



THE PROFESSIONAL CENTRE  
SLIEMA ROAD  
GZIRA GZR 1633 - MALTA

TEL./FAX. (+356) 2131 4265  
EMAIL. [info@kamratalperiti.org](mailto:info@kamratalperiti.org)  
WEBSITE. [www.kamratalperiti.org](http://www.kamratalperiti.org)

**K A M R A T A L - P E R I T I**

*To support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community*

## **CONTROLLED LEASES REFORM**

### **Public Consultation Reply**

SUBMISSIONS BY KAMRA TAL-PERITI

26 APRIL 2021



THE PROFESSIONAL CENTRE  
SLIEMA ROAD  
GZIRA GZR 1633 - MALTA

TEL./FAX. (+356) 2131 4265  
EMAIL. [info@kamratelperiti.org](mailto:info@kamratelperiti.org)  
WEBSITE. [www.kamratelperiti.org](http://www.kamratelperiti.org)

**K A M R A T A L - P E R I T I**

*To support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community*

## **CONTROLLED LEASES REFORM**

### **SUBMISSIONS BY KAMRA TAL-PERITI**

#### **1. Preamble and Background**

- 1.1. The proposal for the reform of the pre-1995 rent laws seeks to address an anomalous situation that has been building up for a long time and which led to a 2019 Court ruling which declared the law unconstitutional, setting a precedent for court cases to come. Over the decades, successive governments have unfortunately repeatedly shied away from addressing the matter in an effective and lasting manner. In this respect one can comment that the initiative is commendable, albeit long overdue.
- 1.2. It is a fact that several tenements have been locked for considerable periods in a protective legal mechanism with the tenants paying rates which are a mere fraction of the actual rental value when this is calculated on the basis of the market value. Several Court judgements, which have identified the said protective mechanism as a breach of the fundamental right to enjoy one's property – and therefore unconstitutional. The situation was further compounded by the legal right given to tenants' heirs to continue to occupy the same property at the same rates upon the original tenants' demise, provided that they resided there for a specified period prior to the said demise. This provision was abused to the extent that the breach of human rights endured by landlords extended through multiple generations. Had this ill-advised proviso been abolished earlier, it would have been a crucial first step in addressing one aspect of the problem.
- 1.3. It is also pertinent to observe that there are a number of cases of landlords whose properties subject to a controlled lease whilst having standard of living which is substantially lower than that of the tenants occupying their property further compounding this unjust situation. It is commendable that the situation is finally being addressed to the benefit of the landlords, the tenants and society at large. The Kamra submits, however, that not all the injustices caused by the pre-1995 rent law will be addressed through this Bill, and that further consideration and analysis will need to be undertaken to develop additional initiatives to address them, too.
- 1.4. Going forward from the present juncture which is characterised by ineptness from a legal, economic and social-justice point of view, the Kamra tal-Periti expects a reform which is based on the following principles:

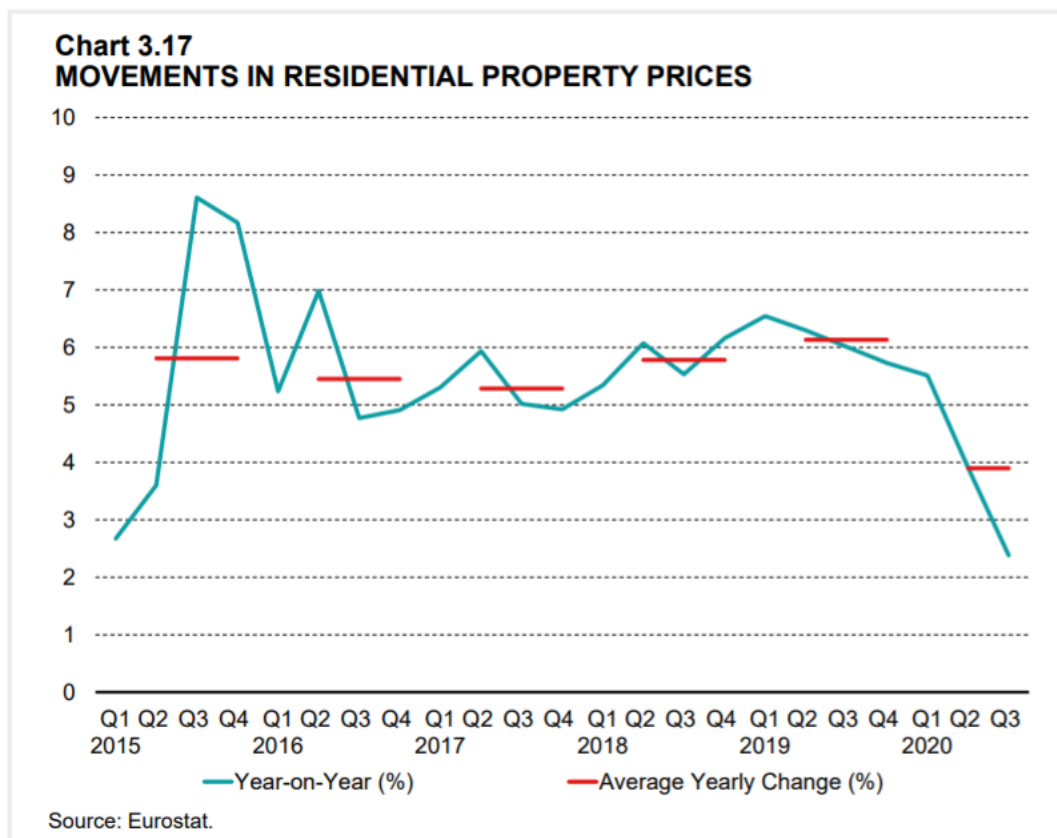
- Balance between the legal rights and obligation of the landlord and tenant (to counteract the heavy bias in favour of the tenant between 1939 and 1995);
- Cognisance of the fact that, in certain cases, the landlord enjoys a lower standard of living than the tenant;
- System based on procedures that are seen to be clear, objective and transparent;
- System which ensures sustainability on state finances and fairness on the taxpayer.

## 2. The Value of Property and Rentals in Malta

- 2.1. A realistic rate for rental of a property, calculated on the basis of its value on the free market, should work out at between 5% and 7% of the said value. A lower rate makes property a very poor and unattractive investment since the capital sum represented by the property's market value could yield a significantly better return if judiciously invested in equities or some similar financial mechanism.

The rent subsidy as proposed needs to be underpinned by evidence-based policy solutions grounded in sound market research and/or empirical studies to ensure its suitability.

- 2.2. The abruptness and extent of the proposed change will undoubtedly create a financial shock which is always a poorly advised move in any economic scenario. Moreover, it is considered premature to propose an increase in rental rates without first carrying out the necessary surveys and studies to determine the general situation, the number of tenancies affected, the financial situation of the tenants, the rates being paid and so forth. An abrupt increase in rental value from say 0.5% of the property value to 2% may prove to be catastrophic for some tenants on lower incomes. State intervention, in the form of rental subsidies, to mitigate such this initial impact appears to be inevitable. It is here presumed, although we have not reviewed any research on the matter, that the cost of rent subsidies, although substantial, would be significantly lower than the cost of compensation meted out by the Constitutional Court or the ECHR.
- 2.3. It is pointed out that in recent decades the price of property has increased considerably, especially over the last eight years or so. Indeed, according to the NSO's Property Price Index (PPI) – which is based on actual transactions involving apartments, maisonettes and terraced houses – increased at an average annual rate of 3.9% during the first nine months of 2020. Indeed, higher growth rates were recorded in previous years with prices increasing by 6.1% in 2019 and 5.8% in 2018. Residential property prices are being supported by a number of factors, including the low-interest rate environment and fiscal incentives targeting first and second time buyers. According to the Central Bank of Malta, house price inflation in Malta, in fact, was higher than that in the euro area, where it averaged 4.7% in 2018 as a whole and 4.2% in the first three quarters of 2019. In its 2020 Annual Report, the Central Bank of Malta reports that residential property prices continued to increase during the first three quarters of 2020. On the other hand, compensation of employees (wages and salaries) as defined in the compilation of Malta's National Accounts increased by 2.4% in 2020 and by 8.6% the previous year. A comparison between the growth rates of these two indicators, however, would shed little light on the affordability of property prices however unless it is complemented by a detailed study of income distribution. Indeed, as property prices increase across market segments, increases in wages and salaries occur very much according to business sector and employment category.



