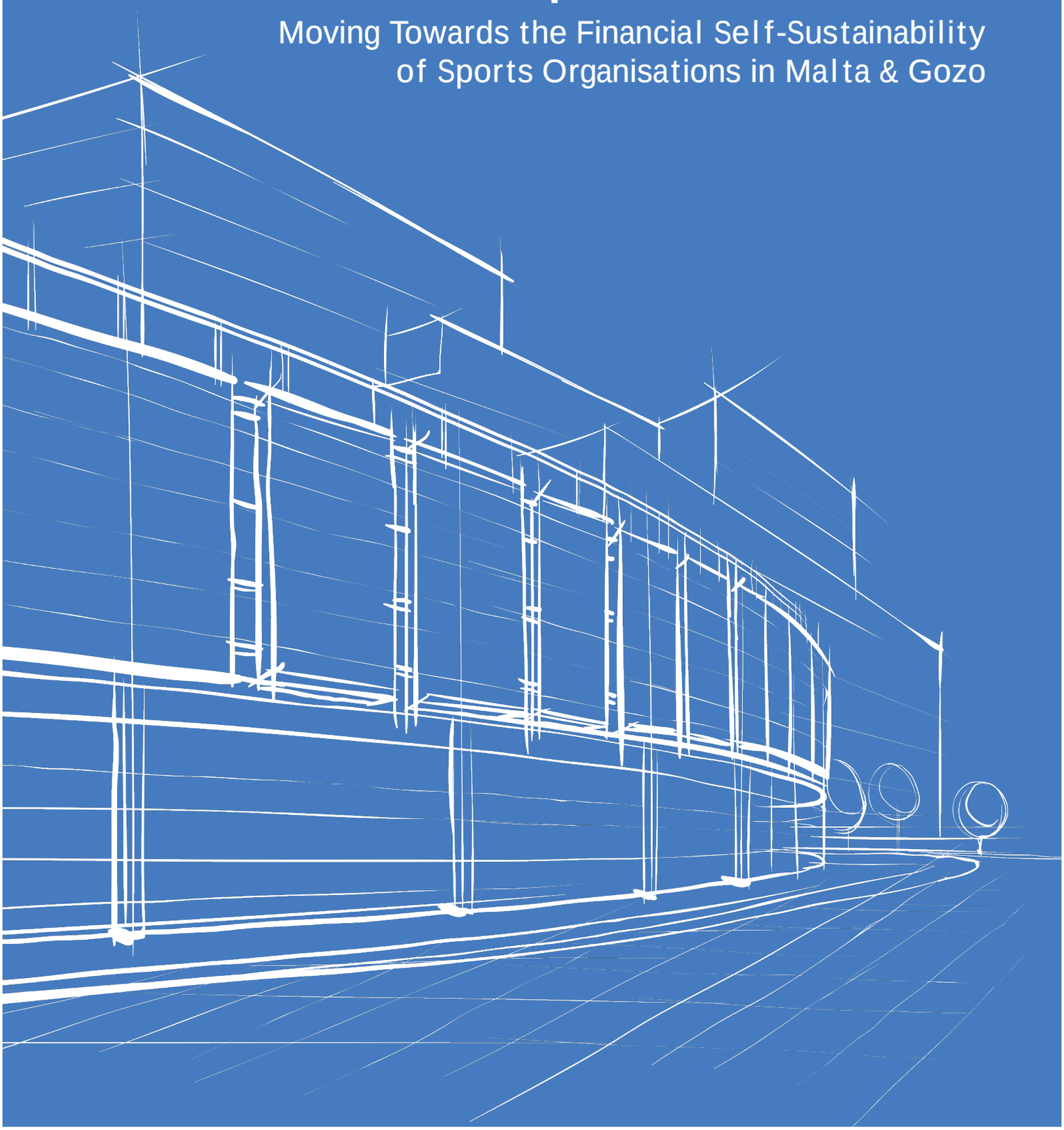
White Paper

The Commercialisation of Sports Facilities

Moving Towards the Financial Self-Sustainability of Sports Organisations in Malta & Gozo



