairs and are not ready for immediate use, therefore the vacancy rate remains high.

Always according to the same Census, the other districts keep much closer to the average albeit four out of the other five districts registered home ownership rates which were superior to the national average. The Northern Harbour recorded a relatively low 71.1% owned dwellings, however, the average was certainly affected by the 59.8% rented dwellings in Hamrun, which as a suburb of Valletta, followed the trend of the Southern Harbour. Within this district, Sliema also recorded a relatively high (31.8%) rental rate. This was probably owed to the prestige that is associated with property in this area. In fact Sliema, along with St. Julians, is reputedly the most expensive place to search for apartments, with typically high peaks when it comes to seafront properties.

The district that shows the most atypical results, however, is Gozo and Comino (the statistics mainly count for Gozo since Comino is inhabited by just one household). On the sister island home ownership was as high as 88.54% with rented dwellings at a meagre 6.64%. This is probably due to the rural character of the island and it indicates the complete detachment of Gozo from the trends of the main island. In Gozo there is an undisputed drive towards owning property and it is also a very common occurrence for households to own a summer residence.

A lifestyle survey conducted by NSO in 2003 indicated that when Maltese moved out of their first home they tended to do so out of the Southern Harbour and South-eastern districts to the Northern Harbour. Many who sell their homes and move out in search of modern and more spacious accommodations tend to keep their first homes as 'second homes'. Some families donate[133] a flat or maisonette to their adult son or daughter to help them cope with the high price of housing. The Households Migration Survey by the then Planning Authority (now MEPA) showed that the internal migration was taking place due to: marriage; a change in household size (need for more

[133] In most cases the donation transfers full ownership.

space); the attractiveness of the neighbourhood; being close to the countryside, away from noise and improvement in the type of home are highlighted as being the major variables affecting decision to move out of the old city centres. Moreover the majority of those moved out of older communities were between the age of 20 and 49 which is an indication that those who are financially able to move out, are moving out and those who either have strong attachment to the community or financially unable to move out or both are left – which usually are the elderly with poor financial situations. Higher-paying jobs, particularly those in the services industry, have moved away from the Grand Harbour Region, and could be an important factor underpinning the growing share of vacant housing.[134]

Therefore besides having the largest percentages of rented housing, the Southern Harbour also holds the highest concentration of vacant dwellings due to the people who move out in search of better quality accommodation. These two factors make this area particularly susceptible to gentrification by the local people as well as by foreigners.[135] The types of tenures have had a limited impact on the distribution of the different earning classes in the past since the considerable household migration into Government Housing Estates formed heterogeneous communities.[136] However, certain households living in rented government accommodation have not escaped social marginalization.

- **Are the different types of housing regarded as contributing to specific, mostly critical, "socio-urban" phenomena, e.g. ghettoization and gentrification**

Studies seem to confirm that there is a gap between the local and the immigrant communities. Very few migrants have developed any form of meaningful relationship with the Maltese and neither migrants nor Maltese nationals participate much in intercultural activities.[137] This seems to indicate that ghettoization is in fact present in Malta.

Cardona questions the very concept of segregated and ghettoized open centres[138] which certainly do not facilitate social inclusion. The ghettoization of the immigrants occurs in three open centres and their impact on the towns which host them has been strong. This concentration of immigrants in a very small number of places seems to be leading to hostility towards immigrants in the villages around the open centres who feel that the social life has been disrupted.[139] In fact, in a survey conducted in 2009 the Maltese reported the

[134] Ibid. no. 32, 199.
[135] Ibid. no. 32, 198.
[136] D. Lockhart, *Public housing initiatives in Malta since 1955*, "Scottish geographical Magazine", 1987:103(1).
[137] C. Calleja, 'Maltese people, immigrants don't mix, studies have shown', *The Times (Malta)*, 11 August 2011.
[138] Further reference to open centres is made above under the heading 'The current housing situation'.
[139] M. Cardona, *You will always have the poor among you: A report about poverty in Malta*, (Malta: Jesuit Centre for the Faith and Justice, 2010), 65.

highest rate of concern over immigration amongst the citizens of all the EU member states (87%).[140] Problems seem to subsist even after the immigrants manage to get a job and leave the open centre. In fact the amount of rent that they would be able to afford would lead them to depressed areas which do not alleviate the burden of their social seclusion.

This phenomenon is also diffused amongst the Maltese. Cardona illustrates situations of ghettoization which occur in government-built social housing blocks. Very often the units inside these buildings would be allocated to people facing economic difficulties and as a matter of fact the government would have formed a ghetto of social problems in one place.[141] This happens in the Grand Harbour Region which scores low regarding the social attractiveness of the community because of its status as a relatively socially deprived region. Several housing estates built therein have resulted in the relocation of relatively destitute people to the area, thereby worsening the social stigma and encouraging out migration.[142]

Another study aimed at identifying such clusters found out that the country's most intense concentrations of deprivation lie in the tourist resort of Qawra, which exhibits 16 times the national poverty standard. McKay attributes this to the comparatively low rental costs which attract the subjects of his study, lone parents on social welfare assistance. Together with Qawra, Valletta also tops the list that focuses on separated females, with 15 times the national standard poverty rate, while the social housing estates of Pembroke and the urban sprawl of Marsascala exhibit pockets at high risk of poverty clustering. Valletta also has the highest concentration of single, unmarried parents on welfare benefits, with the most significant concentration in one particular area showing a poverty incidence of more than 17 times the national standard rate. McKay confirms that poverty clusters are either concentrated in social housing, rented estates or in urban sprawl where housing rent is available and affordable. The same study indicated that these individuals maintained themselves with part-time, or sometimes undeclared, precarious jobs closer to home.[143]

Another problem in Malta relates to the conversion of former boathouses[144] into homes. McKay found that the locality with the main incidence of this is Xghajra. These give shelter to the majority of what are considered squatters since the boathouses or the permanent structures which they inhabit would have been built abusively. The government has made significant efforts in reducing the number of these 'illegal' occupants and in 2010 up to 778 cases of eviction and inspections were reported.[145]

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[140] I. Camilleri, 'Malta's concern over migration highest in EU', *The Times (Malta)*, 20 January 2009.
[141] Ibid. no. 141.
[142] B. Mallia, *The Causes and the Nature of the Voluminous Vacant Housing Stock in the Maltese Islands*, a student research paper, Comparative Housing Policy class, University of Malta, 2004.
[143] F. Galea Debono, 'Poverty runs deep in Qawra, Ħamrun: Poverty areas breed crime', *The Times (Malta)*, 19 March 2012.
[144] Buildings intended for the storage of boats.
[145] 'Tenfold rise in eviction of squatters', *The Times (Malta),* 9 February 2011.

- **Do phenomena of squatting exist? What are their – legal and real world – consequences?**

There also seems to be a number of people who take up habitation in abandoned buildings in Valletta. In the data gathered by Vakili-Zad in 2007 there resulted to be at least three such known cases.[146]

Squatting is expressly prohibited by the Maltese Criminal Code.[147] The relevant provisions are contained in Articles 330 and 338(w) that prohibit any form illegal entry into a house[148] and the leading of an "idle and vagrant life" respectively. In the first case the offender would be liable to imprisonment for a term not exceeding three months or to a fine; if he would have been previously convicted for the second case that was mentioned the punishment would, however, increase to imprisonment for a term from five to eighteen months. Being listed amongst the contraventions, the punishment contemplated for the offence under 338(w) may vary from a period of detention to a fine (*ammenda*) or a simple reprimand or admonition.[149]

If any such cases are reported or found out by the Police the persons involved would be directed to either of the two main shelters that offer their voluntary services in Malta: YMCA or "Fondazzjoni Suret il-Bniedem". These non-government organizations offer temporary care until the residents would have regained sufficient economic and psychological stability to settle into autonomous housing.[150]

2.7. Social aspects

- **What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a "rental trap"?) In particular: Is only home ownership regarded as a safe protection after retirement?**
- **What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatised apartments in former Eastern Europe not feeling and behaving as full owners)**

The high rate of home ownership in Malta is also affected by the favourable public opinion towards this type of tenancy. Instances when the price of land or of buildings fell are unknown in Maltese economic history. Consequently, home-ownership is expensive and at times unaffordable and residential dwellings have become endowed with social esteem. Their size and look

[146] Ibid. no. 32, 229.
[147] Chapter 9 of the Laws of Malta.
[148] The law specifically mentions entry through breaking, the obtainment of a false key or any other instrument adapted for opening or removing fastenings and scaling.
[149] Criminal Code, Article 7.
[150] Interview with *Therese Cini* Sarreo, Community Worker at YMCA Malta, on 8 August 2013.

have become a social status symbol which often indicates wealth, power and prestige.[151] This works to the detriment of rent which is often associated with the less affluent classes. The historic trend in the ongoing rise of property prices has also contributed to the perception that property is the surest area of investment which could not only provide protection in old age, but also a valuable asset in the case of sudden unemployment. Alternative outlets for investment appeared with the establishment of the Malta Stock Exchange in the early nineties, however, the trend had already been set for households to look at property as their main source of investment. Vakili-Zad associates this to the affinity that the home ownership culture found with Maltese traditional culture of centrality of the family and home.[152] Another aspect of the local mentality is in fact that of buying property and keeping it for their children or grand children. Camilleri also comments on this aspect of good family ties that entails the hoarding of property for their offspring.[153]

Besides being associated with lower end of the salary scale letting is additionally viewed with a certain degree of scepticism due to the fact that not being in possession of any assets, households that live in rented premises are thought to be less financially secure than those that own property. The Housing Authority itself declares the promotion of homeownership as one of its primary objectives.[154]

Summary table 3 Urban and social aspects

	Home ownership	Renting with a public task	Renting without a public task	Etc.
Dominant public opinion	Very favourably	Very unfavourably	Unfavourably	
Tenant opinion	The target in the long run	Only if in social distress	A temporary bridge to homeownership	
Contribution to gentrification?	Principal factor	Significant factor	Insignificant factor	
Contribution to ghettoization?	Insignificant factor	Principal factor	Significant factor	
Squatting[1]				

[1] The number of known cases of squatting as well as the limited information available on this phenomenon do not allow such an in-depth analysis. A main factor contributing to squatting may be the ignorance of any agencies and organizations that provide shelter to the homeless or else the reticence to resort to such help. Renting with a public task via a temporary stay at one of the non-profit shelters, therefore, seems to be the only possible solution for such cases.

[151] Ibid. 21.
[152] Ibid. 32, 202.
[153] Ibid. 34, 48.
[154] Housing Authority, accessed from: <http://www.housingauthority.com.mt/EN/content/115>

3. Housing policies and related policies

3.1. Introduction

- **How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?**

The Maltese system of welfare seems to bring together characteristics of both the Social Democratic and the Liberal welfare models. Despite spending comparatively less than other welfare states on social protection various aspects of welfare in Malta are characterised by decommodification, or independence on the part of individuals from the market forces through State welfare. These include health, education and various universal benefits, including pensions. On the other hand, Malta also has various means-tested benefits, a private health-care sector alongside the universal healthcare system, and the existence of private school system alongside the state school system. The housing sector had long been a living example of social democrat ideology, however it has recently been reformed and is now reflecting much more liberal principles.[155]

Malta has a generous and in some cases comprehensive social protection system and as said earlier, Maltese are amongst the best housed in the Mediterranean and Southern Europe due to the British influence on certain policies. The Government remains the largest employer in Malta and there is a certain paternalistic element in the provision of welfare to its citizens.[156] Social security in Malta in fact represents a large portion of government expenditure and through targeting it has been able to provide additional assistance to specific groups of people. The numbers confirm this since in 2010, expenditure on Social Protection as a percentage of the GDP was 19.8%. Out of this amount €10,001,388 were spent on Housing of which €93,774 on Housing Subsidies (benefits issued by the Ministry including subsidies on the interest paid by members of the public on loans obtained to purchase housing units and subsidies on rent) and €9,907,614 on Housing Authority Subsidies (similar subsidies on the interest this time on loans obtained to purchase housing units from the Authority and to build on land leased from the authority). The Housing Authority also subsidises the cost of housing units, plots and ground rents. These two categories of subsidies account for 0.01 and 0.81% of the total Social Protection expenditure respectively.[157]

Another aspect of social protection in Malta is the crucial role that is played by the family. This is characteristic of most Southern European countries. It

[155] M. Briguglio & I. Bugeja, *Exploring Malta's Welfare Model*, Bank of Valletta Review, 2001, 43.
[156] G. Pirotta, *A New Creation or an Image and Likeness? The Maltese Experience of Establishing Local Government in a Centralized Mirco-State*, Public Organisation Review (2001) 1.
[157] NSO, *Social Protection: Malta and the EU 2011* (Data 2006-2010), 2012.

appears, however, that this element is giving way to advancing modernization, urbanization and individualization trends which are the hallmarks of market economy. As Malta becomes more modernized, family and community ties tend to break and the line of responsibility and protection is gradually shifting further away from the family to the Church, NGOs and ultimately the State.[158] Therefore cases of inadequate housing are slowly emerging in the media, contrary to the public perception that poverty and homelessness do not exist. New policies are being targeted for these specific cases.

- **What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)**

Although Malta achieved much in securing accessible, affordable and adequate housing to persons in disadvantaged and low income groups there is no right to housing enshrined in the Constitution or which is guaranteed by the law. Provisions relating to housing are contained in Section 37 of the Constitution, which ensures protection against dispossession of property or deprivation of rights over property, and in various other laws such as the Housing Act and the Housing Authority Act which promote housing and home ownership.

Malta remains nonetheless a signatory to the many EU initiated documents regarding rights of citizenship and the prevention of socio-economic exclusion. In fact, in 2008 the Rent Reform Working Group based its White Paper on the European Social Charter, the First Joint Report by the Commission and the Council on social inclusion, the NICE European Council for common objectives for the fight against exclusion, Article 34 of the EU's Charter of Fundamental Rights and pertinent judgments by the European Court of Justice. Malta also ratified and acceded the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the 13th September 1990.

3.2. Governmental actors

- **Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?**
- **Which level(s) of government is/are responsible for designing which housing policy (instruments)?**
- **Which level(s) of government is/are responsible for which housing laws and policies?**

In Malta Housing is a purely national matter and the body responsible for developing and implementing housing policy is the Housing Authority. The Authority was established on 11th October 1976, by an Act in Parliament, known as The Housing Authority Act.[159] The Housing Authority typically falls

[158] Ibid. no. 32, 113.
[159] Act XV of 1976.

under the Ministry responsible for the social policy.[160] Previously, the Department of Social Accommodation and the Department of Housing Construction and Maintenance were separate from the Authority, however, in 2007 it was decided to adjoin them to the main body. The Housing Authority therefore became responsible for the provision of alternative accommodation to those who lack sustainable housing. The Authority keeps a waiting list of applicants who are interested either to buy or rent government owned dwellings, or private dwellings which are made available through the various schemes. To qualify for a Government unit, an applicant should not possess assets, including property, exceeding €28,000 and should not have an annual gross income exceeding €8,200 in the case of single persons and €10,500, plus an additional €700 per child, in the case of married couples and single or separated parents. The construction of new housing and structural repair in government owned tenements also become the responsibility of the Housing Authority. With the exception of those living in Joint Office units, all tenants living in government owned properties are entitled to its services.

The Authority works very closely with the Government Property Department which was created back in 1961 in order to organize under one roof the main agencies concerned with the administration of government immovable property. The aim of creating such a new structure was to manage the leasing of property, as well as the acquisition of private property for a public purpose under the auspices of the Land Acquisition Ordinance. Till this day the department's declared mission is to promote and maintain the highest and best use of Government's immovable estate and to ensure an equitable process for the acquisition of property that may be required for a public purpose. This department is also responsible for disposing of Government-owned immovable property and administering ex-Church property which was transferred to the State through the 1991 Church/State Agreement.

Within the same Government Property Department there are the Land Department, the Estate Management Department and the Joint Office. The Land Department is the legal aspect of government property management. This means that after the Estate Management Department or Joint Office would have decided on the best possible use of a particular property, the issue would be taken over by the Land Department for the actual disposal of the property under the procedures permitted in the Disposal of Government Land Act. The agency issues tenders, publishes and awards the disposal of government properties. Following this disposal through lease agreements and contracts, the Land Department is then responsible for the follow-up and enforcement of any conditions imposed on the transferee including the proper maintenance of the property. It is also entrusted with the finalisation of contracts including those related to the acquisition of private property for a public purpose under the Auspices of the Land Acquisition (Public Purpose) Ordinance. Expropriation of private property remains a primary task of the Land Department which enables government to carry out major infrastructure works and other project for the benefit of society.

[160] Since the 13 of March 2013.

The Estate Management Department, on the other hand, was formed to manage this vast portfolio of property in a more professional way. It is in fact a body responsible for providing quality property-related advice and services and improve property operation within the department. It is also responsible for the restitution or sale of property to private owners and leasing or transfer of government owned property to government-owned entities such as Enemalta (a public corporation with a monopoly on electricity supply) and Air Malta (the national airline). The Joint Office, as explained in more detail above, is the agency set up by the Church and the State in order to administer the property that had passed into the hands of the government following their agreement in 1991.

The other governmental body, which is involved in the implementation of the policies associated to the issue of housing, is the Malta Environmental and Planning Authority (MEPA). The MEPA was formed in 1992 and entrusted with the mandate of promoting 'proper planning and sustainable development'. One of the important responsibilities of the agency is issuing permission for the construction of all kinds of property, including residential dwellings.

No regional or local level is involved in either the designing of the policies or in the allocation of property to applicants however various mayors, councilors and parish priests do act as intermediaries between the needy cases and the Housing Authority. Due to the closeness of certain communities especially in rural towns and villages, as well as the keen involvement of the Church in the wellbeing of the congregation, both Local Councils as well as Parishes are very important links between the ill-housed and the active hands of government. Recently local councils have also been delegated the responsibility of collecting rents due on leased government properties.

3.3. Housing policies

- **What are the main functions and objectives of housing policies pursued at different levels of governance?**
- **In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?**

Besides the housing of low-income persons and vulnerable groups, the main thrust of the housing authority is manifestly in the promotion of home ownership. The authority is active as well in subsidizing the adaptation and repair of dwellings, stimulating the rental market and the use of vacant housing stock and increasing the accessibility of residential premises. In acknowledging that certain individuals and households need more than just a roof it also provides sheltered housing for target groups and encourages collaboration between private and non-governmental enterprises in accessing cheaper land for housing and improving the maintenance of the social housing stock.

The authority liaises as well with these social agencies and NGOs that provide full residential care and assist in the refurbishment or construction of the dwellings through which these organizations operate and provide service. The authority's overall budget is €200,000 and it supports around 17 NGOs. It grants an annual sum for rental subsidy of a house in the case of Caritas and allocates several other sums for the refurbishment and finishing works of houses apartments and private rooms. Besides those grants the Housing Authority also contributed financially in the installation of lifts and bathrooms in several other premises especially with organizations that deal with persons with disabilities.[161]

- **Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?**

In terms of policy, the government took the decision not to erect any more buildings for purposes of social housing. It would, instead, start placing applicants into privately owned property through the scheme known as the *Skema Kiri*. This was of course a decision that stemmed from the current context of the domestic property market explained above. First of all, this meant activating the rental market through the filling up of vacant dwellings, which was a declared priority of the Ministry.[162] Property-owners would in fact be given the opportunity to generate money through the renting out of their vacant properties. This policy would also mean that the government would no longer have to embark on projects that would entail the development of virgin land especially since the trends are strongly pointing towards conservation of the green areas.

Other initiatives by the government to intervene in the housing market are also hoping to impact vacant dwellings. One is a change introduced in the capital gains tax (CGT), and the other is the Housing Authority's decision to encourage landlords to sell to the Authority their vacant units. The first initiative targeted the resale of property by incentivizing owners to retransfer vacant property within a reasonably short time of the sale. Under the new provisions, the reseller is in fact given the possibility, within a time window of seven years from the date of purchase[163], to opt for a rate of 12% on the total price of resale instead of the 35% CGT on profit. This option is given since in some cases the new method would return higher values. In practice, if for instance a property is bought for €50,000 but sold two years later for €60,000, the old system meant that the CGT amounted to €3,500 (35% x €10,000 profit). The new system, however, ignores the gain or profit made but instead, imposes a flat rate tax of 12% on the sale proceeds, regardless of the profit. In this example, the new and higher tax will be €7,200 (12% x €60,000) i.e. an increase in tax of €3,700.

[161] Malta Housing Authority: Supported Housing, <http://www.housingauthority.com.mt/EN/content/24/Supported%20Housing>

[162] 'Families get housing help', *The Times (Malta)*, 12 March 2012.

[163] In the 2013 Budget Speech, delivered on the 28th November 2012, it was proposed that this time window be extended to twelve years.

As soon as seven years elapse from the date of purchase the taxation rate is fixed at 12% of the value of the property. This regime had been strongly opposed by the property owners since it inevitably brought unfavourable consequences on them. Due to the abrupt slow down of the property market the Malta Developers Association has recently started exerting pressure on the government to have this seven-year time window extended further.[164]

The second initiative by the Housing Authority was called 'urban regeneration scheme' and it was launched in 2006. This scheme, for which the authority allocated Lm 3 million, was mainly intended to buy existing and older housing in urban core areas, which could then be redeveloped and eventually allocated under shared ownership, sheltered housing, or social housing for rent. The aim of this scheme was therefore three-pronged: restoring old dwellings in economically depressed areas of Valletta and the three cities whilst reducing vacant dwellings and providing social housing.[165] The criteria that were used to assess the applications submitted were or course the value for money of the property in question, its location and the specific needs of the authority's clients. The Joint Office itself transferred vacant or substandard units to be rehabilitated under the Urban Regeneration Scheme by the Housing Authority, utilizing funds provided by the European Union for this purpose.[166] Vakili-Zad moves forward the critique that, despite being a very appropriate initiative, the government ought to have used the funds on rehabilitating government owned vacant dwellings rather than those owned by the private sector since this move might have had the unintended consequence of placing additional demand for the housing market and result in a further increase of the price of housing.[167] The Housing Authority's decision, however, seems to have been motivated by the fear that more houses of character would be dropped down in favour of the construction of apartments.

This initiative was further supported by a more recent scheme that will pave the way for abandoned buildings in village cores to be restored. This initiative targeted buildings in urban core areas which fell into a derelict state due to disagreements among the multiple heirs regarding their use. Tax exemptions in the case of transfer to one person are incentivising the heirs to assign the responsibility for restoration to the person who would consolidate the ownership. Similar schemes which are being launched include a 20% refund of restoration expenses, up to a maximum of €5,000, for property owners. People restoring to rent out or sell their property will also benefit from tax incentives.[168]

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[164] '*Developers want tax amendments without waiting for Budget approval'*, *The Times (Malta)*, 15 October 2012.
[165] S. Pace, 'Urban regeneration scheme to boost supply of affordable housing', *The Sunday Times (Malta)*, 2 April 2006.
[166] Ministry for Justice and Home Affairs (2006) *Annual Reports of Government Departments: Government Property Division – Joint Office.*
[167] Ibid. no. 32, 204.
[168] 'New scheme aims to overcome the problem of splitting heirs', *The Times (Malta)*, 17 April 2012.

- **Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc)?**

None of the housing policies in Malta are currently targeted at a specific ethnic or racial group. However, in the past the Housing Authority has embarked on projects targeted exclusively at the category of elderly citizens. In 2005 it completed a sheltered housing project consisting of a number of one-bedroom apartments reserved for the elderly beneficiaries. The authority, in fact, has supported the concept of elderly people living as long as possible in independent self-contained units within the community in order to offer them an alternative housing solution to residential care.[169]

3.4. Urban policies

- **Are there any measures/ incentives to prevent ghettoisation, in particular**
- **mixed tenure type estates[170]**
- **"pepper potting"[171]**
- **"tenure blind"[172]**
- **public authorities "seizing" apartments to be rented to certain social groups**

The aforementioned *Skema Kiri* offered a very important advantage in terms of urban policy. In fact, the allocation of beneficiaries of social assistance amongst tenants who rent privately aimed precisely at eliminating stigmatization towards the former. This initiative was therefore a fully-fledged anti-ghettoization measure whereby beneficiaries of social protection would no longer be segregated into easily discernible blocks of apartments. In an interview with the undersigned, former Minister Chris Said had revealed that the Authority was meant to reopen the scheme, this time concentrating on the areas which displayed the most urgent demand, mainly, the central part of Malta.[173]

The Housing Authority has also recently been active in introducing new social housing concepts to foster a greater sense of community.[174] The authority

[169] 'First sheltered housing for the elderly completed', *The Times (Malta)*, 11 May 2005.
[170] Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenised communities, and to strengthen diversification of housing supply.
[171] This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.
[172] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable form outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.
[173] Held on the 8 December 2012. Since the time of the interview there was a change of administration and the Housing Authority now falls under the portfolio of the Minister for the Family and Social Solidarity Marie Louise Coleiro Preca.
[174] 'Families get housing help', *The Times (Malta)*, 16 March 2012.

embarked on a renovating project of a palazzo in Valletta which now houses four young families with children and four older families. The households who took up the apartments had economical problems and were chosen by the Housing Authority following discussions with non-governmental organisations, including 'Appogg', to see who were the most vulnerable families. In fact the apartments are being rented out to them at highly subsidised rates.[175] Despite being a pioneer project sources from the Housing Authority itself have revealed that the project's success exceeded the initial expectations since the families managed to mingle very well. One can therefore expect more projects of this kind to be implemented in future.

Other "anti-ghettoisation" measures could be: lower taxes, building permit easier to obtain or, in especially attractive localisation - as a condition to obtain building permit, condition of city contribution in technical infrastructure.

- **Are there policies to counteract gentrification?**

The counteraction of gentrification is currently not on the Ministry's agenda.

- **Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)**

The quality of housing is mostly governed by the free market since the only cases where the property would have to be deemed 'habitable' are those of lease through the *Skema Kiri* or application for a governmental subsidy.

- **Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanisation and periurbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)**

On a national level the Housing Policy is contained in the Structure Plan which came into force with the 'Development Planning Act' of 1992. The Structure Plan established criteria which would from then on regulate Housing development. The Structure Plan branched into a further seven local plans. These are the Marsaxlokk Bay Local Plan, which was approved in 1995, and another other six: the Grand Harbour Local Plan, the South Malta Local Plan, the North West Local Plan, the North Harbour Local Plan, the Central Malta

[175] 'Mixed community apartment block inaugurated in Valletta', *The Times (Malta),* 27 June 2012.

Local Plan and the Gozo and Comino Local Plan which were all approved eleven years later.

The local plans establish the strategy to control suburbanization in the different regions. Policy NHSC1 contained in the North Harbour Local Plan, for instance, delimitates the urban development boundaries for the localities within the region and sets out to improve the residential environment. Policies NHHO01 to NHHO04, on the other hand, are specific policies for residential development and acceptable uses within residential areas. Similar policies apply for all other local plans.

Local plans also lay down the requirements for boundaries for residential development, height limitation, design and conservation. Each Local Plan identifies as well particular areas where housing is permitted despite falling outside the limits of development the same local plan. These *'ODZ Settlements'*[176] are in turn categorized into different levels. Housing policies within these areas are similarly regulated by policies contained in the same Local Plan.

In addition to these policies, there are areas dispersed around Malta that have been included in the Rationalization process. These would be areas that fall outside the boundaries of the Settlement Areas established in the Local Plans as well as beyond the limits of development delineated by the same Local Plans. These are normally small areas which fall adjacent to the edge of the development boundaries where housing development may also be permitted. The Rationalisation of Development Boundaries was approved by the Select Committee on Development Planning in July 2006. All the other housing developments which fall within the rural areas are then regulated by paragraph 8 of the policy 'Development Outside Built-up Areas' (1995) applicable for the whole territory of the island. Houses for arable and livestock farmers and developments that may be allowed in replacement of abandoned farms are regulated by the 'Policy and Design Guidance on Agriculture, Farm Diversification and Stables' of 2008.

The general strategy, whether through the Local Plan or any other policies, is the containment of housing within the established limits of development, in order as much as possible, to avoid suburbanization and periurbanization.

Furthermore, no regional taxation policy exists.

3.5. Energy policy

- **To what extent do European, national and or local energy policies affect housing?**

[176] The acronym stands for Outside Development Zone.

European laws[177] have certainly been the main driving force behind the implementation of the country's main energy policies. Malta is first of all bound by the EU's energy efficiency headline target of 20% by 2020.[178] The national target for the said year has been established at 22% along with an additional intermediate target of 15% for the year 2014.[179] Besides the "Energy Efficiency Directive" Malta has also transposed several other EU legislations most of all those promoting the improvement of the energy performance of buildings,[180] the choice of more energy efficient products[181] and the use of energy from renewable sources.[182]

Newly-adopted legislation also safeguards the consumer in relation to the supply of electricity,[183] natural gas,[184] heating and hot water[185] whilst regulating labelling and standard product information in relation to domestic household appliances such as electric ovens,[186] freezers and refrigerators,[187] washing machines,[188] dish washers,[189] air conditioners[190] and televisions.[191]

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[177] The impact of EU legislation on the Maltese energy market will be analysed in more detail in the following parts of the questionnaire.

[178] Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 Nº L 315/1).

[179] Ministry for Finance, *Malta's National Reform Programme under the Europe 2020 Strategy*, April 2003, 15.

[180] Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 Nº L153/13)].

[181] Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 Nº L 153/1)].

[182] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 Nº L 140/16)].

[183] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 Nº L 211/55)].

[184] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 Nº L 211/94)].

[185] Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 Nº L 378/19)].

[186] Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 Nº L 128/45).

[187] Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 Nº L 170/10).

[188] Commission Delegated Regulation (EU) Nº 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 Nº L314/47).

[189] Commission Delegated Regulation (EU) Nº 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 Nº L 314/1).

[190] Commission Delegated Regulation (EU) Nº 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 Nº L 178/1).

[191] Commission Delegated Regulation (EU) Nº 1062/2010 of 28 September 2010

Locally, the Government has been granting subsidies aimed at improving energy efficiency and promoting renewable energy sources amongst the Maltese households. These initiatives were welcomed very positively, mostly due to the trends in electricity prices and the economic crisis. More people were in fact realising the benefits of investing in these technologies and, in most cases, the rate of take-up was successful.

During 2011, the Malta Resources Authority (MRA) continued to administer grant schemes relating to solar water heaters and Photovoltaic systems. Two new schemes for solar water heaters were launched in April 2011. The National Scheme provides a grant of 40% up to €400 and was not restricted by social criteria. The European Regional Development Fund (ERDF) scheme, on the other hand, provides a grant of 40% up to €560.[192] In July 2011, there was a fresh call for PV applications offering a grant of 50% of the eligible expenditure up to a maximum of €3,000. Over 3,500 applications with close to 7 MWp[193] in installations were submitted for the ERDF funded scheme. Government has also launched various schemes to subsidize the purchase of roof insulation, double glazing and energy efficient appliances. In addition, Malta is also close to completing the Smart Metering Project that will make Malta the first country in the world which will have a smart electricity grid across a whole nation. The implementation of this system will enable consumers to monitor their consumption much more easily.

Table E Number of applications handled by the MRA during 2011[194]

SCHEME	APPLICATIONS RECEIVED	ISLAND
2005 Electric car	1	Malta
2010 Solar water heater	103	Malta
2010 Solar water heater	128	Gozo
2011 PV ERDF	497	Gozo
2011 PV ERDF	3,019	Malta
2011 Solar water heater ERDF	12	Gozo
2011 Solar water heater ERDF	22	Malta
2011 Solar water heater National	1,128	Malta
2011 Solar water heater National	107	Gozo

The Housing Authority has also been installing various energy saving features inside its dwellings. These include shading devices, double-glazed apertures, solar panels, energy saving light fittings and roof insulation. Solar water heaters were also installed in some housing units. By doing so the Housing

supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 Nº L 314/64).

[192] Malta Resources Authority, *Annual Report 2011*, 21.

[193] Megawatt-peak: a measure of the nominal power of a photovoltaic solar energy device.

[194] Malta Resources Authority.

Authority is hoping to develop a new green culture amongst its tenants.[195] Through the Energy Performance in Building Regulations[196], specific minimum requirements for energy efficiency will be implemented on new building projects, opening the requirements to investigate alternative energy sources or methods, as co-generation, solar cooling possibilities, heat pumps, geo-thermal possibilities or alternative heat recovery methods.[197]

Summary table 4 Housing Policy

	National level[1]	Local/Regional Level	Lowest level
Policy aims 1) 2) 3) 4)	Fill vacant dwellings Minimise stigmatisation Regenerate urban cores Create mixed communities	Control suburbanization	
Laws 1) 2)	Protection against dispossession of property or deprivation of rights over property[1] Promotion of housing and homeownership[2]	Delimitation of urban development boundaries Establishment of requirements for boundaries for residential development, height limitation, design and conservation	
Instruments 1) 2)			

[195] <http://www.housingauthority.com.mt/EN/content/19/Becoming%20Greener>
[196] Legal Notice 376 of 2012.
[197] Ministry for Resources and Rural Affairs, *A Proposal for a National Energy Policy*, April 2009.

[1] Section 37 of the Constitution
[2] Housing Act and the Housing Authority Act

3.6. Subsidization

- **Are different types of housing subsidized in general, and if so, to what extent? (give overview)**

Approximately 12,000 families have benefitted from Housing Authority schemes over the past four years in Malta, with rent subsidies proving especially popular. The general thrust of the schemes revolves around affordable housing and the Authority dedicates most of its efforts in promoting and encouraging home ownership amongst first time buyers. It also subsidises works necessary in making residences habitable to ordinary residents or accessible in cases of applicants with disabilities. In addition, the authority helps to increase the housing stock for rent through urban renewal projects and it gives substantial rent subsidies to the more vulnerable.

- **Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a subjective right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?**

a) Subsidisation for Tenants

Subsidies for tenants range from assistance in the actual payment of the rent to grants for maintenance or other significant alterations. All of them take into account both the annual income of the applicant and the amount of assistance is proportionate to the latter. Capital assets are also taken into consideration and if the threshold is exceeded applicants are automatically disqualified.

i) Rent Subsidisation Scheme *on Privately Owned Dwellings*

This scheme applies for the rent subsidy on dwelling houses, which are not the property of the Government, and it is available only for premises leased as ordinary residence of the applicants and their family. The scheme also includes property acquired by title of temporary emphyteusis not exceeding twenty-one years. The property has to be in a good state of repair, therefore, in a habitable condition and the lessor has to be the owner, not the sub-lessor, emphyteuta or sub-emphyteuta (provided that the relative emphyteusis does not exceed twenty-one years). It is also necessary that no other property should be owned and that the capital assets of the applicant remain below the threshold of €10,000. The beneficiaries of this scheme are 1,359 which are almost equivalent to €1 million in subsidies each year.[198]

[198] Housing Authority, Annual Report for 2010 and Financial Estimates for 2011.

ii) Adaptation Works in Dwellings Occupied by Tenants *and Owners*

Although in 2005 the majority of dwellings in Malta (55.9%) were perceived to be in a good state of repair, the Authority did not want to overlook those dwellings that were in need of repairs or in a dilapidated form. This scheme joins the three repair schemes which were launched in 1999 offering grants on adaptation works in owner-occupied property (Scheme Z), leased privately-owned properties (Scheme 5) and government-owned property (Scheme W). The aim of this particular scheme is to render these properties habitable to an acceptable standard. This subsidy is available to owners, holders of a title of temporary emphyteusis exceeding forty years, usufructuaries of the property, tenants and temporary emphyteutas. The assistance available under this Scheme consists of an Adaptation Cash Assistance. The dwelling house should be, at the time of the application, of a sub-standard level or dangerous and the amount allocated depends on the type of tenancy. Tenants are granted up to a maximum of €7,000, landlords of rented properties are allowed up to €3,000 and owner occupiers may be benefit of a full amount of €10,000. Each category is only granted assistance for specific works. The dwelling house on which assistance has been granted under this Scheme has to be used and occupied by the purchasers or tenants exclusively as their ordinary residence for a period of at least ten years from the date of the final payment of the Adaptation Assistance Grant. If the applicant fails to do so any subsidy granted is to be refunded to the Authority.

iii) 'Sir Sid Darek' (Housing Authority Scheme for the Purchase of Rented Residential Units)

The biggest exercise of the Housing Authority is aiding families in becoming owners of the properties they reside in. It is the belief of the present government that home ownership is effective both in reducing social problems as well as increasing financial security for households.[199] The initiatives range from incentivising purchase through favourable rates to alleviating the burden of loans taken out to buy a first residence. The schemes also include an option to buy for those properties that are held in emphyteusis.

This scheme aims at encouraging residents in property owned by the Housing Authority to become owner occupiers and use the property as their ordinary residence. One particular fact regarding this scheme is that a substantial number of properties from the Lands Department, on which blocks of apartments are built and are currently leased by the Government, passed directly into the hands of the Housing Authority. It was this transfer that enabled the Authority to offer this unprecedented scheme to the public.

In order to participate, the applicant must have been the recognized tenant of the premises in respect of which he or she is applying for at least 7 years. The purchase price for the absolute ownership of a residential unit owned by

[199] 2013 Budget Speech, delivered by the Minister of Finance on the 28th of November 2012.

the Housing Authority is would be subsidized.[200] Applicants are given 2% subsidy on the commercial price for each year in tenancy up to a maximum of 60% if the applicant does not possess capital assets exceeding €100,000 whilst the rate goes down to 1% subsidy up to a maximum of 30% if the applicant's assets exceed the said threshold. Any residential unit purchased under this scheme cannot be transferred, except by 'causa mortis', before the lapse of at least 10 years from the date of the signing of the final deed.

A similar scheme entitled 'Ninvesti fid-Dar Tieghi' (Investing in My Home) was opened specifically for residents of Government properties in Cottonera and subsequently to those residing in Valletta, Floriana and Marsa. This home ownership scheme was in fact issued solely for buildings which had been rebuilt by the Government on privately owned land in the wake of the Second World War. These localities surrounding the Harbour had in fact suffered severe damage and most of the buildings had been re-erected for purposes of social housing. Through this initiative the Government proceeded to contact the expropriated landowners in order to purchase the land and obtain a transfer of title. This would in turn be offered immediately to the residents who would be thus given the option of becoming the owners of their current tenements. This is only available for tenants who have been residing inside these properties for at least seven years. Those who have been inhabiting the premises for more than twenty years could benefit up to 65% subsidy.

Recently, through another scheme called 'Darek Faċli' (Your Home Easy), the Authority had also offered 123 apartments and 98 garages for sale at reduced prices. These properties and garages were being sold at a subsidised price of 25% of the commercial price. Besides having a subsidy on the commercial price, applicants can benefit from a new payment agreement in which they can balance the price of their property over a period of 20 years with no interest charged.

b) Redemption of ground rent (emphyteusis)

This scheme relates to plots being granted on temporary emphyteusis, or on temporary emphyteusis later on converted into a perpetual one or even on perpetual emphyteusis under the Home Ownership Scheme (HOS) prior to 1979. The emphyteuta, who should be in occupation of the plot, would be able to redeem the ground rent at a rate of 5% (i.e. the ground rent would be multiplied by 20 and subsequently paid as a lump sum to government). A temporary emphyteusis for 150 years would have to be augmented by 15% prior to being converted into a perpetual grant.

[200] The price would be calculated according to the number years in tenancy of the applicant as from the first date of the publication of the scheme.

c) Subsidization on First Home

i) Subsidy on Interest on Loans for the Purchase of the First Residence

The aim of this scheme is to assist those persons who would like to purchase their first residence from the private sector through the provision of a subsidy on the rate of interest on the loans given by the commercial banks. This scheme also targets persons who want to purchase their first residence after separation.

Under this scheme, a subsidy of 2.5 percent is given for the first eight-year period from the first payment that the bank advances in favour of the purchase of the first residence on the first €80,000 of the loan. The amount of loan taken from the bank, which also includes the amount for the finishing works on the property but excludes the furniture, cannot exceed the amount of €150,000. The maximum threshold of aggregate annual gross income for single, separated or divorced and widowed persons without children living with them is €25,000 whilst for the same categories with members of the family living with them, married or engaged couples and persons who will live together it is €40,000. The maximum rates equivalent to capital assets are identical in each case.

The residence which qualifies for assistance under this Scheme has to be used and occupied by the applicants exclusively as their ordinary residence for a period of at least ten years and they are not permitted to rent or transfer the property or its possession to third parties other than by 'causa mortis'. They are also forbidden from allowing third parties to occupy these premises even on mere tolerance or by gratuitous title. If an applicant fails to pay the loan payments to the bank, the Authority would immediately stop the subsidy payments under this Scheme. In any case the Authority is entitled to avail itself of privileges and hypothecs in order to guarantee the refund of the subsidy and the observance of all the conditions by the beneficiaries. The applicant is obliged to occupy the residence within three years from the date of the agreement signed with the Authority or else it would have the right to terminate the subsidy enjoyed under this scheme. In the eventuality that the beneficiary does not continue to occupy the property as his ordinary residence, or that he would want to sell it to third parties before the lapse of the ten years, any subsidy granted would have to be paid back to the Authority in the proportions determined by the number of years that would have elapsed since the date of the deed of the Scheme. A full hundred percent would have to be refunded if the property is sold up to five years since the signing of the deed, seventy-five percent in the case of sale between the sixth and eighth year whilst the rate would drop to fifty percent if the ninth year would have elapsed. The payment of the subsidy would likewise be stopped in the case of broken engagements but in the case of one party buying out the share of the other, the former can continue to benefit from the interest subsidy as long as he or she would have qualified as a single person on the date of application. In the case of broken marriages the subsidy could continue to be enjoyed by the acquirer of the right at the sole discretion of the Authority.

ii) Grant to Assist Owners in the Construction and/or Completion or Rehabilitation of their First Home

The Housing Authority aims at facilitating home ownership also by compensating the expenditure in respect of the cost of construction, completion or rehabilitation works on first dwelling houses. This is also aimed to target owners of first residences, who due to an increase in the number of family members, require to construct additional rooms or carry out various alterations to their premises. A grant up to a maximum of €2,330 is available for single persons of 24 years and over and persons with a disability of 18 years and over, whilst married or engaged couples and persons, whether single, separated or widowed, with custody of children are afforded up to €5,824.

d) Schemes for disabled persons

i) Installation of Lifts in Government Owned Residential Blocks/Entrances

The Authority is also committed to install lifts in Government owned residential blocks where it is physically possible. This scheme is intended to alleviate hardships for persons with disability related to mobility or mobility problems. For the application to be received this disability must be confirmed by a panel set up for this purpose in consultation with the National Commission for Persons with Disability. The scheme also requires that at least one of the applicants must be a tenant recognized by Government and the block or entrance be at least three storeys high from road level. The block must be planned in such a manner that the lift would be accessible to all the apartments with the least structural alterations possible. Necessary permits must be obtained from the MEPA, Lands Department as well as any third parties whose consent would be necessary for the carrying out of the works. The scheme attaches another condition relating to the formation of a Residents' Association of the Block/Entrance which has to accept full responsibility for the maintenance of the lift and the common parts as well as payments for the consumption of electricity and any necessary repairs and maintenance of the same lift.

ii) Scheme for Persons With a Disability

The Housing Authority also assists persons with a disability in rendering their residence adequate for their needs or to convert part of the existing premises in order to enable them to live an independent or at least semi-independent life close to the family. The Authority also offers technical advice as regards the nature of the adaptation works before granting the financial assistance in order to channel the resources available in the best way possible. In order to qualify for the subsidy the property has to be valued below €250,000 and the applicant's capital assets cannot exceed €30,000. The percentage of the grant is determined by the annual income of the beneficiary and the rate can be as high as 100% if the latter earns less than €15,000 annually. Persons

who earn more than €35,000 annually are excluded from this scheme. Applicants may also benefit from this grant twice provided that the assistance is not requested for the same works and the total amount does not exceed the set threshold.

The Adaptation Cash Assistance may only be granted for the purpose of assisting the applicant in ameliorating accessibility inside the premises, modifying bathrooms and kitchens, altering electric and water installations, building conversions or extensions and installing lifts. Any transfer of the premises 'inter vivos' will automatically entail a refund of the grant.

e) Subsidisation of Property Owners

i) Skema Kiri (Private property rental by the Housing Authority)

This initiative enables applicants to rent property directly from private landlords and apply for a subsidy on their monthly rent payments. The property owners who make their property available can in turn benefit from a considerably lower withholding tax on the income generated through the rental of these vacant properties. The rate for those who let their property to the Authority is in fact 5% instead of the usual 35. At present, 1,200 applicants benefit from this scheme at a cost of over €1 million annually.[201] It is another initiative aimed at reducing the number of vacant dwellings whilst meeting the high demand for social housing.

Owners of vacant dwellings are given the opportunity to lease their vacant residential property to the Housing Authority for a minimum period of 10 years. These properties would in turn be sublet to the applicants. The property has to be finished to a good standard and fit for habitation without the need for any additional expenses by the Authority. It must have also been vacant for at least six months prior to the date of application. The contract would be initially offered to the customers for a one-year period, and then subsequently renewed for another three years such that the authority would be able to stop the lease to tenants who fail to comply with the obligations of maintenance. The sub-lessor may choose to acquire the property he resides in during the lease period and if he does not do so, the Authority has to be granted the right of first refusal. This, of course, has to be done with the agreement of the owner.

The offers are evaluated by an independent Selection Panel, appointed by the Minister of Justice, Public Dialogue and the Family, in order to determine which properties are best suited for the Authority's clients and which ones represent the best value for money. The final decision as to which ones are to be selected remain in the hands of the Authority.

[201] A. Buttigieg, 'Housing schemes for the young', *The Times (Malta)*, 19 July 2012.

- **Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?**

None of the subsidies offered by government have ever been challenged on legal grounds.

- **Summarise these findings in tables as follows:**

Summary table 5 Subsidization of landlord

Subsidization of landlord	Rent
Subsidy before start of contract (e.g. savings scheme)	
Subsidy at start of contract (e.g. grant)	
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	1. Skema Kiri (Private property rental by the Housing Authority) Reduced withholding tax on income generated through the lease of property to Housing Authority aims at incentivizing owners to introduce their vacant dwellings into the housing market. 2. Adaptation Works in Dwellings Occupied by Tenants and Owners Grants aimed at assisting the landlord in carrying out repairs to his property

Summary table 6 Subsidization of tenant

Subsidization of tenant	Rent
Subsidy before start of contract (e.g. voucher allocated before finding a rental dwelling)	
Subsidy at start of contract	
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	1. Rent Subsidisation Scheme on Privately Owned Dwellings Assisting households in the payment of monthly rents 2. Sir Sid Darek (Housing Authority Scheme for the Purchase of Rented Residential Units) Incentivizing tenants to become owners of their residences

	Ninvesti fid-Dar Tieghi (Investing in My Home)[1] Incentivizing tenants to become owners of their residences 3. Adaptation Works in Dwellings Occupied by Tenants and Owners Rendering residential premises habitable to an acceptable standard 4. Installation of Lifts in Government Owned Residential Blocks/ Entrances[2] Installing, where physically possible, lifts in Government owned residential blocks 5. Scheme for Persons With a Disability Assisting persons with a disability to render their residence adequate for their needs

[1] Only available for certain properties in the localities of Cospicua, Vittoriosa, Senglea, Valletta, Floriana and Marsa.
[2] Only Government-owned blocks

Summary table 7 Subsidization of owner-occupier

Subsidization of owner-occupier	Homeownership	Emphyteusis
Subsidy before purchase of the house (e.g. savings scheme)		
Subsidy at start of contract (e.g. grant)	1. Grant to Assist Owners in the Construction and/or Completion or Rehabilitation of their First Home Assisting persons in works carried out in the building or rehabilitation of their first home	
Subsidy during tenure (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	2. Subsidy on Interest on Loans for the Purchase of the First Residence Alleviating interest burden on persons taking out a loan to finance first home 3. Adaptation Works in Dwellings Occupied by Tenants and Owners Rendering residential premises habitable to an acceptable standard	1. Rent Subsidisation Scheme on Privately Owned Dwellings[1] Assisting households in the payment of monthly rents 2. Redemption of Ground Rent Offering emphyteutas to redeem groundrent and acquire ownership of their residences 3. Adaptation Works in Dwellings Occupied by

	4. Scheme for Persons With a Disability Assisting persons with a disability to render their residence adequate for their needs	Tenants and Owners Rendering residential premises habitable to an acceptable standard 4. Scheme for Persons With a Disability Assisting persons with a disability to render their residence adequate for their needs

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[1] Only in the case of temporary emphyteusis up to 21 years

3.7. Taxation

- **What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular:**

- **Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?**

Tenants are not liable to any taxes on their rented dwellings; it is only the landlord who is subjected to tax, as laid down in article 4(e) of the Income Tax Act (Chapter 123 of the Laws of Malta). The amount generated through the lease or the emphyteusis must in fact be declared in the tax return as income derived from property.[202]

- **Homeowners:**

o **Income tax of homeowners: is the value of occupying a house considered as a taxable income?**

o Is the profit derived from the sale of a residential home taxed?

In Malta there is no tax for owning property. Charges only come into the picture upon the transfer of property and these are the 'Duty on Documents' tax[203] and the 'Property Transfer Tax'.[204] Whilst the former is relevant to the purchaser, the latter is charged on the vendor. The Duty on Documents tax is generally set at 5% of the higher consideration of the real value of the

[202] The only instance where the law imposes an additional tax on the landlord is that of holiday dwellings rented out to tourists. The Malta Travel and Tourism Services Act (MTTS) subjects these agreements to a reduced VAT rate of 7%. This mechanism comes in as well in the case of short lets to Maltese citizens, except where the latter use the place as their principal place of residence.

[203] Duty on Documents and Transfers Act (Chapter 364 of the Laws of Malta), Exemption from Payment of Duty on Documents and Transfers Order (Subsidiary Legislation 364.01), Duty on Documents and Transfers Rules (Subsidiary Legislation 364.04).

[204] Tax on Property Transfers Rules (Subsidiary Legislation 123.92), Capital Gains Rules (Subsidiary Legislation 123.27).

property, however, the preferential rate of 3.5% is applied on the first €116,468.67 of the property being purchased if it is declared that it will be used as a sole ordinary residence.[205] This rebate is evidently intended to assist first time buyers. The beneficiaries must necessarily be European Union citizens in order to qualify for this rate. There are no inheritance taxes in Malta although duty on documents tax is levied on the transfer of immovable property by inheritance (causa mortis).[206] The Property Transfer tax, which was already made reference to in previous sections, is a tax on the transfer value of property. This is normally set at 12% of the transfer value, however, vendors can also opt for the Capital Gains Tax in the case that the latter would calculate a more advantageous rate.

- **Is there any subsidization via the tax system? If so, how is it organised? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)**

Maltese law does not reserve any special treatment for tenants. The Income Tax Act lays down in Article 26(f) that in ascertaining the total income of any person, no deduction shall be allowed in respect of rent paid for any premises which are not used for the production of the income.

In relation to tax deductions for landlords it depends whether the income is considered of a 'trading' or of an 'investment' nature; this is usually determined by whether it is a short or a long let. The profits deriving from a short let (usually not in excess of three months) would be considered as trading income and any expenses incurred would consequently be regarded as an allowable tax deduction under the general rules contained in the Income Tax Act. On the other hand, 'investment' income deriving from long lets would only be granted a deduction on: i) any interest from a loan that was taken specifically to finance the purchase of the premises that is being rented out, ii) any ground rent payable on the same premises (in the case that the landlord were an emphyteuta or a sublessor and not the freehold owner) and iii) a further deduction of 20% on the gross income – excluding any aforementioned costs relative to the payment of ground rent – which is meant to cover the costs of maintenance.[207]

As said in the previous question, the only category of homeowners who is treated favourably is that of the first time buyers. The latter are allowed a reduced rate of 3.5% (instead of the usual 5%) on the first €116,468.67 of the residence that they would be purchasing.

[205] In the 2013 Budget Speech it was proposed that the rate be extended to cover the first €150,000.
[206] In the same Speech it was proposed that the Duty on Documents payable on transfers of immovable property from parents to their children either through *causa mortis* or donation be removed.
[207] Subsidiary Legislation 123.26, Deduction of Expenses in Respect of Immovable Property, Article 3.

- **In what way do tax subsidies influence the rental markets?**

The law has recently been very active in alleviating tax burdens for those who put their vacant property on the market. As explained above the law makes exception for properties which are leased out under the Skema Kiri; Article 31A of the Income Tax Act in fact reads that the applicable rate for agreements would be 5% of the gross rental income received. This scheme certainly has the effect of increasing the supply of rental housing, although only to an extent, since these are leased solely to the clients of the Housing Authority.

Another initiative that encourages the utilization of vacant property is the recently announced set of tax incentives for owners of old properties in urban conservation areas who restore their buildings and eventually put them out for rent. On the completion of the project, the tax on the rental revenue would be reduced to 10% instead of 35% if the property would be let out for residential purposes.[208]

- **Is tax evasion a problem? If yes, does it affect the rental markets in any way?**

There is no official data on tax evasion in the property market. It seems however apparent that the government wants to introduce a register of rented properties. These intentions are not only clear in the powers given to the Minister in Article 1622A(c) of the Civil Code[209] but it was also confirmed by former Minister Chris Said himself in a personal interview with the undersigned. This would not only put the government in a better position to regulate its income from taxation but it would also give more security to both the parties to the agreement.

[208] 'Tax incentives for owners of old properties', The Times (Malta), 20 December 2012.

[209] "The Minister responsible for accommodation following consultation with the Minister responsible for finance may make regulations for all or any of the following purposes:
(*c*) to create a registry for the deposit or registration and, or de-registration of contracts of letting for any purpose which the Minister may establish, including for the purpose of the validity itself of the same contracts, and to do all that is necessary for this purpose."

Summary table 8 Taxation

	Home-owner		Landlord of tenure Rent	Tenant of tenure Rent	Landlord of tenure Emphyteusis	Tenant of Emphyteusis
Taxation at point of acquisition of tenure	5%	3.5% in case of first time buyer establishing sole ordinary residence				
Taxation during tenure			Income Tax[1]	No	Income Tax	No
Taxation at the end of occupancy	No		No	No	No	No

4. Regulatory types of rental and intermediate tenures[210]

4.1. Classifications of different types of regulatory tenures

- **Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?**

In the rental sector we distinguish between private rent, which is regulated by the market, and the public sector which is financed, or in other cases subsidized, by the state. The latter refers to the provision of housing and housing assistance on a rental basis to households that are in particularly severe need. In Malta, rental social housing is represented solely by Government-owned dwellings and it constitutes 6% of the total housing stock. Private rental is more difficult to quantify since, even though the tenants would be renting property directly from the private owners they would still be benefiting from subsidies that are made available by the government. However, by sticking to the aforementioned estimate the figure would hover around the 14.6% of the total housing stock.[211]

4.2. Regulatory types of tenures without a public task

- **Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.[212]**

Rental contracts are regulated solely by the Civil Code. The Code distinguishes between residential and commercial leases. Under Maltese law the term 'commercial' refers exclusively to non-residential urban tenements which are leased to house activities intended to generate profit. Therefore commercial rents are not to be equated with residential leases.

