I am pleased to present to you an explanation of the reform of the pre-1st June 1995 framework for the renting of property which the House of Representatives enacted by means of amending Title IX of the Civil Code early this summer.

This reform is of significant importance for a number of reasons. It is imperative that Malta adopts a housing strategic orientation that establishes the rental market, together with the home ownership policy, as a fundamental cornerstone. Changes in demographics, social norms and behavior, increased costs in the acquisition of property et al demand a strategic review to housing. Moreover, as statistics and reports show, the strive to own property places undue financial pressures on young couples that at times lead to difficult personal situations. A functioning rental market provides a positive route for individuals and families to acquire adequate and affordable housing.

Yet a functioning rental market has failed to materialise even following the reforms in the rent laws that this Government introduced in June 1995. It is clear that in so far that the pre-1st June 1995 rental landscape continues to prevail confidence by private landlords in a rental market that is governed by a legal framework that has for so long been past its sell date, will not return. Worse, the longer that different administrations failed to address a reform of the rent laws, which had become an instrument of social injustice with regards to landlords and their families, the stronger became the conviction amongst landlords that no government – irrespective of its ideology – was ready to shed the option of intervention in the housing market. Inevitably landlords withdrew from the rental housing market; and the stock of vacant housing continued to grow from one year to the next. There can be no functioning market unless a clear signal is made that this government, and future governments, will never resort to direct intervention with regards to the private housing market - other than in retaining its social obligation to assist in the provision of housing, including the rental of property, to those who legitimately require support.

Moreover, as referred to above, the existing rent laws are, undoubtedly, an instrument of social injustice with regards to landlords and their families. Ironically, this knowledge made reform far more difficult to embark upon as the view prevailed that action in this regard would open ‘Pandora’s Box’. This Government and I are of the strong view that ‘Pandora’s Box’ must be opened. There is no doubt, as this document clearly shows that the expectations of the landlords are at the opposite pole to those of tenants. There is, however, also no doubt that a reform cannot be revolutionary and that the untangling of this environment, which became far more entangled and complex as reform was avoided over time, must be carried out in a manner that does not shock the economic and social fabric of this country.

We have adopted an evolutionary approach to reform: setting different transitory paths for different cohorts of tenants and different types of rented properties. We sought, carefully and with due diligence, to balance the immediate expectations of landlords with realistic and achievable solutions.

In designing the reform we embarked on a wide ranging consultation and discussion process: a sincere process of listening, learning and reflecting on the different positions and angles of the stakeholders involved. And with sincerity we have adapted and adopted different thinking from that originally presented in the White Paper launched only a year ago. There is no doubt that we have not met all of the stakeholders’ expectations given the opposite views that prevail. Yet despite this, we believe that we have managed to design a well balanced reform that allows appropriate time for tenants to re-position themselves and that, at same time, has clearly drawn the line in the sand: the era of government intervention in housing is over.

When we started this process I believed that it was imperative that we obtain support on these reforms from the Opposition, the Partit Laburista, as I believed that a reform that fails to have the full backing of the House of Representatives will fail to restore the confidence that is necessary for a functioning private rental market. I am pleased to state that my Ministry and the Opposition consulted at length and worked for long hours together to find the right solutions and to apply these with the right balance. I thank the Opposition and its representatives, for their contribution has resulted in a far better reform framework.

The rent law was enacted on our statute books earlier this summer with the support of both parties within the House of Representatives. I am glad to say that we have, together, brought this era to final closure.

John Dalli
Minister for Social Policy
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02. The Principles and Goals of Reform of the Regulatory Framework for the Lease of Residential, Commercial and Urban Property

03. The Process of Transition Onto the Regulatory Framework for the Lease of Residential, Commercial and Urban Property

04. The New Legal Framework for the Lease of Residential, Commercial and Urban Property

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05.8 Pre-1995 Leases of Property that have a Civic Connotation

05.9 Incentivising Agreement between Landlords and Tenants of Pre-1st June 1995 Tenancies

First. The launch of the White Paper was complemented by a comprehensive consultation process which embraced (a) public discussion; (b) e-mail, call centre, and web-form interaction; (c) meetings with the Malta Council for Economic and Social Development as well as constituted bodies; and (d) participation in TV, radio and newspaper media.

The e-mail, call centre and web form interaction resulted in over 2,000 feedback responses and 800 queries responses which were all individually answered – with answers also placed on the www.rentreform.gov.mt website. Table 01 presents a breakdown of the queries and feedback received during the consultation process:

<table>
<thead>
<tr>
<th>TABLE 01</th>
<th>Feedback</th>
<th>Queries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Covered White Paper</td>
<td>596</td>
<td>277</td>
</tr>
<tr>
<td>Rec 01</td>
<td>Need for all party support</td>
<td>7</td>
</tr>
<tr>
<td>Rec 02</td>
<td>Address issue of vacant housing stock</td>
<td>5</td>
</tr>
<tr>
<td>Rec 03</td>
<td>Burden for social housing rests primarily with the State</td>
<td>16</td>
</tr>
<tr>
<td>Rec 04</td>
<td>Review mechanisms to involve private sector in social housing</td>
<td>2</td>
</tr>
<tr>
<td>Rec 05</td>
<td>Codified various special rent laws in Civil Code</td>
<td>2</td>
</tr>
<tr>
<td>Rec 06</td>
<td>Reform to address misuse of existing legislative framework</td>
<td>4</td>
</tr>
<tr>
<td>Rec 07</td>
<td>Existing right of sitting tenant and extension of right to legally married spouse</td>
<td>60</td>
</tr>
<tr>
<td>Rec 08</td>
<td>Defining beneficiaries to causa mortis inheritance</td>
<td>237</td>
</tr>
<tr>
<td>Rec 09</td>
<td>Limiting causa mortis inheritance to a one time right only</td>
<td>111</td>
</tr>
<tr>
<td>Rec 10</td>
<td>Transitory provisions for occupants who are not defined as beneficiaries</td>
<td>13</td>
</tr>
<tr>
<td>Rec 11</td>
<td>Limiting right of beneficiary to causa mortis inheritance on the basis of income or economic value of the beneficiary</td>
<td>99</td>
</tr>
<tr>
<td>Rec 12</td>
<td>Retaining current conditions to Inter Vivos transfer</td>
<td>1</td>
</tr>
<tr>
<td>Rec 13</td>
<td>Tenants in long term residential care</td>
<td>42</td>
</tr>
<tr>
<td>Rec 14</td>
<td>Exceptional circumstances</td>
<td>25</td>
</tr>
<tr>
<td>Rec 15</td>
<td>Minimum rent value of residential premises</td>
<td>226</td>
</tr>
<tr>
<td>Rec 16</td>
<td>Increases of rent value of residential premises</td>
<td>134</td>
</tr>
<tr>
<td>Rec 17</td>
<td>Assistance to tenants requiring support with rent payment</td>
<td>22</td>
</tr>
<tr>
<td>Rec 18</td>
<td>Re-defining responsibilities for maintenance and repairs</td>
<td>7</td>
</tr>
<tr>
<td>Rec 19</td>
<td>Establishing new conditions for maintenance and repair</td>
<td>62</td>
</tr>
<tr>
<td>Rec 20</td>
<td>Assistance to tenants requiring support with payment related to maintenance and repair</td>
<td>3</td>
</tr>
<tr>
<td>Rec 21</td>
<td>Contracts for commercial properties with inbuilt mechanism for inducing termination</td>
<td>17</td>
</tr>
<tr>
<td>Rec 22</td>
<td>Increases in the value of rent for commercial property</td>
<td>85</td>
</tr>
<tr>
<td>Rec 23</td>
<td>Transitory provision to the termination of a title of a commercial property unless otherwise agreed</td>
<td>141</td>
</tr>
<tr>
<td>Rec 24</td>
<td>Conditions for companies listed on the Malta Stock Exchange</td>
<td>8</td>
</tr>
<tr>
<td>Rec 25</td>
<td>Inter Vivos transfer of shares</td>
<td>4</td>
</tr>
<tr>
<td>Rec 26</td>
<td>Sub-letting including management agreements to be subject to formal landlord agreement</td>
<td>2</td>
</tr>
<tr>
<td>Rec 27</td>
<td>Transitory provision for management agreements without landlord consent</td>
<td>26</td>
</tr>
<tr>
<td>Rec 28</td>
<td>Right of first choice for continuation of tenancy</td>
<td>5</td>
</tr>
<tr>
<td>Rec 29</td>
<td>Sanctions</td>
<td>2</td>
</tr>
<tr>
<td>Rec 30</td>
<td>Introduction of a Market Property Value Index</td>
<td>4</td>
</tr>
<tr>
<td>Rec 31</td>
<td>Termination of leases of tenancies used as summer dwellings or garages</td>
<td>73</td>
</tr>
<tr>
<td>Rec 32</td>
<td>Continuation of de-requisitioning process</td>
<td>1</td>
</tr>
<tr>
<td>Rec 33</td>
<td>Reform of the Rent Regulation Board</td>
<td>32</td>
</tr>
<tr>
<td>Grand Total</td>
<td>2074</td>
<td>861</td>
</tr>
</tbody>
</table>
Table 02 below highlights the recommendations that generated most interest from both landlords and tenants.

**TABLE 02**

<table>
<thead>
<tr>
<th>Recommendation No</th>
<th>Recommendation</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rec 08</td>
<td>Eligibility to causa mortis inheritance</td>
<td>385</td>
</tr>
<tr>
<td>Rec 15</td>
<td>Increase in the level of the value of the rent of a residential tenancy</td>
<td>340</td>
</tr>
<tr>
<td>Rec 23</td>
<td>Transition process for the liberalisation of a commercial lease</td>
<td>179</td>
</tr>
<tr>
<td>Rec 16</td>
<td>Automatic 3 year increase by inflation on the value of the rent of a residential tenancy</td>
<td>147</td>
</tr>
<tr>
<td>Rec 22</td>
<td>Increase in the level of the value of the rent of commercial leases</td>
<td>134</td>
</tr>
<tr>
<td>Rec 11</td>
<td>Means Test</td>
<td>130</td>
</tr>
<tr>
<td>Rec 09</td>
<td>One time right to causa mortis inheritance</td>
<td>112</td>
</tr>
</tbody>
</table>

It is not surprising that these recommendations generated most interest from both landlords and tenants. The key concerns that stemmed during both the structured and unstructured consultation and discussion process were those that related to (a) security of tenancy; (b) the level of the value of the rent; (c) termination and the consequences of termination of a title to a tenancy; (d) eligibility to the title; and (e) means testing for such eligibility.

