

# An Investigation of Government's Expropriation of Two One-Fourth Undivided Shares of the Property at 36 Old Mint Street, Valletta

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## List of Abbreviations

AG	Auditor General
BICC	Building Industry Consultative Council
DEM	Director Estate Management
DG	Director General
DOI	Department of Information
GPD	Government Property Department
IAID	Internal Audit and Investigations Department
IRD	Inland Revenue Department
Lm	Maltese Lira
MEPA	Malta Environment and Planning Authority
MP	Member of Parliament
MSDC	Ministry for Social Dialogue, Consumer Affairs and Civil Liberties
NAO	National Audit Office
ODZ	outside development zone
OPM	Office of the Prime Minister
PAC	Public Accounts Committee
PD	property drawing
PPS	Principal Permanent Secretary
PS	Parliamentary Secretary
PwC	Pricewaterhouse Coopers
£Stg	Pound Sterling

# Executive Summary



## Executive Summary

1. On 5 June 2015, the three Opposition Members of Parliament (MP) on the Public Accounts Committee (PAC), together with the three Opposition MPs appointed Spokespersons for Justice, the Environment, and Land, respectively, requested the Auditor General to review Government's expropriation of two one-fourth undivided shares of the property at 36 Old Mint Street, Valletta from Mark Gaffarena. Hereunder are the salient findings, essentially reflecting the terms of reference set by the PAC.
2. Following a meeting with the Parliamentary Secretary for Planning and Simplification of Administrative Process (PS OPM), Gaffarena proposed the exchange of a one-fourth undivided share of 36 Old Mint Street to the Government Property Department (GPD) on 28 July 2014. This was favourably advocated by the Director Estate Management (DEM), endorsed by the Director General (DG) GPD and authorised by the PS OPM shortly thereafter. The President's declaration, sanctioning this expropriation, was published on 14 January 2015, valuing the one-fourth undivided share of the Valletta property at €822,500. This expropriation was followed by a deed of exchange, wherein Gaffarena acquired government land at Baħar iċ-Ċagħaq, Qormi, and Siġġiewi as well as a property in Sliema. These were valued at a total of €683,610, while the difference of €138,890 was settled as a cash payment. As negotiations with Government were underway, on 31 October 2014, Gaffarena entered into two promise of sale agreements with other co-owners for a one-eighth and a one-fourth undivided share of the Valletta property. Despite the fact that the contracts of sale had not yet been finalised, the latter share was the subject of another proposed sale by Gaffarena to Government, dated 13 February 2015. The DEM referred the proposal to the DG GPD and PS OPM, who duly authorised the expropriation of this second one-fourth undivided share. The President's declaration was published on 8 April 2015, while Gaffarena entered into a deed with Government for compensation due on 10 April 2015. In exchange, Gaffarena received properties in Baħar iċ-Ċagħaq and Żebbuġ valued at €445,000, as well as €377,500 in cash.
3. In its review of these processes of expropriation, the National Audit Office (NAO) established that the standards expected in terms of good governance were lacking. The prompt and decisive action taken by the GPD in advocating these expropriations, without any form of discussion or analysis, was deemed incomprehensible by the NAO. Despite there being no written record of how Government arrived at certain key decisions, no analysis of the utility of the acquisition, and no consideration of alternative courses of action, the process went ahead nonetheless. This concern was heightened by the fact that the decision to expropriate would eventually entail

an outlay of €3,200,000, and did in fact entail a disbursement of €1,645,000 in the expropriation of the two shares. This Office is not in a position to establish whether the presence of an Officer in the PS OPM Secretariat, in the initial meeting between Gaffarena and the DEM, conditioned the Department's favourable consideration of Gaffarena's offer, and whether that discussed during this meeting reflected the outcome of the meeting between the PS OPM and Gaffarena.

4. The public purpose served by the expropriation of two one-fourth undivided shares of 36 Old Mint Street was far from clear to the NAO. The only documentation relating to the public purpose that was to be served through the first expropriation was a minute by the DEM, advocating the favourable consideration of Gaffarena's offer for possible use as a ministry or a museum. The NAO established that the elusiveness of public purpose was not attributable to inadequate documentation as the PS OPM, DG GPD and DEM confirmed that they had not discussed the public purpose that was to be served through these expropriations. In these circumstances, the NAO concluded that these officials failed to safeguard Government's interest by expropriating property that, although useful, served no identified public purpose.
5. The NAO is of the opinion that value for money is not solely limited to the value of what is being acquired but should also take into consideration its necessity and utility. In the case of the expropriation of 36 Old Mint Street, the necessity of two one-fourth undivided shares remained a highly questionable matter. The NAO's reservations centre on what utility could possibly be served through ownership of an undivided part of a property, when it was entirely within Government's control to expropriate the entire property. When one considers the inflated valuation of 36 Old Mint Street, the undervaluation of Government land disposed of, as well as the substantial cash payments made, over and above the vague public purpose, the NAO deems this expropriation as not constituting value for money.
6. The NAO has unequivocally established that Gaffarena was aware of Government's intention to expropriate well in advance of the publication of the President's declaration, as valuations relating to the properties identified by Gaffarena for exchange had been prepared prior to publication in the Government Gazette. Furthermore, other documentation required to effect the deed of exchange, which should have been completed after the declaration, was in fact received by the GPD well ahead of its publication. The NAO is of the opinion that this information was confidential as it was sensitive government-related information that only Gaffarena was privy to. This put Gaffarena at an unfair advantage over the other co-owners as he could anticipate Government's intention to expropriate the remaining undivided shares in advance of this becoming public knowledge. In fact, Gaffarena did exploit this information when he entered into two promise of sale agreements in advance of the publication of Government's expropriation.
7. This Office's main concern relating to the ethical conduct of officials involved in these expropriations relates to the collusion noted between the GPD and Gaffarena, secretly cooperating to the detriment of the other co-owners. This conclusion, arrived at by the NAO, was based on the fact that although it was within the GPD's legal right to acquire the entire property, the Department opted to expropriate only two undivided shares from Gaffarena in a piecemeal manner. In fact, the GPD only negotiated with Gaffarena and never informed any of the other co-owners of such negotiations. The GPD was aware of or could easily have traced the identity of the other co-owners and could have readily negotiated with them too following the issuance of the President's declaration. Furthermore, the GPD justified the piecemeal acquisition by citing insufficient funds when funds to acquire the entire property were in fact available.

Also supporting the NAO's understanding of collusion was the fact that Gaffarena offered to sell a share to the GPD that he did not own. Of significant concern to the NAO were the valuations prepared by the GPD with respect to the properties exchanged for 36 Old Mint Street, which render evident the fact that Gaffarena was involved in expropriation-related preparations well in advance of the President's declaration. Further evidence of this irregularity was the form certifying ownership of the 'expropriated property' that was completed by Gaffarena's notary and submitted to the GPD prior to the President's declaration.

8. The elimination of the Żebbuġ property from the first expropriation process, due to the aggregate value of properties proposed in exchange for a share of 36 Old Mint Street exceeding that permissible, indicated that Gaffarena was aware of the values of the lands that he was to acquire. This was confirmed by Gaffarena in written submissions to this Office. In the NAO's understanding, this awareness of the values assigned to the lands, apart from supporting the understanding of collusion between Gaffarena and the GPD, introduced a considerable element of risk as access to such information provided an opportunity and context for the breach of the process' integrity. The extent of the risk depended on what information Gaffarena was privy to. The fact that Gaffarena was informed of the proceedings prior to them becoming public was clear; however, the NAO could not establish the extent of the information at his disposal due to his failure to cooperate with this Office. The GPD's poor record keeping and the officials' dubious account of events, particularly in view of how this expropriation materialised without any coordination between those involved, further compounded this.
9. This Office is of the opinion that this expropriation was instigated by Gaffarena, yet readily facilitated by the PS OPM, DG GPD and DEM. The NAO deems such collusive action as highly inappropriate, in clear breach of the fundamental principles of good governance, transparency and fairness.
10. The NAO is of the understanding that if the Attorney General's advice to the Internal Audit and Investigations Department (IAID) is applied, then the two deeds with Gaffarena are invalid, as the compensation payable by Government for each of the undivided shares expropriated should have been proportionally paid to all co-owners. In the case of the first one-fourth undivided share expropriated, Gaffarena should have been paid €205,625, with the remaining €616,875 (balance of €822,500) paid to the remaining co-owners in a proportionate manner according to their share of ownership. Compensation to Gaffarena exceeded the €205,625 payable based on this understanding, as properties valued at €683,610 were exchanged and a cash payment of €138,890 was effected. The validity of the exchange of lands in this deed is brought into serious doubt in view of provisions stipulated in the Disposal of Government Land Act. The NAO supports that stated by the IAID and the Attorney General, urging the application of provisions in this Act that would result in the reversal of the exchange of lands effected in this first deed.
11. Applying the Attorney General's advice in the case of the second expropriation, the NAO is of the understanding that Gaffarena should have been paid €411,250, with the remaining €411,250 (balance of €822,500) paid to the other co-owners. The increase in the amount payable to Gaffarena is attributable to the fact that he was now the co-owner of the second one-fourth undivided share at the time of the publication of the President's declaration and therefore was to be accordingly compensated. The NAO noted that the value of the lands exchanged in the second deed with Gaffarena were in accordance with the provisions of the Disposal of Government Land Act. Although the property exchanged fell within the stipulated parameters, the augmentation of compensation through a cash payment of €377,500 rendered this deed irregular.

12. This Office established that the officials bearing a key role in this expropriation were the PS OPM, DG GPD and DEM. The NAO arrived at the understanding that it was the DEM who assumed the primary role of negotiating with Gaffarena; however, it must be stated that the conclusion of these negotiations would not have been possible without the endorsement of the DG GPD and final authorisation by the PS OPM.



# Chapter 1

## Introduction

# Chapter 1 – Introduction

**1.0.1** On 5 June 2015, the three Opposition Members of Parliament (MP) on the Public Accounts Committee (PAC), together with the three Opposition MPs appointed Spokespersons for Justice, the Environment, and Land, respectively, requested the Auditor General (AG) to review Government’s expropriation of two one-fourth undivided shares of the property at 36 Old Mint Street, Valletta. According to the request, Government had acquired these undivided shares in January and April 2015, respectively, and had paid the owner, Mark Gaffarena (hereinafter referred to as Gaffarena), the sum of €1.65 million for the two shares. Citing media reports that first emerged in May 2015, the submission by the Opposition Members listed a series of allegations and shortcomings in the expropriation process. Appendix 1 refers.

## **1.1 Allegations by the Media**

**1.1.1** Media allegations initially appeared on 31 May 2015 in a Sunday newspaper, wherein it was claimed that Government had paid €1.65 million for half ownership of a property in Valletta that an investor had bought for a fraction of the price just weeks earlier. According to the article, the property in Old Mint Street, Valletta was leased to Government and was being used by the Building Industry Consultative Council (BICC). It was partly owned by Gaffarena, who had made a profit of €685,000 in less than two months, acquiring swathes of public land as part of the settlement. It was further alleged that Gaffarena had bought the shares with advance knowledge that Government intended to expropriate this property. According to the article, Gaffarena bought a one-fourth undivided share on 26 February 2015 for €139,762, which Government then expropriated on 10 April 2015 for €822,500 in exchange for cash and land. The article further indicated that this was the second time in the space of a few months that the Government had purchased a share of 36 Old Mint Street from Gaffarena. On 28 January 2015, Government had expropriated another quarter of this property from Gaffarena, again paying €822,500 in cash and land. The other half of the property was still in the possession of third parties, so ownership of the property remained divided. It was further alleged that, according to a government official, the decision to expropriate part of the property was taken because the [other] owners were threatening to terminate the lease to Government. According to this official, Government was then in a better position to stop a possible eviction.

1.1.2 The article also indicated that, as compensation for the half share of 36 Old Mint Street, Government paid Gaffarena €516,390 in cash. In addition, several parcels of government-owned land were transferred to him, namely:

- a. land at Baħar iċ-Ċagħaq, limits of Naxxar, measuring 1,663 square meters, valued at €70,000, as well as an adjacent plot of land measuring 3,735 square meters valued at €260,000;
- b. two plots of land in Żebbuġ, Malta, one measuring 24,073 and the other 2,150 square metres with a combined value of €375,000;
- c. a shop in Manwel Dimech Street, Sliema valued at €65,000;
- d. land measuring 5,992 square metres at Ta' Kandja, Siġġiewi valued at €165,800; and
- e. land at Tal-Handaq, Qormi measuring 9,980 square metres and valued at €192,810.

1.1.3 According to the timeline indicated in the newspaper article, Gaffarena had bought the first quarter of 36 Old Mint Street on 18 December 2007 for Lm10,000 (equivalent to €23,294). On 22 January 2015, a President's Declaration was published, whereby the expropriation of a quarter of this property was announced. On 28 January 2015, Government paid Gaffarena the amount of €822,500, part in land and part in cash, as compensation for the expropriated share. A second quarter of the property was purchased by Gaffarena on 26 February 2015 for €139,762. Government subsequently expropriated another quarter of 36 Old Mint Street following the President's Declaration published on 8 April 2015. On 10 April 2015, Government compensated Gaffarena with a further €822,500, again in land and in cash, netting Gaffarena a profit of almost €685,000 in less than two months. According to the newspaper, an expropriation process normally takes years to conclude. This was not the case in the part expropriation of 36 Old Mint Street.

1.1.4 Doubts were also raised on the intendance of the expropriation process. When Government carried out the first expropriation, Gaffarena only owned a quarter of the property. He then purchased another quarter that was, once again, sold to Government. According to the article, no explanation was given as to why Government did not expropriate the second quarter share directly from the owners, rather than wait for Gaffarena to acquire it and up the price by €685,000. It was further alleged that, according to the GPD, it was not within the Department's remit to know the values of properties declared by third parties on contracts. Moreover, the GPD had duly verified all the values assigned to the various properties exchanged in the expropriation, which were found to be fair. According to the newspaper, it had consulted two independent architects to assess the valuations of the Valletta property, and the land and the government-owned Sliema property that Gaffarena was given in exchange. As indicated in the article, both architects stated that the amount paid by the GPD was excessive, considering that 36 Old Mint Street was leased to Government, which brings down the value of a sale. In addition, the location of the property was not among the most sought after in Valletta.

1.1.5 Reacting to the allegations made on 31 May 2015, a press conference was held by the Parliamentary Secretary (PS) for Planning and Simplification of Administrative Processes Hon. Michael Falzon (hereinafter referred to as PS OPM) on 1 June 2015. According to the PS OPM, the expropriation process of 36 Old Mint Street was entirely regular and within the parameters of the law. He claimed that Government faced



eviction by 2028 and therefore had to expropriate the property. The PS OPM denied any political interference in the deal, or that Gaffarena could have been privy to inside information. Furthermore, it was only in 2014 that Government decided to acquire the property and Gaffarena's decision to buy the rest of the property did not fall within its, Government's, remit. According to the PS OPM, the [one-fourth shares of the] property was realistically valued at €822,500 by architects appointed by the GPD.

1.1.6 The Shadow Minister for Justice Hon. Jason Azzopardi also held a press conference on 1 June 2015. He claimed that it was impossible that no political direction was sought on the matter, and that there was a valid reason why the Department of Land fell under the responsibility of the Prime Minister. Hon. Azzopardi expressed concern about the fact that Government had expropriated only half of the property instead of acquiring it entirely, if it was in fact required for a public purpose. He also queried the haste with which the expropriation was carried out.

1.1.7 In media coverage over the ensuing days, other allegations of shortcomings in the expropriation of 36 Old Mint Street were reported. These included that:

- a. Gaffarena offered to sell his second undivided share of the property thirteen days before he had actually acquired this share. Although Gaffarena offered Government another quarter of 36 Old Mint Street on 13 February 2015, at the time he was not the owner and had actually sealed the purchase of this one-fourth share of the property only on 26 February 2015.
- b. The previous owners had not been informed of Government's interest in acquiring the property.
- c. The Government's two notices of expropriation published in January and April 2015 had the property listed as a building site rather than as a historic site. The latter would have rendered the value of the property cheaper since no development could be carried out on such sites.
- d. The lands chosen by Gaffarena as part of the deal with Government were of strategic value to him in one way or another, either adjacent to land already in his possession or in areas earmarked for development, such as that at Baħar iċ-Ċagħaq.
- e. The Government had paid €1.65 million for half ownership of 36 Old Mint Street for which Gaffarena was paid €516,390 in cash and given land valued at just over €1 million. The value allocated by the GPD to the government-owned lands and property exchanged as part of the deal with Gaffarena was much less than their actual values. According to an independent assessment by unidentified architects commissioned by a newspaper, the value of these sites was estimated to be double that assigned by the Department, increasing by at least another €1.6 million, doubling the payment made to Gaffarena.
- f. In the case of the shop in Manwel Dimech Street, Sliema exchanged as part of the deal, Government granted the *directum dominium* of the property to Gaffarena, valued at a frugal €65,000, when the emphyteusis was to expire within one year, that is, on 16 June 2016. It was a known fact that the value of an emphyteutical grant close to expiry was nearly that of the property's freehold value. Notwithstanding this, the GPD valued this property at €65,000 when its freehold value was estimated to be over €200,000. It was also odd that the GPD released a property of considerable value in the heart of Sliema when the

emphyteusis was to expire in 2016 and the property would be returned freehold to the Government. This was also incongruent with the fact that the GPD had, rightly, refused several requests made to it for the redemption of ground rent of a number of commercial outlets in the area. Moreover, in the case of this property, exchanged in January 2015 as part of the compensation in respect of the first quarter of 36 Old Mint Street, the GPD obliged Gaffarena by offering under-valued property that would significantly increase the value of his existing property and future development. This was because the shop underlay property already owned by Gaffarena.

- g. As part of the deal, Gaffarena obtained land in Żebbuġ measuring 26,233 square metres. This was valued by the GPD-appointed architect at €375,000, which was €440,000 less than the value obtained by the newspaper. Moreover, in considering the site's use as agricultural land only, the lowest value possible was given by the GPD. Gaffarena had a track record of planning infringements on this land. Although the land was designated for agricultural use, Gaffarena had built commercial establishments that continued to operate despite enforcement notices issued by the planning authority.
- h. Two plots of land at Baħar iċ-Ċagħaq with an aggregate area of 5,398 square metres were exchanged as part of the deal for 36 Old Mint Street. One of these sites measured 3,735 square metres and was given to Gaffarena in exchange for the first quarter share of 36 Old Mint Street. This was valued by the Government's architect at €260,000, €240,000 less than the independent appraisal of €500,000 obtained by the newspaper. The land in question was on the Salini Coast Road and although the area was outside development zone, there was a building on this land with a footprint of 240 square metres. The second parcel of land, exchanged in the second expropriation, was adjacent to this land at Baħar iċ-Ċagħaq and was valued by the GPD at €70,000. According to the independent architect's valuation, the second site was undervalued by €80,000 since it was worth €150,000. The difference mostly resulted from the fact that the independent valuation was based on the premise that it could be annexed to the other land at Baħar iċ-Ċagħaq that Gaffarena was given as part of the first exchange. This increased its value considerably.
- i. The value assigned to the property at Manwel Dimech Street, Sliema by Government's architect was €65,000, while that in the independent valuation was €200,000. This resulted in a discrepancy of €135,000. The Department's valuation was based on the fact that the property was not freehold; yet, this was only the case for one more year since the emphyteusis was to expire in 2016. The property would be worth more than double the assigned value in a year's time. In 2007, Gaffarena, who at the time was not yet the owner, had filed a development application to demolish the existing building to construct apartments and underlying garages. The Malta Environment and Planning Authority (MEPA) had refused the permit in 2012.
- j. The land at Tal-Ħandaq, Qormi was appraised by the GPD's architect at €192,810. An independent architect valued this land at €410,000, resulting in a discrepancy in value of €217,190. Even if the 9,980 square metres site had been valued by the Department as agricultural land, the land was still undervalued. A development application for the site had been filed by Gaffarena in 2005. Although this was later withdrawn, development was still carried out. In fact, the site was being utilised as a club for entertainment purposes without a planning authority permit. An enforcement notice was served on Gaffarena in 2012.

- k. As part of the agreement for the expropriation of 36 Old Mint Street, Gaffarena was given land at Ta' Kandja in Siġġiewi, covering an area of 5,992 square metres. The site was previously a soft stone quarry in an outside development zone. It had three buildings that could potentially be developed in view of new MEPA policies that allowed existing buildings in such outside development zones to be converted into dwellings. These factors were not taken into consideration in the valuation carried out by the GPD-appointed architect, who valued the site at €165,800. The estimated value by the independent architect was €685,000 and was based on the assumption that the quarry had no further mineral to exploit.
- l. The Government had never expropriated property piecemeal in separate contracts with the same seller.
- m. It was unheard of for such deals to be concluded so quickly.
- n. Gaffarena was seen on various occasions at the GPD offices in the company of an officer in the secretariat of PS OPM.

1.1.8 It was against this backdrop of media allegations that the request for an investigation by the AG was made.

## 1.2 Request by the Public Accounts Committee

1.2.1 On 5 June 2015, the three Opposition MPs on the PAC, the Hon. Tonio Fenech, Mario de Marco and Claudio Grech, requested the AG to review the process through which Government expropriated two one-fourth undivided shares of the property at 36 Old Mint Street, Valletta. The request was also signed by the Hon. Jason Azzopardi, Marthese Portelli and Ryan Callus, shadow Ministers for Justice and Democracy, the Environment, Energy and Transport, and Land, MEPA and Infrastructure, respectively. According to the request, Government had acquired these undivided shares in January and April 2015, respectively, and had paid the owner Mark Gaffarena the sum of €1.65 million for the two shares. Citing media reports that first appeared in May 2015, the submission by the Opposition Members listed a series of allegations and shortcomings in the expropriation process, reiterating the allegations alluded to in the media.

1.2.2 The main shortcomings cited in the request to the AG centred on the fact that 36 Old Mint Street was valued as a building site, notwithstanding that it was stated by the PS OPM that the property had historical and architectural value. This resulted in the property being assigned a much higher value than would otherwise have been the case. Conversely, the value assigned by the GPD to government-owned properties exchanged as part of the deals was allegedly much less than their actual value. Also cited were the fact that Gaffarena offered to sell to Government a share of the property that at the time he did not own, and that instead of obtaining the second quarter from the original owners, Government acquired it from Gaffarena after he had purchased it for a much lower price. The net result was that, in exchange for two one-fourth undivided shares in 36 Old Mint Street, Gaffarena made a profit of not less than €685,000 in under two months.

1.2.3 In light of the above, the AG was requested to investigate whether:

- a. the acquisition represented value for money;
- b. the principles of good governance and transparency were ensured;

- c. any official or public servant facilitated the transfer of confidential information to third parties, including but not limited to Gaffarena, resulting in the knowledge that Government was to expropriate a half undivided share of 36 Old Mint Street;
- d. there were breaches of the public service code of ethics with regard to confidential documents and information for the financial gain of third parties, including but not limited to Gaffarena, and whether there were criminal actions by officials and public servants as provided for in articles 133<sup>1</sup> and 257<sup>2</sup> of the Criminal Code and any other relevant articles and regulations;
- e. the classification of 36 Old Mint Street by the GPD as a building, rather than a historical, site as cited in the President's Declarations was an honest assessment of the property;
- f. the advice of the Superintendence of Cultural Heritage, as per Chapter 88 of the Laws of Malta, was sought in the assessment of the property as a building site;
- g. the deal had set a dangerous precedent that will force Government to expropriate all commercial properties leased to it, which leases are to expire in 2028 according to the revised rent laws;
- h. the GPD had replied to the judicial letter submitted in August 2014 by some of the co-owners of the property to the BICC, which was purportedly forwarded to the Department and if not, why; and whether this corroborated the claim that Government had initiated negotiations for the acquisition of the property in 2014;
- i. negotiations for the property had, as stated by the PS OPM, started in 2014 and, if so, who was negotiating on behalf of the GPD, who was involved, and who was informed of such negotiations;
- j. the valuations of properties allocated to Gaffarena in exchange for the half undivided share of 36 Old Mint Street were fair and appropriate;
- k. the GPD acted diligently and judiciously in the transfer of the property in Manwel Dimech Street, Sliema to Gaffarena, when its lease was to expire in June 2016 and therefore it made more sense for the GPD to retain the *directum dominium* until the expiry of the lease which would render the property freehold and unencumbered;
- l. considering that substantial public monies were spent and sizeable lands given to Gaffarena, this was transaction fair when one takes into account the many others who remained uncompensated for land that had been expropriated years earlier;
- m. there was evidence as to who made the initial request for the expropriation of this property and who had taken the decision to do so;

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<sup>1</sup> Article 133: Any public officer or servant who communicates or publishes any document or fact, entrusted or known to him by reason of his office, and which is to be kept secret, or who in any manner facilitates the knowledge thereof, shall, where the act does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine (*multa*).

<sup>2</sup> Article 257: If any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to a public authority, disclose such secret, he shall on conviction be liable to a fine (*multa*) not exceeding forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (€46,587.47) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment ...

- n. it was normal practice for the GPD to expropriate property in a piecemeal process as in the case of 36 Old Mint Street;
- o. the property was in fact required for a public purpose when one considers that this was being used as offices by the BICC, that Government paid over €3 million for the property and that Government had some thirteen years until the expiry of the lease to find alternative premises for the BICC;
- p. it made sense for Government to expropriate the property fragmentarily, possibly incurring additional and unwarranted costs;
- q. Gaffarena chose the government-owned lands given to him in exchange for 36 Old Mint Street; and
- r. the outcome of the investigation warranted disciplinary or, possibly, criminal action to be taken.

1.2.4 On 12 June 2015, the AG acknowledged the letter by the PAC, indicating that the NAO would be adopting the issues raised therein as its terms of reference.

### 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 NAO.

1.3.2 All findings presented in this Report are based on the considerable number of interviews, taken under oath, with persons who were directly or indirectly involved in the expropriation process. These included the co-owners of 36 Old Mint Street, officers at the GPD, the GPD-appointed consultant architect and other officials and public officers who were in any way involved in the expropriation. This Office also interviewed the PS OPM, in view of the fact that the GPD falls within his portfolio and in consideration of his endorsement of the deals with Gaffarena.

1.3.3 Interviews were conducted with senior GPD officials responsible for the administration of the department that is, *inter alia*, mandated to manage Government's immovable estate in an efficient and effective manner. The Department is also tasked with ensuring an equitable process for the acquisition of property that may be required for a public purpose, and to do this at the least cost to the public. To this end, the NAO interviewed the DG GPD, the Commissioner of Land and the Director Estate Management (DEM). This Office also interviewed the Assistant Director Contracts GPD, the GPD's legal officer who drew up the two transfer agreements between the Government and Gaffarena, the GPD architect who had prepared the valuation of the Sliema property given in exchange and a Principal Officer assigned to the office of the DG GPD. The GPD-appointed consultant architect, entrusted with the valuation of all the properties exchanged in the expropriation, bar the one carried out in-house, was also interviewed.

1.3.4 This Office also questioned an official within the Secretariat of the PS OPM, whose involvement in the matter was initially indicated in the media and later ascertained in correspondence reviewed by the NAO. A meeting with the BICC Chair was also held given the involvement, albeit peripheral, of the Council in 36 Old Mint Street.

- 1.3.5 The NAO also interviewed present and previous co-owners of 36 Old Mint Street. This enabled this Office to obtain a history of the property and a better understanding of the ownership of the various shares as passed down through the generations to their present owners. The co-owners also provided this Office with copies of various deeds pertaining to the property, including current agreements of promises of sale. The only previous co-owner of the property not interviewed by this Office was that of the one-quarter share sold to Gaffarena in 2007. The reason for this exclusion was the considerable lapse since the deed of sale.
- 1.3.6 All the interviews held were transcribed by the NAO and a copy submitted to the interviewee involved who was requested to, if required, submit clarifications and endorse the transcript. Public officers cited throughout the Report are referred to by their designation at the time reported on.
- 1.3.7 This Office also attempted to obtain the sworn evidence of Gaffarena, at one time co-owner of 36 Old Mint Street and party to two expropriation agreements with Government. The first meeting with Gaffarena, who was assisted by his legal representative, was held on 29 September 2015. At the outset, Gaffarena's attorney requested confirmation that the remit of the investigation was that indicated in the correspondence submitted to this Office by the PAC on 5 June 2015. The NAO confirmed this understanding. Gaffarena's legal representative then maintained that, at law, only the AG was permitted to question his client, so it was only fair that such proviso was upheld. The AG contested this line of reasoning, maintaining that he is authorised to delegate this responsibility to members of his Office. Despite the AG's contestations, Gaffarena's attorney insisted that, in line with current legislation, particularly article 4 of the Auditor General and National Audit Office Act, only the AG was allowed to question witnesses. According to this article, *'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.'* Citing this article, Gaffarena's legal representative maintained that it was clear that only the AG was mandated to examine witnesses who are not public officers. His client was a private citizen and not a public official; therefore, other NAO officials were not authorised to question Gaffarena. The AG did not agree with the tenuous distinction made, and since no resolution to the impasse was found, it was agreed that the NAO would seek legal advice on the matter and another meeting would be convened.
- 1.3.8 A second meeting with Gaffarena was held on 1 October 2015 wherein, in view of legal advice obtained in the interim, the AG maintained this Office's original position, namely that NAO officials are permitted to question witnesses under the authority of the AG. The NAO's legal adviser, present during this second meeting, reminded the witness that he was not only obligated to but that it was in his interest to answer this Office's queries. Nonetheless, Gaffarena's legal representative retained his stand and argued that only the AG was empowered to question his client. He added that the matter could be referred to the First Hall of the Civil Court for resolution. In view of the opposing views, it was finally agreed that written questions would be handed over to Gaffarena to which written replies were to be given by 5 October 2015.

- 1.3.9 Replies to NAO's queries were submitted by Gaffarena's legal representative by the agreed date; however, a disclaimer that the answers were not being provided under oath was added. This was not in line with this Office's practice that sworn evidence is obtained in the case of investigations. Moreover, Gaffarena's attorney informed the NAO that his client '*will not entertain any further requests from the NAO on this matter*'. Yet, even despite these circumscriptions, the written replies given by Gaffarena were either very succinct, a terse '*yes*' or '*no*', or that the NAO had '*no jurisdiction over my private affairs*'. This Office deemed the answers submitted unsatisfactory and further clarifications by Gaffarena were required. Moreover, the NAO was to determine whether it had exhausted its questions on the matter being investigated, and not Gaffarena. In this case, the questions had clearly not been answered in a comprehensive manner, and the Office requested another meeting with Gaffarena. Despite the NAO's request, on 9 October 2015, Gaffarena's legal representative informed this Office that his client '*expects the Auditor General to abide with article 4 of the Auditor General and National Audit Office Act (Chapter 396). This is for your information and guidance.*' In view of the persistent stand taken by Gaffarena, the NAO had no option except to report on his failure to cooperate with this Office.
- 1.3.10 Aside from interviews held, the NAO examined all the documentation retained by the GPD relating to 36 Old Mint Street and the other properties exchanged in the expropriation, specifically that relating to the shop in Sliema and the sites at Baħar iċ-Ċagħaq, Żebbuġ, Siġġiewi and Qormi. The NAO reviewed in detail the valuations assigned by the GPD to the properties and various lands in question. This Office also examined all other documentation and information provided by the interviewees during the course of the audit. Where required, clarifications and substantiating documentation were requested from interviewees, Government departments and other entities that were involved.
- 1.3.11 The NAO also reviewed two reports by the Financial Investigations Directorate within the Internal Audit and Investigations Department (IAID) drawn up in connection with the expropriation of 36 Old Mint Street. The first report, titled '*Financial Investigation Report - Allegations made in respect of two expropriation processes carried out by the Government Property Department of two undivided one-fourth shares of 36, Old Mint Street, Valletta*' was dated 9 July 2015. The second report, '*Financial Investigation Report - Allegations made in respect of two expropriation processes carried out by the Government Property Department of two undivided one-fourth shares of 36, Old Mint Street, Valletta (Additional Tasks requested by PPS)*' was dated 28 August 2015. These reports were prepared by the IAID pursuant to written requests made by the Principal Permanent Secretary, dated 8 June 2015 and 16 July 2015, respectively. The requests were made to the IAID in line with article 16 of the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta) wherein it is stated that, '*If an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director [IAID]*'.
- 1.3.12 The NAO also engaged the services of a technical consultant to assist the Office in its review of valuation-related aspects deemed relevant to this inquiry. The NAO also sought the advice of its legal adviser in the address of particular aspects of relevance to this investigation.
- 1.3.13 Allegations brought to the attention of the NAO were duly scrutinised and the resultant findings reported on. Relevant documentation and information required were, in most cases and to the best of the NAO's knowledge, made available to this Office by the various parties. The NAO's findings and conclusions are based on the evaluation of such documentation and information supplied, which was thoroughly analysed by the investigating team.

1.3.14 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the allegations brought to its attention were evaluated, investigated and objectively reported on. The investigating team sought to establish the facts based solely and exclusively on evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity and put forward recommendations essentially meant to ensure that the best use of public funds is made.

1.3.15 The findings of this Report are presented in six chapters. This chapter provides an overview of the allegations made in the media and the mandate to the NAO by the PAC. Chapter 2 presents an overview of the expropriation process as provided for in the pertinent legislation. A background on the properties and lands exchanged in the expropriations is also provided in this chapter. Chapter 3 gives a detailed account of the first expropriation process, starting with the request made to the GPD by Gaffarena in July 2014. In Chapter 4, the expropriation process of the second quarter undivided share of 36 Old Mint Street is reviewed. A detailed analysis of the two expropriation processes, featuring critical comments put forward by the NAO in this regard, is presented in Chapter 5. Chapter 6 presents the NAO's conclusions and views as to whether the two expropriations represented value for money, whether the principles of good governance and transparency were ensured during the processes, and whether the expropriations were carried out according to the requirements of pertinent legislation. This chapter concludes with recommendations that address the shortcomings identified.





## Chapter 2

# A Legislative Context to Expropriation and a Background on the Properties Exchanged

## Chapter 2 – A Legislative Context to Expropriation and a Background on the Properties Exchanged

### 2.1 Expropriation: A Legislative Context

2.1.1 Under the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88 of the Laws of Malta), Government is able to acquire private property that is required for a public purpose. Expropriation is an essential legal mechanism required for Government to be able to implement its policies and projects. However, any decision to expropriate land or other property must be motivated by a public purpose.

2.1.2 Article 5 of the Ordinance states that, as the competent authority, the Commissioner of Land may expropriate any such property either:

- a. *'by the absolute purchase thereof; or*
- b. *for the possession and use thereof for a stated time, or during such time as the exigencies of the public purpose shall require; or*
- c. *on public tenure.'*

2.1.3 On the other hand, Government is bound to ensure that owners of the acquired property are adequately and fairly compensated in terms of the law. Expropriation is a derogation from the fundamental right to enjoy one's own property and, therefore, to remedy such violation it is required that the owner of the expropriated property receives a just and adequate sum of compensation which reflects the real value of the property expropriated.

2.1.4 It is the President of Malta who, through a President's Declaration published in the Government Gazette, declares that land or property is required for a public purpose. The declaration is also published in at least two local newspapers (one in print in English and the other in Maltese). A copy of the President's Declaration is also affixed on the notice board of the office of the local council of the locality where the land or property is situated. No person shall require any proof of the public purpose other than the declaration of the President of Malta. However, any person who has an interest in the land or property may contest the public purpose before the Land Arbitration Board by means of an application to be filed in the registry of the said Board within twenty-one days from the publication of the said declaration. Within fourteen working days from the date of publication in the Government Gazette, the owner and/or the occupier of the land shall surrender possession of the property thereof to the Commissioner of Land. An exception is granted if the property is a dwelling, where alternative accommodation would have to be provided by the Commissioner of Land.

- 2.1.5 Compensation is paid to the owner once ownership of the immovable property expropriated is unequivocally established. The value of the immovable is determined by the Commissioner of Land, according to an evaluation arrived at by the GPD's appointed architect; however, the law provides that the amount of compensation to be paid may be determined at any time by agreement between the Commissioner of Land and the owner. It is the competence of the Land Arbitration Board to assess the amount of compensation payable under any of the provisions of Land Acquisition (Public Purposes) Ordinance and for that purpose to declare whether any area is a historical site, a building site, agricultural land or waste land.
- 2.1.6 According to the Ordinance, an owner shall not be required to sell or convey to the competent authority a part of any house or other building, if the owner is willing and able to sell and convey the whole thereof. Moreover, an owner shall not be required to sell or convey to the competent authority a portion of a building site, if the remaining portion measures less than 220 square metres or if, in the opinion of the Board, the remaining portion, owing to its conformation and extension, will cease to be adaptable for building purposes under the laws and regulations relating to buildings. In any such case, the competent authority shall acquire the whole site, provided that if the owner owns adjacent land, the Board may declare that the foregoing provisions of this article do not apply to the land to be acquired.
- 2.1.7 An essential element for expropriation is the fact that the property can only be expropriated if it is required for a public purpose. According to article 2 of the Ordinance, public purpose is defined as, *'any purpose connected with exclusive government use or general public use, or connected with or ancillary to the public interest or utility (whether the land is for use by the Government or otherwise) or with or to town-planning or reconstruction or the generation of employment, the furtherance of tourism, the promotion of culture, the preservation of the national or historical identity, or the economic well being of the State or any purpose connected with the defence of Malta or connected with or ancillary to naval, military or air operations; and includes any other purpose specified as public by any enactment; and for the purposes of this definition, where the purpose for the exercise of any right under this Ordinance is connected with the utilisation of any land or any right in connection or in relation therewith for any purpose connected with the supply, storage or distribution of fuels or other sources of energy, or in connection with the provision of any utility or municipal services or infrastructural project shall be deemed to be connected with or ancillary to the public interest or utility.'*
- 2.1.8 Pertinent reference to land and property expropriated by Government is also made in the Disposal of Government Land Act (Chapter 268 of the Laws of Malta). According to the Act, land and property expropriated from owners may be exchanged with other public land in terms of article 3 of the Schedule, sub-article 13, of the Disposal of Government Land Act. This article stipulates that, *'Government land may be given by exchange with any other land which is declared as required for a public purpose under Chapter 88 of the Laws of Malta, to the owner of the land which has been so declared. Provided that when a difference exists in the value of the two plots of land given by exchange, such difference shall be balanced with also giving an additional sum of money. So however that the exchange may not be effected if the value of the government land to be given exceeds thirty per cent of the value of the expropriated land. Any damages sustained due to the expropriation of such land shall form part of the value of the same land.'*
- 2.1.9 The Disposal of Government Land Act also states that, *'provided that the transfer of any land acquired under any title under the provisions of the Land Acquisition (Public Purposes) Ordinance, where such land is no longer required for a public purpose, to*

*the person from whom such land was so acquired, or to his successors in title, shall not constitute a disposal for the purposes of this Act where the transfer back is made for the consideration (including damages) paid by the Government on the acquisition together with interests at five per centum per annum from the date of the payment up to the date of the transfer back to such persons where such land was acquired by the Government under absolute ownership, and where the land is held by Government on public tenure or possession and use, the transfer back is made subject only to the cessation of the annual payment of the relative recognition rent or acquisition rent as the case may be.'*

2.1.10 The major issues that emanate from the above legislation, which may be of particular relevance to the expropriation under review, are that:

- a. any decision by Government to acquire private land or property through expropriation must be clearly motivated by a public purpose, where the benefit to the public of such acquisition outweigh the right of private individuals;
- b. Government may expropriate land or property through outright purchase, possession and use for a definite period, and on public tenure;
- c. not only do the owners of expropriated land or property have a right to compensation, they are to be fairly recompensed for such land or property; and
- d. Government land may be given in exchange for other land expropriated, provided that when a difference exists in the value of the lands exchanged, such difference is made good financially; however, the exchange may not be effected if the value of the government land to be given exceeds thirty per cent of the value of the expropriated land.