The law does not distinguish between the different kinds of residential leases (eg. leases contracted with students, elderly citizens, employees etc.) and any contract of letting and hiring falls under the regulation of Title IX of the Civil Code. The only cases where the Code is not entirely applicable are those where the lessee would have been accommodated in a residence under the Housing Act[213] or where a public authority would have taken possession of the property through the Land Acquisition (Public Purposes) Ordinance.[214] In cases of property owned by Government or any corporation or authority

[210] i.e. all types of tenure apart from full and unconditional ownership.
[211] Rented dwellings form 20.6% of the total housing stock in Malta (as recorded by the 1995 Census on Population and Housing).
[212] Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.
[213] Cap. 125.
[214] Cap. 88.

established by law, the Code also grants the latter special powers of termination as long as this action is done in the public interest.[215]

- **Different types of private regulatory rental types and equivalents:**

No subsidiary legislation or special laws are in force to regulate particular types of tenancies. Special statutes were enacted in the past in order to introduce rent controls and grant tenants security of tenure, however, after being blamed for the decline of the private rental market these were put aside in favour of the provisions of the Civil Code in 1995. These statutes continue to be partly applicable for contracts signed prior to the said date.

- **Rental contracts**
  - **Are there different intertemporal tenancy law regimes in general and systems of rent regulation in particular?**

The Civil Code makes special provision for the contracts that were negotiated prior 1st of June 1995 and which, until the 1st of January of 2010, were still being regulated solely by the Reletting of Urban Property (Regulation) Ordinance.[216] Act X of 2009 was made with the intention of reforming the rents that were established before June 1995 and removing the protection that the said leases were guaranteed by law. Through the amendments introduced by this Act, the lease market started a process of total liberalization. Nonetheless, until the period of expiry of the lease, or the time of disqualification in case of heirs, the relationship between the lessee and the owner will continue to be regulated by Chapters 69 and 158[217] of the laws of Malta, according to the year during which the contract was signed.

  - **Are there regulatory differences between professional/commercial and private landlords?**

Apart from private landlords, in Malta there are only property owning companies that rent out premises for profit. No social task is associated with them. The law does not differentiate between these two categories and the same provisions apply to both cases.

- **Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)**

The main financing method for prospective buyers is the mortgage. As was explained extensively in section 1.1,[218] the Maltese have kept investing significant amounts in housing with home loans being the driver of the growth in the lending to the non-bank private sector. It is important to note that 'professional landlords' are not that common in Malta and the category is mostly composed of wealthy families that inherited a vast number of

[215] Civil Code, Article 1576A.
[216] Chapter 69 of the Laws of Malta.
[217] Housing (Decontrol) Ordinance.
[218] Section C.

properties from previous generations. In the mean time local banks have been targeting, specifically, customers wanting to buy property with the intention of letting it out.

Besides the bank loan, there appear to be another three alternatives. The first one is of course the private mortgage or a loan obtained through a private individual rather than a banking institution. The benefit of such a loan is that it would allow the buyer to obtain the funds much quicker than through the avenue of a banking institution and the deal could go through regardless of the buyer's low credit score.

A third possibility would be via a private equity real estate fund or a scheme that would involve the pooling capital from several investors. This is usually the case of private individuals or companies who would have substantial funds to invest on one particular asset whilst being well capable of affording the risk. Private equity is therefore mostly resorted to by developers and construction companies.

A final option is constituted by property bonds that would enable the individual investor to acquire bonds in the case that he did not have sufficient funds to purchase a property outright. Consequently, this takes the shape of a more easily accessible alternative to direct property ownership although it does not appear to be particularly diffused locally.

- **Apartments made available by employer at special conditions**

Contracts of this kind do not seem to be customary in Malta.

- **Mix of private and commercial renting (e.g. the flat above the shop)**

The law contains provisions for tenements used both as residential and commercial premises but for which one rent is paid, known in local jargon as 'casa bottega'. According to Article 1531K of the Civil Code, such tenements leased prior to the 1st of June 1995 should be considered as residential tenements.

No special rules are contained for such premises leased after the said date, however, if such 'mixed' leases were to be negotiated after the 1 of January 2010 the allowed uses would have to be specifically mentioned in the contract in line with the newly introduced provisions.[219]

- **Cooperatives**

This model is not present in Malta. This is probably due to the constant direct involvement by government in the provision of housing which left little room for the development of such concepts.

[219] More specifically Article 1531A of the Civil Code that lists the specification of the purpose for which the property is leased amongst the five requirements that determine the validity of the rental contract.

- **Company law schemes**

This model is not present in Malta.

- **Real rights of habitation**

Besides the aforementioned institute of emphyteusis, the Civil Code contemplates another two forms of real rights of habitation: i) usufruct and ii) use and habitation.[220] Usufruct essentially consists in the right of using the thing owned by another and acquiring the fruits thereof. Use consists, on the other hand, of the right of making use of a thing but not of acquiring its fruits. When the object of this right of use is a house, it becomes the right of habitation. The right of habitation, therefore, has necessarily for its object an immovable that serves that purpose and it is defined in Section 430 as "the real right of a person to live with his family and according to his condition, in a house belonging to another."[221] The "habitator" therefore has the right to keep his family in the house but he may only use the part of the property that is necessary to his condition.

- **Any other relevant type of tenure**

4.3. Regulatory types of tenures with a public task

- **Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as**
  - **Municipal tenancies**
  - **Housing association tenancies**
  - **Social tenancies**
  - **Public renting through agencies**
  - **Privatised or restituted housing with social restrictions**
  - **Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness**
  - **Etc.**

Private rent is distinguished from the public sector which is financed, or in other cases subsidized, by the state. The latter refers to the provision of housing and housing assistance on a rental basis to households that are in particularly severe need. In Malta, rental social housing is represented solely by Government-owned dwellings, except for certain NGOs which provide temporary shelter, and it constitutes 6% of the total housing stock.

The government leases out its property to the residents who cannot afford the rates of the free market and the Housing Authority also rents property from the private sector in order to allocate its applicants it them. Other cases are given accommodation in private property which was expropriated by the

[220] Civil Code, Part I: Title II, Articles 328-399.
[221] Ibid. no. 65, 95.

government through the Land Acquisition (Public Purposes) Ordinance.[222] According to Article 5 the government can acquire any land: required for any public purpose by absolute purchase, for the possession and use thereof for a stated period of time or on public tenure. All of these cases require compensation to the private party being deprived of his or her property.

- **Specify for tenures with a public task:**
- **selection procedure and criteria of eligibility for tenants**

For tenants to qualify for a Government unit, the applicant cannot possess assets, including property, exceeding €28,000 and he or she should not have an annual gross income exceeding €8,200 in the case of single persons, €10,500 plus an additional €700 per child in case of married couples and single or separated persons.[223] Properties are assigned according to a points system devised by the same Housing Authority and the registration on waiting lists (managed by the Department of Social Housing) is based on income ceilings. There are however a number of categories which warrant priority because of the precariousness of their situation: danger or substandard condition of the premises, lack of sanitary facilities, overcrowding, social cases, homelessness, disability, elderly cases who live on their own or share accommodation, cases of refugees and excessive rent.

- **typical contractual arrangements, and regulatory interventions into, rental contracts**

Once the prospective tenant accepts the property he or she proceeds to the signing of the lease agreement with the Housing Authority. The contract would of course be subject the provisions of the Civil Code such as any other regular lease agreement. The Authority, however, reserves the right to revise the amount payable every two years; the rent is reassessed according to the tenant's income.[224] Evictions are carried out by the Estate Department on behalf of the Authority.

- **opportunities of subsidization (if clarification is needed based on the text before)**

Besides the subsidised rents that are available for public dwellings, tenants in residing in private dwellings may also apply for a subsidy. This has been explained in detail in Part 3.6.

- **from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?**

Applicants can refer directly to the Housing Authority in order to apply for

[222] Chapter 88 of the Laws of Malta.
[223] The National Insurance Contribution, disability pension, medical allowance and children allowance are not taken in consideration when calculation the income.
[224] Housing Authority. Retrieved online from: <http://www.housingauthority.com.mt/en/content/26/Schemes%20and%20Social%20Housing>

social accommodation. However, this is not always the case and certain individuals are either signalled by the numerous NGOs operating amongst the needy categories or else by members of the local council and members of the clergy who would have been approached by these individuals.

Summary table 9 Regulatory types of rental tenures

Rental housing **without a public task**	Main characteristics
1) Residential tenements	• Regulated by the Civil Code • Completely governed by the market forces • Estimated at around 14.6%
Rental housing for which a **public task** has been defined	
2) Social tenements	• Owned solely by government • Estimated at around 6%

- **For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?**

1) Residential Tenements

5. Origins and development of tenancy law

- **What was the origin of national tenancy law and where was and is it laid down (civil code, special statute, case law)?**

This introductory part is meant to give a brief overview of the succession of laws that aimed to regulate Maltese tenancy market over the years. All the statutes bear particular importance since their legacy keeps affecting the local housing market till this very day. Rents that had been frozen at pre-1939 rates had in fact been left intact until the reform that took place in 2010. Lease contracts are now regulated by the Civil Code and a process has been started in order to phase out the agreements dated pre-1995. The content of the special statutes, that remain partly applicable, will be elaborated further under the following questions.

It was the multilingual order of the Knights of St. John that effectively started bridging the Maltese legal regime with the juridical developments taking place on continental Europe. The last code, in a succession of four, enacted by the Knights was the "Codice Municipale" or as it was referred to in most local writings, the "Codice de Rohan".[225] This Code made use of the word 'locazione' and the general rules regulating the contract were carefully kept distinct from the rules concerning the rent control measures that had been in

[225] This code was written by the local lawyer Federico Gatto and it was promulgated in 1784.

place since the early years of their sojourn.[226] The clauses of the Codice de Rohan were based on "the Romanistic tradition as it had been received in the island, with accretions from Italian and Sicilian Statutes and customary laws."[227] Although the origin of the tenancy laws could in fact be vaguely traced to Roman law, the approach was very practical. In fact, the institution of *locatio conductio* (the term covering letting and hiring under Roman law) was not expressly mentioned in the Code, and despite being termed "locazione" its treatment was predominantly Maltese.[228] Roman law only stood in the background to supplement any lacunae. From 1784 to the middle of the nineteenth century there were no noteworthy developments in the law of lease.

By the time Malta enacted its "Civil Code" the island had fallen under British rule. The colonisers left the body of laws practically unchanged. The rules on letting and hiring, that have extended their reach till this very day, were redacted in Ordinance VI of 1857 and eventual incorporated into Ordinance VII of 1868 that effectively constituted the first codification of Malta's civil laws. The most prominent sources of inspiration were the laws of the Knights and those contained in the French "*Code civil*", which had very similar roots.[229] Despite this influence, however, it cannot be said that Maltese law considers letting and hiring as a purely personal right. The dilemma was so palpable that for a brief period of time during the 1870s, that the right of the lessee was held by the Court to have become a real right under the laws in force.[230] Later jurisprudence, however, retreated to the more prevalent view that lease consisted of a personal right.[231] Lease, under Maltese law, can therefore be considered to confer an absolutely *sui generis* right.[232] Courts seemed to detach themselves from the personal theory due to their concern for the tenant and the adverse consequences that a strict adherence to this theory may have entailed; namely the tenant's complete exposure upon the alienation of the property by the lessor. As a result the law has, along the years, adopted principles that are diametrically opposed to the Romanistic tradition.[233]

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[226] The ''Officio delle Case" was a special tribunal set up by the Knights of St. John in 1531 which controlled increases and prevented capricious evictions; it was only abolished by the British in 1814 (S. Borg Cardona, "The Officio Delle Case and the Housing Laws of the Earlier Grandmasters (1531-1569)", *The Law Journal,* III(1), 39-41).

[227] P. De Bono, *Sommario della storia delle legislazione in Malta*, (Valletta: Tipografia del Malta, 1897), 204.

[228] J.M. Ganado, "Classification and Structure of Locatio-Conduction in Roman Law and Maltese Law", Thesis for the degree of Ph.D. submitted to the London University, 1950, 334.

[229] Ibid. no. 228, 365.

[230] Ruggiero Sammut et v. Gerolamo Gianni et, decided by the Court of Appeal on the 14 October 1872; Stilianò Zica'aki v. Alfonso Terreni et, decided by the Court of Appeal on the 20 August 1879.

[231] Saint John v. Hyzler, decided by the Civil Court (First Hall) on the 15 May 1896; Luigi Custò v. Don Francesco Magri, decided by the Court of Appeal on the 15 November 1907; Giuseppe Bartolo v. Giuseppe Sammut decided by the Court of Appeal on the 20 May 1909.

[232] Ibid. no. 228, 360.

[233] Ibid. no. 228, 391.

The Civil Code is not the sole regulatory instrument under Maltese tenancy law. Specific circumstances during Malta's recent history have imposed on the administration the enactment of several special laws aiming at adjusting the conditions of the rental market. An adjudicatory board dedicated solely to the regulation of leases came to life in 1925. Until the housing crisis that followed World War I, in fact, it had been held that government intervention was not necessary in ensuring an adequate supply of housing[234] and the relationship between landlords and tenants had been regulated by the Civil Code. The need to protect tenants arose in 1922 when the Labour Party started denouncing the landlords' malpractice of charging excessive rents.[235] The "Control of Rents of Immovables Act" was finally passed by the locally composed Legislative Assembly in 1925 and it was later given permanent effect as the Reletting of Urban Property (Regulation) Ordinance by the British administration. It is important to note that the British refrained from imposing common law in Malta and the backbone of the system thus remained firmly rooted in the continental tradition.

These measures heralded an era of regulatory interventions and anti-eviction measures. From this point onwards, in fact, the impetus of strong tenant protection would not abate, save for a brief market-imposed interval, until the final years of the century. The Second World War, which brought with it the greatest housing shortage that Malta had ever experience, prompted the imposition of a rent freeze over all the dwellings that were built prior the war. These provisions were embodied in the Rent Restriction (Dwelling Houses) Ordinance of 1944 that was later amended in 1947.

This latter Ordinance was an emergency measure, and the rates should have been revised shortly afterwards. However, the politicians of the time were dedicating all their efforts to the island's intricate Constitutional struggle and the housing situation was left to degenerate into yet another supply crisis. The low profits had in fact rendered the building industry apathetic and no action was taken until the British reclaimed temporary control over the country's internal issues and deregulated all the buildings that were to be erected after the coming into force of the Housing (Decontrol) Ordinance of 1959. Through this piece of legislation, new leases were made to fall exclusively under the Civil Code, for the first time since 1925.

Despite boosting the construction of new premises the 1959 ordinance did not last long and the next important amendments[236] were to target the very dwellings that had been decontrolled through this legislation. The new provisions enacted in 1979 reflected the diffused trend that had been set in motion in Europe following the oil crisis, of tying the fair rent valuation of

[234] U. Mifsud Bonnici, "Housing Rights in Malta", in *National Perspectives on Human Rights*, edited by S. Leckie, The Hague: Nijhoff, 2003, 254.
[235] A.M. Saliba, *First Labour Party Legislative Initiatives under the 1921 Self-Government Constitution*, Dissertation submitted to the Faculty of Laws, University of Malta, 2012, 103.
[236] Act XXIII of 1979.

decontrolled dwellings to the Annual Index of Inflation.[237] Lessors were now also obliged to renew leases upon their termination and lessees entitled to convert emphyteutical grants into leases.[238] This was the most rigorous point of rent control ever reached in Malta.

The calamitous consequences of this succession of rent control measures on the rental market became evident and the sector was effectively paralysed. The situation was partly remedied in 1995 through the introduction of the Housing Laws (Amendment) Act that placed contracts signed from the 1st of June of that year onwards back under the sole regulation of the Civil Code, however, it did very little to alleviate the hardships of landlords bound by earlier contracts; some of whom were still being paid pre-1939 rates.

The latest amendments took place through the Civil Code (Amendment) Act of 2009[239] that aimed to grasp the nettle with regards to contracts that were still governed by separate statutes. The new provisions established a minimum rent threshold and a scheme for their gradual increase. Another objective of the reform was to bring those contracts to their natural expiration by interrupting the direct or collateral inheritance of lease, save for the genuine cases. The other aspects were, however, left untouched and the Ordinances and Acts enacted since 1931 continue to live on, even indirectly, until today.

- **Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g.** protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries**)**

The first wave of political influence was felt on the arrival the French and the British colonisers who brought to the island the budding democratic notions which had started to pervade Europe. This had an inevitable effect on the relations between landlords and tenants and the way that both parties started viewing their rights.[240] The divide, however, only deepened significantly upon the creation of political parties i.e. at the turn of the twentieth century, when in a stern economic context left-leaning politicians started projecting themselves as protectors of the tenants. The first prominent appearance of rent in the political dialectic emerged in the 1920s when the Labour Party made attempts to introduce measures of Rent Control. At that time popular distress was rampant on the island since landowners had started exploiting the tight housing situation brought about by the aftermath of the First World War[241] and Labour politicians were given the perfect pretext to attack the leniency of the

[237] Ibid. no. 235, Article 3(4)(d)(i).
[238] Emphyteusis is discussed in more detail below.
[239] Act X of 2009.
[240] Ibid. no. 21, 30.
[241] Ibid. no. 234, 254.

1868 Ordinance[242] that allowed landlords to increase rents in an uncontrolled manner.

The shortage of supply had given landlords unprecedented leverage in the conclusion of contracts and the liberal provisions of the aforesaid ordinance provided no safeguards for the tenants.[243] It was around this time that Parliamentary interventions started referring explicitly to the term "working class" and portraying the lower classes as the most vulnerable in society.[244] The reforms did not come in instantly since the other major parties, mostly constituted by wealthy landowners, voiced their opposition against the notion of rent control although there was a general consensus that legislation needed to curb cases of exorbitant rents. As explained above, rent controls eventually came into force but they would not constitute any strong element of controversy until the seventies.

The post-war measures were not the result of any ideological projection but rather decisions imposed by necessities of the time.[245] Right after its independence in 1964, however, Malta faced another period of insufficient supply and housing had assumed such political prominence that the election of the Labour Party was attributed to the promise of tackling this shortage.[246] This situation shifted the national policy towards socialist ideals amongst which security of tenure and affordable housing. In 1979, three years after their re-election, the Labour party was called to amend the rent law. At the time the political parties appeared to disagree on the basic principles to be followed and whilst the Socialist speakers boasted of a low average rent/minimum wage ratio, the Nationalist[247] members of the opposition sought a fairer balance vis-à-vis the owners of the, by then, decontrolled houses. Both parties agreed, however, on the promotion of security of tenure and a stringent set of amendments was eventually ratified by Parliament towards the end of that year.[248]

The trends had changed completely by the mid-1990s. In 1987 a Nationalist government came into power, and the country steered towards a market-led economy. The price of property started soaring and this gave rise to the phenomenon of speculation. The rent regime therefore produced figures of even greater disparity with those of the market. This discrepancy tilted the

[242] Ordinance VII of 1868 constituted the first codification of Maltese Civil Laws.
[243] Ibid. no. 235, 103.
[244] Ibid. no. 235, 105.
[245] Although one may not fail to consider that the law was enacted during a time when the British government was Conservative and this may have arguably had its weight on the decision to liberalise the market once again. It is also a fact that local landowners were angered by the fact that the law capped the rents across the board, regardless of the tenants' income (Pirotta, *Fortress Colony*, III, 514).
[246] J. Boissevain, "Contesting Maltese Landscapes", *Journal of Mediterranean Studies*, 2001:11(2), 280.
[247] The Nationalist party has a right of centre ideology. Malta has had a bipartisan parliament since 1966.
[248] Ibid. no. 3, 162.

balance greatly in favour of the landlords and in 1995 it was recognised that whilst ensuring security of tenure the State also had to revive the rental market. The latter was therefore liberalised and the momentum kept building up in favour of the landlords. The government itself acknowledged the fact that in being denied fair returns, property owners were effectively being made to fulfil a social role that should been the responsibility of the State.

The long due reform took place in 2009 and the White Paper issued by the Ministry for Social Policy, drawn up prior to the discussion of the amendments, made an express reference to "social justice to the landlord."[249] It was also stated that one of the guiding principles of the reform was that the use of private property for social housing could not be such that it placed unreasonable demands on the landlord, who was in turn entitled to an adequate standard of living.[250] In recent years the market has been central to every policy undertaken by the government and Act X of 2009 was all about the phasing out of the pre-1995 regimes and the optimisation of the use of available housing stock. The Ministry for Social Policy itself declared that "a philosophical tenet of the amendments is that … the contract of lease is to be returned to its original nature of an agreement between the parties", thereby manifesting the government's intention of distancing itself completely from the mildest notion of control.[251]

Clear cycles can therefore be delineated between the 1920s and the 2000s where complete market freedom was slowly contained by leftist political forces, with peaks of control being reached in the post-war period and the late seventies that were only interrupted by a brief period of liberalisation between 1959 and 1979. The rigor of these legislations, however, shifted the popular views back towards the more liberal end of the spectrum with the legislation undertaking a process whereby all rents would be brought back in line with their market levels.

- **What were the principal reforms and their guiding ideas up to the present date?**

As discussed in the previous question leases are currently regulated by the Civil Code and along with another two statutes: the Reletting of Urban Property (Regulation) Ordinance of 1931 and the Housing (Decontrol) Ordinance of 1959, which was then revised in 1979. In between there was the Rent Restriction (Dwelling Houses) Ordinance of 1944 which, following the 2010 reform, keeps only bearing an indirect effect on a category of leases (specifically those negotiated prior to 1959). The events that led to the enactment of these statutes were illustrated in the previous questions; this part aims to describe the statutes in more detail.

[249] Ibid. no. 72, i.
[250] Ministry for Social Policy, *Explaining the Reform*, 2009, 4.
[251] Ibid. no. 250, 6.

a. The Reletting of Urban Property (Regulation) Ordinance, Cap. 69

The first body of rules dedicated to regulating tenancy law in the modern era was passed on the 14th of May 1925.[252] The "Control of Rents of Immovables Act" was passed in order to control the spiralling prices caused by a sudden crisis in the building industry. The most important features of the "Control of Rents of Immovables Act" concerned the tacit renewal of the lease upon the landlord's failure to give due notice within a 15-day period and the setting up of an Arbitrary Commission on leases. Despite the promulgation of this law rents kept surging uncontrollably and the need for decisive action was felt. The response came through the "Urban Rent Regulation Act"[253] that gave birth to a regulatory body that would oversee all the matters dealing with rent: the Rent Regulation Board. This Board was bestowed unprecedented powers and was set up with the purpose of determining whether to allow the landlord to evict a tenant or to change the conditions regulating the said lease. The thrust behind this law was to set up a body that would watch over the conditions for the renewal of a lease, the new amounts requested and the reasons for refusal of renewal. A subsequent body of rules was eventually reinstated singlehandedly by the Governor of the island[254] in 1931 as the "Reletting of Urban Property Ordinance"[255] which was heavily based on its 1925 predecessor. The Ordinance is still essentially in force today as Chapter 69 of the laws of Malta.

b. The Rent Restriction (Dwelling Houses) Ordinance, Cap. 116

The second major state intervention in the rental sector came in the aftermath of the Second World War. The conflict was to change the housing context completely since an intense series of aerial attacks tore down major parts of the most densely populated areas. In 1944 the administration of the island thus gave life to the "Rent Restriction (Dwelling Houses) Ordinance"[256] through which the rent of houses built before 1939 was frozen at its pre-war level, while those tenements erected after the war became subject to the jurisdiction of the Rent Regulation Board. The bill was amended in 1947 since the local government set out to provide more low-rent dwellings for the population.[257] Act V of 1947 established that the new "Fair Rent" for houses built after the war would be lowered to a sum equivalent to a return of 3% per year on the freehold value of the site and 3.25% on the capital outlay on

[252] Ibid. no. 234, 107.
[253] Act XXIII of 1929.
[254] The 1930s saw a period of instability in the relations between the Maltese politicians and the British rulers; as a result the Constitution granting self-government was suspended in the period between 1930 and 1932. During this short span Malta had reverted to a Crown Colony status.
[255] Ordinance XXI of 1931.
[256] Now indexed as Chapter 116 of the Laws of Malta.
[257] Ibid. no. 3.

construction.[258] By this stage owners of houses built prior to 1939 had already been placed at a disadvantage since the frozen rates had in actual fact taken the shape of a real subsidy.

c. The Housing (Decontrol) Ordinance, Cap. 158

Although the aim of the post-war legislation was to provide more low-rent dwellings for the public, the unintended consequence was that it hampered investment and discouraged the building of unfinished accommodation.[259] Moreover, a feeling of injustice started stirring within the landowning class because the law reserved the same treatment for lower as well as middle and upper income households.[260] The islands were thus being plunged into another housing shortage but none of the political parties would address the crisis. The opportunity to relieve the market came in 1959 when the islands were back under direct colonial administration.[261] The British took the long due decision of putting buildings erected after the coming into force of a new law, the "Housing (Decontrol) Ordinance",[262] beyond government control. This was done in an attempt to boost property development and introduce a new class of dwellings that would be leased at supply and demand prices.[263] Another important provision allowed the fair rent of controlled dwelling houses to rise by a marginal amount subsequent to certain improvements carried out by the landlord; although this could only be done with the prior consent of the tenant. The effect of this new law was that there were three categories of dwellings: the "Old Houses" built before March 1939, the "New Houses" built between March 1939 and April 1959, and the "Decontrolled Houses" built after April 1959.

Through the Housing (Decontrol) Ordinance rents started being regulated solely by the Civil Code for the first time since 1925 and landlords regained the right to charge market prices and refuse renewal upon termination. However, another two statutes were simultaneously in force: the Reletting of Urban Property Ordinance of 1931 and the Rent Restriction (Dwelling Houses) Ordinance of 1944 (later amended in 1947). The very object of the Housing (Decontrol) Ordinance, which thus constituted the third regulatory statute besides the Civil Code, was in fact to make these other two enactments inapplicable to dwelling houses built after it's promulgation.[264]

[258] These were lowered from 3.5% and 5% respectively.
[259] Ibid. no. 32, 182.
[260] J.M. Pirotta, *Fortress Colony: The Final Act, 1945-1964*, (Malta: Studia Editions, 2001), Vol. III (1958-1961), 514.
[261] A crisis in Anglo-Maltese relations in 1959 prompted the enactment of an Interim Constitution providing for an Executive Council under British rule. Malta would obtain its independence from Britain in 1964.
[262] Now indexed as Chapter 158 of the laws of Malta.
[263] Cap. 158, Article 3.
[264] Ibid. no. 3, 1982.

d. Housing (Decontrol) (Amendment) Act, Act XXIII of 1979

Figures seemed to prove the 1959 legislation successful since the building tempo did pick up.[265] However, as explained in the previous question, the prevalent idea at the time was that it was the deregulating law that was in need of reform. More than anything else, the government wanted to prevent rent speculation on decontrolled dwellings. The white paper preceding the amendments itself recognised the necessity of decontrolled houses but it was argued that absolute freedom from restriction would have gradually placed all houses built after 1939 beyond the reach of every Maltese citizen.[266] The Housing (Decontrol) Ordinance was therefore amended in 1979 in order to introduce a degree of protection for tenants whose contracts were regulated by the previous legislative act. Upon the termination of their lease, tenants could no longer be evicted since their leases would be renewed automatically. Moreover, landlords were prohibited from asking new tenants for higher rents, vary the rent during the same lease or ask tenants to pay for repairs in the absence of an attached certificate, attesting the good state of the dwelling, to the original contract.[267]

The "Housing (Decontrol) (Amendment) Act" of 1979 therefore reiterated all tenancy security measures that had been introduced and extended tenant security to families that had taken up residence in dwellings that had been decontrolled just two decades earlier. Moreover, it extended the tenant's right to transfer a lease *causa mortis* to specific beneficiaries[268] and introduced new measures of control for rent increases. The automatic renewal of contracts implied the applicability of the same rate of rent and any increase could take place only after the lapse of a fifteen-year period, according to the increase in the cost of living. The figure was additionally limited to double the value of the previous rent.[269]

The government defended this further piecemeal addition to the already convoluted situation of the law of lease in Malta by stating that the legal difficulties in eliminating existing anomalies was too high. In the meantime the prevalent feeling was that the administration had failed to grasp the opportunity of drafting a new and comprehensive law regulating the relations between landlord and tenant.[270] The biggest injustice had been committed against the landlords of "old houses" that had been erected before the outbreak of the Second World War since they were still bound by the rates imposed by the 1944 Ordinance and in the case of repairs, the increase could not exceed twice the rate that was being paid. The proposed capitalisation at 6% for the transfer of the premises to the government[271] was no feasible

[265] Ibid. no. 3.
[266] Ibid. no. 3.
[267] Housing (Decontrol) Ordinance, Article 5.
[268] Ibid. no. 267, Article 2.
[269] Housing (Decontrol) Ordinance, Article 5(3)(c).
[270] Ibid. no. 3.
[271] Housing (Decontrol) Ordinance, Article 11(2).

option for the owners of those dwellings. Improvements to the property were likewise unrewarding and these houses were left to fall inexorably into a state of disrepair.

e. Housing Laws (Amendment) Act, Act XXXI of 1995

The 1979 amendments provided the strongest tenant protection legislation that the islands would ever witness.[272] This course of action had, however, stalled the mechanisms of the private rental sector and any incentives for landlords to offer their vacant dwellings for rent or invest in private rental units were completely brought down. This situation paved the way for the next important amendments that were, incidentally, to mirror the policy utilised way back in 1959 i.e. that of deregulating leases that were signed subsequent to the date of their coming into force. The liberalisation was reintroduced through Act XXXI of 1995. Despite this measure rent legislation remained subject to four distinct pieces of legislation and the situation had reached a point where wages and salaries had risen astronomically whilst rents had remained pegged to the 1939 level. Whilst in the immediate post-war years such legislation could have found justification, it clearly could not do the same during the prosperous initial years of the twenty-first century.[273]

f. Civil Code (Amendment) Act, Act X of 2009

As a matter of fact, in the early 2000s, the local administration had been faced by a number of Rent Laws that whilst having been envisaged simply as temporary measures, remained on the statute books and kept increasing their rigidity by the year.[274] The diverging regimes that were simultaneously in place had also led to a wide disparity between rents payable for old dwellings and those payable for buildings leased out after 1995. The long awaited reform came in 2009 and the white paper itself recognised that "possession of tenancy under the pre-1995 laws constitute[d] a misuse of the original spirit of why these laws were introduced at the first instance". The "Civil Code (Amendment) Act" was enacted in order to gradually extinguish the leases that were governed by previous statutes and set new conditions that would regulate these contracts until their expiration. The minimum rent for residential dwellings was fixed at a yearly €185 with a series of subtle triennial increases based on the cost of living. The reform seems to have sought to start a levelling process whilst, however, paying particular attention not to destabilise the housing market.

Rent legislation in Malta have therefore followed the same pattern: controls

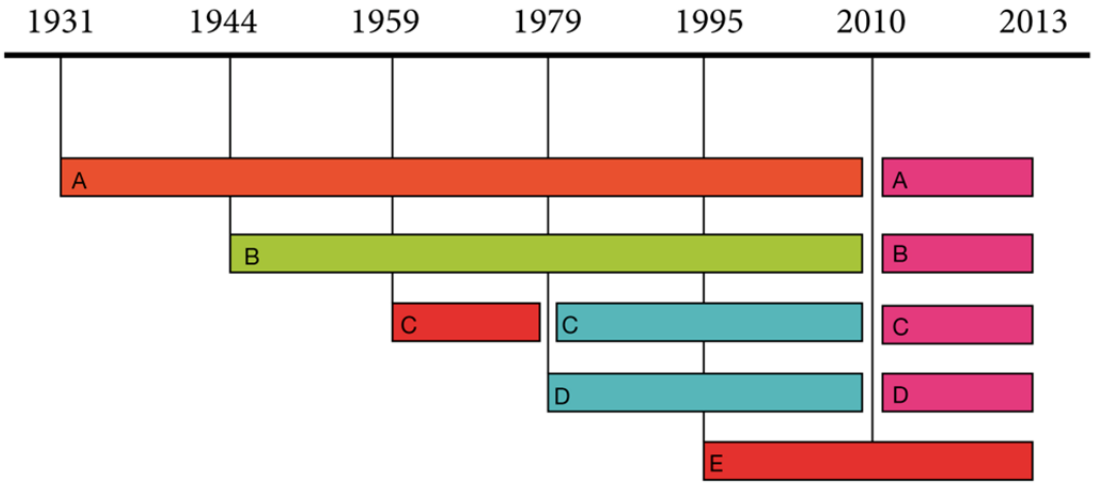
[272] Ibid. no. 32, 184.
[273] M. Miljanic Brinkworth & S. Vella, *Can Social Housing Applicants Afford Market Prices*, Paper presented to the Conference on Housing Affordability, 1999, 4.
[274] J. Lia, *Fair rent & security of tenure*, Dissertation submitted to the Faculty of Laws, University of Malta, 1995.

that set out to ensure security of tenure are introduced before eventually, their severity would command a brief time frame of decontrol. The latest amendments were the first attempt, throughout the history of domestic rent legislation, at gradually bringing all leases on a level playing field. There is currently no talk about further retouches in the rent law although the 2008 White Paper did recommend the introduction of an index that mirrored the price fluctuations of comparable dwellings in the same area.[275]

The figure below summarises the successive pieces of legislation that were enacted in relation to rent along with their period of applicability. The timeline is further explained in the brief summary that follows the figure.

[275] Ibid. no. 72, 45.

Figure 5 The succession of tenancy laws in Malta (1931-2010)



A. Reletting of Urban Property (Regulation) Ordinance, Cap 69

Main purpose:

To protect tenants from excessive rates and capricious evictions after a sudden crisis in the building industry: it therefore entitles tenants to an automatic renewal of the lease at the same conditions. Tenants would also have the right to transfer the lease to their spouse or other relative *causa mortis*. This Ordinance additionally contains the constitutive provisions of the Rent Regulation Board that could determine the limited instances in which the landlord could raise the rent or proceed with eviction.

Political driving force:

Labour Party (left-leaning)

B. Rent Restriction (Dwelling Houses) Ordinance, Cap. 116

Main purpose:

To freeze rates of buildings erected prior to the war and cap rents of newly built dwellings. These were introduced through the notion of "fair rent". Renewal would keep being regulated by the previous Ordinance.

Political driving force:

Enacted by necessity

C. Housing (Decontrol) Ordinance, Cap. 158

Main purpose:

Liberalising property built after 1959 in order to boost property development and introduce a new class of dwellings that would be leased at supply and demand prices. Solely the Civil Code regulated post-1959 leases until the subsequent amendments.

Political driving force:

Enacted by necessity, possibly influenced by Conservative UK Government

D. Housing (Decontrol) (Amendment) Act

Main purpose:

Reintroduce protection for those dwellings that had been deregulated by the previous Ordinance. Tenants were once again granted security of tenure with a right to transfer the lease *causa mortis* to certain beneficiaries. Rents were controlled with a once-every-fifteen-year correction according to the index of inflation.

Political driving force:

Labour Party (left-leaning)

E. Housing Laws (Amendment) Act

Main purpose:

Liberalise leases signed after the 1st of June 1995 to reinvigorate the private rental market. Solely the Civil Code regulates post-1995 leases.

Political driving force:

Nationalist Party (right-leaning)

A to D. Civil Code (Amendment) Act

Main purpose:

Start a process whereby leases regulated by the special statutes would gradually phase out and devise a scheme through which rents would slowly start catching up with market rates. This reform targeted all pre-1995 controlled leases therefore those still regulated by the Reletting of Urban Property (Regulation) Ordinance, the Rent Restriction (Dwelling Houses) Ordinance and the Housing (Decontrol) Ordinance (as amended in 1979).

Political driving force:

Largely bipartisan consensus under Nationalist adminstration.

- **Human Rights:**

- **To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in**

o **the national constitution**

Malta does not have any constitutional provision that ensures the right to adequate housing; this might be explained by the fact that every administration, regardless of its political leaning, has always been reactive in the face of sudden shortages. The response was through rent control measures, control of re-letting, requisition as well as heavy State investment in property for the middle and lower classes. Malta has also had, for quite a number of years, a Housing Department, a Housing Authority, and rent laws designed to curb the monopoly of landlords within the housing market. Maltese policies has favoured tenants so resolutely throughout the years that it is exclusively private property owners who seek constitutional redress due to alleged breaches of their right to private property.[276]

Reports also confirm that the Maltese are well housed: the 2005 census recorded an average of 2.5 rooms per person living in occupied dwellings (according to the *Housing Statistics in the European Union 2010* survey the second highest figure registered amongst all the EU Member States). The Housing Authority is still active in helping young couples in the construction or purchase of their home whilst the Housing Department still takes care of the more urgent cases requiring temporary shelter. Due to the perception that the housing situation is relatively stable, the matter has not been prominent in political debate.

o **international instruments, in particular the ECHR**

The absence of an explicit mention in the Constitution does not preclude reference to international sources of law aiming to secure the right to adequate shelter. During the preparation of the White Paper[277] leading to the latest amendments the Rent Reform Working Group (RRWG) reviewed the European Social Charter,[278] the Joint Report on Social Inclusion,[279] the European Council's common objectives for the fight against poverty and social exclusion,[280] and the EU's Charter of Fundamental Rights.[281] Constitutional judgments, both emanating from the local Courts as well as from the European Court of Human Rights, keep exerting pressure on the legislator even in the present times. As explained above, successive statutes created a number of knotty situations that were never properly addressed until

[276] Ibid. no. 234, 255.
[277] Ibid. no. 72.
[278] Articles 30 and 31.
[279] 15223/01,12 December 2001, 44-47.
[280] 14164/1/02, 25 November 2002, 11.
[281] Article 34(3).

2009. Despite this necessary effort, the reform was not exhaustive and certain outdated measures continue to perpetrate injustice due to the Government's inaction. Amongst the most bitterly contested laws are those that allow the conversion of emphyteutical grants into either leases or perpetual tenures depending on the term contracted.[282]

These measures, introduced by Act XXIII of 1979, were aimed at guaranteeing security of tenure by extending possession rights indefinitely for both lessees and emphyteutas. Along the years, however, their effect became incommensurate with the cause for which they were enacted and they inevitably became the object of strong controversy. The case of conversion into perpetual leasehold has been recently held to breach the landowners' property rights by the European Court of Human Rights (ECHR) in the landmark judgment of Amato Gauci v. Malta,[283] decided on the 15th September 2009. The ECHR held that both the low rent, as well as the disproportionate burden imposed on the landlord constituted grave infringements. The local Constitutional Court adopted the same reasoning of the ECHR and concluded that this legal fiction that turned a temporary grant into an indefinite one is indeed unlawful.[284] Initially it had pointed out that it was only in specific cases that a person could claim a breach of his or her fundamental human rights due to this law;[285] Maltese Courts had in fact seemed very wary of declaring the provisions in question as unconstitutional.[286] Recent decisions have, however, headed decisively towards the absolute invalidity of this law.[287]

In response to these decisions the State established the "Select Committee for the Codification of Laws" which was convened for the first time on the 2 March 2010. Amongst the main items on the agenda were these measures enabling the prolongation of tenure in case of a temporary emphyteutical grant.[288] This three-man committee, however, does not seem to have discussed this matter and with the change of administration in March 2013 this task seems to have fallen within the responsibility of the newly-instituted office of the Law Commissioner. The role of the letter, according to the Revisions of Statutory Laws Act (Act IX of 1980), is that of reviewing and consolidating legislation by deleting laws or sections that would have been revoked or become outdated.

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[282] In case of pre-1995 emphyteutical grants: if they were agreed for a period of less than 30 years they would have been automatically converted into leases, whilst if they were contracted for a period in excess of 30 years the emphyteusis would have been turned into a perpetual grant (Cap. 158, Article 12).

[283] No. 47045/06, §62-64.

[284] Josephine Bugeja v. Avukat Generali et., decided by the Constitutional Court on the 7 December 2009.

[285] Ibid. no. 285.

[286] Angela Balzan v. L-Onorevoli Prim Ministru, decided by the Constitutional Court on the 7 December 2012.

[287] Dr. Cedric Mifsud v. L-Avukat Generali, decided by the Constitutional Court on the 25 October 2013.

[288] K. Aquilina, *Workings of the House of Representatives Select Committee on re-codification and consolidation of laws,* StateCareAndMore.eu.

In a series of judgments in 2006[289] and reiterated again in 2013[290] the ECHR has also held Maltese legislation authorising the requisition of private property to be in breach of Article 1 Protocol no. 1. The same decisions condemned the risible amount of rent that landlords were being subjected to by Government. The acts in question were the Housing Act and the Land Acquisition (Public Purposes) Ordinance.[291] The 2010 reforms were not made to apply to these cases although Article 1622A(g) of the Civil Code gave the Minister the power to extend the scope of these amendments to tenures held under the said acts. The following subarticle allows the Minister to provide transitory arrangements in the case of removal of requisition orders, however, it has not been made use of yet.

- **Is there a constitutional (or similar) right to housing (droit au logement)?**

As said above in Malta there exists no constitutional right to housing. The current situation is best summed up in Mifsud Bonnici's assertion that the "climate for a move to amend the Constitution does not exist at present".[292] However, one cannot deny that certain instances within local tenancy law call for constitutional action. A right to housing could possibly address certain abuses on the part of landlords. These instances will be detailed under the relevant sections in part 6.

6. Tenancy regulation and its context

6.1. General introduction

- **As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased)).**

In recent years, Acts XXXI of 1995 and Act X of 2009 (An Act to Amend the Civil Code) restored the general principle of *pacta sunt servanda* for all lease agreements. Lease can be said to be a purely contractual matter between the parties save for the relevant provisions of the Civil Code.

The definition of lease contained in Article 1526 of the Civil Code lays down

[289] see Ghigo v. Malta, no. 31122/05 §§ 69-70, 26 September 2006; Edwards v. Malta, no. 17647/04 §§ 78-79, 24 October 2006; Fleri Soler and Camilleri v. Malta, no. 35349/05 §§ 79-80, 26 December 2006.
[290] Saliba and Others v. Malta, no. 20287/10 §§ 19-20, 22 January 2013.
[291] Chapters 125 and 88 of the Laws of Malta respectively.
[292] Ibid. no. 234.

that it is a contract by which one of the parties binds himself to allow to the other, the use of thing for a determinate period of time and for a specified rent, which the latter binds himself to pay to the former. The essential requisites for the contract are therefore the agreement of a term and of a relative consideration. This has been consolidated in a long line of jurisprudence. In Vincenzina Vella v. Edward Borg[293] it was held that in the absence of an agreement as to the amount to be given in consideration of the right being created, a lease could not be held to exist. It was additionally considered that neither did services rendered as a form of compensation for the use of the property create a lease, nor did the payment of utilities.[294] Moreover, it had to be specified that the payment was being made in respect of the lease.[295] Another judgment had held that a distinctive feature of lease was the monetary consideration.[296] As regards the period for which the property was being let, local jurisprudence was adamant in holding that no lease could be contracted for an indefinite amount of time, and where the parties would have failed to agree on the latter then the law would determine the term according to the frequency of payment.[297] Consequently any agreement that excluded any consideration or that did not establish a period could not create a title of lease.[298]

As lease is not a contract which transfers ownership but merely the enjoyment of the property, it is sufficient that the lessor be in such a juridical position as to be able to transfer the enjoyment to the lessee. The former legislation allowed rent to be paid in money or in kind. However, it seems that in the new regime, leases of urban-residential property have to be made payable in cash. The rent must be fixed by the parties in the contract, either directly or indirectly i.e. by referring to some other certain and determinate data. If the rent is not fixed by the law or by an agreement, there is no lease owing to the defect of an essential requisite. The final vital element to the contract is the term which must be continuous and, therefore, have a final date which establishes the duration of its execution. Subsequent to the enactment of Act X of 2009 the term should be expressly stated. Duration of the lease can no longer be presumed[299] and the rule that open-ended leases cannot exist under Maltese law remains untouched.

Both the landlord and the tenant can dissolve the contract of lease. Besides the causes of dissolution stemming from the obligations of the lessor; more

[293] Decided by the Court of Appeal (Inferior) on the 28 June 1974.
[294] Rosina Cardona v. Joseph Cuschieri, decided by the Court of Appeal (Inferior) on the 26 June 1970.
[295] Margaret Micallef Sommerville v. Michael Satariano et, decided by the Civil Court (First Hall) on the 23 February 2001.
[296] Giuseppe Abela v. Mary Caruana et, decided by the Court of Appeal (Superior) on the 20 October 2001.
[297] Iris Scott v. Alfred Borg, decided by the Court of Appeal (Inferior) on the 14 January 2002.
[298] Carmel Tabone et v. David Tabone, decided by the Court of Appeal (Superior) on the 31 January 2003.
[299] V. Caruana Galizia, "The Contract of Letting and Hiring", *Notes on Civil Law* (Revised by J.M. Ganado), 1987: III, 709-716.

specifically from the warranties in respect of peaceful possession and against hidden defects, the Civil Code mentions four other causes: (a) the expiration of the time for which the lease was contracted; (b) the occurrence of a dissolving condition; (c) delay in payment of the rent or non-performance of any obligation of either party; (d) the destruction of the property through accident.

Increases are regulated only for leases contracted prior to June 1995; agreements concluded after that date are governed exclusively by the market forces. As explained above, Act X of 2010 set the minimum threshold of those old contracts to €185 and devised a mechanism through which rents would increase triennially until their expiration. The ultimate aim of the latest set of amendments is to achieve the complete liberalisation of market in the shortest time possible. The generous definition of a tenant contained in previous statutes was revisited and pre-1995 contracts are now much less likely to be inherited than before. This should bring old contracts to a natural end, thus, finally establishing a level playing field in the private rental sector.

The current regime envisages a situation where rents would be governed by the rules of the market, therefore, as it stands, the law is clearly pro-landlord. This is undoubtedly the result of a series of outdated laws, intended to guarantee security of tenure, which suffocated and at one point paralysed the Maltese rental sector over the years. Besides this fact, there is also a certain confidence being drawn from the fact that, with the ample supply of housing produced by the recent building boom, demand for rental housing will always be kept under check. As regards quality, no Maltese legislation foresees the establishment of any minimum standards that would determine whether a dwelling is capable of being leased or not. Once again this matter seems to be left free to the market.

- **To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)**

The competence in relation to housing matters is not shared between the national and the local authorities. It is the State that is solely responsible for the regulation of all the aspects of the contract of letting and hiring and no functions or responsibilities in relation to it are assigned to local councils. The latter are only entrusted with the collection of Government property rents.[300]

[300] The structure of Maltese Local Councils is discussed in more detail in: J. Cutajar & J. Magro, *Political Decentralisation in the Maltese Islands*, 118. Retrieved online from: <http://www.um.edu.mt/europeanstudies/books/CD_CSP5/pdf/jcutajarjmagro.pdf>

- **Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?**

Lease merely gives rise to a personal right, although this statement must be qualified in certain aspects. The Civil Code distinguishes lease very clearly from usufruct and other real rights of use and habitation; the latter are considered as real rights which last for the whole of the life of the grantee whilst a lease merely gives rise to a personal right and is limited in its duration.[301] However, other provisions strengthen the position of the tenant to an extent that it could not be viewed as a purely personal right any longer; for instance, the Civil Code states that the acquirer of the thing let is not entitled to dissolve a lease whilst it is in its due course.[302] Jurists seem to agree that the right of the lessee is prevalently personal and not real[303] whilst others opt for the definition of the lease contract under Maltese law as 'sui generis'.[304]

Caruana Galizia[305] illustrates three instances in the Civil Code that distance the lessor's title from the concept of real rights:

a) First of all, Article 1554 of the Civil Code, lists amongst the obligations of the lessor that of allowing "the use of the thing let" to the lessee, therefore implying that former would not be "giving" anything to the purchaser.[306]

b) Secondly the right of the lessee is not included among the incorporeal immovables listed in section 310 along with usufruct or use of immovables and the right of habitation, and if this right were real the law would have required more solemn formalities, such as the publication of the lease through the Public Registry.

c) Finally in the case of an action brought by a third party compelling the lessee to surrender the property (actio reivendicatoria) or to recognise and enforce a servitude (actio confessoria) the lessee is bound to call the lessor to the suit whilst he is granted the right to be relieved therefrom.[307]

Ganado lists three further distinctive elements that make the contract of lease unclassifiable under either of the categories:

i) The right follows the property even in the hands of particular successors.[308]

[301] Ibid. no. 299, 709.
[302] This may effectively constitute a problem for prospective buyers that do no inspect the properties physically.
[303] Ibid. no. 299, 728.
[304] Ibid. no. 228.
[305] Ibid. no. 299.
[306] Article 1554(a) of the Civil Code, in fact, binds the lessor to keep the thing in such a state that it can serve the purpose for with it was let for the whole duration of the lease.
[307] Civil Code, Article 1553.
[308] Article 1572: a contract of letting and hiring of a thing is not dissolved by the death of the lessor or of the lessee.

ii) A lease granted by a person with a dissoluble title is valid against the owner even after the dissoluble title ceases to exist.[309]

iii) A lease given by the apparent owner to a lessee in good faith is valid against the real owner.[310]

Jurisprudence has also been consistent in considering it as a personal right[311] despite a brief early period when our Courts had proposed that the right of the lessee was more akin to the concept of real rights.[312] In a more recent case, the Court reasserted the prevalence of the personal theory by ruling that a tenant is not considered capable of subjecting the rented premises to any servitude or charge.[313]

- **To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?**

As explained earlier, any contract signed after 1995 falls under the sole regulation of the Civil Code. The Code can be considered quite liberal since on the expiration of the lease it is the landlord who decides whether to renew or terminate the lease. However, not all leases in Malta are governed by the Code's largely *laissez faire* provisions. Another two special laws are simultaneously in force and the events leading to their enactment were explained in detail in Part 2.1.

The Re-letting of Urban Property (Regulation) Ordinance of 1931 is one of the separate statutes overriding the Civil Code. It governs directly all pre-1995 rental agreements for Maltese citizens using the property as their sole and ordinary residence; although issues of rent and inheritance of leases are now ruled by the Code. This statute prevents the landlord from asking for the property once the lease expires. The definition of what constitutes a tenant

[309] Article 341 in case of usufruct and 1530 in case of other "temporary" or "dissoluble" contracts. The maximum term of prolongation for urban property is four years. It seems to be valid for contracts transferring any real rights, or rights deriving from a personal relationship which confer on the recipient the right to take the civil fruit, but not those rights which are strictly personal. Therefore whilst it counts for emphyteusis and usufruct, it does not for cases of sublease. The word "dissoluble" may have been introduced to cover cases of the right of pre-emption in sale and the right of preference in emphyteusis.

[310] This assertion must be qualified since the lessor must be at least the temporary or dissoluble owner. If it is the case of an unauthorised lessor, the lessee could claim damages after his ejection by the real owner. This evidences a certain disposition by Court to protect sitting tenants from an abrupt eviction.

[311] More recently in John Bugeja Caruana v. Alfred Brown, decided by the First Hall (Civil Court) on the 17 March 2005.

[312] Sammut v. Gianni; Zica'aki v. Terreni.

[313] Alfred Farrugia v. Joseph Psaila, decided by the Court of Appeal (Superior) on the 21 January 1993; Bugeja Caruana v. Brown.

and what constitutes a lease is also rather broad compared to the Civil Code[314] since these sections were meant to provide unconditional security of tenure for lessees. Therefore, as long as the premises constituted the ordinary place of residence, the landlord would have no other option but to renew the lease along the same conditions as the previous one, unless he would be capable of challenging this reletting of the premises on any of the limited grounds granted to him by the same Ordinance. Until the amendments to the Civil Code, tenant protection could be easily translated into perpetual inheritance of the tenancy.

Another statute which is essentially still in force is the Housing (Decontrol) Ordinance as amended in 1979. Similarly to the previously described Ordinance, upon the termination of the lease the landlord would not be able to reclaim the premises if the tenant were a Maltese citizen and the property constituted his ordinary place of residence. Whilst the law states that the lease is extendible on an annual basis, local jurisprudence has laid down that the lease is extended for 15 years, within which no amendments to the rent payable would be possible.[315] The definition of what constitutes a tenant is likewise broad[316] and prior to the recent amendments the landlord only had the right to increase the rent on the basis of inflation. For the landlord to terminate the contract, the tenant must be in evident breach of one or more of the specific set of conditions listed in the special statute. Following the amendments rents now rise on a triennial basis.

Before the introduction of Act X of 2009 the situation was particularly intricate since none of the statutes, or any of their amendments, had ever attempted to address the situations created by their predecessors. Leases signed prior to the enactment of Act XXXI of 1995 were governed mandatorily by the special laws and despite the liberalization, the previous legislations were kept in force. The 2010 amendments served, first of all, to redimension the definition of a tenant thus, although still not in convergence with the Civil Code, it brought a common position for all the tenants who entered their properties prior to 1995. The amendments also brought much-needed harmonization in respect of rent increases and introduced a common mechanism that is to apply to all rents similarly contracted prior to 1995. Another provision allocates a set rate of increase in the case of repairs of the premises by the landlord.

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[314] It includes (a) emphyteutical concessions 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.

[315] Ibid. no. 72, 9.

[316] It includes (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 long-term target is to restore the situation were all leases are governed by one and the same law: the Civil Code. The 2009 Reform set out to eventually extinguish all the contracts regulated by Chapters 69 and 158 through an "evolutionary" process, aimed at terminating the current open eligibility criteria, that have led to the perpetual inheritance of the property by one generation of tenants to the other.[317]

- **What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?**

The Maltese legal framework allocates all matters relating to lease contracts of immovables – whether residential or commercial – to the Rent Regulation Board (RRB).[318] The RRB is a special judicial body set up by the Reletting of Urban Property (Ordinance).[319] Up to Act X of 2009 the competence to decide on rental disputes generally rested in the ordinary courts; cases were only referred to the RRB if they related to pre-1995 leases. The liberalising Act XXXI of 1995 had in fact designated the ordinary courts as the proper body to hear cases on letting and hiring of immovable property.

