

# An Investigation of Government's Acquisition of the Café Premier

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Report by the Auditor General

February 2015



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## Abbreviations

AG	Auditor General
CE	Cities Entertainment Limited
CGT	capital gains tax
DG	Director General
FSS	Final Settlement System
GPD	Government Property Department
IRD	Inland Revenue Department
Lm	Maltese Lira
Ltd	Limited
MFIN	Ministry for Finance
MFSA	Malta Financial Services Authority
NAO	National Audit Office
OPM	Office of the Prime Minister
PAC	Public Accounts Committee
PM	Prime Minister
PPS	Principal Permanent Secretary
PS	Permanent Secretary
PwC	Pricewaterhouse Coopers
SSC	social security contributions
VAT	Value Added Tax
VCS	Valletta Commercial Scheme

# Executive Summary

## Executive Summary

1. On 19 August 2014, the Opposition Members on the Public Accounts Committee (PAC), together with the then Opposition Spokesperson for Home Affairs and National Security, submitted a request for an investigation to the National Audit Office (NAO). In essence, they requested the Auditor General (AG) to investigate disclosures in the media that Government had paid €4,200,000 for the reacquisition of the utile dominium of the Café Premier premises, which Government had conceded through an emphyteutical grant to Cities Entertainment Ltd (CE) in 1998.
2. The PAC requested the AG to examine all the facts related to the payment made by Government to a private company that owed Government substantial amounts. In particular, the AG was requested to evaluate whether:
  - a. the agreement represented value for money;
  - b. the principles of transparency and good governance were adhered to;
  - c. payments made in the process of the reacquisition of the temporary emphyteusis were ethical;
  - d. Government financial procedures were followed; and
  - e. the procedure adopted by Government in this reacquisition was discriminatory and could expose public finances to similar requests in the future, in that lessees and/or emphyteutae of public property in debt to Government and other commercial creditors would expect Government to bail them out as was, in effect, this case.
3. Furthermore, the AG was requested to establish who were the intermediaries who had intervened, directly or indirectly, between Government and CE in securing this deal. The salient findings and conclusions drawn by the NAO are presented hereunder.
4. By virtue of an agreement entered into on 23 April 1998, Government conceded to CE the temporary emphyteusis of the Café Premier. This agreement clearly stipulated the contractual breaches that would entitle Government to initiate legal proceedings that would lead to the rescission of the contract. On the basis of the NAO's verification, this Office found no evidence that the conditions regarding the use of premises, closure of premises and the use of LPG cylinders were breached. On the other hand, evidence regarding the possible sub-letting of part of the Café Premier premises without the prior requisite consent of the Commissioner of Land and relevant payment of laudemium was noted by the NAO. Furthermore, grounds for the instigation of legal proceedings in terms of CE's failure to respect the three-year threshold of ground rent payments existed.



5. The sequence of events leading to Government's reacquisition of the Café Premier premises may be traced back to early April 2013, a few weeks following the change in administration, when the CE Director Mario Camilleri wrote to the PM. Negotiations between CE and Government were concluded in August 2013 and the matter was referred to Cabinet and subsequently approved in September 2013. Following which, on 29 January 2014, Government and CE signed an agreement whereby Government acquired the utile dominium relating to the temporary emphyteusis of the premises for the sum of €4,200,000.
6. A critically important aspect of the NAO's analysis of the Café Premier reacquisition by Government were the valuations carried out by the Architect appointed by Government, those previously prepared for CE by Mangion, Mangion & Partners, as well as that drawn up by the NAO's Technical Consultant. This Office noted that all valuations carried out were largely consistent, reflecting the value paid by Government. However, the establishment of value in monetary terms, and value for money considerations are two distinct matters. The value assigned to the reacquisition of the Café Premier premises is but one component of the value for money represented by this transfer.
7. Other considerations in the determination of value for money were the possible alternatives available to Government that would have resulted in the same outcome. One such alternative was the possible resort to legal proceedings for the rescission of the agreement, particularly in view of the fact that the ground rent due in April 2013 exceeded the three-year threshold. This coincided with the point at which negotiations between CE and Government commenced, yet no consideration of this means of redress was made by Government. Although the Government indicated its reluctance to pursue legal action on grounds of the lengthy process involved and the uncertainty of the outcome, the NAO considers such justification as insufficient.
8. The Cabinet memorandum dated 10 September 2013 listed four main objectives justifying Government's reacquisition of the Café Premier, namely, the removal of possible danger posed to the National Library by underlying catering establishments, the provision of greater accessibility to the Library, resolution of the problem of arrears faced by CE and the re-dimensioning of available space resulting in the generation of income to Government. The absence of documentation substantiating the detailed analysis of needs and alternatives leading to the fulfilment of the above-discussed Government policy objectives is considered as a significant shortcoming by the NAO. One would have expected the comprehensive analysis of all facets of possible action, subsequently leading to the establishment of policy and finally the pursuit of corresponding action. Further supporting the NAO's assertions is the fact that no concrete developments have been noted in the premises a year after its reacquisition.
9. Notable shortcomings in terms of governance were noted with respect to Government's failure to involve the GPD early in negotiations with CE. This Department is responsible for the management and administration of all Government-owned properties, yet was only involved at the final stages of the reacquisition of the Café Premier, when all had been already agreed upon. Had Government consulted with the GPD, the breach relating to the condition that outstanding ground rent was not to exceed the three-year threshold, might have been brought to the fore earlier on in the negotiations and possibly lead to a different outcome.
10. The appointment of the GPD Architect to draw up an evaluation of a government-owned premises also presented various shortcomings in terms of good governance. The GPD Architect was given this assignment without the DG GPD's knowledge, directly appointed following the recommendation of Adviser OPM and the PM's subsequent

approval. The NAO considers such a practice as undermining the DG's authority and responsibility for the Department, and could have placed the GPD Architect in an awkward situation. The valuation report, despite being prepared on an official GPD letterhead was not retained in file. This absence was also confirmed by the DGs GPD, who stated that they were not aware of this valuation assignment and the report subsequently prepared by the GPD Architect. This anomalous situation is indicative of a lack of transparency and poor governance, further confirming Government's reluctance to involve GPD in an official capacity with respect to the matter.

11. The establishment of 24 September 2013 as the cut-off date for ground rent was deemed as an arbitrary decision by this Office. The NAO considers this decision as a shortcoming on the part of Government, and that ground rent should have been charged up to the date of the signing of the agreement, similar to the approach adopted by other Government Departments involved in this matter. Had the date of agreement been considered as the cut-off date, then the chargeable rent due to GPD would have increased by approximately €39,000. The NAO deems that it would have been more appropriate for GPD to determine the cut-off date.
12. Of serious concern to the NAO is the lack of documentation retained by GPD with regard to the withdrawal of its legal action against CE instigated on 12 December 2012. The only record retained in file was with respect to one of the two cases, and simply stated "*Kawza ċeduta*", while Court records are sparse in detail. The review of internal GPD correspondence exchanged after the withdrawal of the Court case renders GPD's decision more ambiguous, with CE's repayment of outstanding dues cited as the reason for the cessation of Court action. The NAO reviewed such payments and established that five out of a possible 12 payments had been effected. This hardly represents consistency in repayment, especially when one considers the magnitude of the balance due, which at the time was in excess of €290,000 and that repayments made prior to the amicable settlement only amounted to €18,600.
13. Having failed to establish the motivation leading to the withdrawal of court action by GPD and who within the Department instigated such action through the review of GPD files, the NAO attempted to formulate an understanding by means of interviews. This proved to be an equally futile endeavour, with the GPD Legal Section and the Rents Section presenting opposing views as to why such action was taken. Despite the circular references provided by GPD, the blurring of decisions taken through poor record-keeping practices and the abdication of responsibility accounting for such decisions, a clear response, albeit totally incongruent with that stated by GPD, was provided to this Office by Mario Camilleri. Camilleri unequivocally stated that Government and CE withdrew from legal action against one another in view of negotiations under way at the time. Further elaborating on the matter, Camilleri argued that the forfeiture of legal proceedings was an obvious part of the deal, and once negotiations had commenced, then legal action was to be brought to a halt.
14. Evidence obtained by this Office indicated that the €210,000 payment was in effect a commission payment to M&A Investments Ltd despite assertions to the contrary by Camilleri. The CE Board Resolution dated 28 January 2014 rendered this clearly evident, as did the correspondence with Banif Bank dated 19 December 2013. While the former terms the €210,000 payment as 'intermediary costs', the latter referred to this payment as a 'commission on sale'. Notwithstanding the ambiguity in responses provided by Camilleri during interviews with the NAO, this Office considers the above-cited evidence as sufficient proof of the payment of commissions to M&A Investments Ltd.

15. Despite the fact that Government would still have paid €4,200,000, irrespective of the arrangement with M&A Investments, this Office is of the opinion that the €210,000 payment should not have featured in the agreement. The dealings between CE and M&A Investments were a private matter, and Government bore no relationship with the latter. Moreover, the €210,000 payment made in this respect was unsubstantiated and deemed by the NAO as inappropriately included in the agreement. Aside from the above, no evidence came to light of other commission payments out of public funds except for the €210,000 payment made to M&A Investments.
16. The legislative framework regulating the disbursement of public funds was broadly respected, with approval sought from the relevant Minister, in this case, the PM, and that of the PS MFIN. Furthermore, the management of the payment process was well structured, organised and documented. It is in this general sense that the NAO considers the relevant financial procedures to have been adhered to. However, the financial regulations do not make direct reference to such atypical disbursements of public funds. Nonetheless, disbursements of public funds should be made judiciously, and it is in this context that the various shortcomings highlighted in this Report somewhat detract from the prudence expected when deciding to undertake disbursements of such magnitude.
17. With respect to whether the procedure adopted by Government in this reacquisition was discriminatory and could expose public finances to similar requests in the future, this Office notes that legal precedent can only be created by jurisprudence, that is, case law. Advice obtained by the NAO indicated that the setting of a precedent has a persuasive value yet is not binding, more so when one considers that the decision was taken by Cabinet and not by Court. Applied to this case, Government's reacquisition of the Café Premier does not constrain Government in future possible cases bearing elements of congruence. Although no legal precedent was established as a result of this reacquisition, Government may nonetheless be exposed to criticism in terms of fairness and equality.
18. The NAO's concern was also drawn to the various instances where repayment agreements entered into by CE and GPD for the settlement of outstanding ground rent were not honoured. This reflects the poor account management practices employed by GPD, including very weak enforcement capabilities and no structured system for the follow-up of agreements entered into. While the NAO acknowledges the Department's stance and preference for resolving matters outside of Court, the Office considers it necessary for more decisive action to be taken by GPD in the case of repeat defaulters as was the case with CE. In this Office's view, failure to take the required action in this regard is ultimately counter-productive, as the Department is perceived as ineffective in terms of enforcement.
19. A critical limitation faced by the Department in efforts to ensure compliance is the absence of a system of penalties and fines applicable in the case of defaulters. In this context, there exists no incentive encouraging tenants to settle outstanding dues, as failure to pay results in no consequence, barring the occasional judicial letter and subsequent repayment agreement. Legislative amendments to the relevant provisions intended at strengthening the Department's enforcement function should be considered.
20. The NAO fails to understand why the €20,000 payment to Dr Mangion was included as part of the agreement. According to Camilleri, Dr Mangion had provided him with assistance in terms of contract-related legalities; however, the NAO deems that this fee should have been settled privately by CE or Camilleri. Furthermore,

the NAO considers Dr Filletti's involvement in this matter as somewhat ambiguous and information gathered by this Office in this respect was conflicting. The DGs GPD and Camilleri stated that Dr Filletti withdrew from the process in view of possible conflict of interest concerns, yet the NAO noted instances where Dr Filletti was in fact involved, even at what could be considered as an advanced stage of the reacquisition.

21. In sum, the NAO maintains notable reservations regarding the manner by which this reacquisition was made. Although the amount paid by Government reflects a fair market value, this does not necessarily imply that value for money was achieved. The lack of rigorous and documented consideration of other options and the failure to properly evaluate such alternative courses of action constrains the Office in determining whether value for money was achieved. One such alternative was the follow-through of legal action, which Government failed to pursue. This resulted in the eventual withdrawal of legal proceedings without clear justification or documentation, which action detracted from the required level of transparency expected in such a decision. This must be seen within a context where the tenant, CE, was in breach of the lease agreement with Government, as the three-year threshold in ground rent payments had been exceeded when negotiations commenced. Poor governance was a factor central to this shortcoming, with Government's negotiating team failing to appropriately involve GPD from the initial stages of negotiations. Finally, the NAO established that the payment of €210,000 to M&A Investments was an intermediary payment, that is, a brokerage fee or commission, equivalent to five per cent of the transfer value of €4,200,000. Aside from this payment, no evidence of other commissions being paid out of public funds was found.

# Chapter 1

## Introduction

## Chapter 1 – Introduction

**1.0.1** In August 2014, the three Opposition Members on the parliamentary Public Accounts Committee (PAC), together with the then Opposition Spokesperson for Home Affairs and National Security, requested the Auditor General (AG) to review the reacquisition of the utile dominium of the Café Premier premises. According to media coverage cited in the request, Government had paid Cities Entertainment Ltd (CE) the sum of €4,200,000 for the acquisition of this utile dominium.

### **1.1 Media Allegations**

**1.1.1** Reports in the media first started to appear in early March 2014 wherein it was alleged that Government had, prior to the expiry of the lease term, reacquired the emphyteutical lease originally granted to CE in 1998 for 65 years. It was claimed that taxpayers had to fork out the unprecedented sum of €4,200,000 to pay back the Café's outstanding €2,500,000 bank loan, income tax and VAT arrears, utility bills, ground rent and other creditors. It was further stated that the €4,200,000 'bailout' for the owners of the closed-down cafeteria in Valletta was brokered in January 2014, when Government authorised the Department of Land to buy back the remaining emphyteusis of the Café Premiere and its 'Great Siege 1565' waxworks attraction.

**1.1.2** According to the media reports, prior to the signing of the agreement, the Commissioner of Land had retracted judicial action filed by the Government Property Department (GPD) against Café Premier owners CE for the settlement of arrears of ground rent, amounting to over €200,000, that the Company owed Government. It was claimed that matters worsened when, in December 2012, GPD took CE to Court insisting that the Company pay the arrears accumulated on the 65-year emphyteusis. The reports further indicated that the Company was then paying just over €93,000 in annual ground rent; however, in July 2013, lawyers representing the parties informed the Court that an agreement had been reached and all judicial action was withdrawn.

**1.1.3** It was also reported in the media that, instead of forging ahead with its Court action to recoup the arrears or even dissolve the emphyteutical grant as Government was empowered to, GPD paid CE €4,200,000 to pay the Government arrears and taxes, rather than having the Company pay the money owed from its own resources. According to the reports, of the total sum, CE had to pay back the following amounts: €307,346 to settle outstanding arrears with GPD and €504,000 in capital gains tax owed on the land; the sum of €192,748 to the Inland Revenue Department (IRD) to settle income tax and social security payments; €227,058 to the VAT Department

on outstanding dues and legal procedures instituted by the Department against the company; and €130,963 for energy bills to ARMS Ltd. An amount of €210,000 was to be paid to one of the Company's own shareholders, M&A Investments Ltd, and €3,265 to one of its creditors. Finally, another €2,560,800 was to be paid to a commercial bank in settlement of the outstanding bank loans that CE had with the bank. It was further alleged that the €4,200,000 were to be paid in four six-monthly instalments. The deal, according to the media, was nothing short of a timely bailout of the Company. The Government was recovering the premises and the waxworks museum, but the cash had to be used to pay back all the outstanding debts that CE owed Government and release it from the 65-year concession.

- 1.1.4 Media reports quoted Government sources as stating that the 'amicable acquisition' was a decision to remove any hazard that the catering establishments in the area could pose to the treasures housed in the National Library, located directly above the Café Premier. According to the official sources cited, all other tenants of government-owned properties sited within the block that housed the National Library were informed that Government would not accept any future requests for catering establishments in this location. Moreover, Government intended to construct an elevator leading to the National Library's first storey, accessible only through the staircase from the Library's main entrance.
- 1.1.5 According to the reports, the official sources had also claimed that, even if Government had appropriated the cafeteria forcibly for the protection of the scheduled National Library, it would still have had to pay out some form of compensation. It was further alleged that these sources had also admitted that the Café had ceased operating, and that the owners were negotiating with third parties to sell the business, something claimed to be illegal according to the original emphyteutical deed. Furthermore, it was stated that the deed forbade the owners from ceasing operations, something that would have led to a breach of the emphyteutical grant and given Government the right to take back the premises.
- 1.1.6 It was against this backdrop of myriad media allegations that the request to the Auditor General was made.

## 1.2 Request by the Public Accounts Committee

- 1.2.1 On 19 August 2014, the Opposition Members on the PAC, together with the then Opposition Spokesperson for Home Affairs and National Security, submitted a request for an investigation to the National Audit Office (NAO) (Appendix A refers). In essence, they requested the AG to investigate disclosures in the media that Government had paid €4,200,000 for the reacquisition of the utile dominium of the Café Premier premises, which Government had conceded through an emphyteutical grant to CE in 1998.
- 1.2.2 According to the request, Government had, shortly after the 2013 general elections, terminated judicial action that the previous administration had initiated in 2012 against CE in its endeavour to recover over €300,000 that were due to the Department of Land in unpaid ground rent. It had further emerged that CE owed various Government departments considerable amounts, including taxes and unpaid dues. As a minimum, CE owed ARMS Ltd the sum of €131,000 on water and electricity consumption, an amount of €192,748 in tax arrears and unpaid social security, and over €227,000 to the VAT Department.
- 1.2.3 Moreover, the PAC request claimed that if Government genuinely wanted to reacquire the property, then the latter could have made recourse to the Courts for the rescission



of the contract and continued with the judicial action already initiated for the recovery of arrears. Such a course of action would have saved the €4,200,000 disbursed out of public finances.

1.2.4 On behalf of the Opposition, the signatories requested the AG to examine all the facts related to the payment made by Government to a private company that owed Government substantial amounts. In particular, the AG was requested to evaluate whether:

- a. the agreement represented value for money;
- b. the principles of transparency and good governance were adhered to;
- c. payments made in the process of the reacquisition of the temporary emphyteusis were ethical;
- d. Government financial procedures were followed; and
- e. the procedure adopted by Government in this reacquisition was discriminatory and could expose public finances to similar requests in the future, in that lessees and/or emphyteutae of public property in debt to Government and other commercial creditors would expect Government to bail them out as was, in effect, this case.

1.2.5 Furthermore, the AG was requested to establish who were the intermediaries who had intervened, directly or indirectly, between Government and CE in securing this deal. A detailed chronology of salient events, together with documentation indicating who was responsible for the decision to reacquire the premises at a cost of €4,200,000 and when this was taken, were to be presented in the report.

### 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 reacquisition process. These included senior Government officials, present and previous officers at the GPD and CE Directors. The NAO also sought the sworn evidence of Opposition Members of Parliament who had publicly commented on the matter. The public officials interviewed by this Office were the Principal Permanent Secretary (PPS), the Adviser to the Prime Minister (PM) on GPD-related matters (an architect by profession and a former Director General (DG) GPD, hereinafter referred to as Adviser OPM), the incumbent and the previous DG GPD, as well as the former Commissioner of Land. Interviews under oath were also conducted with several GPD officials, including the former Director (Finance and Administration), legal officers at the GPD Legal Section and the GPD Architect who had prepared the valuation of the remaining utile dominium. This Office took sworn evidence of the two CE Directors Mario Camilleri and Neville Curmi, as tenants of the Café Premier and party to the agreement. The Opposition Members of Parliament Hon. Dr Jason Azzopardi and Hon. Ryan Callus were also interviewed, under oath, by the NAO. 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.



- 1.3.3 The NAO reviewed in detail all the documentation retained by GPD relating to the Café Premier premises, in particular the 1998 and 2014 agreements, internal correspondence related to the withdrawal of judicial action and exchanges with CE. This Office also examined all other documentation and information provided by interviewees during the course of the audit. Such documentation included the memorandum presented to Cabinet outlining Government's decision for this reacquisition, a copy of the evaluation report prepared by the GPD Architect and CE internal correspondence that provided essential information, in particular on the payment made to M&A Investments Ltd in the agreement with Government. Where required, clarifications and substantiating documentation were requested from interviewees, Government departments and other entities that were involved. In the main, the latter were the GPD, the IRD, the VAT Department and ARMS Ltd. Such requests primarily related to queries in connection with GPD documentation of Government's lease and reacquisition of the Café Premier premises, tax payable, the VAT claw back and the determination of outstanding dues in respect of utilities. In addition, the NAO reviewed the Police report drawn up in October 2014 by the Economic Crimes Unit in response to the media allegations surrounding the matter.
- 1.3.4 The NAO also engaged the services of a professional technical adviser to assist the Office in its evaluation of technical aspects related to the inquiry. The NAO also consulted with a legal adviser in the address of particular aspects that were deemed relevant to this investigation.
- 1.3.5 Allegations brought to the attention of the NAO were duly scrutinised and resultant findings reported upon. 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.
- 1.3.6 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 upon. 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.
- 1.3.7 The findings of this Report are presented in four chapters. Chapter 1 gives an overview of the allegations made in the media and the mandate to the NAO by the PAC, Chapter 2 deals with the original lease agreement entered into by Government and CE in 1998 and Chapter 3 with the reacquisition contract signed by the parties in January 2014. Chapter 4 presents the NAO's conclusions and views as to whether the transaction represented value for money, the principles of good governance and transparency were ensured, and financial regulations were adhered to, and also its assessment on the payment, or otherwise, of commissions in the process of this transaction.



# Chapter 2

## The 1998 Agreement between Government and Cities Entertainment Limited

## Chapter 2 – The 1998 Agreement between Government and Cities Entertainment Limited

### 2.1 The 1998 Agreement in respect of Café Premier

2.1.1 By virtue of an agreement entered into on 23 April 1998, Government conceded to CE the temporary emphyteusis of the premises at 33 and 34 Old Treasury Street and the basement accessed from 35 Old Treasury Street, as well as three shops at 40, 41 and 42 Old Theatre Street, Valletta, known as Café Premier.<sup>1</sup> This Office deemed it necessary to outline the salient details of the 1998 agreement, since this provides a context against which to better understand the decisions taken later on that led to the signing of the 29 January 2014 contract, whereby Government acquired the remaining utile dominium of the Café Premier for the sum of €4,200,000.

2.1.2 This background provides the basis for certain assertions made, such as the claim of the possible rescission of the 1998 agreement as a viable course of action that Government could have pursued in the reacquisition of the Café Premier premises. Apart from the terms of payment for the emphyteutical lease and other provisions that the tenant was to observe, this agreement also stipulated the specific breaches that could in effect lead to the rescission of the contract.

#### *Termination of Previous Lease*

2.1.3 The initial part of the 1998 agreement dealt with the termination of the Café Premier lease with the then sitting tenants, and the concession of the temporary emphyteusis in favour of CE. The premises were initially leased to Joseph Pace, who had acquired the utile dominium on 1 July 1962 after the expiration of a 99-year emphyteutical concession originally granted in 1863. On 17 August 1995, the heirs of Joseph Pace reached an agreement with CE, indicating that they were willing to relinquish the utile dominium, against payment, if the company could secure a temporary emphyteusis for a minimum of 50 years and subject to a number of other conditions.

2.1.4 This led to the signing of a private agreement between the parties and the Commissioner of Land on 26 November 1997, which was in line with the policy<sup>2</sup> in

<sup>1</sup> Originally, the premises consisted solely of Nos. 33 and 34 as well as the basement at No. 35 Old Treasury Street, Valletta; however, a letter dated 4 May 1998 from the Ministry for Public Works and Construction to Director Works Division indicated that the shops at Nos. 40, 41 and 42 Old Theatre Street, Valletta were annexed to the existing Café Premier tenement, which description now read: Café Premier at Nos. 33 and 34 Old Treasury Street, Basement at No. 35 Old Treasury Street and Shops at Nos. 40, 41 and 42 Old Theatre Street, Valletta.

<sup>2</sup> The policy entitled “Policy under which utilisti and lessees of Government-owned commercial property may opt to have this property granted on new emphyteutical terms by means of a tender procedure” was approved by then Minister of Works and Construction on 2 April 1997.

force at the time whereby utilisti and lessees of government-owned commercial property could opt to have the leased property granted on a new emphyteutical term by means of a tender. The term of the new emphyteutical grant was directly linked to the permanent improvements that had to be made by the lessee. According to the policy, improvements valued:

- a. up to Lm150,000 (€349,406) would qualify for an emphyteutical concession of 25 years;
- b. above Lm150,000 but below Lm350,000 (€815,281) would qualify for an emphyteutical concession of 45 years; and
- c. above Lm350,000 would qualify for an emphyteutical concession of 65 years.

2.1.5 Although the utilista was granted the right of first refusal, in cases where the utilista opted to introduce a third party, then such right was granted to the latter, as was in fact the case in the Café Premier concession. The outright transfer of the premises was finalised with the tripartite agreement of 23 April 1998, signed between the Commissioner of Land, a representative of the incumbent tenants and two [then] Directors of CE. A representative for Bank of Valletta plc and another for Mid-Med Bank plc were also signatories to the agreement, safeguarding the interests of the banks in view of moneys that were to be paid to these two financial institutions on the signing of the agreement.

2.1.6 The agreement did not give a detailed description of the premises other than that it comprised of 33 and 34 Old Treasury Street and the basement accessed from 35 Old Treasury Street and the three shops at 40, 41 and 42 Old Theatre Street, Valletta. However, a detailed description of the emphyteutical premises was drawn up by Mangion, Mangion & Partners in 2009, when this firm was appointed to carry out a valuation of the property, which indicated that:

*“The property consists of part of the ground floor and the basement beneath the Public Library (the Bibliotheca) in Queen’s Square, Valletta. It is on a corner site and it is bounded by Treasury Street on the North West and by Old Theatre Street on the North East. It has a large frontage on the former and a lesser one on the latter street. The frontage on Treasury Street measures some 17m and it has three entrances, while that on Old Theatre Street measures some 13m and it too has three entrances. Along this frontage, Treasury Street is in the form of an arcade which runs beneath the Public Library. Both streets are pedestrianised. Queen’s Square lies adjacent to Treasury Street from which it is separated by the piers of the arcade. The extreme corner between the two streets is occupied by a third party and it is currently occupied by a clothes shop. The main entrance to the Public Library lies between the property frontage and the clothes shop on Treasury Street. The basement largely underlies the ground floor although there are some small variations between the two footprints. The height of the ground floor varies considerably as most of the rooms are vaulted and thus the room height ranges between 2.3m at the springing and 4.4m at the crown of the vaults. The basement floor is also vaulted and the height varies between 2.6m and 4.4m. It is accessible via a staircase located at the end entrance in Treasury Street as well as a second one located behind one of the entrances in Old Theatre Street. The Net Floor Area of the ground floor is 579m<sup>2</sup> and that of the basement is 505m<sup>2</sup>.”<sup>3</sup>*

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<sup>3</sup> Cities Entertainment Ltd also had encroachment rights in part of the arcade in Treasury Street and in part of Republic Square (more commonly known as Pjazza Reġina), Valletta. However, these are outside the scope of this review since encroachment rights are not transferable and do not feature in the agreement between Government and CE analysed in this Report.

This description gives a better understanding of the extent of the Café Premier premises and of other elements, such as frontage, that were factored in when this and subsequent valuations of these premises were made.

#### *Terms and Conditions – Term, Use, Improvements and Upkeep*

- 2.1.7 According to the second part of the 1998 agreement, the concession of the emphyteutical grant in favour of CE was being made on several conditions, including the term of the lease, purpose of use and the payment of annual ground rent. According to the agreement, the Commissioner of Land conceded the temporary emphyteusis to CE for a period of 65 years from the date of contract, that is 23 April 1998. The lease would, therefore, expire in 2063. The emphyteuta could not change the nature of activity of the business other than that stated in the agreement, namely that the premises was to be used solely for cultural purposes. Nonetheless, the emphyteuta could operate a cafeteria as an ancillary service to the principal activity.
- 2.1.8 The emphyteuta was to pay the utilista the aggregate sum of Lm850,000 (€1,979,967), which was comprised as follows – Lm100,000 (€232,937) for goodwill, Lm500,000 (€1,164,687) for improvements to property and Lm250,000 (€582,343) for furniture and fittings. The emphyteuta was also bound to make permanent improvements to the premises valued not less than Lm350,000 (€815,281). These were to be carried out within five years from obtaining the relative permits; however, such permits had to be applied for within six months from the commencement of the new emphyteutical grant.
- 2.1.9 The emphyteuta was to maintain the premises in good condition and was to make good any damages sustained. Moreover, the emphyteuta was to insure the premises, and improvements thereto, for its full value during the term of the emphyteutical grant. The emphyteuta was bound to take all precautionary measures for fire prevention, especially with regard to the National Library located above, and was prohibited from keeping or using LPG cylinders on the premises. When required, government inspectors were to be allowed access to ascertain the condition of the premises and ensure that the conditions of this agreement were in fact being observed.

#### *Terms and Conditions – Closure of Premises, Transfer of Utile Dominium and Partnerships*

- 2.1.10 The second part of the agreement stipulated further contractual conditions that were to be observed by CE. The emphyteuta could not carry out structural alterations to the emphyteutical immovable, nor could the premises be kept closed without the prior written consent of the Commissioner of Land. The emphyteuta was not authorised to make easements in favour of third parties, although the immovable granted by the temporary emphyteusis was still subject to all existing ones.
- 2.1.11 The emphyteuta could not transfer the utile nor was allowed to enter into partnerships, management franchises or similar agreements unless the prior permission in writing of the Commissioner of Land was obtained. If such approval were granted, Government was entitled to a one-time payment, a laudemium, equivalent to that proportion of the ground rent being paid pro tempore, which reflected the area being covered by such an agreement when compared to the area contemplated in the original (1998) agreement. A copy of the contract in respect of such transfers or agreements was to be submitted to the Commissioner of Land, and the laudemium paid, within thirty days from the date of the contract.

## *Terms and Conditions – Payment of Ground Rent*

2.1.12 The concession of the temporary emphyteusis of the Café Premier premises was made against the payment of ground rent due by CE to Government as stipulated in Article 1 of the agreement. An annual ground rent of Lm40,010 (€93,198) payable a year in advance was to be charged; however administrative reductions were to be applied for the first eight years of the term and upward revisions due thereafter. Further details regarding ground rent payable are presented in paragraph 2.2.5.

## *Breaches that could lead to the Rescission of Agreement*

2.1.13 Article 17 of the agreement clearly stipulated the breaches that would allow Government to initiate legal proceedings to dissolve the contract with CE. Five main reasons were indicated that could lead to the rescission of the agreement, namely if:

- a. the tenant made use of the premises for purposes other than that indicated in the agreement;
- b. the tenant failed to pay the ground rent for three years or, if partial payments were made, the outstanding ground rent was equivalent to three years' ground rent;
- c. the tenant kept the premises closed for a continuous period of one year, as long as this was not due to works being undertaken with the prior approval of the Commissioner of Land;
- d. the tenant transferred the premises contravening the sub-letting conditions stipulated in the agreement; and
- e. the tenant made use of LPG cylinders on the premises.

2.1.14 Government was bound to give in writing an advance notice of 30 days to any bank or financial institution that had advanced loans to the emphyteuta in the event of a breach of the agreement that could result in the dissolution of the concession. However, Government would not dissolve the concession for any of the above reasons if there were pending judicial procedures filed by a bank or financial institution.

## *Terms of Payment*

2.1.15 The terms of payment that the emphyteuta had to effect to the utilista were specified in part three of the agreement. It was agreed that CE was to pay the sum of Lm850,000 (€1,979,967) to the previous lessee for goodwill, improvements to property and furniture and fittings. The agreement further stipulated the outstanding amounts that were to be paid to various parties on the signing of the agreement, including dues to Government, details of which are however deemed irrelevant to the issue under consideration.

## **2.2 Adherence to Contractual Conditions**

2.2.1 The 1998 agreement clearly stipulated a number of conditions that were to be adhered to by CE during its tenure of the emphyteutical lease of the Café Premier premises. Although all the contractual conditions were binding, Government's right to rescind the agreement did not arise from every breach. The conditions that, if breached, would enable Government to abrogate the contract with CE and reclaim the immovable property were specifically stipulated in Article 17 of the agreement. The NAO sought to establish whether any of these conditions were infringed and what action, if any, was taken by Government in the event of any such breaches.

### *Article 17(i) – Use of Premises for Purposes other than that Stipulated in the Agreement*

- 2.2.2 Article 17(i) stipulated that CE could not make use of the Café Premier premises for purposes other than those stipulated in Article 2 of the agreement. The latter article clearly stated that the emphyteutical property was to be utilised solely for cultural purposes, although the emphyteuta could operate a cafeteria and a souvenir shop as ancillary operations to the principal business activity. When CE acquired the lease in 1998, the premises was converted into a walk-through presentation of the 1565 siege of Malta, which occupied virtually all of the property except for a small café at ground floor and a related shop in Old Theatre Street. However, CE undertook major restructuring works in 2009 that included a revised and adapted heritage show, which was now restricted to the basement floor, and the conversion of the ground floor into a food court. Applications made to the Malta Environment and Planning Authority for the sanctioning of these works further evidenced that use of the premises was in line with that stipulated in the agreement.
- 2.2.3 During the course of this investigation no allegations were made, nor was any evidence found, which suggested that the premises were utilised for purposes other than those intended.

### *Article 17(ii) – Failure to Pay Ground Rent*

- 2.2.4 Failure by the emphyteuta to pay rent was also ground for the possible rescission of the 1998 emphyteutical contract with CE. Article 17(ii) of the agreement stipulated that if the emphyteuta failed to pay ground rent for three years, or if making partial payments the outstanding dues equalled three years' ground rent, then Government had the right to initiate legal proceedings to rescind the agreement.
- 2.2.5 According to Article 1 of the agreement, the emphyteutical concession was being made against the payment of annual ground rent to the amount of Lm40,010 (€93,198) payable yearly in advance. However, the ground rent was being administratively reduced for the first eight years, that is: for the first two years to Lm20,000 (€46,587); for the next two years to Lm25,000 (€58,234); for the next two years to Lm30,000 (€69,881) and for the next two years to Lm35,000 (€81,528). The full amount of ground rent was therefore due at the beginning of the ninth year of the concession. Nonetheless, this was to be revised every five years according to the rate of inflation, as calculated in line with Article 10(c) of the Housing (Decontrol) Ordinance<sup>4</sup> or, in case of its abrogation, to the inflation index applicable at the time, or an increase equivalent to 20 per cent of the ground rent, whichever of the options was the higher. Thereafter, ground rent was to increase every five years by the rate of inflation or 20 per cent (whichever was higher) over the rent of the previous period. The first such revision was, however, to be made five years after the full amount of ground rent was paid by the emphyteuta. The first full ground rent was hence due at the beginning of the ninth year of concession, that is April 2006, and the initial rate of inflation, or 20 per cent revision, due in April 2011. Table 1 refers.

