

A set of
recommendations by

The Malta Chamber of Commerce, Enterprise and Industry

in response to

'Renting as a Housing Alternative' White Paper

January 2019



Executive Summary

In light of the Government White Paper titled 'Renting as a Housing Alternative', published in Autumn 2018, the Malta Chamber of Commerce, Enterprise and Industry embarked on a comprehensive internal and external consultation process with an aim to contribute a set of recommendations that effectively tackle the numerous issues characterizing the Private Rental Sector (PRS) in Malta at present with a view to alleviate the resulting societal and economic pressures being felt throughout.

The Malta Chamber of Commerce, Enterprise and Industry firmly believes that the status quo in the PRS is not a sustainable option for Malta. The country, its society and economy cannot afford the current rate of increase in accommodation costs to persist. Therefore, strong and timely action is required to tackle the different factors that are contributing to the situation in order to safeguard the quality of life and sustainable growth in Malta.

In recent years, the country has enjoyed a cycle of notable year-on-year economic growth. This has brought about a situation of excess demand for labour which cannot be satisfied with Maltese workers. The labour market has now become reliant on consistent attraction of additional foreign workers. This cycle has benefitted the country significantly from an output perspective, but it is also cause for substantial stress on the country's infrastructure and most notably, on the housing market. The current situation is characterized mainly by the fact that the shortage of workers is being matched by a shortage of affordable accommodation. However, the Chamber firmly believes that due to the irreversible nature of construction, it would be detrimental to the country to flood the market with new residential property that may remain vacant when the economic cycle eventually turns.

Despite the scale and significance of the issues being faced by all parties involved in Malta's PRS, the Malta Chamber noted that the White Paper fell short of expectations in providing concrete, long-lasting solutions that effectively overcome the issues causing the current situation.

Therefore, as a responsible organization with an overarching aim to safeguard and enhance the country's long-term sustainability and competitiveness in the global market, the Malta Chamber has designed a set of measures intended to collectively relieve major pressures being exerted on the PRS by increasing the supply of affordable accommodation in Malta.

The Chamber's proposals include:

- a clear and directional role for the Planning Authority in ensuring supply of affordable permanent housing that addresses the needs of today and those planned for the future whilst preventing overdevelopment for speculative purposes;
- re-assessment of the IIP programme's property investment eligibility criteria;
- a thorough audit of all private and public vacant property followed by efforts and incentives to place said resources to good use and form part of the rental property market;
- implementation of the reforms proposed by the Malta Chamber and GRTU regarding Pre-June 1995 leased residential properties;
- feasible, effective and reversible housing solutions that create immediate supply of affordable, comfortable yet reversible accommodation.

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Introduction

The Malta Chamber of Commerce, Enterprise and Industry represents business from virtually every sector of the economy and always seeks to balance the varying interests of said sectors in order to propose a balanced, equitable and effective way forward whenever Malta finds itself discussing major issues affecting society, the environment and the economy. In response to the Government's White Paper titled 'Renting as a Housing Alternative', the Chamber embarked on a comprehensive research and consultation process both internally and externally.

Internally, the Chamber consulted with members who are landlords of both residential and commercial property, members who are tenants of commercial property and members who are facing significant wage pressures and efficiency losses due to escalating accommodation costs for employees. Externally, the Chamber consulted with key stakeholders, including fellow social partners.

As a responsible organization with an aim to safeguard and enhance the country's long-term sustainability and competitiveness in the global market, the Chamber firmly believes that the views and recommendations included in this document represent balanced, effective and affordable¹ solutions that together will immediately improve the significant issues being experienced by all parties involved in the Malta's Private Rental Sector (PRS), while also respecting unhindered market forces and one's right to own private property.

Factors that led the PRS to the present situation

The issues characterizing Malta's PRS are various and mainly result from an accumulation of pressures caused by historical long-term damage caused to the PRS by one-sided retroactive legislation, subsequent political procrastination in

¹ Accommodation available at a monthly rate that is stably paired with Malta's median income.

effectively reforming pre-June 1995 leases, as well as accelerated economic and population growth in recent years.

Economic growth and population growth

Malta's recent growth and development has become reliant on the consistent attraction of more investment and more human resources. It is estimated that the current stock of foreign workers in Malta amounts to circa 55,000 people with an estimated net increase of between 10,000 and 12,000 people annually. In 2019, Malta will need another 13,000 foreigners in order to maintain its economic growth, according to Josplus².

However, Malta's existing infrastructure and housing market were never planned to cater for the influxes of additional people demanding accommodation in Malta, all of whom require accommodation at different levels of affordability.

What attracts said workers to Malta are the numerous career opportunities and relative income levels net of rent and living expenses. However, quality of life is highly dependent on living conditions, meaning many foreign workers who have no choice but to share accommodation due to the high prices of rent end up leaving Malta sooner than planned. This leads to unsustainable levels of employee turnover, significant disruption to business output and efficiency due to constant recruitment and training, as well as artificial and unsustainable wage inflation.

Furthermore, the current situation in the PRS and other areas of Malta's infrastructure highlight the importance of planning. The country is now experiencing the results of years of detachment between economic development, demographic changes and the urban planning process.

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² <https://www.timesofmalta.com/articles/view/20190120/local/malta-will-need-another-13000-foreign-workers-this-year.699691> Accessed 21st January 2019

The Individual Investor Programme

According to the Chamber, another factor contributing to the shortage of affordable accommodation in Malta's PRS is the Individual Investor Programme's eligibility criteria. While these individuals may be a relatively small cohort active in Malta's property and rental market, their influence on the rest of the market is widespread resulting in raising expectations on the vast majority of landlords which expectations ultimately materialise tangibly.

IIP applicants must presently lease property in Malta for a relatively low minimum value of €16,000 per annum or purchase property for a minimum value of €350,000³. Since the applications rarely relocate entirely to Malta, PRS landlords generally prefer to lease their property to IIP applicants, knowing that the property would not be lived in often while also granting the opportunity to artificially inflate the rent price in order to satisfy the eligibility criteria.

This artificial inflation has contributed to the general increase in rental income expectations in Malta and due to ever-increasing demand for rental accommodation, landlords nonetheless succeed in finding tenants. Concurrently however, a sizeable cohort of low to median income earners are inevitably left behind and forced to share accommodation between numerous people or leave the country all together.

Interest Rates and Liquidity

Moreover, the higher levels of liquidity coupled with low interest rates in the country mean many investors are choosing property speculation over traditional investments. This causes a vicious cycle that is aggravating the issues in the PRS. Understandably, the demand for high-end speculative property means real estate

³ <https://iip.gov.mt/individual-investor-program/> Accessed on 10th January 2019

higher levels of liquidity coupled with low interest rates in the country mean many investors are choosing property speculation over traditional investments

developers focus on meeting demand in this more lucrative market segment instead of increasing supply of affordable housing. This situation benefits both developers and landlords but seriously threatens Malta's sustainable growth and development in its many other industries and hence the economy as a whole.

