

A COM PARATIVE GUIDE

COVID-19 & COMMERCIAL LEASES
A TOUR AROUND THE GLOBE

florent



Preface

At the time of compiling this comparative guide, the Covid-19 virus is still spreading across the world. Until an effective vaccine is realized, the spread of the Covid-19 virus can only be prevented by minimizing social contacts between people. For this reason, from the beginning of 2020, nations all over the world have shut down one by one and the international economy has come to a virtually complete standstill. This also has a major impact for the commercial real estate practice.

Entrepreneurs around the world have had to close the doors of their businesses overnight. In order to curb the fixed costs, entrepreneurs with a leased property will have to ask themselves the question: can I defer or reduce the rent? Or are their possibilities to amend the lease agreement to, for example, terminate it (prematurely)? The answer to these questions is determined by the jurisdiction of the country in which the entrepreneur is established. In this guide we have tried to collect the answers to these 3 questions per jurisdiction.

We would like to thank all our international partners who contributed to the compilation of this guide. It is thanks to their voluntary commitment of their knowledge and their time that this guide has come into existence. Finally, we would like to note that with this guide we have tried to provide the most up-to-date information. We are aware that due to the exceptional situation, the measures that have recently been taken to curtail the spreading of the Covid-19 virus are subject to change due to changed insights and/or regulations. We expressly note that this guide, including the contributions of all our partners, is only a general explanatory note. None of the participating partners accepts any liability whatsoever for the accuracy of the information provided.

We hope you find this guide useful.



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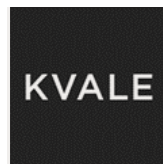
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Introduction

Since 13 March 2020, the Austrian legislator has been implementing a comprehensive package of measures to combat Covid-19. Such measures include (d) in particular restrictions on the freedom of movement of persons and the shutdown of schools, (partially) hotels, shops and restaurants imposed by public authorities. As the implemented measures and the discipline of the people in Austria showed positive effects, Austria is currently preparing for a gradual and monitored re-opening:

- The initially very stringent restrictions for shops and customer areas were partially eased as of 14 April 2020 so that businesses were – subject to health and safety measures – entitled to re-open their shops for the “sale, manufacture, repair or processing of goods” if their indoor customer area did not exceed 400 sqm. Still excluded from this easement were all restaurant areas and shopping malls. Already at that time, bike repair shops, building supplies stores and pawn shops were allowed to open and were not limited by the 400 sqm restrictions.
- As of 1 May 2020, many measures were further eased. Public places may since then be entered if a distance of at least one meter from other persons is kept and a protective device covering the mouth and nose area (e.g. a face mask or a scarf) is worn in closed rooms. In customer areas of business premises, both employees and customers must wear a face mask and the minimum distance of at least one meter must be kept at all times.
- The Ministry of Health published guidelines for guests of restaurants and bars, which were allowed to re-open on 15 May 2020. According to these guidelines, a maximum of four adults (plus children) are allowed to sit at each table and a distance of one meter must be kept between the tables. Further, shared items (such as salt and pepper shakers) have to be removed from the tables. Unlike the members of staff, the guests only have to wear a protective device covering the mouth and nose area when entering or leaving the restaurant or when going to the bathroom. The daily opening hours are limited between 6 am and 11 pm.
- The gradual re-opening of accommodation facilities such as hotels followed on 29 May 2020.
- Further easements, such as longer opening hours for bars and restaurants, shall be implemented as of 15 June 2020.

1. What are the legal possibilities for deferred payment of rent?

For residential leases, the 2nd federal law on accompanying measures for Covid-19 provides relief for tenants paying rent late. If a tenant is between 1 April 2020 and 30 June 2020 unable to pay the rent when due, the landlord cannot terminate the lease agreement solely because of these arrears. However, the late payment must be caused by the tenant's economic capacity (wirtschaftliche Leistungsfähigkeit) being considerably impaired as a result of the corona crisis. Further, the landlord may neither claim the rent payments in court until 31 December 2020 nor cover them from the deposit.

Similar statutory provisions have not been introduced for commercial leases in Austria.

2. What are the legal possibilities for a rent reduction?

From an Austrian law perspective, it has to be distinguished between (i) the entire lease object not being usable (in which case § 1104 of the Austrian General Civil Code (ABGB) applies) and (ii) only parts of the lease object not being usable (in which case § 1105 of the ABGB applies).

§ 1104 of the ABGB, which applies to both, lease agreements (Mietverträge) and tenancy agreements (Pachtverträge), states that no rent is payable by the tenant if the leased object cannot be used in its entirety for the agreed purpose due to extraordinary circumstances (außergewöhnliche Zufälle) such as fire, war, epidemic or flooding. Such extraordinary circumstances are according to Austrian case law elementary, uncontrollable events which affect a larger number of people. In addition, Austrian case law ruled that § 1104 ABGB also applies in case of sovereign acts (hoheitliche Verfügungen) not provoked by the contracting parties. Accordingly, the tenant would in our view be entitled to request a rent reduction for the period in which the leased object cannot be used for the agreed purpose due to the corona crisis, in particular because of a shutdown ordered by public authorities. However, § 1104 ABGB is not mandatory and the parties may agree on a different risk allocation in the lease agreement. An analysis of the individual lease / tenancy agreement is therefore paramount.

§ 1105 ABGB applies if the leased object can only be used partially due to extraordinary circumstances (außergewöhnliche Zufälle). The tenant under a lease agreement (Mietvertrag) may in such case request a proportionate reduction of the rent. In contrast, the leaseholder under a tenancy agreement (Pachtvertrag) only has this right if the lease is concluded for a definite period of one year (or less) and additionally, more than half of the usual average revenue is lost. Again, § 1105 ABGB is not mandatory and it could be waived in the individual lease / tenancy agreement, which should therefore be analysed.

3. What are the legal possibilities to amend the lease?

If a rent reduction is not possible according to the above remarks, e.g. in case of (i) a long-term tenancy agreement (Pachtvertrag) (whereas it is important to note that contracts which are labelled “tenancy agreements” are in fact very often lease agreements, in particular in case of “tenancy agreements” for shops in shopping centres and for hotels) or (ii) the lessor arguing that the business premises are still useable (e.g. if a hotel has not been subject of a closure by public authorities), we see in individual cases arguments to amend the lease / tenancy agreement – and thus to request a rent reduction – on the basis of frustration of contract (Wegfall der Geschäftsgrundlage). This might be the case because typical circumstances which are always and by everyone connected with the business (geschäftstypischer Umstand) might for a certain period of time no longer be existing (e.g. travel bans and bans of major events affect the fundamentals of the hotel industry) without any of the parties' fault. Naturally, the individual contract and circumstances must be reviewed to see whether this is an option.

Please note that decisions from the Austrian Supreme Court on the legal instrument of frustration of contract have always been taken on a case-by-case basis and differed widely, creating uncertainty in how it can be properly invoked and making it difficult to make general assessments.

4. Relevant literature & case law

Lanschützer/Moser, Covid-19 Pandemic – Overview of Effects on the Hotel Industry (link in English, also available in German)

No relevant case law available yet.

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Introduction

The Belgian Government adopted several temporary measures putting homeworking and social distancing on the forefront. It also created a distinction between companies who are considered to be essential, and those that are not. In that sense, the Belgian Federal Government took the following compulsory measures:

- Closing all shops and stores, except for grocery stores (including night shops), food stores for animals, pharmacies, libraries and petrol stations;
- Compulsory homeworking for all non-essential companies. If homeworking is not possible, companies can continue to work if they are able to maintain social distancing of 1,5 meters between individuals. When this is not possible, companies have to temporarily stop their activities and close the workspace.
- Closing all cultural, festival type, recreational and sports institutions, as well as all institutions in the food industry ("horeca" sector, i.e.: hotels, restaurants and cafes). Hotels can nevertheless remain open, with the exclusion of their inhouse restaurant.

The "horeca" sector is, however, allowed to deliver food and to function via a takeaway service.

Certain services, because they are considered as essential, are not concerned by these obligations to close.

This is the case, for example, of nurseries, hospitals, media institutions, etc.

Gatherings, school trips, youth movements and religious activities are forbidden;

Schools and universities are closed.

These measures are indicated in the Ministerial Decrees of March 13th, 18th, 23rd and 24th, 2020.

The Government also addressed several recommendations that are updated on a daily basis on the official website of the crisis task force (<https://www.info-coronavirus.be/en/>).

1. What are the legal possibilities for deferred payment of rent?

In view of the difficulty to pay their rent, many companies asked for reductions or suspensions of their rent to landlords, on the grounds that there is a situation of force majeure (i.e. an insurmountable event, independent of the will of either party to the contract and that leads to the impossibility of fulfilling the contract), deriving from the Ministerial Decrees. It is useful to note that, for the time being, and even if there are some discussions about this, Belgian law does not recognize the right not to pay the rent in case of financial difficulties. Despite this, there are two possibilities to defer payment.

The first legal possibility is contractual. It will depend on what has been provided for in the lease contract and whether or not they settled the responsibilities of each party in the event of a situation of force majeure, as well as the potential implications of this situation on the contract.

If the possibility to defer payment has not been settled contractually, invoking force majeure may be another basis to defer payment of the rent. For this, the company invoking it must (i) not be an essential company, (ii) not have unilaterally decided to shut down before it was legally forced to and (iii) demonstrate that it can no longer use the property normally (or "peacefully"), be it totally or partially.

When this has been proven, in view of the reciprocal nature of the parties' obligations and if the impediment is total, the company will have the right to ask for a deferment to pay rent following Articles 1719,3rd and 1722 of the Belgian Civil Code.

We consider that this argumentation should be welcomed positively by the courts who have, in the past, allowed a tenant to suspend the payment of rent in the event of force majeure.

It also seems that claims filed by landlords in order to force the execution of rental payment will be blocked, at least for the time being, as all enforcement measures have been temporarily suspended.

Finally, we nevertheless advise that all deferment of payments should respect the principle of equity that falls under Articles 1134, al. 3 and 1135 of the Belgian Civil Code.

2. What are the legal possibilities for a rent reduction?

The legal possibilities for rent reduction essentially depend on the reasoning developed in the previous section. When a specific company has managed to prove that it is in a situation of force majeure, it must be assessed whether the situation entails an absolute or only a partial impediment to enjoy the property that falls under the commercial lease. In case of a partial impediment, rent reduction should hence be privileged proportionately to the degree of the impediment. This might, for example, be the case for restaurants or bakeries who were not forced, per se, to close entirely, but that can only work via delivery or takeaway services. The result is therefore a partial impediment of their right to peacefully enjoy the premises under the commercial lease, which may in turn justify a rent reduction on the basis or Articles 1719, 3° and 1722 of the Belgian Civil Code.

Furthermore, the professional union for the Real Estate Sector ("UPS" in French) has recommended to landlords, in a memo dated April 3rd, 2020, to grant tenants who are having financial difficulties, a 50% rent reduction. They recommended to concede this for April and May 2020, and for as long as the Governmental restrictions are in place.

3. What are the legal possibilities to amend the lease?

There is no possibility under Belgian law to unilaterally ask for an amendment of the commercial lease. Belgium, by opposition to France, does not recognize to date the "unforeseeability theory".

A possibility to amend commercial leases exists under Article 6 of the Belgian Commercial Act. This act provides the possibility for tenants to ask the judge for a rent modification at the end of each three-year period when new circumstances changed the rental value of the property. However, this is a legal possibility that is conferred to all commercial tenants who can make use of it only when the abovementioned conditions are met. For this reason, the COVID-19 situation does not, per se, constitute an additional reason to request from the courts an amendment of the lease, even though it may, in particular cases, amount to constituting a new circumstance that can have an impact on the rental value of the property. It will only apply, furthermore, if the contract is about to reach the three-year period. However, commercial tenants for whom the three-year period is pending might be more inclined to use this option.

Hence, the strongest legal possibility to amend the lease is the possibility of settling the situation by means of agreements of a temporary nature. This gives the opportunity to temporarily modify the obligations of the parties in view of the exceptional circumstances at stake.

4. Relevant literature & case law Literature

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Introduction

Czech Government and Parliament adopted numerous measures regarding the SARS CoV-2 coronavirus epidemic. These measures affected many companies, but in general the gastronomy, accommodation and retail store sectors were impacted the severest. Complete list of effective measures is available on the website of the Czech Government.

Following summary reflects some of the most important measures (most of them are slowly being lifted as of today):

- A state of emergency was declared on 12 March 2020 and it was extended until 17 May 2020;
- As from 13 March 2020, gatherings of more than 30 people were prohibited, as well as operation of gyms, wellness centres, music clubs, public swimming pools, leisure facilities, etc.;
- As from 13 March 2020, full-time education was cancelled, as well as education in universities;
- As from 14 March 2020, operation of bars, restaurants etc. was prohibited (except for the facilities with dispensing window), as well as retail sales and the sales of services in business premises.

It is needed to say that the specific measures were changing very turbulently, and it was very difficult not only for general public to keep up with the latest amendments.

As from 20 April 2020 the governmental measures started to loosen and as of 25 May 2020 all facilities should be allowed to operate, although some of them under special safety conditions.

1. What are the legal possibilities for deferred payment of rent?

Czech Parliament has passed new act regarding postponement of rent, specifically Act No. 210/2020 Coll., on certain measures to mitigate the effects of the SARS CoV-2 coronavirus epidemic on tenants of business premises. According to this act the landlord is not entitled to unilaterally terminate the lease during the period until 31 December 2020 only because of a tenant being in arrears with payment of rent associated with the use of the business premises, if the delay occurred in the period from 12 March 2020 to 30 June 2020, and as a result of a restriction resulting from an epidemic emergency that prevented or made it significantly more difficult to run a business.

The tenant must furthermore meet several conditions. First, the tenant shall submit to the landlord documents certifying the fulfilment of the above stated conditions within fifteen days from the day when the first arrear in the payment of rent occurred. Second, the tenant is obliged to pay all receivables which became due in the period from 12 March 2020 to 30 June 2020 and which the tenant has not duly paid, by 31 December 2020 at the latest. If the tenant fails to pay all rent debts that became due in the period from 12 March 2020 to 30 June 2020 by 31 December 2020 at the latest, the landlord becomes entitled to terminate the lease. In such case the notice period is 5 days.

In fact, the law has not entitled the tenant to defer payment of the rent, as the tenant is still obliged to pay the default interest or contractual penalty if it is in arrears, however, it prevents landlords from the lease termination for the above reasons.

2. What are the legal possibilities for a rent reduction?

In general, the landlords are not obliged to provide any kind of rent reduction to the tenant. However, the Czech government has recently approved the "Covid-Rent" programme, on basis of which the state shall provide to tenants a contribution equal to 50 % of the rent for period from 1 April to 30 June 2020. This contribution is conditional on the conclusion of amendment to a lease agreement, on the basis of which the landlord provides a discount from the rent in amount of 30 % for the above stated time period. Conclusion of this amendment is fully voluntary.

The contribution should amount up to CZK 10 mil (approx. EUR 360,000) for one tenant and aggregate amount of contribution should reach CZK 5 billion (approx. EUR 181,850,000). As of this moment this programme is not effective yet, but it is anticipated that first contributions should be provided in June.

3. What are the legal possibilities to amend the lease?

According to Section 1765 of the Act No. 89/2012 Coll., the Civil Code, a party of an agreement has right to demand renegotiation of the agreement if the circumstances under which it has been concluded has changed substantially. This change must create a gross disproportion in the rights and duties of the parties by disadvantaging one of them. If the parties do not make an amended arrangement, the disadvantaged party is entitled to claim a restoration of balance of rights and duties in court. The court may change the obligation or even abolish it.

However, it is very common that lease agreements exclude application of this right.

Nowadays when the governmental restrictions are being lifted and the Government also provided instruments stated in point 1 and 2 hereof in order to mitigate the effects of the SARS CoV-2 coronavirus epidemic, it is quite probable that the landlords will not be very keen to renegotiate the lease agreements exceedingly (i.e. more than to meet the conditions of the "Covid-Rent" programme).

4. Relevant literature & case law

Ministry of Industry and Trade: "State aid related to rent payment in the context of COVID-19" ([link in English](#))

Act No. 210/2020 Coll., on certain measures to mitigate the effects of the SARS CoV-2 coronavirus epidemic on tenants of business premises ([link in Czech](#))

Act No. 89/2012 Coll., the Civil Code ([link in English](#))
No relevant case law available yet.



Introduction

On 11 March 2020, the Danish government issued orders to inhibit the spread of the Coronavirus. A range of businesses and government institutions were forcibly closed, including i) restaurants, cafés and bars, ii) businesses that involve physical contact, iii) shopping malls, iv) indoor sports- and cultural facilities, and v) public educational institutions. Non-essential public sector employees were ordered to work from home or furloughed. The private sector was encouraged to institute work from home policies. Additionally, a ban on public gatherings of 10 or more people was introduced. Furthermore, the government introduced financial aid packages for businesses, including compensation for the salaries of furloughed employees and compensation for (a part of) businesses' fixed costs.

Denmark is now gradually reopening. In April, daycares and school for young children, business with close physical contact, courts and private clinics reopened. In May, shopping malls, restaurants and cafés, school for older children, professional sports (without spectators) and religious communities will reopen. In June, depending on the spread of the virus, the ban on public gatherings of 10 people may be changed to 30-50 people. Higher education, nightclubs and gyms are not expected to open until August.

1. What are the legal possibilities for deferred payment of rent?

The subject is currently debated. Due to the unprecedented extent of the crisis, the legal framework is unclear and will ultimately have to be tested before the courts. The general assessment is that the tenant is not entitled to defer rent payments due to the Corona Crisis. Unless provisions in the

lease agreement stipulate otherwise, the tenant is obliged to pay rent at due date, unless the leased premises have deficiencies which could entitle the tenant to suspension of rent payments.