## 2.2 The Expropriated Property – 36 Old Mint Street, Valletta

2.2.1 In exchange for the two one-fourth undivided shares of 36 Old Mint Street, several tracts of public land and a government-owned property in Sliema were transferred to Gaffarena to cover part of the cost of the Valletta property acquired by Government. For the acquisition of the first one-fourth undivided share in January 2015, in addition to cash paid, Government relinquished land at the Klawura tal-Handaq, Qormi, a site at Ta' Kandja in Siġġiewi, a tract of land at Baħar iċ-Ċagħaq, limits of Naxxar, and the temporary *directum dominium* and subsequent full ownership of the property at 73 Manwel Dimech Street, Sliema. In April 2015, as part of the second expropriation, Gaffarena was given land at the Raba Ta' Ħarram sive Ta' Ħal Mula, limits of Żebbuġ, Malta and another site at Baħar iċ-Ċagħaq. Hereunder is a background on the properties exchanged in the two deeds between Government and Gaffarena.

2.2.2 The earliest documentation traced by the NAO with regard to the property at 36 Old Mint Street was a deed in the archives of Notary Dr Umbardo Pellegrini Petit, dated 3 November 1898, wherein Raffaele Psaila (hereinafter referred to as Psaila) acquired the property from Gaetano Marsala for debts incurred. The property was valued at £Stg 3,600 and was free and unencumbered, except for an annual pious burden of £Stg 6. The NAO was unable to decipher other details of the transfer due to the illegibility of the document.

2.2.3 The next document traced regarding the property was a contract between Psaila and the Government wherein, on 12 August 1902, Psaila agreed to lease 36 Old Mint Street to Government for use as '*an elementary school or schools*'. According to the agreement before the Notary to Government Dr Achille Micallef, Psaila granted the '*block of buildings*' on lease to Government for a period of eight years as from 1 August 1902, and for a further period of eight years at the option of Government, at the yearly rent of £Stg 135. *Inter alia*, the lease was made on condition that:

- a. *'said yearly rent shall be paid ... in [six-monthly] instalments in advance; ...*
- b. *the Government shall have the power to sublet the whole or any portion of the said block of buildings;*
- c. *it shall be lawful for the Government to effect in the said block of buildings such structural alterations as the Government may consider requisite or necessary; ...*
- d. *the Government shall not be bound to restore the said buildings to their present condition.'*

2.2.4 A concise description of the property was included in the lease agreement, wherein the property was described as *'the block of buildings situated in Valletta, corner of Strada Zecca, Strada San Giovanni and Strada San Patrizio, namely at number thirty-six Strada Zecca, numbers sixty-seven, sixty-eight, sixty-nine and seventy Strada San Giovanni and number forty-seven Strada San Patrizio'*. This description justified the reference to the property as a *'block of buildings'*, and any reference in this report to 36 Old Mint Street advertently includes, unless otherwise stated, the premises in St John Street and St Patrick Street.

2.2.5 The block of buildings occupies a footprint of 450 square metres, with 1,335 square metres of usable floor area at the basement and upper levels. It is located in the lower part of Valletta on the Marsamxett side, touching the Mandraggio post-war housing development. The property is situated on a corner, bearing 21.25 metres of frontage on Old Mint Street, 22.75 metres on St John Street and 21.75 metres on St Patrick Street. The ground floor is made up of seven rooms surrounding a central courtyard. Of these, three are front rooms separated by an entrance hall that leads to the grand staircase connecting the different floors. The six rooms on the first floor are also designed around the central courtyard. The *piano nobile* is located at the front of the building and features a timber roof ceiling, which is a rarity in Malta. Another staircase connects the ground floor to the basement, which has a gross area of 100 square metres, inclusive of the central courtyard. Further to this basement area, which is linked to the overlying floors, is an additional basement area presently leased out to three tenants. This additional basement area has a total gross area of 330 square metres and is accessible from St John Street and St Patrick Street.

2.2.6 Despite the lapse of the lease term which, according to the 1902 agreement between Psaila and Government, was for eight years, with another eight years at the option of Government, the property remains, to date, in the possession of Government even as the property was bequeathed through several generations. Originally, Psaila had left equal shares of the property to his four daughters, married Galea, Mercieca, Bonello and Cefai, and their children. Separately, these four shares (hereinafter independently referred to as the Galea, Mercieca, Bonello and Cefai share, as the case may be) were passed down through the respective families over a number of generations. To this day, two of the quarter undivided shares, namely those of the Bonello and Cefai families, remain in the possession of the descendants of Psaila. The other two quarters, originally belonging to the Galea and Mercieca families, were purchased by Gaffarena in 2007 and 2015 respectively, and were expropriated by Government in 2015.

2.2.7 Gaffarena obtained the first undivided share of 36 Old Mint Street in 2007. Originally, this share was held *in solidum* by the Galea heirs; however, by virtue of a deed of division of assets in November 2006, this share was apportioned to two of the Galea siblings. In a deed dated 18 December 2007, the two Galea heirs sold their one-fourth undivided share of the property to Gaffarena at the agreed price of Lm10,000 (equivalent to €23,294). According to this deed, aside from other conditions, the property was subject to a lease to Government and/or other third parties, emanating from a deed in the records of the Notary to Government dated 12 August 1902.

Consequently, the property was not being transferred with vacant possession and the buyer, Gaffarena, had the right to receive rent due on a pro rata basis. According to the deed between the Galea heirs and Gaffarena, the property was not subject to either requisition or expropriation orders. The title of ownership of a one-fourth undivided share of 36 Old Mint Street passed in favour of the Government on 12 January 2015 with the publication of the President's Declaration.<sup>3</sup> The deed of transfer whereby Government acquired from Gaffarena the perpetual utile dominium and the perpetual annual ground rent of €11.65 of a one-fourth share of 36 Old Mint Street was signed on 28 January 2015. According to the deed, the parties agreed to terminate the portion of ground rent payable by Government in respect of the share transacted. In terms of article 13 of the Schedule (Sub-article 3) of the Disposal of Government Land Act, the declared value of the expropriated share was €822,500.

**2.2.8** The second undivided share acquired by Gaffarena belonged to the Mercieca family. According to evidence given by one of the Mercieca heirs, Gaffarena had initially shown interest in acquiring the family's share of 36 Old Mint Street some years back. At the time, Gaffarena had already acquired the Galea share. Despite tentative negotiations, no accord on the sale was reached. Gaffarena again contacted one of the Mercieca siblings sometime in August 2014 and, this time, after other negotiations, the Mercieca family agreed to sell its share of the property to Gaffarena. In fact, a promise of sale for the Mercieca one-fourth undivided share of 36 Old Mint Street was entered into on 31 October 2014, for the contracted sum of €139,762. Although according to this preliminary agreement the deed of sale was to be finalised by 30 April 2016, according to that stated, sometime in January 2015 Gaffarena again contacted the Mercieca family, insisting on the conclusion of the transfer. In an interview with this Office, Mercieca claimed that, at the time, neither he nor his siblings were aware of the President's Declaration published on 12 January 2015 with respect to the first expropriation of a one-fourth share of the property. As stated, unaware of this and to some extent on the insistence of Gaffarena, by virtue of a deed dated 26 February 2015 the Mercieca family transferred their one-fourth undivided share of 36 Old Mint Street to Gaffarena. This was sold for the agreed sum of €139,762. According to the deed, the property was neither under any requisition, expropriation or enforcement orders, nor was it the subject of any letter of intent of expropriation. As indicated by the Mercieca family, the GPD had never contacted them on the matter.

**2.2.9** This second one-fourth undivided share was, in accordance with the President's Declaration, expropriated on 8 April 2015, whereas the deed between the Government and Gaffarena relating to this acquisition was signed on 10 April 2015. By virtue of this deed, Gaffarena was selling and transferring under title of exchange with Government, in turn agreeing to purchase and acquire under the same title of exchange, the one-fourth undivided share of the perpetual utile dominium and the perpetual annual ground rent of €11.65 of 36 Old Mint Street. As a result of this deed, the parties agreed to terminate the portion of ground rent payable by Government with respect to the share transacted. Again, in terms of article 13 of the Schedule (Sub-article 3) of the Disposal of Government Land Act, the declared value of this share was €822,500.

**2.2.10** Another quarter share was inherited by the Bonello family and the title of ownership is somewhat more complicated due to the considerable number of heirs of this share of 36 Old Mint Street. This Office held separate meetings with two interviewees representing the Bonello share. Each interviewee represented approximately half

<sup>3</sup> An issue was raised with this Office regarding the expropriation of the one-fourth undivided shares of 36 Old Mint Street, wherein it was argued that the President's Declarations did not indicate which quarter share was expropriated. It was maintained that, in the case of undivided shares, a one-fourth undivided share would be expropriated in a fixed proportion from all co-owners. However, this matter is dealt with in detail in Chapter 5.

of the heirs who, collectively, held around half of the Bonello one-fourth undivided share (that is, each representing one-eighth ownership of the entire property at 36 Old Mint Street).

2.2.11 The first person interviewed in respect of half of the Bonello share was the same person who represented the Mercieca share of the property, since the Mercieca family had, through familial linkages, also inherited a portion of the Bonello share. When the Mercieca family had agreed to sell its one-fourth share of 36 Old Mint Street to Gaffarena, this was made on condition that Gaffarena would also acquire the portion of the Bonello one-fourth share represented by Mercieca. In fact, in addition to the promise of sale agreement for the Mercieca share, another preliminary agreement was entered into for circa half of the Bonello share of 36 Old Mint Street in possession of heirs represented by Mercieca. The rest was owned by other heirs of Bonello. A promise of sale was, in fact, entered into by the parties on 31 October 2014, whereby it was agreed that, *in solidum*, the sellers would transfer to Gaffarena their share, calculated to be 48.75 per cent of the Bonello share. The value of this portion was to be pro rata of €139,762, that is €68,134. According to the promise of sale, the property was subject to a lease to Government and/or other third parties, emanating from a deed in the records of the Notary to Government dated 12 August 1902. Also noted in this promise of sale agreement were provisions stating that the property was not subject to any requisition, expropriation or enforcement order, or any letter of intent to expropriate or legal proceedings. The deed of sale was to be signed by not later than 30 April 2016.

2.2.12 When the expropriation by Government of the two one-fourth shares came to light, the Mercieca family filed a judicial protest against the Commissioner of Land on 18 June 2015. The Mercieca family contested the expropriation of the two undivided shares as opposed to the acquisition of the entire premises, claiming that this constituted the abuse of administrative discretion. Moreover, it was argued that the President's declarations, formalising the expropriations, did not specify which undivided shares were being acquired by Government. Finally, the Mercieca family maintained that the Commissioner of Land was to advise the President to regularise this situation through the expropriation of the remaining shares required for a public purpose.

2.2.13 The Commissioner of Land was notified of this judicial protest, and on 25 June 2015, duly informed the PS OPM about this matter. The matter was also referred to the Attorney General who indicated that Government was not obliged to respond since this was a judicial protest and recommended consultation with Cabinet prior to further action.

2.2.14 According to the second interviewee representing the other half of the Bonello share, Gaffarena had approached him sometime in 2015, possibly in February or March, wherein Gaffarena had indicated his interest in acquiring this share of 36 Old Mint Street. However, according to that stated, no agreement on the price was reached and the heirs of this portion of the Bonello share decided not to sell. Asked whether the GPD had at any time contacted him with regard to 36 Old Mint Street, the interviewee stated he was never approached by the Department on the matter. This portion, circa one-eighth of 36 Old Mint Street, remains in possession of the Bonello heirs.

2.2.15 Another one-fourth undivided share of the property at 36 Old Mint Street was inherited by the Cefai family from their great-grandfather Raffaele Psaila. Two members of the Cefai family, who were appearing on behalf of their siblings, were interviewed by the NAO. According to that stated, Gaffarena had, some years back, approached one of the Cefai heirs offering to purchase their share of the Valletta



property. No agreement on the price was reached at the time. Nonetheless, sometime later Gaffarena again approached one of the Cefai siblings, informing him that he had purchased the Mercieca one-fourth share of 36 Old Mint Street. According to that stated, Gaffarena had also at the time indicated that, since he now owned half of the property, he could insist on its sale by auction. Although it later transpired that Gaffarena had, in fact, already sold his first quarter to Government and therefore was not in possession of half of the property, the Cefai family decided to sell, given that the property was already leased to Government and that the return on its lease was minimal. A promise of sale for the Cefai share of 36 Old Mint Street was entered into with Gaffarena on 26 March 2015 for €139,762. As indicated in the promise of sale, the deed of transfer was to be concluded within a year, that is by 26 March 2016.

2.2.16 According to that stated, Gaffarena's notary contacted one of the Cefai siblings on 1 June 2015, inquiring whether the deed of sale could be concluded without delay. Since one of the Cefai co-owners was unavailable, it was agreed to schedule the signing of the deed for 15 June 2015. However, in view of ensuing media allegations and after obtaining legal advice, the Cefai family decided to indefinitely postpone the deed of sale in view that the property was now subject to an investigation by both the AG and the IAID. Gaffarena filed a warrant of prohibitory injunction on 17 June 2015 in the First Hall of the Civil Court against the Cefai heirs, requesting the prohibition of the transfer under any title of the Cefai share of 36 Old Mint Street. In the reply on 26 June 2015, the Cefai family indicated that they had not been approached, nor had they approached anyone, for the transfer of their share of the property. It was only in view of the media allegations, the investigations being carried out, and other possible implications that the sale may have, that they had deferred the sale. In the hearing held on 1 July 2015, the Hon. Justice ruled in favour of the defendants and the promise of sale remains pending.

2.2.17 In brief, the NAO established that, with regard to the ownership of 36 Old Mint Street:

- a. Gaffarena obtained the first undivided share from the Galea family on 18 December 2007, which was expropriated by Government on 12 January 2015;
- b. the second share was sold to Gaffarena by the Mercieca family on 26 February 2015 and expropriated as per President's Declaration on 8 April 2015;
- c. half of the Bonello share is covered by a promise of sale with Gaffarena, entered into on 31 October 2014, which expires on 30 April 2016; the other half remains in possession of the Bonello heirs; and
- d. the fourth, Cefai, share of the property is also under a promise of sale signed with Gaffarena on 26 March 2015; the deed of sale is to be concluded by 26 March 2016.

2.2.18 The Government made various uses of the property since acquiring the lease in 1902. The premises were used as an elementary school until relatively recently, although it is unclear as to when exactly Government stopped making use of 36 Old Mint Street as a school. More recently, the property was used to house the offices of various government agencies, including the Book Restoration Laboratory Section of the Libraries and Archives Department and the European Union Programmes Unit. The *Kunsill Nazzjonali taż-Żagħzagħ* and the Junior Achievement Young Enterprise also temporarily used parts of the premises. However, on instructions of the Principal Permanent Secretary (PPS) on 27 May 2014, the premises were to be allocated to the BICC, which was then being 'temporarily' assigned to the portfolio of the Minister for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) from that of the Minister for Transport and Infrastructure forthwith. According to these instructions, the offices of the BICC were to be transferred provisionally to 36 Old Mint Street until a more permanent allocation was found. According to article A (a) of the agreement between

the Government and the BICC dated 3 November 1997, Government was bound to provide substantial premises, rent free, as premises for the Council for the duration of the agreement.<sup>4</sup> Nonetheless, as confirmed in an email dated 18 June 2014 from the Permanent Secretary MSDC to the Secretary BICC, *'the original instructions conveyed by the office of the PPS was that the BICC would 'temporarily' be transferred to 36 Old Mint Street Valletta and once the BICC becomes part of MEPA, then BICC would need to vacate 36 Old Mint Street. This was confirmed by the PPS who made it clear that this was only a temporary solution. In light of the above, BICC should not make any substantial investments in the place since it will have to vacate the offices in the near future. Any expenditure should be limited to bringing the place up to standard for temporary use as offices of the Council. It is therefore pertinent for you to discuss this with the Chairman BICC ...'*

2.2.19 An issue with the lease to the BICC arose shortly thereafter when, on 15 August 2014, the legal representative of one of the co-owners of the property wrote to the Council. In the letter on behalf of the Cefai family, it was alleged that structural works were being carried out, contrary to the provisions of the owners' lease agreement with Government. Furthermore, the Cefai family intended to take legal action for the ejection of the lessee because of a clear violation of the law. According to this submission, the co-owner was not recognising the BICC as the tenant and the Council was being held responsible for the occupation of the premises without lawful title. In a letter addressed to the Permanent Secretary MSDC, dated 21 August 2014, the BICC rebutted these allegations, stating that only minor, maintenance works were being undertaken by the Council. Copied in this correspondence was the DG GPD. A similar letter was also sent to the Permanent Secretary of the Ministry for Education and Employment, dated 25 August 2014, copying in the Permanent Secretary MSDC and the DG GPD. Although correspondence on the matter was exchanged internally, the BICC did not submit a written reply to the owners of the property or their legal representative.

2.2.20 Originally, according to the 1902 lease agreement, the annual rent payable was £Stg 135, roughly equivalent to Lm100. The co-owners disputed this amount and, in 1980, referred the matter to the Rent Regulation Board for its consideration. By judgement delivered by the Board on 22 April 1980, the rent payable was revised to Lm290 (€676) per annum with effect from 1 July 1978.

2.2.21 Apart from the brief description of the property in the 1902 lease agreement, there are only a few other references that give a thorough description of the property. A few details are included in a letter by the Director of Public Works to the Treasurer dated 13 September 1947, wherein it was indicated that *'a wooden roof in one of the rooms of the premises at Old Mint Street, Valletta, rented by Government and used as an Elementary School is in an advanced stage of decay and threatens danger ...'* Another description of the property was given in subsequent, yet undated, draft correspondence to the Ministry of Finance, wherein it was indicated that, *'the premises consist of 15 rooms, seven rooms and one small store at ground floor and seven rooms at first floor level. The building is very old and the majority of rooms, though reasonable large, are very badly off as regards natural lighting.'*

2.2.22 A more recent and detailed description of the premises was given in an inspection report drawn up by the GPD's Enforcement Section in September 2011. According to the report, *'the premises consist of a ground floor, a first floor and a second floor*

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<sup>4</sup> Only 36 Old Mint Street is utilised as the BICC's premises; the other rooms/stores in St John Street and St Patrick Street are either vacant or leased by the GPD to third parties.

- consisting of one room. There is also a partial semi-basement which is probably directly accessible from St Patrick Street. ... This old masonry building is laid out around a central courtyard at basement level, and has façades on three streets, Old Mint Street, St John Street and St Patrick Street. It is partly underlain by third parties, particularly along St John Street. The ceilings and roofs are of old construction and consist of timber beams supporting either timber floorboards or stone slabs; except for the ceiling of the said roof on the second floor, which is probably of reinforced concrete construction. The general state of repairs of the interior is relatively good considering that this is an old building and thus lacking protection against rising damp. ... There is evidence that suggests that all these beams but one were subjected to strengthening interventions. This was done in at least two phases. These interventions were probably carried out to address timber splitting cracks that may have occurred naturally over the years or otherwise. ... Furthermore, the complementary outside units affixed to the walls of the said internal courtyard, apart from being unsightly, may also accelerate the deterioration of the adjacent masonry elements. In fact, the façades of this internal yard exhibit signs of substantial weathering.'

2.2.23 The report continues, 'Another source of deterioration of timber elements is water ingress. The waterproofing of the roofs appears to have been done relatively recently and is generally in a good state of repair (excluding the roof to the second floor, as this was inaccessible). Nonetheless, it was reported that significant amounts of water regularly seeped through the ceiling of the stairway landing on the second floor at specific locations, drenching the same sections of the timber beams repeatedly in the process. ... The façades on the three streets mentioned earlier require direct attention. Considerable deterioration, damage and accumulation of dirt are observed. Apart from missing masonry sections in the upper cornice and elsewhere, considerable deformation and cracking of the masonry, particularly above a number of openings have occurred. The deformation includes localised building of certain areas and the cracking is wide and runs through long vertical distances and various elements, including lintels and relieving arches. It was observed that some limited repair has been done near one of the timber closed balconies in St John Street. ... The damage observed is such that in adverse weather conditions further ingress of water, into the core of the old masonry walls, is bound to occur. Such conditions may lead to further deterioration and eventually, the complete detachment of the façades' outer leaf over the affected areas may take place. Ultimately, this will render the affected parts of the façade unstable leading to their sudden collapse, which collapse may encompass undamaged parts too. It is evident that the cracking is being (or was) monitored because a number of displacement gauges are in place. This kind of serious damage is generally attributable to various causes, separately or jointly, which include masonry/structural works or interventions (including alterations) done in the past, as well as, those if any, done in the underlying basement or third party property, road works such as trenching, prolonged water penetration from un-maintained roofs or façades, etc.'

2.2.24 The report concludes that, 'Consequently, it is important that the history of this building and of such damage including the monitoring data be obtained and engineers previously involved in such works be consulted and re-engaged in order to establish what caused the damage. It is anticipated that repairs will include inter alia a considerable amount of façade dismantling and reconstruction. Furthermore, it cannot be ascertained that further pieces of masonry do not fall off from the façade (from the deteriorated areas in particular), as apparently, has happened recently. Documents on file suggest that the premises in caption are not government property. They are privately owned and are rented by government. Furthermore, the property underlying these premises is occupied/belong to third parties and includes at least one shop.'

## 2.3 The Properties Exchanged

2.3.1 The Government relinquished several tracts of land in various localities in Malta and a shop in Sliema in part exchange, in addition to financial payments made, for the two one-fourth shares of 36 Old Mint Street. As part payment for the first quarter share expropriated in January 2015, Gaffarena obtained, by means of exchange, land at the Klawura tal-Handaq in Qormi, a site at Baħar iċ-Ċagħaq, land at Ta' Kandja in Siggiewi and a shop in Manwel Dimech Street, Sliema. In the second expropriation, government-owned land at Żebbuġ and another plot of land at Baħar iċ-Ċagħaq were relinquished in favour of Gaffarena. This Office reviewed the relevant GPD files in respect of these properties to obtain some background information on the properties exchanged.

### *Land at Klawura tal-Handaq, Qormi*

2.3.2 The land at Tal-Handaq, Qormi was passed to Government by virtue of the State-Church Agreement ratified in February 1993. Details of the land indicated an area of 9,980 square metres, leased to Carmelo Agius for agricultural use. No details were on file as to how the land passed from Agius to Gaffarena; however, on 7 July 2004, Gaffarena requested the Joint Office to change the lease from '*qbiela*' to '*ċens*'. On 20 December 2005, the GPD (Joint Office) informed Gaffarena that Government was willing to accept this request, provided a call for tenders for a lease term of 25 years was issued. For this change to be effected, Gaffarena would be required to waive his title, although he would be given the right of first refusal. On 5 January 2006, Gaffarena, through his architect, indicated his agreement to this line of action, provided that he was guaranteed the right of first refusal since he was a full time farmer and intended to carry out extensive agricultural development on the land. Details on file do not indicate the outcome of this exchange. However, in the interim, in October 2005, the Planning Authority informed the Joint Office that an application for development permission to sanction the construction of an agricultural store, among others, had been made. Details on file again do not indicate the outcome of this request although, according to media allegations, this application was at some point withdrawn.

2.3.3 The next definite action recorded by the GPD was a letter from Joseph Gaffarena's legal representative, dated 21 January 2008, addressed to the Commissioner of Land. According to this letter, Joseph Gaffarena had land at Attard, which Government had expropriated in July 1991 for which he had until then, received no compensation. He was therefore proposing that, in exchange for the Attard site, his son Mark Gaffarena be given full ownership of land at Tal-Handaq that he already held under title of lease (*qbiela*). Although internal correspondence indicated that there were no objections to the proposed transfer, no concrete action in this regard appears to have been taken.

2.3.4 On 23 October 2012, MEPA informed the Commissioner of Land of unauthorised development on the land at Tal-Handaq. According to this cease and desist enforcement order, the infringements included permanent structures of a commercial nature, where food and drinks were served, illegally built on agricultural land. The site was to be restored to its former condition within sixteen days from notice. On 20 November 2012, Gaffarena submitted an application to the Joint Office whereby he indicated his intention, as the owner of the land at Tal-Handaq, to apply for development permission from MEPA to sanction existing structures for use as a sheep farm in terms of Section 68(3) of the Environment and Development Planning Act, 2010. Several plans were included in the submission.

2.3.5 No indication as to the outcome of the above enforcement order and subsequent application for MEPA sanctioning were on file. In fact, the next entry is the request made to the GPD-appointed architect to carry out a valuation of the land in question. However, according to the valuation, structures measuring 182 square metres were built on site, even though land was situated outside development zones (ODZ).

### *A Shop in Manwel Dimech Street, Sliema*

2.3.6 In the case of the shop in Manwel Dimech Street, Sliema exchanged as part of the first expropriation, Government granted the temporary *directum dominium* and the subsequent full ownership, of the property to Gaffarena. According to the relevant GPD file, the property was originally owned by the Archdiocese of Malta and was transferred to Government by virtue of the State-Church Agreement ratified in February 1993. On the transfer document, the property was indicated as 73 and 74 Prince of Wales Road (later renamed Manwel Dimech Street), Sliema, and leased on temporary emphyteusis until 30 June 2016.

2.3.7 In the application for title submitted by the Joint Office to the Land Registry in March 2007 in terms of the Ecclesiastical Properties Act (Chapter 358), the property was described as *'The temporary directum dominium and the relative annual and temporary non-revisable ground rent of Lm0.50,0 (which is governed by a deed published by Notary Giuseppe Metropoli on the 28 June 1867 for 99 years from 1 July 1867, which ground rent was extended by means of a proroga for a further 50 years by a deed in the acts of Notary Giovanni Pullicino on the 2 April 1879) which temporary emphyteusis expires on the 30 June 2016, and subject to the provisions of the law, the full ownership thereafter in respect of the tenement numbered 73, 74 Manwel Dimech Street corner with Saint John the Baptist Street, Sliema, which tenement occupies a superficial area of approximately 196 square metres, as shown on annexed site plan ... [extracted from SS 5474].'*

2.3.8 The next entry on file is a deed of division of assets dated 22 November 2006 wherein a number of properties and assets were allocated to the heirs of Raffaele Psaila. According to the deed, the remaining temporary utile dominium of 74 Manwel Dimech Street, Sliema<sup>5</sup> was assigned to the Galea family. Gaffarena subsequently purchased this two-storey property on 17 May 2013 for €72,211. There was no indication on file as to the outcome of 73 Manwel Dimech Street; however, during the meeting with the Cefai family it was confirmed that the shop at this address was inherited by the Cefai family in an earlier division of assets among the heirs of Raffaele Psaila.

2.3.9 The next entry on the relative GPD file is a minute by the DEM dated 6 October 2014, wherein an official within the office of the DG GPD was requested to *'please ask one of our architects to put up a valuation of shop at 73 Manwel Dimech Street, Sliema as shown on plan at red 7a. This shop is held on temporary emphyteusis which expires on 30/6/16 and ground rent is circa €0.25. We were also informed that it is in a bad state of repair.'*

2.3.10 Following this minute, the remaining documentation on file is a new property drawing, PD No. 2014\_697, in respect of 73 Manwel Dimech Street, an estimate of the valuation carried out by the GPD architect and the registration of the title of the temporary *directum dominium* in respect of this property with the Land Registry.

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<sup>5</sup> No reference was made here to 73 Manwel Dimech Street, Sliema since this was assigned to the Cefai family in a previous deed of division of assets.

2.3.11 However, in a meeting with the Cefai family it was stated that the Church (later the Joint Office) had originally leased the shop to Psaila, which he subsequently sub-let to other tenants. In fact, when 73 Manwel Dimech Street passed to the Cefai family, it was thus occupied. Despite various requests by the Cefai family to the sitting tenant to surrender the lease, the latter refused to vacate the premises. Irrespective of this, the term of the Cefai's emphyteutical lease was to expire on 30 June 2016. However, notwithstanding the residual short period of the temporary emphyteusis, Gaffarena had requested the Cefai family to purchase the remaining lease. According to that stated, Gaffarena sought to obtain the lease so that when it expired, he would have right of first refusal. This was plausible given the fact that he was already in possession of the rest of the property, that is, 74 Manwel Dimech Street, which he had previously purchased from the Galea family.

2.3.12 Gaffarena had in fact approached the Cefai family with regard to 73 Manwel Dimech Street some time ago. In view of the fact that the property was leased to third parties until the expiration of its lease term, the Cefai family decided to sell the remaining lease. In fact, a promise of sale was entered into between the Cefai family and Gaffarena on 26 March 2014 for the remainder of the lease which is to expire on 30 June 2016, for the value of €8,000. Although the property was sub-let, according to the promise of sale, it was to be transferred with vacant possession. However, according to that stated, this was not a concern to Gaffarena.

2.3.13 Irrespective of any promise of sale with the Cefai family, Gaffarena obtained the property at 73 Manwel Dimech Street directly from Government in part exchange for the first share of 36 Old Mint Street. Therefore, essentially, Gaffarena is already the owner of this property and, once the emphyteutical lease to the Cefai family expires, he will be in full and absolute possession of the property.

2.3.14 Several allegations were made in the media with regard to this property. According to media coverage, in 2007, Gaffarena, who at the time was not yet the owner, had filed a development application to demolish the existing building to construct apartments and underlying garages. MEPA had refused the permit in 2012 after its Heritage Advisory Committee objected to the application. According to the media, Gaffarena again applied on 6 May 2015 to build 10 apartments in Sliema on the site at 73 and 74 Manwel Dimech Street. The €65,000 shop was part of the government compensation he got in January, after first buying the house at 74 Manwel Dimech Street in 2013 for €72,000. Then, on 10 April 2015, the government granted him in compensation the shop numbered 73, Manwel Dimech Street, underlying the house he bought. The GPD valued the shop at just €65,000 because it was not a freehold property and still under a temporary emphyteusis that was to expire in 2016. A month later, on 6 May 2015, Gaffarena applied with MEPA to demolish the townhouse and shop for the construction of five garages, 10 apartments spread over four levels, and a penthouse. Based on information obtained from MEPA, documents relating to this application are still being compiled.

#### *A Site at Baħar iċ-Ċagħaq, limits of Naxxar*

2.3.15 A plot of land at Baħar iċ-Ċagħaq initially measuring 3,437 square metres, to which an adjacent area of 298 square metres was added to bring the total footprint to 3,735 square metres, was given to Gaffarena in exchange for the first quarter share of 36 Old Mint Street. A structure had been built on the land, which had been illegally occupied by several squatters over a number of years.

- 2.3.16 On 30 January 2004, the GPD issued a call for tenders for the lease of the land at Baħar iċ-Ċagħaq for recreational purposes, for six-monthly intervals, as per PD 12\_2004. The closing date for the submission of offers was 19 February 2004. According to a valuation carried out by the GPD, the area of the site in question was circa 3,437 square metres and the lease value, including structures, was estimated at Lm550 annually. By the closing date, eight offers were received; however, all were refused as no offer met the estimated lease value. Another call for tenders was subsequently issued on 26 March 2004, with 15 April 2004 specified as the closing date for the submission of offers. The site was allocated to the highest bidder on 25 May 2004. The lease agreement was signed on 9 June 2004, against a lease fee of Lm450 for six months.
- 2.3.17 The next entry in the GPD file is a letter dated 20 April 2009, submitted by Gaffarena wherein he indicated his interest in obtaining on lease the land at Baħar iċ-Ċagħaq, which, it was alleged, was in a bad state of neglect. According to the letter, he intended to use the land for recreational purposes. On 23 September 2009, the GPD informed Gaffarena that his request could not be acceded to as the property was leased to third parties.
- 2.3.18 No further action was registered on file until 30 April 2012, when the Private Secretary to the Minister for Fair Competition, Small Business and Consumers requested the GPD to carry out an inspection on the site at Baħar iċ-Ċagħaq since the site/premises *'are not being used and are in a very bad state'*. According to the report by the Enforcement Officer who had inspected the site, the tenant had stated that considerable damage was caused by a storm some time earlier and that he was in the process of effecting repairs. This was reiterated in a letter that the tenant submitted to the Department on 5 May 2012. According to this submission, a severe storm had badly damaged the wooden structure on site. To make matters worse, individuals had looted the place and damaged the utilities' meters. A report was, in fact, lodged with the Naxxar police station. It was further stated that repairs were to be shortly carried out and that the site was not abandoned. On 5 June 2012, the tenant again wrote to the GPD, enquiring whether the wooden structure could be demolished and replaced with a *'wooden cabin'*.
- 2.3.19 Notwithstanding these letters, the GPD Enforcement Section carried out another site inspection in January 2013. According to an internal minute from the DEM to the Director Land, dated 23 January 2013, *'the place is vandalised and is not in use. Apart from this ... tenant is not paying rent. File is being referred for any action that you may deem necessary'*. On instructions of the latter, on 13 March 2013 the GPD informed the tenant that the Department would not be renewing the lease after 30 June 2013. Consequently, the tenant was to vacate the premises and return the keys to the GPD. Moreover, the tenant was to settle arrears due which amounted to €3,668, covering the period up to 3 June 2013.
- 2.3.20 On 9 May 2013, the tenant formally objected to the Department's position stating that the property was in a bad state of repair due to it being vandalised by third parties, which matter was duly reported to the Police. According to that stated, it was the tenant's intention to restore the site; however there was a major problem since the roof of the structure was made of asbestos, a hazardous material that was not easily handled. The tenant's legal representative again wrote to the GPD on 27 August 2013 stating that his letter dated 9 May 2013 on behalf of his client had *'remained unanswered. ... As you are well aware, [tenant] has already advised you that he intends to immediately reinstate the structure once the asbestos problem is addressed. To say the least, it is not fair that the Department cooperates with a complainant who is maliciously reporting the damage to the structure in order to acquire the property*

himself. We do know who this person is, as verbally stated during the meeting with your lawyer. Our client has also advised you with the correspondence he has taken with MEPA on the same matter. We kindly ask you to consider definitively a compromise agreement with our client regarding the removal of asbestos and completion of the refurbishment works in a reasonable timeframe ...'. Despite the letters submitted to the Department, there was no documentation in the relative GPD file that indicated that the matter was pursued any further by the tenant.

2.3.21 A definite decision regarding the site was taken by the GPD in November 2013 when the Director Land gave instructions that the matter was to be referred to the Department's Tenders Committee for the issue of a call for tenders. In the interim, a valuation report for the site and structure at Baħar iċ-Ċagħaq was drawn up by the Estate Management Department. According to the valuation, the rental value was estimated at €3,000 per annum. Among the factors taken into consideration were:

- a. *'the size and configuration of the both the land and the existing structure; the structure having an approximate area of 220 square meters and the land having an area of circa 3,217 square metres;*
- b. *the location and surroundings of the locality;*
- c. *the fact that the property is located in very close proximity to a popular recreational area, surrounded by country and sea views;*
- d. *the fact that the property can be used for recreational purposes;*
- e. *the fact that a considerable amount of work is needed to repair or demolish and reconstruct the structure;*
- f. *the assumption that the successful tenderer will obtain the required permits to repair or demolish and reconstruct the structure;*
- g. *the previous rent of the property;*
- h. *the demand for the property in question; and*
- i. *the rent of similar sites'.*

2.3.22 On 28 May 2014, a tender proposal was submitted for the consideration and approval of the DG GPD. However, there is no indication in the GPD file as to whether the call for tenders was actually issued. The next entry in the relative file is a minute dated 4 November 2014 by the DEM instructing an officer within the office of the DG GPD to *'obtain a valuation of the freehold of the site edged red on PD 12\_2004'*. This was duly complied with and on 18 November 2014, a valuation in respect of the site was submitted by the GPD-appointed architect.

### *Land at Ta' Kandja, limits of Siġġiewi*

2.3.23 As part of the agreement for the expropriation of 36 Old Mint Street, Gaffarena was given land at Ta' Kandja and Tas-Salvatur, limits of Siġġiewi and Mqabba (hereinafter referred to as Ta' Kandja, Siġġiewi), covering an area of 5,992 square metres. The site was previously a soft stone quarry with three groupings of built structures, located in an outside development zone, and forming part of the aquifer protection area.

2.3.24 The earliest entry in the file dates back to 1966 when the site in question was registered as government-owned land, under urban tenement No. 65018/Land Drawing 20/66 (subsequently G 31072) previously held by the Royal Air Force. Although part of the land was initially leased by Government in 1966, this was relinquished by the tenant in May 1989. Despite several requests made by interested parties for the lease of the site, and at one time actively considered for further quarrying, the site was retained by Government, although intermittently occupied by squatters.



