

I assent.

(L.S.)

GEORGE HYZLER
Acting President

19th June, 2009

ACT No. X of 2009

An Act to Amend the Civil Code, Cap 16

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. The short title of this Act is the Civil Code (Amendment) Act, 2009, and it shall be read and construed as one with the Civil Code, hereinafter referred to as “the Code”. Short title.

2. Article 1525 of the Code shall be substituted as follows:- Substitution of article 1525 of the Code.

“1525. (1) A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January, 2010 shall be in writing.

The Rent Regulation Board, (hereinafter referred to as the “Rent Board”), established under” the Reletting of Urban Property (Regulation) Ordinance shall have exclusive competence to decide on all matters relating to contracts of lease of urban property and of a residence and of commercial tenements. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to Cap. 69.

agricultural leases shall fall under the competence of the Rural Leases Control Board appointed according to the provisions of the Agricultural Leases (Reletting) Act.

Cap. 199.

Rent Board may collect information and data.

The Rent Board has the authority to request information and documentation from government entities, departments and authorities as well as from any other entity to meet its functions as established in this Code.

(2) Unless otherwise specifically stated in this Title, the provisions of this Title shall not apply to agricultural leases which shall continue to be regulated by the provisions of the Agriculture Leases Reletting Act.

(3) For the purposes of this Title:

“commercial tenement” means an urban tenement which is not a residence and which is leased to house an activity primarily intended to generate profit and includes, but is not limited to, an office, a clinic, a tenement leased out for the sale of merchandise by wholesale or retail, a market stall, a warehouse, a storage used for commercial purposes as well as any tenement licensed to sell things, wines, spirits or foodstuff or drinks, theatre, or tenement mainly used for any art, trade or profession:

Provided that a tenement leased to a society or leased to a musical, philanthropic, social, sporting or political entity, that is used as a club, shall not be considered as a commercial tenement even if part of it is used for the purpose of generating profit;

“club” means any club which is registered as such with the Commissioner of Police in accordance with the provisions of the law.”.

Substitution of article 1527 of the Code.

3. For article 1527 of the Code, there shall be substituted the following new article:-

“Letting by co-possessor when voidable. 1527. (1) The lease of an urban property, a residence or a commercial tenement that is co-possessed by more than one person shall always be made by all the co-possessors subject to the provisions of article 1530.

(2) Should one of the co-possessors also occupy the co-possessed property, if the parties agree

that a contract of lease be made, such an agreement shall be made by a contract in writing between all co-possessors on the one hand and the occupier of the tenement on the other; and thereafter such person shall be considered to be a lessee, according to the terms and conditions of a contract of lease, without losing his rights as a co-possessor:

Provided that this subarticle shall be without prejudice to the provisions of Title V of the Second Book, Part I of this Code.

(3) Should a co-possessor of an urban tenement, a residence or a commercial tenement lease out such property without authorization by a judgment of the Rent Board, or in the case of a movable without authorization of the competent court, or without the consent of the other co-possessors, such lease may at the request of any one of the other co-possessors be declared null, unless such request is made within two months from the date when such other co-possessor would have obtained knowledge of such a lease.”.

4. For article 1528 of the Code, there shall be substituted the following new article:

Substitution of article 1528 of the Code.

“When the board or court may grant authorization.

1528. (1) The Rent Board may, at the request made by means of an application by one of the co-possessors of the urban tenement, residence or commercial tenement, authorise the lease of the urban tenement, residence or commercial tenement, where it is shown that the tenement is suitable to be leased and that the proposed lease is advantageous, and that it is not shown that any of the other co-possessors has a just cause to oppose such lease:

Provided that in the lease of movables all the provisions of this subarticle shall apply, however the matter shall fall within the competence of the courts of civil jurisdiction.

(2) The provisions of subarticle (1) shall also apply when any one of the co-possessors is absent, and the Rent Board, in the case of the lease of an urban tenement, a residence or a commercial tenement (or the

court in the case of the letting or hiring of movables and other things as the case may be), would not have received any notice whether the absentee is still living, or as to his whereabouts.”.

Substitution of article 1529 of the Code.

5. Article 1529 of the Code shall be substituted as follows:-

“1529. The co-possessor who has, in general terms, given his consent for the lease of the thing, or who, in spite of his opposition the Rent Board or the court as the case may be has given, in general terms, his authorization for the lease of the thing, may, nevertheless, exercise the right of preference referred to in articles 1591, 1592 and 1593 unless he has in any manner waived such right.”.

Amendment of article 1530 of the Code.

6. In subarticle (2) of article 1530 of the Code, for the words “be reduced to the respective period”, there shall be substituted the words “be reduced to the reasonable period”.

