

FEEDBACK BY THE MALTA CHAMBER

National Strategy for the Reform of the Land Registration System: 2025-2035

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A. INTRODUCTION

The Malta Chamber of Commerce, Enterprise and Industry (The Malta Chamber) welcomes the government's initiative to reform Malta's Land Registration System.

Land is one of the country's most valuable assets. The Land Registry Act (Chapter 296 of the Laws of Malta), enacted forty-three years ago, was intended to modernise the registration of property titles. Given that over the years the country has seen a significant and consistent increase in property development and ownership, a holistic reform is definitely called for.

Currently, land registration is limited to designated areas or areas already affected by registration. Additionally, the Land Registration Agency still operates alongside the Public Registry system. It is essential to have **a single system where all land and related rights are properly registered and continuously updated**.

The evolving property market necessitates an updated legal framework supported by a robust organizational structure and strong technological infrastructure. Ensuring transparency, clarity, and confidence in the accuracy of the system's data and information is essential.

The "*National Strategy for the Reform of the Land Registration System : 2025-2035*" is a positive first step, in that the proposed strategy aims to modernize land registration. However, some points require clarification, others require further analysis, whereas some crucial factors appear to have been overlooked.

This document outlines The Malta Chamber's suggestions for improvement to ensure the reform is effective, fair, and beneficial to businesses and society.

B. THE MALTA CHAMBER'S KEY RECOMMENDATIONS AND CONSIDERATIONS

Government has put forward 18 recommendations. These are:

01. Updated Land Registration Act
02. Strategy for Comprehensive Land Registration in the Maltese Territories by 2035 : Initiatives, Goals, and Review System
03. A New Ownership Title Categorisation System for Private Land and Property
04. The Right to Challenge the Guaranteed Title Status of Government Land or Property
05. Strengthening the Indefeasibility of a Guaranteed Title by Reforming the Overriding Interest's System
06. Trust, Integrity and Reliability of Land/Property Ownership Title Certificates
07. Boundary Principles Underpinning Property Ownership Title Certificates
08. Expediting Conflict Resolution Through Mediation and Arbitration
09. Fraud, Indemnification and Rectification
10. Transferring Obligation of Registration from Purchaser to Seller Concerning Land/Property Redevelopment
11. Delays in the Land Registration Process
12. Privacy, Services, and Security Protocols for Different User Categories Accessing the e-Land Register
13. Fast-Evolving Land Registration Technologies and Supporting Legislation
14. Establishing Oversight Governance Mechanisms
15. Leadership and Functions of the Land Registration Agency
16. Functions of the Land Registration Agency
17. New Services to be Provided by the Land Registration Agency
18. Single Property Title Register for Registration, Transfer, and Administration.

These are The Malta Chamber's Key Considerations and Recommendations:

a. Observing the General Principles of Property Law

This reform will be successful if, while observing the general principles of property law, it takes into account the lessons learnt from the previous and current regimes/systems. The reform needs to ensure an efficient and effective cadastre, one which is fair and equitable to all.

For example, suffice to note that the old regime's method of piecemeal registration resulted in property being squeezed out of the map, because previous registrations were not accurate. It is important that the new system is intelligent enough to immediately pick up and flag *prima facie* discrepancies.

b. Definition of "Land"

There must be a clear definition of "*land*" from the outset. Apart from the land itself, "*land*" should also include buildings and all types of real rights, some of which are distinct and transferable separately – examples of the latter would include the right of *dominium*, common parts, and airspaces amongst others.

Moreover, one needs to keep in mind that:

- (i) Most lands, even if not developed, are typically affected by a number of limitations. By way of simple example, the most basic principle of *ad coelum et ad inferos* is tempered by aviation (eg: passing aircraft and satellites) and subsoil rights (eg: the tunnels and services underground). It is also fact that a number of public passageways are still privately owned.
- (ii) There are disputes about, for example dividing walls whether common or otherwise, servitudes, and other like limitations that arise either by law or by contract. Such typical limitations are states of co-ownership, servitudes, bare ownership, usufructs and other various states including antichresis.
- (iii) A distinction must be kept between the registration of the claim and the registration of an immovable right.
- (iv) In regard to condominiums, there is the recurrent question as to what constitutes the 'common parts' as well as other limitations.
- (v) With respect to land which is on an emphyteutical grant, one needs to distinguish on the one hand the pure ownership (the *dominium*) which is all important for determining the correct *iter* of various properties derived from the same provenance and on the other hand the stronger possession (the *utilem*).