Regulatory Framework pertaining to pre-June 1995 lease agreements

Another factor that has also contributed to the lack of affordable accommodation in the PRS is the pending reform to Pre-June 1995 leases as proposed to Government by the Malta Chamber in May 2017 and again in September 2018. The latter updated recommendations were put forward following the amendments implemented through ACT VIII 2018 on 3rd April 2018. As long as the necessary reforms remain pending, a potential stock of additional accommodation will not be placed on the market since landlords are not able to recover their fair market value.

Social Housing

The fact that for many years no sizeable social housing projects have been completed also means that numerous Maltese families that require access to social housing are required to compete for the minimal affordable accommodation available in the PRS. In recent months, the media has reported various stories of working Maltese families who have to resort accommodation arrangements that were previously unheard of in Malta thanks to the traditional strength and reach of the country's social safety net. Government must therefore provide social housing in such a way that is equitable and addresses the social needs of today and tomorrow.

The Status Quo is not an option

It is safe to say that urgent and forceful actions are required to tackle this myriad of factors, and others, that are causing the present issues in the PRS. The status quo is not an option for Malta as continued unsustainable increases in property and rent prices threaten the country's long-term sustainability and competitiveness. The current situation of high employee turnover and brain drain of both foreign and local talent (who opt to join the speculative property market or move to foreign countries where professional incomes and housing prices are more favourable) may eventually be the cause of an economic downturn, as the country would have become overly reliant on an unsustainable property market. History offers many examples of economic crises caused by a glut in the property market.

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the most viable immediate way forward is to implement measures that create affordable accommodation out of the existing stock of property, together with other temporary and reversible accommodation solutions.

The Malta Chamber of Commerce, Enterprise and Industry has repeatedly called for the proceeds of the current positive economic period to go towards future-proofing the country, by implementing foundations that foster a diversified, sustainable, innovative and high-value added economy. Therefore, the most viable immediate way forward is to implement measures that create affordable accommodation out of the existing stock of property, together with other temporary and reversible accommodation solutions. Such a combination of measures would satisfy the immediate and short-term demand for affordable accommodation required to sustain current levels of economic growth,

while foregoing the need for irreversible construction of new residential property that would likely be vacant in the long-term. Increasingly supply of affordable accommodation is also the approach being recommended by the International Monetary Fund (IMF) in its concluding Statement of the 2019 Article IV Mission for Malta⁴, having noted that rapidly rising housing costs were increasingly affecting vulnerable households.

Concerns with the White Paper

While the White Paper claims to enshrine three key principles that it seeks to ensure in the PRS, namely stability, affordability and predictability, it falls short of the Malta Chamber's expectations to provide concrete, long-lasting solutions that effectively resolve the issues characterizing the PRS in Malta at present. In a nutshell, the issues are caused by demand heavily outweighing supply of affordable accommodation, together with the fact that due to various circumstances people with low, median and high levels of purchasing power all find themselves competing for largely the same pool of property and accommodation.

The White Paper falls short of the Malta Chamber's expectations to provide concrete, long-lasting solutions

Hence, the Malta Chamber's suite of proposals aims to segregate the market and increase the supply of affordable accommodation without the need to resort to a panic flooding of the market with additional housing supply constructed on precious virgin land. The latter, together with regulations that hinder market forces are not favoured by the Chamber because they do not present equitable and sustainable solutions to the current PRS issues caused by the cyclical period of rapid economic expansion being experienced in Malta.

⁴ <https://www.imf.org/en/News/Articles/2019/01/16/Malta-Concluding-Statement-of-the-2019-Article-IV-Mission> Accessed 18th January 2019

Proposals

The White Paper's Proposals

The White Paper puts forward proposals for a rent-stabilizing framework focused on enhancing stability, predictability and affordability, while also stipulating compulsory periods for notices of withdrawal, predictable rent increases, legal improvements to the eviction process, a declaration of deposit and presentation of inventory as well as mandatory registration of rental agreements.

In a PRS that lacks certain fundamental legal reassurances for tenants and landlords alike, the Chamber regards these as positive developments. However, the difficulties in the PRS are caused by supply shortages of affordable accommodation that translates into higher prices, which situation is not addressed adequately by the white paper's proposals in the Chamber's opinion. The Chamber believes that the present PRS issues will persist and continue to worsen should the country continue to experience present levels of unprecedented economic and population growth without also addressing the supply of affordable accommodation.

The Malta Chamber's Proposals

Social Housing and Rent Subsidy

Government must provide social housing in such a way that is equitable and addresses the social needs of today and tomorrow. It is positive to note that numerous areas and sizeable amounts of funds are earmarked for ambitious social housing projects, but these must commence and be completed without any further delays.

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Furthermore, social housing given today must be done on temporary basis and must be periodically means tested. Once the sitting tenants are able to afford entering into the PRS they must return the property to the state for it to be redistributed to other genuine cases. Otherwise, such genuine cases will continue to increase if current PRS issues persist and continue to restrict the first-time buyer market.

The optimization of the Rent Subsidy as highlighted in the White Paper is also considered absolutely necessary. Individualised and frequent means-testing mechanisms that ensure that the subsidy effectively lifts the housing cost overburden is of critical importance.

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A competent Rent Regulatory Authority must be established without further delay

Rent Regulatory Authority

A competent Rent Regulatory Authority must be established without further delay in order to ensure the proper administration and enforcement of the policies and regulations introduced as a result of the present exercise aimed at improving the PRS in Malta. A Rent Regulatory Authority is essential in order to:

- Certify properties for rent;
- receive rent contracts and ensure they are legal and compliant;
- serve as a registry of contracts;
- hold and pay rent deposits submitted by tenants;
- provide information, education and advisory services to both landlords and tenants;
- scientifically established and maintain a rent market value index;

- collect and analyse information about issues faced by those involved in the PRS;
- provide dispute resolution mechanisms;
- maintain an accessible database on the quality of both landlords and tenants.

An authority that serves the above functions, and others, would serve to notably improve the experiences of all parties involved in the Malta's PRS, thereby improving the PRS in itself.

Malta Chamber's Recommendations for effective reforms in the regulations concerning pre-June 1995 leased properties

The Malta Chamber maintains its strong belief that numerous proposals put forward in its May 2017 document (later updated in September 2018) titled 'Rent Reforms: Eight Years On – Recommendations for Improvements'⁵, also apply to resolving the serious issues in the post-1995 PRS. These include:

- Fair market rental value to Landlords of Pre-June 1995 Leased Properties
- Establishment of a Market Value Property Index (MVPI)

Fair Market Value

Measures that ensure fair market rental value to Landlords of Pre-June 1995 Leased Properties, such as equitable means testing mechanisms would ensure that social justice is achieved with the landlord, while also potentially increasing the supply of affordable accommodation. Numerous tenants may be artificially holding on to properties leased under Pre-June 1995 lease agreement conditions due to the insignificant annual cost. If the annual cost does not remain insignificant, such tenants would likely terminate the lease agreement, hence allowing the landlord to place the property on the PRS.