Substitution of article 1531 of the Code.

7. For article 1531 of the Code there shall be substituted the following new articles:-

“When lease for a longer period is authorized by a competent authority.

1531. The provisions of the last preceding section in so far as they restrict the duration of the lease shall not apply where a longer period of lease has been covenanted with the authorization of the competent authority according to law.

Requisites in writing of a contract of lease.

1531A. (1) With regard to the letting of an urban property, a residence and a commercial tenement made after the 1st January, 2010, the contract of lease shall be made in writing and shall stipulate:

- (a) the property to be leased;
- (b) the agreed use of the property let;
- (c) the period for which that property will be let;
- (d) whether such lease may be extended and in what manner;
- (e) and also the amount of rent to be paid and the manner in which such payment is to be made.

(2) In the absence of one or more of these essential requirements, the contract shall be null.

(3) The lease of an urban property, a residence and a commercial tenement made after the 1st January, 2010 shall be regulated exclusively by the contract of lease and by the articles of this Code.

Contract of letting prior to 1st June, 1995.

1531B. The contracts of lease made before the 1st June, 1995 shall be subject to the law as in force prior to the 1st June, 1995 so however that from 1st January, 2010 articles 1531C, 1531D, 1531E, 1531F, 1531G, 1531H, 1531I, 1531J, 1531K, 1531L of this Code.

Rent of a residence.

1531C. (1) The rent of a residence which has been in force before the 1st June, 1995 shall be subject to the law as in force prior to the 1st June, 1995 so however that unless otherwise agreed upon in writing after the 1st January, 2010, the rate of the rent from 1st January, 2010 shall, when this was less than one hundred and eighty five euros (€185) per year, increase to such amount:

Provided that where the rate of the lease was more than one hundred eighty five euros (€185) per year, this shall remain at such higher rate as established.

(2) In any case the rate of the rent as stated in subarticle (1) of this article shall increase every three years by a proportion equal to the increase in the index of inflation according to article 13 of the Housing (Decontrol) Ordinance; the first increase shall be made on the 1st January, 2013:

Provided that where the lease on the 1st January, 2010 will be more than one hundred eighty five euros (€185) per year, and by a contract in writing prior to 1st June, 1995 the parties would have agreed upon a method of increase in rent, after 1st January, 2010 the increases in rent shall continue to be regulated in terms of that agreement until such agreement remains in force.

Rent of a commercial tenement.

1531D. (1) The rent of a commercial tenement, unless otherwise agreed upon after 1st January, 2010 or agreed upon in writing prior to the 1st June, 1995 with

regards to a lease which would still be in its original period on the 1st January, 2010, shall on the 1st January, 2010 be increased by a fixed rate of fifteen per cent over the actual rent and shall continue to increase on the 1st June of each year by fifteen per cent over the last rent between the 1st January, 2010 and the 31st December, 2013.

(2) The rent as at 1st January, 2014 is to be established by agreement between the parties. In the event that such agreement is not reached, the Property Market Value Index shall be considered as a guide to the rent as may be established by regulations made by the Minister responsible for accommodation and in the absence of such regulations, the rent shall from 1st June, 2013 increase by five per cent per year until the coming into force of the said regulations.

(3) In the case of a commercial tenement, if there was an agreement between the parties for periodic rent increases, then such agreement shall continue to apply without the increases contemplated in this article:

Provided that except in such cases where the increase in rent has been effected following an agreement, where the increase as proposed herebefore for commercial tenements is applied, the tenant may by means of a judicial letter served on the lessor or on one of the lessors, terminate the lease by giving him advance notice of three months and this shall also apply if the lease is for a definite period.

External
ordinary
maintenance
of lease.

1531E. The external ordinary maintenance of the lease which would have taken place prior to 1st January, 2010, save unless otherwise agreed upon in writing between the parties, shall be at the expense of the tenant and not of the lessor.

Definition of a
tenant of
a residential
tenement.

1531F. In the event of a lease of a house used as an ordinary residence made prior to 1st June, 1995 that person who will be occupying the tenement under a valid title of lease on the 1st June, 2008 as well as his or her spouse if living together and if they are not legally separated shall be deemed to be the tenant; when the tenant dies the lease shall be terminated:

Provided further that a person continues the lease after the death of the tenant under the same conditions of the tenant if on the 1st June, 2008 –

(i) such person is the natural or legal child of the tenant and has lived with the said tenant for four years out of the last five years; and after 1st June, 2008 continues to live with the tenant until his death:

Provided that, if more than one child has lived with the tenant for four years out of the last five years before the 1st June, 2008 and they continued to live with the tenant until his death, all such children will continue the lease *in solidum*; this lease shall not extend to the wife, husband or offspring of the child, or

