VERŻJONI ELETTRONIKA

I assent.

(L.S.) **MARIE-LOUISE COLEIRO PRECA**
President

10th July, 2018

ACT No. XXVII of 2018

An Act to amend the Housing (Decontrol) Ordinance, Cap. 158.

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:-

Short title and commencement.

Cap. 158.

1. (1) The short title of this Act is Housing (Decontrol) Ordinance (Amendment) Act, 2018 and this Act shall be read and construed as one with the Housing (Decontrol) Ordinance, hereinafter referred to as "the Ordinance".

(2) This Act shall come into force on such date as the Minister responsible for Justice may by order in th Gazette establish and different dates may be established and different transitory provisions may be made in respect of different purposes and provisions of this Act.

Amendment of article 2 of the Ordinance.

2. In the proviso to the definition "tenant" in article 2 of the Ordinance the words "articles 5 and 12" shall be substituted by the words "articles 5, 12, 12A and 12B".

Amendment of article 12 of the Ordinance.

3. In sub-article (1) of article 12 of the Ordinance the words "and of article 12A" shall be substituted by the words "and of articles 12A and 12B".

Addition of new article 12B to the Ordinance.

4. Immediately after article 12A of the Ordinance, there shall be added the following new article:

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"Occupation of dwelling houses under title of lease created in terms of articles 5, 12 or 12A of the Ordinance.

12B. (1) Where a person is in occupation of a dwelling house under title of lease created by virtue of a previous title of emphyteusis or sub-emphyteusis which commenced before the 1st June 1995 through the application of article 5, 12, or 12A the following conditions shall, insofar as they are inconsistent with the provisions of the said articles of this Ordinance apply in respect of such lease as from, the 10th April 2018 notwithstanding the provisions of the said articles of the Ordinance or of any other law.

(2) The owner shall be entitled to file an application before the Rent Regulation Board demanding that the rent be revised to an amount not exceeding two percent per annum of the open market freehold value of the dwelling house on the 1st January of the year during which the application is filed and that new conditions be established in respect of the lease.

(3) The procedure applicable to the hearing of applications before the Rent Regulation Board shall apply to the hearing of an application made under sub-article (1):

Provided that:

(i) the Housing Authority shall be notified with the application and shall have a right to fully participate as *amicus curiae* in the proceedings; and

(ii) the tenant and the landlord shall always be entitled to the benefit of legal aid in proceedings filed in terms of this article if they are not in full-time gainful employment; and

(iii) at the initial stage of the proceedings the Board shall conduct a means test of the tenant which shall be based on the means test provided for in the Continuation of Tenancies (Means Testing Criteria) Regulations issued under articles 1531F and 1622A of the Civil Code or any regulations from time to time replacing them.

S.L. 16.11.

Cap. 16.

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The means test shall be based on the income of the tenant between the 1st January and the 31st December of the year preceding the year when the proceedings are commenced and the capital of the tenant on the 31st December of the said year. The means test shall be conducted with particular reference*, inter alia*, to regulations 4 to 8 of the said regulations which shall apply *mutatis mutandis.*

(4) Where the tenant does not meet the income and capital criteria of the means test the Board shall, after hearing any evidence and submissions produced by the parties, give judgement allowing the tenant a period of five years to vacate the premises. The compensation for occupation of the premises payable to the owner during the said period shall amount to double the rent which would have been payable in terms of articles 5, 12 or 12A.

(5) Where the tenant meets the income and capital criteria of the means test the Board shall proceed according to the following sub-articles.

(6) In establishing the amount of rent payable in accordance with sub-article (1) the Board shall give due account to the means and age of the tenant and to any disproportionate burden particular to the landlord and it may determine that any increase in rent shall be gradual. The Board, after briefly hearing the parties and examining any evidence which it considers relevant, may also order that an increased amount of rent be paid whilst the hearing of an application filed in terms of sub-article (1) is pending.

(7) Where an amount of rent is established in terms of sub-article (1) that rent shall apply in respect of the lease of the dwelling house, unless the lease is previously terminated, for a period of six years, after which it shall be subject to being revised in accordance with sub-article (1) unless an agreement is reached between the parties.

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(8) (a) Upon the happening of a material change in circumstances during the continuance of a lease established in accordance with article 5, 12 or 12A the owner shall be entitled to file an application before the Board demanding that the conditions of the lease be revised on account of their causing a disproportionate burden upon him.

(b) The owner may also demand the dissolution of the lease if he can prove through unequivocal evidence that the tenant is not a person in need of the social protection provided by articles 5, 12 or 12A and by this article:

Provided that:

(i) the provisions of paragraph (a) of this sub-article shall not apply where the hearing of an application under sub-article (1) is pending or has been determined for less than three years;

(ii) the tenant shall always be deemed to be a person not in need of the social protection provided by articles 5, 12, 12A and by this article if the Housing Authority or the landlord offer alternative accommodation suitable to the tenant and guarantees the availability of such accommodation to the tenant for at least ten years for a rent which is not in excess of that which would have been payable by the tenant had the tenant continued the lease under articles 5, 12 or 12A.