- 2.3.25 Of relevance to this investigation is the request made in September 1991 by Victor Gaffarena, a relative of Mark Gaffarena, who indicated that he had been working the land for the past nine months and was therefore asking the Commissioner of Land to recognise him as the tenant. Although in the interim the site was briefly transferred for use by the Police (between November 1991 and June 1992), no further correspondence was found on file with regard to this request until 2 February 1993, when Victor Gaffarena was requested to vacate the site that he had been illegally occupying. On 5 February 1993, Victor Gaffarena's legal representative wrote to the Commissioner of Land indicating that the site in question had been occupied by his client without title for a number of years. However, in view of the fact that his client had maintained the area, spending considerable time and money, and in the absence of a public project, his client was requesting to continue occupying the site and to be given the right of first refusal in the event that a call for tenders is issued by the GPD.
- 2.3.26 Documentation in the relative GPD file does not indicate that any further action was taken with respect to the request by Victor Gaffarena made in 1993. In fact, the next correspondence on file is a letter by a John Gaffarena, received by the GPD on 5 June 2000, wherein it was stated that the Gaffarena family had been 'looking after' the site for years and any correspondence in connection with the site was to be submitted at the indicated address. No indication was on file as to other developments regarding the site until the next insertion, which was a letter submitted by the Mqabba local council in August 2005. In the letter, the Commissioner of Land was requested to effect the necessary repair works to the boundary wall of the site as this was of serious danger to motorists since the site was several metres below street level. The boundary wall had been badly damaged some years back, and given that the land was government-owned, the request was being made to the GPD.
- 2.3.27 There is no indication on file as to what follow-up action was taken. However, the next entry on file of relevance was a letter submitted to the GPD on 9 February 2012, wherein a number of allegations were made and information on the site was requested. Although the sender had not requested the lease of the site, a minute written by the Assistant Director Property gave instructions that the sender was to be informed that the site was leased. The minute was dated 24 May 2012. The sender was duly informed of this on 5 June 2012. Although this exchange does not appear irregular, a post-dated addition to the minute by the Assistant Director Property, originally dated 24 May 2012, was made on 19 January 2015 by the same official, now the DEM. According to this addition, '*PS: This statement was based on info we had on LEMIS<sup>6</sup>. However, it resulted that red 192A [whereby it was indicated that the last tenant, that is the Police, was no longer interested in the site], had not been noted and site was in fact vacant*'. The other entry of relevance was the valuation of the site carried out by the GPD-appointed architect dated 29 September 2014. There is no indication as to who requested the valuation or when it was requested. However, this Office noted that the postscript by the Assistant Director Property was made after the valuation of the site at Ta' Kandja.

### *Land at Ta' Ħarram, Żebbuġ*

- 2.3.28 As part of the second expropriation, Gaffarena obtained two portions of land at Żebbuġ, Malta, known as the Raba ta' Ħarram or Ta' Ħal-Mula. Originally, the fields were the property of the Ecclesiastical Benefice 'Ta' Għar-Ram', and leased by way of 'qbiela' to a third party as from 16 August 1986. According to the agreement signed between the parties on 15 May 1987, the lease term commenced in August 1986,

<sup>6</sup> LEMIS, the Land and Estate Management Information System, is a software programme in use by the GPD.

against an annual payment of Lm30. The agreement further stipulated that the tenant could not assign the lease to others, sub-let the lands or parts thereof or enter into share agreements with third parties. Moreover, the lands had to be solely utilised for agricultural purposes and the lessee could not erect buildings or structures on the land without the written consent of the Administrator (Ecclesiastical Assets). Breaches in any of the conditions of the agreement would result in the immediate termination of the lease. The land at Ta' Ħarram was passed to Government by virtue of the State-Church Agreement ratified in February 1993. Details on the transfer form indicated that the entire area measured 26,220 square metres (one site measuring 24,070 and the other 2,150 square metres) and was leased the third party for agricultural use.

2.3.29 On 9 September 2004, the GPD wrote to the third party indicating that MEPA had informed the Department of the illegal erection of a garage, a room and a '*dura*' on the land at Ta' Ħarram. The third party was to immediately stop any development and restore the site to its original state. It is assumed that this submission was not delivered since a note on the GPD file, dated 28 September 2004, indicated '*letter returned - gone away*'. Documentation on file indicated that no further action on the matter was taken. In fact, the next insertion was dated 1 July 2014, when the DEM gave instructions that Gaffarena was to be recognised as tenant in lieu of the third party in terms of Clause 6(d)(i) of the Schedule attached to Chapter 268. Appended to this minute was a copy of the receipt issued by the GPD to the third party, indicating the payment of the '*qbiela*' for the period 16 August 2011 up to 15 August 2012. Also attached to the receipt was a note, dated 10 July 2012, indicating that an agreement was reached between the third party and Mark Gaffarena, wherein the former was relinquishing the two sites at Ta' Ħarram in favour of the latter. Attached to the agreement was a hand-written note endorsing the agreement, signed by a Notary Public and dated 7 April 2014.

2.3.30 As per instructions given on 4 July 2014, the GPD informed Gaffarena that Government was recognising him as the lessee of the Raba ta' Ħarram, in lieu of the third party, as from 16 August 2013. The lease was subject to an annual fee of €70, subject to all conditions applicable to the previous occupant. This recognition was based on the declaration made by the third party, as endorsed by the Notary Public in April 2014. On the same date, that is 4 July 2014, the third party was informed that with effect from 16 August 2013 he was no longer recognised as the lessee of the land at Ta' Ħarram, which had now been transferred to Gaffarena with effect from that date.

2.3.31 On 29 August 2014, the GPD requested its appointed architect to undertake an evaluation of the two portions of land at Ta' Ħarram, totalling an area of 26,220 square metres and registered as one tenement. The valuation was to be carried out as per current market value and required for exchange purposes. This was to be submitted by 5 September 2014.

### *Another Site at Baħar iċ-Ċagħaq, limits of Naxxar*

2.3.32 Another site at Baħar iċ-Ċagħaq was relinquished by Government in favour of Gaffarena in exchange for the second one-fourth undivided share of 36 Old Mint Street. This second parcel of land was adjacent to the land at Baħar iċ-Ċagħaq exchanged in the expropriation of the first share of the Valletta property.

2.3.33 Very little information is on file at the GPD with regard to this site. In fact, the first insertion is the valuation carried out by the GPD-appointed architect. According to the valuation, the land in question, as shown on Plan SS 5077 (updated as per PD 2015\_0212), was outside the development zone and had a footprint area of about

1,663 square metres. The valuation, dated 16 February 2015, took into consideration the structure located on the land.

- 2.3.34 On 13 April 2015, a letter was submitted to the GPD by a legal firm wherein it was claimed that their client had been occupying the site at Baħar iċ-Ċagħaq (indicated on a site plan extracted from SS 5077) for the last forty years. On 12 April 2015, an individual approached his client and ordered him to vacate the site as he, the former, had 'purchased' the land from Government. According to the letter, this infringed the rights of their client who had occupied the site for years. In view of this, the sitting tenant was to be granted the right of first refusal if the land was being put up for sale. However, according to the reply submitted to the legal firm by the GPD on 20 April 2015, the tenant did not have any valid title at law on the said property and therefore any occupation was illegal and abusive. The tenant was to vacate the site immediately.
- 2.3.35 The next insertion in the relative GPD file was a copy of the deed of transfer between Government and Gaffarena dated 10 April 2015, wherein this site was assigned to Gaffarena in exchange for 36 Old Mint Street, effectively rendering the transfer a done deal. Notwithstanding this definite transfer, subsequent correspondence on file indicated that the land was hived off a larger swathe of land and was duly registered by the Land Registry under separate title.
- 2.3.36 The final entry in the GPD file relating to this site is an internal minute dated 29 May 2015 from the Assistant Director Enforcement to Director Land, wherein it was stated that, *'file was handed over to me by DEM as it is being alleged that land ... which had been transferred by exchange, supposedly been transferred/sold with vacant possession. Therefore, the new owner is claiming otherwise, and hence is requesting GPD to take direct action against squatter. Therefore an eviction is to be issued. Referred for your approval.'* It is not indicated what action, if any, was taken in this regard; however, it is to be stated that the file was referred to this Office in early June 2015 in connection with this investigation.

Chapter 3  
Expropriation of the  
First One-Fourth Undivided Share

## Chapter 3 – Expropriation of the First One-Fourth Undivided Share

### 3.1 A Proposal for the Exchange of Land

- 3.1.1 On 28 July 2014, Gaffarena, through his legal representative, submitted correspondence to the DG GPD, wherein he informed the Department that he was the co-owner of the property at 36 Old Mint Street, Valletta, which was being leased by Government. Gaffarena indicated his willingness to release his share of the property, if compensated, by means of exchange with other agricultural properties held by government. Specific reference was made to land situated at Klawura tal-Handaq, limits of Qormi and land referred to as the Għalqa Ta' Ħarram, Ħal Mula, Żebbuġ. Further to the identification of these sites, Gaffarena's legal representative indicated that these properties were held, under title of lease (*qbiela*), by Gaffarena.
- 3.1.2 According to that cited in this letter, Gaffarena had already made this request before, yet had offered land in Mrieħel, which land was now being retracted and substituted with 36 Old Mint Street. It is in this manner that Gaffarena brought the matter to the attention of the DG GPD, requesting the initiation of proceedings should his offer be favourably considered.
- 3.1.3 Supporting documentation, substantiating Gaffarena's claim of ownership of this one-fourth undivided share, was attached to the letter dated 28 July 2014. This consisted of a deed dated 18 December 2007, whereby the Galea family sold their one-fourth undivided share of 36 Old Mint Street to Gaffarena at the agreed price of Lm10,000 (equivalent to €23,294). Aside from other conditions established in this deed, it was stated that the property was subject to a lease to the Government of Malta and other third parties, arising from a deed in the records of the Notary to Government dated 12 August 1902. Therefore, the property was not being transferred with vacant possession, with the buyer, in this case Gaffarena, having the right to receive rent due on a pro rata basis.
- 3.1.4 The NAO noted that the letter submitted on behalf of Gaffarena, dated 28 July 2014, bore no official GPD stamp, which therefore impedes this Office from establishing the precise date when this correspondence was actually received by the Department. The preceding minute in the relevant GPD file, signed by Revenue Manager GPD, was dated 30 July 2014; however, this does not necessarily confirm that the letter was in fact received after this date.

- 3.1.5 The NAO sought to establish whether Gaffarena, or anyone else acting on his behalf, contacted any GPD officials or any other officials on this matter prior to the submission of the aforementioned correspondence. Furthermore, the NAO enquired whether Gaffarena, or anyone else acting on his behalf, contacted any GPD officials or any other officials immediately after the submission of the 28 July 2014 letter. These queries were directed to various officials, namely, the DG GPD, the Commissioner of Land, the architects involved in the valuation processes, the Executive Chair of the BICC, the Assistant Director Contracts GPD, a GPD Notary and a Principal Officer assigned to the office of the DG GPD. All denied ever having been in contact with Gaffarena or anyone else acting on his behalf. The PS OPM, DEM and an Officer in the PS OPM Secretariat confirmed meeting Gaffarena either prior to, or immediately after 28 July 2014, details pertaining to which are presented hereunder.
- 3.1.6 PS OPM claimed that he had met Gaffarena prior to the submission of the letter dated 28 July 2014. PS OPM maintained that it was during this meeting that Gaffarena had informed him of his intention to offer to exchange his one-fourth undivided share of the property at 36 Old Mint Street with other Government-owned property. In response to this proposal, PS OPM claimed that he informed Gaffarena to proceed as per standard procedure set by the GPD.
- 3.1.7 Gaffarena's testimony, although severely limited and hardly admissible, supported that stated by PS OPM. Furthermore, Gaffarena claimed that he had not contacted any GPD officials or any other officials on this matter prior to the submission of the correspondence dated 28 July 2014.
- 3.1.8 An Officer in the PS OPM Secretariat who was involved in this process referred to the meeting held between PS OPM and Gaffarena, stating that he subsequently coordinated the scheduling of a meeting between Gaffarena and the DEM. This was corroborated by the DEM, yet the NAO was unable to precisely establish when such a meeting was held as no formal record of this meeting was retained.
- 3.1.9 Particularly confounding was the conflicting evidence provided by the DEM, specifically in relation to the scheduling of this meeting. The DEM and the Officer in the PS OPM Secretariat indicated that this meeting with Gaffarena took place sometime in August 2014. Perhaps related was an entry noted on the GPD visitors' log, which indicated that Gaffarena entered the GPD offices on 11 August 2014 at 13:15 hours and listed the DEM as the contact person. However, in view of the lack of supporting evidence, the NAO was unable to ascertain that this was the meeting referred to by the DEM. Moreover, the reliability of the GPD's visitors' log was seriously doubted by the NAO, as despite the fact that various of the Department's officials indicated the frequency of Gaffarena's visits at the Department, only two visits (entries at 11 August 2014 and 19 September 2014) were recorded.
- 3.1.10 Although that stated by the DEM tallied with the version of events provided by the Officer in the PS OPM Secretariat, an inconsistency emerged in the sense that the DEM recorded a minute in the relevant GPD file immediately after the receipt of the 28 July 2014 letter. This minute was dated 31 July 2014, hence contradicting the account of events stated by the DEM.
- 3.1.11 Additional inconsistencies were noted in other statements made by the DEM, who claimed that correspondence dated 21 August 2014 was already registered in the GPD file when the matter was referred to him. This correspondence, sent on behalf of the Executive Chair BICC, rebutted allegations that the Council had carried out irreversible structural alterations to the property at 36 Old Mint Street. The rebuttal addressed that stated in a letter sent by the legal representative of the Cefai family,

owners of a share of the property, on 15 August 2014. The DEM proceeded to state that the meeting with Gaffarena was held after the Department had received this correspondence, which subsequently implied that the meeting was held after 21 August 2014. The conflict in evidence between that recorded on file and that stated by the DEM rendered it impossible for the NAO to reconcile a logical chronology of events.

- 3.1.12 Finally, and further compounding matters, were anomalies in the recording of minutes in the GPD file relating to the property at 36 Old Mint Street. The irregularities noted by the NAO impeded this Office from establishing, with any element of certainty, the sequence of events that immediately followed the submission of the 28 July 2014 letter by Gaffarena. GPD minutes filed between 3 June 2014 and 9 December 2014 were all recoded; however, the Department explained this matter as an inadvertent error that was committed on 3 June 2014 when filing minute 111, erroneously recorded as minute 41. This mistake was perpetuated up to 9 December 2014, when minute 133 was incorrectly recorded as minute 63. The NAO was informed that when this error was detected, the minutes were subsequently renumbered by the GPD, yet whoever effected the corrections failed to arrange the cross-references within the erroneously numbered minutes.
- 3.1.13 Of a more serious nature is the anomaly relating to minutes 118A and 118B. Minutes 118A and 118B were referred to in paragraph 3.1.11 and related to correspondence sent by the BICC dated 21 August 2014 in reply to a letter by one of the co-owners of the property dated 15 August 2014, respectively. The file entry corresponding to minutes 118A and 118B was crossed out. The minute immediately following this crossed-out entry, also re-coded as minute 118, was a minute by the DEM dated 31 July 2014. This is of course grossly anomalous, as it is impossible for the minute dated 31 July 2014 to have been written after correspondence dated 21 August 2014, particularly when one bears in mind that stated by the DEM in meetings with the NAO regarding when he first accessed the GPD file. The GPD was unable to explain this anomalous situation.

## 3.2 An Elusive Public Purpose

- 3.2.1 On 31 July 2014, the DEM submitted a minute to the DG GPD, which in turn implied that the latest possible date of receipt of Gaffarena's letter was in effect this date. Here, the DEM stated that the property at 36 Old Mint Street was private property leased to government, which was formerly used as a school, yet had recently been allocated to the BICC. The rest of this minute, which eventually assumes pivotal importance in the expropriation process, is reproduced verbatim hereunder:

*'Mr Marco Gaffarena had purchased 1/4 undivided share of this property by virtue of deed at red 46A [the 18 December 2007 deed referred to in paragraph 3.1.3]. He is proposing to transfer his share to government in exchange of government-owned agricultural land which is held on lease by him. I think that in principle it would be wise to consider this transaction, considering that this property is in Valletta, and in future could also be utilised for other purposes (such as a Ministry or a museum), while the government property being requested is agricultural land. If you agree with my reasoning, kindly refer to Parliamentary Secretary for his approval. If he also agrees, I will ask our architects to prepare valuations of both properties to determine whether the value of these properties fall within the parameters set out by law.'*

- 3.2.2 This minute was endorsed by the DG GPD; however, no specific date of approval was recorded. On 11 August 2014, the PS OPM expressed agreement with that proposed

by the DEM and indicated that the required valuations were to be obtained. The PS OPM stated that the stipulated policies and procedures were to be followed. The DEM duly complied with instructions issued by the PS OPM and, on 11 August 2014, promptly instructed the Principal Officer GPD to obtain a valuation of the property at Old Mint Street.

- 3.2.3 In view of the fact that the minute noted by the DEM on 31 July 2014, subsequently endorsed by the DG GPD and PS OPM, constituted the only documented justification for the eventual expropriation of a one-fourth share of the property at 36 Old Mint Street, the NAO sought further explanations from all officials involved. To this end, the NAO directed queries to the PS OPM, the DG GPD, the Commissioner of Land and the DEM.
- 3.2.4 In this respect, the PS OPM categorically denied his involvement in the identification of the public purpose, claiming that he approved the minute written by the DEM, which minute effectively initiated the expropriation process. The PS OPM referred to the justification cited by the DEM as underpinning the understanding of what public purpose was to be served through the expropriation of this property. In essence, the PS OPM faithfully referred to that stated by the DEM, that is, that the property could possibly be used as a ministry or museum, and that a property in Valletta was to be exchanged for agricultural land, most of which was already leased to Gaffarena. Notwithstanding this, the PS OPM reiterated and made it amply clear that it was not he who decided or indicated Government's intended public purpose for the property that was to be expropriated.
- 3.2.5 According to the DEM, the public purpose resulted from the fact that Government was already occupying this property and that its lease was due to expire in 2028, presenting the risk of it not being renewed. This, the DEM argued, constituted public purpose. Furthermore, the DEM referred to correspondence issued by the legal representatives of the Cefai family, who threatened possible eviction; however, for reasons already explained, it was impossible for the DEM to anticipate this threat of eviction at the time of writing of the said minute, that is, when the case to the PS OPM was first made. When queried by the NAO as to why Government required this particular property and not other properties/office space in Valletta that could have been proposed following an open call, the DEM stated that this property was expropriated because it was offered to the Department.
- 3.2.6 The DG GPD provided a somewhat different perspective on what constituted public purpose in this expropriation. According to the DG GPD, certain government ministries and departments were in need of office space, and this expropriation addressed this particular purpose. The DG GPD referred to the utilisation of the property by the BICC; however, conceded that this was a temporary arrangement and that the property was not being expropriated for use by the BICC. In support of the argument to expropriate, and as part justification of the public purpose necessitating such action, the DG GPD questionably stated that expropriation was deemed a sensible course of action in view of government's obligation to pay for maintenance-related expenses incurred in the context of it being used as government offices.
- 3.2.7 Also cited as justification in terms of public purpose were rent payments made for the lease of office space from the private sector. However, when queried on what type of analysis the GPD's decision to expropriate was based and whether expropriation proved to be a cost-effective solution, the DG GPD acknowledged that the Department had carried out no analysis whatsoever prior to recommending and later endorsing the expropriation.



- 3.2.8 Furthermore, the DG GPD argued that the justification cited for this expropriation was a fluid matter, with government reserving the right to use this property for whatever public purpose it deemed fit. Neither was government under any obligation to announce the intended public purpose. The NAO enquired with the DG GPD as to why no substantiating documentation, specifically indicating the public purpose planned for this property, was found in the Department's file. To this end, the DG GPD indicated that since the request originated from the GPD, then by inference the Department was aware of its intended use, hence the absence of documentation that would have substantiated and formalised the public purpose behind the expropriation.
- 3.2.9 In contrast with the involvement of the PS OPM, the DG GPD and the DEM, the Commissioner of Land was not involved in the early stages of this expropriation process. Nevertheless, the NAO sought the views of the Commissioner of Land as it is the Commissioner who, by virtue of the Land Acquisition (Public Purposes) Ordinance (Chapter 88, article 5), is recognised as the 'competent authority', ultimately responsible for the acquisition of land required for any public purpose.
- 3.2.10 The Commissioner of Land's views largely reflected that stated by the DG GPD, citing the need for office space for allocation to government departments. The Commissioner of Land also referred to the letter by the legal representative of the Cefai family; however, this certainly could not have influenced the initial decision to expropriate, endorsed by the PS OPM on 11 August 2014, as the letter was dated 15 August 2014. While the Commissioner of Land acknowledged that there was no legal obligation necessitating the declaration of the intended public purpose for land that was to be expropriated, he claimed that this lacuna provided government with an element of flexibility, at times required in adjusting to changing circumstances. However, when pressed by the NAO as to why the intended public purpose was never formally articulated, the Commissioner of Land again referred to the need for offices in Valletta yet failed to provide a more definite response.
- 3.2.11 Setting aside the myriad reasons cited as the public purpose intended for the expropriation of this property, the NAO was informed by the DG GPD and DEM, under oath, that they had not discussed the case between the date of submission of Gaffarena's letter on 28 July 2014 and the approval of the PS OPM on 11 August 2014. The NAO reviewed the email activity of the DG GPD and the DEM during this period and confirmed that no emails relating to this matter were exchanged. Therefore, the DEM recommended the exchange of lands with Gaffarena solely on the basis of that stated in his letter dated 28 July 2014 and possibly, following one meeting with Gaffarena. Nonetheless, how and whether this meeting conditioned the DEM's views remains an aspect that cannot be addressed by the NAO despite this Office's grave concerns, owing to the absence of any documented records or exchanges relating to this meeting. On the other hand, the DG GPD, and eventually the PS OPM, endorsed the recommendation made by the DEM following Gaffarena's proposal without any form of consultation, any email exchange, or any substantiating documentation illustrating the intended purpose for this specific property.

### **3.3 The Valuation of 36 Old Mint Street, Valletta**

- 3.3.1 The Principal Officer GPD sent the request for valuation to an independently appointed architect (hereinafter referred to as the Consultant Architect) on 11 August 2014, at 11:19am. Although the sense of haste is implicitly imparted by the fact that Gaffarena's proposal was approved by PS OPM, referred back to the DEM and relayed onwards by the Principal Officer GPD, all before 11:19am on 11 August, 2014, the urgency of the matter at hand was explicitly communicated to the Consultant Architect.

3.3.2 Writing on behalf of the Commissioner of Land, the Principal Officer GPD requested the Consultant Architect to indicate the freehold value and the value of a one-fourth undivided share of the property at 36 Old Mint Street. Kept in copy in this email were the DEM and the Officer in the PS OPM Secretariat. Attached to this email were GPD drawings of the site that was to be valued, dated 11 July 1984 and bearing reference LD 128/84. The Consultant Architect was informed that the valuation was to be submitted by not later than 18 August 2014.

3.3.3 In line with the urgency cited by the Principal Officer GPD, the Consultant Architect finalised the requested valuation report on 11 August 2014, that is, on the same day that the valuation was commissioned. Although no formal covering letter, email correspondence or official stamp indicating the report's precise date of submission was noted by the NAO, a minute in the GPD file indicated that the Department received the valuation on 12 August 2014.

3.3.4 The Consultant Architect set the freehold market value of the property at 36 Old Mint Street at €3,290,000, while that of the one-fourth undivided share was proportionately set at €822,500. Occupying a footprint of 445 square metres, the Consultant Architect classified the building as having 456 square metres of prime office space and 233 square metres of ancillary office space. The valuation indicated that the property was scheduled and fell within the Malta Environment and Planning Authority's Urban Conservation Area.

3.3.5 Appreciating the value of the property were three features cited by the Consultant Architect, namely that:

- a. the offices were in the heart of Valletta;
- b. the property was situated in a good location in Valletta; and
- c. there was a healthy demand for quality office space.

3.3.6 Notwithstanding the tight timeframe within which the report was commissioned, compiled and submitted, the Consultant Architect's valuation indicated that a site inspection had been carried out. Less categorical were statements made regarding the current title of ownership. In response to the questions '*Is the land currently occupied under a title of emphyteusis?*' and '*Is the land currently occupied under a title of lease?*', which formed part of the valuation report, the Consultant Architect specified '*Assumed not.*' This assumption proved to be erroneous; however, this matter is further discussed at a later stage in the report.

3.3.7 In arriving at the set value of €3,290,000, the Consultant Architect employed two valuation methodologies, namely, the comparative method and the profits method. Expanding on the comparative method, the Consultant Architect indicated that comparative freehold prices for recently refurbished offices in Melita Street, Valletta and Strait Street, Valletta averaged at €5,000 per square metre for prime office space and at €4,000 per square metre for ancillary space. Applied to this property, the 456 square metres of prime office space result in a value of €2,280,000, while the 233 square metres of ancillary space result in a value of €932,000. In total, this results in a freehold value of €3,212,000 (Figure 1 refers).

**Figure 1: Consultant Architect valuation utilising the comparative method**

$$\begin{array}{r} 456\text{m}^2 \times \text{€}5,000 = \text{€}2,280,000 \\ 233\text{m}^2 \times \text{€}4,000 = \text{€}932,000 \\ \hline \text{€}3,212,000 \end{array}$$

3.3.8 Applying the profits method, the Consultant Architect drew on comparative rental values of properties in Valletta, citing a rate of €200 per square metre per annum for prime office space and €150 per square metre per annum for ancillary space. Utilising the previously cited dimensions, the annual rental value of the property at 36 Old Mint Street was set at €126,150 per annum. The Consultant Architect classified this property as representing a relatively risk free investment and therefore set a potential yield of 3.5 per cent, together with an additional 0.25 per cent loading for administrative support and extraordinary repairs. Capitalising at a rate of 3.75 per cent, the freehold value of the property by means of the profits method was set at €3,364,421 (Figure 2 refers).

**Figure 2: Consultant Architect valuation utilising the profits method**

$456\text{m}^2 \times \text{€}200 =$	$\text{€}91,200$
$233\text{m}^2 \times \text{€}150 =$	<u><math>\text{€}34,950</math></u>
	$\text{€}126,150$ per annum
Capitalisation $100 @ 3.75\% = 26.67$	
Freehold Value $\text{€}126,150 \times 26.67 = \text{€}3,364,421$	

3.3.9 In arriving at a final value, the Consultant Architect calculated the average of the two values determined through the two methods, that is €3,212,000 and €3,364,421. This resulted in a value of €3,288,210, which was rounded up to €3,290,000.

### 3.4 The Valuation of Other Properties Exchanged

3.4.1 The minute that follows the valuation submitted by the Consultant Architect, dated 12 August 2014, is another minute by the DEM addressed to the DG GPD on 24 November 2014. Besides referring to previous exchanges on the matter (specifically, the minute reproduced in paragraph 3.2.1, where Gaffarena's case was first put to the DG GPD and subsequently endorsed by the PS OPM), the DEM drew the attention of the DG GPD to the valuation by the Department's Consultant Architect. In addition, the DEM referred to Gaffarena's willingness to accept the values prescribed on condition of compensation by way of an exchange with other property. In light of its fundamental importance, the minute by the DEM is reproduced hereunder:

*'Property at 36 Old Mint Street, 67 to 70 St John Street and 47 St Patrick Street Valletta, all shown on plan L.D. 128/84 were valued by [Consultant Architect] at €3,290,000. The owner of 1/4 undivided share of this property, the value of which amounts to €822,500, is prepared to accept this price on condition that he is compensated by way of an exchange with other property which was identified by himself, namely:*

1. *Property subject of file A1908/97/FF, which is leased to same owner and valued by [Consultant Architect] at €192,801.*
2. *TDD [temporary directum dominium] and subsequent full ownership of property at 73 Manwel Dimech Street, Sliema (T505/2002/1). This property is a closed shop which underlies same owner's property. TDD and subsequent full ownership was valued by [GPD Architect] at €65,000.*
3. *Site at Ta' Kandja (L806/64/3). This site is presently not leased and has been valued by [Consultant Architect] at €168,800.*
4. *Site at Baħar iċ-Ċaġħaq, subject of file no. L59/99 and shown on plan P.D. 12\_2004, valued by [Consultant Architect] at €250,000.*

*The total value of these properties is €673,610. This value falls within the 30% limit contemplated in Chapter 88. You may wish to direct way forward.'*

- 3.4.2 The minute by the DEM, dated 24 November 2014, was endorsed by the DG GPD on 25 November 2014 and referred to the PS OPM for approval. In turn, the PS OPM approved this minute on 25 November 2014, stating the following, *'Provided that the said exchange falls within the appropriate legal parameters, please proceed accordingly. All taxes, stamp duty, etc are to be deducted up front, thus ensuring that actual funds to be paid out are to be kept to the barest minimum.'*
- 3.4.3 The list of properties identified for exchange, as reproduced in paragraph 3.4.1, bore notable anomalies when compared to the original request made by Gaffarena and approved by the PS OPM on 11 August 2014. Here, Gaffarena had indicated that the property to be exchanged was government-owned agricultural land already held on lease by him. In view of the notable difference in the nature of the lands subject to exchange, the NAO enquired with the PS OPM whether he had been consulted by the GPD or whether he had discussed this matter with the Department. The PS OPM denied being informed or consulted in this respect.
- 3.4.4 The NAO noted that no other documentation was retained or developments recorded on the GPD file relating to the property at 36 Old Mint Street between 12 August 2014 (receipt of the Consultant Architect's valuation) and 24 November 2014 (minute by the DEM in which other properties proposed for exchange were identified). In efforts intended at better understanding the developments that materialised in the interim, particularly with respect to how the properties due for exchange were identified and accordingly valued, the NAO directed such enquiries to the officials involved and also reviewed the GPD files corresponding to such properties. The following is an account of information recorded in these files together with subsequent clarifications obtained.

#### *Land at Klawura tal-Handaq, Qormi*

- 3.4.5 On 29 August 2014, the Principal Officer GPD, acting on behalf of the Commissioner of Land, requested the Consultant Architect to prepare a valuation on the portion of land referred to as Klawura tal-Handaq, situated in Qormi. The valuation, which was to be based on current market rates, was to exclude structures and was required for exchange purposes. The Principal Officer GPD indicated to the Consultant Architect that the requested valuation was to be submitted by 5 September 2014.
- 3.4.6 When the NAO queried why the valuation was to exclude structures, the Principal Officer GPD indicated that these were the instructions provided by the DEM. Elaborating in this respect, the DEM indicated that the structures built on this land were illegally constructed and did not have the required planning permits, hence the instructions issued to exclude structures from the property's valuation. The matter relating to the illegally constructed structures situated on this land was addressed in detail in the preceding chapter.
- 3.4.7 The valuation report, dated 31 August 2014, was received by the GPD on 4 September 2014. The land was valued at €192,810, which differed slightly from the €192,801 cited by the DEM. The Consultant Architect classified the land, measuring 9,870 square metres as agricultural land, yet indicated that structures, measuring 182 square metres were built on site. Furthermore, the Consultant Architect indicated that the current use of this site was as agricultural land and indicated that it was situated in an ODZ. According to the Consultant Architect, the fact that the site was classified as ODZ depreciated the value of the land that was to be exchanged. Also depreciating the value of the land were the structures under MEPA enforcement notice.

- 3.4.8 The NAO noted that the Consultant Architect failed to specify whether a site inspection had been carried out, and merely indicated that no photographs had been taken. In response to the questions ‘*Is the land currently occupied under a title of emphyteusis?*’ and ‘*Is the land currently occupied under a title of lease?*’, which formed part of the valuation report, the Consultant Architect again specified that he assumed that this was not the case.
- 3.4.9 In arriving at the value of €192,810, the Consultant Architect employed two valuation methodologies, that is, the comparative method to value the portion of land and the contractor method to establish the value of the buildings located on site. In the first instance, the Consultant Architect indicated that comparative freehold prices for agricultural land average at €19 per square metre, hence, the freehold value of 9,870 square metres of land at this rate resulted in a total of €187,350. In the second instance, the value of buildings located on site using the contractor method was estimated at €400 per square metre, which effectively represented the cost of construction. However, despite citing a rate of €400 per square metre, the Consultant Architect applied a rate of €300 per square metre to the footprint area (for structures) of 182 square metres. The Consultant Architect indicated to the NAO that this discrepancy in rates was due to a typing error. This accounted for a value of €54,600, which, when reduced by 90 per cent to take into account that the buildings were subject to an enforcement notice and that the land lay in an ODZ area, resulted in a revised value of €5,460. The final value was arrived at by combining the value of land, set at €187,350, with the value of buildings, set at €5,460, which in total stood at €192,810.
- 3.4.10 Aside from the email sent by the Principal Officer GPD, requesting the valuation of the land at Klawnsura tal-Handaq and the corresponding report prepared by the Consultant Architect, the NAO noted no other documents or correspondence substantiating and explaining how the selection of this site for exchange purposes came to be.

#### *A Shop in Manwel Dimech Street, Sliema*

- 3.4.11 On 6 October 2014, the DEM instructed the Principal Officer GPD to obtain a valuation of the shop at 73 Manwel Dimech Street, Sliema. The Principal Officer was instructed to direct this valuation to a GPD Architect. The DEM further stated that this shop was held on temporary emphyteusis due to expire on 30 June 2016 and that the annual ground rent payable was approximately €0.25. Finally, the DEM claimed to have been informed that the property was in a bad state of repair, yet provided no further details as to who informed him and what was specifically intended by ‘*bad state of repair*’.
- 3.4.12 Subsequent to this minute, the Principal Officer GPD submitted the request for valuation to the Department’s Chief Architect on 8 October 2014. The valuation was to encompass the temporary *directum dominium* as well as the full ownership of the property thereafter, which consideration was not specified by the DEM. The GPD Chief Architect instructed the Principal Technical Officer to carry out a site inspection, prepare relevant property drawings and take photographs of the property in question, all duly undertaken by 20 October 2014.
- 3.4.13 The valuation report, prepared by the assigned GPD Architect and dated 30 October 2014, was submitted to the Principal Officer on the same day. The Sliema shop, having a total area of approximately 54 square metres, was valued at €65,000. In establishing this value, the GPD Architect considered various factors, namely that:
- a. the location was in a relatively less prominent area of Manwel Dimech Street, Sliema;

- b. development and use of commercial properties in the area mainly consisted of local shops or language institutes, and many shops in the area had closed down;
- c. the dimensions and layout of the property;
- d. the bad state of repair of the property;
- e. parking problems in the area;
- f. unofficial information regarding similar, privately-owned property; and
- g. similar property sold following a public call for tenders.

3.4.14 Aside from these factors, the GPD Architect referred to the fact that the property was granted on a temporary emphyteusis, and if this was to be taken into account, then the resulting value of the *directum dominium* and full ownership thereafter would be €58,960. In arriving at this value, the GPD Architect referred to the Ministerial Direction issued by the Ministry of Finance, the Economy and Investment, bearing reference MFEI 007/09. In establishing value, the GPD Architect also acknowledged that the property was granted on a temporary emphyteusis for a period that was due to expire on 30 June 2016 and that the ground rent payable was of €0.25 per annum.

3.4.15 The NAO noted no other documents or correspondence substantiating and explaining how this site was selected for purposes of exchange. In essence, the only relevant documents retained in the Department's files were the minute written by the DEM on 6 October 2014 and subsequent developments registered by the Department leading to the eventual valuation of the property by the GPD Architect submitted on 30 October 2014. However, these documents related to processes undertaken after the property had been identified for possible exchange and shed no light on how it was in fact identified.

#### *Land at Ta' Kandja, limits of Sigġiewi*

3.4.16 The first entry recorded in the GPD file corresponding to this property, bearing relevance to the eventual exchange of this site, was dated 29 September 2014 and consisted of the valuation report prepared by the Consultant Architect. The NAO noted no documented record indicating how the Consultant Architect had been engaged by the GPD, who had engaged him and when he had been engaged.

3.4.17 Notwithstanding this dearth of documentation, the Consultant Architect valued the land and structures at Ta' Kandja, Sigġiewi at €165,800. The valuation was based on agricultural land measuring 5,992 square metres and built structures measuring 425 square metres. The Consultant Architect indicated that the site had frontage on a public road, yet again failed to specify whether a site inspection had been carried out, merely indicating that no photographs had been taken. In response to the questions '*Is the land currently occupied under a title of emphyteusis?*' and '*Is the land currently occupied under a title of lease?*', which formed part of the valuation report, the Consultant Architect again specified that he assumed that this was not the case.

3.4.18 The stated use of the property was for agricultural purposes, the value of which depreciated owing to its location in an ODZ area and it being subject to MEPA policy SMCO 08, given that it formed part of the aquifer protection area. The valuation methodologies employed were twofold. First, the comparative method for land and second, the depreciated replacement cost method for structures. According to the Consultant Architect, comparative freehold prices for agricultural land averaged €19 per square metre. Therefore, the freehold value of the 5,992 square metres of agricultural land was set at €113,848. With respect to the value ascribed to the built structures, the depreciated replacement cost was set at €123 per square metre. Hence, when applied to the footprint area of 425 square metres, the resultant construction costs amounted to €52,275. In aggregate, the estimated freehold value arrived at by

the Consultant Architect was that of €165,800. This figure is approximately equivalent to the sum of €113,848 and €52,275, that is, €166,123.

3.4.19 Other documents retained on file related to the property drawings prepared by the GPD in the days preceding the signing of the deed between Gaffarena and Government. Once again, the NAO noted no record, documentation or correspondence substantiating and explaining how this site was selected for purposes of exchange. Moreover, the manner by which the Consultant Architect was engaged to value this property remained unclear, as no correspondence or official documents were furnished to the NAO in this regard.

#### *A Site at Baħar iċ-Ċagħaq, limits of Naxxar*

3.4.20 On 4 November 2014, the DEM instructed the Principal Officer GPD to obtain a valuation of the freehold value of the site at Baħar iċ-Ċagħaq marked on the property drawing bearing reference P.D. No. 12\_2004. Contrary to previous valuations, in this case, the DEM specifically indicated to the Principal Officer that the Consultant Architect engaged in the valuation of the land at Klawura tal-Handaq and the site at Ta' Kandja was to be appointed to carry out this assignment.

3.4.21 To this end, the Principal Officer GPD submitted correspondence to the Consultant Architect on 6 November 2014, indicating that the land to be valued, as shown on P.D. No. 12\_2004, had an area of 3,437 square metres. The Consultant Architect was to establish the freehold and rental value of the site at Baħar iċ-Ċagħaq, and submit same by not later than 20 November 2014.

3.4.22 The valuation prepared by the Consultant Architect was received by the Department on 18 November 2014 and estimated the value of the land and building on a freehold basis at €250,000. In the one-page report prepared by the Consultant Architect, it was stated that the land was situated in an ODZ area and was being classified as agricultural land in terms of the Land Acquisition (Public Purposes) Ordinance (Chapter 88). Furthermore, the Consultant Architect indicated that the valuation took into consideration the structure located on the land; however, contrary to previous valuations carried out by the same Architect, the specific method or rate applied to value the said structure was not indicated.