Document for Public Consultation
Prepared by Dr. Chris Bonett

Parliamentary Secretariat for Research, Innovation, Youth and Sport
Ministry for Education and Employment
Great Siege Road
Floriana

Published - February 2016

Contents

1. INTRODUCTION 04

2. ACHIEVING COMMERCIALISATION 06

2.1 THE LEGAL NOTICE 06
2.2 THE COMMERCIAL ACTIVITY 07
2.3 THE CONCESSION OF THE SPORTS FACILITY 07
2.4 THE INVESTORS 08
2.5 COMMERCIAL PARTNERSHIPS 08
2.6 CONTROL AND ENFORCEMENT 09
A. THE REGULATOR 09
B. THE TECHNICAL COMMITTEE 09
C. FINANCIAL MONITORING 10
D. ENFORCEMENT 10
2.7 THE PROCESS 11
A. EXISTING SPORTS FACILITIES 11
B. NEW OR PROPOSED SPORTS FACILITIES 12

3. BENEFITS OF COMMERCIALISATION 13

3.1 SPORTS ORGANISATIONS 13
3.2 THE INVESTORS 13
3.3 THE STATE 14
3.4 THE ECONOMY 14

4. TIME-FRAMES 14

1. Introduction

Since 1997, the Government has identified a system that permits the transfer of public land to sports organisations for the practice of their sporting disciplines by parliamentary resolution. This system was regularised in 2002, with the advent of the Sports Act (Chapter 422 of the Laws of Malta). The law stipulated that government-owned land could be passed to sports organisations registered with SportMalta through some form of legal title. Most of the land has been conceded by two types of title:

a. Temporary emphytheusis for a period of 49 years;
b. Lease for a period of 16 years, renewable for another two terms (48 years)

This system enables a registered sports organisation to make a request to SportMalta for land identified by that same organisation. After verifications would have been confirmed, such as clarifying the title of the land and ascertaining that such land was indeed public, SportMalta would request such land from the Lands Department so that this would be transferred to the relative sports organisation. Following the acceptance of such a request, the Lands Department would engage an architect to provide a market valuation of that land. Based on such a valuation, SportMalta would then come to an agreement on the amount of ground rent or rent to be paid to SportMalta by the sports organisation. Following this, a contract would be drawn up and signed between the relative sports organisation and SportMalta, and this contract would be tabled in parliament.

Clauses in such contracts ascertain that the land conceded would be used only for sporting purposes and no financial gain would be made via any economic activity, with the exception of a canteen for members. In return, the contract offers a hefty subsidy on the ground rent or rent payable, with concessions up to 98% of the ground rent. This would be paid on the condition that the concession is according to the market value as assessed by the architect in his or her valuation. In recent years, this subsidy has been limited and standardised to 95% of the market value.

Tens of pieces of land have been handed over to local sports organisations through this system, particularly for football and aquatic sports. Such concessions have indeed helped sports organisations make considerable advances in the technical preparation of young athletes. However, in the last 5 to 10 years, many sports organisations have claimed that a saturation point has been reached in athlete preparation and training due to the limitations of the current system, so for the next step to be successful (that is, the transition from amateur to professional sport) further government intervention is required.

In recent years, sports clubs and national associations/federations have achieved the above professional outcomes reasonably well, while also attracting the required income. However, it is strongly felt that the sponsorships being contracted and the donations received, particularly by club presidents, are not enough to achieve the financial stability required to convert such clubs into professional sports bodies.

This has led to such sports organisations making financial requests to the government, which the latter cannot accede to, since it is highly improbable that funding of such projects would occur through the consolidated fund. For example, the National Stadium of Ta' Qali opened in the early 1980s as a state-of-the-art football stadium. However, a review of football stadiums abroad indicates that currently the National Stadium is not maximising its potential. This is in view of the concept of a football stadium, which has changed internationally. Where before a stadium was merely a venue that held football matches and accommodated fans, it has now evolved into a multi-purpose commercial enterprise. The aim is to go beyond watching a football match, which is not but a minor feature of a fuller experience that such venues offer. This means that as multi-purpose buildings, football stadiums and other similar sports venues are now equipped to give priority to the fields of retail, accommodation and catering so that fans enjoy an all-inclusive experience. This economic activity generates a revenue stream, which means that the sports organisation running such a venue can re-invest the profits made in the training of its athletes and in the improvement of the training facilities.

