

# An Investigation of matters relating to the Emphyteutical Agreement between Government and the General Workers Union

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Emphyteutical Contract between  
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## List of Abbreviations

A/CEO	Acting Chief Executive Officer
AG	Auditor General
ARMS	Automated Revenue Management Services
DG	Director General
DPW	Director of Public Works
GPD	Government Property Department
GWU	General Workers Union
MEPA	Malta Environment and Planning Authority
MFEI	Ministry of Finance, the Economy and Investment
MFSA	Malta Financial Services Authority
NAO	National Audit Office
OPM	Office of the Prime Minister
PAC	Public Accounts Committee

# Executive Summary

## Executive Summary

1. On 12 February 2015, two Opposition Members of Parliament wrote to the Chair of the Public Accounts Committee (PAC) requesting an investigation of the lease of part of the premises occupied by the General Workers Union (GWU) to the Automated Revenue Management Services (ARMS) Ltd. It was alleged that the lease was in breach of certain conditions stipulated in the contract entered into between Government and the GWU, whereby the Union was granted the perpetual emphyteusis of the site housing its premises. This request was referred to the Auditor General (AG) during the PAC sitting held on 16 March 2015.
2. The terms of reference adopted by the National Audit Office (NAO) were to:
  - a. establish whether the provisions stipulated in the contract between Government and the GWU were breached;
  - b. determine whether the Government Property Department (GPD) was aware of the lease between the Union and ARMS Ltd, whether the Department approved of such an arrangement and, if not, what action was taken;
  - c. ascertain whether other Government officials were involved in this matter, and if so, establish what their role was; and
  - d. establish whether other lease agreements were in place and determine whether these were in accordance with the provisions of the contract.
3. In 1957, the Government of Malta granted the GWU a perpetual emphyteusis on public land for the Union to build its headquarters and to use such exclusively for trade union activities and its printing and publishing company, the Union Press. In 1997, the GWU transferred the Union Press to Marsa and subsequently requested the modification of the 1957 contract in order to allow for the utilisation of the resultant unoccupied space within the premises. The most significant revision made through the 1997 amendment permitted the GWU to transfer, assign or let (rent) part of its building to any company in which the Union had more than 51 per cent of the shareholding. On 15 May 2015, the GWU exercised its right for the redemption of ground rent and filed in Court a schedule of redemption. The perpetual yearly ground rent was redeemed against the payment of €16,026 (representing the perpetual yearly ground rent of €801 capitalised at a rate of five per cent), thereby rendering the property freehold.
4. Prior to the redemption, on 24 April 2014, the GWU and ARMS Ltd signed a lease agreement whereby the latter leased a part of the Workers' Memorial Building to use

as offices and as a customer service outlet in Valletta. The lease term was for a period of five years, with an option to extend for an additional five years. The annual rent that was to be charged to ARMS Ltd was that of €61,950, payable pro rata every six months in advance.

5. Hereunder are the NAO's salient findings, conclusions and recommendations relating to each of the terms of reference.

#### *Breach of the Government-GWU Contract resulting from the ARMS Ltd Lease*

6. The NAO established that between April 2014 and May 2015, the lease of part of the Workers' Memorial Building to ARMS Ltd by the GWU was in breach of the Government's emphyteutical contract with the Union. This emanated from the fact that the GWU did not have any shareholding in ARMS Ltd and therefore infringed condition (b) of the 1997 amendments.
7. The redemption of ground rent on 15 May 2015 rendered the establishment of whether this irregularity persisted after this date less straightforward due to the different legal interpretations of the implications of such redemption. The GWU maintained that, according to legal advice obtained in March 2014, the exercise of this legal right rendered obsolete all of the conditions stemming from the 1957 and 1997 contracts. A conflicting legal perspective was provided by the GPD, as guided by the Attorney General. The GPD argued that even though the ground rent was redeemed, the emphyteutical concession conditions and any subsequent conditions imposed by a public deed between Government and the GWU relating to the property were still valid. Advice provided to the NAO aligned with that indicated by the Attorney General. Notwithstanding, this Office deems this matter to be a legal one, which should be decided in an appropriate judicial forum should circumstances so warrant. Furthermore, the NAO considers it impractical and inappropriate to comment on the possible outcome of any litigation.
8. A complication that arises relates to the possible corrective action that could be exercised by the GPD now that the ground rent has been redeemed. The NAO noted that before the ground rent redemption took place, effectively rendering the site freehold, the GPD had the right to demand the dissolution of the grant on emphyteusis in the case of established breaches. This possibility no longer exists given that the ground rent has been redeemed; however, other means of redress certainly merit consideration, particularly in view of the subsidised ground rent paid by the Union, which directly impacted on a significantly undervalued redemption price.
9. In light of the above, the NAO recommends two courses of action, one relating to breaches registered prior to the redemption of ground rent, with the other relating to the establishment of whether breaches persisted following such redemption. In the first case, the NAO recommends that the GPD actively considers instituting legal action against the GWU for the evident breaches of conditions set in the emphyteutical contract. Second, the NAO urges the GPD to establish, through legal action, whether the conditions of the emphyteutical contract survive the redemption of ground rent, and in the affirmative, institute judicial action against the Union, or any other type of action deemed suitable.

#### *Involvement and Shortcomings of the GPD*

10. The GPD maintained that the Department was unaware of the GWU's arrangement with ARMS Ltd until the press exposed this matter. Notwithstanding such affirmations, the NAO finds it difficult to comprehend how the Department was unaware of ARMS



Ltd's occupation of part of the GWU's premises, given that the Company spared no effort at publicising the setting up of this outlet. Furthermore, in the NAO's considered opinion, while the Department never explicitly approved the lease, it took limited action to avert and/or remedy the situation.

11. Notwithstanding the assertions made by the GPD regarding the GWU's lease to ARMS Ltd, the Union had previously approached the GPD with regard to the possible lease of parts of its premises to government entities. In a letter submitted on 28 March 2014, the GWU had requested the Commissioner of Land's confirmation that should a government entity wish to lease part of the property from the Union, the GPD would find no objection. This letter was followed by a telephone call made by the former Commissioner of Land to the GWU Secretary General. In a minute recorded in the GPD file following this call, the Commissioner noted that the Union had been duly informed that the request could only be acceded to through a parliamentary resolution. According to the Commissioner of Land, the GWU Secretary General informed him that the '*pertinent authorities*' were aware of this matter and that the request was to be accordingly acceded to.
12. Notwithstanding the numerous attempts made by this Office to establish who the authorities referred to were, the GWU Secretary General and the former Commissioner of Land did not provide this information. While the GWU Secretary General failed to reply to all correspondence sent by the NAO, the former Commissioner of Land claimed that he could not recall whether the GWU Secretary General had informed him of their identity.
13. This Office considers the GPD's failure to submit a written reply to the GWU's request dated 28 March 2014 as a shortcoming, which hindered the audit process and constrained the NAO to solely rely on the subjective recall of events by Union and GPD officials rather than the objective analysis of documentation. However, despite the lack of required authorisation, the GWU proceeded with the lease of a part of its premises to ARMS Ltd.
14. On 19 May 2014, a draft memorandum was prepared by the Department and submitted to the Director General (DG) GPD, outlining that given that neither the original deed of emphyteusis nor the deed of amendments provided that such leases could take place, the GWU's request could only be entertained if the deed was amended by means of a parliamentary resolution. Irrespective of the prompt action taken by the GPD in preparing the memorandum, this was rendered superfluous by the fact that the lease agreement between the GWU and ARMS Ltd had already been signed.
15. Notwithstanding the timely preparation of the memorandum, the NAO noted that the GPD failed to pursue the matter, as the memorandum was not submitted for the consideration of the Parliamentary Secretary for Planning and Simplification of Administrative Processes (hereinafter referred to as Parliamentary Secretary OPM). The NAO has reservations regarding the explanations put forward by the GPD, with justification cited in defence of the Department's inaction considered inadequate. This Office considers it unreasonable for the GPD to take action only when and if prompted, and hardly considers it necessary for the Union to persistently remind the Department to take the required action. Similarly unreasonable is the expectation that the Ministry was to prompt the GPD on action to be taken as the Ministry was, according to records and evidence provided to the NAO, unaware of the Union's intentions. This, bearing in mind that the issue relating to the '*pertinent authorities*' was never resolved. In practical terms, the Department should have submitted the memorandum to the Parliamentary Secretary OPM for his consideration.

16. Nevertheless, the Department's shortcomings in this respect do not exculpate the Union from having breached the conditions stipulated in its contract with Government by entering into a lease agreement for part of its premises with ARMS Ltd. This Office fails to comprehend why the GWU did not resolve the matter of the ARMS Ltd lease through the legitimate course of action presented in the parliamentary resolution as proposed by the GPD. Simultaneously, the NAO acknowledges the GPD's failure to facilitate this course of action, effectively halting the process that should have led to Parliament's eventual sanctioning.
17. The NAO enquired as to why the GPD failed to take any action following allegations in the press regarding the occupation of part of the GWU premises by ARMS Ltd, that is, when the Department was unequivocally aware of the matter. The GPD maintained that once the matter was referred to the NAO, any further action was deemed inappropriate until the conclusion of the investigation. Aside from the correspondence sent by the Commissioner of Land to the GWU, which remained unanswered, the NAO is of the opinion that the Department could have taken further and more decisive action in order to establish the veracity of alleged irregularities and, in the affirmative, take remedial action.

#### *Inadequate Involvement of Other Government Officials*

18. The NAO established that the involvement of the Parliamentary Secretary OPM in the initial stages of this matter was limited, largely because he had assumed Office weeks prior to the signing of the GWU-ARMS Ltd lease agreement. Although the NAO acknowledges the circumstances that mitigate responsibility for the Parliamentary Secretary's initial inaction, such justification cannot be cited with respect to the insufficient action taken when the alleged irregularity became public knowledge. Guidance provided to the Commissioner of Land to write to the GWU was appropriate as a first measure, yet should have been escalated in view of the Union's failure to reply and the fact that the same circumstances prevailed.
19. The involvement of the relative Permanent Secretary remained an ambiguous matter to the NAO. Despite the fact that according to GPD records, the file was forwarded to his Office, the Permanent Secretary claimed that he had never seen the file. Moreover, the NAO finds difficulty in understanding how the Permanent Secretary remained unaware of the fact that ARMS Ltd was actually occupying part of the Workers' Memorial Building despite the considerable press coverage on the matter.
20. The Parliamentary Secretary OPM and the Permanent Secretary stated that once the issue was referred to the NAO for investigation, they refrained from taking any action in addressing the alleged irregularities. This Office is of the opinion that the initiation of this investigation should not have served as justification for inaction and further developments in this regard would not have been construed as interference but merely reported on by the NAO.

#### *Occupation by Third Parties of the GWU Premises*

21. The NAO established that portions of the Workers' Memorial Building were, aside from ARMS Ltd, being utilised as a tourist attraction (Malta 5D), an insurance agency (Untours Insurance Agents), a restaurant (Sciacca Grill) and a travel agency (Vjaġġi Untours). The use of parts of the GWU premises by Malta 5D and Untours Insurance Agents was deemed as regular by the NAO in view of the Union's majority shareholding. On the other hand, the occupation by Sciacca Grill and Vjaġġi Untours was not, as the Union was not the majority shareholder. While the NAO is certain of the irregularity of the occupation of part of the premises by Sciacca Grill and Vjaġġi Untours prior

to the redemption of ground rent in May 2015, the situation is less clear following this development. This Office is of the opinion that the establishment of regularity or otherwise should be determined by the appropriate judicial forum. It is only through this course of action that one may establish whether the conditions stipulated in the contract between Government and the Union survive redemption. Should it be established that the conditions prevail, then the irregularity of the occupation of part of the Workers' Memorial Building by Sciacca Grill and Vjaġġi Untours extends beyond May 2015.

22. According to GPD records and that stated by senior GPD officials, the Department was unaware of the use of parts of the Workers' Memorial Building for commercial purposes by entities in which the Union did not have a majority shareholding. In view of the centrality of the premises, the prominence of the establishments operating therefrom, and the duration of their occupation, the NAO struggles to comprehend how the GPD failed to note any of the establishments occupying parts of the Workers' Memorial Building. Furthermore, the NAO deems the lack of enforcement action by the GPD as unacceptable and urges the Department to, where warranted, take appropriate measures to ensure compliance with the conditions stipulated in the GWU-Government contract.
23. In view of the irregularities highlighted, the NAO recommends two lines of action to be taken by the GPD. In the first case, for breaches registered prior to the redemption of ground rent, the NAO recommends that the GPD actively considers instituting legal action against the GWU for the evident breaches of conditions set in the emphyteutical contract. In the second case, in determining whether breaches persisted post ground rent redemption, the NAO urges the GPD to establish, through legal action, whether the conditions of the emphyteutical contract survive the redemption, and in the affirmative, institute judicial action against the Union, or any other type of action deemed suitable.

# Chapter 1

## Introduction

# Chapter 1 – Introduction

**1.0.1** On 12 February 2015, two Opposition Members of Parliament wrote to the Chair of the Public Accounts Committee (PAC), requesting an investigation of the lease of part of the premises occupied by the General Workers Union (GWU) to the Automated Revenue Management Services (ARMS) Ltd. This request was referred to the Auditor General (AG) during the PAC sitting held on 16 March 2015.