⁵ Full Document included in Annex 1

Market Value Property Index

A reliable and functioning Market Value Property Index is also a fundamental cornerstone for the scientific determination of fair market (rental) value of property in Malta. This would serve as a guide on the real and fair value of property depending on size, location and amenities. Both tenants and landlords will benefit from an element of reassurance through such an essential market tool, particularly in an economy that remains highly dependent on the property market.

A reliable and functioning Market Value Property Index is also a fundamental cornerstone

Vacant Property

A thorough analysis of all private and public vacant property in Malta should be followed by the design and implementation of actions and incentives to enable an increase in the supply of affordable accommodation. On one hand, the need for investment in social housing is significant and the construction process is lengthy while on the other hand, the potential repurposing of unnecessarily vacant public property could lead to more immediate additional supply of housing without having to commit virgin land for more irreversible construction.

Reassessment of the IIP Eligibility Criteria

In order to alleviate the impact of the existing IIP eligibility criteria on the property market and the PRS, the Chamber believes that the criteria relating to property must be reviewed. In order for property to satisfy IIP criteria, the Chamber recommends that such accommodation must be limited to zones designed and designated for such purposes. Such zones are already identified and available in various parts of the Maltese islands.

It is also recommended that the threshold values for property are significantly increased and are actually based on valuations using independently established MVPI tools. The issue lies in the fact that property that satisfies the present eligibility criteria is property that can otherwise be supplying additional affordable accommodation. The reasons why landlords would prefer to lease properties to IIP applicants and hence contribute to the shortage of affordable accommodation were discussed above.

***the Planning
Authority must
champion
sustainable property
development in
Malta***

A Proactive and Directional Role for the Planning Authority

In the interest of the long-term sustainability of the property market, the PRS and hence the economy as a whole, the Chamber firmly believes that the Planning Authority must champion sustainable property development in Malta keeping in mind not only the present needs but also directing the market towards the needs of the near future – hence assisting the Industry to plan accordingly and in a sustainable manner over the longer term.

The PA can undertake this innovative role effectively by forecasting the country's accommodation needs and utilising tools at its disposal to influence supply of new buildings towards meeting the country's future needs. These tools at the PA's disposal would need to be fluid and adaptive to any situation of demand that the country may be experiencing at the time. If one takes the present context as an example, the PA would seek to disincentivise projects of the kind with which the country is well served in favour of incentivising permits for the development of affordable accommodation as opposed to the development of other types of speculative property developments. In this way, the PA would be actively directing the property market to create supply based on needs.

PPP for Affordable and Reversible Accommodation

While the White Paper discusses the possibility of PPPs as a potential measure to tackle PRS issues, the Malta Chamber proposes a PPP that creates a large temporary stock of affordable accommodation in the immediate term. To this end, it is proposed that areas of strategically located public land are identified on which temporary and reversible accommodation facilities can be erected. By means of this proposed PPP, it is envisaged that government would provide the land and basic infrastructural services, while the private sector would invest in the installation of temporary and reversible accommodation facilities against pre-arranged affordable rent costs for a minimum period of years before dismantling

the facility and returning the land to its original condition.

Modern temporary and reversible buildings are nowadays virtually indistinguishable from permanent buildings both functionally and aesthetically. In European countries such as Germany and the Netherlands, city councils have resorted to erecting temporary housing solutions that offer immediate, affordable and fully equipped accommodation for people who urgently require living space.

Temporary solutions offer an attractive option when urgent accommodation is required as the pre-fabricated nature allows for swift installation with “plug-and-play” features. An added advantage is the flexibility allowed in the design of the units. Units can be configured to be fully equipped and self-catered with accommodation for

between one and four persons, while large scale dormitory style configurations with canteens and communal living spaces are also possible.

a PPP that creates a large temporary stock of affordable accommodation in the immediate term

Modern temporary and reversible buildings are nowadays virtually indistinguishable from permanent buildings both functionally and aesthetically

The Malta Chamber puts forward this recommendation with responsibility and based on research with confirmation of the quality and comfort of the numerous modern temporary accommodation solutions available on the market.

This solution would mitigate the current yet temporary pressures on the traditional PRS with a temporary and fully reversible solution that effectively tackles the lack of affordable accommodation at the height of present economic and population growth rates. It also alleviates the strain on Malta's transport infrastructure when location choices include for strategic placement of facilities nearby major employment zones, while standards of living would need to be maintained with the presence of security services and facilities management.



Conclusion

The Malta Chamber of Commerce, Enterprise and Industry reiterates its firm belief that an affordable and proper-functioning PRS is fundamental for Malta's to maintain and support its economic growth in a sustainable manner. With the current economic trajectory that remains highly reliant on additional foreign labour, the country can only maintain its attractiveness and cost-competitiveness by addressing issues in the PRS to ensure adequate supply of affordable accommodation. Otherwise, all other costs that are somehow related to property and accommodation will continue to inflate rapidly to a point that will render a number of industries uncompetitive in the global market.

Therefore following widespread consultation, the Malta Chamber is responsibly proposing a suite of regulatory and practical measures that aim to accommodate the current demands for affordable accommodation without needing to commit more of the country's limited resources to offer irreversible solutions to a temporary problem.

The Malta Chamber remains committed to achieving long-term sustainable economic growth in Malta and shall be available for further, more detailed discussions on any of the proposals above, or others aimed at delivering solutions that are effective in alleviating the pressures on the PRS in the both the short-term and long-term.

Annex

Rent Reforms: Eight Years on – A Review

Recommendations for Improvement

Updated Version

The Malta Chamber of Commerce, Enterprise, and Industry

GRTU – Malta Chamber of SMEs

Date: 3rd September 2018

Executive Summary

The recommendations contained in this document were discussed with the GRTU – Malta Chamber of SMEs and the text presented hereunder reflects the common position of The Malta Chamber of Commerce, Enterprise and Industry and the GRTU – Malta Chamber of SMEs.

This updated version of recommendations takes into consideration the amendments passed through ACT VIII of 2018 on 3rd April 2018.