2. What are the legal possibilities for a rent reduction?

If the leased premises have deficiencies the tenant may a) claim reduction of rent corresponding to the deficiencies until the landlord has corrected the issue or b) terminate the lease agreement if the deficiencies are substantial, cf. article 18 of the Danish Business Lease Act ("DBLA"). The current situation will entail limited access for the tenant to the leased premises, e.g. for a tenant in a shopping mall, however such limitation does not in our view impose a deficiency in the sense of the law that entitles the tenant to withhold or suspend rent payments nor to terminate the lease agreement. This is based on the fact that the limited access to the leased premises is the result of an event for

which the landlord shall not bear the risk. However, we cannot rule out the possibility that the courts will apply article 18 or its analogy to the current situation and award tenants rent reduction for the limitation in access or use of the premises.

According to article 23 of the DBLA a tenant is entitled to demand a rent reduction if a public authority has restricted the tenant's use of the premises for health or other reasons. In our view article 23 does not apply to the current restrictions, as article 23 applies to restrictions due to physical deficiencies of the leased premises. However, as we are without precedent, we cannot rule out the possibility that the courts will apply article 23 or its analogy to the current situation and award tenants rent reduction for the limited access or use of the premises.

3. What are the legal possibilities to amend the lease?

Article 7 of the DBLA states that a lease agreement may be amended or set aside, in whole or in part, if it would be

unreasonable or at variance with the principles of good faith to enforce it, see article 36 of the Contracts Act. This provision has a very limited scope and is rarely applicable on agreements between professional parties.

From a practical business perspective, we have seen that parties try to reach an amicable and temporary solution, including offering tenants deferred rental payments, until it is clear if the tenant can receive economic aid or the Corona Crisis has passed.

4. Relevant literature & case law

N/A



Introduction

As is the case in many Countries, the occurrence of the Coronavirus and the result of Government guidance in the UK to stay at home where possible since mid-March 2020, has had a significant and immediate impact on many businesses. A high proportion of UK businesses occupy leasehold property. Lease rents are commonly payable quarterly in advance on 25 March, 24 June, 29 September and 25 December. Many Tenants did not meet their quarterly rent payments due in March and there are already concerns about the June quarter payments.

The Coronavirus Act was introduced on 25 March 2020. This Act did not relax the requirements for Tenants to pay rent, but it did, until 30 June 2020, restrict one of the main remedies available to a Landlord – it prevents Landlords from forfeiting business Leases as a result of non-payment of rent.

We currently await enactment of the Corporate Insolvency and Governance Bill, which restricts the presentation of winding up petitions before 30 June 2020 (another previously effective means for a Landlord to persuade a Tenant to pay overdue rent). Landlords do still have some other means of trying to recover unpaid rent, including from Rent Deposits; Guarantors; debt actions; or potentially through seizure of goods. Other concepts, such as force majeure (not common in English Leases); derogation from grant (essentially a Landlord preventing a Tenant from using and enjoying premises

1. What are the legal possibilities for deferred payment of rent?

Most leases in England & Wales do not allow a deferment of rent and the legislation introduced by the Government so far has not changed this position – Tenants are still liable to repay rent in full on the due date. A deferment of rent can only therefore be agreed voluntarily by Landlords and Tenants through commercial negotiation. Some Landlords and Tenants are seeking to agree practical arrangements taking account of the current situation. As we do not know how long the impact of the Coronavirus will last, any negotiated arrangement will need to be reviewed regularly over the coming months.

2. What are the legal possibilities for a rent reduction?

Tenants do not currently have any right at Law to a reduction in rent as a result of the effect of the Coronavirus on their business and ability to occupy premises. Most Leases in England & Wales also do not include provisions entitling a Tenant to a rent reduction in the current circumstances. Generally therefore, any reduction in rent would have to be achieved through commercial negotiation. Most Leases contain provision for a temporary rent reduction or cessation, but only in certain circumstances following damage to premises by an insured or uninsured risk. As the provisions generally refer to physical damage causing the premises to be incapable of occupation and

use, these provisions do not benefit tenants in the current circumstances. Most Leases exclude a right of set off, so even if a Landlord is in breach of its Lease covenants due to the Coronavirus, a Tenant cannot lawfully withhold or unilaterally reduce the amount of rent payable and must instead pursue a separate claim against the Landlord. Some Leases may include specially negotiated provisions for rent reductions. Such clauses may be more common in retail leases, but are not common in office leases. Some Leases in the retail and hospitality sectors operate with a turnover rent, linked to keep open clauses. In the present circumstances only the base rent is likely to be payable. Tenants will argue against any Landlord who tries to pursue them for not being open at the current time. Any disputes between Landlords and Tenants will take time to be heard in Court due to current delays and a backlog in hearings.

3. What are the legal possibilities to amend the lease?

There are no rights at Law to amend current Leases. Interpretation of Leases can be guided by case Law, but Leases can only be amended by commercial agreement between the parties, or through Court intervention. If amendments are to be achieved to take account of difficulties caused as a result of the Coronavirus, Landlord's and Tenant's need to act reasonably and agree changes.

If amendments are agreed, they can be documented by Side Letter (if they are insignificant temporary changes) or by a Deed of Variation. Beware of amending Leases. Consideration should be given to whether variations are allowed under any superior lease, and also whether the consent of a third party is required (including a guarantor, Bank or other funder). In addition, some Lease amendments are considered at Law to be so significant a change, that on them being concluded, they bring the current Lease to an end automatically, and a new Lease is deemed to have been granted (a "surrender and regrant"). This can have significant unintended consequences for Landlords and Tenants, and could remove protections from which a party previously benefitted. It is very important therefore to seek legal advice before documenting or putting into effect amendments to Leases.

4. Relevant literature & case law

Notes:

a. Frustration: (Li Ching Wing v Xuan Yi Xiong [2004] 1 HKLRD 754)

b. Coronavirus Act 2020 (<http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>)

c. Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (SI 2020/326)
Guidance on responsible contractual behavior in the performance and enforcement of contracts impacted by the Covid-19 emergency (7 May 2020)

(<https://www.gov.uk/government/publications/guidance-on-responsible-contractual-behaviour-in-the-performance-and-enforcement-of-contracts-impacted-by-the-covid-19-emergency>)

d. Also, the following articles:
<https://www.fieldfisher.com/en/insights/commercial-leases-and-the-coronavirus-act-2020>

<https://www.fieldfisher.com/en/insights/new-measures-limiting-use-of-statutory-demands-and-no-coronavirus-case-law-available-yet>

Introduction

Many companies have been heavily impacted by the Covid-19 crisis and have been forced (by law or for economic reasons) to close or limit opening hours.

The French Government has taken measures to help companies in difficulty through a number of decrees (ordonnances). A solidarity fund has also been set up and it is possible for certain tenants to request their landlord to suspend the payment of their rent. Furthermore, in order to help companies to overcome difficulties, companies can apply to their bank to subscribe for a cash loan guaranteed by the French state.

Like most countries, a strict containment set up from 17 March 2020 to 11 May 2020. During this period, the non-essential shops (i.e., restaurants, theatres, non-food businesses and sports halls) were closed. At the time being, restaurants, theatres, cinema, night clubs and sports halls can still not receive public in their premises. Restaurants are only allowed to sale their products through take away. However, construction sites were able to resume in compliance with health regulations and barrier gestures.

1. What are the legal possibilities for deferred payment of rent?

Deferred payment of rent is permitted for:

- the VSEs with less than 10 employees, a turnover < 1M€, prohibited from receiving from the public, a loss of turnover of at least 50% during the period between 1 March 2020 and 31 March 2020 compared to the same period of the previous year;
 - the companies in receivership and liquidation.
- The other companies can contemplate to request their landlord, on an amicable basis, a suspension of their rent based on several more or less relevant means such as (i) the obligation to renegotiate in good faith, (ii) the force majeure, and (iii) the payment deadlines of Article 1343-5 of the French civil code.

As from 12 March until 23 June 2020, the landlords can not apply penalties, interest in arrear, use the cash deposit or active the financial guarantee or request the termination clause stipulated in the commercial leases.

2. What are the legal possibilities for a rent reduction?

At the time being, there is no specific measure taken by the French Government with respect to rent reduction, even if such latter encourages professional landlords to give rent free period to their tenant and in particular tenants which have been subject to a total ban on exploitation such as restaurants, cinemas, theatres, etc. In order to obtain rent reduction, the tenants can contemplate to invoke the notion of exception of non-performance of Article 1219 of the French civil code by considering that the landlord has failed in his obligation to deliver under Article 1719 of the said code. However, landlords have several arguments to counter such ground (i.e., the business premises remain available to the tenant) and the current case law benefits to the landlords. From a tax standpoint, and subject to certain conditions,

the amending finance act (Loi de finances rectificative) for 2020 allows the landlord companies to deduct the discharges of indebtedness (abandons de créances) relating to the rents granted between 15 April and 31 December 2020.

3. What are the legal possibilities to amend the lease?

Except for the VSEs fulfilling the criteria mentioned above, there is at the time being no legal provision allowing the tenants to request the landlords to renegotiate the commercial leases.

However, and as mentioned above, the French Government encourages landlords to provide support measures to their tenants having difficulties.

At the time being, commercial leases can only be amended on an amicable basis

4. Relevant literature & case law

- Traité des baux commerciaux, J-P Blatter, 5 edition
- Memento Baux commerciaux, 2019/2020, Editions Francis Lefebvre
- Droit et pratique des baux commerciaux, 2019/2020 Editions Dalloz



Introduction

The measures taken against the Covid-19 pandemic have drastically affected all aspects of public life and have directly impacted the course of business. Since end of March, many businesses have been ordered to close, completely or partially, or to reduce services or the number of customers serviced at once. New health and safety regulations apply. In addition, indirect effects like a lack of costumers are felt even by businesses that were allowed to operate throughout this crisis or that may reopen now.

The situation is still evolving and – with competencies divided between the Federal and 16 State governments – complex. Therefore, despite political efforts to coordinate, both the measures themselves and the timeline according to which they are ordered or lifted, vary from one Federal State to the next. Generally, these public law measures regarding businesses have included/still include:

- Bans on the opening of childcare, schools, universities and other educational institutions. These are gradually reopening, depending on the Federal State.
- Bans on the opening of bars, restaurants, etc. (which may only offer take-away/delivery) as well as recreational businesses or events. These bans are being lifted only very carefully.
- Bans on the opening of “non-essential” stores like e.g. fashion retailers. First, stores with a sale surface under 800 sqm were allowed to open again. Now, all stores can open again, but are required to ensure only a limited number of customers are present at once and keep sufficient distance. Other mandatory precautions may be installing acrylic glass “sneeze screens” and other separating devices and information signs, removing chairs, or marking areas on the floor.

The following rules (or slight variations) apply to the public at large, probably at least until 5 June 2020:

- Gatherings of the members of more than two households continue to be prohibited. A 1.5 meter distance must be kept to others in public.
- Masks or scarves covering mouth and nose must (or are urgently recommended to) be worn in public transport and inside stores.
- Everyone is urgently recommended to stay home whenever possible.

1. What are the legal possibilities for deferred payment of rent?

The obligation of timely rent payment continues to apply and therefore default interest will accrue on the rent arrears. In commercial lease agreements, the default interest is currently 8.12% p.a. and in consumer lease agreements it is 4.12% p.a. Only a temporary termination ban has been introduced by the federal legislator by Covid-19 Act. It excludes the lessor's right to terminate the lease due to rent arrears accumulated between 1 April and 30 June 2020 if they are caused by the Covid-19 pandemic. The tenant bears the burden of proof that he cannot pay the rent due to the pandemic (and not for other reasons). This termination ban only applies for a 24-month period, i.e. until 30 June 2022. Afterwards, unless new legislation is introduced, lease terminations for cause on the grounds of rent arrears accumulated during the period April to June 2020 will be possible again.

2. What are the legal possibilities for a rent reduction?

The new Covid-19-specific measures do not include a provision concerning a rent reduction, so general tenancy law applies. Pursuant to Sec. 536 of the German Civil Code (GCC), the tenant's duty to pay rent is reduced or suspended for the duration of a material or legal defect of the lease object. However, the current governmental or administrative orders to close the premises to the public do not constitute such legal defect, as they are not based on the premises themselves (as would be the case if for example these were structurally hazardous) or directly linked to the premises (as would be the case if for example they would be located next to a source of hazardous emissions), but on the risk of infection between and among customers and employees. So arguably, they are directed at the tenant's business but not the lessor's building, i.e. stem from the tenant's sphere and cannot be considered a defect of the lease object unless a causality of the qualities of the premises for the impairment of the use of the premises can be established as required by case law of the Federal High Court of Justice.

3. What are the legal possibilities to amend the lease?

The legal possibilities to amend the lease are very limited. Pursuant to Sec. 313 of the GCC, either party can demand an adaptation of the contract because of unforeseen significant changes to the basis of the contract, if they would not otherwise have entered into the contract at all or with these conditions, and if they cannot reasonably be expected to uphold the contract without alteration. This alteration could include, but is not limited to, a rent reduction. All the circumstances of the specific case, particularly, the contractual or statutory distribution of risk, must be taken into account. An example of a contractual distribution of risk would be a force majeure clause. However, the courts in Germany have been reluctant to

adapt lease contracts according to Sec. 313 GCC, arguing that by statutory distribution of risk, unforeseen changes in the usability or economic value of the lease object are the tenant's risk. Furthermore, the fact that the legislator has assumed in the reasons given for the Covid-19 Act that the tenants' duty to pay rent timely and to comply with all other obligations under the lease contract would remain the same is a strong argument against a right to amend the lease agreement.

Whether this section can be invoked to amend lease contracts with regard to the Covid-19 pandemic depends on the facts of the individual case. Tenants who were direct addressees of a prolonged ban on opening their business may stand a better chance than those who were ordered to close only briefly or not at all, but closed nonetheless because of a lack of customers or because they needed time to comply with the new hygiene rules. A mere decline in demand (even a drastic one) because of the recession that most believe we are headed into will not suffice to invoke this provision.

4. Relevant literature & case law

See Federal High Court, NJW 2000, 1714, both for the requirement of a direct link between an impairment and the lease object and for the distribution of risk analysis regarding Sec. 313 GCC.

See Lindner-Figura/Oprée/Stellmann, Geschäftsraummiete, Beck Verlag 2017, for an in-depth discussion of commercial lease contracts under German law.

No Covid-19-specific case law available yet.

Introduction

Due to the occurrence and rapid spread of the COVID-19 virus the Hungarian Government declared a state of danger through Government Decree No. 40/2020. (III.11.) and introduced numerous business related measures in connection with the pandemic situation.

Most of the restrictions and measures relate to opening hours of shops and general economic situations, like payment of loans. Some of the provisions, however, concern lease agreements, such as Government Decree No. 47/2020 (III.18.) which declares that no termination of leases related to non-residential premises is possible until 30 June 2020. Rent related to such leases can also not be increased while the emergency circumstances are existing irrespective of the provisions of the given contract. These rules are applicable in the following industries: tourism, catering, entertainment, gambling, movie, performer, event organizer and provider of sport services. The provisions of the decree are applicable without any further circumstance to be proven, therefore, the only question might be left open is whether the actual lease falls into the industries listed above. By the mitigation of the pandemic, the restrictions are also lifted. According to the new government measurement, it is allowed for shops to be visited, further, for restaurants, bars, outdoor museums and zoos to be open. In Budapest, additional restrictions are maintained. The operator is obliged to ensure the conditions such as the social distance.

1. What are the legal possibilities for deferred payment of rent?

Payment of rent and service charges for premises remains, from the legal perspective, as prior to COVID-19 appearance and is a matter of negotiations between tenants and landlords. Although Government Decree 47/2020 (III.18.) prohibits termination and the increase of rental fee until 30 June 2020 in connection with certain premises, parties to such lease are also able to negotiate the payment obligations concerning the lease.

2. What are the legal possibilities for a rent reduction?

According to the Hungarian Civil Code no lease payments shall be made for the period when the leased premises cannot be used for reasons beyond the lessee's sphere of interest. Unless excluded the application of this provision, the lessee may refer to this clause to avoid payment. Commercial lease agreements usually contain provisions handling this case so it is not the general legal regulation, which is relevant in most of the cases. Further, landlords may dispute the application of this provisions because the reason why the premises cannot be used are also beyond their as lessors sphere of interest.

3. What are the legal possibilities to amend the lease?

Unless specific rules are included in the contract regarding pandemic or similar extraordinary circumstances, parties might be forced to sit together and agree upon the completion of their obligations with regard to the present, unexpected conditions. At lease contracts to be signed in the near future, depending on the parties' agreement, lessor can strengthen its position by demanding advance payment of the rent or getting security payment in an

increased amount. Whereas lessees can benefit from provisions to be introduced into the agreement with regard to the pandemic situation.

As to regulatory framework, based on the Hungarian Civil Code the court may amend the contract if in the long-term contractual relationship of the parties, completion the contract under the same terms is likely to harm the party's relevant lawful interests in consequence of a circumstance occurred after the conclusion of the contract, provided, (i) that such change of circumstances could not have been foreseen at the time of conclusion of the contract, (ii) the party did not cause that change of circumstances, (iii) c) such change cannot be regarded as normal business risks. According to the court practice, however, courts are not entitled to modify contracts based on changes affecting the given economy as a whole or changes affecting every person of one special type of contract. Therefore, it is questionable whether possibility of general amendment by the court is applicable.

4. Relevant literature & case law

- <http://abouthungary.hu/news-in-brief/coronavirus-update-restrictions-lifted-in-budapest/>;

- <http://abouthungary.hu/news-in-brief/coronavirus-update-the-first-restrictions-are-being-lifted-in-hungary/> (English) No case law available yet.