For example in terms of Recommendation 15, 112 of the queries raised related to concerns expressed by tenants of how the increase in the level of the value of rent will personally affect them. On the other hand, 87 of the feedback statements received from landlords were expressions of chagrin at the fact that the proposed level of the value of the rent is far too low.

In terms of Recommendation 16, most of the feedback and queries were raised primarily by tenants expressing concern on the introduction of an automatic mechanism that increases the value of the rent: 24, for example, felt that the 3 year interval between one increase and the other is too short and that the period of the interval should be increased – 5 years for example.

Recommendations 8 and 9 should be viewed in tandem. In terms of Recommendation 8, the majority of the queries raised were open questions of how the new mechanism of eligibility to causa mortis inheritance will work and how it would apply to them. The remainder of the feedback and queries were directed at particular issues: for example 22 proposed that grandchildren should qualify for eligibility; 11 stated that disabled person should qualify for eligibility, etc.

Recommendation 9, however, was primarily a negative response by landlords to the principle of one time causa mortis inheritance. In fact, of the 112 feedback statements received, 101 where statements of disagreement by landlords on the basis that landlords have long suffered seeing their property ‘inherited’ from one tenant’s generation to another, and that the extension of this principle for a further generation is a continuation of social injustice against them.

Recommendations 22 and 23 raised feedback and queries from both landlords and tenants. Landlords expressed disagreement with the pace of transition to a liberalised environment in relation to commercial properties, as well as with regards to the mechanism which regulates increases in the value of the rent. For example 63 statements expressed that the transition period is far too long. With regards to tenants, the concerns were diametrically opposite to those expressed by landlords: in that the 20 year period of transition is far too short and that the termination of the lease has negative impacts on goodwill built over time. A number of queries on how the proposed mechanism vis-a-vis increases in the value of the rent will work were also raised.
In terms of feedback from constituted bodies, there was considerable agreement with the recommendations proposed in the White Paper, with shades of differences stemming from the representation of the particular constituted body. The main concerns related to the recommendations proposed in the White Paper with regards to (a) the termination of commercial contracts by means of a sunset clause of 20 years or less if such contracts had a de facto inbuilt clause for abnormal increases in the value of the rent as a substitute to a termination clause which at the time was not legally enforceable; and (b) the principle that Government has no right to intervene in contracts entered freely by two parties. It is pertinent to underline that the General Retailers and Trader Unit strongly underlined that the rent laws should act as a safeguard to entrepreneurism rather than to safeguard landlords’ rights, and its reservations on the recommendations on reforms with regards to pre-1995 rented commercial properties was strongly articulated.


The third phase of the consultation process related to discussions held between the respective Technical Teams of the Ministry and the Partit Laburista. At the outset, the Ministry for Social Policy set the key objective that for the goals of the reform of the rent framework to be achieved – that is, a functioning rental market – bi-partisan support on the reform had to be attained within the House of Representatives. It was clear that belief by landlords that the period of ‘government’ intervention in the housing market is conclusively put to rest, and that such ‘government’ intervention will not re-occur on the basis of ‘ad hoc’ policy would only be secured if the Government and the Opposition both agreed to the reforms and that new legislation is voted through by the full House of Representatives.

The Ministry for Social Policy thanks the Opposition and its Technical Team for meeting the Ministry’s invitation to work with it on the Bill as well as for their constructive spirit and pro-active participation in the molding of the Bill as finally presented to the Committee of the House of Representatives and, subsequently, for the Third Reading of the Bill in the House of Representatives.
The existing special legislation regulating rent is the product of extraordinary circumstances that stemmed, on the one part, to a reaction to housing stock devastation due to bombing incurred during World War II and, on the other part, an interventionalist government policy directed to ensure that persons in Malta have access to affordable and adequate housing.

That these special laws remained on the statute books of Malta far beyond their requirement, and that the goal of access to affordable and adequate housing was in relation to private tenancies entered into prior to 1st June 1995 at the expense of the landlord are undisputable facts.

The White Paper set the following as principles to guide the reform of the rent laws – that the:

- right to housing is a universally accepted right, but the obligation to provide social housing belongs, primarily, to the State and not to the private sector.

- provision of private tenancies should be based on balanced rights that secure justice and equity in the distribution of obligations and responsibilities between the landlord and the tenant.

- reforms must be manageable and gradual to minimise affects of a social nature.

- right of the tenant to live in a rented property cannot be absolute or indefinite; and it is the State's obligation to alleviate affects that arise from market conditions.

- use of private property for social housing cannot be such that places unreasonable demands on the landlord that affects his right to an adequate standard of living.

Moreover, the White Paper established that a direct goal of a reform in the regulatory framework of the rental framework of residential, commercial and urban property is that such a reform will result in a functioning rental market: where supply of property stock by private investors are increasingly placed on the market once that confidence in long term government policy on private rental housing is established.

The new legislative provisions to regulate the residential, commercial and urban rental market for pre-1st June 1995 tenancies, which are agreed between Government and the Opposition, are consistent with the principles and goals for reform set in the White Paper.
As shown in this document, the position expressed by landlords is that the process of transition from the pre-1st June 1995 rental regulatory framework into a liberalised rental market environment should occur with quasi immediate effect. On the other hand, tenants prefer a status quo state of play.