<sup>4</sup> Chapter 158 of the Laws of Malta, extract:

13. (1) The index of inflation for each of the years from 1947 until 1978 shall be that shown in the Schedule to this Ordinance, taking 1946 as a basis at 100 points. (2) The index of inflation for each year after 1978 shall be established by the Principal Government Statistician as percentage points for each of such years in continuation of the Schedule aforesaid and on the basis of the all items retail price index, or a similar index replacing it, and shall be published by him in the Gazette not later than the end of March immediately following the year to which the index refers. (3) An increase in inflation shall be established by taking the difference between the percentage points for the two relevant years, as shown in the Schedule or as published in the Gazette, as a proportion of the first of such years.



**Table 1: Ground rent per annum payable as per agreement**

Year	Year of concession	Ground rent (Lm)	Ground rent equivalent in €
April 1998	Year 1	20,000	46,587
April 2000	Year 3	25,000	58,234
April 2002	Year 5	30,000	69,881
April 2004	Year 7	35,000	81,528
April 2006	Year 9	40,010	93,198
April 2011	Year 14	(40,010 + 20% or rate of inflation) *	(93,198 + 20% or rate of inflation) *
April 2016	Year 19	* + 20% or rate of inflation	* + 20% or rate of inflation

2.2.6 The NAO reviewed all related GPD documentation and the relevant transaction ledger to ascertain whether the conditions imposed on CE with regard to the payment of ground rent were complied with. This Office also sought to establish whether there were instances where the three-year outstanding ground rent threshold was breached. Data reviewed indicated a number of instances of non-compliance, with considerable accumulations of arrears, several repayment schedules agreed to and then not honoured, as well as judicial action resorted to by both parties. The relevant ground rent ledger records as maintained by GPD are presented in Appendix B.

*Payment of Ground Rent and Related Issues (1): April 1998 – March 2011*

2.2.7 This Office initially reviewed the ground rent ledger history held at GPD from April 1998 to March 2011 to determine whether the conditions regarding the payment of ground rent were observed. The March 2011 cut-off was somewhat arbitrarily decided upon by the NAO audit team, and merely intended to facilitate understanding by separating events that took place well before the transfer of the Café Premier between CE and Government from other developments that occurred in the months leading to the decision to commence negotiations. This cut-off date also segmented the period under review based on the point at which the 20 per cent or rate of inflation revision in ground rent was due. In effect, this separate view should be understood as one continuous account and analysis of the payment of ground rent and issues relating thereto.

2.2.8 The NAO reviewed the payments effected by CE and the balances due as at 23 April of each year, when the ground rent for the next twelve months fell due. In particular, the NAO sought to establish whether the outstanding three-year ground rent limit stipulated in the 1998 agreement was breached at any time during this period. Table 2 refers.

2.2.9 Table 2 indicates that the amounts due by CE as on 23 April of 2004, 2005, 2006 and 2009 exceeded the allowable three-year limit. It has, however, to be pointed out that the above shows the position as on the date that ground rent actually became payable and does not take into consideration payments that were effected by CE soon after the due date which could, therefore, critically change the position from one of default of to one of conformity to the three-year threshold proviso.

**Table 2: Balances due by CE as compared to three-year threshold (1998-2010)**

Date	Ground rent as per agreement (€)	Balance due as per GPD data (€)	Three-year threshold (€)
23 April 1998	46,587	46,587	not applicable
23 April 1999	46,587	46,587	not applicable
23 April 2000	58,234	46,587	151,409
23 April 2001	58,234	46,587	163,056
23 April 2002	69,881	114,139	186,350
23 April 2003	69,881	194,503	197,997
23 April 2004	81,528	251,572	221,290
23 April 2005	81,528	244,002	232,937
23 April 2006	93,198	266,014	256,254
23 April 2007	93,198	219,474	267,925
23 April 2008	93,198	238,561	279,595
23 April 2009	93,198	289,901	279,595
23 April 2010	93,198	237,562	279,595

2.2.10 To address this limitation, the NAO took a closer look at the ledger history, where details including date, amount debited/credited and the balance due following each transaction were listed. This narrowed down the periods of default of the three-year limit to the following:

- 23 April 2004 to 25 August 2004;
- 23 April 2005 to 31 May 2005;
- 23 April 2006 to 8 August 2006; and
- 23 April 2009 to 11 September 2009.<sup>5</sup>

These periods of default in terms of adherence to the three-year threshold proviso are reflected in Figure 1, which provides a graphical illustration of the Café Premier’s ground rent ledger activity relative to the said threshold.

**Figure 1: Café Premier ground rent ledger activity relative to three-year threshold (1998-2011)**



Note:

- The balance due represents the ground rent ledger account activity up to 22 April 2011.
- On 12 June 2003, a laudemium charge of €9,476 was raised and immediately settled. This accounts for the brief instance when the balance exceeded the threshold, but was disregarded by the NAO as it did not relate to the analysis of ground rent payments.

<sup>5</sup> Although the ledger history account was debited with ground rent due prior to the 23 April (that is on 15 April in 2004, 14 April in 2005, 11 April in 2006 and 14 in April 2009), the period of default is considered as commencing from the due date, that is 23 April of each year.

2.2.11 This Office subsequently sought to establish what action, if any, was taken by the Department in light of these infringements. Documentation in the related GPD files indicated that, notwithstanding several prior reminders to CE to settle outstanding balances, on 5 May 2004 the Commissioner of Land submitted a final reminder to CE stating that in spite of notices sent, the Company had failed to settle the amount of Lm108,000 (€251,572) due as ground rent up to 22 April 2005. A hand-written note on the reminder stated that this would be followed by an “official letter”. The matter was revisited by GPD on 29 October 2004 when a note in the relative file indicated that payments were being effected regularly.

2.2.12 The matter of outstanding rent resurfaced on 21 March 2006 when the Director (Land) GPD informed the Department’s Officer in charge of Rents that “*the company has not been consistent in effecting payment to offset the arrears by monthly instalments. ... Under the circumstances please inform the company that unless they call forward to bind themselves to effect payment by instalment retrospective from 1 January 2006 at Lm1,000 (€2,329) weekly without fail and settle immediately the past weekly instalments as from 1/1/2006 plus current rent as it falls due, we shall proceed to terminate the emphyteusis*”. This was shortly followed up when, on 23 March 2006, the Director (Land) instructed the Officer in charge of Rents that “*the arrears being left outstanding by this tenant at the end of each financial year has been discussed with DG. ... It has been decided that no further instalments be accepted and that action in terms of Article 466<sup>6</sup> be proceeded with. As such please ensure that no further instalments are accepted and prepare judicial letters for all arrears due to date. Please take immediate action.*” In fact, on 4 April 2006, a judicial letter was filed against CE, requiring the company to settle the balance due of Lm79,200 (€184,486) within two days. This position was maintained when, in an internal minute from the Director (Land) to the DG GPD dated 28 April 2006 the former recommended that CE’s request to lease part of the Café Premier premises to Caffè Cordina dated 25 April 2006 should only be considered if all arrears of rent were settled. CE was informed accordingly.

2.2.13 On 15 June 2006 CE, through their legal representative, informed the Director (Land) that the Company agreed to pay arrears due in consideration of the ground rent for the period up to 22 April 2007, that till then would accrue to Lm119,200 (€277,661), in:

- a. twelve equal consecutive monthly instalments of Lm5,000 (€11,647) each, the first instalment payable on 30 June 2006; and
- b. the balance (Lm54,200) (€23,268) would be paid in seven equal consecutive monthly instalments of Lm8,457 (€19,699) each, the first instalment payable on 30 June 2007.

Moreover, the ground rent which was to become due on 23 April 2007 was to be fully paid on the due date in terms of the contractual arrangement. In effect, if the payment schedule as proposed by CE was adhered to, rent arrears would have been cleared by 31 December 2007.

<sup>6</sup> Article 466 of the Code of Organisation and Civil Procedure, namely:

466. (1) Where a head of any government department desires to sue for the recovery of a debt due to a department under his direction, or to any administration thereof, for any services, supplies, rent or for any Licence or other fee or tax due, he may make a declaration on oath before the registrar, a judge or a magistrate wherein he is to state the nature of the debt and the name of the debtor and confirm that it is due. (2) The declaration referred to in sub-article (1) shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgment of the competent court unless the debtor shall, within a period of twenty days from service upon him of the said declaration oppose the claim by filing an application demanding that the court declare the claim unfounded. (3) The application filed in terms of sub-article (2) shall be served upon the head of department, who shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period. (4) In the cases of an urgent nature the court may, upon an application of the creditor or the debtor, shorten any time limits provided for in this article by means of a decree to be served upon the other party.

- 2.2.14 Although the Director (Land) was in agreement with the proposed repayment schedule, the DG GPD opposed this timeframe, insisting that all outstanding dues had to be settled by 31 December 2006. According to internal correspondence this was partly motivated by the fact that although CE was effecting payments, these were not always being made regularly. Moreover, the value of the payments being made was not enough to clear arrears and make good for additional ground rent as it became due. On 17 July 2006, GPD informed CE that the settlement of arrears of rent by instalments as proposed by the Company on 15 June 2006 was not acceptable to the Department and that all rent arrears, inclusive of all current rent due, had to be fully paid by the end December 2006 deadline.
- 2.2.15 Notwithstanding GPD's position on the matter, CE effected the payment of two instalments of Lm5,000 (€11,647) each after the 17 July 2006 communication. On the instructions of the DG GPD and Director (Land), these payments were "*cashd on account without prejudice*". CE was informed accordingly.
- 2.2.16 Irrespective of the payments made by CE, the DG GPD maintained his position that the repayment schedule should not go beyond end 2006. Furthermore, in internal correspondence with the Director (Land) dated 31 July 2006, the DG GPD maintained that "*court action should not only be for the recovery of all rent dues but also for the dissolution of deed*". From documentation in the relative GPD files, it did not appear that the matter was actively followed up until the issue was somewhat resolved on 14 May 2007 with the GPD's approval of CE's newly proposed repayment schedule, which the company had submitted on 30 November 2006. The GPD's approval was "*subjected to the payment of the instalments without fail as they fall due and should any instalments remain unpaid, the payment program shall cease and action will be taken for the recovery of all the outstanding balance*". Irrespective of the fact that CE was effecting regular payments during this period, the NAO noted that the proposed schedule was entirely incongruent to and significantly contrasted the GPD's earlier stand in that all outstanding arrears would now be settled by May 2008 rather than by end 2006, as previously insisted on by GPD. For that matter, it also differed from the 31 December 2007 deadline as previously put forward by CE. Moreover, notwithstanding the agreement in place, and the several payments made by CE, by June 2008 CE had again accumulated arrears, which stood at €238,561.
- 2.2.17 On 4 June 2008, the Commissioner of Land informed CE of this amount of outstanding ground rent and requested that dues be settled within one week from this date. Moreover, CE was informed that, should the Company fail to effect payment, judicial action would be initiated. Nonetheless, documentation made available to this Office by GPD indicated that no immediate follow up was made by the Department. The matter was not actively followed up, at least until 5 May 2009, when the Department's Legal Section requested an update of the outstanding balance due on the tenement from the Rents Section at GPD. A reply was submitted on the same date, indicating that the outstanding balance was €289,901.
- 2.2.18 Following this exchange, the GPD filed a judicial protest against CE dated 5 May 2009, citing the company's non-adherence to the repayment schedule that CE had proposed in November 2006, with outstanding dues that had accumulated to €289,901. According to the judicial protest, the Department had no option other than to initiate proceedings for the rescission of the emphyteutical agreement with CE. The NAO noted that, at €289,901, ground rent due was in fact in excess of the three-year limit stipulated in the agreement, which was €279,595.
- 2.2.19 Documentation in the relative GPD files indicated that, some time following the judicial protest, a meeting between GPD and CE was convened, the conclusions of

which were conveyed in a letter by the DG GPD to CE dated 23 May 2009. According to this letter, GPD maintained that stated in the judicial protest and reiterated its stance that, unless CE regularised its position in accordance with the terms of the repayment agreement, the GPD would take further judicial action against the Company. Moreover, a cheque issued by CE for €20,000 would not be cashed since this could prejudice the Department's position.

2.2.20 On 2 June 2009, CE submitted a cheque for €93,198 in full settlement of one year's ground rent in respect of the Café Premier premises. This was to replace the two cheques submitted earlier for €15,000 and €20,000, respectively. Notwithstanding this payment, on 3 June 2009, the GPD returned all three cheques, insisting that the full amount of €289,901 be settled immediately, otherwise legal action would be instituted. On 9 June 2009, CE deposited the amount of €93,198 at the Law Courts, stating that this payment in respect of annual ground rent was due on 23 April 2009 and which covered the period from this date up to 22 April 2010, was unjustly refused by the Commissioner of Land.

2.2.21 It was unclear what, if any, further action was taken, at least until 17 June 2009 when CE submitted a letter to the DG GPD. According to this document, a meeting between the parties in the presence of the then Parliamentary Secretary was held earlier that day where a way forward was proposed by CE. It was further stated that, taking into account the payment of €93,198 made in June 2009, CE would still owe €196,702 in respect of rent arrears, which the company proposed to pay in 36 equal monthly instalments. It was also proposed that future ground rent (excluding arrears) would be paid six-monthly instead of yearly in advance.

2.2.22 To this end, a formal agreement was entered into between the parties; however, several changes to the terms as proposed by CE were made. According to the agreement signed between the GPD and CE on 9 September 2009:

- a. the cedola for the amount of €93,198 was to be withdrawn;
- b. the remaining balance of €196,702 was to be paid in 30 monthly instalments, payable on the tenth of each month; since the first two instalments were already paid, the next payment was due on 10 September 2009;
- c. in the event that the company defaulted on three of the 30 payments, this agreement would be terminated and the outstanding balance would be due as one payment; and
- d. with the exception of arrears that were to be paid as indicated above, rent updates were to be paid in advance as these became due as per the 23 April 1998 agreement.

Therefore, to settle all rent arrears CE was to pay 30 monthly instalments of €6,557 up to December 2011. In addition, annual ground rent of €93,198 was to be paid as it fell due, that is, on 23 April of each year.

2.2.23 In the main, regular payments were being effected until May 2010 when, following a meeting between the Commissioner of Land and CE on 26 May 2010, GPD's tenement account in respect of the Café Premier premises was split into two – 'Tenement 60536 in Current Account' in respect of current rent and 'Tenement 60536 in History' in respect of arrears. Therefore, the amount outstanding of €216,682 was split into:

- a. Tenement 060536 (in Current Account): €85,432
- b. Tenement H060536 (in History): €131,250.

Moreover, as from then on, monthly payments of €7,767 were to be credited to the Current Account in respect of current rent and monthly payments of €6,557 were to be allocated to the History Account in respect of arrears. No explanations as to the reason[s] for this division was found in GPD files; the NAO however noted that, contrary to the agreement signed in September 2009, current rent would now be paid in monthly instalments rather than yearly in advance as it became due.

2.2.24 Despite the agreement entered into on 9 September 2009 and the ‘concession’ that current rent was to be paid in monthly instalments rather than yearly in advance, by February 2011 both accounts had once again fallen considerably in arrears. On 7 February 2011, GPD informed CE that arrears of €54,366 had accumulated on Tenement 060536 in respect of ground rent due up to 22 April 2011. In another letter that the Department submitted on the same day, CE was informed that rent arrears due up to 22 April 2010 on H060536 had accumulated to €111,580. Both accounts were to be settled “*at the earliest possible*”.

2.2.25 Several payments were made by CE after the 7 February 2011 letters; however, these were not sufficient to settle the outstanding dues. There was no evidence in the GPD documentation made available to the NAO that further action was taken by the Department, until at least 17 February 2012 when copies of the ledger history of both the current and the history accounts were inserted in the GPD file relating to this tenement. The balances indicated were €64,552 and €78,796, respectively.

#### *Payment of Ground Rent and Related Issues (2): April 2011 – April 2013*

2.2.26 The status quo persisted until 13 November 2012 when, in an internal minute in the relative GPD file, instructions were given for judicial letters to be prepared since the May 2010 repayment schedule was not being adhered to by CE. According to GPD, the outstanding balances due were now €152,750 in respect of the current rent (060536) and €68,463 in arrears of ground rent (H060536), amounting to a total balance due of €221,213. Two separate judicial letters in respect of the two rent-related accounts, namely 060536 and H060536, were subsequently filed against CE on 12 December 2012. According to the judicial letters, the settlement of all outstanding dues was to be effected within two days.

2.2.27 Providing context to the above-cited judicial action is the NAO’s analysis of ground rent balances due by CE to the GPD with respect to the period April 2011 to April 2013 (Table 3 refers). Rendered evident are two salient issues. First, that at the instant when judicial letters were filed against CE, the balance due was below the three-year threshold. Second, a point of fundamental importance, is the fact that according to GPD records, the three-year threshold with respect to ground rent payments had been exceeded by CE on 23 April 2013. Specifically, the balance due was €16,300 in excess of the applicable threshold.

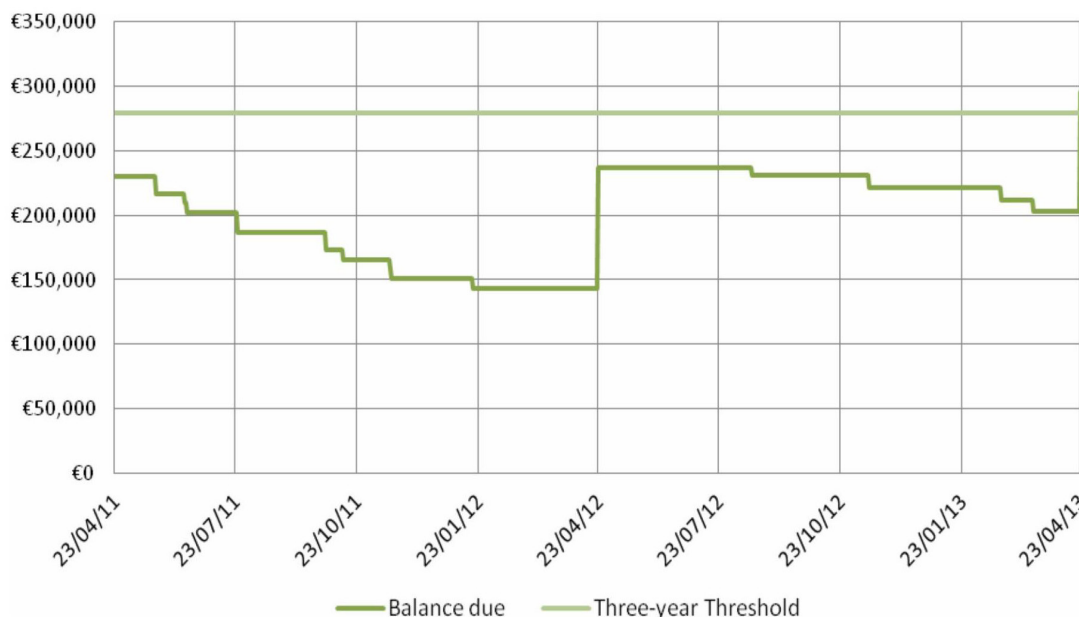
**Table 3: Balances due by CE as compared to three-year threshold according to GPD data (2011-2013)**

Date	Three-year threshold (€)	Balance due as per GPD data (€)	Variance (€)
23 April 2011	279,595	230,497	49,098
23 April 2012	279,595	236,546	43,049
23 April 2013	279,595	295,895	(16,300)



2.2.28 Only one payment was made after 23 April 2013, which was dated 10 May 2013 and amounted to €4,650. A detailed graphical illustration of the Café Premier’s ground rent ledger activity for the period April 2011 to May 2013, in terms of adherence to the three-year threshold, is presented in Figure 2.

Figure 2: Café Premier ground rent ledger activity relative to three-year threshold (2011-2013)



2.2.29 This Office, however, disputes the outstanding amount due as established by GPD and cited in the judicial letters. According to the NAO, the current ground rent account should have included a revision in rent as per rate of inflation or 20 per cent, whichever was the higher, which was due in April 2011 in respect of the period 23 April 2011 to 22 April 2012. According to the 1998 agreement, the full amount of ground rent was due at the beginning of the ninth year of the concession. However, this was to be revised every five years according to the rate of inflation or an increase equivalent to 20 per cent of the ground rent, whichever was the higher. The first such revision was to be made following five years of being charged full ground rent. Since the first full ground rent was due in April 2006, the first rate of inflation, or 20 per cent revision, should have been made in April 2011. Such a revision should have also been reflected in terms of ground rent payable in 2012, 2013, 2014 and 2015. This revision was not effected in invoices raised by GPD in April 2011 and 2012 that, therefore, should have been for the amount of €111,838 and not €93,198.

2.2.30 As a result of this oversight, these revisions were not reflected in the balance due quoted in the judicial letter in respect of the current account 060536 filed by the Department on 12 December 2012. This was in fact understated by €37,280 and should have read €190,030 and not €152,750. In addition to this amount, €68,463 was due in respect of arrears of ground rent as per rent ledger account H060536 to bring the total actual amount of outstanding dues as at 12 December 2012 to €258,493 and not €221,213 as quoted by GPD.

2.2.31 In light of this omission, this Office sought to establish the outstanding amounts, as per due date (that is, 23 April), for the years 2011 to 2013. Table 4 indicates the amount of ground rent due as charged by GPD and as established by the NAO, taking into consideration the revisions that were to be effected as per agreement.

**Table 4: Ground rent as determined by GPD and as per NAO workings**

Date	As per GPD Data				As per NAO workings			
	Total outstanding (€)				Total outstanding (€)			
	Due	Current	History	Total	Due	Current	History	Total
23 April 2011	93,198	54,366	98,466	246,030	111,838	54,366	98,466	264,670
23 April 2012	93,198	64,552	78,796	236,546	111,838	83,192	78,796	273,826
23 April 2013*	93,198	143,534	59,163	295,895	111,838	180,814	59,163	351,815

\* if charged up to 22 April 2014

2.2.32 According to the DG GPD, however, the index of inflation or 20 per cent revision could only be computed after 17 February 2012 when Legal Notice 70/2012 was published and, by virtue of which, the Index of Inflation for 2011 was established. However, irrespective of whether or not this was actually the case, it has to be noted that, according to the DG GPD, the revisions in ground rent were brought to the attention of CE only in September 2013. Moreover, an entry in GPD's Café Premier rent ledger history indicated that the corresponding adjustments for the period 23 April 2011 to 22 April 2014 were only effected by the Department in November 2013. Therefore, the rent ledger account was erroneous until November 2013, when the due revisions were finally made by the GPD.

2.2.33 According to the NAO's workings (Table 5 refers), when taking into consideration the revisions that were due, the comprehensive amount of unpaid ground rent exceeded the three-year threshold in April 2013 and the GPD could, potentially, have initiated legal proceedings for the rescission of the contract. As expected, the extent of the discrepancy in terms of ground rent due as compared to the three-year threshold was that of €16,301. The similarity to the previously cited figure of €16,300 as presented in Table 3 is attributable to the fact that a 20 per cent revision was applied by the NAO to the ground rent due as well as to the applicable three-year threshold, resulting in a stable difference of €16,300.

**Table 5: Comparison of outstanding ground rent as per NAO workings with the three year threshold**

Date	Three-year threshold (€)	Outstanding ground rent as per NAO workings (€)	Difference (€)
23 April 2011	298,234	264,670	33,564
23 April 2012	316,874	273,826	43,048
23 April 2013*	335,514	351,815	(16,301)

\* if charged up to 22 April 2014

2.2.34 As stated earlier, the GPD had only effected the due adjustments in November 2013, and despite the intermittent payments of ground rent being made, the Department took no other legal action aside from the filing of the judicial letters on 12 December 2012. The DG GPD acknowledged that the Department had failed to carry out the required adjustment in ground rent but maintained that since the tenant was not informed of the revision, then the GPD could hardly enforce payment thereof: "... *Id-Dipartiment ma għamilx dik ir-revision u ma infurmax lit-tenant li ha ssir ir-revision,*



*allura għaldaqstant aħna min-naħa tagħna ma stajniex nitolbuh għall-arretrati li ma kienx infurmat li huma dovuti min-naħa tiegħu. Kien żball tal-GPD.”<sup>7</sup>*

2.2.35 The DG GPD conceded that it is not acceptable for the Department to enter into contracts and stipulate conditions that it is then not able to monitor: *“Mhijiex aċċettabli żgur dik għax jien jekk ħa nagħmel condition f’kuntratt irrid inkun kapaċi li nissorveljah.”<sup>8</sup>* With regard to the ‘repeated’ repayment agreements entered into and which then were time and again not honoured, the DG GPD stated that the Department’s position in this regard was to, where possible, arrive at a workable arrangement with the tenant: *“L-idea tad-Dipartiment hi, kienet u għadha, li jekk aħna kapaċi naslu b’repayment agreement, aħjar milli noqogħdu nidħlu l-Qorti, niġġieldu u nillatikaw u ma naslu mkien ħafna drabi. ... Allura qed nippruvaw naħdmu fuq sistema fejn l-arretrati ma nħalluhomx jakkumulaw.”<sup>9</sup>*

2.2.36 Following the filing by the GPD of the judicial letters in December 2012, CE filed counter-protests to each of the Department’s letters, stating that GPD’s claims were unfounded. The counter-protest relating to account H060536 was filed on 7 January 2013, while that in respect of account 060536 was dated 25 January 2013. CE further requested the Court to suspend legal proceedings against the Company until the amounts of outstanding ground rent due were correctly established.

2.2.37 In spite of the judicial action initiated against each other, once again both parties entered into a ‘new’ repayment agreement. According to an email submitted on 15 January 2013 by the Director (Finance and Administration) GPD to the CE Director Neville Curmi, the parties had, in a meeting held earlier that day, agreed that,

*“arrears on tenements 60536 and H060536 will be paid as follows:*

*P60536 file number 339/63/IV arrears of €152,833.75*

*H60536 file number 339/63 arrears of €68,463.12.*

*The two tenements total to an amount of €221,298 however you agreed to pay €9,300 per month. As from May 2013 apart from the amount of €9,300 you will also be paying a further amount of €7,750 to cover the rent amount of €93,198.23 (sic)<sup>10</sup>.*

*As soon as you acknowledge the above agreement, I will insert in file and withdraw judicial letter. May I remind you to keep with the above agreement, as failing to do so the Department will have no other option but to proceed in court. Furthermore, the rent section will be monitoring your account to ascertain that payments are effected regularly.”*

2.2.38 In a separate email submitted on the same date, the Director (Finance and Administration) GPD forwarded a copy of the two ledger statements to Curmi. However, the emails were not acknowledged as, on 16 January 2013, the Director (Finance and Administration) GPD informed Curmi that, *“I appreciate your acceptance regarding the below content as otherwise I will not be in a position to stop the judicial action.”*

<sup>7</sup> The Department did not effect the revision and did not inform the tenant that a revision was due, therefore it was not possible for us (GPD) to request the payment of arrears that the tenant was not aware of. It was a shortcoming of the GPD.

<sup>8</sup> This is certainly not acceptable, as if I am to stipulate a condition within a contract, then I should be able to monitor it.

<sup>9</sup> The Department’s (GPD) understanding, was and still is, that if we are able to resolve matters by means of a repayment agreement, then this is better than resorting to the Courts, which would result in arguments as well as conflicts, but not to the matter’s resolution. To this end, we (GPD) are trying to implement a system whereby arrears are addressed early on, with a view to limiting their possible accumulation.

<sup>10</sup> The amount of €93,198.23 quoted by Director Finance and Administration GPD should have been €111,838 as per revisions due, reported in the preceding paragraphs of the Report.

- 2.2.39 On 23 January 2013, Curmi responded to this email stating that he was abroad, hence the delay in replying. Furthermore, Curmi indicated that, *“what you wrote is exactly what we agreed. I have since examined the contract of use and discovered that a rent review will be made in April 2013, this year. The agreement goes that there will be an increase in line with the cost of living or of at least 20% per annum, for the next 5 years. I assume that the 20% will take precedence. Therefore from May 2013 there will be an increase of about euro 18,600 per annum. This is of course substantial. In view of the increase I would ask whether you would be able to consider our arrears to be repaid over a period of 3 years instead of the 2 as we agreed. The remaining agreement that we would carry on with the payment of annual rent monthly over the year as and when due will of course remain.”*
- 2.2.40 In the reply submitted by the Director (Finance and Administration) GPD on 25 January 2013, Curmi was advised to, *“...start paying the first instalments as agreed and then we review after an increase in the rent amount is worked out.”* Curmi indicated his agreement with this arrangement in an email submitted that same day.
- 2.2.41 Notwithstanding the repayment programme agreed to by GPD and CE, on 5 February 2013 the Department filed a Risposta to the counter-protests filed by CE on 7 January and 25 January 2013. In its submission to the Courts, GPD stated that, contrary to what was indicated in the counter-protests by CE, the amounts due had previously never been contested by the Company. According to the GPD, this was clearly evidenced by the fact that the Company had entered into a repayment programme for the defrayal of dues, so much so that one of the Directors had requested an extension of time over which outstanding amounts were to be settled – three years instead of two. The Department further indicated that, notwithstanding the agreement reached in emails and other correspondence exchanged between GPD and CE, the repayment programme had not been formalised. This hindered the Department in pursuing legal action for the rescission of the lease/emphyteutical grant. The GPD maintained that the filing of the counter-protests by CE was merely a delaying tactic, aimed at extending the period over which the Company would settle the outstanding dues.
- 2.2.42 The notices of the hearings were issued by the Law Courts on the 6 February 2013 and 15 February 2013, respectively. One case (in respect of the ‘arrears’ account – H060536), was assigned to the Hon. Justice Farrugia Sacco, and was due for hearing on 20 March 2013, while the other (in respect of the ‘current’ rent account – 060536) was to be presided over by the Hon. Justice Meli and was due for hearing on 17 May 2013.
- 2.2.43 In the interim, correspondence exchanged between CE’s legal representative and GPD’s Legal Section, indicated that CE had defaulted with respect to payments due. As a result, according to an email submitted by GPD on 20 February 2013, the Department was not in a position to withdraw its legal action unless payments were effected. On 22 February 2013, CE made their first instalments as per agreed repayment programme, with €4,650 paid on each account (060536 and H060536), leaving an overall outstanding balance of €211,997. The ensuing developments on the two Court cases and the eventual cessation of proceedings are reported on in depth in the ensuing Chapter, where the withdrawal of all legal action is discussed in detail.
- 2.2.44 The Café Premier was indefinitely closed on 8 March 2013. Nonetheless, the terms and conditions of the 23 April 1998 agreement remained binding.

## Article 17(iii) – Closure of Premises

- 2.2.45 The 1998 agreement, in particular Article 17(iii), clearly stated that the emphyteuta could not retain the premises closed for a continuous period of one year, if not to carry out works, for which the prior approval of the Commissioner of Land had to be obtained. Infringement of this condition would enable Government to initiate legal proceedings to rescind its contract with CE.
- 2.2.46 To address assertions, albeit informal, that the Café Premier was closed for intermittent periods during the CE's tenure of the premises, this Office sought to verify these claims with the CE Directors Mario Camilleri and Neville Curmi. The NAO also sought the views of officials of the GPD, given its inherent responsibility for the administration of Government immovable property and the fact that the Commissioner of Land was the signatory on behalf of Government to the 1998 agreement with CE.
- 2.2.47 During interviews with the CE Directors, both denied that Café Premier had remained closed for any significant period after the signing of the 23 April 1998 agreement. According to Mario Camilleri, after the first years in operation, the premises was briefly closed when there were some transfers in the company's shareholding. Correspondence in GPD files, wherein CE requested the Commissioner of Land's clearance and approval for the allotment and transfer of shares in the Company from one shareholder to another, as required by Article 15 of the agreement, indicated that this took place sometime in mid-2009.<sup>11</sup> The premises was again closed, this time over a longer period, when major refurbishment works were carried out in 2009. This was in the main confirmed by Neville Curmi, the other CE Director, who stated that when the Company initially took over the premises, this was briefly closed when refurbishment works and other improvements were undertaken. Curmi confirmed that more substantial renovation works were made to the premises in 2009, resulting in the closure of the premises for a considerably longer period. These works were completed in July 2009 and between this date and March 2013 the premises was always in operation. Mario Camilleri and Neville Curmi confirmed that any periods during which the Café Premier was closed did not exceed, or even come close to, the one-year limit laid down in the agreement.
- 2.2.48 To further obtain an objective corroboration to the affirmation made by the CE Directors, that the premises was never closed for any considerable period of time, the NAO requested a copy of utility bills (water and electricity) from ARMS Ltd covering the period of lease to CE. This Office sought to establish consumption patterns and determine whether there were unexplained fluctuations in consumption, not attributable to, for example, seasonal factors. According to ARMS Ltd, the Integrated Water Management System was used for billing during the period 1998 to 2009, and was then replaced by SAP<sup>12</sup> sometime during 2010. Extractions from both systems covered the entire period under review. Consumption data provided was reviewed in some detail by the NAO. No unusual electricity consumption patterns were noted although data in respect of water consumption was atypical for short phases during the period reviewed. Although an adequate explanation for this apparent anomaly was not given by the CE Directors, this irregularity was deemed as insufficient evidence that the premises was closed for any considerable duration.
- 2.2.49 This Office also sought to establish what procedures were in place at the GPD that enabled the Department to monitor contractual conditions stipulated in agreements with regard to commercial properties. In particular, the NAO sought to confirm the CE

<sup>11</sup> Changes in the shareholding of Cities Entertainment Ltd are discussed in detail in Chapter 3.

<sup>12</sup> SAP is an enterprise software to manage business operations and customer relations.

Directors' assertion that the Café Premier premises was, for the duration of CE's lease, not kept closed beyond the stipulated period. According to the DG GPD, in such cases the Department generally relied on third parties, for instance neighbours or passers-by, to inform GPD that a particular premises was closed. The Department followed up such reports by sending its inspectors on different days and at different times to verify the claims made. Once confirmed, GPD would contact the lessee to establish whether there was a valid reason for this. If not, GPD followed the matter with what further action was deemed necessary in the given circumstances. The DG GPD further stated that, with regard to the Café Premier premises, there was no indication in any of the Department's files that the premises were kept closed during CE's tenure of the premises. This was corroborated in the NAO's review of the relevant GPD files.

