

### SUMMARY OF THE LAW ON URGENT MEASURES FOR THE CONTROL OF RENT PRICES IN RESIDENTIAL LEASE AGREEMENTS

The purpose of this briefing is to summarise the most relevant points and obligations introduced by the law on urgent measures for the control of rent prices in residential lease agreements (the “LCR”) approved by the plenary session of the Parliament of Catalonia on 9 September 2020, with the aim of regulating the control and moderation of rents in lease agreements in which the leased property (i) is intended to constitute the permanent residence of the tenant<sup>1</sup>; and (ii) is located in an area of Catalonia which has been declared a **tense housing market**.

The LCR entered into force on 22 September 2020, without prejudice to the fact that (i) the provisions of the LCR which may incur expenses to be charged to the budgets of the Generalitat will take effect on the date of the entry into force of the law on budgets corresponding to the budget year immediately following the entry into force of the LCR; and (ii) the application of the rent control regime for newly built housing or housing which has undergone major refurbishment will enter into force within three (3) years of the entry into force of the LCR (that is, from 22 September 2023).

For this purpose, in accordance with the LCR, the municipalities, or parts thereof, in which any of the following circumstances exist will be considered to be tense housing market areas:

- (i) If the average price of housing rent experiences sustained growth which is clearly higher than that of the average of the territory of Catalonia.
- (ii) If the average burden of rent on the personal or family budget is more than thirty percent of the household's usual income, or if the average price of housing rents exceeds thirty percent of the average income of persons under thirty-five years of age.
- (iii) If the price of housing rents has experienced, within five years prior to the area being declared a tense housing market area, an accumulated year-on-year growth which is three percentage points higher than the year-on-year rate of the Catalan consumer price index (the “IPCC”).

The authority to declare an area to be a tense housing market (or, where appropriate, to agree on the appropriate review) will lie with the department of the Generalitat of Catalonia that deals with housing matters. However, this authority may also be exercised (i) in the city of Barcelona, by the

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<sup>1</sup> Residential lease agreements that are subject to special rent determination schemes (i.e. residential properties leased prior to 1 January 1995, housing subject to an official protection regime, housing leased in accordance with the legal provisions applicable to compulsory social rent, etc.) are excluded from the application of this law.

Barcelona City Council and (ii) in the metropolitan area of Barcelona, by the Metropolitan Area of Barcelona (either on its own initiative or at the request of any of the municipalities in this area).

Without prejudice to the provisions of the preceding paragraph, the LCR includes a transitional provision with a list of 60 municipalities (including Barcelona and its metropolitan area) which are declared as tense housing market areas for an initial period of one year from the entry into force of the LCR (and, consequently, the various provisions contained in the LCR will apply to residential lease agreements entered into in these municipalities from the entry into force of this law).

In particular, residential lease agreements entered into in these municipalities (as well as in any other municipalities, or parts thereof, that may be declared tense housing market areas in the future, as described in point 3 of this briefing) from the entry into force of the LCR, will need to apply the reference index of property rental prices (the “IRPAV”)<sup>2</sup> determined by the department of the Generalitat with authority in housing matters.

In residential lease agreements that are subject to the LCR, the rent agreed upon at the beginning of the contract cannot exceed (i) the reference price for renting a residential property with similar characteristics in the same urban area or (ii) if the property was leased within five (5) years prior to the entry into force of the LCR, the rent established in the last lease agreement increased cumulatively with the competitiveness guarantee index<sup>3,4</sup>.

Without prejudice to the foregoing, the LCR establishes the following specific exceptions and rules applicable to the control of rent in lease agreements entered into under the LCR in the following circumstances:

- (i) If a new lease agreement is entered into for a residential property which is subject to the LCR that had been leased previously within five (5) years prior to the entry into force of the LCR, and provided that (a) the landlord is a natural person whose cohabitational unit

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<sup>2</sup> The reference index of property rental prices is an indicator that can be accessed by the public for information purposes that provides an estimate of the average rent price per square metre in the area and with the characteristics specified by the person making the enquiry.

<sup>3</sup> According to Law 2/2015, of 30 March, on the de-indexing of the Spanish economy (BOE 31/03/2015), the Spanish National Statistics Institute (INE) is responsible for the calculation and monthly publication of the Competitiveness Guarantee Index (IGC).