Whilst the Government, as well as the Opposition, have both expressed that the existing rental regulatory framework imposes social injustice upon landlords, and that such social injustice must be brought to an end, the fact is that such a reform cannot be embarked upon overnight. Moreover, reform has to balance the different expectations of the parties involved – which stand at opposite poles.

The reform of the framework regulating the private rental of pre-1st June 1995 property is premised on an evolutionary and not a revolutionary process – a process of transition that allows for the economic and social dimensions affected by this reform to successfully weather the consequences of change, as well as to enable for the gradual absorption of the arising change. A four tiered transition process is introduced.

The first is the transition process that relates to pre-1st June 1995 property rented for residential purposes. The process of reform attempts to seek a balance between terminating the current open eligibility criteria that has led to the perpetual inheritance of the tenancy by one generation of tenants to the other to:

- a transition process phased over the life time of who should be considered an eligible sitting tenant and an eligible beneficiary within the parameters of an one time causa mortis continuation of the title of the said tenancy.
- an increase in the value of the rent paid and subsequent increases in such rental value.

The second is the transition process that relates to pre-1st June 1995 property rented for commercial purposes. The process of reform attempts to seek a balance between the continuation of use of the tenancy for a specific sunset period of 20 years whilst ensuring that the return to the landlord in terms of the value of the rent received over the sunset period is a fair return.

The third is the transition process that relates to pre-1st June 1995 rented property that has no form of social connotation or that is not linked to the tenant's source of economic income. In this regard, the process of transition is restricted to the extent possible.

The fourth is the transition process that relates to pre-1st June 1995 property that is rented for use as clubs. The process of reform attempts to seek a balance between the social role that a club plays in a village or society at large with the fact that the return on the investment to the landlord is one that is fair. In this regard, the process of reform will be by means of preparing appropriate regulation directed at different categories of clubs.

It is to be noted that the new law is designed in a manner that it does not intervene in formal agreements or contracts reached between a landlord and a tenant.

The reforms to the pre-1st June 1995 rent regulatory framework will come into effect as from 1st January 2010. This is one year later than previously contemplated in the White Paper. The Ministry for Social Policy reached this decision on the basis of work that needs to be carried out in order to:

(a) prepare for the proper management of the new law following its effective implementation.

(b) establish a ‘line in the sand’ between the old and the new rental regime that is clearly demarcated and which allows tenants as well as landlords to prepare for transition in a proper manner.

The reforms to the pre-1st June 1995 rent regulatory framework includes government in its role as a landlord as well as a tenant of property.
The new legal framework underpinning the reform of the rental of residential, commercial and urban property is introduced within Title IX of Part II of Book Second of the Civil Code, ‘Of Contracts of Letting and Hiring’ (CAP 16).

The decision to amend the Civil Code as against the replacement of all of the rent special laws by means of designing and introducing a new Act is based on the following considerations:

- a philosophical tenet of the amendments is that, in strict legal terms, the contract of lease is to be returned to its original nature of an agreement between the parties: whereby one party hands over the use of a particular thing to another against remuneration. The contract of lease as conceived in Title IX of the Civil Code provides for the lease of things and of services.

- the existing special laws on rent will be gradually phased out over time as the transition process comes to a close over time.

- the existing special laws on rent are still necessary given that there remain current disputes between tenants and landlords that require resolution under certain aspects of these laws.
05. The Reforms

05.1 Loci of Responsibility for Rent Regulation

The new legal framework now places responsibility for deciding on matters relating to contracts of lease of property – whether this is residential, commercial or urban – with the Rent Board ([Clause 2 of Act to Amend the Civil Code: Article 1525(1)]. It is pertinent to note, however, that in those cases where a tenant or a landlord has already initiated a dispute at the Courts of Law, such a dispute will continue to fall under the jurisdiction of the Court of Law.

In order to de-bureaucratise the process leading to the settlement of disputes, the Rent Board is provided with the following powers:

(a) the authority to request information and documentation from government entities, departments and authorities as well as from any other entity required to enable the Board to meet its functions. ([Clause 2 of Act to Amend the Civil Code: Article 1525(1)].

(b) in matters relating to the eviction of tenants the Board is provided with the authority to decide on the basis of a process that sees (i) that a sworn application is presented together with a sworn affidavit containing the relevant facts; (ii) that the procedures are on the basis of special summary procedures where judgement is given at the first hearing of the case should the respondent fail to appear at the sitting or fail to show that he has a valid defence to rebut the claims for eviction; (iii) that upon receipt of a sworn application by a landlord the respondent is served without delay to appear before the Board between 15 days to 30 days from the receipt of the application; (iv) if the respondent fails to appear or fails to present a valid defence the Board will decide forthwith; (v) if the Board is satisfied that the respondent has a prima facie defence to the action he is provided with twenty days from the date of order to file a reply of defence; and (vi) where leave to defend is given such action will be tried and determined in the ordinary course as provided for under the Re-letting of Urban Property (Regulation) Ordinance (Cap 16) ([Clause 38 of Act to Amend the Civil Code: Article 16A].

It is to be noted that the Minister responsible for accommodation is provided with the power to regulate on any matter that will allow for the proper implementation of the new law – including procedures of the Board ([Clause 36 of Act to Amend the Civil Code: Article 1622A(b)].

05.2 A Written Contract of Lease

The new law introduces the concept that all rentals that take place following its enactment on 1st January 2010 will be in writing. ([Clause 2 of Act to Amend the Civil Code: Article 1522(1)].