2.2.50 According to the NAO, the above adequately established that the premises were not closed for any considerable periods during CE's tenure, until early March 2013 when the Café Premier was indefinitely closed. This date was confirmed by both the CE Directors in interviews with the NAO.

#### *Article 17(iv) – Sub-letting of Premises*

2.2.51 Article 15(i) of the 1998 agreement between Government and CE stated that the emphyteuta could not transfer part of the utile without the prior approval of the Commissioner of Land. Furthermore, according to Article 15(ii), the emphyteuta could not enter into partnerships, management franchises or similar agreements unless the prior permission in writing of the Commissioner of Land was obtained. If approval was granted in either of the scenarios contemplated in Article 15, Government was then entitled to a one-time payment, a laudemium, equivalent to that proportion of the ground rent being paid pro tempore, which reflected the area in square meterage being covered by such an agreement when compared to the original area in square meterage contemplated in the agreement. A copy of the contract in respect of such transfers or agreements was to be submitted to the Commissioner of Land, and the laudemium paid, within thirty days from the date of the contract. A penalty would be imposed in the event of non-compliance with any of the two conditions.

2.2.52 Article 17(iv) of the agreement made direct reference to Article 15 and indicated that breaches of the latter article would give Government the right to initiate legal proceedings to rescind the agreement.

2.2.53 This Office sought to establish whether CE had, during its tenure of the emphyteutical property, leased all or part of the premises to third parties and whether, in the event of such a transfer, the relevant provisions were observed. A comprehensive review of GPD files revealed a number of instances where sub-letting agreements were entered into by CE with third parties, details of which are given hereunder.

2.2.54 On 19 May 2003, CE informed the Commissioner of Land that the Company intended to lease part of the Café Premier premises to J.F. Caterers Ltd with effect from 15 June 2003, in terms of Article 15(ii) of the emphyteutical concession agreement. The sum of Lm4,068 (€9,476) reflected the ground rent pro rata to the size of the premises that was leased out, that is 15.67m<sup>2</sup>, that was payable to GPD on approval. Approval was granted to CE on 10 June 2003 and a lease agreement was entered into between the parties on 5 June 2003, which in fact pre-empted the Commissioner of Land's approval. The agreement was for a period of ten years, terminating on 19 June 2013, against the payment of a fixed annual rental fee, an additional monthly charge equivalent to a percentage of the monthly turnover and the one-time payment of a premium.

- 2.2.55 On 11 July 2003, the Commissioner of Land requested CE to amend its lease agreement with J.F. Caterers Ltd since this included an area forming part of Pjazza Regina, which was held on encroachment terms, and therefore did not form part of the emphyteutical grant. The lease was duly revised and an amended version was submitted to GPD on 25 September 2003. By May 2005, J.F. Caterers Ltd had accumulated rent arrears of over Lm26,000 (€60,564) and CE requested that a warrant of prohibitory injunction be issued by the Law Courts against the Company. The NAO did not come across any other details regarding the subletting agreement with J.F. Caterers Ltd in any of the GPD files reviewed; however, in April 2006 CE informed the Commissioner of Land of its intention to now sub-let part of the Café Premier to Caffè Cordina.
- 2.2.56 On 19 April 2006, CE requested the approval of the Commissioner of Land for the sub-letting of part of the Café Premier premises to Caffè Cordina in accordance with the 1998 agreement. On approval, the laudemium would be payable to GPD, reflecting the pro rata ground rent of the area, 162m<sup>2</sup> (equivalent to 13.56 per cent of the entire area) being leased out. However, on 8 May 2006 GPD informed CE that the Department was not prepared to consider the request unless all arrears of rent were fully settled by CE. Following lengthy discussions between CE and GPD, a repayment programme in respect of all outstanding rent was reached (this is discussed in detail in paragraphs 2.2.12 to 2.2.16) and, on 14 May 2007, approval for the sub-let was granted, subject to the payment of the laudemium due to GPD.
- 2.2.57 A copy of the sub-letting agreement was submitted to the Director (Land) on 13 May 2007, together with the payment of Lm5,425 (€12,639) in full settlement of the laudemium. The agreement was, however, dated 27 April 2006, which was considerably earlier than the 14 May 2007 approval given by the Director (Land). Moreover, the lease agreement again included an area in Pjazza Regina for the placing of tables and chairs, which did not form part of the emphyteutical premises and which was, in fact, subject to an encroachment permit that was not transferable.
- 2.2.58 This was, to an extent, corroborated in a reply to a parliamentary question (PQ No. 19351) dated 22 May 2006, wherein clarifications were requested as to why Caffè Cordina had taken over Café Premier's encroachment in Pjazza Regina without a call for tenders<sup>13</sup>. In the reply dated 23 May 2006, the DG GPD indicated that the area referred to was held by CE, which had been granted the temporary emphyteusis to Café Premier. Moreover, CE had made a request to GPD to lease to Caffè Cordina parts of the property as per the emphyteutical agreement. The PQ and GPD's reply indicated that the Department's attention was drawn to this apparent infringement, and indirectly inferred that although the Department was aware of the situation, no action was taken.
- 2.2.59 It was only on 4 June 2008 that GPD drew CE's attention to this irregularity, although no reference was made to the fact that the agreement with Caffè Cordina was entered prior to the approval by the Director (Land). In this communication, the GPD requested CE to take immediate steps to amend the lease so as to exclude the area held on encroachment terms. CE was also requested to indicate whether it was willing to relinquish its encroachment permit in favour of a new one that would be issued to Caffè Cordina. In its reply dated 9 June 2008, CE contended that GPD's assertion, that the area in Pjazza Regina held on encroachment terms was leased to Caffè Cordina, was contradicted by the contract referred to by GPD. The contract in fact clearly stated that Caffè Cordina was granted the *"right to use, enjoy and benefit from the*

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<sup>13</sup> In effect, encroachment permits are neither transferable nor are these granted through a call for tenders; these are granted at the *"pleasure of Government"*.



*tables and chairs*"; therefore, CE emphasised, the area was not transferred but Caffè Cordina was merely allowed to benefit therefrom. Moreover, CE had no intention of renouncing the encroachment permit issued to it.

- 2.2.60 No other action was taken until 30 January 2009 when GPD requested Caffè Cordina *"not to make further use of the area"* covered by the encroachment permit made reference to in the agreement dated 27 April 2006 with CE. Caffè Cordina did not contest this decision and on the same date informed GPD that it will be *"respecting the Government's order"*. However, CE contested GPD's position on the matter and, on 2 February 2009, initiated court proceeding requesting that a warrant of prohibitory injunction be issued against GPD. The Department filed its reply on 6 February 2009, and the matter was finally resolved on 17 February 2009. It is to be stated that this matter fell outside the scope of the emphyteutical grant, and reference to this was made solely by way of information and the indirect bearing that this had on the 1998 agreement.
- 2.2.61 The issue of sub-letting was brought up by this Office in interviews with both the incumbent DG GPD and the former DG GPD. According to the current DG GPD, although the approval of the GPD is to be sought in instances of sub-letting, GPD would not withhold its approval unnecessarily and is required to be a signatory to the sub-letting agreement. Nonetheless, when such requests are made, GPD as a rule ensures the settlement of any outstanding dues. According to the DG GPD, this is an effective factor that is used to the Department's advantage in negotiations with lessees. In this particular case, a repayment schedule in respect of outstanding dues was agreed to with CE. With regard to the sub-letting of encroachment areas, DG GPD categorically stated that these cannot be sub-let to third parties since encroachment permits are non-transferable. With regard to the signing of the agreement prior to the approval of the Department, DG GPD stated that this was a matter that the Commissioner of Land and the GPD's legal team would normally address. In the absence of related correspondence, then this shortcoming may have gone unnoticed. However, the DG GPD added that it was pertinent and fair to point out that CE had, prior to signing the agreement, already made their request to GPD as per conditions of emphyteutical lease.
- 2.2.62 On 20 January 2009, CE made another request to the Director (Land) for his approval for the sub-letting of a small part of the Café Premier complex, in particular 40 Old Theatre Street, to another third party. Payment for the pro rata laudemium reflecting the area being leased out, that is 83m<sup>2</sup> equivalent to 6.946 per cent of the total area, was enclosed.
- 2.2.63 On 11 January 2010, CE informed GPD that, despite the considerable time lapse, no approval to CE's 20 January 2009 request was received. In view of this, the parties had agreed that the business could no longer be concluded and the deal had therefore fallen through. Since the change of user had effectively never taken place, CE requested GPD to refund the Company the sum of €6,473, or offset this sum against amounts due by CE. On 22 January 2010, GPD informed CE that this amount was allocated to the Company's rent account 'Ten 60536'.
- 2.2.64 These were the three instances of sub-letting agreements that this Office came across during its review of the relevant GPD files. It was however noted that the evaluation of the Café Premier premises carried out by Mangion, Mangion & Partners in 2009 made reference to a lease to Café Palazzo, citation to which was not found in any GPD documentation. The Mangion, Mangion & Partners report indicated that this was a *"newly constituted lease ... with an area of 59m<sup>2</sup>, the rate per m<sup>2</sup> of this rental is €792/m<sup>2</sup> p.a."*. Requested to provide details of this lease, the CE Director Mario

Camilleri stated that CE had obtained the verbal go ahead of the Commissioner of Land, and that this must have been followed by written approval. However, Camilleri's recollection of the details was vague, partly because he was, at the time, not wholly involved in the running of the premises. Camilleri maintained that the lease was retracted after less than a year since rent due was not being paid. Notwithstanding Camilleri's claim, no documentation of the lease, nor evidence of the payment of a laudemium, was traced in GPD files.

2.2.65 Article 17(iv) of the 1998 agreement clearly stated that any transfers of the emphyteutical property not in line with the provisions of Article 15 could result in the initiation of legal proceedings leading to the rescission of the agreement. Although in this case the major infringements with regard to sub-letting mainly involved encroachment, the NAO could not entirely rule out that there could have been other breaches related to the emphyteutical grant. This Office could not ignore the fact that no evidence of the sub-let to Café Palazz was traced in GPD documentation. Under such circumstances, GPD is wholly dependent on the emphyteuta to provide the necessary details and effect the relevant payments due. In reality, this curtails what amendatory action can be taken by Government to address such breaches.

#### *Article 17(v) – Use of Gas Cylinders on the Premises*

2.2.66 In addition to the requirement of Article 16(i) whereby CE was obliged to take all necessary "*fire prevention/protection*" measures, especially in view of the National Library overlying the Café Premier, this article further stipulated that the use of LPG cylinders on these premises was prohibited. Moreover, Article 17(v) made further emphasis on this prohibition, indicating that any breach in this regard was serious enough that it could result in Government's termination of its agreement with CE.

2.2.67 The NAO sought to establish whether there was any infringement in this regard, considering the emphasis made to this condition in the agreement. This Office found no evidence of use of LPG cylinders on the premises, except for the PPS's claim to the contrary. However, it was not possible to confirm, or otherwise, this assertion post facto. It was also not possible to determine, or otherwise, the possible breach of this condition with GPD, since the Department rarely proactively monitors contracts with lessees, even those for commercial leases, mostly due to the limited number of enforcement officers assigned to it.

2.2.68 Notwithstanding the fact that the use of LPG cylinders on Café Premier premises remained unsubstantiated, a policy prohibiting the establishment of catering outlets underlying the National Library has since been issued. This policy is discussed in detail in Chapter 3 of the Report.





# Chapter 3

## The 2014 Agreement

## Chapter 3 – The 2014 Agreement

### 3.1 Negotiations between Government and Cities Entertainment Ltd

3.1.1 On 29 January 2014, Government and CE signed an agreement whereby Government acquired the utile dominium relating to the temporary emphyteusis of the premises known as Café Premier for the sum of €4,200,000. Hereunder is a detailed account of negotiations undertaken, culminating towards eventual agreement, as well as a review of the contract, with specific attention directed towards payments arising therefrom.

#### *Commencement of Negotiations*

3.1.2 The sequence of events leading to Government's reacquisition of the Café Premier premises may be traced back to early April 2013, a few weeks following the change in administration. The CE Director Mario Camilleri wrote to the PM on 4 April 2013 requesting a meeting indicating that he intended to discuss an area where his business interests came into contact with Government. The PM replied later that same day and stated that a meeting was to be scheduled in a few weeks' time. Furthermore, the PM remarked that he was aware that Camilleri was also meeting the Parliamentary Secretary for Competitiveness and Economic Growth within the Ministry for the Economy, Investment and Small Business.

3.1.3 Subsequent correspondence exchanged between the PM and Mario Camilleri on 6 May 2013 confirms that the aforementioned meeting was in fact held on 17 April 2013, where the possibility of the Café Premier premises passing back to Government was discussed. This was not the first attempt by Camilleri to transfer the Café Premier back to Government, as Camilleri had disclosed to the NAO that he had approached the previous Administration with this proposal. The outcome at the time was negative and the matter was not pursued any further.

3.1.4 During the 17 April 2013 meeting, Camilleri informed the PM that he was discussing the sale of the Company to third parties and that one offer had already been tabled. According to Camilleri, the PM indicated that he would be evaluating how the matter could be approached and that somebody would be contacting him regarding the matter.

3.1.5 The matter was subsequently brought up for discussion by the PM in a meeting with Adviser OPM, where the latter was informed that Government had been offered the opportunity to reacquire the premises. According to Adviser OPM, this meeting took place around May 2013 and also in attendance were the Chief of Staff of the Office of

the Prime Minister (OPM) and the PPS. Adviser OPM's formal role at this early stage of the process was not yet formalised, as his engagement as Adviser to the PM was with effect from 1 June 2013; however, the PM instructed him to establish contact with Mario Camilleri to explore what was being expected by CE and report back.

- 3.1.6 The meeting with Adviser OPM must have taken place prior to, or on 17 May 2013, as on this date initial correspondence was exchanged between CE and Government with respect to Café Premier-related negotiations. Here, Mark Camilleri of CE wrote to Adviser OPM with respect to the Company's interest in returning the property back to Government, should agreement regarding price and payment schedule be reached. Also quoted were CE's liabilities due to Government, here stated as approximately €675,000 and composed of outstanding dues relating to rent, tax and utilities.
- 3.1.7 Attached to this email were two valuations carried out by Mangion, Mangion & Partners, one in 2002 and the other in 2009. On one hand, the 2002 report, addressed to the CE's Directors, estimated the overall value of the leasehold property and its accompanying encroachment at Lm1,981,745 (€4,616,224). Deducting the value of the encroachment (Lm160,000, equivalent to €372,700) results in a leasehold property value of Lm1,821,745, equivalent to €4,243,524. On the other hand, the 2009 report, which was addressed to a commercial bank, sets the net value of the leasehold at €4,352,286.
- 3.1.8 One final aspect of particular interest with respect to the 17 May 2013 email is Camilleri's assertion that CE was discussing the sale of the Company with several third parties and already had an offer that was close to conclusion. The NAO sought to verify the veracity of such claims, which aside from determining the reliability of CE's negotiating position, would also provide a benchmark against which to measure the eventual deal reached with Government. Information provided by the CE Director Neville Curmi fully substantiated claims made by Mark Camilleri in his email of 17 May 2013. In fact, on 16 May 2013, a third party submitted a draft heads of agreement to the CE Directors Mario Camilleri and Neville Curmi. The offer was that of €3,500,000 and entailed the purchase of CE's entire shareholding. Curmi stated that had this agreement gone through, then he would have been entitled to a brokerage fee payable in view of his role in conducting negotiations with the third party.
- 3.1.9 Adviser OPM replied to Mark Camilleri's email on 18 May 2013 stating that he disagreed with the conclusions reached by Mangion, Mangion & Partners and was now awaiting CE's proposal regarding the monetary consideration that the Company was expecting from the sale of the remaining period of the emphyteutical lease. More specifically, Adviser OPM disagreed with the value attributed to the encroachment concession.

### *Establishing Value*

- 3.1.10 Following the correspondence exchanged on 17 and 18 May 2013, which effectively reflected the documented commencement of negotiations, CE submitted an initial request on 20 May 2013, terming the 2009 valuation of €5,370,000 as a starting point for discussions. This figure differed to the €4,352,286 valuation cited earlier, in that the €5,370,000 (which was a rounded figure for the €5,379,567 cited in the report) also included a valuation of the encroachment area adjoining the premises, capitalised at €1,027,281. This email, submitted by Mark Camilleri and addressed to Adviser OPM, imparted a sense of urgency arising in view of other offers received from third parties while simultaneously conveying a willingness to negotiate price and payment terms.

- 3.1.11 On receiving CE's initial request, Government sought to obtain a valuation of its own. To this end, Adviser OPM recommended a Senior Architect within GPD (hereinafter referred to as Architect GPD) to the PM, who duly concurred. Architect GPD stated that no documentation relating to his assignment on this task was exchanged, and claimed that Adviser OPM had verbally communicated such instructions.
- 3.1.12 In view of the manner by which Architect GPD was approached, it was impossible for the NAO to precisely determine his date of engagement; however, by 4 June 2013, Architect GPD had completed his valuation report and submitted it to Adviser OPM (Appendix C refers). No copy of this report was noted in all GPD files reviewed in relation to this matter, despite the report being issued under the Department's letterhead. Copies of the report were in fact provided to the NAO by Architect GPD, Adviser OPM and PPS. Furthermore, the review of GPD files indicated that the Department's management was not made aware of its Architect's assignment. This was confirmed by Architect GPD, who stated that he had not informed his superiors despite being aware that this was contrary to the procedure ordinarily employed by the GPD in cases of valuations.
- 3.1.13 The valuation report prepared for Government estimated the value of the remaining 50 years of utile dominium burdening the property at €4,400,000 to €4,500,000. At a general level of analysis, the valuation report prepared by Architect GPD was detailed and efforts at augmenting objectivity were noted through the application of established rates.
- 3.1.14 The methodology deemed most suitable by Architect GPD for the purpose of his report was the comparison method, which choice was conditioned by the absence of any financial accounts of the operating business. Furthermore, valuation was based on the following characteristics:
- a. the internal layout of the property as per plans attached to the 23 April 1998 deed;
  - b. the weighted area of the property, calculated as being 704.5m<sup>2</sup>;
  - c. the property forms part of the historical and unique National Library building;
  - d. the exposure of the premises onto Pjazza Regina;
  - e. local plan and level of protection is subject to Grade 1 limitations;
  - f. fixtures and fittings within the property related to the nature of the operation; and
  - g. the applicable rate of €500/m<sup>2</sup> per annum, which is the standard rate used by the GPD under the Valletta Commercial Scheme (VCS).
- 3.1.15 Two points merit further elaboration, that is, calculations relating to the weighted area of the property and the per metre rate established as per the VCS. With respect to the first point, the basement and mezzanine levels were assigned a weight of 0.5 prime, therefore, the 483m<sup>2</sup> and the 61m<sup>2</sup> resulted in a combined weighted area of 272m<sup>2</sup>. The ground floor zones were sub-categorised and weighted, with the first seven metres in depth considered as prime area, the next seven metres as 0.75 prime, while the remaining area deemed as 0.5 prime. This sub-categorisation implied that the 650m<sup>2</sup> of ground floor area was in effect reduced to a weighted area of 432.5m<sup>2</sup>. Combining the 272m<sup>2</sup> with this 432.5m<sup>2</sup> resulted in the cited 704.5m<sup>2</sup> weighted area. The NAO queried whether the assignment of weights, as applied in this case, were regulated by professional standards or a Departmental policy; however, Architect GPD stated that this aspect of the valuation is conditioned by the valuer's discretion, which in turn is influenced by the various characteristics of the property being valued and the valuer's attribution of worth to such characteristics.

3.1.16 With regard to the second point, the VCS first became operational in December 2012 and was intended to extend and better regulate the lease of Government-owned properties in Valletta for commercial purposes while simultaneously ensuring the generation of more rental income. Under this Scheme, Valletta was categorised into four zones, depending on the centrality of location of the commercial premises. Zone 1 featured the most central streets and open spaces in Valletta, and therefore the rate charged for premises situated in this zone was the highest, effectively set at €500/m<sup>2</sup>. On the other hand, zones 2, 3 and 4 featured premises with gradually reducing per metre rates. The Café Premier premises was situated at the border between zones 1 and 2, yet the per metre rate applied in Architect GPD's valuation was that pertaining to zone 1, that is, €500/m<sup>2</sup>.

3.1.17 Based on these two variables, Architect GPD was able to determine the freehold value of the premises. The capitalisation rate utilised in this case was that of 5.5 per cent. When queries were raised by the NAO as to why this rate was applied, Architect GPD stated that the determination of the rate bore an element of subjectivity and that GPD normally capitalised at 5 per cent. However, given the commercial nature of the premises, the rate was accordingly increased. The application of the 5.5 per cent capitalisation rate to the cited €500/m<sup>2</sup> to the 704.5m<sup>2</sup> weighted area resulted in a freehold value (F) of €6,404,545 (Box 1 refers).

#### Box 1: Determination of Freehold Value

$$F = \text{rate/m}^2 \times \text{weighted area} \times \text{rate of capitalisation}$$

$$F = €500 \times 704.5\text{m}^2 \times (100/5.5)$$

$$F = €6,404,545$$

3.1.18 Having established the site's freehold value, the valuation report proceeded to determine the directum dominium. Here, the report made reference to Ministerial Direction provided by means of MFEI 007/09, entitled '*Policy Direction in connection with Ministerial Direction MFEI 004/08 in order to establish a fair value of Government commercial property for the disposal of Public Land by way of sale of the Temporary Directum Dominium and relative ground rent.*' This Ministerial Direction was issued on 28 July 2009 by the then Minister of Finance, the Economy and Investment.

3.1.19 MFEI 007/09 referred to another Ministerial Directive, that is, MFEI 004/08, wherein it was established that, "*All disposal of Public Land by way of sale of the Temporary Directum Dominium and relative ground rent should be made at the market value of the property and which basis of estimation should be the freehold value of the said property.*" This Ministerial Direction effectively established the basis on which the fair value of the commercial property could be arrived at. Here it was assumed that the freehold value at the end of the contract, together with the total yearly emphyteusis, would be equal to the maximum sum that the Government would obtain from the property. In turn, this should be equal to the redemption price compounded at a determined interest.

3.1.20 With reference to the report drawn up by Architect GPD, the redemption price was deemed equivalent to the directum dominium and the formula quoted in MFEI 007/09 was used in determining such a value (Box 2 refers).

### Box 2: Calculation of Directum Dominium

$DD = \frac{(1.025^n F + En)}{(1 + i)^n}$
Where: DD = directum dominium   n = number of years until end of contract   F = site freehold value without any building   E = yearly emphyteusis   i = interest rate
$DD = \frac{(1.025^{50} \times \text{€}6,400,000 + \text{€}130,050 \times 50)}{(1 + 0.055)^{50}}$
$DD = \text{€}1,959,845$

3.1.21 Two figures cited in Box 2 merit further explanation, that is, the €130,050 yearly emphyteusis and the 5.5 per cent interest rate. The €130,050 yearly emphyteusis was arrived at following the correction for inflation of ground rent charged in 1998. While the rate of inflation in 1998 stood at 580.61, the rate of inflation in 2012 was that of 810.16. The Lm40,010 notionally payable in 1998, would be equivalent to a rounded €93,200 per annum. Correcting for inflation by applying an index of 1.3954 (810.16/580.61) results in the cited yearly emphyteusis of €130,050.

3.1.22 On the other hand, the interest rate utilised was that of 5.5 per cent, which was established as the rate to be used when providing advice for the sale of temporary directum dominium and relative ground rent of Government-owned commercial property. This rate was established by virtue of correspondence circulated within GPD on 28 August 2009 and issued by the Manager, Coordination Services on behalf of the DG.

3.1.23 Architect GPD proceeded to explain that while the property was valued at €6,400,000, the 15 years that had passed over the 65-year emphyteutical agreement implied that €1,959,845 of the value of the premises had returned to Government. The remaining 50-year period represented the utile dominium held by CE, hereby valued at €4,440,155.

### Box 3: Calculation of Utile Dominium

$F = DD + UD$
Where: F = freehold value   DD = directum dominium (owned by Government)   UD = utile dominium (owned by CE)
$UD = F - DD$
$UD = \text{€}6,400,000 - \text{€}1,959,845$
$UD = \text{€}4,440,155$

3.1.24 As part of the NAO review of the valuation carried out by the Government-appointed Architect, this Office engaged the services of a technical consultant to assist its audit team. The NAO consultant stated that while most aspects of the valuation were regulated by Government policies, directives or internal GPD procedures, the weighting of the premises' area was the one aspect subject to the Government Architect's discretion. Elaborating on the matter, the NAO consultant indicated that the rental value of retail floors is calculated by the zoning method and the principle of halving is applied to inner portions, while a quarter of the rate is taken for deeper

ground floor zones, as well as for basement and upper levels. The Government valuation utilised higher ratios of 0.75 for inner ground and 0.5 at basement level.

3.1.25 Notwithstanding the discrepancy in the weights applied, the valuation arrived at by the NAO consultant was higher than that established by the Government appointed Architect. This was largely attributable to the higher per metre rate applied by the NAO consultant, who was not constrained by the €500/m<sup>2</sup> rate stipulated in the VCS.

### *Offers and Counter-Offers*

3.1.26 Following the submission of Architect GPD's €4,400,000 to €4,500,000 valuation to Adviser OPM on 4 June 2013, the latter requested the PM's authorisation to table an initial offer of €3,500,000, with the possibility of negotiating upwards to €4,000,000. Such authorisation was provided by the PM later that same day by means of an email sent to Adviser OPM and copied to the PPS and Chief of Staff OPM. On 4 June 2013, Adviser OPM submitted Government's initial offer for the utile dominium belonging to CE, which was set at €3,300,000. The submitted offer was for the purchase of the property as a running concern, and was to include all furniture and fittings. The offer was to be paid in three equal instalments without interest.

3.1.27 A counter-proposal was submitted by Mark Camilleri of CE in an email sent to Adviser OPM on 11 June 2013. Here, Camilleri stated that Government's proposal fell short of other offers that were being considered by CE and was €2,200,000 less than their 2009 valuation. CE's counter-offer set terms as follows:

- a. A consideration of €4,200,000 that was net of any tax payable on the sale of immovable property. Substantiating the 'net of tax' argument, CE stated that they had received offers for the purchase of the Company that would not entail the incurrence of any tax arising from the transfer of property, and therefore CE highlighted the necessity of considering this element in its workings. In this respect, CE raised the idea of Government exempting them from this tax given that the property was being transferred to Government. Should this not be possible, CE stated that the element of tax arising from the transfer of property would have to be factored into the price.
- b. Approximately €700,000 due to governmental entities, which was to be immediately set off against the consideration. This amount included social security payments due, value added tax (VAT), GPD-related fees and utility costs.
- c. The remaining balance of approximately €3,500,000 was to be paid over eight equal quarterly instalments.
- d. Finally, CE referred to Government's offer to purchase the property as a 'running concern'. While the Company indicated its willingness to include all fixtures and fittings relating to the Great Siege of Malta tourist attraction, CE was not including the restaurant-related fixtures as part of the agreement.

3.1.28 Pursuant to this counter-proposal, Chief of Staff OPM requested details of amounts due by CE to a number of governmental entities. Correspondence to this effect was exchanged with the Commissioner of Revenue, the Acting Chief Executive Officer of ARMS Ltd and DG GPD. The requested information, barring social security-related data for 2011 and 2012 (which returns had not yet been submitted by CE to the IRD), was provided by all three sources and forwarded to Adviser OPM by Chief of Staff OPM on 12 June 2013.

3.1.29 A difficulty relating to the communication channels employed in negotiations between CE and Government arose on 13 June 2013. This emerged from the review of correspondence exchanged by Adviser OPM and a certain Mr Curmi (presumably



David Curmi). Here, Adviser OPM confirmed that negotiations were under way with Mario Camilleri as a representative of CE and that it was Government's belief that Camilleri bore responsibility to keep interested parties within the Company informed of developments. The implication of Adviser OPM's response is that Curmi was not aware of negotiations between CE (as represented by Camilleri) and Government, let alone the content and progress of such.

- 3.1.30 Following further correspondence, Mario Camilleri wrote to Adviser OPM (also copied to Neville Curmi and David Curmi) on 14 June 2013 stating that David Curmi had been kept up to date on progress registered and apologised for the inconvenience caused as a result of CE's internal miscommunication. More importantly, Camilleri stated that negotiations were to proceed in the same manner as before and assumed responsibility for referring any firm commitments to CE's Board of Directors for decision-making should the need arise. The PM was informed of such developments by Adviser OPM later that same day.
- 3.1.31 The CE request of €4,200,000 (net of tax) dated 11 June 2013 and sent to Adviser OPM was forwarded to the PM on 25 June 2013. Adviser OPM acknowledged the delay and explained that this was due to the fact that he had been waiting for documents substantiating CE's claim that it would be more advantageous for them to sell the Company than transfer the property, as the latter option resulted in the payment of capital gains tax, while the former did not. Finally, Adviser OPM enquired as to whether the documentation provided by CE should be forwarded to the Commissioner of Revenue for comment.
- 3.1.32 The documentation referred to by Adviser OPM was a Pricewaterhouse Coopers (PwC) report addressed to CE regarding the likely capital gains that could arise with respect to each shareholder following the transfer of shares by the Company to third parties, considered in the context of multiple possible scenarios. The PwC report compares this position to an outright sale of the property by CE.
- 3.1.33 The PM directed Adviser OPM to seek the Commissioner of Revenue's views with respect to PwC's report, which response was provided later that same day, that is, 25 June 2013. In his email to Adviser OPM, copied to the PM, Chief of Staff OPM and PPS, the Commissioner of Revenue confirmed that PwC's report was correct in stating that the shareholders of CE would pay a substantial amount of tax if they were to transfer the property instead of the shares.
- 3.1.34 The Commissioner of Revenue further elaborated on this point when stating that the transfer of the property would not be subject to capital gains tax since the property had been owned for more than 12 years, and therefore, such a transfer would be subject to a final withholding tax of 12 per cent payable by CE. However, the Commissioner proceeded to state that since the shareholders were reluctant to transfer the property due to this 12 per cent tax (which tax would not have been incurred had CE opted to transfer the Company instead), then the buyer must consider paying a higher price to compensate the Company for this tax.
- 3.1.35 Two other points of interest and relevance to this case were made by the Commissioner of Revenue. First, although the Income Tax Act provides that the Minister of Finance may issue an exemption from tax, this was not recommended due to various reasons, one of which being that such an exemption would constitute a breach of European Commission state aid rules.
- 3.1.36 Second, the Commissioner commented that if VAT had been paid on improvements to immovable property and such VAT had been claimed as input tax, a claw back of such



input tax would arise if the property was sold before the lapse of twenty years from the year the improvements were made. Reference was hereby being made to the Capital Goods Adjustment Rules issued under the VAT Act. Under such circumstances, the input VAT paid would be clawed back on a pro rata basis and the Commissioner strongly recommended not to compensate the Company for any claw back of VAT that could arise.

- 3.1.37 On 27 June 2013, Adviser OPM sent an email to the PM, Chief of Staff OPM and PPS citing that, as per explanation provided by the Commissioner of Revenue, CE's offer of €4,200,000 net of tax implied that Government's offer would have to be that of €4,772,727. Adviser OPM stated that, in his opinion, this request was too high, particularly when one considered Architect GPD's valuation of €4,400,000 to €4,500,000, which he agreed with. To this end, Adviser OPM proposed that Government submit a final offer of €3,850,000 net of tax, which would imply an offer of €4,375,000. This offer would be on condition that €1,375,000 be paid on signing of the contract (which sum would immediately be recouped by Government, given outstanding dues payable) and the payment of the remaining balances in tranches of €750,000, payable every six months without interest. Finally, Adviser OPM stated that he was of the opinion that Government could agree to CE's request to retain catering-related fittings.
- 3.1.38 Subsequent to this, the PM proposed that Government table an offer of €3,500,000 net of tax, that is, an offer of €3,977,272. On 2 July 2013, Adviser OPM enquired with the PM whether Government was going to declare this as its final offer. Adviser OPM stated that he was of the opinion that if this offer was to be tabled, then Government should allow for other negotiations. The review of correspondence exchanged on this matter rendered evident that Adviser OPM was basing this opinion on what he had heard from undisclosed sources, namely, that a third party (referred to in paragraph 3.1.9) had offered between €3,600,000 and €3,750,000. Ultimately, the PM instructed Adviser OPM to proceed as proposed, hereby understood by the NAO as allowing for further negotiations and not terming this offer as Government's final position.
- 3.1.39 In this context, on 2 July 2013, Adviser OPM tabled a Government offer by means of an email sent to Mark Camilleri. The offer was in line with discussions captured in the preceding paragraphs, that is, €3,977,272 (equivalent to €3,500,000 net of tax), as opposed to Government's previous offer of €3,300,000 (equivalent to €2,900,000 net of tax). CE's earlier request at this point of negotiations was for €4,772,272 (€4,200,000 net of tax). Furthermore, Adviser OPM stated that Government found no objection in excluding restaurant-related fixtures from the deal, as long as the Great Siege of Malta tourist attraction was included, together with fixtures and fittings related to the function and safety of the building. Notional agreement on the duration over which payments were to be settled was also reached, that is, two years instead of three.
- 3.1.40 On 5 July 2013, Mark Camilleri tabled another CE proposal in an email to Adviser OPM. The proposal was that of €4,488,636 (equivalent to €3,950,000 net of tax). All other aspects of the deal had, at this point, already been agreed to. A few days later, that is, on 9 July 2013, Adviser OPM forwarded correspondence to the PM, copied to Chief of Staff OPM and PPS, indicating CE's €4,488,636 proposal. In this correspondence, Adviser OPM stated that he had a meeting with the Camilleris (presumably Mario Camilleri and Mark Camilleri) to try and better understand the basis of their request. Adviser OPM stated that the Camilleris would prefer to finalise a deal with Government rather than the third party preferred by their partners (presumably Neville Curmi), but to do so would require a better deal than that on offer by the third party. One must note that the offers tabled by Government and the third party were in fact identical in terms of value; however, there is no evidence to

suggest that Government was aware of this situation. Notwithstanding, Adviser OPM proceeded to state that he sensed Government's offer of €3,977,272 as very close to this third party offer and that perhaps it was time for Government to put forward a non-negotiable offer.