(ii) such person is the brother or sister of the tenant, who on the death of the tenant is forty-five years of age or more, or brother or sister of her husband or his wife who is forty-five years of age or more, and who has lived with the tenant for four years out of the last five years before 1st June, 2008 and who after that date continued living with the tenant until his death:

Provided that, if there are more than one brother or sister who are over forty-five years of age and who have been living with the tenant for four years out of the last five years before the 1st June, 2008 and have continued living with him until his death, all such brothers or sisters shall continue the lease *in solidum*; this lease shall not extend to the wife, husband or children of the said brother or sister, or

(iii) such person is the natural or legal child of the tenant, who is younger than five years of age and after 1st June, 2008 has continued to live with the tenant until his death, or

(iv) such person is the natural or legal ascendant of the tenant, who is forty-five years of age, and who has lived with the tenant for a period of four years out of the last five years before the 1st June, 2008 and has continued living with the tenant until his death; this lease shall not extend to the wife, husband or children of the ascendant:

Provided that if on the death of the tenant, there are several children, siblings, or ascendants who all satisfy the criteria of paragraphs (i), (ii), (iii) or (iv), all those persons shall have the right to continue the tenancy together in solidum:

Provided further that a person shall not be deemed not to have lived with the tenant for the sole reason that she has been temporarily absent from the residence of the tenant due to work, study or medical care:

Without prejudice to the provisions of this article, a person shall not be entitled to continue the lease following the death of the tenant, unless such person satisfies the means test criteria which the Minister responsible for accomodation may introduce from time to time.

Person who does not qualify to be a tenant.

1531G. In the case of persons who although failing to qualify to continue the tenancy according to the criteria laid down in article 1531F but who before the 1st June, 2008 were residing with the tenant and continued to reside with the tenant until the tenant's death, such persons shall have a right to continue the tenancy as follows:

(a) if the person fails the means test criteria as stipulated above, the lease shall in any case continue for a period not longer than three years from the date of the death of the last surviving tenant, with a rent which will be double that being paid by the last tenant;

(b) if a person fails to qualify under other criteria, not being those of the means test, the lease shall continue for a period of not more than five years from the death of the last surviving tenant, with a rent which will be double that which was being paid by the last tenant.

Tenement leased as a garage or used as a summer residence.

1531H. (1) In the case of garages leased before the 1st June, 1995 that do not form part of a residence leased to a tenant as an ordinary residence and which are not considered as a commercial tenement, in the absence of an agreement to the contrary there shall not be any right of renewal of the lease after 1st June, 2010;

(2) In the case of a tenement leased before the 1st June, 1995 and used as a summer residence which is not the ordinary residence of the tenant, in the absence of an agreement to the contrary there shall not be any right of renewal to the lease after 1st June, 2010:

Provided that for the purposes of this Title no tenant shall be deemed to hold more than one ordinary residence.

Definition of a tenant of a commercial tenement.

1531I. In the case of commercial premises leased prior to 1st June, 1995, the tenant shall be considered to be the person who occupies the tenement under a valid title of lease on the 1st June, 2008, as well as the husband or wife of such tenant, provided they are living together and are not legally separated, and also in the event of the death of the tenant, his heirs who are related by consanguinity or by affinity up to the grade of cousins inclusively:

Provided that a lease of commercial premises made before the 1st June, 1995 shall in any case terminate within twenty years which start running from the 1st June, 2008 unless a contract of lease has been made stipulating a specific period. When a contract of lease made prior to the 1st June, 1995 for a specific period and which on the 1st January, 2010 the original period “di fermo” or “di rispetto” is still running and such period of lease has not yet been automatically extended by law, then in that case the period or periods stipulated in the contract shall apply. A contract made prior to the 1st June, 1995 and which is to be renewed automatically or at the sole discretion of the tenant, shall be deemed as if it is not a contract made for a specific period and shall as such terminate within twenty years which start running from the 1st June, 2008.

Tenements leased by any type of club.

1531J. In the case of a tenement leased to an entity and used as a club before the 1st June, 1995 including but not limited to a musical, philanthropic, social, sport or political entity, when its lease is for a specific period and on the 1st January, 2010 the original period “di fermo” or “di rispetto” is still running and the lease has not yet been automatically extended by law, then in that case the period of lease established in

the contract shall apply. In all other instances where the contract of lease was made prior to the 1st June, 1995 the law and all definitions as in force on the 1st June, 1995 shall continue to apply:

Provided that notwithstanding the provisions of the law as in force before the 1st June, 1995, the Minister responsible for accommodation may from time to time make regulations to regulate the conditions of lease of clubs so that a fair balance may be reached between the rights of the lessor, of the tenant and the public interest.