The law establishes that a written contract should stipulate the following minimum criteria: (a) the property to be leased; (b) the agreed use of the property leased; (c) the period for which that property will be leased; (d) whether such lease may be extended and if so, in which manner such extension will occur and; (e) the amount of the rent to be paid and how such payment will be made ([Clause 7 of Act to Amend the Civil Code: Article 1531A(1)]. A model template of a written contract of lease is attached as the 'Third Schedule' to the law ([Clause 37 of Act to Amend the Civil Code: Third Schedule].

The new law underlines that, in the absence of one or more of the minimum criteria established in the law, the contract of lease will be nullified ([Clause 7 of Act to Amend the Civil Code: Article 1531A(2)].

The Minister for accommodation is provided with the power to regulate with regards to the creation of a registry for the deposit or registration and/or de-registration of a contract of lease as well as for the purpose of the validity process of the said contract ([Clause 36 of Act to Amend the Civil Code: Article 1622A(c)].
05. The Reforms

05.3 The Effects of the Reform on Pre-1st June 1995 Property Rented for Residential Purposes

05.3.1 Defining the Sitting Tenant of a Pre-1st June 1995 Residential Property

The new law defines a tenant of a residential tenement (Clause 7 of Act to Amend the Civil Code: Article 1531F) as the person who:

- is the sitting tenant and is in possession of a valid title of lease on 1st June 2008, and
- is the spouse of the sitting tenant who is not legally separated and has been living with the sitting tenant before and on 1st June 2008.

05.3.2 The Beneficiaries to the One-Time Right of the Continuation of a Pre-1st June 1995 Lease Upon the Death of a Sitting Tenant

Both the White Paper and the Bill published in November 2008 proposed that there should only be a ‘one-time’ right to the continuation of the lease by eligible beneficiaries upon the death of a sitting tenant.

This is the balance introduced in terms of, on the one hand, removing the right of inheritance of a lease of a property by dependencies or, for the matter, persons living with the tenant which resulted in the perpetual loss of the property by the landlord; and, on the other hand, in establishing an evolutionary process that will result in the gradual termination of this right.

The new law limits this one time right to the continuation of the lease upon the death of the sitting tenant to the following beneficiaries:

<table>
<thead>
<tr>
<th>Beneficiary</th>
<th>Extension of Criteria following Consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural or legal child of the sitting tenant who lived with the said tenant for 4 years out of the last 5 years before 1st June 2008 and continued to live with the sitting tenant until his death (Clause 7 of Act to Amend the Civil Code: Article 1531F(i))</td>
<td>Following the consultation process, this right is extended to all children who have lived with the sitting tenant for 4 years out of the last 5 years before 1st June 2008 and continued to live with him until his death, where-in the lease will continue in solidum.</td>
</tr>
<tr>
<td>Brother or sister of the sitting tenant who lived with the said tenant for 4 years out of the last 5 years before 1st June 2008 and continued to live with the sitting tenant until his death (Clause 7 of Act to Amend the Civil Code: Article 1531F(ii))</td>
<td>Following the consultation process this right is extended to: (a) brother/s and, or sister/s of the sitting tenant who is 45 years of age or more. This is based on the premise that a person of such an age is constrained in making life style changes as he has no adequate time to plan as well as that persons in this age cohort and above face difficulties in securing loans to finance a potential change in accommodation. (b) such brother/s and, or sister/s as stated in (a) above lived with the sitting tenant for 4 years out of the last 5 years before 1st June 2008 and continued to live with him until his death, where-in the lease will continue in solidum.</td>
</tr>
</tbody>
</table>
### Beneficiary Extension of Criteria following Consultation

<table>
<thead>
<tr>
<th>Benefit Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beneficiary</strong></td>
<td>Natural or legal child of the sitting tenant who is younger than 5 years of age and who after 1st June 2008 continued to live with the sitting tenant until his death (Clause 7 of Act to Amend the Civil Code: Article 1531F(iii)).</td>
</tr>
<tr>
<td><strong>Beneficiary</strong></td>
<td>Natural or legal ascendant of the sitting tenant who lived with the said tenant for 4 years out of the last 5 years before 1st June 2008 and continued to live with the sitting tenant until his death (Clause 7 of Act to Amend the Civil Code: Article 1531F(iv)).</td>
</tr>
</tbody>
</table>

Following the consultation process this right is extended to:

- (a) natural or legal ascendant of the sitting tenant who is 45 years of age or more. This is based on the premise that a person of such an age is constrained in making lifestyle changes as he has no adequate time to plan as well as that persons in this age cohort and above face difficulties in securing loans to finance a potential change in accommodation.
- (b) such natural and legal ascendants as stated in (a) above who lived with the sitting tenant for 4 years out of the last 5 years before 1st June 2008 and continued to live with him until his death, where-in the lease will continue in solidum.

### Spouses and Children of Beneficiary

The one time right that allows persons who meet the established criteria to define a beneficiary does not extend to the wife, husband or children of the designated beneficiary.

### Temporary Absences from Rented Premises

The new law provides that, in the event that a person is temporarily absent from living in the tenancy with a sitting tenant for purposes of work, study or medical care, such absences will not be discounted against the said beneficiary with regards to the condition that establishes that a designated beneficiary must live with the sitting tenant 4 years out of the last 5 years before 1st June 2008 and continued to live with the sitting tenant until his death (Clause 7 of Act to Amend the Civil Code: Article 1531F).