- 3.1.41 To this end, the PM stated that the €3,977,272 (equivalent to €3,500,000 net of tax) was in fact Government's final offer. In line with instructions provided by the PM, Adviser OPM sent an email to Mark Camilleri on 9 July 2013 indicating that Government was not accepting CE's request of €4,488,636 (equivalent to €3,950,000 net of tax) but was maintaining its ground and insisting on its last offer of €3,977,272.
- 3.1.42 In response to Government's stance, Mario Camilleri sent an email to the PM, copied to Adviser OPM and Mark Camilleri, requesting a meeting. Here, Camilleri stated that Adviser OPM had informed him that he could not engage in any direct price negotiation, since he was merely taking direction on the issue, and it was in this context that a meeting with the PM was requested.
- 3.1.43 On 11 July 2013, the PM indicated his willingness to meet during the following week. According to Mario Camilleri, in attendance at this meeting were the PM, Adviser OPM and the PPS. During this meeting, discussions and negotiations intended at establishing agreement on price were concluded.
- 3.1.44 Pursuant to this, Mark Camilleri sent an email to Adviser OPM on 5 August 2013 outlining CE's €4,200,000 proposal (equivalent to €3,696,000 net of tax). Details regarding the amount to be paid on signing and four ensuing six-monthly payments were put forward. Subsequently, on 6 August 2013, Adviser OPM forwarded CE's latest proposal of €4,200,000 to the PM, copying in Chief of Staff OPM and PPS. Adviser OPM was of the opinion that CE's request was reasonable, making particular reference to Architect GPD's €4,400,000 to €4,500,000 valuation. Finally, Adviser OPM requested further instructions from the PM.
- 3.1.45 In turn, the PM sought the views of Chief of Staff OPM and the PPS. While the Chief of Staff stated that he considered the offer a fair deal subject to the valuation being correct, no record of written feedback provided by the PPS to the PM was retrieved. Nonetheless, on 7 August 2013, the PM instructed the PPS to consult with the Ministry for Finance (MFIN) (Appendix D refers). The PPS consulted with Permanent Secretary (PS) MFIN on 17 August 2013, whereby the latter was requested to review the draft Cabinet memorandum prepared with respect to Government's acquisition of the Café Premier utile dominium.
- 3.1.46 In his response dated 18 August 2013, PS MFIN commented on various matters, particularly with respect to the importance of retaining appropriate documentation of the negotiation process. PS MFIN also highlighted that if Cabinet approved this recommendation to purchase, then an additional €1,400,000 would be required in that year's budget and the remaining amount accounted for in the ensuing two budgets. In addition, PS MFIN claimed that if the established price was fair and reasonable, then he agreed with the proposed acquisition.
- 3.1.47 Aside from other correspondence exchanged, on 2 September 2013, Adviser OPM sent an email to the PPS, copied to the PM and Chief of Staff OPM. Among other matters clarified, Adviser OPM claimed that if Government was not going to provide CE with a response, then the opportunity to reacquire the premises would be missed. At this point, the PPS enquired as to the way forward with PS MFIN, who promptly informed him that once Cabinet approval was obtained, then GPD would draw up the relevant agreement. Accordingly, the PPS informed Adviser OPM that he would be

presenting a memorandum to Cabinet on 10 September 2013 and offered him the opportunity to assist in its preparation. Adviser OPM was in fact the memorandum's original author and did contribute to its review as he proposed the inclusion of a provision that prohibited catering in any part of the Café Premier premises should this ever be leased again. This proposal, which served as a means of ensuring that GPD adhered to this provision given its specific reference in a Cabinet memorandum, was agreed to by the PPS.

### *The Cabinet Memorandum*

3.1.48 The memorandum entitled 'Café Premier, Valletta', dated 10 September 2013, was approved by Cabinet on 17 September 2013 (Appendix E refers). In essence, the memorandum briefly made reference to the salient facts relating to the 1998 temporary emphyteusis granted by Government to CE and that this Company had run into financial difficulties over the last years, resulting in the closure of the premises in April 2013. The substantial dues to various Government entities were also cited, quoted at €689,984 and payable to ARMS Ltd, GPD, the IRD and the VAT Department.

3.1.49 With respect to the negotiation process, the memorandum stated that after an approach by CE, Government took the initiative to commence negotiations with a view to acquiring the remaining utile dominium. It was stated that this acquisition would enable Government to:

- a. remove possible danger to the National Library posed by the kitchen forming part of the Café Premier;
- b. create vertical circulation to the National Library by providing space for the installation of a lift;
- c. resolve the problem of arrears due to various entities; and
- d. generate income through the re-dimensioning of the available space and leasing out of such space for commercial purposes, while ascertaining that business carried out therein poses no danger to the National Library.

3.1.50 In the Cabinet memorandum, reference was made to CE's negotiations with third parties and to the fact that the Company's initial request was of €5,370,000, based on the valuation carried out in 2009 by Mangion, Mangion & Partners. Also highlighted was the valuation prepared by the Government-appointed architect, who valued the utile dominium of the remaining emphyteusis at €4,400,000 to €4,500,000 in June 2013.

3.1.51 The memorandum stated that CE had informed Government that the Company was willing to sell the utile dominium remaining on the Café Premier for €4,200,000, with a payment of €1,839,200 on signing of the deed and the remaining €2,360,800 payable in four equal instalments spread at six-monthly intervals without interest. Furthermore, it was stated that CE were prepared to bind themselves to pay all outstanding dues to the aforementioned entities as well as the 12 per cent final withholding tax (which amounted to €504,000) on signing of the deed. In line with negotiations, it was stated that CE were to leave all fixtures and fittings related to the running of the 'Great Siege of Malta' tourist attraction, but were not including the kitchen and restaurant-related fixtures as part of their offer.

3.1.52 Finally, the memorandum concluded, "*It is being recommended that Cabinet approves the transaction as described in the last paragraph of this memorandum [paragraph 3.1.52 refers] and its objectives listed above in bullet form [paragraph 3.1.50 refers].*"

3.1.53 On 18 September 2013, the DG Cabinet Office informed DG GPD of Cabinet’s approval of the transaction agreed with CE following negotiations held and provided a copy of the memorandum. To this end, the DG GPD was requested to initiate the process for the acquisition of the remaining utile dominium of the property in concern. On the basis of correspondence reviewed and that stated by all GPD officials to the NAO, this correspondence represented the first instance when GPD were formally notified of negotiations with CE in relation to the Café Premier premises.

3.1.54 Upon receipt of correspondence from the DG Cabinet Office, the DG GPD informed the PS MFIN of the need for additional funds required with respect to the planned acquisition, namely, an additional €1,839,200 to Vote 7014 - Acquisition of Property for Public Purposes; and an additional €1,180,400 for the 2014 and 2015 Votes. The assumption underlying the DG GPD’s request was that the transaction would be effected in 2013. On 20 September 2013, following correspondence with the DG Budgetary Affairs, the PS MFIN informed the DG GPD that additional funds were being provided for the acquisition of Café Premier from CE.

3.1.55 On 24 September 2013, Adviser OPM informed Mark Camilleri that Government had accepted CE’s offer of 5 August 2013, that is, at an agreed amount of €4,200,000. Copied in this key communication were Mario Camilleri, the PM, Chief of Staff OPM and PPS. Camilleri was also informed that the GPD had been instructed to draw up the relative deed and that officials from this Department would be in contact with him on the matter (Appendix D refers).

3.1.56 This exchange, dated 24 September 2013, effectively brings to a close the process of negotiation entered into by CE and Government in May 2013. Table 6 provides an overview of amounts tabled by CE and Government throughout the negotiating process highlighting the key stages and dates leading to eventual agreement.

**Table 6: Overview of negotiated offers and counter-offers**

Date of CE’s request	Amount requested by CE	Amount offered by Government	Date of Government’s offer
20 May 2013	€5,370,000	-	-
-	-	€3,300,000	4 June 2013
11 June 2013	€4,772,727	-	-
-	-	€3,977,272	2 July 2013
5 July 2013	€4,488,636	-	-
-	-	€3,977,272	9 July 2013
5 August 2013	€4,200,000	-	-
-	-	€4,200,000	24 September 2013

## 3.2 Preparation of the Draft Deed of Acquisition

3.2.1 On 18 September 2013, following the receipt of the Cabinet memorandum, the DG GPD instructed a Department Notary to prepare a draft deed of acquisition of the Café Premier tenement by Government. A key aspect of the preparatory work undertaken by GPD in the deed drafting process was the establishment of dues payable by CE to various Government entities. The DG GPD sought to formally and precisely establish the amounts due, initiating such efforts by means of correspondence exchanged with PS MFIN on 26 September 2013 and 30 September 2013.

3.2.2 Hereunder is an account of how amounts payable to each of the Government entities, as well as to other creditors, were established. The following is a list of all parties paid as per Government's agreement with CE:

- a. GPD;
- b. IRD;
- c. VAT Department;
- d. ARMS Ltd;
- e. Dr Malcolm Mangion;
- f. Golden Harvest Manufacturing Company Ltd;
- g. M&A Investments;
- h. Banif Bank; and
- i. CE Ltd.

### *Government Property Department*

3.2.3 The amount due to the GPD by CE was established on 19 November 2013, following the exchange of a number of emails by the Department's DG, Director (Finance and Administration), Assistant Director (Finance and Administration), Revenue Manager and Notary. As per GPD correspondence, the amount due was that of €307,347, which included ground rent payable as well as encroachment-related fees. The NAO noted that the cited €307,347 was somewhat inaccurate and should have read €306,975, as rendered evident in Table 7.

**Table 7: Amount due by CE to GPD**

Account	Account details	Balance due
H060536	Ground rent arrears account	€59,163
060536	Ground rent account	€223,656
Ground rent sub-total		€282,819
094320	Encroachment – Tables & Chairs (A)	€22,633
E21016	Encroachment – Tables & Chairs (B)	€1,473
096075	Encroachment – Tables & Chairs (C)	(€372)
E21017	Encroachment – Tables & Chairs (D)	€89
E21018	Encroachment – Tables & Chairs (E)	€155
E21019	Encroachment – Tables & Chairs (F)	€89
E21020	Encroachment – Tables & Chairs (G)	€89
Encroachment sub-total		€24,156
Total		€306,975

3.2.4 The encroachment sub-total amounted to €24,156 and was arrived at following the establishment of 27 September 2013 as the cut-off point. The setting of this date as the cut-off point was based on correspondence issued by Revenue Manager GPD to CE on 27 September 2013, whereby the Company was informed that all encroachment permits for the placement of tables and chairs in Pjazza Regina and Old Treasury Street were being terminated with effect from the date of the letter.

3.2.5 The ground rent sub-total of €282,819 was composed of dues arising out of two accounts, namely, 060536 and H060536. In the case of the latter account, that is, the arrears account, the balance cited was a straightforward matter, with GPD simply stating the amount due as per its records.

- 3.2.6 On the other hand, the manner by which GPD arrived at the balance due on the 060536 account requires some degree of explanation. The amount of ground rent due by CE on this specific account when agreement was reached with Government stood at €232,082. In actual fact, this figure was not precisely representing amounts due by CE, as on April 2011, the ground rent payable should have been revised upwards by 20 per cent.<sup>14</sup> Such a revision should have also been reflected in terms of ground rent payable in 2012 and 2013. To this end, GPD debited CE's account with the amount of €55,919, which corresponded to an annual increase of €18,640. This figure is correct, in the sense that it is equivalent to 20 per cent of the annual ground rent of €93,198 (which was the actual ground rent charged in 2011, 2012 and 2013). Therefore, with this revision, the balance payable to Government increased from €232,082 to €288,001.
- 3.2.7 However, an additional revision was also required and implemented by GPD with respect to ground rent paid for the period 23 April 2013 to 22 April 2014. The cut-off period established in this case was set at 24 September 2013 and an email sent by the DG GPD on 18 November 2013 to various officials of the Department confirmed this. An explanation as to the basis of the selection of this date as the cut-off for chargeable ground rent was provided by Adviser OPM. Here, Adviser OPM stated that, on 11 November 2013, he had written to the PM, copying in Parliamentary Secretary for Planning and Simplification of Administrative Processes, Chief of Staff OPM and PPS. In this correspondence, Adviser OPM explained that since CE was advised that agreement had been reached on 24 September 2013; then, in his opinion, the same date should be considered as the cut-off date for the computation of outstanding dues to Government. Nonetheless, Adviser OPM enquired whether all concurred with this arrangement. On 14 November 2013, the PPS submitted a reply indicating agreement, after consultation with Permanent Secretary, MFIN.
- 3.2.8 The establishment of 24 September 2013 as the cut-off date for ground rent was deemed as an arbitrary decision by this Office. The NAO considers this decision as a shortcoming on the part of Government, and that ground rent should have been charged up to the date of signing of the agreement, similar to the approach adopted by other Government Departments involved in this matter. If the date of agreement was considered as the cut-off date until when ground rent was to be charged, then the chargeable rent due to GPD would have increased by approximately €39,000. The difference in terms of days between the 24 September 2013 cut-off date and the 29 January 2014 agreement date was 127 days. The daily ground rent rate applicable was that of €306.40, which when applied to the 127 days, resulted in a balance of €38,914.
- 3.2.9 In view of the 24 September 2013 cut-off, the rent due for the period 24 September 2013 to 22 April 2014 was credited to CE's account, which amount was determined by GPD to be equivalent to €64,345. Deducting the €64,345 from the previously cited balance of €288,001 results in the actual amount due to GPD, which in this case was €223,656.

### *Inland Revenue Department*

- 3.2.10 The IRD was responsible for the collection of CE's dues to Government in terms of capital gains tax arising from this transaction, income tax payable by the Company, as well as income tax and social security contributions (SSC) corresponding to the Company's employees. Calculation of the amount of capital gains tax payable by CE

<sup>14</sup> The 20 per cent revision in ground rent was due as per article 1 of the 1998 agreement between CE and Government, details pertaining to which are provided in paragraph 2.2.5.



was a straightforward matter, as applying the 12 per cent rate to the agreed price of €4,200,000 resulted in €504,000 in capital gains tax due.

3.2.11 With regard to company tax payable by CE as well as income tax and SSC corresponding to the Company's employees, correspondence submitted by the Commissioner of Revenue to the DG GPD on 4 October 2013 indicated that the Company had not submitted its tax returns for the years of assessment 2011 and 2012. CE had also failed to submit relevant Final Settlement System (FSS) documents.

3.2.12 The Commissioner proceeded by indicating that CE had failed to submit the end of year documents for 2011 and 2012 and that its Directors were to be summoned to Court. Further elaborating on the matter, it was indicated that with respect to 2011, payments were made for January, February and March, while in the case of 2012, the only payment submitted was that of August. In view of the failure to file returns for years of assessment 2011 and 2012, estimations had been issued by the IRD, which at the point of correspondence stood at €145,700.

3.2.13 The company tax balance of €145,700 was calculated as follows:

- a. €145,500 as tax due from estimations, as well as additional tax and interest for years of assessment 2011 and 2012; and
- b. €200 as an additional tax for the late return of the 2010 year of assessment submission.

Following the submission of returns for the years of assessment 2011 and 2012, the tax due from estimations was cancelled and statements issued on 22 January 2014 indicated a balance due of €800 for 2011 and €400 for 2012, which, in both cases, represented penalties for late filing. A statement for the year of assessment 2013 was also issued on 22 January 2014 with a penalty of €50 for the filing of a late return. These amounts, together with the €200 for the year of assessment 2010, brought the total balance due to €1,450.

3.2.14 In the case of income tax and SSC corresponding to CE's employees, the balance due as at 24 January 2014, that is, following the submission of end of year documents for 2011, 2012 and 2013, was that of €191,298. Based on information supplied by the IRD, the €191,298 constituted amounts due as represented in Table 8.

**Table 8: FSS and SSC due by CE**

Year	FSS	SSC	FSS fines	SSC fines	Total
1998	€21	€1	€16	€0	€38
2010	€0	€188	€0	€61	€249
2011	€23,338	€50,016	€4,517	€13,088	€90,958
2012	€26,211	€44,862	€2,808	€5,720	€79,601
2013	€9,641	€10,811	€0	€0	€20,452
Total	€59,211	€105,877	€7,341	€18,869	€191,298

3.2.15 GPD were informed of amounts due to Government by CE on 24 January 2014, following the aforementioned submission of documents by the Company. To this end, the IRD claimed that amounts due were as follows:

- a. €1,450 due in terms of company tax; and
- b. €191,298 due in terms of FSS and SSC, that is, tax and national insurance withheld from the income of CE's employees.

## VAT Department

- 3.2.16 Initial correspondence was exchanged between the VAT Department and GPD on 4 October 2013, wherein the Director (Debt Management) VAT indicated to the DG GPD that the precise amount of VAT and related legal fees due by CE would be communicated at a later date; however, an indicative amount of €226,000 was cited. Subsequent to this, on 7 November 2013, further correspondence was exchanged between the DG GPD and Director (Debt Management) VAT, whereby the latter stated that unless payment was made by 30 November 2013, CE would not be eligible for the Remittance of Interest and Administrative Penalties incurred under the VAT Act Scheme. The deadline for registered persons to qualify for remittance under this Scheme was set at 30 November 2013 by virtue of Legal Notice 240 of 2013, which accordingly amended Subsidiary Legislation 406.18.
- 3.2.17 Article 10 of Annex A of Subsidiary Legislation 406.18 states that, *“No remittance shall have effect in the account of the registered person unless and before the person effects the final payment, as agreed, to the satisfaction of the Commissioner.”* This Office is of the opinion that the statement made by the Director (Debt Management) VAT to the DG GPD was based on this understanding as well as the provision stipulating the 30 November 2013 deadline.
- 3.2.18 Further correspondence was exchanged in early December 2013, at which point the Director (Debt Management) VAT informed the GPD Notary tasked with drafting the deed that aside from VAT due by CE, as well as interest incurred every month until full payment was effected, the Department was to recover legal fees incurred, which amounted to €6,354. Moreover, GPD’s attention was drawn to the fact that the VAT Department had been instructed to collect all balance due up to the date of the signing of the contract and not up to 24 September 2013, as per GPD’s understanding of the matter.
- 3.2.19 One final matter addressed at this stage was the cancellation of privileges, which was to take place once the VAT Department received payment. The VAT Department provided Notary GPD with documentation relating to all privileges filed by the Department against CE. In turn, the Notary indicated that a clause would be incorporated into the deed, whereby the VAT Department’s legal representative would cancel such privileges.
- 3.2.20 Ultimately, on 24 January 2014, the Director (Debt Management) VAT informed Notary GPD of the final amounts deemed payable to the Department by CE. The amount of VAT payable was €220,309, while legal fees amounted to €6,354. The VAT Department stated that it was of utmost importance that the above-cited amounts were paid through three separate bank drafts/cheques, as follows:
- a. €95,809 to cover tax declared and not paid on returns due from November 2011 to date;
  - b. €124,500 as the remaining balance up to 14 January 2014; and
  - c. €6,354 for legal fees.
- 3.2.21 Requested to provide further clarifications by the NAO, the VAT Department claimed that the €95,809 presented in the preceding sub-paragraph (a) referred to tax declared as due between November 2011 to the date of the Budget Scheme remittance letter. On the other hand, the €124,500 stipulated as per sub-paragraph (b) related to the VAT amount due by CE with respect to the period prior to 16 October 2011, once again citing the 2012 Budget Remittance Scheme rules. In clarifications provided, the VAT Department stated that one of the criteria to be satisfied for eligibility to the scheme



was the payment of all tax declared due from 15 November 2011 up to the date of the remittance letter. In the case of CE, owing to the fact that eventual payment was going to be made in one lump sum on the date of signing of the contract, the VAT Department separated the two figures and asked for two separate drafts as the processing had to be carried out in two stages.

3.2.22 In light of the incongruity arising from correspondence issued by the VAT Department regarding CE's eligibility to the Scheme and the 30 November 2013 deadline, the NAO sought to establish:

- a. when CE applied to participate in the Scheme;
- b. whether the Company was in effect eligible; and
- c. whether the VAT Department applied the relevant provisions as stipulated in Subsidiary Legislation 406.18.

3.2.23 CE's request to participate in the Remittance of Interest and Administrative Penalties incurred under the VAT Act Scheme was dated 26 September 2013, yet this was received by the VAT Department on 14 November 2013, that is, two weeks prior to the Scheme deadline. Article 11 of Annex A of Subsidiary Legislation 406.18 provides that "*...the Commissioner may allow a registered person to qualify for remittance under the scheme where in his opinion the failure on the part of that person to qualify for remittance was due to a reasonable excuse.*" The reason cited by Mario Camilleri, the CE Director who completed the relevant form to participate in the said Scheme was "*Lack of funds*", which reason was deemed acceptable by the Commissioner on 24 January 2014, that is, a few days prior to the signing of CE's agreement with Government.

3.2.24 The matter regarding CE's eligibility to the Scheme drew this Office's attention, particularly in view of the above-cited 7 November 2013 email in which the Director (Debt Management) VAT stated that unless payment was made by 30 November 2013, CE would not be eligible for the Scheme, and subsequent action to the contrary. Asked to provide an explanation as to why the Department backtracked on its original advice, the Director stated that by 30 November 2013, a VAT-registered person only had to request to participate in the said Scheme, and need not have effected payment. The Department indicated that there had been some form of misunderstanding regarding the precise understanding of Article 11, "*...which date is considered final for the purposes of allowing registered persons to qualify for remittance under the scheme.*" The Director (Debt Management) VAT indicated that at first, this had been understood as meaning that all returns due after 15 October 2011 were to be paid by the 30 November 2013 deadline. However, at some point after the email sent to the DG GPD on 7 November 2013, this Article was understood as implying that a request for participation in the said Scheme had to be submitted by the 30 November 2013 deadline, and therefore full payment of relevant VAT returns due by this date was not necessary.

3.2.25 Following the Commissioner's approval, correspondence was sent to CE by the VAT Department on 6 March 2014, whereby the Company was requested to select an instalment plan out of the four options presented by the Department, the selection of which would determine the amount remitted. Understandably, the shorter the period within which full settlement was achieved, the greater the reduction in interest and administrative penalties, which in this case varied from a reduction of €32,071 (in the case of immediate settlement) to a remittance of €20,044 (in the case of settlement over an 11 month period). In reality, the letter was nothing more than a formality, as the full payment of the balance due had already been effected on 29 January 2014,

on the signing of the agreement with Government, and therefore the total remitted was that of €32,071.

3.2.26 This Office queried the basis upon which the VAT Department remitted 80 per cent (€32,071) of the total interest and administrative penalties due. To this end, the VAT Department cited Article 11 of Annex A of Subsidiary Legislation 406.18, wherein it is stated that, *“Provided further that where a registered person is so allowed to qualify for remission, the Commissioner shall determine new dates for payments in respect of the option under paragraph 5 of this Annex.”* In essence, Article 5 establishes a range of dates which, depending on when payment of balance is effected, accordingly determine the rate of remittance of interest and penalties. The VAT Department indicated to the NAO that the Commissioner had determined the payment deadline as that of 7 April 2014 as per letter issued on 6 March 2014.

3.2.27 The NAO maintains reservations regarding the VAT Department’s interpretation of the provisions stipulated in Article 11 of Annex A of Subsidiary Legislation 406.18, particularly with respect to the application of the 30 November 2013 deadline for allowing registered persons to qualify for remittance under the Scheme. This Office considers the provisions stipulated in Article 11 as ambiguous, as a VAT registered person may be considered as qualifying for the Scheme when submitting the relevant application form, or equally so, when approval by the Commissioner is granted. Finally, the possibility of applying the least favourable rate of remittance (50 per cent) in cases that extend beyond the 30 November 2013 deadline should be considered by the VAT Department.

#### *ARMS Ltd*

3.2.28 Information relating to amounts payable by CE to ARMS Ltd was provided to GPD a few days prior to the date of signing of the agreement. Aside from correspondence authorising various ARMS Ltd officials to appear on the deed on behalf of this Entity, the total amount due was established as being that of €130,964. Substantiating documentation was provided to GPD in the form of two invoices corresponding to separate CE accounts, that is:

- a. €127,591 corresponding to account 1010 0008 6645; and
- b. €3,373 corresponding to account 1010 0008 5769.

#### *Dr Malcolm Mangion*

3.2.29 In the days leading to the contract, that is, on 27 January 2014, Notary GPD exchanged correspondence with Dr Malcolm Mangion regarding dues payable with respect to legal consultancy services provided to CE. Notary GPD requested details regarding legal consultancy fees that were to be claimed in Dr Mangion’s personal capacity, as well as details pertaining to fees that were to be claimed on behalf of colleagues who were somehow involved in the process.

3.2.30 In his response, Dr Mangion indicated that the sum of €20,000 was intended as a legal consultancy fee; however, reference in the contract was to be solely made to him and that he would subsequently make the necessary arrangements in terms of tax due as well as payments to colleagues.

3.2.31 According to Camilleri, the €20,000 payment was intended for Dr John Gauci and Dr Mangion. Although ambiguous in his response, Camilleri claimed that his legal representatives carried out the required research prior to the signing of the contract and ensured that all was dealt with in a timely manner. On the other hand, Neville

Curmi claimed that he was hardly involved in matters relating to the drafting of the agreement and that when he queried Dr Mangion's role with Camilleri, the latter informed him that Dr Mangion had provided assistance in terms of contract-related legalities. When pressed on the matter, Curmi stated that he was not entirely certain as to what Dr Mangion's role in the matter entailed.

- 3.2.32 When queried by the NAO, Mario Camilleri stated that Dr Mangion was brought in by Dr Gauci, who in turn was resorted to after Dr Stefano Filletti ceased representing Camilleri on ground of possible conflict of interest arising from his, Dr Filletti's, relationship with GPD. The NAO noted that Dr Filletti was still representing Camilleri on 8 November 2013, when Dr Filletti wrote to the DG GPD indicating that he was assisting Camilleri in taking over Curmi's share of the Company, among other matters.
- 3.2.33 The two DGs responsible for GPD during the time of drafting of the agreement confirmed to the NAO that Dr Filletti provided legal counsel to the Department, particularly in complex cases; however, one DG went on to state that Dr Filletti had indicated the possibility of a conflict of interest situation arising and therefore withdrew from involvement on the case, while the other DG (who was appointed late in the process) categorically denied Dr Filletti being engaged by GPD.
- 3.2.34 Correspondence substantiating the above was noted in file, and in fact, on 14 November 2013, Dr Filletti sent an email to Notary GPD, among others, indicating that he would henceforth not be able to proceed further on the matter and that Dr Gauci and Dr Mangion were to assume responsibility. Attached to this email were two documents, that is, the convenium that was to be signed by Government and CE, and a draft version of the agreement. The convenium was never seen through, yet the draft agreement forwarded by Dr Filletti provided the basis for the eventual agreement signed in late January 2014.
- 3.2.35 Nonetheless, documentation retained by GPD indicated that subsequent correspondence exchanged between the Department and third parties was copied to Dr Filletti and Dr Mangion on 15 November 2013 (Dr Gauci also copied in), 6 December 2013 and 12 December 2013, although no record of interventions made by the two were noted in GPD files.
- 3.2.36 An element of explanation was provided by Notary GPD, who stated that Mario Camilleri had informed her that a payment relating to legal consultancy services was to be effected. Notary GPD claimed that Dr Filletti had subsequently contacted her and informed her that payment was to be made to Dr Mangion and that such payment was to be termed as legal consultancy. Following such developments, Notary GPD sought the approval of the DG GPD as well as that of the Commissioner of Land, and the former found no objection in view of Government securing dues payable by CE in its respect.
- 3.2.37 Further to the above, Notary GPD indicated that as the agreement signing date drew nearer, it was Dr Gauci whom she would consult with. In fact, Notary GPD stated that Dr Gauci was responsible for handling the M&A Investments issue (this matter is dealt with in greater detail later on in this Report) and assisted Camilleri at contract signing stage.
- 3.2.38 Notwithstanding the above-detailed views, on 27 January 2014, Banif Bank's legal representative wrote to Dr Filletti in relation to GPD's request for the total cancellation of the hypothecs burdening the Café Premier. Some form of compromise was proposed by the Bank's legal representative and Dr Filletti was asked to indicate

whether such an arrangement was agreeable to GPD. Dr Filletti subsequently exchanged correspondence on the matter with the Commissioner of Land.

3.2.39 The NAO considers Dr Filletti and Dr Mangion's involvement in this matter as somewhat ambiguous. According to information gathered by this Office, Dr Filletti did not represent GPD or Camilleri, yet clearly contributed to the process in some capacity as rendered evident through records of correspondence exchanged on the matter. Furthermore, it is evident that GPD and Camilleri were aware of Dr Filletti's involvement, as both were copied in various email exchanges. On the other hand, the only evidence reviewed in relation to the Dr Mangion's role was his request for payment dated two days prior to the signing of the contract.

#### *Golden Harvest Manufacturing Company Ltd*

3.2.40 Aside from representing CE's interests, Dr Mangion also represented Golden Harvest Manufacturing Company Ltd. This matter came to the fore on 23 January 2014, when Notary GPD informed CE's Directors that the Department had become aware that Golden Harvest Manufacturing Company Ltd were owed money and that the Company had secured a judicial hypothec. To this end, CE were requested to specify the exact amount owed to this Company, in order to ensure payment and cancellation of the judicial hypothec on signing of the deed.

3.2.41 The information requested by GPD was provided by a representative of Golden Harvest Manufacturing Company Ltd, who sent an email to Notary GPD on 27 January 2014, confirming that the amount due to the Company was that of €3,265. Furthermore, the Company's representative provided Notary GPD with an extract from the minutes of the Company's Board of Directors authorising Dr Mangion to appear for and on behalf of Golden Harvest Manufacturing Company Ltd in order to:

- a. Collect the debt of €3,265 due from CE; and
- b. After the resolution of 'a', cancel the hypothec 15286/2013 and undertake the necessary arrangements to cancel any warrants of prohibitory injunction or seizure originally issued in connection with the same debt due.

#### *M&A Investments Ltd*

3.2.42 On 6 December 2013, the GPD Notary tasked with drafting the agreement between Government and CE sent an email to Mario Camilleri and Neville Curmi, copied to Adviser OPM, the DG GPD, the Commissioner of Land, Director (Finance and Administration) GPD, Dr Filletti and Dr Mangion. The email was lengthy and detailed, addressing multiple facets of the agreement that was reached; however, this email also represented the first documented instance of the amount due to the creditor M&A Investments.

3.2.43 Approximately a week later, that is, on 12 December 2013, Notary GPD sent another email to the DG GPD, copied to Adviser OPM, the Commissioner of Land and Director (Finance and Administration) GPD, stating that she had included the €210,000 payment that was to be made to M&A Investments. Aside from indicating that M&A Investments were to be part of the deed, the Notary stated that she had spoken to Adviser OPM (who was in copy) with respect to the amount due to M&A Investments.

3.2.44 Notwithstanding the above correspondence, the inclusion of the €210,000 payment that was to be made to M&A Investments remained an issue of great contention up till the actual signing of the agreement between Government and CE. In fact, on 27 January 2014 (two days prior to the signing of the agreement), Notary GPD sent an

email to Mario Camilleri and Neville Curmi enquiring as to whether M&A Investments was to feature in the agreement, or otherwise. The GPD Notary proceeded to explain the source of her confusion, with Camilleri claiming that M&A Investments should feature in the agreement, while Curmi maintaining that this should not be the case.

- 3.2.45 Curmi replied to Notary GPD’s email confirming that the inclusion, or otherwise, of M&A Investments in the deed was the source of disagreement between the two CE Directors. To this end, Curmi indicated that the matter was being addressed by their respective legal advisers.
- 3.2.46 The matter appears to have come to a conclusion later on 27 January 2014, at which point Camilleri wrote to Notary GPD and informed her that following a meeting with Curmi, the two CE Directors had agreed that everything with respect to M&A Investments’ inclusion in the deed was to remain as originally planned. Copied in this correspondence were Neville Curmi, Adviser OPM, the DG GPD and the Commissioner of Land.
- 3.2.47 Indirectly related to the matter, yet of significant interest no less, is the matter raised by Camilleri with regard to the payment of trade creditors. In this email, Camilleri stated that Dr Mangion was to contact Notary GPD with respect to the inclusion of a clause for the benefit of trade creditors. No evidence of such correspondence submitted by Dr Mangion was noted in GPD files, and ultimately, trade creditors were not specifically mentioned in the agreement signed by Government and CE.
- 3.2.48 The NAO queries relating to the €210,000 payment made to M&A Investments were addressed to the CE Directors and in this context, Camilleri stated that this payment was simply the settlement of one of CE’s dues with a creditor – the creditor in this case being M&A Investments whose sole Director, according to Malta Financial Services Authority (MFSA) records, was Mario Camilleri.
- 3.2.49 Further commenting in this respect, Camilleri stated that the repayment corresponded to a shareholder’s loan issued by M&A Investments. The NAO’s review of the latest accounts submitted to the MFSA by M&A Investments, that is, the Annual Report and Financial Statements as at 31 December 2009 indicated that the Company owned 29 per cent of shares within CE. Aside from M&A Investments, a number of other companies owned by Camilleri and Curmi held the absolute majority of shares in CE (Table 9 refers).

**Table 9: CE account of shares**

Shareholder	Number of shares held	Percentage shareholding
Jamco Ltd <sup>1</sup>	618,250	39.442
M&A Investments Ltd	453,250	28.915
Daneta Ltd	330,000	21.053
Caballero Entertainments Ltd	165,000	10.526
Impact (Consultancy & Developments) Ltd	1,000	0.001
Total <sup>2</sup>	1,567,500	100.000

**Notes:**

1. Jamco Ltd holds all of CE’s issued ‘A’ shares, that is, 411,500 shares and 206,750 of ‘B’ shares.
2. The total shareholding does not add up to precisely 100 per cent; however, this is due to a rounding error.

- 3.2.50 Camilleri was specifically requested to provide documentation substantiating the €210,000 claim for payment and, to this end, provided the NAO with a signed copy of M&A Investments’ balance sheet as at 31 December 2002. Making reference to



the balance sheet, Camilleri stated that this confirmed that M&A Investments had invested Lm200,000 (€465,875) in CE. The NAO considered the evidence provided as insufficient, as this merely indicated that M&A Investments owed a creditor, probably Mario Camilleri and the other M&A Director whose signature was on the balance sheet, the sum of Lm200,000 and established no link between the €210,000 payment effected by CE to M&A Investments as per agreement with Government. Had M&A Investments sold its shareholding in CE, then the possibility of payment would have been considered plausible, yet no such explanations were put forward by Camilleri and the review of MFSA records relating to the transfer of shares within CE indicated no transactions of the sort.