**1.0.2** In essence, the AG was requested to investigate the possible breach of a public deed dated 12 December 1997, entered into by the Government of Malta and the GWU. This 1997 contract was entered into following the approval of a parliamentary resolution on 31 October 1997, which served to amend the conditions stipulated in the original contract between Government and the Union dated 7 February 1957. The 1957 contract granted the GWU a portion of the site of the former Auberge de France (which was destroyed in World War II) on which to build premises for the Union, now known as the Workers' Memorial Building. The deed granted this site to the GWU on a title of perpetual emphyteusis and barred the Union from transferring, assigning or letting the building, either in whole or in part, to third parties for commercial purposes. In the 1997 amendments, the Government accepted the Union's request to lease the building to companies in which the Union had at least 51 per cent of shares.

## **1.1 Media Allegations**

**1.1.1** In May 2014, the first media reports emerged indicating that ARMS Ltd was exploring the option of establishing a branch in Valletta through the rental of office space owned and occupied by a GWU subsidiary. Subsequently, in February 2015, further media reports on the matter alleged that the five-year rental of the GWU's building in Old Bakery Street, Valletta to ARMS Ltd was in breach of the contract with Government, as the Union was not a shareholder in ARMS Ltd. Press coverage cited that ARMS Ltd would be paying the GWU an annual rent of €62,000, while the total value of the agreement was set at €309,750. Moreover, it was stated that the Union paid an annual perpetual ground rent of €801.

**1.1.2** The media also reported that the GWU had rented the building to ARMS Ltd following a public call for applications and that the Union's offer had been the most competitive out of the three bids submitted. The other two bids offered a space at an annual €790 per square metre, VAT excluded, and at €150 daily, plus €150,000 in advance

as premium, respectively. With regard to the GWU building, ARMS Ltd was paying an annual €177 per square metre for the lease of 350 square metres of office space.

1.1.3 The media reports also referred to other lease arrangements that the GWU allegedly had with two other commercial entities, potentially in breach of the same public deed. These were the lease to 5D Ltd, a company producing audiovisual shows on Malta's history in a theatre in Old Bakery Street, Valletta, and that to Sciacca Grill Ltd, the operator of a restaurant housed in part of the Union's building and situated in South Street, Valletta.

## 1.2 Request by the Public Accounts Committee

1.2.1 This investigation originated on 12 February 2015, when two Opposition Members of Parliament, Hon. Jason Azzopardi and Hon. Ryan Callus, wrote to the Chair of the PAC (Appendix A refers). Here, reference was made to the amendments to the contract dated 12 December 1997 between the Government of Malta, as represented by the Commissioner of Land, and the GWU. Specific reference was made to Government's consent to the Union's request to lease parts of its building in Valletta, granted to it by title of perpetual emphyteusis, to companies in which the GWU had at least 51 per cent of shares. Such acceptance was denoted in the 1997 amendments, with condition (b) stating that *'Government authorises the emphyteuta to transfer, assign or let for commercial purposes to any Company in which the General Workers Union has over fifty one per cent (51%) of the shareholding of such company and for such duration as it holds such percentage shareholding.'*

1.2.2 Moreover, the correspondence submitted to the Chair PAC alleged that in 2014, the GWU had leased a part of its building in Valletta to ARMS Ltd, despite being bound by the condition cited in the previous paragraph. Reference was also made to the reply to parliamentary question 13827, dated 2 February 2015, wherein it was indicated that ARMS Ltd was jointly owned by the Water Services Corporation and Enemalta plc.

1.2.3 The two Opposition Members of Parliament claimed that the Union's lease of its building to ARMS Ltd was in breach of the 1997 public deed, which deed reflected the resolution approved by the Maltese Parliament, on grounds of the GWU not being a shareholder of ARMS Ltd. It is in this context that the PAC was requested to investigate:

- a. whether the 12 December 1997 public deed was breached to financially facilitate a third party;
- b. any advice of the Commissioner of Land in 2014 with respect to the lease to ARMS Ltd and the administrative process since the Government Property Department (GPD) was informed that a lease was/was going to be granted;
- c. which GPD officer approved the lease;
- d. who were the public officers, including GPD and Office of the Prime Minister (OPM) officials, involved and responsible for authorising the lease;
- e. whether condition (b) specified in clause 1.2.1 of the 1997 contract was breached, or whether it was being breached through other ongoing commercial leases to third parties, and what actions were being taken by the GPD so that such breaches did not persist.

1.2.4 The 12 February 2015 letter was discussed in the PAC meeting of 16 March 2015 and, following further parliamentary debate, was eventually referred to the attention of the AG. In a letter to the Chair PAC (Appendix B refers), the AG stated that the Office

would be conducting an investigation of the 1997 contract between Government and the GWU and had set the following terms of reference:

- a. establish whether the provisions stipulated in the contract between Government and the GWU were breached;
- b. determine whether the GPD was aware of the lease between the Union and ARMS Ltd, whether the Department approved of such an arrangement and, if not, what action was taken;
- c. ascertain whether other Government officials were involved in this matter, and if so, establish what their role was; and
- d. establish whether other lease agreements were in place and determine whether these were in accordance with the provisions of the contract.

### **1.3 Methodology**

**1.3.1** This investigation was conducted in accordance with Para 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 (XVI of 1997) and in terms of practices adopted by the National Audit Office (NAO).

**1.3.2** The NAO examined in detail all the documentation retained by the GPD in relation to the portion of the former Auberge de France site occupied by the GWU. Particular attention was directed towards the original 1957 contract, which granted the Union the perpetual emphyteusis of the site on which the Workers' Memorial Building was built. Equally important were the 1997 amendments thereto, correspondence submitted by the GWU to the GPD relating to the matter at hand, as well as other internal GPD correspondence and documents retained in file. Moreover, deemed centrally relevant was the agreement entered into by the Union with ARMS Ltd.

**1.3.3** Reference was also made to public records retained by the Malta Financial Services Authority (MFSA) in order to verify the extent of Union ownership, or otherwise, of companies operating from the Workers' Memorial Building. The NAO sought to verify the accuracy of records retained by the MFSA by means of correspondence exchanged with the GWU as well as with the identified third parties. Various, yet not all, parties contacted provided feedback and clarifications subsequently incorporated into the NAO's findings.

**1.3.4** Where required, clarifications and substantiating documentation were requested from Government and Union officials interviewed during the course of this audit. These interviews, taken under oath, served to augment and corroborate the NAO's understanding of events. Officials interviewed in this respect were the Parliamentary Secretary for Planning and Simplification of Administrative Processes (hereinafter referred to as Parliamentary Secretary OPM), the relative Permanent Secretary, the Director General (DG) GPD, the former and incumbent Commissioners of Land,<sup>1</sup> a GPD lawyer, the Acting Chief Executive Officer (A/CEO) of ARMS Ltd and the GWU Deputy Secretary General. The interviews held were transcribed by the NAO, a copy of which was submitted to the relevant interviewee who was asked to, if necessary, submit clarifications, and confirm the transcript. Public officers and other persons cited in the report are referred to by their designation at the time reported on.

**1.3.5** The allegations brought to the NAO's attention were duly scrutinised and the ensuing findings reported on. The NAO's findings and conclusions are based on the

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<sup>1</sup> During the period being reported on, two Commissioners of Land were in office. The tenure of the first Commissioner of Land, herein referred to as the former Commissioner of Land, ended in December 2014. The present Commissioner of Land took office in January 2015 and is herein referred to as the Commissioner of Land.

evaluation of the documentation and information supplied, which was methodically examined by the audit team. In line with the principles of independence, fairness and objectivity, the NAO sought to determine the facts based on the evidence at its disposal, investigate and objectively report its findings and conclusions.

1.3.6 The report is structured in four Chapters, with this Chapter providing an overview of the allegations reported in the media and the PAC's mandate to the NAO. In Chapter 2, the 1957 contract entered into by the Government of Malta and the GWU is examined, together with the subsequent amendments effected in 1997, specifically the provisions relating to the lease of parts of the premises. In Chapter 3, the four audit objectives set as a result of the PAC request are addressed. Among other key points examined, the NAO sought to establish whether the Union's contract with Government was breached and understand the role of the GPD in this matter. The NAO's conclusions and views relating to all elements put forward in this audit's terms of reference are outlined in Chapter 4.





Chapter 2  
The 1957 and 1997 Contracts between  
Government and the General Workers Union,  
and Recent Developments

## Chapter 2 – The 1957 and 1997 Contracts between Government and the General Workers Union, and Recent Developments

2.0.1 In 1957, the Government of Malta granted the GWU a perpetual emphyteusis on public land for the Union to build its headquarters and to use such exclusively for trade union activities and its Union Press. In 1997, the Union transferred its printing and publishing company, the Union Press, to Marsa and subsequently requested the modification of the 1957 contract in order to allow for the utilisation of the resultant unoccupied space within the premises. The revisions made in 1997 permitted the GWU to transfer, assign or let (rent) part of its building to any company in which the Union had more than 51 per cent of the shareholding. In addition, the 1997 deed included a clause stating that five per cent of the yearly profits after tax from any commercial activity carried out in the GWU building were to be deposited into a fund administered by the Union *'for the specific objectives of promoting consumer affairs for the benefit of the general public'*.

### 2.1 The 1957 Contract with respect to the Perpetual Emphyteutical Grant to the GWU

2.1.1 Through a contract entered into on 7 February 1957, Government conceded to the GWU (the emphyteuta) a perpetual emphyteutical grant of part of a site formerly occupied by the Auberge de France, registered under tenement number one hundred and fifty two, effective from contract date. By means of this contract, the Government effectively granted the GWU a perpetual emphyteusis of a building site in Valletta and the air space on top of the terrace of the adjoining Electricity Substation that had a door, unnumbered, in Old Bakery Street. The building site had an estimated area of 335.4 square canes (equivalent to 1,472 metres squared). It was bordered on the North West by the remaining part of the site previously occupied by the Auberge de France, on the South West by South Street and on the South East in part by Old Bakery Street and in part by the substation. The aforementioned substation was bordered on the North West and South West by the building site and on the South East by Old Bakery Street. The area of the terrace situated above the substation was approximately 8.6 square canes (equivalent to 38 metres squared).

2.1.2 On the part of the Union, the entry into this contract was authorised by a resolution of the GWU's National Executive approved on 1 February 1957, and confirmed by another resolution passed at an Extraordinary meeting of the national conference

of the Union's Delegates on 6 February 1957. On the part of the Government, a resolution to grant the site to the GWU on perpetual emphyteusis was approved during the Legislative Assembly sitting held on 28 November 1956. The grant had been authorised by His Excellency the Governor, through a minute dated 3 February 1957, on papers bearing the reference OPM 1337/1955.

- 2.1.3 Appearing for and on behalf of the Maltese Government was the then Prime Minister, the Hon. Dominic Mintoff. On the other hand, the GWU was represented by Messrs Joseph Borg, Reginald Gerald Miller and Edward Wright, in their respective capacity of President, General Secretary and Finance Officer. According to the deed, the Maltese Government regarded it in the public interest to keep in step with other European countries in their efforts to strengthen institutions that made up the foundation of democratic government.
- 2.1.4 The granting of the perpetual emphyteusis was covered by legal provisions relating to emphyteuses and by the conditions outlined hereunder. Although certain provisions have been superseded by virtue of the 1997 amendments, this brief overview provides a relevant background against which a better understanding of later developments may be formed.
- 2.1.5 The first condition in the 1957 contract covered the annual perpetual ground rent to be paid by the GWU, standing at one pound (£1) per square cane, payable annually in advance to the Treasury. Therefore, the site granted by the Government of Malta to the GWU was subject to a yearly ground rent of Lm344 (when the Maltese lira was adopted its value was equal to that of the pound), equivalent to an annual charge of €801, payable in advance.
- 2.1.6 Furthermore, the contract bound the emphyteuta to construct a building costing at least twenty thousand pounds on the granted site, the façade of which had to be in accordance with a design endorsed by the Director of Public Works (DPW). The contract also specified that the building could extend over the Electricity Substation's roof as long as the ventilators at the back of the substation were not covered and the vent shafts over it were to be made in the structure to be built above the substation. The works involved in the construction of the building were to commence before the lapse of two years from the date of contract and were to be finished within eight years from said date. Furthermore, the emphyteuta was to use all '*reasonable despatch*' in obtaining all permits and licences as could be necessary for the carrying out of the works. Should the emphyteuta fall short of starting or completing the building's construction within the periods specified in the contract, the GWU, without prejudice to condition 18 of the contract (specified hereunder in paragraph 2.1.12), would be liable to a penalty of five pounds for every day beyond the specified periods. Moreover, the height of the building, as measured from South Street, could not rise above 60 feet (equivalent to 18.3 metres); heights exceeding such dimensions could only be permitted by the Government through special written authorisation. The GWU had to abide by building construction laws and regulations. Furthermore, not less than four weeks in advance of any works to be carried out on site, the emphyteuta was to present drawings to scale showing plans, sections and elevations of the entire building proposed to be constructed on the site for sanctioning by the DPW. The DPW could modify such plans, sections and elevations at his discretion.
- 2.1.7 The contract also included a number of conditions relating to the use of the building. One of these, condition four, stipulated that '*the emphyteuta shall use the building to be erected on the said site as aforesaid solely for trade union activities including the present activities of the General Workers Union and of the Union Press and other purposes directly connected therewith*'. Moreover, the fifth condition stated

that *'the building shall include an assembly hall which may be used for theatrical or other shows which in the view of the National Executive of the General Workers Union are designed for the recreation of trade union members and their families or to promote the educational or social welfare of the Maltese workers'*. Of interest is the sixth condition, which specified that *'the building to be erected on the site shall not either wholly or in part be transferred assigned or let to third parties for commercial purposes.'*