These projects have attracted investors who love sport, but who are also recognising a paradigm shift in the re-conceptualisation of sports venues as potential vehicles for efficient and pro-active business opportunities. However, the overhaul of an infrastructural project does not only depend on financial promise to attract the investors required. In order to achieve the quantum leap desired, progression into professionalism is also contingent on professional, transparent governance and administration of sports organisations, which consequently reflect the aspirations of potential investors. Only through responsible governance and a sound administration of financial resources would investors feel that their financial backing is being utilised properly, rather than being misappropriated.

This is why, in recent years, sports organisations have embarked on long-term plans aimed at transforming them, and their affiliated clubs, into professional sports organisations. Three important aspects have been addressed:

a. The way a national association/federation and its clubs govern their financial resources;
b. The way the national association/federation or clubs are administered; and
c. The identification of new revenue streams generated directly by the association or clubs to make such organisations financially self-sustainable.

It is recognised that national associations/federations have been dealing with the first two aspects in recent years, and an improvement has been registered both in the governance of financial resources and in the administration of sports organisations. The third aspect is the one being addressed in this White Paper. For Maltese sport to make a quantum leap, it is necessary to locate fresh revenue streams. The commercialisation of sports facilities granted by the government to sports organisations is a simple yet effective tool by which the latter can make a sound income, without the need to depend on the donations of third parties. The income that can be generated through the commercialisation of leased sporting facilities could give sports organisations a new lease of life.

Opposing this, there is an impending fear that should this opportunity not materialise, sports organisations face a serious risk of shutting down, as the expenses being incurred are higher than the income being generated. This is a situation that should be avoided at all costs, as the strong social and educational functions of these sports organisations, particularly at amateur and grassroots levels should always be preserved. Therefore the concept of commercialisation should be pursued in order to help sports organisations achieve the required growth.

However, there must be sensibility to the issue that such commercialisation will be carried out on public land. Therefore the necessary safeguards must be in place, through appropriate legislation, to ensure that this concept does not turn out to be a 'no-holds-barred' exercise for the commercial speculation of government land. Moreover, there is awareness of the fact that some sports organisations are already engaging in economic activity on their leased lands, particularly via catering establishments. This is in breach of their existing contracts with the Lands Department or SportMalta. Whilst the Government is in agreement that economic activity is a necessary tool that boots revenue for sports organisations, the misuse of public land is unacceptable. It is not the intention of this White Paper to propose closing down these establishments, but rather to regularise their position and make the system legal and acceptable for all stakeholders.

This White Paper shall provide recommendations for a legal framework that will regulate the processes to be adopted for commercial purposes by the sports facilities in Malta and Gozo. Commercialisation will help sports organisations and Maltese sport to grow and achieve financial self-sustainability.

2. Achieving Commercialisation

This White Paper makes a number of recommendations that promote the regulation of commercial projects implemented by and within sports facilities in Malta and Gozo. The following are proposals on a new legal notice that will regulate how this commercialisation may be achieved.

2.1 The Legal Notice

This White Paper proposes the creation of regulations, by virtue of the publication of a legal notice under the Sports Act, will allow sports organisations to either:

a. Conduct their commercial activities within their properties; or
b. Lease their land to third parties for the generation of commercial activity under sub-lease agreements (operations agreement); or
c. Enter into partnerships with third parties for the generation of commercial activities in a system of expense and profit sharing.

This legal notice is to contain regulations that would permit sports organisations to carry out economic activity on lands administered by them. At the same time, however, the notice would also establish controls that confirm the preservation of the property's origins and nature as a sports facility.

