

CHAPTER 246

IMMOVABLE PROPERTY (ACQUISITION BY NON-RESIDENTS) ACT

To prohibit the acquisition of immovable property by non-residents.

9th August, 1974

ACT XXXVII of 1974, as amended by Act LVIII of 1974; Legal Notice 148 of 1975; Acts XVI of 1978, IV of 1979, XIII of 1983, I of 1988, IX of 2003, III and XIII of 2004; and Legal Notice 156 of 2005.

1. The short title of this Act is the Immovable Property (Acquisition by Non-Residents) Act. Short title.

2. In this Act, unless the context otherwise requires -

"building" includes a plot of land and for the purposes of article 6 the projected cost of its development;

"continuous period" shall be calculated by ignoring any periods totalling less than ninety days in any calendar year during which an individual is not in Malta provided that such periods do not exceed ninety days in any given calendar year;

"European Union" means the European Union referred to in the Treaty;

"Government" means the Government of Malta;

"immovable property" means and includes all things, rights and actions which are immovable by their nature or by reason of the object to which they refer in accordance with articles 308 and 310 of the Civil Code;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution;

"Member State" means a state which is a member of the European Union;

"Minister" means the Minister responsible for finance, and except for the purposes of an order made in terms of article 6(1) or regulations made in virtue of article 8, includes where delegated in writing by the Minister, and public officer in the Ministry of Finance so delegated by the Minister;

"non-resident person" means and includes:

- (a) any individual who is not a citizen of Malta or of another Member State; or
- (b) a citizen of Malta or of another Member State, even in either case, if in possession of a valid residence permit, who has not been resident in Malta for a minimum continuous period of five years at any time preceding the date of acquisition; or
- (c) any body or other association of persons, and any authority, institution, organisation, fund, firm and any

Interpretation.
Amended by:
I. 1988.2;
IX. 2003.37;
III. 2004.82;
XIII. 2004.63.

Cap. 16.

other entity whatsoever, whether corporate or not, if:

- (i) it is constituted, formed, established, incorporated or registered in, or under the laws of, a state other than Malta or another Member State; or
- (ii) it has its registered address, principal place of residence or of business in a state other than Malta or another Member State; or
- (iii) twenty-five per cent or more of its share or other capital is owned by a non-resident person or is registered in the name of a trustee for the benefit of a non-resident person; or
- (iv) it is in any manner and whether directly or indirectly controlled by one or more non-resident persons;

(d) any trustee in terms of a trust who is:

- (i) a non-resident person unless all the beneficiaries of the trust are determined and are residents of Malta and in case of a discretionary trust where the power of appointment or any discretion may be exercised in favour of residents of Malta;
- (ii) a resident of Malta where any of the beneficiaries are non-resident persons and in case of a discretionary trust, where the power of appointment or any discretion may be exercised in favour of any nonresident person;

"primary residence" means the dwelling house in which an individual habitually resides in, or intends to habitually reside in, as his principal place of abode, whether in Malta or elsewhere;

"resident of Malta" means an individual who is:

- (a) a citizen of Malta or another Member State who has been resident in Malta for a minimum continuous period of five years at any time preceding the date of acquisition;
- (b) the spouse, of whatever nationality and wherever resident, of a citizen of Malta or another Member State where such spouses are acquiring together on the same deed;

"residence permit" means a residence permit issued in terms of the Immigration Act;

"secondary residence purposes" means purposes other than for primary residence or for any of the purposes listed in article 3(2)(b) or (3);

"special designated area" means a zone described in the First Schedule and such other zone as the Minister may from time to time by order in the Gazette add to such schedule;

"the Treaty" has the same meaning as is assigned to it in article 2 of the European Union Act.

Cap. 217.

Cap. 460.

3. (1) Without prejudice to the other provisions of this Act:

- (a) a resident of Malta may acquire by an act *inter vivos* immovable property in Malta by or under any title without the necessity of obtaining a permit under this Act;
- (b) a citizen of Malta and a citizen of a Member State who in either case is not a resident of Malta may not, without the necessity of obtaining a permit under this Act, acquire immovable property for secondary residence purposes by an act *inter vivos* in Malta.