3.4.23 Similar shortcomings were noted by the NAO with respect to the valuation of the land as aside from details regarding the footprint of the area, cited as 3,437 square metres, no specific information outlining the valuation method utilised and rates applied were indicated. The Consultant Architect indicated that the valuation took into account the characteristics and locality of the site, the structure constructed thereon, land use zoning in the Central Malta Local Plan and other contributory factors from assessments carried out; however, no specific details were provided as to how these factors influenced the final valuation.

3.4.24 Finally, again taking into account the characteristics and locality of the site, the structure thereon constructed, land use zoning in the Central Malta Local Plan and other contributory factors from assessments carried out, the Consultant Architect estimated a rental value of €7,500 per annum. The Consultant Architect indicated that the rate was to be reviewed every five years, in accordance with the cost of living index.

3.4.25 On 12 December 2014, a few weeks prior to the signing of the deed of expropriation of 36 Old Mint Street, the dimensions of the site at Baħar iċ-Ċagħaq were revised, with P.D. No. 12\_2014 replaced by P.D. No. 12\_2014\_A. This revision was effected following

instructions issued by the DEM. Although there was no record of correspondence exchanged between the Department and its Consultant Architect, on 23 December 2014, the Principal Officer GPD filed a revised valuation corresponding to the site's new dimensions.

3.4.26 The Consultant Architect's revised valuation, dated 21 December 2014, was identical to that submitted on 18 November 2014; however, the footprint of the area now stood at 3,735 square metres, while the value of the land and building on a freehold basis was set at €260,000. In effect, the change to the site's dimensions entailed the addition of 298 square metres, which were valued at €10,000. A similar upward revision was carried out with respect to the site's rental value, which was now estimated at €7,900 per annum, accordingly revisable every five years in line with the cost of living index.

3.4.27 The NAO noted no other documents or correspondence substantiating and explaining how this site was selected for purposes of exchange. In essence, the only relevant documents retained in the Department's files were the minute written by the DEM on 4 November 2014 and subsequent developments registered by the Department leading to the eventual valuation of the property by the Consultant Architect received on 18 November 2014. However, these documents related to processes undertaken after the property had been identified for possible exchange and shed no light on how it was in fact identified. Neither was there any information regarding the subsequent adjustments made to the dimensions of the site other than the Department's processing of this amendment as a matter of fact. There was no written record indicating how or when the GPD was informed of this change, no record of the approval of the PS OPM being sought, no record of the endorsement of the DG GPD, and no record of the Consultant Architect being engaged to revalue this site.

#### *On the Identification of Properties to be Exchanged*

3.4.28 Based on the limited documented information retained by the GPD with respect to how properties were identified for subsequent exchange by Government, the NAO established that at least two persons were involved in this process of identification, that is, the DEM and Gaffarena.

3.4.29 In the case of the latter, written replies received by this Office, not provided under oath, indicated that Gaffarena had identified the properties, yet failed to specify how and who at the GPD was informed of his selection. The manner of identification, as claimed by Gaffarena, was scant of detail. In essence, Gaffarena stated that the land at Klawura tal-Handaq was already leased to him, while the shop in Manwel Dimech Street, Sliema was located beneath another property owned by him. Justification cited with regard to the site at Ta' Kandja, Siġġiewi was that the site was in his uncle's possession. Here, the NAO presumes that Gaffarena was referring to the illegal occupation of the site by a family relative of Gaffarena's, who, according to GPD records, had been squatting on this public land since 1992. Finally, with respect to the site at Baħar iċ-Ċagħaq, Gaffarena claimed that this land was indicated to him by an official from the private secretariat of the then PS for Revenue and Land. No supporting documentation was provided by Gaffarena to the NAO to substantiate this claim. As indicated in paragraph 2.3.17, Gaffarena had in fact expressed interest in acquiring the property for recreational purposes on 20 April 2009; however, this request was refused on 23 September 2009, with the GPD citing the fact that it was already leased to third parties. This exchange was the only interface between Gaffarena and the GPD (when forming part of the portfolio of the PS for Revenue and Land) recorded in the Department's file.



- 3.4.30 Information obtained from the DEM following an interview held with this Office was somewhat inconclusive, largely due to the inconsistencies in replies provided to the NAO. Initially, the DEM claimed that he was unsure whether Gaffarena spoke to him regarding the properties he intended to exchange for his one-fourth undivided share of 36 Old Mint Street; however, the DEM was certain that it was Gaffarena who had identified the properties. Later during this interview, the DEM categorically denied any involvement in the process and maintained that his role in this matter was limited to requesting valuations.
- 3.4.31 When confronted with the fact that valuations for the properties to be exchanged were commissioned by the Department in a staggered manner and that this indicated that Gaffarena was informing the DEM of the properties he intended to exchange in a correspondingly staggered manner, the DEM confirmed that the NAO's understanding was correct.
- 3.4.32 Consistent with that stated by Gaffarena was the DEM's understanding of how the land at Klawura tal-Handaq and the site at Ta' Kandja, Siġġiewi were identified by Gaffarena. Here, the DEM referred to the fact that the former was leased to Gaffarena while the latter was occupied by a relative of Gaffarena's. It is assumed that in the latter case, the DEM was referring to the illegal occupation of the site, as documented in the GPD's records.
- 3.4.33 No direct reference was made to the shop situated in Manwel Dimech Street, Sliema. With regard to the land at Baħar iċ-Ċaġħaq, although no further details were provided with respect to how the site was first identified, the DEM provided an element of understanding as to how the dimensions of the site were extended a few weeks prior to the signing of the deed. The DEM stated that Gaffarena had indicated that the land had no road access due to the widening of the Salina Coast Road and therefore required alternative arrangements. Further commenting in this regard, the DEM indicated that Transport Malta would also probably have objected to the property being accessed from this arterial road.

**Table 1: Timeline relating to the valuation of 36 Old Mint Street, Valletta and properties exchanged**

Date	Development
28 July 2014	Gaffarena expressed willingness to exchange 36 Old Mint Street with Government land
31 July 2014	Minute by DEM presenting Gaffarena's case
11 August 2014	PS OPM issued approval for the proposed exchange
11 August 2014	GPD commissioned Consultant Architect to value 36 Old Mint Street
12 August 2014	Consultant Architect submitted valuation of 36 Old Mint Street
29 August 2014	GPD commissioned Consultant Architect to value land at Klawura tal-Handaq, Qormi
4 September 2014	Consultant Architect submitted valuation of land at Klawura tal-Handaq, Qormi
29 September 2014	Consultant Architect submitted valuation of the site at Ta' Kandja, Siġġiewi
8 October 2014	GPD commissioned GPD Architect to value a shop in Manwel Dimech Street, Sliema
30 October 2014	GPD Architect submitted valuation of the shop in Manwel Dimech Street, Sliema
6 November 2014	GPD commissioned Consultant Architect to value a site at Baħar iċ-Ċaġħaq
18 November 2014	Consultant Architect submitted valuation of the site at Baħar iċ-Ċaġħaq
24 November 2014	Minute by DEM presenting properties to be exchanged
25 November 2014	DG GPD approved exchange
25 November 2014	PS OPM approved exchange
12 December 2014	Property drawings related to site at Baħar iċ-Ċaġħaq were revised by GPD
21 December 2014	Consultant Architect submitted revised valuation of the site at Baħar iċ-Ċaġħaq

3.4.34 To recap, the major developments registered with respect to the valuation of the property at 36 Old Mint Street, as well as those exchanged as part compensation due to Gaffarena, are captured in Table 1. This timeline serves to summarise salient events relating to the valuation processes undertaken by the GPD, exclusively focusing on developments registered in this respect. Needless to say, matters relating to this and other aspects of the expropriation process did emerge in the interim, which issues are dealt with in the ensuing section.

### 3.5 Issues Resulting from the Valuations

3.5.1 The series of valuations prepared with respect to 36 Old Mint Street and the properties exchanged by Government culminated in the minute prepared by the DEM on 24 November 2014. Here, the approval of the DG GPD was sought regarding the expropriation of a one-fourth undivided share compensated by means of exchange with four government properties (paragraph 3.4.1 refers). Although the DG GPD and PS OPM approved this transaction on 25 November 2014, the Assistant Director Contracts GPD expressed an element of reservation.

3.5.2 On 26 November 2014, the Assistant Director Contracts GPD drew the attention of the DG GPD as to whether the course of action being pursued by the Department was advisable. The Assistant Director Contracts GPD stated that in order for the Department to proceed with the proposed exchange in accordance with applicable legislation, the GPD would have to expropriate the privately-owned property. Reference was made to the fact that the GPD was not in a financial position to acquire the whole property, since it was valued at €3,290,000 and funds corresponding to this amount would have to be deposited in a bank account should the entire property be expropriated. The Assistant Director Contracts GPD concluded her minute to the DG GPD by enquiring whether the recommended course of action, that is, the acquisition of a one-fourth undivided share, was advisable.

3.5.3 In response, also dated 26 November 2014, the DG GPD informed the Assistant Director Contracts GPD that the property was occupied by a government entity and had been occupied by various others in the past. The relevance of this statement to queries raised by the Assistant Director Contracts GPD remained unclear to the NAO. More telling was the subsequent part of the response provided by the DG GPD, where he indicated the following, *'It is requested that we acquire the 1/4 share and when funds are available in future, the remaining shares are to be considered.'*

3.5.4 Later on 26 November 2014, a GPD official requested the Consultant Architect to submit a soft copy of his valuation of the property at 36 Old Mint Street. This was to be transposed on a GPD letterhead, referred for his signature and eventually attached to the President's Declaration sanctioning the expropriation. The GPD official explained that the valuation was to address the entire property and the one-fourth undivided share, as had in fact been indicated in the Consultant Architect's submission. Copied in this email was the Assistant Director Contracts GPD.

3.5.5 There was no record retained in the GPD file of the Consultant Architect's reply to the Department's request for a soft copy of his valuation; however, the NAO assumed that the Consultant Architect responded prior to 1 December 2014 and copied the Assistant Director Contracts GPD. For on 1 December 2014, the Assistant Director Contracts GPD requested the Principal Officer GPD to seek further clarification with regard to the Consultant Architect's valuation. Specifically, the Assistant Director Contracts GPD indicated that the Consultant Architect was to review his valuation in light of the fact that the property was leased to government. This was information that the Consultant Architect had not factored in his valuation of the property at 36

Old Mint Street. The Assistant Director Contracts GPD referred to the 1902 contract between the owners of the property and government, and maintained that this should be brought to the Consultant Architect's attention.

- 3.5.6 The Principal Officer GPD conveyed the Assistant Director Contracts GPD's concerns as, on 4 December 2014, the Consultant Architect replied in response to the issue raised. In essence, the Consultant Architect maintained his ground, stating, *'I have been informed that the said property is currently leased. I have also been informed that the term of the lease has expired and rent is being accepted on a year-to-year basis with no formal title. Under these circumstances, I can confirm that the valuation of the freehold market value stated in the valuation mentioned in the foregoing, that is, of €3,290,000 remains valid.'* The Principal Officer GPD subsequently brought the Consultant Architect's reply to the attention of the Assistant Director Contracts GPD.
- 3.5.7 When queried by the NAO on the response provided to the GPD, the Consultant Architect's response was inconsistent with that documented. The Consultant Architect indicated that he had not been informed of this year-to-year arrangement and instead claimed to have formed his opinion following the review of the 1902 lease agreement originally entered into by Government.
- 3.5.8 Notwithstanding the Consultant Architect's reiteration of the value assigned to the property at 36 Old Mint Street, the Assistant Director Contracts GPD raised several points of concern with the Commissioner of Land. On 6 January 2015, the Assistant Director Contracts GPD informed the Commissioner of Land that the GPD was in the process of exchanging property in Valletta, which was leased to government, with four sites in various localities. The Assistant Director Contracts GPD stated that the Valletta property had been valued at €3,290,000 and only a one-fourth share was to be acquired by means of expropriation.
- 3.5.9 In effect, the concerns expressed by the Assistant Director Contracts GPD related to the matter addressed in paragraph 3.5.5, that is, government's lease of the property that was to be expropriated. The Assistant Director referred to the valuation prepared by the Consultant Architect with respect to the Valletta property, specifically citing the fact that the Architect had based the valuation on the argument that the property was being leased to government on a year-to-year basis and therefore the valuation was arrived at as if the premises were vacant. Besides questioning who had furnished the Consultant Architect with this information, the Assistant Director raised the following points, namely that:
- a. the owners of the property had referred the matter to the Rent Regulation Board and judgement had in fact been delivered on 22 April 1980;
  - b. a one-fourth undivided share of the property had been purchased in 2007 for Lm10,000; and
  - c. correspondence submitted on 15 August 2014, by the legal representative of one of the co-owners of the remaining three-fourths share of the property, threatened government with eviction if the conditions of the lease were not complied with, hence acknowledging government as the leaseholder.
- 3.5.10 The Assistant Director Contracts GPD argued that these points confirmed that the owners of the property could not terminate government's lease. Furthermore, in view of the 2008 revision to rent laws, leased commercial properties could be returned vacant to the owners in 2028. The NAO's understanding of that implied by the Assistant Director Contracts GPD was that government's lease of the property, which

by virtue of the revisions to rent laws extended to 2028,<sup>7</sup> was to be factored into the valuation of the property. The Assistant Director Contracts GPD sought to draw the Commissioner of Land's attention to these issues prior to referral for the standard endorsement required in anticipation of the President's declaration to expropriate and requested his comments in this respect.

**3.5.11** The Commissioner of Land embraced the points raised by the Assistant Director Contracts GPD and conveyed the matter to the Consultant Architect on 7 January 2015, simultaneously copying the PS OPM, DG GPD, DEM, Director Joint Office, Director Finance and Administration, Assistant Director Contracts GPD, and the Officer in the PS OPM Secretariat. In this correspondence, the Commissioner of Land referred to statements made by the Consultant Architect in his valuation report. Specifically cited was the following, '*...your valuation is made on the assumption that the premises are not leased. You were subsequently informed (by whom?), that in fact, the premises are currently leased on a year-to-year basis and thereafter you reconfirmed your valuation quoted above. Considering that government is the actual recognised lessee of the premises, I would like to ask you, whether, should the year-to-year lease you were informed about actually mean that the lessor must recognise the lessee as the leaseholder up to 2028, that is, for the next 13 years or so (being a commercial lease and in accordance with the current rent laws), would this affect the valuation you made?*' The Commissioner of Land requested an urgent response to the concerns raised.

**3.5.12** The Consultant Architect replied to the matter raised by the Commissioner of Land on the same day, reiterating that the valuation submitted with respect to the property at 36 Old Mint Street, remained valid. In substantiating this assertion, the Consultant Architect claimed that the transaction being considered was one from a lessor to a lessee. In the Consultant Architect's opinion, the lessor's interest in the property was equivalent to the freehold market value. Elaborating in this regard, the Consultant Architect maintained that, under the current circumstances, there would have been no reason why a lessor would transfer the freehold interest in the property to a lessee at a discount from the market value given the relatively short guaranteed lease period, after which time the lessee's interest in the property would be extinguished. The Consultant Architect argued that his reasoning was grounded in the consideration of the lack of marketability, and consequent diminished value, of the lessee's interest in the property.

## **3.6 The Authorisation Process**

**3.6.1** On 8 January 2015, the Commissioner of Land submitted a minute to the PS OPM, through the DG GPD, stating that the file corresponding to the property at 36 Old Mint Street was being referred for his approval and endorsement. The attention of the PS OPM was specifically drawn to the concerns raised by the Assistant Director Contracts GPD regarding whether government's remaining 13-year lease period (addressed in paragraphs 3.5.5 to 3.5.11) was to be factored in the valuation.

**3.6.2** The Commissioner of Land submitted a second minute to the PS OPM on 8 January 2015, again endorsed by the DG GPD. Here, the Commissioner of Land referred to

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<sup>7</sup> Reference in this respect was presumably being made to Article 1531(I) of the Civil Code (Chapter 16), which states the following: '*Provided that a lease of commercial premises made before the 1st June, 1995 shall in any case terminate within twenty years which start running from the 1st June, 2008 unless a contract of lease has been made stipulating a specific period. When a contract of lease made prior to the 1st June, 1995 for a specific period and which on the 1st January, 2010 the original period "di fermo" or "di rispetto" is still running and such period of lease has not yet been automatically extended by law, then in that case the period or periods stipulated in the contract shall apply. A contract made prior to the 1st June, 1995 and which is to be renewed automatically or at the sole discretion of the tenant, shall be deemed as if it is not a contract made for a specific period and shall as such terminate within twenty years which start running from the 1st June, 2008.*'

previous correspondence exchanged by the PS OPM, DG GPD and DEM, documenting Government's decision to expropriate Gaffarena's one-fourth undivided share of the property at 36 Old Mint Street and compensate same with various government-owned sites. The Commissioner of Land specifically stated that the GPD was to commence expropriation proceedings to acquire a one-fourth undivided share of the block of buildings consisting of premises 36 Old Mint Street, premises 67 to 70 St John Street and premises 47 St Patrick Street, Valletta.

- 3.6.3 Elaborating on this acquisition, the Commissioner of Land indicated that the property was permanently required for use by government, and in terms of the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), the GPD was proposing acquisition through absolute purchase. In this minute to the PS OPM, the Commissioner specified that the Consultant Architect had valued a one-fourth undivided share of the aforementioned block of buildings at a freehold value of €822,500. Finally, the Commissioner sought the approval of the PS OPM for the acquisition of a one-fourth undivided share of the property and, subject to agreement, the PS was to subsequently refer the file to the President for her endorsement. Once the expropriation was approved, the Department of Information (DOI) was to be notified in order to publish the acquisition in the Government Gazette.
- 3.6.4 Despite queries addressed to the Commissioner of Land by the NAO, the reason why the Commissioner submitted two requests for authorisation to the PS OPM in quick succession remained unclear. The Commissioner of Land stated that he did not know why two similar requests for authorisation (albeit bearing different references to documents retained in the GPD file) were made, yet denied discussing the matter with the PS OPM in the interim.
- 3.6.5 The PS OPM duly approved the proposed expropriation on 8 January 2015, and submitted a declaration drafted for the President's approval and signature. The declaration identified the property that was to be expropriated as a one-fourth undivided share of the block of buildings that includes the premises at 36 Old Mint Street, premises 67 to 70 St John Street and premises 47 St Patrick Street, Valletta. The President endorsed the declaration on 12 January 2015, stating that the property was required by the competent authority for a public purpose, in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), and that the acquisition was to be through absolute purchase.
- 3.6.6 The compensation offered for a one-fourth undivided share, based on the valuation of the Consultant Architect, which document was annexed to the declaration, was set at €822,500. Also annexed was a site plan indicating the property that was to be expropriated.
- 3.6.7 The President's declaration, together with the Consultant Architect's report and site plan were referred to the DOI on 14 January 2015 and appeared in The Malta Government Gazette dated 22 January 2015. The Government Gazette notice, bearing reference number 58, was submitted to two local newspapers on 23 January 2015, with instructions issued to publish the President's declaration. The declaration was also sent to the Department for Local Government on 23 January 2015, in which case the GPD indicated that the said declaration was to be posted on the Valletta Local Council's notice board.

## **3.7 The Deed**

- 3.7.1 The deed relating to the expropriation of the first one-fourth undivided share of the property at 36 Old Mint Street was signed on 28 January 2015. The parties to the

transaction were recorded by the Notary GPD, with the Assistant Director Contracts GPD appearing on behalf of the Commissioner of Land and Government, while the counterparty, Mark Gaffarena and Josielle Gaffarena were recognised, in unison, as the 'spouses Gaffarena' (hereinafter referred to as Gaffarena). Cited in this regard was the President's declaration, bearing reference 58 and dated 22 January 2015 (as published in the Government Gazette), by virtue of which Government acquired the property, while acknowledging the right to compensation, as established by the Land Acquisition (Public Purposes) Ordinance (Chapter 88).

- 3.7.2 In the first instance, by virtue of this deed, Gaffarena was selling and transferring under title of exchange with Government, which in turn was agreeing to purchase and acquire under the same title of exchange, the one-fourth undivided share of the perpetual utile dominium and the perpetual annual ground rent of €11.65. As a result of this deed, the parties agreed to terminate the portion of ground rent payable by Government with respect to the share being transacted. In terms of article 13 of the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268), the declared value of the property was €822,500.
- 3.7.3 In the second instance, as a means of counter-exchange, Government assigned and transferred to Gaffarena, under title of exchange, the following immovable properties:
- a. The *directum dominium* and annual temporary non-revisable ground rent of €1.16 corresponding to the premises at 73 Manwel Dimech Street, Sliema. This rent was to expire on 30 June 2016 and the value of the property was established at €65,000.
  - b. The portion of land, which included a number of dilapidated structures of a rural nature, known as 'Tas-Salvatur' and situated in the limits of Ta' Kandja, Siggiewi (at times indicated as located at the limits of Mqabba), comprehensively measuring 5,992 square metres. This land was valued at €165,800.
  - c. The portion of land forming part of the Klawura tal-Handaq, limits of Qormi, measuring approximately 9,980 square metres. This portion of land was valued at €192,810.
  - d. The portion of land in Baħar iċ-Ċagħaq, limits of Naxxar, measuring 3,735 square metres, which included a number of dilapidated structures. This portion of land was valued at €260,000.
- 3.7.4 Indicated in the deed was the condition that the properties were being transferred as is, without any guarantee regarding hidden defects, free and unencumbered with all their rights and appurtenances. In addition, the Government was not guaranteeing the vacant possession of the properties indicated at paragraphs 3.7.3.a and 3.7.3.c. In the eventuality of these properties being occupied by third parties, or if such parties were afforded easement or other rights over the said properties, then Gaffarena would assume all responsibilities in relation to these parties without any right for compensation from Government.
- 3.7.5 The properties intended for exchange, as listed in paragraph 3.7.3, were in aggregate valued at €683,610. As stated in the deed, since the value of the properties to be exchanged was not equal, the Government was to pay Gaffarena €138,890 as a means of balancing the difference in values. Aside from other standard clauses, the deed stipulated that Gaffarena was to pay €20,563 as duty on documents, as well as an additional tax on the sale price, set at eight per cent, which amounted to €65,800.
- 3.7.6 Fees incurred with respect to this deed were to be equally shared between the parties. The balance ultimately paid to Gaffarena was €49,403. This was arrived at by

deducting €20,563 (duty on documents), €65,800 (tax) and €3,124. This latter amount corresponded to apportioned legal fees of €2,890 and searches costing €234.

3.7.7 Other provisions addressed in the deed include considerations relating to instances of possible conflict and arbitration, as well as matters regarding the fair declaration of value. Annexed to the deed were several documents, namely:

- a. a site plan of the property at 36 Old Mint Street bearing reference L.D. 128/84 and marked as document 'A';
- b. a plan of the premises at 73 Manwel Dimech Street, Sliema, including a survey sheet bearing reference P.D. 2014\_697 and marked as document 'B';
- c. a plan of the portion of land known as 'Tas-Salvatur' and situated in the limits of Ta' Kandja, Siggiewi, including a survey sheet bearing reference P.D. 93\_80\_A and marked as document 'C';
- d. a plan of the portion of land forming part of the Klawura tal-Handaq, limits of Qormi, including a survey sheet bearing reference P.D. 2014\_982 and marked as document 'D';
- e. a plan of the portion of land in Baħar iċ-Ċagħaq, limits of Naxxar, including a survey sheet bearing reference P.D. 12\_2004\_A and marked as document 'E';
- f. the legal advice provided by the Notary on the basis of which Gaffarena was recognised as the owner of the property transferred to Government, marked as document 'F'; and
- g. a list of all documents annexed to this deed, marked as document 'X'.

3.7.8 Document 'F' corresponded to the standard form that was to be completed by Gaffarena's lawyer in order to establish ownership of the immovable property subject to expropriation proceedings. This form was completed and signed by the Notary on 5 December 2014 (for reasons of clarity, Gaffarena's Notary completed this form and not the GPD Notary previously referred to). In so doing, the Notary declared that she had established ownership of one-fourth of an undivided share of the indicated property while bearing in mind the comments outlined in the root of title, annexed to the document and marked as document 'X'. In this sense, the Notary confirmed:

- a. that no other person, other than the persons mentioned, have any claim to any real or personal right on the said property; and
- b. that no hypothecs, privileges, burdens, servitudes and personal rights affect the property other than those indicated under Sections D and F of the document.

3.7.9 Section D, titled '*Other real and personal rights*', comprised comments relating to pious and other burdens, as well as to the lease of the property. In the latter case, the Notary indicated that the property was leased and subject to recognition rent payable by the Government. Furthermore, with regard to pious and other burdens encumbering the property, dues included four Liri per annum for the feast of St Anthony of Padova and '*qantarejn ħobż*' valued at two Liri per annum. On the other hand, in Section F, titled '*Liabilities*', the Notary indicated that the one-fourth undivided share to be acquired was not securing any obligations.

3.7.10 In turn, annexed to this document were a number of other records rendering evident Gaffarena's ownership of the property that was to be expropriated. These are listed hereunder:

- a. a deed, dated 18 December 2007, wherein the Galea share of ownership of the property at 36 Old Mint Street was transferred to Gaffarena. This deed, as recorded by Notary Dr Angela Bezzina (hereinafter referred to as the Notary),

related to the transfer of a one-fourth undivided share from the Galea family to Gaffarena against payment of €23,294. The deed was marked as document 'A';

- b. a deed, dated 22 November 2006, tracing how the Galea share of ownership of the property at 36 Old Mint Street was transferred between the co-heirs. This deed, as recorded by the Notary, valued the one-fourth undivided share of the property at Lm1,000 (€2,329). The deed was marked as document 'B';
- c. a deed in the records of Notary Giovanni Azzopardi, dated 15 May 1939, listing an inventory of assets pertaining to Raffaele Psaila, among which was the property at 36 Old Mint Street. These assets were bequeathed to the heirs of Raffaele Psaila, namely, the Bonello, Cefai, Mercieca and Galea families, with the latter bearing particular importance in this case. This deed was marked as document 'C';
- d. an agreement entered into on 5 October 1953, in the presence of Notary Dr Giuseppe Sammut, was signed by the heirs of Raffaele Psaila, here represented as the Bonello, Cefai, Galea and Mercieca families. By virtue of this deed, part of Raffaele Psaila's assets were apportioned among the four aforementioned families. However, another part of Raffaele Psaila's assets were to be retained in communion, with the property at 36 Old Mint Street being one such asset. This agreement was marked as document 'D'; and
- e. referred to as document 'X', this record served to outline the root of the title solely and exclusively related to the one-fourth undivided share in the property at 36 Old Mint Street as acquired by Gaffarena from the Galea family. This document was signed by the Notary.

3.7.11 The final record retained in the GPD file corresponding to the expropriation of the first one-fourth undivided share of the property at 36 Old Mint Street was a form signed by Notary GPD, titled '*Formola A*'. This form, together with a Land Registry plan corresponding to the expropriated property, was submitted on 29 January 2015, that is, in accordance with that stipulated in article 22(8) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88). This article tasks the competent authority, here understood to be the Commissioner of Land, to ensure that the expropriated property is registered in accordance with the Land Registration Act (Chapter 296) within three months from the issue of the President's declaration. In this case, the relevant registration was well within the three-month timeframe.

## 3.8 The Expropriation at a Glance

3.8.1 The registration of the expropriated property as government property, documents corresponding to which were filed on 9 February 2015, represents the final record relating to the expropriation of Gaffarena's first undivided share of 36 Old Mint Street. A week later, that is, on 16 February 2015, the GPD received another offer submitted by Gaffarena, again proposing the transfer of a second one-fourth undivided share of the Old Mint Street property. This matter is dealt with in the next chapter; however, a brief recap of the salient developments relating to the first expropriation follows.

3.8.2 On 28 July 2014, Gaffarena informed the DG GPD that he was the co-owner of the property at 36 Old Mint Street, which was being leased by government and indicated his willingness to release his share of the property if compensated by means of exchange with other agricultural properties held by government. A few days later, that is, on 31 July 2014, the DEM submitted a minute to the DG GPD, citing that he considered the transaction a wise one. This minute was endorsed by the DG GPD and PS OPM on 11 August 2014, following which, the DEM started the process of valuations.



- 3.8.3 The property at 36 Old Mint Street was valued at €3,290,000 on 12 August 2014, with the one-fourth undivided share proposed for exchange by Gaffarena valued at €822,500. Over the ensuing weeks, Gaffarena identified several properties intended for exchange as means of compensation, with land at Klawura tal-Handaq, Qormi identified and valued in late August 2014, the site at Ta' Kandja, Siggiewi in late September 2014, a shop in Sliema in October 2014, and the site in Baħar iċ-Ċagħaq in November 2014.
- 3.8.4 Issues relating to the valuation of the Valletta property arose between November 2014 and January 2015; however, these ultimately bore no impact on the expropriation process. In fact, on 8 January 2015, the Commissioner of Land submitted a minute to the PS OPM, through the DG GPD, stating that the file corresponding to the property at 36 Old Mint Street was being referred for his approval and endorsement. The PS OPM duly approved the proposed expropriation on 8 January 2015, and submitted a declaration drafted for the President's approval and signature. The President endorsed the declaration on 12 January 2015, stating that the property was required by the competent authority for a public purpose, in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), and that the acquisition was to be through absolute purchase.
- 3.8.5 The deed relating to the expropriation of the first one-fourth undivided share of the property at 36 Old Mint Street was signed on 28 January 2015. In exchange for this one-fourth undivided share, Government transferred four properties to Gaffarena, which in aggregate were valued at €683,610. The difference resulting from the €822,500 valuation of the one-fourth undivided share, that is, €138,890, was to be paid to Gaffarena; however, following deductions relating to duty, tax and legal fees, the sum ultimately paid was that of €49,403.

Chapter 4  
Expropriation of the  
Second One-Fourth Undivided Share

## Chapter 4 – Expropriation of the Second One-Fourth Undivided Share

### 4.1 A Proposal to Sell another One-Fourth Undivided Share and Government's Response Thereto

- 4.1.1 A letter signed by Gaffarena and dated 13 February 2015 was received by the GPD on that same day. This letter was not addressed to any particular public official, nor was it addressed to the Department. The only reference borne by this correspondence was indicated in its subject caption, which read '*Regarding 36 Old Mint Street Valletta (ref. L108/84).*' In written comments submitted to the NAO, Gaffarena indicated that he did not know to whom this letter should have been addressed; a hardly credible statement for reasons rendered amply evident throughout this report.
- 4.1.2 In this correspondence, Gaffarena informed the GPD that he was the owner of another one-fourth undivided share of the property at 36 Old Mint Street. Referring to the previous transfer to Government of the first one-fourth undivided share, Gaffarena indicated his willingness to sell his remaining share of the property, thereby resulting in Government assuming ownership of a one-half undivided share of the Valletta premises.
- 4.1.3 Gaffarena's correspondence was filed on 16 February 2015 and presumably referred to the DEM, as his intervention on the matter ensued. Here, the DEM submitted a minute for the attention of the PS OPM through the DG GPD. The DEM stated the following, '*Reference is made to minute 118 and to your approval at red 119.<sup>8</sup> Mr Marco Gaffarena is offering to sell another one-fourth share of this property to Government. If you approve we shall start the process for the acquisition of this one-fourth share.*' The NAO was unable to establish when this minute by the DEM was recorded, as the date was not specified and corresponding file movements, which could have served as a possible indication, were not registered. Notwithstanding this, an approximate indication is afforded by the DG GPD, who agreed with that proposed by the DEM on 27 February 2015; implying that the DEM's minute must have been dated prior to or on 27 February 2015.
- 4.1.4 The PS OPM issued his approval on 2 March 2015, indicating that the GPD was to ensure that the values were reasonable. Elaborating further in this respect, the PS OPM stated that this acquisition by Government was sensible as it would then own

<sup>8</sup> Minute 118 corresponds to the views expressed by the DEM in response to Gaffarena's first offer to exchange a one-fourth undivided share. Here, the DEM advocated the wisdom of such a transaction. In turn, red 119 corresponds to the PS OPM's endorsement of the DEM's proposal.

half of the Valletta property. On receipt of the PS OPM's approval, the DEM referred the matter to the Assistant Director Contracts GPD on 3 March 2015 to initiate proceedings with respect to the publication of the President's declaration. These instructions were submitted through the Commissioner of Land, who duly endorsed.

- 4.1.5 Of interest in this respect was a comment put forward by the DG GPD, when queried about the lack of justification recorded in the Department's file substantiating Government's decision to expropriate this one-fourth undivided share. In light of the absence of documentation, the DG GPD was asked whether he had discussed this expropriation with the PS OPM, DEM or any other person. The DG GPD stated that he had not discussed this second expropriation with the PS OPM or DEM. Moreover, the DG GPD indicated that the DEM had discussed this matter directly with the PS OPM.

## 4.2 The Valuation of Properties to be Exchanged

- 4.2.1 Subsequent to this, on 12 March 2015, the Assistant Director Contracts GPD referred a minute to the Commissioner of Land requesting his authorisation of matters relating to this second expropriation. In view of its central importance, the minute by the Assistant Director Contracts GPD is reproduced hereunder:

*'Parliamentary Secretary has approved the expropriation/acquisition of an undivided share of the property in Valletta, file ref: L108/84 (attached). The owners of the property would like to exchange the compensation due to them, amounting (as per previous valuation, where an equivalent share was acquired) to €822,500 with:*

- a. *Government owned agricultural land at Żebbuġ area 26,220m<sup>2</sup>, leased to them. This land was valued at €375,000 (file ref: A 1242/97)*
- b. *Government owned agricultural land at Baħar iċ-Ċagħaq, area 1,663m<sup>2</sup>. This land was valued at €70,000 (file ref: L57/2015)*

*In terms of clause 13 of article 3 of the Schedule of the Disposal of Government Land Act, the proposed exchange is possible. The owner will be paid the amount of €377,500.*

*You may wish to approve that the contract of exchange is concluded immediately after the privately owned land is expropriated (i.e. within a 14 day period) and therefore as in previous similar cases, funds as per value of the expropriated property are not deposited in a bank account.'*

- 4.2.2 Although not addressed to the PS OPM, the Assistant Director Contracts GPD's minute was approved by the PS on that same day, that is, 12 March 2015. In issuing this approval, the PS OPM stated, *'Given that person we are expropriating from is the same person to whom we are transferring land in exchange, and given also that amounts fall within the bracket stipulated by law, we may proceed accordingly; provided that time lapse does not exceed that of 14 days and that expropriation compensation rights legally rests at origin in the same person with whom we are exchanging immovable property.'*

- 4.2.3 It is pertinent to note that the Commissioner of Land did in fact issue his approval at a later stage in the process. A minute by the DG GPD, bearing no specified date, referred the minutes recorded by the Assistant Director Contracts GPD and PS OPM to the Commissioner of Land. In response, on 24 March 2015, the Commissioner of

Land granted his approval; however, by this date, a number of notable developments had been registered and indeed, this coincided with the date of the President's declaration.

- 4.2.4 In seeking to understand the manner by which the properties selected for exchange were identified and valued, the NAO directed such enquiries to the officials involved while also reviewing the GPD files corresponding to such properties. The following is an account of information recorded in these files.

#### *Land at Ta' Ħarram, Żebbuġ*

- 4.2.5 It is of interest to note that the land at Żebbuġ, identified for exchange in this second expropriation, was valued during the period corresponding to the first expropriation. In fact, on 29 August 2014, the Principal Officer GPD, acting on behalf of the Commissioner of Land, requested the Consultant Architect to undertake a valuation of two portions of land referred to as the Raba' ta' Ħarram, sive ta' Ħal Mula, situated in the limits of Żebbuġ, Malta. The land in question measured approximately 26,220 square metres and the valuation was to be carried out as per current market values. Also indicated was the fact that the property was required for exchange purposes. The Principal Officer GPD informed the Consultant Architect that the valuation was to be submitted by not later than 5 September 2014.
- 4.2.6 The Consultant Architect's valuation, dated 31 August 2014, was filed by the Principal Officer GPD on 4 September 2014. The freehold market value of the land in Żebbuġ was set at €375,000. The two portions of land, classified as agricultural land, measured 2,150 square metres and 24,070 square metres, tallying perfectly with the approximate measurements cited by the Principal Officer GPD. Other information provided in the valuation report indicated that the land was situated in an ODZ location and that it was subject to enforcement notice 00184/2003. The Consultant Architect noted that these two considerations depreciated the value of the land.
- 4.2.7 The NAO noted that the Consultant Architect failed to specify whether a site inspection had been carried out, and merely indicated that no photographs had been taken. In response to the questions '*Is the land currently occupied under a title of emphyteusis?*' and '*Is the land currently occupied under a title of lease?*', which formed part of the valuation report, the Consultant Architect again specified that he assumed that this was not the case.
- 4.2.8 The valuation methodology employed by the Consultant Architect was the comparative method. The Consultant Architect stated that comparative freehold prices for agricultural land, when taking into consideration the depreciative factors, average at €14 per square metre. Therefore, citing a footprint area of 26,270 square metres, the resultant value was that of €367,780, rounded up to €375,000.
- 4.2.9 Aside from the email sent by the Principal Officer GPD requesting the valuation of the land in Żebbuġ and the corresponding report prepared by the Consultant Architect, the NAO noted no other documents or correspondence substantiating and explaining how the selection of this site for exchange purposes came to be.

#### *Another Site at Baħar iċ-Ċagħaq, limits of Naxxar*

- 4.2.10 The land at Baħar iċ-Ċagħaq, which was to be exchanged as part of this second expropriation, was situated immediately adjacent to the other site at Baħar iċ-Ċagħaq that featured in the first expropriation. The NAO noted that no documented record indicating the engagement of the Consultant Architect to value this property was

retained by the GPD. This anomalous situation was rendered more perplexing when one considers that the Consultant Architect's valuation was dated 16 February 2015. This was a mere three days after the GPD had received Gaffarena's letter proposing the transfer of another one-fourth undivided share. The implication, obvious as it is, is that this property was identified as a possible site for exchange and its relative valuation sought with the GPD failing to retain any form of documentation detailing this sequence of events. Furthermore, all of this was done without any authorisation, as the DG GPD and PS OPM were yet to sanction the proposed expropriation. This would happen two weeks and three weeks later, respectively. Although the valuation was received by the GPD on 3 March 2015, the NAO's concerns remain valid, as the focus here is on when the valuation was commissioned and not when the valuation was received.