- (vi) Redemption of groundrent needs to be looked into as well. There are two ways of effecting a redemption – by deed which in principle should give greater certainty of the decisions of the private parties or by unilateral schedule of redemption (cedola), the effectiveness of which has been the subject of much debate especially when the schedule is not filed against all persons interested. Therefore adequate provision should be made to enable the registration of *directi domini* even if these have been redeemed. Furthermore, case law accepts that a redemption only liberates the tenement of the payment of ground rent and it does not liberate the property of limitations (typically height and use).

c. Legal Framework, Certainty and Addressing Overlapping Claims

The public consultation document indicates that the reform will require changes to the main Act, however it is not specified what these will entail. It is important that the amended Act addresses existing legal uncertainties. For example, what happens when there is a discrepancy between the text of the title deed and the drawing prepared by the architect.

It must also clearly outline what happens in cases of conflicting title claims. A challenge encountered during property searches is the occurrence of overlapping claims of ownership and other property rights. The revised legislation must establish a clear and definitive procedure for addressing cases involving overlapping claims and ambiguous property boundaries.

Additionally, a systematic approach is required to address existing overlaps in already registered properties.

d. Tiering System

The public consultation document outlines a tiered system through which the title process will be assessed (Possessory – Qualified – Guaranteed – Absolute). However, it provides limited details regarding the required documentation at each stage and who will be carrying out the necessary surveys (i.e. whether it is private or public entities).

Additionally, the document predominantly addresses the physical boundaries of the property, but it lacks clarity on how servitudes and easements will be incorporated into the registration process.

Also, what happens pending the Court process determining the claim/s? Does the Registrar proceed with a qualified registration?

These aspects require further elaboration.

e. Obligation of Registration of New Developments Shifted on to the Seller

The public consultation documents suggests shifting the responsibility of registration onto the seller – this is a logical approach. However, the proposal currently applies only to new developments. The Malta Chamber recommends extending this obligation to all property transactions, ensuring that the seller is always held accountable and guarantees the accuracy of what is being sold.

f. Registration of Property being Transferred on Plan or as Airspace

In situations where property is being transferred on plan or as airspace, The Malta Chamber is of the opinion that registration should ideally occur after completion of the building works, at the compliance stage. This is crucial because the initial perimeter of the property on plan, may differ from the final as built situation. Ensuring the highest level of accuracy at compliance is essential to avoid discrepancies.

g. Notification to Neighbours Upon Registration

- (i) Under the current proposal, registration notifications will be published in the Government Gazette. Although the Government Gazette is available in both print and online format, its reach has remained quite limited, making the publication insufficient in preventing fraudulent activity or encroachment disputes. A more effective notification system should be introduced, ensuring that, at least, neighbouring property owners are made aware of new registrations in a timely and effective manner.
- (ii) Boundary issues predominantly arise when neighbours register their adjacent properties. The Malta Chamber believes that the contestation period should be revised to allow contestants adequate time to submit comprehensive claims. Moreover, consideration could be given to the introduction of a reasonable fee to discourage frivolous claims and ensure that objections are substantiated.
- (iii) The public consultation document mentions that the public will only be able to access the online portal against the payment of a fee. The Malta Chamber believes that the public should have free access to the online system, with fees being imposed only at the contestation stage or if they require printed documentation from/through the system.

h. Notification to the Registered Owner Upon Third Party Claims

In addition to point g. above, the system must also take into consideration third party claims and registered owners' rights. The registered owner should always be notified of any registration of a claim or of an immovable right by third parties.

i. Base Map Accuracy and Integration with Other Systems

The base map currently used by the Land Registry for certain localities is outdated, making it challenging to register individual units accurately. The Planning Authority's base map is more up to date, and therefore it makes sense to use the Planning Authority's base map as the preferred reference moving forward. One should also be given peace of mind that it is an accurate physical survey of the Maltese archipelago, and not an interpretation thereof. In view of this, The Malta Chamber cautions that integrating registrations based on the Land Registry's outdated base map into a new system aligned with the Planning Authority's data will be difficult. A coordinated feedback loop between the Planning Authority, the Lands Registry, and other relevant entities is necessary. This aligns with the document's emphasis on technology neutrality.

j. Best Practice Guidelines for Architects

A comprehensive set of best practice guidelines should be established to standardize assumptions where exact measurements are unavailable. For example, if the thickness of a wall or roof cannot be determined, a universally accepted standard value should be adopted across all architectural assessments.

k. Sanctions on Professionals for Missed Deadlines

The proposed sanctions for failing to meet the 30-day deadline remain unclear. Further details are necessary on when and how these sanctions will be applied and their potential overall impact. The Malta Chamber will give further input on this point once details are communicated.

