

**A BILL
entitled**

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, 2008, 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, 2009 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 including commercial tenements or residences. All other leases fall under the competence of the ordinary courts while matters relating to 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. 69.)

(Cap. 199.).

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, offices, clinics, 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 tenements leased to societies, or leased to musical, philanthropic, social, sporting and political entities that are used as clubs shall not be considered as commercial tenements even if part of the said property is used for an activity that generates profit;

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

Substitution of article 1527 of the Code.

Letting by co-owners and co-possessor.

3. Article 1527 of the Code shall be substituted as follows:-

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

(2) Should one of the co-possessors or co-owners also occupy the co-possessed or co-owned 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 or co-owners 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 or co-owner of the said property as the case may be:

Provided that the provisions of Title V of the Second Book, Part I of this Code, shall continue to apply *mutatis mutandis*.

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

4. Article 1528 of the Code shall be substituted as follows:-

Substitution of article 1528 of the Code.

“1528. (1) The Rent Board may at the request made by means of a sworn application by one of the co-possessors or one of the co-owners of the urban tenement, a residence or a 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 or co-owners has a just cause to oppose such lease:

When authorisation may be granted.

Provided that in the lease of movables all the provisions of this sub-article shall apply as the ordinary courts may decide.

(2) The provisions of sub-article (1) shall also apply when any one co-possessors or co-owners is absent, and the Rent Board would not have received any notice 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 moveables and other things as the case may be) whether the absentee is still living, or his whereabouts.”

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

Substitution of article 1529 of the Code.

“1529. The co-possessor or co-owner 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 authorisation 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.”

6. In sub-article (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”.

Amendment of article 1530 of the Code.

Substitution of article 1531 of the Code.

Requisites of a contract of letting in writing.

7. Article 1531 of the Code shall be substituted as follows:-

“1531. (1) With regard to the letting of an urban tenement, a residence and a commercial tenement made after the 1st January, 2009, 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;

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

The lease of an urban tenement, a residence and a commercial tenement made after the 1st January, 2009 shall be regulated exclusively by the contract of lease and by the provisions of this Code.

(2) The lease of property made before the 1st January, 2009 shall remain in force subject to the following provisions:

Contract of letting prior to 1st June, 1995.

(a) 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:

Increases in rent of residences.

(i) (a) in the case of premises used as a residence, unless otherwise agreed to by the parties after the 1st January, 2009, the rent payable as from the 1st January, 2009 shall where such rent was lower than one hundred and eighty five Euro (€185) per annum increase to such amount. Provided that if the rent payable was higher than one hundred and eighty five Euro (€185) per year then that higher rent shall remain at such higher rate as established. The rent established on the 1st January, 2009 as herein indicated 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, 2012.

(Cap. 158.)

(b) Provided that with regard to commercial premises, in default of a different agreement reached after the 1st January, 2009, the rent shall on the 1st January, 2009 increase by a fixed rate of fifteen per cent over the actual rent and shall continue to increase on the 1st January of each year by fifteen per cent over the last rent between the 1st January, 2009 and the 31st December, 2012.

The rent as at 1st January, 2013 is to be established by agreement between the parties. In the event that such agreement is not reached, any party may apply to the Rent Board to fix the fair rent which shall be established according to the Property Market Value Index as may be established by regulations made by the Minister responsible for housing and in the absence of such regulations, at the discretion of the Rent Board:

Provided further that 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 made by law in this paragraph (b):

Provided further that except in such cases where the increase in rent has been effected following an agreement, 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 apply also if the lease is for a definite period;

(ii) it is the tenant and not the lessor who shall be responsible for the external ordinary maintenance of the property;

(iii) if a used tenement is leased as an ordinary residence, such person occupying the tenement by a valid title of lease on the 1st June, 2008 shall be considered as the tenant, as well as such person's husband or wife if they are living together and are not legally separated; on the death of the tenant the lease shall be terminated:

Provided further that a person shall continue the tenancy following the death of the tenant subject to the same conditions applicable to 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:

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 then all such children will have a right to the tenancy *in solidum* and in the event that more than one child accepts such right to the tenancy and, or continue to live in the tenement, such tenancy will then be regulated by the conditions of lease made after the 1st June, 1995 and the applicable rent shall be the just rent as established by the Rent Board; provided that the right to the tenancy 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 is sixty years of age or over, or brother or sister of her husband or his wife who is sixty years of age or over, and who has in any case lived with the tenant for four years out of the last five years before 1st June, 2008:

Provided that, if there are more than one brother or sister who is sixty years of age or over who have lived with the tenant for four years out of the last five years before the 1st June, 2008, all such brothers or sisters shall have a right to the tenancy *in solidum* and in the event that more than one brother or sister accepts such right to the tenancy and, or continue to live in the tenement, the tenancy will continue to be regulated by the conditions of lease introduced on or after the 1st June, 1995 and the applicable rent will be the fair rent as established by the Rent Board; 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, or

persons who do not
qualify,

iv. such person is the natural or legal ascendant of the tenant, who is sixty years of age and over, who has lived with the tenant for four years out of the last five years before the 1st June, 2008; provided that this lease shall not extend to the wife, husband or children of the ascendant:

Provided further that a person who has not lived with the tenant for a period of four years out of the last five years as stipulated above due to work, study or health care outside Malta, shall not forfeit the right to continue the lease after the tenant's death because of these periods of absence:

Provided further that 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 housing may introduce from time to time;

(iv) persons who, although failing to meet the criteria stipulated in paragraph (iii) hereabove, on the 1st June, 2008 were residing with the tenant at the time of the tenant's death, such persons shall have a right to continue the tenancy as follows: persons who do not qualify for continuance of lease.

(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 the conditions of lease made on or after the 1st June, 1995 with a fair rent as established by the Rent Board;

(b) if a person fails to qualify under criteria other than 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 the conditions of lease made on or after the 1st June, 1995 with a fair rent as established by the Rent Board;

(v) (a) in the case of garages that do not form part of a residence leased to a tenant as an ordinary residence and which are not considered as commercial tenement, the lease shall in the absence of an agreement to the contrary terminate on the 1st January, 2010; garages,

(b) in the case of a tenement used as a summer residence and which is not the ordinary residence of the tenant, the lease shall in the absence of an agreement to the contrary terminate on the 1st January, 2010: summer residence.

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

(vi) in the case of commercial tenements, the tenant shall be considered to be the person who on the 1st June, 2008 occupies the tenement under a valid title of lease 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 and the heirs who are also his natural or legal children: commercial tenements,

Provided that the right to the *causa mortis* succession in the event of the death of the tenant or of one of the tenants shall be regulated by the provisions as established by this Code or by the applicable law relating to succession:

Provided that a lease of commercial tenement made before the 1st June, 1995 shall in all cases terminate within twenty years from the 1st June, 2008 unless another contract of lease has been made laying down a specific period. A contract of lease made prior to the 1st June, 1995 for a specific period and which has not yet lapsed on the 1st January, 2009 and on that date the original period "*di fermo*" or "*di rispetto*" is still running, and where such period of lease has not yet been automatically extended by law, then the original period of lease as established in the contract shall in that case continue to apply. A contract made between the parties prior to the 1st June, 1995 that allows for automatic renewals shall be considered as a contract for an unspecified period and shall as such terminate within twenty years running from the 1st June, 2008;

clubs,

(vii) in the case of tenements leased before the 1st June, 1995 by any kind of club including, but not limited to, societies, musical, philanthropic, social, sport and political entities which are used as clubs when their lease is for a specific period and on the 1st January, 2009 the original period "*di fermo*" or "*di rispetto*" is still running and the lease has not been automatically extended by law, then in that case the original period of lease established in the contract shall continue to prevail. In all other instances where the contract of lease was made prior to the 1st June, 1995 the lease shall terminate on the 1st January, 2010:

Provided that the Minister responsible for housing may, in relation to particular clubs or kinds of particular clubs, exempt such clubs from the application of this paragraph (vii) by regulations should he deem it necessary in the public interest;

"Casa Bottega".

(viii) in the case of a tenement used both as a residential and commercial tenement for which one rent is paid, the provisions of this article relating to a residential property shall apply:

Provided that with regard to the rent payable from the date of the coming into force of this paragraph to the 31st

December, 2012 the tenement shall be considered as a commercial tenement and for this purpose, as regards the due rent, the rules relating to the increase of the rent of commercial tenements shall apply as provided in this article. As from the 1st January, 2013 the rent shall be established in the following manner: by calculating the rent as if the whole tenement is used for residential purposes and the rent for such part only used for a commercial purpose in such manner as the rent is established for commercial tenements, and in both cases this shall be calculated in the manner established in article 1531(2)(a)(i), after which the higher rent of the two shall apply.

(b) With regard to leases made on or after the 1st June, 1995, these leases, whether of residential or commercial tenements and urban property, shall continue to be regulated in accordance with the terms and conditions agreed to by the parties and the applicable law at the time.

Contracts after 1st June 1995.

(c) With regard to leases made before the 1st June, 1995 of premises which are not residential or commercial tenements, subject to the provisions of article 1531(2)(a)(vii) regarding clubs, the law and definitions in force before the 1st June, 1995 shall continue to apply:

Provided that the Minister responsible for housing may issue regulations from time to time to regulate such leases.”.

Other leases prior to 1st June 1995.

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

Amendment of article 1532 of the Code.

“(2) The provisions of sub-article (1) do not apply with regard to the lease of urban, residential and commercial tenements made after the 1st January, 2009.”.