Introduction

In order to contrast and contain the spread of COVID-19 virus, the Italian Government adopted, as of 9 March 2020, several measures to stop and suspend productive and commercial activities throughout Italy, with the exception of the activities considered essential listed in Annex 1 of the Prime Ministerial Decree of 22 March 2020.

In order to provide economic support for these activities, many measures providing aid have been adopted, such as the wage guarantee fund to support the employees affected by the suspended work activities (up to 80% of their salary) and a non-refundable aid from 600 up to 1000 Euros per month for March, April and May 2020, in favour of VAT holders and professionals who have suffered a decrease in their turnover compared to previous years. In this context, with specific reference to commercial leases, the Italian Government provided a tax benefit amounting to 60% of the rent of March, April and May 2020, in favour of commercial tenants who generated revenues lower than € 5 million in 2019 and had a reduction in turnover of at least 50% in March, April or May 2020 compared to the same tax period in 2019 (pursuant to Art. 28 of the Decree Law no. 34 of 19 May 2020, "Decreto Rilancio"). This tax benefit (together with the tax benefit recognised for workplace safety and sanitization) may be transferred to third parties, by 31 December 2021, who may also set-off the credit against the State Treasury (pursuant to Art. 122 of Decreto Rilancio). The transfer of the tax benefit to the landlord could therefore be used for a potential renegotiation of the rent, as described in the following paragraphs 2 and 3.

The Italian emergency legislation provides, as regards contractual relationships, an exemption from liability in the event of breach of contract (or delay in performance) if the breach was a result of the compliance with the Covid-19 containment measures (pursuant to Art. 91 of the Decree Law no. 18 of 17 March 2020, "Decreto Cura Italia"). However, the exemption from liability is not automatic and, therefore, every breach of contract by the tenant shall be examined

in court in the light of the circumstances of each individual case; the court shall examine if the payment of the rent became impossible due to the compliance with the Covid-19 containment measures and despite the due diligence on behalf of the tenant.

1. What are the legal possibilities for deferred payment of rent

A suspension in the payment of the rent may be considered in light of the temporary impossibility for the tenant to use the property during the emergency period. Indeed, pursuant to Art. 1256 paragraph 2 of the Italian Civil Code, the temporary impossibility to use the property could exempt the tenant from liability for delayed payments, only for the period in which the restrictive measures were in force. However, the rent suspension is limited to the lockdown period, at the end of which, the tenant must pay the outstanding rent. This solution can also be reached under Art. 1175 and Art. 1375 of the Italian Civil Code, by which the parties, in any contractual relationship, must behave according to the principles of good faith and fairness during the performance of the contract (possibly re-negotiating the contract, as described in paragraph 3).

2. What are the legal possibilities for a rent reduction?

With regard to the possibility for a rent reduction, a commercial tenant can invoke the provisions of Art. 1464 and Art. 1258 of the Italian Civil Code, concerning the right to reduce the contractual obligations of the parties, even in case of partial or temporary impossibility regarding their performance. Despite the lack of judicial precedents/case law on this matter (at least with regard to the lease), an important body of academic opinion considers that,

in a contract with periodic payments, if the obligation becomes temporarily impossible due to irresistible and unforeseen events, the party who must pay has the right to request a reduction proportionate to the losses suffered as a result of the unforeseen events. According to this principle, therefore, the tenant, who was temporarily unable to use the rented property for the commercial activity for which it was leased, can request an appropriate rent reduction, pursuant to Art. 1464 of the Italian Civil Code, in order to partially compensate the reduction in turnover caused by the suspension of the commercial activity.

In the event that the tenant benefits from the 60% tax benefit of March, April and May 2020, the rent reduction may apply only to a part of the rent, as it may be difficult for the same tenant to benefit from both the rent reduction and the tax benefit.

In this regard, it should also be noted that the first judicial precedents about this matter have been decided in April and May 2020 through precautionary measures and regarded similar cases which referred to the enforcement of guarantees of lease contracts for the non-payment of the corresponding rents (see Court of Bologna decision of 12 May 2020 no. 4976; Court of Venice decision of 14 April 2020 e Court of Rimini decision of 25 May 2020). The Courts of Bologna, Venice and Rimini issued similar decisions, ordering, on a provisional basis, landlords, against whom proceedings had been brought, not to cash in, by way of coverage of rent during the lockdown period, cheques given by the tenants to guarantee the payment of rent. However, these specific cases only contemplate precautionary suspensions, which the Courts will decide in the following months, together with the possibility for the tenants to pay the rent.

3. What are the legal possibilities to amend the lease?

With regard to the remedies concerning the modification or termination of lease contracts, a tenant in difficulty could terminate the lease contract for excessive onerousness pursuant to Art. 1467 of the Italian Civil Code, which only occurs when the obligation of one of the parties becomes excessively burdensome due to extraordinary and unforeseen events, such as a pandemic disease (excessive onerousness meaning that the imbalance of the contractual obligations, also regarding the reduction of the other party's obligation that, in some cases, the judicial precedents have calculated in a 50% reduction of the initial obligation). In such case, the defendant (landlord) could propose a fair reduction of the rent in order to avoid the termination of the lease contract. By means of this instrument, therefore, the rent reduction in the context of a legal action for contract termination is hypothetical as there is not certainty that the landlord will propose the preservation of the contract by offering a rent reduction.

On the other hand, it is a consolidated principle of Italian law that, when unforeseen events significantly modify the initial balance between the parties in long-term contracts, the parties are obliged by a duty of cooperation (already mentioned in paragraph 1 above) to re-negotiate the contract, in order to balance the contract with respect to the mutual interests of the parties.

This duty is found in Art. 2 of the Italian Constitution, which provides that parties are bound by a general obligation of solidarity, also of an "economic" nature. In addition, the Italian Civil Code provides that the parties must behave in accordance with good faith and fairness (Art. 1175 of the Italian Civil Code), even during the performance of the contract (Art. 1375 of the Italian Civil Code), and imposes a control on the balance and fairness of the reciprocal contractual obligations.

Finally, the government restrictions could amount to, together with other elements, serious grounds for the termination of the lease contract (as per Art. 27, last paragraph, of Law no. 392 of 1978). Indeed, even if the restrictions, being of a temporary nature, are not enough to justify a termination under the above serious grounds, such restrictions could nevertheless contribute to the termination of the contract if combined with other circumstances (such as, for example, a crisis in the business activity, which is irreversibly worsened during lockdown).

4. Relevant literature & case law

Literature

<http://www.governo.it/it/coronavirus-normativa>
Case Law
Court of Bologna, decision 12 May 2020, no. 4976.
Court of Venezia, decision 14 April 2020.
Court of Rimini, decision 23 May 2020.

Introduction

On 12 March 2020, the Government of Latvia decided to declare the state of emergency in the country, which was later amended and supplemented several times. According to this decision, a state of emergency has been declared throughout the country until 9 June 2020 in order to limit the spread of the Covid-19 virus, at the same time adopting the decision regarding gradual cancellation or easing of certain restrictions. Strict adherence to all physical distancing and epidemiological safety measures on a daily basis in all areas will continue to be a prerequisite for reducing these restrictions. As of 12 May restrictions will be eased in the areas of education, sports, various events and gatherings, transportation and tourism:

- people are allowed to gather indoors and outdoors for both public and private events, but their number should not exceed 25.
 - culture, entertainment, sports and other facilities will be allowed to be open from 7 a.m. until midnight.
- people using public transport will be required to cover their mouth and nose.
- culture, entertainment, sports and other facilities will be allowed to be open from 7 a.m. until midnight. People still must observe a distance of two-by-two meters (applies to both public indoor and public outdoor spaces).
- Considering the provisions of epidemiological safety, pre-schools, together with local governments, will have to decide how to organize learning of 5- and 6-year-old children - in person or remotely.

Other than prior to 12 May 2020, all stores will be open in shopping centres during weekends and holidays. The restriction that only grocery stores, press outlets, pharmacies, vaccination offices, optical stores, animal feed stores, dry-cleaner's, hygiene and household goods stores, and construction and gardening goods stores may operate in shopping centres is cancelled.

1. What are the legal possibilities for deferred payment of rent?

An emergency situation is a special legal regime which confers additional powers on public authorities as well as a number of restrictions. The measures, the aim of which is to limit the spread of the Covid-19 virus, can be considered as an objective factor that directly affects the fulfillment of previously concluded agreements.

Under the laws of the Republic of Latvia, as a general rule, the exemption may be based on laws or contractual conditions which preclude the parties from fulfilling their obligations and / or preclude the imposition of penalties for non-compliance.

According to the Civil Law of the Republic of Latvia, a loss is accidental - when it is caused by an accidental event or force majeure. No one has to compensate for an accidental loss. Therefore, if an incidental impediment prevents someone from fulfilling an obligation, it should be recognized as if he had fulfilled it. (Sections 1773 and 1774 of the Civil Law).

On the other hand, in accordance with Section 2147 of the Civil Law, the obligation to pay the rent or lease is suspended and the already paid payments must be returned - one or the other in full or in part - if the leased or rented thing has remained unused due to an event not caused by the lessee and which happened without his fault. Such events include the case where the tenant loses the opportunity to use the thing due to force majeure.

In order to determine whether the imposition of Covid-19 and related restrictions by the government constitutes force majeure, it is necessary to take into account the field of business in which the contract is concluded. In addition, such circumstances may be established if Covid-19 or related government restrictions / emergency measures render performance of the contract impossible. According to case law, such circumstances of force majeure include i. a. governmental orders, which render the performance of the concluded lease agreement impossible.

Under the laws of the Republic of Latvia Entrepreneurs whose field of activity is directly affected by the established restrictions (organization of educational, entertainment, recreational, cultural and sporting events, travel services, passenger transport, etc.) have the right to not to pay the lease or defer the payment if the leased item cannot be used for reasons beyond the tenant's control, including due to force majeure.

In accordance with the regulations on exemption from rent adopted by the Cabinet of Ministers of the Republic of Latvia, there are cases in which an entrepreneur may be exempted from rent during an emergency situation if the premises for business activities are leased from a public person or its capital company.

The Regulations stipulate that if the leased premises are not used for economic activities at all within the specified period in connection with the decisions adopted by the Cabinet of Ministers to limit the Covid-19 pandemic, then it should be exempted from rent.

To qualify for the rent exemption, a company cannot have a tax debt of more than € 1,000 and its turnover has fallen by at least 30%. In other cases, the company can reduce the rent to 90% of the set, if it meets the set criteria.

2. What are the legal possibilities for a rent reduction?

Rent reductions shall be subject to the same legal standards as set out in the first paragraph. The above does not prevent the tenant and landlord on adjustments to the tenancy by mutual consent, including in the event of difficult financial circumstances.

3. What are the legal possibilities to amend the lease?

Amendments to the lease agreement shall be subject to the same legal provisions as set out in the first paragraph. The above does not prevent the parties to the contract from agreeing on a reduction of the rent, including in the event of difficult financial circumstances.

4. Relevant literature & case law

- 1) Cabinet of Ministers of the Republic of Latvia, 12 March, 2020, Decision No. 103 "On Declaring a State of Emergency" with amendments
- 2) Judgement of 26 January 2011 of the Department of Civil Cases of the Senate of the Supreme Court of the Republic of Latvia in case no. SKC-11/2011

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Introduction

On March 17, 2020 the Parliament of the Republic of Moldova declared the state of emergency throughout the territory of the Republic of Moldova, until May 15, 2020.

Further, several decisions of the National Extraordinary Public Health Commission which instituted several preventive measures and restrictions specific to the state of emergency, were taken, including:

1. the suspension of regular passenger air flights (including charter flights) and international passenger rail routes between March 17 and June 1, 2020;
 - ✓ Freight and messenger flights/routes have not been suspended;
2. the prohibition of entry into the country, through the border points of the Moldovan-Ukrainian and Moldovan-Romanian state border;
3. the suspension of the following activities:
 - (i) trade carried out within the shopping centers (excepting food, pharmaceutical and petroleum products units),
 - (ii) the activity of wholesale and cash and carry units;
 - (iii) open markets and public catering establishments, in their premises and designated/authorized spaces, with the exception of the activities of preparation and distribution of products by catering;
 - (iv) those of recreational units, sports halls and centers, swimming pools, fitness rooms, theatres, cinemas, concert halls, museums and other training and recreation facilities, as well as religious confession facilities,

✓ the activity of the manufacturing units (factories, plants etc.) was suspended, whereas the activity of other service units (banks, non-banking financial institutions, notaries, construction, repairs etc.) has not been suspended. However, the afore-mentioned service units are obliged to ensure a fluidized regime of persons access to the place of service provision. (observance of the social distance of 1 meter).

Starting from April 22, 2020, it was permitted to trade packaged products and in catering regime serving, except for: express buffets, street ice cream vendors, mobile food carts; food preparation at fair stands; activities of restaurants and bars related to transport, window sales units.

✓ In addition, the government has issued urgent, non-binding recommendations, including the recommendation to stay at home as long as possible, to work from home as far as possible, and to maintain a 1 meter distance from other persons.

On May 15, 2020, the State of health emergency situation was declared throughout the territory of the Republic of Moldova until June 30, 2020 ("https://gov.md/sites/default/files/proiect_hotarire_cnesp_nr.11_mai_2020.pdf") Many companies are impacted and forced (by law or for economic reasons) to suspend their activity or to limit the operating hours.

The following compulsory measures are taken by the Government of the Republic of Moldova ("<https://gov.md/ro/content/informatii-privind-coronavirus>") up until at least June 30, 2020 unless stated otherwise:

- The activity of leisure, recreation, gyms, sports centers, swimming pools, fitness rooms, theaters, cinemas, concert halls, museums and other training units is prohibited until June 30, 2020.
- The educational process within general, vocational and university education institutions (for public and private institutions) shall be suspended until June 30, 2020, with the possibility of extending the prohibition period (depending on the concrete epidemiological situation).
 - The suspension of the activity of the commercial markets in Chişinău and Bălţi is maintained until May 31, 2020.
 - The suspension of the activity of the shopping centers at national level shall be maintained until May 31, 2020.
 - The suspension of scheduled passenger flights, scheduled passenger air charters shall be maintained until 30 June 2020.
 - The suspension of the exercise of professions involving physical contact. (except for dentists, medical institutions and hairdressers). Despite the declared State of health emergency situation, the following activities are allowed with certain restrictions being applicable:
 - The sale of packaged food products through the public catering units excluding the possibility of their consumption in the premises / territory of the unit.
 - It is allowed to organize single mass meetings, with the participation of less than 50 people, in compliance with public health measures and with the mandatory preparation by the organizers of the list of epidemiological evidence of the event, according to the model (name, first name, IDNP, telephone number, email address, home address), except for spaces that are adjacent to public institutions, education, hospitals or other places at high risk of infection.
 - religious meetings

1. What are the legal possibilities for deferred payment of rent?

In most commercial leases, the right to suspend rent payment is excluded. Moreover, inability to pay is in itself not a valid legal ground for non-payment or deferred payment under the Moldavian jurisdiction. With regard to the monthly payments for the coming period(s), tenants should be aware that deferred payment, without prior

consent from the landlord bears a risk. Even under the current circumstances it is possible that (many) tenants have become liable for non-performance and will incur contractual penalties in case of non-payment of rent or, as the case may be, of making deferred payments, without the prior consent of the Landlords.

Therefore, a tenant whose activity is directly related to the sectors of the economy that are subject to restrictions approved by the decisions of the profile commissions, but also of other central and local public authorities, could possibly justify the non-performance or deferred the obligation by the existence of the justifying impediment. Legal advice is highly advisable to be obtained before a tenant decides to enter into a rent strike.

2. What are the legal possibilities for a rent reduction?

Due to a justifying impediment caused by the crisis/pandemic the tenant is entitled to claim a proportionate rent reduction given the fact that he can prove that his activity was essentially affected. In our opinion the government measures in relation to the pandemic will constitute a legal "defect", although there are still different opinions regarding this issue. Nevertheless, in almost every commercial lease, the right to a rent reduction is validly excluded.

3. What are the legal possibilities to amend the lease?

Following the amendments introduced in the New Modernized Civil Code of the Republic of Moldova in the spring 2019 (hereinafter "Modernized Civil Code"), the concept of force majeure was replaced by the concept and term "justifying impediment".

Modernized Civil Code establishes that the non-performance of an obligation is justified insofar as the debtor is able to bring evidence that such is due to a justifying impediment, as it is regulated by Article 904, or due to fortuitous impossibility of performance as it is regulated by Article 989.

The state of emergency declared by the Parliament of the Republic of Moldova could be assimilated with a fortuitous impossibility of execution and invoked as one, or as a justifying impediment for the proper non-performance of the contractual obligations, if certain conditions and rules are observed, as follows:

- the event was unpredictable at the time of the conclusion of the contract;
- the event is beyond the debtor's control;
- the event is insurmountable (it cannot be overcome);
- the debtor must be in a real impossibility to perform the obligation.

The fortuitous impossibility of performance represents the situation in which the performance of the obligation is impossible. However, this impossibility must be caused by a circumstance for which the debtor is NOT responsible. In this case, the debtor is obliged to prove that such an impossibility exists.

The performance of the obligation is not considered impossible if the said obligation can be performed in more difficult conditions, with higher costs, with the assistance of a third party or only after a certain period. Thus, if certain circumstances only lead to more difficult conditions or involve higher costs for the performance of the obligation, these circumstances will not be recognized as fortuitous impossibility.

In any case, we specify that the existence of the impediment must be notified to the creditor. In this regard, in accordance with the provisions of Article 904 (5) of the Modernized Civil Code, the debtor, as soon as he knew or should have known the circumstances of the impediment, has the obligation to ensure that the creditor receives a notification about the impediment and its effects on the debtor's capacity to perform the obligation.