(2) For the purposes of this Act "immovable property for secondary residence purposes" shall exclude:

- (a) any immovable property which is to serve as the primary residence for the person acquiring the immovable property; or
- (b) such immovable property the acquisition of which is required for the carrying out of such person's business activities or the supply of services by such person.

(3) A person, other than a physical or a non-resident person, may acquire by an act *inter vivos* immovable property in Malta without the necessity of obtaining a permit under this Act where such immovable property is required for the purpose of carrying out the activity for which it has been set up.

4. (1) Save as hereinafter provided, with effect from 30th May, 1974, a non-resident person may not acquire immovable property by or under any title, and in any manner, whatsoever, whether by act *inter vivos* or *causa mortis*, and including prescription, occupancy or accession; and any deed, will or other act purporting to transfer or transmit any immovable property to a non-resident person, and any devolution or other event having the effect of transmitting immovable property and which but for the provisions of this Act would have transmitted such property in favour of a non-resident person, shall be null and void and be without effect for all purposes of law and in regard to all persons; and any transfer, payment or other thing made or done or given as part or in consequence of, or as ancillary to, anything which is prohibited as aforesaid shall likewise be null and without effect and, as and where appropriate, the subject matter thereof shall be returned, restored, refunded, cancelled or otherwise dealt with accordingly.

(2) Subarticle (1) shall not apply to:

- (a) the acquisition of a grave or a site for a grave by a non-resident person; and
- (b) to the redemption by a non-resident person of any groundrent or other burden encumbering any immovable property lawfully acquired by such non-resident person.

Persons who may acquire immovable property without a permit.

Added by:
IX. 2003.39.
Amended by:
III. 2004.83.

Non-residents may not acquire immovable property.

Amended by:
I. 1988.3;
IX. 2003.38.

Exception in certain cases.

Substituted by:

IX. 2003.40.

Amended by:

III. 2004.84.

5. (1) The provisions of article 4 shall not apply in respect of:

- (a) any immovable property devolving *causa mortis* on any person, wherever resident, provided that the person from whom the property devolves had acquired such immovable property, where applicable, in accordance with the provisions of this Act; or
- (b) the acquisition of immovable property by any person, wherever resident, in a special designated area; or
- (c) the acquisition of any further divided or undivided share in immovable property by any person, wherever resident, where such person had previously lawfully acquired a share in such immovable property; or
- (d) the transfer of immovable property in an inheritance between co-heirs; or
- (e) the partition of immovable property between co-owners; or
- (f) the acquisition of immovable property by a company or other commercial partnership, not being a non-president person, from one or more of its members holding over fifty per cent interest in, or of its share capital; or
- (g) the donation of immovable property to a spouse, descendant or an ascendant in the direct line and their relative spouses, or in the absence of descendants to a brother or sister and their descendants, provided such immovable property had been acquired in accordance with the provisions of this Act, where applicable.

(2) The party acquiring the immovable property or on whom the immovable property is assigned in a partition or devolves in accordance with any one or more of the exceptions listed under subarticle (1) shall declare on the deed that such transfer is so covered, and the notary publishing the deed shall warn the said person of the importance of the truthfulness of such declaration and record on the deed that he has so warned such person.

(3) Any notary who receives any deed which does not contain a declaration as is required under the provisions of this article, or who fails to warn the parties particularly as to the importance of the truthfulness of such declaration or to record in the deed he has compiled with such requirement, shall be guilty of an offence under this Act, and shall on conviction be liable to a fine (*multa*) of not less than one thousand liri and not more than ten thousand liri.

Permit to non-residents to acquire immovable property in particular cases.