- 2.1.8 The 1957 contract also outlined that should there be discovered any traces of movable objects of local archaeological, antiquarian or artistic importance and of any treasure trove on the site granted to the GWU, the Union had to provide immediate notice to the Treasurer and Director of Contracts. Furthermore, any finds/treasure trove would become *ipso facto* property of the Government. The GWU should abide by the provisions of the Antiquities (Protection) Act. Furthermore, the emphyteuta could not excavate for water on the site without the Government's prior written consent. In addition, the GWU was to abide by the Underground Water Ordinance provisions of 1943.
- 2.1.9 The emphyteuta was legally obliged to maintain the building in good repair at his expense. Any damage taking place therein or thereto, not only through ordinary causes but also through accidental, extraordinary and unanticipated situations or by Act of God, was to be compensated by the emphyteuta, or his heirs, who was required to rebuild, should it be necessary, any part of the said structure. Furthermore, the emphyteuta was to permit free access to the building at any reasonable time to any Government official who was authorised to examine the building.
- 2.1.10 To secure the payment of the ground rent and the adherence to all other obligations undertaken, a hypothec in favour of the Maltese Government was created. This hypothec was drawn with respect to all the property of the GWU, present and future in general, saving the special privilege according to law on the aforementioned building site and air space, as well as on improvements of any kind that could be constructed thereon. This hypothec was to be cancelled when the Government was satisfied that the mentioned improvements of 20,000 pounds had been undertaken.
- 2.1.11 The contract also specified that the emphyteuta would not be exempt from the requirement to obtain any permits and/or licences that could be necessary under the law and/or regulations in effect. Furthermore, through the signing of the contract, the emphyteuta gave up any potential rights granted by any provision of law that could be contrary to the conditions specified within the contract. Additionally, the Union was to have no claim to any compensation or other payment that could be payable from the War Damage Commission with respect to the site.
- 2.1.12 Finally, the contract also outlined the actions that the Government could take should the GWU fail to abide by the contract. Indeed, condition 18 of the contract stated that, *'if the emphyteuta fails to comply with or contravenes any of his obligations under this deed the Maltese Government shall have the right to demand the dissolution of this grant on emphyteusis and the devolution of the site with all the improvements thereon in favour of the Maltese Government, and in such case the emphyteuta shall not be entitled to any compensation whatever for any improvements erected on the site. Moreover, the Government shall have the right to claim compensation for any damage suffered as a result of such dissolution.'*

## 2.2 The 1997 Amendments

- 2.2.1 A letter, dated 10 October 1997, written by the GWU Secretary General and addressed to the Minister for Public Works and Construction, referred to condition four of the 1957 contract (cited in paragraph 2.1.7) and stated that the Union Press had relocated to a larger building in Marsa due to various reasons, namely:
- a. operational growth experienced over the past years;
  - b. the Valletta premises were not considered large enough to accommodate additional colour printing equipment, constrained the acquisition of new equipment, had low electricity voltage and the location caused inconvenience to traffic in South Street and Old Bakery Street when discharging newsprint reels and loading finished goods;
  - c. damages were being sustained due to flooding of the factory shop/stores during bad weather; and
  - d. printing paper was regularly ruined because of the humidity at the site.
- 2.2.2 Through this correspondence, the Minister was requested to consider allowing the Union the opportunity to utilise the vacant space in the Valletta premises to better carry out its operations in the interests and for the benefit of its members. Furthermore, an amendment to condition six of the 1957 contract (also cited in clause 2.1.7) was requested, such that the Union could assign, transfer or let part of its premises to any company in which the GWU had over 51 per cent of the shareholding and for such time as it continued to hold such percentage shareholding.
- 2.2.3 In another letter, dated 15 October 1997, also addressed to the Minister for Public Works and Construction, the GWU Secretary General specified that the amendments requested in the 10 October 1997 letter were essential in order to allow the Union to undertake commercial operations from the space that was previously occupied by the Union Press for its members' benefit. It was also stated that the GWU's Council was additionally proposing that a percentage of the yearly after-tax profits (for instance three to five per cent) from any commercial activity carried out in the said building be paid into a GWU-managed fund to be used for promoting consumer affairs for the public interest.
- 2.2.4 The Attorney General's advice with respect to the requests made by the GWU was provided to the Commissioner of Land on 16 October 1997 and outlined that, while it was legally possible to enter into a contract as proposed, it would necessitate the inclusion of a number of conditions to safeguard the Government's interests. With regard to the proposed GWU-managed fund, such conditions would entail measures intended at ensuring that the full profit registered was reported and paid, and that the proportion of profits to be allocated for consumer protection was being so spent. The Attorney General expressed reservations with respect to Government's ability to draft and enforce such a contract, suspecting that the GWU would be reluctant to agree to such conditions, as the safeguards required would hinder the Union's free utilisation of the property. According to the Attorney General, the idea was a non-starter as it was impracticable. The Attorney General further expressed reservations on how particular objectives to promote consumer affairs could be indicated for perpetuity.
- 2.2.5 Notwithstanding such reservations, authorisation for the GWU's requested amendments was granted through a parliamentary resolution approved in sitting number 130 on 31 October 1997. Thereafter, in a deed dated 12 December 1997,

the Government of Malta acceded to the Union's request and amended the 1957 contract with respect to the three immovables outlined hereunder:

- a. the part of the building at Valletta forming part of the unnumbered premises housing the offices of the GWU, accessible from Old Bakery Street underlying other property forming part of the same offices and bound on the South West by South Street, South East by Old Bakery Street and North West by Government property, measuring approximately 1,218 metres squared;
- b. the part of the building at Valletta forming part of the unnumbered premises housing the offices of the GWU, accessible from Old Bakery Street, and bound on the South West partly by South Street and partly by Government property, South East partly by Old Bakery Street and partly by property of Enemalta Corporation and North West by Government property, having an area of approximately 1,122 metres squared; and
- c. the part of the building at Valletta forming part of the unnumbered premises housing the offices of the General Workers Union and bound on all sides by property held on perpetual emphyteusis by the GWU having an area of approximately 99 metres squared.

2.2.6 In essence, the Government recognised that the Union Press no longer operated from the immovable granted by virtue of the 1957 contract. In this context, it authorised the GWU to transfer, assign or let part of its premises for commercial purposes to any company in which it had over 51 per cent of the shareholding. This arrangement was valid for as long as the Union held such percentage of the shareholding. Furthermore, five per cent of the yearly after-tax profits from any commercial undertakings carried out in the said premises were to be deposited into a GWU-managed fund to be used for promoting consumer affairs.

### 2.3 Developments following the 1997 Amendments to the Contract

2.3.1 Following the 1997 amendments to the 1957 contract, a number of issues arose in connection with the utilisation of the site granted in perpetual emphyteusis to the GWU.

2.3.2 The NAO's review of documentation retained by the GPD indicated that on 12 June 2008, the Director Land wrote to the DG GPD stating that the Parliamentary Secretary for the Ministry of Finance, the Economy and Investment (MFEI) required the estimated value of the *directum dominium* of the former site of the Auberge de France. This information was required with regard to a verbal request made to the Parliamentary Secretary MFEI by the GWU for the acquisition of the *directum dominium*. Also included in the Department's file was a note to the designate DG GPD by the Director Land, wherein it was stated that the Union had expressed interest in utilising the property for commercial purposes. The Director Land further outlined that this was not a matter of redeeming the perpetual ground rent, as redemption could mean that the conditions of the 1957 contract would remain binding. While an element of commercial activity was allowed by virtue of the 1997 deed, this was limited to the GWU holding a 51 per cent shareholding in the companies undertaking such commercial activity. According to that discussed during the Union's meeting with Parliamentary Secretary MFEI, as reported by the Director Land, the GWU wanted to release themselves from any restrictions to carry out different types of commercial activities and this would imply the outright purchase by the Union of the *directum dominium*. In terms of the Disposal of Government Land Act, this could be executed either through tender or by means of an ad hoc parliamentary resolution.

- 2.3.3 On 14 July 2008, the DG GPD (designate) requested an estimate of the *directum dominium's* sale value and commissioned an architect to carry out a valuation to this effect. In turn, the architect referred to a report already retained on file, corresponding to a minute dated 6 January 1998. In response, the designate DG GPD stated that the report was to be retained by him (presumably removed from the Department's file) so that the file would not be classified as confidential. Attempts at sourcing this report from the GPD and the architect commissioned to carry out the valuation were made by the NAO to no avail.
- 2.3.4 Notwithstanding the Union's tentative efforts at purchasing the *directum dominium* pertaining to the Workers' Memorial Building, the NAO noted no other documentation held by the GPD indicating that the matter was pursued any further. No other developments were registered until 15 May 2015, when the GWU exercised its right for the redemption of ground rent, granted by Article 1501 of the Civil Code, and filed in Court a schedule of redemption. The perpetual yearly ground rent was redeemed against the payment of €16,026 (representing the perpetual yearly ground rent of €801 capitalised at a rate of five per cent), thereby rendering the property freehold.





Chapter 3  
Workers' Memorial Building:  
Regularity of Use

## Chapter 3 – Workers’ Memorial Building: Regularity of Use

- 3.0.1 The 1957 contract between the Government of Malta and the GWU incorporated a number of conditions concerning the utilisation of the building constructed on the site granted to the Union on perpetual emphyteusis, namely the Workers’ Memorial Building. Condition four of the contract stipulated that, *‘the emphyteuta shall use the building to be erected on the said site solely for trade union activities including the present activities of the General Workers Union and of the Union Press and other purposes directly connected therewith’*. In addition, condition six provided that, *‘the building to be erected on the site shall not either wholly or in part be transferred assigned or let to third parties for commercial purposes’*. Following a parliamentary resolution dated 31 October 1997, a deed of amendment was drawn up and entered into on 12 December 1997, modifying the fourth and sixth conditions of the 1957 contract of emphyteutical concession in connection with the part of the building previously utilised by the Union Press. Particularly, the amendment provided that, *‘Government authorises the emphyteuta to transfer, assign or let for commercial purposes to any company in which the GWU has over fifty one percent (51%) of the shareholding of such company and for such duration as it holds such percentage shareholding’*. Furthermore, *‘a five percentage (5%) of annual profits after tax from any commercial undertakings carried out in said premises are to be deposited into a fund managed by the General Workers Union, to be utilised for the specific objectives of promoting consumer affairs for the benefit of the general public’*.
- 3.0.2 On 24 April 2014, the GWU and ARMS Ltd signed a lease agreement, whereby the latter leased part of the Workers’ Memorial Building. Furthermore, parts of the building are being utilised as a tourist attraction (Malta 5D), an insurance agency (Untours Insurance Agents), a restaurant (Sciacca Grill) and a travel agency (Vjaġġi Untours). Hereunder is a comprehensive account of the facts as established by the NAO concerning the breach or otherwise of the 1957 perpetual emphyteusis contract between the Government and the GWU and the 1997 amendments made thereto. Another aspect central to this review was the role assumed by the GPD and other public officials in the matter.
- 3.0.3 This chapter is effectively structured according to the terms of reference set by the NAO following the PAC’s request to investigate. The terms of reference are reproduced hereunder for ease of reference:
- a. establish whether the provisions stipulated in the contract between Government and the GWU were breached;

- b. determine whether the GPD was aware of the lease between the Union and ARMS Ltd, whether the Department approved of such an arrangement and, if not, what action was taken;
- c. ascertain whether other Government officials were involved in this matter, and if so, establish what their role was; and
- d. establish whether other lease agreements were in place and determine whether these were in accordance with the provisions of the contract.

Each of the above-cited terms corresponds to sub-sections 3.1 to 3.4, respectively.

### **3.1 ARMS Ltd Lease Agreement**

**3.1.1** The first objective, emanating from the terms of reference, entailed the verification of whether the provisions stipulated in the contract between Government and the GWU were breached. Here, the NAO limited its attention specifically to the occupation of part of the Workers' Memorial Building by ARMS Ltd, and whether this occupation was in breach of the aforementioned Government-GWU contract, or otherwise. An element of background to the selection of the site by ARMS Ltd is provided as context, while aspects relating to the possible breach of the contract are subsequently explored.

**3.1.2** During an interview with the NAO, the ARMS Ltd A/CEO explained that at the time of interest to this Office, the Company's strategy was geared towards developing a customer outreach program, essentially consisting of opening small offices in strategic locations around Malta to provide better customer accessibility. This was effectively captured in the ARMS Ltd Board meeting minutes of 14 January 2014, wherein the Company's Chair outlined that new branches were planned for Valletta, Paola and a north-central area, for instance Mosta. Furthermore, an architect was commissioned to identify potential locations and negotiate terms. The Board meeting minutes indicate that the ARMS Ltd Chair anticipated the start-up cost for new branches at approximately €350,000 to €500,000 (depending on the state of the chosen sites), with a recurrent yearly cost of €330,000 to €410,000. By the next Board meeting, the appointed architect was expected to present a plan on the proposed branches.

**3.1.3** Shortly after the above-referred Board meeting, advertisements relating to the establishment of offices in various localities appeared in six local newspapers on 26 January 2014 and 2 February 2014. According to the advertisement, ARMS Ltd was considering the purchase or rental of property covered by a Class 5 Malta Environment and Planning Authority (MEPA) permit for utilisation as offices and customer services outlets in Valletta, Mosta, Sliema and Paola. The advertisement listed a number of required characteristics:

- a. a minimum area of 300 metres squared;
- b. a minimum frontage and width of seven metres;
- c. covered by MEPA permits;
- d. fully compliant with the permit drawings; and
- e. user-friendly and accessible to persons with a disability.