In the absence of an agreement of the parties in this regard, the dispute shall be submitted to the courts, who will decide whether the event brought to the creditor's attention by the debtor with the intention of amending the lease contract for proper non-performance of the obligation represents a justifying impediment. In this regard, we consider that the answer to this question must be analyzed on a case-by-case basis, both in terms of legal provisions and factual circumstances.

The legislation does not require any decision of the authorities to confirm or announce the existence of force majeure. In some cases, official decisions may ease the burden of proving the impediment, but they are not a necessary condition for invoking force majeure.

Certain official decisions could create considerable impediments to the performance of the obligations or even render it impossible. These decisions can be considered as force majeure by the court. However, in the absence of clear and unequivocal wording in the decision, the court will have the last word in deciding whether or not that decision will be recognized as force majeure.

If, due to an exceptional change of circumstances, the performance of the assumed obligations becomes so onerous that it would be clearly unfair to be supported by the debtor, the court may take the following measures:

- to adjust the parties' benefits to distribute equitably the losses and benefits resulting from the circumstances changing;
- to terminate the contract at the time and under the conditions established by the court.

These measures can only be taken if:

✓ the situation has changed since the obligation was assumed;

✓ the debtor did not take into account and could not reasonably foresee that a change of circumstances will occur and the impact it will have on the performance of the obligations;

✓ the debtor has not assumed and cannot reasonably be considered to have assumed the risk (!) of that change of circumstances;

✓ the debtor has tried, in a reasonable manner and acting in good faith, to negotiate the amendment of the contractual clauses.

4. Relevant literature & case law

No relevant case law available yet.



Introduction

Since 17 March 2020, the Monegasque Government has introduced various compulsory measures to combat Covid-19.

Such temporary measures included in particular:

- Restrictions on the freedom of movement of the persons;
- Social distancing;
- Closing all schools, bars, restaurants, shops and stores, businesses, sports halls, cinemas... Only businesses offering “essential services” could remain open such as pharmacies and grocery stores;
- Compulsory homeworking for all non-essential companies;
- Management of the layoffs and termination of employment contracts during the pandemic.

In order to help companies economically affected by the Covid-19 crisis, the Monegasque Government has also put in place several measures, in particular:

- An aid up to 5,000 EUR for companies with a turnover below 1.5 million EUR and suffering a sharp drop-in of their activity;
- An Extraordinary Minimum Income for personal activities that have been forced to close;
- The staggering of the contributions, in particular social security contributions, supplementary pension contributions and tax contributions;

- The setting up of a Monegasque guarantee fund through which the State guarantees credits of between EUR 50,000 and 500,000 if there are granted by Monegasque banks to the businesses impacted by the crisis. Since 4 May, Monaco has proceed with for a gradual and monitored re-opening of the activities. Companies, shops and schools were able to reopen, as well as the restaurants, beaches and cinemas (since June).

On 19 May, the Government has launched a massive serological testing campaign. All Monegasque residents and people working the Principality have the possibility to be tested or re-tested.

The Monegasque Government regularly publishes information on the measures taken on the following official website: covid19.mc.

1. What are the legal possibilities for deferred payment of rent?

The Monegasque real estate market is divided in several sectors:

- The “private sector” (secteur libre) where the premises concerned can be rented without specific conditions except to the ones provided by Law n° 1.329 of 8 January 2007 and close to other European countries like Belgium;
- The “public sector” (secteur domanial) which encompasses all the premises belonging to the State of Monaco. These are allocated in priority to Monegasque nationals.

Concerning commercial leases in the public sector: the Government has decided, in order to support the Monegasque economy, that all tenants occupying commercial premises in this sector, which have been forced to close down their businesses, are exempt from rent and charges for the entire 2nd quarter of 2020.

With regard to commercial leases in the private sector: the Government appeals to the civic mindedness of the landlords by adapting and/or spreading out the rent payments. Bill No. 250 drafted by the National Council (the Monegasque parliament) and entitled “ Proposal on the various measures relating to commercial, industrial or artisanal leases and office leases to deal with the Covid-19 virus pandemic ” provided for the introduction of a mechanism in several steps, obliging private landlords during the period of the pandemic to:

- Authorize monthly payment of the rent (usually, in Monaco, rent is payable by anticipated quarter);
- Grant a 20% reduction in the monthly rent in order to allow the tenant to overcome this exceptional crisis period;
- Postpone 30% of the monthly rent over the next two quarters. Thus, the tenant would only have to pay only 50% of the monthly rent during the crisis.

In addition, the proposal provided for the creation of a new criminal offence for the landlords who would fail to comply with the monthly and spread-out payment of the rents: a fine between EUR 2,250 and EUR 9,000.

This bill was rejected by the Monegasque Government during the public session of the National Council on 16 June 2020.

However, some landlords in the private sector have agreed, on a voluntary basis, to allow the payment of the rent on a monthly basis and/or to grant reductions up to 50% of the monthly rent.

In case of reluctance of the landlords, can the tenant suspend the payment of the rents and charges during the compulsory closure of the rented premises?

This cause for exemption is not expressly provided for by the Monegasque law. However, the inability to use the premises and force majeure may be used to justify the partial or total suspension of the payment of the rent during the closing period.

The recognition of force majeure may have the effect of exonerating the reciprocal non-performance of the obligations of the lease. Thus the non-payment of the rent will not, in this case, confer a right for compensation or lead to the termination of the lease.

Indeed, in accordance with Article 1003 of the Monegasque Civil Code, “no damages are due when, as a result of force majeure or a fortuitous event, the debtor has been prevented from giving or doing what he was required to do, or has done what he was forbidden to do”.

Nevertheless, the tenant must be careful in the application of his “excuse of non-performance”. The principle of good faith in the performance of the agreements (Article 989 of the Civil Code), equity and customs (Article 990 of the Civil Code) require notifying the landlord and not to unilaterally suspend the payment of the rent.

Of course, a case-by-case analysis is required, but the Monegasque Courts should be receptive to the argument of force majeure during this unprecedented situation. However, it is advisable to verify that the lease agreement does not include a clause excluding force majeure.

In such circumstances, a landlord claiming the payment of the entire rent, might be also confronted with Article 1562 of the Civil Code, which allows a reduction of the rent in case of a partial loss of the rented premises, or even an abuse of right.

2. What are the legal possibilities for a rent reduction?

Commercial leases are governed by Law No. 490 of 24 November 1948, which has been amended on many points by Law No. 1287 of 15 July 2004. The provisions of the Law are of public order. Any clause inserted in a contract which contravenes its provisions is null and void.

The rent price may be reviewed (i) either at the time of the renewal of the lease under the conditions provided for in Articles 4 et seq. of the Law, or (ii) during the course of the lease under the conditions provided for in Article 21 of the Law, subject to the condition that at least three years have elapsed since the date on which the rent price was previously set. The tenant must justify that the current rent paid no longer corresponds to the rental value of the property as a result of a change:

- either in the general economic conditions of the Principality;
- or in the particular conditions affecting the premises.

3. What are the legal possibilities to amend the lease?

There is no possibility under Monegasque Law to unilaterally request the amendment of the commercial lease.

To date, the best solution is to take into account, in a mutual agreement, the exceptional and provisional circumstances of this period of crisis.

4. Relevant literature & case law

- <https://covid19.mc>

- <https://journaldemonaco.gouv.mc/Journaux/2020/Journal-8482/Loi-n-1.485-du-9-avril-2020-portant-suspension-des-delaix-administratifs-pour-faire-face-a-la-pandemie-du-virus-COVID-2019>;

- <https://journaldemonaco.gouv.mc/Journaux/2020/Journal-8482/Loi-n-1.486-du-9-avril-2020-relative-a-la-justice-pour-faire-face-a-la-pandemie-du-virus-COVID-2019>

- <https://journaldemonaco.gouv.mc/Journaux/2020/Journal-8478/Decision-Ministerielle-du-17-mars-2020-portant-reglementation-temporaire-des-deplacements-en-vue-de-lutter-contre-la-propagation-du-virus-COVID-19-prise-en-application-de-l-article-65-de-l-Ordonnance-Souveraine-n-6.387-du-9-mai-2017-relative-a-la-mise-e>



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Introduction

Many companies (including SMEs) in the Netherlands have been heavily impacted and are forced (by law or for economic reasons) to close or limit opening hours. The following compulsory measures are taken by the Dutch government ([link](#)) up until at least 19 May 2020 unless stated otherwise:

- A ban on the opening of bars, restaurants, gyms, educational institutions and childcare centers, as from 15 March. Primary schools and childcare centers are gradually reopening as from 11 May.
- A ban on practicing professions that involve physical contact such as hairdressers, nail studios, and physiotherapists as from 23 March. Dentists are exempt, but most have fully or substantially closed down on a voluntary basis. The ban on practicing professions that involve physical contact is slowly permitted again from 11 May, provided the services are performed by appointment.
- A ban on events that must either be reported or for which permits are required, including festivals and concerts, professional sporting events and public happenings such as King's Day, the Eurovision Song Contest and Sail, as from 15 March up until at least 1 September 2020.
- A ban on gatherings in public areas of groups of three or more persons who do not stay 1.5 meters from one another.

In addition, the government has issued urgent, non-compulsory recommendations, including the call to stay home as much as possible, including for work, and to stay 1.5 meters from other people at all times. Overwhelmingly, people are complying voluntarily with these measures. This also limits footfall and commercial activity in the high streets.

From the 21st May the compulsory measures have been gradually loosened. As of 1st June at noon sharp bars and restaurants may be reopened, provided that no more than 30 people are allowed inside at any given time (including staff) and that the 1.5 meters of social distancing can be upheld at all times.

1. What are the legal possibilities for deferred payment of rent?

In most commercial leases, the right to suspend rent payment is excluded. Such exclusion is allowed under Dutch law. Moreover, inability to pay is in itself not a valid legal ground for non-payment or deferred payment in our jurisdiction. Notwithstanding that the Dutch umbrella organizations for investors and tenants reached a gentlemen's agreement on 15 April 2015 that intends to allow tenants to defer 50% of their monthly payments for the coming period(s), tenants should be aware that deferred payment, without prior consent from the landlord bears a risk. Even under the current circumstances it is possible that (many) tenants have become liable for non-performance and will forfeit contractual penalties in case of unilateral measures. This applies to a greater extent to larger tenants. Legal advice is paramount before a tenant enters into a rent strike.

2. What are the legal possibilities for a rent reduction?

Pursuant to section 7:207 of the Dutch Civil Code ('DCC'), a tenant is entitled to claim a proportionate rent reduction if the corona crisis constitutes a defect in the meaning of section 7:204(2) DCC. To our opinion the (government measures in relation to the) corona pandemic will

constitute a legal 'defect', although opinion still varies on this issue. Nevertheless, in almost every commercial lease the right to a rent reduction is validly excluded. Dutch courts will be reluctant to interfere (on grounds of good faith) in this respect.

3. What are the legal possibilities to amend the lease?

A claim to amendment of the lease due to unforeseen circumstances pursuant to section 6:258 DCC might offer solace. However, it is well established case law in the Netherlands, that high thresholds apply to amend a contract on this ground. At the end of the day this will depend on the specific circumstances of the case, such as: the tenant's (annual) loss of turnover; the cause of the tenant's loss (mandatory closure or decline of footfall due to large-scale compliance with urgent advice); the dependency of the landlord on the rent; the parties' economic and social position and relative bargaining power; prevailing opinion and the interest of the public. Given the excessive impact on commercial dealings of the corona pandemic and its unforeseen nature, we envisage that there might be willingness by the (lower) courts to intervene ex section 6:258 DCC. In particular a group of relative small tenants must be able to find (some) relief via this way. Currently, reports are appearing in the media that the government is considering emergency legislation to impose rent deferrals or rent reductions. If enacted, the emergency legislation will generally prevail over section 6:258 DCC.

If the enjoyment of the leased property is altogether impossible for a longer period of time and this caused by a defect, both landlord and tenant can invoke section 7:210 DCC and terminate the lease. The remaining term of the lease and the duration of (impact of) the government measures will determine whether a termination pursuant to section 7:210 DCC is possible. In situations where the corona pandemic renders it impossible to accomplish the purpose of the lease (for example think of short term leases for pop up shops and stores) this might foster another possibility to find relief.

Landlord and tenant should bear in mind that a solution by legal means will be difficult to achieve on short notice. As from 17 March 2020, the courts are solely opened for 'urgent' matters ([link](#)). A claim to collect rent arrears will not be sufficiently urgent to qualify for summary proceedings. In cases that are urgent enough to be dealt with in preliminary relief proceedings, preliminary relief courts will be reluctant to depart from contractual agreements (partly for fear of creating a precedent). For the time being, the parties' main recourse is to pursue the amicable way. The benefit that can be gained if both parties can manage to take account of each other's position during this difficult period cannot easily be overstated.

4. Relevant literature & case law

J.M. Heikens, 'De overmacht van Corona', WR 2020/49 ([link in Dutch](#)).

J.A. Tuinman & T.Q. de Booy, 'De corona pandemic and commercial leases: don't believe the hype', WR 2020/48 ([link](#))(English).

On the 27th of May 2020 the first judgements in preliminary relief proceedings have been rendered related to lease and the corona pandemic. Up till 16th June three more judgements in preliminary relief proceedings have followed.

In Judgement of the interim relief judge of the District Court of Noord-Holland, location Assen of 27 May 2020 (Sigismund B.V./Inbev Nederland B.V.) ([link](#)); judgement of the interim relief judge of the District Court of Gelderland, location Arnhem of 29 May 2020 (Vitesse/Stadion Arnhem/Expl. Gelredome) ([link](#)); and judgement of the interim relief judge of the District Court of Amsterdam of 11 June 2020, the interim relief judges rendered that the (measures to contain the) corona crisis qualify as a defect pursuant to section 7:204 (2) DCC. As a result, the lessee would in principle be entitled to a rent reduction pursuant to section 7:207 DCC. Furthermore, these judgements indicate that in the event parties have excluded rent reduction in the lease, such an exemption may be set aside and amended on the grounds of reasonableness and fairness (section 6:248 DCC), but especially on the grounds of unforeseen circumstances (section 6:258 DCC).

A different judgement was reached by the interim relief judge of the District Court of Overijssel, location Zwolle of 3 June 2020 (x/Urbana Zwolle B.V.) ([link](#)). The interim relief judge rendered that the (compulsory measures to contain the) corona crisis cannot be qualified as a defect pursuant to section 7:204 (2) DCC, nor as an unforeseen circumstance according to section 6:258 DCC.

Introduction

Small as well as large businesses in Norway remains heavily affected by the measures imposed by the Norwegian government to contain the spread of the novel coronavirus (Covid-19). To make things worse, the virus outbreak in Norway have coincided with record low petroleum prices. With the Norwegian economy being heavily dependent on incomes from the offshore oil industry, the situation in the oil markets have enhanced the negative effects of the virus containment measures.

As of the date of this brief, a long list of general measures have been imposed under the existing Infection Prevention Act and a temporary emergency powers act (the Corona Act 2020) passed by the Norwegian parliament on 24 March 2020. Under the Corona Act, the Government may expand, amend or derogate from existing acts of law to the extent necessary to fulfil the stated purpose of the Act (to allow for reasonable, effective and proportional outbreak containment measures to be enacted, and to remedy the negative consequences of the Covid-19 outbreak on the population, business, public sector and society at-large, cf. section 1 of the Act). The temporary measures under the Corona Act and the Infection Prevention Act currently include (but are not limited to) the following:

- Social distancing measures, home isolation and quarantine measures. The borders generally remain closed except for EU and EEA citizens, but all persons arriving from outside of Norway must subject themselves to 10 days of home quarantine.
- An outright ban on public gatherings and events with more than 50 persons in attendance (provided that all attendees can keep a distance to all other persons of at least one metre).
- Opening of restaurants is subject to keeping 1 meter distance between all guests on premises. Night clubs and pubs (without food service) are to remain closed until 1 June.
- Schools and universities have been closed but are currently under a gradual re-opening scheme.
- Non-essential personnel that are able to work remotely are still recommended to continue working from home for the foreseeable future, in particular in urban areas.
- A temporary restructuring law offering bankruptcy protection measures has entered into force as an amendment to the Bankruptcy Act. The rules will remain in force until 1 January 2022 but as the rules enacted are

generally considered a long overdue revision to the pre-bankruptcy restructuring measures available to debtors and creditors under Norwegian law, it is widely anticipated that proposals for a permanently revised Bankruptcy Act will be put forward before the expiration date.

- Broad economic compensation schemes have been put in place to compensate businesses suffering effects of the containment measures for, inter alia, certain types of fixed costs. Tax relief measures have also been adopted. Note that the measures listed above are significantly less restrictive than the initial measures rolled out during the first and second week of March. The Corona Act was initially adopted to expire after one month, but it has since been prolonged until 27 May. It is not expected that the Government will ask parliament for a further extension of the Act. Instead, narrower measures will be introduced where deemed necessary under the Government's existing powers to enact statutory instruments/regulations, along with certain limited proposals to amend existing laws.

1. What are the legal possibilities for deferred payment of rent?

The Tenancy Act 1999 applies to all tenancy/property rental agreements unless the contract expressly provides that the provisions of act shall not apply. The Tenancy Act does not contain measures for deferring rent payments. During the crisis, we have seen various attempts by lessees/tenants to avoid paying rent by invoking force majeure. Force majeure requires that a party is unable to or prevented from performing its own duties under a contract due to circumstances outside of that party's control (and that the force majeure event could not have been anticipated at the time of agreement). From a tenant's perspective, the only legal obligation is to pay rent. Unless the banking system collapses, there is nothing preventing a tenant from fulfilling its obligations in a lease agreement. Furthermore, being unable to pay rents as they fall due is a general commercial risk that cannot give rise to claim for deferral of rent payments.