This index establishes a rate of price revision which is consistent with the recovery of competitiveness against the euro area. When the rate of variation of this index is below 0 percent, this value will be taken as a reference (i.e., it cannot be less than 0), which would be equivalent to the application of the non-review rule. When the rate of variation of this index exceeds the medium-term annual inflation target of the European Central Bank (currently 2 percent), this value will be taken as a reference (i.e., it cannot be greater than 2).

<sup>4</sup> The criterion relating to rent established in the last lease agreement will not apply if (i) there is a family relationship between the landlord and the previous tenant (ii) the previous contract was subject to a special rent determination scheme (i.e. residential properties leased prior to 1 January 1995, housing subject to an official protection regime, housing leased in accordance with the legal provisions applicable to compulsory social rent, etc.).

has an income of not more than 2.5 times the indicator of sufficient income of Catalonia<sup>5</sup> (the “IRSC”) (including rental income); and (b) the tenant has an income of more than 3.5 times the weighted IRSC, the limit applicable to the rent in the lease agreement must be **the highest** out of (i) the IRPAV; and (ii) the rent amount established in the last lease agreement increased cumulatively with the competitiveness guarantee index.

- (ii) In general, the lease agreement must indicate the amount of the rent resulting from the application of the IRPAV **without considering its upper and lower areas**, unless the contracting parties agree, taking into account the specific characteristics of the property in question, to increase or reduce the rent resulting from the application of the IRPAV by five percent, provided that the property has at least three (3) of the following characteristics (which must be expressly stated in the contract): lift, parking, is furnished, has a heating or cooling system, communal areas for shared use such as a garden or a terrace, communal swimming pool or similar facilities, concierge services in the building or special views.
- (iii) However, without prejudice to the above point (ii), if the lease agreement that is subject to the LCR is for a residential property which is newly constructed or has undergone major refurbishment, and provided that no public subsidies were obtained to carry out the works during the five (5) years since when the end of works certificate was obtained, the maximum rent limit applicable will be set on the basis of the upper area of the applicable IRPAV.
- (iv) In addition, the LCR enables the landlord to increase the rent in lease agreements subject to the LCR, in the terms legally provided and without being subject to the limits established by this law, when the landlord is required to carry out improvement works on the leased residential property, once the minimum mandatory period of the lease has passed.

In addition, it is worth noting that the LCR gives the parties to lease agreements which are subject to this law the possibility of agreeing to the tenant paying the general expenses and individual services in accordance with the legislation on urban leases<sup>6</sup>, but each payment must break down the part corresponding to the rent and the part corresponding to the expenses assumed by the tenant.

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<sup>5</sup> Law 13/2006, of 27 July, on social benefits of an economic nature, established the indicator of sufficient income, which should be fixed periodically by the Law on Budgets of the Generalitat. For information purposes, for the 2020 financial year, the Budget Law of the Generalitat de Catalunya has set the value of the indicator of sufficient income in Catalonia at €569.12 per month and €7,967.73 per year.

<sup>6</sup> In accordance with article 20 of Law 29/1994, of 24 November, on Urban Leases, the landlord may ask the tenant to pay “*general expenses for the proper maintenance of the property, its services, taxes, charges and liabilities that are not susceptible to individualisation*”. The majority legal opinion is that such expenses include the payment of both the property’s contribution to the community of owners, the real estate tax (IBI), the rubbish tax, the sewage tax and comprehensive home insurance.

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Lastly, it is worth highlighting that the LCR also imposes an obligation on landlords to advise of the application of the value corresponding to the IRPAV in all housing offers subject to the LCR, and, where appropriate, include the amount of the rent of the last lease agreement in force for the same dwelling, updated as detailed in point 6 above.

Law 18/2007 of 28 December, on the right to housing, has been amended to include a system for penalising non-compliance with the LCR by establishing fines that vary depending on whether the breaches in question are considered to be (i) very serious, which will be punished with a fine of €90,001 to €900,000 (ii) serious, with a fine of €9,001 to €90,000 or (iii) minor, with a fine of €3,000 to €9,000.

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The information contained in this Briefing is of a general nature and does not constitute legal advice. This document was prepared on 25 September 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

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