Case example: A football club would be allowed to erect and open shops, offices or garages on the whole footprint of the land, both above and below ground, subject to the attainment of the necessary development permits, and provided that the football pitch and the necessary dressing rooms and sports facilities are retained (for example on the roof of the complex).

Therefore, the legal notice is to establish:

a. The type of commercial activity that may be conducted on such land;
b. The type of investor who is approved to offer financial backing of such facilities;
c. The monitoring and enforcement procedures to be enacted so as prevent the misuse of such facilities;
d. The procedure that allows commercial activity to be conducted by a sports organisation in its facilities; and
e. A regulator that will approve projects for the commercialisation of sports facilities, and be tasked with control of the legal notices and the enforcement of provisions, as well as contractual obligations by the sports organisation.

2.2 The Commercial Activity

Under the proposed legislation, most types of commercial activity would be allowed to be conducted. However, since sports facilities are there primarily to be used by and for the education of children, no immoral activity or gambling is to be permitted. The legal notice shall thereby stipulate the exclusion of commercial outlets such as nightclubs, lotto receivers, gambling shops etc.

Together with the above, the construction of residential units on land leased for sport purposes shall not be authorized. The objective behind the concept of commercialisation is to aid sports organisations boost their income for financial sustainability. There is no intention to create a housing scheme. However, hostels (but not hotels) that serve a housing purpose for those teams or athletes who wish to hold training camps in Malta and Gozo are to be approved; this is because promoting and using Maltese sports facilities as international training camps may be a good source of income for the sports organisation running the facility.

In order to verify that the commercialisation objectives of the sports facilities are met, it is proposed that the legal notice incorporates clauses that prohibit land speculation from occurring. All new contracts with sports organisations for emphytheutical concession, in which commercialisation will be allowed, are to be drawn up with the explicit declaration that if the commercial activity undertaken is by way of a sub-lease to a third party, then it is the latter who will be responsible for the commercial activity but will in turn not sub-let the land or its operations to other third parties. Moreover, sports organisations that are already engaged in economic activity but are in breach of the contract of temporary emphytheusis, are to be set a reasonable time-frame to come into line with the new regulations.

2.3 The Concession of the Sports Facility

It is not the intention of the proposed legislation to change the current method by which public land is transferred to Maltese sports organisations for use as sports facilities. Therefore the system whereby public land is conceded through the title of emphytheusis to Maltese sports organisations is to be retained. This is to be done via a transfer of the land from the Lands Department to SportMalta, as currently regulated by the relevant articles of the Sports Act.

Similarly, subsidies on ground-rents will remain unaffected in those parts where the use of the sports facility would remain exclusively for the practice of sport. However, the proposed legislation will provide for the removal of the subsidy on the ground-rent in those parts that will be approved for commercial projects. For clarity, it is being proposed that the subsidy on ground-rents will be removed only for those parts of the sports facility that will be commercialised. Ground-rent over the commercial parts shall be charged at a fair value to be established by the proposed legislation.

It is being also proposed that those sports organisations that apply for a commercial project to be conducted on their sports facility are to have the option to re-start the emphytheutic concession, and therefore sign a new contract for a 49-year lease of the sports facility.This is targeted at supporting sports organisations in attracting investors who would be involved in a sound commercial project over a long-term period. This would also potentially translate into a return on investment for both the sports organisation and prospective investors, during which time the ownership of the land is preserved by the State.

2.4 The Investors

The aim of the proposed legislation will be to provide a legal tool that will enable Maltese sports organisations to develop their facilities, both from a purely sporting angle as well as from a commercial perspective, consequently assisting these organisations in becoming financially self-sustainable. This is to be achieved while recognizing that all sports organisations in Malta and Gozo are non-profit making organisations run by volunteers who dedicate their time and money for the love of their sport and their club. Therefore, there is sensitivity to the issue that most sports organisations would want to exploit their sports facility commercially but lack the financial resources to carry out the investment needed. To this end, the proposed legislation will authorize third-party investors and/or partners to fund projects of this nature. On the other hand, a sports organisation that has the means and capacity to execute infrastructural works as required, and can do this without external financing, will still be entitled to operate in this way.