This document is re-proposing the issues that have not been tackled as yet and which constituted an integral part of document circulated in May 2017. The issues and the respective recommendations in their regard are as follows:

(a) Recognising Trading Potential of a Pre- June 1995 Commercial Property

01. On 1st June 2028 pre-June 1995 property will be liberalised and will be subject to the regulatory framework governing post June 1995 rental property. The landlord regains the right to ask the tenant to evict the property irrespective of whether negotiations are held.
02. The landlord's right to regain the title of a pre-June 1995 commercial property on the expiry of the lease on 31st May 2028 will be on the basis that the landlord compensates the tenant for the 'trading potential goodwill' accrued to the property.

The capitalisation method under the income approach is applied as the methodology to value the 'saleable value or goodwill' of the property the lease of which is to be returned to the landlord. The capitalisation method will be governed by the following principles:

- (a) In the case that the Landlord executes his right to regain the title the value of the goodwill will be determined by the MPVI based on established criteria which includes the number of years the tenant operated in the said property. The outgoing tenant will be paid 9/10th of the value of goodwill while the Landlord retains 1/10th of the value.
- (b) In the case that the tenant has reached an agreement directly with a third party on the value of the goodwill payable, the outgoing tenant will be paid 9/10th of the value of goodwill while the Landlord will be paid 1/10th of the said goodwill.
- (c) In the case that the landlord does not accept the third party as a new tenant, the landlord will be bound to pay the 9/10th of the agreed goodwill value to the current tenant.

(b) Fair Market Rental Value to Landlords of Pre-June 1995 Leased Commercial Properties that are not Governed by an Agreement / Contract

Social justice is achieved with the landlord of a pre-June 1995 commercial property by repealing Article 1531D of the Civil Code and establishing parameters where by 2020 the tenant of such a property pays the landlord a fair market value based on the Property Market Value Index, (which should be operative as from 1st January 2020) – and thereafter adjusted to reflect market rates in 2024 and 2028. The value of the rent payable established on the basis of the net property value as per MPVI will be based on the prevailing Bank base interest rate ruling at the time and capped at a maximum of 2% of the open market value of the property. Mandatory mediation should be introduced to address disputes. In the event that persistent failure to reach agreement on a fair market rental value is the result of vexatious behaviour, the landlord and/or tenant shall be

penalised by a monthly sanction equal to 5% of the value of the newly determined fair market value of the lease back dated to 31st December 2019.

(c) Fair Market Rental Value to Landlords of Pre-June 1995 Leased Residential Properties that are not Governed by an Agreement / Contract

Social justice is achieved with the landlord of a pre-June 1995 residential property by introducing a means tested mechanism where tenants who have capital resources:

- Above the threshold will pay the landlord by 2020 a fair rental market value – adjusted every four years. The value of the rent payable established on the basis of the net property value as per MPVI will be based on the prevailing Bank base interest rate ruling at the time and capped at a maximum of 2% of the open market value of the property and to reflect market conditions and subject to arbitration mechanisms, etc.; and
- Tenants whose capital resources are lower than the means testing thresholds will either (i) be eligible to be considered as a social rent case. In this instance, the difference between the fair market price determined for the property and the rent paid today by the tenant will be paid directly to the landlord by Government, whereas the tenant continues to pay the same rent paid today. The amount paid to the landlord by government will be exempt of tax; or (ii) the tenant will be provided with alternative social housing accommodation by government in which case the title of the property will immediately return to the landlord.

(d) Competent Rent Regulatory Authority

The Malta Chamber and GRTU emphasise that a well-resourced administrative competent authority is established in 2020 with the authority to set-up and manage the MPVI, implement the provisions of the Civil Code with regard to rental contract registration; administer disputes issues between landlords and tenants, and administer the process, including arbitration, for the determination of the fair market rental value. The administration of disputes issues between landlords and tenants will remain within the competences of the Rent Regulatory Board, and such Board will be integrated within the structure of the newly established authority.

There is no justifiable reason why responsibility should be split with the law courts. The same principles applied for dispute resolution in other policy sensitive areas – such as privacy and trust – are applied for rent disputes: authority rest with a well-resourced administrative competent authority with recourse to the courts only on technical points of law.

(e) Setting Up the Market Value Property Index

The Market Property Value Index continues to be a fundamental cornerstone for the determination of a 'scientific' fair market rental value. The proposed competent rental authority is assigned the responsibility and financing to set-up the MPVI. It should be tasked to deliver the MPVI in 6 months maximum. Powers assigned to the responsible Minister under sub-articles (a), (b) (c), and (d) of Article 1622A of the Civil Code should be applied to compel government and private stakeholders to provide the necessary information.

Introduction

The recommendations contained in this document were discussed with the GRTU – Malta Chamber of SMEs and the text presented hereunder reflects the common position of The Malta Chamber of Commerce, Enterprise and Industry and the GRTU – Malta Chamber of SMEs.

Prior to the launch of the rent reforms in 2008 and the subsequent enactment of Act X of 2009 introducing changes to the Civil Code, The Chamber of Commerce, Enterprise and Industry (Malta Chamber) and GRTU – Malta Chamber of SMEs (GRTU) had long argued for an overhaul of the rent regulatory framework for pre-1995 June residential and commercial property.

The Malta Chamber posited its arguments for reform on the following:

- Whilst agreeing with the concept of social justice where the government provides housing social assistance to vulnerable persons such social justice cannot be achieved by usurping the rights of landlords over their property. The provision of social housing is a state responsibility and the state must shoulder this responsibility.
- The rent laws at the time created a situation where the tenant and their descendants or relatives perpetually inherited the rented private property from one generation to the next.
- Whilst the landlord practically lost the right to reclaim their property the legislation placed onerous maintenance responsibilities on them whilst rent payments were frozen in time.
- The transition of rented pre-June 1995 commercial property for the businessman tenant to the landlord should be carried out in a manner that accounts for the trading value potential accrued to the property through the commercial activity generated and in a manner that allows for a transition over a reasonable time.
- The rental value of pre-June 1995 commercial property distorted the commercial playing field when compared to post rental June 1995 property given that the latter were rented at market value whilst the former rents were frozen in time. An equalisation of commercial rents to achieve a level playing field across businesses was a necessity.
- That the government should not intervene in rental terms and conditions where a contract on the rental of the pre-June 1995 property was in place between the landlord and the tenant.
- That to re-build confidence in the rental property market, given the control measures enacted over different administrations the reforms, should be entrenched within the Constitution.

In its feedback on the White Paper which the Malta Chamber presented to the Ministry for Social Policy in August 2008 and in subsequent meetings with the then Minister and drafting team the Malta Chamber, in the main, welcomed the reforms. The Malta Chamber, however, raised the following reservations and presented alternative recommendations:

- Retaining the rent value at €185 per annum was wrong. The landlord must not carry the burden of subsidising the rent for tenants. The tenant should pay the market rental value for the property. The subsidisation of the market rental value paid by the tenant should be made by the government in the event that this was required for vulnerable groups; potentially on the basis of a means tested ad hoc housing rental benefit.
- The discussion in the White Paper leading to recommendations on pre-June 1995 residential dwellings was detailed and supported by an extensive analytical study. In stark contrast, the

recommendations relating to pre June 1995- commercial property were presented without any analytical study. The impression gained at the time, and reinforced since, is that these recommendations were hastily put together. It was known at the time that the government had agreed with the General Retailers and Traders Union (GRTU) to carry out a survey on pre-June 1995 commercial rents. This exercise was not successful.