We have also seen various attempts to invoke the doctrine of frustration. Under Norwegian law, this is an uncodified principle of the law of obligations that could give rise to amending or setting aside contractual obligations if subsequent unforeseen developments leads to a situation where the original intentions of the parties are fundamentally frustrated. As a general rule, each party bears the risk for the assumptions it relies on when entering into a contract. As such, the threshold for succeeding with a claim for deferral on the basis of frustration is very high and in most cases unlikely to succeed. Commercial property lease agreements in Norway are

generally negotiated on the basis of the templates published by the Commercial Real Estate Agents' Forum ("Forum for Næringsmeglere"). These template agreements are broadly accepted in Norway as de-facto industry standard agreements. No current version of these template contracts contain any provisions allowing for deferred payment of rent due to the coronavirus outbreak (or circumstances of a similar nature). It is therefore highly unlikely that individual commercial lease agreements will contain terms to that effect.

2. What are the legal possibilities for a rent reduction?

There are no statutory measures that can give rise to a claim for rent reduction. Initially during the Covid-19 crisis there was a brief interchange among real estate lawyers in a series of articles in a Norwegian newspaper on whether a particular rent reduction provision in the Tenancy Act could apply. Pursuant to section 5-7 of the Tenancy Act, rents shall be reduced "if a third party's right to the property or statutory provisions or public decisions pursuant to statute prevent the agreed utilization". In our opinion, a claim for rent reduction cannot succeed on the basis of this provision as it clearly only applies to the situation where the use of the property is barred on the basis of defects relating to the property itself (e.g. failure to apply with zoning codes, lack of use permits, etc.). As mentioned above (and for all the same reasons) force majeure cannot be invoked by a tenant. The uncodified principles of frustration of contract that was also mentioned above could theoretically apply, but the applicability of the doctrine is as mentioned above very limited under Norwegian law.

In the longer term, the abovementioned Norwegian standard contracts for commercial real estate lease may be relevant if the economic growth is replaced by a downward trajectory: Under the latest set of revisions to the "Standard Lease for Office and Industrial Buildings (Used/As-Is)", adopted in 2019, rent is subject to annual adjustment corresponding with changes in the consumer price index published by Statistics Norway. This technically allows for negative adjustments, but note that any reductions are capped in the sense that there shall be no adjustments "below the Rent agreed on the date of entering into the lease".

3. What are the legal possibilities to amend the lease?

There are no statutory measures that directly gives rise to claims for renegotiation or restatement of the terms of lease based on the effects of the Covid-19 outbreak. More generally, however, section 36 of the Contracts Act 1918 provides that an agreement "may be wholly or partially set aside or amended if it would be unreasonable ... to invoke it". The scope of applying this provision is very limited in the context of commercial agreements negotiated between professional parties. As the unreasonability threshold is high, a tenant's claim for rent reduction will not prevail if the underlying problem is that the agreement is not as profitable or commercially viable as originally intended. The standard wording of the abovementioned industry standard commercial lease agreements does not contain renegotiation clauses, and MAC (material adverse change) clauses are very rarely seen in the context of commercial lease agreements. It remains to be seen if the current situation will lead to tenants insisting on such clauses for future leases, but under the current situation the best solution seems to be to rely on commercially negotiated solutions.

4. Relevant literature & case law

- The Tenancy Act 1999 (an unofficial translation is available at <https://www.regjeringen.no/en/dokumenter/the-tenancy-act/id270390/>) and preparatory works relating to the Act (published in Norwegian only).
- Contracts Act 1918 (an unofficial translation is available at https://www.nb.no/items/URN:NBN:no-nb_digi-bok_2014060308062).



Introduction

In connection with the COVID-19 epidemic, Polish Government declared a state of epidemic in the whole country and introduced many business restrictions. From the business perspective the restrictions mainly affected retail shops and services in large commercial facilities, leisure and entertainment, sports, as well as, gastronomy. Since 4 May 2020, step by step the government is slowly lifting these restrictions, and as of today (18 May) shopping centres, bars, restaurants and hairdressers are re-opened. However, certain restrictions apply (for example, the number of people who may be in stores and restaurants is very limited) and a new sanitary regime has been introduced (covering faces, wearing gloves, keeping social distance etc.). Schools, theatres, cinemas, museums and gyms remain closed. Due to the economic slowdown in connection with the pandemic, both tenants and landlords are facing problems with payment/non-payment of rent and service charges.

1. What are the legal possibilities for deferred payment of rent?

The Act on “the anti-crisis shield” regulates i.e. the relations between tenants and landlords in large-scale shopping malls. Under this act during the ban of commercial activities in shopping malls, the mutual obligations of the parties to the lease agreement were suspended. This means that tenants are not required to pay the rent during the closure of shopping centres. There are no such solutions introduced regarding deferment of rent payments for premises located outside large shopping malls or for offices which, despite the epidemic, can remain open. In consequence, payment of rent and service charges for premises not located in commercial malls remains from the legal perspective as prior to COVID-19 appearance and is a matter of negotiations between tenants and landlords.

2. What are the legal possibilities for a rent reduction?

There are no special provisions allowing a reduction of rent because of epidemic. Therefore, general provisions of Polish law should be used. The Polish Civil Code provides under art. 357(1) for a rebus sic stantibus clause. This regulation allows to request the court to reduce the amount of a rent due to an extraordinary change in circumstances (epidemic / restrictions on business operations / decrease in sales).

If paying rent would involve excessive difficulties or would threaten one of the parties with a substantial loss which the parties did not anticipate when concluding the contract a court may designate the new amount of rent to be paid. This clause does not constitute a tenant's right to demand a rent reduction directly from the landlord or the basis for unilateral rent reduction by the tenant due to external circumstances. Tenant that wishes to request a reduction in rent by applying this provision must bring an action in court. This will take time and the result is not foreseeable as it will be a case by case decision/ruling of the court.

3. What are the legal possibilities to amend the lease?

Based on the same provisions of the Polish Civil Code, after meeting the same conditions, the tenant may request the court to change the manner in which a contractual obligation must be performed or even to terminate the lease contract. The court resolves each case after considering the interests of the parties and in accordance with the principles of social coexistence. However, it should be emphasized that proceedings before the court may take a relatively long time. Thus, the most recommended solution is the dialogue between the tenant and the landlord leading to amendment of the contract.

In each case, the analysis of the lease agreement is also crucial, as it may contain provisions enabling the agreement to be amended, for example in the event of force majeure.

4. Relevant literature & case law

<https://www.noerr.com/en/landingpages/im-fokus-coronavirus> (English)

<https://www.gov.pl/web/tarczaantykrzysowa> (Polish)

No case law available yet.

Introduction

Commencing as of March 16, 2020, under the Decree no. 195/16 March 2020, the state of emergency was declared throughout the territory of Romania for a period of 30 days. Later on, based on Decree no. 240/April 14, 2020, the state of emergency was extended for additional 30 days, until May 14, 2020 inclusively. Based on above mentioned regulations, several mandatory measures were taken by the Romanian Government in order to avoid the spread of the pandemic, such as:

- A wide range of business activities were suspended such as restaurants, cafés and bars, shopping centres, beauty salons, barber shops, dentist offices (except for urgent interventions), selfcare, sports and cultural establishments (including any sport competition), as well as educational activities in public institutions and religious activities that involve a certain number of persons. From this measure the following activities were excepted: food stores, pet shops, pharmacies, petrol stations, electronic and home appliances shops who ensure home delivery, courier/post services and generally the industries and sectors which were deemed essential. However, where applicable, home delivers and drive-in activities were allowed.
- Mandatory homeworking, where possible for all employees working at companies with activity in non-essential industries/sectors and state authorities, all companies being encouraged to use the digital means as much as possible. Where homeworking was not possible, companies were able to continue to carry out their activity at the workplace, with the application of protection measures, including ensuring social distancing between employees.
- Furthermore, the government introduced financial aid packages for businesses, including compensation for the salaries of affected employees and tax facilities in certain situations.

1. What are the legal possibilities for deferred payment of rent?

Following the declaration of the state of emergency, the Government of Romania established a series of economic measures to limit the negative effects on the most affected sectors of activity. Such measures were implemented through the Emergency Ordinance no. 29/2020 (hereinafter referred to as "GEO 29/2020") regarding certain economic and budgetary-fiscal measures along with other normative acts. Under GEO 29/2020, during the state of emergency, small and medium-sized companies which have discontinued their activity in whole or in part based on the decisions issued by the competent authorities and which possess the emergency situation certificate² issued by the Ministry of Economy, Energy and Business Environment (MEEBE) benefit of a moratorium on rent payment for the premises used as headquarters and secondary offices. Same applies for payment of utilities.

However, the aforementioned measure is subject to some concerns, such as:

- The measures apply exclusively to small and medium-sized companies and only under the above-mentioned conditions;
- The measure aims to provide a moratorium on utility services and rent payments. Therefore, at the end of the

state of emergency, small and medium-sized companies will have to pay in full all those amounts, being exempted only from the payment of penalties.

- The applicable legal criteria in order to benefit from the aforementioned facilities have not been yet adopted. However, in order to effectively exercise the right to obtain a deferred payment of the rent, the lessee needs to notify its intention to the lessor and to submit an emergency situation certificate.

Other than the above-mentioned provision with temporary applicability, the situations where the payment of the rent can be deferred may be grounded on a case by case basis, subject to specific provisions of each lease agreement, following negotiations of parties or by invoking force majeure or hardship. However, force majeure and hardship must be approached with caution as their outcome and their limits depend largely on the content of each respective lease agreement.

According to art. 1270 of the Romanian Civil Code, the contract is the "law of the parties", its performance not being subject to the discretion of the contractual partners, but mandatory ("the pacta sunt servanda" principle). Thus, in general, not paying the rent is considered a significant breach of the contract, considering that, as a rule, any non-performance entails the contractual liability of the default party. However, by way of exception, the law allows debtors (those liable to perform the obligation assumed as per the agreement) to benefit, under certain conditions, of the exemption from the performance of the assumed contractual obligations.

2. What are the legal possibilities for a rent reduction?

The legal possibility to ask for a reduction of rent may be based on force majeure. Thus, GEO 29/2020 implements a force majeure presumption, according to which a force majeure event is presumed to be an unforeseen, absolutely unpredictable and inevitable event which results from action by the authorities to apply measures required for preventing and combating the spread of infection with Covid-19, that affects the activity of small and medium-sized companies, as certified by a certificate of an emergency situation issued by the Ministry of Economy, Energy and Business Environment. Thus, under the conditions set by GEO 29/2020, in this case of impossibility to perform contractual obligations, there is no need to prove the existence of a force majeure event, as its existence is presumed.

Thereby, GEO 29/2020 implements a form of economic protection with respect to the possibility of invoking force majeure against small and medium-sized companies.

In this sense, with regard to the ongoing contracts concluded by small or medium-sized companies (other than lease agreements or utility supply agreements – for which moratorium has been regulated – see section 1 above), force majeure may be invoked against small or medium-sized companies only after an attempt to renegotiate the contract in order to adapt its terms to the exceptional circumstances generated by the state of emergency. This attempt to adapt the contract should be carefully carried out, as it must be proved with documents communicated between the parties by any means (including electronic means).

In order for the presumption to operate, small and medium-sized companies must hold an emergency situation certificate to attest to the impact over their activity. However, a force majeure presumption can be overturned by the interested party by means of any evidence, even if an emergency certificate was obtained prior to this moment. Approx. 42,000 small and medium size enterprises obtained such emergency certificate from the state authorities – procedure to obtain it is simple and is carried out electronically.

On the other hand, only actions taken by the authorities in order to apply the measures imposed for prevention and spread of the pandemic may qualify as force majeure but not also the measures taken by the authorities under the normative act establishing the state of emergency.

Additionally, we draw to your attention that if the requirements for a force majeure presumption under GEO 29/2020 and the requirements regarding issuance of an emergency situation certificate are not met, force majeure may be invoked solely in line with the provisions of the Civil Code as generally applicable law.

In this context, the tenant must prove not only the fulfilment of the conditions set by law for qualifying an event as force majeure (the existence of an external, unpredictable and absolutely unstoppable and inevitable event), but also compliance with the contractual provisions on following the applicable procedure for invoking force majeure, if and where appropriate, as well as the consequences of the event and the causal link between the event and non-performance of the obligation.

On a case by case basis, contracts may provide that evidence of force majeure must be on the basis of a document issued by a third party, such as:

- a notice issued by the Romanian Chamber of Commerce and Industry (CCIR);
- a notice issued by County Chambers of Commerce;
- any other document issued by third parties (such as,

for example, documents issued by public authorities, national institutions and so on).

Finally, in order to obtain an opinion issued by the Romanian Chamber of Commerce and Industry or by County Chambers of Commerce, it is necessary to carry out specific procedures, including a factual and detailed presentation of the event, its consequences in relation to the contractual partner, as well as legal arguments in order to demonstrate that the event invoked amounts to force majeure.

However, prior to the invocation of force majeure we strongly recommend a rigorous analysis of the lease contracts, considering that some contracts may exclude or limit the applicability of force majeure effects.

In addition, under certain conditions, the reduction of the rent may also result from the application of the hardship legal institution, as detailed in Section 3 below.

3. What are the legal possibilities to amend the lease?

In case the contractual parties do not reach an agreement regarding the lease amendment, under Romanian law, the contracts may be amended solely grounded on hardship provision (art. 1271 of Civil Code) but the conditions imposed by the Civil Code are rather restrictive and the court intervention is required. Under this provision, as a principle, the parties must perform their obligations, even if performance has become more onerous, either due to an increase in the costs involved in performing their own obligation or due to a decrease in the value of counter performance.

However, if performance of a contract has become excessively onerous due to an exceptional change of circumstances which would make it obvious unjust to require the tenant to perform, the court may decide either (i) to adapt the contract, to equitably distribute the losses and benefits resulting from the change of circumstances, or (ii) to terminate the contract at a time and under conditions on terms to be decided by the court. In this respect, both adaptation and termination of the agreement can be decided by the court, who will examine the matter having in mind exclusively the following cumulative conditions:

- the intervention of exceptional circumstances occurred after the conclusion of the agreement;
- the change of circumstances and its extent were not and could not reasonably have been envisaged by the tenant at the moment of conclusion of the agreement;
- the tenant did not assume the risk of change of circumstances and could not reasonably be considered to have assumed such a risk at the moment of concluding the contract;

- forcing the tenant to perform its obligation has become manifestly unfair;
- the tenant has tried, within a reasonable period and in good faith, to negotiate a reasonable and equitable adaptation of the agreement.

In other words, it is a simple excessive contractual imbalance, which needs to be remedied. The law provided legal remedies for some categories of companies and professionals, however, these measures are not generally applicable, as economic market actors have not been uniformly affected. Therefore, the pandemic does not create per se an exemption, but possibly can raise the issue of contingency, if the conditions previously analyzed are met. The mere occurrence of this event, however, does not exempt the party invoking it from the obligation to prove concretely the contractual imbalance encountered, as well as the direct causal link between the occurrence of the pandemic and the situation thus created.

4. Relevant literature & case law

<https://www.bnt.eu/ro/noutati/stiri-juridice/2973-force-majeure?layout=bnt:news> (English)

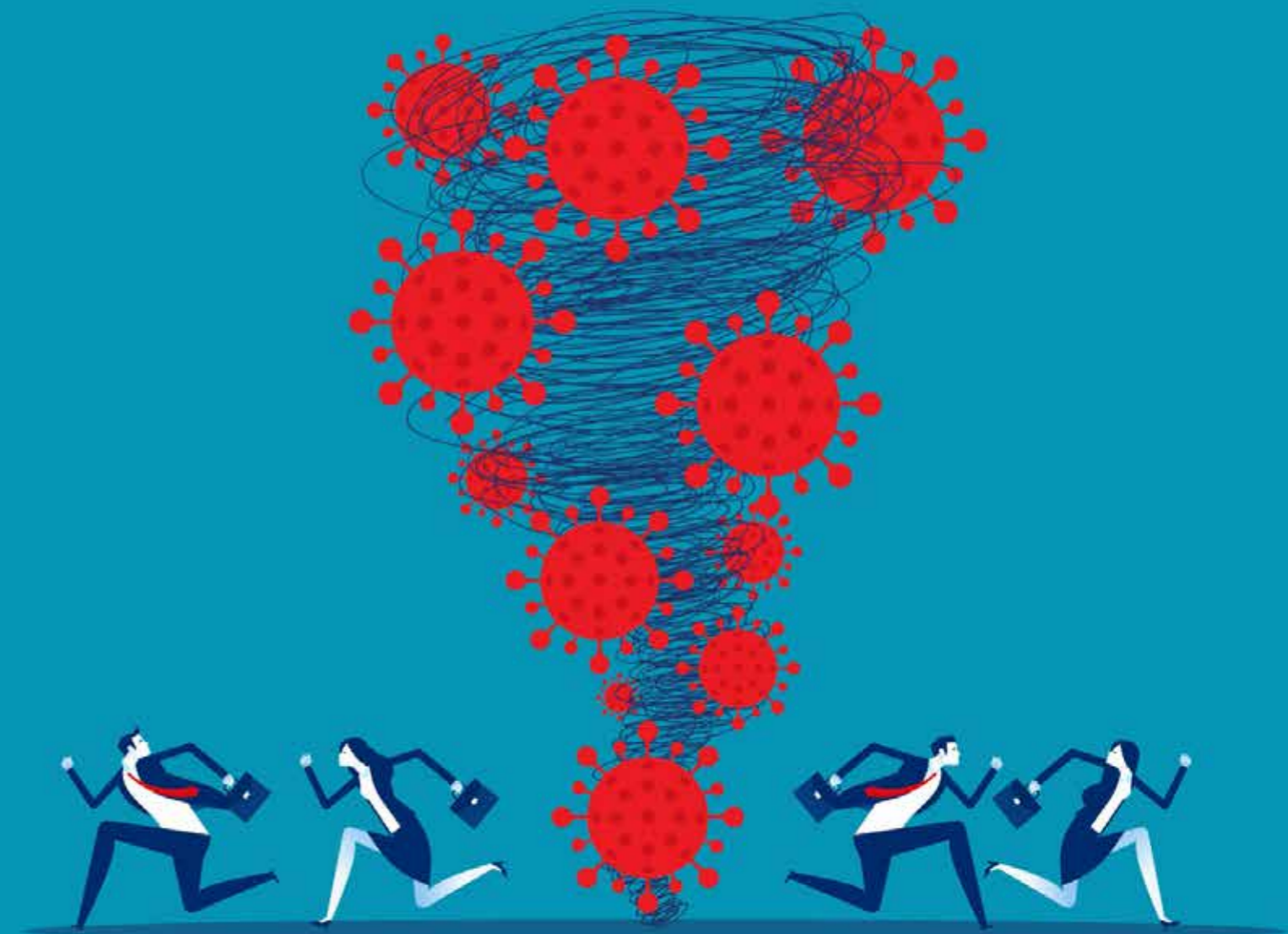
<https://www.universuljuridic.ro/impreviziunea-consideratii-teoretice-aspecte-practice/> (Romanian)

<https://www.juridice.ro/624866/pot-partile-conveni-la-momentul-contractarii-sa-isi-assume-raspunderea-pentru-forta-majora.html> (Romanian)

1. In accordance with Law No. 346/2004 regarding the incentives for incorporation and development of small and medium companies, the latter are defined as companies which cumulatively meet two conditions, namely (1) having an average annual number of less than 250 employees and (2) having a net annual turnover of up to 50 million EUR converted into RON, or total assets which do not exceed the equivalent in RON of 43 million EUR according to the last approved financial statement. Total assets are defined as long-term assets plus current assets plus payments made in advance.