Amended by:

XVI. 1978.2;

XIII. 1983.5;

I. 1988.4;

IX. 2003.38, 41.

6. (1) The Minister may grant a permit in writing to a non-resident person to acquire an immovable property specifically indicated in the permit if in the opinion of the Minister it is in the public interest or it is otherwise appropriate to grant such permit:

Provided that, if an application is made to the Minister for the acquisition of immovable property by a non-resident person, and such application is made in line with such policies, such form and in such manner, if any, as may be established by regulations

made under this Act, and such information as may be prescribed by regulations has been given, the Minister shall not withhold his permit if he is satisfied that -

- (a) the immovable property is required for an industrial or touristic project approved by the Government or for any other project or purposes similarly approved in view of its contribution to the development of the economy of Malta; and
- (b) in the case of an individual who is not a resident of Malta, the immovable property is a building the value of which is not less than eight thousand liri (which sum shall be adjusted in line with an immovable property price index that shall be published annually in the Gazette by the National Statistics Office) and which is intended to be used by the non-resident person as a residence for himself and his family and such non-resident person does not own or hold under any title whatsoever any other immovable property in Malta other than immovable property the acquisition of which is exempted under article 4(2) or 5;
- (c) the immovable property is either:
 - (i) a garage situated within five hundred metres from the applicant's previously acquired residence; or
 - (ii) an adjoining parcel of land or building intended to serve as an extension to and be integrated with, the applicant's previously acquired residence:

Provided further that the Minister may withhold the granting of a permit for the acquisition of any immovable property which he considers to be of historical importance, or as being situate in a historical locality.

(2) Where by virtue of any deed, succession, act or event, a non-resident person would, but for the provisions of this Act, have acquired immovable property, the Minister may, by order in the Government Gazette specifying the property which he intends to cover by the order, grant a permit to such non-resident person to acquire the property so specified; and in any such case the acquisition shall have effect from such day as may be specified in the order being a day not earlier than the date of the deed, succession, act or event aforesaid or, if no date is specified in the order, from the date of the deed, succession, act or event aforesaid.

(3) The conditions, restrictions, limitations and qualifications under which the permit referred to in this article is granted shall be those listed in the Second Schedule.

(4) An acquisition of immovable property made by virtue, and in accordance with the terms of a permit granted under subarticle (1) by means of a public deed to which such permit is annexed and an acquisition of an immovable property in respect of which a permit is granted under subarticle (2), shall be valid and have effect

notwithstanding article 4, subject to compliance with the provisions of any other law applicable to such acquisition:

Provided that this subarticle shall not apply, and article 4 shall have full effect as if no permit under this article had been granted, if, in respect of any permit so granted, information material to the granting of such permit was given to the Minister which was incorrect or misleading.

(5) As soon as may be after the end of every three-month period ending on 31st March, 30th June, 30th September and 31st December, the Minister shall cause to be published in the Government Gazette a list of all permits granted under this article during the preceding period of three months, together with such information concerning the person to whom and the property in respect of which the permit was granted as the Minister may deem appropriate. A copy of all the lists published under this subarticle shall be kept at the Public Registry offices in Malta and in Gozo and such copies shall be so open to inspection by any person in like manner as the registers kept in those offices.

Immovable property to be used only for the purpose indicated.
Amended by:
LVIII. 1974.68;
L.N. 148 of 1975;
XIII. 1983.5.
Substituted by:
IX. 2003.40.
Amended by:
III. 2004.85.

7. (1) It shall not be lawful for any person, without the consent in writing of the Minister, to make use, or to permit the use, of any immovable property acquired by virtue of a permit granted under article 6, in any manner or for any purpose other than that indicated in the application for such permit.

(2) Any person authorised to acquire immovable property in Malta in accordance with the provisions of article 3 shall, on the deed transferring title, declare that he qualifies to acquire such immovable property and shall further state the reasons for such qualification as well as, where required to do so by this Act, the purpose of such acquisition, and the notary publishing the deed shall warn the said person of the importance of the truthfulness of such declaration and include such declaration in the said deed.

(3) Any notary who receives any deed which does not contain a declaration as is required under the provisions of this article, or who fails to warn the parties particularly as to the importance of the truthfulness of such declaration or to record in the deed that he has complied with such requirement, shall be guilty of an offence under this act, and shall on conviction be liable to a fine (*multa*) of not less than one thousand liri and not more than ten thousand liri.