3.2.51 Aside from this line of questioning, which sought to establish the understanding of facts through the review of M&A Investments' records, the NAO also adopted a CE oriented perspective, which entailed the review of this Company's accounts in an attempt to arrive at a possible explanation as to the €210,000 payment. CE's Annual Report and Financial Statements as at 31 December 2012, submitted to the MFSA on 21 March 2014, indicate directors loans as amounting to €867,873. When the NAO queried why the specific provision was for €210,000 and not the full amount of circa €867,000, Camilleri's response was as follows, *"Because I couldn't get the full amount out of the sale proceeds. If there would have been enough revenue I would have insisted that I will get my shareholders' loan of course. So that is the maximum I could take looking at the figures over here."*

3.2.52 In light of explanations provided by Camilleri, the NAO requested documentation substantiating the above-cited directors loans, particularly that relating to the €210,000 payment. The evidence furnished entailed a number of disbursements from Jamco Ltd to CE, Curmi & Partners and Marcam Ltd. Given that the €210,000 payment was made from CE to M&A and justified as a loan, the transactions between Jamco and CE were not considered as related evidence in this case and therefore not deemed as an appropriate explanation by this Office. Furthermore, the terms and conditions regulating such a loan agreement were not provided.

3.2.53 The NAO questioned Mario Camilleri with regard to the €210,000 payment at great length, specifically seeking to establish whether the payment was simply the recovery of a shareholder's/director's loan as discussed above, or a commission payment. Statements made by Camilleri did not provide a clear understanding as to which of the two explanations, that is, the shareholder's loan or the commission payment, was valid. Box 4 to Box 10 substantiate the ambiguity of responses elicited by the NAO.

**Box 4: Extract from interview with Mario Camilleri**

NAO	And so what is the reason for the specific inclusion of this €210,000 payment to M&A Investments in the contract?
Mario Camilleri	I felt that I done the deal. I've worked very hard to put the deal together. I put a lot of money in the Company, at least I'll be taking some of the money out. And that was part of the agreement with the Curmis which they signed on the dotted lines... .
NAO	So is it because you were a creditor?
Mario Camilleri	I was a creditor.
NAO	Or because you carried out the deal?
Mario Camilleri	No, no, no. I was a creditor. And I said because I done the deal I want to have part of the shareholders loan paid back to M&A Investments.

**Box 5: Extract from interview with Mario Camilleri**

NAO	So you're denying that this €210,000 was your commission on the deal?
Mario Camilleri	It's not a commission. No, no.
NAO	<i>Senserija qalu il-media.</i> [The media stated that it was a brokerage fee.]
Mario Camilleri	No, no, no. That's where I got very, very upset. I mean the media says a lot of things without doing their proper homework. This was a proper business deal, I had the strings in my hands at the time and I said look this deal will happen, I will go and sign the contract, I have been negotiating it, I want some of my shareholder's loan back. Period.

**Box 6: Extract from interview with Mario Camilleri**

Mario Camilleri	And this €210,000 has created even a bigger concern, because the €210,000 is a percentage of the full price.
NAO	Five per cent.
Mario Camilleri	Five per cent of the full price. If I had an agent I would have paid five per cent for the full price, but instead of me saying ok I want to be paid for it, I said I want part of my shareholder's loan back. So I know your question, your question is have you paid anybody any money? No, I have not. I never pay any money to anybody unless he is an agent and a declared agent. ... there was no agent in this. I went in personally. I spoke to the PM, no third party got involved, [Adviser OPM] came from the PM as the person to advise on how to go about the deal and negotiate the deal and that's it. As far as I am concerned I had to pay nobody a penny as a commission.

**Box 7: Extract from interview with Mario Camilleri**

NAO	So every single payment is accounted for, and there are documents justifying each payment, except for the €210,000 payment.
Mario Camilleri	The €210,000 was going to a shareholder. I'm the person that's selling, I am the person that's dictating, it was agreed by my partner that one of the shareholders will take as part of the shareholder's loan the €210,000 and that's it. I don't see why one would ask for documentation on that. I mean at the end of the day, if I sell a property and I say divide the payments into this category, at the end of the day the important thing is that the Government got paid on the day, that's why questions were asked.

**Box 8: Extract from interview with Mario Camilleri**

NAO	So it's a sheer coincidence that €210,000 happens to be five per cent of the €4.2 million.
Mario Camilleri	It's a sheer coincidence. Listen if it was going to be something commissioned to anybody you think I would have brought it straight out in the open like this? I gave this to Lands [shows documents with workings relating to the agreement] to tell them exactly how the money is going to be divided. My son presented this. ... if there was anything to be hidden you wouldn't be seeing it. Rest assured. But we're not that kind of people.

**Box 9: Extract from interview with Mario Camilleri**

NAO	So your explanation to this is that in effect you are paying yourself for a loan issued to the company.
Mario Camilleri	Absolutely. Absolutely. That is exactly how it is. It is not what I am saying. It is what it is.
NAO	And the reason why you did that is because that way you ensured that you would be paid on the first payment.
Mario Camilleri	You got it. You got it.

**Box 10: Extract from interview with Mario Camilleri**

NAO	Did I understand you well when you said that when your partner saw the draft agreement at first he did not want to sign because of these €210,000?
Mario Camilleri	He made a big fuss about it. He made a big fuss. I said look I mean I believe I've got a deal done over here, this is how it's gonna be done, this is how the figures are gonna be split and you're gonna come and sign. If you don't come and sign we're both liable for €2 million each. He said no, no, we'll pay it later, I said no. He said but it's been coming to you. I said it doesn't matter.

- 3.2.54 Additional evidence and views with respect to the M&A Investments payment of €210,000 were obtained from Neville Curmi, who, on the basis of that stated by Mario Camilleri, had posed an element of resistance by opposing such a transaction. Providing background on the matter, Curmi stated that on 1 August 2013, an offer to buy out his share in CE was submitted by M&A Investments. The €150,000 offer was put forward by Paul Camilleri and witnessed by the Company's accountant. According to MFSA records, Paul Camilleri was at the time no longer a Director of M&A Investments given his resignation dated 30 July 2013.
- 3.2.55 Curmi claimed that he was not aware of progress registered by Camilleri in terms of negotiations then still under way with Government and was considering M&A's proposed buy-out. The offer envisaged the take-over of all assets and liabilities, and entailed the transfer of all shares held by Daneta Ltd and Caballero Entertainments Ltd, as well as all rights involving CE, to M&A Investments. Corroborating evidence relating to this take-over by M&A Investments was noted in an email dated 11 October 2013 sent by the DG GPD to the DG Cabinet Office among others, whereby the latter was informed that Camilleri was in the process of acquiring the shareholding of Curmi to become the sole shareholder of CE prior to the deed of sale with Government. Further corroborating evidence was noted in an email sent by Dr Filletti to the DG GPD on 8 November 2013, wherein it was stated that plans were afoot to buy Curmi's share out.
- 3.2.56 An integral part of this arrangement was the release of Curmi from any personal guarantees held by CE's Bank. Curmi indicated that Camilleri had informed him that all arrangements involving the bank's release from personal guarantees had been attended to; however, following further consultations with the Bank, it emerged that personal guarantees would remain in place and therefore the possibility of M&A Investments taking over Curmi's shareholding was rejected.
- 3.2.57 Curmi subsequently indicated to the NAO that a few days after the Bank's rejection of release from personal guarantees held in CE's respect, Camilleri informed him of the deal reached between CE and Government. In this context, Curmi expressed a sense of having been misled by Camilleri, as he later realised that agreement with Government had already been reached many weeks before.



3.2.58 According to Curmi, it was at this moment that Camilleri requested the payment of a five per cent commission, which when applied to the agreed €4,200,000, results in a payment of €210,000, that is, equivalent to the amount paid to M&A Investments. When asked to substantiate this claim, Curmi provided the NAO with a copy of a CE Board Resolution dated 28 January 2014, a day prior to the signing of the agreement with Government.

3.2.59 According to Curmi, the Resolution was drafted by Camilleri, and provided evidence in this respect, in particular, an email sent by Mario Camilleri to Neville Curmi on 29 January 2014. In this email, Camilleri stated that attached was the Resolution that was to be signed when the two were to meet at GPD (later on that day to sign the agreement). Comparison of this version of the Board Resolution with that ultimately signed indicates a few changes, which were carried out by Curmi. These changes entailed reference to CE's share register and how this did not reflect the correct position of ownership, as well as the addition of precise figures relating to the settlement of remaining Company debt. Camilleri was asked by the NAO to provide a copy of the Resolution, which was furnished to this Office on 16 December 2014 and corroborated that stated by Curmi (Appendix F refers). It must be noted that Camilleri had, in two interviews prior to this date, failed to make reference to this key information despite being pressed on the matter by the NAO.

3.2.60 The Board Resolution as signed by Neville Curmi and Mario Camilleri highlighted various aspects of importance relating to the agreed price of €4,200,000 (further details specifically relating to this are provided in the ensuing section). Of pivotal importance to this investigation was one of the conditions listed in the Board Resolution, hereby quoted verbatim, "*Intermediary costs payable to M&A Investments related to the successful conclusion of the deal, equal to 5% of the sale value will be due upon contract and this will amount to €210,000.*" Based on that stated in the Board Resolution, it is evident to the NAO that the amount payable to M&A Investments did not relate to a shareholder's loan issued to CE, but more precisely reflected the payment of a brokerage fee arising out of the successful completion of the deal. In the NAO's understanding, the brokerage fee, or intermediary costs payable to M&A Investments, equivalent to five per cent of the agreed transfer price, is more in line with a commission payment rather than any other explanation provided to this Office by Camilleri.

#### *Banif Bank p.l.c.*

3.2.61 On 9 December 2013, the Directors of CE, Camilleri and Curmi, submitted correspondence to the Chief Executive Officer of Banif Bank, outlining the salient details of interest to the Bank, relating to the agreement reached with Government (Appendix G refers). Details relating to the expected structure of the deal, the schedule of payments and how funds received were to be utilised were elaborated upon. A draft copy of the agreement was attached therewith to substantiate that stated.

3.2.62 The CE Directors proposed a repayment programme that would regulate the manner by which the Bank would receive its dues. The proposed schedule of repayment envisaged full settlement over a period of 24 months. Payments to the Bank, amounting to €2,000,000, were intended to mirror those received by CE from Government, and were scheduled as follows:

- a. €200,000 upon signature of the contract;
- b. €400,000 within six months;
- c. €500,000 as the second instalment;

- d. €400,000 as the third instalment; and
- e. €500,000 as the fourth and final instalment.

3.2.63 In view of the assured source (Government) and quick repayment, the CE Directors requested consideration with respect to the payment of interest on the outstanding balance. Aside from the matter of whether interest was to be charged, or otherwise, the CE Directors informed the Bank that since it was to be one of the main beneficiaries of the agreement reached with Government, then it would of course appear in the deed of sale where a privilege was to be retained in its favour. Furthermore, the personal guarantees of both Directors were to be retained and released when payment in full was received by the Bank.

3.2.64 Concluding their correspondence with the Bank, the CE Directors provided a full summary of payments, which is reproduced in tabular format in Table 10. Rendered clearly evident in the penultimate line is the description relating to the €210,000 payment, which is here stated as a ‘commission on sale.’

**Table 10: Extract from correspondence sent by CE Directors to Banif Bank**

Summary of payments	€	€
Sale proceeds		4,200,000
Privileged creditors	1,443,717	
Bank	2,000,000	
Trade creditors (including garnisheed creditors)	428,000	
Commission on sale	210,000	
Balance left to pay unsecured creditors		118,283

3.2.65 A response to CE’s letter dated 9 December 2013 was issued by Banif Bank’s legal representatives on 19 December 2013. The Bank declined CE’s request for the crystallisation of its position in relation to facilities availed of, and therefore, the interest rate that was to be charged on the full exposure was that of 5.5 per cent.

3.2.66 In addition, the Bank did not accept the repayment schedule as proposed by CE and requested adjustment as follows:

- a. €200,000 on signing of deed;
- b. €500,000 after six months;
- c. €500,000 after 12 months;
- d. €450,000 after 18 months; and
- e. €518,228 on 31 December 2015.

The above schedule was based on the assumption that the deed would be signed on 31 December 2013. The Bank informed CE that should the deed be signed at a later date, then interest would continue to accrue and impact upon the indicated repayments.

3.2.67 With respect to the security relating to the balance concerned, the Bank indicated that the General Hypothec and Special Hypothec burdening the Café Premier were to be retained. The Bank proposed that the hypothecs would be reduced accordingly with each payment. This matter was subject to further discussions between the Bank and GPD, and consensus on the matter was reached on 27 January 2014.

3.2.68 Here, the Bank’s legal representative sent an email to Dr Filletti with respect to GPD’s request for the total cancellation of hypothecs burdening the Café Premier. It was

indicated that while the Bank was prepared to reduce the relative notes as far as the cancellation of the Special Hypothec was concerned, the Bank would keep the General Hypothec against CE unfettered. Dr Filletti advised the Commissioner of Land that this position was legally correct and thus, the matter was resolved.

3.2.69 On 28 January 2014, the Bank wrote to CE stating that it was willing to waive its Hypothecary rights emanating from various notes on the temporary utile dominium of the remaining period from the original emphyteutical grant relating to the Café Premier premises. This waiver was to be issued on the condition that the following amounts were to be deposited into the Company's account held with the Bank as follows:

- a. €200,000 on date of deed;
- b. €500,000 by 31 July 2014;
- c. €500,000 by 31 January 2015;
- d. €450,000 by 31 July 2015; and
- e. €531,075 by 31 January 2016.

3.2.70 Finally, Notary GPD was provided with a letter of authorisation issued by Banif Bank with respect to its representative, whereby the latter was provided with the power to appear for and on behalf of the Bank for the purpose of executing the deed.

### *Cities Entertainment Ltd*

3.2.71 CE was to receive the residual amount following payment of the agreed €4,200,000 and relevant settlement of all of the above-mentioned creditors. In the aforementioned Board Resolution, it was stated that despite no tangible profit for the shareholders, this deal with Government presented CE with the only viable option of repaying all secured as well as unsecured creditors.

3.2.72 Furthermore, the CE Board Resolution dated 28 January 2014 stated that any residual funds which remained after the settlement of bank dues as well as any funds generated through the sale of assets would be utilised in their entirety to address the remaining Company debts in the following order:

- a. garnishee orders equivalent to approximately €43,000;
- b. unprivileged trade creditors equivalent to approximately €410,000;
- c. loans made to CE by Curmi-owned companies (Daneta Ltd and Caballero Entertainments Ltd), equivalent to an approximate €370,000; and
- d. other shareholder related loans on a 50/50 (Camilleri/Curmi) per cent basis.

3.2.73 One final note of importance recorded in the Board Resolution related to CE's shareholding, whereby it was stated that notwithstanding the fact that the share register denoted a majority of shares held by the Camilleri-owned companies (M&A Investments Ltd and Jamco Ltd), on a 70/30 basis, this position was in fact incorrect. The correct proportion of ownership of CE was that Curmi and Camilleri owned CE on a 50/50 basis.

## **3.3 The 2014 Agreement**

3.3.1 The agreement between Government and CE for the transfer of the utile dominium with respect to the remaining temporary emphyteusis pertaining to the Café Premier premises was signed on 29 January 2014 (Appendix H refers). The GPD Notary who

was tasked with the drafting of the deed notarised the agreement reached, while all interested parties were represented as follows:

- a. the Commissioner of Land, appearing for and on behalf of Government and GPD;
- b. Mario Camilleri and Neville Curmi as representatives of CE;
- c. a lawyer appearing on behalf of the IRD;
- d. a lawyer appearing on behalf of the VAT Department;
- e. a representative of ARMS Ltd;
- f. Dr Mangion appearing in his own personal capacity, as well as on behalf of Golden Harvest Manufacturing Company Ltd;
- g. Mario Camilleri appearing on behalf of M&A Investments; and
- h. a representative of Banif Bank Malta p.l.c.

3.3.2 Following the statement of all parties represented in the agreement, note of the Bank's consent to reduce various hypothec privileges was recorded. Notarised within the deed were provisions relating to the manner by which hypothecs burdening the property yet safeguarding the Bank's interests were to be gradually and accordingly reduced with each payment.

3.3.3 Aside from the reduction of hypothecs encumbering the premises, the transfer was subject to a number of other conditions relating to the scheduling of disbursement of funds as well as the establishment of amounts payable to each of the aforementioned third parties. For ease of understanding, and in line with that stated in the agreement, the €4,200,000 may be categorised into two sets of payments (details of which are presented in Table 11).

- a. First, the sum payable on the date of signing of the agreement, which amounted to €1,839,200 and was offset against dues payable to the GPD, CGT, the IRD, the VAT Department, ARMS Ltd, M&A Investments Ltd, Dr Mangion and Golden Harvest Manufacturing Company Ltd. A partial payment of the amount due to Banif Bank was also settled, while the residual amount from the €1,839,200 went to CE.
- b. Second, the remaining €2,360,800 were to be paid in four equal instalments of €590,200 payable in six-month intervals. The first payment of €590,200 was to be made six months after the date of signing of the agreement. A portion of each payment was to be made to Banif Bank, while the residual amount was to be received by CE. Details on the relative apportionment of each payment are presented in Table 11.

3.3.4 Reference was also made to items of inventory that were to form an integral part of the agreement, namely, items related to the 'Great Siege of Malta' attraction as well as all remaining items that were not to be taken by the outgoing tenants. On the latter point, a comprehensive list of items was drawn up by GPD prior to the agreement and was reproduced as an appendix to the deed. Inventory items that were to be taken by the outgoing tenants included all equipment and fittings relating to the industrial kitchen; all catering-related equipment and fittings including tables and chairs; all office-related equipment and furniture; and all company records, as well as other loose items (such as souvenirs and picture frames). Furthermore, the agreement stipulated that all items of inventory that were not carted away within three months from the date of signing would become Government property.

**Table 11: Classification and scheduling of payments as per agreement**

Classification	Debtor / Details of payment		Amount	
Part 1 [payable on date of signing of the agreement]	GPD		€307,347	
	CGT		€504,000	
	IRD	Company Tax FSS & SSC	€1,450 €191,298	€192,748
	VAT Department	VAT1 VAT2 Legal Fees	€95,809 €124,500 €6,750	€227,059
	ARMS Ltd		€130,964	
	M&A Investments Ltd		€210,000	
	Dr Malcolm Mangion		€20,000	
	Golden Harvest Manufacturing Company Ltd		€3,265	
	CE		€43,817	
	Banif Bank p.l.c.		€200,000	
	Sub-total Part 1		€1,839,200	
Part 2 [payable in six monthly intervals from the date of signing of the agreement]	Payment 1	Banif Bank p.l.c. CE	€500,000 €90,200	€590,200
	Payment 2	Banif Bank p.l.c. CE	€500,000 €90,200	€590,200
	Payment 3	Banif Bank p.l.c. CE	€450,000 €140,200	€590,200
	Payment 4	Banif Bank p.l.c. CE	€531,075 €59,125	€590,200
	Sub-total Part 2		€2,360,800	
Overall	Sub-total Part 1		€1,839,200	
	Sub-total Part 2		€2,360,800	
	Total		€4,200,000	

**3.3.5** Aside from all of the above, numerous standard contractual clauses featured in the agreement between Government and CE, including that the premises was being transferred free and unencumbered of debt, hypothecs, privileges and/or garnishee orders. Such clauses were followed by the specific cancellation of hypothecs as a result of payments arising out of this agreement, namely those registered to the Government, the VAT Department and Golden Harvest Manufacturing Company Ltd.

**3.3.6** All persons present at the GPD offices for the drafting of this deed (as indicated in paragraph 3.2.2), as well as by Notary GPD, signed the agreement. Annexed to the agreement were the various letters of authorisation empowering representatives of the IRD, the VAT Department, ARMS Ltd, Golden Harvest Manufacturing Company Ltd and Banif Bank to act on their behalf, together with the aforementioned inventory.

### 3.4 Other Issues of Note

#### *VAT Claw Back as per Capital Goods Adjustment Rules*

- 3.4.1 As indicated earlier in this Chapter, during Government's negotiations with CE, the Commissioner of Revenue's views were sought with respect to certain tax-related matters. Among other issues discussed, the Commissioner commented on the VAT Regulations with respect to adjustments relating to input tax on capital goods (as stipulated in Subsidiary Legislation 406.12) by means of an email sent to Adviser OPM on 25 June 2013, and copied to the PM, Chief of Staff OPM and PPS. Here, the Commissioner stated that if VAT had been paid on improvements to immovable property and such VAT had been claimed as input tax, a claw back of such input tax would arise if the property was sold before the lapse of twenty years from the year the improvements were made. Under such circumstances, the input VAT paid would be clawed back on a pro rata basis and the Commissioner strongly recommended not to compensate the Company for any claw back of VAT that could arise.
- 3.4.2 The NAO enquired with the VAT Department whether any of the input VAT claimed by CE was subsequently refunded to the Department following the transfer of the Café Premier premises to Government in accordance with the capital goods adjustment rules. The VAT Department informed the NAO that as at 17 November 2014, no capital adjustments had been effected.
- 3.4.3 In view of the advice provided by the Commissioner of Revenue and inaction reported by the VAT Department, the NAO sought to determine whether any VAT that had been claimed as input tax was in fact due to be recovered. It must be stated that this exercise was somewhat tangential to the main audit objectives, and in this context, the Office based its calculations solely on data provided by the VAT Department and the accounts and financial statements submitted by CE to the MFSA.
- 3.4.4 Limitations persisted with respect to both sources of data. In the case of information provided by the VAT Department, this Office was informed that there is no specification included as to whether capital expenditure declared was incurred in relation to moveable capital assets or improvements to property. Furthermore, the Department informed the NAO that the VAT Act does not establish the requirement for supporting documentation to be submitted with VAT returns. The implication of this inability to distinguish between moveable capital assets and improvements to property relates to the period of reference within which adjustments are to be made. In the case of capital goods excluding immovable property, a period of five years is deemed to be the period of reference, whereas in the case of immovable property, the period utilised is that of twenty years.
- 3.4.5 To address this difficulty in determining what portion of tax claimed related to immovable and what portion related to moveable capital goods, the Office resorted to accounts and financial statements submitted by CE to the MFSA. Where possible, the NAO identified costs incurred with respect to immovable capital assets and others incurred with respect to moveable capital assets. This was possible for 10 out of the 16 years in the period under review. With respect to these ten years, the Office assumed that the ratio between costs incurred in relation to immovable and moveable capital assets, as presented in CE's accounts, was to be reflected in the apportionment of input tax calculations based on VAT submission data.
- 3.4.6 Accounts relating to the remaining six years had either not been submitted or were in an abridged format, which therefore rendered the process of distinguishing between immovable and moveable improvements impossible. In the case of these six



years, input tax claimed was apportioned on a 50/50 basis between immovable and moveable capital goods.

3.4.7 Based on these two assumptions, the NAO estimated that the VAT Department should have clawed back an approximate €60,000 in tax, with €57,000 arising in relation to immovable property improvements and €3,000 with respect to moveable capital goods. It must be emphasised that this Office did not seek to establish with absolute precision the magnitude of the VAT claw back due, yet solely undertook this approximate analysis to bring this matter to the fore.

#### *Withdrawal of Legal Proceedings*

3.4.8 On 12 December 2012, GPD instigated legal action against CE. Two judicial letters were sent to CE, giving the Company two days to settle balances of €152,750 and €68,463, that is, amounting to a total balance due of €221,213. The reason why two separate judicial letters were sent to CE was attributable to the two rent-related accounts retained by GPD, referred to in the preceding Chapter as 060536 and H060536.

3.4.9 A counter-protest was subsequently submitted by CE's legal representatives with respect to each of the judicial letters, with that relating to account H060536 dated 7 January 2013, while the other, which related to account 060536, was dated 25 January 2013. The judicial protests filed by CE claimed that the requests for payment raised by the Commissioner of Land were unfounded and that legal action should be suspended until the correct amounts due were established.

3.4.10 Rendered aware of judicial action taken by CE on 31 January 2013, the Director (Finance and Administration) GPD exchanged correspondence with the Department's Legal Section informing them that a repayment programme had been agreed to with Neville Curmi. To this end, the Commissioner of Land responded to CE's counter-protest dated 25 January 2013 on 5 February 2013, claiming that these dues were in fact correct, as they had previously formed the basis of a repayment programme that had been agreed to by CE. The Commissioner of Land proceeded to state that the judicial protests filed by CE were simply a delaying tactic.

3.4.11 Notices of hearing of a case were issued on 6 February 2013 and 15 February 2013, with one case (4007/12) assigned to the Hon. Justice Farrugia Sacco and due for hearing on 20 March 2013, while the other (4009/12) was to be presided over by the Hon. Justice Meli and due for hearing on 17 May 2013.

3.4.12 In the interim, correspondence was exchanged between CE's legal representative and GPD's Legal Section, culminating in an email sent on 20 February 2013, whereby GPD indicated that CE had defaulted with respect to payments due and therefore, the Department was not in a position to withdraw its lawsuit unless payments were effected. A few days later, that is, on 22 February 2013, CE effected their first instalment as per the agreed repayment programme, and the Director (Finance and Administration) GPD proposed a revision of the account in three months' time, presumably, to better gauge necessary action.

3.4.13 The Senior Legal Officer GPD indicated to the Department's Director (Finance and Administration) that GPD should not withdraw its lawsuit for the time being as payments submitted could be a ploy to lead the Department to believe that CE was going to honour its obligations. Accordingly, when appearing on behalf of the Department on the scheduled 20 March 2013 hearing with respect to case 4007/12, the Senior Legal Officer informed the Court that two payments had been effected



as per repayment programme and asked for a deferment, which was set for 14 June 2013.

3.4.14 Similarly, another GPD Legal Officer appearing on behalf of the Department on 7 May 2013 with respect to case 4009/12 informed the Courts that some payment was made by CE and asked for time to resolve the issue in an amicable manner. Court records indicated that this case was deferred to 10 July 2013 for what was to be the probable cessation of proceedings. The payments referred to by the GPD Legal Officers are presented in Table 12.

**Table 12: Payments effected by CE after the initiation of legal proceedings**

Account	Date of payment	Amount paid	Overall balance due
060536 H060536	22 February 2013	€4,650 €4,650	€211,997
060536 H060536	18 March 2013	€4,650 €4,650	€202,697
060536	10 May 2013	€4,650	€291,245

3.4.15 Court records relating to the hearing of 14 June 2013 with respect to case 4007/12 indicated that agreement had been reached and payments were being effected. This was corroborated by the Legal Officer representing the Department on the case, who stated that when she had informed the Court of payments received by GPD, the Judge had pressed the Department to decide on its intended course of action, as the Court had no role to play if payments were in order. The case was deferred to four days later for the presentation of the aforementioned agreement. Consequently, on 18 June 2013, the Commissioner of Land produced a notice of cessation of legal proceedings with respect to Rikors 34/2013, citing agreement between the parties involved. The letter was signed by a GPD Legal Officer. Subsequent to this, CE withdrew legal proceedings with respect to Rikors 34/2013, also citing agreement between the parties involved.

3.4.16 Mirroring developments registered with respect to case 4007/12 were events relating to case 4009/12, or rather, Rikors 33/2013. Here, on 10 July 2013, GPD retracted its case on ground that agreement had been reached between the two parties. CE followed suit, also withdrawing legal proceedings.

3.4.17 Deemed somewhat ambiguous by the NAO was an email sent by the GPD Senior Legal Officer to the Department's DG, Director (Finance and Administration) and Legal Officer on 6 August 2013. In this context, the GPD Senior Legal Officer enquired whether payments were being made by CE, as it appeared that the case had been dropped, despite the substantial arrears due. In response, the Director (Finance and Administration) stated that the withdrawal of legal proceedings was inevitable in view of objections raised by the presiding Judge, as could be attested by the Legal Officer who attended the hearing. The Director proceeded to state that prior to authorisation, CE were effecting payments.

3.4.18 The NAO deemed the assertion made by the Director (Finance and Administration) on 6 August 2013 as tenuous, the basis of which is rendered clearly evident in Table 12. Out of a possible twelve payments (€4,650 per account over a period of six months – February 2013 to July 2013), CE had in fact effected five payments, which in this Office's opinion, hardly provides the level of assurance required in acquiescing to the withdrawal of legal proceedings.

- 3.4.19 Of interest in this regard is an email sent by a GPD Legal Officer on 6 August 2013 to the Department's DG, Director (Finance and Administration) and Senior Legal Officer, among others, indicating that discussions were being held between CE and OPM. In the NAO's understanding, this email represents the first instance when GPD acknowledge awareness of pending negotiations between Government and CE.
- 3.4.20 Notwithstanding the above-established facts, the NAO sought to identify and better understand the sequence of events that resulted in the cessation of legal action by GPD against CE. The review of GPD files was of no aid at all, as the only record relating to the forfeiture of legal proceedings by the Department was an office note signed by the GPD Legal Officer succinctly stating "*Kawża ceduta.*" This note related to case 4007/12, and no equivalent record of any sort was found with respect to case 4009/12.
- 3.4.21 Having failed to establish the motivation leading to the withdrawal of court action by GPD and who within the Department instigated such action through the review of GPD files, the NAO attempted to formulate an understanding by means of interviews. This proved to be an equally futile endeavour, with the GPD Legal Section claiming that determining whether payments were being effected related to the work of the Rents Section (which formed part of the Finance & Administration Directorate). On the other hand, the Director (Finance and Administration) claimed that this was purely a legal matter, and that the withdrawal of legal proceedings was not her decision to make.
- 3.4.22 Despite the circular references provided by GPD, the blurring of decisions taken through poor record-keeping practices and the abdication of responsibility accounting for such decisions, a clear response, albeit totally incongruent with that stated by GPD, was provided to this Office by Mario Camilleri. Camilleri unequivocally stated that Government and CE withdrew from legal action against one another in view of negotiations under way at the time. Further elaborating on the matter, Camilleri argued that the forfeiture of legal proceedings was an obvious part of the deal, and once negotiations had commenced, then legal action was to be brought to a halt.

### *An Analysis of Policy Inputs*

- 3.4.23 It is not within the NAO's mandate to question Government policy, and in this case, the policy, if this may be termed as such, emanates from the Cabinet memorandum, dated 10 September 2013 and approved on 17 September 2013. Four main objectives were listed in this document, namely:
- a. Remove possible danger to the National Library posed by the kitchen forming part of the Café Premier;
  - b. Create vertical circulation to the National Library by providing space for the installation of a lift;
  - c. Resolve the problem of arrears due to various entities; and
  - d. Generate income through the re-dimensioning of the available space and the leasing out of such space for commercial purposes, while ascertaining that business carried out therein poses no danger to the National Library.
- 3.4.24 Queries relating to the formulation of the above points were addressed to the PPS, who stated that no other documentation relating to these policy objectives was available or in fact necessary. Pressing further on the matter, the NAO enquired whether business plans had been drawn up in Government's evaluation of possible courses of action; in this respect, the PPS did not provide this Office with any evidence

of the analysis carried out on the above policy objectives prior to Government's decision to pursue negotiations with CE.

3.4.25 Enquiring on the first objective, that is, the removal of possible danger to the National Library, specifically in the sense of what policy inputs fed into this decision-making process, the PPS made reference to the *Partit Laburista's* electoral manifesto. The PPS proceeded to state that reference in this context was in general terms and highlighted the importance of the National Library as well as other libraries. The NAO reviewed the aforementioned electoral manifesto and noted that the only reference made to the National Library indicated a general strengthening of this Institution; hence, any link between the manifesto and the above policy objective is not so clear or evident.

3.4.26 Furthermore, and of greater concern to this Office in terms of its analysis of information utilised by Government in arriving at the policy decision to safeguard the National Library is the fact that there is no record of the consideration of other possibilities that could have resulted in the attainment of this same goal. For example, Government could have considered:

- a. The amendment of the 1998 agreement, specifically the exclusion of the cafeteria-related clause, through negotiations with CE.
- b. The inclusion of a provision in any possible future transfer of the emphyteusis to third parties within this same term of lease, prohibiting future tenants from utilising the premises for catering purposes. This provision could have also been considered had the transfer of lease been effected under the guise of a transfer in shareholding of CE. This course of action was in fact pursued by GPD with another tenant whose premises were located under the National Library immediately after the approval of the Cabinet memorandum.
- c. Other ways of managing the risk of accidental fire, such as through the installation of advanced fire prevention, detection and suppression systems. There is no evidence of any form of risk assessment having been carried out by a competent authority.

3.4.27 As highlighted, no documentation and/or explanations were provided to this Office illustrating the consideration of other avenues of action besides direct negotiation with CE for the purchase of the utile dominium relating to the temporary emphyteusis of the Café Premier. Clearly supporting this argument is evidence provided by Adviser OPM, who unequivocally stated that his role did not contemplate the consideration of other options aside from assisting in the negotiations undertaken by Government in view of the reacquisition of the premises. Given Adviser OPM's direct involvement in the process a mere few weeks after the PM was first approached by Camilleri, then it is highly unlikely that other possible means for safeguarding the National Library, aside from direct negotiation with CE, were considered.

3.4.28 Similar concerns emerge with regard to the second objective, that is, the creation of vertical circulation to the National Library through the installation of a lift. While the NAO fully supports initiatives intended at promoting accessibility for all, this Office maintains that an appropriate analysis of the anticipated use and benefit of the incurrence of such costs should have been undertaken. Such preliminary analysis would have been useful for comparative purposes, particularly in terms of cost-benefit prioritisation, thereby identifying where best to invest and improve accessibility. More specifically, the NAO expected some form of technical analysis to be carried out prior to the commencement of negotiations with CE, whereby the most favourable point of access to the National Library would have been identified.

- 3.4.29 The third point, that is, the resolution of the problem of arrears due to various entities may hardly be considered as a policy objective. The issue of outstanding balances due to various Government entities should have bore no impact on Government's decision-making process. The Government entities owed substantial dues certainly have other means of redress that are regularly utilised in their efforts to recover amounts payable. In this Office's opinion, it is most certainly not the business or responsibility of Government to resolve the financial difficulties of private persons or companies.
- 3.4.30 The fourth objective, that is, the generation of income through the re-dimensioning of the available space was to be achieved by means of leasing out such space for commercial purposes while simultaneously ascertaining that business carried out therein posed no danger to the National Library. While this Office considers the objective reasonable and possibly representing sound business sense, no documentation supporting how such an objective was arrived at was provided to the NAO. One would have expected detailed proposals on how the area could be subdivided and forecasts of revenue that was to be generated through the lease of the accordingly re-dimensioned space. The absence of relevant documentation, which should have notionally served as an input to the policy decision-making process, detracts from the rigour of analysis expected in arriving at the stated objective.
- 3.4.31 In the NAO's understanding, a favourable opportunity, as perceived by Government, presented itself when Camilleri approached the PM regarding the possible reacquisition of the Café Premier premises, and Government proceeded to capitalise upon such an opportunity. One must recall that CE had received an offer from a third party on 17 May 2013, comparable to that eventually agreed to with Government. Of note is the fact that this offer had been tabled by the third party to CE prior to the commencement of negotiations with Government. In this context, the NAO questions whether the above-discussed policy objectives would still have been actively pursued, had the third party offer been accepted by CE. In this sense, the priority assigned to protecting the National Library and creating vertical access thereto, were contingent upon agreement not being reached elsewhere, which hardly represents the ideal manner of drawing up policy.
- 3.4.32 The absence of documentation substantiating the detailed analysis of needs and alternatives leading to the fulfilment of the above-discussed Government policy objectives is considered as a significant shortcoming by the NAO. In this Office's view, the objectives detailed in the Cabinet memorandum of 10 September 2013, as approved on 17 September 2013, appear to have been formulated as justification of Government's proposal to acquire the Café Premier, and the analysis required to support such a course of action is insufficient. One would have expected the comprehensive analysis of all facets of possible action, subsequently leading to the establishment of policy and finally the pursuit of corresponding action.