2. Under Emergency Government Ordinance 33/2020 regarding fiscal measures and amendment of normative acts, an emergency situation certificate, based on an affidavit by the economic agent (as applicant), confirms that the applicant has suffered (i) a decrease of revenues of at least 25% compared to the average of revenues from January-February 2020 or (ii) partial or total interruption of activity based on lawful decisions issued by the competent public authorities during the period of the state of emergency.

At the time of drafting, there was no relevant jurisprudence available.



Introduction

In Russia, at the federal and regional levels, the following key measures for preventing the spread of coronavirus disease (which significantly affected, inter alia, a commercial property lease) have been taken:

- a regime of non-working days with reservation of the right to get wages was introduced by the edicts of the President of the Russian Federation nationwide from 25 March to 11 May. However, a lockdown for certain at-risk categories of citizens was imposed in Moscow from the beginning of March;
- the heads of the regions of Russia have been entrusted with the development of a set of restrictive measures, including the suspension or restriction of the activities of entities and individual entrepreneurs, restriction of movement of citizens and vehicles;
- as from 11 May 2020, the operation of restrictive measures was determined by the regions themselves based on specific epidemiologic situation.

In particular, the clubbing and going to the movies, children's playrooms and children's entertainment centres, other entertainment and leisure facilities were suspended in Moscow from the end of March. The operations of restaurants, café, bars, retail facilities (other than grocery shops and shops selling essential commodities), beauty salons, hair salons, sauna and public bath houses were suspended. It was prohibited to go to the large parks and country estate. From the middle of April, the provision of auto rental services and performance of construction and repair works were suspended, and obligatory authorization cards for movement through the city were introduced. From the end of May, the restrictions for the movement of citizens and operation of entities, which have been imposed by the constituent entities of the Russian Federation, are being gradually removed. Thus, on 9 June 2020, any restrictions for the movement of citizens were removed, and the procedure for gradual

removal of restrictions on the activities of enterprises and shopping facilities was established.

To support the economy, the Government of Russia and government authorities of constituent entities have taken a number of measures, for example:

- the federal "antivirus" law establishing, inter alia, the specifics of regulation of lease relations during a crisis has been adopted;
- a list of systemic companies, to which preferential loans for supporting their operations, tax deferment and subsidies shall be provided, has been determined as well as a moratorium for filing a petition in bankruptcy of such companies has been imposed;
- additional benefits have been accepted at the level of constituent entities. For example, in Moscow, when a rent payment is reduced by 2 or more times, the lessor's exemption from paying ½ of the property tax as well as the interest-free rent payment by instalments for the state-owned land plot, on which the lessor's commercial properties are situated, have been envisaged.

According to the data of CUSHMAN & WAKEFIELD, after the removal of restrictions, a warehousing property market is the one that is recovering faster than the others are, and a number of transactions for acquiring the land plots by major developers for project implementation has been resumed. According to the findings of the Association of the European Businesses (AEB), a considerable number of entities will partially preserve a home office regime and elect not to lease a part of rentable space, which will certainly affect a rental market.

1. What are the legal possibilities for deferred payment of rent?

On 1 April 2020, a special Federal Law No 98-FZ, the so called "antivirus" law within business community, was adopted. Article 19 of this Law introduces changes to regulation of lease (in addition to the provisions of the Civil Code of the Russian Federation): it envisages a deferred payment of rent, the right to claim the rent reduction and the right of certain categories of lessees to repudiate a lease agreement. Each of these measures is subject to conditions determined by the relevant decrees of the Government of the Russian Federation. Thus, for example, only the lessors that operate in the most affected economic sectors shall have the right to deferred payment (Part 1 of Article 19 of the Law). Such sectors include, in particular, transport, public catering, services in hotel business, tourism, entertainments, sports, certain types of retail business, etc. The assignment of the lessee's activities to one of these sectors shall be in accordance with special nomenclature of the legal entities' economic activity codes. The rent payment for the period starting from imposition of restrictions and ending 1 October 2020 shall be carried forward to the future period (from 1 January 2021 to 1 January 2023) according to a certain procedure. The lessees that do not fall under this category may suspend rent payment based on the general provisions of the Civil Code of the Russian Federation concerning the performance of obligations (in particular, Article 328 of the Civil Code of the Russian Federation) due to the temporary impossibility of consideration (impossibility of using the premises). However, the possibility of applying this provision to situations involving "external risks" is not exactly clear.

Tellingly, if the lessor proves that the lessee was not actually affected by the imposed restrictions, the deferral of payment may be refused (Explanation of the Supreme Court of the Russian Federation in Overview No.1 dated 21 April 2020).

2. What are the legal possibilities for a rent reduction?

The specified Law (Part 3 of Article 19) has also granted the right to any lessee to claim the rent reduction for 2020, when the use of the leased property was impossible due to the imposed restrictions. However, the right to make such a claim does not imply the lessor's obligation to agree with conditions proposed by the lessee since the Law does not establish the extent of such reduction. Meanwhile, some lessors are ready to satisfy the lessees' claims and agree to reduce a rent payment to the extent of utility costs and costs for maintenance of the leased property. In the event that the lessor refuses to reduce the rent payment, such issue may be settled only in a judicial proceeding. In such a case, the lessee may rely on both a special provision of the above Law and provisions of the

Civil Code of the Russian Federation concerning alteration of contract, in particular, Article 451 of the Civil Code of the Russian Federation (alteration or termination of contract due to material change in the circumstances). This provision has certain specifics and was not virtually used earlier; however, the Supreme Court of the Russian Federation in its Overview No.1 dated 21 April 2020 notes the possibility of its application in the circumstance of spread of Covid-19.

3. What are the legal possibilities to amend the lease?

Finally, the Law (Part 4 of Article 19) enables a certain category of lessees to unilaterally out-of-court repudiate a lease agreement. In such case, the lessee must simultaneously meet two criteria: (1) it must fall under the category of lessees that operate in one of the most affected economic sectors, and (2) it must be included in the register of small and medium-sized businesses (which are supported by the authorities to the utmost). Such repudiation is possible in case of the failure to reach an agreement with the lessor as to the conditions of rent reduction and may be implemented before 1 October 2020 by giving the relevant notice to the lessor. In case of such repudiation, no damages resulted from termination of agreement nor lost profits or fee for repudiation of agreement (if envisaged by its terms and conditions) shall be recovered from the lessee. However, a security payment made to the lessor shall not be refunded to the lessee. Other amounts shall be paid by the lessee in full. Any outstanding issues (for example, what to do if the security payment is in the form of a bank guarantee, etc.) will be settled in a judicial proceeding. The other categories of lessees shall be entitled to seek termination of lease agreement judicially pursuant to the general provisions of the Civil Code of the Russian Federation (in particular, pursuant to Article 451 of the Civil Code of the Russian Federation – due material change in the circumstances) or terminate the agreement on the grounds envisaged by its terms and conditions (if the agreement contains such terms and conditions).

4. Relevant literature & case law

As mentioned herein.

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Introduction

Due to the coronavirus pandemic, Slovakia imposed strict measures very soon after the first confirmed coronavirus case. Slovakia closed airports, universities, schools, shops and borders earlier than any other country after Italy. Wearing face masks in public was mandatory. The government issued immediate, non-compulsory recommendations, including the call to stay home as much as possible and work from home, if the nature of the work allows it, and to keep a distance of 2 metres from other people at all times. By and large, people were complying voluntarily with these measures.

Many companies in Slovakia, mainly small and medium enterprises, have been heavily impacted and were forced (by law or for economic reasons) to close their premises or limit opening hours. As of 15 June 2020, Slovakia has 1,552 confirmed cases and 28 fatalities. In close cooperation with epidemiologists, the government prepared a plan to loosen the strict imposed measures in five phases. The first phase began on 22 April 2020. Currently, Slovakia is in the fifth phase of loosening the strict measures. Mass events with attendance of more than 500 people must not take place. As of 10 June 2020, wearing face masks outdoors is not obligatory but recommended. Face masks are still mandatory indoors, e.g. in public transportation and shops.

Generally, the life in Slovakia is getting back to normal. Restaurants, shopping malls, night clubs, wellness and fitness centers and swimming pools are open. Primary schools and schools until 5th grade opened on 1 June 2020. As of 10 June 2020, travelling to 19 countries: Czech Republic, Austria, Hungary, Slovenia, Croatia, Switzerland, Germany, Norway, Finland, Iceland, Cyprus, Malta, Bulgaria, Greece, Denmark, Baltic countries is allowed without the obligatory quarantine in a state facility/at home or a

compulsory coronavirus test upon returning to Slovakia or other restrictions. As of 10 June 2020, Bratislava airport operates the flights to Bulgaria, Greece and Cyprus.

1. What are the legal possibilities for deferred payment of rent?

As part of the package of measures to mitigate the effects of the crisis caused by COVID-19, the Slovak Parliament adopted a law to protect tenants from termination of the lease by the landlord in cases where the tenant is unable to pay the rent. The statutory prohibition of termination applies to all types of lease relationships, regardless of whether they were concluded by natural persons for residence purposes or by natural or legal persons for business purposes.

The law deprives landlords of the right to unilaterally terminate the lease with the tenant of a residential and/or commercial premise until 31 December 2020 on the grounds that the tenant is in default of payment of the rent and related payments (utilities). The tenant's default must occur in the period from 1 April 2020 to 30 June 2020 due to circumstances in relation to COVID-19 pandemic. The tenant is obliged to provide the landlord with sufficient

credible and timely evidence of the reason for the tenant's delay with the payment of rent and related payments.

This is not to be understood as a postponement of payments of the rent and related payments by the tenant and the tenant is therefore still obliged to pay his liabilities to the landlord in an orderly and timely manner. However, non-payment of the rent is not a reason for termination of lease by the landlord. In case of non-payment of the rent the landlord is entitled to default interests and/or the contractual penalty if one has been agreed in the contract.

The impossibility of termination of the lease only refers to the impossibility of termination due to non-payment of the rent, the other contractual reasons for termination of the lease remain unaffected.

2. What are the legal possibilities for a rent reduction?

Slovak Parliament did not adopt any special regulation regarding a rent reduction due to the coronavirus pandemic. Thus, a rent reduction is to be negotiated between the contractual parties. Pursuant to Slovak law, a tenant is entitled to claim a proportionate rent reduction in case of a defect of the subject of the lease if the subject of the lease cannot be (partially or fully) used due to this defect. However, the inability to open and operate the premises due to the coronavirus pandemic is not to be considered defect of the subject of the lease but an act of God (force majeure). Of course, a tenant can ask the landlord for a rent reduction due to the coronavirus pandemic. However, if a tenant does not succeed to agree on the rent reduction with the landlord (in writing), he is obliged to pay the rent according to the lease agreement.

On 9 June 2020 the Slovak Parliament adopted a financial aid (in form of a state subvention) for entrepreneurs who were forced to close their premises due to state-imposed measures in connection with COVID-19 pandemic but were obliged to pay rent to landlords. The state will pay the rent for the tenant in an amount discounted by the landlord, maximum in the amount of 50% of the rent (e.g. if the landlord forgives half of the rent, the state will pay the other half and the tenant will not pay anything). The tenant will be able to pay the rest of the rent in installments within the following four years. The entitled persons are entrepreneurs – natural persons or legal entities provided that the right to use the subject of the lease (non-residential premises or marketplace) was created on the basis of a lease agreement on 1 February 2020 at the latest. The state financial aid is applicable only for rent payments (not for related payments or payments for utilities) for the time during which the subject of the lease had to be closed due to state-imposed measures in connection with COVID-19 pandemic.

3. What are the legal possibilities to amend the lease?

Pursuant to Slovak law, the agreement on the lease of non-residential premises must be in writing, otherwise it is invalid. Any amendments to the lease agreement must also be in writing. There is no other special legal regulation regarding the amendment of the lease, such as a claim to amendment of the lease due to unforeseen circumstances (such as the coronavirus pandemic) or due to a loss of tenant's profit due to unforeseen circumstances. Thus, an amendment of the lease is to be negotiated between the parties.

4. Relevant literature & case law

<https://www.bnt.eu/en/news/legal-news/2993-slovakia-non-payment-of-rent-during-the-corona-crisis?layout=bnt:news>

<https://www.bnt.eu/en/news/legal-news/3003-slovakia-measures-to-prevent-the-spread-of-coronavirus-are-slowly-being-relaxed?layout=bnt:news>

<https://www.bnt.eu/en/news/legal-news/3015-slovakia-due-to-favourable-epidemiological-situation-measures-against-the-spread-of-covid-19-will-be-relaxed-from-20-may?layout=bnt:news>

<https://www.bnt.eu/sk/aktuality/aktualne-temy-z-oblasti-prava/3011-slovakia-temporary-protection-for-entrepreneurs-4?layout=bnt:news>

<https://www.bloomberg.com/news/articles/2020-04-28/european-nation-with-least-virus-deaths-proves-speed-is-key?fbclid=IwAR0Ev4BeF3qc2WabQGZfISO51-4cr7T4nE85LMiy18TNk9FVGxZR5iNbal0>

https://foreignpolicy.com/2020/05/06/slovakia-coronavirus-pandemic-public-trust-media/?fbclid=IwAR3UZ4tJ-CIMcDvN7HKbPYK7v09yIFbzvQsxQX3ul-Lw9qc4KnFE_nFT-f2U8

Introduction

Restrictions in Sweden due to the corona pandemic have been somewhat more limited than in most other countries. Consumption has however been heavily impacted and especially the retail sector and hotels and restaurants have exhibited huge losses. An escalating amount of bankruptcies clearly confirm the unsustainable situation for many businesses.

The Swedish government has introduced a wide range of measures in order to limit the spread of the corona virus and to limit its economic impact. For instance emergency packages have been established for SMEs, temporary reductions of employers' social security contributions and individual contributions have been presented, short-term layoffs have been strengthened, temporary discounts are given for fixed rental costs in vulnerable sectors, increased loan facilities and credit guarantees are provided and liquidity reinforcement via tax accounts have been introduced.

Some of the most relevant measures which have been taken by the Swedish government are presented below.

- Ban on public gatherings and events with more than 50 participants.
- Prohibition against visiting retirement homes.
- Temporary ban on travel to Sweden until June 15, 2020.
- Rules for restaurants, pubs and cafés as regards crowding, queues and serving and eating at tables

In addition, the Swedish government has issued recommendations such as working from home when possible, avoiding social contacts for those over the age of 70 and avoiding trips of more than two hours unless necessary. It is also recommended not to perform education in school premises as regards upper secondary schools, vocational higher education, adult education and higher education institutions. Most people are complying voluntarily with these measures.

1. What are the legal possibilities for deferred payment of rent?

The right to suspend rent payment is generally not included in most lease agreements. An inability to pay rent to a landlord is not a valid legal ground for deferred payment. If a tenant claims that a landlord has not fulfilled its contractual obligations due to the corona pandemic, it needs to deposit the rent in order to be secured against a premature termination. It should be noted that a landlord might claim force majeure if a situation occurs where it is unable to fulfil its obligations due to the corona pandemic. A deferred payment, without prior consent from the landlord or without deposition enables the landlord to terminate the lease agreement in advance.

2. What are the legal possibilities for a rent reduction?

A reduction in sales or profitability and liquidity problems are not generally, provided that the premises maintain and correspond to contractual commitments, considered to give rise to a legal right to rent reduction. However, if an insufficiency occurs in the premises or impediments arise which hinder the business to be conducted in the premises due to the corona pandemic, a rent reduction could be attainable.

The Swedish government has adopted a regulation, SFS 2020:237 for a rent relief package which is offered to landlords whose tenants conduct business in defined sectors, specified by SNI-codes. The relief package is mainly aimed towards hotels and restaurants, non-consumables and sectors such as retail, lodging, leisure

and entertainment industries, travel agencies, dentists and hair and body care.

With this government aid, the landlords can receive an aid amounting to 50 percent of the agreed rent discounts during the period April 1, 2020 until June 30, 2020. The aid cannot exceed 25 percent of the previously fixed rent and hence only applies to discounts on fixed rent. Rent discounts on turnover rent are not covered by the government. The total aid for each tenant can never exceed EUR 800 000.

