

## AMENDMENTS TO THE SPANISH URBAN LEASES ACT

Royal Decree 7/2019, of 1 March, on urgent measures regarding housing and rentals, entered into force on 6 March 2019 (the "**Royal Decree**") and includes certain amendments to the Spanish Urban Leases Act (the "**Urban Leases Act**").

### AMENDMENTS TO THE URBAN LEASES ACT

The Royal Decree introduces several amendments to the Urban Leases Act, which will apply to new lease agreements entered into as from 6 March 2019. Of these amendments, we highlight the following:

#### TERM

- **Mandatory term:**

The term of the lease agreement will be freely agreed between the parties. However, if the agreed term is less than 7 years (or 5 years where the landlord is a natural person) (the "**Mandatory Term**"), then upon its expiry, the lease agreement will be mandatorily extended for additional periods of 1 year each, up to the minimum term of 7 years<sup>1</sup>, unless the tenant notifies the landlord of its intention not to renew the lease agreement at least 30 days in advance of the termination date of the initial term, or any of its extensions.

- **Tacit renewal:**

Once the Mandatory Term has elapsed, if neither of the parties notifies the other party of its intention to terminate the lease agreement<sup>2</sup>, the agreement will be automatically extended annually for up to 3 years. The tenant will be entitled to terminate the lease agreement at the end of any of its extensions by serving 1-month's prior notice.

#### RENT REVIEW

The rent can be reviewed every anniversary of the lease, in the terms stipulated by the parties under the lease agreement. However:

- if the parties have agreed to review the rent but have not agreed on the specific review mechanism, the Guarantee of Competitiveness Index will be the one applied; and

#### Key issues

- Amendments to the Urban Leases Act
  - Term
  - Rent review
  - Legal deposit and additional guarantees
  - Expenses
  - Termination of the landlord's title and transfer of the leased residential property
  - Pre-emption rights
  - Death of the tenant
- Other measures
  - Tourist rental properties (*viviendas turísticas*)
  - Eviction procedure
  - Tax measures
  - Reference price index

<sup>1</sup> Or 5 years where the landlord is a natural person.

<sup>2</sup> The tenant by serving 2-months' prior notice and the landlord by serving 4-months' prior notice.

# C L I F F O R D

# C H A N C E

- the increase in the rent cannot exceed the change in the Consumer Price Index (CPI).

If the lease agreement does not establish the review of the rent, the rent will not be updated.

## STATUTORY RENT DEPOSIT AND ADDITIONAL GUARANTEES

- **Lease agreements with an initial term not exceeding the Mandatory Term:** (i) the amount of the statutory rent deposit will not be updated during the Mandatory Term, but it will be updated on each extension, if applicable; and (ii) the landlord will not be entitled to request additional guarantees exceeding 2 months of rent.
- **Lease agreements with an initial term exceeding the Mandatory Term:** (i) the parties will be entitled to freely agree the periodic update of the statutory rent deposit; and (ii) the parties will be entitled to freely agree any additional guarantee.

## EXPENSES

If the landlord is a legal entity, the real estate agent's fees and rental formalisation costs will be borne by the landlord.

## TERMINATION OF THE LANDLORD'S TITLE AND TRANSFER OF THE LEASED RESIDENTIAL PROPERTY

In general terms, in the event of the termination of the landlord's title to the leased residential property or the transfer of the property, the lease agreement will remain in force until the Mandatory Term elapses. Specific regulations apply if the agreed term exceeds the Mandatory Term.

## PRE-EMPTION RIGHTS

Pre-emption and redemption rights will not exist when the leased residential property is sold together with the remaining residential units or premises owned by the landlord which form part of one same property, nor when all units and premises comprising the property are sold jointly by several owners to one single buyer. However, housing laws may establish pre-emption and redemption rights over the entire property in favour of the body designated by the competent housing Public Administration.

Until such housing laws are approved, as the case may be, this change to the Urban Leases Act will have no impact. In this regard, please note that certain regional Governments (e.g. Catalonia) and City Councils (e.g. Barcelona) already have pre-emption rights in the event of the sale of real estate assets coming from enforcement proceedings and located in high-demand areas.

## DEATH OF THE TENANT

In the case of lease agreements with an initial term exceeding the Mandatory Term, the parties may agree:

- to include a waiver by means of which, if the death of the tenant occurs once the Mandatory Term has elapsed, there are no subrogation rights in favour of certain individuals related to the tenant; or
- to deem the lease agreement terminated once the Mandatory Term elapses, if the death of the tenant occurs during such Mandatory Term.

However, please note that the above-mentioned waiver cannot be stipulated by the parties if the third party that may subrogate the lease agreement upon the death of the tenant is an individual in a situation of particular vulnerability, or a minor, a person with a disability or an individual over the age of 65.

## **OTHER MEASURES**

The Royal Decree also includes additional measures, such as:

### **TOURIST RENTAL PROPERTIES (*VIVIENDAS TURÍSTICAS*)**

One of the reasons for the approval of this Royal Decree is to avoid the price rise resulting from the growing phenomenon of "tourist rental properties" in Spain. In this regard, the Royal Decree:

- sets out a technical clarification on the exclusion of tourist rental properties from the scope of application of the Urban Leases Act; and
- amends the Spanish Property Division Act, in the sense that by means of a qualified majority, a condominium of owners will be able to limit or condition the tourist rental activity or set special quotas or increase contributions to the shared expenses of the property by up to a maximum of 20%.

### **EVICITION PROCESS**

The Royal Decree introduces mechanisms to the eviction process to address the situation in which households most at risk may find themselves in the event of their eviction. In this regard, the Royal Decree includes an amendment:

- to the eviction process where vulnerable households are involved, establishing that the classification of a situation as 'vulnerable' will result in the suspension of the eviction proceedings by up to 3 months, until the measures deemed appropriate by social services are adopted; and
- by means of which the relevant court must specify the exact date and time set for the eviction.

### **TAX MEASURES**

Among other tax measures, the Royal Decree:

- enables City Councils to approve surcharges for permanently unoccupied residential properties;
- enables City Councils to establish a rebate of up to 95% for properties to be leased as housing subject to a regulatory rent restriction; and
- improves the tax treatment of the leased residential property.

### **REFERENCE PRICE INDEX**

For the purpose of promoting a better understanding of the rental housing market, the Royal Decree foresees the creation of a national reference price index for rental housing, which will be created within 8 months. The regional governments may also create their own rental housing reference price index adjusted to their territory.

## CONTACTS

**Name: Carlos Portocarrero**  
Partner

**T** +34 91 590 7500  
**E** carlos.portocarrero@cliffordchance.com

**Name: Blanca Ochoa**  
Counsel

**T** +93 344 2232  
**E** blanca.ochoa@cliffordchance.com

**Name: Cristina Casquete**  
Lawyer

**T** +34 91 590 7500  
**E** cristina.casquete@cliffordchance.com

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Clifford Chance, Paseo de la Castellana 110,  
28046 Madrid, Spain

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