**3.1.4** Furthermore, the advertisement specified that, were ARMS Ltd to rent rather than purchase the property, the rental period would be for a minimum of five years, with an option to extend for another five years. Upon assessment of the property, ARMS Ltd reserved the right to refuse any submissions that did not satisfy any of the criteria listed in the advertisement or any additional criteria that could have an effect on qualities normally related to, for instance, natural ventilation and lighting, as well as functionality. The submissions were to contain the proposed rental and/or purchase

rates, full-scale MEPA permit plans and a full MEPA permit document including the site plan. In addition, interested parties were to submit at least, four photos of the façade, four photos of the backyard/internal yard elevations and a minimum of 10 photos of a number of internal areas including sanitary facilities. Submissions made were to indicate any servitudes or legal constraints that could have led to an unfavourable impact on the functionality of the building. Submissions were to be addressed to the A/CEO and were to be received by 11 February 2014.

### *Selection Process*

3.1.5 The evaluation report, compiled by ARMS Ltd's appointed architect, indicated that there were 14 submissions, some of which listed multiple properties. A number of submissions were made in relation to all four locations listed in the advertisement.

3.1.6 According to the ARMS Ltd A/CEO, the Company had decided to, for the first phase of the outreach process, establish an office in Valletta due to its strategic location, and subsequently proceed to establish offices in the other localities indicated later on in the process. With respect to the properties in Valletta put forward for ARMS Ltd's consideration, the architect compiled another evaluation report outlining the features of the four offers tabled, summarised below:

- a. A 900-metre squared property situated in Melita Street was submitted for consideration. This property was covered by a Class 4 MEPA permit (not the permit class required by ARMS Ltd) and had no facilities for persons with a disability (the architect was to clarify this on site). Plans were readily available and while its rental value was set at €790 daily excluding VAT, its sale price was that of €5,200,000. Utilising this rate, the NAO estimated the annual cost of rent of this property at €288,350, excluding VAT. The NAO noted that another offer for a property in Melita Street was submitted to ARMS Ltd by another bidder. The second offer set this property's rental value at €30 per metre squared monthly and outlined that it would consider renting part of the property given its size. Utilising this rate and assuming that ARMS Ltd would have rented 300 metres squared of office space, the NAO estimated the annual rental cost of this property at €108,000. According to the ARMS Ltd A/CEO, the two offers related to the same premises and, in view of the fact that both bids were not the most advantageous, the NAO relied on that stated by the A/CEO.
- b. Three properties within a shopping complex were included as one submission, and essentially comprised of:
  - i. a 190-metre squared property on the second underground floor – this property had Class 4 shops and was not required by ARMS Ltd;
  - ii. a 150-metre squared property on the third underground floor with an unspecified class use, possibly a Class 4 but this matter still had to be clarified at the time of writing of the evaluation report; and
  - iii. a 240-metre squared property on the third underground floor consisting of offices and Class 4 shops.

No MEPA drawings were made available with respect to this submission. The price of the property that was deemed surplus to requirements by ARMS Ltd (the 190-metre squared property) was set at €275 per metre squared, rising by three per cent per annum, while the price of the other two properties was set at €225 per metre squared, rising by three per cent per annum. Given that the portion identified under (b)(i) was deemed surplus to requirements by ARMS Ltd, the NAO estimated the annual cost of rent with respect to properties (b)(ii) and (b)(iii) at €87,750, rising annually by three per cent.

- c. The GWU property was listed in the architect's evaluation report as having 350 metres squared of office space. No MEPA plans were provided to ARMS Ltd; yet unofficial plans showing the office layout were made available. The premises were fully finished and served with a lift, yet on-site clarification was required in order to establish the extent of accessibility for persons with a disability. The annual lease payable to the Union was set at €61,950. The architect outlined that this property was possibly ideal for ARMS Ltd, even though issues relating to permits and accessibility required further clarification.
- d. A property in Republic Street was listed in the architect's evaluation report as having a total floor area of 300 metres squared spread over three floors. The architect indicated that no MEPA plans had been submitted and that the property would unlikely have access for persons with a disability since there were no lifts or ramps and was spread on different levels (although this was subject to on-site clarification). Furthermore, the terms of the offer were that the sale price was €950,000 and the lease offered was for €150 daily with a premium of €150,000. According to the ARMS Ltd A/CEO, this property was not ideal for the company given that it was spread over three floors. Spreading the premium over a ten-year period, the NAO estimated the annual rent payable at €69,750.

3.1.7 According to the ARMS Ltd A/CEO, the GWU submission had several advantages: it was the lowest-priced, the best out of the properties submitted in terms of accessibility, it had the space to conduct other operations aside from customer care, and it was renovated. As outlined in the preceding paragraph, the GWU submission was the architect's first preference. In summary, according to the A/CEO, the GWU submission suited ARMS Ltd perfectly and was the best alternative out of the submitted offers.

3.1.8 After having reviewed documents provided by ARMS Ltd, the NAO noted that no reference was made by the GWU to the conditions limiting the possible lease of its premises. This was deemed particularly relevant as the advertisement published by ARMS Ltd specified that any servitudes or legal constraints possibly bearing an unfavourable impact on the functionality of the building had to be indicated. When queried about the matter, the GWU Deputy Secretary General specified that the Union had not indicated any servitudes or legal constraints impeding the Union from entering into possible lease arrangements with ARMS Ltd. The A/CEO corroborated this version of events, stating that ARMS Ltd was not informed of any constraints in this respect.

3.1.9 The NAO subsequently sought to establish when the GWU was informed of its selection by ARMS Ltd. The ARMS Ltd A/CEO specified that she had recommended the GWU submission for selection by the Board and that the Board had approved this recommendation. Notwithstanding requests made by the NAO to establish when recommended action was proposed and approved, no documentation was provided by ARMS Ltd in this regard.

3.1.10 Furthermore, the NAO requested ARMS Ltd to provide evidence of the correspondence exchanged with the GWU in this respect, indicating when the Union was informed of its selection. The ARMS Ltd A/CEO informed this Office that no correspondence to this effect could be traced and that the GWU was verbally notified of its selection. This version of events was corroborated by the GWU Deputy Secretary General, who stated that the Union could not trace any formal correspondence received from ARMS Ltd regarding its submission's selection; however, he advised this Office that a verbal notification was received towards the beginning of April 2014.

- 3.1.11 The lease agreement signed between the GWU and ARMS Ltd on 24 April 2014 was for the annual sum of €61,950, payable pro rata every six months in advance. Additionally, for the first four years of the lease, ARMS Ltd was bound to pay the GWU, pro rata every six months in advance, a yearly fee of €3,000 for the lease of movable items. The lease was for five years '*di fermo*' and five years '*di rispetto*', as outlined in ARMS Ltd's advertisement, with the first five years commencing on 10 April 2014. The agreement also specified that profits (losses) made (incurred) in the activity carried out by ARMS Ltd within the premises were to be for the sole benefit or charge of ARMS Ltd.
- 3.1.12 The 25 April 2014 ARMS Ltd Board meeting minutes stated that the agreement with the GWU had been signed and that the Union's submission for the Valletta branch had been the cheapest and most suitable for the intended use. The costs to be incurred to finish and adapt the premises were anticipated to amount to €48,303. The ARMS Ltd Board resolved to approve the recommendations, including the necessary expenditure, in line with procurement regulations.

#### *GWU Correspondence with the GPD*

- 3.1.13 The first correspondence exchanged between the GWU and the GPD relating to the matter under investigation, as retained in the Department's file, was dated 28 March 2014. Here, the GWU Secretary General wrote to the former Commissioner of Land stating that certain government entities (unspecified in this correspondence) had expressed an interest in leasing a part of the property, subject to the emphyteutical concession, from the GWU. In view of the request made by the unspecified government entities, the Union was seeking confirmation that the GPD would find no objection with such arrangements.
- 3.1.14 When queried by the NAO, the GWU Deputy Secretary General disclosed that the Union had obtained separate legal advice regarding whether it was permissible to lease a portion of the Workers' Memorial Building to ARMS Ltd. The advice received, dated 18 March 2014, was that the Union would not be in breach of the contract if it obtained the required permission, or if it redeemed the site's ground rent. In respect of the latter case, the Union was informed that the redemption of ground rent would render obsolete the obligations it had entered into through the contract with Government.
- 3.1.15 According to this legal advice, a copy of which was made available to this Office, the only limitation to this principle was when the transferor (*dominus* – in this case, Government) would have reserved any proprietary rights or 'elements of the property' in the emphyteutical concession contract.<sup>2</sup> The advice obtained by the Union further stipulated that it did not appear that any 'elements of the property' existed, save for possibly the seventh condition of the 1957 contract regarding the height of the walls. Therefore, according to the advice, if the GWU had leased a portion of the site for commercial use before the ground rent redemption, this situation would then be rectified through such redemption.
- 3.1.16 Furthermore, the GWU Deputy Secretary General insisted that through its letter to the GPD, the Union had not sought permission or requested any amendment to the emphyteutical grant but merely wished to clarify that the Government did not see the matter as a breach of the contract.

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<sup>2</sup> The advice provided to the Union cited the case of Joseph G. Coleiro noe vs. Maria Felicita Cremona, delivered by the Court of Appeal on the 14 October 1987.

## Redemption of Ground Rent

- 3.1.17 On 15 May 2015, the GWU exercised its right for the redemption of ground rent, granted by Article 1501 of the Civil Code, and filed in Court a schedule of redemption relating to the Workers' Memorial Building. The perpetual yearly ground rent was redeemed against the payment of €16,026 (representing the perpetual yearly ground rent of €801 capitalised at a rate of five per cent), thereby rendering the property freehold.
- 3.1.18 According to the GWU's Deputy Secretary General, when press coverage regarding the breach of the GWU's emphyteutical contract through its lease to ARMS Ltd first appeared, the ground rent redemption process had already been initiated by the Union. Given that a number of articles relating to the matter appeared in the press early on in February 2015, the NAO considers the justification put forward by the Deputy Secretary General as unlikely.
- 3.1.19 The Deputy Secretary General stated that the redemption of ground rent was a commercially motivated decision taken by the Union. According to the Union, the exercise of this legal right (ground rent redemption) rendered obsolete all of the conditions stemming from the 1957 and 1997 contracts. Therefore, the leasing of portions of the Workers' Memorial Building was no longer limited to companies in which the Union had a minimum of 51 per cent shareholding. The Deputy Secretary General elaborated on the matter, and claimed that the Union capitalised on the opportunity to acquire an asset at a time suitable to it, a course of action unrelated to the GWU and ARMS Ltd lease arrangement.
- 3.1.20 The Deputy Secretary General indicated to the NAO that the redemption of ground rent as a possible means of resolving any issues relating to the lease of parts of the Workers' Memorial Building was never discussed with the GPD. Indeed, when the DG GPD and the Commissioner of Land were requested by this Office to submit any correspondence exchanged or documentation retained by the Department, the Commissioner of Land confirmed that there was no further correspondence in relation to this matter, aside from the schedule of redemption.
- 3.1.21 However, the GPD did seek the advice of the Attorney General following queries raised by the NAO. In this context, and guided by the advice provided by the Attorney General, the GPD maintained that even though the ground rent was redeemed, the emphyteutical concession conditions and any subsequent conditions imposed by a public deed between the *dominus* (in this case, the Government) and the emphyteuta (the GWU) relating to the property were still valid. This did not result from a precise provision of the law but from case law. Here, reference was made to a decision delivered by the Court of Appeal on 22 November 1995, in the case of *Baron Salvino Testaferrata Moroni Viani et vs Hubert Mifsud*.
- 3.1.22 Moreover, according to the GPD, the definition of 'disposal' in the Disposal of Government Land Act (Cap 268) was also relevant insofar as this provided that the change in the conditions under which the land was disposed of was itself a disposal. While the Act provided that government land could be disposed of in accordance with any law from time to time in force, and the Civil Code was such a law, one also had to consider the fact that the Civil Code has been interpreted to the effect that the redemption of the ground rent did not remove the conditions of an emphyteutical deed insofar as these were of a 'property' nature or insofar as they could be understood to impose a servitude on the property, either in favour of the original owners, or in favour of a wider group.