### Removal of One Time Right Extension of Lease by Beneficiaries who hold a Level of Income or Economic Worth

The principle of the one time extension of the title of the lease to a beneficiary is based on the principle of social justice: that is to provide protection to beneficiaries to continue to live in a residence without being subject to social and economic upheaval.

This principle, however, does not hold for beneficiaries – with the exception of the spouse – who have a high economic wealth or value. Thus, such beneficiaries can under no rational circumstance be designated to be in need of transitional protection. In this regard the new law establishes that entitlement of a person to a beneficiary status shall be on the basis of satisfying a Means Test criteria (Clause 7 of Act to Amend the Civil Code: Article 1531F). The new law provides the Minister for accommodation with the power to regulate vis-à-vis the establishment of the Means Test criteria (Clause 36 of Act to Amend the Civil Code: Article 1622A(e)).

It is to be noted that the Means Test criteria are currently being drafted. The Means Test criteria will be published prior to the coming into force of this provision on 1st January 2010.
05.3.3 The Rights of Occupants in a Pre-1st June 1995 Tenancy Who Are Not Eligible to the One Time Right of the Continuation of a Lease upon the Death of a Sitting Tenant

The new eligibility criteria for the definition of a beneficiary to the one time right of the continuation of the lease upon the death of the sitting tenant will mean that there will be occupants who lived with the tenant who, under the new law, will no longer have the right to the title of the lease.

These persons, who are defined as occupants, are classified in two categories. Under the new law, such occupants are provided with the following transitory protection:

**A Person who Meets the Criteria Definition of a Beneficiary but who will Fail the Means Test**

A person who meets the criteria definition of a beneficiary but who fails the Means Test (Clause 7 of Act to Amend the Civil Code: Article 1531G(a)). Such an occupant will be provided with a transitory protection of a period of up to 3 years to (a) either reach agreement on a new lease in order to continue to rent the tenancy; or (b) to find alternative accommodation.

During this period of transitory protection, the value of the rent paid for the tenancy by the then sitting tenant will double.

**A Person who does Not Qualify as a Beneficiary**

A person who does not meet the criteria definition of a beneficiary, but who would have lived with the sitting tenant before 1st June 2008 until the death of the sitting tenant (Clause 7 of Act to Amend the Civil Code: Article 1531G(b)). Such an occupant will be provided with a transitory protection of a period of up to 5 years to (a) either reach agreement on a new lease in order to continue to rent the tenancy; or (b) to find alternative accommodation.

During this period of transitory protection, the value of the rent paid for the tenancy by the then sitting tenant will double.

05.3.4 Non-use of a Property and Pre-1st June 1995 Tenants in Residential Homes and, or in Institutional Care

The new law introduces the concept of non-use of a residential tenement. Under this new concept, a residential tenement which is not used for a period of 12 months will be classified as a ‘bad use’ of the property leased and under such circumstances the title of the lease will revert back to the landlord. It is pertinent to underline that the new law excludes temporary absences on the basis of work, study and health care from the definition of ‘bad use’ (Clause 18 of Act to Amend the Civil Code: Article 155A(1)).

The concept of a non-use of a commercial property as previously found in the Civil Code – in that the tenement for a commercial purpose which is not used in accordance with the provisions of the contract of lease shall be deemed to be ‘bad use’ - is retained.

The White Paper, and subsequently the Bill issued in November 2008 introduced the concept that in the event that a sitting tenant is absent from his or her residential property for a period that is more than twelve months due to the fact that he or she is either (a) institutionalised in a hospital but is medically discharged; or (b) living in a residential house for the elderly, then the property is either (i) inter vivos transferred to an eligible beneficiary; or (ii) if there is no such beneficiary then the title of the lease reverts back to the landlord.

The raison d’être behind the introduction of this concept was two-fold. First, it was directed to ensure that a residential property that may be left vacant for years is turned into a productive housing stock. Second, it was directed to provide social justice to the landlord given that, even though the property may be vacated for years and there is no eligible beneficiary, the
landlord is still unable to re-possess the title of the tenancy until the death of the sitting tenant.

Following feedback received during the consultation process as well as in agreement with the Opposition, the Ministry for Social Policy adjusted its position on this matter: in that, whilst it sought to retain the original policy objectives described above, it has balanced these with appropriate safeguards directed to ensure that a tenant is not left in a situation where he or she will have no home in the event that they wish to go back to their residence.

In this regard, the new law allows for a tenancy to be either (i) inter vivos transferred to an eligible beneficiary; or (ii) if there is no such beneficiary, then the title of the lease reverts back to the landlord in the event that a sitting tenant recovering in a hospital or in an old people’s home is either:

(a) certified by the institution to be permanently dependent on the institution; or

(b) it conclusively results that the sitting tenant is permanently dependent on the institution (Clause 18 of Act to Amend the Civil Code: Article 155A(2)).

05.4 Increases in the Value of the Level of the Rent of Pre-1st June 1995 Residential Tenancies

The new law establishes that, unless there is agreement in writing between the landlord and the tenant, the minimum value of the rent for a residential tenancy will, with effect from 1st January 2010, be €185 per year. It is pertinent to note that any rent that is higher than €185 per year will retain that higher level of value (Clause 7 of Act to Amend the Civil Code: Article 153A(1)).