The proposed legislation will ensure that anyone, whether Maltese or foreign, will be eligible to invest in a project that is aimed at generating commercial activity within a sports facility. However, safeguards are to be applied before accepting an investment for a particular project. This process involves running appropriate and rigorous due-diligence exercises to guarantee that sports organisations would not be used as vehicles for money laundering or other illicit businesses.

Since the land is granted by way of temporary emphytheusis, sports organisations applying for permission to implement infrastructural projects for the commercialisation of the sports facility may underwrite loans with licensed financial institutions. However, in order to certify that the sports facilities and, by extension, public land, are both protected, such sports organisations, as well as potential investors, are not to be granted permission to create hypothecs, privileges, or any other form of guarantee that may burden the sports facility.

2.5 Commercial Partnerships

The proposed legislation will not cater for the conversion of sports organisations from sui generis civil societies into commercial companies. However, the regulations are to contain sections that would authorise sports organisations to enter into profit-oriented partnerships with commercial companies for the realisation and successful operation of the business activity within the sports facility. These commercial companies may be wholly-owned by the particular sports organisation, jointly-owned by the organisation and third-party investors, or wholly-owned by third-party investors.

These companies are to enter into investment and/or operations agreements with the recognised sports organisation. These agreements are to regulate the relationship between the investor and the sports organisation. They are also meant to stipulate the business and legal relationship between sports organisation and investor. Finally, such agreements will not be used to transfer land from the sports organisation registered with SportMalta to a commercial partnership or third-party investor.

2.6 Control and Enforcement

In order to verify that all commercialisation projects of sports facilities comply with the proposed regulations, measures of control and enforcement are necessary. This White Paper makes three proposals in order to achieve the targets set out in this section:

A. The Regulator

It is of cardinal importance to protect the public land granted by the State to sports organisations. Therefore, the commercialisation of sports facilities should not occur within a lax framework where everything is allowed. A regulatory body must be established and this should be granted powers to approve projects for commercialisation and to monitor the implementation of such projects. Consequently, this body would oversee that the targets set out in this White Paper are achieved.

The proposed legislation should establish a regulator that would be tasked with working towards the commercialisation of sports facilities by being empowered to:

i. Approve sports-facility commercialisation projects following advice from a purposely set-up technical committee;
ii. Monitor the implementation of the approved project;
iii. Monitor the operation of the economic activity following the termination of the infrastructural project; and
iv. Monitor the sports organisation's financial reports and those involving any commercial partnerships, as the case may be.

B. The Technical Committee

It is being proposed that upon the receipt of an application for a commercial project within a sports facility, a technical committee should be formed to analyse and advise the Regulator on whether to approve or deny applications for the commercialisation of such a facility. The technical committee is to be composed of persons who have a proven track record in and familiarity with the administration of Maltese sports organisations. It is fundamental that the technical committee members understand and have mastery over the exigencies of Maltese sport and are therefore in a position to judge projects that will bring added value to the particular sports organisation.

Owing to the technical nature of the judging exercise, this White Paper proposes that on the above committee there should be at least one architect, one lawyer and one certified public auditor. In this way, applications for commercial projects would be analysed from financial and legal perspectives on the one hand, and from an environmental standpoint on the other, so that the latter includes accounting for sustainable development practices.

It is being proposed that whenever a club applies for a project, the technical committee is to be appointed by the national association/federation within which the applying club is affiliated. However, in cases where the application is presented by a national association/federation, the technical committee is to be appointed by the Regulator. Finally, this committee should be constituted of persons who do not have a conflict of interest in the application presented and who should answer directly to the Regulator.

C. Financial Monitoring

The ultimate aim of commercialisation will be to provide sports organisations with the income required to make them financially self-sustainable and to have sufficient resources that would in turn enable them to invest in superior training structures. For these reasons, it is of paramount importance that thorough monitoring controls are carried out so that the declared financial targets in the approved projects are met.