9. Immediately after sub-article (2) of article 1533, there shall be added the following new sub-article:-

Amendment of article of 1533 of the Code

“(3) The provisions of sub-article (1) do not apply with regard to the lease of urban, residential and commercial tenements made after the 1st January, 2009.”.

Amendment of article of 1534 of the Code.

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

“(2) The provisions of sub-article (1) do not apply with regard to the lease of urban, residential and commercial tenements made after the 1st January, 2009.”.

Amendment of article 1536 of the Code.

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

“(2) The provisions of sub-article (1) do not apply with regards to lease of urban, residential and commercial tenements entered into after 1st January 2009.”.

Amendment of article 1540 of the Code.

12. For sub-article (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 the structural repairs which may become necessary, unless he shall have expressly bound himself to carry out other repairs.

(3) For the purposes of this Title with regard to urban, residential and commercial tenements, “structural repairs” shall mean such repairs relating directly to the structure of the building, including ceilings.

(4) When the lessor of an urban, residential and commercial tenement carries out structural repairs which have become necessary not due to his own fault, than the annual rent shall be increased by six per cent of the costs incurred in such repairs:

Provided that where such repairs have not become necessary due to a fault of the lessee, then the said lessee may with immediate effect terminate the said lease even if the lease is for a definite time that has not yet lapsed.

Provided that in the cases where the lessor is willing to carry out these repairs the lessee shall have the right to 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 at the termination of the lease for such structural repairs.”.

13. Sub-article (1) of article 1541 of the Code shall be substituted as follows:- Amendment of article 1541 of the Code.

“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 demand, by sworn application, that he be authorised 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.”.

14. Sub-article (2) of article 1541 of the Code shall be substituted as follows:- Amendment of article 1541 of the Code.

“(2) The lessee is entitled to retain the rent due or yet to be paid, in reimbursement of the said expense, saving his right to any greater sum if such expense exceeds the amount of such rent so however that in this case the lessor shall not be entitled to increase the rent as stated in article 1540 (4).”.

15. In article 1542 of the Code, in the Maltese text thereof, for the words “wara s-sejha bil-qorti msemija” there shall be substituted the words “wara s-sejha msemija”. Amendment of article 1542 of the Code.

16. 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 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.”.

17. 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.

Amendment of article 1553 of the Code.

18. Article 1553 of the Code shall be renumbered as sub-article (1) thereof, and immediately thereafter the shall be added the following new sub-article:-

“(2) During the term of a lease of an urban, residential and commercial tenement, the lessor shall be entitled to enter the premises at such times and in such manner as may be agreed with the tenant in order to meet his obligations or to ensure that the tenant is meeting his obligations and to show the tenement to prospective buyers:

Provided that in the absence of an agreement between the parties, the Rent Board shall, if it deems necessary and after hearing the parties summarily, establish days, times and conditions following an application filed by the owner for this purpose. The Rent Board may decide *seduta stante* or *in camera* without the necessity of hearing the parties. Such decree shall be issued within two working days from the day when the lessee is served notice. The Rent Board may order the inspection to be held under the supervision and in the presence of a Court Marshall. The Rent Board in carrying its functions under this provision shall in all cases protect the lessee’s privacy and the Rent Board shall prevent the lessor from having his rights abused under this sub-article.”.

Amendment of article 1554 of the Code.

19. 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 of the Code.

20. Article 1555 of the Code shall be substituted as follows:-

“1555. (1) If the lessee uses the thing leased for any purpose other than that agreed upon by the parties or as presumed by the previous article, or in a manner which may prejudice the lessor, the latter may, according to circumstances, demand the dissolution of the contract.

(2) With regard to a residential tenement such failure to use the said tenement for a period exceeding twelve months shall be deemed to be bad use of the thing leased as established by sub-article (1):

Provided that if the lessee has failed to use the leased tenement due to overseas work, study or health care than such failure shall not be deemed to be bad use:

Provided further that it shall be deemed to be bad use where a lessee does not use the premises for a period exceeding one year, due to his residing in another house or institution intended for habitation or recovery owing to ill health or old age:

So however that in the event of the recovery of a lessee of a lease made before the 1st June, 1995 if:

(i) the institution certifies or it so results after six months that the status of the lessee is such that he is fully dependent on the institution and that such dependence will on a balance of probability be long lasting; or

(ii) the lessee following twelve months is still a resident of the institution, the lease of that property shall be transferred to a person as indicated in article 1531(2)(a)(iii) hereof:

Provided that where in the case of a residence in an institution or hospital as here before mentioned there is no such automatic right to transfer the title of lease or where such transfer of lease does not take place, the lessor has the right to terminate the lease:

Provided further that at any time the Rent Board shall have the right to request certification on the period of recovery from the medical practitioner and from the relevant home or institution.