- 3.1.23 The GPD, as guided by the Attorney General, argued that in this particular case, the condition that the land was to be utilised solely for trade union activities could be seen as a servitude in favour of society in general and as having had a bearing on the ground rent imposed at the time when the perpetual emphyteusis was granted. Indeed, according to the GPD, when that condition was modified in 1997, a pecuniary obligation was also imposed on the emphyteuta, albeit not being a pecuniary obligation of direct payment to the Government. The pecuniary obligation referred to in this case related to the five per cent of annual profits after tax of any commercial undertaking, operating from the Workers' Memorial Building, which had to be transferred to a fund managed by the GWU.
- 3.1.24 The GPD informed the NAO that if there were any breaches of the conditions imposed by the emphyteutical concession relating to the property and which were a relevant consideration in fixing the price of the emphyteusis at the time when the grant was made, the GPD could choose to institute legal action for such breaches. Legal action by the GPD could also be resorted to in case of any breach of conditions subsequently imposed with respect to the emphyteutical grant.
- 3.1.25 The NAO acknowledged the contrasting perspectives presented by the GWU and the GPD, and therefore sought advice on the matter. Advice provided to this Office in this respect aligns with that indicated by the Attorney General. In essence, the NAO is of the opinion that once the ground rent was redeemed, the contractual relationship and the obligations arising out of such contract would still be binding. This Office notes that before the ground rent redemption took place, effectively rendering the site freehold, the GPD had the right to demand the dissolution of the grant on emphyteusis, as per Condition 18 of the 1957 emphyteutical grant. While this possibility no longer exists, given the redemption of ground rent, the NAO recommends for the Commissioner of Land to seek legal advice as may be necessary in order to determine whether it is opportune for the GPD to instigate legal action against the GWU or any other type of action deemed suitable. In the NAO's opinion, the issue of whether to resort to litigation, or otherwise, and the precise context to such litigation if pursued, would have to be determined by the legal adviser to the GPD, that is, the Attorney General's Office.
- 3.1.26 In conclusion, the Office deems this matter to be a legal one, which should be decided in an appropriate judicial forum should circumstances so warrant. Furthermore, the NAO considers it impractical and inappropriate to comment on the possible outcome of any litigation. Although the NAO has expressed an opinion on this matter, were the situation to be resolved through litigation, then this opinion would be subject to any decision arrived at by the Courts. Naturally, the NAO cannot pre-empt or be certain of the Court's decision on this matter should litigation be pursued.
- 3.1.27 This Office notes that, should it be established that the conditions of the grant survive the ground rent redemption, the lease to ARMS Ltd would be in breach of the conditions of the grant. This is due to the fact that ARMS Ltd is owned by Enemalta plc and the Water Services Corporation, and the GWU does not have and never had any shareholding whatsoever in the Company. Furthermore, the condition entered into by the GWU in the 1997 amendment deed, which provided that five per cent of the profits of any commercial undertakings carried out from the Workers' Memorial Building were to be spent on promoting consumer affairs is not catered for in the GWU-ARMS Ltd lease agreement. On the contrary, this agreement specifies that profits (losses) made (incurred) in the activity carried out by ARMS Ltd within the premises were to be for the sole benefit or charge of ARMS Ltd. The Office concedes, however, that it would be difficult to establish, if at all, any profits made by ARMS Ltd through the premises occupied in the Workers' Memorial Building.

3.1.28 Should it be established that the conditions of the grant do not remain applicable following the ground rent redemption, then it is imperative to note that the GWU-ARMS Ltd agreement was in breach of the emphyteutical grant conditions referred to above before the redemption of ground rent took place, namely between April 2014 and May 2015.

## 3.2 The Role of the GPD

3.2.1 The second objective set as part of the PAC-mandated terms of reference entailed determining whether the GPD was aware of the lease between the Union and ARMS Ltd, whether the Department approved of such an arrangement, and if not, what action was taken. Other third parties are addressed under the fourth objective, that is, in section 3.4.

3.2.2 According to the interviews this Office conducted with several senior officials of the GPD, the Department was unaware of the GWU's arrangement with ARMS Ltd until the press exposed this matter. Notwithstanding such affirmations, this Office finds it difficult to comprehend how the Department was unaware of ARMS Ltd's occupation of part of the GWU's premises, given that ARMS Ltd spared no effort at publicising the setting up of this outlet. Furthermore, in the NAO's considered opinion, while the Department never explicitly approved the lease, it took limited action to avert and/or remedy the situation. At the time of writing of this report, the GPD had taken no decisive action on the matter whatsoever.

3.2.3 The DG GPD and the former Commissioner of Land stated to the NAO that, on receiving the 28 March 2014 correspondence from the GWU referred to in paragraph 3.1.13 of this report, the GPD had examined its file regarding the Union's premises and evaluated the contract regulating the perpetual emphyteutical grant. The GPD had concluded that the constraining condition in the 1957 contract, as amended by the 1997 deed, did not allow the GWU to lease to any government entity.

3.2.4 During a meeting with this Office, the former Commissioner of Land stated that he had phoned the GWU Secretary General and informed him that the contract allowed the Union to lease to third parties in which the Union had a majority shareholding, yet this was clearly not the case with regard to government entities. He added that a parliamentary resolution was necessary for the Union's request to be consented to. However, the former Commissioner of Land stated that during the phone call he had been given the impression that the GWU Secretary General had discussed the issue at another level. The Commissioner added that he was told not to create problems, as the pertinent authorities were aware of the matter.

3.2.5 The former Commissioner of Land stated that following the phone call, he resolved to escalate the issue. Furthermore, following this telephone call, the former Commissioner of Land proceeded to record an office note in the relevant GPD file, dated 11 April 2014. This is here cited verbatim, *'Phoned [Secretary General] (GWU) on 9 April 2014 and informed him that request can only be acceded to if there is a change in the parliamentary resolution. He replied that the pertinent authorities are already aware of this matter and that one is to proceed accordingly in order to accede to the Union's request.'*

3.2.6 When queried about the matter by this Office, the DG GPD and the former Commissioner of Land stated that they were not aware of who the *'pertinent authorities'* referred to in the abovementioned office note were. The former Commissioner of Land stated that he understood the *'pertinent authorities'* as reference to the political establishment. The GWU Deputy Secretary General also claimed that he was unaware of who the

*'pertinent authorities'* were and whether it was true that such authorities knew about the matter.

- 3.2.7 Queried further on the matter, during a meeting with the NAO, the DG GPD referred to a telephone call received from a senior official from the Ministry for Energy and Health, during which he was asked about the procedure for the GWU to lease a part of the building to a government entity. The DG GPD could not recall the identity of the above-referred official yet stated that he had informed the said official that a parliamentary resolution was required in order for the Union to honour provisions outlined in the emphyteutical grant contract with Government. The DG GPD could not determine the precise date of this telephone call, yet recalled that it was close to the 28 March 2014 letter sent by the GWU.
- 3.2.8 Seeking further clarification on the matter, the NAO submitted correspondence to the GWU Secretary General, enquiring whether he recalled being contacted by the former Commissioner of Land. In the affirmative, the GWU Secretary General was requested to elaborate on various aspects, namely: what he recalled being said during the aforementioned telephone call; who the *'pertinent authorities'* were; what was intended by such authorities being *'aware of the matter'*; and, why the option proposed by the former Commissioner of Land, that is, making the required amendments through a parliamentary resolution, was not pursued. Despite numerous attempts made by this Office, no reply to correspondence sent on the matter was received at the time of writing.
- 3.2.9 The DG GPD, the former Commissioner of Land and the Deputy Secretary General of the GWU confirmed that the Union was never provided with an official written reply to its 28 March 2014 letter. While acknowledging that a written reply would have been ideal, the DG GPD stated to this Office that the GWU's letter had been answered through the above-referred telephone call. This Office deemed the absence of a formal written reply as a shortcoming on the part of the GPD, which renders the process of auditing at somewhat of a disadvantage, constrained to solely rely on the subjective recall of events rather than the objective analysis of documentation.
- 3.2.10 The DG GPD and the former Commissioner of Land provided some elements of justification for the lack of an official reply issued by the GPD to the GWU. While the DG GPD stated that the Department never replied to the Union due to a shortage in its staff levels, the Commissioner of Land argued that at that stage he had not known whether the Government was willing to proceed through the parliamentary resolution route in order to accommodate the Union's request.
- 3.2.11 In this context, the former Commissioner of Land referred the case to a GPD Legal Officer who, on 14 April 2014, recorded a minute addressed to the DG GPD. Here, the GPD Legal Officer concurred with the views expressed by the Commissioner of Land by stating that the GWU's request could only be entertained if the emphyteutical contract was amended. The DG GPD's approval in this respect was sought prior to preparing the memorandum that was to be submitted to the Parliamentary Secretary OPM. At this stage, it is important to note that unbeknown to GPD officials, the GWU and ARMS Ltd signed the lease agreement ten days following the recording of this minute in the GPD file, and therefore action taken by the Department, albeit prompt, was rendered superfluous in this respect.
- 3.2.12 On 3 May 2014, the DG GPD instructed the former Commissioner of Land to prepare a memorandum for eventual transmission to the Parliamentary Secretary OPM. This request was in turn referred to the GPD Legal Officer on 6 May 2014, who was asked to prepare a draft memorandum and revert. During a meeting with the NAO, the GPD

Legal Officer explained that her task was that of preparing a memorandum based on another memorandum already included within the relevant GPD file, which had been prepared by a previous Commissioner of Land in 2009. The 2009 memorandum is dealt with in detail in Section 3.4 of this report. Furthermore, the NAO was informed by the GPD Legal Officer that the contents of the memorandum that was to be drawn up had been discussed with the former Commissioner of Land and agreed on.

- 3.2.13 On 19 May 2014, the GPD Legal Officer submitted the drafted memorandum to the DG GPD. This memorandum provided a background to the salient facts of the case and concluded by outlining that given that neither the original deed of emphyteusis nor the deed of amendments provided that such leases could take place, the GWU's request could only be entertained if the deed was amended. The proposed amendment would allow the GWU to lease portions of the property subject to the emphyteutical concession if such a lease was made to a government entity. Furthermore, given that the original contract had been entered into following the sanction by the Legislative Assembly, as a predecessor of Parliament, a parliamentary resolution was necessary for the deed to be modified. The DG GPD and the former Commissioner of Land indicated to the NAO that they were in agreement with the conclusion put forward by the GPD Legal Officer in the memorandum. When the GPD file relating to the Workers' Memorial Building was received by the NAO at the onset of this audit, this draft memorandum was the final document retained on file.
- 3.2.14 According to the former Commissioner of Land and the GPD Legal Officer, they were never provided with feedback with regard to the above-referred memorandum. Furthermore, the former Commissioner of Land outlined to this Office that, most likely, other matters had taken precedence and that this was a state of affairs that occurred frequently at the GPD. More importantly, according to the DG GPD, the memorandum was never referred to the Parliamentary Secretary OPM and the relevant file remained at his office. Indeed, there was no record of the memorandum being referred to the Parliamentary Secretary OPM on file.
- 3.2.15 The DG GPD outlined that the Department had doubts about whether it should initiate the process for a parliamentary resolution itself, claiming that there was no specific request indicating this course of action made by the relevant Ministry. The DG GPD elaborated on this point, stating that the process relating to this case had mainly stopped because there had been no insistence from the GWU, and the Department had interpreted this to signify an absence of interest in pursuing the matter. Moreover, the DG GPD sought to justify the Department's inaction by maintaining that nobody had recalled his attention to the case.
- 3.2.16 The NAO has reservations regarding the explanations put forward by the GPD, with the justification cited in defence of the Department's inaction considered inadequate. This Office considers it unreasonable for the GPD to take action only when and if prompted, and hardly considers it necessary for the Union to persistently remind the Department to take the required action. Similarly unreasonable is the expectation that the Ministry was to prompt the GPD on action to be taken as the Ministry was, according to records and evidence provided to the NAO, unaware of the Union's intentions. This, bearing in mind that the issue relating to the '*pertinent authorities*' was never resolved. In practical terms, the Department should have submitted the memorandum to the Parliamentary Secretary OPM for his consideration.
- 3.2.17 As a side note, the former Commissioner of Land, during a meeting with the NAO, specified that the clause prohibiting letting to third parties (not majority owned by the Union) in the Government-GWU contract could also be amended through another mechanism. This involved the Union consenting to the relinquishment of the

emphyteusis, following which the Government would issue a new tender, without the relevant restrictive clause, requesting offers for the site. In such case, the GWU would be granted the right of first refusal, while Government would be able to charge a higher ground rent amount in view of the removal of the restrictive clause/s. However, the former Commissioner of Land acknowledged that the surest way for the Union to maintain its hold over the building was through the parliamentary resolution route.

3.2.18 The NAO enquired as to why the GPD failed to take any action following allegations in the press regarding the occupation of part of the GWU premises by ARMS Ltd. In response, the DG GPD and the Commissioner of Land argued about the necessity of verifying how and under what instrument the property was given to ARMS Ltd, should this turn out to be the case. The GPD officials claimed that it was not simply a matter of confirming that an ARMS Ltd office was located inside the Workers' Memorial Building, and that such facts had to be established before deciding on whether to instigate legal action. Such legal action would then result in the Court establishing whether there was a breach of the contract.

3.2.19 The Commissioner of Land initiated action in this sense through correspondence, dated 23 March 2015, sent to the Union's Secretary General and President, enquiring whether the GWU or any of its affiliate companies had entered into any agreements with ARMS Ltd in respect of any part of the Workers' Memorial Building. Evidence of this correspondence was provided to the NAO during a meeting with the Commissioner of Land. A reminder was sent to the GWU Secretary General on 20 April 2015, yet, at the time of writing, the GPD had not received any form of response from the Union. The NAO was informed that no further action was taken by the Department due to the commencement of this Office's investigation into the matter. However, the Commissioner of Land specified that had this matter not been subject to this Office's investigation, he would most likely have sent the Union a judicial letter.

### 3.3 The Role of other Government Officials

3.3.1 The third objective set as per the agreed terms of reference was for the NAO to ascertain whether other Government officials were involved in this matter, and if so, what their role was. From evidence reviewed, the role and involvement of the DG GPD, the incumbent and former Commissioners of Land, and a GPD Legal Officer have been outlined. The following is an account of the involvement of other public officials external to the GPD. In this context, the NAO sought the views of the Parliamentary Secretary OPM and the Permanent Secretary, in view of their political and administrative responsibility for the GPD, respectively.