## Chapter 4

# Conclusions and Recommendations

## Chapter 4 – Conclusions and Recommendations

### 4.1 The Facts of the Case

- 4.1.1 By virtue of an agreement entered into on 23 April 1998, Government conceded to CE the temporary emphyteusis of the premises at 33 and 34 Old Treasury Street and the basement accessed from 35 Old Treasury Street, as well as three shops at 40, 41 and 42 Old Theatre Street, Valletta, known as Café Premier.
- 4.1.2 The 1998 agreement between Government and CE clearly stipulated the contractual breaches that would entitle Government to initiate legal proceedings that would lead to the rescission of the contract. On the basis of the NAO's verification, this Office found no evidence that the conditions regarding the use of premises, closure of premises and the use of LPG cylinders were breached. On the other hand, evidence regarding the possible sub-letting of part of the Café Premier premises without the prior requisite consent of the Commissioner of Land and relevant payment of laudemium was noted by the NAO. Furthermore, ground for the instigation of legal proceedings in terms of CE's failure to respect the three-year threshold of ground rent payments existed.
- 4.1.3 The sequence of events leading to Government's reacquisition of the Café Premier premises may be traced back to early April 2013, a few weeks following the change in administration, when the CE Director Mario Camilleri wrote to the PM. Negotiations between CE and Government were concluded in August 2013 and the matter was referred to Cabinet and subsequently approved in September 2013. Following which, on 29 January 2014, Government and CE signed an agreement whereby Government acquired the utile dominium relating to the temporary emphyteusis of the premises known as Café Premier for the sum of €4,200,000.
- 4.1.4 In early March 2014, details of this agreement appeared in the media alleging Government's bailout of CE and the payment of commissions among other matters raised. Pursuant to this, the PAC tasked the NAO with the investigation of the Café Premier transfer in August 2014. Hereunder (Table 13 refers) are the most salient events relating to the transfer of the Café Premier from CE to Government. This Office's conclusions with respect to this matter follow and are structured according to the request raised by the PAC.



**Table 13: Timeline of events**

Date	Event
23 April 1998	Agreement signed between Government and CE for the transfer of the temporary emphyteusis of the Café Premier premises for 65 years
23 April 2004	Breach of Article 17(ii) relating to the payment of ground rent, where the three-year threshold was exceeded until 25 August 2004
23 April 2005	Breach of Article 17(ii) relating to the payment of ground rent, where the three-year threshold was exceeded until 31 May 2005
4 April 2006	Judicial letter filed against CE by GPD
23 April 2006	Breach of Article 17(ii) relating to the payment of ground rent, where the three-year threshold was exceeded until 8 August 2006
15 June 2006	CE proposed a repayment schedule, yet this was rejected by the DG GPD
30 November 2006	CE submitted a new repayment schedule
14 May 2007	GPD approved CE's proposed repayment schedule
4 June 2008	GPD requested CE to settle outstanding ground rent within one week, failing which judicial action would be taken
18 April 2009	Breach of Article 17(iv) relating to the sub-letting of part of the premises without the prior requisite approval of the Commissioner of Land. The sub-letting to Café Palazz was made reference to in the valuation report prepared by Mangion, Mangion & Partners (2009).
23 April 2009	Breach of Article 17(ii) relating to the payment of ground rent, where the three-year threshold was exceeded until 11 September 2009
5 May 2009	GPD filed a judicial protest against CE in view of the Company's non-adherence to the 30 November 2006 repayment schedule
17 June 2009	CE proposed a new repayment agreement
9 September 2009	CE's proposed repayment agreement was entered into subject to certain amendments
26 May 2010	CE's tenement account was split into two, that is, 060536 and H060536
12 December 2012	GPD filed judicial letters (relating to accounts 060536 and H060536) against CE in view of the Company's non-adherence to the 9 September 2009 repayment schedule
7 January 2013	Counter protest filed by CE with respect to account H060536
15 January 2013	A new repayment agreement between CE and GPD was entered into
25 January 2013	Counter protest filed by CE with respect to account 060536
5 February 2013	GPD filed a Risposta to CE's counter protests of 7 and 25 January 2013
8 March 2013	Closure of Café Premier premises
20 March 2013	Court hearing scheduled in respect of account H060536
4 April 2013	Mario Camilleri wrote to the PM requesting a meeting
17 April 2013	Meeting between Mario Camilleri and the PM whereby the possibility of the transfer of the Café Premier back to Government was discussed
23 April 2013	Breach of Article 17(ii) relating to the payment of ground rent, where the three-year threshold was exceeded until the agreement with Government
May 2013	Meeting between the PM, Adviser OPM, Chief of Staff OPM and the PPS, where CE's Café Premier proposal was discussed

16 May 2013	A third party submitted a bid of €3,500,000 to CE for the Café Premier
17 May 2013	Initial correspondence exchanged between CE (Mark Camilleri) and Government (Adviser OPM)
17 May 2013	Court hearing scheduled in respect of account 060536
20 May 2013	CE submitted an initial request of €5,370,000 as a starting point for discussions
4 June 2013	Architect GPD completed valuation report citing a value of €4,400,000 to €4,500,000 and submitted same to Adviser OPM
4 June 2013	Adviser OPM submitted Government's initial offer of €3,300,000 following the PM's authorisation
11 June 2013	Counter proposal made by CE for €4,772,727 (equivalent to €4,200,000 net of CGT)
12 June 2013	Chief of Staff OPM informed Adviser OPM of outstanding dues owed to Government Departments by CE, namely to the IRD, VAT Department, ARMS Ltd and the GPD
2 July 2013	Offer by Government of €3,977,272 (equivalent to €3,500,000 net of CGT)
5 July 2013	Counter proposal made by CE for €4,488,636 (equivalent to €3,950,000 net of CGT)
9 July 2013	Offer by Government of €3,977,272 (equivalent to €3,500,000 net of CGT), which offer was termed as final
11 July 2013	PM confirmed meeting with Camilleri, during which negotiations were concluded (meeting also attended by Adviser OPM and the PPS)
5 August 2013	CE submitted a proposal of €4,200,000 (equivalent to €3,696,000 net of CGT)
6 August 2013	Adviser OPM forwarded CE's proposal of €4,200,000 to the PM stating that the request was reasonable – Chief of Staff OPM also considered the offer as a fair deal subject to the valuation being correct – No written comment from the PPS
10 September 2013	Cabinet memorandum regarding the transfer of the Café Premier premises presented by the PPS
17 September 2013	Memorandum approved by Cabinet
18 September 2013	The DG Cabinet Office informed DG GPD of Cabinet's approval of the transaction and was requested to initiate the process of acquisition (this represented the first instance where GPD were formally notified of Government's intention to reacquire the premises)
18 September 2013	The DG GPD informed Notary GPD to prepare the draft deed of acquisition
24 September 2013	Adviser OPM informed CE that the €4,200,000 proposal had been accepted by Government
24 September 2013	Cut-off date regarding the accumulation of ground rent due by CE to GPD – balance cited by GPD was that of €282,819
27 September 2013	Cut-off date for encroachment fees payable by CE to GPD, with a balance of €24,156
18 November 2013	Upward revision of ground rent due by 20 per cent with respect to the period April 2011 to April 2014
24 January 2014	IRD informed GPD that the balance due by CE in terms of FSS, SSC and company tax was that of €192,748
24 January 2014	VAT Department informed GPD that the balance due by CE was that of €226,663
24 January 2014	ARMS Ltd informed GPD that the balance due by CE was €130,964

27 January 2014	Camilleri informed GPD that the sum of €210,000 payable to M&A Investments Ltd was to be included in the agreement
27 January 2014	Dr Malcolm Mangion informed GPD that legal consultancy fees claimed on his behalf and on that of colleagues amounted to €20,000
27 January 2014	Golden Harvest Manufacturing Company Ltd confirmed with the GPD that the balance due was €3,265, which when paid would result in the cancellation of the warrants of prohibitory injunction
28 January 2014	Banif Bank stated its willingness to waive its hypothecary rights on condition of the staggered repayment of €2,181,075
28 January 2014	The CE Board Resolution indicated that the intermediary cost payable to M&A Investments related to the successful conclusion of the deal, equal to five per cent of the contract value, that is, €210,000, was due
29 January 2014	Government and CE signed an agreement whereby the Café Premier was reacquired by Government for €4,200,000
29 January 2014	€1,839,200 was paid on the date of signing of the agreement, with disbursements to GPD, IRD, the VAT Department, ARMS Ltd, Dr Malcolm Mangion, Golden Harvest Manufacturing Company Ltd, M&A Investments, Banif Bank and CE
31 July 2014	First instalment of €590,200 was settled, with €500,000 paid to Banif Bank and €90,200 paid to CE
31 January 2015	Second instalment of €590,200 was settled, with €500,000 paid to Banif Bank and €90,200 paid to CE
31 July 2015	Third instalment of €590,200 is to be settled, with €450,000 to be paid to Banif Bank and €140,200 to be paid to CE
31 January 2016	Fourth instalment of €590,200 is to be settled, with €531,075 to be paid to Banif Bank and €59,125 to be paid to CE

## 4.2 Value for Money

- 4.2.1 A critically important aspect of the NAO's analysis of the Café Premier reacquisition by Government were the valuations carried out by the Architect appointed by Government, those previously prepared for CE by Mangion, Mangion & Partners, as well as that drawn up by the NAO's Technical Consultant. This Office noted that all valuations carried out were largely consistent, reflecting the value paid by Government. However, the establishment of value in monetary terms, and value for money considerations are two distinct matters. The value assigned to the reacquisition of the Café Premier premises is but one component of the value for money represented by this transfer.
- 4.2.2 Other considerations in the determination of value for money were the possible alternatives available to Government that would have resulted in the same outcome. One such alternative was the possible resort to legal proceedings for the rescission of the agreement, particularly in view of the fact that the ground rent due in April 2013 exceeded the three-year threshold. This coincided with the point at which negotiations between CE and Government commenced, yet no consideration of this means of redress was made by Government. Although the Government indicated its reluctance to pursue legal action on grounds of the lengthy process involved and the uncertainty of the outcome, the NAO considers such justification as insufficient. This Office considers the resort to legal action as a necessary tool in the rectification of serious and repeated contractual default, and should not be ruled out on grounds of delay and uncertainty of outcome.

4.2.3 The Cabinet memorandum dated 10 September 2013 listed four main objectives justifying Government's reacquisition of the Café Premier, namely, the removal of possible danger posed to the National Library by underlying catering establishments, the provision of greater accessibility to the Library, resolution of the problem of arrears faced by CE and the re-dimensioning of available space resulting in the generation of income to Government. The absence of documentation substantiating the detailed analysis of needs and alternatives leading to the fulfilment of the above-discussed Government policy objectives is considered as a significant shortcoming by the NAO. In this Office's view, the objectives detailed in the Cabinet memorandum appear to have been formulated as a justification of the Government's proposal to acquire the Café Premier, and the analysis required to support such a course of action is insufficient. One would have expected the comprehensive analysis of all facets of possible action, subsequently leading to the establishment of policy and finally the pursuit of corresponding action. Further supporting the NAO's assertions is the fact that no concrete developments have been noted in the premises a year after its reacquisition.

### 4.3 Good Governance and Transparency

4.3.1 Notable shortcomings in terms of governance were noted with respect to Government's failure to involve the GPD early in negotiations with CE. This Department is responsible for the management and administration of all Government-owned properties, yet was only involved at the final stages of the reacquisition of the Café Premier, when all had been already agreed upon. Had Government consulted with the GPD, the breach in terms of Article 17(ii), that outstanding ground rent was not to exceed the three-year threshold, might have been brought to the fore earlier on in the negotiations and possibly lead to a different outcome.

4.3.2 The appointment of the GPD Architect to draw up an evaluation of a government-owned premises also presented various shortcomings in terms of good governance. The GPD Architect was given this assignment without the DG GPD's knowledge, directly appointed following the recommendation of Adviser OPM and the PM's subsequent approval. The NAO considers such a practice as undermining the DG's authority and responsibility for the Department, and could have placed the GPD Architect in an awkward situation.

4.3.3 The valuation report, despite being prepared on an official GPD letterhead was not retained in file. This absence was also confirmed by the DGs GPD, who stated that they were not aware of this valuation assignment and the report subsequently prepared by the GPD Architect. This anomalous situation is indicative of a lack of transparency and poor governance, further confirming Government's reluctance to involve GPD in an official capacity with respect to the matter.

4.3.4 The establishment of 24 September 2013 as the cut-off date for ground rent was deemed as an arbitrary decision by this Office. The NAO considers this decision as a shortcoming on the part of Government, and that ground rent should have been charged up to the date of the signing of the agreement, similar to the approach adopted by other Government Departments involved in this matter. Had the date of agreement been considered as the cut-off date, then the chargeable rent due to GPD would have increased by approximately €39,000. The NAO deems that it would have been more appropriate for GPD to determine the cut-off date.

4.3.5 Of serious concern to the NAO is the lack of documentation retained by GPD with regard to the withdrawal of its legal action against CE instigated on 12 December 2012. The only record retained in file was with respect to one of the two cases, and

simply stated “*Kawża ćeduta*”, while Court records are sparse in detail. The review of internal GPD correspondence exchanged after the withdrawal of the Court case renders GPD’s decision more ambiguous, with CE’s repayment of outstanding dues cited as the reason for the cessation of Court action. The NAO reviewed such payments and established that five out of a possible 12 payments had been effected. This hardly represents consistency in repayment, especially when one considers the magnitude of the balance due, which at the time was in excess of €290,000 and that repayments made prior to the amicable settlement only amounted to €18,600.

4.3.6 Having failed to establish the motivation leading to the withdrawal of court action by GPD and who within the Department instigated such action through the review of GPD files, the NAO attempted to formulate an understanding by means of interviews. This proved to be an equally futile endeavour, with the GPD Legal Section claiming that determining whether payments were being effected related to the work of the Rents Section (which formed part of the Finance & Administration Directorate). On the other hand, the Director (Finance and Administration) claimed that this was purely a legal matter, and that the withdrawal of legal proceedings was not her decision to make. Despite the circular references provided by GPD, the blurring of decisions taken through poor record-keeping practices and the abdication of responsibility accounting for such decisions, a clear response, albeit totally incongruent with that stated by GPD, was provided to this Office by Mario Camilleri. Camilleri unequivocally stated that Government and CE withdrew from legal action against one another in view of negotiations under way at the time. Further elaborating on the matter, Camilleri argued that the forfeiture of legal proceedings was an obvious part of the deal, and once negotiations had commenced, then legal action was to be brought to a halt.

#### 4.4 The Payment of Commissions

4.4.1 Evidence obtained by this Office indicated that the €210,000 payment was in effect a commission payment to M&A Investments Ltd despite assertions to the contrary by Camilleri. The CE Board Resolution dated 28 January 2014 rendered this clearly evident, as did the correspondence with Banif Bank dated 19 December 2013. While the former terms the €210,000 payment as ‘intermediary costs’, the latter referred to this payment as a ‘commission on sale’. Notwithstanding the ambiguity in responses provided by Camilleri during interviews with the NAO, this Office considers the above-cited evidence as sufficient proof of the payment of commissions to M&A Investments Ltd.

4.4.2 Despite the fact that Government would still have paid €4,200,000, irrespective of the arrangement with M&A Investments, this Office is of the opinion that the €210,000 payment should not have featured in the agreement. The dealings between CE and M&A Investments were a private matter, and Government bore no relationship with the latter. Moreover, the €210,000 payment made in this respect was unsubstantiated and deemed by the NAO as inappropriately included in the agreement.

4.4.3 Aside from the above, no evidence came to light of other commission payments out of public funds except for the €210,000 payment made to M&A Investments.

#### 4.5 Adherence to Financial Procedures

4.5.1 The legislative framework regulating the disbursement of public funds was broadly respected, with approval sought from the relevant Minister, in this case, the PM, and that of the PS MFIN. Furthermore, the management of the payment process was well structured, organised and documented. It is in this general sense that the NAO

considers the relevant financial procedures to have been adhered to. However, the financial regulations do not make direct reference to such atypical disbursements of public funds. Nonetheless, disbursements of public funds should be made judiciously, and it is in this context that the various shortcomings highlighted in this Report somewhat detract from the prudence expected when deciding to undertake disbursements of such magnitude.

## **4.6 The Setting of Precedents**

**4.6.1** With respect to whether the procedure adopted by Government in this reacquisition was discriminatory and could expose public finances to similar requests in the future, this Office notes that legal precedent can only be created by jurisprudence, that is, case law. Advice obtained by the NAO indicated that the setting of a precedent has a persuasive value yet is not binding, more so when one considers that the decision was taken by Cabinet and not by Court. Applied to this case, Government's reacquisition of the Café Premier does not constrain Government in future possible cases bearing elements of congruence. Although no legal precedent was established as a result of this reacquisition, Government may nonetheless be exposed to criticism in terms of fairness and equality.

## **4.7 Other Considerations**

**4.7.1** The NAO's concern was drawn to the various instances where repayment agreements entered into by CE and GPD for the settlement of outstanding ground rent were not honoured. This reflects the poor account management practices employed by GPD, including very weak enforcement capabilities and no structured system for the follow-up of agreements entered into. While the NAO acknowledges the Department's stance and preference for resolving matters outside of Court, the Office considers it necessary for more decisive action to be taken by GPD in the case of repeat defaulters as was the case with CE. In this Office's view, failure to take the required action in this regard is ultimately counter-productive, as the Department is perceived as ineffective in terms of enforcement.

**4.7.2** A critical limitation faced by the Department in efforts to ensure compliance is the absence of a system of penalties and fines applicable in the case of defaulters. In this context, there exists no incentive encouraging tenants to settle outstanding dues, as failure to pay results in no consequence, barring the occasional judicial letter and subsequent repayment agreement. Legislative amendments to the relevant provisions intended at strengthening the Department's enforcement function should be considered.

**4.7.3** The NAO review of this case highlighted weaknesses with respect to GPD's revenue management function. This was exemplified in the Department's failure to effect the 20 per cent or cost of living increase revision when due, which was in fact effected two years later. At the time of reporting, the revisions in ground rent payable were not automated and the Department was therefore reliant on the manual transfer of physical files and a rudimentary system of reminders. Further prioritisation and investment in the automation of revisions to ground rent as well as other contractual provisions should be actively considered by GPD.

**4.7.4** The NAO maintains reservations regarding the VAT Department's interpretation of the provisions stipulated in Article 11 of Annex A of Subsidiary Legislation 406.18, particularly with respect to the application of the 30 November 2013 deadline for allowing registered persons to qualify for remittance under the Remittance of Interest



and Administrative Penalties incurred under the VAT Act Scheme. This Office considers the provisions stipulated in Article 11 as ambiguous, as a VAT registered person may be considered as qualifying for the Scheme when submitting the relevant application form, or equally so, when approval by the Commissioner is granted. Finally, the possibility of applying the least favourable rate of remittance (50 per cent) in cases that extend beyond the 30 November 2013 deadline should be considered by the VAT Department.

- 4.7.5 The NAO considers Dr Filletti and Dr Mangion's involvement in this matter as somewhat ambiguous, despite Camilleri's claims that the latter had provided assistance in terms of contract-related legalities and the former withdrawing in view of his conflict of interest. Information gathered by this Office regarding Dr Filletti's involvement was conflicting. The DGs GPD and Camilleri stated that Dr Filletti withdrew from the process in view of possible conflict of interest concerns, yet the NAO noted instances where Dr Filletti was in fact involved, even at what could be considered as an advanced stage of the reacquisition. On the other hand, the only evidence reviewed in relation to the Dr Mangion's role was his request for payment dated two days prior to the signing of the contract. Furthermore, this Office fails to understand why the €20,000 payment to Dr Mangion was included as part of the agreement and not settled privately by CE.
- 4.7.6 According to the VAT Regulations dealing with adjustments relating to input tax on capital goods, if VAT had been paid on improvements to immovable property and such VAT had been claimed as input tax, a claw back of such input tax would arise if the property was sold before the lapse of twenty years from the year the improvements were made. Under such circumstances, the input VAT paid would be clawed back on a pro rata basis. The NAO estimated that the VAT Department should have clawed back an approximate €60,000 in tax, with €57,000 arising in relation to immovable property improvements and €3,000 with respect to moveable capital goods. It must be emphasised that this Office did not seek to establish with absolute precision the magnitude of the VAT claw back due, particularly in view of the limited data available, yet solely undertook this analysis to highlight the necessity for possible further action by the VAT Department.

## 4.8 Overall Conclusion

- 4.8.1 The NAO maintains notable reservations regarding the manner by which this reacquisition was made. Although the amount paid by Government reflects a fair market value, this does not necessarily imply that value for money was achieved. The lack of rigorous and documented consideration of other options and the failure to properly evaluate such alternative courses of action constrains the Office in determining whether value for money was achieved. One such alternative was the follow-through of legal action, which Government failed to pursue. This resulted in the eventual withdrawal of legal proceedings without clear justification or documentation, which action detracted from the required level of transparency expected in such a decision. This must be seen within a context where the tenant, CE, was in breach of the lease agreement with Government, as the three-year threshold in ground rent payments had been exceeded when negotiations commenced. Poor governance was a factor central to this shortcoming, with Government's negotiating team failing to appropriately involve GPD from the initial stages of negotiations. Finally, the NAO established that the payment of €210,000 to M&A Investments was an intermediary payment, that is, a brokerage fee or commission, equivalent to five per cent of the transfer value of €4,200,000. Aside from this payment, no evidence of other commissions being paid out of public funds was found.





# Appendices

## Appendix A – PAC request for investigation

KAMRA TAD-DEPUTATI



HOUSE OF REPRESENTATIVES

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

Illum, 19 ta' Awwissu 2014

Sur Awditur Ġenerali,

Numru ta' rapporti fil-media lokali, b'mod speċjali fil-*Maltatoday*, fl-aħhar xhur żvelaw kif il-Gvern, proprju f'it wara l-elezzjoni ġenerali tal-2013, hallas €4.2 miljun biex xtara u akkwista lura l-*utile dominium* tal-enfitewsi li hu stess kien ikkonċeda fl-1998 lil Cities Entertainment Ltd għall-*Cafe Premier* fil-Belt Valletta.

Ġie stabbilit ukoll li l-Gvern preżenti, eżatt wara l-elezzjoni fl-2013, waqqaf il-proċeduri fil-Qorti li l-Gvern preċedenti kien fetaħ fl-2012 kontra din il-kumpanija Cities Entertainment Ltd għal hlas ta' arretrati ta' ċnus lid-Dipartiment tal-Artijiet, li l-ammont tiegħu kien ta' aktar minn €300,000.

Minbarra dan, hu issa fatt magħruf li mill-€4.2 miljun li din il-kumpanija rċeviet mingħand il-Gvern, biex il-Gvern ha lura dak li hu tiegħu, kien hemm mijiet kbar ta' eluf ta' ewro li l-kumpanija, li kienet debitorici u moruża fil-pagamenti, kellha tħallas lil diversi Dipartimenti tal-Gvern, fosthom f'taxxi u kontijiet mhux imħallsa minnha stess. Biss biss, din il-kumpanija kellha djun ta' €131,000 mal-ARMS, €192,748 f'arretrati ta' taxxi u sigurtà soċjali, u aktar minn €227,000 dovuti lid-Dipartiment tal-VAT.

Kieku l-Gvern ġenwinament ried jakkwista dan il-fond immobbli fil-Belt Valletta, seta' faċilment għamel kawża fil-Qorti għar-rexissjoni tal-kuntratt enfitewtiku u jhalli għaddejjin il-proċeduri diġa' mibdija għal hlas ta' arretrati dovuti. B'hekk, il-Gvern kien jiffranka €4.2 miljun lill-erarju pubbliku.

Ahna hawn taht iffirmati għan-nom tal-Oppożizzjoni, għalhekk, nitolbuk tinvestiga bis-shiħ il-fatti relatati ma' dan il-hlas ta' €4.2 miljun mill-Gvern lill-kumpanija privata li kienet diġa' debitorici tiegħu f'ammonti kbar ta' flus, u tiggudika jekk :



- a) dan l-aġir jammontax għal *value for money* ta' flus il-poplu;
- b) jekk il-prinċipji ta' *good governance* u trasparenza ġewx segwiti;
- c) il-ħlas li seta' sar fil-mori tal-akkwist ta' dan iċ-ċens temporanju kienx etiku;
- d) f'din il-kwistjoni, ġewx segwiti l-proċeduri finanzjarji tal-Gvern;
- e) il-proċedura eżata mill-Gvern hijiex diskriminatorja u tistax tesponi l-erarju pubbliku għal talbiet simili fil-futur, peress li issa inkwilini u/jew enfitwenti ta' proprjetà pubblika li jkunu morużi fil-ħlas dovut lill-Gvern u lill-kredituri kummerċjali oħra, jistennew li l-Gvern isalvahom b'*bail out* kif effettivament ġara f'dan il-każ.

Nitolbuk ukoll tistabilixxi min kienu l-intermedjarji kollha li intervjenew, direttament jew indirettament, bejn il-Gvern u l-kumpanija Cities Entertainment Ltd., kif ukoll sabiex tippreżenta kronoloġija dettaljata tal-fatti relatati u in kwistjoni, tippreżenta d-dokumenti kollha li wasslu għal din id-deċiżjoni tal-Gvern u biex tindika min eżattament kien responsabbli biex ittiegħdet id-deċiżjoni, u meta, li l-Gvern jixtru lura għal €4.2 miljun l-enfitewsi temporanju ta' kumpanija li kienet debitorja f'ammonti hekk kbar ta' flus kemm mal-Gvern kif ukoll ma' terzi.

Insellu għalik,



On. Jason Azzopardi



On. Tonio Fenech



On. Claudio Grech



On. Kristy Debono

## Appendix B – Ground rent ledger records as maintained by GPD (060536 and H060536)

**DIPARTIMENT PROPRIETÀ TAL-GVERN**  
 Berġa tal-Baviera, Valletta VLT 2000  
 Email: [customercare.gpd@gov.mt](mailto:customercare.gpd@gov.mt)  
 Tel: (+356) 2295 3000



**GOVERNMENT PROPERTY DEPARTMENT**  
 Auberge de Bavière, Valletta VLT 2000  
 Email: [customercare.gpd@gov.mt](mailto:customercare.gpd@gov.mt)  
 Tel: (+356) 2295 3000

### Lista tat-Transazzjonijiet / Ledger History

Numru tal-ID / ID Number      C0016222

Proprietà / Property

060536

**Cities Entertainment Limited**  
**Great Siege Of Malta**  
**Cafe Premier Complex**  
**Republic Str, Valletta**  
**Malta**

#### Dettalji tal-Proprietà / Property Details

Cafe Premier 33-35  
 Triq It-Tezorerija  
 40-42old Theatre Str, Valletta  
 Malta

Data Date	Tip Type	Numru Number	Dettalji Details	Debiti Debits	Kreditu Credits	Bilanc Balance
28/04/1998	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 00470300	46587.47		46587.47
29/04/1998	Rcevuta/Receipt		FROM: 23/04/1998 TO: 22/04/1999		46587.47	0.00
09/04/1999	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/1999 TO: 22/04/2000	46587.47		46587.47
02/06/1999	Rcevuta/Receipt		FROM: 23/04/1999 TO: 22/04/2000		46587.47	0.00
04/10/1999	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 00576646	24458.41		24458.41
05/10/1999	Rcevuta/Receipt				24458.41	0.00
05/04/2000	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2000 TO: 22/04/2001	46587.47		46587.47
27/12/2000	Rcevuta/Receipt		FROM: 23/04/2000 TO: 22/04/2001		46587.47	0.00
11/04/2001	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2001 TO: 22/04/2002	46587.47		46587.47
19/04/2001	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 00674035	23293.73		69881.20
17/01/2002	Rcevuta/Receipt				6988.12	62893.08
15/04/2002	Rcevuta/Receipt				6988.12	55904.96
15/04/2002	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2002 TO: 22/04/2003	58234.33		114139.29
18/07/2002	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 00748755	11646.87		125786.16
06/02/2003	Rcevuta/Receipt				1164.69	124621.47
15/04/2003	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2003 TO: 22/04/2004	69881.21		194502.68
07/05/2003	Rcevuta/Receipt				1164.69	193337.99
12/06/2003	Rcevuta/Receipt				9475.88	183862.11
12/06/2003	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 00794303	9475.88		193337.99
03/07/2003	Rcevuta/Receipt				2329.37	191008.62
25/07/2003	Rcevuta/Receipt				2329.37	188679.25
23/09/2003	Rcevuta/Receipt				2329.38	186349.87
15/10/2003	Rcevuta/Receipt				1164.69	185185.18
22/01/2004	Rcevuta/Receipt				1164.69	184020.49
02/02/2004	Rcevuta/Receipt				2329.36	181691.13
15/04/2004	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2004 TO: 22/04/2005	69881.20		251572.33
07/05/2004	Rcevuta/Receipt				2329.37	249242.96
24/05/2004	Rcevuta/Receipt				4658.76	244584.20
04/06/2004	Rcevuta/Receipt				2329.37	242254.83
17/06/2004	Rcevuta/Receipt				2329.37	239925.46
30/06/2004	Rcevuta/Receipt				2329.37	237596.09
14/07/2004	Rcevuta/Receipt				2329.38	235266.71
16/07/2004	Rcevuta/Receipt				2329.37	232937.34
30/07/2004	Rcevuta/Receipt				2911.72	230025.62
02/08/2004	Rcevuta/Receipt				2329.37	227696.25
23/08/2004	Rcevuta/Receipt				4658.75	223037.50
25/08/2004	Rcevuta/Receipt				2329.37	220708.13

File No.      339/63/IV

Date Printed    08/10/2014

Report Date    08/10/2014

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**Lista tat-Transazzjonijiet / Ledger History**

Numru tal-ID / ID Number C0016222 Proprietà / Property 060536

Data Date	Tip Type	Numru Number	Detalji Details	Debiti Debits	Kreditri Credits	Bilanc Balance
03/09/2004	Rcevuta/Receipt				2329.37	218378.76
22/09/2004	Rcevuta/Receipt				4658.76	213720.00
12/10/2004	Rcevuta/Receipt				2329.36	211390.64
21/10/2004	Rcevuta/Receipt				2329.38	209061.26
29/10/2004	Rcevuta/Receipt				2329.37	206731.89
09/11/2004	Rcevuta/Receipt				2329.37	204402.52
02/12/2004	Rcevuta/Receipt				2329.38	202073.14
09/12/2004	Rcevuta/Receipt				2329.37	199743.77
23/12/2004	Rcevuta/Receipt				2329.37	197414.40
29/12/2004	Rcevuta/Receipt				2329.38	195085.02
18/01/2005	Rcevuta/Receipt				2329.37	192755.65
28/01/2005	Rcevuta/Receipt				2329.37	190426.28
01/02/2005	Rcevuta/Receipt				2329.38	188096.90
14/02/2005	Rcevuta/Receipt				2329.37	185767.53
24/02/2005	Rcevuta/Receipt				2329.37	183438.16
04/03/2005	Rcevuta/Receipt				2329.38	181108.78
15/03/2005	Rcevuta/Receipt				2329.37	178779.41
08/04/2005	Rcevuta/Receipt				2329.37	176450.04
14/04/2005	Rcevuta/Receipt				2329.37	174120.67
14/04/2005	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2005 TO: 22/04/2006	69881.19		244001.86
22/04/2005	Rcevuta/Receipt				116.47	243885.39
25/04/2005	Rcevuta/Receipt				2329.37	241556.02
29/04/2005	Rcevuta/Receipt				2329.37	239226.65
13/05/2005	Rcevuta/Receipt				2329.37	236897.28
18/05/2005	Rcevuta/Receipt				2329.38	234567.90
31/05/2005	Rcevuta/Receipt				3494.06	231073.84
13/06/2005	Rcevuta/Receipt				2329.37	228744.47
23/06/2005	Rcevuta/Receipt				2329.37	226415.10
04/07/2005	Rcevuta/Receipt				2329.38	224085.72
06/07/2005	Rcevuta/Receipt				4658.75	219426.97
22/07/2005	Rcevuta/Receipt				2329.37	217097.60
28/07/2005	Rcevuta/Receipt				2329.37	214768.23
05/08/2005	Rcevuta/Receipt				4658.75	210109.48
23/08/2005	Rcevuta/Receipt				4658.75	205450.73
30/08/2005	Rcevuta/Receipt				2329.37	203121.36
12/09/2005	Rcevuta/Receipt				2329.37	200791.99
16/09/2005	Rcevuta/Receipt				2329.38	198462.61
22/09/2005	Rcevuta/Receipt				2329.37	196133.24
24/10/2005	Rcevuta/Receipt				4658.75	191474.49
31/10/2005	Rcevuta/Receipt				2329.37	189145.12
16/11/2005	Rcevuta/Receipt				2329.37	186815.75
29/11/2005	Rcevuta/Receipt				2329.38	184486.37
07/12/2005	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 00954982	23293.74		207780.11
15/12/2005	Rcevuta/Receipt				2329.37	205450.74
28/12/2005	Rcevuta/Receipt				2329.37	203121.37
11/01/2006	Rcevuta/Receipt				2329.38	200791.99
31/01/2006	Rcevuta/Receipt				2329.37	198462.62
21/03/2006	Rcevuta/Receipt				13976.24	184486.38





