No. 976

MINISTRY FOR THE ECONOMY, EUROPEAN FUNDS AND LANDS

Explanatory Notes[1]

Expired or Expiring Emphyteutical Concessions Regulations, 2023

1. Introduction

These Explanatory Notes refer to the Regulations under the Government Lands Act (Cap. 573) with the title "Expired or Expiring[2] Emphyteutical Concessions Regulations, 2023" which have been drawn up by the Lands Authority under the Ministry for the Economy, European Funds and Lands

2. Summary and background

Several residential, agricultural and commercial emphyteutical concessions which are expired are not presently regulated. The scope of these regulations is to concurrently regulate these concessions whilst the Authority receives payments for occupation, ground rents or agricultural leases. Recognised emphyteuta of expiring concessions will be given the opportunity to extend their concession before the expiration of the said concession.

These regulations shall also cater for:

The regulation of expired concessions which are currently unregulated;

The receipt of payments from occupiers of tenements (residential, agricultural or commercial) for occupation and ground-rents and, or agricultural leases;

The regularisation of the title of persons in expired emphyteutical concessions for residential use, given that currently such persons do not hold a legal title on the property. These regulations will regularise their title against payment;

Agricultural and Commercial tenements which are currently in tenements with expired or expiring emphyteutical concessions given that they presently cannot project their future since their premises are not covered by a legal title;

The provision of legal certainty for emphyteuta currently in a tenement with an expiring emphyteutical concession.

3. Overview of the structure of the instrument

Regulations 1 and 2 of the proposed legislation contain the title ("citation") of and definitions ("Interpretation") regulations.

[1]These Explanatory Notes are for the purpose of and in accordance with Article 3(2)(c) and Schedule III of Chapter 512 of the Laws of Malta.

[2]Expiring Emphyteusis means emphyteusis due to expire till the 31st of December 2030

Regulation 3 specifies the applicability of the proposed regulations. Regulations 5 and 6 provide the procedure for request submissions under these regulations whereas regulations 8, 9 and 10 stipulate the term of the concession, the payment and amount of ground rent or lease for such a concession.

Regulations 11, 12, 13, 14 and 15 are general clauses relating to the application process, any declaration needed, any related expenses, charges and an explanation of the Authority's discretion to refuse applications.

Regulation 15 gives the applicant the right to an appeal from a decision under these regulations.

4. Commentary on parts and articles

Regulation 1 – the title of these regulations

Regulation 2 - interpretation

Regulation 3 – stipulate that these regulations apply to any expired or expiring emphyteusis with the exception of:

- Emphyteutical concessions approved by a special resolution of the House of Representatives;
- Emphyteutical concession exceeding 1,500m^2;
- Emphyteutical concessions granted for a kiosk;
- Emphyteutical concessions granted following a call for tender;
- Emhyteutical grants on agricultural or rural lands which is included in the Development zone.

Regulation 4 - states that an agricultural lease may be granted under these regulations if the expired or expiring emphyteusis was granted on agricultural lands where there are no farms built or buildings intended primarily for the keeping of cattle for rearing and fattening or any other domestic animals. Where there are farms built or buildings as explained above an emphyteutical concession may be granted or with regard to any other lands to which these regulations apply.

Regulation 5 - regulates applications of expired emphyteutical concession which must be submitted within 3 years from the date of the coming into force of these regulations.

Regulation 6 - regulates applications of expiring emphyteutical concession which must be submitted in any time before the expiration of the emphyteutical concession, and or agricultural lease.

Regulation 7 - In the case of concession which has more than one recognised emphyteuta, any one of them may declare that he is transferring any of his rights to any other recognised emphyteuta.

Regulation 8 - The period of the emhyteutical concession is 50 years from the date of publication of the emphyteutical concession.

Regulation 9 - A payment of one lump sum must be made for the occupancy of the land in the cases of expired concessions as stipulated in the original emphyteutical concession which has expired.

Regulation 10 - regulates the amounts of agricultural lease or ground rent:

- In the case of an agricultural lease, the rates as established by the Authority;
- In the case of any concession granted on any other lands the ground rent shall be calculated as 2% of the open market value for the recognised use and such sum shall be revisable every 10 years by 10%.

Regulation 11 - The Authority reserves the right to request any other information it deems necessary with regard to any application submitted. It may also suspend and deny an application if there is a legal dispute.

Regulation 12 - An application submitted under these regulations must be accompanied by a signed declaration confirming the contents of the application and that there is no other information, facts or documentation which would lead the Authority to deny the application. The applicant is to submit all relevant information to the Authority, even if he/she believes that the Authority already has knowledge of that information.

Regulation 13 - Before the signing of new concession or lease all costs must be paid by the applicant

Regulation 14 - The Authority has the right to refuse any application. Every decision of the Authority must be in writing and shall include the reason of refusal in the case that the application is rejected. The Authority shall have the right to rescind any contract under these regulations in the First Hall of the Court if the approval was based on incorrect information. The Authority shall also not be held liable for any damages resulting under these regulations

Regulation 15 – Grants the applicant the right of appeal from a decision made under these regulations in front of the Administrative Review Tribunal

Concluding Section

These regulations are to enter into force on publication given that they fall within the exemptions listed in the Small Business Act (Exemptions) Regulations (S.L. 512.01).

For further information please contact:

Customer Care:
+356 2122 4016, +356 2295 3904

Email:
customercare.la@landsauthority.org.mt

N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

14th July, 2023