**Figure 1 Source: CBM Annual Report 2020**

- 2.4. So therefore, whilst noting the fact that the economic situation prevailing in Malta before the COVID pandemic presented an ideal opportunity to achieve an equitable balance between household incomes and property prices. It is noted that the already existing imbalance has been made even worse over the last few years since increases in disposable incomes have lagged far behind the corresponding increases in property prices. It is understood that increases in property prices invariably have a corresponding impact on rental rates and expectations thereof.

### **3. Specific Comments on Controlled Leases Reform Bill**

- 3.1. As outlined above, the Kamra expects the Controlled Leases Reform to be fair and workable. In order to do so, the new policy must be based on sound evidence and research covering the legal, social and economic implications which are invariably associated with this reform and which will be impacted by it.
- 3.2. The Reform attempts to arrive at a rental benchmark expressed as a percentage of the market value of the property to be determined by the Court. The Bill and other related documentation seen by the Kamra, however, does not specify on what basis the property is to be valued, by whom and according to which criteria?
- 3.3. The Kamra is willing to contribute to the successful implementation of this reform, so much so, that it has committed itself to support the Authorities through the issuance of specific guidelines and tools based on its well-established and widely recognised valuation

standards. In the interest of professionalism and adherence to recognised international standards, the Kamra firmly believes that no other person except a Perit should be allowed to perform property valuations for the purposes of the Controlled Leases Reform.

- 3.4. Technically there are a number of approaches that can be used to value a property and the final valuation should settle at the highest result obtained from all approaches. The development potential of the property must be taken into consideration when establishing its open market value.
- 3.5. However, when establishing the rental value of a property, its development potential is not a factor in its estimation. The only consideration to be made is that of establishing the highest possible return that it can achieve in an open market in its current physical condition and established legal use. Tenants do not rent the property's development potential, but merely the use of that property in its current form for a pre-determined period of time. Indeed, in many rental agreements tenants are not allowed to effect any physical alterations to the property without the landlord's consent, and thus cannot seek to realise any further potential for their rental payments.
- 3.6. Moreover, in an open market the rental value of an asset with a fully realised development potential is a product of the appropriate yield rate factored to its open market value. The yield rate for residential property generally ranges between 5% and 7%, depending on the localised and/or specific market risk. Thus, having the Courts establish the rental value of a property on the basis of its open market value, which may include the value of unrealised development potential, may result in distorted estimations.
- 3.7. Thus, the Kamra submits that rather than establishing the rental value at 2% of the property's market value, the property values utilised to estimate the rental value are derived by excluding development potential altogether, and a more equitable fixed yield rate of 5% be applied directly by the Courts.
- 3.8. Below are some further comments on particular clauses of the Bill.

#### 3.8.1. Art 5 – Means Test Criteria

The Kamra asks for clarifications as to whether the income and capital of the tenant refer to those held by the Tenant as a household, as an individual, as spouses jointly, or by any other formula? It is essential to ensure that no legal loopholes are created to avert abuse of the system. Moreover, the Kamra recommends that the means test criteria are formalised by means of a Legal Notice.