- In determining the rental value for pre-June 1995 commercial rates the determining factor should be the principle of a fair market rental value - one that reflects the market rental value paid for similar property in the post June 1995 liberalised market environment.
- Argued against any unilateral decisions in the increase in the rental value given that this will have a negative impact on certain businesses.
- Agreed that the sub-leasing of commercial property loophole exploited by tenants constituted an injustice to the owner of the property and that a fair mechanism must be introduced.

The issue of pre-June 1995 commercial rates was also raised by the GRTU. Amongst the issues raised by GRTU in its response to the White Paper are the following:

- The recommendations on the pre-June 1995 commercial rates were presented by government with no supporting studies. The GRTU proposed that government de-couples commercial from residential rentals. A new working group should be set up incorporating representatives of business which would present recommendations on the pre-June 1995 commercial rates based on detailed analytical studies.
- Commercial enterprises required protection in law against summary dismissal from their licensed premises by the landlord on the expiry of the sunset clauses proposed in the White Paper.
- Commercial enterprises should be given the opportunity to buy the rented commercial value with discounts set according to the number of years businessmen tenants leased the premises and invested in tangible and intangible assets in the business.
- The principle of *causa mortis* should not apply for pre-June 1995 commercial enterprises and the principle of succession of the business property should continue to apply.

Seven Years of Implementation: A Review

The Malta Chamber and GRTU recognise that the government responded to feedback presented to the White Paper. Indeed, at times, the final position adopted when enacting Act No X of 2009 departed significantly from the recommendations presented in the White Paper. The Malta Chamber and GRTU commend the then Minister for setting a bi-partisan team made of technical persons from government and the opposition which resulted in a bi-partisan political position adopted on what constituted a significant, sensitive and far reaching reform. That Act No X of 2009 was enacted unanimously by the House of Representatives was a strong positive signal to private investors and in the resuscitation of the private sector rental market.

Nevertheless, a number of matters raised by the Malta Chamber and GRTU on the proposed reforms were not taken on board. These matters continue to be of concern. In addition, certain positive measures introduced in Act No X of 2009 whilst enacted are to date not implemented.

These issues are discussed hereunder.

(a) Market Property Value Index

The key determinant of market behaviour, include the rental property market, is demand and supply. The pre-June 1995 rental property sector, however, is *sui generis*. It constitutes the challenge of addressing a conundrum of moving from a sector controlled for many decades to a liberalised sector. It is one that cannot be carried out in a 'big bang' manner in order to avoid social and economic shocks to the economy and the tenants concerned. Notwithstanding, ensuring that over time a level playing field with the post June 1995 rental sector is reached.

This constitutes a painful challenge. How is social justice to be secured for the landlord for long stripped of legitimate returns on their capital? How is this to be achieved whilst a transition towards a liberalised environment that balances the 'assumed' rights of the tenants – residential and commercial – who suddenly are faced with a new landscape which can jeopardise their ability to meet rental values based on market rates? How are entrepreneurs who may be forced to move their business to a new location and in doing so see the trading value potential they accrued through the use of the leased property wiped off?

The drafters of the White Paper and subsequently the bi-partisan technical team were cognizant of this conundrum. Indeed, they posited that such a balance could only be attained on basis of what "constituted a fair market rental value for the level of rent to be paid for a tenancy." It is evident from the White Paper and subsequent discussions that the involved parties struggled to determine how such a fair market rental value is to be determined, and whether this should act as a guideline or a regulatory mechanism which compels both the landlord and tenant to come together on the principle of 'reasonableness'.

The White Paper proposed that the Government introduces an "index for determining the market rental value in a particular area; as well as the locality within the area.

This principle was transported to Article 1531D (2) of the Civil Code which stated that:

"The rent as at 1st January 2014 is to be established by agreement between the parties. In the event that such agreement is not reached, the Property Market Value Index shall be considered as a guide to the rent as may be established by regulations made by the Minister responsible for accommodation and in the absence of such regulations, the rent shall from 1st June, 2013 increase by five per cent per year until the coming into force of the said regulations."

The newly introduced Article 1622A (d) of the Civil Code stated that the responsible Minister will "create a structure establishing and administering the Market Property Value Index."

The Malta Chamber and GRTU are aware that there were two attempts to establish the Market Property Value Index (MPVI) – in 2009 and 2012. The Chamber and GRTU participated in both attempts. For various reasons, including changes in ministers, these attempts were not successful.

It is unfortunate that the MPVI was not set-up – originally planned to come into play by the end of 2013.

(b) Indiscriminate Rental Increase Mechanisms for Commercial Property

The drafters of Act X recognised that designing and implementing a MPVI would not happen within the short term – 12 or 24 months. In fact, as mentioned above, they set 31st December 2013 as the latest possible timeframe in having the MPVI in place – that is, 54 months from the enactment of Act X.

This recognition meant that no 'scientific' tool would be in place for the determination of the 'fair value' rental market price on the introduction of the reforms as at 1st January 2010. On the other hand, it was anathema that no increases in commercial rental rates would be carried out between 2009 and 2013, when the MPVI is introduced, as this would continue to perpetuate the injustice to landlords.

This dilemma was addressed by establishing an arbitrary annual percentage increase of 15% for the period 1st January 2010 to 31st December 2013; and in the event that the MPVI is not introduced as planned by end of 2013, the rental rate increases by an additional 5% annually until such time that the MPVI is introduced.

There is no doubt that the 15% and 5% annual rental increases were unscientifically set. Indeed the White Paper had recommended that the increase of the commercial rent should be correlated with the annual turnover of a particular enterprise – a recommendation which was subsequently shelved.

Irrespective of how these percentage increases were reached the Malta Chamber and GRTU believe that the mechanism is flawed. This mechanism fails to provide social justice to the landlord. Although no data is available, review of rental values of clubs and of residential homes shows that the rental rates are very low when compared to what the market rental value of property fetches in today's liberalised rental market. It is reasonable to assume that pre-June 1995 commercial rental rates are similarly low in value.

This means that landlords of pre-June 1995 commercial property have not benefited from the rental reforms as the percentage rate on a low rental base value is unlikely to have a significant compounding impact.

A flat percentage increase, moreover, does not differentiate between the characteristics of the property – footprint, position, location, etc. which all are determinants of market value. The reforms introduced a discriminatory 'one size fits all' formula.