3.3.2 During meetings with the NAO, senior GPD officials made reference to the limited involvement of the Parliamentary Secretary OPM, which this Office sought to verify. The Parliamentary Secretary OPM claimed that he learnt about the issue from the media and that he did not know who the '*pertinent authorities*' referred to in the former Commissioner of Land's office note (paragraph 3.2.5 refers) were. Furthermore, the GPD file had never been forwarded to him and he had never been asked to sanction the lease or to take any decision on the issue. According to the Parliamentary Secretary OPM, when the issue was exposed in the press, he had discussed the matter with the Commissioner of Land and had instructed him to write to the GWU. The Parliamentary Secretary OPM also maintained that since the grant was made through a Legislative Assembly resolution, any changes to the contract had to be carried out through a similar parliamentary resolution. Finally, the Parliamentary Secretary OPM stated that when it was decided that the issue was to be audited by the NAO, he refrained from further interventions in relation to the matter.

- 3.3.3 On 26 March 2015, according to the GPD's records, the file relating to the premises occupied by the GWU was sent to the Permanent Secretary. This fact was established by the NAO following the review of the GPD file's movement sheet. The DG GPD also confirmed that when the press had exposed the issue, an official from the Office of the Permanent Secretary had requested the file. Yet, the Permanent Secretary's direct involvement in this matter remained somewhat ambiguous. During a meeting held with the NAO, the Permanent Secretary categorically denied that he had seen the file and that he had been involved in the matter at all. Queries in this respect were also addressed to the Commissioner of Land, who confirmed that he had not discussed any issue relating to this file with anyone from the Office of the Permanent Secretary.
- 3.3.4 During a meeting with this Office, the Permanent Secretary maintained that he was not the pertinent authority referred to in the former Commissioner of Land's office note (paragraph 3.2.5 refers) and he was not aware as to who the office note was referring to.
- 3.3.5 The Permanent Secretary stated that he had not taken any action on this matter, as he was unaware that ARMS Ltd were operating from the Workers' Memorial Building. Of interest was the claim made by the Permanent Secretary when stating that he first became aware of ARMS Ltd's occupation of part of the GWU's premises during his meeting with the NAO, that is, on 15 July 2015. Furthermore, the Permanent Secretary maintained that the fact there had been other entities operating from the building for years meant that he would not have thought the situation irregular even if he had known about it. The Permanent Secretary also specified that he did not consider it necessary to enquire about the file or speak to the DG GPD or the Commissioner of Land when the issue first appeared in the press, and that he had waited for the matter to develop. Consistent with the approach adopted by the Parliamentary Secretary OPM, the Permanent Secretary argued that when an issue was being discussed in Parliament, such as was the case with this matter, he would ordinarily refrain from any further intervention. Hence, this was the reason put forward to the NAO as to why the Permanent Secretary had not consulted with senior GPD officials when allegations of irregularities emerged.

## 3.4 Other Lease Agreements

- 3.4.1 The fourth and final objective addressed as part of this audit was to establish whether other lease agreements were in place and whether these were in accordance with the provisions of the contract entered into by the Union and Government. The NAO also sought to establish whether the GPD was aware of the other possible third parties encumbering the premises.
- 3.4.2 From field observations carried out by this Office, portions of the Workers' Memorial Building were, aside from ARMS Ltd, being utilised as a tourist attraction (Malta 5D), an insurance agency (Untours Insurance Agents), a restaurant (Sciacca Grill) and a travel agency (Vjaġġi Untours). The GPD file relating to the premises did not have a record of any lease agreements the GWU had with these entities. Furthermore, the Union did not provide this Office with any agreements or documents regulating payments made to the Union for the utilisation of part of its premises by the aforementioned third parties, citing commercial reasons.
- 3.4.3 Given the absence of any documentation held by the GPD and the Union's failure to provide all requested documentation, the NAO enquired about the occupation of parts of the Workers' Memorial Building by the above-cited third parties. The DG GPD

and the Commissioner of Land stated that they were not aware of any agreements that the Union had with respect to its Valletta premises. In view of the centrality of the premises, the prominence of the establishments operating therefrom, and the duration of their occupation, the NAO struggles to comprehend how the GPD failed to note any of the establishments referred to in the preceding text and to take appropriate measures, where warranted, to ensure compliance with the conditions stipulated in the GWU-Government contract.

- 3.4.4 It is important to note that the NAO limited its review to entities operating from the Workers' Memorial Building as established by means of field observations carried out in July 2015. Consequently, this Office does not exclude possible breaches by other entities that operated from the GWU's premises prior to this date.
- 3.4.5 Furthermore, this Office did not examine whether the 1997 contract condition regarding the five per cent annual profits after tax to be charged from any commercial undertaking carried out in the Workers' Memorial Building, which amount had to be deposited into a fund to be utilised for consumer affairs promotion, was being adhered to. Similar to the opinion expressed by the former Attorney General (paragraph 2.2.4 refers), the Office deems the enforcement of such a clause as impracticable and it was therefore scoped out of this particular investigation.
- 3.4.6 In this context, the following paragraphs detail the NAO's findings in relation to the breach or otherwise of the GWU's contract with Government as regards the above-referred entities. The NAO based its research in determining the ownership of the companies concerned on the public records retained by the MFSA.
- 3.4.7 The NAO sought to verify the accuracy of records retained by the MFSA by means of correspondence exchanged with the GWU as well as with the third parties operating from within the Workers' Memorial Building. These verifications were undertaken in terms of Article 4 of the Auditor General and National Audit Office Act, reproduced in Figure 1 for ease of reference. Not all parties contacted provided feedback and clarifications; however, in the case of parties that did submit information, this was incorporated in the NAO's report.

**Figure 1: Article 4, Auditor General and National Audit Office Act, 1997**

The Auditor General may in connection with his functions under the Constitution or any other law, examine any person on oath on any matter pertaining to any account subject to his audit and shall have all the powers that are by virtue of the Inquiries Act conferred on a chairman of a board of enquiry under that Act, and the provisions of that Act shall apply to the Auditor General in the exercise of his functions aforesaid as if he were a chairman appointed under that Act.

#### *The Malta 5D Show*

- 3.4.8 Having commenced screening in 2012, the Malta 5D show provides a brief historical and cultural theatrical experience, primarily intended as a tourist attraction. The Company operating the 5D theatre/cinema housed within the Workers' Memorial Building, namely AV Malta Ltd, is owned in the majority (51.5 per cent) by the GWU, and therefore conforms to the provisions regulating the GWU's contract with the Government. The rest of AV Malta Ltd's shareholding is held by 5D Ltd (48.5 per cent), which is in turn fully owned by Paza Ltd, a company privately held by two individuals.
- 3.4.9 It is of interest to note that the GWU's shares in AV Malta Ltd consist of seven per cent

cumulative preference shares with restricted voting rights that are to be redeemed at their nominal value within fifteen years from the date of operation, or as may be established by a unanimous decision of the members taken at a General Meeting of the Company. Although from a legal standpoint, the shareholding of AV Malta Ltd is in line with the Government-GWU contract, from an accounting perspective, the matter merits some explanation. For according to International Accounting Standard 32, preference shares are considered as a liability for the company, rather than equity. Therefore, applied to this situation and from an accounting perspective, the Union's shares in AV Malta Ltd are considered a liability and not equity, whereas the shares held by 5D Ltd are ordinary shares and considered as equity.

3.4.10 The documentation provided to this Office indicated that there had been discussions relating to the operation of such a show from the Workers' Memorial Building since 2009. Furthermore, the 28 March 2014 letter by the GWU was not the first attempt made by the Union to address the condition included in the deed as amended in 1997. In fact, the relevant GPD file included a memorandum, intended for Cabinet from a former Commissioner of Land, that was to be sent through the DG GPD to Parliamentary Secretary Revenues and Land, MFEI, and dated 10 December 2009. It is unclear whether this memorandum was actually submitted to the Parliamentary Secretary Revenues and Land; however, the following developments were what triggered its formulation:

- a. A letter from the Commissioner of Land dated 11 March 2009 and addressed to the Secretary General of the GWU, wherein the GPD noted that parts of the Union's building in Old Bakery Street had been transferred or leased for commercial purposes to a third party, a private company unrelated to AV Malta Ltd or 5D Ltd. The letter requested a copy of the agreement entered into between the GWU and this Company. On 26 April 2009, the Secretary General of the GWU replied to the Commissioner of Land arguing that the Union was aware of the terms of the emphyteutical concession and that no part of the Workers' Memorial Building was transferred or leased to the third party. The Secretary General also stated that an understanding with the third party had been reached for the provision of expertise and resources in the running and upgrading of the theatre; and
- b. On 16 October 2009, the legal representatives of the GWU and a third party (privately-held by two individuals and Paza Ltd (the owner of 5D Ltd)) wrote to the Commissioner of Land. Here, the Union and the third party requested a partial waiver of the constraint imposed in the 1997 amendments so that the GWU would be allowed to lease part of its premises to the third party for a determined yet unspecified period of time. The intention behind the proposed lease was to create a five-dimension audiovisual projection of the history of Malta. In its letter, the GWU acknowledged that this undertaking was not in line with the scope and objectives of the Union, hence the request.

3.4.11 This memorandum ultimately concluded that the request made by the GWU could be complied with by amending the emphyteutical grant through a parliamentary resolution as required by the Disposal of Government Land Act (Cap. 268) which would be followed by a deed corroborating Parliament's resolution.

3.4.12 The GPD file also included a revised second memorandum following that above-mentioned. However, this second version was signed by the then Director Land and featured a paragraph not included in the initial version of the memorandum. The newly incorporated text stated that rather than referring the matter to Parliament, and subject to Government's approval, one could consider acceding to the request made by the third party referred to in paragraph 3.4.10.b without amending the



deed, provided a percentage of the net profits, say five per cent annually, was paid to Government. This memorandum was noted in the file as having been submitted to the Parliamentary Secretary Revenues and Land on 13 January 2010. Nevertheless, on the basis of documentation retained by the GPD, no action was taken with respect to either of the memoranda, and in fact, according to a minute recorded by the Department, the file was returned on 7 March 2013. During a meeting with the NAO, the Permanent Secretary indicated his awareness of the existence of this memorandum, albeit stating that he had never actually seen it. Given that no action was taken by Government or the GPD following the drafting of these memoranda, this issue was deemed tangential to the main audit objectives.

### *Untours Insurance Agents*

3.4.13 Occupying part of the Workers' Memorial Building are Untours Insurance Agents, established in October 1981 as Untours Insurance Ltd. In the NAO's understanding, this insurance agency is not in breach of the Government-GWU's emphyteutical grant contract post the 1997 amendments. According to the MFSA records, Untours Insurance Agents is owned by GWU Holdings Ltd (which is in turn 99.9 per cent owned by the GWU) and Untours Travel Ltd (which is in turn 99.9 per cent owned by GWU Holdings Ltd).

### *Sciacca Grill*

3.4.14 This restaurant started operating from the Workers' Memorial Building in 2014. According to the MFSA records examined by this Office, Sciacca Grill Ltd is owned by M&N Catering Ltd, which is privately owned. The GWU has no percentage shareholding whatsoever in these Companies.

3.4.15 According to the GWU, Sciacca Grill Ltd was the most recent operator to provide food and beverage services from an area within the Workers' Memorial Building. The GWU stated that the Workers' Memorial Building had always had a food and beverage operator in terms of the original concession. The NAO sought to verify the veracity of this claim through an examination of the contracts the Union had in this respect, yet could not source the condition referred to by the Union. When requested by this Office to specify what the original concession incorporates, and to provide it with a copy of such concession, the Union replied that it believed this query to be unsupported by the statutory remit of the Office and that any further action would therefore be *ultra vires*. In the absence of any documentation substantiating the Union's claims, the NAO is left with no alternative but to deem the occupation of part of the Workers' Memorial Building by Sciacca Grill Ltd as irregular and in breach of the Union's contract with Government.

3.4.16 Furthermore, according to the NAO's understanding, the part of the GWU premises occupied by Sciacca Grill Ltd does not correspond to the immovables specified in the 1997 amendments. Therefore, this part of the premises should have been regulated by the 1957 contract with Government, which clearly does not allow for the utilisation of the Union's premises, or parts thereof, for commercial purposes.

3.4.17 While the NAO is certain of the irregularity of the occupation of part of the premises by Sciacca Grill Ltd prior to the redemption of ground rent on 15 May 2015, the situation is less clear following this development. The issue has been discussed in considerable detail in paragraphs 3.1.17 to 3.1.28, and as stated therein, the establishment of regularity or otherwise should be determined by the appropriate judicial forum. It is only through this course of action that one may establish whether the conditions

stipulated in the contract between Government and the Union survive redemption. Should it be established that the conditions prevail, then the irregularity of the occupation of part of the Workers' Memorial Building by Sciacca Grill Ltd extends beyond May 2015.

### *Vjaġġi Untours*

3.4.18 This travel agency is a joint venture operation between Untours Ltd (40 per cent shareholding) and Orange Travel Group Ltd (60 per cent shareholding), and established in December 2011. The Union has no shareholding in Orange Travel Group Ltd. According to the GWU, Vjaġġi Untours Ltd does not hold title to any part of the Workers' Memorial Building and, since it is Untours Ltd that is the leaseholder of the area from where Vjaġġi Untours Ltd operates, the situation is rendered regular. It is important to note that the Union did not provide this Office with evidence substantiating the assertion made regarding the lease held by Untours Ltd, rendering the independent verification of this fact not possible. Notwithstanding that asserted by the Union, the NAO is of the opinion that Vjaġġi Untours Ltd's occupation of part of the Workers' Memorial Building, whether by legal title or otherwise, is not in line with the provisions of the GWU's contract with Government.