Despite the provisions contained in the reform, the ordinary courts have retained their competence on cases which had been filed before them, but from the introduction of the reforms onwards they could only decide cases in which the validity of the lease agreement was at stake. The Courts of Law have made it clear that despite the extensive powers being conferred on the RRB, matters that did not fall within the scope of the provisions aimed at regulating leases still fell under the jurisdiction of the ordinary courts.[320] It follows that the Board cannot decide a matter relating to the contractual validity of a lease agreement; the latter would only be competent to hear cases which arose from that agreement.[321] The same Civil Court, however, accepted that its competence to decide a matter would be extinguished as soon as it emerged that a valid title at law was in fact in existence.[322] The competence of the tribunal is determined by the declarations and pleas raised

[317] Ibid. no. 245, 5.
[318] Civil Code, Article 1525(1).
[319] Reletting of Urban Property (Ordinance), Article 16.
[320] Christopher Gatt v. Daniel Doneo, decided by the First Hall (Civil Court) on the 28 March 2011. In this case a lease contracted under vice of consent, involving a suspected false signature, was held to fall under the jurisdiction of the First Hall (Civil Court). This judgment followed earlier jurisprudence, inter alia Joseph Gauci v. Catherine Kerkoub decided by the Court of Appeal (Inferior) on the 20 October 2003.
[321] Tourist Services Limited v. Arali Enterprises Limited, decided by the First Hall (Civil Court) on the 4 November 2011.
[322] Emmanuel A. Bonello noe v. Francis Fenech, decided by the First Hall (Civil Court) on the 20 May 2004.

by the parties.[323]

Along with this exclusive competence Act X of 2009 also empowered the RRB to decide cases of eviction through a special summary procedure known as "*proċedura tal-giljottina".*[324] The RRB acts as a court of first instance and any decision may be referred to the Court of Appeal as stipulated in Section 24(2) of the Reletting of Urban Property (Regulation) Ordinance.[325]

- **Are there regulatory law requirements influencing tenancy contracts**
  - **E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)**

In Malta there is no register for rented property, therefore neither the landlord nor the tenant are under any obligation to enrol their contract of lease anywhere. In addition, no standard is required for properties in order for them to be capable of being leased, therefore, there is no record or public information in this respect. Needless to add, there is no sort of register for so-called "bad" or defaulting tenants.

- **Regulatory law requirements on (new) habitable dwellings, e.g. on minimum size, number of bathrooms etc.**

a) Planning and zoning are exclusively dealt with by the Malta Environmental and Planning Authority (MEPA). The Environmental Development Planning Act[326] establishes the parameters of local planning amongst which the regulation of sizes of dwellings[327] and the limitations for the various kinds of properties.[328] The minimum permissible site frontage is normally 6 meters although MEPA may allow exceptions down to 4.2 metres, as long as the size of the dwelling complies with the other requirements. In the case of redevelopment of existing buildings the admissible width may be reduced to 3 metres, as long as the dwelling is designed in such a manner as to allow an

[323] Joseph Bugeja v. Alfred Camilleri, decided by the Court of Appeal on the 6 October 2004.
[324] Reletting of Urban Property (Ordinance), 16A(1)(a).
[325] The appeal has to be filed by means of an application within twenty days from the day of the Board's decision.
[326] Chapter 504 of the Laws of Malta.
[327] "Development Control Policy and Design Guidance 2007" Part 3 entitled "Site Coverage, Dwelling Type, Plot Size, Dwelling Size (Sections 3.1 to 3.8).
[328] Ibid. 327, Section 3.2. The regulations for 'Detached and Semi-Detached Dwellings' include: permissible development, minimum site area, maximum site coverage, maximum number of habitable floors, garages and areas of soft landscaping. The limitations for 'Flatted Dwellings' including 'Maisionnettes' in Areas Zoned for 'Semi-Detached or Detached Villas' are contained in Section 3.5.

adequate admission of natural light and sufficient ventilation.[329] The policy also states that all new built and rehabilitated housing units must have a minimum gross floor area of 45m^2, 76m^2 and 96m^2 for one-, two- and three-bedroom apartments respectively.[330] Further guidelines aim at ensuring proper standards of amenity and the protection of privacy.[331]

b) These developments must additionally conform to the sanitary laws regulating the construction of new dwellings contained in Article 97 of the Code of Police Laws[332] that sets further standards for the building's approval by the authority.

c) New buildings must also adhere to the "Technical Guidance Document F - Conservation of Fuel, Energy and Natural Resources"[333] which expands on the requirements of the aforementioned Code of Police Laws.

- **Regulation on energy saving**

The Maltese regulations on energy saving have always followed the European Directives on the matter. The "Energy Performance of Buildings Regulations 2012"[334] is the instrument through which the provisions contained in the EU Directive on the energy performance of buildings[335] find their applicability in Malta. These measures are very relevant to the private rental market. Article 13 of these regulations for instance, establishes a system to monitor and ensure that an Energy Performance Certificate (EPC) is issued for buildings that are rented out to new tenants. The regulations also set out the obligation, on the part of the landlord, to show and deliver a copy of this EPC to any prospective tenant and they additionally lay out that the performance indicator should be clearly advertised when the premises is released on the market.

In the case that this certificate is not provided, the tenant is entitled to go as far as engaging an assessor to issue the EPC and deducting the expenses incurred from the amount of rent due.[336]

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[329] The minimum dwelling size (other than the dwellings covered in the aforementioned policies 3.2 and 3.5) are regulated by Section 3.7.
[330] In the development of five or more units, MEPA may not permit more than 20% of the dwellings to be developed as one-bedroom units (excluding penthouses). Allowances are made for buildings developed by NGOs.
[331] "Development Control Policy and Design Guidance 2007", Section 12.1.
[332] Chapter 10 of the Laws of Malta.
[333] Published through Legal Notice 238 of 2006.
[334] Published through Legal Notice 376 of 2012. This superseded the previous "Energy Performance of Buildings Regulations 2008" that had been published through Legal Notice 261 of 2008.
[335] Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.
[336] Energy Performance of Buildings Regulations 2012, Article 14.

Since the enactment of the Building Regulation Act[337] in November of 2011, the Building Regulation Office, set up under the Ministry responsible for infrastructure, is empowered to take action against any infringements of the abovementioned regulations. Architects are liable for any designs that run counter to the requirements contained in the regulations.

6.2. The preparation and negotiation of tenancy contracts

Summary Table 10 Preparation and negotiation of tenancy contracts

	Main characteristic(s) of Private Leases
Choice of tenant	The majority of landlords seem to rent property directly to tenants. Strong scepticism towards estate agents although they also seem to be widely used.
Ancillary duties	Duty of the lessor to contract in absolute good faith.

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- **Freedom of contract**
    - **Are there cases in which there is an obligation for a landlord to enter in to a rental contract?**

The only instances, contemplated by Maltese law, where a landlord would be obliged to enter into a rental contract are contained in the Land Acquisition (Public Purposes) Ordinance[338] and the Housing Act.[339] Both instances involve a governmental imposition on the landlord where the latter would have had to accept the tenant to whom the tenement was transferred. The first legal instrument enables the government to acquire property connected with exclusive governmental or general public use, or more widely if required in the public interest or utility in general.[340] The acquisition occurs through a Presidential declaration and the competent authority may demand the land for "possession and use" for a stated time or for such period as the stated public purpose might require.[341] Property may also be acquired on public tenure.[342]

The Housing Act then gives general requisitioning powers to the Director of Social Housing, through which, a landlord may similarly be subjected to a

[337] Chapter 513 of the Laws of Malta.
[338] Chapter 88 of the Laws of Malta.
[339] Chapter 125 of the Laws of Malta. As of 1995 the Director of Social Housing was no longer able to exercise any requisitioning powers (Article 21) although a vast amount of properties remain requisitioned in virtue of this Housing Act.
[340] Definition of "public purposes" given by Article 2 of Chapter 88.
[341] Ibid. Article 5(b).
[342] Ibid. Article 5(c)

'forced' lease. These powers were definitively taken away from him in 1995[343] although this amendment did not affect previously requisitioned premises. Article 3, as amended by the Housing (Amendment) Act of 1989,[344] still reads that if it appeared "necessary or expedient in the public interest, but only for the purpose of providing living accommodation to persons or of ensuring a fair distribution of such living accommodation", the Director could proceed to take possession of a building.[345] This latter provision that was initially drawn up during a time when it may have been well justified[346] but it had later on become susceptible to abuse. Most tenancies held through such administrative action have been stirring controversy till this very day.[347]

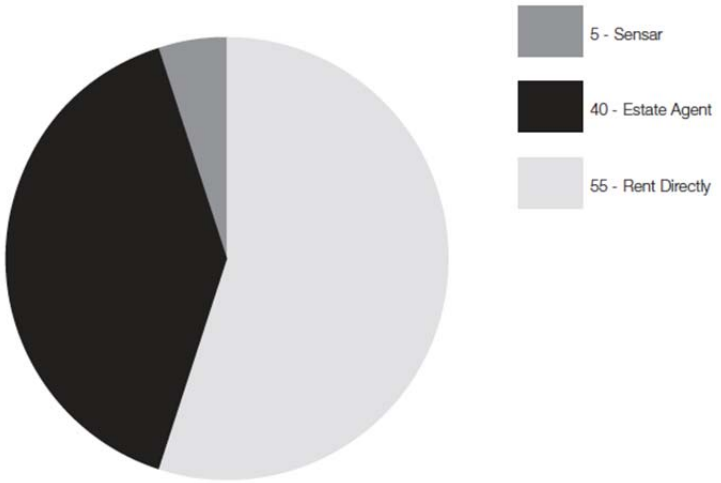
A steady process of derequisition has been going on since 1998 through which premises are usually returned to the landlords upon their vacation. From an estimated total of over 13,000 requisitioned dwellings in 1998 the number had been reduced to approximately 5,200 by 2008.[348] The RRWG of 2008 has itself recommended the continuation of this derequisitioning exercise.

- **Choice of tenant**
    - **How does the landlord normally proceed to find a tenant?**

Recent findings seem to suggest that local property owners are very skeptical of using the services of an Estate Agent when it comes to renting out their property. The results of the study, shown in the figure below, indicate that owners would prefer to let out property directly to the tenant rather than outsource the search to a third party. Neither did the cost or the type of dwelling nor its location appear to affect the decision to use an estate agent or other intermediary. [349]

Figure 6 Method used to let property[350]

[343] Cap. 125, Article 21.
[344] Act XXXVII of 1989.
[345] Judgments such as Edward Ferro et v. Segretarju tad-Djar, decided by the Constitutional Court have established that the Housing Secretary (now referred to as the Director of Social Housing) would have immediately become the valid possessor of the premises upon the issue of this requisition order. Later on, in Carmen Cilia v. Carmela Grech, decided by the Court of Magistrates (Civil) on the 12 October 2001, it was confirmed that following the amendments to the Housing Act, the legal possession had been transferred to the Housing Authority as the successor of the same Housing Secretary.
[346] The Housing Act was enacted in 1949.
[347] See Part 2.1.
[348] Ibid. no. 72, 46.
[349] Ibid. no. 123, 85
[350] Ibid. no. 347.



Sensar: real estate broker[351]

The ways in which owners advertise properties vary from the traditional means of communication including newspapers, magazines, and leaflets to the more modern practice of using social media and online classified advertising.[352]

Certain prospective tenants also seem to be discouraged from using estate agents due to the fees that might be involved, consequently they would prefer to look for the 'To Let' signs or other kinds of adverts themselves. Migrants hailing from Sub-Saharan and North Africa as well as those coming from the Middle East are very likely to use personal contacts.[353]

- **What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?**

It does not seem that such checks are a common practice in Malta. Landlords may, however, request the tenant to be backed by a surety. The security,

[351] The functions of a real estate broker are very similar to those of real estate agents. A broker, however, would generally be more experienced and he would not form part of an agency; on the other hand, he might even employ real estate agents in the conclusion of the deal.
[352] Amongst the most popular sites are those run by them main estate agencies: eg. <http://www.franksalt.com.mt/EN/content/55/Search_Letting_Property>, <http://www.dhalia.com/malta-property.aspx>, <http://www.belair.com.mt/letting>, <http://www.remax-malta.com/renting.aspx>, <http://www.engelvoelkers.com/malta/> and <http://www.property-malta-perry.com/>.
[353] Ibid. no. 123, 57.

however, would not be extended automatically if the tenant opted for renewal or if he continued his occupation beyond the agreed term, unless, of course, the surety would have expressly bound himself for the whole time until the lessee would have surrendered the thing.[354]

- **How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?**

In the absence of a register for "dangerous" tenants the Maltese landlord does not seem to have any means of investigating into the financial statuses of tenants. The diffused practice in the case of distrust, therefore, is either the imposition of a monetary deposit or else the demand of a significant payment in advance i.e. three or six months rent.[355] Once the landlord finds out that the tenant is sufficiently reliable, he would be more likely to soften his approach and demand that rent be paid monthly or bimonthly.

- **What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)**

It is possible for the tenant to search for details of ownership at the Public Registry[356] or, where applicable, the Land Registry[357] in which one could also verify whether the property is encumbered by any burdens such as easements, burdens, privileges or hypothecs.

- **Services of estate agents**

  - **What is the role of estate agents? What are the usual services they provide in the area of rental housing?**

The services offered by estate agents are considered by Maltese law to fall under 'brokerage'. For the agent to be entitled to the brokerage fee three concurrent elements must exist: i) that the negotiations be concluded, ii) that the intervention of the broker be requested or at least accepted by both contracting parties and iii) that the activity of the broker would have led the

[354] Civil Code, Article 1538. Suretyships are then dealt with in detail by the Civil Code in Part II, Title XX Articles 1925 to 1963.
[355] This may constitute another instance where landlords may abuse of their rights. Maltese law neither regulates the amount of deposit that can be asked nor the maximum payment that can be made in advance (save for Article 1535 of the Civil Code that prohibits payments in advance in excess of six months' rent if any prejudice would be caused to the hypothecary creditors of the lessor or to his successors to the property).
[356] Constituted by the Public Registry Act, Cap. 56 of the Laws of Malta.
[357] Constituted by the Land Registration Act, Cap. 296 of the Laws of Malta: this Act applies for properties that fall within the Compulsory Registration Areas designated by it.

parties to the final consent.[358] In the absence of any of those three requirements the broker would only be able to claim compensation for services rendered; if Court finds the request to be well-founded the awardable amount would be based on a *quantum meruit* basis. It therefore follows that if the agent would have been appointed exclusively by only one of the parties it would not be a case of brokerage but simply one of mandate or '*locatio operarum*' (letting and hiring of skill and labour).[359] The same applies for those cases where the negotiations would stop short of the final consent[360] although jurisprudence has further elaborated that a broker would only be entitled to compensation if he could both prove his appointment as well as the services that he would have performed; the mere supply of information would not be sufficient to justify his remuneration.[361] It has, for instance, been specified that the mere advertising of the property and the introduction of interested acquirers to the seller did not entitle the agent to a fee; the Court of Appeal said that this risk had to be borne by the agent particularly in view of the considerable amounts of commission that were involved in the case of successful negotiations.[362]

The main reasons why estate agents are resorted to in Malta seem to be, first of all, because of the perceived risk of over- or under-pricing one's property, which may result in significant delays in the process of finding a tenant. Agents are thus relied on due to their better knowledge of the market conditions. The second reason relates of course to promotion and marketing since the property being leased out would receive a much greater exposure.[363]

A recent study conducted by the National Commission for Promotion of Equality (NCPE) has evidenced that the parties do not rely on agents as a source of legal information particularly in regard to discrimination legislation. In fact, the majority of the respondents seemed to regard the estate agent merely as an "intermediary" in a business transaction and nothing more. The same study outlined how this detachment may be one of the main reasons why so few immigrants and ethnic minorities resort to estate agencies.[364] The

[358] Reiterated *inter alia* in: Legend Real Estate Limited v. Paul Pisani, decided by the First Hall (Civil Court) on the 29 October 2004; Bugibba Real Estate Limited v. Joseph Portelli et, decided by the First Hall (Civil Court) on the 30 May 2003.
[359] Anthony Ferris et v. Ronald Cachia, decided by the First Hall (Civil Court) on the 24 September 1999.
[360] Emmanuele Borg v. Emmanuele Bartoli, decided by the Court of Appeal on the 2 March 1953, quoted more recently in: Caroline Ebejer et v. Saviour Galea et, decided by the Court of Appeal (Inferior) on the 17 April 2009.
[361] Carmelo Pace v. Josephine Tabone, decided by the First Hall (Civil Court) on the 4 March 1952; Alfred Antignolo v. Louis Magri et, decided by the Court of Appeal on the 21 February 1996.
[362] Legend Real Estate Limited v. Paul Pisani, decided by the Court of Appeal on the 25 May 2007.
[363] Federation of Estate Agents Malta, <http://user.orbit.net.mt/fournier/FEAM/whyagents.htm>.
[364] Ibid. no. 123.

services of the category are mostly made use of by European nationals (both EU and non EU).[365]

- **To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?**

The profession of estate agents in Malta is not regulated by any specific piece of legislation, which also means that their activities are not overseen by any public authority. The only representative body for the category is the Federation of Estate Agents that lists amongst its objectives that of ensuring an ethical standard in the conduction of business between agents and clients as well as between the agents themselves, and that of securing the advancement and the facilitation of the acquisition of knowledge required for the carrying out of the activity.[366]

- **what is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?**

It is customary amongst estate agents to charge a "standard agency fee" equivalent to one half of the first month's rent from the landlord and one half of the first month's rent from the tenant in the case of long lets.[367] For shorter lets, that can range from a minimum of 7 days to a maximum of 6 months, the agency fee is around 10% of the total rent from the landlord and 10% of the total rent from the landlord and 10% of the total rent from the tenant. There are no legal limitations on the commission that can be charged by estate agents and therefore this aspect also seems to be self-regulated.[368]

- **Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)**

In Malta we have no specific provision on "*culpa in contrahendo*" although this concept appears to be embodied in the ample scope of Article 1031 of the Civil Code.[369] Maltese judgments have always given weight to the principle of good faith and the obligation of any party to a contract to give due regard to the other party's interest. There have been instances when the Courts explicitly condemned a party of *culpa* and *dolus in contrahendo*.[370]

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[365] Ibid. no. 262, 102.
[366] Federation of Estate Agents Malta, accessed from: <http://www.foeamalta.org/>
[367] Long lets are generally understood as as lets for a period of not less than 6 months.
[368] Federation of Estate Agents Malta, accessed from: <http://user.orbit.net.mt/fournier/FEAM/rental.htm>.
[369] Civil Code, Article 1031: "Every person, however, shall be liable for the damage which occurs through his fault."
[370] Anthony Bezzina v. Direttur tal-Kuntratti, decided by the Civil Court (First Hall) on the 12 October 2006.

One of the first cases where the local courts recognised the applicability of precontractual liability concerned, in fact, a promise of lease where the Commercial Court had accepted the prospective lessee's argument that the lessor's decision to let the premises to a third party deep into the negotiation phase with the former amounted to 'culpa' in terms of Article 1031 of the Civil Code. The lessor was therefore ordered to pay damages since the prospective lessees proved to the Court's satisfaction that the lessor had assured them regarding the conclusion of the contract.[371]

Another case relating specifically to a contract of lease did come up more recently in front of the Civil Court and it was confirmed that it was the duty of the lessor to contract in absolute good faith.[372] Plaintiff (lessee) sought the nullity of the contract of lease due to the lessor's omission that the premises that constituted the object of the agreement, lacked the necessary permits from the Planning Authority. The Court found the lessor guilty of *culpa in contrahendo* and ordered the latter, in a subsequent judgment, to restore the sum that the lessee had spent in rent along with all the other related expenses that he was made to incur. The second judgment[373] also held that if found responsible of any fault prior to the conclusion of the contract, the lessor would not be able to avail himself of any contractual stipulation limiting the amount that could be refunded to the lessee, since the same agreement giving rise to this claim would be null *ab initio*.

A promise of lease entailing a forfeitable deposit (or *arra poenitentialis*) would, on the other hand, only seem to given effect as long as the promissee would not have had any valid reason at law to withdraw from the contract. This is in line with the promise of sale jurisprudence where a prospective buyer would, for instance, be excused from appearing on the final deed if he were not able to obtain the necessary permit to purchase the property.[374]

[371] John Pullen v. Manfred Gunter Matysik et, decided by the Court of Appeal on the 26 November 1971. The damages were however restricted to the actual damages suffered and the amount was not inclusive of any profits that plaintiff would have derived from the concession of the commercial premises.
[372] Mario Borg v. Carmelo Testa, decided by the Civil Court (First Hall) on the 9 October 2003.
[373] Mario Borg v. Carmelo Testa, decided by the Civil Court (First Hall) on the 9 February 2006.
[374] Aldo Ciantar v. Alfred Vella, decided by the Commercial Court on the 18 November 1988.

6.3. Conclusion of tenancy contracts

Summary Table 11 Conclusion of tenancy contracts

	Main characteristic(s) of private residential leases
Requirements for valid conclusion	Written contract stipulating: a) property leased, b) agreed use, c) duration of lease, d) whether lease is extendible, e) amount of rent to be paid.
Regulations limiting freedom of contract	Access to Goods and Services and their Supply (Equal Treatment) Regulations, Equal Treatment of Persons Order, Status of Long-Term Residents (Third Country Nationals) Regulations. Invalidity in case of unlawful consideration or subject matter of contract contrary to morality/public policy. Prohibition to stipulate provisions contrary to special statutes (only pre-1995 contracts).

- **Tenancy contracts**
  - **distinguished from functionally similar arrangements (e.g. licence; real right of habitation; leihe, comodato)**

a. Emhyteusis

Tenancy contracts have always been distinguish from other types of contracts, such as commodatum, by the Maltese Courts. A slight exception may relate to emphytheusis[375] which, despite being differentiated by the law, has often been held by the Maltese to fulfil the same role as a contract of letting and hiring. This phenomenon seems to be firmly entrenched in popular culture since in the Civil Code the section relating to emphyteusis precedes immediately the one dealing with leases.[376] As described earlier, Act XXIII of 1979 had at one point provided for the automatic conversion of emphyteutical grants into leases. This move was meant to regulate the developed practice

[375] This contract elevates the emphyteuta (the one holding the land in emphyteusis) to the position of a quasi-owner with all the relative rights and obligations that accrue. The "direct' owner" (the grantor of the emphyteusis) retains only the "directum dominium" and is divested of all his ownership rights until it eventually reverts back to him at the end of the tenure. The payment of the groundrent is the recognition of the dominium and it neither does nor should necessarily represent the market value.

[376] Titles VII and VIII of the Civil Code respectively.

of 'leasing out' property under the title of emphyteusis in order to elude the restrictive rent laws. Such methods have perhaps consolidated the popular belief that the two contracts are deeply related although, as of June 1995, emphyteutical grants could be contracted free of any restrictions once again.

The Civil Code itself proposes the notion of interchange between these two contracts. Article 1498, in fact, stipulates that despite being termed a contract of letting and hiring, an agreement of lease exceeding the term of sixteen years, which bears more resemblance to a contract of emphyteusis rather than lease, may be considered as an emphyteutical grant. The same article lays down that the contrary would not be possible, regardless of the brevity of the emphteutical period, however, this latter clause was superseded, until 1995, by Article 44(a) of Chapter 69 which introduced the legal fiction that any emphteutical grant inferior to sixteen years was equivalent to a lease.

Despite this institute's decline in several other European countries, in Malta it is still relatively diffused; one of the main reasons is that it was used by Government to fulfil a social purpose. As a result of the building boom of the 1960s, which saw young couples struggle to finance their homes, the government, as well as the Church, decided to grant plots of land on emphyteusis to persons who were unable to buy them. Couples could thus channel their savings directly into the building of the property rather than having to put them aside for the purchase of the land. Moreover, unlike what happened through the lease of property, Maltese couples could become owners of their homes, and the matrimonial home could therefore come to constitute a form of investment.[377]

Conceptually, emphyteusis was not meant for residential purposes. However, in the mid-twentieth century it started being used by landowners as a means of deriving more profit from their real estate investments. In fact, this is the other main reason why emphyteusis has retained such popularity. Owners of dwelling houses used to grant their property "on long leases" for a period exceeding 16 years in order to avoid the application of the special rent laws.[378] Since the institute of emphyteusis was only regulated by the liberal provisions of the Civil Code, owners could utilise emphyteutical grants to exact any amount they wished and, most of all, reserving the liberty of refusing to renew the contract upon its expiration. Furthermore, as the Housing (Decontrol) Ordinance of 1959 considered the emphyteuta occupying these premises as an owner, those dwelling houses which were so occupied

[377] N. Tabone, *The Disintegration of the Institute of Emphyteusis from 1970 to Date*, Dissertation submitted to the Faculty of Laws, University of Malta, 2009,10-17.

[378] By virtue of Article 44(1) of the Reletting of Urban Property (Regulation) [Cap. 69] emphyteutical grants contracted for a period not exceeding sixteen years were considered leases. This rule had been in force since 1947.

in 1959, could be decontrolled by the real owner since they would have been owner-occupied on that date.[379]

The former use constituted an evident breach of the spirit of the laws and Government thus decided to take action through Act XXIII of 1979. The Housing (Decontrol) Ordinance was amended in order to give the temporary emphyteuta the possibility to extend his tenure beyond the period agreed in the contract;[380] at the expense, of course, of the direct owner. This effectively meant that whereas the direct owner would have originally set out to grant a temporary emphyteusis, he would have been suddenly faced with an indefinite lease agreement possibly lasting for entire decades. The same Act laid down that grants contracted for a period exceeding 30 years were to be converted into perpetual emphyteuses.[381] The latter practically meant the transformation of temporary emphyteutical concessions into a de facto transfer of property without the consent of the owner.

Emphyteusis was subsequently liberalised again through Act XXXI of 1995 which made the Housing (Decontrol) Ordinance inapplicable to any emphyteutical concession granted after the 1st of June of that year. Rents of contracts that had been originally negotiated as emphyteutical grants, and subsequently converted into leases, fall under the regulation of Act X of 2009.

[379] C. Gatt, *The Effect of the Housing (Decontrol) Ordinance on Temporary Emphyteutical Grants of Dwelling-Houses in the Light of Case-Law*, Dissertation submitted to the Faculty of Laws, University of Malta, 1993, 1.

[380] Housing (Decontrol Ordinance, Article 12(2): This applied when the emphyteutical grant was either granted for a period not exceeding 30 years, if the contract was made before 21st June 1979, or for any period, if the contract was made on or after 21st June 1979. The emphyteuta was empowered to continue in occupation of the dwelling under a lease from the direct owner at a rent equal to the ground rent payable immediately before the expiration of the emphyteusis, The rate could only be increased at the beginning and after the lapse of every fifteenth year, being an amount not exceeding such groundrent, as represents in proportion to such ground-rent the increase in inflation since the time the ground-rent to be increased was last established.

[381] Housing (Decontrol) Ordinance, Article 12(4): In this case, since the ground-rent would have been established some one hundred years back, it was first increased sixfold on "conversion", and subsequently every fifteen years on the basis of the increase in the cost of living, similarly to the temporary grants. The latter kind of temporary emphyteuses carried very low ground rents, sometimes even less than €2.33 per year and had between 99 and 150 years duration. They were drawn up in the last century, belonged mostly to the Church, and were due to lapse in the 1980s and 1990s.

b. Commodatum

The Courts have also been asked to rule cases where the tenancy would consist of a commodatum. The commodatum, or loan for use, is provided for by Article 1824 of the Civil Code and it is defined as a gratuitous contract through which a party delivers a thing to another for a specified time or purpose, subject to the obligation of the borrower to restore the thing back to the other party. Maltese Courts have held commodatum to create a valid title, unlike precarium (dealt with in article 1839 onwards) that is brought into being by the owner's consent in favour of the occupant's use of his property. Consisting merely of tolerance, a precarium can be withdrawn at the owner's own will. For the purpose of the special statutes, however, both contracts were held to constitute a valid title under which a tenant could prolong his or her occupancy of the premises.[382] These contracts were afforded protection under Cap. 69 since the Ordinance included, under the term "lease", any real or personal right on any premises granted under "onerous or commutative" title.[383] As held by jurisprudence the essential factor that distinguishes the contracts of commodatum and precarium is the duration since whilst the former implies an agreed term the latter can be ended by the lender at will.[384] The Courts have also stressed the presence of an inherent fiduciary element in these sort of contracts[385] and they are in fact usually based on affective ties or debts of gratitude. The distinctive element of such agreements from a contract of lease is the payment; commodatum and precarium require gratuity.[386]

Any structural repairs carried out by the borrower in favour of the lendor's property would be deemed to erode the essential character of the commodatum since the contract is based on the gratuity of the performance.[387] The case of adult children living with their parents is held to be neither capable of qualifying under commodatum nor precarium since these relationships have no contractual origin.[388] Of course any express agreement between the parties would nonetheless bring in the applicability of the Civil Code.

[382] Carmelina Camilleri et v. Paul Mifsud et decided by the Court of Appeal (Inferior) on the 12 August 1994.
[383] Chapter 69, Article 44(c).
[384] Francesco Cassar v. Antonio Galea et, decided by the Civil Court (First Hall) on the 24 March 1941.
[385] Gaetano Sammut pro et noe v. Pauline Sammut et decided by the Court of Appeal (Inferior) on the 15 December 2003.
[386] This principle was recently reiterated in Helen Portelli v. David Portelli et decided by the First Hall (Civil Court) on the 5 May 2011.
[387] Maria Assunta Cassar v. Albert Connell et decided by the Court of Appeal (inferior) on the 7 July 2003, and Maria Pace v. Anthony Pace et decided by the same Court on the 28 April 2004.
[388] Antonio Vassallo v. Edward Vassallo et decided by the Court of Appeal (Superior) on the 18 May 1964.

Where a contract would have fallen outside the definition of lease, but the obligation undertaken by the borrower in a commodatum would play such an essential role to the contract that it would be tantamount to a counterperformance, the contract could no longer qualify as a commodatum but as an "atypical" one.[389] The Courts have been consistent in holding that any onerous obligation excluded the notion of commodatum[390] although, if the consideration paid in respect of the use of the property were in money, the contract would be considered as one of letting.[391]

- **specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.**

Urban leases follow the same rules of any other lease contract, in fact, they are regulated by the sub-title named "Of the Letting of Things".[392] The Code then differentiates between urban leases, rural leases and leases of immovables by allocating specific clauses that regulate each of these particular contracts.[393] The only distinction that the Code makes within urban leases is that between residential and commercial. All residential contracts,

[389] Robert Borg v. Francesco Abela, decided by the Court of Appeal on the 16 December 1949; quoted more recently in Maria Assunta Cassar v. Albert Connell et, decided by the Court of Appeal (Inferior) on the 7 July 2003. The judgment in Maltese refers to the "atypical" contract as the "contratto innominato". In Cassar v. Connell the case revolved around a workshop that was being contended by the two parties. It transpired from the evidence that the plaintiff had given access to the room in return for services that she was meant to receive from the defendants. The relationship between them eventually soured and whilst abandoning their obligation towards the plaintiff, defendants kept making use of the premises. The Court held that as soon as they stopped their services their title changed from one based on a "contratto innominato" to one of mere tolerance on the part of the owner. Defendants were consequently ordered to vacate the premises. It seems that in such cases involving 'quid pro quo' agreements, the Court would look at the intention of the parties at the time of contract.

[390] Negte. Joseph Calascione noe v. Carmelo Schembri, decided by the Court of Appeal on the 5 April 1954.

[391] Borg v. Abela**,** quoted in Giuseppe Abela v. Mary Caruana, decided by the Court of Appeal (Superior) on the 30 October 2001.

[392] The "thing" is described as "any kind of corporeal property, whether movable or immovable, may be the subject of a contract of letting and hiring (Civil Code, Article 1526)

[393] For instance, any clauses that touch on the Rent Regulation Board are only applicable to urban leases, whether residential or commercial; leases of movables fall within the competence of the courts of civil jurisdiction (Article 1528). The requisites in the writing of a contract of lease are likewise only applicable to urban leases (Article 1531A) as are the sections relating to pre-1995 leases. In other instances, such as in the case of repairs that can be undertaken by the lessee (1541-1543), the Code does not make an express distinction amongst the different forms of leases but it designates the Rent Regulation Board or the Rural Control Leases Board as the appropriate forum for the hearing of the disputes, therefore making it clear that the clauses would only count for urban and rural tenements. In other articles the law would use the word "tenement" or "tenant" thereby excluding immovables.

therefore, fall under the same body of rules regardless of their particular characteristics.

Maltese law has only defined the term "dwelling house" in the special laws and the definition has often been very wide. In Rent Restriction (Dwelling Houses) Ordinance it is defined as "a building, a part of a building separately let, or a room separately let, which is let mainly as a dwelling or place of residence".[394] The fact whether the property is let furnished or not is similarly irrelevant. In Malta the practice, in fact, is to rent the dwellings ready furnished and the price contracted would be inclusive of it.[395]

- **Requirements for a valid conclusion of the contract**
  - **formal requirements**

Before Act X of 2009 a contract of letting and hiring could be made either verbally or in writing. This changed after the 1st of January 2010 and according to the new Article 1525 of the Civil Code, lease contracts relating to residential and commercial properties are only valid if made in writing. Article 1531A imposes a further condition on the validity of a residential lease. In fact, written contracts are now also required to stipulate, under pain of nullity, the following five minimum criteria: a) the property that is being leased; b) the agreed use of the property being let; c) the period for which that property is being let; d) whether such lease might be extended and in which manner; e) and the amount of rent to be paid along with the manner in which such payment should be made.[396]

These changes were also accompanied by the introduction of a model template of a written contract of lease in the 'Third Schedule' of the Civil Code. This was included as a form of guidance in view of Article 1531A(2) which lays down that, in the absence of any of the aforementioned criteria, the

[394] Cap. 116, Article 2.

[395] Special provisions regarding furniture are contained in the Rent Restriction (Dwelling House) Ordinance since at the time when this act came into force there was a diffused practice amongst landlords to charge a separate price for the furniture thereby earning an additional rate on top of the regulated rent. Article 9(2) of the said Ordinance, therefore, enabled the tenant to apply to the Board in order to establish a fair rent for the furniture in the case that he felt that he was being overcharged. These provisions were enacted to address the difficulties presented by the post-war period, however, through Act XXIII of 1979 the Housing (Decontrol) Ordinance further entitled the tenant of any leased contracted before 21st June 1979 to pay only the amount that related to the building. For contracts signed subsequent to that date the lease had to distinguish between the price paid in respect of the building and of the furniture and the tenant could likewise demand the dissolution of the lease of the furniture. This of course applied until 1995 when all contracts would be regulated exclusively by the articles of the Code.

[396] Article 1530A CC; this is only applicable to leases contracted after the 1st of January 2010. The formal requirements were introduced in view of the eventual setting up of a rent register, however, this proposal has not yet been implemented.

contract of lease would be deemed null.[397]

- **is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract, etc)**

No such fee for the conclusion of the contract is applicable to leases in Malta.

- **registration requirements; legal consequences in the absence of registration**

  Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.

No duty to register the contract exists in Malta. This is due to the fact that no such register has been drawn up to date. The 2010 amendments have also offered a solution in this respect and the Minister for accommodation was, through Article 1622A(c), provided with the power of creating a registry for the deposit or registration and, or deregistration of lease contracts. Such a registry was conceived for the purpose of validating the agreements. Despite the avenue offered by the law none of the main political parties has spoken publicly in favour of its implementation although the former Justice Minister had expressed his intention of introducing this register.[398]

- **Restrictions on choice of tenant - antidiscrimination issues**
  - **EU directives and national law on antidiscrimination**

As a member of the European Union Malta has implemented directives on equal treatment between both men and women as well as between persons of different racial or ethnic origin. These rules are contained in Subsidiary Legislation 456.01 "Access to Goods and Services and their Supply (Equal

[397] As mentioned already, prior to the amendments the situation was different. In fact, article 1525 of the Civil Code used to make no distinctions between leases of immovables and other leases. This meant that leases of urban property (both residential as well as commercial) could be made both verbally as well as in writing. The Court had underlined that the validity of the lease did not depend on any specific writing or other special condition as long as the agreement was in line with the definition of letting and hiring as laid down in Article 1526. The only requirements needed in the creation of a legal relationship were the identity of the premises that were going to be leased along with the agreement on the amount to be paid in rent (*Emmanuel Vella et v. Abdul Al-Kadi, Court of Appeal, 29 April 2005*). There existed, however, a further qualification represented by the requirement to express the contract in a public deed or private writing in case of leases exceeding two years (Article 1233).
The Courts have not had the opportunity to deal with Article 1531A yet and it is not known whether its draconian provisions would be given full effect. The impression is that until the setting up of the register, the pre-2010 position as regards the validity of the contract will remain unchanged.

[398] See Part 1.

Treatment) Regulations"[399] and Subsidiary Legislation 460.15 "Equal Treatment of Persons Order".[400] Under the Maltese statute it is only the latter that makes an express reference to the housing sector. Article 4(1)(d) prohibits discrimination on the part of either a private or a public entity in relation to "access to and supply of goods and services which are available to the public, including housing." If a person is found to be in contravention of the said provision he would be liable on conviction to a fine of not more than €2,329.37 or to imprisonment for not more than 6 months, or to both such fine and imprisonment. According to section 15(1) a victim of discrimination would also be entitled to a claim in damages. This legislation empowers the National Commission for the Promotion of Equality (NCPE) to act upon a complaint, thereby initiating investigations or verifications regarding the allegedly unlawful conduct. The Commissioner is also entitled by law to conduct surveys, publish reports and make recommendations on any issue relating to discrimination.[401]

Further legislation is contained in Subsidiary Legislation 217.05 entitled "Status of Long-Term Residents (Third Country Nationals) Regulations".[402] It refers specifically to the housing sector in Article 11(1)(g), which guarantees equal treatment, to third country nationals who are granted long-term residence status in Malta, in regard to "procedures for obtaining housing".

Although cases of third country nationals seeking to enforce their rights are not common, the investigations conducted by the NCPE have brought to light several notorious realities. For instance, the research finds that irrespective of the provisions contained in the Racial Equality Directive, estate agents seem to be "colluding" with property owners in discriminating against certain ethnic groups, including certain cases of manifest discriminatory provisos in the written contracts. The study places a great responsibility on estate agents who are held to be "producing and sustaining housing discrimination in Malta" and "gatekeepers in maintaining certain neighbourhoods as 'white/non Muslim'".[403] The main fear on the part of the owners resulted to be that of foreign tenants subletting the property to fellow peers and little is it acknowledged by the locals that immigrants would have to resort to sharing accommodation due to financial constraints that they would be facing.

Moreover, the same findings reveal that migrants and members of ethnic minorities residing in Malta are neither aware of the rights, nor of the remedies

[399] Implementing Council Directive 2004/113/EC of 13 December 2004 on the principle of equal treatment between men and women in the access to and supply of goods and services.
[400] Implementing Council Directive 2000/43/EC of 29 June 2000 on the principle of equal treatment between persons irrespective of racial or ethnic origin.
[401] Eual Treatment of Persons Order, Article 10(2). The NCPE is also responsible for assisting victims of discrimination, not only physically but also through the evaluation of the local context and the recommendation of areas of improvement.
[402] Implementing Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.
[403] Ibid. no. 123, 14.

which they have at hand regarding access to housing and racial discrimination.[404] The study itself suggests that more action is needed in diffusing information on the Racial Equality Directive and the services provided by the same NCPE, and to extend the scope of this effort to persons of non-English/Maltese speaking backgrounds. It also proposes the establishment of a code of ethics containing new standards of practice in accordance with the said directive since estate agents are identified as crucial players in the fight against discrimination in the housing sector.[405]

It is reported that the NCPE have received five cases of alleged discrimination in housing on the grounds of race or ethnic origin. Out of these, three were decided and two cases were pending.[406] In such cases, if the complaint is found by the Commission to constitute an offence, it would immediately proceed to forward it to the Commissioner of Police in order for the latter to take action, whilst if it does not it would call on the perpetrator to redress the situation and mediate for settlement.[407] It is also interesting to note that none of the landlords who were interviewed made reference to the Racial Equality Directive, nor any legislation in regard to discrimination.[408] Therefore, it also appears that the relevant stakeholders are largely unaware of the obligations imposed on them by the law.

- **Limitations on freedom of contract through regulation**
  - **mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract**

As already explained above, as of the 1st of January 2010 contracts of lease, should, on pain of nullity, contain express references to the property that is being leased, its agreed use, the period of duration of the lease, its possibility of being extended and finally the amount and manner of payment.[409]

- **control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms**

[404] Ibid. no. 123, 15.
[405] Ibid. no. 123, 17.
[406] Ibid. no. 123, 29.
[407] aditus, "Malta Integration Network Project: National Anti-Discrimination Legislation Table", 2013. Accessed online on:
<*aditus.org.mt/aditus/Documents/MIN(Antidiscriminationbibliography).pdf*>
[408] Ibid. no. 123, 86.
[409] Civil Code, Article 1531A. This amendment has not ever been challenged in Court since its introduction in 2010; it is probable, however, that despite this specific provision the Court would not proceed to declare a contract null for the lack of any of those requisites, if at the same time there existed all the elements of a contract of lease. If the Court stands by the latter interpretation, the contract would simply be voidable and not void.

Under Title IX of Part II on Letting and Hiring there appears to be no limitation on what could be contracted by the parties to a lease agreement. The only article that might invalidate clauses is 1605 dealing with the right of preference, which renders any new misrepresentative or fraudulent conditions null. In that case the new lease would remain operative on the same conditions of the previous lease and the tenant would additionally be entitled to claim damages.

The validity of the terms in a lease agreement therefore seems to fall exclusively under Title IV sub-title I Part II of the Civil Code dealing with contracts in general. Article 966, in fact, renders the contract invalid in the case that it is made upon an unlawful consideration whilst Article 985 prohibits things that are forbidden by law or contrary to morality or public policy from forming the subject matter of a contract. Article 974 reads that a contract, in this case of lease, would similarly be null if the consent is given by error, extorted by violence or procured by fraud.

The situation relating to contracts that are still regulated by the special statutes is different. In fact, both Cap. 69 as well as Cap. 158 contain express provisions that invalidate any clauses that go contrary to their stipulations. Article 15 of Cap. 69 states that any clause or condition excluding the tenant from any benefit conferred by the statute would be considered null and void. Similarly, Article 14 of Cap. 158 lays down that any agreement, undertaking, promise or act which goes contrary or limits the core articles[410] of the Ordinance would be considered null and without effect. Waivers and restrictions of those rights protecting tenants would also be held ineffective. In several instances the Courts were called to invalidate agreements that stipulated increases beyond those that were allowed by Cap. 158, even though the new rates had been inadvertently accepted by the tenant for a period of time; the landlord would nonetheless be entitled to retain the amounts paid in excess.[411] Any contractual term that excluded the competence of the Rent Regulation Board or imposed a higher amount than that allowed by Cap. 69 would likewise be nullified.[412]

The protection was, however, subject to certain limitations. For instance, if the tenant of a property which is protected under Cap. 158 decided to enter a new agreement, thereby renouncing his rights under the previous contract, he could not subsequently claim that the most recent contract was null.[413] It was also held that upon the decontrol of the premises the tenant would be

[410] Articles 5, 7, 12 and 13.
[411] Raymond Pizzuto et v. Giovanna Schembri et, decided by the Civil Court (First Hall) on the 20 March 2003. This judgment stopped at first instance, however, it would have been interesting to have the decision reviewed on Appeal since this contained all the necessary elements for an action for unjust enrichment.
[412] Saviour Mousu v. Form Limited, decided by the Civil Court (First Hall) on the 12 December 2001.
[413] David Fenech et v. Paul Micallef et., decided by the Court of Appeal (Inferior) on the 21 January 2004.

divested of the special rights he would have enjoyed under the special laws.[414] It is also interesting to note that the landlord could also avail himself of these provisions since in the case that the agreement stipulated that the amount of rent could not be altered, he would still be able to claim the increase after the lapse of the first fifteen-year period according to Cap. 158.[415]

- **statutory pre-emption rights of the tenant**

In the sphere of private rental there exist no pre-emption rights of the tenant although, as explained in Part I this may not necessarily be the case for government owned dwellings. It was certainly within the plans of the government, to incentivise agreements between landlords and tenants of pre-1995 tenancies by introducing a fiscal scheme that, in the case of a sale of the property owned by a landlord to the tenant living in that particular property, the Final Witholding Tax on the sale of the premises would have been reduced from 12% to 3%.[416] Government does not seem to have carried through with the implementation of this proposal.

Tenants renting from private landlords may only avail themselves of a statutory right of preference[417] that binds the lessor to relet the property to the sitting tenant if the latter matched the same conditions of any succeeding tenant. This right may only be enjoyed by co-owners "pro indiviso" of the property, the last preceding tenant of an urban tenement and the possessor or occupier of a part of an urban tenement with regard to a new lease of the underlying part of the same tenement.[418] In the case of different titles, the order of preference is determined by the order in which they have been listed.[419] This practice was a local custom developed during the times of the Knights which eventually found itself amongst the provisions of the Civil Code. This specific part of the law of letting and hiring is nowadays hardly resorted to and one could say that it has fallen in disuse.

- **are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?**

[414] Victor Sammut v. Abraham Schembri, decided by the Court of Appeal (Superior) on the 4 May 1994.
[415] Joseph Calleja v. Raymond Pule', decided by the Court of Appeal (Inferior) on the 23 June 1994.
[416] Ibid. no. 245, 14. This was possible as long as the property was registered as a rented property and the sale took place between the 1st January 2010 and the 31st December 2013.
[417] Civil Code, Articles 1590 to 1613.
[418] This does not apply to condominiums.
[419] Ibid. no. 299, 737.

There seems to be no express provision in the Civil Code that prohibits a landlord from leasing a property that is mortgaged out, unless of course, such a condition would have been inserted in the mortgage document. In that case the mortgagor would be bound by the terms of the contract.

6.4. Contents of tenancy contracts

Summary Table 12 Contents of tenancy contracts

	Main characteristic(s) private Residential Leases
Description of dwelling	Property to be leased must be indicated on contract.
Parties to the tenancy contract	Landlord may also be temporary owner (eg. emphyteuta, usufructuary). Tenant defined widely under special statutes (only pre-1995 contracts) to include spouse and relatives.
Duration	Lifelong tenancies, right to transfer lease *causa mortis* to specific beneficiaries (only pre-1995 contracts). No minimum or maximum duration (post-1995 contracts).
Rent	Subject to triennial increases according to increase in inflation (only pre-1995 contracts). No limitations (post-1995 contracts)
Deposit	No regulation. Both asked in the form of advance payment and guarantee deposit.
Utilities, repairs, etc.	Landlord responsible for all repairs that may become necessary excluding works of maintenance.

- **Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)**

This matter was resolved by the recent amendments that introduced the identification of the property being leased amongst the five essential requisites for the validity of the contract of lease contained in Article 1531A. The new law underlines that, in the absence of any one or more of the minimum criteria, the contract of lease would be void. Therefore, the effects of omitting an express identification of the property would lead to the nullity of the contract.[420]

- **Allowed uses of the rented dwelling and their limits**

[420] To date, this article has never been challenged in Court since its introduction in 2010. Whether the jurisprudence will abide by such a strict interpretation of the clause is therefore yet to be verified.

- **In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling).**

Maltese jurisprudence allows for a property to be contracted for a dual purpose: commercial and residential. These properties are referred to as "casa bottega". These premises would usually consist of a residential tenement where the tenant would have reserved the right to use part of the house as a commercial outlet. Judgments have further elucidated that two adjacent tenements cannot qualify as a "casa bottega" even if any aperture allowed the quick transfer from one property to another.[421] The definition of this mixed contract acquires particular importance in certain cases when the property is expressly contracted as a "casa bottega" since the failure by the tenant to use the tenement for both residential and commercial purposes simultaneously, would enable the landlord to request his eviction on the grounds of change of use.[422] Where the contract would be silent, the Court would look into the intentions of the parties at the moment of the conclusion of the contract and the prevalent use of the property. For instance, if the property is let out mainly as a commercial tenement and the tenant chooses not to inhabit the remaining part of the same premises, the tenant cannot be said to have altered the destination of the property.[423]

The 2010 amendments introduced new provisions to regulate pre-1995 leases of the "case bottega". The new provision reads that whilst a "casa bottega" is to be considered in terms of security of tenure as a residential property[424] the value of the rent is to mirror the conditions established for commercial properties; the increase in the value of the rent will only apply for the part of the property which is used as a commercial premises and should the tenant stop using the commercial part he would have to continue paying the level of rent established at the time and, thereafter, the rent would increase under the conditions established for a residential tenancy.

- **Parties to a tenancy contract**
  - **Landlord: who can lawfully be a landlord?**

It has long been held under Maltese law that the thing given on lease need not be the property of the lessor. In fact, since lease is not a contract that transfers ownership but simply the enjoyment of the thing, in the eyes of the law it is sufficient that the lessor be in "such a juridical position as to be able to

[421] Anthony Darmanin v. Direttur tal-Artijiet, decided by the Court of Appeal (Superior) on the 25 May 2012.
[422] Alfred Gatt v. Helen Mary Laus pro., decided by the Court of Appeal (Inferior) on the 28 December 2001.
[423] Joseph Coleiro v. Francis Meli, decided by the Court of Appeal (Inferior) on the 8 September 2003.
[424] Civil Code, Article 1531K.

transfer the enjoyment to the lessee".[425] Jurisprudence has underlined that a lessor could be a tenant (i.e. a sublessor), a simple usufructuary, an antichretic creditor as well as a possessor of the premises holding a resolutory or transitory title.[426]

This is even confirmed in Articles 341 and 1530 of the Civil Code which stipulate that leases contracted with usufructuaries and persons possessing the thing under entail or any temporary or dissoluble title are valid. Additionally, the law binds the lessor's successors – who come in either through the termination or dissolution of their right or title – to respect that lease until its termination as long as it is made on fair conditions and for a term that is not superior to four years. This provision was enacted in order to stabilise leases and favour tenants whose right over the property would be subject to dissolution.[427] The two abovementioned conditions were introduced in order to protect the interest of those successors who would therefore be able to free themselves of this contract if the lease were clearly contracted below market value or for an unreasonably long time. If the terms under which the lease was granted were unfair, the successor would in fact be entitled to impugn the contract and obtain its annulment whilst if the duration exceeded the four-year term, the lease would be subject to being reduced to the legal limit (with the term starting to run form the day of the contract and not from the day in which the right of the lessor ceases or is dissolved). In practice this means that a direct owner, for instance, would have to tolerate a lease contracted by the outgoing emphyteuta for a maximum period of 4 years. Judgments have also confirmed that the absence of a direct relationship between the owner of the property and the tenant may not necessarily lead to the invalidity of the title and Article 1530 was an express confirmation of this. In a particular judgment it was also held that a lease contracted by a buyer mentioned in an expired promise of sale was also valid under Article 1530.[428]

The tenant is also entitled to sublet the thing as long as he is expressly consented to in the contract because the lessor would be in a position to grant the enjoyment of the thing on lease. This does not apply for persons having the right of use or habitation since these are strictly personal rights and cannot be separated from the person or its holder.[429] In relation to property which is co-owned, the lease must be consented to by all the co-owners.[430] However, any of the co-owners may be authorised to grant the entire property on lease by the Rent Regulation Board, after summoning the dissentient co-owners. In this case the proposed lease must be advantageous to all the

[425] Ibid. no. 299, 709.
[426] Walter Agius v. Carmelo Cachia, decided by the First Hall (Civil Court) on the 1 September 1964 and confirmed more recently in Emmanuel Vella v. Abdul Al Kadi decided by the Court of Appeal (Superior) on the 29 April 2005.
[427] Ibid. no. 299, 710.
[428] Emmanuel Vella et v. Abdul Al Kadi.
[429] Ibid. no. 299, 711.
[430] Civil Code, Article 1527.

owners and none of them has to have just grounds for opposition.[431] If one of the co-owners grants a lease singlehandedly, the other co-owners have a time frame of two months within which to bring the matter in front of the Rent Regulation Board.[432] It is interesting to note that in this case the law reads that the Board "may" and not that it "shall" annul the lease. This seems to imply that the Board must first take into account the aforementioned conditions of Article 1528 before proceeding with the annulment.[433]

- does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?

In certain instances we can notice how the law, despite allowing a free hand to both contracting parties, tends to lean towards the tenant. Similarly, even when the person of the landlord changes, the law aims to protect the tenancy contract until its termination. Article 1572 of the Civil Code specifically lays down that a contract of lease is neither terminated by the death of the lessor or the lessee[434] nor by the alienation of the property.[435] In fact, if the lessor sells the thing, or "alienates it in any other manner", the alienee would not be able to dissolve the lease.[436] The conditions of the lease would therefore remain intact. This seems to be motivated by the principle of stability of contract and security of tenure. In fact no lessee would be certain of his right if the lessor could, at any time, exclude him from the enjoyment of the thing by a simple transfer.[437] The law, however, makes exception for contractual stipulations through which the lessor reserves such power to himself. In one particular judgment it held that on the death of either of the parties the lease would continue until its date of expiration (whether it is express of presumed) and the relative obligations would be transmitted to the heirs.[438]

- **Tenant:**

- **Who can lawfully be a tenant?**

The Civil Code does not define "tenant", however, one of the internal requisites for the validity of the lease is capacity to contract. It therefore seems that a lease can be contracted by any person who does not fall within

[431] Civil Code, Article 1528.
[432] Civil Code, Article 1527(3).
[433] Ibid. no. 299, 712.
[434] This does not apply to the contracts signed prior to 1995; the termination of which is dealt by Articles 1531A to 1531M. The implications of these articles will be discussed in detail below.
[435] Civil Code, Article 1574.
[436] In the absence of a register of leased property, this might lead to a problem of certainty unless the property is physically inspected by the prospective buyer.
[437] Ibid. no. 299, 730.
[438] Carmela Cardona v. Giovanni Lawria, decided by the Court of Appeal on the 10 November 1969.

the prohibitions of Articles 967 to 973 of the Civil Code, namely: minors,[439] persons who are interdicted or incapacitated[440] and persons who have no use of reason.