Tenement used as a residence as well as a commercial premises.

1531K. In the case of a tenement leased prior to 1st June, 1995 and which is used both as a residential premises as well as a commercial tenement for which one rent is paid, this shall be considered to be a residential tenement to which the rules of this article regarding residential premises shall apply:

Provided that -

(a) with regard to the rate of the rent, the rent shall be that established for a commercial premises as stipulated in article 1531D;

(b) if the commercial part will not continue to be used as such, insofar as the rate of the rent is concerned, there shall continue to apply the rent which was payable immediately before the termination of the use of the commercial part; so however that, the increase in the rent from that time onwards shall be regulated on the basis of the rent as established by article 1531C;

(c) where the rent increases in terms of regulations made as stipulated in article 1531D, the increase in rent shall be considered only on that part of the tenement which will actually be used for a commercial purpose.

Lease which entered into force on or after the 1st June, 1995.

1531L. With regard to leases which came into force on or after the 1st June, 1995 such leases, both of a residential and of a commercial tenement, and of urban property, shall continue to be regulated by the same terms and conditions agreed upon between the parties and by law as in force at the time.

Lease of other
tenement
made
prior to 1st
June, 1995.

1531M. With regard to leases made before the 1st June, 1995 of tenements which are not residences or commercial tenements, subject to the provisions of article 1531J relating to clubs, the law and all definitions as were in force before the 1st June, 1995 shall continue to apply:

Provided that, the Minister responsible for accommodation may from time to time make regulations to regulate such leases so that a fair balance may be reached between the rights of the lessor, of the tenant and the public interest.”.

8. Article 1532 of the Code shall be renumbered as subarticle (1) thereof, and immediately thereafter there shall be added the following subarticle:- Amendment of article 1532 of the Code.

“(2) The provisions of subarticle (1) do not apply with regard to the lease of urban, residential and commercial property made after the 1st January, 2010.”.

9. Immediately after subarticle (2) of article 1533 of the principal Act, there shall be added the following new subarticle:- Amendment of article 1533 of the Code.

“(3) The provisions of subarticle (2) do not apply with regard to the lease of urban, residential and commercial property made after the 1st January, 2010.”.

10. Article 1534 of the Code shall be renumbered as subarticle (1) thereof, and immediately thereafter there shall be added the following new subarticle:- Amendment of article 1534 of the Code.

“(2) The provisions of subarticle (1) do not apply with regard to the lease of urban, residential and commercial property made after the 1st January, 2010.”.

11. Article 1536 of the Code shall be renumbered as subarticle (1) thereof, and immediately thereafter there shall be added the following new subarticle:- Amendment of article 1536 of the Code.

“(2) The provisions of subarticle (1) do not apply with regard to lease of urban, residential and commercial property entered into after the 1st January 2010.”.

Amendment of article 1540 of the Code.

12. For subarticle (2) of article 1540 of the Code there shall be substituted the following:–

“(2) During the continuance of the lease, the lessor is bound to make all repairs which may become necessary, excluding building, the repairs mentioned in article 1556, if he has not expressly bound himself to this effect.

(3) For the purposes of this Title with regard to an urban, residential and commercial tenement, “structural repairs” shall be deemed to be those relating to the structure of the building itself, including the ceilings.

(4) When the lessor in the case of a residence leased prior to the 1st June, 1995 carries out structural repairs which have become necessary not due to his own fault, then the rent shall be increased by six per cent of the costs incurred:

Provided that where the structural repairs have not become necessary due to a fault of the lessee, then the said lessee has the right to terminate the lease even though the period of the lease has not yet lapsed:

Provided that in the cases where the lessor is willing to carry out these repairs, the lessee may choose to carry out such repairs at his expense, and in such an event the rent shall remain unchanged; however the lessee shall in such case have no right for any full or partial compensation for such structural repairs at the termination of the lease.”.

Substitution of article 1541 of the principal law.

13. For article 1541 of the Code, there shall be substituted the following:–

“1541. (1) If the lessor, on being required so to do by means of a judicial act, fails to carry out the repairs to which he is bound, it shall be competent to the lessee to request, by application, authorization to carry out such repairs at the expense of the lessor, under such conditions as the Rent Board, or the Court or the Rural Leases Control Board, as the case may be, may deem proper in the circumstances.

(2) The lessee shall have the right to keep the rent due or the rent which is still due to be paid, so that he will be paid back for such expenses, subject to his rights for any greater amount, if the amount of those expenses is more than such rent; in this case the lessor has no right to increase the rent as mentioned in article 1540 (4).”.