3.4.19 Once again, while the NAO is certain of the irregularity of the occupation of part of the premises by Vjaġġi Untours Ltd prior to the redemption of ground rent on 15 May 2015, as in the case of Sciacca Grill Ltd, it would have to be determined whether the irregularity persisted following this redemption.



# Chapter 4

## Conclusions and Recommendations

## Chapter 4 – Conclusions and Recommendations

### 4.1 The Facts of the Case

- 4.1.1 In 1957, the Government of Malta granted the GWU a perpetual emphyteusis on public land for the Union to build its headquarters and to use such exclusively for trade union activities and its Union Press. In 1997, the Union transferred its printing and publishing company, the Union Press, to Marsa and subsequently requested the modification of the 1957 contract in order to allow for the utilisation of the resultant unoccupied space within the premises. The revisions made in 1997 permitted the GWU to transfer, assign or let (rent) part of its building to any company in which the Union had more than 51 per cent of the shareholding. In addition, the 1997 deed included a clause stating that five per cent of the yearly profits after tax from any commercial activity carried out in the GWU building were to be deposited into a fund administered by the Union *'for the specific objectives of promoting consumer affairs for the benefit of the general public'*.
- 4.1.2 On 24 April 2014, the GWU and ARMS Ltd signed a lease agreement, whereby the latter leased a part of the Workers' Memorial Building to use as offices and as a customer service outlet in Valletta. The lease term was for a period of five years, with an option to extend for an additional five years. The annual rent that was to be charged to ARMS Ltd was that of €61,950, payable pro rata every six months in advance.
- 4.1.3 In May 2014 and February 2015, media reports emerged alleging that the agreement between the GWU and ARMS Ltd was in breach of the emphyteutical contract that the Union had with Government. The media reports also referred to other lease arrangements that the GWU allegedly had with other commercial entities, potentially in breach of the same public deed. Pursuant to these allegations, on 12 February 2015, two Opposition Members of Parliament wrote to Chair PAC, requesting an investigation into the possible breach of conditions stipulated in the contract between the Government and the GWU. This request was referred to the NAO during the PAC meeting held on 16 March 2015.
- 4.1.4 On 15 May 2015, the GWU exercised its right for the redemption of ground rent and filed in Court a schedule of redemption. The perpetual yearly ground rent was redeemed against the payment of €16,026, thereby rendering the property freehold.

4.1.5 Hereunder are the salient events relating to the site granted to the GWU on title of perpetual emphyteusis. This Office’s conclusions regarding this investigation follow and are structured according to the terms of reference set by the NAO (Figure 2 refers).

**Figure 2: Timeline of events**

Date	Event
28 November 1956	Approval of a resolution to grant the site of the former Auberge de France to the GWU on perpetual emphyteusis during a Legislative Assembly sitting
3 February 1957	Authorisation of the grant of the site by His Excellency the Governor
7 February 1957	Contract between the Government and the Union for the granting of the former Auberge de France premises to the GWU on a title of perpetual emphyteusis
10 October 1997	Request by the GWU Secretary General to the Minister for Public Works and Construction for permission to assign, transfer or let part of its premises to any company in which the Union had over 51 per cent of the shareholding
15 October 1997	Proposal by the GWU Secretary General to the Minister for Public Works and Construction for a percentage of the yearly after-tax profits from any commercial activity carried out in the premises to be paid into a GWU-managed fund intended for promoting consumer affairs
16 October 1997	Attorney General’s advice to the GPD with respect to the GWU’s request
31 October 1997	Parliamentary Resolution approving changes to the 1957 contract conditions
12 December 1997	Amendment deed to the contract conditions, with the Union being allowed to lease the building to companies in which it had at least 51 per cent of shares
12 June 2008	Parliamentary Secretary Revenues and Land requested the estimated value of the <i>directum dominium</i> of the GWU premises following a verbal request made by the Union for its acquisition
11 March 2009	Commissioner of Land requested the GWU Secretary General to submit a copy of the agreement between the GWU and a third party utilising the theatre
26 April 2009	GWU Secretary General informed the Commissioner of Land that no part of its premises was transferred or leased to the third party
16 October 2009	GWU and a third party jointly requested the GPD to approve the partial waiver of the constraints imposed in the 1997 deed so that the Union could lease part of its premises to a third party
10 December 2009	GPD prepared a draft memorandum to Cabinet stating that the GWU’s request could be complied with by amending the emphyteutical grant through a parliamentary resolution – a revision to this memorandum considered the possibility of acceding to the request, provided a percentage of net profits was paid to Government
13 January 2010	Revised memorandum was submitted to the Parliamentary Secretary Revenues and Land
26 January 2014 & 2 February 2014	Advertisements issued by ARMS Ltd for the purchase or rent of property for utilisation as offices and as customer services outlets
7 March 2014	File was returned to GPD
11 February 2014	Closing date for the submission of offers to ARMS Ltd

18 March 2014	Legal advice provided to the GWU regarding the sustained applicability, or otherwise, of conditions following the possible redemption of ground rent
28 March 2014	GWU Secretary General requested the Commissioner of Land's confirmation that should a government entity wish to lease part of the property from the Union, the GPD would find no objection
April 2014	Verbal notification by ARMS Ltd to the GWU regarding the selection of its offer
10 April 2014	Date of effect of the GWU and ARMS Ltd lease agreement
11 April 2014	Former Commissioner of Land noted that he had verbally informed the GWU Secretary General on 9 April 2014 that the request by the Union could only be acceded to by means of a parliamentary resolution – according to the Commissioner, the GWU Secretary General indicated that the pertinent authorities were already aware of the matter and that one was to proceed accordingly in order to accede to the Union's request
14 April 2014	A GPD Legal Officer informed DG GPD that the GWU's request could only be entertained if the emphyteutical contract was amended – file was referred for DG GPD's endorsement and for the preparation of a memorandum to be submitted to the Parliamentary Secretary OPM
24 April 2014	GWU and ARMS Ltd signed the lease agreement
May 2014	Media reports alleged that ARMS Ltd was considering the establishment of a branch in Valletta through the rental of office space in the GWU premises
3 May 2014	DG GPD instructed the Commissioner of Land to prepare a draft memorandum for eventual transmission to the Parliamentary Secretary OPM
6 May 2014	Commissioner of Land instructed a GPD Legal Officer to prepare a draft memorandum
19 May 2014	Submission of the memorandum by the GPD Legal Officer to the DG GPD
6 February 2015	Further media reports alleged that the five-year rental of part of the GWU's premises to ARMS Ltd was in breach of the Union's emphyteutical contract with Government
12 February 2015	Request by two Opposition Members of Parliament to the PAC for an investigation of the lease of part of the premises occupied by the GWU to ARMS Ltd
16 March 2015	PAC referred the matter to the NAO
23 March 2015	Commissioner of Land enquired with the GWU Secretary General whether the Union, or any of its affiliates, had any agreements with ARMS Ltd in respect of any part of the Workers' Memorial Building
20 April 2015	Reminder submitted by the Commissioner of Land to the GWU Secretary General following previous correspondence
15 May 2015	GWU filed a schedule of redemption with respect to the perpetual yearly ground rent of its premises, thereby rendering the site freehold

## 4.2 Breach of the Government-GWU Contract resulting from the ARMS Ltd Lease

4.2.1 The first objective, emanating from the terms of reference, entailed the verification of whether the provisions stipulated in the contract between Government and the GWU were breached. Here, the NAO limited its attention specifically to the occupation of

part of the Workers' Memorial Building by ARMS Ltd, and whether this occupation was in breach of the aforementioned Government-GWU contract.

- 4.2.2 The NAO established that between April 2014 and May 2015, the lease of part of the Workers' Memorial Building to ARMS Ltd by the GWU was in breach of the Government's emphyteutical contract with the Union. This emanated from the fact that the GWU did not have any shareholding in ARMS Ltd and therefore infringed condition (b) of the 1997 amendments.
- 4.2.3 On 15 May 2015, the GWU exercised its right for the redemption of ground rent and filed in Court a schedule of redemption relating to the Workers' Memorial Building. This action rendered the establishment of whether irregularities persisted after this date less straightforward due to different legal interpretations of the implications of ground rent redemption.
- 4.2.4 The GWU maintained that, according to legal advice obtained in March 2014, the exercise of this legal right rendered obsolete all of the conditions stemming from the 1957 and 1997 contracts. Therefore, the leasing of portions of the Workers' Memorial Building was no longer limited to companies in which the Union had over 51 per cent shareholding.
- 4.2.5 A conflicting legal perspective was provided by the GPD. In this context, and guided by the advice provided by the Attorney General, the GPD argued that even though the ground rent was redeemed, the emphyteutical concession conditions and any subsequent conditions imposed by a public deed between Government and the GWU relating to the property were still valid. This did not result from a precise provision of the law but from case law. The GPD argued that the condition that the land was to be utilised solely for trade union activities, as specified in the emphyteutical contract with Government, could be seen as a servitude in favour of society in general and as having had a bearing on the ground rent imposed at the time when the perpetual emphyteusis was granted.
- 4.2.6 Advice provided to the NAO aligned with that indicated by the Attorney General. In essence, this Office is of the opinion that once the ground rent had been redeemed, the contractual relationship and the obligations arising out of such a contract would still be binding. Notwithstanding, this Office deems this matter to be a legal one, which should be decided in an appropriate judicial forum should circumstances so warrant. Furthermore, the NAO considers it impractical and inappropriate to comment on the possible outcome of any litigation.
- 4.2.7 A complication that arises relates to the possible corrective action that could be exercised by Government now that the ground rent has been redeemed. The NAO noted that before the ground rent redemption took place, effectively rendering the site freehold, the GPD had the right to demand the dissolution of the grant on emphyteusis in the case of established breaches. This possibility no longer exists given that ground rent has been redeemed; however, other means of redress certainly merit consideration, particularly in view of the subsidised ground rent paid by the Union, which directly impacted on a significantly undervalued redemption price.
- 4.2.8 In light of the above, the NAO recommends two courses of action, one relating to breaches registered prior to the redemption of ground rent, with the other relating to the establishment of whether breaches persisted post ground rent redemption. In the first case, the NAO recommends that the GPD actively considers instituting legal action against the GWU for the evident breaches of conditions set in the emphyteutical



contract. Second, the NAO urges the GPD to establish, through legal action, whether the conditions of the emphyteutical contract survive the redemption of ground rent, and in the affirmative, institute judicial action against the Union, or any other type of action deemed suitable.

### 4.3 Involvement and Shortcomings of the GPD

- 4.3.1 The second objective set as part of the PAC-mandated terms of reference entailed determining whether the GPD was aware of the lease between the Union and ARMS Ltd, whether the Department approved of such an arrangement, and if not, what action was taken.
- 4.3.2 The GPD maintained that the Department was unaware of the GWU's arrangement with ARMS Ltd until the press exposed this matter. Notwithstanding such affirmations, the NAO finds it difficult to comprehend the Department's lack of awareness of ARMS Ltd's occupation of part of the GWU's premises, given that ARMS Ltd spared no effort at publicising the setting up of this outlet. Furthermore, in the NAO's considered opinion, while the Department never explicitly approved the lease, it took limited action to avert and/or remedy the situation. At the time of writing, the GPD had taken no decisive action on the matter whatsoever.
- 4.3.3 An aspect that drew the NAO's attention was the reference made in the GPD's file to the inferred approval obtained from the '*pertinent authorities*' by the GWU regarding the possible lease of part of its premises to a government entity. Notwithstanding the numerous attempts made by this Office to establish who the authorities referred to were, the GWU Secretary General and the former Commissioner of Land did not provide this information. While the GWU Secretary General failed to reply to all correspondence sent by the NAO, the former Commissioner of Land claimed that he could not recall whether the GWU Secretary General had informed him of their identity.
- 4.3.4 This Office considers the GPD's failure to submit a written reply to the GWU's request dated 28 March 2014 as a shortcoming, which hindered the audit process and constrained the NAO to solely rely on the subjective recall of events by Union and GPD officials rather than the objective analysis of documentation. Despite the fact that no written reply was issued by the GPD, according to records retained by the Department, the Union was informed that it could not proceed with the proposed lease without the relevant amendments being made to the contract by means of a parliamentary resolution. Notwithstanding the lack of required authorisation, the GWU proceeded with the lease of part of its premises to ARMS Ltd.
- 4.3.5 On 19 May 2014, a draft memorandum was submitted to the DG GPD outlining that given that neither the original deed of emphyteusis nor the deed of amendments provided that such leases could take place, the GWU's request could only be entertained if the deed was amended by means of a parliamentary resolution. Irrespective of the prompt action taken by the GPD in preparing the memorandum, this was rendered superfluous by the fact that the lease agreement between the GWU and ARMS Ltd had already been signed.
- 4.3.6 Notwithstanding the timely preparation of the memorandum, the NAO noted that the GPD failed to pursue the matter, as the memorandum was not submitted for the consideration of the Parliamentary Secretary OPM. The NAO has reservations regarding the explanations put forward by the GPD, with justification cited in defence of the Department's inaction considered inadequate. This Office considers it unreasonable for the GPD to take action only when and if prompted, and hardly

considers it necessary for the Union to persistently remind the Department to take the required action. Similarly unreasonable is the expectation that the Ministry was to prompt the GPD on action to be taken as the Ministry was, according to records and evidence provided to the NAO, unaware of the Union's intentions. This, bearing in mind that the issue relating to the '*pertinent authorities*' was never resolved. In practical terms, the Department should have submitted the memorandum to the Parliamentary Secretary OPM for his consideration.