On the contrary, we do find a definition of a "tenant" in the special laws. In introducing the concept of inheritance[441] in fact, the special statute widened the scope of the lawful occupier to extend security of tenure to as many persons as possible. This definition is very important in understanding how various persons, whose leases were contracted prior to 1995, are currently still in the enjoyment of a valid title of lease. Article 2 of Cap. 69 reads that the expression "tenant" includes the widow or the widower of the tenant,[442] provided that the spouses were not legally or *de facto* separated, and in the case where no surviving spouse is left, any member of the tenant's family who was residing with him or her at the time of death.[443] What is more important, however, is the Article that follows, which states that it would not be lawful for the lessor of any premises to refuse the renewal of any lease upon its expiration. This effectively meant that the right to the tenement was inherited from one generation to another without the premises being able to ever revert back to the landlord. It must also be underlined that premises belonging to or administered by the Government did not fall under the application of this law.

Jurisprudence had qualified this right to 'inherit' the lease. In fact, for a relative to demand the prolongation of the lease, he or she had to prove that his or her residence was not simply casual, occasional, related to some favour or inspired by an impending need to change the surroundings in search for physical or mental respite, but it had to be the ordinary residence of the person, as imposed by necessity.[444] As a result the duration of the stay of that relative in the tenant's premises would not necessarily be considered as a determining factor.[445] Moreoever, the relative did not need to be the heir of the deceased tenant in order to be entitled to inhabit the premises and he did not even need to be a Maltese citizen.[446] The definition was also widened to include any person who had been brought up by the deceased tenant.[447]

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[439] Childred under the age of 18 years.

[440] According to Article 187 of the Civil Code the persons who may be interdicted or incapacitated are majors who are in a state of imbecility or other mental infirmity or is prodigal.

[441] Inheritance in this case means the right of whoever qualifies under the definition of tenant to continue in the occupation of the premises after the death of the previous tenant.

[442] The law does not seem to consider non-legal partners as eligible beneficiaries.

[443] The definition includes any sub-tenant.

[444] Nazzareno Cutajar v. Carmela Quirolo et, decided by the Court of Appeal on the 1 December 1961, quoted as well in Dr. John Agius v. Marlene Copperstone et Civil Court (First Hall) on the 25 May 1966.

[445] Saviour Coppini noe v. Joseph Vella Bonnici noe, decided by the Court of Appeal on the 8 February 1971.

[446] Joseph Pace v. Salvatore Attard et, decided by the Court of Appeal (Inferior) on the 28 of April 2004. This latter point of nationality did not apply to leases inherited under the terms of Cap. 158.

[447] Vincent Zammit v. Vincent Kerr, decided by the Court of Appeal (Inferior) on the 11 March 1966.

The definition of "tenant" has changed considerably since the coming into force of the 2010 amendments. The new law introduces the notion of a one-time right to the continuation of the lease by any eligible beneficiaries, thereby starting a process through which these "old" leases would be eventually phased out. The right to remain in the premises was maintained for persons who have been in possession of a valid title of lease since 1st June 2008 and to his or her spouse who would have been living with the tenant since then. For other relatives in the collateral or direct line, their right to inherit the lease has been considerably limited. Children would only be able to continue benefiting from the previous lease if they would have lived with the sitting tenant for 4 out of the last 5 before 1st June 2008 and continued to live with him until his or her death.[448] This right would also be extended to any brothers or sisters, or natural or legal ascendants who are at least 45 years old and who would have fulfilled the same conditions set for children. Natural or legal children under the age of 5 would also qualify as beneficiaries in the case that they continued to live with the sitting tenant from the 1st of June 2008 until his or her death.[449] Moreover, if a person qualified as a beneficiary, his right to occupy the premises could neither be transferred to the spouse nor to the child.

The successor of the sitting tenant would additionally have to satisfy the means test criteria established in the "Continuation of Tenancies (Means Testing Criteria) Regulations".[450] This effectively means that under the new law there will be occupants who lived with the tenant who will no longer have the right to extend the lease. The law, however, offers transitory protection for occupants of such premises. A person who met the criteria definition of a beneficiary but failed the means test would be allowed to stay within the premises for an additional 3 years in order to either reach a renewal agreement or find alternative accommodation.[451] A person who does not qualify as a beneficiary, but who would have lived with the sitting tenant before 1 June 2008 until his or her death would be provided with a transitory protection of up to 5 years. In both these latter cases, the rent would meanwhile double.

The definition of "tenant" contained in Cap. 158, is identical to the one provided in Cap. 69[452] however, the right of continuation is limited to the children, any unmarried brother or sister and any ascendant who would be living with the tenant at the time of his or her death. This was a clear attempt to curb the abuses that were taking place due to the excessively wide definition provided by Cap. 69.[453]

[448] In this case the lease would continue *in solidum*.
[449] Civil Code, Article 1531F.
[450] Subsidiary Legislation 16.11.
[451] Civil Code, Article 1531G(a).
[452] Cap. 69, Article 2.
[453] This point is elaborated in Carlo Azzopardi v. Mario Rodenas, decided by the Court of Appeal (Inferior) on the 17 February 2003.

- **Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?**

The law clearly lays down through Article 1615 that the lessee is allowed to house third parties in parts of the residential property, even against payment, unless this is expressly prohibited in the rental contract.[454] It is clear that the tenant has considerable freedom in administering the property that he would be renting. Jurisprudence has clarified that the title belongs strictly to the lessee since he or she would be the person to have contracted the lease with the landlord; any relatives, even if allowed to live in the property in virtue of the rights belonging to the tenant, would not be subject to a legal relationship with the landlord. However, unless the relatives of the tenant would have entered the premises abusively, violently, arbitrarily or without landlord's knowledge then one could not say that they were in illegal occupation of the premises.[455] This matter was touched on in another case where it was held that in allowing her daughter to live with her and use part of the premises, the tenant had neither transferred nor assigned her the lease. The lessee had kept paying the rent regularly in her own name and since the plaintiffs could not prove the existence of a sublease the Court found that there had been no breach of contract on the part of the tenant.[456]

In relation to the number of persons who could legally occupy the premises, the guiding rules are contained in the Code of Police Laws.[457] This code expressly lays down that no room in any house or apartment can be used for habitation unless:

a) In the case of a room that is at least 2.75m high,[458] there is a minimum surface of 3.75m^2 for each person older than seven years and 2.75m^2 for each person of seven years of age or younger, and;

b) in the case of a room that is lower than 2.75m, a minimum surface of 4.75m^2 and 3.75m^2 respectively.

The said code establishes that a landlord would be presumed to have permitted the overpopulation of the leased premises unless he were able to show that he had expressly prohibited the tenant from making such use thereof.[459]

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[454] This must be in line with the provisions contained in Article 1555 which prohibits the lessee from using the property for any other purpose that that agreed upon with the landlord, or in any other manner which may prejudice the lessor.
[455] Emmanuel Bonello v. Francis Fenech, decided by the Civil Court (First Hall) on the 20 May 2004.
[456] Mizzi Estate Ltd. v. Alfrida Schembri, decided by the Court of Appeal (Inferior) on the 23 February 2001.
[457] Chapter 10 of the Laws of Malta, Article 112.
[458] Cap. 10, Article 97(1)(d).
[459] Cap. 10, Article 113.

- **Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant**

The contract seems to be given strength in cases where the position of the lessee suffers a change. It has already been mentioned that under Maltese law the position of the lease does not end with the death of the lessee and the heirs of the latter are therefore entitled to make use of the property until the contract reaches its natural expiration. The lessee may also bestow the lease as a legacy on any other person, subject to the obligation of such legatee to request the possession of the premises from the heir of the deceased prior to the commencement of his occupation.[460]

Marriage may also entitle the spouse of the lessee to continue inhabiting the leased property. In fact, Article 1320(d) of the Civil Code lays down that the community of acquests shall comprise any property acquired with resources derived from the acquests, "even though such property is acquired in the name of only one of the spouses". The implications of such a provision on a contract of lease was explained fairly recently by the Courts.[461] During the time in which the unmarried couple would be cohabiting, the future spouse would not be able to claim any right on the title held by the other. This however changes upon the first renewal of the lease after marriage. In fact, as soon as the married couple enters a new lease for the matrimonial home, the rent would be considered as having been paid by the funds of the community. As a matter of fact, therefore, the spouse of the tenant would now start occupying the property in her own right. This acquires particular importance at the moment of separation of the couple since even when the original tenant leaves the property, the spouse would be able to continue occupying the premises which they previously held in common. The right of the tenant's former spouse would prevail even in the case that the original lessee would have proceeded to give notice to the landlord and deliver him the key.[462]

In any ordinary case of separation, in line with Articles 37 and 55A of the Civil Code, it would be the Court to determine which spouse would continue to reside in the matrimonial home, both during the proceedings as well as after. This would be irrespective of whether the property would be paraphernal or form part of the community of acquests. The case would be different if the tenant's spouse did not occupy the property as her sole ordinary residence.

[460] Civil Code, Article 726.
[461] Carmel Falzon et v. Carmelo Calabretta et, decided by the Court of Appeal (Superior) on the 28 February 2001. In this case the wife successfully claim the protection of Cap. 158, Article 5(2).
[462] George Zahra v. Carmelo Chircop et, decided by the Court of Appeal (Superior) on the 8 February 1960.

In one particular judgment, the Court interpreted the absence of the spouse from Malta at the time of separation to be irreconcilable with the claim of any right on the tenancy since she neither inhabited the property nor ever paid the rent.[463] The same position in respect to marriage is likely to apply for civil partners upon the imminent introduction of the 'Civil Unions Act'. The proposed legislation, in fact, confers onto civil partners the same rights and obligations that emanate from marriage.

The case of students could very well qualify as one of assignment of lease. This is a contract by which the lessee of a thing would transfer to another, either for a price or on gratuitous title, his rights of enjoyment over the thing in whole or in part, together with the respective obligations.[464] Both articles 1614 and 1617 of the Civil Code bind the occupier of a tenement or simply of a room to obtain the consent of the lessor prior to assigning the lease to a third party.

- **Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?**

The position of Maltese law on subletting has changed since the introduction of the 2010 amendments. Article 1514 of the Civil Code now reads that the lessee cannot sub-let the property unless such right is expressly agreed upon in the contract. Therefore, where the contract would be silent on subletting, the law would lean in favour of the landlord, rather than the tenant.[465] Consequently, the right to sublet a room within an urban premises is similarly prohibited unless the lessee obtained the consent of the lessor.

For contracts that are regulated by Cap. 69 the law requires a different kind of consent. Article 9 reads that where, during the previous lease, the tenant would have sublet the premises to a third party without the express consent of the lessor, then the Board would allow the lessor to resume possession of the premises at the termination of that lease. The Courts have laid specific emphasis on the word "express" and in several judgments they have made it clear that a tacit consent would not be sufficient.[466] Moreover the consent would have had to be clear and unequivocal since it involved the renunciation of a right.[467] The onus of proving that the tenant had sublet the premises lies

[463] Alexander Sant Fournier v. Laura Borg Cardona, decided by the Civil Court (First Hall) on the 17 January 2011.
[464] Ibid. no. 299, 743.
[465] Prior to the amendments a lessee could sublet a property even if he was not expressly authorised by the contract of lease. The right to sublet could, however, be disallowed, either in whole or in part, by an express clause.
[466] Spiridione Ellul v. Giuseppe Buttigieg et, decided by the Court of Appeal on the 12 May 1950; John Beck v. John Cassar Demajo, decided by the Court of Appeal on the 28 February 1958.
[467] Paul Abela noe v. Paul Azzopardi, decided by the Court of Appeal on the 30 May 1952.

on the landlord.[468] This appears to be one of the few instances where Cap. 69 leans in favour of the landlord and judgments have clarified that the landlord had a legitimate interest not to let his tenant speculate and make a profit from his own property.[469] The consent would be considered express either if the landlord, whilst being aware of the sublease, lets the lease to be renewed[470] or else if the conduct of the landlord would otherwise be inexplicable.[471] It is also important to note that the lessee is allowed to transfer his rights of enjoyment over the property let in whole or in part.[472]

It does not seem that under Maltese law a sublease could in any way diminish tenant protection. Jurisprudence has confirmed that a sublease would create a whole new contract and that the principal landlord would be totally extraneous to it. In front of the original contract, therefore, the sublessee would be considered as a third party.[473] A relationship between the principal lessor and the sublessee would not even come into being in the case of the former's express consent to the subletting of the premises in the original rental contract.[474] The original landlord, in fact, cannot institute a contractual action for damages directly against the sublessee.[475] However, it has been held that if the landlord's recognition of the sublessee would be accompanied by certain terms setting the modalities of the rent, a contractual relationship between the two parties would not be juridically excluded.[476]

At present, subletting seems to be one of the major issues regarding the private rental market. Property owners, in fact, seem to be concerned about a certain practice which occurs more frequently amongst members of minority ethnic groups, to sublet their property to their peers without the consent or knowledge of the owner. The main reported preoccupation was that landlords would no longer have any control over who would be residing in their property.[477] As explained already in Part I, asylum seekers become particularly vulnerable at the moment that they leave the open centres and would start their search for accommodation in the community. In the absence

[468] Concetta Theuma et v. Rev. Dun Gwann Mercieca et, decided by the Court of Appeal on the 20 February 1996.
[469] Alexander Apap Bologna v. Mario Blackman et, decided by the Court of Appeal on the 28 June 1957.
[470] Margherita Mamo pro et noe v. Michele Camilleri, decided by the Court of Appeal on the 2 May 1969.
[471] John Debono v. Giuseppa Ciantar, decided by the Court of Appeal on the 22 May 1967.
[472] Ibid. 299, 743. Therefore a sublease of the whole property would not give the landlord grounds on which to evict the lessee due to a wrong use of the property let.
[473] Giuseppe Tabone et v. Ursola Farrugia, decided by the Court of Appeal on the 11 December 1950; Pasquale Grech v. Pubio Farrugia, decided by the Court of Appeal by the 4 April 1997; Francis Xavier Darmanin v. Brian Camilleri, decided by the Court of Appeal on the 28 January 2000.
[474] Francesco Fenech v. Generoso Ellul, decided by the Court of Appeal (Inferior) on the 16 July 1980.
[475] Joseph Camilleri v. Carmelo Farrugia, decided by the Civil Court (First Hall) on the 5 December 2002.
[476] Maria Concetta Curmi v. Gaetano Camilleri et, decided by the Court of Appeal (Superior) on the 14 April 2000.
[477] Ibid. 123, 82.

of any material support, including housing, along with the problems relating to finding stable employment, the decision of sharing accommodation costs with fellow immigrants would, in most cases, appear to be the most reasonable strategy in securing accommodation. The only alternative for some of them would be homelessness and it is for this reason that the NCPE has proposed the reassessment of the criteria which enable individuals to access social housing.[478]

- **Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?**

It seems that Maltese law allows contracts whereby different rooms of the same property are rented out to different people.[479] An analogy can be drawn with the instance where multiple heirs inherit a lease from the deceased tenant. This case was treated by the Court of Appeal in Henry Micallef v. Anna Stanley[480] where it was confirmed that the heirs of the deceased were entitled to claim the right to the tenancy jointly and indivisibly. The Court, however, additionally held that if subsequently one of the heirs were allowed to turn the lease solely onto himself, the other heirs would have lost any of their rights vis-à-vis the landlord. In fact, the tenant would have acquired this right *ex novo*. For this to happen, however, the tenant needed the consent of the other co-heirs and if he were to lose this right during any later stage, the other co-heirs would not be able to invoke any of the rights that they had previously held on the property.

- **Duration of contract**

- **Open-ended vs. limited in time contracts**

One of the principal rules under Maltese law is that a contract of lease must have a specific period of duration. In practical terms this means that if someone would want to take a house on lease for the remainder of his days, this would certainly not be possible under Maltese law.[481] This is expressly contained in Article 1526(1) that defines a lease as the grant of the enjoyment of a thing to another "for a specified time".[482] Maltese jurisprudence is very adamant in maintaining that the determination of a specific period of duration is essential to the contract of lease;[483] any clause stating the lease to be

[478] Ibid. no. 123, 84.
[479] In this case the contract would still be regulated by ordinary law (i.e. the Civil Code).
[480] Decided on the 16 March 2005.
[481] Saving the solution of leasing the house for a very long period of time and attaching a resolutive condition that would become operative on the tenant's death. This statement does not apply for leases signed before 1995, therefore regulated by Caps. 69 and 158, which give the tenant the right to remain within the premises until the day of his demise.
[482] This was confirmed in The Vintage Company Ltd v. Kummissarju tal-Puluzija, decided by the Court of Appeal (Inferior) on the 10 October 2005.
[483] Antonio Cini v. Contra Ammiraglio James Lacon Hammet, decided by the First Hall (Civil Court) on the 15 July 1904; Josette Magro et v. Charles Saliba decided by the Court of

indefinite is to be therefore considered null and the term deduced from the criteria established in the Civil Code.[484]

It must be underlined that, in line with what has been explained above, the juridical position has changed in such cases. The new amendments would, in fact, invalidate any lease agreement that would not contain the period for which the property would be let. For contracts signed prior to 2010, however, the duration of the lease can be presumed according to Article 1532 of the Civil Code.[485] This article reads that in the absence of any express agreement relating to the term of the tenancy, the letting of an urban tenement would be deemed to be made for the period in respect of which the rent would have been calculated i.e. a year if the rent was agreed for so much a year or for one month if it was so agreed for one month.

- **for limited in time contracts: is there a mandatory minimum or maximum duration?**

Maltese law has never imposed any maximum or mimimum duration on contracts of lease. The methods which the Maltese legislator has chosen along the years in order to secure housing amongst the various sectors of the population have been quite radical and instead of opting for a statutory minimum term, the legislator intervened by enacting special statutes that extended the tenant's right over their premises for the whole length of his life, along with the additional possibility of transferring it to his spouse or relatives.[486] As a result in Malta there are no moderate 'security of tenure' measures that lay down a temporal threshold for tenancy contracts; a tenant can either enjoy protection for life or no protection at all (i.e no protection beyond the stipulated contractual term).

- **Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation option; contracts for life etc.**

Both Cap. 69 and Cap. 158 provide for the automatic renewal of the lease, as long as the tenant falls within the criteria that were explained above. Cap. 69 revokes the right of the landlord to recover possession of the tenement from the tenant at the end of the stipulated or presumed period of lease; given that

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Appeal on the 9 May 1984; Joseph Pisani v. Dr. Louis Vella et, decided by the Court of Appeal on the 9 March 1992; Carmelo Stivala v. Ratan Mohnani, decided by the Court of Appeal on the 29 October 1999.

[484] Magro et v. Saliba.

[485] Nazzareno Sultana noe v. Charles Fenech et, decided by the Court of Appeal (Inferior) on the 22 June 2001.

[486] This is of course not possible for contracts regulated by the Civil Code i.e. for any contract signed after 1995.

the property constitutes the place of residence of the tenant.[487] Similarly, Cap. 158 imposes the automatic reletting of the premises on the landlord, as long as the tenant is a Maltese citizen and the property consists of his ordinary place of residence. Whilst it is clear that in the case of Cap. 69 the lease would, by operation of the law, be renewed for the same duration for which it would have been contracted; under Cap. 158 there was doubt as to intention of the law. In fact, similarly to Cap. 69, it secures the automatic recommencement of a lease upon its expiration, but in addition, Cap. 158 provided that the rent could be increased upon the lapse of every fifteenth year. This created confusion as to whether the lease would be renewed automatically for the stipulated period contained in the contract, or on every fifteenth year. For various years, jurisprudence held that having been given the right to retain the same level of rent for that set amount of time, the law had effectively prolonged the duration of the lease for the equivalent period of years.[488] This prevalent reasoning was reversed in a more recent case which held that the fifteen-year reference applied uniquely to the increase of rent and not to the duration of the lease in general.[489] The term of the lease would therefore remain the same as that stipulated in the contract. As said in part 2.2 it was estimated that rent controlled residences amounted to around 11% of all occupied dwellings in Malta.[490]

Besides the statutory prolongation, certain contracts may also contain clauses that allow the tenant to opt for a further term. The contract would therefore contain an obligatory period (referred to in local jargon as “di fermo”) with an attached clause enabling the tenant to extend the tenancy by an additional period of time (“di rispetto”). It must be underlined, however, that whilst both the “periodo di fermo” and the “periodo di rispetto” are obligatory for the landlord, the latter period is merely optional for the tenant. The effect of the “periodo di rispetto” is that once this period comes into operation, the duration of the term would become obligatory until its expiration.[491]

Other than those two situations the Civil Code only speaks, in Article 1531A, of the stipulations regarding the extension of a lease. Such a clause is essential for the validity of a rental contract. The draft rental contract attached as the third schedule of the Civil Code clarifies that the contract should contain a clear reference to whether the contract may be renewed or not upon the termination of the lease, and in the affirmative case the parties should lay down the manner in which this could be done. Having said this, it is very important to state that under the Civil Code, the landlord is under no obligation

[487] Cap. 69, Article 3. As explained above the definition of ‘rent’ under Cap. 69 is much broader than the definition found in the Civil Code and it includes emphyteutical grants which do not exceed the period of 16 years and any other contract transferring a real or personal right on the tenant for any period of time.

[488] Anthony Tonna v. Vincent Galea noe, decided by the Court of Appeal on the 9 July 1982, confirmed inter alia in: Peter Caruana Galizia noe v. Joseph Ellul Sullivan decided by the Court of Appeal (Inferior) on the 28 February 1997.

[489] Carlo Azzopardi v. Mario Rodenas, decided by the Court of Appeal (Inferior) on the 17 February 2003.

[490] The Sunday Times, *Housing Survey*, 2003.

[491] Grazia Gatt et v. Carmelo Saliba, decided by the Court of Appeal on the 11 October 1911.

to prolong a contract of lease. The Maltese courts have confirmed that unless the contract fell under the regulation of any special law, the landlord could refuse to renew the lease without the need of providing any justification to the tenant, since he was bound solely by the term expressed in the contract or that presumed by law.[492] Upon the expiration of the contract, the landlord could therefore proceed immediately to issue the notice to vacate the property.

- **Rent payment**

- In general: freedom of contract vs. rent control

According to the definition of lease contained in Article 1526 of the Civil Code the rent must be fixed by the parties in the contract either directly or directly i.e. by referring to some other certain and determinate data.[493] The absence of such a stipulation would automatically entail the invalidity of the contract of lease. However, in the case of pre-2010 contracts that would have already commenced their execution in the absence of any express agreement setting the value of rent, the law would fix the rent at the current price, and in case of no such price, upon a valuation made by experts.[494]

Under Civil Code no other references to the amount of rent are made save for Article 1530. The law lays down that such leases negotiated by temporary landlords would only continue to be binding on the new landlord if they would have been made "on fair conditions" (this provision was introduced in order to prevent collusion between the temporary owner and the lessee). The Courts have repeatedly held that these conditions were to be viewed in their complexity since the real test lay in whether the terms would have been considered advantageous by the landlord's successor or not.[495] In practice, however, the main element that is taken into consideration is the quantum of the lease[496] and the Court has, in various instances, been called to decide whether the amount of rent was to be considered "fair" or not. This represents, perhaps, the only instance in the Civil Code where the Court is given the faculty to scrutinise the rent agreed in a contract of lease. It is interesting to note that jurisprudence has been constant in affirming that the main criterion that has to be adopted in the appraisal of this amount is the value that the property would have fetched on the free market. The court has in fact looked unfavourably at the employment of any objective criterion such as the index of inflation, since it was considered to lead to a dangerously

[492] Andrew Zahra v. Kummissarju tal-Artijiet, decided by the Civil Court (First Hall) on the 5 May 2002.
[493] Ibid. no. 299, 712.
[494] Civil Code, Article 1534.
[495] Bernard Bugeja et v. Carmen Lantieri et, decided by the Court of Appeal (Superior) on the 4 July 2001.
[496] Nathalie Bellizzi et v. Richard Matrenza noe, decided by the Court of Appeal on the 6 October 1999. In this decision the court held that although it was the most vital exercise in establishing whether the conditions were fair or not, the consideration of other aspects could be equally essential in reaching a just decision.

distorted and unjust conclusion.[497] The "fair" rent would be established by a court-appointed technical expert.

Saving for this specific instance it seems that the parties would be bound by any terms that they would have negotiated in the rental contract, including the value of rent. This was held, inter alia, in Alfred J. Baldacchino noe v. Frank Debono[498] where it was stated that as long as the contractual terms could not be impugned judicially, they acquired the force of law for both contracting parties.

- **Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent**

Rent control is only applicable to contracts that are subject to Caps. 69, 116 and 158 of the Laws of Malta i.e. all contracts that were signed prior to 1995. The rents payable for these residential leases were one of the main objects of the reform carried out in 2010. As was explained extensively in Part I, the desolate state of the private rental market was attributed to the stringent rent control was put in place during previous decades, which allowed no sort of profitable return to the landlord. This had led to a situation where landlords were disincentivised from putting their property on rent. Act XXXI of 1995 had partly remedied this problem by liberalising leases signed after the 1st of June 1995, however, contracts signed prior to that date remained subject to their respective rent regimes. It was not until the Rent Reforms carried out in 2010 that an increase mechanism was finally introduced for these 'old' contracts in order to start a process whereby these would start catching up slowly with the market rents. The relevant provisions are contained in Article 1531C of the Civil Code which has affected all pre-1995 leases.

First of all this article sets a minimum threshold of a yearly €185 to all residential properties. This figure is unarguably very low (amounts to roughly €15 a month), however, the RRWG showed extreme caution in avoiding to introduce new economic hardships on the tenants.[499] Rents that were higher than this amount would remain unaffected. Secondly, the amendments provide for a triennial increase in proportion to the increase in the index of inflation with the first increase which ought to have taken place on the 1st January 2013. It must be noted, in addition, that this article can be derogated by means of a separate written agreement between the landlord and the tenant and in the case of any method of increase stipulated in the contract

[497] Louis Apap Bologna v. Godwin Portelli, decided by the Commercial Court on the 6 May 1985; Henry Coppini pro et noe v. Veronica White, decided by the Court of Appeal (Inferior) on the 25 March 1986; Cecil Azzopardi pro et noe v. Josephine Montalto noe, decided by the Court of Appeal (Superior) on the 17 February 2003.
[498] Decided by the Court of Appeal on the 8 June 1998.
[499] Ibid. no. 72, 40. The figure of €185 was reached by placing the €116.5 (formerly 50 Maltese Liri) on the 1960:158.80 inflation base at the 2007:712.68 inflation base.

signed prior to the 1st June 1995, the increase in rent would continue to be regulated in terms of that agreement until it remained in force.

Despite this long-awaited reform, most landlords in Malta remain grossly underpaid. It would thus be useful to look at the situation prior to the coming into force of the 2010 amendments. Rent control measures adopted by the Maltese legislator have been very strict and certain measures that were meant to be temporary were never revised. As a result there were cases of landlords who up till 2010 were being paid pre-1939 rents. A mild form of rent control which entitled the tenant to continue in the occupation of the dwelling at the same conditions after the expiration of the contract had already been adopted prior to the Second World War through Cap. 69, however, the notion of "fair rent" was only introduced by Cap. 116 as a response to the housing shortage that struck the island. This latter enactment, entitled the Rent Restriction (Dwelling Houses) Ordinance, laid down that dwellings completed prior to the 31st March 1939 had to maintain the same rent that used to be charged before the commencement of the war,[500] whilst the rent for "new" dwellings, or houses that were completed after that date, could not be superior to a sum equivalent to a return of a yearly 3% on the freehold value of the site and 3¼% on the capital outlay on construction. [501] With the simultaneous existence of Cap. 69, the situation meant that not only would these rates be frozen but also that the tenant's spouse or family members' would be able prolong the lease of the premises at the same untouched value. Cap. 69, in fact, prohibited the lessor from raising the rent without the permission of the Board[502] and the latter was in turn empowered to grant the said permission only in the case of imminent extraordinary repairs or if the proposed rent did not exceed 40% over and above the fair rent at which the premises were or could have been leased prior to 1914.[503] This state of affairs applied to all contracts signed prior to 1959 and remained in place until 2010.[504]

The other statute that contains rent control provisions is Cap. 158 that was initially enacted in 1959 in order to decontrol dwellings that were either not completed, not ready for use, still vacant or owner-occupied on the day that the Ordinance came into force.[505] This period of deregulation, however, only lasted for twenty years and through the substantial amendments that were passed through Act XXIII of 1979, these leases were once again put under strict protection. The amendments, in fact, provided that leases on such

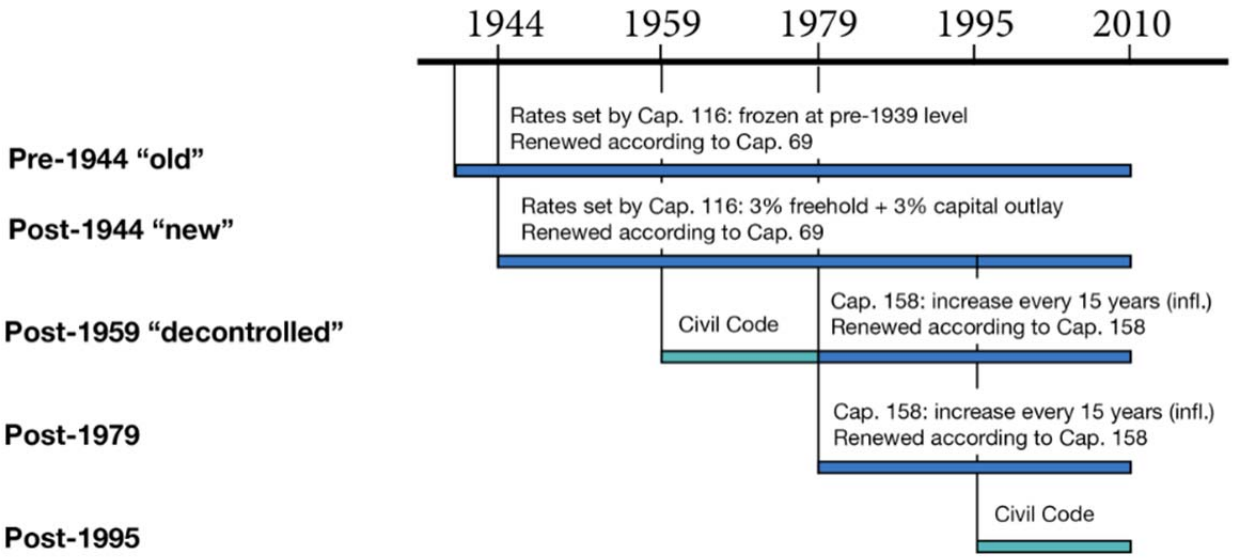
[500] Cap. 116, Article 2. In the case of repairs conducted after the war the Board could raise this "fair rent" by an amount that could not exceed a return of a yearly 3¼% on the capital outlay on the alterations or additions.
[501] Both the landlord and the tenant could apply to the Board in order to establish the fair rent.
[502] Cap. 69., Article 3.
[503] Cap. 69., Article 4. In the case of an increase due to repairs the Board could allow any increase that it may have deemed justified, having regard to the benefit resulting from the alterations or works.
[504] For contracts that did not exceed the yearly €185 the first rent increase could only be requested in 2013.
[505] Cap 158., Article 3.

decontrolled dwellings would be automatically renewed at the same rent that they were contracted as long as the tenant was a Maltese citizen and occupied the house as his ordinary residence. This Act also seemed to be influenced by the prevalent trends of the 1970s, and unlike the previous instruments, it did not impose a total rent freeze, although the increase would be marginal. The landlords of those formerly decontrolled dwellings were afforded a once every fifteen year increase in proportion to the rise in the index of inflation. In addition, this Act subjected those liberalised leases back to the provisions of Cap. 69 as long as they were not in conflict with the provisions of Cap. 158; this regime lasted until 1995.

In 2010, rent increases of contracts entered into prior to 1995 became subject to the exclusive regulation of Article 1531C of the Civil Code.[506] This article provides for the gradual augmentation of rates towards the free market levels (Article 1531C is dealt with under the section "Clauses on rent increase"). Rents of leases signed after 1995 are determined solely by the free market.

The figure below illustrates the succession of controls that led up to the situation of 2010, the year when the new amendments set a minimum payable rent and a fixed increase mechanism for all leases signed prior to 1995. Rents negotiated from the 1st of June of the latter year onwards are completely unregulated.

Figure 7 Successive pieces of legislation affecting the price of rent (1944-2010)[507]



[506] Act X of 2009.
[507] Own elaboration.

Despite the rigorousness with which these controls were applied, the Courts have decided, at least in the cases of commercial tenements, that once the original contract would have contemplated a gradual rent increase, the agreement would remain binding despite the existence of the special laws.[508] Technically speaking the landlord was not in breach of Cap. 69 because he was neither refusing to renew the lease nor to raise the rent agreed. In another case it was similarly held that if the agreement foresaw the tacit renewal beyond the stipulated period, then the lease would have continued to be regulated by that same contract.[509] Additionally, the lessee was not precluded from accepting a higher rent or any new conditions proposed by the landlord if he does not formalise his objection through a judicial letter within a period of fifteen days.[510] Moreover, it was held that under Cap. 158, any clause preventing rent increase would have been considered invalid and that the landlord would have still been entitled to request the periodic addition stipulated in Article 5(3)(c).[511]

Jurisprudence has also laid down the rules in the case of an agreement on excessive rent. Of course, such decisions were given on contracts that fell under the regulation of the special statutes. The only express provision contained in Maltese law regarding excessive rent is found in Cap. 116 Article 7, which lays down that with the exception of certain specific cases of *bona fide*, the rent is irrecoverable. Judgments have maintained the same approach and even with regards to Cap. 158 our Court has held that despite any contractual obligation entered by the tenant, to pay a rate that was superior to that permitted by law, the particular stipulation would be held to be null and without effect. In any case a tenant cannot proceed judicially to recover the money that he would have paid in excess.[512]

- **Maturity (fixed payment date); consequences in case of delayed payment**

Article 1554(b) of the Civil Code reads that the lessee is bound to pay the rent agreed upon with the lessor. In case of default, Article 1570 lays down that the lessor may choose to either compel the lessee to perform his obligation or to demand the dissolution of the contract together with damages for non-performance. It seems that under our law any delay is sufficient.[513] As

[508] John Debrincat v. John A. Borg et, decided by the Court of Appeal on the 18 November 1985; El Dara Ltd v. Emanuel Galea, decided by the Civil Court (First Hall) on the 6 July 2001; Grave Spiteri et v. Carmel Camilleri, decided by the Civil Court (First Hall), on the 30 May 2002.
[509] Monica Ellul et v. AIC Ludovico Micallef, decided by the Court of Appeal (Inferior) on the 11 June 1993.
[510] Cap. 69, Article 6(2).
[511] Joseph Calleja v. Raymond Pule', decided by the Court of Appeal (Inferior) on the 36 June 1994.
[512] Raymond Pizzuto et v. Giovanna Schembri et, decided by the Civil Court (First Hall) on the 20 March 2003. The judgment held, additionally, that the tenant was still given the possibility to renounce the right that was given to him by law.
[513] Ibid. no. 299, 733.

concerns residential leases, however, the contract may only be terminated after the lessee would have been summoned by means of a judicial letter and he would have remained in default for a period of two weeks from the said notification. This procedure was introduced by the 2010 amendments in a clear attempt by the legislator to draw closer to the interests of the landlord. Jurisprudence has confirmed, however, that the law must be followed *ad unguem* by the lessor and unless the tenant is called upon by a judicial letter then the Court could not proceed to order the eviction.[514] Under Caps. 69 and 158 the procedure is lengthier; according to Articles 9(a)(1) and 5(3)(b) respectively, in fact, the Board would grant the landlord the request to resume possession of the premises if the tenant would have failed to pay the rent punctually in respect of two or more terms, within fifteen days from the day on which he is called upon for payment.[515] In this case the lessor would not be obliged to summon the lessee in writing but would even be able to do so verbally.[516]

The Courts seem not to order the eviction of the tenant prior to scrutinising the causes that would have led to such default. This is done in order to ensure that in every case the lessor is not unjustly deprived of his right to enjoy the property.[517] Yet, the tenant can very rarely be justified for defaulting the payment of rent.[518] The fact that, for instance, in the case of controlled leases, the rent would not have been established by the Board, was not accepted by the Court as an argument to justify the default.[519] Neither would the fact that the amount of rent is the object of an ongoing court dispute.[520] The accepted procedure is a Court deposit of the requested amount pending the final decision.[521] It is a developed practice under Maltese law, however, to interpret any doubt in tenancy clause in favour of the tenant since the latter could be risking eviction.[522] In any case, upon receiving the rent from the

[514] Vincent Sammut v. Joseph Ellul, decided by the Rent Regulation Board on the 28 June 2012.
[515] Jurisprudence has taken this to mean two interpellations for two missed deadlines (*Joseph Ellul v. Jos. G. Coleiro, Court of Appeal, 24 January 1964*)
[516] Mary Borg et v. John Muscat, decided by the Court of Appeal on the 9 March 1994.
[517] Joseph Darmanin et v. Giljan Cutajar, decided by the Court of Appeal on the 23 November 2005; Frank Camilleri noe v. Wing Commander Philip Morgan, decided by the Court of Appeal on the 28 January 1949**.** In the latter case it was explained that the law did not want to give the landlord a pretext to evict the tenant but a safeguard to receive what was due to him.
[518] It has been hedd that in the case of circumstances that justify the default he would not lose his right to renew the lease (*Camilleri v. Morgan*; *Lino Testaferrata Bonici et v. Emily Moakes, Court of Appeal, 14 November 1955*).
[519] Kan. Lorenzo Micallef et v. Carmelo Zahra, decided by the Court of Appeal on the 10 March 1952.
[520] Joseph Borg noe v. Edgar Galea, decided by the Court of Appeal on the 7 October 1996.
[521] Cygnet Ltd v. Supplies Ltd, decided by the Civil Court (First Hall) on the 5 May 2005.
[522] This is laid down in Article 1009 of the Civil Code and confirmed by jurisprudence in, inter alia: Nazzareno Farrugia pro et noe v. Lorenzo Bonnic noe decided by the Court of Appeal on the 10 November 1941; Anthony Calleja et v. Carmelo Debono, decided by the Court of Appeal on the 10 February 1961 and Carmel Briffa v. Vincent Buttigieg, decided by the Court of Appeal (Inferior) on the 2 une 2003.

tenant without reservations, the landlord would be losing any right to terminate the lease on the basis of default on the part of the tenant.[523]

The Civil Code also lays down that if it appears from receipts that the lessee would have paid the rent falling due on three consecutive periods without any reservation being made as to any amounts that would have fallen due previously, these latter sums would be presumed to have been paid.[524]

- May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect);

Under Maltese law a tenant is no case entitled to refuse to pay rent[525] or to keep the rent on the basis of a purported claim against the landlord.[526] The only exceptions to this rule are contained in Articles 1541 and 1543 of the Civil Code that entitle the tenant to carry out any necessary extraordinary repairs at the expense of the landlord and to set it off against the rent due, if the latter remains inactive.[527] Both articles, therefore, enable the lessee to keep any rent that is due by him in order to compensate for any expenses that should have been incurred by the landlord. The difference between these two cases is that in Article 1541 the lessee would first duly compel the lessor to carry out any extraordinary repairs and subsequently obtain authorisation by Court to execute the works himself. Under Article 1543, on the other hand, the repairs would be of such an urgent nature that the lessee would be entitled to carry out any repairs without the necessity of any preliminary proceedings.[528] In the latter case, however, the lessee would have to be able to prove that the omission or delay of those works would have caused serious prejudice to him.

It is also relevant to note that the Court has accepted private agreements, settling any claim that the parties to a contract might have had against each

[523] Carmelo Stivala v. Ratan Mohnani, decided by the Civil Court (First Hall) on the 23 October 2001.
[524] Civil Code, Article 1160.
[525] Joseph Borg v. Edgar Galea, decided by the Court of Appeal on the 7 October 1996.
[526] Louis Apap Bologna v. Alfred Delia, decided by the Court of Appeal (Inferior) on the 7 July 2003; Carmel Bellia et v. Joseph Frendo, decided by the Court of Appeal on the 14 December 2001. In such cases the tenant should proceed to file an application against the landlord; even if the tenant was right at law, he cannot consider himself a creditor of the landlord and proceed not to pay rent.[526]
[527] The Article specifies that the lessor must first be summoned through a judicial act, and prior to carrying out the repairs at the expense of the lessor the lessee has to request permission by the Rent Regulation Board.
[528] The lessee would still be bound to inform the lessor about these circumstances as soon as possible and to present him with a report drawn up by an expert attesting to the urgency of such repairs, their estimated value and the prejudice that may have resulted from the delay of such works. The article also authorises the lessor to proceed with the continuation of those works himself.

other, which did not involve any judicial proceedings.[529] However, no agreement could limit what the tenant was entitled to at law. This was the case in "B. Tagliaferro & Sons Ltd v. Albert Mizzi et"[530] where the landlord had agreed to cover the costs of the repairs up to a certain amount. Tenants proceeded to accept this offer unconditionally but during the execution of the works they discovered additional structural damage which required immediate attention. Since the amount would have exceeded that stipulated in the private agreement, landlords refused to pay and tenants proceeded to adopt the procedure laid down in Article 1543 i.e. to set off the costs of the additional extraordinary repairs against the rent payable by them. The lessor initially filed a successful case for eviction based on the default of the lessee, however, the decision was reversed on Appeal, where after considering the reasons for non-payment, the Court held that the tenants could not suffer at their own expense any repairs that fell under the responsibility of the landlord.[531] It was also confirmed that any clause in a contract obliging a tenant to pay for all repairs had to be interpreted restrictively to include only ordinary repairs.[532]

A conduct that is certainly unacceptable under Maltese law is any unilateral decision on the part of the tenant to retain the rent in cases where he would not be permitted to do so by the Code or when the credit claimed by him would not be liquid. If a tenant insisted on such wrongful position he would be exposing himself to default and, consequently, eviction. Moreover, it has also been affirmed that the procedure laid down by the law, should, in any case, be followed as closely as practicable.[533]

In the case of either of parties failing to pay the other what is due, the debtor can avail himself of a garnishee order; a court order that requires the person on whom it is served, including banks, to freeze the assets of the debtor, and to deposit the available sum – up to the amount specified in the order – within 19 days from when the order was served.[534] Additionally, Article 2009(e) of

[529] Giovanni Balzan v. Rita Sammut, decided by the Court of Appeal on the 30 November 1956.
[530] Decided by the Court of Appeal on the 27 November 2009.
[531] Tagliaferro v. Mizzi is also interesting in that it explains the degree of "danger" that is required. The fact that the tenants' architect described the danger as "probable" did not mean that the repairs were not justified. The test to be adopted by Court in these cases is, in fact, on a "balance of probabilities" (*Eucaristico Zammit v. Eurstrachio Petrococchino noe, Court of Appeal, 25 February 1952; Diane Harvey noe v. Concetta Attard, Court of Appeal (Commercial), 11 June 1968; Carmela Borg v. Manager ta' l-Intrapriza tal-Halib, Civil Court (First Hall), 17 July 1981*). The Court has also, in other cases, held that any works conducted on the property must respect the character of the building and irrespective of the urgency of the repairs, the tenant would have to obtain all the permits that would be necessary (*Evelyn Montebello et v. Vincent Magri et, Court of Appeal, 30 May 2008)*.
[532] Louis Abela v. Joseph M. Briffa, decided by the Court of Appeal (Inferior) on the 24 February 1967.
[533] Alfred Falzon et noe v. Karmenu Scerri et, decided by the Court of Appeal (Inferior) on the 23 June 2004.
[534] The Executive Garnishee Order is dealt with in Articles 375-383 of the Code of Organisation and Civil Procedure, whilst the provisions regarding the Precuationary Garnishee Order are contained in Articles 849-854; the effects of a Precautionary Garnishee

the Civil Code grants a privileged claim to the lessor on the debt due to him for the rent of an immovable, for any repairs which the lessee would have failed to carry out and for the non-performance of any other covenant of the contract. The same provision allows the lessor to seize or attach by garnishee order any furniture that would have been removed elsewhere without his consent; however, the privelege would only be preserved if the warrant is demanded within fifteen days from the day on which the movables would have been removed.

Although Maltese law does not seem to foresee many remedies of self-help one exception is made in the section dealing with subletting[535] where the Code gives the original lessor a right on the things of the sublessee in order to enforce his rights on any arreas, compensation for non-repairs or non-fulfilment of any other contractual clause.[536]

In a similar fashion, the tenant does not seem to be able to prolong his stay at the premises beyond the agreed term in case of default by the landlord e.g. if he is owed payment following the carrying out of any urgent repairs. In such an event, a relevant provision would appear to be Article 550 of the Civil Code that entitles a possessor to retain a thing until its owner proceeds to the payment of any expenses made by him on that property. However, the law only refers to the "possessor" thereby suggesting that it wanted to exclude the "detentor" from the availment of this action; in other instances the law makes its intentions clear by making express mention of the latter.[537]

Order and of an Executive Garnishee Order are the same.

[535] Civil Code, Article 1619.

[536] This is a real action that is available to the landlord notwithstanding the fact that: i) the tenement would be occupied by a sub-tenant, ii) that the things subject to the action real action would belong to the same sub-tenant and that iii) he may also have paid the rent to the sublessor. Jurisprudence has elaborated that this article showed that the responsibility of the sublessee is not personal but "propter rem" i.e. owing to his relationship with the thing, and that any action for damages filed by the landlord directly against the sublessee could not be successful (*Joseph Camilleri v. Carmelo Farrugia et, Civil Court (First Hall), 5 December 2002*).

[537] Jurisprudence has on various occasions confirmed that, in line with the civilian tradition, the lessor is considered simply as a detentor rather than a possessor. For example, it has been held in *Costantino Borg v. Alexander Cachia Zammit noe (decided by the Civil Court [First Hall] on the 8 October 2004*) that whilst Article 535, that provides for the action for restoration of possession in case of spoliation (*actio spolii)*, can be availed of by the tenant since it speaks of any person who has the "possession, of whatever kind, or of the detention of a movable or an immovable thing", the same could not be said on the action to secure possession in case of molestation (*actio manutensionis*) because the specific provision only mentions the person "being in possession, of whatever kind, of an immovable thing". Similarly, in the case of prescription (i.e. the acquisition of a right by a continuous, uninterrupted, peaceable, open, and unequivocal possession for a time specified by law) the Civil Code does not allow tenants to prescribe property in their own favour since they do not hold the thing as their own (Article 2118).

- May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)

Under Maltese law, the alienation of the premises by the landlord does not terminate the lease,[538] therefore, until the lease's expiration, the transferee would automatically be subrogated in the landlord's right to receive the rent. The Code further specifies that in the case of sale of urban tenements, the rent due in respect of the period during which the sale is made or until the suspensive condition is fulfilled, would be divided between the seller and the buyer in proportion to the time elapsed before the act of sale or the fulfillment of the condition and the time that would have elapsed afterwards.[539]

The landlord may also assign his right to receive rent to any third party as long as the deed is made in writing. The assignee may not, however, exercise the rights assigned to him before due notice to the debtor by means of a judicial act.[540] Jurisprudence has elaborated that the latter requirement is necessary in order for the debtor to become aware of the events concerning his obligation and to act in favour of his interests should it become necessary.[541] The notice would only become unnecessary if the debtor would have previously acknowledged the assignment.[542] The Courts have additionally held that any ground-rent that fell due in relation to emphyteusis also amounted to credit.[543]

Should the tenant, however, decide to assign the lease to a third party he would have to be expressly allowed to do so by the very contract of letting.[544] The assignment has to be made necessarily in writing[545] and it has to be passed onto the assignee in the same conditions which bound the assignor otherwise it would be considered as a constitution of whole new contract altogether.[546] Jurisprudence has also held that when the tenant would present another person to the landlord in order for the latter to recognize the third party as the new tenant, he would not be assigning the lease but simply declaring his intentions to terminate the contract.[547]

- May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the "tenant-contractor" create problems

[538] Civil Code, Article 1574.
[539] Civil Code, Article 1396.
[540] Civil Code, Articles 1469-1471.
[541] George Borg v. John Debono, decided by the Court of Appeal on the 18 February 2003.
[542] Civil Code, Article 1473.
[543] Il-Kumissaru ta' l-Artijiet v. LHP Limited, decided by the First Hall (Civil Court) on the 6 December 2010.
[544] Civil Code, Article 1614.
[545] Rita Pirotta v. Simon Carbonaro et, decided by the Court of Appeal on the 17 November 2004.
[546] Giuseppe Buhagiar v. Maria Tereza Sammut et, decided by the First Hall (Civil Court) on the 8 February 1957.
[547] Augusto Testaferrata Abela v. Giulia D'ugo, decided by the Court of Appeal on the 16 October 1959.

in that case? (a lien is a statutory right of a contractor to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)

The position under Maltese law seems to be that the consideration paid in respect of the lease may only consist in money, alimentary products or a share of the fruits produced by the thing (the latter two are likely to apply in cases of agricultural leases). In case of any other form of payment there would not be a contract of lease.[548] The performance of any works was specifically excluded from the accepted manner of payment in the case Salvatore Borg v. Paolo Briguglio et[549] and so were generous and altruistic acts performed in favour of the landlord.[550] Moreover, with the introduction of the 2010 amendments, the consideration relating to urban and commercial leases may only be payable in cash.[551]

In the case of any sum due to an undertaker by way of any works carried out on the property, the law does not create any legal hypothec in his favour. Architects, contractors, masons and other workmen would, however, be granted a privileged status over any constructed, reconstructed or repaired immovable, up to the sum that they are owed in respect to the expenses and the price of their work.[552] Another judicially acknowledged remedy in these cases would most likely be the *action de in rem verso* or action for unjust enrichment. This was the case in Emmanuele Said v. Nobbli Markiz Testaferrata Bonnici Ghaxaq[553] where a supplier who had sold building materials to the tenant had successfully availed himself of this action against the owner of the premises after the same tenant had become insolvent. The *action de in rem verso* is dealt with by the Maltese Civil Code in Articles 1028A and 1028B. Being a subsidiary action it may only be exercised when no other action for the recovery of that loss would be available.

- **Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?**

[548] Carmelo Xuereb v. Salvu Camenzuli, decided by the Court of Appeal on the 12 December 1969.
[549] Decided by the Court of Appeal on the 17 November 1972.
[550] Vincenza Vella v. Edward Borg, decided by the Court of Appeal (Inferior) on the 28 June 1974.
[551] Article 1533(3) of the Civil Code seems to exclude the possibility of agreeing on a rent payable in kind or in a portion of fruits since the law will always deem a residential or commercial lease to be payable in money.
[552] Civil Code, Article 2010(b). The same privilege is granted to the person who has, by means of a public deed, supplied money or materials for the construction, reconstruction or repair of the immovable, or for the payment of the workmen employed on such work. Their ranking would rise above that of the dominus if the works carried out would be necessary for the preservation of the tenement [2091(2)].
[553] Decided by the Civil Court (First Hall) on the 16 June 1936.

As said previously the Civil Code grants a special privilege to the lessor over particular movable property of the lessee.[554] The law in fact states that the debt due to the lessor for the rent of an immovable entitles the landlord to a privilege over the value of all things that serve to furnish the dwelling. This was also confirmed by jurisprudence and a particular case held that there was no doubt that the lessor enjoyed this privilege, however, the privilege could not extend itself onto objects belonging to third parties that were to remain inside the premises only temporarily.[555]

- **Clauses on rent increase**

- **Open-ended vs. limited in time contracts**
- **Automatic increase clauses (e.g. 3% per year)**
- **Index-oriented increase clauses**

Maltese law does not provide any schemes as to rent increase. Therefore, unless the contract was signed prior to the 1st of June 1995, the parties can negotiate any sort of increase in the rental contract. This method of increase must, however, on pain of nullity, be contained in the rental contract as laid down in Article 1531A(d). Landlords may therefore opt for a yearly increase clause; very often this would be in the form of a percentage rather than a mirror or an index.

In case of controlled leases, on the other hand, it is Article 1531C of the Civil Code that finds its application, unless the parties would have otherwise agreed in writing. As explained above, the rates would increase upon the end of every three-year cycle starting from the 1st of January 2013. The index used in this case is the index of inflation. These increases may be considered a bit too mild since the lower the rent paid, the lower the consequent increase. Once again, therefore, it was the landlords of the older contracts that were made to endure the toughest burden.[556] It seems, however, that it was a firm tenet of the reform to cause the least social upheaval.

- **Utilities**

[554] Civil Code, Article 2009(e).
[555] Commander Edward Hamilton Hill noe v. Neg. Joseph E. Coleiro noe, decided by the Court of Appeal on the 5 May 1965. In this case the warrant of seizure issued by the landlord entitled the latter to claim a television set that the lessee had borrowed from the plaintiff company. Jurisprudence is, however, conflicting regarding whether the conservation of this privilege requires good faith on the part of the lessor.
[556] Basing oneself on the figure issued in the Index of Inflation by the NSO for the year 2012 (810.16 as against the 770.07 registered in 2010), a quick calculation on the amount of €185 - the statutory minimum yearly amount - would return an allowable increase of €9.64. Therefore, the new price which the landlord may start charging the tenant after the 1 of January 2013 is that of €194.64 per annum.

- Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation.

Maltese law does not regulate the payment of utilities in lease agreements, neither in the Civil Code nor in the special statutes.[557] This means that all relative arrangements must be dealt with by the parties in the lease contract.[558] The usual utilities agreed on by the contracting parties are the supply of water and electricity.