(c) Mandating Rentals to be Governed by a Written Contract

Newly introduced Article 1531A (1) of the Civil Code establishes that with regard to the letting of an urban property, a residence and a commercial tenement made after 1st January 2010 the contract was to be made in writing and would include as a minimum (i) property to be leased; (ii) agreed use of the property let; (iii) the period for which that property is let; (iv) whether such lease is extended and in what manner; and (v) the amount of rent to be paid and the manner in which payment is to be made. Sub article (2) of this Article stated that in absence of one or more of these requirements the contract would be deemed as null.

Article 1662A empowered the minister to make regulations 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".

The articles referred to above, although enacted, are not applied. No regulations are issued for the registration and de-registration of contracts.

(d) Sunset Clause for Sublet Commercial Property

The drafters introduced two sunset clauses for pre-June 1995 rented commercial property – for (i) property that is not covered by a contract; and (ii) for that property which is sublet by the tenant.

With regard to the former, a sunset period of twenty years was set – starting from 1st June 2008. The rationale for the twenty year period was that an enterprise is provided with a sufficient period of time to plan and finance a transition to alternative premises in the event that the landlord and the tenant failed

to reach an agreement on the extension of the lease beyond the sunset clause. The Chamber agreed with this reasoning as the period was sufficiently long to cushion the enterprise from financial shocks.

With regard to sublet property the sunset period set was for 10 years only. The rationale presented was that the sub-leasee was exploiting the landlord as they were paying a low commercial rent whilst subleasing the property at current market rates.

Whilst the Chamber agrees that the issue of subleasing must be addressed the solution provided, however, created an injustice for the entrepreneur who entered into the subleasing contract under prevailing rules. The rent reform suddenly changed the rules of the game for the sub-leasee. The sub-leasee was suddenly and unexpectedly placed in the position that they either agree a lease extension on terms established by the landlord post 2018 irrespective of whether these represented a fair market rental value or they would need to move their business elsewhere within a 10 year period – significantly less than the 20 year period set for tenants of commercial property.

This issue was subsequently tackled in the amendments made in ACT VIII of 2018 which was enacted on 3rd April 2018.

(e) No Recognition for Trading Value Potential of the Enterprise

The reforms took no consideration of the trading value potential of the enterprise – a trading value potential resulting from tangible and intangible investments made by the owner in the business – which includes the property and the surrounding area.

The trading value potential of a commercial enterprise can be significant. A considerable part of that trading value potential stems from the identification of the property location and the leveraging thereof. The success of an enterprise can be endangered if a business is forced to abandon a strategic location. Transferring the business to another site within or outside the original location does not necessarily guarantee continued success.

It may be the case that a commercial enterprise that is forced to re-locate because the landlord and the tenant fail to reach agreement on what constitutes a fair market rental value for the property can see its trading value written off overnight.

(f) Competent Rent Regulatory Authority

The rent reform White Paper proposed that the current legislative framework divided recourse of rent related dispute between tenants and landlords to the Courts and the Rent Regulation Board – a separation, it argued, that created unnecessary complexities. It thus proposed that rent matters are removed from the jurisdiction of the Courts and that a single administrative entity is constituted with full jurisdiction over the regulation and governance of the rental market in order to ensure that related matters are addressed effectively. It proposed that such responsibility should rest with a restructured Rents Regulations Board within the ambit of the Rent Regulatory Authority.

To enable such reforms to be introduced Article 1622A of Act X introduced in the Civil Code empowered the responsible Minister to implement such measures to give it full effect and to allow for its proper administration, including Board procedures.

The Malta Chamber is informed that at a Cabinet Memorandum was prepared by the responsible Minister in January 2012 which proposed that powers should be streamlined and full authority assigned to the Courts under the charge of a magistrate appointed full time on rent dispute matters. Following the Cabinet re-shuffle in early 2012 this Memorandum was withdrawn.

(g) Social Justice to Landlords of Residential Dwellings

The Malta Chamber agreed with the reforms introduced under Act X to remove the 'perpetual' right to the inheritance of the lease by descendants or dependants of the tenant. The introduction of the one-time *causa mortis* inheritance of the lease subject to qualifying conditions finally ensured that landlords within a maximum of two generations will regain control of their property.

The Malta Chamber agreed with reforms that reduced the onerous responsibilities placed on the landlord to maintain the property (at current market prices) until such time the property reverts back to the landlord.

The Malta Chamber, however, strongly disagreed with the reforms that established the rental value for residential property, where no contractual agreement was in place, at €185 as at 1st January 2010 where this was lower; and thereafter increases every three years by a proportion equal to the increase in the index of inflation.

This reform continued to rip off the landlord from obtaining the appropriate return on their capital. In essence, the reform perpetuated the state of play where government exploited private property to provide social housing to pre-June 1995 residential tenants at the expense of the landlord. The extent of the social injustice created is best seen by the spate of awards handed down to landlords by the Constitutional Court and the European Courts for the "violation of their fundamental human right to enjoyment of their property of which they are deprived against payment of an inadequate rent."

This matter is being addressed, to some extent, by Bill 42 of 2018 to amend the "Housing (Decontrol) Ordinance (Chapter 158), which is in the 2nd reading in Parliament as at to-date.

Recommendations

The Malta Chamber and GRTU present the following recommendations.

(a) Recognising Trading Potential of a Pre- June 1995 Commercial Property

As at 1st June 2028 all pre-June 1995 commercial property will be liberalised and will be subject to the regulatory framework governing post June 1995 rental property. The landlord regains the right to ask the tenant to evict the property irrespective of whether negotiations are held. The tenant will have no right to remain in the property other than on matters established at law.

Recommendation 01
On 1 st June 2028 pre-June 1995 property will be liberalised and will be subject to the regulatory framework governing post June 1995 rental property. The landlord regains the right to ask the tenant to evict the property irrespective of whether negotiations are held.

The Malta Chamber and GRTU argue that the landlord's right to regain the title of a pre-June 1995 commercial property on the expiry of the lease on 31st May 2028, irrespective of whether negotiations were entered into with the tenant for the extension of the lease, should be on the basis that the landlord compensates the tenant for the trading value potential accrued to the property by the tenant businessman. On the other hand, if the Landlord decides to put the property on the market, the incumbent tenant will be given the right of first refusal.

The Malta Chamber and GRTU's position is based on the relationship that exists between trading potential and goodwill. This is confirmed by the 'Red Book' – RICS Valuation – Professional Standards – published by the Royal Institution of the Chartered Surveyors (RICS, 2014).