Hence it is being proposed that SportMalta, in concordance with the Regulator, should be entrusted to conduct the necessary financial monitoring of these projects as well as a review of the financial statements of the relative sports organisations undertaking such projects. The proposed legislation is to contain sections which stipulate that sports organisations engaging in commercial activities on their premises would be required to present annual audited financial statements accounting for the commercial activities, with the same reporting standards as required by law for commercial companies under the Companies Act (Chapter 386 of the Laws of Malta). Moreover, monitoring is also to be made on the payment of the ground-rents due to the Government, by SportMalta. It has been established that in recent years a number of sports organisations have not been complying with the timely payment of ground-rents on their sports facilities. Proper monitoring and enforcement will lead to the appropriate sanctions being applied against sports organisations for not paying the ground-rent due on time.

D. Enforcement

The targets envisaged by the proposed legislation and any impositions that the technical committee or the Regulator may have made during the application stage are to be met and settled through necessary controls. To achieve the latter, it is important that upon the approval of commercial activity within a sports facility, the sports organisation and its partners, if any, are to be monitored to confirm that such targets are being attained. If and when the targets are not attained, then an enforcement system should be in place for action to be taken by SportMalta.

All aspects that pertain to the commercial activity of the sports organisation should be enforced and this process is to be monitored. The proposed legislation will only be effective if adequate enforcement is carried out whenever the conditions that are imposed by the law or by the Regulator are not met. It is proposed that sanctions for non-compliance are to range from pecuniary fines to the suspension and/or revocation of the permission to carry out commercial activity within that sports facility, as would have been previously granted by the Regulator.

2.7 The Process

This White Paper proposes that, by way of testing, the new regulations are to be initially applicable to the first four projects that receive the approval of the Regulator. Should the application, verification and acceptance processes of these projects be successful, then national sports associations/federations, as well as football and aquatic sports clubs, in possession of a legal title of a 49-year temporary emphytheusis on their sports facility will be allowed to run commercial projects. This means that, under the proposed legislation, a total of sixty sports facilities would be eligible to apply for commercial projects within their sports facility.

It is being proposed to have two different procedures for application:

A. Existing Sports Facilities

Those sports organisations that already have been given an emphytheutical grant of 49 years and that want to extend the remit of their premises to include commercial activity would be required to:

i. File an application with the national association/federation or the Regulator, as the case may be, requesting permission to implement projects related to commercial activity on such land;

ii. Include an architectural blueprint in their application of the proposed development and business plans as to the type of commercial activity to be pursued;

iii. Ensure that the business plan determines the relationship between the sports organisation and any partner, if any, so this would also have to include estimates on how the income of the sports organisation will increase by virtue of the proposed project;

iv. Show what infrastructural work will be involved in the architectural plan. Approval of projects that require a development permit will be subject to the attainment of a full development permit issued by the relevant authority;

v. Include evidence in the application that the applying sports organisation has adhered to all the obligations stipulated by the regulations, particularly when third-party investors are involved and measures would have to be enacted to verify the legality of the investment;

vi. Request in its application for the emphytheutical grant to start afresh and its duration to extend up to 49 years;

vii. A technical committee is appointed either by the national association/federation or by the Regulator, as the case may be, to review the application and to determine its feasibility;

viii. The technical committee may request changes to the application, and ultimately provide the Regulator with advice on whether to approve or reject an application; and

ix. Draw up a new contract whenever an application has been approved by the Regulator, and have such contract pass through a parliamentary resolution in order for it to become valid.

B. New or Proposed Sports Facilities

Sports organisations that have either identified a new piece of land for the use of their sports facility or that already have an emphytheutical grant but would like to annex another piece of adjacent land for commercial activity should:

i. Follow the procedure of land acquisition and apply with SportMalta, for the concession of land for sports purposes from the Lands Department, under a title of temporary emphytheusis, according to the relevant sections of the Sports Act;

ii. Follow steps (i) to (ix) above.