In the case of commercial tenements, 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 subarticle (1).

(3) The provisions of sub-article (1) shall also apply if, in the case of rural tenements, the lessee abandons the cultivation thereof, or does not cultivate the said tenements as a *bonus paterfamilias*, and the lessor may thereby suffer prejudice in respect of which no security was given to him.

(4) In any of the aforesaid cases, the lessee is also liable in damages.”.

21. 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.
Except when caused by force majeure.

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

“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.
Cleansing of cisterns.

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

“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.

24. 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.

25. 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 article 1531, a contract of letting”.

Substitution of article 1570 of the Code.

26. 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 Code.

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

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

28. 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.

29. 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.

30. 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 judgment on the aforesaid sworn application, declaring the right of preference as having lapsed.”.

31. 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.

32. 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.

33. 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.

34. 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, in the absence of an agreement between all the parties and, or of an explicit or tacit acceptance by the lessor, such sub-letting will terminate on the 31st May, 2018:

Provided further that the rent shall be fixed in accordance with the provisions of article 1531(2)(a)(i) of this Code.”.

Substitution of article 1614 of the Code.

35. 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.
Housing of third parties.

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

“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.

37. 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”.

Addition of new article 1622A.

38. Immediately after article 1622 shall be added the following article:-

“Power to make regulations.

1622A. The Minister responsible for housing and, or the Minister responsible for finance shall have the power to make regulations for all or any of the following purposes:

(a) to draw up a model contract of lease (in writing or electronically or both) that may be used by the parties concerned:

Provided that the contract of lease cannot impose conditions on the parties exceeding the conditions stipulated in this Title, and a written contract that satisfies all such requirements shall still be considered to be valid even if drafted in a form other than that drawn up in Schedule III to this Code;

(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;

(c) to create a registry for the deposit or registration and, or de-registration of contracts of letting for statistics and, or taxation purposes and for registration purposes;

(d) to create and administer a Market Property Value Index;

(e) to establish criteria for a means test for the purpose stipulated in article 1531(2)(a)(iii) of this Code;

(f) to establish regulations and criteria for the purpose of articles 1531(2)(a)(vii) and 1531(2)(c) of this Code;

(g) to do anything required for the registration of contracts of letting at the Central Registry Office as established by the Central Registry Act.

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

Addition of the Third Schedule to the Code

“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 atholder of Identity Card Number hereinafter referred to as the lessor.

And on the other part son of and neè..... born in and residing atholder 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.

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

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

(a) in article 16 thereof, immediately after subarticle (3) there shall be added the following new subarticle:-

“(4) 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 Contracts of Letting and Hiring, of the Civil Code.”; and

(Cap. 16.)

(b) 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.”.

Transitory provisions.

40. (1) Leases which were in force before the 1st June, 1995, and which are still in force on the 1st January, 2009, shall continue to be regulated by the laws which were in force before the 1st June, 1995, subject to the provisions of Title IX of the Civil Code, as amended by this Act.

(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, 2009, 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 the Civil Code, as amended by this Act. Act XXXI of 1995.

(3) 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, 2009 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 this title shall apply to leases of all urban property including such leases where contracts of emphyteusis were altered into lease contracts by virtue of the law.

(5) The Rent Regulation Board appointed by virtue of the Reletting of Urban Property (Regulation Ordinance), shall have exclusive jurisdiction to decide matters connected with lease contracts of either commercial or residential urban property. Provided that cases which on the 1st January, 2009 are pending before the ordinary courts and which relate to lease contracts shall continue to be heard by the said courts. Cap. 69.

(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, the Housing Authority and any other officer by virtue of the Housing Act, and by virtue of the Housing Authority Act and the provisions of these laws as in force immediately before the coming into force of this Act (1st January, 2009) shall continue to apply, insofar as they still apply, with regard to the relationship between such Director, Authority or officer and owner of any property which such Director, Authority or officer possesses on that date, or between such Director, Authority or officer and any person who is legally occupying any such premises. The provisions of such laws as have been herebefore mentioned shall also continue regulating the relationship between a person occupying such property and its owner. (Cap. 125)

(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 made on the 1st June, 1995 or after that date and the renewal of a lease on the 1st January, 2009 or after that date (whether such renewal is conventional, legal, customary or otherwise) shall not be considered as a lease made on the 1st January, 2009, or after that date.”

Objects and Reasons

The object of this Bill is to reform the rent laws in order to establish social justice with the owners of leased tenements; in a phased manner it liberalises leases made before the 1st June, 1995, and also lays the foundations for a lease market which would function properly and thus provide a suitable alternative for adequate and affordable accommodation. The saving clause in the transitory provisions for requisitioned property is made subject to the government's on-going policy aimed at phasing out as soon as possible all Requisition Orders.