The RICS state that an enterprise usually consists of the legal interest in the land and buildings, the trade inventory, and the market perception of the trading potential – excluding personal goodwill of the entrepreneur. Whilst trading potential and goodwill are not the same a strong correlation exists between the two. Jurisprudence in the United Kingdom (UK) establishes that for goodwill to exist there is the need for 'custom' and 'business'.⁶ In the UK the courts developed the classification of goodwill from the view point of the customer. Dense and Hutchison (2004, 237) show that the courts in the UK defined four types of customers:

- (1) The cat – which stays faithful to the location and not the person.
- (2) The dog – which stays faithful to the person and not the location.
- (3) The rat – which is casual and is attracted to neither the person nor location.
- (4) The rabbit – which comes because it is close by and for no other reason.

Guidance notes on the valuation of goodwill exclude personal goodwill – that is, the person in the zoological classification quoted above – is excluded. Guidance notes state that in preparing a trade related valuation the valuer should look to estimate "the market value as a fully-equipped operational entity, regarding to trading potential": that is the dog and the rabbit topped up by the rat. This puts emphasis on the attractiveness to potential customers of the location, design, and licence for a particular established use, given that the valuer is to assume an "average competent operator."

This places emphasis on the attractiveness to potential customers of the location, design, and licence for a particular established use, given that the valuer is to assume an "average competent operator" (RICS, 2014). Significantly, the value calculated attaches to the building and runs with the property, irrespective of a change in ownership.

This definition was formerly known as "inherent goodwill but is now referred to in the Red Book as the trading potential. Under these circumstances a business, which is well established, is likely to have a higher value than the one that has recently been constructed. In the latter case, the trading potential – the potential consumer spend of the cat, rat and rabbit – has not been established with any degree of certainty and the valuer, in attempting to determine the most likely category of buyer for the new business, has to make subjective judgments on the initial level of trade (Dense and Hutchison, 237). The Oxford English Dictionary defines goodwill in business as:

"The privilege, granted by the seller of a business to the purchaser, of trading as the recognised successor of the seller; (now usu. more generally) the established reputation of a business regarded as a quantifiable asset and calculated as part of its value when it is sold."⁷

Dense and Hutchison (2004, 237) emphasise that the key part of the definition is that here goodwill must be a "separate element in the saleable value of the business." This is emphasised in the Red Book (RICS, 2014), which states that the goodwill must be able to be passed to the purchaser of a property – in the case of pre-June 1995 property the title of the commercial property returning to the landlord.

⁶ Pg 238, Dunse, A, N., and Hutchison, E, N., Trade related valuations and the treatment of goodwill, Journal of Property Investment and Finance, Vol 22, No. 3, 2004

⁷ <http://www.oed.com/view/Entry/79988?rskey=QffiNz&result=1&isAdvanced=false#eid>

This “separate saleable goodwill” may, for example, attach to product lines and brand names. Importantly, this type of goodwill is capable of being transferred independently of the property from which the business is currently being conducted, albeit that increasing distance from the original location may significantly reduce the value of the goodwill (Dense and Hutchison, 239).

Recommendation 02

The landlord’s right to regain the title of a pre-June 1995 commercial property on the expiry of the lease on 31st May 2028 will be on the basis that the landlord compensates the tenant for the ‘trading potential goodwill’ accrued to the property.

The Red Book does not state the valuation method that should be used to undertake the valuation of trading properties; however it would typically be a sales comparison approach or income capitalisation approach (Dense and Hutchison, 241).

Recommendation 03

The capitalisation method under the income approach is applied as the methodology to value the ‘saleable value or goodwill’ of the property the lease of which is to be returned to the landlord. The capitalisation method will be governed by the following principles:

- (a) In the case that the Landlord executes his right to regain the title the value of the goodwill will be determined by the MPVI based on established criteria which includes the number of years the tenant operated in the said property. The outgoing tenant will be paid 9/10th of the value of goodwill while the Landlord retains 1/10th of the value.
- (b) In the case that the tenant has reached an agreement directly with a third party on the value of the goodwill payable, the outgoing tenant will be paid 9/10th of the value of goodwill while the Landlord will be paid 1/10th of the said goodwill.
- (c) In the case that the landlord does not accept the third party as a new tenant, the landlord will be bound to pay the 9/10th of the agreed goodwill value to the current tenant.

(b) Fair Market Rental Value to Landlords of Pre-June 1995 Leased Commercial Properties that are not Governed by an Agreement / Contract

Tenants of pre-June 1995 leased commercial properties are by 1st January 2020 to reach an agreement with landlords on what constitutes a fair market rental value for the said property based on the Market Property Value Index (which should be operative as from 1st January 2020) – and thereafter adjusted to reflect market rates in 2024 and 2028. The value of the rent payable established on the basis of the net property value as per MPVI will be based on the prevailing Bank base interest rate ruling at the time and capped at a maximum of 2% of the open market value of the property.

. This agreement, which should be notarised, shall be introduced as follows:

- o 31st December 2020: Rental value of lease of the property increases (where appropriate) to 40% of the agreed fair market value.

- 31st December 2021: Rental value of lease of the property increases (where appropriate) to 70% of the agreed fair market value.
- 31st December 2022: Rental value of lease of the property increases (where appropriate) to 100% of the agreed to fair market value.
- In 2024 and in 2028 the rental value of lease of the property will be reviewed and adjusted to account for market rates at the time.
- In the event that the tenant and landlord fail to agree on a fair market value the rent regulatory authority will order mandatory mediation and decided as appropriate. Once decided rent due will be paid by the tenant backdated. If following failure of mediation, it transpires that agreement was not reached due to intransigence on the part of the tenant; the tenant will be subject to a monthly sanction of 5% on the newly determined fair rental market value of the lease. This measure is proposed to discourage vexatious behaviour.

These measures will replace Article 1531D (1) of the Civil Code. The introduction of these measures ensure that social justice is finally secured for landlord given that they no longer be forced to wait till 31st May 2028 to receive a fair return on their property. The phased approach is proposed to enable the tenant to buffer what could be a significant increase in the rental value once this is now pegged to a fair market value.

Recommendation 04

Social justice is achieved with the landlord of a pre-June 1995 commercial property by repealing Article 1531D of the Civil Code and establishing parameters where by 2020 the tenant of such a property pays the landlord a fair market value based on the Market Property Value Index, (which should be operative as from 1st January 2020) – and thereafter adjusted to reflect market rates in 2024 and 2028. The value of the rent payable established on the basis of the net property value as per MPVI will be based on the prevailing Bank base interest rate ruling at the time and capped at a maximum of 2% of the open market value of the property. Mandatory mediation should be introduced to address disputes. In the event that persistent failure to reach agreement on a fair market rental value is the result of vexatious behaviour, the landlord and/or the tenant shall be penalised by a monthly sanction equal to 5% of the value of the newly determined fair market value of the lease back dated to 31st December 2017.