(4) If any act is committed or omitted in contravention of any of the provisions of subarticles (1) or (2) or of any condition, restriction, limitations or qualification contained in any permit or consent given under this Act, the person to whom the permit or consent was last granted and any other person committing or omitting or permitting the commission or omission of any such act as aforesaid, shall be guilty of an offence under this Act and shall be liable, on conviction, to a fine (*multa*) not exceeding ten thousand liri (Lm10,000) or double the market value of the immovable property so acquired, whichever is the higher amount, and, in the case of a continuing offence, to a further fine (*multa*) of not less than one hundred liri and not exceeding one thousand liri (Lm1,000) for each day, excluding the first one hundred and eighty

days, during which the offence continues:

Provided that no proceedings shall be instituted against such person within one hundred and eighty days from the date of acquisition, and no proceedings shall be taken if, within such period of one hundred and eighty days, such person has remedied the contravention and has conformed with the provisions of this Act or has otherwise lawfully transferred the property:

Provided further that should any permit or consent be required to conform with the law and such permit or consent is refused, no proceedings shall be instituted against such person, and those already commenced shall be withdrawn, if such person transfers the immovable property within one hundred and eighty days from the date of such refusal.

(5) Saving the provisions of the provisos to subarticle (4), nothing in the said subarticle shall be construed as validating anything done not in conformity with any condition, restriction, limitation or qualification contained in a permit or consent given under this Act.

8. The Minister may make, and when made vary, alter and, without prejudice to the making of new regulations, revoke, regulations to give effect to any of the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, to -

Regulations.
Amended by:
IV. 1979.2;
XIII. 1983.5;
IX. 2003.38, 42.

- (a) prescribe or make provision for any matter which may be or is to be prescribed under this Act;
- (b) amend, cancel or substitute any of the Schedules to this Act;
- (c) make provision for or determine the cases, manner, terms and conditions, other than those provided for in this Act, in or under which a permit may be granted under article 6;
- (d) make provision, and establish penalties not exceeding ten thousand liri or double the market value of the immovable acquired and not exceeding one thousand liri for each day in respect of continuing offences, or other consequences or effects, for or in respect of any contravention or failure of compliance with any condition, restriction, limitation or qualification contained in any such permit as aforesaid;
- (e) prescribe the fees that may be charged for the issue of permits for the acquisition of immovable property under the provisions of this Act and, without prejudice to the generality of the foregoing, make different provisions in respect of such fees for different categories of applications for a permit, for different categories of permits, for different categories of persons, or for such different circumstances or reasons as appear to the Minister to be appropriate.

Colourable
transactions.
Added by:
IX. 2003.43.

9. The provisions of this Act shall also apply where a person acquires shares or other equitable interest in a commercial partnership in order to circumvent and evade the requirement of a permit under this Act, and where any person so acquires such shares or equitable interest for such purpose without first obtaining a permit, the provisions of this Act, including, without prejudice to the generality hereof, the provisions of articles 4 and 7 thereof, shall apply to the acquisition of such shares or equitable interest as if such acquisition were of the immovable property held by such partnership.

FIRST SCHEDULE
List of scheduled zones in terms of article 2

Added by:
IX. 2003.44.
Amended by:
L.N. 156 of 2005

1. FORT CHAMBRAY

Fort Chambray in the limits of Ghajnsielem in the Island of Gozo, shown outlined in red in a plan marked as Document X enrolled in the records of Notary Public in the Lands Department Dr. Vincent Miceli by Deed No. 121 dated 13th April, 1993.

2. PORTOMASO DEVELOPMENT

Portomaso Development situated on a plot of land at Spinola, St. Julians, Malta, shown outlined in blue in a plan marked as Document B annexed to a deed in the records of the Assistant Notary to Government, Doctor Anthony Attard, by Deed No. 83 dated 19th May, 1964.