4.2.11 The valuation prepared by the Consultant Architect estimated the value of the land and building on a freehold basis at €70,000. In the one-page report prepared by the Consultant Architect, it was stated that the land was situated in an ODZ area, yet did not classify it as agricultural land, as was the case in the valuation of the adjacent site. Furthermore, the Consultant Architect indicated that the valuation took into consideration the structure located on the land; however, contrary to previous valuations carried out by the same Architect, the specific method or rate applied to value the said structure was not indicated.

4.2.12 Similar shortcomings were noted by the NAO with respect to the valuation of the land, as aside from details regarding the footprint of the area, cited as 1,663 square metres, no specific information outlining the valuation method utilised and rates applied were indicated. The Consultant Architect indicated that the valuation took into account the characteristics and locality of the site, the structure thereon constructed, land use zoning in the Central Malta Local Plan and other contributory factors from assessments carried out; however, no specific details were provided as to how these factors influenced the final valuation.

4.2.13 Finally, again taking into account the characteristics and locality of the site, the structure thereon constructed, land use zoning in the Central Malta Local Plan and other contributory factors from assessments carried out, the Consultant Architect estimated a rental value of €2,200 per annum. The Consultant Architect indicated that the rate was to be reviewed every five years, in accordance with the cost of living index.

#### *Regarding the Identification of Properties Exchanged*

4.2.14 Based on the limited documented information retained by the GPD with respect to how properties were identified for subsequent exchange by Government, the NAO again established that two persons were involved in this process of identification, that is, the DEM and Gaffarena.

4.2.15 In written replies received by this Office, not provided under oath, Gaffarena indicated that he had proposed the properties eventually acquired through exchange with his second one-fourth undivided share of 36 Old Mint Street. Gaffarena claimed that he could not recall whom he had spoken to when identifying property for exchange; however, when queried about whom he met during his recurring presence at the GPD, Gaffarena indicated the DEM, Assistant Director Contracts GPD and the GPD Notary. Given the limited involvement of the latter two officials, restricted to the final stages of the expropriation process, the NAO is of the understanding that Gaffarena's interaction with the DEM related to the process of valuing properties identified for exchange.

- 4.2.16 Details relating to the manner by which such properties were identified, as claimed by Gaffarena, were scant. With regard to the first property that was to be acquired in exchange, Gaffarena maintained that the parcel of land known as the Raba ta' Ħarram was held by him on lease. Here, the NAO presumes that Gaffarena was referring to the private agreement entered into between the previous tenant and himself, apparently dated 10 July 2012, yet brought to the GPD's attention in July 2014, a few weeks prior to the commencement of the expropriation proceedings. Of particular interest was the fact that the DEM instructed another GPD official to recognise Gaffarena as the new tenant, while clause 3 of the original agreement between the previous tenant and the Curia expressly prohibited such arrangements. More details relating to this matter are presented in paragraph 2.3.28.
- 4.2.17 On the fact that the valuation was dated 31 August 2014, that is, prior to the commencement of proceedings relating to the second expropriation, Gaffarena indicated that he had been informed that if the land in Żebbuġ was included in the first exchange, the difference in value between the properties to be exchanged would exceed the 30 per cent threshold. The DEM put forward similar comments when claiming that Gaffarena was considering the inclusion of this property as part of the exchange relating to the first expropriation, hence explaining the date of the GPD's valuation. According to the DEM, Gaffarena had indicated that this property was to be eliminated from the exchange due to its substantial value.
- 4.2.18 Although Gaffarena and the DEM were consistent in explanations provided regarding the date of the Raba ta' Ħarram valuation, the same cannot be said with respect to whether Gaffarena was informed of the values assigned to the properties that were proposed for exchange. While Gaffarena stated that he was not informed of the value of the properties exchanged, the statement made by the DEM contradicts this, as Gaffarena's decision to drop this property from the first exchange was based on its substantial value, hence indicating knowledge of the value of at least one property intended for exchange.
- 4.2.19 With respect to the second property that was to be exchanged, that is, the land at Baħar iċ-Ċaġħaq, Gaffarena indicated that he had selected this property due to it being adjacent to another plot of land of his. The NAO notes that the adjacent land here referred to was in fact transferred to Gaffarena as part compensation in the expropriation of the first one-fourth undivided share of the Valletta property.

### 4.3 The Authorisation Process Revisited

- 4.3.1 On 17 March 2015, the Commissioner of Land sought the authorisation of the PS OPM with regard to the acquisition of another one-fourth undivided share of the property at 36 Old Mint Street. This minute was submitted through the DG GPD, who duly provided his endorsement. In essence, the Commissioner of Land referred to previous minutes exchanged by the PS OPM, DG GPD and DEM, documenting Government's decision to expropriate Gaffarena's second one-fourth undivided share of the Valletta property. The Commissioner of Land specifically stated that the GPD was to commence expropriation proceedings to acquire a one-fourth undivided share of the block of buildings consisting of premises 36 Old Mint Street, premises 67 to 70 St John Street and premises 47 St Patrick Street, Valletta.
- 4.3.2 As was the case with respect to the first expropriation, the Commissioner of Land indicated that the property was permanently required for use by government, and in terms of the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), the GPD was proposing acquisition through absolute purchase. Reference was made to the valuation carried out by the Consultant Architect, which established that

the freehold value of a one-fourth undivided share of the aforementioned block of buildings was that of €822,500. It was in this context that the Commissioner of Land sought the approval of the PS OPM for the acquisition of a one-fourth undivided share of the property and, subject to agreement, the PS was to subsequently refer the file to the President for her endorsement. Once the expropriation was approved, the DOI was to be notified in order to publish the acquisition in the Government Gazette.

- 4.3.3 The PS OPM endorsed this acquisition on 18 March 2015 and submitted a declaration drafted for the President's approval and signature. The declaration identified the property that was to be expropriated as a one-fourth undivided share of the block of buildings that included the premises at 36 Old Mint Street, premises 67 to 70 St John Street and premises 47 St Patrick Street, Valletta. The President endorsed the declaration on 24 March 2015, stating that the property was required by the competent authority for a public purpose, in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), and that the acquisition was to be through absolute purchase.
- 4.3.4 The compensation offered for a one-fourth undivided share, based on the valuation of the Consultant Architect, which document was annexed to the declaration, was set at €822,500. Although reference was made to a signed site plan indicating the property that was to be expropriated as an annex to the President's declaration, this could not be traced in the relevant GPD file.
- 4.3.5 The President's declaration, together with the Consultant Architect's report and site plan were referred to the DOI on 25 March 2015 and appeared in The Malta Government Gazette dated 8 April 2015. The Government Gazette notice, bearing reference number 287, was submitted to two local newspapers on 9 April 2015, with instructions issued to publish the President's declaration. The declaration was also sent to the Department for Local Government on an unspecified date in April 2015, in which case the GPD indicated that the said declaration was to be posted on the Valletta Local Council's notice board.

#### 4.4 The Second Deed

- 4.4.1 The deed relating to the expropriation of another one-fourth undivided share of the property at 36 Old Mint Street was signed on 10 April 2015. The parties to the transaction were recorded by the Notary GPD, with the Assistant Director Contracts GPD appearing on behalf of the Commissioner of Land and Government, while the counterparty, Mark Gaffarena and Josielle Gaffarena were recognised, in unison, as the 'spouses Gaffarena' (hereinafter referred to as Gaffarena). Cited in this regard was the President's declaration, bearing reference 287 and dated 8 April 2015 (as published in the Government Gazette), by virtue of which Government acquired the property, while acknowledging the right to compensation, as established by the Land Acquisition (Public Purposes) Ordinance (Chapter 88).
- 4.4.2 In the first instance, by virtue of this deed, Gaffarena was selling and transferring under title of exchange with Government, which in turn was agreeing to purchase and acquire under the same title of exchange, the one-fourth undivided share of the perpetual utile dominium and the perpetual annual ground rent of €11.65. Similar to the case of the expropriation of the first one-fourth undivided share, as a result of this deed, the parties agreed to terminate the portion of ground rent payable by Government with respect to the share being transacted. In terms of article 13 of the Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268), the declared value of the property was €822,500.



- 4.4.3 In the second instance, as a means of counter-exchange, Government assigned and transferred to Gaffarena, under title of exchange, the following immovable properties:
- a. The portion of land in Baħar iċ-Ċagħaq, limits of Naxxar, measuring approximately 1,663 square metres, which includes a number of dilapidated structures. This portion of land was valued at €70,000.
  - b. Two portions of land known as ‘Raba ta’ Ħarram’, also known as ‘Ta’ Ħal Mula’, situated in the limits of Żebbuġ, Malta, which portions of land had an overall value of €375,000:
    - i. one measuring approximately 2,150 square metres; and
    - ii. another measuring approximately 24,073 square metres.
- 4.4.4 Indicated in the deed was the condition that the properties were being transferred as is, without any guarantee regarding hidden defects, free and unencumbered with all their rights and appurtenances. In addition, the Government was not guaranteeing the vacant possession of the properties indicated at paragraphs 4.4.3.b.i and 4.4.3.b.ii. In the eventuality of these properties being occupied by third parties, or if such parties were afforded easement or other rights over the said properties, then Gaffarena would assume all responsibilities in relation to these parties without any right to compensation from Government.
- 4.4.5 The properties intended for exchange, as listed in paragraph 4.4.3, were in aggregate valued at €445,000. As stated in the deed, since the value of the properties to be exchanged was not equal, Government was to pay Gaffarena €377,500 as a means of balancing the difference in values. Aside from other standard clauses, the deed stipulated that Gaffarena was to pay €20,563 as duty on documents, as well as an additional tax on the sale price, set at five per cent, which amounted to €41,125.<sup>9</sup> Fees incurred with respect to this deed were to be equally shared between the parties. The balance ultimately paid to Gaffarena was €312,923. This was arrived at by deducting €20,563 (duty on documents), €41,125 (tax) and €2,890 (legal fees).
- 4.4.6 Other provisions addressed in the deed include considerations relating to instances of possible conflict and arbitration, as well as matters regarding the fair declaration of value. Annexed to the deed were several documents, namely:
- a. a site plan of the property at 36 Old Mint Street, bearing reference L.D. 128/84 and marked as document ‘A’;
  - b. a plan of the portion of land in Baħar iċ-Ċagħaq, limits of Naxxar, including a survey sheet bearing reference P.D. 2015\_0212 and marked as document ‘B’;
  - c. a plan of one of the portions of land known as ‘Raba ta’ Ħarram’, also known as ‘Ta’ Ħal Mula’, situated in the limits of Żebbuġ, Malta, including a survey sheet bearing reference P.D. 2015\_0211 and marked as document ‘C’;
  - d. a plan of another portion of land known as ‘Raba ta’ Ħarram’, also known as ‘Ta’ Ħal Mula’, situated in the limits of Żebbuġ, Malta, including a survey sheet bearing reference P.D. 2015\_0215 and marked as document ‘D’; and
  - e. the legal advice provided by the Notary on the basis of which Gaffarena was recognised as the owner of the property transferred to Government, here marked as document ‘E’.
- 4.4.7 Document ‘E’ corresponded to the standard form that was to be completed by Gaffarena’s lawyer in order to establish ownership of the immovable property subject to expropriation proceedings. This form was completed and signed by the Notary on

<sup>9</sup> The difference in tax levied was correctly established, as properties transferred before five years from the date of acquisition were to be charged a final withholding tax of five per cent and not the standard rate of eight per cent.

24 March 2015. In so doing, the Notary declared that she had established ownership of one-fourth of an undivided share of the indicated property while bearing in mind the comments outlined in the root of title, annexed to the document and marked as document 'X'. In this sense, the Notary confirmed:

- a. that no other person, other than the persons mentioned, have any claim to any real or personal right on the said property; and
- b. that no hypothecs, privileges, burdens, servitudes and personal rights affect the property other than those that may be indicated under Sections D and F.

4.4.8 Section D, titled '*Other real and personal rights*', comprised comments relating to the lease of the property. Here, the Notary indicated that the property was leased and subject to recognition rent payable by the Government. Furthermore, the Notary claimed that no other details as to whether the property was let or sub-let to third parties were available. On the other hand, in Section F, titled '*Liabilities*', the Notary indicated that the one-fourth undivided share to be acquired was not securing any obligations.

4.4.9 In turn, appended to this document were a number of other records intended to render evident Gaffarena's ownership of the property that was to be expropriated. These are listed hereunder:

- a. a death certificate of a member of the Mercieca family together with testamentary dispositions recorded in the will as per the records of Notary Dr George Bonello dated 6 January 1984;
- b. another will pertaining to the same member of the Mercieca family as per the records of Notary Dr Patrick Critien dated 27 May 1994;
- c. another will pertaining to the same member of the Mercieca family as per the records of Notary Dr Edward Flores dated 17 June 1999, where his children were nominated as his sole universal heirs;
- d. a deed of declaration *causa mortis* of the aforementioned Mercieca family member as per the records of Notary Dr Marco Farrugia dated 13 January 2005; and
- e. referred to as document 'X', this record served to outline the root of the title solely and exclusively related to the one-fourth undivided share in the property at 36 Old Mint Street, as acquired by Gaffarena from the Mercieca family. This document was signed by the Notary.

4.4.10 The NAO noted that document 'X', as drafted by the Notary, makes reference to document 'A', which was the deed between Gaffarena and the Mercieca family whereby the one-fourth undivided share that featured in the second expropriation was transferred to Gaffarena. This deed, dated 26 February 2015, was not found in the GPD file and was sourced by the NAO through other means.

4.4.11 The date of this deed assumes an element of significance, particularly when one bears in mind that Gaffarena originally communicated his willingness to transfer this one-fourth undivided share to Government on 13 February 2015. In so doing, Gaffarena had effectively offered to sell his second one-fourth share of the property prior to actually acquiring it. Also of concern was the fact that the valuations of both properties exchanged as compensation for the Valletta property were completed before Gaffarena had acquired this second share. That relating to the Raba ta' Ħarram site may somehow be linked to the series of valuations undertaken with respect to the first quarter; however, there can be no reasonable explanation justifying the timing of the valuation of the site at Baħar iċ-Ċagħaq.

4.4.12 The final record retained in the GPD file corresponding to the property at 36 Old Mint Street was a form signed by the Notary GPD, titled '*Formola A*'. This form, together with a Land Registry plan corresponding to the expropriated property was submitted on 13 April 2015, that is, in accordance with that stipulated in article 22(8) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88). This article tasks the competent authority, here understood to be the Commissioner of Land, to ensure that the expropriated property is registered in accordance with the Land Registration Act (Chapter 296) within three months from the issue of the President's declaration. In this case, the relevant registration was effected well within the three-month timeframe.

## 4.5 The Second Expropriation at a Glance

4.5.1 The second expropriation of a one-fourth undivided share of the property at 36 Old Mint Street was concluded in less than two months, as Gaffarena's letter indicating his willingness to transfer this share was dated 13 February 2015, while the deed finalising the transaction was dated 10 April 2015. Hereunder is a summary of the main events highlighting the manner by which this expropriation unfolded.

4.5.2 As stated, Gaffarena's proposed sale of his second one-fourth undivided share was dated 13 February 2015, which intention was conveyed for authorisation by the DEM on an unspecified date, yet presumably prior to or on 27 February 2015. For on this date and in response to that noted by the DEM, the DG GPD endorsed the acquisition of this one-fourth undivided share. The approval of the PS OPM followed shortly thereafter, in fact dated 2 March 2015. It is pertinent to note that Gaffarena actually acquired this second one-fourth undivided share on 26 February 2015, that is, on the eve of the DG GPD's endorsement and a week prior to the PS OPM's authorisation to expropriate. Moreover, one must note that Gaffarena proposed the transfer of the second one-fourth undivided share of the Valletta property prior to his acquisition of the share.

4.5.3 The valuation of the property at 36 Old Mint Street, utilised in the first expropriation, was similarly applied in this case. Therefore, the one-fourth undivided share proposed by Gaffarena for sale to Government was valued at €822,500. On 12 March 2015, the Assistant Director Contracts GPD indicated that the properties to be exchanged as part compensation for the one-fourth undivided share were a portion of land in Baħar iċ-Ċagħaq and two portions of land in Żebbuġ, Malta. The land in Żebbuġ had been valued on 31 August 2014, which date coincided with the period when sites identified for exchange corresponding to the first expropriation were being valued. On the other hand, the land in Baħar iċ-Ċagħaq was valued by the Consultant Architect on 16 February 2015, three days after the receipt of Gaffarena's letter and prior to the approval of the DG GPD and PS OPM.

4.5.4 On 17 March 2015, the Commissioner of Land submitted a minute to the PS OPM, through the DG GPD, stating that the file corresponding to the property at 36 Old Mint Street was being referred for his approval and endorsement. The PS OPM duly approved the proposed expropriation on 18 March 2015, and submitted a declaration drafted for the President's approval and signature. The President endorsed the declaration on 24 March 2015, stating that the property was required by the competent authority for a public purpose, in accordance with the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), and that the acquisition was to be through absolute purchase.

4.5.5 The deed relating to the expropriation of the second one-fourth undivided share of the property at 36 Old Mint Street was signed on 10 April 2015. In exchange for this one-fourth undivided share, Government transferred three properties to Gaffarena, which in aggregate were valued at €445,000. The difference resulting from the €822,500 valuation of the one-fourth undivided share, that is, €377,500, was to be paid to Gaffarena; however, following deductions relating to duty, tax and legal fees, the sum ultimately paid was that of €312,923.



Chapter 5  
An Analysis of the Expropriation of  
Two Undivided Shares

## Chapter 5 – An Analysis of the Expropriation of Two Undivided Shares

### 5.1 A Proposal to Expropriate

- 5.1.1 The events leading to the two expropriations addressed in this report may be traced back to correspondence submitted by Gaffarena to the GPD, wherein the transfer of one-fourth undivided shares of 36 Old Mint Street was proposed. The first proposal, dated 28 July 2014, recommended the exchange of the first share of the Valletta property with government-owned agricultural land held by Gaffarena under title of lease (*qbiela*) situated in Qormi and Żebbuġ. The second proposal was dated 13 February 2015, wherein Gaffarena offered to sell another one-fourth undivided share of 36 Old Mint Street.
- 5.1.2 The GPD officials interviewed by the NAO invariably indicated that Gaffarena's proposals for the transfer of ownership of his shares in 36 Old Mint Street were anomalous, in the sense that the process followed did not represent the ordinary way through which Government acquired property intended for public use. It is generally Government that identifies land required for public purposes and initiates the process for its acquisition through provisions outlined in the Land Acquisition (Public Purposes) Ordinance (Chapter 88). Ordinarily, a President's declaration is published with details regarding the property that is being expropriated, and it is at this stage that the owners of this property come forward with evidence supporting their claims of ownership. Compensation payable by Government is determined by the GPD and in cases of disagreement, is subject to arbitration proceedings under the Land Arbitration Board.
- 5.1.3 In the NAO's understanding, it is evident that in this case, the ordinary process was reversed, with Gaffarena initiating proceedings through the correspondence submitted to the GPD. Moreover, this Office has ample evidence that Gaffarena's involvement was not limited to this initial step in the process and that the GPD was coordinating with Gaffarena on the technicalities relating to the exchange of the properties well in advance of the President's declaration.
- 5.1.4 All public officials interviewed by the NAO indicated that they had not discussed this matter with Gaffarena prior to his submission of the letter dated 28 July 2014. On the other hand, the PS OPM stated that he had met Gaffarena prior to this correspondence and it was in this context that he had directed Gaffarena to refer the matter to the GPD. Gaffarena corroborated this version of events. Subsequent to Gaffarena's letter, the DEM advocated the favourable consideration of the offer made to Government in

a minute to the DG GPD dated 31 July 2014. Following this, sometime in August 2014, a meeting was held between the DEM and Gaffarena, who was accompanied by an Officer in the PS OPM Secretariat. The NAO has numerous reservations in this regard, namely:

- a. The letter submitted by Gaffarena on 28 July 2014 bore no date stamp; therefore, the NAO could not ascertain when this letter was received by the GPD;
- b. The evidence reviewed by this Office when compared to the testimony provided by the DEM, who played a pivotal role in these initial stages, resulted in a number of inconsistencies.
  - i. First, the DEM claimed that he became aware of the proposal in the meeting with Gaffarena in August 2014; however, this could not have been the case since his minute to the DG GPD was dated 31 July 2014.
  - ii. Second, the DEM maintained that correspondence submitted by the BICC on 21 August 2014 was already on file when the matter was first referred to him; this clearly contradicts written records signed by him on 31 July 2014 and his account of events.
  - iii. Third, if the meeting between the DEM and Gaffarena was held on 11 August 2014 (which is the only entry featuring Gaffarena recorded in the GPD visitors' log between July and August), then it was impossible for the Director to have been aware of the claims raised by other co-owners with the BICC.
  - iv. Finally, the NAO noted that the correspondence relating to the BICC issue, dated 21 August 2014, was filed prior to the minute by the DEM to the DG GPD. Although the BICC correspondence was later crossed out, this matter remains grossly anomalous, as it is impossible for the subsequent minute by the DEM, dated 31 July 2014, to have been written after correspondence dated 21 August 2014.
- c. The NAO finds difficulty in comprehending the prompt and decisive action taken by the GPD, particularly in terms of the DEM advocating the favourable consideration of Gaffarena's proposal a few days after receipt of his letter. Incomprehensible is the fact that the DEM recommended the transfer of this property without consulting anyone within the GPD or Government. This Office's reservations are heightened by the poor record-keeping practices employed by the Department, including failure to retain minutes of the initial meeting held between the DEM and Gaffarena. Furthermore, this Office questions whether the presence of an Officer in the PS OPM Secretariat in this meeting conditioned the endorsement of Gaffarena's offer by the DEM. Moreover, whether that discussed during this meeting reflected what was actually discussed between the PS OPM and Gaffarena remains a moot point. The absence of any written record corresponding to these meetings limits the NAO's verification of events.

5.1.5 Also of concern to the NAO is the fact that Gaffarena offered to sell the second one-fourth undivided share of the property at 36 Old Mint Street at a time when he was not yet its owner. Although this share of the property was under promise of sale, the deed for the transfer of this share to Gaffarena was only concluded on 26 February 2015, that is, after the proposal to Government dated 13 February 2015.

## 5.2 Public Purpose and the Decision to Expropriate

5.2.1 The NAO is of the opinion that the identification of the public purpose, which is to be served by land or property intended for expropriation, is an element of fundamental



importance in ensuring that Government acts with the level of integrity expected. In effect, the acquisition of land by means of expropriation infringes on an individual's right to property and therefore, compensation paid in this respect mitigates the loss of such rights while justifying the wider public good. Failure to adequately justify the public purpose associated with a particular expropriation raises concerns regarding the necessity of the private property acquired by Government. While the NAO acknowledges that there is no legal requirement stipulating the formal declaration of the public purpose, this Office is of the opinion that this does not detract from the requirement to appropriately justify any expropriation of private property.

- 5.2.2 In the case of the expropriation of 36 Old Mint Street, the public purpose served was far from clear. In essence, Gaffarena submitted a proposal to transfer his first share on 28 July 2014, which request was favourably recommended by the DEM on 31 July 2014. This recommendation was subsequently endorsed by the DG GPD on an unspecified date and approved by the PS OPM on 11 August 2014. The recommendation minuted by the DEM constituted the only written record relating to the possible public purpose that was to be served by Government's acquisition of this property. For matters of precision, the sole direct reference to public purpose was the following, *'I think that in principle it would be wise to consider this transaction, considering that this property is in Valletta and in future could also be utilised for other purposes (such as a Ministry or a museum), while the Government property being requested is agricultural land.'*
- 5.2.3 In establishing whether this lacuna in the identification of public purpose was the result of shortcomings in the appropriate documentation of discussions held and decisions taken or an outright failure to safeguard Government's interest, the NAO obtained the views of the PS OPM, DG GPD and DEM. All of the aforementioned officials indicated that they had not discussed the possible public purpose served through this expropriation. In these circumstances, the NAO concludes that the PS OPM, DG GPD and DEM failed to safeguard Government's interest by expropriating property that, although useful, ultimately served no identified public purpose.
- 5.2.4 Notwithstanding that stated, the NAO reviewed all email correspondence exchanged by the DG GPD, DEM, Commissioner of Land and the Officer in the PS OPM Secretariat during the period May to August 2014. This effectively covered the period within which correspondence could possibly have been exchanged indicating the intended public purpose for 36 Old Mint Street. The NAO established that no email correspondence specifically relating to the expropriation of the Valletta property was exchanged. This Office deems incomprehensible how a decision of this significance, involving the coordination of multiple officials and the outlay of substantial public funds did not result in any correspondence and effectively rested solely on the succinct minute by the DEM.
- 5.2.5 The only reference to Gaffarena in the correspondence reviewed was indirect, as the NAO established that these referred to payments relating to another expropriation. When queried by the NAO, the PS OPM indicated that reference was hereby being made to Joseph Gaffarena, that is, Mark Gaffarena's father, for land that had been expropriated in 1987 and still due compensation. In fact, two payments of €184,691 each were effected on 30 October 2014 and 12 January 2015, respectively to Gaffarena Holdings Limited. Although these transactions were not directly related to Government's acquisition of 36 Old Mint Street, the NAO considers the discretion exercised by the PS OPM in determining who was to be paid for expropriations as absolute and therefore lacking in terms of fairness and transparency. This Office is of the opinion that pending balances should be settled according to established criteria that take into consideration the period such dues have been outstanding and the

materiality of amounts payable. This process should be managed by the GPD and not at ministerial level.

- 5.2.6 Following the review of the limited documentation regarding the identification of public purpose, the lack of any form of coordination between officials involved and the absence of correspondence exchanged on the matter, the NAO finds difficulty in understanding the basis of the decision taken by Government to expropriate a one-fourth undivided share of 36 Old Mint Street. This Office's concern is heightened by the fact that the expropriation of an undivided share, while legally permissible, is highly unusual. The only other instances cited by the various GPD officials consulted on the matter were the expropriations of undivided shares of land in Swieqi and Għaxaq. In the first case, the land was designated as a public open space that was later intended for use by the Swieqi Local Council. With regard to the Għaxaq case, the property was situated at the entrance of a tunnel utilised by the Enemalta Corporation. In both instances, Government was already the owner of the remaining undivided shares and through expropriation, became the sole owner of the properties in concern. Moreover, these were the only two exceptions recalled where Government had expropriated undivided shares of a property, further highlighting the anomalous nature of the expropriation of a one-fourth undivided share of a property for which only a vague public purpose had been determined.
- 5.2.7 Notwithstanding this elusiveness, the NAO remains sceptical as to what public purpose could possibly have been served through the acquisition of a one-fourth undivided share of the property at 36 Old Mint Street. Justification provided regarding the piecemeal approach adopted by the GPD in expropriating undivided shares instead of the entire property was unconvincing, with the DG GPD citing lack of funds as the reason behind this. This was stated in a minute by the DG GPD dated 26 November 2014; however, this was deemed to be an entirely unacceptable explanation by the NAO given that funds for the acquisition of the entire property were to be shortly available with the Department's budgetary allocation for expropriations for 2015, which stood at €7.2 million. Furthermore, the acquisition of the second undivided share was sanctioned on 2 March 2015, contradicting earlier claims of budgetary constraints.
- 5.2.8 Equally unacceptable was the explanation put forward by the DEM who sought to justify the GPD's piecemeal expropriation by stating that Gaffarena was the only co-owner who had approached the Department. Although the DEM acknowledged that it was unusual for individuals to instigate expropriations, he argued that the Department did not acquire the remaining shares (except those owned by Gaffarena) because the other co-owners had not proposed such a sale to the GPD. The NAO deems this reasoning as highly questionable, particularly when considering that the manner by which Gaffarena's shares of the property were acquired represented the exception and not the rule, hence it was unreasonable for the GPD to expect the other owners to come forward. Furthermore, it must be noted that, when government expropriates property for a public purpose, the consent of the owners is not required, thereby rendering unfounded the Department's justification.
- 5.2.9 Another commonly cited justification during meetings held by the NAO with GPD officials was the need for office space, intended for use by Government, in Valletta. While the need for office space may be a valid claim, the NAO fails to understand the need for this specific office space, particularly when one considers the fact that Government had the right to occupy this property until 2028. The NAO is of the opinion that the need for office space could have readily been addressed through a more open and transparent competitive procurement process. It is evident that the GPD did not consider or explore the feasibility of alternative means of obtaining office

space in Valletta, as there was no record of any workings or supporting documentation to this end.

5.2.10 Aside from the inconsistencies as to what constituted the public purpose behind this expropriation was the fact that no political direction was afforded by the PS OPM, rendered particularly evident when stating that he bore no role in the identification of public purpose. Although the NAO acknowledges the detrimental effect of unwarranted political interference, this Office is also of the understanding that failure to adequately involve oneself when required is equally detrimental. In this specific case, the NAO is of the opinion that the PS OPM failed to appropriately scrutinise the recommendation put forward by the DEM, approving the transaction without consulting with the GPD or questioning the purpose that was to be served through this expropriation.

5.2.11 After having reviewed the position description of the DEM, the NAO is of the opinion that the recommendation put forward proposing Government's acquisition of 36 Old Mint Street fell outside his remit. The responsibilities outlined in the position description of the DEM relate to the provision of technical work required in the acquisition and disposal of property and the administration of Government's estate. Therefore, the recommendation put forward to the DG GPD by the DEM following receipt of Gaffarena's proposal went beyond the responsibilities and duties pertaining to this position.

5.2.12 A fact that was corroborated by various officials interviewed by the NAO was that the allocation of the property to serve as offices to be utilised by the BICC was in effect a temporary measure and not the reason why 36 Old Mint Street was expropriated. This Office noted that correspondence submitted to the BICC by one of the co-owners of the Valletta property, threatening eviction therefrom, was sent after the recommendation to expropriate had already been approved by the DG GPD and PS OPM. This therefore could not have conditioned Government's decision to expropriate.

5.2.13 The identification of a public purpose in the acquisition by Government of the second one-fourth undivided share was rendered somewhat redundant by the expropriation of the first undivided share, when the public purpose should have been determined. Notwithstanding this, the NAO found no information documenting what public purpose was to be served through this second expropriation and no reason why Government did not consider the acquisition of the remaining undivided shares of the Valletta property.

5.2.14 The shortcomings stated above raise the concern of the NAO, as this Office deems these indicative of collusion. The NAO's understanding of collusion is secret or illegal cooperation or conspiracy in order to deceive others, with this expropriation being a case of senior officials and Gaffarena secretly cooperating to the detriment of the other co-owners. This conclusion arrived at by the NAO was based on the following:

- a. It was within GPD's legal right to expropriate the entire property, yet the Department opted to acquire only two undivided shares from Gaffarena in a piecemeal manner. In the case of the second share, Government timed its expropriation to coincide with when Gaffarena acquired this share.
- b. The GPD did not expropriate the entire property citing insufficient funds when funds were in fact available. Although the NAO acknowledges that the Department had commitments that predated these events, its allocated budget for expropriations in 2015 was €7.2 million, rendering it possible for Government

to acquire the entire property. Whether Government intended to incur such a substantial expense on one property is debatable, particularly in view of the lack of a public purpose identified in this regard.

- c. The GPD only negotiated with Gaffarena and never communicated with any of the other owners. The GPD officials interviewed by this Office and the co-owners, aside from Gaffarena, confirmed this.
- d. Gaffarena offered to sell a share to the GPD that he did not own. This second share was owned by third parties who had never been contacted by Government regarding its interest in acquiring the property. Government's interest in this share of the Valletta property crystallised the day after Gaffarena's acquisition of it, with PS OPM's approval obtained a week after.
- e. The GPD was aware or could easily have traced the identity of the other owners and could have readily negotiated with them too following the issuance of the President's declaration with respect to the expropriation of the entire property.
- f. All the valuations prepared by the GPD, of the properties exchanged for 36 Old Mint Street, render evident the fact that Gaffarena was involved in preparations undertaken with regard to the expropriation process well in advance of the President's declaration. It is at this point that Government's expropriation became public knowledge and the point at which Gaffarena should have come forward with documents substantiating ownership. This sequence of events was not adhered to in this case, with Gaffarena well aware of the expropriation and identifying properties for counter-exchange in advance. Further evidence of this irregularity was the form certifying ownership of the 'expropriated property' that was completed by Gaffarena's notary and submitted to the GPD prior to the President's declaration.
- g. The elimination of the Rabata' Harram property from the first expropriation process, due to the aggregate value of properties proposed in exchange for a share of 36 Old Mint Street exceeding that permissible, indicated that Gaffarena was aware of the values of the lands that he was to acquire. This was confirmed by Gaffarena in written submissions to this Office. In the NAO's understanding, this awareness of the values assigned to the lands, apart from supporting the understanding of collusion between Gaffarena and the GPD, introduced a considerable element of risk as access to such information provided an opportunity and context for the breach of the process' integrity. The extent of the risk depended on what information Gaffarena was privy to. That Gaffarena was informed of proceedings prior to them becoming public was clear; however, the NAO could not establish the extent of information at his disposal due to his failure to cooperate with this Office. The GPD's poor record keeping and the officials' dubious account of events, particularly in view of how this expropriation materialised without any coordination between those involved, further compounded this.
- h. Supporting this notion that Gaffarena was well informed of what was going on was evidence provided by all GPD officials summoned by the NAO who confirmed the regular presence of Gaffarena at the GPD offices, specifically referring to various instances when he was seen in the company of the DEM.

5.2.15 The NAO is of the opinion that this expropriation was instigated by Gaffarena, yet readily facilitated by the PS OPM, DG GPD and DEM. It is the cooperation of these officials with Gaffarena, to the advantage of the latter, that the NAO deems tantamount to collusive action, highly inappropriate and in clear breach of the fundamental

principles of good governance, transparency and fairness. Although the NAO noted serious shortcomings in the GPD’s management of this expropriation process, this would not have been possible without the authorisation provided by the PS OPM.

5.2.16 Other GPD officials that were involved in this expropriation process either merely provided administrative support, such as the Principal Officer GPD, or although more directly involved, were not party to the above-referred collusion. In this latter case, the NAO specifically refers to the role played by the Commissioner of Land, who had not yet been appointed to this post when the decision to expropriate the first share had been taken. With regard to his role in the second share expropriated, the discomfort with the decision taken was implied in his reluctance to endorse the proposed acquisition and confirmed in meetings held with the NAO. According to the Commissioner, the reservations held with respect to the second expropriation were rendered somewhat futile in view of Government’s concluded acquisition of the first undivided share. Similarly, the Assistant Director Contracts GPD had raised her concerns with the DG GPD and the Commissioner of Land. The Commissioner of Land had taken action with respect to these concerns albeit to no avail.

### 5.3 On the Valuation of 36 Old Mint Street, Valletta

#### *Considerations regarding the NAO Valuation of 36 Old Mint Street, Valletta*

5.3.1 The NAO’s valuation of 36 Old Mint Street, carried out by an external consultant, established that the net internal area of the property was of 919 square metres, of which 230 square metres corresponded to the tenanted basement areas (Table 2 refers). Due to the internal height of a number of rooms at ground floor level, which ranged between 4.9 metres and 5.7 metres, the formation of an intermediate light-weight floor may be constructed. The first floor rooms bear similar characteristics, therefore allowing for the construction of an intermediate floor in a number of rooms. The intermediate floors would amount to an additional area of 352 square metres, with 125 square metres at ground floor level and 227 square metres on the first floor.

5.3.2 Presently, the roof level comprises a room measuring 27 square metres. Due to the height of the parapet walls and the presence of open windows, it would be possible to roof over most of the existing roof level. Furthermore, although height limitations for this area are not specified in the local plans, consultations with MEPA revealed that a recessed development of the airspace above roof level may be acceptable, provided that it is not detrimental to the existing building or its surroundings. This is possible due to an existing third part blank wall. These developments would result in an additional net area of 488 square metres, with 266 square metres at existing roof level and 222 square metres of developable airspace overlying the roof level.

**Table 2: Internal net area of 36 Old Mint Street**

Level	Internal Net Area		
	Existing Area (m <sup>2</sup> )	Potential Area (m <sup>2</sup> )	Total Area (m <sup>2</sup> )
Basement (BICC)	49	-	279
Basement (Tenanted)	230	-	
Ground	307	-	432
Ground (Intermediate)	-	125	
First	306	-	533
First (Intermediate)	-	227	
Roof	27	-	293
Roof (Additional)	-	266	
Airspace	-	222	222
<b>Total</b>	<b>919</b>	<b>840</b>	<b>1,759</b>

5.3.3 With regard to the state of repair of the Valletta property, the NAO noted that the first floor is currently a fully functional office space, while certain rooms at ground floor level are being utilised as lecture/conference rooms. The remaining rooms at ground floor level are yet to be upgraded. The courtyard at basement level was noted as being in a good state of repair. Despite several attempts made by the NAO to inspect the basement areas leased to third parties other than the BICC, this Office was not granted access to these areas. Therefore, their internal condition could not be established. The NAO noted that the roof area was in a good state of repair as rendered evident by the condition of the timber ceiling slabs. On the other hand, the external façade of the building at the lower level was deemed to be in a poor state of repair with deteriorated flaking masonry.

### Methodology Employed in the NAO Valuation

5.3.4 The NAO's valuation was undertaken according to the 'Kamra tal-Periti Valuation Standards' of 2012, for the valuation of premises based on commercial investment for existing use, together with the comparative method for similar palazzo listings in Valletta. Hereunder are details relating to the valuation of 36 Old Mint Street established through the application of these two methods.

5.3.5 As an investment property, rents for office rental vary from €20 per square metre to €475 per square metre, with Malta's central business district averaging at €155 per square metre. The estimated rental value for this property, given its location in the lower Valletta area, is that of €135 per square metre for the upper floors and €45 to €60 per square metre for the basement level. With respect to the third party basement leases, the NAO is assuming that these can be terminated within the current year. Attempts to establish the correctness of this understanding with the GPD were to no avail.

5.3.6 The rental rate set with respect to the intermediate flooring was estimated by the NAO at €80 per square metre. This was established following the de-capitalisation of construction costs for the insertion of light-weight flooring at €750 per square metre at six per cent. Therefore, the rental value of 36 Old Mint Street, based on net floor areas, was estimated at €125,250 per annum, as illustrated in Table 3.

**Table 3: Rental value based on net floor area**

Level	Area (m2)	Rate (€/m <sup>2</sup> )	Total (€/per annum) <sup>1</sup>
Ground and first floor	613	135	82,750
Basement and roof construction	75	60	4,500
Intermediate floors	350	80	28,000
Tenanted basement	222	45	10,000
<b>Total</b>	<b>1,260</b>	<b>-</b>	<b>125,250</b>

Note: 1. Total figures presented per level are rounded.