In order to be entitled to rent relief the parties must fulfil the following conditions.

i. the landlord must have entered into a lease agreement at the latest on March 1, 2020 with a tenant covered by the regulation, with a wholly or partially fixed rent in SEK;

ii. the landlord must have leased the premises to the tenant during the entire or part of the period April 1, 2020 until June 30, 2020.

iii. the rental discount on the fixed rent must have been agreed upon between the parties no later than June 30, 2020, for the period April 1, 2020 until June 30, 2020 where the rent is lower than the fixed amount that would have been paid during the same period under the lease agreement. No other adjustments to the terms of the lease agreement are allowed; and

iv. the tenant is not a government agency or the tenant may not have been in financial difficulties as per December 31, 2019, defined in Article 2.18 of the Commission Regulation (EU) No 651/2014 or is subject to a payment order decided upon by the European Commission due to an aid being considered illegal and incompatible with the internal market.

3. What are the legal possibilities to amend the lease?

Lease agreements often entail unilateral force majeure clauses in favor of the landlord. As most force majeure clauses do not release the tenant from fulfilling its obligations under the lease, the force majeure clauses could primarily be applicable if a right to a reduction of rent, damages, repair and/ or termination occurs. A situation could for example arise where the availability of the premises or the conditions for the tenant where to change as a result of the corona pandemic. A general interpretation of the force majeure clause would then be utilized.

If no force majeure clause is included in the lease agreement, a tenant could plead article 36 of the Swedish Contract Law which aims to balance unreasonable agreement clauses. The tenant could state that the current conditions in the lease agreement are unreasonable due to seriously altered prerequisites.

It is very difficult to assess the outcome of a dispute regarding amendment of a lease between a landlord and a tenant as no practice yet has been established.

4. Relevant literature & case law

<https://www.government.se/articles/2020/03/economic-measures-in-response-to-covid-19/>

<https://www.krisinformation.se/en/hazards-and-risks/disasters-and-incidents/2020/official-information-on-the-new-coronavirus>

<https://svenskforfattningssamling.se/sites/default/files/sfs/2020-04/SFS2020-237.pdf> (In Swedish)

http://www.sni2007.scb.se/_pdf/080530kortversionsnisorad2007eng.pdf

Introduction

Since the beginning of March 2020, the Swiss Federal Council has taken measures to curb the spread of Covid-19, inter alia prohibiting a vast number of businesses (shops, restaurants, bars, etc.) from being open to the public (lockdown) until 11 May 2020, the date from which Switzerland began gradually reopening.

Since the beginning of March 2020, the Swiss Federal Council has taken measures to curb the spread of Covid-19, inter alia prohibiting a vast number of businesses (shops, restaurants, bars, etc.) from being open to the public (lockdown) until 11 May 2020, the date from which Switzerland began gradually reopening. The private sector was encouraged to implement work from home policies and more generally, a ban on public gatherings of 5 or more people was introduced. In parallel to these measures, the Swiss Federal Council enacted on 27 March 2020 a time-limited Covid-19 ordinance titled "Ordinance on Mitigating the Effects of the Coronavirus Pandemic on Leases" (the "Covid-19 Ordinance") to mitigate the impact that the Covid-19 pandemic is having on ongoing leases.

This ordinance addresses questions regarding permission to move in and out of leased premises during the Covid-19 pandemic and extends the minimum deadline under which landlords can require payment if their tenants default on the payment of their rent or ancillary costs. By contrast, the Covid-19 Ordinance does neither provide for a deferral of due dates for rent payment nor a reduction of rent and does not affect the accrual of default interest in case tenants default on their payments. Considering these uncertainties, the Parliament instructed on 8 June 2020 the Swiss Federal Council by way of a motion to define state-wide the rights and obligations of the rental parties for the lockdown period, at least in part. In particular, the motion provides that tenants whose rent does not exceed CHF 20,000 per month and property only owe 40% of the contractually agreed rent for the duration of the forced closure, the remaining 60% being borne by the landlord. If the rent is between CHF 15,000 and CHF 20,000,

both parties have the possibility of opting out of the aforementioned arrangement, although the modalities of such an opt-out are currently unclear. In addition, the Swiss Federal Council should provide a hardship fund for landlords in the amount of CHF 20,000,000.

1. What are the legal possibilities for deferred payment of rent?

Subject to the above-mentioned flat-rate solution that should result from the motion, tenants are not entitled under Swiss law to defer rent payment as a result of a sanitary crisis such as Covid-19. Unless provisions in the lease agreement stipulate otherwise, the tenant is obliged to pay rent by the date agreed upon therein. However, according to the Covid-19 Ordinance, if as a result of lockdown measures a tenant falls into arrears with the payment of rent or accessory charges that are due for payment between 13 March 2020 and 31 May 2020, the deadline set by the landlord for payment of the rent or accessory charges must amount to at least 90 days. In addition, the Swiss Federal Council and many cantonal governments called upon tenants and landlords alike to enter into negotiations to find measured, balanced and mutually acceptable solutions. In practice, many landlords have agreed to defer the payment of rent for commercial premises closed during the Covid-19 crisis, given the effects that Covid-19 had on them, with a view of finding an amicable solution for the future payment of the suspended rent payments. In addition, some cantons have granted financial assistance to tenants to assist in paying their rent. For instance, the Canton of Geneva has agreed to assist tenants who are required to pay rent up to a maximum of CHF 10,000 a month for commercial premises

by paying a third of the affected rent for so long as the landlord covers one third of the rent and the tenant pays the final third. The above-mentioned Parliament motion does not regulate the relationship between the new regulation pursuant to the motion and these cantonal measures already in place. In particular, landlords with properties in the cantons concerned could be faced with the question of whether they will later be confronted with claims for restitution from the cantons that have already assumed part of the rent on the basis of the cantonal regulation.

2. What are the legal possibilities for a rent reduction?

Swiss law provides that if defects occur in the rented premises over the course of a lease, the tenant of said premises can require its landlord to grant a proportionate reduction of the rent. Whether there is a right to a rent reduction on commercial premises due to government-imposed closures under tenancy private law is questionable. In order to obtain legal certainty on the matter, it will be necessary to wait for court precedents. In the context of this legal question, Swiss law contains two provisions that could be raised to terminate a lease due to the Covid-19 restrictions. The first provision states that if performance of a lease agreement becomes unbearable for a party for good cause, such party may terminate the lease by giving the legally prescribed notice at any time.

The second provides for the possibility to terminate a contract when its performance becomes impossible as a result of circumstances that are not attributable to the debtor. As there is once again at this stage no legal certainty in relation to these questions, it will be necessary for the Swiss courts to determine how these provisions may be used in the context of Covid-19 and how private law will be coordinated with the above-mentioned motion depending on the precision of the law finally adopted. It should be noted that the Swiss Federal Council has also recognized that the measures requested in the motion severely interfere with the principle of private autonomy and the landowners' property rights, which in particular raises the question, if the regulation requested by the Swiss Parliament constitutes a material expropriation for which compensation must be paid. It remains to be seen how the Swiss Federal Council will implement the motion.

3. What are the legal possibilities to amend the lease?

Switzerland's tenancy law does not provide tenants with the possibility to unilaterally modify their lease agreement. In addition to the above-mentioned possibility of invoking a defect due to the Covid-19 situation, Swiss case law provides for the theory of unforeseeability (*clausula rebus sic stantibus*) which derives from the principle of good faith. The purpose of this theory is to allow the agreement to be adapted as deemed required in the reasonable discretion of the court when the circumstances under

which it was concluded have changed to such an extent that maintaining the agreement unaltered cannot be reasonably required because it would represent an exorbitant sacrifice for the debtor. Again, until the legislation implementing the 8 June 2020 motion is enacted and until court precedents exist it will remain uncertain if and to what extent this theory will be applicable with respect to the Covid-19 crisis.

4. Relevant literature & case law

No relevant case law available yet.

No relevant public literature available yet.

Middle-East



Middle – East Israel

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Introduction

The Government of the State of Israel was relatively early to respond and impose restrictive measures due to the COVID-19 pandemic outbreak. These measures included significant restrictions on travel into Israel, partial or complete shutdown of all non-essential businesses and public and governmental institutions, and significant restrictions on travel inside the State of Israel, including home confinement of large portions of the population during lengthy periods. These measures are now being gradually relaxed and lifted during the course of May 2020. Absent a new eruption of the pandemic, most businesses are expected to be fully operational by mid-June 2020. These measures were mostly imposed by way of binding emergency legislation, a very small portion of which has been translated into English and may be found here.

The Government of the State of Israel was relatively early to respond and impose restrictive measures due to the COVID-19 pandemic outbreak. These measures included significant restrictions on travel into Israel, partial or complete shutdown of all non-essential businesses and public and governmental institutions, and significant restrictions on travel inside the State of Israel, including home confinement of large portions of the population during lengthy periods. These measures are now being gradually relaxed and lifted during the course of May 2020. Absent a new eruption of the pandemic, most businesses are expected to be fully operational by mid-June 2020. These measures were mostly imposed by way of binding emergency legislation, a very small portion of which has been translated into English and may be found here. No governmental action has been taken to date in relation to commercial lease agreements. The Ministry of Justice has established a special task force entrusted with reviewing

the various legal aspects of commercial contracts affected by COVID-19 and suggesting appropriate legal measures. While this task force is expected to address the matter of both commercial and private lease agreements, it is yet unclear which approach the task force will take in its recommendations. Unfortunately it may be quite some time before its recommendations are published and it remains to be seen whether they will be adopted.

In the meantime, some Israeli property owners have unilaterally granted, and some parties to commercial lease agreements have agreed to, various measures ranging from complete waiver of lease payments, partial reductions, payments based on monthly turnover and deferral of payments. Other property owners have refused to grant any concessions and have taken legal action to enforce their rights vis-à-vis tenants, as further detailed below.

1. What are the legal possibilities for deferred payment of rent?

Most Israeli commercial lease agreements do not include specific force majeure provisions and are accordingly subject to the general provisions of Israeli contract law. Section 15 of the Rent and Lending Law of 1971 allows the tenant to cease rent payments for a period of time during which the rented property cannot be used due to force majeure circumstances that render the tenant's ability to use the leased property for the purpose of the lease impossible, subject to the property owner's right to terminate the lease after a reasonable period. A recent (pre-COVID-19) Supreme Court decision suggests, however, that this section applies in events which are specific to the rented property and not in general circumstances such as a pandemic. Such general circumstances fall under the general statutory rule found in Section 18 of the Contracts Law (Remedies for Breach of Contract) of 1970, which provides limited relief from breach of contractual obligations affected by force majeure circumstances. Assuming the actual ability to pay rent (as opposed to the subjective financial situation of the tenant) is not affected by the COVID-19 pandemic, it appears that this provision may only be relevant in circumstances where the tenant was completely prevented from using the leased property (e.g. commercial centers that until recently were completely closed by government order). In these cases, a claim may possibly be made that it is in fact the lessor which is in breach of its obligation to provide the lessee with access to and the right to freely use the leased property. The lessor may indeed rely on COVID-19 and the resulting emergency legislation to justify this breach, in which case the lessee will not be entitled to enforce the lease but will be able to cease paying the rent until use of the property is allowed. The rule in Section 18 above is, however, a protective clause, which means that it can only help a tenant to avoid rent payment where the tenant notified that lessor that the lessor is in breach of the lease agreement and the lessor invoked Section 18 protection.

Many lessees of commercial property have ceased payments of rent during the pandemic, and several courts have already been approached by lessors trying to enforce autonomous bank guarantees provided as security for the lease payments. While no final decisions have been given to date, some courts have refused to grant temporary injunctions preventing the use of these enforcement measures, stating that COVID-19 does not necessarily justify deferral of lease payments which cause damage to lessors who have financing obligations to meet. Other courts have given temporary injunctions preventing the use of these enforcement measures and

recognizing COVID-19 and the resulting emergency legislation as extreme circumstances which may justify force majeure protection.

2. What are the legal possibilities for a rent reduction? For an answer, please check question 3.

3. What are the legal possibilities to amend the lease?

There is no provision of law specifically providing for rent reduction or for amendment of the lease agreement in force majeure or contract frustration circumstances. A possible mechanism raised in the past by one Justice of the Supreme Court of Israel is to rely on Section 39 of the Contracts Law (General Part) of 1973, which provides that contracts must be fulfilled in good faith and in a customary manner. The Supreme Court justice suggested that under force majeure circumstances, the party to the contract not affected by these circumstances cannot demand in good faith that the party affected by them should fulfil its contractual obligations as originally agreed between the parties. This opinion, if adopted by a majority of the court, will open the way for courts to introduce changes to lease agreements in order to adjust their provisions to force majeure circumstances, including but not limited to rent reduction.

Another doctrine which was generally acknowledged by Israeli Courts is the adaptation of contractual obligations to changing circumstances. This doctrine may be used as a basis for claiming that where the circumstances affecting the basic transaction changed due to the COVID-19 outbreak, the terms of the lease agreement must be adapted where such adaptation does not undermine the basic consents of the parties.

4. Relevant literature & case law

An authorized translation into English of Section 18 of the Contracts Law (Remedies for Breach of Contract) of 1970 may be found here, on page 15.

An authorized translation into English of Section 39 of the Contracts Law (General Part) of 1973 may be found here, on page 123.

All other sources are available only in Hebrew.

Middle-East Islamic Republic of Iran

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Introduction

The government of Islamic Republic of Iran, like many other governments across the globe, has taken and implemented certain measures in response to the Covid19 pandemic. What distinguishes the situation, and the government's response to the pandemic, in Iran are the crippling effects of the US sanctions which pose a serious burden on the financial ability of the government to assist businesses and citizens in overcoming the debilitating economic impact of Covid19.

Despite the said severe restrictions, the government has, however, taken an active and central role so far as commercial and ordinary leases are concerned. The governmental response to Covid19 may be divided in two parts: (1) using the preexisting legal mechanism of "force majeure" provided for under Articles 227 and 229 of the Iranian Civil Code in order to provide a degree of relief; and (2) using presidential Executive Action as well as decrees issued by the Council of Ministers to provide financial assistance to individuals and businesses that have been impacted by the pandemic.

In this context it is noteworthy to mention that the government's efforts towards alleviating economic hardship have been complimented, to a very large degree, by the prevailing social and cultural norms that dictate assisting one's neighbors and fellow citizens in tough times. The impact of the latter, whether carried out or implemented by "charitable entities and organizations" or by "fellow citizens and landlords", cannot be ignored at all, as many of the most hard-hit people and businesses turned directly to such organizations/individuals in seeking assistance – since many of the government's initiative could only be of limited scope and depth due to the US economic sanctions.

1. What are the legal possibilities for deferred payment of rent?

As mentioned above, Articles 227 and 229 of the Iranian Civil Code codify the "force majeure" doctrine. In essence, Articles 227 and 229 provide that a party who fails to carry out a contractual undertaking/obligation may be able to avoid such obligation if s/he/it is able to prove that his/her/its failure was due to some external causes for which s/he/it could not be held responsible for the duration for which such external causes exist. The literal text of the mentioned Articles is indeed narrower in wording, as they speak to payment of damages. In practice, however, the Judiciary has issued instructions to the judges directing them to interpret the clauses much more liberally (a liberal interpretation of the statute) such that they cover and apply to the principal obligation under the lease to pay rent. As such, legally speaking, the Judicial Branch in concert with the Executive Branch, mandated that the said Articles of the Civil Code be given a liberal interpretation and a wider scope of application (due to the public emergency of Covid19) allowing deferred payment of rent for the duration of the public emergency. The Judiciary has also instructed the judges NOT to enforce the ordinary laws applicable to "vacating rental properties" for a duration of 3 months, as of the commencement of the public health emergency on or about February 24th 2020.

The mentioned instruction has, as of this date, been extended. The foregoing has been complimented by ordinances issued under presidential Executive Action and decrees issued by Council of Ministers (rough equivalent to the "Cabinet" in western system of government) for consecutive 2-months period (which have been extended as of this date) allowing deferred payment of rent.

2. What are the legal possibilities for a rent reduction?

While, legally speaking, "rent reduction" has not been amongst the measures introduced by the central government, the overwhelming majority of landlords (some of which are large-scale landlords/owners of bigger shopping malls) have either allowed various degrees of "rent reduction" or "rent forgiveness" altogether to their respective tenants for negotiated durations of time, as the case may be. The foregoing "privately undertaken" initiative, although widely publicized and noted by state media, has not been LEGALLY mandated

and has solely been based on an unwritten moral/social responsibility doctrine and the prevailing cultural norms aimed at assisting fellow citizens. Such private initiatives and charitable actions have had a significant economic impact on keeping many businesses and needy individuals afloat during the Covid19 public health emergency coupled with the US sanctions.

3. What are the legal possibilities to amend the lease?

To date we are not aware of any legally mandated or cabinet discussions aiming at this possibility.

4. Relevant literature & case law



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Introduction

Pursuant to Circulars respectively dated March 16, 21 and 27, 2020 issued by the Ministry of Interior, operation of theaters, performance centers, concert halls, wedding halls, night clubs, bars, pubs, internet cafes, gaming venues, any kind of indoor areas for kids, coffee shops, cafes, tea gardens, amusement parks, pools, baths, spas, massage parlors, hair dressers, beauty salons, barber shops, sport centers and private dentist clinics has been banned and restaurants, diners and similar venues may only stay open for take-away orders and operate without serving customers within the venue.

The ban on hairdressers, beauty salons and barber shops are lifted as of May 11, 2020, provided that such venues shall comply with COVID-19 precautions and be subject to social distancing rules and other requirements. Approximately 100 out of 496 shopping malls had voluntarily stopped their operations entirely and some of the malls that remained open ceased some of their operations. As of May 11, 2020, the closed malls have been reopened and will operate in line with the abovementioned requirements provided in such Circulars.