3. COTTONERA DEVELOPMENT

Cottonera Development consists of the immovable property, as per Plans LD 23/99, LD 23A/99; LD 23B/99; LD 24/99; LD 24A/99; LD 24B/99 and LD 24C/99 marked as Documents "X", "Y", "F", "W", "P", "O" and "K" respectively annexed to a deed in the records of Notary Doctor of Laws Vincent Miceli by Deed No. 100 of the 2nd June, 1999.

4. MANOEL ISLAND/TIGNÈ POINT

Manoel Island/Tignè Point in the limits of Gzira and Sliema in the Island of Malta, as per plans Property Drawing number fifty four stroke two thousand (PD 54/2000) and Property Drawing number fifty five stroke two thousand (PD 55/2000) in respect of lands at Manoel Island/Tignè Point respectively marked "X" and "Y" respectively enrolled in the records of Notary Public in the Lands Department Vincent Miceli of the 3rd March, of the year two thousand (2000).

5. TAS-SELLUM RESIDENCE (MELLIEHA PROJECT)

Tas-Sellum Residence (Mellieħa Project) consisting of the immovable property as per Plan marked as Document "X" annexed to a deed in the records of Notary Doctor of Laws Sandra Bugeja by Deed No. 246 of the twenty-ninth (29th) September of the year two thousand and four (2004).

SECOND SCHEDULE
Conditions, restrictions, limitations and qualifications
for the grant of a permit under article 6

Added by:
IX. 2003.44.
Amended by:
III. 2004.86

1. Any non-resident person wishing to acquire immovable property in terms of article 6 of the Act shall submit a form as shown on Annex A or B hereto duly completed and containing such particulars and accompanied by such documents, as are prescribed in the said form.

2. The Minister may refuse to issue a permit to a person who is not of good conduct.

3. In issuing a permit in terms of article 6 of the Act, the Minister shall impose the following conditions:

A. In the case of a dwelling house:

- (i) that the immovable property is solely used as a residence by the applicant and his family and for no other purpose;
- (ii) that the acquisition is to be effected within six months from the date of issue of the permit, saving the granting of any extension as may be applied for;
- (iii) that within three months from publication of the deed of acquisition, a certified copy of such deed must reach the office of the Commissioner of Inland Revenue (Capital Transfer Duty Department); and
- (iv) that the immovable property may not be sold in part, or otherwise converted into more than one dwelling house.

B. In the case of a garage or other adjoining property:

- (i) that the immovable property is used solely as a garage by the applicant and his family or as an extension to be integrated with the applicant's existing dwelling;
- (ii) that the acquisition is to be effected within six months from the date of issue of the permit, saving the granting of any extension as may be applied for;
- (iii) that within three months from publication of the deed of acquisition, a certified copy of such deed must reach the office of the Commissioner of Inland Revenue (Capital Transfer Duty Department); and
- (iv) that the immovable property covered by this permit may not be sold or otherwise disposed of separately but only together with the applicant's original dwelling house.

C. In the case of a plot of land:

- (i) that the applicant is to develop the plot into one complete single residence ready for occupation within a period of two years from the date of issue of this permit;
- (ii) that the immovable property is eventually to be used solely as a residence by the applicant and his family and for no other purpose;
- (iii) that the acquisition is to be effected within six months from the date of issue of the permit, saving the granting of any extension as may be applied for; and
- (iv) that within three months from publication of the deed of acquisition, a certified copy of such deed must reach the office of the Commissioner of Inland Revenue (Capital Transfer Duty Department).

4. The fees payable shall be Lm 100 for each permit, or such fees as may, from time to time, be prescribed by Order of the Minister.

ANNEX A

APPLICATION TO THE MINISTER RESPONSIBLE FOR FINANCE BY A BODY
OF PERSONS TO ACQUIRE IMMOVABLE PROPERTY IN MALTA IN TERMS
OF THE IMMOVABLE PROPERTY (ACQUISITION BY NON-RESIDENTS) ACT
(CAP. 246)

PART I

A. Particulars of applicant falling under paragraph (c) of the definition of "non-resident person" in article 2 of the Immovable Property (Acquisition by Non-Residents) Act, Cap. 246, (hereinafter referred to as the Act).