(9) (a) Any person who has a right to be recognised as a tenant in terms of the proviso to the definition "tenant" in article 2 shall, unless the said is a person referred to in paragraph (a) of the said definition, only acquire a right to occupy the dwelling house for a period of five years upon the expiration of which he shall vacate the said dwelling house. The compensation for occupation of the dwelling house payable to the owner during the said period shall, unless the occupier meets the income and capital criteria of the means test referred to in paragraph (iii) of sub-article (3), amount to double the rent which would have been payable in terms of articles 5, 12 or 12A.

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(b) Any dispute as to whether the occupier meets the criteria of the means test may be referred by either party to the Board by application and the provisions of sub-article (3) shall apply.

Cap. 16.

(10) The provisions of article 1555A of the Civil Code shall apply in respect of any lease which came into effect by virtue of articles 5, 12, 12A or this article.

(11) The provisions of this article shall also apply in all cases where any emphyteusis, sub-emphyteusis or tenancy in respect of a dwelling house regulated under articles 5, 12, or 12A has lapsed due to a court judgment based on the lack of proportionality between the value of the property and the amount receivable by the landlord and the person who was the emphyteuta or the sub-emphyteuta or the tenant still occupies the house as his ordinary residence on the 10th April 2018. In such cases it shall not be lawful for the owner to proceed to request the eviction of the occupier without first availing himself of the provisions of this article.".

Consequential amendment to the Civil Code. Cap. 16.

5. Article 1531J of the Civil Code shall be re-numbered as sub-article (1) thereof and immediately thereafter there shall be added the following new sub-articles:

"(2) The provisions of this sub-article and of the following sub-articles shall, notwithstanding any other law, apply in respect of the occupation of premises under title of lease by a club where all the following conditions are satisfied:

(i) where the club consists of a band club which on the 1st March, 2018 has been in existence for at least thirty (30) years;

(ii) where the said band club has on the 1st March, 2018 occupied the same premises as its principal quarters under a title of lease or emphyteusis or under a combination of both for a period of at least thirty (30) years;

(iii) where the band club is still in occupation of the premises and the premises are the only premises of the band club, except for stores and similar premises or premises which are small and are not used as a club, on the 1st March, 2018; and

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(iv) where the eviction of the band club has been ordered by a final judgement of the Rent Board or of a Court for a reason other than the failure to pay rent due.

(3) Where all the conditions listed in sub-article (2) are satisfied, the club shall be entitled to continue occupying the premises under a title of lease under the following conditions:

(i) for a rent which shall amount to ten (10) times the amount of rent payable for the occupation of the said premises prior to the final judgement of the Rent Board or of the Court ordering eviction;

(ii) the rent referred to in sub-paragraph (i) shall not be further increased in terms of regulation 2 of the Conditions Regulating the Leases of Clubs Regulations but the amount due to the owner in terms of regulation 3 of the said regulations shall still be due in addition to the rent; S.L. 16.13.

(iii) the rent due in terms of sub-paragraph (i) shall not be less than five thousand euro (€5,000) *per annum* or amount to more than one (1) per cent of the value of the premises on the 1st January 2018.

(4) The owner of premises to which sub-articles (2) and (3) apply shall be entitled to apply to the Rent Board to contest the fulfilment of any condition provided for in sub-article (2) or to demand a variation in the conditions of the lease in order to make good for any situation of manifest disproportionality which may result from the application of sub-articles (2) and (3), due account being taken of the social and cultural functions performed by the band club:

Provided that in considering whether there exists a situation of manifest disproportionality the Board shall not base its considerations on the potential of the premises for development for commercial use but it shall consider the premises in its actual state.

(5) In any proceedings which may lead to the eviction from premises owing to structural alterations made without the consent of the lessor, when the premises from which the eviction is demanded consist of the principal quarters of a band club, the Rent Board or the Court shall not order the eviction from such premises where the structural alterations consist of works related to the philharmonic or social activities or to the activities performed by the band club, and where the works consist of

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improvements to the premises or of structural alterations to the premises and the band club provides a guarantee which in the opinion of the Rent Board or of the Court is sufficient to allow the lessor to restore the premises and to make the reparations or alterations necessary in the premises at the termination of the lease and to make good for any loss suffered during the execution of the necessary works:

Provided that the amount of the guarantee referred to in this sub-article shall be established on the basis of the prices current at the time of the judgement.".

Passed by the House of Representatives at Sitting No. 137 of the 4th July, 2018.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.72