14. Article 1543 of the Code shall be substituted as follows:- Substitution of article 1543 of the Code.

“1543. It shall be lawful for the lessee, without the necessity of any proceedings, to carry out at the expense of the lessor the urgent repairs; and, the omission or delay of which might cause to him serious prejudice: and, in any such case, he may, for the purpose of reimbursement, retain the rent as provided in article 1541:

Provided that the lessee shall be bound to inform as soon as possible the lessor about these circumstances and to deliver to him a report by an expert as to the urgency of such repairs and their estimated value and the prejudice which might result from such delay:

Provided also that the lessor shall be entitled to assume the continuation of the repairs commenced under the provisions of this article.”.

15. In article 1544 of the Code, for the words “fixed by the court, the lessee” there shall be substituted the words “fixed by the “Rent Board (or the court or the Rural Leases Control Board as the case may be), the lessee”. Amendment of article 1544 of the Code.

16. Immediately after article 1548 of the Code, there shall be added the following new article:- Addition of new article 1548A to the Code.

“Right of access to the tenement by the lessor.

1548A. During the running of the lease of an urban, residential or commercial tenement, the lessor has right of access to the tenement in such times and in such manner agreed upon with the tenant in order that the lessor may fulfill his duties or to verify whether the tenant is performing his obligations, as well as to show the tenement to prospective buyers:

Provided that in the absence of an agreement between the parties, the Rent Regulations Board may,

if need be, after hearing the parties summarily, fix days, times and conditions, after an application filed by the lessor for that purpose. The Board may give a decree during the sitting or in the chambers without hearing the parties. The decree shall be given within five working days from the date when the tenant is served with a notice. The Rent Board may order the inspection to be done under the supervision and in the presence of a Court Marshal. In this function, the Rent Regulation Board shall also take into account the tenant's right to privacy and shall verify that no abuse is made of the lessor's right as provided in this subarticle. In such case, no appeal may be made from the said decree.”.

Amendment of article 1554 of the Code.

17. In article 1554 of the Code, for the words “of section 1534” there shall be substituted the words “established by law”.

Substitution of article 1555 and addition of new article 1555A to the Code.

18. For article 1555 of the Code there shall be substituted the following articles:–

“Unlawful user of the thing let.

1555. If the lessee uses the thing leased for any purpose other than that agreed upon by the parties, or as presumed in the previous article, or in a manner which may prejudice the lessor, the lessor may, according to circumstances, demand the dissolution of the contract.

Non-use of tenement.

1555A. (1) In the case of a residential tenement, failure to use the tenement for a period exceeding twelve months shall be deemed to be bad use of the thing leased in terms of article 1555:

Provided that when a person has failed to use the leased tenement due to being temporarily absent from the tenement due to work, study or health care, then such failure shall not be deemed to be bad use.

(2) When the lessee of a lease which started before the 1st June, 1995 is recovering in hospital or in an old people's home, and where such institution certifies or where it conclusively results that the same tenant is permanently dependent on the institution, the lease of that tenement shall be transferred to the person mentioned in article 1531F:

Provided that when the tenant does not remain in

the tenement due to total dependence on the institution as certified by the same institution or as it otherwise results and there is no right of transfer of the lease as herebefore mentioned, or the transfer is accepted by the person qualifying therefor, the lessor may request the dissolution of the contract.

(3) In the case of commercial premises, failure to use the said tenement for a commercial purpose in accordance with the provisions of a contract of lease shall be deemed to be bad use of the thing leased in accordance with the provisions of article 1555.

(4) The provisions of article 1555 shall also apply in the case of rural tenements, if the lessee abandons the cultivation thereof, or does not cultivate the said tenement as a *bonus paterfamilias*, and the lessor may thereby suffer prejudice in respect of which no security was given to him.

(5) In any of the aforesaid cases, apart from those cases where the lessee forfeits the lease due to his recovery in an institution, the lessee shall also be liable to pay damages.”.

19. Article 1556 of the Code shall be substituted as follows:- Substitution of article 1556 of the Code.

“1556. The lessee of an urban tenement is responsible for all repairs other than structural repairs:

Provided that if such repairs are not carried out appropriately and according to good workmanship the lessor shall have the right to request the Rent Board to authorise him to carry out such repairs at the expense of the lessee:

Provided further that in those instances where new repair obligations have been imposed on the lessee which were not incumbent upon him before the 1st June, 2008 the failure by the lessee to undertake such repairs before the 1st January, 2009 shall not in any way expose the lessee to damages or any other form of punitive measures such as an action for the termination of the lease.”.

Substitution of article 1557 of the Code.

20. Article 1557 of the Code shall be substituted as follows:-

Except when caused by force majeure.