1. Name of body, association, authority etc. or other entity which is making the application:

2. Whether corporate or not:

3. Where or under the laws of which country is it constituted, formed, established, incorporated or registered: (a certified copy of any relevant deed of constitution or incorporation is to be attached)

4. Whether it has its principal place of residence or of business outside Malta:

5. (a) A list of all shareholders showing the number of shares held by each, the citizenship of each shareholder and the place of residence; and

(b) Where the shareholder is a body, association, authority etc., all the particulars relating to it as at (a) above:

(A separate list may be attached to the application duly signed and dated by applicant, and a note to this effect made in the above space).

6. Whether it is in any manner directly or indirectly controlled by one or more non-resident persons as defined by the Act:

(Full particulars are to be given as necessary)

B. Particulars of immovable property to be acquired by non-residents.

1. Detailed description of immovable property including the type of property, the locality and other particulars necessary to identify it and the area of the property in square metres:

2. Price or other consideration being paid:

3. If for development, details of cost of works and estimated period for completion of same:

4. Under what title is the immovable property to be acquired:

(Applicant is to submit a copy of the preliminary agreement and other related documents in connection with the acquisition of the property).

5. Purpose for which the immovable property is to be acquired:

6. Source of funds for acquisition of immovable property:

7. Any other particulars:

C. Particulars of person from whom immovable property is being acquired.

1. Name:

2. Address:

D. Details of any immovable property in Malta already held or owned by applicant under any title whatsoever:

I hereby declare that the above particulars are true and correct and that the immovable property is intended to be used for the purpose above mentioned.

Date

Signature of Applicant

NOTE: Applicant is warned that any information given in the application material to the granting of a permit by the Minister which is incorrect or misleading would amongst other things as contemplated in the Act render any pertinent deed or act null and void.

PART II

For official use only.

ANNEX B

APPLICATION TO THE MINISTER RESPONSIBLE FOR FINANCE BY AN INDIVIDUAL TO ACQUIRE IMMOVABLE PROPERTY IN MALTA IN TERMS OF THE IMMOVABLE PROPERTY (ACQUISITION BY NON-RESIDENTS) ACT (CAP. 246)

PART I

A. Particulars of applicant:

1. Name and surname:

2. Place and Date of Birth:

3. Parents' names including mother's maiden surname:

4. Profession or trade:

5. Citizenship:

6. Place of residence: (full address)

7. Mailing address if different from above:

Two passport size photos of the applicant and a photocopy of the applicant's passport showing the personal details are to be attached to this application.

B. Particulars of immovable property to be acquired by non-resident

1. Detailed description of immovable property (i) type of property, the locality, boundaries (where necessary) and other particulars needed to identify it and (ii) size of the property giving overall area of land in square metres, details of buildings, and all other appurtenances, (iii) whether or not property is of historical importance or situated in a historical area:

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2. Price or other consideration being paid:

3. If for development, details of cost of works and estimated period for completion of same:

4. Under what title is the immovable property to be acquired:

(Applicant is to submit a copy of the preliminary agreement and of any documents in connection with the acquisition of the property).

5. Purpose for which the immovable property is to be acquired:

6. Source of funds for acquisition of immovable property:

7. Any other particulars:

C. Particulars of person or body of persons from whom immovable property is being acquired:

1. Name:

2. Address:

3. Citizenship or in case of body of persons, whether "resident" in terms of the Act

D. Particulars of immovable property already owned or held:

1. Details of any immovable property in Malta already owned or held under any title whatsoever by applicant:

2. Details of any immovable property in Malta already owned or held under any title whatsoever by applicant's family:

3. Details of any immovable property in Malta disposed of by applicant or any member of his family during the last 10 years:

I hereby declare that the particulars are true and correct.

Date

Signature of Applicant/Attorney

NOTE: Applicant is warned that any information given in the application material to the granting of a permit by the Minister which is incorrect or misleading would amongst other things as contemplated in the Act render any pertinent deed, will or act null and void.

PART II

For official use only.