5.3.7 Applying an average risk-free rate of four per cent, based on Government bonds traded over the past five years, a two per cent premium on property, a one per cent tenant risk and a one per cent depreciation factor results in a property discount rate of eight per cent. The market dictates that estimated rental values are subject to increases of 2.5 per cent per annum. Therefore, this results in a property capitalisation rate of 5.5 per cent (eight per cent less the 2.5 per cent). Capitalised at the rate of 5.5 per cent, the value of 36 Old Mint Street is that of €2,206,876 (Table 4 refers).

**Table 4: Capitalisation of rental value**

Level	Rental value (€/per annum)	Capitalisation rate (%)	Amount (€)
Ground and first floor	82,750	5.5	1,504,545
Basement and roof construction	4,500	5.5	81,818
Intermediate floors	28,000	6.0 <sup>1</sup>	466,667
Tenanted basement	10,000	6.5 <sup>2</sup>	153,846
<b>Total</b>	<b>125,250</b>	-	<b>2,206,876</b>

Notes:

1. For the proposed intermediate floors, the tenant risk is revised upwards to 1.5 per cent as opposed to the previous one per cent.
2. The tenant risk with regard to the tenanted basement areas is increased to two per cent due to the time lag that exists to vacate these premises and enter into a new lease agreement.

**5.3.8** In arriving at the market value on total completion, the NAO accounted for management and maintenance costs at a rate of five per cent and purchase-related expenses at nine per cent, which costs were subsequently deducted from the capital value. This resulted in a market value of the leased out area of €1,923,424. Based on these calculations, the market rate of the office area is that of €2,138 per square metre. The market rate for this location factors in construction costs, profit and airspace value. Assuming construction costs at €845 per square metre and profit at 17.5 per cent of the market value, the airspace market rate is estimated at €1,015 per square metre. Applying the market rate of €850 per square metre, the value of airspace existing at roof level and the potential overlying recessed gross airspace area, estimated at 630 square metres<sup>10</sup>, results in a value of €535,500. Therefore, the present market value of 36 Old Mint Street in its existing use is €2,458,924.

**5.3.9** The investment method of valuation, as elaborated on in the preceding text, was verified against the comparative method of valuation. This was undertaken through the analysis of various palazzo listings in Valletta. The NAO noted 22 palazzo listings for the Valletta area, with market rates varying from €1,100 per square metre to €6,050 per square metre. This low market rate appears to be an outlier, as the next cluster of market rates converged towards the €2,333 per square metre range. Lower Valletta commands market rates for a mix of residential, office and/or hospitality premises in the €2,333 to €3,500 per square metre range. It was noted that the rate was conditioned by the state of repair of the palazzo listed. This method of valuation yielded market rates that were comparable with the investment property existing use rate of €2,138 per square metre.

**5.3.10** It must be noted that palazzos in Valletta were not being considered solely for their investment potential, but sought as trophy buildings, purchased for their status symbol and unique design features. These buildings are most ideal for boutique hotels, which would bear an element of consistency with the lower intensity usage of properties in the lower part of Valletta. In view of these characteristics, the estimated market rate for this property was set at €3,150 per square metre. Applying this rate to the gross area of the upper floors and half the rate to the basement level results in an estimated market value of €3,543,750. Notwithstanding this, the NAO cannot consider the basis of this valuation as applicable to the context of the expropriation of 36 Old Mint Street. In this case, Government is constrained in terms of the possible use of the property, limited to utilisation within the confines of understanding of a public purpose, which certainly could not extend to utilisation in the commercial sense that forms the basis of this valuation.

<sup>10</sup> It must be noted that the variations in the roof and airspace area are attributable to the different methods of measurement, with the 630 square metres relating to the gross area and the 488 square metres (cited in paragraph 5.3.2) relating to the net area.

- 5.3.11 Having ruled out the valuation of 36 Old Mint Street as a trophy building, the NAO again refers to the value established under its existing use, that is, €2,458,924. This valuation, albeit valid, merits further revision in view of the burdening of the premises. The property is subject to a minimal lease amount of €676 per annum (prior to the expropriation of the two one-fourth shares). As a result of the 2009 revision in rent regulations, all commercial leases will have to be brought up to market value as at 2028, which signifies that Government (the property's present occupant) is achieving a profit rent for the remaining period of 13 years averaging at €100,000 per annum.
- 5.3.12 Bearing in mind the burdens on 36 Old Mint Street, the present worth of the property may be established through the capitalisation of the rent payable at a rate of 3.75 per cent over the remaining 13-year period, then discounting the estimated market value of the premises in 2028 at 5.75 per cent. The application of these parameters results in a market value in 2028 of €4,116,978,<sup>11</sup> which when discounted to the present value results in an estimate of €1,889,450.<sup>12</sup>

### Valuation by the Inland Revenue Department

- 5.3.13 The Inland Revenue Department (IRD) commissioned a valuation to determine the open market value of a one-fourth undivided share of 36 Old Mint Street. The necessity of this valuation arose as a result of the *inter vivos* transfer of this share from the Mercieca family to Gaffarena. The report, dated 18 November 2015, stated that the open market value of the property was severely encumbered by possession and use of the entire block by Government in exchange for payment of recognition rent. According to the IRD valuation, the premises was still in active use by Government and the architect commissioned in this respect could not determine a date of termination for this agreement. Moreover, notwithstanding any date of termination, the architect argued that Government could still take possession of the property in accordance with the Land Acquisition (Public Purposes) Ordinance (Chapter 88).
- 5.3.14 The IRD-commissioned architect assumed that the occupant (Government) could only be removed through lengthy and costly litigation and that the property would not be rendered free and unencumbered for the foreseeable future. Therefore, according to this valuation, the market value of the property was nominal and amounted to a subjective fraction of what the open market value would be were it unencumbered. Citing the remote possibility that the property might revert to the owners, the IRD-commissioned architect assumed that a sum amounting to 10 per cent of the free and unencumbered market value would be a reasonable estimate of its open market value. In this respect, the market value of the one-fourth undivided share transferred in the subject *inter vivos* deed was estimated at €75,000.
- 5.3.15 The NAO's main reservations regarding the IRD-commissioned valuation report are twofold. First, this Office noted that this valuation was limited in terms of relevant details and analysis. No reference to the rates utilised in arriving at the stipulated value were indicated. The method employed by the IRD-commissioned architect was also not specified. The report indicates that an internal inspection of the property was not carried out, which further increases the NAO's concern at whether the determination of a fair and precise value was possible.
- 5.3.16 The second concern identified by the NAO relates to the 90 per cent discount applied to the value of the one-fourth undivided share of 36 Old Mint Street. The reason why this significant discount was applied was deemed invalid by the NAO as the occupant,

<sup>11</sup> €2,458,869 x 1.0375<sup>14</sup> = €4,116,978

<sup>12</sup> (€675.70 x 10.81(PV)) + €4,116,886 / 1.0575<sup>14</sup> = €1,889,450



in this case Government, will have to vacate the property by 2028 as stipulated in article 1531(I) of the Civil Code (Chapter 16). In essence, this article specifies that, 'A contract made prior to the 1st June, 1995 and which is to be renewed automatically or at the sole discretion of the tenant, shall be deemed as if it is not a contract made for a specific period and shall as such terminate within twenty years which start running from the 1st June, 2008.'

### *Other Issues relating to the Valuation of 36 Old Mint Street, Valletta*

- 5.3.17 The NAO has established that the burdening of 36 Old Mint Street up to 2028 results in a tangible effect on the value of the property. In fact, the NAO noted that when unencumbered, the property was valued at €2,458,924, while when factoring in the burden of encumbrance, the value is decreased to €1,889,450. This reduction in value sheds a different light on the concerns raised by the Assistant Director Contracts GPD and the Commissioner of Land, who repeatedly enquired with the Consultant Architect whether this encumbrance bore any effect on his valuation.
- 5.3.18 This Office maintains reservations regarding the justification provided by the Consultant Architect in response to queries raised by the aforementioned GPD officials. These stem from the notable inconsistencies in that stated to the GPD by the Consultant Architect, first citing the fact that Government had no legal title over the premises, then claiming that the remaining period of lease was short and therefore bore no effect on the freehold valuation of the property. This latter point merits attention, particularly in view of the adjustment in value effected in the valuation obtained by the NAO, which was equivalent to approximately 20 per cent of the freehold estimate.
- 5.3.19 Another aspect relating to the valuation of 36 Old Mint Street, particularly in the request made to the NAO by the PAC and in media coverage on the matter, was that the property was a historical building and should have been accordingly expropriated. According to article 3(a) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), 'The President of Malta may by declaration signed by him declare any land to be required for a public purpose: Provided that: (a) when land to which the said declaration refers is required for a public purpose on account of the fact that it is a historical building, the said declaration shall state the said fact ...'. In the case of the two expropriations reviewed, the President's declaration made no reference to the fact that 36 Old Mint Street was required on account of it being a historical building.
- 5.3.20 The GPD officials interviewed stated that expropriation in this sense was never considered, claiming that it was the Consultant Architect's responsibility to establish whether the building was classified as a historical building. In turn, the Consultant Architect maintained that since the building was not scheduled, then it could not be considered as such. The NAO established that the property is situated in a residential area as per CG07 of the MEPA Local Plans 2006. Although the building has no scheduling from the Heritage Planning Unit, it is to be noted that Valletta as a whole is on the national protective inventory and alterations to the buildings within this locality are subject to the same level of scrutiny as in the case of an individual scheduling.
- 5.3.21 The NAO noted that the advice of the Superintendence of Cultural Heritage, on whether the building ought to have been scheduled, was not sought by the GPD. This Office is not in a position to comment on what this advice would have been had it been sought; however, it was not the intention of the GPD to expropriate this building due to its historical significance and status, as this would have otherwise been indicated in the President's declaration.

5.3.22 The implications, in terms of expropriation, on the valuation of a historical building as opposed to a building site (as 36 Old Mint Street was classified) arise from article 22(11), which states that, *'(aa) in the case of a historical building the value thereof shall be calculated as the higher of the following: (i) the full value of the historical building if sold on the open market subject to the condition that the use that can be made thereof shall be limited to use for educational, touristic or cultural purposes less the amount required for the historical building to be restored in accordance with internationally accepted guidelines and standards of craftsmanship and practice for the purpose of rendering it suitable for such educational, touristic or cultural use; (ii) where the historical building was originally Government-owned ...'*. In view of this, the NAO is of the understanding that the expropriation of 36 Old Mint Street as a historical building would have resulted in less of a disbursement by Government since the open market value would have been adjusted to take into account the cost of refurbishing the building.

### *Conclusions regarding the Valuation of 36 Old Mint Street, Valletta*

5.3.23 In comparing the rates applied by the Consultant Architect to those utilised in the NAO's valuation, the disparity is rendered immediately apparent. The NAO rate for existing use was €2,138 per square metre, whereas the Consultant Architect applied rates of €5,000 per square metre for prime office space and €4,000 per square metre for ancillary space. The NAO noted that the rates cited by the Consultant Architect were more in line with similar properties situated in the core of Valletta, which analysis was based on listings utilised in the comparative method of valuation. Furthermore, the rates set by the Consultant Architect exceeded rates of similar properties yet intended for commercial use, which utilisation would certainly not be applicable in the case of an expropriation.

5.3.24 Although the difference in rates may be partly attributed to the subjectivity of such valuations, the same argument cannot be applied to the matter of the property's encumbrance. The NAO maintains that the Consultant Architect was well aware that such burdens would expire in 2028, which fact should have been considered when determining the value. An element of concern was expressed by the GPD in this regard, albeit ultimately futile as no adjustment was made to the value of 36 Old Mint Street by the Consultant Architect. The impact of this consideration on the valuation obtained by the NAO was equivalent to a reduction of 20 per cent of the value, which, if applied by the Consultant Architect, would have resulted in a significantly lower valuation.

5.3.25 Finally, the NAO is of the opinion that the GPD should have sought the advice of the Superintendence of Cultural Heritage regarding the classification of 36 Old Mint Street, as, if classified as a historical building, would have bore a significant impact on the valuation. The valuation of such buildings takes into account the open market value of the property less the cost of refurbishment. Had 36 Old Mint Street been classified as a historical building, then the disbursement by Government in its expropriation would have been significantly less.

## **5.4 On the Valuation of the Properties Exchanged**

5.4.1 A key aspect, central in the determination of whether the transaction between Government and Gaffarena was equitable, was the review of values assigned to the various lands and property exchanged as compensation. This, together with other aspects relating to the manner in which the valuation process was managed by the GPD were reviewed by the NAO. This Office analysed the valuations utilised by the

GPD for the purposes of exchange, which valuations were presented in Chapters 3 and 4. Queries arising therefrom were put to the Consultant Architect and GPD Architect, who were tasked with the responsibility of establishing the value of the six properties exchanged.

- 5.4.2 In assessing whether fair values were assigned to the lands and properties exchanged, the NAO referred to a report compiled by PwC, dated 7 August 2015. This report formed part of the IAID report, dated 28 August 2015, titled 'Financial Investigation Report – Allegations made in respect of two expropriation processes carried out by the Government Property Department of two undivided 1/4 shares of 36, Old Mint Street, Valletta'. The NAO's reference to the valuations obtained by the IAID were duly sanctioned by this Department.
- 5.4.3 The review carried out by PwC entailed the estimation of the market value of the properties exchanged by Government as part compensation paid to Gaffarena. This assessment focused on the existing use of the property and lands, as well as possible permissible development opportunities. In determining value, PwC utilised two approaches, namely, the Sales Comparison Approach and the Residual Land Value Approach, accordingly employed in order to estimate the highest and best use for each property.
- 5.4.4 In determining the highest and best use, PwC considered the following:
- a. *'that the use is possible with regard to what would be considered reasonable by market participants';*
  - b. *'that the use is legally permissible and any legal restrictions on the use of the site (e.g. zoning designations) are taken into account';* and
  - c. *'that the use is financially feasible and takes into account whether an alternative use that is physically possible and legally permissible will generate sufficient return to a typical market participant, after taking into account the costs of conversion to that use, over and above the return on the existing use.'*
- 5.4.5 Aside from the review of MEPA policies and local plans, PwC substantiated the current and potential uses of the property and lands exchanged by Government through consultation with MEPA. Moreover, in the establishment of value, PwC took into consideration planning permits and enforcement notices issued by MEPA in relation to the property and lands intended for exchange.

#### *Land at Klawnsura tal-Handaq, Qormi*

- 5.4.6 The land at Klawnsura tal-Handaq, situated in Qormi and measuring 9,870 square metres, was valued by the Consultant Architect at €192,810. A rate of €19 per square metre was employed with respect to the agricultural land, whereas structures were estimated at €300 per square metre. While the agricultural land was valued at €187,350, the structures situated on site were valued at €5,460, as the Consultant Architect applied a 90 per cent reduction to take into account the fact that the buildings were subject to an enforcement notice.
- 5.4.7 This valuation was commissioned by the GPD on 29 August 2014, completed on 31 August 2014, and received by the Department on 4 September 2014. Although the Consultant Architect was specifically instructed by the GPD to exclude structures from the valuation, this detail was not adhered to.
- 5.4.8 Responding to queries raised by the NAO in this regard, the Consultant Architect stated that an illegal structure on a piece of land had a depreciative impact on the

value of the land. This was due to the property's reduced marketability arising from the presence of an enforcement notice and the negative value arising from the cost to demolish the illegal structure. The Consultant Architect maintained that rather than take the cost to demolish the structures and subtract it from the value of the land, he decided to add to the value of the land a sum that represented 10 per cent of the value of the structures. This consideration took into account the remote possibility that, perhaps sometime in the future, MEPA policies might change rendering the buildings sanctionable, even though they were not at the time of the valuation. The Consultant Architect claimed that it could have been argued that the value of land should have been reduced by, at least, the cost to demolish and clear the land; yet, contrary to this, was augmented by €5,460, that is, 10 per cent of the value of the structures.

5.4.9 With respect to the instructions issued by the GPD to provide a valuation excluding structures, the Consultant Architect maintained his adherence to the task assigned, arguing that he only estimated the structures in order to arrive at a consideration that was to be added to the value of the land. The Consultant Architect claimed that this consideration arose from the remote potentially legal use of the structures and not as an inclusion in the value of the land itself.

5.4.10 The PwC report estimated the value of the land at Klawura tal-Handaq at €330,000. This valuation was based on the site's utilisation as agricultural land. Factors that augmented the value of this land included the fact that the property was situated in a prime agricultural area with adequate accessibility, as well as the site's ready access to water supply owing to its proximity to an area of hydrological importance. PwC's valuation was based on the Sales Comparison Approach, and reference in this sense was made to advertised prices for agricultural land situated in the vicinity to this site and bearing similar characteristics.

5.4.11 In the valuation of land at Klawura tal-Handaq, PwC did not attribute any value to the commercial activities that were reportedly carried out on site due to the fact that these premises were served with an enforcement notice issued by MEPA relating to the illegally constructed structures situated on site and the irregular commercial use thereof.

5.4.12 Comparison of the two valuations results in a difference of €137,190, with PwC's estimate greater in value than that of the Consultant Architect. In percentage terms, the PwC estimate was valued at 71 per cent over that of the GPD.

#### *A Shop in Manuel Dimech Street, Sliema*

5.4.13 The GPD Architect valued the shop at 73 Manwel Dimech Street, Sliema, measuring 54 square metres, at €65,000. The report was commissioned by the Department on 8 October 2014, with the GPD Architect submitting the requested valuation on 30 October 2014.

5.4.14 Queries addressed to the GPD Architect by the NAO regarding the valuation of the Sliema property were comprehensively addressed, providing further clarification and details with respect to the factors deemed relevant to this valuation. The GPD Architect referred to other valuations of properties bearing similar characteristics that he had carried out. Cited was the case of a small terraced house in St Helen Street, Sliema, the value of which was estimated at €755 per square metre. Another case, dated October 2008, was that relating to a property situated in St Joseph Street, Sliema, originally estimated at €1,029 per square metre, yet ultimately sold by the GPD at a rate of €702 per square metre following the receipt of tender offers. The

GPD Architect argued that the rate utilised in the valuation of the shop at 73 Manwel Dimech Street compared favourably with these cases, as this stood at €1,204 per square metre.

5.4.15 Elaborating on the micro characteristics of the site where the shop was situated, the GPD Architect affirmed that the precise location was a relatively obscure part of Manwel Dimech Street. Furthermore, the fact that the property was situated at an intersection rendered the sanctioning of its change in use, that is, conversion from a shop to a garage, as somewhat more unlikely.

5.4.16 PwC's estimated value of the shop at 73 Manwel Dimech Street was that of €64,000. This valuation was based on the assumption that the property would be refurbished and leased for commercial purposes. Of relevance in this sense was the MEPA policy NHRE 02, which restricts the ground floor to commercial activities only, specifically prohibiting the conversion of the commercial premises situated at ground floor level to residential units. Although the deed relating to the expropriation of the first one-fourth undivided share of the Valletta property indicated that the temporary emphyteusis relating to the Sliema shop was to expire on 30 June 2016, for valuation purposes, PwC assumed that the asset was freehold.

5.4.17 In view of the similar valuations assigned to this property by the GPD Architect and PwC, as well as the supporting documentation provided by the GPD Architect substantiating the value established, the NAO has no concerns with respect to the estimated value of this property.

#### *Land at Ta' Kandja, limits of Siġġiewi*

5.4.18 The site at Ta' Kandja, Siġġiewi was valued by the Consultant Architect at €165,800. This valuation was based on agricultural land measuring 5,992 square metres and built structures measuring 425 square metres, which were valued at rates of €19 and €123 per square metre, respectively. In his valuation, the Consultant Architect stated that the property was used as agricultural land, the value of which depreciated owing to its location in an ODZ area and it being subject to MEPA policy SMCO 08, given that it formed part of the aquifer protection area.

5.4.19 In contrast, PwC's estimated valuation of the land at Ta' Kandja, Siġġiewi was markedly different, set at €780,000. In arriving at this valuation, PwC considered the fact that the site had no particular designation of use indicated in any of the MEPA policy documents as well as the implications of residential and commercial/industrial use, concluding that utilisation for residential purposes would maximise the underlying real estate value of the property. PwC substantiated their assessment through clarifications obtained from MEPA. Although the site was located in an area of important hydrological value and in the protected buffer zone of the Malta International Airport, MEPA indicated to PwC that the property could be considered in conjunction with policies SMMW 01 and SMIA 11. This implied that the site could be used for residential and industrial/commercial uses, and while additional development would not be permitted, buildings bearing the same area and height dimensions of the existing structures could be reutilised in line with the parameters of the MEPA policies.

5.4.20 In the PwC report, the site was described as a disused quarry that had been filled to form a mature orchard, housing three structures that predated 1978. Although the area of the plot tallies with that utilised by the Consultant Architect (5,992 square metres), the built-up area was inconsistent. While the Consultant Architect cited a

footprint area of 425 square metres, the PwC report cited the existing single storey building structures as cumulatively measuring approximately 850 square metres.

- 5.4.21 PwC based its valuation on the Residual Approach, assuming that the existing structures would be redeveloped into four farmhouses. Furthermore, the PwC valuation assumed that each farmhouse would be built on a plot measuring approximately 1,500 square metres, thereby occupying the total area of 5,992 square metres, with an internal floor area of 175 square metres. In arriving at the total estimated value of €780,000, PwC referred to advertised prices for similar types of properties, namely farmhouses, villas and bungalows situated in relative proximity to the site, including Siġġiewi, Mqabba and Żebbuġ.
- 5.4.22 When comparing the valuation prepared by the Consultant Architect with respect to the site at Ta' Kandja in Siġġiewi, with that prepared for the land at Klawura tal-Handaq situated in Qormi, the NAO noted that different rates were applied in the assignment of value for built structures. The rate used with regard to the Siġġiewi site was that of €123 per square metre, whereas that utilised for the Qormi property was that of €300 per square metre (although this was later discounted by a factor of 90 per cent, owing to their illegality and enforcement notices issued thereto). This divergence was queried by the NAO, as the two sites were essentially similar, comprised of agricultural land with built structures. The Consultant Architect explained this discrepancy in terms of the quality of finishing of the valued structures, with the level of finishing at the Klawura tal-Handaq site higher than those of the Siġġiewi site.
- 5.4.23 The NAO's concerns regarding the absence of documentation explaining the manner by which the Consultant Architect was engaged by the GPD to carry out this valuation remained unresolved. No documentation indicating when and who had engaged the Consultant Architect to carry out this valuation was provided to the NAO despite this Office's requests to the GPD and the Consultant Architect. Instead, the Consultant Architect claimed that he might have been verbally informed of this assignment. This Office considers the GPD's failure to document the commissioning of the Consultant Architect as a shortcoming in terms of the Department's administration.
- 5.4.24 Of interest to the NAO was the motivation cited by Gaffarena in his choice to acquire this property. According to that stated by Gaffarena, a relative of his occupied this land. This was verified by the NAO, and although this Office established that Gaffarena's relative did not hold the property by legal title, records indicated that he had been squatting the property since at least 1993. From the review of documentation retained by the GPD, it was evident that this illegal occupation persisted for a number of years. Notwithstanding the Department's awareness of the irregularity of this situation, no corrective action was taken. Although tangential to the main objectives of this audit, the NAO notes the consistent inaction of the GPD with regard to this evident illegality, ultimately sanctioned through the transfer to Gaffarena.
- 5.4.25 The NAO's concern was drawn to the substantial difference in the values set for this site by the Consultant Architect and PwC. The difference in the estimated values was that of €614,200, with PwC's estimation 370 per cent higher than that established by the Consultant Architect. If PwC's valuation is correct, in the sense that it was based on applicable MEPA policies, then the NAO finds great difficulty in understanding why the Consultant Architect failed to take into consideration these policies when determining the value of the land at Ta' Kandja, Siġġiewi. The application of these policies would have ensured the maximisation of revenue by the GPD. This Office has no reason to doubt the value assigned by PwC, as PwC had in fact consulted with

MEPA on the applicability of these policies to the land in question, thereby justifying and rendering reasonable the valuation established.

### *A Site at Baħar iċ-Ċagħaq, limits of Naxxar*

5.4.26 The Consultant Architect first valued the site located at Baħar iċ-Ċagħaq, measuring 3,437 squares metres and exchanged as part compensation for the January 2015 expropriation, at €250,000. This assignment was commissioned on 6 November 2014, with the valuation submitted on 18 November 2014. However, the site plan was revised on 12 December 2014 to include an additional 298 square metres. On 21 December 2014, the Consultant Architect submitted a new valuation report, valuing the site, now measuring 3,735 square metres, at €260,000.

5.4.27 Although the valuation took into account the structures located on this land, the specific rates applied to built structures and to agricultural land were not indicated. Following a request by the NAO, the Consultant Architect provided information relating to the workings utilised in the determination of the value. The Consultant Architect cited a rate of €42 per square metre for the land, which measured 3,735 square metres. This rate reflected the fact that the site was located in an ODZ area, its consideration as agricultural land, its recreational value, and the views from the site. The structures, now reported as measuring 220 square metres, were valued at a rate of €460 per square metre. The aggregate value of these two components was €258,070, rounded up to €260,000. The NAO could not verify whether the rates cited by the Consultant Architect had in fact been applied when the site was originally valued, since the valuation report, contrary to other cases, was scant of detail.

5.4.28 The value arrived at by the Consultant Architect differed from that established by PwC, in which case the site was valued at €645,000. The difference of €385,000 was equivalent to a variation of 148 per cent. In the establishment of value, PwC acknowledged that the site was located in an ODZ area; however, also took cognisance of the permitted uses of building structures outlined in MEPA's Rural Policy Design Guidance, 2014 document. PwC valued this property through utilisation of the Residual Approach, basing its estimate on the assumption that the existing wooden structure located on site could be redeveloped into a luxurious bungalow with an internal floor area of 350 square metres, with the surrounding grounds upgraded by means of hard and soft landscaping. This assumption was based on the fact that the dilapidated wooden structure situated on site was covered by existent planning policy provisions that permits the rehabilitation of existing structures for residential use.

5.4.29 Further elaborating on the estimation of this site's value, PwC stated that the valuation was composed of two components:

- a. a standard villa plot, encompassing one tumolo of land, valued by means of reference to advertised prices for luxurious bungalows built on plots of land measuring 1,000 to 1,500 square metres, situated in the vicinity of the Baħar iċ-Ċagħaq area; and
- b. an additional landscaped area measuring approximately 2,600 square metres surrounding the bungalow, which estimate was established following enquiries made with estate agents as to the value attributable to extensive grounds surrounding residential dwellings.

5.4.30 In the determination of this site's value, PwC took into consideration the uncertainty arising due to the potential development of an adjacent site, which could have been redeveloped to include a car park and related activities, thereby generating commercial and traffic activity that would have bore a negative impact on the

attractiveness of the site. According to PwC, an inverse effect was generated by the marriage value assigned to the two properties when combined, which augmented the aggregate value of the Baħar iċ-Ĉagħaq sites by €185,000. The negative impact referred to above was nullified by the fact that the adjacent site was also transferred to Gaffarena as part-exchange in the second expropriation, effectively reversed as a result of the marriage value attributed.

5.4.31 The NAO enquired as to whether the additional portion of land, granting the property access from a side road as opposed to the previous point of access solely through the Salini Coast Road, changed the value of the property or merely necessitated the upward revision in area and the corresponding proportionate increase in value. The Consultant Architect indicated the latter option as his understanding, merely revising the earlier established value through a pro rata adjustment. Other queries addressed to the GPD and the Consultant Architect regarding the latter's engagement for the revaluation of the site in December 2014, specifically in terms of documentary evidence supporting this commissioning, remained unaddressed. Again, the NAO's concern was drawn to the GPD's failure to comprehensively document the engagement of the Consultant Architect in the revaluation of this site.

5.4.32 Besides concerns relating to the valuation of the Baħar iċ-Ĉagħaq site, the NAO's attention was also drawn to the manner by which the Consultant Architect was engaged by the GPD. Contrary to previous valuations commissioned by the GPD, in this case, the DEM specifically indicated to the Principal Officer that the Consultant Architect was to be appointed to carry out this assignment. This intervention, was deemed unwarranted by the NAO and contradicted testimony provided to this Office by the DEM, when stating, *'Ifihmni, dak jien m'għandiex say fiha. Dak il-valuations isiru mill-uffiċċju tad-DG. Dak hemm skrivan u jgħaddihom hu. Jiġifieri min jagħmel il-valuations jiena la nkun naf qabel, għax jiena ma nistaqsix għand min marru. Inkun naf wara, meta jiġu.*<sup>13</sup> In the NAO's opinion, this unnecessary deviation from the standard manner by which other valuations were assigned presents an element of risk, which is compounded by the fact that the DEM acted as the sole interface between the GPD and Gaffarena when the latter was identifying properties for exchange.

5.4.33 Finally, the NAO noted that the additional portion of land featuring in the valuation dated 21 December 2014, measuring 298 square metres and exchanged for the first undivided share of 36 Old Mint Street, was in fact exchanged without the authorisation of the DG GPD and PS OPM. The only written record retained by the GPD in this respect were the instructions issued by the DEM on 12 December 2014 indicating the additional portion of land that was to be incorporated. The NAO considers this matter a serious shortcoming, with approximately 300 squares metres of public land disposed of by Government without any documented authorisation whatsoever.

#### *Another Site at Baħar iċ-Ĉagħaq, limits of Naxxar*

5.4.34 The valuation prepared by the Consultant Architect with respect to the second site at Baħar iċ-Ĉagħaq estimated the value of the land and building at €70,000. This land was situated immediately adjacent to the other site at Baħar iċ-Ĉagħaq exchanged in the first expropriation. Although the valuation prepared by the Consultant Architect did not specify a rate for the agricultural land valued, this Office was informed, in later submissions, that the rate applied was that of €42 per square metre. When applied to the 1,663 square metres, this resulted in a value of €69,846, rounded up to €70,000.

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<sup>13</sup> 'I have no say in that. Valuations are carried out by the DG's office. A clerk within the DG's office assigns valuations. I would not be aware of who is assigned to carry out valuations, as I do not enquire on the matter. I would know once the valuations are submitted.'



The Consultant Architect indicated that the rate set reflected the site's ODZ location, its agricultural use, its recreational value and the scenic views. Again, the NAO could not verify whether the rate cited by the Consultant Architect had in fact been applied when the site was originally valued, since the valuation report, contrary to other valuations, lacked such details.

5.4.35 The NAO noted that no documented record indicating the engagement of the Consultant Architect to value this property was retained by the GPD. This anomalous situation was rendered more perplexing when one considers that the Consultant Architect's valuation was dated 16 February 2015. This was a mere three days after the GPD had received Gaffarena's letter proposing the transfer of another one-fourth undivided share. The implication, obvious as it is, is that this property was identified as a possible site for exchange and relative valuation sought, with the GPD failing to retain any form of documentation detailing this sequence of events. Moreover, this was undertaken without the authorisation of the DG GPD and PS OPM, who were yet to sanction the proposed expropriation. This would eventually be granted two weeks and three weeks later, respectively. Notwithstanding the fact that the valuation was received by the GPD on 3 March 2015, the NAO's concerns remain valid, as the focus here is on when the valuation was commissioned and not when the valuation was received.

5.4.36 While the Consultant Architect estimated the value of this site at €70,000, PwC estimated this second Baħar iċ-Ċagħaq site at €178,000. This valuation was established utilising the Residual Approach and was based on the assumption that the site, measuring approximately 1,109 square metres and eligible for use as a car park, would be redeveloped as follows:

- a. a kiosk, or a similar commercial undertaking, built on an area of 20 square metres; and
- b. the area around the kiosk, measuring 1,089 square metres, redeveloped for use as a car park.

5.4.37 The valuation of the land that was to be utilised for the kiosk and the car park was arrived at by reference to the income-generating potential of the identified commercial activities. Furthermore, the assigned use was in accordance with the Central Malta Local Plan Document 2006, which designates two thirds of the site for use as a car park with peripheral soft landscaping. The remaining portion of land pertaining to this site, measuring 554 square metres, was allocated a notional value in view of its limited use. While acknowledging that the Local Plan corresponding to this site allowed for designated use as a car park, PwC also considered the incorporation of this site with the other adjacent land acquired by Gaffarena, possibly as an extension to the landscaped area of the larger site.

#### *Land at Ta' Ħarram, Żebbuġ*

5.4.38 The Consultant Architect valued the two portions of land, referred to as the Raba' ta' Ħarram and measuring a total of 26,270 square metres, at €375,000. This valuation was commissioned by the GPD on 29 August 2014 and duly submitted by the Consultant Architect on 4 September 2014. Information obtained by the NAO confirmed that this land was originally intended for exchange with the first undivided share acquired by Government, yet eventually formed part of the second expropriation process.

5.4.39 The NAO raised various queries relating to the Consultant Architect's valuation, particularly focusing on the €14 per square metre rate utilised in terms of the site's

agricultural land. Contrary to the method of adjustment employed in the case of the Klawura tal-Handaq site, where a 90 per cent deduction was effected on the built structure (with no adjustment to the value of the agricultural land) due to enforcement notices served, in this case, the correction for illegal structures was applied across the entire property. In this sense, the Consultant Architect confirmed the NAO's understanding that the €14 per square metre rate, applied to the 26,270 square metre site, was a correction for the MEPA-identified and enforced irregularities. The Consultant Architect claimed that the structures located on site were a liability and this, together with the enforcement notice, resulted in the adjusted rate.

5.4.40 The Consultant Architect acknowledged that the approach employed in valuing the two aforementioned sites, although bearing similar characteristics, was different. The different approaches were justified by the Consultant Architect when stating that while the land at Tal-Handaq lies within a zone classified as an Agricultural Value Area according to the Central Malta Local Plan Map No QOM 4, the land at Ta' Harram enjoyed no similar classification. This was reflected in the lower base rate applied to the land that was then qualified with other considerations concerning the disposition and location of the land, ease of access, and recreational value, among others.

5.4.41 The Consultant Architect maintained that the fact that two different rates were applied to two different pieces of agricultural land should not be considered as an inconsistency but as an application of professional judgment. The fact that in one instance additional value was assigned due to structures on the land does not imply that the same additional value should be given to another piece of land that also has illegal developments built upon it. In the case of the Tal-Handaq site, it was warranted that the value of the land should be increased in view of the type of development and the relative proximity to the Development Zone boundary (thereby creating a remote possibility that some time in the future, planning policies might allow sanctioning and legal use of the property). According to the Consultant Architect, the Cost/Contractor's methodology employed in this case was deemed rational, as this approach augmented the final value of the land.

5.4.42 In the case of the Ta' Harram site, the Consultant Architect indicated that the land did not enjoy the same Agricultural Value categorisation in the Local Plan. Apart from this, the Consultant Architect referred to the nature of the illegal development, coupled with other considerations concerning relative accessibility, as influencing his professional judgement in opting for a different approach. Elaborating in this sense, the Consultant Architect stated that these are different parcels of land, with different locations, different access, different types of development constructed thereupon and therefore, the application of different approaches was not indicative of inconsistency.

5.4.43 In contrast with the value assigned by the Consultant Architect was that established by PwC. The latter estimated the market value of the Raba' ta' Harram land at €865,000, which was in stark contrast with the €375,000 value assigned by the Consultant Architect. The difference in this case amounted to €490,000, equivalent to a variation of 131 per cent.

5.4.44 PwC based its valuation on the land's permitted use, that is, as agricultural land. Utilising the Sales Comparison Approach, PwC referred to advertised prices for agricultural land in the vicinity, including sites at Żebbuġ, Qormi, Siġġiewi and Mqabba. Taken into account were the characteristics of the property, which was located in a prime agricultural area with adequate access as well as the ready availability of water supply, given the site's proximity to an area of hydrological significance. These characteristics were utilised in identifying comparable properties for valuation purposes.

### *General Comments regarding all Valuations*

- 5.4.45 In the NAO's review of all valuations carried out by the GPD with respect to the properties exchanged, particularly when seen in light of the estimations prepared by PwC, the element of subjectivity in the determination of value was rendered evident. This subjectivity was understandably grounded in the professional judgement of the architects carrying out the valuations. Such subjectivity was manifested in the decision of which method of valuation to apply, the factors that were to be considered, the weight of such factors, and applicable property value rates, among others.
- 5.4.46 Applied to this context, the NAO understands the rationale employed by the Consultant Architect when deciding to employ different methods of valuation to properties bearing similar characteristics and intended for agricultural use, as was the case with the Tal-Handaq and Raba ta' Harram sites. While subjectivity in the selection of valuations methods is understandable, less clear was the difference in rates applied to these properties, both intended for agricultural purposes. The Consultant Architect sought to justify the rate applied by citing a document prepared by the Chamber of Architects in October 2013, where the rate for bare agricultural land was determined as €10.75 per square metre. An alternative method for establishing value also cited by the Consultant Architect was the profits method, which he claimed resulted in a maximum rate of €13.55 per square metre according to the produce cultivated. Therefore, the Consultant Architect maintained that his rate of €14 per square metre was in line with these benchmarks. On the other hand, PwC based their valuation on advertised prices for properties bearing comparable characteristics situated in neighbouring areas. The PwC report does not provide separate rates for the built structures and agricultural land, rendering the comparison of rates not possible. Notwithstanding this, given the magnitude of the difference in the total value assigned to these properties and the consistent directionality of variation, the NAO's concern was drawn to the fact that the values assigned by the Consultant Architect were invariably and substantially lower than those set by PwC.
- 5.4.47 While the difference in values assigned is significant in the case of the two agricultural sites cited above, the variations are more pronounced when the Consultant Architect and PwC assigned different uses to the same property. The largest variance was noted in the valuations of the land at Ta' Kandja, Siġġiewi, in which case the Consultant Architect valued the site at €165,800, while PwC estimated its value at €780,000. The difference of €614,200, equivalent to 370 per cent, was attributable to the different uses assigned. The Consultant Architect designated the site as agricultural land, and while his valuation took into account the structures on site, possible alternatives for and the sanctioning of these structures were not taken into consideration. On the other hand, PwC considered the fact that the site had no particular designation of use indicated in any of the MEPA policy documents reviewed in assessing the valuation. Moreover, PwC established that the site could be used for both residential and industrial/commercial purposes, although additional development was not permitted. Taking these factors in consideration, PwC assessed the property using the Residual Approach, maximising the underlying real estate value of the site.
- 5.4.48 Another property where the valuations set by the Consultant Architect and PwC differed significantly was that of the first site at Baħar iċ-Ċaġħaq. While the former estimated value at €260,000, the latter's was €645,000, resulting in a difference of €385,000, equivalent to 148 per cent. In establishing value, the Consultant Architect limited the possible use of this land to agricultural purposes, while acknowledging its recreational potential. On the other hand, PwC valued the site in terms of its possible redevelopment for residential use, which in this case consisted of a luxurious

bungalow with extensive grounds. This assumption formed the basis of the PwC valuation, which was formulated by employing the Residual Approach.