I. Mediation and Arbitration

The reform mentions arbitration mechanisms. The Malta Chamber sees this positively. However, more clarity is needed on (i) the number of arbitration tribunals that will be established, (ii) the respective case load for each tribunal, (iii) the frequency of tribunal meetings, (iv) the locations/s where the arbitration tribunals will convene and the time, as well as (v) the respective rules of procedure and decision timeframes. Additionally, it is equally important to understand how the qualified personnel for this role will be selected. These are potential bottlenecks that need to be addressed from the outset so as to avoid unnecessary delays in dispute resolution.

m. Resolving Ownership Disputes

Irrespective of the reference to mediation and arbitration, the public consultation document lacks clarity on how disputes will be addressed. While the State plans to defend registered owners, it is unclear how ownership will be determined, particularly in cases where the first registered owner is not the rightful owner.

n. Training on the New Registration System

Proper training on the new registration system is essential. Lands employees must master the system. Training for Land Registry personnel is essential to ensure the effective implementation of the reformed system. Training should also be provided to direct users like architects and notaries, as well as to referring professionals such as accountants, risk assessors and lawyers. Additionally, there should be general information sessions for the general public.

The reform should focus on structured training programs for smooth implementation and compliance. Further details should be provided on how this training will be conducted and what resources will be allocated for this purpose.

o. Digitisation and Digitalisation, and Cost Implications

Digitisation is the process of converting of hard/paper files and documents into digital files and documents. The data remains the same, only the accessibility and storage change. It is beneficial because the relative information is preserved and can be accessed easily.

Digitalisation is the process of utilizing the aforementioned digitized data, resulting in deeper changes that can alter the core data. These changes should ultimately lead to opportunities for increased efficiency but as may be inferred, this could result in changes to property rights.

Hence at this stage it is important to identify what is going to be digitized, how and when, and plan for the eventual digitalisation ensuring that there are the proper protocols and workflows to address anomalies and possible past errors. Furthermore, whereas The Malta Chamber supports the digitisation and eventual digitalisation phase to reduce administrative burdens and accommodate for the increase in number of data requests received by the agency, the associated costs should not fall on businesses. The outdated state of the current system reflects years of underinvestment, and businesses should not bear the financial burden of modernizing government infrastructure. Registration fees and related expenses must be clearly defined, transparent, and proportionate to property size and type whilst also taking into consideration point g. (iii) above and point p below.

p. Development Status of the Software System

The reform appears to rely on an as-yet-undeveloped software system. It would be interesting to have more information regarding its current status and progress. Does Government intend to refer to any countries that have already implemented such systems? If yes, which countries? This is important particularly when evaluating and implementing workflows against the legal framework. Will Government be issuing an open call for tender? If yes, what period is it targeting? And what is the expected timeline for its implementation and roll-out?

q. System Maintenance and Futureproofing

Regular updates and scheduled audits are critical to ensure the system remains efficient and effective. The new system must avoid the pitfalls of the current one, which has become outdated and misaligned. Clear governance and oversight mechanisms should be established to guarantee the long-term sustainability of the platform.

r. Implementation Timeline

While the goal of 100% registration by 2035 is ambitious, the document lacks a detailed implementation timeline beyond periodic reviews (2028, 2032). The Malta Chamber recommends introducing a phased action plan with short-term (2025-2027), medium-term (2028-2031), and long-term (2032-2035) milestones, along with KPIs to measure the reform's progress.

The first phase should definitely be the registration of all Government-owned properties, including all the right and appurtenances thereto. The Malta Chamber believes that prior to public rollout, all government properties and land areas should be fully registered. This should be done in parallel with migration of the already registered land and property that exist in the current Land Registry system. During the migration, it should be emphasized that quality assurance is done rigorously to ensure that work is being done in a satisfactory manner. All plans including those submitted by Lands Authority without proper markings must be revisited and amended as soon as possible. Once finalized, The Malta Chamber supports a phased rollout of compulsory registration areas, beginning with undisputed properties and gradually expanding. This approach reduces complications and allows the system to showcase its benefits early on. Additionally, the Agency should prioritize achieving full 100% registration coverage rather than settling for 95%, ensuring that all land and property are comprehensively accounted for.

s. Access to Information

Transparency and efficiency are crucial to the success of this reform. Considering that the information is already in the public domain by virtue of the fact that every deed is by its nature a public deed, accessibility through the new system should also be provided to the public. Also, and in line with The Malta Chamber's position highlighted above at point g. (iii), point o. and point s. above, access to the system should be made available at no cost. This no-cost access is justified by the fact that the process of the registration itself would have been paid for by the registrant.