(c) Fair Market Rental Value to Landlords of Pre-June 1995 Leased Residential Properties that are not Governed by an Agreement / Contract

It is the state and not a private landlord who carries the burden for the provision of social housing. The rent reforms failed to address this issue. Additionally, as stated earlier, the government is forced to pay significant grants to landlords who successfully challenge the government at courts of law. The principle that the landlord is exploited by the government by forcing them to rent private property at social rates is now established in legal jurisprudence. This means that any landlord who takes government to court on this matter will succeed.

The stepping up of court cases against the government could be reduced if landlords see that justice is finally secured with immediate effect.

The Malta Chamber and GRTU propose that a means testing mechanism is introduced for pre-June 1995 tenants of residential property. The means tested mechanism will achieve the following:

- Tenants whose capital resources are higher than the means testing thresholds will pay a fair market rent value for the property. The process leading to increasing the rent to the fair market value will be similar to that proposed in recommendation 04. The rent will be reviewed every four years. The value of the rent payable established on the basis of the net property value as per MPVI will be based on the prevailing Bank interest rate ruling at the time and capped at a maximum of 2% of the open market value of the property and in accordance to a fair market value until such time that the title of the property returns to the landlord under the new conditions set in the Civil Code. Arbitration and the treatment of vexatious intransigence will be similar as that proposed for pre-June 1995 commercial property.
- Tenants whose capital resources are lower than the means testing thresholds will either (i) be eligible to be considered as a social rent case. In this instance, the difference between the fair market price determined for the property and the rent paid today by the tenant will be paid directly to the landlord by Government, whereas the tenant continues to pay the same rent paid today. The amount paid to the landlord by government will be exempt of tax; or (ii) the tenant will be provided with alternative social housing accommodation by government in which case the title of the property will immediately return to the landlord.

Recommendation 05

Social justice is achieved with the landlord of a pre-June 1995 residential property by introducing a means tested mechanism where tenants who have capital resources:

- Above the threshold will pay the landlord by 2020 a fair rental market value – adjusted every four years. The value of the rent payable established on the basis of the net property value as per MPVI will be based on the prevailing Bank interest rate ruling at the time and capped at a maximum of 2% of the open market value of the property and to reflect market conditions and subject to arbitration mechanisms, etc.; and
- Tenants whose capital resources are lower than the means testing thresholds will either (i) be eligible to be considered as a social rent case. In this instance, the difference between the fair market price determined for the property and the rent paid today by the tenant will be paid directly to the landlord by Government, whereas the tenant continues to pay the same rent paid today. The amount paid to the landlord by government will be exempt of tax; or (ii) the tenant will be provided with alternative social housing accommodation by government in which case the title of the property will immediately return to the landlord.

(d) Competent Rent Regulatory Authority

Effective regulation of the rental market – whether for pre-June 1995 or post June 1995 property – is important. There will always be issues between tenants and landlords – which issues require speedy resolution. Pivotal to the well-functioning of the rental market sector is the ability for the parties to see justice delivered without delay.

The Malta Chamber and GRTU can no longer accept the poor performance by the competent authorities with regard to the resolution of rental property related disputes. It is not acceptable that a dispute goes on for ever.

It is despairing to note that over the past 8 years since the issuance of the White Paper little, if no, action was done in this regard.

Salient parts of the rent reforms mentioned earlier – namely the MPVI and the registration of rental contracts as established by the reformed Civil Code– failed because neither the Rent Board nor the Courts Administration assumed ownership for their implementation.

The Malta Chamber and GRTU emphasises that a well-resourced administrative competent authority is established in 2017 with the authority to set-up and manage the MPVI, implement the provisions of the Civil Code with regard to rental contract registration; administer disputes' issues between landlords and tenants, and administer the process, including arbitration, for the determination of the fair market rental value. The administration of disputes issues between landlords and tenants will remain within the competences of the Rent Regulatory Board, and such Board will be integrated within the structure of the newly established authority.

There is no justifiable reason why responsibility should be split with the law courts. The same principles applied in dispute resolution in other policy sensitive areas – such as privacy and trust – are applied for rent disputes: authority rest with a well-resourced administrative competent authority with recourse to the courts only on technical points of law.

Recommendation o6

The Malta Chamber and GRTU emphasise that a well-resourced administrative competent authority is established in 2020 with the authority to set-up and manage the MPVI, implement the provisions of the Civil Code with regard to rental contract registration; administer disputes' issues between landlords and tenants, and administer the process, including arbitration, for the determination of the fair market rental value. The administration of disputes issues between landlords and tenants will remain within the competences of the Rent Regulatory Board, and such Board will be integrated within the structure of the newly established authority.

There is no justifiable reason why responsibility should be split with the law courts. The same principles applied for dispute resolution in other policy sensitive areas – such as privacy and trust – are applied for rent disputes: authority rest with a well-resourced administrative competent authority with recourse to the courts only on technical points of law.

(e) Setting Up the Market Value Property Index

The MPVI proposed in the White Paper continues to be a fundamental cornerstone for the determination of a 'scientific' fair market rental value. This is because there today is no central depository capture information regarding property sales or property rental. The Central Bank of Malta created a Hedonic Regression Model of House Prices in Malta for the period 1980-2008. This was based on over 25 thousand observations taken from national newspaper adverts. This system has improved in recent years following CBM mandating financial banks to provide mortgage related data. This, however, does not cover rental market values.

The local data available on property transactions is rudimentary at best. Information registered is generally not captured in a usable form, although the local banks are capturing some information about the property when the purchaser utilises a bank loan to purchase property. The information currently appearing on a Deed of Sale is not regulated, although there is mention that this will be so once the

Central Registry act comes into force. The detail appearing on the deed can vary and is currently not captured in any way.

Past attempts to set up the MPVI failed because there was no institutional ownership. The process was dependent on individuals – the responsible minister and their technical team. Once these moved to new responsibilities the effort collapsed.

The Malta Chamber and GRTU recommend that the proposed competent rental authority is assigned the responsibility and financing to set-up the MPVI. It should be tasked to deliver the MPVI in 6 months maximum. The technology on which an MPVI system will be built is today mainstream. The main issue is ensuring that government and private sector stakeholders make available the necessary data. To ensure that such stakeholders are compelled to provide such data appropriate Legal Notices can be issued under the powers assigned to the responsible Minister under sub-articles (a), (b) (c), and (d) of Article 1622A of the Civil Code.

A public private partnership model can be considered for the financing of the development of the MPVI

Recommendation 07
<p>The Market Property Value Index continues to be a fundamental cornerstone for the determination of a 'scientific' fair market rental value. The proposed competent rental authority is assigned the responsibility and financing to set-up the MPVI. It should be tasked to deliver the MPVI and be operative not later than 1st January 2020. Powers assigned to the responsible Minister under sub-articles (a), (b) (c), and (d) of Article 1622A of the Civil Code should be applied to compel government and private stakeholders to provide the necessary information.</p>