5.4.49 The second site in Baħar iċ-Ċagħaq was also subject to notable variance, with the valuations by the Consultant Architect and that by PwC set at €70,000 and €178,000, respectively. The difference of €108,000 was equivalent to a 154 per cent variation. The Consultant Architect attributed the same possible use indicated in the case of the first site at Baħar iċ-Ċagħaq. Conversely, PwC took into account the site’s designation as a car park, as well as other possible commercial developments such as kiosks and ancillary car park related facilities. This valuation was arrived at through use of the Residual Approach.

5.4.50 In the NAO’s opinion, the Consultant Architect failed to consider other possible uses for the sites at Ta’ Kandja and Baħar iċ-Ċagħaq, that would have resulted in the maximisation of revenue to Government. Based on information provided by PwC, these alternative uses are permissible under current MEPA regulatory policies, thereby rendering realisable the possible redevelopment of these sites. It is in this context that the NAO’s concerns regarding the reliability of the Consultant Architect’s valuations must be understood, with the magnitude and directionality of arising variations consistently against Government. In the case of these three properties, the source of these variations may be traced to the potential different uses attributed to the properties. It is difficult to extend the argument that ‘valuations are subjective’ to account for these variations, as failure to take into consideration applicable MEPA policies certainly does not fall within this understanding of subjectivity. Therefore, subject to the applicability of the MEPA policies cited by PwC, the NAO is of the opinion that the Consultant Architect’s valuations failed to comprehensively consider all relevant factors, hence resulting in the undervaluation of the three sites.

5.4.51 The valuations of the final property exchanged for 36 Old Mint Street, that is, the shop in Sliema, presented no issues of concern. At €64,000, the valuation prepared by PwC was €1,000 less than that estimated by the GPD Architect. In sum, while the aggregation of valuations prepared by the GPD amounted to €1,128,610, that estimated by PwC was €2,862,000. The net difference between these two sets of valuations was €1,733,390 against Government, equivalent to a variation of 154 per cent (Table 5 refers).

**Table 5: Summary of GPD and PwC valuations**

Property	GPD Valuation	PwC Valuation	Difference (€)	Difference (%)
Land at Klawnsura tal-Ħandaq, Qormi	€192,810	€330,000	(€137,190)	(71%)
Shop in Manwel Dimech Street, Sliema	€65,000	€64,000	€1,000	2%
Land at Ta’ Kandja, Siġġiewi	€165,800	€780,000	(€614,200)	(370%)
Site at Baħar iċ-Ċagħaq, Naxxar (part 1)	€260,000	€645,000	(€385,000)	(148%)
Site at Baħar iċ-Ċagħaq, Naxxar (part 2)	€70,000	€178,000	(€108,000)	(154%)
Land at Raba Ta’ Ħarram, Żebbuġ	€375,000	€865,000	(€490,000)	(131%)
Total	€1,128,610	€2,862,000	(€1,733,390)	(154%)

5.4.52 Although not directly related to the actual valuations, other aspects in the commissioning and reporting of such assignments drew this Office’s attention. One such aspect related to the prompt submission of valuations. This was rendered particularly evident in the case of the valuation of 36 Old Mint Street, which was commissioned on 11 August 2014 and finalised on the same day, albeit received by the GPD on 12 August 2014. Similarly prompt were the valuations prepared for the land at Klawnsura tal-Ħandaq and for the Raba ta’ Ħarram, with both commissioned on 29 August 2014 and submitted on 31 August 2014. These were filed by the GPD on

4 September 2014. Also of concern to the NAO were the instances when no written requests for the valuation of particular sites were made by the GPD. This was the case with the land at Ta' Kandja and the second site at Baħar iċ-Ċagħaq, as well as the revision of the first site at Baħar iċ-Ċagħaq.

5.4.53 Other issues noted by the NAO related to the management of the valuation process as administered by the GPD. It is this Office's understanding that there is no standard procedure regarding the engagement of architects to support the GPD technical section. Mechanisms intended at safeguarding the integrity of the system of engagement are missing, which safeguards could possibly be provided through the introduction of a system of rotation. The NAO also noted that the architects engaged were not requested to submit a conflict of interest declaration. This was deemed to be another component fundamental in ensuring the integrity of the valuation process. In addition, other procedure-related improvements may be registered through the introduction of a standard valuation form, which may be of benefit to the GPD in ensuring a more consistent approach with regard to valuations.

5.4.54 Finally, the NAO's attention was drawn to the payment of valuation-related fees, with the GPD indicating that a fee of €82 was paid for each valuation. Although the fee paid should not constitute a judgement on the valuations, this Office is of the opinion that these fees should reflect the work necessary to arrive at such a valuation, particularly when the amounts involved are substantial.

## 5.5 Authorisation Process

5.5.1 The role played by the various officials involved in these two expropriations is rendered evident in the process leading to their eventual authorisation. Although this process was discussed in detail in chapters 3 and 4, the following provides a succinct account of key developments registered in this respect. Moreover, this brief account highlights the importance of interventions effected, with endorsements provided essential in actively guiding the process through.

5.5.2 In the case of the first share expropriated, the following are the salient events that constituted the authorisation process:

- a. on 11 August 2014, the PS OPM approved, in principle, the acquisition of the first undivided share in exchange for agricultural land following a minute by the DEM;
- b. on 24 November 2014, the DEM listed the properties that were to be exchanged in a minute to the DG GPD;
- c. on 25 November 2014, the DG GPD and PS OPM approved the exchange of these properties as part compensation for the one-fourth undivided share of 36 Old Mint Street;
- d. on 8 January 2015, the Commissioner of Land wrote to the PS OPM, through the DG GPD, who approved, requesting final approval of the expropriation of a share of the Valletta property;
- e. on 8 January 2015, the PS OPM approved the expropriation and referred the matter to the President;
- f. on 12 January 2015, the President issued a declaration relating to the expropriation of a one-fourth undivided share of 36 Old Mint Street; and
- g. on 22 January 2015, the President's declaration was published in the Government Gazette.

5.5.3 The second share followed a comparable pattern, albeit bearing certain differences:

- a. on 2 March 2015, the PS OPM approved the acquisition of a second share of the Valletta property, following a minute by the DEM, also duly endorsed by the DG GPD;
- b. on 12 March 2015, the Assistant Director Contracts GPD listed the properties that were to be exchanged in a minute addressed to the Commissioner of Land;
- c. on 12 March 2015, the PS OPM approved the exchange of these properties;
- d. on 17 March 2015, the Commissioner of Land wrote to the PS OPM, through the DG GPD, requesting final authorisation for the expropriation;
- e. on 18 March 2015, the PS OPM approved the expropriation and referred the matter to the President;
- f. on 24 March 2015, the Commissioner of Land approved the exchange of properties after the DG GPD again referred the matter to him following the earlier referral by the Assistant Director Contracts GPD;
- g. on 24 March 2015, the President issued the declaration of expropriation of an undivided one-fourth share; and
- h. on 8 April 2015, the President's declaration was published in the Government Gazette.

5.5.4 Comparing the two processes, a number of differences emerge. One such difference related to who put forward for authorisation the properties that were to be exchanged for the two shares of the Valletta property. In the case of the first share, the DEM assumed such a responsibility; however, in the second process, this function was carried out by the Assistant Director Contracts GPD. Also different was the official to whom these requests were addressed, with the DG GPD featuring in the first case and the Commissioner of Land as the recipient in the second case. These procedural differences may be attributed to the fact that the post of Commissioner of Land was vacant at the time of the first expropriation, when the authorisation for the properties to be exchanged by Government as part compensation was sought. Also noted by the NAO was the delayed authorisation by the Commissioner of Land, which was eventually provided after the PS OPM had already endorsed the exchange of properties.

5.5.5 In both expropriations, the PS OPM was presented with the properties that were to be exchanged by Government as a concluded matter. All properties identified for exchange by Gaffarena had already been valued by the GPD, with their corresponding values specifically indicated in the minutes addressed to the PS OPM for his endorsement. Whether the initial approval issued by the PS OPM on 11 August 2014 was construed by the GPD as solely implying the endorsement of expropriation or including the sanctioning of negotiations with Gaffarena was unclear. However, the sequence of events that followed this approval indicated the latter understanding, with the GPD's actions relating to the negotiations with Gaffarena on which properties were to be exchanged duly endorsed by the PS OPM. Although the NAO acknowledges that the submission of the offers by Gaffarena was outside of Government's control, the subsequent actions taken thereto were entirely within its control. It is in this context of understanding that the NAO considers Government's actions in deciding to negotiate with Gaffarena prior to the issuance of the President's declaration as imprudent.

5.5.6 The NAO found no evidence or documentation substantiating how Gaffarena selected the properties intended for exchange, how the GPD was informed of these and whether the PS OPM was consulted in this regard. The only documentation that indicated that Gaffarena in fact identified the properties that were to be exchanged

were the minutes submitted to the PS OPM. The absence of such documents hinders the audit process and limits this Office's ability to fully establish who was informed and consulted when the properties were being identified.

5.5.7 When queried by the NAO, the DEM indicated that Gaffarena had discussed the properties he wanted in exchange in meetings held with him. Furthermore, the DEM confirmed the frequency of meetings held with Gaffarena, wherein the properties Gaffarena intended to receive in exchange for 36 Old Mint Street were indicated. The timing of the commissioning of these valuations reflected the staggered manner by which these properties were being identified by Gaffarena, subsequently communicated to the DEM in an equally intermittent manner.

5.5.8 Of concern to the NAO was the reluctance of the Commissioner of Land to endorse the second expropriation. According to the Commissioner of Land, his appointment as Commissioner coincided with the conclusion of the first expropriation, which he endorsed prior to its transmission to the PS OPM on 8 January 2015. However, in the second expropriation, the Commissioner of Land refrained from endorsing the transfer of properties to Gaffarena as part compensation until the PS OPM had issued his authorisation. In fact, the DG GPD had to draw the Commissioner's attention to this lapse, which was rectified shortly before the issuance of the President's declaration. In a meeting with the NAO, the Commissioner of Land expressed his reservations regarding the considerable disbursement in terms of funds and property that was to be transferred by Government. It is in this sense that the Commissioner delayed his authorisation, waiting until the PS OPM and DG GPD had authorised the transaction. Moreover, the Commissioner indicated his unease at the process employed in expropriations and exchanges of this sort, stating that the exchange of properties should follow the finalisation of the expropriation.

5.5.9 Aside from matters relating to the authorisation granted by the PS OPM and the various GPD officials involved in the two expropriations, the NAO's attention was drawn to the President's declarations issued with respect to the two one-fourth undivided shares expropriated by Government. The first declaration was dated 12 January 2015, while the second was dated 24 March 2015.

5.5.10 In both expropriations, the declaration read as follows, '*Jiena hawnhekk niddikjara illi l-art hawn taħt imsemmija hija meħtieġa mill-awtorita kompetenti għal skop pubbliku skond id-dispożizzjonijiet ta' l-Ordinanza dwar l-Akkwist ta' Artijiet għal Skopijiet Pubbliċi (Kapitolu 88) u illi l-Akkwist tagħha għandu jkun b'xiri assolut.*'<sup>14</sup> The description of the properties that were to be expropriated on the strength of these Presidential declarations was, in both cases, as follows, '*Kwart indiviż ta' blokk bini li jinkludi l-fond bin-numru 36, fi Triq Żekka, il-fondi bin-numri 67 sa 70, fi Triq San Ġwann u l-fond bin-numru 47, fi Triq San Patrizju.*'<sup>15</sup> Finally, besides referring to the site plans corresponding to the property to be acquired, the compensation payable was set as follows, '*Il-kumpens offrut għall-kwart indiviż huwa ta' tminn mija u tnejn u għoxrin elf u ħames mitt Ewro (€822,500), skond l-istima li hawn ma' din id-dikjarazzjoni...*'<sup>16</sup>

5.5.11 The NAO noted that the shares of the property that were to be expropriated according to the President's declarations were a one-fourth undivided share in each instance and

<sup>14</sup> 'I hereby declare that the undermentioned land is required by the competent authority for a public purpose in terms of the provisions of the Land Acquisition (Public Purposes) Ordinance (Chapter 88) and that the acquisition thereof is to be by absolute purchase.'

<sup>15</sup> 'One fourth undivided share of a building block including premises with the number 36, in Triq Żekka, premises with numbers 67 to 70, in Triq San Ġwann and premises with number 47, in Triq San Patrizjo.'

<sup>16</sup> 'The compensation for the one fourth undivided share is eight hundred and twenty-two thousand and five hundred Euros (€822,500) according to the valuation published with this declaration...'

made no reference to the shares owned by a specific co-owner. Hence, it is unclear why the GPD understood that the declaration specifically corresponded to the shares owned by Gaffarena as the declaration could have readily applied to all of the other co-owners.

5.5.12 In fact, this understanding was reflected in the legal opinion provided to the IAID by the Attorney General. The IAID enquired as to whether Government, after expropriating an undivided share, could acquire this undivided share from one co-owner only, notwithstanding cognisance of the other co-owners. According to the advice provided by the Attorney General, as reported in the IAID report, *'The legal effect of the expropriation of an undivided share of a building is that the share expropriated is actually taken from all the co-owners of the undivided shares in that building at the time of the publication of the President's declaration. Consequently when Government expropriates an undivided share of a building it owes the price to all the co-owners of that building. Therefore if the transfer is concluded with only one of the co-owners who happens to own an undivided share in the building which corresponds to the share expropriated by Government, this does not bring the expropriation and compensation process to a conclusion since the other co-owners would still have to be compensated for their expropriated undivided share.'*

5.5.13 The legal advice obtained by the NAO reflected the position stated by the Attorney General. According to this advice, under the civil law notion of property, a person holding an undivided share in property is deemed to have an undivided interest in all the property as that share is indeterminate. In 2004, amendments to the Civil Code (Chapter 16) were effected to render the sale of an undivided share in property possible so that technically, after 2004, a person having an undivided share in property could sell that share validly to third parties and the acquisition by third parties would be valid and unassailable. With this in mind, the first point that must be made is that Gaffarena had validly acquired his quarter undivided share in 36 Old Mint Street and could validly sell that quarter undivided share to another third party. However, the acquisition of 36 Old Mint Street was pursuant to an expropriation and not through sale on a voluntary basis. In the notice published in the Government Gazette, what was stated as being expropriated was a quarter undivided share in the property; so expressed, that expropriation effects all the co-owners in the property in that that quarter undivided share would be taken from each and every one of the co-owners and the relative compensation would be consequently due to each and every one of the co-owners and not only to the person to whom it was actually paid, in this case, Gaffarena. The position is that in expropriating a quarter share, it is not stated that the quarter share being expropriated was that belonging to a particular person but a quarter undivided share of the property was expropriated and this would in reality effect all co-owners.

5.5.14 Applied to this context, in both expropriations, the compensation payable to Gaffarena should have been equivalent to a one-fourth of the value of the one-fourth undivided share. In other words, Gaffarena was notionally due €205,625 in compensation, which is one-fourth of the value of €822,500 assigned to each undivided share of the property cited in the President's declarations.

## 5.6 Contracts with Gaffarena

5.6.1 Following the publication of the President's declaration on 22 January 2015, compensation for the expropriated undivided share of the property at 36 Old Mint Street, valued at €822,500, was effected through a deed dated 28 January 2015. Here, Gaffarena was compensated for the expropriation of this one-fourth undivided share through the exchange of a property in Sliema, as well as land at Baħar iċ-Ċaġħaq,



Qormi and Siġġiewi with an aggregate value of €683,610. The difference of €138,890 was settled through a cash payment.

- 5.6.2 The second deed, corresponding to the expropriation of another one-fourth share expropriated by Government, was signed on 10 April 2015. This followed the publication of the President's declaration on 8 April 2015. In this case, Gaffarena was compensated by means of land exchanged situated at Baħar iċ-Ċagħaq and Żebbuġ valued at €445,000 in aggregate. A cash payment of €377,500 was made to Gaffarena to settle the balance due.
- 5.6.3 The NAO is of the understanding that if the Attorney General's advice is applied, then the two deeds with Gaffarena are invalid. The compensation by Government for each of the undivided shares expropriated should have been proportionally paid to all co-owners. In the case of the first one-fourth undivided share expropriated, Gaffarena should have been paid €205,625, with the remaining €616,875 (balance of €822,500) paid to the remaining co-owners in a proportionate manner according to ownership. Compensation to Gaffarena exceeded the €205,625 payable based on this understanding, as properties valued at €683,610 were exchanged and a cash payment of €138,890 was effected.
- 5.6.4 It may therefore be argued that the contracts are effectively flawed as, though Gaffarena was in a position to transfer a one-fourth undivided share in the property, the acquisition by Government was from all the co-owners and not only from Gaffarena. It is a moot point whether Government could successfully sue for the rescission of the deed on this basis; however, even if the deed is not nullified, the other co-owners could possibly bring a claim against Government for the payment of their respective share of compensation established as due for this expropriation in terms of the deed.
- 5.6.5 This anomalous situation is compounded by paragraph 13 of Schedule (Article 3) of the Disposal of Government Land Act (Chapter 268), which states that *'Government land may be given by exchange with any other land which is declared as required for a public purpose under Chapter 88 of the Laws of Malta, to the owner of the land which has been so declared. Provided that when a difference exists in the value of the two plots of land given by exchange, such difference shall be balanced with also giving an additional sum of money. So however that the exchange may not be effected if the value of the Government land to be given exceeds thirty per cent of the value of the expropriated land.'*
- 5.6.6 The IAID sought the advice of the Attorney General with regard to the applicability of paragraph 13 of Schedule (Article 3) to this case. According to that stated in the IAID report, the Attorney General maintained that, *'If only one-fourth of the two one-fourth undivided shares transferred to Government by means of the two public deeds of the 28 January and the 10 April 2015 was in fact covered by the relative Presidential declaration, paragraph 13 could only be availed of up to the value of that one-fourth plus thirty per cent.'* In light of the advice provided by the Attorney General, the IAID established that the value of Government land transferred to Gaffarena exceeded the 30 per cent threshold stipulated in paragraph 13. The NAO is of a similar opinion, noting that the value of Government land exchanged should not have exceeded €267,313 (equivalent to a 30 per cent increase over €205,625), when this in fact stood at €683,610. Needless to say, the cash payment of €138,890 intended to settle the balance due is rendered unnecessary in view of this understanding.
- 5.6.7 The validity of the exchange of lands in this deed is brought into serious doubt in view of article 4 of the Disposal of Government Land Act (Chapter 268), wherein it is stated that, *'Any disposal of land to which article 3 applies made otherwise than in*

*accordance with the provisions of that article shall be null and void. The nullity of a disposal made in contravention of the article aforesaid may be demanded also by the Attorney General or by any person who is a member of the House of Representatives at the time of the demand.'* This matter was also reported on by the IAID, citing the Attorney General's advice that, *'lack of compliance with paragraph 13 of Schedule 3 to the Disposal of Government Land Act, where that paragraph is the only basis for the transfer of Government Land in terms of the Act, engages article 4 of the Act.'*

- 5.6.8 The NAO supports that stated by the IAID and the Attorney General, urging the application of article 4 of the Disposal of Government Land Act (Chapter 268), resulting in the reversal of the exchange of lands effected in this first deed. This Office is of the opinion that it may be possible for Government to proceed with an action for the rescission of the deed on the basis that the provisions of this Act have not been followed; however, this is a matter for the Attorney General to determine, though it may be possible in terms of the law for other persons to bring forward such action.
- 5.6.9 Applying the Attorney General's advice to the IAID in the case of the second expropriation, the NAO is of the understanding that Gaffarena should have been paid €411,250, with the remaining €411,250 (balance of €822,500) paid to the other co-owners. This understanding is based on that stated by the Attorney General, *'... that the share expropriated is actually taken from all the co-owners of the undivided shares in that building at the time of the publication of the President's declaration.'* The increase in the amount payable to Gaffarena is attributable to the fact that he was now the owner of half of the second one-fourth undivided share at the time of the publication of the President's declaration and therefore was to be accordingly compensated.<sup>17</sup>
- 5.6.10 The NAO noted that the value of the lands exchanged in the second deed with Gaffarena were within the 30 per cent threshold stipulated in paragraph 13 of the Schedule (Article 3) of the Disposal of Government Land Act. This understanding was based on the fact that Gaffarena was given land valued at €445,000, which fell within the 30 per cent bracket that would notionally have been set had he been paid the €411,250 due. The approximate offsetting of dues would have rendered the cash payment of €377,500 made to Gaffarena redundant.
- 5.6.11 It is unfortunate that legal advice was not sought by the GPD prior to the finalisation of the two deeds with Gaffarena. This shortcoming is rendered more pronounced when one considers the anomalous particularities relating to these expropriations, which should have served as a catalyst in urging the GPD to seek legal guidance.
- 5.6.12 Finally, when queries regarding the haste with which the expropriation proceeded from the President's declaration stage to the deed of transfer were made to the GPD, the Department indicated to the NAO that this was intended to avert the requirement to deposit funds required for the expropriations in a bank account. According to article 22(3) of the Land Acquisition (Public Purposes) Ordinance (Chapter 88), the GPD is required to deposit, within 15 working days of the publication of the President's declaration, an amount equivalent to the stated value of the property in an interest bearing bank account. In view of the fact that the GPD was aware of who the owner of the expropriated property was, and who in turn was well aware of the expropriation proceedings underway, the necessity of depositing such funds was avoided by directly proceeding to the deed.

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<sup>17</sup> It must be stated that if Government had expropriated a share from all co-owners, Gaffarena would effectively have been transferring the second portion of his first one-fourth undivided share and the second portion of his second one-fourth undivided share. The Mercieca family, who were still the owners of this share when the first President's declaration was published, would have transferred the first portion of the second one-fourth undivided share to Government.

## 5.7 Other Issues of Note

- 5.7.1 In the NAO's opinion, these two expropriations were highly atypical and therefore this Office considered the application of the provisions considered in the Land Acquisition (Public Purposes) Ordinance (Chapter 88) as poorly fitting. Notably, while the Ordinance clearly stipulates what is intended by 'public purpose', it stops short of requiring any type of formal documentation identifying the specific public purpose that is to be served. In this case, although the officials interviewed by the NAO indicated some form of public purpose, the absence of documentation in this regard was conspicuous, yet again, there exists no legal requirement to formally document such matters. The risk in this respect is evident, with the level of justification required to expropriate private property established by law clearly inadequate. The administrative safeguard against the possible abuse of government power falls squarely within the responsibility of the GPD, which in this case, fell short of the expected standards of good governance and accountability.
- 5.7.2 Another anomalous aspect of these expropriations was the fact that an undivided share was being acquired by Government. The Ordinance does not preclude Government from expropriating an undivided share of a property. In fact, the Attorney General, as reported in the IAID report, stated that, '*Government may expropriate an undivided share in land provided that this is done for 'public purposes'.*' While the NAO supports this understanding, this Office questions what public purpose could possibly be served through the acquisition of a one-fourth undivided share of 36 Old Mint Street. Although not in contravention of the Ordinance, the NAO deems the expropriation of these undivided shares as highly irregular, particularly when one considers the circumstances providing context, the sequence of events and the lack of documentation prevalent throughout. While there is no legal obligation for the GPD to expropriate an entire property as opposed to an undivided share, the former option would certainly have presented a stronger argument for public purpose. Here, the GPD failed to ensure the effective disbursement of public funds and implement an equitable process for the acquisition of property required for a public purpose.
- 5.7.3 Similarly uncharacteristic was the manner by which the acquisition processes were instigated, with one co-owner (Gaffarena) effectively proposing the expropriations. This scenario is not contemplated in the Ordinance as the assumption, quite logically, is that Government identifies the property that is required for a public purpose and not vice-versa. Although the Ordinance does not specifically preclude this possibility, the initiation of the process of expropriation by the owner detracts from the credibility of the public purpose that is to be served, casting significant doubt on the ethical correctness and motivation behind the expropriation.
- 5.7.4 As discussed, although within the confines of the law, the manner by which the expropriation of the two undivided one-fourth shares of 36 Old Mint Street was carried out raised this Office's concern. The NAO maintains notable reservations regarding the evident shortcomings identified in terms of good governance, accountability and ethical correctness. When considered in conjunction with collusion-related findings, these shortcomings render the NAO's concern more pronounced.
- 5.7.5 With reference to the correspondence referred to in paragraph 5.2.5, although not directly related to the expropriation of 36 Old Mint Street, the NAO considers the exercised in deciding who is to be paid dues relating to past expropriations as unwarranted. This Office is of the opinion that payments for expropriations that have been long due should, as far as possible, be based on the period that such payments have been outstanding. The GPD could utilise a first in first out system, settling the oldest dues first. The NAO acknowledges the need to retain an element of flexibility or

discretion in such matters, particularly when the dues relating to past expropriations correspond to a considerable outlay; however, in this case, the particular attention afforded to Gaffarena does not fit within this understanding.

- 5.7.6 Regarding the role of the Officer in the PS OPM Secretariat, the NAO acknowledges that his primary function was that of liaising between the PS OPM and the GPD. Moreover, this Office is cognisant of the fact that this Officer's level of involvement was limited, mostly involving attendance to a few meetings between Gaffarena and the GPD and the receipt of information submitted by the Department. One such instance related to email correspondence regarding the valuation of lands, where the Officer in the PS OPM Secretariat was, in the NAO's opinion, unnecessarily copied in. Although not active in this sense, the NAO still questions the relevance of this involvement. This matter touches on somewhat of a grey area, with no clear delineation as to where liaison stops and interference begins.
- 5.7.7 Other issues that emerge as a result of this review concern management-related shortcomings prevalent at the GPD, particularly with respect to the roles of the DG GPD and the DEM. The NAO considers the actions taken by the DEM as inconsistent with his position description, rendered evident in the minute written at the start of the process, where he advocated the expropriation of the first share of the Valletta property. This key intervention was clearly outside his remit, as discussed in paragraph 5.2.11. Similarly flawed was the role of the DG GPD, intended to oversee the Department's operations, yet who failed to consult or discuss the matter with other senior officials and merely endorsed an expropriation of questionable public purpose and a significant outlay of funds.
- 5.7.8 The NAO also noted other management-related issues that impacted on the NAO's ability to comprehensively establish the facts of the case. The GPD failed to adequately maintain a record of persons who had meetings with the Department's officials, hence limiting this Office in establishing the precise chronology, frequency and officials met in visits by Gaffarena to the GPD. Also conspicuous by their absence were any minutes of critical meetings held between Gaffarena and the GPD officials involved in this matter. Despite the fact that there was no written record of how Government arrived at certain key decisions, no analysis of the utility of acquisition, no consideration of alternative courses of action, the process went ahead nonetheless.



# Chapter 6

## Conclusions and Recommendations

## Chapter 6 – Conclusions and Recommendations

### 6.1 Timeline of Key Events

6.1.1 Hereunder is a timeline of the key events relating to the expropriation of two one-fourth undivided shares of the property at 36 Old Mint Street, Valletta, as well as the two promise of sale agreements entered into by Gaffarena for the acquisition of another one-fourth and a one-eighth undivided share of the property (Table 6 refers).

**Table 6: Timeline of key events**

Date	Description
28 July 2014	Mark Gaffarena offered to exchange his share of 36 Old Mint Street with agricultural properties held by Government
31 July 2014	The DEM favourably recommended the consideration of this transaction, which was subsequently endorsed by the DG GPD
11 August 2014	The PS OPM expressed agreement with that proposed by the DEM
11 August 2014	The GPD requested the Consultant Architect to value the property at 36 Old Mint Street
12 August 2014	The GPD received the Consultant Architect's valuation of 36 Old Mint Street, valued at €3,290,000
15 August 2014	The Cefai family threatened eviction of the BICC from 36 Old Mint Street in view of structural works in breach of the lease agreement with Government
21 August 2014	The BICC referred the matter to the Permanent Secretary MSDC, copying the DG GPD, refuting the allegations made by the Cefai family
29 August 2014	The GPD requested the Consultant Architect to value the land at Klawsura tal-Ħandaq, Qormi
29 August 2014	The GPD requested the Consultant Architect to value the land at Raba ta' Ħarram, Żebbuġ
4 September 2014	The GPD received the Consultant Architect's valuation of the land at Klawsura tal-Ħandaq, valued at €192,810
4 September 2014	The GPD received the Consultant Architect's valuation of the land at Raba ta' Ħarram, valued at €375,000
29 September 2014	The GPD received the Consultant Architect's valuation of the land at Ta' Kandja, Siġġiewi, valued at €165,800
8 October 2014	The GPD requested its Technical Section to value a shop at 73 Manwel Dimech Street, Sliema
30 October 2014	The GPD Architect submitted the valuation of the shop at 73 Manwel Dimech Street, valued at €65,000
31 October 2014	Gaffarena entered into a promise of sale agreement for the acquisition of a one-fourth undivided share of 36 Old Mint Street with the Mercieca family, valued at €139,762 and due for finalisation by 30 April 2016

31 October 2014	Gaffarena entered into a promise of sale agreement for the acquisition of a one-eighth of an undivided share of 36 Old Mint Street with the Bonello family, valued at €68,134 and due for finalisation by 30 April 2016
5 November 2014	Gaffarena's Notary completed the form required in establishing ownership of property subject to expropriation
6 November 2014	The GPD requested the Consultant Architect to value a site at Baħar iċ-Ċagħaq
18 November 2014	The GPD received the Consultant Architect's valuation of the site at Baħar iċ-Ċagħaq, valued at €250,000
24 November 2014	The DEM indicated to the DG GPD the properties that were to be exchanged by Government as part compensation payable to Gaffarena for the first undivided share
25 November 2014	The DG GPD endorsed the proposed properties for exchange
25 November 2014	The PS OPM approved the exchange of these properties
26 November 2014	The Assistant Director Contracts GPD enquired with the DG GPD whether this course of action was advisable
26 November 2014	The DG GPD informed the Assistant Director Contracts GPD that it was requested that the Department acquired this share and that the remaining shares would be considered when funds were available
1 December 2014	The Assistant Director Contracts GPD requested the Principal Officer GPD to seek clarifications from the Consultant Architect regarding the valuation of 36 Old Mint Street, specifically regarding the fact that the property was leased to Government
4 December 2014	The Consultant Architect replied to concerns regarding the lease to Government, stating that this bore no impact on the valuation
12 December 2014	The DEM issued instructions for the revision of the dimensions of the site at Baħar iċ-Ċagħaq
23 December 2014	The GPD received the Consultant Architect's revised valuation of the site at Baħar iċ-Ċagħaq, valued at €260,000
6 January 2015	The Assistant Director Contracts GPD referred the query regarding the lease to Government to the Commissioner of Land
7 January 2015	The Commissioner of Land again referred this matter to the Consultant Architect
7 January 2015	The Consultant Architect again stated that the lease to Government bore no impact on the valuation
8 January 2015	The Commissioner of Land requested the approval and endorsement of the PS OPM, through the DG GPD, for the acquisition of a one-fourth share of 36 Old Mint Street
8 January 2015	The PS OPM approved the proposed expropriation and submitted same for the President's endorsement
12 January 2015	The President endorsed the proposed expropriation of a one-fourth share of 36 Old Mint Street
14 January 2015	The President's declaration was published in the Malta Government Gazette
28 January 2015	Deed between Government and Gaffarena outlining properties to be exchanged and amount payable for the expropriation of a one-fourth share of 36 Old Mint Street signed (compensation consisted of €683,610 in property and €138,890 in cash)
13 February 2015	Gaffarena sent another letter to the GPD indicating his willingness to sell another one-fourth share of 36 Old Mint Street
26 February 2015	Gaffarena acquired the second one-fourth share of 36 Old Mint Street from the Mercieca family
undated	The DEM referred the matter to the PS OPM, through the DG GPD, requesting their approval to expropriate
27 February 2015	The DG GPD approved the expropriation proposed by the DEM
2 March 2015	The PS OPM endorsed the proposed expropriation of the second one-fourth share of 36 Old Mint Street
3 March 2015	The GPD received the Consultant Architect's valuation of the second site at Baħar iċ-Ċagħaq, valued at €70,000
3 March 2015	The DEM referred the matter to the Assistant Director Contracts GPD to initiate proceedings for the publication of the President's declaration through the Commissioner of Land



12 March 2015	The Assistant Director Contracts GPD sought the authorisation of the Commissioner of Land, specifying the properties to be exchanged and amount payable as compensation due to Gaffarena
12 March 2015	The PS OPM approved the compensation due for the second one-fourth share
17 March 2015	The Commissioner of Land again requested the authorisation of the PS OPM regarding the acquisition of the second one-fourth share
18 March 2015	The PS OPM sanctioned this acquisition and referred the matter to the President for the necessary endorsement
24 March 2015	The Commissioner of Land approved the acquisition of the second share and compensation due
24 March 2015	The President endorsed the proposed expropriation of a second one-fourth share of 36 Old Mint Street
24 March 2015	Gaffarena's Notary completed the form required in establishing ownership of property subject to expropriation
26 March 2015	Gaffarena entered into a promise of sale agreement for the acquisition of another one-fourth undivided share of 36 Old Mint Street with the Cefai family, valued at €139,762 and due for finalisation by 26 March 2016
8 April 2015	The President's declaration was published in the Malta Government Gazette
10 April 2015	Deed between Government and Gaffarena outlining properties to be exchanged and amount payable for the expropriation of a second one-fourth share of 36 Old Mint Street signed (compensation consisted of €445,000 in property and €377,500 in cash)
31 May 2015	First allegations emerged that Government paid €1,600,000 for half ownership of a property in Valletta
5 June 2015	Opposition MPs requested AG to review Government's expropriation of two one-fourth undivided shares of 36 Old Mint Street

## 6.2 Conclusions and Recommendations

6.2.1 In addressing the terms of reference set by the Opposition Members on the PAC in conjunction with other Opposition MPs, dated 5 June 2015, the NAO maintains notable reservations regarding the evident shortcomings identified in terms of good governance, accountability and ethical correctness. When considered in conjunction with collusion-related findings, these shortcomings heightened this Office's concern. In essence, the NAO concluded the following:

### *Good Governance and Transparency*

6.2.2 In its review of these processes of expropriation, the NAO established that the standards expected in terms of good governance were lacking. The prompt and decisive action taken by the GPD in advocating these expropriations, without any form of discussion or analysis, was deemed incomprehensible by the NAO. Despite there being no written record of how Government arrived at certain key decisions, no analysis of the utility of acquisition, and no consideration of alternative courses of action, the process went ahead nonetheless. This concern was heightened by the fact that the decision to expropriate would eventually entail an outlay of €3,200,000, and did in fact entail a disbursement of €1,645,000. This Office is not in a position to establish whether the presence of an Officer in the PS OPM Secretariat, in the initial meeting between Gaffarena and the DEM, conditioned the Department's favourable consideration of Gaffarena's offer, and whether that discussed during this meeting reflected the outcome of the meeting between the PS OPM and Gaffarena.

6.2.3 In terms of transparency, the absence of any written record corresponding to these meetings limited the NAO's verification of events, constraining the Office to rely on verbal testimony provided by officials involved in the process. The numerous inconsistencies in the testimony provided by the DEM were deemed to be of significant concern by the NAO, particularly in view of his pivotal role in the expropriations.

## *Value for Money Considerations and the Valuation of Properties Exchanged*

- 6.2.4 The ascertainment of value for money with respect to the expropriation of 36 Old Mint Street is multi-faceted. One such facet relates to the value assigned to the property. The NAO has reservations as to whether a fair value was assigned in determining the compensation paid by Government with respect to this expropriation. In this Office's review of the GPD valuation, it was noted that the property estimate was lacking in terms of detail, failing to adequately substantiate the rates utilised. Furthermore, these rates were notably discrepant to those established by the NAO, with the GPD valuation of €3,290,000 significantly higher than that obtained by this Office, that is, €1,889,000.
- 6.2.5 Another facet relates to the valuation of the other properties exchanged by Government as part compensation to Gaffarena. These valuations, as prepared by the GPD, were equally discrepant when compared to those prepared by PwC on behalf of the IAID. All but one of the valuations differed significantly, with the aggregate variance being that of €1,733,000, again to the detriment of Government, since in this case the properties exchanged were undervalued. Combining the overvaluation of 36 Old Mint Street with the undervaluation of the properties exchanged resulted in a staggering discrepancy of €3,134,000. Applied to the context of the two shares expropriated and on the basis of valuations obtained by the NAO and the IAID, Government acquired property worth €944,500, while Gaffarena received €516,000 in cash and €2,862,000 in property, in aggregate, €3,378,000.
- 6.2.6 Although this discrepancy may be partly attributed to the subjectivity of such valuations, this argument cannot be extended to account for the GPD's failure to consider key facts that bore a direct and significant impact on the property being expropriated and disposed of by Government. In the case of 36 Old Mint Street, the Consultant Architect failed to consider the property's encumbrance. The impact of this consideration on the valuation obtained by the NAO was equivalent to a reduction of 20 per cent of the value. In the case of the other properties, similar omissions were noted, with sites valued as agricultural land by the Consultant Architect, yet considered for residential, commercial or industrial purposes by PwC. These alternative uses, deemed permissible by MEPA, accounted for the most substantial element of variations noted.
- 6.2.7 Value for money must also be understood in terms of the reason and motivation behind Government's expropriation of 36 Old Mint Street. These aims and objectives remained obscure to the NAO, vaguely documented by the DEM and referred to in a fluid manner in interviews held by this Office with various officials involved. Failure to clearly stipulate the objective served by this expropriation renders the establishment of value for money an impossible endeavour. The acquisition of property by Government is not an end in itself but a means to an end, with the public purpose being its end. In this sense, with no public purpose specified, and no end indicated, it is not possible to establish whether Government's objective was met in a cost-effective manner, since the action taken served no specific purpose and so value for money cannot be ascertained.
- 6.2.8 If one were to acknowledge the commonly cited justification of the need for office space, the NAO still fails to understand the necessity of this specific office space, particularly when one considers the fact that Government had the right to occupy this property until 2028. The NAO is of the opinion that the need for office space could have been readily addressed through a more open and transparent competitive procurement process. It is evident that the GPD did not consider or explore the

feasibility of alternative means of obtaining office space in Valletta, as there were no records of any workings or supporting documentation to this end.