The principle of full accessibility to the Land Registry should also be extended to other public entities, including the Commissioner for Revenue and the Malta Business Registry. For example, in cases where companies have been merged, dissolved, or otherwise struck off, individuals researching the succession of related immovable rights may face significant challenges in tracing the provenance of a given property. Access to information to all other public entities, including government agencies and authorities, will also help to co-ordinate and streamline enforcement efforts, ensuring that resources are used more efficiently, effectively, and uniformly.

The aforementioned principle is in line with similar systems and information made available in other EU countries such as:

- Germany at <https://verwaltung.bund.de>
- Slovenia at https://www.sodisce.si/javne_knjige/zemljiska_knjiga
- Italy at <https://www.agenziaentrate.gov.it/portale/web/english/nse/services/cadastral-services>)
- Other EU registers which may be accessed from the European e-Justice Portal at https://e-justice.europa.eu/109/EN/land_registers_in_eu_countries).

Whilst it is conceded that the online services in the Member States vary from one country to another, the stated core services of all registries are specifically ***“to register, examine and store land and property information, such as location and ownership, and to make this information available to the public and professional customers”***. Given that this is the considered understanding of the EU authorities and other member states, one should seek a system at par – or better – with our fellow EU citizens.

t. Cybersecurity and Fraud Prevention

Cybersecurity must be given top priority to protect the information and ensure the integrity of property titles. A robust system is essential to safeguard against potential cyberattacks and fraud.

u. Other Observations

- (i) The system must also cater for the superimposition of property rights of varying degrees. For example, a plot of land owned by different owners may be granted on an emphyteutical grant to one person. With the appropriate technology, one could have a layering of plans to show the correct segments which make up the components held in full ownership of the respective rights that make up the land.
- (ii) Whereas it is current and common good practice to attach a plan to the deed, it was never required by the Public Registry Act, ie there is no requirement for a plan *ut sic*, and as a result there are a number of deeds which did/do not have a plan attached to the deed as well as a good number of properties that are based on provenances that were not endowed with a plan. On this basis alone, care must be had to ensure that the eventual registrations are resolved in the light of the reality of the contents of the relative deeds.

- (iii) In the event of an empirical assessment of properties derived from the same provenance, and when the vetters discover an error in the notarial treatment, will the vetters be empowered to refer the error to the Court of Revision of Notarial acts to have the deed corrected?
- (iv) What happens to properties the ownership whereof is subject to a condition, for example in the case of a legacy empowering the heir/legatee to choose one property or the other and the choice has to date not been made?
- (v) In a similar vein, what happens when the legatee pays his *causa mortis* within the statutory year but the heir has not put such legatee in formal legal possession. In whose name is the property to be registered?
- (vi) What happens when in establishing eg a *directum dominium* burdening the property, the relative owners are unknown?
- (vii) Generally, how is any property to be treated when the presumptive heirs are unknown? Will the vetters register the property in the name of the last known owner?
- (viii) In terms of Company legislation, properties which are not assigned in a liquidation of companies are to devolve to the Government of Malta. However, in some cases companies are reactivated by Court order thereby reinstating the property in favour of the company – in such a case, how is the registration to be treated?
- (ix) What safeguards will be made to ensure the propriety of the vetters?

C. CONCLUSION

Overall, the sentiment toward the proposed reform is positive, primarily because this reform is a much needed step forward which will firstly give more certainty in the real estate market and also because, with time, it will result in shorter transaction times. While understanding that the main aim of this consultation process is to state Government's overall intent, the success of its implementation will depend on addressing critical gaps in the details.

Care should be had to ensure that private interests are afforded an easy and cheap remedy with minimal bureaucracy.

The reform should also seek to achieve a concerted exercise by notaries (for title-vetting) and architects (for correct interpretation of plans). A well-functioning cadastral register should relieve the notaries of many burdens which have been imposed on them during the past 30 years namely (i) tax collecting and (ii) anti money laundering regulations. Once the cadastre is up and running properly, notaries should be able to focus better on title-vetting and therefore further reinforce the need for the highest degree of title-vetting, whereas architects remain the best placed to interpret the data and transpose it in a digitised format. The new legislation should clarify the respective responsibilities of the vetting officers by distinguishing between the respective roles of notaries and architects.

The Malta Chamber is committed to supporting and giving further input in this important reform but urges the government to address the concerns outlined above. By implementing these recommendations, the new system can deliver a fair, efficient, and modern land registration framework.



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