**Lista tat-Transazzjonijiet / Ledger History**

Numru tal-ID / ID Number C0016222 Proprietà / Property 060536

Data Date	Tip Type	Numru Number	Detalji Details	Debiti Debits	Kreditu Credits	Bilanc Balance
11/04/2006	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2006 TO: 22/04/2007	81528.06		266014.44
15/06/2006	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 00983993	11670.16		277684.60
08/08/2006	Rcevuta/Receipt				23293.73	254390.87
11/09/2006	Rcevuta/Receipt				11646.87	242744.00
04/10/2006	Rcevuta/Receipt				11646.87	231097.13
30/10/2006	Rcevuta/Receipt				11646.86	219450.27
05/12/2006	Rcevuta/Receipt				46587.47	172862.80
29/12/2006	Rcevuta/Receipt				11646.87	161215.93
31/01/2007	Rcevuta/Receipt				11646.87	149569.06
01/03/2007	Rcevuta/Receipt				11646.86	137922.20
03/04/2007	Rcevuta/Receipt				11646.87	126275.33
11/04/2007	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2007 TO: 22/04/2008	93198.23		219473.56
03/05/2007	Rcevuta/Receipt				11646.87	207826.69
08/06/2007	Rcevuta/Receipt				16305.61	191521.08
20/07/2007	Rcevuta/Receipt				12636.85	178884.23
14/11/2007	Rcevuta/Receipt				16305.61	162578.62
06/03/2008	Rcevuta/Receipt				17215.47	145363.15
14/04/2008	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2008 TO: 22/04/2009	93198.23		238561.38
04/06/2008	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 01112571	12636.85		251198.23
05/06/2008	Rcevuta/Receipt				12636.85	238561.38
05/06/2008	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 01112577	12636.85		251198.23
06/08/2008	Rcevuta/Receipt				4495.77	246702.46
06/08/2008	Rcevuta/Receipt				10000.00	236702.46
17/09/2008	Rcevuta/Receipt				20000.00	216702.46
28/10/2008	Rcevuta/Receipt				20000.00	196702.46
14/04/2009	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2009 TO: 22/04/2010	93198.23		289900.69
10/09/2009	Rcevuta/Receipt				6556.75	283343.94
11/09/2009	Rcevuta/Receipt				6556.75	276787.19
14/09/2009	Rcevuta/Receipt				6556.75	270230.44
07/10/2009	Rcevuta/Receipt				82014.44	188216.00
15/10/2009	Rcevuta/Receipt				6556.75	181659.25
11/11/2009	Rcevuta/Receipt				11183.79	170475.46
30/12/2009	Rcevuta/Receipt				6556.75	163918.71
22/01/2010	Rcevuta/Receipt				6473.00	157445.71
23/02/2010	Rcevuta/Receipt				6556.75	150888.96
24/02/2010	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 01228783	31.45		150920.41
05/04/2010	Rcevuta/Receipt				6556.75	144363.66
15/04/2010	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2010 TO: 22/04/2011	93198.23		237561.89
20/04/2010	Rcevuta/Receipt				6556.75	231005.14
03/05/2010	Rcevuta/Receipt				7766.52	223238.62
17/05/2010	Rcevuta/Receipt				6556.75	216681.87
26/05/2010	AGG/ADJ CRD		Credit Adjustment: LMS Invoice No: 01242143		131250.16	85431.71
02/06/2010	Rcevuta/Receipt				7766.52	77665.19
05/07/2010	Rcevuta/Receipt				7766.52	69898.67
30/08/2010	Rcevuta/Receipt				14323.27	55575.40





**Lista tat-Transazzjonijiet / Ledger History**

Numru tal-ID / ID Number C0016222

Proprietà / Property

060536

Data Date	Tip Type	Numru Number	Dettalji Details	Debiti Debits	Kreditri Credits	Bilanc Balance
10/09/2010	Rcevuta/Receipt				7766.52	47808.88
13/09/2010	Rcevuta/Receipt				6556.75	41252.13
04/11/2010	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 01278961	6556.75		47808.88
04/11/2010	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 01278958	6556.75		54365.63
28/03/2011	Kont/Invoice		Kera Kummercjali / Commercial Rent - FROM: 23/04/2011 TO: 22/04/2012	93198.23		147563.86
14/04/2011	Rcevuta/Receipt				15533.04	132030.82
24/05/2011	Rcevuta/Receipt				14323.27	117707.55
21/06/2011	Rcevuta/Receipt	545	343124 Banif -		6556.75	111150.80
21/06/2011	Rcevuta/Receipt	557	343123 Banif -		7766.52	103384.28
25/07/2011	Rcevuta/Receipt	2818	343208 Banif -		15533.04	87851.24
14/10/2011	Rcevuta/Receipt	18194	416253 Banif -		7766.52	80084.72
18/11/2011	Rcevuta/Receipt	23615	437942 Banif -		7766.52	72318.20
19/01/2012	Rcevuta/Receipt	32806	486866 Banif -		7766.52	64551.68
27/04/2012	Kont/Invoice	644984	Kera Kummercjali / Commercial Rent - FROM: 23/04/2012 TO: 22/04/2013	93198.23		157749.91
17/08/2012	Rcevuta/Receipt	54821	001504 BOV -		5000.00	152749.91
08/01/2013	Kont/Invoice	958749	Legal Fee	41.92		152791.83
08/01/2013	Kont/Invoice	958749	Legal Fee	41.92		152833.75
22/02/2013	Rcevuta/Receipt	81802	000124 BOV -		4650.00	148183.75
18/03/2013	Rcevuta/Receipt	82817	003351 HSBC -		4650.00	143533.75
23/04/2013	Kont/Invoice	1050003	Kera Kummercjali / Commercial Rent - FROM: 23/04/2013 TO: 22/04/2014	93198.23		236731.98
10/05/2013	Rcevuta/Receipt	88919	009011 HSBC -		4650.00	232081.98
18/11/2013	Kont/Invoice	1241025	Kera Kummercjali / Commercial Rent - FROM: 23/04/2011 TO: 22/04/2014	55918.95		288000.93
02/04/2014	Kont/Invoice	1264368	Kera Kummercjali / Commercial Rent - FROM: 23/04/2014 TO: 22/04/2015	111837.88		399838.81
17/07/2014	Rcevuta/Receipt	562505	FROM: 23/04/2011 TO: 22/04/2014		223655.85	176182.96
17/07/2014	Hlas/Payment		Credit: account was closed on 24/09/2013		64345.08	111837.88
17/07/2014	Hlas/Payment		Credit		111837.88	0.00



**Lista tat-Transazzjonijiet / Ledger History**

Numru tal-ID / ID Number C0016222

Proprietà / Property H060536

**Cities Entertainment Limited**  
**Great Siege Of Malta**  
**Cafe Premier Complex**  
**Republic Str, Valletta**  
**Malta**

**Detalji tal-Proprietà / Property Details**

Premises 33,34,35  
 Old Treasury Str  
 Valletta  
 Malta

Data Date	Tip Type	Numru Number	Detalji Details	Debiti Debits	Kreditu Credits	Bilanc Balance
26/05/2010	AGG/ADJ DEB		Debit Adjustment: LMS Invoice No: 01242140	137806.91		137806.91
26/05/2010	AGG/ADJ CRD		Credit Adjustment: LMS Invoice No: 01242141		6556.75	131250.16
06/07/2010	Rcevuta/Receipt				6556.75	124693.41
04/11/2010	Rcevuta/Receipt				6556.75	118136.66
04/11/2010	Rcevuta/Receipt				6556.75	111579.91
14/04/2011	Rcevuta/Receipt				13113.50	98466.41
30/09/2011	Rcevuta/Receipt	17371	401291 Banif -		13113.50	85352.91
18/11/2011	Rcevuta/Receipt	23616	437943 Banif -		6556.75	78796.16
14/11/2012	Rcevuta/Receipt	70487	001849 BOV -		10333.04	68463.12
22/02/2013	Rcevuta/Receipt	81801	000124 BOV -		4650.00	63813.12
18/03/2013	Rcevuta/Receipt	82818	003351 HSBC -		4650.00	59163.12
17/07/2014	Rcevuta/Receipt	562504	FROM: 22/11/2008 TO: 22/04/2010		59163.12	0.00

## Appendix C – Valuation report prepared by Architect GPD

UFFIĊĊJU TAL-PRIM MINISTRU  
Dipartiment Proprietà tal-Gvern  
DIRETTORAT GHAT-TMEXXUJA TAL-PROPRJETA'



OFFICE OF THE PRIME MINISTER  
Government Property Department  
ESTATE MANAGEMENT DIRECTORATE

Office ref: dm13176

Address of Property: Café Premier,  
33–35, Old Treasury Street and  
nos. 40–42, Old Theatre Street, Valletta.

Purpose of Valuation: Valuation Purposes  
Date of Inspection: 03<sup>rd</sup> June 2013  
Tenure/Possession: Commercial  
Temporary Emphyteusis: €130,050 p.a.  
(Expiry date of emphyteusis on 23.04.2063)

### Brief

To assess the value of the remaining 50 years utile dominium burdening property known as Café Premier consisting of properties nos. 33, 34 and 35 Old Treasury Street and nos. 40, 41 and 42, Old Theatre Street, Valletta.

### Basis of Valuation

For the purpose of this report the following definition of market value is adopted:

*"The estimated amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after property marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."* (European Value Standard 6<sup>th</sup> edition, EVS:2009)

An opinion of the best price at which the sale of an interest in property would have been compelled unconditionally for cash consideration on the date of valuation assuming:

- A willing seller
- That prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of price and terms and conditions of the sale.

The Government Property Department is made up of the following directorates - :

Directorate General	Finance & Administration Directorate	Land Directorate	Estate Management Directorate	Joint Office
Auberge de Bavière, Valletta VLT 2000 Tel. 22953000 Fax. 21234925	Auberge de Bavière, Valletta VLT 2000 Tel. 22953000	Auberge de Bavière, Valletta VLT 2000 Tel. 22953000 Fax. 21237970	Auberge de Bavière, Valletta VLT 2000 Tel. 22953000	Auberge de Bavière, Valletta VLT 2000 Tel. 22953000 Fax. 22953469

Correspondence address for all directorates: AUBERGE DE BAVIÈRE, VALLETTA VLT 2000

Electronic mail to be referred to: [customercare.gpd@gov.mt](mailto:customercare.gpd@gov.mt)

For information and services please visit our Website at: <http://www.gpd.gov.mt>

- That the state of the market, level of values and other circumstances were, on an earlier assumed date of exchange of contracts, the same as on the date of valuation.
- That no account was taken of any additional bid by a purchaser with a special interest.

The assumptions refer to the fact that certain types of property designed or adopted for particular uses, invariably change hands in the open market at prices based directly on trading potential for a strictly limited use.

### **Methodology**

There are five (5) standard methodologies for the evaluation of land and property. These are methods based on comparison, profits, residual, contractor's method and investment method. In the absence of any financial accounts of the operating business, it was deemed suitable to use the comparison method for the purpose of this report.

### **Valuation**

The following estimate of market value is based on the following characteristics:

- The internal layout of the property in question is shown on LD plans 96/97 and 96<sup>A</sup>/97 attached to deed dated 23<sup>rd</sup> April 1998 in the records of Not. Vincent Miceli;
- The weighted area of the property in question was calculated as being 704.5m<sup>2</sup> (vide attached appendix 01);
- The property forms part of the historical and unique National Bibliotheca building;
- The exposure of the premises onto Misrah ir-Repubblika aka *Pjazza Regina* (vide attached site plan doc 02);
- Local plan and level of protection (Grade 1) limitations;
- Fixtures and fittings within the property related to the nature of the operation;
- The applicable rate of €500/m<sup>2</sup> p.a. is the standard rate used by the Department under the present Valletta Commercial Scheme.

### **Repair and Condition**

The property is in a good state of repair and there are no structural deficiencies/cracks which could be determined by a visual inspection. The property is also in accordance with sanitary laws.

### **Planning History**

Only one (1) MEPA planning permit was traced from the official MEPA website:

PA 00377/07\_*To sanction existing plans; to carry out minor internal alterations consisting of altered staircase and wc's and insertion of skylight at ground floor.* Permit was granted in October 2007

### **General Considerations**

- I have made no allowance for the balance of any outstanding loans or other charges which may exist, either in respect to capital or interest thereon.
- No allowances have been made in my valuation for any expenses of purchase or realization.
- Valuations stated within this report are exclusive of any VAT liability which may be incurred in development or disposal.
- Valuation reflects only that goodwill which is transferable. It excludes goodwill which attaches to personal reputations and qualities.

In the event of a future change in the trading potential, the open market value of the existing use could vary.

### **Valuations Considerations**

After having considered the above-mentioned assumptions, including the fact that the property adheres to MEPA policies, Local Plan issues and sanitary regulations and taking also into account all other relevant factors which may bear an influence on the market value of the property in question, I assess a fair and reasonable estimate of the remaining 50 years utile dominium burdening the property under reference in the range of:

**Four Million Four Hundred Thousand Euro and Four Million Five Hundred Thousand Euro (€4.4m - €4.5m)<sup>1</sup>**

Note should be taken of the fact that the valuation was based on the prevailing rate applicable under the Valletta Commercial Scheme issued by the Government Property Department and a projection as to the demand for properties of the same characteristics in the vicinity.

**Confidentiality**

This report is being submitted solely for the internal use of the Government Property Department and I accept no liability for its use by any third party. Neither the whole nor any part of this report, nor any reference thereto, may be included in any published document, circular or statement nor published in any way without the prior written approval of the form and context in which it may appear.

redacted

Senior Architect & Civil Engineer  
Government Property Department

Attachments: Appendices 1, 2, 3 & 3A  
Four (4) photos showing internal views of property

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<sup>1</sup> Vide appendices 3 & 3A



Appendix 01

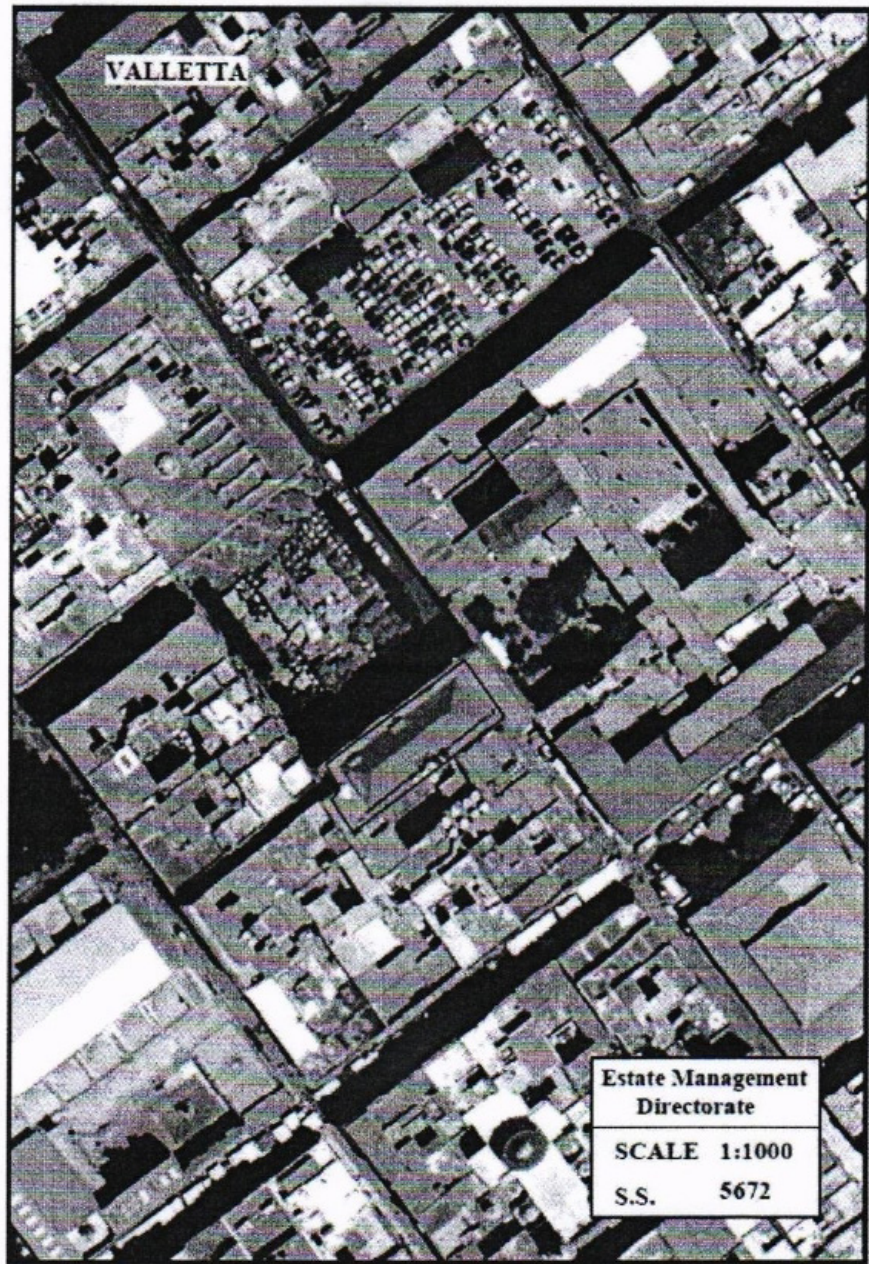
Level	Actual Area			Equivalent		Weighted Area
Basement	483m <sup>2</sup>			0.5 Prime	=	241.5m <sup>2</sup>
Ground Floor	650m <sup>2</sup>					
Ground Floor Zones	A	150	m <sup>2</sup>	Prime	=	150m <sup>2</sup>
	B	130	m <sup>2</sup>	0.75 Prime	=	97.5m <sup>2</sup>
	C	370	m <sup>2</sup>	0.5 Prime	=	185m <sup>2</sup>
Mezzanine level	61m <sup>2</sup>			0.5 Prime	=	30.5m <sup>2</sup>
				Weighted Area	=	<b>704.5m<sup>2</sup></b>

Notes:

- Ground floor area: 651m<sup>2</sup>; Mezzanine level: 61m<sup>2</sup>; Basement level: 483m<sup>2</sup>
- The first 7m in depth considered as prime area; the next 7m considered as 0.75Prime, whereas the remaining area at ground floor level is taken as 0.5Prime.
- Basement and Mezzanine levels are taken as 0.5Prime



Appendix 02



### Appendix 03 - Valuation Methodology

Lm40,010 p.a. = €93,198 ie. €93,200 p.a. (in 1998)

Rate of inflation in 1998 was set at 580.61, whereas the latest official Rate of Inflation issued in 2012 stood at 810.16

Revising €93,200 p.a. according to the latest rate of inflation published, works out to be approx. €130,050 p.a.

Considering a reasonable rate at €500/m<sup>2</sup> (as per present Departmental Valletta Commercial Scheme)

and capitalized rate at 5.5%

$500 \times 704.5 @ 5.50\% = €6.4m$

The present freehold value of the premises in question is therefore in the range of €6.4.

And hence the value of UD (vide attached excel sheet) works out to be in the range of: €4.4m - €4.5m

Appendix 3A \_Calculation of DD and UD

<p><b>Mathematical formula:</b></p>	<p><math>DD = \frac{(1.025^n F + En)}{(1+i)^n}</math> where</p> <p>DD = Directum Dominium;  n = number of years up till end of contract;  F = site freehold value without any building;  E = yearly emphyteusis;  i = interest rate</p>
<p><b>Computation:</b></p>	<p>n = 50 years.  F = Thirty Thousand Euro (€6,400,000);  E = Fifty Eight euro cents (€130,050).  i = 5.5%</p> <p><math>DD = \frac{(1.025^n F + En)}{(1+i)^n}</math></p> <p><math>= \frac{[1.025^{32.5}(30,000) + (0.58 \times 32.5)]}{(1+0.055)^{32.5}}</math></p> <p>= €11750.51</p> <p><b>DD = €1,959,845</b> (<i>One Million Nine Hundred Fifty Nine Thousand Eight Hundred and Forty Five Euro</i>)</p>

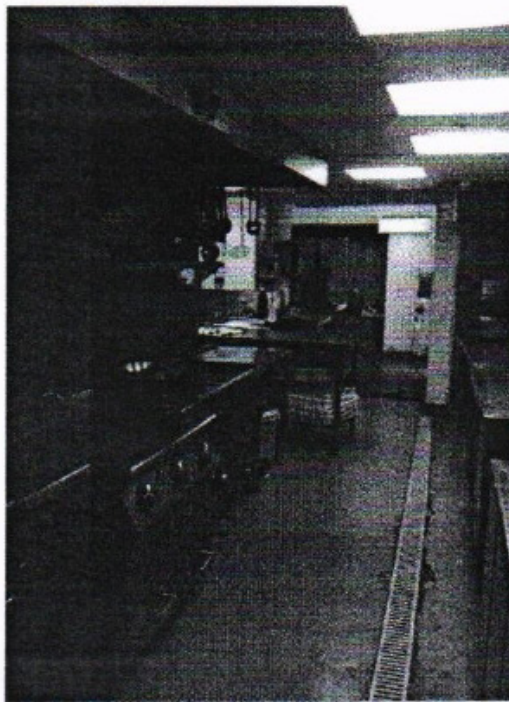
Site freehold value without any building:	<b>F</b>	6400000
Interest Rate:	<b>i</b>	0.055
Yearly Emphyteusis:	<b>E</b>	130,050
Number of Years up till end of contract:	<b>n</b>	50
Rate of Inflation:		1.025
<b>Redemption Price: DD</b>		<b>1959845</b>

UD: €4,440,155





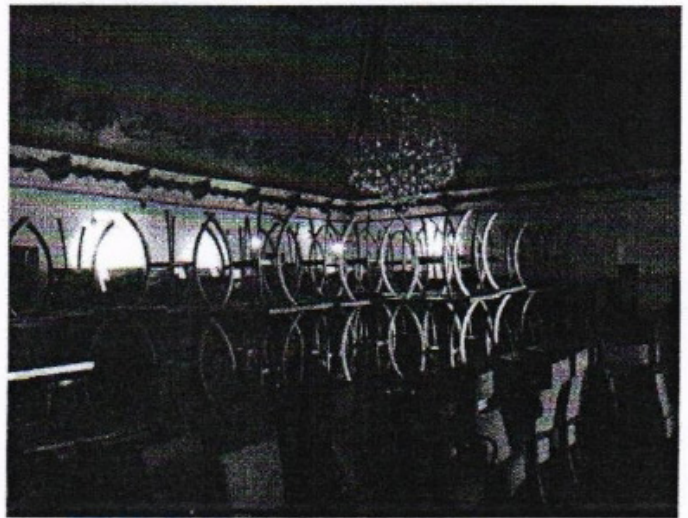
**Photo 01: Internal view of cafeteria**



**Photo 02: View of restaurant kitchen**



Photo 03: Internal view of restaurant area



04: Restaurant Area

Appendix D– Correspondence indicating Government’s acceptance of CE’s offer

Gmail - Cafe Premier

Page 1 of 1



**Cafe Premier**

Joseph Muscat: redacted

Wed, Aug 7, 2013 at 1:08 PM

To: Keith Schembri

redacted

Cc: Cutajar Mario at OPM

redacted

Advisor OPM

redacted

Ok - mario ara mall finanzi biex naghtu go ahead etc

From: **Advisor OPM** redacted  
Subject: Re: Cafe Premier  
Date: 24 September 2013 18:19:10 BST  
To: Mark Camilleri redacted  
Cc: Mario G Camilleri redacted, Joseph Muscat redacted  
Schembri Keith redacted  
Cutajar Mario redacted

Dear Mr. Camilleri,

I have been directed to inform you that Government has accepted your offer of the 5th August 2013. Government Property Department has been instructed to draw up the relative deed, and officials from this Department will be in contact with you re the matter.

Regards

**Advisor OPM**

On Mon, Aug 5, 2013 at 9:06 PM, Mark Camilleri redacted wrote:

Dear **Advisor OPM**

Further to your email below and subsequent discussions, I am detailing below what I believe could be a scenario which should work for both parties. I hope it meets with approval.

We propose a Gross sale price of €4.2M. I have taken the liberty of charting the payment structure below, in anticipation of us reaching an agreement.

**Sale Price:**

Gross Sale Price	€4,200,000
Less 12% tax	€504,000
<b><u>Net Sale Price</u></b>	<b>€3,696,000</b>

**Cash Flow:**

Govt Set off Amount	€1,249,000
Residual Amount	€2,951,000
On signing	€590,200
6 months	€590,200



12 months	€590,200
18 months	€590,200
24 months	€590,200

Other terms to remain as per my earlier emails.

Please feel free to contact me with your comments and feedback

Best Regards

Mark Camilleri

## Appendix E – Cabinet memorandum

### CABINET MEMORANDUM

TO: Cabinet  
FROM: Cabinet Secretary  
SUBJECT: Cafe' Premier, Valletta  
DATE: 10 September 2013

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#### Background

On the 23<sup>rd</sup> April 1998, Government of Malta granted on temporary emphyteusis to Cities Entertainment Ltd, the premises in Valletta k/a Café Premier accessible from 33, 34, and 35 Old Treasury Street, as well as the three shops numbered 40, 41, & 42 Old Theatre Street, for a period of 65 years at an annual emphyteutical rent of €93,174.94 [LM40,000] which was administratively reduced for the first eight years. The Deed states that premises were to be used primarily for commercial activities of a cultural nature and ancillaries. In fact the basement accessible from 35 Old Treasury was converted into a state of the art tourist attraction based on the Great Siege of 1565, whilst the ground floor was renovated and furnished to serve in part as a cafeteria, in part as a restaurant, and in part as a fully equipped kitchen. Even though at the time, the installation of a kitchen was debated in view of the danger this could pose to the National Library located right above it, it was decided not to contest this use.

Cities Entertainment Ltd, owners of the emphyteutical lease have run into financial difficulties over the last years, resulting in the closure of the whole premises five months ago. Government Property Department, the VAT Department, the Social Security Department, and ARMS Ltd are all owed substantial sums of euros, amounting to €689,984 as reported in June 2013 (NI arrears up to 2010).

#### Negotiations

After an approach by Cities Entertainment Ltd, Government took the initiative to start negotiations with a view to acquiring back the remaining utile dominium in order to be able to:

- remove once and for all the possible danger to the National Library described above;
- create vertical circulation to the National Library by having space to install a lift;
- solve the problem of arrears due to the various entities listed above; and

- generate income by redimensioning the available space and leasing out the various sections for commercial purposes, ascertaining that the business carried out therein will never pose danger to the National Library.

Cities Entertainment Ltd accepted to discuss this possibility with Government whilst continuing to negotiate the sale of the company with third parties. Their initial request of 5.37 million euros was based on the valuation that had been carried out at their request in 2009 by the architectural firm *Mangion, Mangion & Partners*. A government-appointed architect valued the utile dominium of remaining emphyteusis at 4.4 to 4.5 million euros in June 2013.

After various negotiations, Cities Entertainment Ltd have informed Government that they are prepared to sell the utile dominium remaining on the property in question for 4.2 million euros gross with a payment of €1,839,200 on signing of deed and the remaining €2,360,800 in four equal instalments spread at six-monthly intervals without interest. They are also prepared to bind themselves to pay all outstanding dues to the entities mentioned above as well as the 12% Final Withholding Tax (amounting to €504,000) on signing of the deed. Cities Entertainment Ltd are also stating that whilst they are prepared to leave all fixtures and fittings related to the running of the tourist attraction the Great Siege of Malta, they are not including in their offer the kitchen and restaurant related fixtures.

#### **Recommendation**

It is being recommended that Cabinet approves the transaction as described in the last paragraph of this memorandum and its objectives listed above in bullet form.

## Appendix F – CE Board Resolution dated 28 January 2014

### CITIES ENTERTAINMENT LTD BOARD RESOLUTION

At a meeting of the board of directors of the company held on Tuesday 28<sup>th</sup> January 2014 at the company's registered office in Valletta .

Attended by Mario Camilleri (MC) and Neville Curmi (NC) the 2 directors of the company, MC reported that negotiations had concluded with the Government (GoM) for the sale of the lease the company holds over its premises in Valletta known as Cafe Premier/Great Siege of Malta in Old Treasury Street Valletta.

The final agreed price is €4,200,000 (four million two hundred thousand euro), conditional as follows:

- €1,839,200 on contract
- €2,360,800 in 4 equal 6 monthly instalments of €590,200.
- The first instalment to be paid within 6 months from date of contract,
- The last instalment within 24 months of the contract.
- That all dues owed to the GoM of whatever nature are to be settled immediately upon the signing of the deed out of the initial payment, These would amount to euro €1382.121.54.
- Intermediary costs payable to M&A Investments related to the successful conclusion of the deal, equal to 5% of the sale value will be due upon contract and this will amount to €210,000.

The directors agreed unanimously to accept this deal on the above terms, and although there would be no tangible profit for the shareholders, the deal presented the company with the only viable option of repaying ALL the secured and ALL the unsecured creditors.

Thus the directors felt that they had now honoured their obligations to the full.

Both Directors held long discussions with the company bankers to secure their acceptance of the proposed repayment of the company debt of circa euro €2,051,030, and after much negotiation the bank agreed to the proposal provided certain securities remain in place, and meanwhile charge the company an interest payment of 5.5% per annum on any unpaid balance. The Bank shall appear on the deed with GoM to secure their interests appropriately.

It has been agreed that any residual funds which remain after the bank repayments as well as any funds generated through the sale of remaining assets, shall be utilised in their entirety to settle remaining company debts in the following order: Garnishee orders (about Eur 43,000.00), Unprivileged trade creditors (about Eur 410,000.00), Loans made to the company by the Curmi Companies (about Eur 370,000.00), in that order of merit, and finally other shareholder related loans on a 50/50% basis.

It is also agreed that even though the share register records a majority of shares held by the Camilleri companies as to 70/30%, the correct position of ownership of Cities Entertainment Ltd is that the Curmis and the Camilleris own Cities Entertainment Ltd on a 50/50 basis.







NAC/ac

9<sup>th</sup> December 2013

redacted  
 Banif Bank Malta  
 203, Level 2, Rue D'Argens,  
 Gzira, GZR 1368

Dear redacted ,

I refer to our brief conversation his morning wherein I outlined details of the deal we have available for the take over of the property owned by Cities Entertainment Ltd.

As requested I wish to confirm this in writing and outline specifically the details which we, both as directors of Cities Entertainment Ltd have been able to ascertain.

The purchaser is the Malta Government as you well know. This buyer is the best name in Malta. Therefore you are no longer dealing with Camilleri or Curmi, but a very assured source of repayment. We believe this must be taken into consideration when formulating your decision. Details of the deal are as follows:

1. Expected Structure of deal

<b>Selling Total</b>	€	€
		<b>4,200,000</b>
<b>Payment On Contract</b>	1,839,200	
<b>Instalments every 6 Months</b>	2,360,800	
<b>4 x 590,200</b>		<b>4,200,000</b>

2. How money on contract expected to be used: €1,839,200

<b>Payment On Contract</b>	€	€
		<b>1,839,200</b>
Tax @ 12%	504,000	
Lands Rent & Encroachments	307,347	
VAT inclusive of interest	250,000	
National Insurance inc interest	190,000	
Arms: Electricity	158,000	
Water	4,017	
Interest	1,853	

**Cities Entertainment Ltd.**  
 The Great Siege of Malta, Café Premier Complex, Republic Square, Republic Street, Valletta VLT 10, Malta.  
 Tel: (356) 2123 7574/2124 7300 Fax: (356) 2124 4986  
 E-mail: cities@maltanet.net website: http://cities.com.mt/great-siege



Notary	20,000	
VAT of Arms Court Fees	7,000	
Outstanding Salaries & Wages	1,500	
<b>Sub Total</b>		<b>1,443,717</b>
<b>Balance Carried Forward</b>		<b>395,483</b>
Garnishee creditors	45,000	
<b>Sub Total</b>		<b>350,483</b>

We are attaching a copy of the draft contract from which you will ascertain;

- The correct amount of the deal
- The actual name of the buyer
- The repayment programme so proposed

We can confirm that this deal has already been approved by the highest authority so it will be difficult for us to change/deviate from the offer and how it will be paid.

What we can discuss is the full repayment due to the bank which will be made over a period of 24 months (Short). Therefore payment is assured. One must also consider that we, as directors, have to manage the cost available to the best of our ability and in view of the proposed early repayment which is assured we are making the following proposal of repayment. This programme is formulated in such a way that will give the directors some spare cash with each repayment made. This cash is most essential and it is most necessary as this balance will help out in the difficult negotiations we shall be embarking on when discussing each and every payment.

Proposal for repayment:

Amount Due in EUR	2,000,000
On Contract First Installment	200,000
Within 6 Months	400,000
Second Installment	500,000
Third Installment	400,000
Fourth and Final Installment	500,000
<b>Total Payments</b>	<b>2,000,000</b>

Therefore full repayment will be made within 24 months of the contract. Moreover, in view of the situation which we know you appreciate and in view of the assured source and quick repayment we expect to receive some consideration about the payment of interest in the outstanding balance due to you over this 24 month period. We believe that

Cities Entertainment Ltd.

*Ryszard Jurek*  
The Great Siege of Malta, Café Premier Complex, Republic Square, Republic Street, Valletta VLT 10, Malta.

Tel: (356) 2123 7574/2124 7300 Fax: (356) 2124 4986

E-mail: cities@malta.net website: <http://cities.com.mt/great-siege>



because of the negotiations over what is really a debt in your recoveries section, and therefore considered bad or doubtful. Our proposal does not take into consideration that you will be charging any interest and trust that this is acceptable to you, especially now that full repayment is coming from an assured source and within a short period of time.

As you will be one of the main beneficiaries to the sale proceeds, you will, of course appear in the deed of sale where a privilege has been retained in your favour. Apart from all this of course, both our personal guarantees will be left on the line to be released when payment is received by you in full. A full summary of all payments is shown below.

Summary of payments

	€	€
Sale proceeds		4,200,000
Privileged creditors	1,443,717	
Bank	2,000,000	
Trade Creditors(inc garnisheed creditors)	428,000	
Commission on sale	210,000	
Balance left to pay unsecured creditors		118,283

We shall be pleased if you will consider this proposal with the urgency it demands as the buyers are eager to conclude as soon as possible and so are we.

Yours sincerely

  
Mario Camilleri

  
Neville Curmi

Cities Entertainment Ltd.