“1557. The lessee shall in no case be responsible for the repair of damages caused by force majeure and without any fault of his own.”.

Substitution of article 1558 of the Code.

21. Article 1558 of the Code shall be substituted as follows:-

Cleansing cisterns

“1558. The cleansing of cisterns and sinks, of cess pits and of chimneys shall be at the charge of the lessee.”.

Amendment of article 1560 of the Code.

22. In article 1560 of the Code, the words “, even as regards the repairs mentioned in section 1556” shall be deleted.

Amendment of article 1566 of the Code.

23. In article 1566 of the Code, for the words “A contract of letting” there shall be substituted the words “Without prejudice to the provisions of articles 1531A to 1531M, a contract of letting”.

Substitution of article 1570 of the Code.

24. Article 1570 of the Code shall be substituted as follows:-

“1570. A contract of letting and hiring may also be dissolved, even in the absence of a resolutive condition, where either of the parties fails to perform his obligation; and in any such case the party aggrieved by the non-performance may elect either to compel the other party to perform the obligation if this is possible, or to demand the dissolution of the contract together with damages for non-performance:

Provided that in the case of urban, residential and commercial tenements where the lessee fails to pay punctually the rent due, the contract may be terminated only after that the lessor would have called upon the lessee by means of a judicial letter, and the lessee notwithstanding such notification, fails to pay the said rent within fifteen days from notification.”.

Substitution of article 1572 of the Codes.

25. For article 1572 of the Code there shall be substituted the following:

“1572. Without prejudice to the provisions of articles 1531A to 1531M a contract of letting and hiring of a thing is not dissolved by the death of the lessor or of the lessee.”.

26. In article 1576C of the Code, for the words “court” there shall be substituted the words “Rent Board”. Amendment of article 1576C of the Code.

27. In article 1576D of the Code, for the words “confirmation by the court” there shall be substituted the words “confirmation by the Rent Board”. Amendment of article 1576D of the Code.

28. Article 1603 of the Code shall be substituted as follows:- Substitution of article 1603 of the Code.

“1603. If, on such sworn application, the lessee fails to establish the sufficiency of the security, the Rent Board may, before giving judgment, allow him a time not exceeding eight days within which to produce a fresh security, and if such fresh security, whether alone or together with the previous one, is not deemed by the Rent Board as being sufficient, the Rent Board shall proceed to give judgement on the aforesaid application, declaring the right of preference as having lapsed.”.

29. Paragraph (f) of article 1607 of the Code, for the words “to do so by judicial proceedings” there shall be substituted the words “to do so by the Rent Board”. Amendment of article 1607 of the Code.

30. In article 1608 of the Code, for the words “and by the court deemed” there shall be substituted the words “and by the Rent Board deemed”. Amendment of article 1608 of the Code.

31. In article 1609 of the Code, for the words “opinion of the court” there shall be substituted the words “opinion of the Rent Board”. Amendment of article 1609 of the Code.

32. Article 1613 of the Code shall be substituted as follows:- Substitution of article 1613 of the Code.

“1613. In the absence of other special provisions, the contract of subletting is regulated by the same provisions which regulate the contract of letting and hiring:

Provided that in the case of the sub-letting of commercial tenements before the 1st June, 1995, these shall be terminated on the 31st May, 2018 unless done by agreement with the lessor, in which case such sub-lettings shall be regulated by such agreement:

Provided further that the lease shall be established according to that laid down in article 1513D of this Code.”.

Substitution of article 1614 of the Code.

33. Article 1614 of the Code shall be substituted as follows:-

“1614. (1) The lessee is not entitled to sub-let a thing or to assign its lease, unless such right was agreed upon in the contract.

(2) For the purposes of this Sub-title, a management agreement or any other form of agreement, by means of which a lessee transfers to third parties the possession of the tenement or of the business operated from the commercial tenement shall be considered as sub-letting.

(3) Where the lessee is a limited liability company or any other form of company, the cumulative inter vivos transfer of fifty per cent of the shareholding, even if carried out by means of more than one transfer and, or the transfer of the actual controlling power of the administration of such company or of the control of the business conducted from the tenement shall be considered as a sublease:

Provided that such a transfer shall not be considered as a sublease if the transfer was made to the wife or husband who are not legally separated and, or to the children of the shareholder.”.

Substitution of article 1615 of the Code.

34. Article 1615 of the Code shall be substituted as follows:-

Housing of third parties.

“1615. (1) The lessee may house third parties in parts of the residential property against payment unless this is expressly forbidden in the contract and subject to the provisions of article 1555.

(2) The lessee shall also be entitled to accept other persons to dwell with him against payment of part of the rent, or against any other consideration, unless such right has not been expressly forbidden by the contract.”.