The new law also provides for an automatic increase in the value of the rent every 3 years by a proportion equal to the increase in the index of inflation as established by Article 13 of the Housing (Decontrol) Ordinance. The first increase will take place on 1st January 2013 (Clause 7 of Act to Amend the Civil Code: Article 153A(2)).

It is to be noted that, following instructions issued in January 2009 by the Minister for Social Policy, the Housing Authority is reviewing its rent assistance and support schemes. The review is directed to ensure that the appropriate changes are made to these schemes so that they provide the appropriate level of support to those categories of the population who may require legitimate social assistance in the event that they are negatively affected by such increases.

05.5 Repairs and Maintenance of a Pre-1st June 1995 Tenement

The new law establishes that external ordinary maintenance on the property leased, unless there is agreement in writing between the landlord and the tenant, will be at the expense of the tenant and not the landlord (Clause 7 of Act to Amend the Civil Code: Article 153A(1)).

The landlord will be responsible only for structural repairs. The new law defines structural repairs with regards to urban, residential and commercial tenements to be those repairs relating to the structure of the building itself, including the ceiling (Clause 12 of Act to Amend the Civil Code: Article 154A(3)).

A tenant of an urban, residential or commercial tenement may either request the landlord to carry out such structural repairs or he or she may decide to carry out such repairs personally.

In the event that the tenant requests the landlord to carry out the repairs, then the landlord has the right to increase the value of the rent by 6% of the costs incurred. In the event that the tenant decides to carry out the repairs, the tenant will have no right to claim, in part or in full, from the landlord the cost incurred for such repairs (Clause 12 of Act to Amend the Civil Code: Article 154A(4)).

The landlord is provided with the right to access the tenement in order to ensure that the tenant is meeting his or her obligations with regards to the carrying out of ordinary repairs and maintenance. In the event that the tenant fails to provide the landlord with the right of such access to the property the landlord has the right to appeal to the Rent Board. The process that will be adopted by the Rent Board is a summary one – where-in the Board has the right to decide on such matters without hearing the parties concerned and where the ruling of the Board will be exercised under the supervision of a Court Marshal in the event that a tenant continues to refuse to provide a landlord with such access (Clause 16 of Act to Amend the Civil Code: Article 154A8).
05. The Reforms

05.6 Commercial Leases

05.6.1 Defining the Sitting Tenant of a Pre-1st June 1995 Commercial Tenement

The new law defines the sitting tenant of a commercial tenement rented prior to 1st June 1995 as the person who has occupied the tenancy under a valid lease on 1st June 2008. The definition of a sitting tenant also includes the husband or wife of the sitting tenant, provided that the spouse is living with the sitting tenant and that they are not legally separated (Clause 7 of Act to Amend the Civil Code: Article 1531D).

05.6.2 The Transitionary Process Governing Pre-1st June 1995 Commercial Tenements

The new law defines that in the event that:

1. there is a contract of lease between the landlord and tenant which establishes a specific period for the term of the lease; or
2. there is a contract of lease for a specific period which, as at 1st January 2010, the original period ‘di fermo’ or ‘di rispetto’ is still running and that the period of lease has not been automatically extended by law

then such a contract of lease for a commercial lease shall continue to apply (Clause 7 of Act to Amend the Civil Code: Article 1531D).

In the event, however, that the contract of lease between the landlord and the tenant:

1. does not meet the conditions 01 and 02 stated above in this section of the document; or
2. is designed in a manner where such a contract is renewed automatically or at the sole discretion of the tenant in a way that renders a specific period contract as an indefinite contract

then such a contract will terminate within 20 years from 1st June 2008 – that is on 31st May 2028 (Clause 7 of Act to Amend the Civil Code: Article 1531D).

05.6.3 Defining the Eligible Beneficiary to the Continuation of a Lease of a Pre-1st June 1995 Commercial Tenement

It is to be noted that the new law provides that the lease of a pre-1st June 1995 contract will be continued by an eligible beneficiary in the event that a sitting tenant dies during the 20 year transition period discussed in 05.6.2 above. In such a circumstance, the eligible beneficiary will continue the lease from the death of the sitting tenant until the end of the 20 year transition period on 31st May 2028.

The new law defines the heir to the continuation of the lease in the event of the death of the tenant to be that heir who is related by consanguinity or by affinity up to the grade of cousin inclusively (Clause 7 of Act to Amend the Civil Code: Article 1531D).

05.6.4 Increases in the Value of the Level of the Rent of Pre-1st June 1995 Commercial Tenements

The new law provides that the value of the rent of a commercial tenement shall, with effect from 1st January 2010, increase by a fixed rate of 15% over the actual rent paid – with such increases taking place annually up to 31st December 2013 - unless a Property Market Value Index is introduced earlier which will then act as a guide to assist the parties to reach agreement on a fair market value. (Clause 7 of Act to Amend the Civil Code: Article 1531D(1)).

It is the intention of the Ministry for Social Policy to introduce a Property Market Value Index by 1st January 2014. The Index will act as a guide to assist the landlord and the tenant to reach agreement on a fair market rental value for the property. In the event that the Property Market Value Index is not introduced by 1st January 2014, the value of the rent of the commercial tenement will increase by 5% every year until such an Index is introduced (Clause 7 of Act to Amend the Civil Code: Article 1531D(2)).
05. The Reforms

It is pertinent to underline, that the new conditions relating to the increase in the level of the rent for commercial tenants will not apply in the event that there is an agreement between a landlord and a tenant provides for the periodic increase in the level of the value of the rent (Clause 7 of Act to Amend the Civil Code: Article 1531D(3)).