- Responsibility of and distribution among the parties:

- **Does the landlord or the tenant have to conclude the contracts of supply?**
- **Which utilities may be charged from the tenant?**

In Malta there is only one designated electicity distribution company, "Enemalta Corporation" (EMC)[559], and one water service provider, the "Water Services Corporation" (WSC).[560] Only the owner may request the installation of a meter, however the billing is taken care of by a different company: the "Automated Revenue Management Services" (ARMS), set up as a joint venture between the EMC and WSC. Tenants are allowed to apply for a new service at ARMS, however, they would be required to present the lease agreement as a proof of their link to the property.[561] Once the application is accepted, the relationship is strictly between ARMS and the account holder; and it would only be such account holder who would have access to the right granted to him by law under the Electricity Supply Regulations[562] and the Water Supply Regulations.[563] The movement of the registration from one premises to another is, however, restricted to only once yearly.[564]

In the specific case of leases, the Electricity and Water Supply Regulations also enable the chairmen of the respective corporations to require the landlord

[557] The Condominium Act is similarly silent as regards payment of utilities.
[558] There exist various ways of how tenants would be expected to pay the water and electricity bills. The most frequent practice is that of landlords forwarding the bills upon their receipt. Other billing arrangements include the negotiation or establishment of a fixed rate per month which is usually meant to cover water and electricity costs or even an agreement which foresees the direct payment by the tenant of a bill addressed to the landlord (in the latter case the tenant would generally reserve the right to take a meter reading prior to accepting the keys; this reading may also be shown in the rental contract).
[559] Established by the Enemalta Act, Chapter 272 of the Laws of Malta.
[560] Established by the Water Services Corporation Act, Chapter 355 of the Laws of Malta.
[561] Personal correspondence with the Legal Office, Enemalta Corporation on the 23 July 2013.
[562] Subsidiary Legislation 423.01.
[563] Subsidiary Legislation 423.03.
[564] S.L. 423.01, Article 36(8); S.L. 423.03, Article 12(8)(f).

to bind himself *in solidum*[565] with the tenant for the regular payment of amounts that may become due to EMC if the premises were let furnished[566] and to the EMC and WSC if they were let for a period inferior to 3 months.[567]

- **What is the standing practice?**

- **How may the increase of prices for utilities be carried out lawfully?**

Water and electricity tariffs are regulated solely by the Malta Resource Authority (MRA).[568] The rates differentiate between residential and non-residential premises. Residential rates are of course cheaper and consumers can avail themselves further of an ecobenefit that is calculated on the registered number of residents on the billing account. An erroneous registration may therefore yield significant disparities between the correct rate and the computation of the billing agency.

- **Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?**

The disruption on the part of the provider would be possible if a request for payment would not be honoured within fourteen days of its presentation, even though the respective corporations tend to allow a much more lenient time period.[569]

The same action would, however, not be possible on the part of the landlord since this would be considered to be a case of 'ragion fattasi' or an arbitrary exercise of a pretended right.[570] This was confirmed in 'Il-Puluzija v. Michael Saliba'.[571]

- **Deposit:**

- **What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?**

[565] Jointly and severally.
[566] S.L. 423.01, Article 5.
[567] S.L. 423.01., Article 12; S.L. 423.03, Article 11. The customer in this case would still be considered to be the lessor.
[568] The MRA is constituted by the Malta Resources Authority Act, Cap. 423 of the Laws of Malta: it is a public corporate body with regulatory responsibilities relating to water, energy and mineral resources in the Maltese Islands.
[569] S.L. 423.01, Article 67; S.L. 423.03, Article 30.
[570] This is contemplated in Cap. 9, Article 85(1).
[571] Decided by the Court of Criminal Appeal on the 20 August 2009.

The Civil Code is silent on any sums of money requested as a security payment prior to entering a rented premises. The deposit would usually be made on the signing of the agreement and the clause would generally stipulate that the amount would be refunded to the tenant upon the termination of the lease, provided that upon the inspection of the landlord the premises are found in good order and in the same condition that they were delivered to him.[572] Generally the landlord would also reserve the right to keep the deposit in the case that any utility bills would not have been cleared by the tenant.[573]

- **What is the usual and lawful amount of a deposit?**

The only legal limitation that exists is in the Civil Code is contained in Article 1535 that nullifies, in the case of urban tenements, any payment made in advance for more than six months, if any prejudice is caused to the landlord's hypothecary[574] creditor or to the persons who would be succeeding him in the title.[575]

The notion of 'deposit' seems to be widely employed by Maltese landlords, however, there appears to be no standard practice. The amount requested might, in most cases, depend on the trust that exists between the contracting parties. In the case of long lets, which are usually contracts negotiated for a period of not less than 6 months, the amount requested by the landlord as a security deposit is that equivalent to one or two months' rent.[576]

- **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)**
- **What are the allowed uses of the deposit by the landlord?**

In the absence of any specific provisions, it appears that agreements relating to deposits are regulated by rules of custom. These security deposits seem to be in fact characterised by an element of self-help on the part of landlords and such agreements would be perfectly enforceable under Maltese law due to the wide observance of the principle of *pacta sund servanda*. The nature of

[572] The clause would generally excuse the tenant of any fair wear and tear.
[573] The NCPE has underlined the abusive conduct on the part of landlords regarding the specific issue of reimbursement, which seems to be experienced across the board by Maltese and foreigners alike. Various first-hand testimonies have revealed the difficulty that the recovery of this sum may involve in practice (Ibid. 123, 66).
[574] 'Hypothec' is defined by Article 2011 of the Civil Code as "a right created over the property of a debtor or of a third party, for the benefit of the creditor, as security for the fulfillment of an obligation".
[575] Recently confirmed in Dr. Alberto Magri v. Aeroflot Russion International Airlines, Civil Court (First Hall), 15 April 2002.
[576] Federation of Estate Agents Malta, <http://user.orbit.net.mt/fournier/FEAM/rental.htm>.

this deposit has never been questioned in Maltese jurisprudence, however, an analogy can be drawn with three institutes:

a) Pledge

The request of a deposit would functionally seem to have the same nature such as that of a pledge, however, there is doubt as to whether this classification would stand. In fact, although it is created as a security for an obligation which confers upon the creditor the right to obtain payment out of the thing delivered, it is not entirely clear whether it creates a privilege on that amount, over the other creditors of the lessee.[577]

If the effects of this contract were nevertheless likened to the one of a pledge, the landlord would be restricted in the use of the sum deposited. In the case of abuse of the thing pledged, in fact, the debtor could demand that it be deposited with a third party.[578] However, the debtor is clearly prohibited from claiming the restitution of the sum pledged until he would have performed all the obligations for which he would have been liable.[579] Under the Civil Code, the creditor is not forbidden from making use of the pledge, as long as he obtained the consent of the debtor.[580] If any unpermitted use of the security were made by the creditor, he would become guilty of abuse and the debtor would be consequently entitled to avail himself of the aforementioned remedy of depositing the sum with a third party. The creditor would be similarly prohibited from deriving any advantage through the use of such amounts.[581]

The Civil Code additionally lays down that if the sum deposited produced any interest or yielded other profits, the creditor would only be able to appropriate such interest in order to deduct them from the interests that would be due to him.[582]

b) Ius retentionis

Another possible right that might be invoked is the *ius retentionis* or the right of retention.[583] This right belongs to the depositary by virtue of the Civil Code that lays down that he may retain the amount until the receipt of the full

[577] Pledge is defined by Article 1964 of the Civil Code as "a contract created as a security for an obligation. The pledge may be given either by the debtor himself or by a third party for the debtor. Article 1966 specifies that "A pledge confers upon the creditor the right to obtain payment out of the thing pledged with privilege over other creditors."
[578] Civil Code, Article 1978.
[579] Civil Code, Article 1979.
[580] Civil Code, Article 1980. The creditor would, nevertheless, have to respect the provisions of Article 1977 that prohibit him from deriving any advantage from accruing interests.
[581] Civil Code, Article 1981.
[582] Civil Code, Article 1977
[583] In certain cases it was even referred to as "possessory lien" (Vella v. Jones)

payment of what is due to him.[584] The *ius retentionis* is therefore a means of security, on the part of the creditor, to obtain payment for the sum owed to him by the debtor, and this right seems to find its application in the cases of lease since there would exist a direct relationship between the lessor and the lessee.[585]

This right is one of the very rare instances of self-help that the law affords to the creditor. The right to exercise the *ius retentionis* must therefore either be expressly granted by the law[586] or else allowed exceptionally by Court in those circumstances that contained the identical elements of those cases mentioned in the law.[587] Moreover, there must exist a link between the thing held and the very creditor and the debt and the obligation to restore the thing must have arisen from the same fact.[588] The *ius retentionis* would also remain unaffected by any claims of preference despite it not being a privileged right in itself.[589] The only doubt relating to the applicability of the right of retention to the landlord's practice of requesting a deposit is contained in the fact that jurisprudence has held that the creditor would have to possess the thing as his own and not in the name of the debtor with the intention of returning it back.[590] Is it therefore doubtful whether the *ius retentionis* can be applied to the case in question.

c) Deposit

Another possible analogy which could be made by the Court would be that with the obligations of the depositary. The Civil Code, in fact, compels the depositary to use the same diligence which he uses for the custody of his own things[591] and it has been further clarified by the Courts that the expected level of diligence would be that of a good father of the family.[592] The creditor would be additionally prohibited from making use of the thing deposited without the express or implied consent of the depositor[593] and if the thing deposited bore any fruits which would have been collected by the depositary, the latter would

[584] Article 1919. This was explained in the cases: G. Bonnici v. C. Busuttil, decided by the Court of Appeal on the 3 December 1999; Direttur Tad-Dipertiment Tal-Bini u Ing. v. Emmanuel Pen Zarb, decided by the Civil Court (First Hall) on the 30 January 2006; MWJ Co. Ltd v. Amabile Camilleri, decided by the First Hall (Civil Court) on the 3 October 2008.
[585] Alexis Vella et v. David Jones et, decided by the Court of Appeal on the 27 January 2006. In this case the Court specified that the relationship that existed betweent the creditor and the debtor needed to be direct.
[586] Most recently in: Joseph Spiteri v. Melanie Cachia, delivered by the Court of Magistrates on the 13 July 2010.
[587] Frank Gulia et v. Joseph Agius et, decided by the Court of Appeal on the 26 March 1968.
[588] Dominic Palmier v. Michael Falzon, decided by the First Hall (Civil Court) on the 13 March 2009.
[589] DBC Ltd v. John Attard, decided by the First Hall (Civil Court) on the 9 December 2003; reiterated in MWJ Co. Ltd v. Amabile Camilleri, decided by the First Hall (Civil Court) on the 3 October 2008. The principle is also contained in Article 1997 of the Civil Code.
[590] Falzon v. Micallef et, decided by the First Hall (Civil Court) on the 7 May 1955.
[591] Article 1899.
[592] Emanuel Cassar v. Mario Aquilina, decided by the First Hall (Civil Court) on the 14 October 2005; Martin Cachia v. Kummissarju tal-Puluzija, decided by the First Hall (Civil Court) on the 12 December 2002.
[593] Civil Code, Article 1902.

be obliged to restore them to the debtor.[594] However, deposit as contemplated under the Civil Code, is not conceived as a means of security and similarly to the *ius retentionis* it appears to lack the necessary elements to be applied in such cases of 'deposits'.

- **Repairs**

- **Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)**

Amongst the obligations of the lessor listed in the Civil Code there is the duty of keeping the tenement in a good condition[595] i.e. in such a state that it can serve the purpose for which it was let for the whole duration of the lease. Consequently, he must also effect the repairs subsequent to the initial phase of the lease, except for ordinary works of maintenance.[596] As discussed earlier, in the case of the lessor failing to perform this obligation, either with respect to the initial or the subsequent repairs, the lessee may be authorised by the Court to execute the necessary repairs at the expense of the lessor.

It therefore follows that the slight and frequent repairs on urban tenements are the responsibility of the tenant since it is presumed that these were caused by the use which he or his dependants may have made of them or else through their fault.[597] This justifies the fact that when the damage is caused by decay or "force majeure", or by no fault of his own.[598] The other repairs and expenses are at the landlord's charge, provided that the tenant be not at fault, in which case he would be responsible in view of his obligation of keeping the thing "uti bonus pater familias".[599]

In the event of damages to the property, it would be the tenant's responsibility to prove that they occurred through accident or through a force beyond his control.[600] These are all in line with the other fundamental obligation of the lessee to return the thing in the state in which he had received it at the beginning of the lease.[601] In summary, the landlord is responsible for the extraordinary repairs that are necessary to maintain the property in a good state of repairs whilst the tenant must take care of the ordinary internal

[594] Civil Code, Article 1907.
[595] Article 1539.
[596] Ibid. no. 299, 716.
[597] Ibid. no. 299, 725.
[598] Civil Code, Article 1557.
[599] Article 1554(a). Latin: *with the diligence of a prudent father*.
[600] The responsibility of the tenant extends to the acts of his dependants and even subtenants who have not been acknowledged by the landlord.
[601] Article 1540.

repairs, unless deterioration would be such that it would require replacements; in which case the responsibility would rest with the landlord.[602]

The Court has also shed light on situations, where the extraordinary repairs would have become necessary due to the lack of ordinary works of maintenance which should have been undertaken by the tenant. This was discussed in at least a couple of recent judgments[603] where it was held that the tenant was nevertheless responsible for the structural damages that occurred to the premises due to their failure to inform the plaintiff about the apparent faults in a timely manner, and at a subsequent stage, their opposition to the conduction of any works. This duty stemmed from Article 1559 that bound the tenant to return the premises in the same state that it had been delivered to him.[604]

Jurisprudence has further elucidated that the tenant needs to live up to certain obligations in order not to prejudice his position at law. A lessee is, in fact, expected to: i) invigilate on the integrity and safety of the thing; ii) take all precautions necessary for its conservation; iii) see to the repairs that he is responsible for according to Article 1556 and; iv) give the landlord immediate notification regarding any repairs that are at his charge.[605] Therefore the law does not only require the tenant to maintain the property in the state that he found it in, but also to assume an active attitude and protect the capital interests of the landlord.[606] This duty is extremely important since if the tenant is found to be in breach of it, both the Civil Code[607] as well as Chapter 69[608] foresee the dissolution of the contract or the loss of the right to renew the lease.

The issue of repairs recently came to the fore prior to the 2010 amendments since the heavy responsibility placed on the landlord had made it highly impracticable for the owners of controlled tenements to carry out repairs on their properties. In fact, whilst values for conducting repairs kept rising, the statutes did not allow him an adequate means of return. Cap. 158 restricted any eventual increase to a maximum of 10% of the repairs carried out[609] and

[602] In cases of emphyteusis all expenses relating to repairs have to be borne by the tenant although with regards to repairs requiring major expensidures in relation to temporary emphyteusis the tenant can require the landlord to share part of the costs.
[603] Anthony Gatt v. Office Electrionics, decided by the Court of Appeal on the 22 March 2006; Joseph Frendo v. C&H Bartoli, decided by the Court of Appeal (Inerior) on the 7 May 2010.
[604] Lilian Micallef Eynaud v. Albert Falzon Santucci, decided by the Court of Appeal on the 11 January 2006; Giuseppina Farrugia v. Chev. Joseph Vassallo noe, decided by the Civil Court (First Hall) on the 21 June 1970.
[605] Micallef Eynaud v. Falzon Santucci.
[606] Anthony Gatt v. Office Electronics.
[607] Article 1555.
[608] Article 9(a). In this case the lessor is ought to have created "considerable damage to the premises" (Giovanni Grech v. Rose Vassallo et, decided by the Court of Appeal on the 29 October 1954).
[609] Subject to the condition that the increase could in no case exceed the actual value of the rent.

the landlord could only relieve himself of the obligation of conducting repairs if at the time of renewal he would have been able to present a certification by an architect of the tenant's choice that the property was in a good state of repair. The result of these measures was that over the years various properties had been left to deteriorate.

The State was criticised for having placed such unreasonable pressure directly onto the private landlord and the reforms have thus provided a partial remedy to the unsustainable burden that was being asked of the landlords.[610] The new law establishes that external ordinary maintenance on property leased prior to the 1st of June 1995 would be at the expense of the tenant and not the landlord unless any private agreement between the two stipulated otherwise.[611] This means that the landlord would only be responsible for structural repairs.[612] A tenant of a residential or commercial tenement may also either request the landlord to carry out such structural repairs or else decide to carry out such repairs personally. In the former case, the landlord would acquire the right to increase the value of the rent by 6% of the costs incurred whilst in that of the latter, the tenant would have no right to claim from the landlord, either in part or in full, the costs incurred for such repairs.[613] Moreover, a new right to access has been granted to the landlord in order enable him to verify whether the tenant would be in fact meeting his obligations to maintain the premises.[614] It must additionally be mentioned that, through several schemes, government has taken the initiative to assist both owners and tenants to refurbish their properties.[615]

- **Connections of the contract to third parties**

- **Rights of tenants in relation to a mortgagee (before and after foreclosure)**

When the landlord's title would be susceptible to such right of recovery, it seems that Article 1530 would come in to protect the tenant from a

[610] Ibid. no. 72, 34.
[611] Civil Code, Article 1531E.
[612] Article 1540(3) also introduced a new definition of structural repairs for urban, residential and commercial tenements. They are to be understood as repairs relating to the structure of the building itself, including the ceiling.
[613] Civil Code, Article 1540(4).
[614] Civil Code, Article 1548A. In the case that the tenant denied the landlord this right of access, the landlord would have the right to appeal to the RRB. In this case the Board would adopt the summary procedure wherein the Board would reach a decision without hearing the parties concerned and where the ruling of the Board would be exercised under the supervision of a Court Marshal if the tenant insisted on prohibiting the landlord from such access. No appeal may be made from this decree.
[615] In order to further assist landlord and tenants to finance repairs the Housing Authority has also issued new schemes that subsidise adaptation works in residences occupied by either owners or tenants. Landlords of private dwellings rented to tenants can apply for assistance to eliminate dangerous structures. (www.housingauthority.com.mt/EN/content/58)

consequent eviction. This is not contained expressly in the wording of the law, however, in view of the wide applicability given to the Article, it may lead the Court to consider the mortgagor as a temporary owner. As regards the tenant's obligations, it has been confirmed by the Court in 'Francesco Sciberras et v. Ignatius Peter Busuttil et'[616] that those would remain unaltered. In this case the landlord defaulted on the mortgage and the property was about to be sold by judicial auction. It was decided that in such cases, despite being served with a warrant of seizure, the landlord would nonetheless be entitled to receive rent until his property would be acquired by a third party. The purchaser of the property would thus succeed the landlord in the right to receive the rent, subject to the conditions laid down in Article 1530.[617]

6.5. Implementation of tenancy contracts

Summary Table 13 Implementation of tenancy contracts

	Main characteristic(s) of tenancy type 1 Private Residential Leases
Breaches prior to handover	General action for damages in case of delayed completion of dwelling. In case of "double lease" second lessor only allowed to occupy premises if entered into possession first and in good faith.
Breaches after handover	Duty of the landlord to warrant peaceful possession and against hidden defects. No responsibility over molestations by third parties unless right over thing is claimed.
Rent increases	Statutory triennial increase according to index of inflation (only pre-1995 contracts). Free market (post-1995).
Changes to the dwelling	Tenant allowed to make improvements as long as partial and necessary for the enjoyment of the property, otherwise illegal if done without consent of landlord.
Use of the dwelling	Obligation to make proper use of the property. Non-use amounts to bad use. Failure to use tenement for twelve months amounts to bad use, tenant justified only in cases of work, study or health care.

[616] Decided by the Civil Court (First Hall) on the 17 March 2005.
[617] The right of the lessee to continue the lease would prevail as long as it is made on fair conditions and for a term not exceeding four years.

- **Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling**
- **In the sphere of the landlord:**

- Delayed completion of dwelling

The Maltese Civil Code does not contemplate the situation where the tenant would be impeded from accessing the dwelling due to the incompletion of the premises. The only possible avenue for the tenant would appear to be a general action for damages[618] against the landlord, since the latter would have breached the obligation to deliver the thing let in a state that suited the purpose for which it had been agreed upon.[619] The period contracted by the parties, in fact, cannot be altered by the Court for any reason and the only available remedy would be in the form of compensation for damages.[620] The lessor may, in turn, have a number of actions available against the third party, amongst which a similar action for damages for the loss of rental income.[621] In case of a penalty clause stipulated by the landlord and the undertaker, the law reads that the former could choose to sue for either the performance of the principal obligation or proceed to demand the penalty incurred by the latter.[622]

- Refusal of handover by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants)

In a case of conflict between several valid lessees of the same thing, the local Courts have not been consistent in their approach. However, in line with the prevalent view that the right of the tenant is a personal one, the most consolidated position is that the first lessee would acquire preference, provided that none of the successive lessees would have obtained the possession of the tenement. In the case that the second or further tenant would have obtained possession in good faith, then he would be given prevalence on the ground that the right of the first lessee, that is a personal one, cannot be availed of against the subsequent one, and has, therefore, no action through which he can expel him.[623] This has been confirmed in Giuseppe Debono et v. Vincenza Attard et[624] where it was specified that good faith was an essential requisite for the subsequent lease to prevail over a previous one. It was further elaborated that this element needed to exist at

[618] Article 1045.
[619] Article 1539(a).
[620] Neg. Giovanni German noe v. Nobbli Markiz Paolo Apap Bologna, decided by the Civil Court (First Hall) on the 12 March 1953.
[621] The action contained in 1045 foresees both the loss of actual as well as future earnings.
[622] Article 1120(2); the creditor would not be able to demand both the principal thing and the penalty unless the penalty would have been stipulated in consideration of mere delay [1120(3)].
[623] Ibid. no. 299, 731.
[624] Decided by the Court of Appeal (Superior) on the 9 May 1951.

the moment of the tenant's admission into the property and not simply during the moment of negotiation or conclusion of the lease contract. Moreover, the same judgment held that the lessee did not need to occupy the premises personally but that it could have also been made through a third party.

- **Refusal of clearing and handover by previous tenant**

The dissolution of the contract of letting happens automatically, by operation of law, on the expiration of the term expressly agreed upon without there being a need for any of the contracting parties to give notice to the other.[625] This means that any unilaterally prolonged occupation on the part of the tenant would be considered abusive, arbitrary and consequently held without any valid title.[626] In such cases, jurisprudence has considered that both the landlord as well as the new tenant could avail themselves of a direct action against any abusive third party.[627] A new tenant would not need to summon the landlord or involve him in the dispute as long as the latter would not have done anything to hinder or impair the rights that derived to him from the contract.[628] The point of whether the lawful tenant had the sufficient juridical interest to present an action for eviction of an unlawful third party came up more recently in 'Henry Tabone v. Hilda Demajo'[629] where the tenant's demand was once again upheld.

The landlord would additionally be able to claim any sums due from the unlawful tenant. The Courts have clarified that in such cases the compensation due would not be in the form of arrears but rather damages,[630] even though the amount due would be established on the basis of the rental value or the agreed rate.[631]

It must also be said that there is no rule in the Civil Code that justifies the tenant in keeping the tenement beyond the stipulated period, even if the tenant would have become insolvent. The absence of payment would therefore, according to the Civil Code,[632] constitute a ground for the dissolution of the contract; the lessor would be able to either compel the lessee to perform the obligation or demand the dissolution of the contract along with any ensuing damages due to his non-performance. In the extreme

[625] Civil Code, Article 1566.
[626] Carmelina Camilleri et v. Paul Mifsud et, decided by the Court of Appeal (Inferior) on the 12 August 1994.
[627] Antonio Catania v. Rinaldo Zahra, decided by the Court of Appeal on the 20 February 1953.
[628] Giuseppe Camilleri v. Giuseppe Attard Portughese et, decided by the Court of Appeal on the 22 June 1925.
[629] Decided by the Court of Appeal (Inferior) on the 3 November 2004.
[630] John Galea et v. Raymond Falzon et, decided by the Civil Court (First Hall) on the 28 April 2005.
[631] Joseph Olivieri et v. Francis Vella et noe, decied by the Civil Court (First Hall) on the 21 November 2003.
[632] Article 1570.

case that the abusive tenant tried to prolong his stay by changing the lock of the premises the landlord would be able to proceed against him through the actio spolii[633] as long as he could: i) prove his material possession over the premises, ii) prove the act of spoliation or molestation and iii) file the action within a period of two months from the occurrence of the allegedly unlawful act in question, or else its discovery.[634]

- **Public law impediments to handover to the tenant**

If any public law decision would prohibit the landlord from delivering the premises to the tenant, the Courts would consider it as an extraneous cause, comparable to "force majeure". The landlord would therefore not be answerable for any damages that would have been caused by his non-performance.[635]

▪ **In the sphere of the tenant: refusal of the new tenant to take possession of the house**

Maltese law has always entitled the tenant to take the unilateral action of renouncing the lease and in the case of immovables this does not require either a private writing or any authorisation by the RRB.[636] The necessary element is the clear, unequivocal and positive manifestation of the tenant's will; whether it is deducible from direct proof or presumable from the facts of the case.[637] Jurisprudence has also confirmed that the juridical consequences of the renunciation would be the divestiture of the tenant's rights and the loss of his title over the property.[638] Since he is not bound by any statutory minimum term, the tenant seems to be able to renounce his right at any stage of the lease. Nothing, however, seems to preclude the landlord's right to claim any resultant damages.

[633] The 'actio spolii' is an action for the recovery of possession originating from Roman law.
[634] The availability of this remedy for the landlord was confirmed most recently in Paul Domanchich et v. Horace Zerafa, decided by the First Hall (Civil Court) on the 23 October 2007.
[635] Neg. Giovanni German noe v. Nobbli Markiz Paolo Apap Bologna, decided by the Civil Court (First Hall) on the 12 March 1953.
[636] Dun Giuseppe Camilleri v. Saveria Apap Muscat, decided by the Civil Court (First Hall) on the 20 March 1939.
[637] Buhagiar vs Saliba, decided by the Court of Appeal (Inferior) on the 28 November 1983; Henry Thake v. Carmel sive Lino Borg, decided by the Court of Appeal (Inferior) on the 25 November 1986; Anthony Scerri et v. Anthony Cutajar et, decided by the Court of Appeal on the 16 March 2005. The act of renunciation would usually consist in the tenant's return of the key to the landlord or the presentation of a new tenant who would enter in his stead.
[638] Wing Commander Harold Francis Charrington v. Nazzareno Cassar, decided by the Court of Appeal on the 25 June 1955.

- **Disruptions of performance (in particular "breach of contract") after the handover of the dwelling**
- **Defects of the dwelling**

- **Notion of defects: is there a general definition?**

There is no express definition of defects under Maltese law, however, one of the express obligations of the lessor is to secure the lessee in the quiet enjoyment of the thing during the continuance of the lease.[639] These warranties must be given in respect of:

i) *molestations of right and evictions*[640]

This includes both the acts of the lessor as well as those of third parties. The lessor has, in fact, a negative obligation consisting in the duty of abstaining from performing any act which might deprive the lessee of his enjoyment in whole or in part. As a consequence of this, the lessor cannot, during the lease and without the consent of the lessee, alter the form of the thing let, since this would prevent the tenant from deriving that enjoyment which he aimed at obtaining in virtue of the lease.[641] This obligation is of course subject to the exception concerning urgent repairs.

As part of this fundamental obligation, the lessor must also give a warranty against acts done by third parties. The only condition required is that it be a molestation of right over the thing let or an opposition to the exercise by the lessor of a right arising from the lease. It must be noted that despite having to warrant against molestations of right, the lessor is in no way obliged to do so in relation to molestations of fact. The reason for this difference is that unlike the former, such molestations have no connection with the person's rights as a lessee.[642]

ii) hidden defects

This warranty comes from the obligation not to simply deliver the thing to the lessee, but to make sure that it has all that is necessary for its enjoyment. In such cases the defect must be serious i.e. it must be such that it prevents or lessens the use of the thing[643] and if the defect existed at the time of the

[639] Civil Code, Article 1539(c).
[640] This threefold division was made by Caruana Galizia (*The Contract of Letting and Hiring*, 1987: III, 718).
[641] Civil Code, Article 1547.
[642] The warranty for molestations of fact would nonetheless be due when they would be accompanied by any pretensions to a right (Civil Code, Articles 1550, 1551).
[643] Civil Code, Article 1545.

contract it must have been latent, i.e. the lessee could not at that the moment of the conclusion of the contract noticed the defect by himself.[644]

iii) accident and "force majeure"

This warranty refers to the obstacles to, or the diminutions of, the enjoyment of the thing caused by accident or "force majeure", or by the acts of third parties within the limits of their rights. The Civil Code applies this warranty to the case in which the thing let is totally or partially destroyed.[645] In fact, if such a diminution in the enjoyment of the property occurred, the tenant would have a right to sue the landlord.

- **Examples: is the exposition to noise e.g. from a building site in front of the house or are noisy neighbours a defect? damages caused by a party or third persons? Occupation by third parties?**

In line with what has been argued above the case of the noisy neighbourhood would not be considered a defect since the Civil Code clearly lays down that the lessor is not bound to warrant the lessee against the molestations by certain acts of third parties, unless they would be claiming any right on the property.[646] The lessee may, however, oppose such molestation by proceeding in his own name against the author of such abusive acts. As was explained by jurisprudence, our law makes a clear distinction between molestations of right ("molestie di diritto") and molestations of fact ("molestie di fatto").[647] If the molestations did not affect the rights emanating from the contract of lease than the lessee could not call on the lessor in order to remove those nuisances. Since in such cases the damage would be personal, he would have a right "jure proprio".[648]

The position changes in the case of any party causing damages to the property. In fact, in this case the landlord would be responsible for those repairs that would be essential for the lessee to continue in the enjoyment of his property. If the repairs are urgent and cannot be delayed until the expiration of the lease, the lessee would be bound to suffer the execution of those repairs, whatever the inconvenience caused to him, even though during such execution he may be deprived of a part of the tenement.[649]

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[644] Civil Code, Article 1546. It is not a requirement for the defect to have existed at the time of the contract since in lease, the obligation of the lessor to grant enjoyment of the thing to the lessee lasts for the whole duration of the contract.
[645] Article 1571.
[646] Article 1550.
[647] Costantino Borg v. Alexander Cachia Zammit, decided by the Civil Court (First Hall) on the 8 October 2004.
[648] Latin: in his own right.
[649] Article 1548. This assertion is, however, qualified to a maximum period of forty days after which the tenant will have a right to a reduction in rent. This will is discussed further below.

The third case concerning occupation by third parties falls certainly within those warranties that the lessor is bound to give in order to ensure the peaceful possession of the tenement by the lessor. The Civil Code contemplates this specific situation in Article 1553 which stipulates that if any third parties claimed any right on the thing let or brought an action to compel the lessee to surrender the thing, in whole or in part, he would be bound to call upon the lessor to defend him.

- **Discuss the possible legal consequences: rent reduction;**

Rent reduction is a possible avenue for the lessee in at least three specific cases.

i) The first one is in the case of urgent repairs that last longer than forty days; the lessee would be entitlted to a reduction of the rent proportion to that time and to the part of the tenement or other thing of which he is deprived.[650] The lessee is made to tolerate this molestation for such a length of time because his interest in enjoying the property must be reconciled with the lessor's necessity of preventing the thing from being destroyed. Article 1548(2) seems in fact to bring these two considerations together.[651]

ii) The second clause allowing the tenant a reduced rate could be availed of in the event of partial destruction of the property or partial eviction, including a diminution in the enjoyment of the property in any way whatsoever or the subjection of the tenant to any inconvenience. Rent reduction would be the only remedy available for the lessee if the remaining part served the purpose for which he would have taken the entire property on lease. A demand for dissolution would only be possible if the part left could not serve the purpose for which the entire thing had been hired.[652] In such event his right to claim a reduction in the rate would nonetheless remain intact.[653] It is indifferent whether this partial eviction or destruction occurs due to force majeure or due to a fault by the lessor. This would only have an effect on the right of the lessee to claim damages from the landlord.

iii) A third possibility for the tenant to demand the reduction of the rent is in the case of the discovery of faults and defects that prevented or diminished the use of the property. This remedy would not be

[650] Civil Code, Article 1548(2).
[651] Ibid. no. 299, 718.
[652] Civil Code, Article 1551.
[653] Ibid. no. 299, 720.

available if the said faults were apparent and could have been discovered by the tenant himself at the time of the contract.[654]

- **damages;**

i) The tenant is first of all entitled to claim damages in the case that he is evicted from the leased premises by third parties.[655] The lessor would only be entitled to the reimbursement of damages; other remedies such as the reduction of the rent would not be possible since total eviction causes the dissolution of the contract "ipso jure".[656]

However, the law also lists cases in which although the obligation of warranty does not cease "per se", the right of the lessee to the reimbursement of damages ceases. These three cases listed in Article 1552 are:

- If the lessee failed to give notice of the molestation to the lessor without delay and the lessor would be prejudiced by such omission.
- If the cause of eviction would have arisen after the stipulation of the contract.[657]
- If at the time of the contract the lessee would have been aware of the cause which would eventually give rise to the eviction.

ii) In the case of hidden defects the landlord would be liable for the payment of damages only if the lessor would be able to prove bad faith on the part of the lessor[658] i.e. if, despite being aware, the lessor failed to reveal the defect that already existed at the time of the lease or else if had well-founded suspicion that it existed.[659]

iii) In case of partial destruction due to force majeure the lessee would not be entitled to any compensation since the reasons would not be imputable to the lessor.[660]

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[654] Civil Code, Article 1545: this counts also if the defects would have arisen after the conclusion of the contract.
[655] Civil Code, Article 1551.
[656] Ibid. no. 299, 720.
[657] The lessor would not be bound to make good the damages, because no fraud or fault would be imputable to him. An exception must be made when such supervening cause is due to an act of the lessor himself e.g. a second lease which may have had its effects before a previously contracted one. (Ibid. no. 299, 720.)
[658] Civil Code, Article 1546.
[659] Ibid. no. 299, 721.
[660] Ibid. no. 299, 721.

- **"right to cure" (to repair the defect by the landlord);**

The right to cure in case of damage to the property or urgent repairs is evident in Article 1540(2) that binds the lessor to make all the repairs that might become necessary during the continuance of the lease, excluding the ordinary acts of maintenance. The law, however, exempts the lessor from the repair of any faults or defects that the lessee could have discovered for himself at the time of the contract.[661] The lessor is also called, in virtue of Article 1553, to defend the lessee in cases of eviction or molestation by any third party.

- **reparation of damages by tenant;**

The tenant is entitled to conduct the repairs himself on two occasions: either when the lessor fails to take necessary action in respect of repairs to which he would be bound, after having been duly required to do so by means of a judicial act,[662] or in the case of urgent repairs that require immediate action.[663] In cases of molestation or eviction the tenant would have the duty to call upon the lessor to defend him and, if he so demanded, have the proceedings against him be discontinued upon declaring the name of the lessor.[664] In such cases he also seems to be able to avail himself of the action for spoliation,[665] which is discussed below.

- **possessory actions (in case of occupation by third parties) what are the relationships between different remedies;**

The two main possessory actions in this case are the action to secure possession ("actio manutensionis")[666] or the action for restoration of possession in case of spoliation ("actio spolii").[667] Jurisprudence has held that whilst the first action is restricted to the landlord, the second is available to both. This was elaborated in 'Costantino Borg v. Alexander Cachia Zammit'[668] where it was held that mere detention, as is in the case of lease, was not sufficient to bring an action to secure the possession of the premises. On the other hand, a lessee was clearly enabled to file an action for spoliation since the law makes specific reference to the term "detentor". The reasoning was clearly based on the nature of the right of the lessee who would not have

[661] Civil Code, Article 1545(3).
[662] Civil Code, Article 1541. Prior to initiating the works the lessor would have to request authorisation from the Board. The works would of course be at the expense of the lessor.
[663] Civil Code, Article 1543. This would similarly be at the charge of the tenant as long as the tenant observed the procedure laid down in the law.
[664] Civil Code, Article 1553.
[665] Civil Code, Article 535.
[666] Civil Code, Article 534.
[667] Spoliation is the illicit appropriation of someone else's property.
[668] Decided by the Civil Court (First Hall) on the 8 October 2004.

acquired any real right over the property but merely a right of enjoyment until the expiration of the contracted period. Being considered to possess the thing in the name of the landlord, the tenant would not be able to avail himself of these provisions unless he were specifically authorised by the law.

Jurisprudence has ruled that in cases of molestations of right, the tenant had to proceed to file an action against the landlord in order that, in turn, the latter could protect him through an action directed against the pretenders of this right.[669]

- **what are the prescription periods for these remedies**

The general rule contained in the Civil Code is that the right to bring an action for the rescission of an obligation is barred on the expiration of the period of five years from the day on which such right could have be exercised.[670] This was confirmed by jurisprudence in 'Andrea Santonocito et v. Maria Concetta Grech et'[671] damages arising out of a contract of lease were subject to a period of prescription of five years.[672] The limits within which a party may bring an action for securing the premises or an action for spoliation are, however, different. In fact, the former is prescribed by a period of one year from the molestation[673] whilst the second is limited by a much more rigorous period of two months from the spoliation.[674]

Entering the premises and related issues

- **Under what conditions may the landlord enter the premises?**

Maltese law expressly allows the landlord the right to access the tenement. In fact, the Civil Code states that the lessor would be entitled to enter the leased premises during any time and in any manner that would have been agreed upon in the contract.[675] The law specifies that this right is granted particularly for the ascertainment that the tenant would be meeting his obligations; mostly those in relation to ordinary repairs and maintenance.[676] The law further

[669] Antonio Montebello v. Giuseppe Montebello, decided by the Civil Court (First Hall) on the 15 March 1960.
[670] Civil Code, Article 1224.
[671] Decided by the Civil Court (First Hall) on the 21 June 2002.
[672] In case of non-contractual damages on the grounds of violence, error, fraud, or disability of a person interdicted, or a minor, the action would be barred on the expiration of two years (Civil Code, Article 1222).
[673] Civil Code, Article 534.
[674] Civil Code, Article 535.
[675] Civil Code, Article 1548A.
[676] Ibid. no. 245, 11: the introduction of Article 1548A in 2009 was prompted by the ruinous consequences of the previous statutes that burdened the landlord with responsibility over all sort of repairs, whether ordinary or extraordinary. As a result of these clauses tenants

states that this right would also be available in the case that the landlord would want to show the premises to a prospective buyer. In addition, the law provides a remedy for the landlord in the event that the tenant failed to allow him access to the property, particularly in the absence of such an agreement. In fact, following an application by the landlord, the Board would be able to decide the matter summarily[677] and if the tenant persisted in his obstructive behaviour the ruling could even be exercised under the supervision of a court marshal.[678]

- Is the landlord allowed to keep a set of keys to the rented apartment?

From the reading of the above it follows that although the law does not expressly prohibit the landlord from keeping a set of keys to the apartment, he is certainly not entitled to enter the premises without the consent of the tenant or the authorisation of court. A Court of Appeal judgment concerning sale may shed further light on this particular issue since the warranty of peaceful possession under sale and lease is identical. In one particular case, in fact, it was held that the seller of a property was liable for a breach of contract due to his failure to deliver all the keys of the property to the buyer following the finalisation of the deed of sale.[679] The reasoning of the court was based on the fact that the possession of the keys in the hands of parties other than the buyer would constitute a breach of the seller's contractual obligation to ensure peaceful possession of the property.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

A landlord is in no case entitled to lock a tenant out of a rented premises, even if the term of the contract would have expired, since such means of action would be classified as an arbitrary exercise of a pretended right (or *ragion fattasi*).[680]

The same cannot be said with the same degree of certainty for other kinds of properties. In a specific case where the landlord had proceeded to change the lock of a commercial premises, the Court of Appeal limited itself to condemn his lack of good faith in denying the defaulting lessee to retrieve his belongings from inside the property, even after the arrears had been

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allowed the property to deteriorate and several buildings ended up suffering significant structural damage.

[677] i.e. without hearing the parties.

[678] Article 1548A also binds the RRB to take into account the tenant's right to privacy and to ensure that no abuse is made of this right on the part of the lessor. Moreover the decision of the RRB may not be appealed.

[679] Pauline Fenech v. Emmanuel Baldacchino noe, decided by the Civil Court on the 20 March 1992.

[680] 'William Charles Merchant v. John Bartolo et.' decided by the First Hall (Civil Court) on the 28 February 2014, Rik. Nru. 299/2011. In this specific case a contractual clause entitled the landlord to take physical possession of the premises together with all the movables that would be found inside.

cleared.[681]

- **Rent regulation (in particular implementation of rent increases by the landlord)**
- **Ordinary rent increases to compensate inflation/ increase gains**

Since no form of rent control is currently in place, landlords have the liberty to dictate any increase upon the expiry of the agreed term. Statutory rent increases therefore apply only to pre-1995 leases as stipulated by Article 1531C of the Civil Code.

- **Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?**

An increase in rent following renovations to property is only foreseen by the Civil Code in cases of pre-1995 leases.[682] The recently introduced provision reads that if the lessor carries out structural repairs, which have not become necessary through his own fault, then he would be entitled to raise the rent by 6% of the costs incurred.[683]

- **Rent increases in "houses with public task"**

Since social housing is purely a State matter, rents of housing with a public task are dealt with exclusively by the Housing Authority. Beneficiaries of this service are subject to a biannual revision of their rent. Every two years, therefore, tenants residing in government units would be asked to submit proof of their income, in order to have their rates reassessed according to the prices fixed by the same authority.[684] Moreover, in line with the Minimum Compensation for Requisitioned Buildings[685] as of the 1 of October 2011, the rent increase mechanism foreseen in Article 1531C started applying as well to residences that had been requisitioned under the Housing Act.

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[681] Jazz Leisure Company Limited v. Ian Pace, decided by the Court of Appeal on the 29 May 2009.
[682] Civil Code, Article 1540(4).
[683] In the event that the tenant decides to carry out the repairs himself, he would not have a right to claim, in part or in full, the cost incurred for such repairs from the landlord. Where the repairs would not have become necessary due to the fault of the lessee, the latter would have the right to terminate the lease even though the period of lease would not have lapsed yet.
[684] Housing Authority. Retrieved online from: <http://www.housingauthority.com.mt/en/content/26/Schemes%20and%20Social%20Housing>
[685] Subsidiary Legislation 16.12, Article 2.

- **Procedure to be followed for rent increases**
  - **Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel)?**

As said above, there is not limit to how much a landlord may ask in rent and likewise there is no limit to how much the amount may rise. However, the White Paper, issued by the Ministry for Social Policy prior to the introduction of the amendments of 2010, recognised that in liberalising the market the reforms would result in a new form of injustice. The RRWG acknowledged the danger of landlords negating the right of first choice to the outgoing tenant by requesting an unreasonable level of rent. This preoccupation led the group to propose the introduction of an index that would establish the market value of the level of rent in a particular area; as well as the locality within that area.[686]

- **Possible objections of the tenant against the rent increase**

Tenants whose leases were agreed prior to 1995 may have recourse to the RRB in the case that increases exceeded the stipulated limits contained in the Civil Code. For lessees who had their contract negotiated after 1995 there would exist no possibility of contesting the amount requested by the lessor.

- **Improvements/changes of the dwelling**
- **Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?**

The law is very clear in laying down that the lessee may not make any alterations in the thing let without the consent of the lessor. Most of all he is not entitled to claim the value of any improvements made without such consent.[687] The Civil Code goes on to add that the lessee would, nevertheless, be able to remove such improvements and restore the property to the condition in which it was before his access into the property. This position is certainly meant to curb abuses on the part of the tenant who would otherwise be entitled to burden the lessor with useless expenses that would be unnecessary for the enjoyment of the thing. Where, however, the improvements consisted in materials that could be separated and could be of some pecuniary utility to the tenant when so separated, the law gives the latter, on the ground of equity, the right to take them along with him – as long as the landlord would not prefer to pay a sum corresponding to the abovementioned profit.[688]

[686] Ibid. no. 72, 45.
[687] Civil Code, Article 1564(1).
[688] Civil Code, Article 1564(2).

Jurisprudence has shed further light on the interpretation of these clauses. It transpires, in fact, that when it comes to improvements the Court applies the articles of the Code much less restrictively.[689] It was held, for instance, that cosmetic changes contain a decorative aspect and they could in no way be held to cause damage to the building. In this specific case the replacement of old tiles with ceramic ones was considered to be an improvement to the property and the tenant was held to be in no way liable for damages, even though the works were undertaken without his consent.[690] The Courts have been consistent in establishing that the law did not mean to prohibit any minor works that did not prejudice the lessor, especially when these would have benefited the same property.[691]

- **Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?**

The Code grants the lessor the privilege of choosing whether to keep the improvements made or let the tenant undo and remove them prior to his departure. This does not mean that the tenant could, in any case, expect the lessor to compensate him for the costs incurred, especially if such ameliorations were done without his consent.[692] If anything, the law penalised the tenant by taking away his right to recover such amount.[693] The only option available to him at that point would be to take back the improvements and restore the property to its previous state.

- **Is the tenant allowed to make other changes to the dwelling?**

Jurisprudence has held that the modifications that the tenant is allowed to carry out on a dwelling is not something that could be decided *a priori* but it had to be evaluated on a case-by-case basis.[694] The Courts have, in fact, developed five criteria that determine the legality of these alterations, even in the case of a lacking consent on the part of the landlord.[695] Any acceptable changes: (a) have to be partial and of no particular importance; (b) do not

[689] This applies as well to the cases of alterations as will be discussed below.
[690] John Sant et v. Jessie Baldacchino, decided by the Court of Appeal (Inferior) on the 30 September 2002.
[691] Anthony Magri v. Carmen Busuttil, decided by the Civil Court (First Hall) on the 23 April 2001.
[692] Civil Code, Article 1564(1).
[693] Magri v. Busuttil.
[694] Joseph Galea v. Salvatore Grech, decied by the Court of Appeal on the 7 April 1961.
[695] Luigi Cachia Zammit Randon et v. Carmelo Mifsud Bonnici, deiced by the First Hall (Civil Court) on the 17 October 1935; Angelo Grech v. Giuseppe Gauci, decided by the Court of Appeal on the 1 May 1953**;** Joseph Busuttil v. Gio Maria Frendo et, decided by the Court of Appeal (Inferior) on the 17 February 1987; Deguara Caruana Gatto v. Buhagiar, decided by the First Hall (Civil Court) on the 27 May 1994.

have to change the express or presumed use of the dwelling; (c) do not have to prejudice property rights, especially what concerned the solidity of the building; (d) would have to be capable of being restored at the end of the lease; (e) have to be necessary and useful for the enjoyment of the premises. Judgments have gone as far as accepting works of an extraordinary nature such as the dropping of walls, the closing of apertures, the building of bathrooms, the erection of internal staircases and the roofing of yards.[696]

The Courts have also elucidated that the wide judicial interpretation sought ensure the tenant's full enjoyment of the leased premises.[697] In fact, judgments have often emphasised the lessee's right to use the property as his own and, consequently to adapt it to his convenience unless he were expressly denied from doing so in the contract.[698] It was nonetheless confirmed that the landlord is under no obligation to consent to any alterations proposed by the tenant and neither is he compelled to sign any building development application on behalf of the tenant.[699] Recently, the courts have also held that the landlord did not have to wait till the expiry of the lease in order to ask for the premises to be restored to their previous state if the specific works risked putting the conservation of the premises in peril.[700] The landlord is in all cases entitled to bring an action for the dissolution of the rental contract if the tenant proceeded to conduct any inadmissible works without his consent.

In line with the position of the Civil Code, the Condominium Act[701] also establishes that whilst being allowed to contribute to the costs incurred for the alterations or innovations to the common parts, the tenant is not entitled to claim any form of reimbursement from the owner at the end of the tenancy, even in the case that such work served to enhance the value of the unit.[702]

- **in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?**
- **fixing antennas, including parabolic antenna**

The law is silent regarding what kind of specific improvements would be permissible or not. The Civil Code, in fact, limits itself to Article 1564. The

[696] Rutter Giappone v. Strickland, decided by the Court of Appeal on the 21 June 1922; Marie Louise Agius pro et noe v. Ingrid Mifsud, decided by the Court of Appeal (Inferior) on the 20 November 1998.
[697] Agius pro et noe v. Mifsud.
[698] Maria Stilon Depiro v. Giuseppa Falzon et, decided by the Court of Appeal on the 5 March 1965.
[699] Frank Tonna v. Mary Falzon, decided by the Civil Court (First Hall) on the 9 January 2002.
[700] Evelyn Montebello et v. Vincent Magri noe, decided by the Court of Appeal on the 30 May 2008.
[701] Chapter 398 of the Laws of Malta.
[702] Cap. 398, Article 8(8) and (9).

cases presented above, however, differ quite substantially, since whilst the antennas can be considered partial improvements, the lift and the wheelchair access may certainly be more permanent in nature. A relevant instrument is the "Equal Opportunities (Persons with Disability) Act[703] that lays down, in Article 14 (dealing with accommodation), that no person can prohibit a person with disability to make alterations to his property if: (i) the latter would have undertaken to restore, at his own expense, the accommodation back to its original condition (assuming that such alteration would be in fact practicable) and, (ii) the works did not involve the alteration of property occupied by other persons.[704] Therefore, strictly speaking, a landlord is limited in refusing such changes.

It is also interesting to note the "Scheme for Persons for Disability" offered by the Housing Authority, lists "the recognised tenant" among its qualified applicants. This scheme allows a beneficiary to avail himself of funds in order to carry out adaptations and introduce stair-lifts or lifts in private blocks of apartments and private houses.[705]

These changes would also be subject to the rules established by the condominium. According to Article 8(5) of the Condominium Act, a condominus may, at his own expense, install or erect any necessary facilities that enable him to mitigate or eliminate problems of mobility.[706] In this respect the latter provisions seem to be very much in line with the abovementioned Equal Opportunities (Persons with Disability) Act. In the case of the antenna, one thing that needs to be certified is whether the wall or the roof against which the antenna is going to be fixed would be considered to be a common part.[707] In the event that the tenant usurped the common parts the condomini would not only have a rightful claim against the tenant but possibly even an action for spoliation since any irregular alteration would be effectively considered as prejudicing the interests of all the other co-possessors.[708] In the case of a sizable installation, held to detract from the character of the façade, the setting up of such equipment would be subject to the unanimous consent of all the condomini.[709]

[703] Chapter 413 of the Laws of Malta.
[704] This article is subject to exceptions, one of which is the unreasonabless of the alterations to provide these special services or facilities required by the person with a disability.
[705] <http://www.housingauthority.com.mt/EN/content/61>
[706] Cap. 398, Article 8(5). Subarticle (7) adds that if the tenant is refused consent by either the owner or the meeting of the condomini, the tenant would be able to refer the matter to arbitration, however, the law clearly states these works cannot prejudice the rights of the other condomini.
[707] In relation to what constitutes a "common part" our Court have held that only an express stipulation to the contrary would rebut the presumption that the thing is held in common (Andrew Xuereb pro v. Kurt Coleiro, decided by the Court of Appeal on the 20 June 2008). The law also provides an inclusive list.
[708] Anthony Portelli v. Questo Café Ltd, decided by the Court of Appeal on the 3 December 2010.
[709] Cap. 398, Article 8(3)(a).

In relation to apertures of internal walls and their removal, Maltese law allows a freer hand to the tenant. Such events took place in the case 'Carmelo Stivala v. MTS Limited;[710] and, in line with the approach taken in respect of alterations in general, the Court of Appeal confirmed that the tenant was not prohibited from connecting one part of the tenement to another.

- **Alterations of the dwelling by the landlord**
- **Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord**
- **What does the tenant have to tolerate?**
- **Which procedures must be followed**

The Civil Code specifically lays down that the lessor cannot, during any stage of the continuance of the lease, change the form of the thing let, without the consent of the lessee.[711] Besides this obligation, the law does not seem to comtemplate the specific case when the lessor would want to conduct any changes on the dwelling during the course of the lease. The law, in fact, foresees the intervention of the landlord only in the case of repairs, and in such instances the tenant would be expected to tolerate a certain period during which the works would be completed. The Civil Code compels the tenant to suffer the execution of any urgent repairs, whatever the inconvience caused to him thereby, even if it involved the deprivation of a part of the tenement. The maximum period that the tenant would be expected to tolerate is that of forty days, after which he would be entitled to ask for a reduction of the rent in proportion to the time and to the part of the tenement which would have been rendered temporarily inaccessible.[712]

- **Uses of the dwelling**
    - **Discuss allowed vs. forbidden uses such as:**
- **keeping animals; smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.**

The Civil Code reads that the lessee is bound to make use of the thing let as a prudent father of the family and for the sole purpose stated in the contract.[713] Should he make use of the property in a different manner than

[710] Decided by the Court of Appeal on the 18 June 1998.
[711] Article 1547.
[712] Article 1548.
[713] Article 1554: In the absence of any agreement to that effect, the purpose shall be presumed according to circumstances. Caruana Galiza lists three specific circumstances through which the use could be inferred: (i) the previous destination of the thing; (ii) the profession of the lessee; (iii) the situation of the tenement (*The Contract of Letting and Hiring*,

that agreed upon with the lessor, or for any other purpose that would cause prejudice to him, the latter would be entitled to demand the dissolution of the contract.[714]

The Code is silent regarding various of the abovementioned uses, therefore, unless such matters are expressly foreseen by the rental agreement, and the tenant does not neglect any of his general obligations, the landlord does not seem to have grounds on which to base his objection. The case would of course be different if the building in question would be a registered condominium with a specific set of rules regulating the use of the common parts.[715] These rules may be proposed or amended by any of the condomini and if a consensus were not met the matter would be referred directly to arbitration.[716] Such rules may of course relate to the keeping of pets, the disposal of waste, the conduction of trade or business activities within the premises and any defacing to the façade in general. Regarding the latter point, however, if the placards or posters would be considered prominent enough to change the aesthetics and décor of the condominium, those would be subject to the unanimous consent of all the condomini.[717] It is important to note that any rules drafted by the meeting may be impugned by any condominus on the ground that they would be contrary to law, unreasonable or oppressive; the matter could proceed all the way to arbitration.[718] Moreover, tenants can both be present as well as intervene during meetings but they are in no way entitled to vote.[719] Needless to say, finally, that most of these specific instances can be excluded by the parties in the rental contract.

Regarding the use of property for immoral purposes, Maltese law has been very clear that such agreements would not be upheld. One early case was 'Fenech v. Calleja'[720] where the Court of Appeal had unequivocally established that the lease of a property for the purpose of prostitution was null since the contract would be afflicted by an illicit 'causa'.[721] The Civil Code additionally deals with this specific instance under the subtitle dealing with subletting. In fact, despite the regularity of a sublease, the lessor would be entitled to recover the possession of the premises if these were being used for prostitution or other immoral purposes.[722]

1987: III*,* 723).
[714] Article 1555.
[715] Cap. 398, Article 24.
[716] Cap. 398, Article 25.
[717] Cap. 398, Article 8(3).
[718] Cap. 398, Article 23.
[719] Cap. 398, Article 8(6).
[720] Vincenzo Fenech v. Giuseppe Calleja, decided by the Court of Appeal on the 28 June 1907.
[721] In confirming the sentence of the first instance, the Court of Appeal held that such a contract would have no juridical effect because the negotiation would have been immoral and, therefore, unlawful. This position was confirmed more recently in George Muscat v. Brian Mizzi, decided by the Court of Appeal on the 5 October 2007.
[722] Civil Code, Article 1618.