#### 3.8.2. Art 5 (b) (iii) (c) - 5 Year Eviction Limit

The 5-Year permission to remain in a tenement in the event of a tenant being ineligible for subsidy is deemed to be too long. At the same time, eviction may be regarded as an extreme measure given that there may be scope for a compromise agreement between the tenant and the landlord. There seems to be an inconsistency on this 5-Year Limit with other documents related to this reform.

### 3.8.3. Art 5 (b) (iii) (c) – Double Rent

The Kamra is not in favour of the proposed procedure laid out in the Bill for the rent to automatically double in the event that the tenant is found ineligible for subsidy through the means test. Doubling the value of the rent could still be grossly insufficient from the landlord's point of view when one considers that annual rents of €200-€300 are not uncommon and when the landlord was legally obliged to provide for the maintenance of the tenement for so many years.

In this regard, the Kamra recommends that if the 2 per cent yield rate is to be retained, it be used as a floor for the calculation of the rental value. This 2 per cent criteria will correspond to 2 per cent ceiling of cases eligible for subsidy.

### 3.8.4. Art 5 (b) (iii) (f) – Revision Period of Rental Conditions

The period of applicability for the established rent value fixed to 6 years is considered too lengthy and arbitrary. The Kamra submits that the Rent Revision period should be consistent with the Eviction Period Limit, and should be established by the Courts.

### 3.8.5. Art 5 (b) (g) (i) – Definition of "Tenant"

As discussed above, the inheritance provision which allowed dependents of lessees to inherit and continue with the rent for future generations led to breach of human rights of landlords.

For the purposes of this reform, the Kamra notes that the lessee will be defined as the current occupier, their widow/widower and, only in case of brothers and sisters who are unmarried and inherited the lease jointly from their parents, each one of them in solidum. Descendants, siblings (other than those who are unmarried and inherited the lease jointly with their brothers and sisters from their parents) and ascendants will only be allowed to remain in occupation of the property for a maximum period of 5 years.

The Kamra submits that 'inheritance of rentals' should be limited solely to a surviving spouse only. Tenants' sons or daughters residing in the property for a minimum of three years prior to the tenant's demise should be allowed the option to either vacate within one year of the demise of the tenant or enter into a new rental agreement. The five-year period proposed is felt to be excessive.

Furthermore, a definite 5-year period of prolonged rent seems to provide enough protection to the interest of both tenant and landlord. In so far as the long-term relationship is concerned, at least, this new provision will not lead to abuse of a dominant position on the part of the tenant in seeking to buy the said property from the landlord for a fraction of the property value.

Notwithstanding the above, special attention should be given by the Authorities to circumstances such as tenant descendants that have some form of disability or other similar extenuating circumstances, or who in their right would qualify for rent subsidy.

#### **4. Concluding Remarks**

- 4.1. In view of the above, the proposal appears to be an attempt at a fair compromise which could appease property owners with a system that derives rental values which are closer to market rates. There will undoubtedly be those who contend that the new system still falls short of providing them with a reasonable return. On the other hand, as indicated above, the reform will also place a certain cohort of tenants, as yet undetermined, in some financial difficulty or force them to seek alternative and/or smaller accommodation. It is trusted that the rent subsidy model that was referred to the Kamra will adequately cover this social group.
- 4.2. It is to be appreciated that the problem is a very complex one which has been left relatively unheeded by several administrations for decades. Owing to this, there is no magic bullet solution which can be applied. The Kamra appreciates that such a complex issue having such far-reaching consequences may not be conclusively resolved through the proposed Bill alone. For this reason, the Kamra tal-Periti is prepared to continue to work closely with the Authorities and in particular the Ministry for Social Accommodation in an effort to assist in addressing any issues that may remain unresolved through this Bill whilst developing the benefits and overall workability of the new structures and contribute to further reforms that may become necessary in the years ahead.

END