4.3.7 Nevertheless, the Department's shortcomings in this respect do not exculpate the Union from having breached the conditions stipulated in its contract with Government by entering into a lease agreement for part of its premises with ARMS Ltd. This Office fails to comprehend why the GWU did not resolve the matter of the ARMS Ltd lease through the legitimate course of action presented in the parliamentary resolution as proposed by the GPD. Simultaneously, the NAO notes the GPD's failure to facilitate this course of action, effectively halting the process that should have led to Parliament's eventual sanctioning.

4.3.8 The NAO enquired as to why the GPD failed to take any action following allegations in the press regarding the occupation of part of the GWU premises by ARMS Ltd, that is, when the Department was unequivocally aware of the matter. The GPD maintained that once the matter was referred to the NAO, any further action was deemed inappropriate until the conclusion of the investigation. Aside from the correspondence sent by the Commissioner of Land to the GWU, which remained unanswered, the NAO is of the opinion that the Department could have taken further and more decisive action in order to establish the veracity of alleged irregularities and, in the affirmative, take remedial action.

#### 4.4 Inadequate Involvement of Other Government Officials

4.4.1 The third objective set as per agreed terms of reference was for the NAO to ascertain whether other Government officials were involved in this matter, and if so, establish what their role was. In this context, the NAO sought the views of the Parliamentary Secretary OPM and the Permanent Secretary, in view of their political and administrative responsibility for the GPD, respectively.

4.4.2 To this end, the NAO established that the Parliamentary Secretary's involvement in the initial stages of this matter was limited, largely because he had assumed Office weeks prior to the signing of the GWU-ARMS Ltd lease agreement. Although the NAO acknowledges the circumstances that mitigate responsibility for the Parliamentary Secretary's initial inaction on the matter, such justification cannot be cited with respect to the insufficient action taken when the alleged irregularity became public knowledge. Guidance provided to the Commissioner of Land to write to the GWU was appropriate as a first measure, yet should have been escalated in view of the Union's failure to reply and the fact that the same circumstances prevailed.

4.4.3 The involvement of the Permanent Secretary remained an ambiguous matter to the NAO. Despite the fact that according to the GPD's records, the file was forwarded to his Office, the Permanent Secretary claimed that he had never seen the file. Moreover, the NAO finds difficulty in understanding how the Permanent Secretary remained unaware of the fact that ARMS Ltd were actually occupying part of the Workers' Memorial Building despite the considerable press coverage on the matter.

4.4.4 The Parliamentary Secretary OPM and the Permanent Secretary stated that once the issue was referred to the NAO for investigation, they refrained from taking any action in addressing the alleged irregularities. This Office is of the opinion that the

initiation of this investigation should not have served as justification for inaction and further developments in this regard would not have been construed as interference but merely reported on by the NAO.

#### **4.5 Occupation by Third Parties of the GWU Premises**

- 4.5.1 The fourth and final objective addressed as part of this audit related to the establishment as to whether other lease agreements were in place and whether these were in accordance with the provisions of the contract entered into by the Union and Government. The NAO also sought to establish whether the GPD was aware of the other possible third parties encumbering the premises.
- 4.5.2 From verifications carried out by the NAO, this Office established that while the occupation of parts of the GWU premises by Malta 5D and Untours Insurance Agents was regular, that by Sciacca Grill and Vjaġġi Untours was not. While the NAO is certain of the irregularity of the occupation of part of the premises by Sciacca Grill and Vjaġġi Untours prior to the redemption of ground rent in May 2015, the situation is less clear following this development. This Office is of the opinion that the establishment of regularity or otherwise should be determined by the appropriate judicial forum. It is only through this course of action that one may establish whether the conditions stipulated in the contract between Government and the Union survive redemption. Should it be established that the conditions prevail, then the irregularity of the occupation of part of the Workers' Memorial Building by Sciacca Grill and Vjaġġi Untours extends beyond May 2015.
- 4.5.3 According to GPD records and that stated by senior GPD officials, the Department was unaware of the use of parts of the Workers' Memorial Building for commercial purposes by entities in which the Union did not have a majority shareholding. In view of the centrality of the premises, the prominence of the establishments operating therefrom, and the duration of their occupation, the NAO struggles to comprehend how the GPD failed to note any of the establishments occupying parts of the Workers' Memorial Building. Furthermore, the NAO deems the lack of enforcement action by the GPD as unacceptable and urges the Department to, where warranted, take appropriate measures to ensure compliance with the conditions stipulated in the GWU-Government contract.
- 4.5.4 In view of the irregularities highlighted, the NAO recommends two lines of action to be taken by the GPD. In the first case, for breaches registered prior to the redemption of ground rent, the NAO recommends that the GPD institutes legal action against the GWU for the evident breaches of conditions set in the emphyteutical contract. In the second case, in determining whether breaches persisted post ground rent redemption, the NAO urges the GPD to establish, through legal action, whether the conditions of the emphyteutical contract survive the redemption, and in the affirmative, institute judicial action against the Union, or any other type of action deemed suitable.

# Appendices

## Appendix A – Investigation Request sent to the Public Accounts Committee

  
KAMRA TAD-DEPUTATI      HOUSE OF REPRESENTATIVES  
MALTA

Lil On. Tonio Fenech  
Chairman  
Kumitat Kontijiet Pubblici  
Il-Palazz  
Valletta

Illum, 12 ta' Frar 2015

On. Fenech,

Fil-31 ta' Ottubru 1997, il-Kamra tar-Rappreżentanti approvat Riżoluzzjoni li permezz tagħha giet aċċettata t-talba tal-General Workers' Union biex tkun tista' tikri l-bini tagħha fil-Belt Valletta, li huwa mogħti lilha mid-Dipartiment tal-Artijiet b'titolu ta' enfitewsi, lil kumpaniji li fiha hija jkollha mhux inqas minn 51% tal-ishma (*vide* annessa Riżoluzzjoni, Dok. A).

In segwitu ta' din ir-Riżoluzzjoni, fit-12 ta' Diċembru 1997 gie ffirmat il-kuntratt pubbliku relattiv u ċjoe bejn il-GWU u d-Dipartiment tal-Artijiet għan-nom tal-Gvern ta' Malta. Kif tista' tara mill-anness kuntratt (Dok.B), fil-kondizzjoni numru (b) hemm proprju l-kliem: "*Government authorises the emphyteuta to transfer, assign, or let for commercial purposes to any Company in which the General Workers Union has over fifty one per cent (51%) of the shareholding of such company and for such duration as it holds such percentage shareholding*".

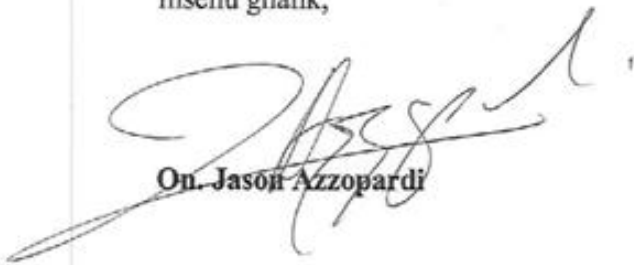
Issa hu fatt magħruf u fid-dominju pubbliku li fl-2014 il-GWU kriet parti mill-bini tagħha fil-Belt Valletta, l-istess bini li hu milqut bil-kondizzjoni msemmija fil-kuntratt pubbliku ta' Diċembru 1997, lil ARMS Ltd. Daqstant ieħor hu fatt magħruf li l-azzjonisti ta' ARMS Ltd huma l-Water Services Corporation u l-Enemalta plc (*vide* t-twegiba għall-mistoqsija parlamentari numru 13827 mogħtija fit-2 ta' Frar 2015 u mmarkata Dok.C) u għalhekk il-GWU m'hijiex azzjonista tal-ARMS Ltd.

B'hekk hu ċar li l-kirja tal-GWU lil ARMS Ltd tal-bini tagħha fi Triq Nofsinhar, il-Belt Valletta qed tikser il-kuntratt pubbliku li gie ffirmat bejn il-Gvern Malti u l-istess GWU fit-12 ta' Diċembru 1997, liema kuntratt jirrifletti r-Riżoluzzjoni approvata mill-Parlament Malti fil-31 ta' Ottubru 1997.

Għan-nom tal-Oppożizzjoni qed nitolbu li l-Kumitat tal-Kontijiet Pubblici jinvestiga u jiddikjara:

- a) Jekk il-kuntratt pubbliku tat-12 ta' Diċembru 1997 (fejn il-Gvern Malti hu firmatarju) inkisrux biex jiġi aġevolat finanzjarjament terz;
- b) X'kien il-parir tal-Kummissarju tal-Artijiet fl-2014, jekk inghata, għal din il-kirja u x'kien l-*iter* amministrattiv minn meta d-Divizjoni Proprjetà tal-Gvern kienet infurmata li saret/ser issir tali kirja ta' bini tal-Gvern mogħti b'enfitewsi lil GWU bil-limitazzjoni kif inghad hawn fuq;
- c) Min, fid-Divizjoni Proprjetà tal-Gvern, approva tali kirja bi ksur ta' tali kuntratt;
- d) Min kienu l-uffiċjali pubbliċi involuti u responsabbli, inkluż iżda mhux biss fid-Divizjoni Proprjetà tal-Gvern u fl-Uffiċċju tal-Prim Ministru, li awtorizzaw li ssir tali kirja bi ksur ta' dan il-kuntratt u tar-Riżoluzzjoni Parlamentari;
- e) Jekk il-kondizzjoni (b) tal-51% ishma tal-kuntratt pubbliku msemmi tat-12 ta' Diċembru 1997 bejn il-GWU u l-Gvern Malti inkisrux jew hux qed tinkiser b'kirjiet kummerċjali oħra lil terzi li għaddejjin bħalissa u x'passi qed jiehu d-Dipartiment tal-Artijiet biex tali ksur ta' kuntratt pubbliku ma jibqax għaddej.

Insellu ghalik,



On. Jason Azzopardi



On. Ryan Callus

## Appendix B – Terms of Reference set by the National Audit Office



National Audit Office  
Notre Dame Ravelin  
Floriana FRN 1600  
Malta

Phone: (+356) 22055555  
Fax: (+356) 21220708  
E-mail: nao.malta@gov.mt  
Website: www.nao.gov.mt

*Awditur Generali*

Rif Taghna: NAO 53/2015

10 t' April 2015

Onor. Antonio Fenech, MP, B.A. (Hons) Accty, FIA, CPA  
*Chairman*  
Kumitat tal-Kontijiet Pubbliċi  
Kamra tar-Rappreżentanti  
Il-Palazz  
Valletta

Għażiż Onor. Fenech,

Nagħmel referenza għal ittra datata 12 ta' Frar 2015, mibghuta lill-Kumitat tal-Kontijiet Pubbliċi mill-Onorevoli Membri Jason Azzopardi u Ryan Callus, u diskussa fis-seduta tas-16 ta' Marzu 2015. F'din l-ittra, u hekk kif sussegwentement maqbul mill-Membri tal-Kumitat, l-Uffiċċju Nazzjonali tal-Verifika ntabab jinvestiga l-kuntratt bejn id-Dipartiment tal-Artijiet u l-General Workers Union, fejn il-Gvern aċċetta t-talba tal-Union biex tkun tista' tikri bini fil-Belt Valletta, mogħti lilha b'titolu ta' enfitewsi, lil kumpaniji li fihom ikollha mhux inqas minn 51 fil-mija tal-ishma. Dan il-kuntratt hu datat 12 ta' Diċembru 1997. Gie indikat li fl-2014, il-General Workers Union kriet parti minn dan il-bini lil terzi.

Fl-isfond ta' din it-talba, l-Uffiċċju Nazzjonali tal-Verifika qiegħed iressaq dawn it-termini:

- jirrevedi jekk il-kuntratt bejn il-Gvern u l-General Workers Union inkisirx;
- jistabbilixxi jekk id-Dipartiment kienx jaf bil-kirja bejn il-General Workers Union u terzi, jekk approva din il-kirja, u jekk le, x'azzjoni ha f'dan ir-rigward;
- jesplora jekk kinux involuti uffiċjali pubbliċi oħra f'din il-kwistjoni, u x'kien ir-rwol tagħhom; u
- jeżamina jekk hemmx kirjiet oħra lil terzi li mhumiex skont il-provvedimenti tal-kuntratt.

Traduzzjoni bil-Ingliż ta' dawn it-termini tinsab mehmuża ma' din l-ittra.

B'hekk, sabiex tiġi indirizzata t-talba dwar dan il-kuntratt, l-Uffiċċju Nazzjonali tal-Verifika se jimxi b'dawn it-termini bħala gwida.

Anthony C. Mifsud

Ink.

Kopja lil: Onorevoli Jason Azzopardi, MP  
Onorevoli Ryan Callus, MP  
Sinjura Anna Brincat, Segretarja tal-Kumitat

An investigation of the agreement between Government and the General Workers Union dated 12 December 1997, wherein Government authorised the emphyteuta to transfer, assign or let for commercial purposes its Valletta premises (granted by means of an emphyteutical agreement with Government) to any company in which the Union has 51 per cent shareholding. The terms of reference are as follows:

- a. establish whether the provisions stipulated in the agreement between Government and the General Workers Union were breached;
- b. determine whether the Government Property Department was aware of the sub-lease between the Union and third parties, whether the Department approved of such sub-letting, and if not, what action was taken;
- c. ascertain whether other Government officials were involved in this matter, and if so, what was their role; and
- d. establish whether other sub-letting agreements are in place and determine whether these are in accordance with the provisions of the agreement.



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