The transformation of part of a residential premises into a commercial space may similarly be considered abusive under Maltese law. Jurisprudence has consistently held that in the event of the property being leased out for a specific purpose, with this particular use constituting a vital element in the agreement, the tenant could not unilaterally decide to change it.[723] This position bases itself on an old jurisprudence which had established that the lessee could only proceed to change the use of the leased property singlehandedly if the contract were completely silent on the matter and, at the same time, circumstances would not have been able to indicate any clear purpose.[724] Moreover, the landlord has to stay on his guard since his failure to object, whilst being knowledgeable of the converted use, might be tantamount to a tacit consent.[725] The situation should have become clearer now that the agreed use of the property let has become one of the essential elements to the validity of the rental contract.[726] Under Maltese law, change of use can constitute a ground on which the landlord would be capable of obtaining the dissolution of the lease contract.[727]

- **is there an obligation of the tenant to live in the dwelling?**

In case of residential premises the newly introduced Article 1555A of the Civil Code reads that failure to use the tenement for a period exceeding twelve months would be deemed to be bad use of the thing, therefore, provoking sufficient grounds on which the landlord could proceed to terminate the contract.[728] A temporary absence would be justified only in cases of work, study or health care.[729] This amendment was triggered by the objective of turning more vacant dwellings into productive housing stock.[730] The lessee would also be liable for damages unless the reasons for which he would have left the property would have been his recovery in an institution.[731] The Court has also accepted that a tenant cannot be considered to have abandoned the premises if he would have sought alternative accommodation whilst the property would have been undergoing structural works.[732]

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[723] Brother James Calleja v. Joseph Anthony Grixti et, decided by the Court of Appeal (Inferior) on the 28 December 2001.
[724] Antonio Zahra v. Francis Galea, decided by the Court of Appeal on the 8 January 1965.
[725] Emanuele Camilleri v. Joseph Carabott, decided by the Court of Appeal on the 29 October 1962; Emanuele Magro v. Nicola Agius, decided by the Court of Appeal on the 13 January 1964.
[726] Civil Code, Article 1531A(1)(b).
[727] Civil Code, Article 1555.
[728] According to Article 1555; Article 1555A is currently being challenged constitutionally on the grounds of inhuman treatment in the case Elizabeth Pizzuto v. Avukat Generali et.
[729] In cases of pre-1995 leases, if a person would be recovering in hospital or in an old people's home, and such institution certifies that the tenant would be permanently depending on the insitution, the lease would be either (i) inter vivos transferred to an eligible beneficiary; or (ii) if there is no such beneficiary then the title of the lease reverts back to the landlord (in line with the qualifying criteria laid down in Article 1531F).
[730] Ibid. no. 254, 10.
[731] Article 1555A(5).
[732] John Sant et v. Jessie Baldacchino, decided by the Court of Appeal (Inferior) on the 30 September 2002.

Before the introduction of this article, jurisprudence seemed to be quite lenient with the tenant. Despite accepting that non-use constituted a change of use of the property,[733] elderly lessees were allowed to hold on to their leased properties, even if they would have left their properties in order to be cared for by their children or by any institution. The Court had wanted to safeguard the tenant's position in the case that he would have eventually been able to return to the premises.[734] However, the Court would not have extended such protection in cases of pre-1995 leases, where the tenant would not have released the property despite acquiring alternative accommodation. The Court would have therefore placed considerable weight on the intention of the tenant to return to the leased premises.[735]

- **Are there specificities for holiday homes?**

The Civil Code does not make specific mention of summer residences[736] save for 1531H that provides for the liberalisation of these holiday homes that were rented prior to 1995. In fact, holiday dwellings had been afforded a wider definition by the Courts and they were considered to be an extension to the residential home, affording tenants the same protection and control stipulated under the pre-1995 rent reform.[737]

Jurisprudence has additionally established that a premises contracted as a summer dwelling could not be turned into an ordinary residence since this would have been in breach of the agreed use.[738]

- **Video surveillance of the building**

  Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

[733] Nicola Galea v. Giovanni Falzon, decided by the Court of Appeal on the 30 May 1952; John Portelli v. Emanuele Sacco, decided by the Court of Appeal on the 19 May 1958; Luigia Schembri v. Joseph Sultana, decided by the Court of Appeal on the 29 January 1999. In this latter case it was decided that whilst the lessor could be held to have tacitly accepted a change of use, this could not apply in the event the tenant abandoned the premises since it could never be presumed that the landlord would have acquiesced to the damages that would inevitably arise as a result of this inactivity.

[734] George Felice v. Gianni Cini, decided by the Court of Appeal on the 28 June 2001; Mary Abela v. Joseph Camilleri, decided by the Court of Appeal (Inferior) on the 22 April 1986; Lino Bonnici v. Michelina Livori, decided by the Court of Appeal on the 30 November 1983.

[735] Mario Blackman v. John Cuschieri et., decided by the Court of Appeal (Inferior) on the 16 December 2002.

[736] Defined as "a summer residence which is not the ordinary residence of the tenant".

[737] Ibid. no. 72, 45.

[738] Doris Attard v. Andrew Azzopardi, decided by the Court of Appeal (Inferior) on the 17 February 2003. The judgment held that both parties had to execute the contract in good faith.

The act of capturing and recording of images by means of a closed-circuit television (CCTV) camera falls under the regulation of the Maltese Data Protection Act (DPA)[739] since the surveillance and consequent identification of natural persons constitutes a form of "processing of personal data" according to the definition contained in the same act.[740]

In any case, the persons[741] who determine the purpose and means of the surveillance are required to notify the Data Protection Commissioner[742] with the processing operation prior to the physical installation of the cameras.[743] They must also define a clear and specific purpose for their surveillance and this has to be proportionate with the rights to privacy of individuals.[744] CCTV cameras may serve a different number of purposes; obviously most systems are installed for security purposes.

In Malta, individuals have the right to be informed about processing of personal data by means of CCTV cameras. The most diffused practice is that of providing the information by way of notices affixed in prominent and easily visible places within the monitored areas. In some cases, these notices would be required to show even before the subject's approach to the monitored area. Households are exempted from this obligation to give notice if the camera would be installed within the limits of the premises; the duty to respect the legitimate rights and interests of neighbouring tenants and other parties would remain applicable nonetheless.[745]

Persons who feel aggrieved or threatened by these means of surveillance may resort to the Data Protection Commissioner who is also bound to: verify whether the processing is being carried out lawfully, receive reports and claims from data subjects regarding violations of the DPA and even institute proceedings in cases of infringements or criminal offences that he might encounter in the course of his functions.[746] It has been reported that most of the complaints forwarded to the Data Protection Commissioner refer in fact to the installation of CCTV cameras.[747] In any case, the decision of the Commissioner may be appealed from in terms of the same DPA that provides

[739] Chapter 440 of the Laws of Malta.
[740] Cap. 440, Article 2: "processing of personal data" means any operation which is taken in regard to personal data including the recording, storage and disclosure by transmission of such data.
[741] Defined by the act as "controllers".
[742] Cap. 440, Article 36: the Commissioner is appointed by the Prime Minister following consultations with the Leader of the Opposition.
[743] Cap. 440, Article 29.
[744] Cap. 440, Article 29(3).
[745] Office of the Information and Data Protection Commissioner (IDPC), *Processing of personal data by means of a CCTV camera*. Accessed online from: http://idpc.gov.mt/dbfile.aspx/CCTV_cameras.pdf.
[746] Cap. 440, Article 40.
[747] Council of Europe, *Major Developments in the Data Protection Field since the 26th meeting of the T-PD (Malta)*. Retrieved online from: <http://www.coe.int/t/dghl/standardsetting/dataprotection/tpd_documents/Malte.pdf>

for the constitution of a Data Protection Appeals Tribunal.[748] The appeal may be brought within a maximum term of thirty days.[749]

As regards the specific cases of condominiums any surveillance system would be considered as a 'common part' since the CCTV cameras correspond with the definition contained in the Condominium Act of "installations and objects of whatever type intended for the common use or benefit".[750] Regarding their installation it appears that such matter would only need a vote of majority given the fact that the introduction of a camera surveillance system would most likely be considered as an "innovation".[751] In fact, it does not seem that this decision would require a unanimous consent since the law requires the agreement of all the condomini only in the case of innovations or alterations that might "prejudice" the security of the building.[752]

6.6. Termination of tenancy contracts

Summary table 14 Termination of tenancy contracts

	Main characteristic of residential dwellings
Mutual termination	By agreement between the parties (art. 992(2))
Notice by tenant	1. want of repairs (art. 1544) 2. discovery of faults or defects (art. 1545) 3. urgent repairs rendering the tenement uninhabitable for any period of time (art. 1549)[1] 4. partial eviction of the property following an action brought by a third party touching a right on the thing let (art. 1551) 5. express resolutive condition stipulated in contract (art. 1569) 6. tacit resolutive condition (art. 1570)
Notice by landlord	1. change of use or non-use of the premises (art. 1555) 2. express resolutive condition stipulated in the contract (art. 1569) 3. tacit resolutive condition (art.

[748] Cap. 440, Article 48.
[749] Cap. 440, Article 49(1).
[750] Cap. 398, Article 5(c).
[751] Cap. 398, Article 8(1).
[752] Cap. 398, Article 8(3)(c).

	1570) 4. rent arrears (art. 1570) 5. need of premises for landlord's own habitation – *as long as stipulated in contract* (art. 1573) 6. alienation of premises – *as long as stipulated in contract* (art. 1574) 7. sublessee using premises for immoral purposes (art. 1618)[2]
Other reasons for termination	1. Lease negotiated for immoral or unlawful purpose (art. 987) 2. Destruction of dwelling (art. 1571) 3. Urban renewal

[1] The tenant could always proceed to carry out these repairs himself at the expense of the landlord (art. 1543) or ask for an abatement of the rent (art. 1548).

[2] The law seems to make sole reference to the sublessee in order to guarantee the lessor a direct action against him. In the case of the lessee, in fact, the lessor could always proceed on the ordinary remedy provided in Article 987 of the Civil Code which lays down that any obligation founded on an unlawful consideration would have no effect. Article 990 further specifies that the consideration would be unlawful it if were prohibited by law or contrary to morality or to public policy.

- **Mutual termination agreements**

Mutual termination is one of the causes for termination that is foreseen by the Maltese Civil Code in the clauses that deal with the effects of all kinds of contracts.[753] This of course applies in equal manner to the contract of letting and hiring.

The Courts have allowed cases of mutual rescission where following the notice on the part of the tenant, the landlord would have unreservedly accepted the keys of the premises back. It has, in fact, been held that once the lessor would have taken the possession of the premises back from the lessee, he would have renounced his right to insist on the continuation of the lease until the expiration of the agreed term. In so doing, the lessor would have therefore brought about the termination of the contract.[754]

- **Notice by the tenant**
    - Periods and deadlines to be respected

[753] Civil Code, Article 992(2) reads that contracts that are legally entered may only be revoked by the mutual consent of the parties or on the grounds allowed by law.
[754] Mary Ciantar v. Ladislao Giuseppe Mecolucci, decided by the First Hall (Civil Court) on the 27 April 2010.

According to Maltese law it is not necessary for either of the contracting parties to give notice to the other for the dissolution of the contract to take place. In fact, the lease is terminated 'ipso jure on the expiration of the agreed term'.[755] The Civil Code only predicts certain terms in case of leases of presumed duration, however, these do not apply for contracts signed after the 1st of January 2010, which require the express stipulation of the term for the agreement to be legally valid.[756] The Code also foresees the possibility of tacit reletting, if after the expiry of the lease, the tenant would have been allowed to continue in the enjoyment of the property. In this case the same period of notice for leases of presumed duration would apply.[757] Yet again, tacit reletting does not apply for contracts signed from 2010 onwards.[758]

- **May the tenant terminate the agreement before the agreed date of termination (especially in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?**

The Maltese Civil Code allows the tenant to bring an action for the dissolution of the lease in any of the cases where the landlord would have defaulted in any of his obligations under the same Code. The grounds upon which a tenant may base an action for dissolution are:

i) dissolution of contract for want of repairs (Article 1544);

As said earlier one of the principal obligations of the lessor is to deliver the property in a good state of repair and to maintain it in such a condition for the whole continuance of the lease.[759] In the case that he failed to effect the necessary repairs and the damage persisted in preventing or diminishing considerably the enjoyment of the thing let, the lessor would be entitled to dissolve the lease. This would become possible after an explicit demand to the RRB that would, in turn, impose a time limit on the lessor within which to

[755] Civil Code, Article 1566.
[756] Civil Code, Article 1531A. According to Article 1568, when the term is presumed the contract would not cease on the expiration of the term unless either of the parties gave a one month notice to the other in the case of a presumed duration of one year, or a fifteen day notice in the case of a presumption for any shorter period. Strictly speaking, the notice was only required in cases of urban leases which duration was presumed according to Article 1532. Moreover, no specific formality is required for the giving of the notice as long as the lessor would have manifested his intention not to enter the stage of reletting; this act could be as simple as that of refusing the rent for the unconsented period (Joseph Philip Testaferrata Bonici et v. Carmelo Bonanno et, decided by the Court of Appeal (Inferior) on the 7 July 2003, Carmelo Cioffi v. Sammy Darmanin, decided by the Court of Appeal (Inferior) on the 6 May 1986).
[757] Ibid. 299, 732. The applicable period is one month in the case of a tacit reletting for one year and fifteen days in the case of a tacit reletting for one month.
[758] Civil Code, Article 1536(2).
[759] Civil Code, Article 1540.

carry out the repairs. The action for dissolution is of course optional for the lessee; and whether he demanded the dissolution of the contract or the execution of the repairs, he has the right to demand the reimbursement of damages which he might have subsequently sustained.[760]

It is interesting to note, in addition, that the obligation of repairing the thing is essentially and solely natural and the law contains nothing that prevents the lessee from receiving the property in a state of partial disrepair and from binding himself to make the initial repairs.[761]

ii) discovery of faults or defects in the property let (Article 1545);

An ancillary obligation for the lessor is that of warranting the thing let against the faults or defects that would in a similar manner prevent or lessen the use of the property being let.[762] In such cases the defects must have been latent and unnoticeable by the lessee at the time of the contract. Upon the discovery of the defect or fault, the lessee would be entitled to either demand the dissolution of the contract or demand a reduction of the rent.[763]

Jurisprudence has confirmed that this Article is modelled completely on the notion of responsibility for hidden vices contained in the institute of sale.[764] In the case of the leases of immovables this defect has to affect the material structure of the premises in a way that it altered its integrity or that it hindered or reduced considerably its enjoyment according to the intended use. This applies in the same manner if the faults would have been discovered after the letting agreement[765] although the lessor would not be answerable for any faults that could have been easily detected by the lessee. In line with Maltese legal doctrine the 'defect' has to be: a) intrinsic in the property itself, b) capable of affecting the agreed use and c) of sufficient gravity to affect the agreed use in a considerable way.[766]

iii) urgent repairs rendering the tenement uninhabitable for any period of time (Article 1549);

[760] Caruana Galizia includes amongst those expenses the higher rent which the lessee may have had to pay in order to obtain the lease of another tenement and the costs incurred due to the transport of the furniture from one tenement to another (Ibid. 299, 718).
[761] Ibid. 299, 716.
[762] Civil Code, Article 1545.
[763] Under Maltese law, however, the lessee would not be able to claim the reimbursement of damages except in case of bad faith on the part of the lessor.
[764] Maria Micallef et v. Dr. Ignazio Zammit, decided by the Court of Appeal on the 28 February 1921.
[765] Civil Code, Article 1545(2).
[766] Renato La Ferla v. Mark Aquilina, decided by the Court of Appeal on the 9 January 2008.

Urgent repairs are defined as those that cannot be delayed until the termination of the contract.[767] In the case that such damage occurred in a tenement destined for habitation, the lessee would be able, according to circumstances, to demand the dissolution of the lease, if it deprived him of any part of the tenement that was necessary for his habitation and that of his own family.

iv) partial eviction of the property following an action brought by a third party touching a right on the thing let (Article 1551).

If the lessor is partially evicted from the premises and the part left would not be able to serve the purpose for which the entire thing would have been hired, the lessor would have the option of either demanding a reduction of the rent or else of opting for the dissolution of the lease along with the demand for the reimbursement of damages owing to the lessor's non-performance. It is important to note if the part left would be capable of serving the purpose for which the lessee would have taken the entire thing on lease he would not be able to demand the dissolution of the contract.[768] Moreover the action of dissolution under Article 1551 is available to the lessee.[769]

Other than these four instances, the one other instance where the Code entitles the tenant to proceed with the giving of notice is in the aforementioned case of lease of presumed duration where the law entitles "either of the parties" to bring the contract to an end.

In any case the tenant may not terminate the agreement singlehandedly unless he were entitled to do so by a contractual stipulation.[770] This was confirmed by jurisprudence, which has ruled that the simple notice on the part of the lessee, prior to the expiration of the agreed term of the contract did not bring about the dissolution of the lease, moreso when the landlord would not have consented to such anticipated termination and when he would have even kept expecting the payment of the pending arrears.[771] This was explained further in another case where, without any seemingly valid reason, the lessor had deposited the keys of the premises in Court with eight months of the contract still to run. The Court ruled that the lessor had breached the

[767] Ibid. no. 299, 718.
[768] Ibid. no. 299, 720.
[769] Emmanuel Chetcuti v. George Cortis, decided by the Court of Appeal on the 30 June 2004.
[770] Paul Borg v. Michael Stivala, decided by the Court of Appeal on the 5 October 2001.
[771] Emanuele Borg v. Dr. Dorothy Scicluna, decided by the Court of Appeal on the 12 January 2005. In this case the tenant alleged that the notice was given due to the discovery of inherent defects in the premises. In deciding against her, the Court of Appeal specified that in this case the tenant should have proceeded with a judicial demand for the dissolution of the lease based on Article 1545 which makes the landlord liable for any defects or faults in the property. The Court also underlined that even in such cases the termination would only operate subsequent to the delivery of a judgment and not *ipso jure*.

conditions of the agreement, which, in accordance with the principle of "pacta sund servanda", had to be respected in its entirety.[772]

The Courts are also likely to enforce any clauses that foresee a penalty in the case of a unilateral decision on the part of the tenant to terminate the agreement. This was also confirmed by jurisprudence although in one specific case the Court felt that it had to employ the competence assigned to it by the law to mitigate the amount due in respect of the breach.[773] The Court justified this mitigation by additionally bringing into play the concept of 'good faith' that imposed upon the parties the duty to preserve each other's interests.[774]

This position adopted by Maltese Courts in relation to the unilateral termination of lease contracts on the part of tenants may appear defeasible when viewed from the larger perspective of European Union law. The inability on the part of the lessor to free himself from a lease agreement without consequently having to incur the payment of damages seems, at least prima facie, to constitute a breach of the fundamental principles of the internal market contained in Article 21 of the TFEU.[775] It has been recently affirmed by the Court of Justice of the European Union (CJEU) that this right is intended to preclude any measure that might "place nationals of the Member States at a disadvantage when they wish to pursue an economic activity in the territory of another Member State".[776] The CJEU has also held against measures that are potentially capable of "dissuading" a worker from exercising his right to freedom of movement.[777] There is no doubt that a lengthy rental contract would possibly deter a worker from seeking more favourable possibilities abroad.

There is also the additional flaw that if the tenant experiences a sudden change of circumstances, such as dismissal from employment, that would require his relocation in a cheaper premises, he would not be able to interrupt

[772] Emmanuel Cauchi et v. BCE Holding Limited et, decided by the First Hall (Civil Court) on the 28 June 2006. This judgment had also quoted the decision in Gloria Beacom et v. Anthony Spiteri Staines, Court of Appeal, 5 October 1998.
[773] Civil Code, Article 1122. This article enables the Court to abate or mitigate the penalty if the debtor would have performed the obligation in part, and the creditor would have expressly accepted the part so performed.
[774] Emanuel Borg v. The Two Divers Co. Ltd., decided by the Court of Appeal on the 27 February 2008.
[775] Article 21 reads that: "Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States". Sub-article 3 specifically lays down that the freedom of movement for workers shall: "entail the right, subject to limitations justified on grounds of public policy, public security or public health:
(a) to accept offers of employment actually made;
(b) to move freely within the territory of Member States for this purpose …"
[776] Case C-325/08 *Olympique Lyonnais,* decided on 16 March 2010, para 33.
[777] Case C-461/11 *Radziejewski*, decided on the 8 November 2012, para 31. In this case an insolvent worker's right to find employment in a foreign country was deemed to be restricted by a national provision that prohibited a citizen from leaving his Member State of origin in order to benefit from debt relief.

the contract. An exception to this is, of course, constituted by the stipulation of an express resolutive condition[778] which entitles the tenant to rescind the agreement upon the eventual happening of the foreseen circumstance. This is mostly resorted to by foreign tenants who insert 'force majeure' clauses in the case that any sudden event would constrain them to leave the island.[779]

The Civil Code contemplates the supervening of "force majeure" and the happening of a "fortuitous event" in Article 1029; whilst the former needs to be irresistible[780] the latter has to be unforeseeable by a person of ordinary diligence.[781] In none of these cases should the person have contributed to the facts through his own acts of commission or omission, which means that a third element of inevitability must also be present.[782] Therefore, under Maltese law, force majeure justifies the breach of an obligation only when the impossibility of execution would be objective and independent of the party's will.[783] The onus of proof would in all cases rest on the debtor.[784] It seems that financial difficulties might be accepted by the Courts to constitute force majeure if the above elements would be sufficiently proven.[785]

- **Are there preconditions such as proposing another tenant to the landlord?**

Such a condition is not contemplated by Maltese law. However, the proposition of another tenant might, reasonably, make the landlord much more willing to accept the rescission of a running lease. Jurisprudence has clarified that when a tenant would present another person to the landlord for the latter to recognise him as the new tenant, his action would not be

[778] The express resolutive condition constitutes one of the causes for dissolution according to Article 1569 of the Civil Code. The happening of such a condition would bring the termination of the contract 'ipso jure' without the need of a prior judgment. Article 1569 is explained in more detail below.

[779] <http://user.orbit.net.mt/fournier/FEAM/rental.htm>. The clause must of course be founded on a valid reason.

[780] 'Force majeure' is in fact referred to by the Civil Code as an "irresistible force".

[781] Alfred Delia v. Segretarju Permanent et decided by the Court of Appeal on the 19 May 2004; Albert Borg Falzon v. Charles Darmanin decided by the Court of Appeal (Commercial) on the 7 June 1940; confirmed again in Anthony Pirotta v. Direttur tad-Dipartiment tal-Muzewijiet, decided by the Court of Appeal on the 3 October 2008.

[782] Pubblio Azzopardi v. Antonio Arcicovich, decided by the Court of Appeal on the 14 November 1919; Francis Coleiro v. Carmelo Cassar, Court of Appeal on the 24 April 1964; recently reiterated in: Margaret Gauci v. Pierre Caruana, decided by the First Hall (Civil Court) on the 29 April 2009. The degree of foreseeability must be that of reasonable probability and not that of remote or unlikely possibility.

[783] Col. Hugh Philip Raymond v. Manwel Busuttil, decided by the Court of Appeal on the 16 November 1942; Robert Borg v. Peter Camilleri, decided by the Commercial court on the 30 January 1941; Edward rizzo v. Col. Charles E. Dawson, decided by the Court of Appeal on the 15 May 1953; affirmed more recently in: Middle Sea Insurance Company Limited v. Sullivan Maritime Limited et, decided by the First Hall (Civil Court) on the 12 May 2004.

[784] Consiglia Renech v. Angelo Carabott, decided by the Court of Appeal on the 17 November 1941.

[785] Joseph Lia v. Marisielle Briffa, decided by the Small Claims Tribunal on the 14 January 2013.

equivalent to an assignment but simply a declaration that he would want to abandon the lease.[786] Therefore, legally, the situation would imply a new lease contracted between the landlord and the new tenant.[787]

- **Notice by the landlord**

- **Ordinary vs. extraordinary notice in open-ended or time-limited contracts; definition of ordinary vs. extraordinary (generally available in cases of massive rent arrears or strong antisocial behaviour)**

As said above, the landlord need not give any notice for the lease to terminate on its date of expiration,[788] saving for leases signed prior to 2010.[789] Maltese law does not admit of open-ended contracts and where no date of expiry is written down in the contract, the law deems the lease to be made for the period in respect of which the rent would have been calculated.[790]

The law, however, does give the landlord various means of action in the case that the tenant would have fallen short of his obligations. The majority of those instances, require the landlord to proceed with a Court action for the contract to be dissolved since even if the tenant defaulted in any of his obligations, the lease would not be terminated by direct operation of the law.

i. In the specific case of rent arrears, the law lays down that the contract may be terminated after the lessor would have called upon the lessee by means of a judicial letter, and notwithstanding such notification, the lessee remained in default for a further period of fifteen days.[791] It is important to note that under Maltese law any delay is sufficient, even if it amounted to a single instalment.[792]

Two other causes which, according to the Civil Code may bring about the termination of the contract are the occurrence of a dissolving condition[793] and

[786] Augusto Testaferrata Abela v. Giulia D'Ugo, decided by the Court of Appeal on the 16 October 1959.
[787] Rogantino Degabriele v. Giuseppe Xuereb et, Qorti Civili, Prim' Awla, 7 ta' Frar 1946; Rita Pirotta v. Simon Carbonaro et, decided by the Court of Appeal on the 17 November 2004.
[788] Civil Code, Article 1566.
[789] Civil Code, Article 1568.
[790] Civil Code, Article 1532.
[791] Civil Code, Article 1570 (Proviso).
[792] Ibid. no. 299, 733.
[793] Civil Code, Article 1569.

the non-performance of any obligation on the part of either of the contracting parties.[794]

ii. An express resolutive condition would apply in the same way as it applies to all other contracts[795] and the dissolution would take effect from the day on which the covenantee would, by means of a judicial act, give notice to the covenantor of his intention to avail himself of the covenant. Therefore, the party in default would not be granted any time for clearing the delay. In this case, in fact, the dissolution takes place "ipso jure" as soon as an application is served, and the judgment merely ascertains the fact that the lease is dissolved.[796] Jurisprudence has also confirmed that subsequent to the happening of the resolutive condition, the intervention of the Court would only be required for a specific order, such as one for eviction.[797]

iii. In the absence of an express resolutive condition, the Court has the discretion to grant relief according to the circumstances of the case.[798] In fact, if the resolutive condition is tacit, the contract is not dissolved "ipso jure".[799] The law itself grants the aggrieved party the choice to either compel the other party to perform the obligation, or to demand the dissolution of the contract together with the compensatory damages deriving from the non-performance.[800]

The Civil Code mentions a further two instances when the landlord might seek to terminate the contract: wrong use and immoral use of the property on the part of the sublessor.

iv. In the case that the lessee used the property for any purpose other than that stipulated in the agreement, or in a manner which prejudiced the lessor, the latter might proceed with a demand for dissolution.[801] Jurisprudence has extended this notion to the non-use of the property, although it must also be noted that when the contract is challenged on this ground, the Court would analyse the

[794] Civil Code, Article 1570. The default of payment on the part of the lessee, discussed in the previous paragraph, is contemplated in this same article.
[795] The resolutive condition is dealt with in the Civil Code in Articles 1066 to 1069.
[796] Ibid. no. 299, 733.
[797] Adrian Busietta v. Philip Gatt, decided by the Court of Appeal (Superior) on the 30 May 2008.
[798] Ibid. no. 299, 733. The Court may not necessarily grant this period of relief, especially if the tenant would have been making an illegal use of the premises (Patricia Galea et v. Balsons Auto Parts Company Limited, decided by the First Hall (Civil Court) on the 29 April 2013).
[799] Francis Abela v. Karl Bonello, decided by the Court of Appeal (Superior) on the 31 May 2002.
[800] Civil Code, Article 1570.
[801] Civil Code, Article 1555. Article 155A additionally lays down that, in the case of leases entered into prior to 1995, where it is conclusively proven that a tenant would have become permanently dependent on an institution and none of his relatives would qualify as a beneficiary, the property would revert back to the landlord.

circumstances of the case prior to deciding for eviction. A reasonable justification, given the specific circumstances of the case, would in fact, keep the contract in force.[802] Moreover, a lengthy period of inaction on the part of the lessor, whilst being knowledgeable of the change in the use of the premises, would be considered equivalent to acquiescence or at least tolerance.[803]

v. In the case of a sublease, or an assignment of the lease, even when expressly consented to by the lessor, the latter would have the right to recover possession of the property if it were being used for purposes of prostitution or other immoral purposes.[804]

A final note regarding notice by the landlord concerns the specific cases of dissolution on the grounds that the lessor desired the house for his own habitation[805] or that he would be alienating the premises.[806] First of all it must be said that under Maltese law, it is not lawful for the lessor to dissolve the lease under these grounds unless it would have been expressly stipulated in the contract. In such case, however, the lessor would be bound to give a one month notice, if the remaining period would be in excess of one year, and fifteen days if the remaining period would be any shorter.

- **Statutory restrictions on notice:**

i. for specific types of dwellings, e.g. public dwellings; dwellings recently converted into apartments etc.

The Code makes special provision for public dwellings i.e. where the lessor is the Government or any other corporation or authority established by law. The law, in fact, entitles the government to dissolve a contract of lease "at all times in the public interest" by giving notice by means of a judicial act to the lessee.[807] The stipulated period of notice in this case is that of a minimum of three months. As in the case of private residential leases, once the term would have expired, no court declaration would be required for the lessee to take back possession of the premises. Moreover, where the Government would have dissolved the contract on any of the grounds contained in the Civil Code, the lessee would have no right to any compensation.[808]

[802] Mariano Xuereb v. Lorenzo Rapa, decided by the Court of Appeal on the 15 December 1958.
[803] Emmanuele Magro v. Nicola Agius, decided by the Court of Appeal on the 13 January 1964; Cygnet Limited v. Supplies Limited, decided by the First Hall (Civil Court) on the 5 May 2005.
[804] Civil Code, Article 1618.
[805] Civil Code, Article 1573.
[806] Civil Code, Article 1574.
[807] Civil Code, Article 1576A.
[808] Civil Code, Article 1576B.

ii. in favour of certain tenants (old, ill, in risk of homelessness)

The Maltese Civil Code does not distinguish between the various kinds of lessees and it does not seek to protect those individuals who are perceived as being the most vulnerable. An element of protection only transpires in the new rules that were drafted in order to phase out those leases signed prior to 1995, however, those are not applicable to contracts signed subsequent to the said date.[809] As regards ill persons, the only safeguarding provision in the law of letting and hiring simply prevents the landlord from evicting the tenant on the ground of bad use if the latter would have been absent from the premises due to rehabilitation, however little could be done on the patient's part if the term of his lease would have reached expiration.[810]

This, however, does not mean that the Maltese legislator is indifferent towards the cases that require most assistance. The lack of any protective provisions in the Civil Code may in fact indicate the trust that there exists in the local structure of social housing. In case of homelessness, persons would be able to find shelter in the various non-profit institutions that cater for them. During the time they spend at the homeless institutions the individuals either attempt to work their way back into the private rental market or else they wait until they are eventually housed by the Department of Social Accommodation. *Elderly living on their own/shared*, *Homelessness* and *Disability* are in fact three cases that are awarded priority in the processing of applications for social accommodation.[811]

iii. for certain periods

The Reletting of Urban Property (Regulation) Ordinance lays down the correct procedure in the case that the lessor intended to increase the rent or to impose new conditions on the lessee. If he desired to do so, the lessor would be required to give due notice to the tenant, by means of a judicial letter, at least one calendar month before the expiration of the lease.[812] Unless the lessee contested the increase or the new conditions in front of the RRB he would be deemed to have accepted them.[813] Any promise on the part of tenant to leave the premises, however, would neither be construed as a notice of termination nor would it by itself entitle the lessor to recover the possession

[809] Article 1531F preserves the right of any brother, sister or ascendant of the tenant to continue the lease of the premises under the same conditions, if on the death of the said tenant they would have turned forty-five (as long as they would have lived with the tenant for four out of the previous five years before the 1st June 2008, and continued to do so until his death).
[810] Civil Code, Article 1555A.
[811] Retrieved from:
<www.housingauthority.com.mt/en/content/26/Schemes%20and%20Social%20Housing>
[812] The same statute lays down that the lease would be renewed automatically according to the same terms.
[813] Cap, 69, Article 14.

of the premises.[814] The Reletting of Urban Property (Regulation) Ordinance only applies for contracts negotiated up till 1995.

iv. after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling

As said already a contract of lease is neither dissolved by the death of the lessor nor by the alienation of the premises, unless the lessor would have reserved these powers to himself in the agreement constituting the lease.[815] If he does so, however, the alienee of the premises desiring to avail himself of this particular stipulation, would be bound to give notice to the lessee one month before, if the remaining period of the lease would not be superior to one year, or fifteen days before, in the case that it were inferior.[816]

- Requirement of giving valid reasons for notice: admissible reasons

The valid reasons for dissolution on the part of both parties, other than the expiration of the stipulated period, are summarised in summary table for this heading.

- Objections by the tenant

Since the dissolution of the contract requires the aggrieved party to take the judicial avenue, his adversary would in all cases have the opportunity to raise his objections in front of the Board. The Court has on various occasions manifested a certain caution in terminating tenancy contracts, particularly in cases of residential dwellings, since a decision against the tenant might potentially lead to homelessness. It is a well-established principle in Maltese jurisprudence, for instance, that any doubt on the interpretation of a clause has to go in favour of the tenant.[817]

Jurisprudence shows that in every case the Court seeks to determine whether the default would be simply the object of a whimsical conduct or else the result of a circumstance that would be genuinely worthy of justification.[818] The tenant would in fact be excused in case of an "objectively reasonable" or

[814] Cap. 69, Article 15(2).
[815] Civil Code, Articles 1572 and 1574.
[816] Civil Code, Article 1575. The law also allows the parties to stipulate any other term in the contract.
[817] Giuseppe Chetcuti Bonavita v. Joseph W. Naudi, decided by the Court of Appeal on the 22 October 1956; Frank Camilleri v. Wing Commander Philip Morgan, decided by the Court of Appeal on the 28 January 1949; more recently in George Camenzuli v. Emanuel Fenech, decided by the RRB on the on the 28 June 2012.
[818] Emanuela Mallia v. George Attard et, decided by the Court of Appeal (Inferior) on the 12 January 2005.

"legally sustained" justification.[819] Cases have been decided against the landlord where he himself would have refused to accept the rent[820] or else where through his own spiteful behaviour, he would have rendered the habitation of the premises impossible for the tenant, in order to subsequently allege non-use on the latter's part.[821] In general terms the Court aims to ascertain that the ultimate sanction of eviction in the case of default is not used to grant the landlord any specific advantage, but to simply serve as a deterrent against non-performance.[822] In adopting this approach, however, the Court has maintained a rigorous line with the tenant and it has, for instance, decided that financial difficulties would not exempt him from payment.[823]

- **Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?**

No such additional period may be granted under Maltese law after the expiry of the agreed term. In fact, as soon as the contract reaches its termination the tenant would be occupying the premises without any valid title at law and the Court would have no other option but to order the eviction.

- **Challenging the notice before court (or similar bodies)**

As said above, an action for dissolution would necessarily have to pass through the RRB, that is the Board responsible for all matters affecting leases of urban property.[824]

[819] Maria Concetta Vella v. Federico Galea noe, decided by the Court of Appeal on the 24 January 1997; Doris Attard v. Julian Borg, decided by the Court of Appeal on the 28 June 2001. Both these decisions dealt with leases regulated by Cap. 69 and the Court had laid emphasis on the protective spirit of this special statute. This reasoning, however, was also employed for lease contracts signed after 1995 such as in the case Helen Miceli et v. Carmelo Pisani, decided by the Civil Court (First Hall) on the 14 December 2004.

[820] Lewis Salerno v. Agatha Vella, decided by the Civil Court (First Hall) on the 15 June 1955. In every case the tenant would be expected to bring sufficient proof of the claimed impediments (Joseph Darmanin et v. Giljan Cutajar, decided by the Court of Appeal on the 23 November 2005).

[821] Rita Mula v. Carmel Attard, decided by the Court of Appeal (Inferior) on the 17 November 2004. In this case the landord had interrupted the supply of electricity in an attempt to estrange the tenant from his premises.

[822] Perit Joseph Barbara et v. Antonia Anastasi, decided by the Court of Appeal on the 28 February 1997.

[823] Francesco Sciberras v. Ignatius Peter Busuttil, decided by the First Hall (Civil Court) on the 17 March 2005.

[824] Reletting of Urban Property (Regulation) Ordinance, Article 16.

- **in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law**

If despite the alleged expiration of the contract, the tenant would want to contest his eviction, he could avail himself of the action for spoliation.[825] The procedure regulating the exercise of this action expressly lays down that in such cases the defendant would not be able to raise any pleas other than dilatory ones, before he would have restored the thing to its former condition and fully revested the party despoiled within the time which may have been fixed in the judgment.[826] This appears to be the only way through which a tenant may temporarily extend his occupation of the premises.

A different procedure may be employed by the Commissioner of Land in the case of government property. The Land (Compulsory Eviction) Act[827] in fact, entitles the Commissioner to order the compulsory eviction of any person who would be in occupation of government land without any valid title.[828] However, if the person who suffered this order believed that he had a valid right over the property he would be entitled to sue out a warrant of prohibitory injunction[829] against the Commissioner and proceed to demand a declaration of the order's invalidity by proving his title over the property in question. Jurisprudence has established that the Commissioner must allow a period of at least 20 days for the evictee to prepare his defence in front of a Court.[830]

Other than those particular actions, the law also gives certain lessors in government property a right to compensation. In fact, where the government would proceed to dissolve a contract, without any valid reason according to articles listed under the relevant subtitle "Of the Dissolution of Lease" the government would have to pay the lessee any sum – to be fixed by the RRB – in order to cover the added expenses incurred in the evacuation of the tenement and the transfer to another premises.[831] Moreover, if the lessee

[825] Civil Code, Article 535.
[826] Code of Organisation and Civil Procedure, Article 791. The same article confirms that this action is available to a tenant who has been dispossessed of his premises by the lessor or by a third party.
[827] Chapter 288 of the Laws of Malta
[828] Cap. 288, Article 3.
[829] Code of Organization and Civil Procedure (Cap. 12), Sub-title V.
[830] Emanuel Camilleri et v. Kummissarju tal-Artijiet, decided by the Constitutional Court on the 11 April 2006; Carmel Camenzuli v. Kummissarju tal-Artijiet, decided by the First Hall (Constitutional Jurisdiction) on the 23 March 2007 (confirmed by the Constitutional Court on the 11 January 2013). In these judgments it was also held that a period inferior to 20 days would constitute an infringement of the right of access to court protected by Article 6 of the European Convention for Human Rights.
[831] Civil Code, Article 1576C.

were able to prove that the contract would have been dissolved abusively and not in the public interest, he would also have a right to damages.[832]

- **Termination for other reasons**

- Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)

Execution proceedings against the landlord do not bring the contract to an end. It is expressly laid down in the Civil Code that neither sale nor alienation of the premises would dissolve the lease, unless, of course, it would have otherwise been stipulated in the contract.[833]

Because of this very reason, however, the Court is often called to decide on the validity of certain leases that would have been contracted in order to circumvent the consequences of repossession. The Court is not new to annulling contracts of letting that would be deemed as a debtors' attempt at keeping hold of the possession of the premises in the case that they would eventually be sold through judicial auction.[834]

- **Termination as a result of urban renewal or expropriation of the landlord**

Maltese law does not contain any provisions relative to termination in the case of urban renewal. In the specific case of expropriation, however, the Land Arbitration Board[835] is not only competent to order the immediate possession of any land and to order the transfer of the land to the competent authority in absolute ownership but also to order the termination of any lease.[836] The same Act lays out the relevant procedure in such cases. In fact, should urban land subject to a lease be acquired by a competent authority, no compensation would be due to the occupier if he would have been given a full year's notice to quit. If the notice is not given in due time, the occupier would be entitled to any amount which does not exceed the fair rent of the property for a period of two years.[837]

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[832] Civil Code, Article 1576D. In this case the damages would be liquidated by the ordinary Court and not by the RRB (Martin Baron v. Kummissarju tal-Artijiet, decided by the RRB on the 3 October 2013).
[833] Civil Code, Article 1574.
[834] Jean-Philippe Chetcuti v. Maurice Vassallo Eminyan, decided by the First Hall (Civil Court) on the 7 February 2008 (confirmed in Appeal on the 27 June 2008); HSBC Bank Malta v. John Debono, decided by the First Hall (Civil Court) on the 30 April 2012. These two cases concerned the agreement of a lease between the defaulting debtors and their children.
[835] Constituted by Article 23 of the Land Acquisition (Public Purposes) Ordinance, Chapter 88 of the Laws of Malta.
[836] Land Acquisition (Public Purposes) Ordinance, Article 25.
[837] Land Acquisition (Public Purposes) Ordinance, Article 20. The law also specifies that in fixing the amount of compensation, regard should be had to the remaining period of the lease and to the circumstances of the particular case.

- **What are the rights of tenants in urban renewal? In particular: What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?**

The termination of leases due to urban renewal is not contemplated by Maltese law. It therefore seems that in the case of private residential leases, the landlord would have to wait until the expiration of the contract prior to proceeding with the demolition and re-erection of a building.[838] The only alternative for this seems to be a private agreement, where the landlord either promises to find an alternative accommodation for the tenant or to cover his expenses for relocation.[839]

In the case of public tenements government enjoys a much wider degree of discretion and as seen above it has much greater liberty in terminating contracts. The relocation of beneficiaries of social accommodation into new blocks would therefore be much less problematic although still requiring of a substantial amount of planning. Urban renewal of government property falls

[838] This was the case in Joseph Grech v. Austin Agius, decided by the Court of Appeal on the 3 October 2008 (cited again in Stefan Mifsud v. Joseph Grech, decided by the Court of Appeal on the 25 March 2011). The owners entered an agreement to sell premises against a share of the profit that the developer would have made through the sale of one of the storeys of the new building. However, the developer could not proceed with the demolition since the premises were being legally occupied by a lessee. Court therefore went on to annul the contract of sale due the impossibility on the part of the developer to regenerate the premises.

[839] A recent case that came up in front of the First Hall of the Civil Court (Edwin Zammit v. Saviour Casha et, decided on the 28 October 2011) concerned a tenant who had to abandon the premises being let to him due to several structural damages that rendered it dangerous. After an intervention by the Police, the landlord promised that he would have redeveloped the block and reinstated the tenant in one of the new apartments. The landlord demolished the old building, however, he did not proceed to erect a new block. The tenant therefore sued him, asking the Court not only to fix a date by which the landlord had to redevelop the premises but also to find him liable for the damages that the tenant had incurred due to the relocation and the renting of a new apartment.
Unfortunately the Court did not enter into the merits of the case since defendants raised a successful preliminary plea.
A similar matter remained partly unresolved in Francis Grixti v. Godfrey Ellul Sullivan, decided by the First Hall (Civil Court) on the 15 December 2011. In this case the landlord required the tenant to vacate the premises temporarily until he erected another two storeys above the property. After he had obtained the necessary building permit, tenant refused to abandon the premises unless he was relocated to another premises or awarded a sum of around €125,000. The case was decided in favour of the tenant since the landlord could not provide evidence of the agreement wherein the tenant had allegedly agreed to leave the premises. The Court, however, seemed to imply that had this agreement been proven the landlord would have had a well-founded claim for damages that he had suffered due to the tenant's refusal to leave the premises.
The Court also specified that the demolition of the property would have implied the permanent removal of the tenant from the premises and not merely the suspension of its enjoyment until the completion of the new structure. This reasoning seems to be based on Article 1571 of the Civil Code that lays down that if the property leased were destroyed the contract would be *ipso jure* dissolved.

under the responsibility of the local Housing Authority that is, in fact, active in regenerating substandard housing that is no longer decent for habitation.[840]

The approval or rejection of any real estate projects falls within the competence of the Malta Environmental and Planning Authority (MEPA) established by the Environment and Developing Planning Act (EDPA).[841] The decision-making process for the issue of a building permit, allows any person to declare an interest in the development and to proceed with representations.[842] Should their objection not be received by the Authority, they would be able to appeal in front the Environment and Planning Review Tribunal established by the same act. The Tribunal may, in fact, hear and determine any appeal lodged by the interested third party who would have brought forward any representations during the permitted stage.[843] An exceptional third instance would lie in front of the ordinary courts[844] if the appellant were to be dissatisfied specifically with any point of law decided by the Tribunal.[845] These formal procedures must be added to the number of stakeholder meetings that are held prior the revision of any local plan in which any member of the public at large is entitled to bring forward any possible shortcomings present in the existing local plans.[846]

Nevertheless, urban renewal remains one of the three main goals stated in the Structure Plan of the Maltese Islands. The Structure Plan aims, in fact, to channel development activity into existing and committed urban areas "particularly through a rehabilitation and upgrading of the existing fabric and infrastructure".[847] If the local administration opted for the regeneration of a single site the tool at its disposal would be the "development brief" that is a document setting out planning guidance for the development of a specific site or small area. Development briefs are regulated by the Environmental Development Planning Act (EDPA)[848] and it can be drawn either of the MEPA's own motion or at the request of any applicant.

The EDPA lays down that the brief should contain information on the "tenure of the site"[849] i.e. who is in ownership or occupation of the land, however, it does not lay down any specific rules as to rehousing. This means that any matter relating to relocation of tenants is left exclusively to government.

In cases of urban renewal government may also resort directly to compulsory

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[840] Council of Europe, Revised European Social Charter: 4th National Report on the implementation of the Revised European Social Charter submitted by the Government of Malta, 2011, 24. Accessed from: <http://www.coe.int/t/dghl/monitoring/socialcharter/reporting/statereports/Malta4_fr.pdf>
[841] Chapter 504 of the Laws of Malta.
[842] EDPA, Article 68(4).
[843] EDPA, Article 41(c).
[844] The designated court in this case is the Court of Appeal (Inferior Jurisdiction)
[845] EDPA, Second Schedule; Article 7.
[846] "Local plan revision, MEPA invites public for wide consultation", *Maltatoday*, 18 July 2013.
[847] Ministry for Development of Infrastructure: Planning Services Division, *Structure Plan for The Maltese Islands: Draft Final Written Statement and Key Diagram*, December 1990, 22.
[848] Cap. 504, Article 65.
[849] Cap. 504, Article 65(3)(d).

acquisition. The procedure is regulated by the Land Acquisition (Public Purposes) Ordinance[850] whereby a public authority is entitled to proceed with the purchase of any land required for a public purpose.[851] In such cases the amount of compensation would be agreed with the same owner[852] and if the parties failed to reach an amicable deal the matter would have to be referred to the Land Arbitration Board. In assessing compensation the Board would not be able to make any special allowance on account of the acquisition being compulsory and the valuation of the land would be established at a price that a willing seller might be expected to pay in the open market.[853] This has for instance happened in the project of Urban Renewal in Valley Road Msida.

6.7. Enforcing tenancy contracts

- **Eviction procedure: conditions, competent courts, main procedural steps and objections**

Summary Table 15 Enforcing tenancy contracts

	Main characteristic(s) of tenancy of residential leases
Eviction procedure	Special procedure in front of the RRB: if lessee bring no valid prima facie defence case is decided on first hearing (Cap. 69, art. 16A)
Protection from eviction	No form of protection is allowed Court is likely to scrutinise case in more detail if term of lease would not have elapsed
Effects of bankruptcy	No personal indebtedness for natural persons/consumers Lessor is entitled to special privilege over lessee's furniture (CC, art. 2009)

As said above, all matters relating to contracts of lease of property started lying within the competence of the RRB as of 2010.[854] The amendments of 2009 also introduced a new procedure in order to expedite cases of evictions; the Board was in fact vested with the authority to decide such matters on the

[850] Chapter 88 of the Laws of Malta.
[851] This is of course subject to the Constitution of Malta and the European Convention Act (which incorporates the European Convention on Human Rights and Fundamental Freedoms into Maltese law) that compel the authority to give fair compensation and to proceed with expropriation only when it is in the public interest.
[852] Cap. 88, Article 13.
[853] Cap. 88, Article 27.
[854] Civil Code, Article 1525(1). The procedure includes of course subleases.

basis of a special summary procedure i.e. judgment would be given at the first hearing should the respondent fail to either appear at the sitting or prove a valid defence in his favour. The application should be accompanied by a sworn affidavit containing the relevant facts and a clear reference to the summary procedure being employed. The respondent would subsequently be ordered to appear within a period of fifteen to thirty days from the receipt of the application, at which point, the RRB would either decide the matter forthwith, or else, in the case that the Board were to be satisfied with the *prima facie* defence brought by the respondent, provide him with a further twenty days to file a reply. Where leave to defend would be given, the action would be tried and determined in the ordinary course.[855]

Under Maltese law, judgments and decrees of Court are held to be executive titles.[856] In the case that any abusive tenant remained in the premises, an order of eviction could be enforced through a 'warrant of ejection or eviction from immovable property'.[857] An enforcement ordered by the Courts is carried out by a Court Marshal, who has, even with the assistance of the police where appropriate, the power to evict persons from houses or other tenements that would be illegally occupied by them.[858] The Court Marshal has to give a further period of between four and eight days within which to leave the tenement.[859] If the tenant would still fail to desist, the Court Marshal would then deliver a copy of the warrant to the tenant at the first available opportunity and proceed to execute it without delay.[860] During the latter stage, the Court Marshal would be entitled to exercise all such power that would reasonably be required of him in order to execute the warrant, which of course includes that of breaking open any outer door.[861]

No opposition to the execution of the warrant would be considered until the eviction would be effected, however, nothing would hinder the tenant from making an ulterior application to the Court, demanding that the executive act be revoked for any valid reason at law.[862] The procedure is illustrated in the table below. In case of government property the compulsory eviction of any person can also be carried out under the Land (Compulsory Eviction) Act that was referred to above.[863]

[855] Cap. 69, Article 16A. This procedure does not preclude the tenant's right to appeal the judgment.
[856] COCP, Article 253.
[857] The executive act contemplated in Article 273(f) of the COCP.
[858] The form for the warrant of ejectment is contained in the COCP, Schedule B, no. 17.
[859] COCP, Article 384.
[860] COCP, Article 278.
[861] COCP, Article 275. This must be done in the presence of two witnesses and all the relative costs would be born by the tenant.
[862] COCP, Articles 276, 281(1).
[863] See: *Challenging the notice before Court (or similar bodies)*.

Figure 8 **Eviction procedure (Special Summary Procedure)**

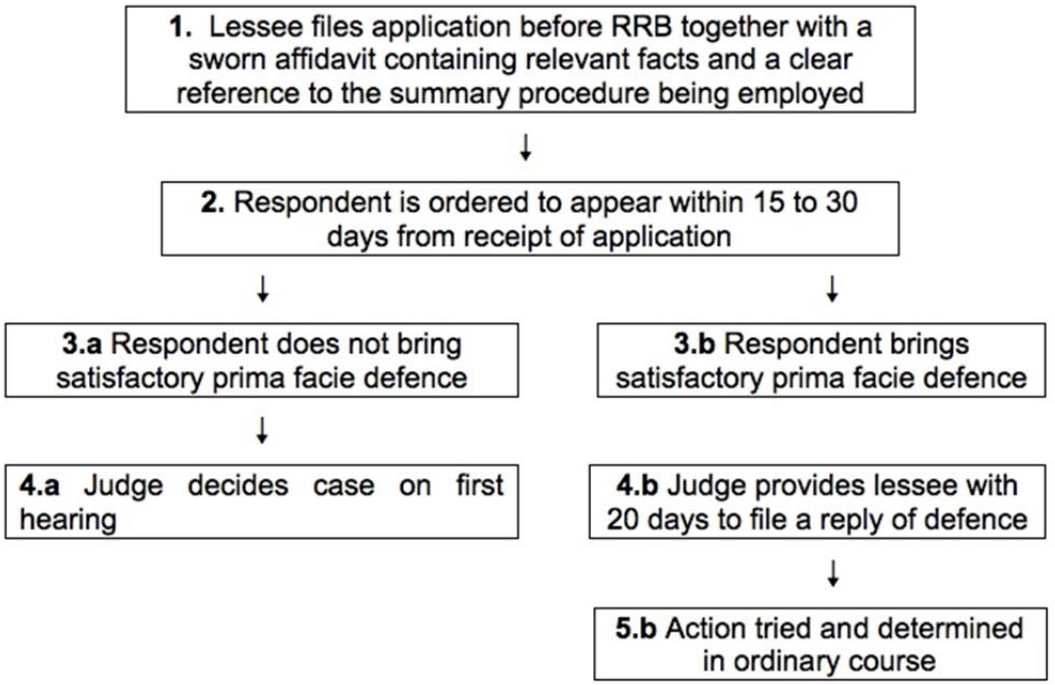
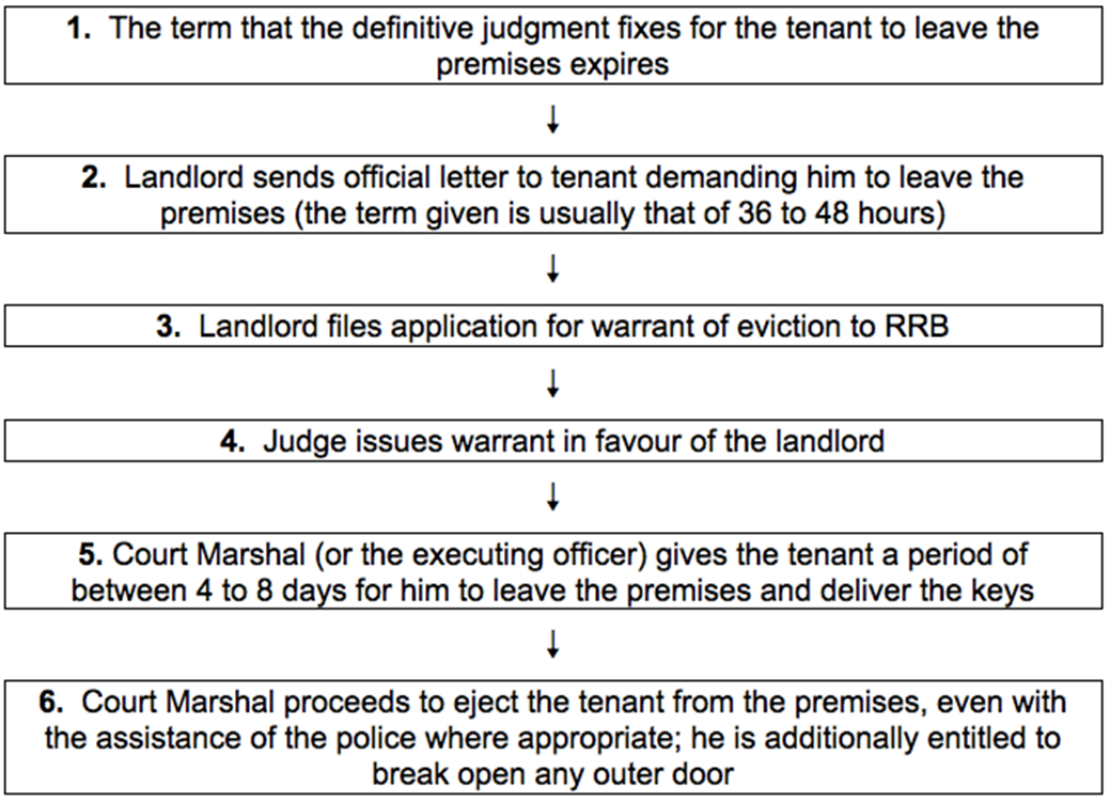


Figure 9 Procedure for eviction when tenant refuses to leave the premises despite unfavourable verdict



- **Rules on protection ("social defences") from eviction**

In Malta there are no social defences available against evictions, therefore, even in the case of individuals held vulnerable, the Court would not be able to prolong their occupation beyond the stipulated period.[864]

- **May rules on the bankruptcy of tenant-consumers influence the enforcement of contracts?**

Maltese legislation does not provide specific provisions to cover personal over-indebtedness. The present system in Malta only regulates insolvency proceedings that cover traders, companies and partnerships.[865] Therefore an individual, or a consumer, cannot be declared bankrupt.