Amendment of article 1618 of the Code.

35. In article 1618 of the Code, for the words “been excluded, the lessor” there shall be substituted the words “be excluded and also where it has been agreed upon, the lessor”.

36. Immediately after article 1622 shall be added the following article:—

Addition of new article 1622A of the Code.

“Power to make regulations.

1622A. The Minister responsible for accommodation following consultation with the Minister responsible for finance may make regulations for all or any of the following purposes:

(a) to draw up a model contract of lease that may be used by the parties concerned;

(b) to enable the proper implementation of the provisions of this Title and to implement such necessary measures to give it full effect and to allow for its proper administration, including Board procedures;

(c) to create a registry for the deposit or registration and, or de-registration of contracts of letting for any purpose which the Minister may establish, including for the purpose of the validity itself of the same contracts, and to do all that is necessary for this purpose;

(d) to create a structure establishing and administering the Market Property Value Index;

(e) to establish criteria for a means test for the purposes stipulated in article 1531F of this Code;

(f) to establish regulations and criteria for the purpose of articles 1531J and 1531M of this Code;

(g) to extend the application of the provisions of this Code regarding the lease or part of it with regards to cases where a person has been accommodated in a residence under the Housing Act, or where a public authority has taken possession of a residence in terms of the Land Acquisition (Public Purposes) Ordinance, or under any other law which is or has been in force from time to time;

(h) to provide transitory arrangements in the case of removal of requisition orders issued according to the Housing Act;

Cap. 398.

(i) to provide for the removal or modification of any transitory provisions contained in the Condominium Act;

(j) to provide with respect to any thing about which he may make regulations in terms of the provisions of this Title.”.

Addition of the Third Schedule to the Code.

37. Immediately after the Second Schedule to the Code there shall be added the following new schedule:-

“THIRD SCHEDULE

Lease of an urban property, residence and commercial tenement

This, day of

By the present private writing there appear on the one part son of and neè born in and residing at holder of Identity Card Number hereinafter referred to as the lessor.

And on the other part son of and neè born in and residing at holder of Identity Card Number hereinafter referred to as the lessee.

And hereby the parties agree on the following:

- a. the lessor is granting by title of lease to the lessee who under the same title of lease accepts the premises
- b. the lessee may use the leased premises for
- c. this lease is being made for a period of commencing from
- d. the parties agree that on the termination of this lease it may not be renewed / shall be renewed as follows

e. the rent payable for this lease shall be that shall be due each in advance / in arrears.”.

38. The Reletting of Urban Property (Regulation) Ordinance shall be amended as follows:-

Amendment of the
Reletting of Urban
Property (Regulation)
Ordinance.
Cap. 69.

(a) immediately after subarticle (3) of article 16 there shall be added the following new subarticle:

“(4) Without prejudice to any other law the Board shall also decide all matters affecting the leases of urban property including residential as well as commercial property in terms of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, including causes relating to the occupation of urban property where such leases have expired.”;

(b) immediately after article 16 thereof, there shall be added the following new article:-

“Powers of
the Board.

16A. (1) (a) In actions before the Rent Board, where the demand is solely for the eviction of any person from the lease or sub-lease of any urban, residential or commercial tenement, with or without a claim for rent or any other consideration due or by way of damages for any compensation, up to the date of the surrender of the tenement, it shall be lawful for the applicant to demand in the sworn application that the Board gives judgment allowing his demand, without proceeding to trial:

Provided that the applicant shall, in his sworn application state that the respondent has no defence to the action:

Provided further that the applicant shall also file together with the application a sworn affidavit containing facts relative to the claim, and confirming that such facts are within his knowledge. The applicant may also file together with his application an affidavit of any other third party confirming facts relative to the claim.

(b) In the cases provided for in this article, the sworn application shall be in writing according to the prescribed form and shall contain an order to the respondent to appear before the Board, on an appointed day and at a stated time.

(c) In the cases provided for in this article, the sworn application shall also indicate clearly that the procedures conducted are special summary procedures where judgement shall be given at the first hearing of the case should the respondent fail to appear at that sitting or should he fail at that sitting to show that he has a valid defence to put forth to rebut the applicant's claims.

Service on respondent. (2) A copy of the sworn application shall be served upon the respondent.

Time for service of sworn application. (3) In the cases referred to in subarticle (1) hereof, the sworn application shall be served on the respondent without delay; and he shall be ordered to appear not earlier than fifteen days and not later than thirty days from the date of service:

Provided that in the case of non-observance of the provisions of this article the Board shall not stop proceedings by special summary proceedings but shall give such orders as it may consider appropriate so that the rights of the parties be not prejudiced.