It is to be noted that the law provides for the possibility of a tenant to terminate the contract of the lease, even if this is a definite contract, specifically with regards to the new conditions relating to the increases in the value of the rent by means of giving 3 months notice.

05.6.5 Legislating for the Pre-1st June 1995 Rental of a Casa Bottega

The new law introduces provisions directed to regulate property leased prior to 1st June 1995 as a Casa Bottega – that is where the house has part of it designated as residential and part of it as commercial.

The new law states that, whilst a Casa Bottega is to be considered in terms of security of tenure et al as a residential property (Clause 7 of Act to Amend the Civil Code: Article 1531K), the value of the rent is to be paid under the conditions established for a commercial property (Clause 7 of Act to Amend the Civil Code: Article 1531K(a)). The increases in the value of the rent, however, shall be for only that part of the property which is actually used for a commercial purpose (Clause 7 of Act to Amend the Civil Code: Article 1531K(c)).

The new law adds that, should the tenant stop using part of the property for commercial purposes, then the tenant shall continue to pay the level of rent established at the time and, thereafter, the value of the rent will increase under the conditions established for a residential tenancy (Clause 7 of Act to Amend the Civil Code: Article 1531K(c)).

05.6.6 Sub-letting of Leases of Commercial Tenements

The new law states clearly that the tenant is not entitled to sub-let a lease or to assign a lease unless such a right is specifically stated in the contract between the landlord and the tenant (Clause 33 of Act to Amend the Civil Code: Article 1614 (1)).

Specifically with regards to sub-letting of commercial leases that took place prior to 1st June 1995, the law stipulates that, unless there is agreement between the landlord and the tenant, such a sub-lease entered into by the tenant and the sub-lessor under any form of agreement shall have a transitory period of 10 years as from 1st June 2008, hence terminating on 31st May 2018 (Clause 32 of Act to Amend the Civil Code: Article 1613).

The new law defines sub-letting to include a management agreement or any other form of agreement by which a tenant transfers to a third party the possession of the tenement or the business operated from the said tenement (Clause 33 of Act to Amend the Civil Code: Article 1614 (2)).

05.6.7 Leases of Tenements to Public Liability Companies or any Other Form of Company

The new law establishes that a:

(a) cumulative Inter Vivos transfer of 50% of the shareholding of a public liability company or any other form of company even if this is carried out by more than one transfer; or

(b) transfer of the actual controlling power of the administration of such a company; or

(c) transfer of the control of the business conducted from the tenement

shall be considered as tantamount to the transfer of the lease of the said tenement (Clause 33 of Act to Amend the Civil Code: Article 1614 (3)).

It is, however, to be noted that a transfer as described above to the wife or husband who are not legally separated and / or to the children of the shareholder shall not be considered as a sub-lease (Clause 33 of Act to Amend the Civil Code: Article 1614 (3)).
05. The Reforms

05.7 Pre-1995 Leases of Property that have No Social Connotation

The new law establishes that leases of:

01. Garages that do not form part of a residence leased to a tenant as his or her ordinary residence and which are not considered as a commercial tenement, unless there is agreement between the landlord and the tenant, shall terminate as at 1st June 2010 and the title of the lease shall revert back to the landlord (Clause 7 of Act to Amend the Civil Code: Article 1531H(1)).

02. Property that is used as a summer residence by the tenant but where such property is not the ordinary residence of the tenant, unless there is agreement between the landlord and the tenant, shall terminate as at 1st June 2010 and the title of the lease shall revert back to the landlord (Clause 7 of Act to Amend the Civil Code: Article 1531H(2)).

The new law further stipulates that for the purpose of rental, a tenant can only be deemed to hold one ordinary residence.

05.8 Pre-1995 Leases of Property that have a Civic Connotation

Government will regulate the property rented prior to 1st June 1995 for civic purposes (primarily as a musical, philanthropic, social, sport, political or other forms of club) by means of targeting each category of use on an ad hoc basis. In this regard, Government will regulate by means of Legal Notice specific conditions directed towards a specific purpose that balances the rights of the landlord, of the tenant, and of public interest (Clause 7 of Act to Amend the Civil Code: Article 1531J).

In the immediate term, the Government will issue a Legal Notice that will establish the minimum rental value for premises leased as clubs at €300 per annum which will come into effect as from 1st January 2010.

05.9 Incentivising Agreement between Landlords and Tenants of Pre-1st June 1995 Tenancies

Government will, by the end of 2009, introduce two fiscal incentive schemes directed at landlords of pre-1st June 1995 tenancies. These are:

(a) To incentivise the sale of property owned by a landlord to the tenant living in that particular property. Government will establish a fiscal incentive scheme where the Final Withholding Tax on the sale of such a property is reduced from 12% to 3% subject that (i) the property is registered as a rented property; and (ii) the sale takes place between 1st January 2010 and 31st December 2013.

(b) It is recognised that there will still be residential property where the value of the rent will be lower than the market value. Thus, where the property is registered as a rented property and the value of the rent is less than the market value, then such rent will be tax free.