The law entitles the lessor to a special privilege over the value of all the lessee's furniture and this applies in respect of any default on his part, including any sum owed to repairs that he would have failed to carry out.[866]

In the case of competing claims, however, the lessor could be superseded by a number of other claims:

a) Judicial costs

By virtue of Article 2003 of the Civil Code costs incurred in making up the inventory, carrying out the sale of the property, distributing the proceeds and any other expense incurred for the common benefit of the creditors bear a general privilege over all property of the debtor.[867]

b) Employee's wages

According to the Employment and Industrial Relations Act[868] any claim brought by an employee in respect of a maximum of three months of the current wage that would be payable by the employer[869] as well as compensation due to the employee in consideration the termination of the

[864] This was the case in Awtorità tad-Djar v. Anita Doris Savona (decided by the by the RRB on the 28 June 2012) which involved an unemployed beneficiary of the Housing Authority whose child had fallen ill. As a result of the medical costs she could not keep up with the rent and despite understanding that this was a genuine case the Board could do nothing but grant the applicant's demand for eviction at the end of the contract. In affirming his impotence, the judge did, however, urge compassion from the Authority in the execution of the judgment.

[865] K. Sammut, *The Regulation of Consumer Credit in Malta as Applicable to the Bank-Customer Relationship*, dissertation submitted to the Faculty of Laws, University of Malta, 2013, 37.

[866] Civil Code, Article 2009(e).

[867] The same article gives a general privilege to the funeral expenses and the deathbed expenses.

[868] Chapter 452 of the Laws of Malta, Article 20.

[869] The privileged claim cannot exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.

employment would supersede any other privileged or hypothecary claim.

c) Social Security

In line with the Social Security Act[870] the claim of the Director of Social Security over any amount due by way of contributions towards this scheme would constitute a privilege, ranking equally with the wages of employees, over the assets of the employer or the estate of the self-employed or self-occupied person.

d) Income Tax

Any sum due by the debtor arising from Income Tax constitutes a privileged claim over all the assets of the employer. These, however, cannot be claimed ahead of the employees' wages and the claims of the Director of Social Security. They would otherwise rank higher than any other privileged or hypothecary claim.[871] It is also important to note that this applies only for the employer's assets and not for his ordinary income, therefore, if the employer were the owner of a company he would not be personally liable if the creditors proceeded only in respect of his natural person.[872]

e) Value Added Tax

Finally any due payments in respect of VAT also precede ordinary creditors, whether privileged or not, by virtue of the Value Added Tax Act that entitles the Commissioner to a special privilege over the assets forming part of the economic activity of that person.[873] This privilege would rank lower than any other general privilege and it would also supersede the payment due to the lessor because the same Article expressly lays down that it is only the debt due to a pledgee and a debt owed to a hotel-keeper for accommodation that would rank higher out of all the instances contemplated in Article 2009 of the Civil Code (the same article that entitles the lessor to a privilege over the movable propety of the lessee). Jurisprudence has additionally specified that this privilege is enjoyed only on the amount that would be due in taxes and not on other payment that would be owed by the debtor. This privilege also stands independently of whether it were to be registered by the Commission or not.[874]

6.8. Tenancy law and procedure "in action"

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in our field ("tenancy law in action") is taken into account:

[870] Chapter 318 of the Laws of Malta, Article 116(3).
[871] Chapter 372, Income Tax Management Act, Article 23(11).
[872] Konkors tal-Kredituri ta' Mario Abela (*Ranking of Creditors of Mario Abela)*, decided by the First Hall (Civil Court) on the 6 of June 2007.
[873] Chapter 406 of the Laws of Malta, Article 62.
[874] Konkors ta' Krediture ta' Carmelo Gauci Limited (*Ranking of Creditors of Carmelo Gauci Limited)*, decided by the Court of Appeal on the 27 February 2009.

- **What is the role of associations of landlords and tenants?**

In Malta there are no associations representing either landlords or tenants. In fact, the only associations that concern the sector only bring together developers, contractors and estate agents.[875] Tenants are therefore unrepresented on a national stage and this perhaps does have a close link with the paternalistic role that government has historically assumed towards the generality of the citizens, particularly the most vulnerable.[876] It is hard, in fact, to deny that the absence of a union is owed to the fact that in Malta tenants had for years been overly protected through rigorous rent control and transferable security of tenure. This means that at the moment tenants are only indirectly affected by initiatives aiming to promote their interests. A case in point is the "Guide for Property Tenants"[877] that was published in four languages following a research study on immigrant and ethnic minority groups and housing in Malta.[878] The central focus of the study was not tenancy law but racial discrimination as protected against by the Equality Directive.

It would seem, therefore, that the only representative authority under which tenants could fall is the Malta Competition and Consumer Affairs Authority.[879] There are no longer any doubts regarding the applicability of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts to tenancy agreements. This point was confirmed by the CJEU which held that contracts of letting and hiring concerning residential premises concluded between a landlord acting for purposes relating to his trade, business or profession and a tenant acting on a non-commercial basis came in an equal manner under the scope of the Directive.[880] It was stated in very clear terms that tenants were deserving of the protection reserved to weaker parties due to the fact that, on the one hand, the amount that the tenant would be taking out on rent would usually represent a significant fraction of his income, whilst on the other, the rules governing this contract were typically too complex for an individual to acquire proper information on them.[881] The provisions of the directive, however, would not be able to supersede any mandatory statutory provisions under national law and the ascertainment of the latter would necessarily be in the hands of the national courts.[882]

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[875] Malta Developer's Association (MDA), Federation of Building and Civil Engineering Contractors (FOBC), Federation of Estate Agents (FEA).
[876] G.A. Pirotta, "A Farewell to Paternalism Through Public Enterprise: Privatization in the Small Island State of Malta", *International Review of Public Administration*, 2001:6(1), 39.
[877] Accessible on: <http://msdc.gov.mt/en/NCPE/Pages/Our_Publications_and_Resources/Resources_and_Tools.aspx>. The leaflet was published in English, French, Somali and Tigrinya.
[878] European Union Programme for Employment and Social Solidarity, "I'm Not Racist, But...".
[879] Established by Article 3 of the Malta Consumer and Competition Affairs Authority Act, Chapter 510 of the Laws of Malta.
[880] Dirk Frederik Asbeek Brusse and Katarina de Man Garabito v. Jahani BV, Preliminary ruling by the CJEU (First Chamber) decided on the 30 May 2013, C-488/11.
[881] Ibid. no. 880, para. 32.
[882] Ibid. no. 880, para. 33, 34.

- **What is the role of standard contracts prepared by association or other actors?**

The only publicly available standard contract in Malta is the one contained in the Third Schedule of the Civil Code. This contract is a shell document that provides for the five necessary elements stipulated in Article 1531A.[883] Besides the one contained in the code,[884] it is known that the various estate agencies have also drafted their own samples. These would include the aforementioned details along with further stipulations generally regarding: the termination of the agreement in the case of default on the part of the tenant, the agreed use of the property, the possibility of subletting, the payment of any deposits as well as water and electricity bills, the maintenance of the building, the state in which the property would be expected to be returned, the possibility of the landlord requesting permission to inspect the premises and the payment of any service fees or commissions due to the agency.

The role of these standard contracts prepared by Estate Agents seem to play a much more active role among foreigners, particularly European nationals, since the latter are the likeliest category to use the services of estate agencies.[885] The Maltese ethnic minorities appear to make a much lesser use of them particularly since the 14% out of all immigrants who were not in possession of a written contract were all composed by the Sub-Saharan Africans, North Africans and members of the Middle Eastern community.[886] These figures were obtained in a survey that dealt with third country nationals; similar data relating to the generality of the local renting population is not available.

- **How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?**

Maltese tenancy law presupposes the parties to resort directly to the Rent Regulation Board rather than seeking a remedy through ADR. Tenants and landlords, however, may easily opt for mediation or arbitration since Malta has specialised centres in both areas.

[883] These essential elements are: (a) the property to be leased; (b) the agreed use of the property let; (c) the period for which that property will be let; (d) whether such lease may be extended and in what manner; (e) and also the amount of rent to be paid and the manner in which such payment is to be made.
[884] This draft contract was introduced following the latest set of amendments.
[885] Ibid. 123, 58.
[886] Ibid. 123, 66.

i) Mediation

Mediation is defined by Maltese law as a process in which a neutral, qualified and impartial individual facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute.[887] The parties may request that the content of the agreement reached between them would be made enforceable – subject to the provisions of the COCP – by a court or any other competent authority.[888] Mediation can be either requested by the parties by a joint note to the adjudicating authority or else ordered by the latter on its own initiative.[889]

The Mediation Act additionally establishes a forum wherein parties would be able to come together in order to see the problem out with the assistance of mediator.[890] This Mediation Centre receives both cases where the private parties themselves decide to resort to mediation as well as those when mediation is ordered directly by Court; the mediator can be even chosen by the parties. The process may end either: i) when the parties reach an agreement in writing, ii) when the mediator states in writing that the mediation is terminated, iii) if the mediator believes that the parties cannot arrive at a solution, iv) if one of the parties chooses not to continue with the mediation process.[891]

A non-refundable registration fee applies according to the kind of dispute and it must be paid in advance. This fee varies from €35 to €120 depending on the kind of dispute and the value of the contention. This must be added to the fee that would be owed to the mediator that would be agreed in writing by the all those involved. If they failed to do so the mediator would be entitled to a fee calculated on the basis of a flat rate of €50 per hour.

Certain legal acts promote mediation themselves; for instance, the provision of mediation between consumers and traders is one of the responsibilities assigned to the Office for Consumer Affairs by the Malta Competition and Consumer Affairs Authority Act, 2011.[892]

Contenders of local tenancy disputes, however, do not seem to consider the advantages of this type of ADR much. So far the Centre has only received 24 cases, all of which were referred by Court. No applications have been received directly from the parties in a dispute. Moreover, of the 24 applications referred by the Court, only four cases have been settled by mediation; the rest bounced back to Court or were abandoned. Some those

[887] Mediation Act, Chapter 474 of the Laws of Malta, Article 2.
[888] Cap. 474, Article 17B.
[889] Cap. 474, Article 18.
[890] Cap. 474, Article 4.
[891] Cap. 474, Article 28.
[892] Act No. VI of 2011: Article 17(1)(h).

were even settled before mediation had commenced. None of the said four cases concerned a landlord-tenant dispute.[893] Despite all this, the administration seems intent on maintaining its effort in promoting this dispute-solving method and the recent Justice Reform Commission itself proposed the extension of mediation to other tribunals amongst which, of course, the RRB.[894]

ii) Arbitration

Maltese law similarly provides for the process of arbitration in the Malta Arbitration Act which also embodies a number of international conventions such as the UNCITRAL Model Law on International Commercial Arbitration (First Schedule to the Arbitration Act) and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Second Schedule to the Arbitration Act). Part IV of the Arbitration Act deals with the conduct of domestic arbitration in the settlement of disputes, however, disputes concerning questions of personal civil status, including those relating to personal separation and annulment of marriage, are excluded.[895]

Any application for arbitration must be filed with the Malta Arbitration Centre (MAC) on pain of nullity. The role of the MAC is mostly that of assisting the parties during the arbitral process. The Chairman may be requested to intervene whenever the parties fail to reach an agreement, for instance, as to the choice of the arbitrator. Once the award is then registered, it would constitute an executive title for the purposes of the part of the COCP that deals with the 'Enforcement of Judgments and other Executive Titles'.[896] There is no possibility of appeal from a registered award therefore the decision is final and binding for all the parties involved.[897] The filing fee for cases of arbitration is equivalent to 25% of the value that the parties would incur in filing an application in front of the Superior Courts of Malta.[898] The minimum tariff is, however, that of €116.47.

The Malta Arbitration Centre has never received any applications dealing with residential leases. In fact, cases of letting and hiring that are heard by the Board usually concern commercial agreements containing an arbitration

[893] Direct correspondence with the Registrar of the Malta Mediation Centre, Mr. Oscar Grech, 5 of December 2013.
[894] Justice Reform Commission: Final Report, 69: *Extension of mediation to other tribunals*, 30 November 2013.
[895] Malta Arbitration Centre Official Page, Domestic Arbitration: <http://www.mac.org.mt/en/Arbitration/Pages/Domestic-Arbitration.aspx>
[896] COCP, Title VII of Part I of Book Second.
[897] The only possible avenue would be that of requesting Court to set aside the award on one of the specific grounds laid down in Article 70 of the Arbitration Act. Otherwise an appeal would only be possible on a point of law (Article 70A).
[898] Arbitration Rules, Subsidiary Legislation 387.01, Appendix A, Article 1.1.1.A.

clause. It is, for instance, a government policy to resort to arbitration in cases where it leases out property to corporate entities.[899]

Arbitration is nonetheless mandatory in certain specific cases contemplated under the Condominium Act.[900] Jurisprudence has clarified, however, that the reference to arbitration did not apply to every matter relating to condominium law and the ordinary courts still had to competence to hear a case regarding, for instance, the division of the area of the block, since it was not specifically excluded from doing so.[901] [902]

- **Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?**

Court delays are known to be a frequent encounter for the parties involved in litigation. The lengthiest process appears to be the oral phase of evidence gathering when testimony is being produced.[903] Cases of eviction are however, by their very nature, much less complex issues and the times involved are considerably less than the average. The process was certainly rendered quicker by the setting up of the new procedure allowing the RRB to decide cases summarily wherever the allegedly defaulting tenant failed to contest the application or satisfy the RRB that he had a prima facie defence. A yearly sample gathered between May 2012 and April 2013 reveals that the average number of days involved in residential eviction procedures in front of the RRB is that of 238 days or (9 months and 1 week), however, the length of the individual cases is inconsistent since the shortest case took roughly one

[899] Personal correspondence with Dr. Fiona Galea Farrugia, Registrar of the Malta Arbitration Centre, 17 December 2013.

[900] These articles are: 8(7), 11(5), 14(8), 15(3)(4), 19(3), 20, 23(1), 24(7) u 25 of Chapter 398.

[901] Nazzareno Caruana v. John Inguanez, decided by the Court of Appeal on the 8 January 2010; confirmed again in Carmel Axiaq v. Amadeo Abela, decided by the First Hall (Civil Court) on the 2 October 2012.

[902] One must additionally note, in relation to arbitration, that locally there is an ongoing juridical debate regarding whether mandatory arbitration violates the right to a fair hearing under the Constitution of Malta and the European Convention Human Rights. The judgment that ignited the controversy was H. Vassallo & Sons Ltd v. Avukat Generali (decided by the Constitutional Court on the 8 October 2012) which had found that arbitrators could not guarantee independence due to an element of external pressure that was caused by the insecurity of tenure. The latest decision, however, restored the previous position wherein it was held that in view of the advantages that arbitration brought to the local system of administration of justice, the dispositions relative to arbitrators were all thought to safeguard the independence and impartiality of arbitrators and the integrity of the process (Untours Insurance Agency Ltd v. Victor Micallef, decided by the Constitutional Court on the 21 January 2013). Awards delivered pursuant to mandatory arbitration are therefore allowed to stand in the Maltese jurisdiction although one particular judgment is still pending in front of the ECHR. This position was most recently elucidated in GasanMamo Insurance Ltd v. Alexander Van Reeven, decided by the First Hall (Civil Court) on the 5 November 2013.

[903] D. Zammit, "Maltese Court Delays and the Ethnography of Legal Practice", *Journal of Civil Law Studies*, 2011:4, 554.

month whilst the longer one took almost four years.[904] As regards the cases that were decided through the special summary procedure, the study revealed a similarly high figure of 313 days (10 months and 2 weeks) but once again the sample was affected by two cases that took considerably longer than the others; the average for the remaining cases would be of a more reasonable 125 days (4 months). It therefore seems that the summary procedure is being relatively efficient although the same RRB has shown that the times could be quicker.[905]

As regards the process that would be triggered by the tenant's occupation of the premises beyond the time limit established by the judge, no hard and fast figure could be drawn up. The certain time periods that are involved are the two to three days that the landlord gives the tenant on the official letter prior to filing the application for the warrant of ejectment, and the ulterior four to eight days (usually it is the maximum period of eight days that is allowed) that the Court Marshal would give the tenant after the warrant would have been issued. The length beyond these certain 10 days is determined by amount of time that the judge takes to decide whether to authorize the issue of the warrant or not. This can vary between a couple of days to a number of months, depending, of course, on the complexity of the matter.

It is important to note that under Maltese law it is only the rent, or damages, payable until the filing of the application by the landlord that are awarded by the Court. Delays can therefore be potentially very prejudicial to lessors, keeping in mind not only the loss of revenue but also the continued consumption of utilities by the lessees. The expenses could nonetheless be recovered through the filing of a subsequent case, usually in front of the Small Claims Tribunal that decides all the money claims that do not exceed the sum of €3,494.

- **Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?**

In Malta, the main sources of costs of justice are: the court fees, the lawyers' and legal procurators' fees,[906] and the experts' fees.[907] Costs are in any case

[904] The sample only focused on the length of the case during the first instance (i.e. the RRB).
[905] K. Xerri, "The Regulation of Residential Rent Increases in Malta: The next step after Act X of 2009?", dissertation presented in partial fulfilment of the LL.D degree, University of Malta, Faculty of Laws, 2013, 105.
[906] A lawyer is required in all of the proceedings that take place in front of the Superior Courts of Malta (including the RRB) in virtue of Article 178 of the COCP which requires written pleadings and applications to be signed by a lawyer and a legal procurator. Lawyers' fees do not depend on the outcome of the case and fees calculated 'pro rata' are illegal. On an average lawyers' fees on a per hour basis may range up to €49 (M. Farrugia, Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union, Country Report: Malta, 2007, 35).

prescribed by law and the relative rates are contained in the respective legislations.[908] Despite being readily obtainable this information is not always easily decipherable and prospective applicants might have to seek advice in order to calculate the probable costs involved in their cases.[909] In determining the costs, the Maltese system bases itself on the contended value rather than the amount of work involved in the proceedings. The winning party, may, however, be partly or fully reimbursed the judicial costs by the losing party.

The fee incurred in filing an application in front of the RRB is equivalent to €34.94 and any reply or answer thereto would be charged at €23.29.[910] An application would also entail the payment of a registry fee along with an additional fee due to the executive officer effecting the service.[911] The filing of an appeal would cost the party €69.88.[912] The costs would rise further due to the necessary notifications, judicial letters or warrants of execution.

These fees must of course be added to those payable to advocates and legal procurators. Every note of submissions filed in the RRB bears a cost of €46.59 to €232.94[913] whilst any ordinary application would vary between €11.65 to €58.23.[914] The fee due for the drafting of any judicial letter or judicial protest is that of €23.29 and an affidavit may cost a minimum of €4.66 to a maximum of €34.94.[915] For each definitive judgment then, in respect of the first €1,164.69, the lawyer would be entitled to either €46.59 or 10% of the claim, whichever would be the greater. Should the contended sum exceed €1,164.69, the fee would rise to €6.99 per €232.94 up to €23,293.63; in case of further excess then the costs would rise by €2.33 per every €232.94.[916] In cases of eviction the sum owed to the advocate would be calculated at one month's rent, with the minimum amount payable being that of €11.64. The Legal Procurator would be owed a third of that amount.[917]

From the above it can be concluded that judicial fees are generally accessible. Hereunder lies an example of a case filed by the landlord for the

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There would also be a fee for legal procurators who shall receive one third of the fees established for advocates

[907] M. Farrugia, *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union*, Country Report: Malta, 2007, 9.

[908] Mostly contained in the COCP, and in the case of tenancy disputes also in the Fees of the Rent Regulation Board Regulations (Subsidiary Legislation 69.02).

[909] One source of such information is the Registry of the relevant Court where one may be assisted by the staff.

[910] Tariff contained in the Fees of the Rent Regulation Board Regulations, Subsidiary Legislation 69.02.

[911] Ibid. no. 910, 7.

[912] COCP, Tariff A, 2(2).

[913] COCP, Tariff E, 1(c).

[914] COCP, Tariff E, 2(c).

[915] COCP, Tariff E, 6.

[916] COCP, Tariff E, 13.

[917] COCP, Tariff E, 40.

eviction of the tenant from his property. The monthly rent was fixed at €200 per month:

Figure 10 Example of judicial costs incurred by a landlord during an eviction procedure:

	€
Application:	34.95
Registry free:	11.65
Fee due to executive officer:	2.33
Copy of application required to be filed with original:	4.66
Affidavit:	46.59
Lawyer's fee:	200.00 (1 month's rent)
Legal Procurator's fee:	66.67 (1/3 lawyer's fee)
Total:	**366.85**

- **How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)**

As explained earlier there are three pieces of legislation that are currently applicable in Maltese tenancy law, namely: the Civil Code, the Reletting of Urban Property Regulation Ordinance, the Housing (Decontrol) Ordinance and the Rent Restriction (Dwelling Houses) Ordinance.[918] It is interesting to note that the current law of letting and hiring contained in the Civil Code was applicable from 1857 to 1925, then from 1959 to 1979 in respect of the new newly contracted leases – which were eventually subjected back to the protective regime – and finally from 1995 onwards. In 2010 the Code was amended in order to phase out all the leases that were negotiated prior to 1995. This state of affairs, however, creates much less difficulties than it may seem since the divide is largely that between pre-1 June 1995 and post 1 June 1995 leases i.e. protected and liberalised contracts. The tenants' situation is aggravated by the absence of representative bodies and by the scarce literature available in respect of Maltese tenancy law.

A current situation of uncertainty also exists in respect of the Housing (Decontrol) Ordinance. First the ECHR, then the Maltese Constitutional Court, in fact, declared the law enabling temporary emphyteutical grants (entered into prior to 1995) to be converted into indefinite leases or perpetual tenures

[918] The latter sets the basis of those rents negotiated prior the War or immediately after it (until 1959) however, new amendments in the Civil Code have introduced an increase mechanism based on the index of inflation.

to be in violation of the landlord's right to the enjoyment of his private property and government has itself been enjoined by the Courts to rectify this situation in the shortest time possible.[919]

In general tenants do not have much accessible information unless they refer their queries directly to a lawyer. This, however, might not be within everyone's financial means, especially in view of the fact that a considerable percentage of tenants fall within the lower-income categories of the population. Moreover, with a law of letting and hiring that dates back to more than a century and half ago, certain practices that take place amongst landlords and estate agents are not even contemplated by current legislation and the Court would not be able to do much in censuring malpractices. One of the most urgent problems is represented by the absence of a register for leases which weakens the effectiveness of any provision taken in the sector.

- **Are there "swindler problems" on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?**

Although swindler problems have arisen in Malta none of these cases has ever come up in residential market. In fact, the main target of the fraudsters have been holiday dwellings, particularly farmhouses, that locals as well as foreigners rent for just a short number of days or weeks.[920]

- **What are the 10-20 most serious problems in tenancy law and its enforcement?**

1. Reluctance on the part of owners to put up their vacant dwellings for rent

Until recently, there seemed to be a certain reluctance on the part of landlords to enter the private rental market mostly due to their mistrust in the State's intentions. Although this phenomenon might have abated, landlords might still opt to leave their property vacant in order to remain certain of their right to transfer it directly to their descendants.

[919] See 'What are the 10-20 most serious problems in tenancy law and its enforcement?', Number 12.

[920] 'Man dupes 15 in Gozo farmhouses scam', *The Times (Malta*), 11 September 2012; C. Calleja, 'Farmhouse scammer ruins Gozo holidays', *The Times (Malta)*, 12 September 2012; 'Annabelle Monreal behind Gozo farmhouse scam', *The Times (Malta)*, 26 September 2013.

2. Underdeclaration or no declaration at all of rental income

It is a known fact, albeit undocumented, that a large part of the landlords do not declare their rental income. This concern has been addressed in the latest budget where government announced the application of a final withholding tax of 15 percent from the year 2014.[921] This measure was introduced as a means to incentivise owners to comply with their fiscal obligations, however, without the simultaneous introduction of a system of registration of leases the effectiveness of this policy is yet to be tested.

3. Absence of a lease register

Landlords and tenants are under no obligation to register their lease contracts. This does not only affect public revenue (as discussed in the previous point) but, in certain instances, it might also leave tenants in a much less secure position. A rent register could also be able to yield data on the averages of each locality, keep record of any deposited amounts and possibly contain an ancillary register of 'bad tenants'. It would also constitute a way through which acquirers of property, especially foreigners, could obtain the necessary guarantees as to the true vacancy of the building. A register would render the rental market more transparent in general.

4. No indexation of rent

As the situation currently stands rents are controlled exclusively by the market forces. Prices are therefore only kept under check by the relative oversupply of dwellings compared to the demand for rental. This, however, does not exclude particular situations of abuse where uninformed tenants might sign excessively onerous contracts. Whilst not interfering with the landlord's margin of profit a carefully drafted index would go a long way in increasing certainty for the tenant.

5. Negligence on the part of landlords and estate agents towards the duties imposed on them by the Racial Equality Directive

A recent study[922] has found that there is a significant lack of information in the tenancy market regarding the rights and obligations emanating from the Racial Equality Directive. In fact discrimination towards persons from Sub-Saharan and North Africa as well as the Middle East is particularly rampant in this field. The study has also found out that neither the tenants nor estate

[921] Article 31D of the Income Tax Act. This applies only for residential premises.
[922] Ibid. no. 123.

agents or landlords are aware of their respective rights and duties and agents themselves were effectively acting as “gatekeepers” to certain areas.

6. No right to housing

The right to housing is absent from the Maltese Constitution, however, there is no ongoing discussion regarding its inclusion. The Maltese are relatively well-housed and the State’s arm reaches towards all the vulnerable cases. Despite this, there seem to exist at least two common practices that might be potentially outlawed by the introduction of such a right:

6.1 provision regulating lawful amount of deposit

The Civil Code does not seek to regulate the amount of deposit that a landlord may request from his tenant. Although the general practice seems to be that of demanding a month’s rent in advance, there are cases where landlords require down payments in excess of six months up to even a year. Onerous deposits constitute a barrier to access to housing.

6.2 provision regulating conditions for the retention of the deposit

The aforementioned study also brought to light another unfortunate reality of the Maltese housing market, namely that of landlords failing to return the deposited amounts at the end of the tenancy. It is a common occurrence amongst landlords to claim that their property would have suffered damage in order to avoid returning the tenants their due.

7. No regulation of utility bills

Further problems relating to the charging of utilities exist in cases where landlords would refuse to register the tenants or at least transfer the bill in their name. In fact the billing company applies two different tariffs, but the favourable rate would only apply in the case of a primary residence (i.e. the same individual cannot benefit from the reduced rates twice). It is very frequent for tenants to be thus overcharged in this respect, with times where landlords would even refuse to present the bill as proof of what they would be charging.

8. Absence of a union for tenants and landlords

A union for tenants is conspicuous in its absence, especially given the current regime that leaves the determination of the terms of the contract completely in the hands of the parties. Tenants have no way of obtaining information on tenancy contracts if not by consulting a lawyer but most of all they have no common forum wherein they could voice their common concerns and negotiate collectively with other representations. One reason why the need for such a representative body never arose could be that for decades government sought to protect tenants itself through the enactment of successive pieces of pro-tenant legislation. In the case of landlords the situation is different since their grievances were always brought forward by other related associations such as those of the developers. The establishment of tenant and landlord unions could certainly be an important stepping stone in the private rental sector especially in terms of effective policy-making.

9. Length of certain proceedings

Lengthy procedures are known to be the norm locally and this is no different in the field of tenancy law, although Act X of 2009 set up a special summary procedure that allows the judge to decree the verdict on the first sitting in the case of default by the lessee. This has also been proven to work – certain judgments were delivered in just over a month's time[923] – however, in the case that the tenant brought a satisfactory prima facie defence the case would have to follow the regular, rather lengthy procedure.

10. No rent during court proceedings

The previous problem is aggravated by the fact that it is only the claims up till the filing of the case that would be liquidated by Court. This means that lengthy procedures could also translate into significant losses for the lessors unless they wanted to file fresh proceedings.

11. Inability to end contract prior to its expiry

A further problem relates to the lessee being unable to end the contract unilaterally upon the happening of a reasonable cause for termination, such as having to move abroad due to employment. This could potentially represent a restriction on his freedom of movement since the impossibility to terminate the contract in Malta could constrain him from taking up better opportunities in any other Member State.

[923] See question 'Do procedures work well and without unreasonable delays?'

12. Constitutionality or otherwise of certain types of tenures

A current controversy relates to the Article 12(2) of the Housing (Decontrol) Ordinance[924] that allowed the conversion of temporary emphyteutical grants into leases that would then be protected indefinitely under the terms of the Reletting of Urban Property (Regulation) Ordinance.[925] A 2009 ECHR judgment filed against Malta had found that the landlord/applicant had indeed suffered a violation of his right to the peaceful enjoyment of his possessions.[926] This was also confirmed more recently by the Maltese Constitutional Court.[927]

13. Inadequacy of amount of rent despite increase mechanism (pre-1995 leases)

Despite the recently introduced mechanisms aimed at gradually increasing the rents of leases negotiated before 1995 (i.e. contracts which terms would remain unaltered throughout the whole length of the tenancy and which would, in turn, be renewable until the death of the tenant) not much justice is being done with owners whose properties have been leased since the pre-WWII period. In fact, the amendments did not take into account the period in which the lease was signed an whilst this arrangement could suit landlords who signed their contracts in the final years prior to the definite liberalisation of the market, the same could not be said for those whose properties had their rents frozen at the rates payable in the 1940s. The minimum threshold of €185 per year established in 2010 is still disproportionate and the marginal triennial increase would do very little to close the gap between the market rent and the actual value that certain landlords receive.

- **Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?**

A section of the law of letting and hiring which seems not to be referred to anymore is the right to preference[928] that could be exercised by the sitting lessee over a prospective one as long as he could equal the same conditions offered by the latter. The landlord was previously bound to notify the new conditions to the sitting tenant by means of a judicial act and the latter would have had a fifteen day period within which to accept them or turn them down.

[924] Cap. 158 of the Laws of Malta. Some other temporary grants were also converted into perpetual emphyteutical tenures.
[925] Cap. 69 of the Laws of Malta.
[926] Amato Gauci v. Malta, App. no. 47045/06, decided on the 15 September 2009.
[927] Dr. Cedric Mifsud v. L-Avukat Generali, decided by the Constitutional Court on the 25 October 2013.
[928] Articles 1590 to 1612 of the Civil Code.

Once he would have made a declaration of acceptance, he would have become bound by these new conditions and the right of preference would have been perfected.[929]

This right was given in view of the tenant's affection towards the tenement as well as in consideration of the inconvenience and expenses caused by a change of residence. In fact, if he had not been occupying the premises he would not have been able to claim this right. The tenant's entitlement would have similarly been extinguished by his failure fulfil any of his obligations during the preceding lease. Moreover, if the landlord declared on oath that he would not have given the tenement on lease for any less onerous conditions for a year from the day of his new demand, the tenant would not have been able to oppose his right. The same would have applied if the landlord gave the tenement to any of his relatives up to the degree of a cousin. This mechanism even foresaw the bad faith of the landlord and the discovery of fraud would have entitled the sitting tenant to the reimbursement of any damages or losses.[930]

It is interesting to note how this right remained in abeyance during the time that the Reletting of Urban Dwellings (Regulation) Ordinance was in force due to the fact that the latter granted a wider form of protection to the tenant.[931] This provision probably fell in disuse after the Civil Code had been made to re-apply to leases in the later years. This part of the law of letting and hiring is particularly important since it showed the legislator's intention to give added protection to the tenant. In recent decades, however, these sections were omitted thereby rendering the law much more liberal and pro-landlord than it was intended to be in the first place.

- **What kind of tenancy-related issues are currently debated in public and/or in politics**

Tenancy has not been the object of public discussion save for two instances: the first one concerns the disproportionate burdens that landlords are still being made to bear due to the protective statutes enacted throughout the years and the second relates to the public revenue coming from rental incomes.

The constitutionality of the law that enables temporary emphytheutical grants to be converted into perpetual ones or protected leases has been successfully challenged in front of both the ECHR as well as the Maltese Constitutional Court.[932] The insignificant amounts that landlords have been receiving in

[929] Ibid. no. 299, 738.
[930] Ibid. no. 299, 739-743.
[931] Ibid. no. 299, 743.
[932] See 'Problems of tenancy law and its enforcement', no. 12.

return for their properties as well as the length of time for which they would have been deprived of their properties have also prompted the government to finally draft a reform in 2009.[933] The effects of intrusive government interventions that were dictated by past vicissitudes are, however, still being felt very strongly: the mechanisms to increase rent did not only have a marginal effect in certain cases but the new provisions also left out of their scope the numerous properties that had been requisitioned by government. The recent decision by the Constitutional court has certainly set more urgency to further reforms.[934]

Rental income has also been in the spotlight recently due the notorious practice, on the part of numerous landlords, to conceal their profits from the State. The current administration had brought it up in the run up to the last election and the reduced rate of 15% withholding tax will start applying from the beginning of 2014. It is hoped that this reduction will boost the revenue that government generates in this area.[935]

7. Effects of EU law and policies on national tenancy law

7.1. EU policies and legislation affecting national housing policies

Although housing issues have never been addressed directly by the European Union, and no specific policy was dedicated to the sector, its organs have on more than one occasion affirmed the importance of housing rights especially in the ambit of economic and social policies. One of the first instruments to have recognised housing as a key issue in combating social exclusion was a white paper on European Social Policy drafted by the Commission in 1994.[936] Further European initiatives in this fields included the decision of the European Parliament in July 2005 to make expenditure on housing renewal eligible for European Structural Funding, that was closely followed by the Proposal of a European Charter for Housing which most of all read that the EU had to make sure that its policies contributed in “establishing a favourable and incentive framework for the Member States’ housing policies” complimenting the Union’s affirmed objectives in relation to cohesion and sustainable urban development. The proposal also underlines the impact that housing problems have on competitiveness, employment and social inclusion since the absence of a proper home compromises both employment as well as studying opportunities.[937]

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[933] Act X of 2009, operative since the 1 January 2010.

[934] 'Unconstitutional rent law must change - Franco Debono', *Maltatoday*, 13 November 2012.

[935] 'Labour promises 15% final withholding tax on property rentals', *The Times (Malta)*, 16 January 2013; 'Labour would slash taxes on rental income', *The Times (Malta)*, 17 January 2013; 'The full Budget - the top 10, and the rest of 2014's measures', *Maltatoday*, 4 November 2013.

[936] Commission of the European Communities, European Social Policy - A Way Forward for the Union, White Paper, 27 July 1994, 38.

[937] Urban Intergroup, "Proposal of a European Charter for Housing", 4 April 2006. The URBAN Intergroup at the European Parliament that was responsible for the drafting of this document is a cross-party and cross-committee grouping committed to urban-related issues.

These developments lead to the European Parliament resolution of the 10 May 2007 on housing and regional policy[938] that further built upon the concept of the spillover effect of housing problems onto other social aspects to which the EU was committed such as social inclusion and mobility. These efforts culminated in the Parliamentary Declaration of 2008 in which a group of MEPs called on the Council to agree on an EU-wide commitment to end street homelessness by 2015[939] and another one in 2010 where the European Commission was urged to develop an EU homelessness strategy along the guidelines laid down in the Joint Report on Social Protection and Social Inclusion[940] adopted in March 2010 and to gather data on homelessness.[941]

EU policies have not affected Malta by any large degree yet. The state is very much involved in providing social protection and the citizens perceive assistance almost as an entitlement.[942] The Maltese system of social protection is in fact well-developed as opposed to its Southern European counterparts.[943] Contrary to countries that have little or no social housing, Malta has a considerable percentage of its housing stock (10%-12%) that benefits from governmental assistance.[944] In addition, there is no housing shortage in Malta, on the other hand, around 39,000 dwellings (or approximately 15% of the total housing stock) lies permanently vacant.[945] This, of course, does not eliminate the problems of distribution and affordability. It can be said that, recently, the Maltese housing market has only been partly challenged by the rising immigration from North Africa and the mild economic crisis that was, in any case, quickly absorbed by the economy of the island.

Malta has nonetheless benefited from European funding aimed at regenerating rundown areas, renovating common areas of multi-family housing estates and redeveloping vacant space in surrounding areas. One extensive project, which is 85% financed by the European Regional Development Fund, is the 'Stronger Cottonera Communities' that aims to improve the housing conditions of social housing tenants in the Grand Harbour area.[946]

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[938] Resolution 2006/2108(INI).
[939] Written Declaration on ending street homelessness.
[940] Council of the European Union, Joint Report on Social Protection and Social Inclusion 2010, 6500/10, 15 February 2010.
[941] Written Declaration on EU homeless strategy.
[942] Ibid. no. 32, 113.
[943] E.P. Delia, *Towards Sustainable Welfare Programmes and Pensions in Malta*, Malta Chamber of Commerce, 1998, 17; A.M. Abela, G. Cordina and N. Muscat Azzopardi, *Study on the Social Protection systems in the 13 Applicant Countries: Malta*, Country Study, European Commission, Brussels, 2003.
[944] Ibid. no. 32, 150: The reasons that Vakili-Zad attributes to this difference is the impact of the British housing policy in Malta; all the early major studies on housing, in fact, have been conducted by British experts and many of their recommendations have been carried out.
[945] K. Sansone, "Half of 'vacant' dwellings are actually summer residences", The Times (Malta), 16 October 2013.
[946] ERDF104 - Stronger Cottonera Communities, <http://www.housingauthority.com.mt/EN/content/34/ERDF104%20%20Stronger%20Cottonera%20Communities>

The local Housing Authority has also participated in another ERDF project that enabled the installation of a Photovoltaic system through which the authority could use renewable clean energy throughout its offices.[947]

7.2. EU policies and legislation affecting national tenancy laws

- **EU social policy against poverty and social exclusion**

The European Union plays a very important complimentary role to that of the Member States in the field of poverty and social exclusion. The EU undertook to strengthen the European social model in the Lisbon Special European Council of 2000 where it was agreed to promote social integration through actions such as the encouragement of work and the guarantee of social stability. The EU organs have also been very active in combating racism, promoting equality of opportunity between sexes as well as aiding the plight of disabled citizens.[948] The most recent National Report on Strategies for Social Protection and Social Inclusion takes into consideration both the objectives and targets of the Lisbon Agenda.[949]

In addition, the EU has set up a structural fund corresponding primarily to the obligations that emanate from Articles 164 and 175 of the TFEU that states the aims of the European Social Fund (ESF) amongst which is economic, social and territorial cohesion. The National Strategic Reference Network[950] that establishes the strategic priorities for EU structural funds for Malta in the period 2007-2013 lists social inclusion under objective number 3.[951] The fund has allowed social housing providers to reach unemployed persons by providing them with psychological assistance as well as training. In Malta the ESF co-financed a substantial part of a 3-year long project, initiated in 2005, that targeted individuals who at the age of 18 would be leaving institutes and looking to enter the employment market, often without shelter and

[947] ERDF 102 – Energy Smart Authority <http://www.housingauthority.com.mt/EN/content/32/ERDF102%20-%20Energy%20Smart%20Authority>

[948] The Lisbon Special European Council (March 2010): Toward a Europe of Innovation and Knowledge: <http://europa.eu/legislation_summaries/education_training_youth/general_framework/c10241_en.htm>

[949] National Report on Strategies for Social Protection and Social Inclusion 2008-2010, 6: <https://secure3.gov.mt/socialpolicy/admin/contentlibrary/Uploads/MediaFile/nap_inc_2008_2010.pdf>

[950] Strategic objective 3 - Social Inclusion, 86**:** <http://mfin.gov.mt/en/home/popular_topics/Pages/National-Strategic-Reference-Framework.aspx>

[951] National Report on Strategies for Social Protection and Social Inclusion 2008-2010, 6: <https://secure3.gov.mt/socialpolicy/admin/contentlibrary/Uploads/MediaFile/nap_inc_2008_2010.pdf>

employment. Both the local Housing Authority as well as the Employment Training Corporation participated in this project.[952]

Another EU target is the Europe 2020 strategy that aims at lifting at least 20 million people out of poverty and social exclusion as well as increasing the employment of the European population across the board. Amongst the flagship initiatives within this ambitious project there lies the Platform against Poverty and Social Exclusion.[953] Malta has of course adhered to these targets and it has undertaken to reduce the local population at risk of poverty or social exclusion by 6,560 individuals.[954]

The past years have also seen the establishment of the National Commission for the Promotion of Equality (NCPE), which is an independent, government funded body aiming to monitor matters related to gender, racial, ethnic and religious equality.[955]

- **consumer law and policy**

There is no doubt that in the field of consumer law, especially in regard to those measures adopted from the nineties onwards, the impetus for change in Malta was owed to the EU. The first act in relation to consumer law, the Consumer Protection Act, was enacted in 1981; this was eventually replaced by the Consumer Affairs Act in 1994 that had already started envisaging Malta's entry into the EU. This act is still in place as Chapter 378 of the Laws of Malta and it sets up the position of Director General (Consumer Affairs), the Consumer Affairs Council[956] and the Consumer Claims tribunal.[957] The Act also provides rights for recognized consumer associations and now it incorporates the: i) Unfair terms directive;[958] ii) Injunctions directive;[959] iii)

[952] EQUAL – Headstart: <http://www.housingauthority.com.mt/EN/content/30/EQUAL%20-%20Headstart>. Headstart was chosen from the EU as a "Winning Story" from all the projects that were co-financed under the EQUAL programme. Another similar project in which the Housing Authority was involved was the E4L - Embark for Life project <http://www.housingauthority.com.mt/EN/content/33/E4L%20-%20Embark%20for%20Life**>.**

[953] <http://ec.europa.eu/social/main.jsp?catId=961&langId=en>

[954] National targets: <http://ec.europa.eu/europe2020/pdf/targets_en.pdf>

[955] The NCPE is established under the Equality for Men and Women Act, Chapter 456 of the Laws of Malta. This Act implements Directive 2010/41EU of the European Parliament and the Council of 7 July 2010 on the application of the principle of equal treatment between men and women.

[956] Both contained in Part II of Chapter 387.

[957] Part III of Chapter 387.

[958] Directive 93/13/EEC on unfair terms in consumer contracts.

[959] Directive 2009/22/EC on injunctions for the protection of consumers' interests.

Guarantees directive;[960] iv) Product liability directive[961] and the; v) Unfair practices directive.[962]

Malta's accession also meant the adoption of the directive on misleading and comparative advertising,[963] which was transposed into the Maltese Commercial Code[964] and the Timeshare Directive[965] enacted through subsidiary legislation 409.02. The directive on consumer rights[966] has not been transposed in any local instrument. These European measures must of course be added to other regulations governing consumer law in the EU and that may potentially impact tenancy law disputes.[967]

It is interesting to note that all of these directives provide for all the stages of the contract: the pre-contractual stage, the contractual stage as well as the post-contractual stage.[968] All of these measure aim to safeguard the consumer's economic interests, his right to proper information as well as an eventual possibility of legal redress. With regard to unfair commercial practices it is important to note that the directive does not create maximum harmonization in the field of immovable property therefore Member States may not establish stricter rules in this area[969] however, since the directive has a horizontal applicability it stretches to any business-to-consumer transaction.[970]

Important progress has also been registered in ensuring proper and effective means of redress. The directives themselves encourage the Member States to take action in order to ensure full compliance with the said directives. In May 2011, Malta established the MCCAA in order to safeguard the interests of the consumers and enhance their welfare, amongst other things, through the co-ordination of standards and the establishment, jurisdiction and procedure of an appeals tribunal.[971] The MCCAA eliminated the previous difficulties relating to the specialized regulators for each different sector of consumer protection and the Director of Consumer Affairs' inability to act

[960] Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees.
[961] Directive 85/374/EEC concerning liability for defective products.
[962] Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.
[963] Directive 2006/114/EC.
[964] Chapter 13 of the Laws of Malta (changes introduced through Act II of 2008).
[965] Directive 2008/122/EC on the protection of consumer in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.
[966] 2011/83/EC.
[967] Regulation 861/2007/EC establishing a European small claims procedure and Regulation 2006/2004/EC on cooperation between national authorities responsible for the enforcement of consumer protection laws.
[968] A. Azzopardi, The Contribution of EU Directives to the Objective of Consumer Protection, Elsa Malta Law Review, 2012:II, 44.
[969] Unfair Commercial Practices Directive, Article 3.
[970] Ibid. no. 968, 50.
[971] Chapter 510 of the Laws of Malta.

autonomously. The main organs of the Authority are the Board of Governors, the Co-ordination Committee and four other entities: i) Office for Competition, ii) Office for Consumer Affairs, iii) the Standards and Metrology Institute and the iv) Technical Regulation Division. Each of these entities is in turn headed by a Director General and they comprise several directorates.[972] The Office for Consumer Affairs, for instance, encompasses three directorates namely, the Complaints and Conciliation Directorate, the Information, Education and Research Directorate and the Enforcement Directorate.[973] It is the latter Directorate that focuses on the enforcement of consumer protection legislation and investigates unfair trading practices and unfair contract terms.[974] In 2012, the Office issues three warning statements in order to caution consumers against traders who were supplying services in an unsatisfactory manner.[975]

Consumer complaints are dealt with by the Consumer Claims Tribunal, established under the Consumers' Affairs Act, which is the mechanism set up in order to resolve disputes between consumers and traders when conciliation would not have yielded any agreement. An Appeal would only be available if the value would be superior to €1,200[976] and the trader is given 20 days within which to comply with the Tribunal's decision. If the trader persisted in refusing to respect the decision, then the consumer would be able to resort to the applicable civil law remedies.[977] The number of cases that were heard in the year 2012 amounted to a total of 481.[978] As explained in part 6.7 there is no doubt as to the applicability of consumer law in regard to tenancy contracts negotiated with professional landlords, however, no cases of letting and hiring have yet been reported to the MCCAA.

- **competition and state aid law**

Competition is intrinsically linked to consumer law since it is only the former that enables the consumer to reap the full benefits from the free market. Malta's Competition Act[979] was enacted in 1994 as part of the country's preparations to join the EU. This represented a very important turning point since up to the seventies and the early eighties Malta had followed a very strict protectionist policy which had resulted in a "proliferation of state

[972] Malta Competition and Consumer Affairs Authority, Report and Accounts, 23 May 2011-31 December 2012, 3.
[973] Malta Competition and Consumer Affairs Authority, Report and Accounts, 23 May 2011-31 December 2012, 8.
[974] Ibid. no. 973, 10.
[975] Ibid. no. 973, 10.
[976] Unless it is brought retarding any matter relating to the jurisdiction of the Tribunal, any question of prescription or where the tribunal has acted contrary to the rule of natural justice as, as a result seriously prejudiced the rights of the appellant.
[977] The costs for execution in this case, however, would only amount to one-half of the Court-fees would normally be due (Article 25 of Chapter 378).
[978] <http://www.mccaa.org.mt/en/consumer-claims-tribunal>
[979] Chapter 379 of the Laws of Malta.

monopolies and government-granted monopolies".[980] The provisions of the Competition Act had been modelled on the competition rules of Articles 81, 82 and 86 of the EC Treaty and in 2003 a merger control system was set up in order to monitor the lessening of competition through concentrations.[981] This legislation had also set up the Office for Fair Competition that had the competence to both investigate as well as decide cases of anticompetitive behaviour, and the Commission for Fair Trading that reviewed these decisions, or in certain other instances acted as adjudicator of first instance. EU competition law served as the "guiding light" for both the Office and the Commission and upon the country's accession in 2004, the Competition Act was amended to empower them to apply the EU instruments.

Since the setting up of the MCCAA in 2011 all matters of competition fall under the Office for Competition[982] that has also acquired wider decision-making powers. It has the power to enforce both the rules contained in the Competition Act as well as EU competition rules.[983] Decisions could be appealed in front of the Competition and Consumer Appeals Tribunal.[984] In 2012, the Office for Competition had investigated 33 competition cases,[985] ten of which were instituted after the amendments to the Competition Act.[986] Only one of those cases concerned the property market and it was being investigated under prohibited agreements and practice.[987]

If an alleged breach is confirmed by the Office for Competition, the person who would have suffered damage due to the infringement would be able to bring a claim for damages before the Maltese Courts.[988] The abovementioned Collective Proceedings Act is equally applicable to violations of competition law and Malta is also about to introduce its leniency policy in order to incentivise whistle-blowing on the part of businesses.[989] In addition to those entities, Malta's accession entailed the setting up of the State Aid Monitoring Board that aims at ensuring that the various schemes issued by the Maltese government are in line with the EU state aid rules. This Board has been operative since 2000 and it falls under the Ministry of Finance.

No case of tenancy law has been heard by the Office for Competition although prior to the latest reform 'unfair competition' had become an issue in

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[980] E. Buttigieg, "Market Liberalisation, Competition and Consumer Welfare - Are We There Yet?" Available on:
<http://www.um.edu.mt/europeanstudies/books/CD_CSP5/pdf/ebuttigieg.pdf>.

[981] Control of Concentrations Regulations, Subsidiary Legislation 379.08.

[982] Established by Article 13 of the Malta Competition and Consumer Affairs Authority Act.

[983] Following Malta's accession into the EU the Office was enabled to participate in the European Competition Network (ECN) which allows the national authorities to act more closely with the main European organs.

[984] Established by Article 31 of the Malta Competition and Consumer Affairs Authority Act.

[985] As at April 2012.

[986] Parliamentary Question 33657, Parliamentary Sitting 464, 25 April 2012. The amendments in question are those contained in Act VI of 2011.

[987] Article 5 of the Competition Act.

[988] Competition Act, Article 27A.

[989] Malta does not have a leniency policy but a public consultation period on 'Leniency Regulations' was launched on 14 June 2013. This process was closed in August (http://mccaa.org.mt/en/consultations-publications).

the field of commercial leases.[990] The huge discrepancies between protected and unprotected leases had brought about great disadvantages to new entrants in the market. Pre-1995 commercial leases have for this specific reason been treated less leniently by the reform.

It must also be said, however, that despite these milestones Malta will always encounter limitations in this specific field. The small size of the market, in fact, means that in certain specific circumstances a multiple number of industries would require a disproportionate effort to survive or reach efficiency. This in turn means that the local entities need to be more watchful for possible abuses.[991]

- **tax law**

The impact of EU tax law over the local housing market has been minimal. As mentioned under question 2.4 relative to taxation, the seller and the purchaser are only subject to a one-time payment upon the transfer. Stamp duty for buyers is at 5% (of which 1% is paid provisionally upon entering the promise of sale agreement) whilst the tax on the transfer of immovable property is subject to a final withholding tax of 12%, unless the seller wanted to opt for the 35% capital gains tax in the case that he would have only held the property for a period of less than twelve years.[992] "Non-residents" may also opt for the latter system.[993] In case of rent, it would only be the landlord who would be subject to income tax.[994]

What the EU certain prompted were changes to the Value Added Tax Act.[995] In Malta, accommodation in hotels and other licensed premises is one of the services that are charged at a reduced rate,[996] however, in 2011 the rate rose from 5 to 7%.

EU accession has also entailed changes to corporate tax refund mechanisms. The International Trading Company (ITC) and International Holding Company

[990] Ibid. no. 72, 35.
[991] Ibid. no. 980, 9. In Commission Decision 2006/859/EC of 28 November 2006 granting Malta a derogation from certain provisions concerning common rules for the internal market in electricity, Malta was defined as a 'small isolated system'.
[992] Cap, 123, 5A(3)(b).
[993] "Non-residents" are defined by the Immovable Property (Acquisition by Non-Residents) Act (Chapter 246 of the Laws of Malta) as non-Maltese citizens or a citizen of Malta or another Member State who is in possession of a valid residence permit but who would not have been resident in Malta for a minimum continuous period of five years at any time preceding the date of acquisition. In such case the person would be required to bring a confirmation by the tax authorities of his country that he is being subjected to tax on profits derived from the transfer of immovable property situated in Malta.
[994] In the 2014 Budget speech, the administration announced that a final withholding tax of 15% will replace the currently applicable rate of 35%.
[995] Chapter 406 of the Laws of Malta.
[996] The standard rate in Malta is that of 18%.

(IHC) regimes that were set up in order to allow multinational companies to set up a Maltese unit and carry out business activity on the island. Those were however rejected by the European Commission due to the advantages that it gave to companies owned by non-Maltese that made money outside Malta and which did nothing to promote the growth of the Maltese economy.[997] The government therefore opted for an EU approved and EU compliant tax refund system, effectively rendering Malta the only EU member state with a full imputation system.[998] The newly introduced Maltese Taxed Account and the Foreign Income Account, however, apply to all profits derived from local and foreign sources with the exclusion of profits derived directly or indirectly from immovable property situated in Malta. The government decided to treat this sector differently since land is not a mobile factor and such profits do not only arise as a result of the inputs of capital and labour but simply because land has an inherent value relative to its location.[999] Therefore, profits derived from rent would, for tax purposes, be allocated to a separate immovable property account and would consequently not be eligible for refund of tax when distributed to shareholders.