Mode of service. (4) The sworn application, and the affidavit produced therewith, and any order referred to in subarticles (2) and (3) hereof shall be served by means of any executive officer of the courts.

Trial in special summary proceedings. (5) (a) If the respondent fails to appear to the sworn application, or if he appears and does not contest the proceedings taken by the applicant, on the ground of irregularity or inapplicability, or, having unsuccessfully raised such plea, does not by his own sworn evidence, or otherwise, satisfy the Board that he has a *prima facie* defence, in law or in fact, to the action on the merits, or otherwise discloses such facts or issues of law as may be deemed sufficient to entitle him to defend the action, the Board shall forthwith give judgement, allowing the applicant's claim. The respondent may make his submissions to contest the proceedings taken by applicant on the ground of irregularity or inapplicability by means of a note to be filed in the registry of the Board or during the hearing.

(b) If the respondent successfully contests the proceedings on the ground of irregularity, or inapplicability, or if he satisfies the Board that he has a *prima facie* defence to the action, or discloses such facts or issues of law as may be deemed sufficient to entitle him to defend the action or to set up a counter-claim, he shall be given leave to defend the action and file a reply within twenty days from the date of the order referred to in paragraph (d) hereunder.

(c) Where leave to defend is given, the action shall be tried and determined, on the same acts, in the ordinary course as provided in this Ordinance.

(d) The order giving leave to defend shall be made orally, a record thereof being kept in the proceedings.”; and

(c) in article 46, immediately at the end of subarticle (1) thereof, there shall be added the following proviso:-

“Provided that articles 16 to 45 of this Ordinance shall also apply to all leases made after the 1st June, 1995.”.

39. (1) Leases which were in force before the 1st June, 1995, and which are still in force on the 1st January, 2010, shall continue to be regulated by the laws which were in force before the 1st June, 1995, other than the provisions of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, as amended by this Act and subject to any regulations made in virtue of the amendments introduced by this Act. Transitory provisions.

(2) Leases which were granted after the coming into force of the Housing Laws Amendment Act, 1995, and which are still in force on the 1st January, 2010, shall continue to be regulated by the provisions of the said law insofar as they are not affected by the provisions of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, as amended by this Act.

(3) So however that where by this Act further obligations were made incumbent on the lessee which before the 1st June, 2008 were not incumbent on him, failure to fulfil those obligations before the 1st January, 2010 may not in any manner make the lessee liable for any damages or other adverse consequences such as an action for the termination of the lease.

(4) The provisions of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, shall also apply to the letting of urban tenements where terminated contracts of emphyteusis or sub-emphyteusis have been or are about to be converted into leases by virtue of the law:

Provided that in the case of leases made by virtue of the Housing (Decontrol) Ordinance, the provisions of the said Ordinance defining the person to be considered as the lessee and the provisions providing for the transfer of the lease after the demise of the lessee shall continue to apply notwithstanding the aforesaid provisions of the Civil Code.

(5) The Rent Board appointed by virtue of the Reletting of Urban Property (Regulation) Ordinance shall have exclusive jurisdiction to decide matters connected with the letting of urban property including both commercial tenements and residences. So however that causes relating to lease contracts which on the 1st January, 2010 are still pending before the Courts or other Tribunals shall still be dealt with by the same Courts or Tribunals.

(6) Nothing in this law and in the Civil Code as amended by this Act shall be deemed to lessen the powers pertaining to the Director, Social Accommodation, to the Housing Authority, or to any other person who exercises public authority owing to such person's office, by virtue of the Housing Act or by virtue of the Housing Authority Act.

(7) Without prejudice to the provisions of the Civil Code as amended by this Act, the renewal of a lease after the 1st June, 1995 or after that date (whether such renewal is conventional, legal, customary or otherwise) shall not be considered as a lease agreed on the 1st June, 1995 or after that date and the renewal of a lease on the 1st January, 2010 or after that date (whether such renewal is conventional, legal, customary or otherwise) shall not be considered as a lease agreed on the 1st January, 2010, or after that date.

(8) Save as the Minister responsible for accommodation may by regulations otherwise provide, nothing in this Act shall affect the applicability of:

(b) the Housing Act; Cap. 125.

(c) the Disposal of Government Land Act; and Cap. 268.

(d) article 8 of the Reletting of Urban Property (Regulation) Ordinance.

as in force immediately before the coming into force of this Act.

(9) Without prejudice to the other provisions of this Act, the provisions of this Act shall apply to leases where Government is the owner or the lessee.”.

Passed by the House of Representatives at Sitting No. 129 of 16th June, 2009.

LOUIS GALEA
Speaker

PAULINE ABELA
Clerk to the House of Representatives