The Great Siege of Malta, Café Premier Complex, Republic Square, Republic Street, Valletta VLT 10, Malta.  
Tel: (356) 2123 7574/2124 7300 Fax: (356) 2124 4986  
E-mail: cities@malta.net website: <http://cities.com.mt/great-siege>



## Appendix H – 2014 agreement between Government and CE

Illum disgha u ghoxrin (29) ta' Jannar tas-sena elfejn u erbatax (2014)

Quddiem Nutar Dottor **redacted** Nutar Pubbliku fit-Taqsimha Proprjeta' tal-Gvern deheru personalment kif identifikaw ruhhom bid-dokumenti ufficjali taht imsemmija:

Mill-Ewwel Parti:

**redacted**, Kummissarju tal-Artijiet, **redacted**

li qieghed jidher fuq dan l-att fisem u in rapprezentanza tal-Gvern ta' Malta u tad-Dipartiment Proprjeta' tal-Gvern, u dan kif debitament awtorizzat skond Legal Notice numru erba' mija u tlieta u sittin (463) li dehret fil-Gazetta tal-Gvern tas-sitta (6) ta' Dicembru tas-sena elfejn u tlettax (2013) u Government Notice numru mija u wiehed (101) li dehret fil-Gazetta tal-Gvern tat-tmienja u ghoxrin (28) ta' Jannar tas-sena elfejn u erbatax (2014) u skond l-Att dwar l-Amministrazzjoni Pubblika, Kapitolu erba' mija sebgha u disghin (497) tal-Ligijiet ta' Malta; minn hawn il-quddiem maghruf bhala 'l-Gvern ta' Malta'. Il-karti relattivi ghal dan l-att huma mmarkati bhala Land numru tliet mija disgha u tletin zbarra tlieta u sittin Volum erbgha [ruman] ittra A (L.339.63.IV.A).

Mit-Tieni Parti:

Mario Camilleri, direttur, **redacted**

u Neville Curmi, direttur, **redacted**

li qieghdin jidhru fuq dan l-att fisem u in rapprezentanza tal-kumpanija Cities Entertainment Limited bin-numru ta' registrazzjoni C16222 [Indirizz: 34, The Great Siege of Malta, Cafe Premiere Complex, Republic Square, Republic Street, Valletta], u dan kif debitament awtorizzati permezz tal-memorandum u articles tal-kumpanija, minn hawn il-quddiem maghrufa bhala 'l-kumpanija venditrici'.

Mit-Tielet Parti:

L-Avukat Dottor **redacted**

, li qieghda tidher fuq

Att Numru  
22

Bejgh,  
Riduzzjonijiet,  
Assenjament, u  
Kancellamenti

Ins: 1948/14  
Fil-5/2/2014

I: 1631/14

Vol R:757/14  
Vol R:758/14  
Vol R:759/14  
Vol R:760/14

LRA. 662/2014  
LRC.383/2014  
Lr. Canc.384/201  
Lr.Canc.385/201  
Lr.Canc.386/201  
Lr.Canc.387/201  
Lr.Canc.388/201  
Lr.Canc.389/201  
Lr.Canc.390/201  
Lr.Canc.391/201  
Lr.Canc.392/201

dan l-att fisem u in rappreżentanza tad-Dipartiment tat-Taxxi Interni u dan kif debitament awtorizzata permezz ta' awtorizzazzjoni mahruġa mid-Direttur Ġenerali tad-Dipartiment tat-Taxxi Interni hawn annessa u mmarkata bhala dokument ittra 'A' u skond l-Att Dwar is-Sigurta' Soċjali Kapitolu tliet mija u tmintax (318) tal-Liġijiet ta' Malta, minn hawn il-quddiem maghruf/a bhala 'id-Dipartiment tat-Taxxi Interni'.

Mir-Raba' Parti:-

L-Avukat Dottor **redacted**

li qed jidher fisem u għan-nom tad-Direttur Ġenerali tad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud u dana kif debitament awtorizzat permezz ta' *letter of authority* datata erbgha u ghoxrin (24) ta' Jannar tas-sena elfejn u erbatax (2014) hawn annessa u markata bhala dokument ittra 'B', minn hawn il-quddiem maghruf/a bhala 'id-Dipartiment tal-VAT'.

Mill-Hames Parti:-

**redacted** agent, **redacted**

li qiegħed jidher fuq dan l-att fisem u in rappreżentanza tal-kumpanija **Automated Revenue Management Services Limited** bin-numru ta' registrazzjoni C46054 [Indirizz: Gattard House, National Road, Blata l-Bajda, Hamrun], u dan kif debitament awtorizzat permezz ta' rezoluzzjoni tal-kumpanija tad-disgha (9) ta' Lulju tas-sena elfejn u tlettax (2013) hawn annessa u mmarkata dokument ittra 'C', minn hawn il-quddiem maghruf/a bhala '**Automated Revenue Management Services Limited**'.

Mis-Sitt Parti:-

In-Nutar Dottor **Malcolm Mangion**, **redacted**

**redacted** li qiegħed jidher fuq dan il-kuntratt fismu proprju u kif ukoll għan-nom u fl-interess tal-kumpanija '**Golden Harvest Manufacturing Company Limited**', bin-numru ta' registrazzjoni C 176 [Indirizz: UB 21, Industrial Estate, San Gwann] u dan kif debitament awtorizzat permezz ta' stralc ta' risoluzzjoni tal-Bord tad-Diretturi mahruġa ai termini tal-memorandum u artikoli tal-kumpanija hawn anness u mmarkat dockment ittra 'D', minn hawn il-quddiem maghruf bhala 'n-Nutar

Dottor Malcolm Mangion' u/jew bhala 'Golden Harvest Manufacturing Company Limited', skond il-kaz.

Mis-Seba' Parti:-

Mario Camilleri, direttur, **redacted**

li qiegħed jidher fuq dan l-att fisem u in rappreżentanza tal-kumpanija **M & A Investments Limited** bin-numru ta' registrazzjoni C22748 **redacted**

u dan kif debitament awtorizzat permezz tal-memorandum u artikoli tal-kumpanija, minn hawn il-quddiem magħruf/a bhala '**M & A Investments Limited**'.

Mit-Tmien Parti:-

**redacted**

li qiegħda tidher fuq dan l-att fisem u in rappreżentanza ta' **Banif Bank Malta p.l.c** bin-numru ta' registrazzjoni C41030 [Indirizz: Level 2, Rue D'Argens, Gzira], u dan kif debitament awtorizzata permezz ta' ittra ta' awtorizzazzjoni datata sebgha u ghoxrin (27) ta' Jannar tas-sena elfejn u erbatax (2014) hawn annessa u mmarkata **document** ittra 'E', minn hawn il-quddiem magħruf/a bhala '**Banif Bank Malta p.l.c**'.

Minni Nutar identifikati permezz tad-dokumenti ufficjali hawn fuq imsemmija.

Bis-sahha ta' din l-ewwel parti ta' dan il-kuntratt, il-kreditur **Banif Bank Malta p.l.c**, qiegħed jagħti l-kunsens tieghu għar-riduzzjoni tas-segwenti noti ta' ipoteka ossia:

- ipoteka numru sebat elef mitejn u disgha u erbghin tas-sena elf disa' mija tmienja u disghin (I.7249/1998) **redacted**
- ipoteka numru sebat elef mitejn u hamsin tas-sena elf disa' mija tmienja u disghin (I.7250/1998) **redacted**
- ipoteka numru tmint elef hames mija u tnejn u ghoxrin tas-sena elfejn u sebgha (I. 8522/2007) **redacted**

- ipoteka numru erbat elef seba' mija u sitta u tletin tas-sena elfejn u ghaxra (I. 4736/2010) redacted
- ipoteka numru erbat elef seba' mija u sebgha u tletin tas-sena elfejn u ghaxra (I. 4737/2010) redacted
- ipoteka numru hamest elef tliet mija u tlieta u disghin tas-sena elfejn u hdax (I. 5393/2011) redacted
- ipoteka numru hamest elef tliet mija u hamsa u disghin tas-sena elfejn u hdax (I. 5395/2011) : redacted
- ipoteka numru seba' mija u hdax tas-sena elfejn u tnax (I. 711/2012) redacted

,iskritti/irregistrati fir-Registru Pubbliku ta' Malta, fis-sens illi qieghed kompletament jillibera mill-effetti tal-istess noti hawn fuq indikati l-fond hawn trasferit permezz ta' dan l-att. Salv tali riduzzjoni u liberazzjoni, l-Banif Bank Malta p.l.c qieghed izomm id-drittijiet tieghu l-ohra naxxenti mill-imsemmija noti kollha salvi, fermi, operanti u mhux mittiefa.

Bis-sahha ta' din it-tieni parti dan l-att il-kumpanija venditrici qieghda tbiegh, tassenja u tittrasferixxi favur il-Gvern ta' Malta, li jaccetta, jixtri u jakkwista l-utile dominju temporanju ghaz-zmien li fadal mill-koncessjoni enfitewtika temporanja ta' hamsa u sittin (65) sena, liema zmien beda jiddekorri mit-tlieta u ghoxrin (23) ta' April tas-sena elf disa' mija u tmienja u disghin (1998) u jiskadi fit-tnejn u ghoxrin (22) ta' April tas-sena elfejn u tlieta u sittin (2063) tal-fond maghruf bhala l-'Cafe' Premiere' konsistenti f'numri tlieta u tletin (33) u erbgha u tletin (34) Old Treasury Street, Valletta u l-basement ta' l-istess Cafe' Premiere b'access minn numru hamsa u tletin (35) Old Treasury Street, kif ukoll it-tliet hwienet b'numri erbghin (40), wiehed u erbghin (41) u tnejn u erbghin (42), Old Theatre Street, Valletta, bid-drittijiet, gustijiet u pertinenzi tieghu kollha, hekk kif jidhru bordurati bl-ahmar fuq pjanti Land Drawing



sitta u disghin zbarra sebgha u disghin (LD96/97) u Land Drawing sitta u disghin ittra 'A' zbarra sebgha u disghin (LD96A/97), liema pjanti huma transuntati fl-atti tan-Nutar Dottor redacted tas-sebgha u ghoxrin (27) ta' Frar tas-sena elf disa' mija sebgha u disghin (1997).

Dan il-bejgh qieghed isir u ser jigi accettat bil-kondizzjonijiet li gejjin:-

Bill-prezz miftiehem bejn il-partijiet ta' erba' miljuni u mitejn elf Ewro (€4,200,000) li minnhom is-somma ta' miljun tmien mija disgha u tletin elf u mitejn Ewro (€1,839,200) qieghda prezenzjalment tithallas mill-Gvern ta' Malta lil kumpanija venditrici, li jaccetta, u minn liema somma l-kumpanija venditrici qabel xejn qieghda permezz tal-prezenti att tiddelega lil Gvern ta' Malta, li jaccetta, sabiex ihallas is-somma ta' tliet mija u sebat elef tliet mija u sitta u erbghin Ewro u tlieta u tmenin centezmu (€307,346.83) rapprezentanti l-hlas tal-arretrati dovuti lid-Dipartiment Proprieta' tal-Gvern u qieghda wkoll tiddelega lil Gvern ta' Malta, li jaccetta, sabiex ihallas is-somma ta' hames mija u erbat elef Ewro (€504,000) rapprezentanti it-taxxa finali fuq il-qiegh kapitali dovuta minnha fuq dan l-att. Fir-rigward tar-rimanenti somma mill-miljun tmien mija disgha u tletin elf u mitejn Ewro (€1,839,200) il-kumpanija venditrici qieghda wkoll permezz tal-prezenti att tiddelega lill-Gvern ta' Malta, li jaccetta, sabiex ihallas prezenzjalment minn din ir-rimanenti somma, is-segweni somom bis-segweni mod u ordni:

- (a) is-somma ta' mija u tnejn u disghin elf seba' mija u tmienja u erbghin Ewro (€192,748) lid-Dipartiment tat-Taxxi Interni. Ghal fini ta' kjarezza qieghed jigi dikjarat mill-partijiet illi din is-somma tinkludi fiha l-ammont ta' elf erba' mija u hamsin Ewro (€1,450) li jirraprezentaw it-taxxa dovuta tal-kumpanija, u l-ammont ta' mija u wiehed u disghin elf mitejn u tmienja u disghin Ewro (€191,298) rapprezentanti taxxa tal-FSS (Final Settlement Sytem) u kontribuzzjonijiet tas-Sigurta Socjali b'referenza ghat-taxxa u National Insurance mizmuma mid-dhul tal-impjegati tal-istess kumpanija venditrici ;
- (b) is-somma ta' mitejn u sebgha u ghoxrin elf u tmienja u hamsin Ewro u disgha u tmenin centezmu (€227,058.89) lid-Dipartiment tal-VAT. Ghal fini ta' kjarezza qieghed jigi dikjarat mill-partijiet illi din is-somma tinkludi fiha l-ammont ta' hamsa u disghin elf tmien mija u tmien Ewro u disgha u tmenin centezmu (€95,808.89) u l-ammont ta' mija u erbgha u ghoxrin elf u hames mitt Ewro (€124,500) dovuti mill-kumpanija venditrici lid-

Dipartiment tal-VAT bhala Taxxa Fuq il-Valur Mizjud sad-data tal-att u kif ukoll tinkludi l-ammont ta' sitt elef seba' mija u hamsin Ewro (€6,750) li jirrapresenta t-tariffa u/jew spejjez legali relatati mal-proceduri legali migjuba kontra l-kumpanija venditrici u d-diretturi taghha:

- (c) is-somma ta' mija u tletin elf disa' mija u tlieta u sittin Ewro u tnejn u tmenin centezmu (€130,963.82) lil Automated Revenue Management Services Limited;
- (d) is-somma ta' mitejn u ghaxart elef Ewro (€210,000) lil kumpanija M & A Investments Limited;
- (e) is-somma ta' ghoxrin elf Ewro (€20,000) lin-Nutar Dottor Malcolm Mangion fismu proprju. Ghal fini ta' kjarezza qieghed jigi dikjarat mill-partijiet illi din is-somma qieghda tingabar min-Nutar Dottor Malcolm Mangion a sodisfazzjon tat-tariffa tal-konsulenza/i legali moghtija lil kumpanija venditrici;
- (f) is-somma ta' tliet elef mitejn u hamsa u sittin Ewro u erbgha u ghoxrin centezmu (€3,265.24) lin-Nutar Dottor Malcolm Mangion fitem u ghan-nom tal-kumpanija Golden Harvest Manufacturing Company Limited;
- (g) is-somma ta' mitejn elf Ewro (€200,000) lil Banif Bank Malta p.l.c;

li jaccettaw u li ghal-liema somom ricevuti rispettivament id-Dipartiment Proprjeta' tal-Gvern, id-Dipartiment tat-Taxxi Interni, Automated Revenue Management Services Limited, il-kumpanija M & A Investments Limited, in-Nutar Dottor Malcolm Mangion fismu proprju, l-istess Nutar Dottor Malcolm Mangion fitem u ghan-nom tal-kumpanija Golden Harvest Manufacturing Company Limited, u il-Banif Bank Malta p.l.c., qieghdin jaghtu d-debita ricevuta skond il-ligi.

Fl-istess hin permezz tal-prezenti att, id-Dipartiment Proprjeta' tal-Gvern, id-Dipartiment tat-Taxxi Interni, Automated Revenue Management Services Limited, il-kumpanija M & A Investments Limited, in-Nutar Dottor Malcolm Mangion fismu proprju u l-istess Nutar Dottor Malcolm Mangion fitem u ghan-nom tal-kumpanija Golden Harvest Manufacturing Company Limited qieghdin jimmittu kwittanza a saldu tal-pretenzjonijiet pekunarji tagghom. F'dan ir-rigward tali kredituri ossia id-Dipartiment Proprjeta' tal-Gvern, id-Dipartiment tat-Taxxi Interni, Automated Revenue Management Services Limited, il-kumpanija M & A Investments Limited, in-Nutar Dottor Malcolm Mangion fismu proprju u l-istess Nutar Dottor Malcolm Mangion fitem u ghan-nom tal-kumpanija Golden Harvest Manufacturing Company Limited (imsejjha 'Kredituri



Imsemmija) jintrabtu li wara dan l-att jaghmlu l-proceduri kollha necessarji u mitluba mill-kumpanija venditrici jew il-konsulenti legali taghha sabiex inehhu u jirrimwovu kull u kwalunkwe mandat jew sekwestru li huwa naxxenti minn krediti vantati u dovuti lill-istess Kredituri Imsemmija u li jkun ghadu vigenti wara l-firma ta' dan il-Att u ghaliex previa tali pagamenti tali Kredituri Imsemmija ma fadallhom l-ebda pretenzjoni ulterjuri fuq l-istess materja.

Stante illi l-Gvern ta' Malta wettaq tali delega, il-kumpanija venditrici qiegħda wkoll thalli d-debita ricevuta. Ir-rimanenti bilanc ammontanti għal tlieta u erbghin elf tmien mija u sbatax –il Ewro u tnejn u ghoxrin centezmu (€43,817.22) qiegħed prezenzjalment jingħata lill-kumpanija venditrici, li taccetta u għal-liema somma l-kumpanija venditrici qiegħda wkoll thalli d-debita ricevuta.

Fir-rigward tar-rimanenti bilanc tal-prezz ammontanti għal zewg miljuni tliet mija u sittin elf u tmien mitt Ewro (€2,360,800), il-Gvern ta' Malta għandu jhallas dan l-ammont mingħajr imghax ferba' (4) pagamenti ugħwali ta' hames mija u disghin elf u mitejn Ewro (€590,200) kull wieħed kull sitt (6) xhur, bl-ewwel pagament isir fi zmien sitt (6) xhur mil-lum. Minn kull pagament, il-kumpanija venditrici qiegħda wkoll permezz tal-prezenti att tiddelega lil Gvern ta' Malta, li jaccetta, sabiex ihallas direttament lill-Banif Bank Malta plc fakkont ta' debitu illi l-istess kumpanija venditrici għandha mal-istess bank, liema akkont għandu n-numru disgha zero tlieta erbgha erbgha wieħed zero zero zero wieħed (9034410001), is-segħwenti sommon, kif geġ:

- (a) Mill-ewwel pagament is-somma ta' hames mitt elf Ewro (€500,000) ,
- (b) Mit-tieni pagament is-somma ta' hames mitt elf Ewro (€500,000),
- (c) Mit-tielet pagament is-somma ta' erba' mija u hamsin elf Ewro (€450,000),
- (d) Mir-raba' pagament is-somma ta' hames mija u wieħed u tletin elf u hamsa u sebghin Ewro (€531,075).

B' dan illi kull bilanc rimanenti minn kull pagament għandu jithallas lill-kumpanija venditrici, li taccetta. Il-kumpanija venditrici qiegħda ukoll tiriserva a favur tagħha, il-privilegg speċjali spettanti lilha bil-ligi in garanzija tal-hlas puntwali ta' l-imsemmi bilanc tal-prezz.

Kontestwalment fuq dan l-att, il-kumpanija venditrici stante illi hija debitrici affavur tal-Banif Bank Malta plc qiegħda prezenzjalment tassenja u/jew ccedi a favur Banif Bank Malta plc, li jaccetta, parti

mmarkat dokument ittra 'X'. Ghal fini ta' din il-klawzola, il-kumpanija venditrici qieghda tiggarrantixxi a favur il-Gvern ta' Malta, li jaccetta, li l-oggetti, apparat, mobbli u mobbilja kollha li jinsabu fil-fond huma totalment imhallsa u liberi minn kwalunkwe dejn favur terzi u li zzommu hieles minn kwalunkwe azzjoni li tista' tkun talvolta naxxenti u/jew relatata mal-istess.

Stante dak hawn fuq stipulat, jekk xi apparat, mobbli u mobbilja li huma imnizzla fl-elenku imsemmi ma jittiehdhx mill-kumpanija venditrici u/jew is-succeuri taghha sa zmien tliet xhur mil-lum, dawn ukoll ghandhom jitqiesu bhala li jsiru proprjeta' tal-Gvern ta' Malta minghajr ebda dritt ta' kumpens favur il-kumpanija venditrici, liema kumpanija venditrici qieghda wkoll bil-prezenti att tirrinunzja ghal kull dritt li tirkupra l-istess. Ghal fini ta' din il-klawzola l-kumpanija venditrici qieghda wkoll tiggarrantixxi a favur il-Gvern ta' Malta, li jaccetta, illi dawn huma u/jew ikunu totalment imhallsa u liberi minn kwalunkwe dejn favur terzi u li zzommu hieles minn kwalunkwe azzjoni li tista' tkun talvolta naxxenti u/jew relatata mal-istess.

Il-kumpanija venditrici tiggarrantixxi l-pussess pacifiku u r-rejali godiment tal-propjeta' minnha trasferita b'dana l-att ghaf-favur tal-Gvern ta' Malta, accettanti, b'ipoteca generali tal-beni taghha kollha prezenti u futuri.

Il-kumpanija venditrici tiggarrantixxi a favur il-Gvern ta' Malta, li jaccetta, illi din il-propjeta qieghda tigi trasferita bil-pussess vakanti u libera minn djun, ipoteki u/jew privileggi u/jew mandati u/jew sekwestri jew charges li jistghu jaghtu lok ghall-istess, minn cnus u/jew subcnus hliel ghac-cens originali, minn kull xorta ta' litigazzjoni, minn kwalunkwe uzufrutt u/jew minn kwalunkwe dritt personali iehor, minn kull dritt reali u servitujiet hliel ghal dawk rizultanti mill-pozizzjoni tal-propjeta, minn kwalunkwe piz piju u pizijiet ohra, minn kirjiet u li ma hemm l-ebda pretensjoni ta' kwalsiasi natura fuq il-propjeta'.

Il-kumpanija venditrici tiggarrantixxi a favur il-Gvern ta' Malta, li jaccetta, illi l-propjeta hawn fuq deskritta qieghda tigi trasferita bhala libera u franka, hliel ghac-cens originali u tiggarrantixxi ukoll illi l-propjeta qieghda tigi trasferita bhala tale quale, fl-istat u kundizzjoni li tinsab fiha illum.

Il-kumpanija venditrici tiggarrantixxi a favur il-Gvern ta' Malta, li jaccetta, illi li ma hemm l-ebda enforcement order fuq il-propjeta b'dan l-att trasferita.

Il-kumpanija venditrici tiggarrantixxi favur il-Gvern ta' Malta, li jaccetta, illi sal-lum hija ghamlet u/jew lestit u/jew ikkonkludiet kwalunkwe rezoluzzjoni, awtorizzazzjoni u r-ratifiki kollha li huma u/jew li jistghu ikunu mehtiega sabiex isir dan it-trasferiment u li dawn kollha saru kif suppost u a piena sodisfazzjon tal-Gvern ta' Malta.

Il-kumpanija venditrici qieghda tikkonsenja lil Gvern ta' Malta fuq dan l-att ic-cwieviet tal-fond b'dan l-att trasferit.

L-ispejjes u drittijiet ta' dan l-att huma a karigu tal-Gvern ta' Malta.

Bis-sahha ta' din it-tielet parti ta' dan l-att, l-imsemmi redacted fisem il-Gvern ta' Malta qieghed jaghti l-kunsens tieghu ghall-kancellament totali tan-nota ta' ipoteka rregistrata fir-registru pubbliku ta' Malta bin-numru hamest elef erba' mija u wiehed u sebghin tas-sena elf disa' mija u tmienja u disghin (L5471/1998).

Bis-sahha ta' din ir-raba' parti ta' dan il-kuntratt u b'konsegwenza tal-pagament maghmul mill-komparenti Cities Entertainment Limited kif stipulat aktar fuq fdana l-att, Dottor redacted nomine fisem id-Direttur Generali tad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud qieghed jaghti l-kunsens tieghu ghal kancellament totali tas-segweni noti ta' ipoteka ossia:

- ipoteka numru sebat elef sitt mija u wiehed tas-sena elfejn u tlettax (7601/2013) iskritta fir-Registru Pubbliku ta' Malta favur il-Kummissarju tat-Taxxi u kontra Mario Camilleri.
- ipoteka numru sebat elef sitt mija u tnejn tas-sena elfejn u tlettax (7602/2013) iskritta fir-Registru Pubbliku ta' Malta favur il-Kummissarju tat-Taxxi u kontra David Curmi.
- ipoteka numru sebat elef sitt mija u tlieta tas-sena elfejn u tlettax (7603/2013) iskritta fir-Registru Pubbliku ta' Malta favur il-Kummissarju tat-Taxxi u kontra Neville Curmi.
- ipoteka numru tlettax –il elf tmien mija u hamsin tas-sena elfejn u tlettax (13,850/2013) iskritta fir-Registru Pubbliku ta' Malta favur il-Kummissarju tat-Taxxi u kontra l-kumpanija venditrici.
- ipoteka numru tlettax –il elf tmien mija u wiehed u hamsin tas-sena elfejn u tlettax (13,851/2013),iskritta fir-Registru Pubbliku ta' Malta favur il-Kummissarju tat-Taxxi u kontra d-debitur Mark Anthony Camilleri.

Dottor redacted nomine jiddikjara illi id-Direttur Generali tad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud qieghed jaghti l-

kunsens tieghu ghal dan il-kancellament odjern bhala soggett ghall-kundizzjoni illi tali kunsens bl-ebda mod ma jipprevedika d-drittijiet tad-Direttur Generali tad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud kontra l-kumpanija Cities Entertainment Limited u / jew l-ufficjali taghha, prezenti u passati, fir-rigward ta' kull bilanc li talvolta jista jirrizulta li jkun dovut lid-Direttur Generali tad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud.

Bis-sahha ta' din il-hames parti ta' dan il-kuntratt, l-imsemmi Nutar Dottor Malcolm Mangion qiegħed fisem u għan-nom tal-kumpanija Golden Harvest Manufacturing Company Limited jagħti l-kunsens tieghu għal kancellament totali tas-segweni nota ta' ipoteka rreġistrata fir-Registru Pubbliku ta' Malta ossia:

- ipoteka numru hmistax –il elf mitejn u sitta u tmenin tas-sena elfejn u tlettax (I. 15,286/2013)

Għall-fini ta' l-Att numru sbatax (17) tas-sena elf disa' mija tlieta u disghin (1993) dwar Taxxa fuq Dokumenti u Trasferimenti Ohra jigi dikjarat illi l-kumpanija venditrici akkwistat il-proprjeta trasferita fuq dan l-att b'titolu ta' enfitewsi temporanja mingħand il-Gvern ta' Malta permezz ta' kuntratt fl-atti tan-Nutar Dottor *redacted* tat-tlieta u ghoxrin (23) ta' April tas-sena elf disa' mija u tmienja u disghin (1998).

Għall-fini ta' l-Att numru sbatax (17) tas-sena elf disa' mija tlieta u disghin (1993) dwar Taxxa fuq Dokumenti u Trasferimenti Ohra jigi dikjarat illi l-ebda taxxa ma hija dovuta fuq dan l-att peress li l-Gvern huwa ezentat minn hlas ta' Taxxi.

Għal fini ta' l-Att tas-sena elf disa' mija u tlieta u disghin (1993) dwar Taxxa fuq Qliegħ Kapitali qed jigi dikjarat illi t-taxxa finali dovuta fuq dan l-att mill-kumpanija venditrici tammonta għal hames mija u erbat elef Ewro (€504,000).

Il-partijiet fuq dan l-att jiddikjaraw illi l-valur mogħti lill-proprjeta' in vendita huwa ġust u reali u dan wara li jien Nutar wissejt lill-partijiet dwar l-importanza ta' din id-dikjarazzjoni.

Jigi ddikjarat illi l-Gvern ta' Malta ma għandux b'żonn ta' permessi sabiex jakkwista immobbli taħt il-Kapitlu mitejn u sitta u erbghin (246) tal-Liġijiet ta' Malta sabiex jakkwista proprjeta' u dan wara li wissejt lill-partijiet dwar l-importanza tal-veracita' ta' din id-dikjarazzjoni.



kunsens tieghu ghal dan il-kancellament odjern bhala soggett ghall-kundizzjoni illi tali kunsens bl-ebda mod ma jippregudika d-drittijiet tad-Direttur Generali tad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud kontra l-kumpanija Cities Entertainment Limited u / jew l-ufficjali taghha, prezenti u passati, fir-rigward ta' kull bilanc li talvolta jista jirrizulta li jkun dovut lid-Direttur Generali tad-Dipartiment tat-Taxxa Fuq il-Valur Mizjud.

Bis-sahha ta' din il-hames parti ta' dan il-kuntratt, l-imsemmi Nutar Dottor Malcolm Mangion qieghed fisem u ghan-nom tal-kumpanija Golden Harvest Manufacturing Company Limited jaghti l-kunsens tieghu ghal kancellament totali tas-segweni nota ta' ipoteka registrata fir-Registru Pubbliku ta' Malta ossia:

- ipoteka numru hmistax –il elf mitejn u sitta u tmenin tas-sena elfejn u tlettax (I. 15,286/2013)

Ghall-fini ta' l-Att numru sbatax (17) tas-sena elf disa' mija tlieta u disghin (1993) dwar Taxxa fuq Dokumenti u Trasferimenti Ohra jigi dikjarat illi l-kumpanija venditrici akkwistat il-propjeta trasferita fuq dan l-att b'titolu ta' enfitewsi temporanja minghand il-Gvern ta' Malta permezz ta' kuntratt fl-atti tan-Nutar Dottor redacted tat-tlieta u ghoxrin (23) ta' April tas-sena elf disa' mija u tmienja u disghin (1998).

Ghall-fini ta' l-Att numru sbatax (17) tas-sena elf disa' mija tlieta u disghin (1993) dwar Taxxa fuq Dokumenti u Trasferimenti Ohra jigi dikjarat illi l-ebda taxxa ma hija dovuta fuq dan l-att peress li l-Gvern huwa ezentat minn hlas ta' Taxxi.

Ghal fini ta' l-Att tas-sena elf disa' mija u tlieta u disghin (1993) dwar Taxxa fuq Qliegħ Kapitali qed jigi dikjarat illi t-taxxa finali dovuta fuq dan l-att mill-kumpanija venditrici tammonta ghal hames mija u erbat elef Ewro (€504,000).

Il-partijiet fuq dan l-att jiddikjaraw illi l-valur mogħti lill-propjeta' in vendita huwa gust u reali u dan wara li jien Nutar wissejt lill-partijiet dwar l-importanza ta' din id-dikjarazzjoni.

Jigi ddikjarat illi l-Gvern ta' Malta ma għandux bżonn ta' permessi sabiex jakkwista immobbli taħt il-Kapitlu mitejn u sitta u erbghin (246) tal-Liġijiet ta' Malta sabiex jakkwista propjeta' u dan wara li wissejt lill-partijiet dwar l-importanza tal-veracita' ta' din id-dikjarazzjoni.

Ghal-fini ta' l-Att dwar Registrazzjoni tal-Artijiet qed jigi dikjarat illi l-proprjeta' in vendita tinsab registrata fir-Registru tal-Artijiet.

Kwalunkwe tilwim, kontroversja jew talba li tohrog jew li ghandha x'taqsam ma' dan il-kuntratt jew il-ksur, terminazzjoni jew l-invalidita' ta' dan il-kuntratt, ghandha tigi deciza permezz ta' procedimenti ta' arbitragg skont ir-regoli tal-arbitragg ta' Centru dwar l-Arbitragg ta' Malta kif huma fis-sehh. Ghall-ghanijiet ta' din il-klawsola, f'kaz ta' tilwim, kontroversja jew talba:-

- (a) in-numru ta' arbitri jkunu tlieta;
- (b) l-awtorita' li tappunta tkun ic-Centru tal-Arbitragg ta' Malta;
- (c) l-arbitragg isir f'Malta u l-proceduri jsiru bl-Ilsien Malti;
- (d) il-ligi li tapplika hija l-Ligi Maltija.

Ghal fini ta' subartikolu tnax (12) ta' artiklu hamsa (5) ittra kapitali 'A' (5A) tal-Ligi fuq it-Taxxa fuq il-Qliegħ, il-partijiet jiddikjaraw illi min-naha tagħhom iddikjaraw lin-Nutar sottoffirmat il-fatti kollha illi jiddeterminaw jekk it-trasferiment huwiex wiehed li ghalih artikolu 5A japplika u illi huma relevanti sabiex jigi accertat l-ammont propju ta' taxxa dovut jew xi ezenzjoni, inkluż il-valur illi fl-opinjoni tagħhom raġonevolment jirrifletti il-valur fis-suq ta' l-istess propjeta jekk il-valur mogħti huwa għola mill-ammont imhallas għat-trasferiment. Il-partijiet qegħdin jagħmlu din id-dikjarazzjoni wara illi jiena Nutar sottoffirmat widdibthom dwar l-importanza tal-veracita tad-dikjarazzjoni tagħhom.

Ghal finijiet tat-tieni proviso mas-Sub-Artikolu numru hamsa (5) tal-Artikolu numru erbgħa u tmenin ittra 'C' (84C) tal-Att dwar il-Professjoni Nutarili u l-Arkivji Nutarili, Kapitolu hamsa u hamsin (KAP 55) tal-Ligijiet ta' Malta, qiegħed jigi dikjarat illi bil-paragrafu ittra 'f' tar-regolament numru erbgħa (4) tal-avviz Legali numru tlett mija u hamsa u hamsin tas-sena elfejn u tnax (A.L. 355 tal-2012) dwar l-Ezami tat-Titolu, n-Nutar huwa ezentat '*ipso iure*' milli jezamina t-titolu fir-rigward tal-immobbli b'dana l-att akkwistat u ~~redacted~~ fisem il-Gvern ta' Malta jiddikjara li jiena Nutar sottoffirmat spjegajtilu l-importanza u l-konsegwenzi ta' din l-ezenzjoni.

Peress illi d-dokumenti ma dan l-att huma iktar minn hamsa qed jigi hawn anness elenku mmarkat bhala dockment ittra 'Z'.



Dan l-att gie magħmul, moqri u pubblikat wara li gie minni Nutar imfisser skond il-ligi f'Malta, il-Belt Valletta, fi Triq San Bastjan, fil-Berga tal-Baviera fid-Dipartiment tal-Artijiet, bla numru.

Firmati:

redacted

Mario Camilleri

Neville Curmi

redacted

redacted

redacted

Malcolm Mangion

redacted

redacted

Nutar Pubbliku fit-Taqsima Proprieta' tal-Gvern

#### Dokument 'Z' – Elenku

Dokument 'A' - Awtorizzazzjoni mahruġa mid-Direttur Generali tad-Dipartiment tat-Taxxi Interni

Dokument 'B' - Letter of Authority mahruġa mid-Direttur Generali tad-Dipartiment tal-VAT

Dokument 'C' - Rezoluzzjoni tal-kumpanija Automated Revenue Management Services Limited

Dokument 'D' - Stralc ta' Rizoluzzjoni tal-Bord tad-Diretturi mahruġa ai termini tal-memorandum u artikoli tal-kumpanija Golden Harvest Manufacturing Company Limited.

Dokument 'E' - Ittra ta' Awtorizzazzjoni mahruġa mis-segretarju tal-Banif Bank Malta p.l.c

Dokument 'X' - Inventarju

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