- **energy saving rules**

In line with the EU's 2020 strategy, Malta has set various ambitious targets for energy efficiency, renewable energy and greenhouse gas reduction. One of the aims is not to allow the increase of Malta's greenhouse gas emissions to surge higher than 5% (compared to 2005 levels) in non-Emissions Trading Scheme sectors such as combustion in residential buildings.[1000]

EU law has, in this particular field, been setting the pace for local development. Several Directives have been adopted in the sector including the "Energy Efficiency Directive, the Directive on the energy performance of buildings,[1001] the Directive on labelling and standard product information

[997] European Commission, "State aid: Commission requests phasing out of distortive tax regimes in Malta", Press Release IP/06/363, 23 March 2006: <http://europa.eu/rapid/press-release_IP-06-363_en.htm>

[998] Maltese companies are taxed at 35% on their trading profits and upon distribution of a dividend, the shareholder would be eligible for a tax refund of 30% on the trading profits of the tax paid by the trading companies. The corporate tax rate payable within the group would be therefore that of 5%. A shareholder who would receive a dividend from a Maltese-registered company with only passive interest or royalty income would be able to claim back a refund of 5/7^{ths} of the tax paid by the company on that income. Where, on the other hand, double taxation relief would be obtained the shareholder will be entitled to a two thirds refund of Maltese tax paid.

[999] Inpact International, Fact Sheet 1 - The Malta Company, 2: <http://www.busuttilmicallef.com/content/images/stories/pdfs/abc.pdf>

[1000] Ministry of Finance, the Economy and Investment, Malta National Reform Programme under the Europe 2020 Strategy, April 2011, 41.

[1001] Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 Nº L153/13)].

relating to the consumption of energy[1002] and the Directive on the promotion of the use of energy from renewable sources.[1003] Other recently transposed EU instruments have also given additional safeguards to consumers in relation to supply of energy and several domestic appliances.[1004]

As was discussed earlier the 'Energy Performance of Buildings Regulations 2012'[1005] set out the obligation on the part of the landlord to show and deliver a copy of an Energy Performance Certificate to any prospective tenant. This effectively means that if the tenant discovered that the premises were not of the quality that was promised, this lacking requirement could potentially constitute a hidden defect. In such an event, however, the inferior energy performance would have to be serious enough as to prevent or lessen the use of the premises by the lessee. If this would be the case, the lessee could either proceed to demand the dissolution of the contract or else require a reduction of the rent.[1006]

Besides legislation, the EU has also allotted Maltese energy policies various funds in order to improve efficiency. The Malta Resources Authority has, with the aid of the ERDF, administered several grant schemes in favour of solar water heaters and Photovoltaic systems. The local Housing authority itself has been active in improving energy efficiency in public dwellings by introducing several energy-friendly installations.[1007]

- **private international law including international procedural law**

The COCP gives Maltese Courts jurisdiction over any person in matters relating to property "situate or existing in Malta".[1008] Local rules have, however, been superseded by two European regulations, namely: Council Regulation (EC) No. 44/2001[1009] and Regulation (EC) No. 593/2008 (Rome I).[1010] The relevant articles are 22(1) and 4(1)(c) respectively.

[1002] Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 Nº L 153/1).

[1003] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 Nº L 140/16)].

[1004] For a more detailed description see '*2.2.D Energy Policy*'.

[1005] Published through Legal Notice 376 of 2012. This superseded the previous "Energy Performance of Buildings Regulations 2008" that had been published through Legal Notice 261 of 2008.

[1006] In accordance with Articles 1545 and 1546 of the Civil Code. The lessor would additionally be answerable for any damages that the defect would have cause the lessee.

[1007] For more information see '*2.2.D Energy Policy'*.

[1008] Article 742(1)(c). Maltese Courts also have jurisdiction, of course, over citizens of Malta or over any other person domiciled or-resident or even merely present in Malta.

[1009] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[1010] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

According to Regulation No. 44/2001, contentions on immovable property or tenancies of immovable property would be tried in the jurisdiction where the property would be situated regardless of the domicile of the parties.[1011] The Rome I regulation, on the other hand, lays down that unless the parties would have chosen which law were to govern their contract in the case of a dispute, any agreement relating to a right in rem in immovable property, including tenancies would be governed by the law of the country where the property would be situated. In the case of sale by auction the contract would be governed where the auction would be taking place.[1012]

Whilst taking cognizance of any dispute centered around property situated on the Maltese territory, Maltese Courts would, accordingly, decline to exercise any residual jurisdiction where any another Member State would be reserved exclusivity.

- **anti-discrimination legislation**

Discrimination has certainly been one of the fields where EU law has contributed actively in the enactment of new provisions. The Treaty on European Union (TEU) lists equality as one of values upon which the Union is founded.[1013] The same treaty goes on to lay down that the Union shall combat discrimination, promote equality between women and men and respect cultural and linguistic diversity.[1014]

One of the first acts that were enacted in preparation for Malta's accession was the Equality for Men and Women Act[1015] which provided expressly against discrimination between the sexes. This was followed by the Access to Goods and Services and their Supply (Equal Treatment) Regulations[1016] that gave effect to the provisions of the Directive implementing the principle of equal treatment in the sector. Specific reference to housing, however, is only made by the Equal Treatment of Persons Order[1017] (targeted at racial and ethnic minorities) that prohibits discrimination on the part of either a private or a public entity in relation to "access to and supply of goods and services which are available to the public, including housing."[1018] Under Maltese law,

[1011] The article lists an exception related to tenancies that are concluded for a period of less than six months, where the courts of the Member State where the defendant would be domiciled would also have jurisdiction.
[1012] Regulation (EC) No. 593/2008, Article 4(1)(g).
[1013] TEU, Article 2.
[1014] TEU, Article 3.
[1015] Chapter 456 of the Laws of Malta.
[1016] Subsidiary Legislation 456.01. Subsidiary Legislation 456.02 provides also for the investigative procedures of such breaches.
[1017] Subsidiary Legislation 460.15. This instrument is based on Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive).
[1018] S.L. 460.15, Article 4(1)(d).

investigations on alleged unlawful conduct could also be initiation by the National Commission for the Promotion of Equality itself and the agency is additionally entitled to conduct surveys, publish reports and make recommendations that might serve to eliminate cases of discrimination in this field.[1019]

Another piece of legislation is the Status of Long-Term Residents (Third Country Nationals) Regulations[1020] which aim to ensure equal treatment in respect of third country nationals who are granted long-term residence status in Malta also in regard to "procedures for obtaining housing".[1021] Studies have confirmed that third country nationals, especially those who hail from Africa and the Middle East are largely aware of these rights and remedies that are made available to them and that in most cases the stakeholders of the housing market themselves – such as owners and estate agents – would be unaware of their legal obligations, particularly those emanating from the Racial Equality Directive. It is reported that the NCPE has only received five cases of alleged discrimination in housing on the grounds of race or ethnic origin.[1022]

- **constitutional law affecting the EU and the European Convention of Human Rights**

Although there is no right to housing or to any adequate shelter enshrined in the Maltese Constitution the proper housing of every citizen has always been a public concern. Organs belonging to Government have, in fact, constantly sought to ensure a degree of stability in the housing sector. In previous parts[1023] it has been documented how a long string of responsive interventions including: rent control, control of re-letting, requisition of vacant or partly disused houses, heavy investment in public housing and numerous grants of housing plots.[1024] This has led to a climate where the right to property being claimed by the expropriated landowners resonates much more in the fora of the media, than the rights claimed by the ill-housed. In fact, the State has, on several occasions, been found liable for the violation of the private landlords' right to property even by the Strasbourg Courts. Legal

[1019] Equal Treatment of Persons Order, Article 10(2). The NCPE is also responsible for assisting victims of discrimination, not only physically but also through the evaluation of the local context and the recommendation of areas of improvement.
[1020] Subsidiary Legislation 217.05. The purpose of these regulations is to implement the provisions of Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents. The Regulations determine (*a*) the terms for conferring and withdrawing long-term resident status granted in relation to third country nationals legally residing in Malta and the rights pertaining thereto and; (*b*) the terms of residence in Malta of a third country national who was conferred the status of long-term resident in another Member State.
[1021] Article 11(1)(g).
[1022] More information on discrimination present in the Maltese housing market is contained above under: *Restrictions on choice of tenant – anti discrimination issues*.
[1023] Particularly in the introductions to Part 1 and Part 2 respectively.
[1024] Ibid. 234, 255.

regimes that prolonged the tenures for an indefinite period were held not to ensure a proportionate amount of rent in compensation. In these cases the State has itself relied on the defense that these legislations aimed at the "prevention of homelessness and [the] protection of the dignity of individuals who would not have been able to afford reasonably priced accommodation."[1025]

Malta nonetheless adheres to the United Nations Universal Declaration of Human Rights that asserts the right of every person to a standard of living which safeguards his health, well being and that of his family with regard to housing. Although these fundamental rights and freedoms are recognised in Article 1(1) of the Constitution, which reads that "Malta is a democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual", the right to housing is not specified in any of its provisions.

Malta has additionally ratified various instruments that refer to the right to housing or housing assistance. These include: the International Covenant on Economic, Social and Cultural Rights[1026] that qualifies the required habitation as "adequate", the Convention on the Rights of the Child,[1027] the Convention for the Elimination of all forms of Discrimination Against Women,[1028] the European Convention on Human Rights,[1029] the Charter of Fundamental Rights of the European Union and the European Social Charter.[1030] It is interesting to note that out of these instruments it is only the latter that carries the unequivocal clause that "[e]veryone has a right to housing" (art. 31). However, Malta has not accepted this article and in this respect it has only adhered to Article 16 that ensures the right of every family to appropriate social, legal and economic protection in order to ensure its full development. Malta has also failed to accept Article 30 that guarantees everyone a right to protection and social exclusion.[1031]

[1025] Ghigo v. Malta (Application no. 31122/05). The same Housing Act declares its purpose to be that of making "provision for securing living accommodation to the homeless" and "for ensuring a fair distribution of living accommodation".

[1026] Ratified on the 13 September 1990.

[1027] Ratified by Malta on the 26th of January 1990.

[1028] Ratified by Malta on the 8 March 1991.

[1029] Incorporated into Maltese law through the European Convention Act, Chapter 319 of the Laws of Malta, on the 19 August 1987.

[1030] The revised European Social Charter was ratified by Malta on the 27 July 2005.

[1031] In this respect Malta could potentially be challenged on the treatment of irregular immigrants, when one takes into consideration the decision 'Centre on Housing rights and Evictions (COHRE) v. Italy', decided by the European Committee of Social Rights on the 25 June 2010 (*Complaint No. 58/2009*). In this case Italy was held liable for several policies and practices adopted in respect of Roma and Sinti residents who were constrained to segregation and inadequate housing conditions. This decision is also important since it underlines the right to participation as a component of the right to protection against poverty and social exclusion protected in Article 30 and it went as far as declaring that: "States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation" (par. 107).

Despite the lack of public discussion on the right to housing this report has identified at least two common malpractices that could be prohibited by such a constitutional provision, namely: the landlords' appropriation of sums paid as deposit by the tenants and the demand of excessive advance-payments prior to the tenant's taking of possession.[1032]

- **harmonisation and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)**

The Principles of European Contract Law (PECL), the Draft Common Frame of Reference (DCFR) and the Common European Sales Law (CESL) create separate self-standing contractual regimes with the aim of providing a smoother framework within which to carry transactions in the European Union.[1033] The CESL carries additional importance locally since Malta is one of the four EU countries that has not signed the United Nations Convention on Contracts for the International Sale of Goods (CISG).

These three international instruments would not seem to impact Maltese tenancy law to a very large extent, particularly, because the provisions on letting and hiring that are contained in the Maltese Civil Code have not departed from the principle of absolute freedom of contract, based on the autonomy and self-determination of both parties. This is very much reflected in one of the founding sections of the PECL which lay down that parties are free to enter any contract and determine its contents subject only to three requirements: good faith, fair dealing and any other mandatory rules established in the same principles.[1034] If therefore, these instruments of unification were to affect Maltese tenancy law, they would seem to do so mostly during the pre-contractual stage.

As said previously[1035] in Malta there is no specific provision on "culpa in contrahendo", however, jurisprudence has given weight to the principle of good faith and the obligation of the contracting party to give due regard to the other party's interests. Both the DCFR as well as the CESL elaborate on this point of pre-contractual duties. The PECL lay down the principle that a negotiating party who would have broken off negotiations contrary to good faith and fair dealing would be liable for losses caused to the other party.[1036]

[1032] These particular topics are dealt with in more detail in Part 2 under the respective headings of 'Deposit' and 'Utilities'.
[1033] O. Lando & H. Beale (eds), Principles of European Contract Law, 2000, p. xxii; DCFR, General, Comment 21; Common European Sales Law, Article 1(1).
[1034] Art. 1:102: Freedom of Contract.
[1035] In: *Ancillary duties of both parties in the phase of contract preparation and negotiation.*
[1036] Art. 2:301: Negotiations Contrary to Good Faith.

The DCFR goes further by defining "good faith and fair dealing" in I-1:103 as a "standard of conduct characterised by honesty, openness and consideration for the interests of the other party to the transaction or relationship in question".[1037] The CESL takes this definition into its stride, however, it moves a step backward from the general duty of good faith and limits it to an inflexible list of specific information duties (art. 23), in so doing, shifting the focus onto procedural rather than substantive fairness.[1038] The CESL thereby appears to limit considerably the protection that would possibly be given under Maltese law.

The CESL is also important in respect of the implied warranty of fitness for the purpose agreed with the seller at the time of the conclusion of the contract.[1039] Under Maltese law, in fact, the law of letting and hiring in respect of the warranty against defects largely reflects the provisions on the law of sale.[1040] The CESL places considerable emphasis on the duty of disclosure and the seller is obliged to warrant the suitability of the goods for the purpose that the buyer would have expressed.[1041] It is also interesting to look at the buyer's remedies under the CESL in the case of defective goods. Article 106 in fact entitles the buyer to: i) require repair or replacement, ii) withhold the payment of the price, iii) terminate the contract and oblige the seller to return the price, iii) reduce the price or iv) claim damages. The buyer may therefore turn down any offer on repair or replacement and order the price to be reduced immediately, claim damages or terminate the contract. In this respect there seems to be no conflict with Maltese law since all three remedies are equally available.[1042]

Although not applying to immovables[1043] one may also note that the provisions of the DCFR relating to lease (including the remedies for non-performance and rights to enforce performance) do not represent any major departure from the principles contained in the Maltese Civil Code. The DCFR, however, contains two innovative concepts that are not contemplated under Maltese law. The first one relates to the limitation of right to enforce payment of future rent (IV.B-6:101) and the second one to the subsidiary liability of the lessor in the case that there is a change in ownership and a consequent

[1037] Subsection 2 goes on: "It is, in particular, contrary to good faith and fair dealing for a party to act inconsistently with that party's prior statements or conduct when the other party has reasonably relied on them to that other party's detriment". Under 3:301 'Negotiation and confidentiality duties', the injured party would be entitled to damages if the other party entered the negotiations without the intention of reaching an agreement.

[1038] P. Giliker, "Pre-contractual Good Faith and the Common European Sales Law: A Compromise Too Far?", European Review of Private Law, 2013:21(1), 91.

[1039] CESL, Article 100. Article 69 further lays down that: "Where the trader makes a statement before the contract is concluded... about the characteristics of what is to be supplied under the contract, the statement is incorporated as a term of the contract."

[1040] Ibid. no. 299, 721.

[1041] For a critique of this Article see: D.G. Baird, 'Precontractual disclosure duties under the Common European Sale Law", Common Market Law Review, 2013:1, p. 14.

[1042] In the case of leases, reimbursement of damages would be due only in the case of bad faith on the part of the lessor, i.e. in case the lessor did not reveal the defect which already existed at the time of the lease, of which he was since then aware, or had well-founded suspicions that it existed (Ibid. no. 299, 721).

[1043] DCFR, IV.B-1:101 Comment E.

substitution of his position (IV.B–7:101).

As regards the first case, the DCFR seems to envisage a situation where the lessee would no longer require the property and opt to request an anticipated termination of the contract. Like the Civil Code, the DCFR lays down that "a definite lease period cannot be terminated unilaterally beforehand by giving notice"[1044] however, if the lessee wished to return the property and it would be "reasonable for the lessor to accept [its] return" then the latter would not be able to enforce payment of future rent, but simply limit his claim to damages. Default in payment would in most cases not be accepted as an excuse, but the release from the obligation to maintain the property, for instance, would be more relevant in practice. To what extent a new lease with a third party would reduce the loss would depend on the circumstances.[1045] Whilst granting the landlord the right to choose between enforcement of the contract and its termination (including any consequent damages)[1046] the Maltese Civil Code does not put this obligation on the landlord.

The second case concerns the specific case where an owner decides to sell the leased property whilst the contract would still be running. The DCFR here imposes on the seller, or former lessee, a relationship of personal security over the new lessee's performance. This solution is owed to the fact that under the DCFR the former owner's discharge depends on the lessee's assent.[1047] In practice, the only possible performance for the former owner would be the payment of money, either as performance of a claim of money or as damages for non-performance of a non-monetary claim.

- **fundamental freedoms**
    - **e.g. Austrian discussion on secondary homes; licence to buy house needed?**

Citizens of all EU Member States may freely proceed to purchase property in Malta as long as they would intend to use it as their primary residence. Otherwise they would have to have resided continuously on the island for a minimum period of five years. If the purchaser neither intended to use the property as his primary residence nor would he have fulfilled the five-year residence requirement, he would have to require permission prior to proceeding with the purchase of the immovable. The acquisition of immovable property by non-residents is regulated by the Immovable Property (Acquisition by Non-Residents) Act.[1048] In this case, the minimum price would be €104,486.37 for the purchase of a flat or maisonette or €174,143 for the purchase of any other immovable property.[1049] Non-residents are not allowed

[1044] IV.B-2:102.
[1045] IV.B-6:101 Paragraph C.
[1046] Civil Code, Article 1570.
[1047] III.–5:302 (Transfer of contractual position).
[1048] Chapter 246 of the Laws of Malta.
[1049] Inland Revenue Department: <http://www.ird.gov.mt/aip/faqs.aspx>.

to own more than one immovable property at once and most of all any property acquired by them would not be capable of being rented out.

Restrictions do not apply to EU commercial partnerships as long as the property would be required for business purposes and at least 75% of its share capital would be held by an EU Member State citizen. Unless these requirements were fulfilled, permission would only be granted if the property were to be required "for an industrial or touristic project or as a contributor to the development of the economy of Malta".[1050]

Permission is also not required if the property in question would be located in a Special Designated Area. These areas are regulated by the Immovable Property (Designation of Special Areas) Regulations[1051] and they would usually consist of an array of high-end properties that could be freely acquired by locals and foreigners alike.

The free movement of EU nationals is safeguarded by the 'Free Movement of European Union Nationals and their Family Members Order'.[1052] This legislation allows EU citizens, together with their families, to freely take up residence in Malta for any period up to three months. If the latter period expired, the person would have to apply for a registration certificate with the Director of Citizenship and Expatriate Affairs; the validity of such residence would be valid for a period of five years.[1053] In line with the rules that were described above, an EU citizen who would have resided legally for a continuous period of five years would be granted permanent residence.[1054]

A recent case of discrimination in the local housing market concerned the charging of excessive rates to foreign nationals in relation to utility bills. It was in fact alleged by a lobby group of European expatriates alleged that the relative pricing schemes issued by the Automated Revenue Management Services (ARMS) Corporation, imposed a higher rate of around 30% on non-Maltese EU citizens.[1055] This was due to the fact that foreigners were encountering difficulties in benefiting from the reduced "residential" rate and, instead, they were being charged at the standard "domestic" rate. Although it seemed as a prima facie case of outright discrimination, the matter at hand simply concerned the decision, on the part of the Maltese authority, not to

[1050] Ibid. no. 1049: <http://www.ird.gov.mt/aip/currentconditions.aspx>.
[1051] Subsidiary Legislation 246.02.
[1052] Subsidiary Legislation 460.17, implementing Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
[1053] Ibid. no. 1052, Article 7; or for the envisaged period of his residence if the resident intended to stay less than five years. The validity of the residence permit would cease upon the interruption of the continuous residence for a period exceeding two years.
[1054] Ibid. no. 1052, Article 6.
[1055] B. Borg, 'Non-Maltese EU citizens to sue over higher bills', The Times (Malta), 15 December 2012.

accept a Maltese identity card as proof of residence in the case of foreign nationals.[1056] Therefore, the nature of the obstacle being faced by these foreigners seemed to be more bureaucratic rather than legal. The European Commission itself refrained from proceeding against Malta after entering into the merits of this case.[1057] The lobby group has now come to an agreement with the relevant Ministry together with ARMS Ltd wherein the billing company declared that it would start considering locally-issued ID cards and e-residence cards as sufficient proof of residence in cases of foreign nationals applying for the reduced energy tariffs.

Summary Table 16 The effect on EU policy and legislation over national housing policies and tenancy law

EU Policies	National housing policies and tenancy law
EU social policy against poverty and social exclusion	• European funding used to regenerate rundown areas, renovate common areas of multi-family housing estates and redevelop vacant space in surrounding areas • Target to reduce the local population at risk of poverty or social exclusion by 6,560 individuals in line with Europe 2020 Strategy
Consumer law and policy	• Consumer Affairs Act containing rights for recognized consumer associations and incorporating Unfair Terms Directive, Injunctions Directive; Guarantees Directive; Product Liability Directive and Unfair Practices directive. Transposition of Directive on misleading and comparative advertising and Timeshare Directive • Establishment the Malta Competition and Consumer Affairs Authority (MCCAA) • European Consumer Centres' Network (ECC-Net)
Competition and state aid law	• Establishment of Office for Competition (under MCCAA) • Establishment of State Aid Monitoring Board that aims at ensuring that the various schemes issued by the Maltese government are in line with the EU state aid rules
Tax law	• Minimal impact of EC law over housing market; tax payable only upon transfer and acquisition of property (no VAT applies for purchase or sale of immovables) • Accommodation in hotels and other licensed premises charged at a reduced rate 7% • In case of companies, profits derived from rent would be allocated to a separate immovable property account and tax would not be eligible for refund when distributed to shareholders
Energy saving rules	• Target not to allow greenhouse gas emissions to surge higher than 5% (compared to 2005 levels) in non-Emissions Trading Scheme sectors such as combustion in residential buildings - in line with Europe 2020

[1056] Foreign residents were for instance required to prove they were permanently residing in Malta by submitting income tax declarations.
[1057] I. Camilleri, "No discrimination' in foreigners' higher tariffs', The Times (Malta), 24 Juanuary 2011.

	• Implementation of Energy Efficiency Directive, Directive on the energy performance of buildings, Directive on labelling and standard product information relating to the consumption of energy, Directive on the promotion of the use of energy from renewable sources and Directives in relation to supply of energy and several domestic appliances • Aid of the ERDF in administration of grant schemes in favour of solar water heaters and Photovoltaic systems
Private international law including international procedural law	• COCP, Council Regulation No. 44/2001 and Regulation No. 593/2008 (Rome I) vest the Maltese courts with jurisdiction over disputes dealing with property that is located on the Maltese territory
Anti-discrimination legislation	o Transposition of European legislation in the Equality for Men and Women Act, Access to Goods and Services and their Supply (Equal Treatment) Regulations, Equal Treatment of Persons Order and Status of Long-Term Residents (Third Country Nationals) Regulations ensure equality of treatment between persons of different sex, race and ethnic origin. Setting up of National Commission for the Promotion of Equality.
Constitutional law affecting the EU and the European Convention of Human Rights	• No right to housing recognised in Constitution • Ratification of various international instruments but no acceptance of Article 30 of the European Social Charter (Right to Housing).
Harmonization and unification of general contract law	• No large impact on Maltese tenancy law due to relatively wide freedom of contract allowed to lessors and lessees • PECL, DCFR and CESL possibly affecting the pre-contractual stage. • DCFR differing from Maltese Civil Code in introducing limitation of right to enforce payment of future rent and subsidiary liability of the owner/lessor in case of change in ownership
Fundamental freedoms	• EU citizens may freely proceed to purchase property in Malta as long as primary residence • Permission required if secondary residence, unless they would have been continuously resident for previous 5 years • No permission required if Special Designated Area

7.3. Table of transposition of EU legislation

DIRECTIVES	TRANS-POSITION	RELATED SUBJECT	PART QUESTION-NAIRE
CONSTRUCTION			
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 Nº L 134/114)	Subsidiary Legislation 174.04 Public Procurement Regulations	It is envisaged a special allocation procedure for contractors when the target is the construction of social housing (art. 34).	
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJEC 11.02.1989 Nº L 40/12)	Subsidiary Legislation 427.83 Construction Products (Implementation) Regulations	About construction products: free movement and the certificates required.	
TECHNICAL STANDARDS			
Energy efficiency			
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 Nº L 315/1).		Energy saving targets imposed to the State. It also deals with the Public Administration buildings and others that require greater energy savings.	
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 Nº L153/13).	Legal Notice 376/2012 Energy Performance of Buildings Reulations, 2012 under the Building Regulation Act (Cap. 513) and the Malta Resources Authority Act (Cap.423)	Energy efficiency of the new and the existing buildings.	Part II 2.a 'Regulation on energy saving'.
Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 Nº L 153/1).	Subsidiary Legislation 427.24 Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Energy-related Products Regulations	Labelling and basic information for household electric appliances' users.	

Commission Delegated Regulation (EU) Nº 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 Nº L 258/1).			
Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 Nº L 71/1).	Subsidiary Legislation 427.24 Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Household Appliances Regulations		
Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 Nº L 140/16).	Subsidiary Legislation 423.19 Promotion of Energy from Renewable Sources Regulations	Promotion of the use of renewable energy in buildings.	
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 Nº L 211/55).	Subsidiary Legislation 423.22 Electricity Market Regulations	Basic standards for electricity sector.	
Heating, hot water and refrigeration			
Commission Delegated Regulation (EU) Nº 626/2011 of 4 May 2011 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 Nº L 178/1).	Legal Notice 266/2013 Energy Labelling Requirements for Air Conditioners (Implementation) Regulations, 2013 under the Product Safety Act (Cap. 427)	Labelling and information to provide about air conditioners.	

Commission Delegated Regulation (EU) Nº 1060/2010 of 28 September 2010 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 Nº L 314).	Subsidiary Legislation 427.24 Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Energy-Related Products Regulations	Labelling and information to provide about household refrigerating appliances.	
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 Nº L 211/94).	Subsidiary Legislation 423.21 Natural Gas Market Regulations	Basic legislation about natural gas in buildings and dwellings.	
Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 Nº L 378/19).	Requirements of this Directive reflected in the Technical Guidance (Part F) Conservation of Fuel, Energy and Natural Resources (Minimum requirements on the energy performance of buildings regulations, 2006)	Legislation about heating and hot water in dwellings and buildings.	
Household appliances			
Commission Delegated Regulation (EU) Nº 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU 9.5.2012 Nº L 123/1).		Labelling and information to provide about tumble driers.	
Commission Delegated Regulation (EU) Nº 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 Nº L 314/1).	Subsidiary Legislation 427.24 Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Energy-Related Products Regulations	Labelling and information to provide about dishwashers.	

Commission Delegated Regulation (EU) Nº 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 Nº L314/47).	Subsidiary Legislation 427.24 Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Energy-Related Products Regulations	Labelling and information to provide about washing machines.	
Commission Delegated Regulation (EU) Nº 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 Nº L 314/64).	Subsidiary Legislation 427.24 Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Energy-Related Products Regulations	Labelling and information to provide about televisions.	
Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 Nº L 170/10).	Legal Notice 235\2003 Indication by Labelling and Standard Product Information of the Consumption of Energy and other Resources by Household Appliances (Amendment) (No. 2) Regulations, 2003 under the Product Safety Act	Labelling and information to provide about household electric refrigerators and freezers.	
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 Nº L 128/45).	Subsidiary Legislation 427.78 Energy Labelling of Electric Household Electric Ovens (Implementing Measures) Regulations	Labelling and information to provide about household electric ovens.	
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 Nº L 266/1).	Subsidiary Legislation 427.24 Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Household Appliances Regulations	Labelling and information to provide about household combined washer-driers.	
Lifts			
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 Nº	Subsidiary Legislation 427.37 Lifts Regulations	Legislation about lifts.	

L 213).			
Boilers			
Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, Nº L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 Nº 73).	Subsidiary Legislation 427.17 Efficiency Requirements for New Hot-Water Boilers Fired With Liquid or Gaseous Fuels (Implementing Measures) Regulations	Legislation about boilers.	
Hazardous substances			
Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 Nº 174/88).	Subsidiary Legislation 427.57 Restirction of Use of Hazardous Substances in Electrical and Electronic Equuipment Regulations	Legislation about restricted substances: organ pipes of tin and lead alloys.	
CONSUMERS			
Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 Nº L 304/64).	Chapter 378 Consumer Affairs Act, Part VI Unfair Contract Terms	Information and consumer rights. Legislation referred to procurement of services, car park. Immovables are excluded: lease of housing, but not of premises.	(RDL 1/2007) Part II 2.b. 'Ancillary duties of both parties in the phase of contract preparation and negotiation'.
Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) Nº 2006/2004 on cooperation between national authorities	Legal Notice 239/2011 Processing of Personal Data (Electronic Communications Sector) (Amendment) Regulations, 2011 under the Data Protection Act (Cap. 440)	Consumer protection in the procurement of communication services.	

responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 Nº L 337/11).			
Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, Nº 110/30).	Chapter 378 Consumer Affairs Act, Part X Compliance Orders (amended through Act VI of 2011)	Collective injunctions infringements of Directives Annex I.	
Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts	Subsidiary Legislation 409.02 Protections of Buyers in Contracts for Timesharing of Immovable Property Regulations	Consumer protection in timeshare, long-term holiday prodcut, resale and exchange contracts	Part II. 3 'consumer law and policy'
Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC	Subsidiary Legislation 378.10 Consumer Credit Regulations	Consumer Credit	Part II. 3 'consumer law and policy'
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, Nº L 376/21).	Chapter 13 Commercial Code (amended through Act II of 2008)	Misleading advertising and unfair business-to-consumer commercial practices.	
Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) Nº 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 Nº L 149/22).	Chapter 378 Consumer Affairs Act, Part VII Unfair commercial practices and illicit schemes Title I Unfair commercial practices		

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC 04.06.1997 Nº L 144/19).	Subsidiary Legislation 378.08 Distance Selling Regulations	Contracts relating to immovables are excluded, except from lease.	
Directive 1994/44/CE of 25 May 1999 on certain aspects of the sale of consumer goods and associate guarantees		Sale of consumer goods and associate guarantees	Part II. 3 'consumer law and policy'
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 Nº L 095).	Chapter 378 Consumer Affairs Act, Part VI Unfair Contract Terms	Unfair terms	Part II 2.c 'control of contractual terms'.
HOUSING-LEASE			
Regulation (EC) Nº 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 Nº L 177/6).		Law applicable (art. 4.1.c and d and 11.5)	
Council Regulation (EC) Nº 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 Nº L 12/1).		Jurisdiction (art. 22.1)	
Commission Regulation (EC) Nº 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) Nº 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) Nº 2214/96 (OJEC 29.9.2001 Nº L 261/46).		CPI harmonization. Art. 5 includes estate agents' services for lease transactions.	
Commission Regulation (EC) Nº 1749/1999 of 23 July 1999 amending Regulation (EC) Nº 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 Nº L 214/1).		CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and other services.	Part II 2.d 'Index-oriented increase clauses'.

Council Regulation (EC) Nº 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonised index of consumer prices (OJEC 31.07.1998 Nº L 214/12).			
Commission Regulation (EC) Nº 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub indices of the HICP (OJCE 21.11.1996 Nº L 296/8).			
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 Nº L 137/27).		Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantatges to workers who have moved within the EU.	
DISCRIMINATION			
Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 Nº L 373/37).	Subsidiary Legislation 456.01 Access to Goods and Services and their Supply (Equal Treatment) Regulations	Discrimination on grounds of sex.	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 Nº L 180/22).	Subsidiary Legislation 460.15 Equal Treatment of Persons Order	Discrimination on grounds of racial or ethnic origin.	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
IMMIGRANTS OR COMMUNITY NATIONALS			
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 Nº L 155/17).	Subsidiary Legislation 217.15 Conditions of Entry and Residence of Third-Country Nationals for the Purpose of Highly Qualified Employment	Equality of treatment with housing (art. 14.1.g.) However, Member States may impose restrictions (art. 14.2).	

	Regulations		
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) Nº 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 Nº L 158/77)	Subsidiary Legislation 460.17 Free Movement of European Union Nationals and Their Family Members Order	Discrimination on grounds of nationality. Free movement for European citiziens and their families.	
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 Nº L 16/44).	Subsidiary Legislation 217.05 Status Of Long-Term Residents (Third Country Nationals) Regulations	Equal treatment in housing (art. 11.1.f.)	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, Nº L 251/12).	Subsidiary Legislation 217.06 Family Reunification Regulations	The reunification applicant shall prove to have an habitable and large enough dwelling (art. 7.1.a).	
Regulation (EEC) Nº 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 Nº L 257/2).		Equal treatment in housing and access to the housing applicants' lists (Art. 9 and 10.3).	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
INVESTMENT FUNDS			

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) Nº 1060/2009 and (EU) Nº 1095/2010 (OJEU 01.07.2011, Nº L 174/1).	Subsidiary Legislation 370.21 Investment Services Act (Marketing of Alternative Investment Funds) Regulations, Subsidiary Legislation 370.22 Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations, Subsidiary Legislation 370.23 Investment Services Act (Alternative Investment Fund Managers) Regulations, Subsidiary Legisation 370.24 Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations	Real estate investment funds	
ADR			
Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters	Act IX of 2010 amending the Arbitration Act (Cap. 387) Mediation Act (Cap. 474)	Mediation	Part II 2.h 'Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - machnisms of conciliation, mediation or alternative dispute resolution used?

8. Typical national cases

The solutions to these cases are based on the Civil Code (Chapter 16 of the Laws of Malta), the Reletting of Urban Property (Regulation) Ordinance (Chapter 69 of the Laws of Malta) and the Condominium Act (Chapter 398 of the Laws of Malta).

1. Formal Requirements

What is the specific form required for the validity of the contract? (e.g. in writing) Is the contract automatically rescinded if this form is not observed?

Whilst defining lease as a contract "whereby one of the contracting parties binds himself to grant to the other the enjoyment of a thing for a specified time and for a specified rent which the latter binds himself to pay to the former" (art. 1526), the Civil Code follows to state that any contract entered into after the 1st January 2010 should be in writing (art. 1525) and that it should additionally specify five necessary elements: i) property to be leased, ii) agreed use of property, iii) period for which property will be let, iv) whether lease may be extended and v) the amount of rent to be paid (Article 1531A). It is further stated that the absence of even one of those latter requirements would make the contract null (1531A).

Jurisprudence has so far supported the position that once the lessee would have never been compelled to leave the premises and that he would have even paid the rent punctually, his occupation would be held to be in absolute good faith (Emmanuel Vella v. Abdul Al-Kadi[1058]). The Court would therefore appear to accept a receipt as valid proof of the unwritten agreement. This, however, related to the legal position prior to the 2010 amendments which introduced the said necessary requirements. It is still unclear what the Courts would decide if faced by this quandary.

2. What is considered a lease?

A young married couple agree with the elderly mother of the husband to move in with her in return for the performance of certain services that she required due to her advanced age. At a certain point after the couple moved in, the relationship between the wife and her mother-in-law breaks down and the old woman proceeds to demand the eviction of the couple. Is she entitled to do this?

Under Maltese law, the agreement would neither constitute a lease nor a commodatum (art. 1839), but simply an "innominate" contract. Therefore in this case, the couple would be in occupation of the premises by the mere tolerance of the woman and she would be able to proceed to terminate the contract at will. In fact, the rendering of services excluded the creation of a contract of lease according to article 1526(1) of the Civil Code (*Salvatore Borg*

[1058] Decided by the Court of Appeal on the 29 April 2005.

v. Paolo Briguglio et,[1059] *Vincenza Vella v. Edward Borg*[1060]) and it similarly fell out of the definition of a commodatum since it lacked the element of gratuity. The woman can therefore demand their eviction from her residence (*Maria Assunta Cassar et v. Albert Connell*,[1061] *Maria Pace v. Anthony Pace et*[1062]).

3. Subletting

Can the tenant Y sub-let a room in her apartment to Z and if so under what conditions? What are the landlord's rights if Y sub-rents a room without permission (termination, damages)?

The recently amended Article 1614 of the Civil Code provides that the lessee cannot sub-let or assign a lease unless the contract authorizes him to do so. Therefore silence would favour the lessor. The position under the special law[1063] regulating rents contracted before 1995 is almost analogous to the Civil Code with subletting being considered legal in the sole case that it were preceded by the express consent of the lessor. The consequences for subletting the property without permission are either the dissolution of the contract or, in the case of pre-1995 leases, the resumption of possession by the lessor after an application to the Rent Regulation Board (*Joseph Gauci et v. MCL Limited*[1064]). This was confirmed in *Captain Charles Kerr v. Chev. Marcello Eminyan*[1065] that continued consolidating jurisprudence in favour of the lessor's interest not to allow the lessee to speculate and make a profit on property belonged to the lessor. In case of pre-1995 leases, irregular subletting would not entail the invalidation of the contract since the prohibition to sublet without the lessor's consent is a negative obligation which only constitutes a ground upon which the lessor can deny renewal. Jurisprudence has also been very clear on the importance of the consent being express and not merely tacit.

4. Termination

Despite promising payment on several occasions the tenant skipped the payment of three monthly rents. Can the landlord proceed to give immediate notice?

The Civil Code (*art. 1570*) enables the landlord to terminate the contract after he would have called upon the lessee by means of a judicial letter compelling him to pay his dues. If regardless of such notification, the tenant remained in default for a further period of fifteen days, the landlord could proceed to file an action in order to evict the tenant. Local jurisprudence has consistently emphasised the importance of this formality, most recently in *Vincent Sammut*

[1059] Decided by the Court of Appeal on the 17 November 1972.
[1060] Decided by the Court of Appeal (Inferior) on the 28 June 1974.
[1061] Decided by the Court of Appeal (Inferior) on the 7 July 2003.
[1062] Decided by the Court of Appeal (Inferior) on the 28 April 2004.
[1063] Reletting of Urban Property (Regulation) Ordinance, Chapter 69 of the Laws of Malta.
[1064] Decided by the Court of Appeal on the 20 October 2003.
[1065] Decided by the Court of Appeal on the 2 October 2009.

v. Joseph Ellul.[1066] The courts may also inquire into the reasons of the default in order to determine whether it was justified or not (*Joseph Darmanin et v. Giljan Cutajar[1067])* but this would not necessarily be the case when a delayed payment would have been negotiated as an express resolutive condition (art. 1569). For rents which are regulated by the special law, the lessor would only be able to demand repossession of the premises to the Rent Regulation Board after the termination of the lease. In such cases a verbal summoning would be suffice (*Mary Borg et v. John Muscat*[1068]) however two consecutive summonings following two consecutive defaults are required. A tenant would likewise have fifteen days to rectify his position.

5. Change of parties following marriage

Some time after the negotiation of the lease the tenant gets married and his wife moves into the rented apartment. After the marriage the tenant and the landlord agree to renew the lease for a further term. During this second term, the marriage between the tenant and his wife breaks down and he proceeds to negotiate the termination of the lease with the landlord. Can the landlord evict the wife on the basis of this agreement?

The landlord cannot proceed to evict the wife. Since the lease was renewed after the marriage had taken place the rental agreement had started to form part of the community of acquests (as contemplated in aft. 1320 of the Civil Code). Therefore, despite their separation, his wife would be entitled to remain in occupation of the premises until the expiry of the contract. The tenant's request to terminate the agreement would therefore not be sufficient for the latter to demand the eviction of the tenant's former wife (*Carmel Falzon et v. Carmelo Calabretta et*).[1069]

6. Parties to a lease agreement

Following the landlord's request for the payment of rent, the lessee claims that he is not liable for payment since the agreement was signed by his unmarried partner. Would his defence be successful?

The tenant would not be able to exempt himself from payment if it would have been clear that it was their joint intention to rent the residential premises together. Under Maltese law a party who indicates that he is contracting in someone else's name, or who gives the other party reason to believe that he would be doing so, would be binding that other person towards the other party as well (*Frank Cilia noe v. Charles Scicluna*).[1070] This would be so, particularly, if his conduct showed otherwise i.e. if he went to view the apartment together with his partner and if he usually paid the rent himself.

In the case of a registered partnership there would be less problems since the

[1066] Decided by the Rent Regulation Board on the 28 June 2012.
[1067] Decided by the Court of Appeal on the 23 November 2005.
[1068] Decided by the Court of Appeal on the 9 March 1994.
[1069] Decided by the Court of Appeal on the 28 February 2001.
[1070] Decided by the Commercial Court on the 27 April 1992.

partnership agreement would usually provide the division of costs related to the household (*Professor Albert Fenech v. Michel Vat*).[1071]

7. Alterations to the Building by the Tenant

Y, a tenant in a block of apartments, asks the landlord X for permission to install an air-conditioner. X is a bit wary of granting permission since this would invite other tenants to the same. X does not want to pepper the facade with outside units because in his opinion this would have a detrimental effect on the aesthetics of the block. Can X deny permission?

Article 1564(1) of the Civil Code expressly prohibits the lessee to make any alterations without the permission of the lessor. Jurisprudence has, however, reconsidered this prohibition. *Maria Stilon Depiro v. Giuseppa Falzon et*[1072] was an early judgment that held that this provision was not meant to exclude every kind of alteration since the lessee still has the right to use the premises as his own and, consequently, to adapt it to his convenience unless he is expressly precluded from doing so by the contract. The obligation to return the property in the state it was received remains in place in any case. The position, as confirmed more recently in *Litterio Runza v. Sarex Ltd.*[1073] seems to be that the lessee may make any kind of temporary structural change that may benefit him, even without the consent of the lessor, as long as it does neither alter the use for which the property was let nor prejudice the rights of the same lessor.

The rules change if the property in question is part of a condominium. In fact, according to Article 8(3) of the Condominium Act alterations which change the aesthetics and décor of the condominium cannot take effect without the unanimous consent of all the condomini. One further matter which would need to be certified is whether the wall against which the unit is going to be fixed is considered to be a common part. The law provides an inclusive list, however, jurisprudence has made it clear that only an express stipulation to the contrary would rebut the presumption that the thing is held in common (*Andrew Xuereb pro v. Kurt Coleiro*[1074]). In the event that anyone of the condomini abuses of the common parts, the remedy would be the *actio spolii* since the wrongful alteration would be effectively prejudicing the interests of all the other co-possessors (*Anthony Portelli et v. Questo Café Ltd*[1075]).

8. Liabilty for Personal Injury

The landlord has been a bit negligent in the maintenance of his house. Despite the tenant's complaints that the tiles around the edges of the pool needed replacement, the landlord did not take any action. One day, whilst playfully chasing her child in the pool area, the tenant's wife slips and causes severe injuries to her back. Is the landlord liable for damages?

[1071] Decided by the Court of Magistrates on the 20 September 2011.
[1072] Decided by the Court of Appeal on the 5 March 1965.
[1073] Decided by the Court of Appeal on the 2 October 2012.
[1074] Decided by the Court of Appeal on the 20 June 2008.
[1075] Decided by the Court of Appeal on the 3 December 2010.

In this case the landlord does seem to be liable for damages since the incident involves repairs which he was responsible for carrying out. He was therefore bound, according to Article 1540, to replace any slippery tiles that had been causing a hazard to the tenants. The damages for which he would be liable to make good are laid down in Article 1045(1) and these include the expenses which the injured party may have been compelled to incur, together with any loss of actual wages or future earnings arising from the permanent, total or partial, incapacity caused by the accident. Maltese law does not award moral damages in such cases. In *Carmen McKenna et v. Erichton Services Limited et*[1076] the tenant had suffered fatal injuries after a weak railing had given way with him. Plaintiff won the case after proving to the Court's satisfaction that had the railing been properly fixed, the accident would have been avoided. Therefore, in the above case, the tenant would have to demonstrate that the accident was attributable to the landlord's fault.

9. Defects of the premises

The landlord, Mr. X, is renting out the apartment to the tenant, Mrs. Y. The tenement was in a good condition, however, when the rainy season came along water started dripping from the ceiling. The tenant asked the landlord to carry out the repairs within two weeks but the latter failed to reply. Fearing damage to his personal belongings the tenant proceeded to repair the roof himself. His fresh demand is to set off the costs from the monthly rent rates until the two parties square up. Is this lawfully possible?

Article 1556 places the responsibility of structural repairs on the landlord. In defining 'structural repairs' Article 1540 expressly mentions the 'ceilings' of the building. There is no doubt therefore that, under Maltese law, Mr. X is uniquely responsible for the repair of the roof. The Civil Code also makes provision for situations which require immediate attention, as seems to be the case above. Article 1543 authorizes the lessee to carry out any urgent repairs at the expense of the lessor. Mrs. Y's demand is perfectly legitimate since it is the same article that goes on to say that it shall be lawful for the lessee to retain the rent for purposes of reimbursement. In any case the tenant is bound to inform the landlord about such repairs and prior to taking the measures contemplated above, he must deliver a report by an expert as to the urgency for such repairs, their estimated value and the prejudice which might result from the delay. This is a requirement that would certainly be looked into by Court before awarding the case to the tenant (*B. Tagliaferro & Sons Limited v. Albert Mizzi et*[1077]). Jurisprudence has explained how this obligation of immediate notification and action stems from the other obligation of returning the premises in the state that they were delivered (*Micallef Eynaud v. Falzon*[1078]). The courts have not, however, exempted the lessee from responsibility when the damage would have occurred due to his constant lack of maintenance (*Anthony Gatt v. Office Electronics Limited*[1079] and *Frendo v. C & H Bartoli Limited*[1080]). Repairs must also respect the character

[1076] Decided by the Court of Appeal on the 3 November 2006.
[1077] Decided by the Court of Appeal on the 27 November 2009.
[1078] Decided by the Court of Appeal on the 11 January 2006.
[1079] Decided by the Court of Appeal on the 22 March 2006.
[1080] Decided by the Court of Appeal on the 7 May 2010.

of the damaged premises and, regardless of the urgency, obtain the necessary permits (*Evelyn Montebello et v. Vincent Magri et*[1081]).

10. Social defence

An unemployed tenant whose child falls seriously ill incurs expensive medical costs that leave her with insufficient funds to pay the rent. Irrespective of her plight, the landlord proceeds to demand her eviction. Can the woman bring any defence in her favour?

The Maltese Civil Code does not foresee any social defences, however, it does accept "objectively reasonable" or "legally sustained" justifications (Maria Concetta Vella v. Federico Galea,[1082] Doris Attard v. Julian Borg,[1083] Helen Miceli et v. Carmelo Pisani[1084]). Whether the Court would accept this as a valid defence has yet to be seen, however, if the contract of lease would have expired the Court would not be able to do anything but to order her eviction. It would, at most, urge compassion from the landlord in the execution of the judgment (*Awtorita' tad-Djar v. Anita Doris Savona*[1085]).

[1081] Decided by the Court of Appeal on the 30 May 2008.
[1082] Decided by the Court of Appeal on the 24 January 1997.
[1083] Decided by the Court of Appeal on the 28 June 2001.
[1084] Decided by the Civil Court (First Hall) on the 14 December 2004.
[1085] Decided by the Rent Regulation Board on the 28 June 2012.

9. Tables

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Abela Paul v. Azzopardi Paul, decided by the Court of Appeal on the 30 May 1952

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Apap Bologna Alexander v. Blackman Mario et, decided by the Court of Appeal on the 28 June 1957

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Apap Bologna Louis v. Portelli Godwin, decided by the Commercial Court on the 6 May 1985

Attard Doris v. Azzopardi Andrew, decided by the Court of Appeal (Inferior) on the 17 February 2003

[1086] The Maltese judicial system is a two-tier system comprising of a court of first instance presided over by a judge or magistrate, and a court of appeal. The First Hall of the Civil Court is the superior court which deals with all matters, civil and commercial, which are not by special provision of law assigned to be tried and determined by another court. The Maltese Commercial Court was suppressed in 1995. The Court of Magistrates of Gozo in its Superior Jurisdiction has the same jurisdiction, powers and functions as are exercised by the First Hall of the Civil Court in Malta saving for some exceptions such as human rights cases. The Rent Regulation Board is also a court of first instance having jurisdiction over all matters related to leases of urban immovables. The Court of Appeal is then the final appellate court in Malta in civil matters (Malta has only a one tier system of appeal).

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Bonello Emmanuel A. noe v. Fenech Francis, decided by the First Hall (Civil Court) on the 20 May 2004

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Borg Costantino v. Cachia Zammit Alexander noe, decided by the Civil Court (First Hall) on the 8 October 2004

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Borg Emanuele v. The Two Divers Co. Ltd., decided by the Court of Appeal on the 27 February 2008

Borg Falzon Albert v. Darmanin Charles decided by the Court of Appeal (Commercial) on the 7 June 1940

Borg George v. Debono John, decided by the Court of Appeal on the 18 February 2003

Borg Joseph noe v. Galea Edgar, decided by the Court of Appeal on the 7 October 1996

Borg Mario v. Testa Carmelo, decided by the Civil Court (First Hall) on the 9 October 2003; Civil Court (First Hall) on the 9 February 2006

Borg Mary et v. Muscat John, decided by the Court of Appeal on the 9 March 1994

Borg Paul v. Stivala Michael, decided by the Court of Appeal on the 5 October 2001

Borg Robert v. Abela Francesco, decided by the Court of Appeal on the 16 December 1949

Borg Robert v. Camilleri Peter, decided by the Commercial Court on 30 January 1941

Borg Salvatore v. Briguglio Paolo, decided by the Court of Appeal on the 17 November 1972

Briffa Carmel v. Buttigieg Vincent, decided by the Court of Appeal (Inferior) on the 2 une 2003

Bugeja Bernard et v. Lantieri Carmen et, decided by the Court of Appeal (Superior) on the 4 July 2001

Bugeja Caruana John v. Brown Alfred, decided by the First Hall (Civil Court) on the 17 March 2005

Bugeja Joseph v. Camilleri Alfred, decided by the Court of Appeal on the 6 October 2004

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Gatt Christopher v. Doneo Daniel, decided by the First Hall (Civil Court) on the 28 March 2011

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Mousu Saviour v. Form Limited, decided by the Civil Court (First Hall) on the 12 December 2001

Mula Rita v. Attard Carmel, decided by the Court of Appeal (Inferior) on the 17 November 2004

Muscat George v. Mizzi Brian, decided by the Court of Appeal on the 5 October 2007

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Pisani Joseph v. Vella Louis Dr. et, decided by the Court of Appeal on the 9 March 1992

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Vella Maria Concetta v. Galea Federico noe, decided by the Court of Appeal on the 24 January 1997

Vella Vincenzina v. Borg Edward, decided by the Court of Appeal (Inferior) on the 28 June 1974

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Xuereb Andrew pro v. Coleiro Kurt, decided by the Court of Appeal on the 20 June 2008

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Xuereb Mariano v. Rapa Lorenzo, decided by the Court of Appeal on the 15 December 1958

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Zammit Edwin v. Casha Saviour et., decided on the 28 October 2011

Zammit Eucaristico v. Petrococchino Eurstrachio noe, decided by the Court of Appeal, 25 February 1952

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Ghigo v. Malta, no. 31122/05 §§ 69-70, 26 September 2006

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CJEU

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C-325/08 Olympique Lyonnais SASP v. Olivier Bernard and Newcastle United UFC, Judgment of the Court of Justice (Grand Chamber), 16 March 2010

C-461/11 Ulf Kazimierz Radziejewski v Kronofogdemyndigheten i Stockholm, 8 November 2012

European Committee of Social Rights

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9.3. Abbreviations

ADR	Alternative Dispute Resolution
ARMS	Automated Revenue Management Services
Cap.	Chapter
CCTV	Closed-circuit Television
CEA	*Comité Européen des Assurances*
CESL	Common European Sales Law
CGT	Capital Gains Tax
CISG	Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
COCP	Code of Organisation and Civil Procedure
DCFR	Draft Common Frame of Reference
DPA	Data Protection Act
ECC-Net	European Consumer Centers Network
EDPA	Environment and Development Planning Act
EMC	Enemalta Corporation
ERDF	European Region Development Fund
ESF	European Social Fund
EU	European Union
EU-SILC	Survey on Income and Living Conditions
HOS	Home Ownership Scheme
IHC	International Holding Company
ITC	International Trading Company
MAC	Malta Arbitration Centre
MCCAA	Malta Competition and Consumer Affairs Authority
MEPA	Malta Environmental & Planning Authority
MFSA	Malta Financial Services Authority
MRA	Malta Resources Authority
NCPE	National Commission for the Promotion of Equality
NGO	Non-governmental Organisation
NSO	National Statistics Office
OJEU	Official Journal of the European Union
PECL	Principles of European Contract Law
PIR	Price-to-Income Ratio
PTT	Property Transfer Tax
REITS	Real Estate Investment Trust
REMS	Real Estate Market Survey
RRB	Rent Regulation Board
RRWG	Rent Reform Working Group
S.L.	Subsidiary Legislation
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNCITRAL	United Nations Commission on International Trade Law
VAT	Value Added Tax
WSC	Water Services Corporation
YMCA	Young Men's Christian Association

9.4. Legislation

Access to Goods and Services and their Supply (Equal Treatment), Subsidiary Legislation 456.01 of the Laws of Malta

Access to Goods and Sevices and their Supply (Equal Treatment) Regulations, Subsidiary Legislation 456.01

Act X of 2009, Civil Code (Amendment) Act

Act XXXI of 1995, Civil Code (Amendment) Act

Arbitration Act, Chapter 387 of the Laws of Malta

Arbitration Rules, Subsidiary Legislation 387.01 of the Laws of Malta

Building (Price Control) Act, Chapter 288 of the Laws of Malta

Building Permits Act, Chapter 322

Building Regulation Act, Chapter 513 of the Laws of Malta

Capital Gains Rules, Subsidiary Legislation 123.27

Civil Code (Amendment) Act, Act X of 2009

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