6.2.9 In sum, the NAO is of the opinion that value for money is not solely limited to the value of what is being acquired but should also take into consideration its necessity and utility. In the case of the expropriation of 36 Old Mint Street, the necessity of two one-fourth undivided shares remains a highly questionable matter. The NAO's reservations centre on what utility could possibly be served through ownership of an undivided part of a property, when it was entirely within Government's control to expropriate the entire property. When one considers the inflated valuation of 36 Old Mint Street, the undervaluation of Government land disposed of, as well as the substantial cash payments made, over and above the vague public purpose, the NAO deems this expropriation as not constituting value for money.

### *An Elusive Public Purpose*

6.2.10 The public purpose served by the expropriation of two one-fourth undivided shares of 36 Old Mint Street was far from clear to the NAO. The only documentation relating to the public purpose that was to be served through the first expropriation was a minute by the DEM, advocating the favourable consideration of Gaffarena's offer for possible use as a ministry or a museum. The NAO established that the elusiveness of the public purpose was not attributable to inadequate documentation as the PS OPM, DG GPD and DEM confirmed that they had not discussed the public purpose that was to be served through these expropriations. In these circumstances, the NAO concluded that these officials failed to safeguard Government's interest by expropriating property that, although useful, served no identified public purpose.

6.2.11 While the detrimental effect of unwarranted political interference is acknowledged by the NAO, failure to adequately involve oneself when required is equally detrimental. In the case of the expropriation of 36 Old Mint Street, the NAO is of the opinion that the PS OPM failed to adequately scrutinise the recommendation proposed by the DEM, when he endorsed the acquisition without consulting the GPD or questioning the purpose that was to be served through this expropriation.

6.2.12 The acquisition by Government of the second one-fourth undivided share rendered the identification of a public purpose somewhat redundant, as this should have been established in the first expropriation. Notwithstanding this, the NAO found no documentation outlining what public purpose was to be served through this second expropriation and no justification why Government did not consider the acquisition of the remaining undivided shares of the Valletta property.

### *The Transfer of Confidential Information to Third Parties*

6.2.13 While the NAO has no direct evidence substantiating the transfer of confidential information to third parties, the circumstantial evidence reviewed indicates that certain critical information was in fact disclosed. For all intents and purposes, an expropriation becomes public knowledge when the President's declaration is published in the Government Gazette. In this case, the NAO has unequivocally established that Gaffarena was aware of Government's intention to expropriate well in advance of this publication, as valuations relating to the properties identified by Gaffarena for exchange had already been prepared. Furthermore, other documentation required to effect the deed of exchange, which should have been completed after the declaration, was in fact received by the GPD well ahead of the publication in the Government Gazette.

6.2.14 The reason why the NAO has termed evidence at hand as circumstantial emanates from the fact that this Office does not have documentation indicating the direct exchange of information between the officials involved and Gaffarena. The NAO's inability to obtain evidence of the direct exchange of information with Gaffarena is attributable to the manner by which negotiations were undertaken, with no written record of Gaffarena's meetings with the DEM being retained or records of correspondence exchanged on the matter. In the absence of such, the NAO was unable to obtain irrefutable evidence of the transfer of confidential information, yet this in no manner detracts from this Office's previous assertions that Gaffarena did have access to information that was not public. This disclosure of official information is in breach of the First Schedule, Code of Ethics (Article 5) of the Public Administration Act, which stipulates that, *'A public officer should only disclose official information or documents acquired in the course of his or her employment when required to do so by law, in the course of duty, or when proper authority has been given.'*

6.2.15 The NAO is of the opinion that this information was confidential as it was sensitive government-related information that only Gaffarena was privy to. This put Gaffarena at an unfair advantage over the other co-owners as he could anticipate Government's intention to expropriate the remaining undivided shares in advance of this becoming public knowledge. In fact, Gaffarena did exploit this information when he entered into a promise of sale agreement for the second one-fourth share with the Mercieca family (eventually expropriated by Government in April 2015) and another promise of sale agreement for a one-eighth share of the Bonello family. These two promise of sale agreements were entered into by Gaffarena in advance of the publication of Government's expropriation, yet at a time when Gaffarena was privy to this confidential information that the other owners were not aware of.

6.2.16 Although the irregularities highlighted in this section of the report bear direct relevance to the provisions stipulated in articles 133 and 257 of the Criminal Code, the determination of whether these provisions have been breached remains a complex legal matter outside of the mandate of the NAO.

### *Ethical Conduct of Officials Involved*

6.2.17 The NAO's main concern relating to the ethical conduct of officials involved in these expropriations relates to the collusion noted between the GPD and Gaffarena, secretly cooperating to the detriment of the other co-owners. This conclusion arrived at by the NAO was based on the fact that, although it was within the GPD's legal right to acquire the entire property, the Department opted to expropriate only two undivided shares from Gaffarena in a piecemeal manner. In fact, the GPD only negotiated with Gaffarena and never informed any of the other co-owners of such negotiations. The GPD was aware or could easily have traced the identity of the other co-owners and could have readily negotiated with them too following the issuance of the President's declaration. Furthermore, the GPD justified the piecemeal acquisition by citing insufficient funds when funds to acquire the entire property were in fact available. Also supporting the NAO's understanding of collusion was the fact that Gaffarena offered to sell a share to the GPD that he did not own. Of significant concern to the NAO were the valuations prepared by the GPD with respect to the properties exchanged for 36 Old Mint Street, which render evident the fact that Gaffarena was involved in expropriation-related preparations well in advance of the President's declaration. Further evidence of this irregularity was the form certifying ownership of the 'expropriated property' that was completed by Gaffarena's lawyer and submitted to the GPD prior to the President's declaration.

6.2.18 The elimination of the Raba ta' Ħarram property from the first expropriation process, due to the aggregate value of properties proposed in exchange for a share of 36 Old Mint Street exceeding that permissible, indicated that Gaffarena was aware of the values of the lands that he was to acquire. This was confirmed by Gaffarena in written submissions to this Office. In the NAO's understanding, this awareness of the values assigned to the lands, apart from supporting the understanding of collusion between Gaffarena and the GPD, introduced a considerable element of risk as access to such information provided an opportunity and context for the breach of the process' integrity. The extent of the risk depended on what information Gaffarena was privy to. The fact that Gaffarena was informed of proceedings prior to them becoming public was clear; however, the NAO could not establish the extent of information at his disposal due to his failure to cooperate with this Office. The GPD's poor record keeping and the officials' dubious account of events, particularly in view of how this expropriation materialised without any coordination between those involved, further compounded this. Finally, supporting the notion that Gaffarena was well informed of what was going on, was the evidence provided by all GPD officials, who confirmed the regular presence of Gaffarena at the GPD offices, specifically referring to various instances when he was seen in the company of the DEM.

6.2.19 The NAO is of the opinion that this expropriation was instigated by Gaffarena, yet readily facilitated by the PS OPM, DG GPD and DEM. The NAO deems such collusive action as highly inappropriate, in clear breach of the fundamental principles of good governance, transparency and fairness. Although the NAO noted serious shortcomings in the GPD's management of this expropriation process, this would not have been possible without the authorisation provided by the PS OPM.

#### *The Classification of 36 Old Mint Street, Valletta*

6.2.20 The GPD officials interviewed stated that the expropriation of 36 Old Mint Street as a historical site was never considered, claiming that it was the Consultant Architect's responsibility to establish whether the building was to be classified as such. In turn, the Consultant Architect maintained that since the building was not scheduled, then it could not be considered as such. The NAO established that although 36 Old Mint Street is not scheduled by MEPA, Valletta as a whole is on the national protective inventory and alterations to the buildings within this locality are subject to the same level of scrutiny as in the case of an individual scheduling.

6.2.21 Nonetheless, the advice of the Superintendence of Cultural Heritage, on whether the building ought to have been scheduled, was not sought by the GPD. This Office is not in a position to comment on what this advice would have been had it been sought; however, it was not the intention of the GPD to expropriate this building due to its historical significance and status, as this would have otherwise been indicated in the President's declaration. The NAO is of the understanding that expropriation of 36 Old Mint Street as a historical building would have resulted in less of a disbursement by Government since its open market value would have been adjusted to take into account the cost of refurbishing the building.

#### *The Setting of a Precedent and other Legal Considerations*

6.2.22 One of the terms set by the PAC related to whether this acquisition had set a precedent that would condition Government to expropriate all commercial properties leased to it, which leases were to expire in 2028 according to the revised rent legislation. This expropriation cannot be considered in this light, as it is within Government's right to expropriate any property required to serve a public purpose. It is not reasonable

to assume that this expropriation would serve as precedent in this sense, for it is the public purpose that should determine the acquisition of property by Government and not the characteristics of the property that is being expropriated (in this case, all commercial properties leased to Government, which leases were to expire in 2028).

6.2.23 Although it is this Office's opinion that no precedent was set in the above-described sense, this expropriation raised a number of legal issues. Following the advice provided to the IAID by the Attorney General and supported by the legal advice obtained by the NAO, this case has established that Government may expropriate an undivided share of a property, even in cases when it owned no previous share in the property. In other cases involving the expropriation of an undivided share brought to the NAO's attention by the GPD, Government owned the remaining portion of the property and therefore, through expropriation, Government was assuming sole ownership.

6.2.24 Notwithstanding that Government may acquire undivided shares in a property through expropriation, the advice provided by the Attorney General to the IAID, again supported by the NAO, asserts that compensation must be paid to all co-owners proportionate to their share of ownership. The NAO noted that the shares of the property that were to be expropriated according to the President's declarations were a one-fourth undivided share in each instance and made no reference to the shares owned by a specific co-owner. Hence, it is unclear why the GPD understood that the declaration specifically corresponded to the shares owned by Gaffarena as the declaration could have readily applied to all the other co-owners.

6.2.25 The advice of the Attorney General to the IAID extended into the compensation payable to the co-owners and in essence stated that even if the transfer is concluded with one of the co-owners, this does not conclude the expropriation and compensation process, since the other co-owners would still be due compensation for their undivided share. Applied to this context, in both expropriations, the compensation payable to Gaffarena should have been equivalent to a quarter of the value of the one-fourth undivided share. In other words, Gaffarena was notionally due €205,625 in compensation, which is one-fourth of the value of €822,500 assigned to each undivided share of the property cited in the President's declarations.

6.2.26 The NAO is of the understanding that if the Attorney General's advice is applied, then both deeds with Gaffarena are invalid. The compensation by Government for each of the undivided shares expropriated should have been proportionally paid to all co-owners. In the case of the first one-fourth undivided share expropriated, Gaffarena should have been paid €205,625, with the remaining €616,875 (balance of €822,500) paid to the remaining co-owners in a proportionate manner according to their share of ownership. Compensation to Gaffarena exceeded the €205,625 payable based on this understanding, as properties valued at €683,610 were exchanged and a cash payment of €138,890 was effected.

6.2.27 The validity of the exchange of lands in this deed is brought into serious doubt in view of article 4 of the Disposal of Government Land Act (Chapter 268). The NAO supports that stated by the IAID and the Attorney General, urging the application of article 4 of the Disposal of Government Land Act (Chapter 268), resulting in the reversal of the exchange of lands effected in this first deed.

6.2.28 Applying the Attorney General's advice to the IAID in the case of the second expropriation, the NAO is of the understanding that Gaffarena should have been paid €411,250, with the remaining €411,250 (balance of €822,500) paid to the other co-owners. The increase in the amount payable to Gaffarena is attributable to the fact that he was then the co-owner of the second one-fourth undivided share at the time

of the publication of the President's declaration and therefore was to be accordingly compensated.

6.2.29 The NAO noted that the value of the lands exchanged in the second deed with Gaffarena were within the 30 per cent threshold stipulated in paragraph 13 of the Schedule (Article 3) of the Disposal of Government Land Act. This understanding was based on the fact that Gaffarena was given land valued at €445,000, which fell within the 30 per cent bracket that would notionally have been set had he been paid the €411,250 due. Although the property exchanged fell within the stipulated parameters, the augmentation of compensation through a cash payment of €377,500 rendered this deed irregular.

### *The BICC Issue*

6.2.30 The NAO established that the GPD did not reply to a letter, dated 15 August 2014, submitted by the legal representative of the Cefai family to the BICC. This was subsequently referred to the GPD by the BICC on 21 August 2014. It must be noted that although correspondence on the matter was exchanged internally, the BICC did not submit a written reply to the owners of the property or their legal representative. This correspondence bore no influence on the decision to expropriate, as negotiations had already commenced between the GPD and Gaffarena. This was rendered evident by the fact that prior to 15 August 2014, the DEM had already submitted correspondence to the PS OPM advocating the acquisition, the Consultant Architect had already been engaged and the property already valued.

6.2.31 Furthermore, it must be noted that the allocation of the property to serve as offices to be utilised by the BICC was in effect a temporary measure and not the reason why 36 Old Mint Street was expropriated. This was established following the review of correspondence exchanged regarding the temporary allocation of the premises to the BICC and subsequently corroborated during interviews held by the NAO with relevant officials.

### *Initiation, Negotiation and Authorisation of the Expropriations*

6.2.32 The NAO was tasked with establishing when negotiations regarding the expropriation of 36 Old Mint Street commenced, who was involved in and who was informed of such negotiations. The Office was also requested to indicate who authorised these expropriations. The first documentation relating to this matter is the letter submitted by Gaffarena on 28 July 2014, wherein he offered to exchange his one-fourth undivided share of the Valletta property for government-owned agricultural land already leased to him. However, the PS OPM indicated to this Office that he had met Gaffarena prior to this date and advised him to pursue the matter with the GPD, hence the submission of the letter. Shortly after receipt of Gaffarena's letter, in a minute to the PS OPM dated 31 July 2014, the DEM favourably advocated the exchange. This sequence of events corroborates that stated by the PS OPM, that negotiations for the acquisition of 36 Old Mint Street commenced in 2014.

6.2.33 Following the review of documentation retained by the GPD and the interviews held by the NAO, this Office established that the officials bearing a key role in this expropriation were the PS OPM, DG GPD and DEM. On the basis of information available to this Office, the NAO arrived at the understanding that it was the DEM who assumed the primary role of negotiating with Gaffarena. However, it must be stated that the conclusion of these negotiations would not have been possible without the endorsement of the DG GPD and the final authorisation by the PS OPM.

6.2.34 Also involved were a number of other GPD officials, although it must be stated that their involvement was limited and necessitated in terms of their administrative capacity. Reference is hereby made to the Commissioner of Land and the Assistant Director Contracts GPD, who both had raised concerns regarding certain aspects relating to the expropriation while this was still underway. The NAO is cognisant of the limited courses of action open to these officials. In the case of the Commissioner of Land, he assumed office at the time when the first expropriation was about to be published, and therefore his role in the second expropriation was conditioned by action already taken by the GPD in the first expropriation.

6.2.35 Finally, the NAO also noted the involvement of an Officer in the PS OPM Secretariat, who initially served as liaison between Gaffarena and the GPD, acting on instructions by the PS OPM. It was not possible for the NAO to determine the precise role played by this official, largely due to the fact that minutes of meetings held were not kept. However, the NAO established that the Officer in the PS OPM Secretariat was occasionally copied in email correspondence relating to the expropriation.

### *The Transfer of the Sliema Property*

6.2.36 The NAO was requested to ascertain whether the GPD acted diligently and judiciously in the transfer of the property in Manwel Dimech Street, Sliema to Gaffarena. This Office was specifically requested to establish this in view of the fact that the lease was to expire in June 2016 and therefore it would have been sensible for the GPD to retain the *directum dominium* until the expiry of the lease. The valuation prepared by the GPD Architect reflected this consideration and was accounted for when establishing value. The fact that the valuation by PwC tallied with that by the GPD Architect further supports the validity of this property's estimate. Therefore, the NAO has no concern in this respect.

### *Discretion in the Payment of Expropriation Dues*

6.2.37 An important aspect relating to the broader understanding of expropriations was referred to the NAO by the PAC in its request to review the discretion exercised in the settlement of past expropriation dues. In this context, the NAO's attention was drawn to correspondence advocating payment to Gaffarena. When queried by the NAO, the PS OPM indicated that reference was hereby being made to Joseph Gaffarena, that is, Mark Gaffarena's father, for land that had been expropriated in 1987 and still due compensation. In fact, two payments of €184,691 each were effected on 30 October 2014 and 12 January 2015, respectively to Gaffarena Holdings Limited. Although these transactions were not directly related to Government's acquisition of 36 Old Mint Street, the NAO considers the discretion exercised by the PS OPM in determining who was to be paid for expropriations as absolute and therefore lacking in terms of fairness and transparency. This Office is of the opinion that pending balances should be settled according to established criteria that take into consideration the period such dues have been outstanding and the materiality of amounts payable. This process should be managed by the GPD and not at ministerial level.

### *An Atypical and Fragmented Expropriation*

6.2.38 The NAO established that Gaffarena's proposals for the transfer of ownership of his shares in 36 Old Mint Street were anomalous, in the sense that the process followed did not represent the ordinary way through which Government acquired property intended for public use. It is generally Government that identifies land required for public purposes and initiates the process for its acquisition through provisions



outlined in the Land Acquisition (Public Purposes) Ordinance (Chapter 88). Ordinarily, a President's declaration is published with details regarding the property that is being expropriated, and it is at this stage that the owners of this property come forward with evidence supporting their claims of ownership. In the NAO's understanding, it is evident that in this case, the ordinary process was reversed, with Gaffarena initiating proceedings through the correspondence submitted to the GPD.

6.2.39 This scenario is not contemplated in the Ordinance as the assumption, quite logically, is that Government identifies the property that is required for a public purpose and not vice-versa. Although the Ordinance does not specifically preclude this possibility, the initiation of the process of expropriation by the owner detracts from the credibility of the public purpose that is to be served, casting significant doubt on the ethical correctness and motivation behind the expropriation.

6.2.40 Another anomalous aspect of these expropriations was the fact that an undivided share was being acquired by Government. The Ordinance does not preclude Government from expropriating an undivided share of a property. In fact, the Attorney General, as reported in the IAID report, stated that, '*Government may expropriate an undivided share in land provided that this is done for 'public purposes'.*' While the NAO supports this understanding, this Office questions what public purpose could possibly be served through the acquisition of a one-fourth undivided share of 36 Old Mint Street. Although not in contravention of the Ordinance, the NAO deems the expropriation of these undivided shares as highly irregular, particularly when one considers the circumstances providing context, the sequence of events and the lack of documentation prevalent throughout. While there is no legal obligation for the GPD to expropriate an entire property as opposed to an undivided share, the former option would certainly have presented a stronger argument for public purpose.

6.2.41 The NAO remains sceptical as to what public purpose could possibly have been served through the acquisition of a one-fourth undivided share of the property at 36 Old Mint Street. Justification regarding the piecemeal approach adopted by the GPD in expropriating undivided shares instead of the entire property was unconvincing, with the DG GPD citing lack of funds as the reason behind this. This was deemed an entirely unacceptable explanation by the NAO given that funds for the acquisition of the entire property were to be shortly available with the Department's budgetary allocation for expropriations for 2015, which stood at €7.2 million. Furthermore, the acquisition of the second undivided share was sanctioned on 2 March 2015, contradicting earlier claims of budgetary constraints. Equally unacceptable was the explanation put forward by the DEM who sought to justify the GPD's piecemeal expropriation by stating that Gaffarena was the only co-owner who had approached the Department. Although the DEM acknowledged that it was unusual for individuals to instigate expropriations, he argued that the Department did not acquire the remaining shares (except those owned by Gaffarena) because the other co-owners had not proposed such a sale to the GPD.

### *The Identification of Lands Exchanged*

6.2.42 The NAO found no evidence or documentation substantiating how Gaffarena selected the properties intended for exchange, how the GPD was informed of these and whether the PS OPM was consulted in this regard. The only documentation that indicated that Gaffarena in fact identified the properties that were to be exchanged were the minutes submitted to the PS OPM. The absence of such documents hinders the audit process and limits this Office's ability to fully establish who was informed and consulted when the properties were being identified.

6.2.43 When queried by the NAO, the DEM indicated that Gaffarena had discussed the properties he wanted in exchange during meetings held with him. Furthermore, the DEM confirmed the frequency of meetings held with Gaffarena, wherein the properties Gaffarena intended to receive in exchange for 36 Old Mint Street were indicated. The timing of the commissioning of these valuations reflected the staggered manner by which these properties were being identified by Gaffarena, subsequently communicated to the DEM in an equally intermittent manner.

### *Disciplinary or Criminal Action*

6.2.44 Finally, the NAO was requested to consider whether as a result of the outcome of this investigation, disciplinary or, possibly, criminal action was warranted. It must be stated that it is not in this Office's mandate to instigate disciplinary or criminal proceedings, for this falls within the remit of other duly constituted bodies. Notwithstanding this, hereunder is a concise account of the major irregularities noted by the NAO with respect to the two expropriations reviewed, focusing on the actions of the DEM, DG GPD and PS OPM.

6.2.45 The DEM disclosed information deemed confidential by the NAO and in so doing colluded with Gaffarena to the detriment of the other co-owners. His actions provided Gaffarena with sensitive information that was exploited, rendered most evident in Gaffarena's manoeuvres to quickly acquire the remaining shares from the other co-owners, who were not privy to such information. The inappropriate assistance afforded to Gaffarena is attested in the haste with which the DEM arrived at the conclusion that an undivided share of 36 Old Mint Street would represent a sensible acquisition for Government. This conclusion was arrived at without any form of analysis or consultation with other senior GPD officials and worse still, without any specific public purpose identified. The NAO's concern was heightened by the failure of the DEM to record key decisions taken and minutes of meetings held during the negotiation process.

6.2.46 The DG GPD endorsed these expropriations without vetting or analysing the proposal put forward by Gaffarena, or consulting with anyone on the matter. Furthermore, in the NAO's opinion, the DG GPD failed to seek legal advice on what effectively was an anomalous situation. The need to obtain legal advice was particularly relevant in this case, owing to the possible implications of the expropriations on the other co-owners. Despite no clearly stipulated public purpose, the DG GPD endorsed these expropriations without raising his concern with anyone about this fundamental deficiency.

6.2.47 Finally, although the only evidence at hand indicates that the role of the PS OPM was limited to the authorisation of minutes prepared by the GPD, this was pivotal for the expropriations to go through. Moreover, the PS OPM failed to question whether any public purpose was to be served by this expropriation and merely insisted adherence to the appropriate legal parameters and that values were reasonable. Insistence on these two requirements does not exculpate the PS OPM from failing to ask the most basic yet most essential question, that is, what public purpose was to be served through Government's acquisition of two undivided shares in 36 Old Mint Street.



# Appendix

# Appendix 1: Request by the PAC dated 5 June 2015

Lil Awditur Ġenerali  
National Audit Office  
Notre Dame Ravelin  
Floriana FRN 1600

Illum, 5 ta' Ġunju 2015

Sur Awditur Ġenerali,

Bejn nhar il-Hadd li għadda, 31 ta' Mejju 2015 u llum, il-ġurnali *The Sunday Times* u *t-Times of Malta* żvelaw każ skandaluż li jikkonċerna d-Dipartiment tal-Artijiet li l-Oppożizzjoni temmen bis-shih li jimmerita li l-Uffiċju tiegħek jinvestiga bis-shih.

## FATTI

1. Id-Dipartiment tal-Artijiet, li jaqà taht ir-responsabbiltà politika tal-Prim Ministru, hallas (uffiċjalment biss) €1.65 miljun għal nofs indiviż ta' proprjetà minghand ċertu Mark Gaffarena f'36, Strada Zekka, il-Belt Valletta;
2. Dan Mark Gaffarena kien xtara dan in-nofs indiviż għal prezz ferm u ferm inqas minghand diversi ko-proprjetarji proprju ftit jiem/ġimgħat biss qabel mal-istess Dipartiment xtraħ minghandu għas-somma ta' €1.65 miljun;
3. Jirriżulta li fit-18 ta' Diċembru 2007 is-Sur Gaffarena xtara kwart indiviż minn din il-binja għal €23,294;
4. Fit-22 ta' Jannar 2015 haġġet id-Dikjarazzjoni tal-President li biha dan il-kwart indiviż gie esproprjat għal prezz ta' €822,500 u li thallsu lil Mark Gaffarena sija bi flus kontanti u sija b'artijiet tal-Gvern;
5. Fis-26 ta' Frar 2015 Gaffarena xtara kwart indiviż iehor tal-istess binja għal €139,762;
6. Fit-8 ta' April 2015 haġġet Dikjarazzjoni Presidenzjali ohra li biha dan il-kwart indiviż ta' din l-istess proprjetà li Gaffarena xtara fis-26 ta' Frar 2015 gie esproprjat għal €822,500 ukoll u li thallsu sija bi flus kontanti u sija b'artijiet tal-Gvern;
7. B'hekk id-Dipartiment tal-Artijiet minflok xtara minghand is-sidien oriġinali dan il-kwart indiviż (*vide* dikjarazzjoni tad-DG Ray Camilleri fit-*Times* tat-2 ta' Ġunju 2015), xtraħ minghand is-Sur Gaffarena wara li dan xtraħ minghand is-sidien oriġinali għal prezz ferm u ferm inqas minn dak li bih huwa bieghu lid-Dipartiment tal-Gvern;
8. Fl-istess harga tat-*Times* tat-2 ta' Ġunju 2015, is-Segretarju Parlamentari l-On.M. Falzon hu kkwotat jgħid: "there had not been contact with the original owners because Mr Gaffarena offered the half share of the property". Dan qatt ma jista' jkun veru għax sa dakinhar meta Gaffarena offra li jbiegħ lid-Dipartiment tal-Artijiet huwa kien għadu sid ta' kwart indiviż biss, u mhux ta' nofs indiviż;
9. B'hekk jirriżulta li s-Sur Gaffarena għamel qliegh nett ta' mhux inqas minn €685,000 f'inqas minn xaharejn;

10. Jirrizulta li fiż-żewġ Dikjarazzjonijiet Presidenzjali imsemmija, id-Dipartiment iddikjara li l-binja imsemmija hawn fuq kienet qed tiġi stmata bħala “art fabbrikabbli” (“building site”) meta hu ovvju li dan mhux il-każ u meta hu magħruf li l-valur ta’ art fabbrikabbli huwa ferm oġhla minn ta’ binja storika kif jippreskrivi l-Kap.88 tal-Liġijiet ta’ Malta (fil-fatt, l-istess Segretarju Parlamentari Dr Falzon fit-Times tat-2 ta’ Ġunju 2015 qal “the Valletta property had *historical and architectural value*”). Hija xi haġa tinten hafna li d-Dipartiment kien jaf, u l-Gvern kien jaf, li l-binja għandha valur storiku u minkejja dan, flok giet dikjarata bħala tali fiż-żewġ Dikjarazzjonijiet tal-President giet dikjarata bħala art fabbrikabbli biex il-valur ikun ferm oġhla;
11. Jirrizulta minn stqarrija ikkwotata mill-gurnal imsemmi l-Hadd 31 ta’ Mejju 2015 li “one of the owners—who owned half the building—offered to sell his share to government”. Dan ma jistax ikun peress li meta l-Gvern għamel l-ewwel esproprijju (22 ta’ Jannar 2015) is-Sur Gaffarena kellu kwart indiviż biss.
12. Jirrizulta mill-harġa tat-*Times of Malta* tal-5 ta’ Ġunju 2015 li l-valur mogħti mid-Dipartiment tal-Artijiet lill-proprjetajiet mogħtija lis-Sur Gaffarena huwa ferm u ferm inqas minn dak reali. Il-valuri veru huwa iktar mid-doppju ta’ dak stmat mid-Dipartiment tal-Artijiet. Biss biss, fil-każ tal-proprjetà li tinsab fi Triq Manwel Dimech, Sliema, l-Gvern ta lis-Sur Gaffarena id-dirett dominju tal-binja, stmat €65,000 biss, meta ċ-ċens jagħlaq fis-16 ta’ Ġunju 2016, sena oħra. Hu fatt magħruf li l-valur ta’ fond lejn tmiem konċessjoni enfitewtika huwa viċin hafna dak tal-valur *freehold* tagħha, pero minkejja dan, id-Dipartiment stmah €65,000 biss meta hu stmat li l-binja fi Triq Manwel Dimech, Sliema għandha valur *freehold* ta’ iktar minn €200,000 (ahna nġhidu ferm iktar minn €200,000 meta tqis li s-Sur Gaffarena stess sa m’ilhux wisq applika l-MEPA biex jikkonverti l-binja f’appartamenti u *underlying garages*). Dan mingħajr preġudizzju għall-fatt li huwa stramb għall-ahħar kif id-Dipartiment telaq minn idu proprjetà li tiswa tant fil-qalba ta’ Tas-Sliema meta jaf li sena oħra ha tkun lura għandu *freehold* għax jagħlaq iċ-ċens u meta huwa fatt magħruf li diversi negozji f’dik l-istess triq ilhom snin jitolbu li jifdu ċ-ċnus tagħhom mingħand id-Dipartiment tal-Artijiet u dan, ġustament, jirrifjuta, biex ma jitlifx il-proprjetà b’valur kummerċjali b’sahħtu hafna;
13. Fil-harġa tat-*Times of Malta* tal-Hamis, 4 ta’ Ġunju 2015 jirrizulta li meta s-Sur Gaffarena offra (13 ta’ Frar 2015) li jbiegh kwart indiviż tal-binja lid-Dipartiment tal-Artijiet huwa lanqas kien is-sid ta’ dan il-kwart indiviż;
14. Kif graw il-fatti f’dan il-każ jirrizulta li dawn sehħew bejn Jannar 2015 u April 2015. Kif inti taf, fl-24 ta’ Frar 2015 inti pprezentajt lill-iSpeaker ir-rapport tiegħek dwar ix-xiri mill-Gvern tal-Café Premier fil-Belt Valletta. Fil-ġimghat ta’ wara, l-Prim Ministru kien qal li l-Gvern kien “qed jitgħallem mill-izbalji tiegħu” u issa sirna nafu li proprju fl-istess perjodu d-Dipartiment tal-Artijiet, li huwa fid-dekasteru tal-Prim Ministru, kien qed jesproprija biċċa biċċa minn binja privata li għaliha hallas prezz esageratament għoli (meta tara b’kemm xtara s-Sur Gaffarena u b’kemm biegh lill-Gvern għall-ishma indiviżi tiegħu) u billi d-Dipartiment tal-Artijiet hallas lis-Sur Gaffarena b’diversi artijiet li jiswew d-doppju ta’ dak li fil-fatt qalu li jiswew (*vide Times of Malta*, 5 ta’ Ġunju 2015). Fl-aħjar ipotezi għalhekk ahna nħossu li kien hemm nonkuranza sfaċċata min-naħa tad-Dipartiment tal-Artijiet u tal-awtoritajiet biex jiġi mħares l-erarju pubbliku u jkun hemm l-affarijiet sew. Fl-aħgar ipotezi, ahna nħossu li dan l-aġir jirrapresenta abbuż serju u gravi hafna, żvelar ta’ informazzjoni governattiva interna lil terzi għal skop ta’ lukru, jekk mhux ukoll korruzzjoni.

## TALBIET

Fid-dawl ta' dawn il-fatti inkwetanti fuq l-isparpaljar ta' fondi pubbliċi, nitolbuk tinvestiga u tiġġudika:

1. Jekk dan l-aġir (bejn Jannar u April 2015) għall-akkwist mill-Gvern ta' kwart indiviż f'Jannar 2015 u iehor f'April 2015 ta' din il-proprjetà fi Strada Zekka, fil-Belt Valletta, u ċ-ċirkostanzi kollha attinenti, jammontax għal *value for money* ta' flus il-poplu;
2. Jekk il-prinċipji ta' għaqal, *good governance* u trasparenza ġewx segwiti;
3. Fid-dawl tal-kronoloġija tal-fatti bejn Jannar u April 2015, jekk kienx hemm uffiċjali pubbliċi (*public officials*) jew dawk inkarigati minn servizz pubbliku (*public servants*), skond kif definiti fil-Kodiċi Kriminali, li taw jew iffaċilitaw informazzjoni governattiva kunfidenzjali lil terzi, inkluż iżda mhux biss lis-Sur Gaffarena, biex dan sar jaf li l-Gvern kien ser jespropja n-nofs indiviż tal-proprjetà fi Stada Zekka, fil-Belt Valletta;
4. Jekk kienx hemm ksur tar-regoli tas-servizz pubbliku u oħrajn dwar il-kunfidenzjalità tad-dokumenti u korrispondenza governattiva bi skop ta' gwadann finanzjarju ta' terzi, fosthom iżda mhux biss tas-Sur Gaffarena, u b'mod partikolari jekk kienx hemm imġieba kriminali minn uffiċjali pubbliċi (*public officials*) jew dawk inkarigati minn servizz pubbliku (*public servants*), skond kif definiti fil-Kodiċi Kriminali, provduta fl-artikli 133 u 257 tal-Kodiċi Kriminali, fost artikli oħra u liġijiet oħra li jistgħu ikunu rilevanti;
5. Jekk kienx hemm ġudizzju onest mid-Dipartiment tal-Artijiet meta iddikjara fid-Dikjarazzonijiet tal-President tal-espropju (Jannar u April 2015) li l-proprjetà in kwistjoni ġiet stmata bħala art fabbrikabbli flok sit storiku;
6. Jekk intalabx il-parir bil-miktub tas-Sovrintendenza tal-Ħarsien tal-Wirt Kulturali, skond il-Kap.88 tal-Liġijiet ta' Malta, biex il-binja fi Strada Zekka in kwistjoni tkun tistà tigi stmata bħala *historical site* minflok *building site*, u jekk le, għala;
7. Ġiex stabbilit preċedent perikoluż li l-Gvern ikollu jespropja bini li jkun qed jikri mingħand il-privat li mhux residenzjali liema kirja għandha tintemm fl-2028 bil-liġi l-ġdida tal-kera;
8. Jekk id-Dipartiment tal-Artijiet wegħibx u meta l-ittra legali datata 15 ta' Awwissu 2014 li uħud mill-ko-proprjetarji tal-binja fi Strada Zekka, Valletta, kitbu lic-Chairman tal-Building Industru Consultative Council (li jirriżulta kien il-perit, sal-passat riċenti hafna, tal-istess Sur Gaffarena) u liema ittra dan ic-Chairman hu rappurtat li qal li għaddiha lid-Dipartiment tal-Artijiet; u jekk dik l-ittra ma kienetx imwiegħba, għala u l-implikazzjonijiet ta' dan fuq kemm kien qed iġhid il-verità l-Gvern meta qal li beda jinnegozja sa mill-2014 biex jiehu lura din il-proprjetà;
9. Ma' min kien qed jinnegozja d-Dipartiment tal-Artijiet fl-2014 peress li s-Segretarju Parlamentari l-On. Falzon hu kkwotat jgħid li n-negozjati kienu bdew fl-2014 għall-akkwist tal-binja, u min kien involut f'dawn in-negozjati, u min kien infurmat b'dawn in-negozjati;
10. Jekk il-valutazzjonijiet tal-propjetajiet kollha li ingħataw lis-Sur Gaffarena mid-Dipartiment tal-Artijiet f'Jannar 2015 u f'April 2015 bħala permuta ta' ħlas għan-nofs indiviż li huwa kellu humiex ġusti u xieraq meta jitqies il-valur tas-suq illum;

11. Jekk id-Dipartiment tal-Artijiet użax id-diligenza u l-għaqal ta' *bonus paterfamilias* meta għadda d-dirett dominju tal-proprjetà fi Triq Manwel Dimech, Sliema lis-Sur Gaffarena meta ċ-ċens gravanti din il-proprjetà ser jagħlaq f'Ġunju 2016 u allura kien jagħmel hafna iktar sens li d-Dipartiment tal-Artijiet iżomm dan id-dirett dominju għandu hu sakemm jagħlaq iċ-ċens u b'hekk japprezza hafna l-valur tal-fond bħala liberu u frank (*freehold*);
12. Jekk din ir-transazzjoni tal-Gvern fejn intefqu dawn il-flejjes kollha u ingħataw dawn l-artijiet kollha lis-Sur Gaffarena hijiex ġusta fil-konfront ta' dawk kollha li ilhom għexieren ta' snin jistennew biex jithallsu, anke ammonti zgħar ferm, tal-art li Gvernijiet tal-passat esproprijaw fl-interess pubbliku;
13. Minn fejn originat it-talba għall-espropriu u min fil-fatt ha d-deċiżjoni li ssir l-esproprijazzjoni f'dan il-każ u l-persuni kollha involuti fil-proċess biex il-Gvern esproprija kwart indiviż u wara kwart indiviż iehor;
14. Jekk hijiex prassi li d-Dipartiment tal-Artijiet jesproprija l-proprjetà bil-pezzibukkuni, kif sar f'dan il-każ;
15. Jekk il-Gvern verament għandux bżonn din il-binja. Illum hemm il-BICC biss f'dan il-post: kemm hu għaqli li l-Gvern qabad u hallas aktar minn 3 miljun ewro bi stima konservattiva hafna meta għandu 13-il sena biex isib post mill-hafna li diġà għandu biex jospita l-BICC?
16. Jekk jagħmel sens li l-Gvern jesproprija biss kwart ta' proprjeta u ftit wara, kwart iehor, flok il-proprjetà shiha mill-ewwel stante illi l-espropriju tan-nofs li baqà issa se jiġi jiswa aktar lill-Gvern filwaqt li kieku esproprija kollox f'daqqa kien iħallas anqas;
17. Jekk is-Sur Gaffarena kienx huwa li għażel x'artijiet tal-Gvern jingħataw u fejn, peress li dawn l-artijiet li ingħataw kollha għandhom valur u post strateġiku u kollha b'xi mod jew iehor għandu interess f'ihom (eż., imissu ma' art li diġà għandu jew huma artijiet li huwa ilu jokkupa jew, bħall-artijiet li ingħataw lis-Sur Gaffarena viċin il-White Rocks fejn hemm *earmarked* żvilupp ta' lukandi);
18. Jekk fid-dawl tal-fatti hawn fuq indikati, partikolarment tal-kronoloġija tal-fatti kif sehew, u fid-dawl ta' xhieda u provi li ser jirrizultawlek mill-investigazzjoni tiegħek, hemmx lok ta' passi, inkluz dixxiplinari u kriminali, kontra kull min naqas minn dmiru jew abbuża jekk mhux ukoll ikkometta atti ta' korruzzjoni f'dan il-każ.



Insellu għalik,

 <b>On. Jason Azzopardi</b>	 <b>On. Marthese Portelli</b>	 <b>On. Ryan Callus</b>
 <b>On. Tonio Fenech</b>	 <b>On. Claudio Grech</b>	 <b>On. Mario de Marco</b>

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