It must be stated at this point that the current system of the concession of public land to sports organisations should not be altered as this already safeguards the authenticity of the sport organisation's intentions in question. Moreover, it is suggested that changes made to or within the proposed system are as minimal as possible so as to not complicate the process by which land is granted to sports organisations. Another condition the regulations must state is that those sports organisations that are permitted to run commercial activities on their premises must have their contract for temporary emphytheusis with signed with SportMalta. This means that sports organisations that have contracted their sports facility with other public entities are not to be granted permission to conduct commercial activities.

Moreover, only SportMalta should be authorised to grant subsidies on the ground rent payable for the areas of the sports facility that would be used purely for sporting purposes. Conversely, it shall be the Minister in charge of Sport who shall establish the value of the ground rent to be paid on the commercialised areas of the sports facility.

3. Benefits of Commercialisation

This White Paper proposes a turning point in the way sport is perceived, administered and regulated in Malta and Gozo. Up until some time ago, sport was considered a pastime that offered and promoted a healthy lifestyle among a country's citizens. However, more recent studies on the economic impact of sport in Europe have shown that this activity has been steadily evolving into one that boosts the economy by generating large amounts of revenue while providing employment opportunities to the State's workforce. Questions have been raised on the status of sport in the Maltese islands specifically, as to why other countries that are historically at par with the Maltese islands from a sporting perspective have registered significant improvement in sports competitions, whilst the Malta has lagged behind.

It is the Government's belief that commercialising sports facilities will make all stakeholders realise that sport has now become a business-generating industry. This commercialisation will boost sports organisations' income that will in turn be used to improve their sporting infrastructures. Ultimately this will mean that their athletes would be better equipped and trained for competitions on an international level, ultimately closing the competitive gap between Malta and other nations. The envisioned outcome is that sports organisations, private investors, the State and the national economy will all stand to benefit from the commercialisation of sports facilities.

3.1 Sports Organisations

Sports organisations should be the net beneficiaries of the new legislation, which will provide them with an opportunity to create new income streams that up to now has not been possible. The proposed legislation aims to support sports organisations in being financially self-sufficient and less dependent on donors or sponsors.

Sports organisations will have to run their own administration in a professional manner in order to achieve the targets set out in this White Paper. This will strengthen the sporting sector in general, as more efficient and expert organisations will lead to the establishment of good practice in the development of sporting disciplines within the organisation. Another outcome is that increased income will translate into an investment in higher quality facilities and equipment, and in first-rate coaches. All of these conditions will enable better training of athletes from the grassroots to elite levels in a more professional environment.

3.2 The Investors

Investors would benefit from this operation as it offers new possibilities for business in many localities around Malta and Gozo. It is believed that local and foreign investors would have wanted to invest in sports facilities, however, up until now they would not have been able to do so because their investment would not be secured. This proposed legislation is thereby aimed at protecting such an investment and also promising a return on their business venture.

3.3 The State

The State should also be a beneficiary of the proposed legislation, as it would start receiving incremented ground rent for the emphyteutical concessions of the facilities. When sports organisations start boosting their funds via self-sustained commercial activities, the State would be in a position to reduce direct funding currently being offered to sports organisations; instead, it would use these funds for other priorities in Maltese sport.

3.4 The Economy

The commercialisation of sports facilities should feed into the country's economy by increasing the number of employment opportunities that should be made available all around the Maltese islands. Initially, this would happen in the development stages; later on, employment opportunities would be available in the operation of new commercial establishments to be located within the sports facilities.

Moreover, the commercial activities should produce revenue streams for sports organisations. This revenue would in turn generate the funding needed to develop elite sports facilities of international repute. Such enhanced facilities should attract international athletes and teams who would enlist in training camps held in Malta and Gozo. Furthermore, there would be potential for major sports events to be organised and held in the Maltese islands, thus providing further incentives and a further boost to the growing industry and economy of sports tourism.

4. Time-Frames

This White Paper is open to public consultation. This process will be held until the end of March 2016 after which time the relevant legislation will be drafted.