As of June 1, except for wedding halls, theaters, performance centers, concert halls and other concert venues, the abovementioned bans have been lifted based on the announcements made by the president. Accordingly, workplaces for which the bans have been lifted are open for business, however the underlying legislation has not been made publicly available.

It is highly disputable in the doctrine whether a lessee may, under the Turkish Code of Obligations, be released of his/her payment obligation based on the principle of impossibility of obligation performance during the COVID-19 outbreak due to the impact thereof. One opinion argues that since such agreements impose only

monetary obligation on lessees, such principle may not be applied to lease agreements, whereas the opposing opinion argues that it may be applied regardless of the type of obligation. Therefore, non-payment of lease fees based on impossibility principle due to COVID-19 outbreak will be resolved by judicial authorities.

1. What are the legal possibilities for deferred payment of rent?

As a caution against the COVID-19 outbreak, The Law numbered 7226 ("The Law") has been enacted on March 26, 2020, introducing a temporary article providing that failure of payment of workplace lease fees from March 1, 2020 to June 30, 2020 shall not constitute valid basis for termination of lease agreements and/or eviction from leased properties. However, lessees shall remain liable for payment of such fees.

The Law provides another temporary article regarding postponement of hearings and relevant judicial procedures and suspension of nearly all statutory time limits and terms except for provisional injunction and etc. from March 13, 2020 to April 30, 2020. The president has the authority to extend the suspension period by 6 months. For the moment, it has been extended to June 15, 2020.

In this respect, until such suspension period is expired, it may not be possible to initiate enforcement proceedings pertaining to the abovementioned lease fees in case of non-payment thereof.

2. What are the legal possibilities for a rent reduction?

A lessee may request from the court an equitable adjustment in rent payment in accordance with impact of the COVID-19 outbreak on lease agreement. However, it must be evidenced that payment of the rental fee without an adjustment will make it unbearable for the lessee to continue to be bound by such lease agreement.

In addition, lessee must reject to pay the rental fee or pay such fee reserving the right to request adjustment, otherwise lessee shall be deemed to have forfeited such right.

Furthermore, if it is not possible to make adjustments in the rental fee for some reason, lessee may as well request termination of lease agreement. On the other hand, as per the generally accepted opinion in the doctrine that adjustment request may be made before the court solely based on the assumption that impact of COVID-19 outbreak will last for a fairly long time (i.e. not being limited with 3 or 4 months).

3. What are the legal possibilities to amend the lease?

Amendment to a lease agreement is subject to mutual agreement of the parties. However, as explained above, reduction of the rental fee may be possible by a court decision.

4. Relevant literature & case law

N/A

North-America



North – America México

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CANNIZZO

Introduction

Starting from March 30, 2020, the Mexican Government adopted several temporary measures of social distancing, health care and suspension of non-essential activities as follows: (i) On March 30, 2020, a decree was published declaring the disease epidemic caused by COVID-19 as a health emergency on grounds of force majeure; (ii) On March 31, 2020, a decree was published setting forth extraordinary actions to address such health emergency and ordering the immediate suspension of certain activities considered as non-essential; (iii)

Through a decree published on May 15, 2020, the Mexican Government added to the afore-mentioned essential activities the construction industry, mining and the manufacture of transportation equipment allowing such activities to start operating from June 1st, subject to certain conditions. The term for the suspension of the non-essential activities was originally set at April 30, 2020, but through a decree published on April 21, 2020, such term was extended until May 30, 2020. and (iv) On May 14, 2020, a decree was published according to which activities will not be reactivated on May 30 but starting on June 1st, 2020, in accordance with a four-color traffic light scheme: red, orange, yellow and green, where red represents greater restrictions and green the return to all activities. From time to time, both federal and local governments inform of the color of the traffic light corresponding to the relevant entity in order to determine which activities can be reactivated at said location. It should be noted that, to date, most of the country is still on red alert.

As a consequence of the above, schools and universities, commercial premises located in shopping malls (with few exceptions of essential activities such as supermarkets and banks), movie theaters, gyms, among others, and in general non-essential professional, commercial and industrial facilities, have been forced to close and will be reactivated gradually.

Furthermore, the federal government has issued non-compulsory recommendations, such as the call to stay home, hand washing, remote greeting and sneezing etiquette and not to gather with more than 50 people. Local governments, on the state and municipal levels, have also issued additional provisions and agreements in relation to the pandemic.

1. What are the legal possibilities for deferred payment of rent?

There are no legal provisions allowing one of the parties of a lease agreement to enforce a deferral of payment of rent. Lease agreements may contain force majeure clauses but, if there is no express provision in such clauses allowing tenant to defer payment of rent in the circumstance of a pandemic or similar circumstances (which would not be a standard provision), the general concept of force majeure would not justify itself the deferred payment of the rent based on economic reasons of short cash flow or economic difficulties. It would be more efficient for the tenant to try enforcing the articles of the relevant civil code based on the impediment for using the leased premises (see 2 below) or the unforeseeability theory (see 3 below). Many landlords in Mexico are currently trying to negotiate a deferred payment of rent to avoid or minimize the possible outcome of a substantial rent reduction or non-causation of the rent arising from the

application of the civil provisions on the impediment for using the leased premises (see 2 below).

2. What are the legal possibilities for a rent reduction?

The lease of real properties is regulated by the local civil codes (one civil code per state). When an Act of God or force majeure prevents partially or totally the use of a leased property, the civil codes contain specific and, in many cases, similar provisions. For example, civil code for Mexico City provides that if due to an Act of God of force majeure, the tenant is totally prevented from using the leased property, no rent will be caused while the impediment lasts, and if it lasts more than two months, tenant may request the termination of the lease agreement (art. 2431). If the use of the leased property is only partially prevented, tenant may request the partial reduction of the rent, to be determined by experts, unless the parties choose to terminate the contract, if the impediment lasts two months (art. 2432). Such provisions are expressly not waivable (art. 2433).

In view of the foregoing, we consider that there is legal ground, for those tenants unable to use the leased premises, to argue that there is a cause of "force majeure" generated by COVID-19, since the Mexican authority has used this term to describe this health emergency. In addition, there is also legal ground to sustain that such cause of force majeure is actually causing an impediment to the use of those properties that are devoted to non-essential activities. Such impediment, in some cases, may be not only legal (that is, a consequence of the need to abide by the legal provisions issued by the authority) but also physical, in those cases in which the buildings, industrial facilities or shopping centers where the leased properties are located, are closed to the public and/or it is physically impossible accessing to them.

3. What are the legal possibilities to amend the lease?

A possibility to amend the lease may arise from applying the so called "unforeseeability theory" (teoría de la imprevisión) that several state civil codes have included in different ways. The purpose of such provisions is to recover the balance of the contractual obligations of the parties when, due to unpredictable and extraordinary circumstances, the obligations of one of them has become too onerous. The civil code for Mexico City, for example, provides that, when in contracts of continual performance (like the lease agreements), extraordinary events nation-wide occur, which are impossible to foresee and make the obligations of one of the parties more onerous, such party may start a legal procedure aimed at recovering the balance between the obligations of the parties (art. 1796) through requesting to the other party an amendment to the agreement. If a judge determines that the action is grounded, the defendant may choose between: 1)

amending the obligations to restore the original balance of the contract, as determined by the judge or 1) terminating the agreement (art. 1796 bis). Termination will not proceed if the plaintiff is in default with its obligations or has acted in bad faith (art. 1796 ter).

Tenants might argue, based on these rules that COVID-19 pandemic has caused general economic problems, a drop in the customers flow and other similar circumstances that could not be predicted at the time of the execution of the lease. The outcome, however, would be quite hard to foresee for several reasons, among others: (i) The terms to which the action is subject. Some civil codes include the term within which the relevant action shall be exercised. It should be revised on a case-by-case basis if the action was initiated and processed in a timely manner; (ii) The need to prove, on the part of the tenant, that its obligations became more onerous; (iii) The fact that there are very few precedents or jurisprudential criteria in this kind of cases and therefore it is hard to predict how Mexican judges would rule. In any case, tenant will not be entitled to suspend the fulfillment of its obligations and will have to wait for a final award, which might imply one to two years, depending on the defense strategy of the defendant.

Probably a fair negotiation will be the key to reach a balanced solution and avoid the recourse to legal actions, also considering that Mexican courts are currently closed and that after the lifting of the suspension their workload will be very likely substantial.

4. Relevant literature & case law

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No relevant case law available yet.

Latin-America



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Introduction

In Argentina, national Decree No. 297/2020, issued on 19 March 2020, imposed a strict lock-down, which has been slowly being relaxed since then in different ways, although it is still in force in almost all the country. The so called quarantine was originally set to be in effect until 31 March, but it has been extended several times until, at the least, 7 June. By the time the mentioned decree was enacted, in the country there were 158 infected and 3 deaths related with Covid-19, so the measure was taken at a premature stage of virus spread compared to what has happened in other countries.

In Argentina, national Decree No. 297/2020, issued on 19 March 2020, imposed a strict lock-down, which has been slowly being relaxed since then in different ways, although it is still in force in almost all the country. The so called quarantine was originally set to be in effect until 31 March, but it has been extended several times until, at the least, 7 June. By the time the mentioned decree was enacted, in the country there were 158 infected and 3 deaths related with Covid-19, so the measure was taken at a premature stage of virus spread compared to what has happened in other countries.

Among the restrictions imposed by this decree and its successive amendments the following can be mentioned:

- Prohibition of movement of persons except for the purchase of essential products. Failure to comply with this rule can result in criminal liability.
- Suspension of cultural, recreational, sports and religious events, among others.
- Suspension of the opening of shops, shopping centers and every activity requiring the presence of persons other than those supplying essential products.

While in some Provinces the measures have been made more flexible due to the absence of cases and the control of the spread of the virus, in large cities (mainly the City of Buenos Aires and the Province of Buenos Aires, areas

where the greatest number of cases are recorded) minimal changes have been made, such as the opening of certain industries and the possibility of recreational outings during weekends for one hour, dividing people according to their ID number.

1. What are the legal possibilities for deferred payment of rent?

Decree No. 320/2020, issued on 29 March, regulates the consequences that the measures decided by the government –and the economic consequences of the pandemic itself– have on existing or new leases. As the general principle contained in this rule, it establishes the suspension, until 30 September, of evictions for non-payment in cases of family housing, buildings intended for the provision of services, trade or industry of single-owners, self-employed or small and medium companies, and the suspension of time limits to enforce the existing eviction rulings for the same period.

In addition, it allows the freeze of the rent price for a period of six months, until 30 September.

2. What are the legal possibilities for a rent reduction?

With respect to the rental prices established in the contract, Decree No. 320/2020 has provided for the freezing of the rental price of the properties detailed in the previous section until 30 September, which means that the adjustments during this period of time, agreed upon contractually, will not be applied. It is important to mention that, in a country with high inflation such as Argentina, it is very common for periodic adjustments to be made to the rent price (generally, each semester). However, the decree also provides that the tenant shall start paying, as from 30 September, the accrued amounts not paid based on the suspended adjustments.

3. What are the legal possibilities to amend the lease?

Firstly, the above-mentioned decree establishes a rule of utmost importance regarding the amendment of leases, which is the automatic extension of these contracts until 30 September (in those contracts whose terms would have expired before 30 September), at the tenant's option. This provision is closely related to the measure of lock-down that implies the impossibility of moving or transporting equipment or goods.

Apart from this regulation, there are other tools in Argentine legislation that would allow renegotiation or termination of leases, applicable not only to those situations referred to in Decree No. 320/20 but also to other commercial leases that do not fall within the scope of said rule.

Some of these tools are, for example, force majeure or frustration of the purpose of the contract (mainly, when the tenant cannot use the leased property). In practical terms, an approach that has been promoted by the courts in other crisis is the so called "principle of the shared effort", by means of which the parties are expected to negotiate a way to mitigate the damages and further preserve the continuation of the contract. The rationale of this principle is that since the causes creating the difficulties for compliance, as expected at the time of entering into the contract, are not due to the parties' fault nor rely on their willingness to comply, the parties should not suffer unnecessary and avoidable harm to them. The principle of the shared effort entails the application of the duty of good faith by the parties involved, in order to preserve the validity of the agreements in situations as the current one.

4. Relevant literature & case law

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E.V. del Carril, "El covid-19 en los contratos de locación de inmuebles de oficinas o locales. ¿Caso fortuito o imprevisión?", [elDial DC2A9F](https://www.elDial.com).

T. Patrignani and M. Krause, "Efectos de la pandemia en los contratos civiles y comerciales", [elDial.com - DC2A21](https://www.elDial.com).

No relevant case law available yet.

Introduction

Like most of the countries around the world, Brazil is facing unprecedented hardship resulting from the COVID-19 pandemic. Brazil also adopted measures of social distancing and closing of public places like other countries, in order to contain the spread of the virus.

Brazil is nowadays one of the most affected countries in the world by COVID-19. A combination of political disputes between the Federal Government and the States and Municipalities, together with its vast territory, social inequality and cultural differences, has contributed to the widespread of the virus around the country.

Amidst this polarization of perspectives, the Legislative Branch is dealing with a difficult path to enact bills establishing guidelines and procedures to deal with the pandemic. A clear example is the Bill of Law 1179/20, which deals with the Emergency and Transitory Regime to Private Relationship, that was converted into Law 14.010 on June 10th. In the original Bill of Law there were provisions about urban leases, especially in relation to the possibility to evict lessees throughout the pandemic. However, upon its enactment, all such provisions were vetoed by the President.

Due to the lack of a proper legal framework to be applied specifically throughout the pandemic, both the Federal Government and State Governments have enacted regulation establishing guidelines regarding procedures, authorizations and restrictions to the performance of activities.

As a result of the discussions between Federal and State authorities, the Judiciary Branch has been called upon to play an important role in moderating disputes. Brazilian courts are daily facing disputes among parties claiming to review, adjust or terminate contracts, mostly

due to the occurrence of an unforeseeable event. And Lease Agreements are one of the most affected types of agreement during this pandemic, and one of the most discussed in Brazilian Courts.

Since the enactment of Law 8.245/91 (the so-called "Lease Law"), in spite of some critics, the lease relations have achieved a level of stability, with an adequate set of rules, as objective as possible, in terms of roles played by the parties, limits to their rights and obligations and contractual disputes resolution. Upon the COVID-19, parties faced the first relevant fact that spotlighted the inefficacy of some legal boundaries and the lack of proper solution to relevant changes that might occur throughout the term of a lease.

Opportunistic behavior, nevertheless, cannot be fostered. The incidence of Section 393 of the Brazilian Civil Code (which regulates the force majeure) is not automatic and generic and should not apply indistinctly to any contractual relationship. The proof of the impact of an unforeseeable event and the impossibility of fulfilling the contractual provision is still under the lessee's account.

The analysis of the concrete case is fundamental to observe whether or not the hypothesis is of economic-financial review or rebalancing (which must be evidenced by the lessee) or some sort of contractual exception, by force majeure. Despite Sections 18, 19 and 68, II, of Law 8.245/91 guarantees the lessees' right to review the rent due to market variation, neither of them limits or regulates the applicability of the general theories of contract performance, such as:

- The excessive onerosity theory, which allows the revision of the terms of a contract upon an event that renders the situation excessively onerous to one party;
- The unforeseeability theory, which recognizes that whenever a contractual relationship becomes disproportional due to unforeseen events, a Court may interfere to correct the situation;
- The prevalence of the principles of objective good faith, social function, preservation and balance of the contracts;

Brazilian Courts are taking into account all these theories when deciding lease related claims.

1. What are the legal possibilities for deferred payment of rent?

There is no specific regulation that would allow the deferred payment of the rent in Brazil. However, based on the applicability of the theories described above, considering the characteristics of each case, a Brazilian Court is likely to allow the deferred payment of the rent. We are recommending our clients to entertain negotiations regarding such deferred payment and, only in case the parties do not reach agreement, revert to the Courts.

2. What are the legal possibilities for a rent reduction?

The Brazilian Lease Law provides in its Chapter IV that a lessee is required to pay at least 80% (eighty percent) of the current rent value, if lessee is aiming to obtain an injunction in a Revisional Claim (a claim, whereby the lessee is entitled to review the value of the rent and have it adapted to market conditions).

However, Brazilian Courts are using the theories described above to reach different decisions, thus allowing the rent reduction whenever a party can evidence its losses due to the pandemic. Also, the type of lease agreement shall have an impact of the Court decisions. Basically, in Brazil, one should take into account (i) the Normal Commercial Lease, (ii) the Shopping Mall Lease, and (iii) the Build-to-suit Lease.

In the short period of time of the pandemic, there is already case law in Brazil determining rent reductions varying from 20% to 80% in Normal Commercial Leases. In Shopping Mall Leases, current case law also determines reductions ranging from 100% of the minimum rent to 1/3 of the minimum rent, plus reductions of other fees, such as condominium and marketing fees.

When it comes to Built-to-suit agreements, however, the situation should be different. Even though there is currently no known case law regarding these types of agreements, we are of the opinion that Courts should be less likely to grant rent reductions in these cases. But, depending on the characteristics of the case, may be amenable to grant a deferred payment.

Built-to-suit agreements are defined under Brazilian law in Section 54-A of the Lease Law, which recognizes that the rent is the remuneration for the investments of the landlord, and, therefore, cannot be reduced throughout the term of the whole agreement. In this type of agreement, applicability of the theories described above should be restricted and the possible intervention of the Courts will depend on the specific facts of the case.

3. What are the legal possibilities to amend the lease?

The Parties to any agreement may freely negotiate an amendment to the original agreement and this is also applicable to the lease agreements in Brazil. However, the interference of a Court or Arbitral Tribunal to determine changes to the performance of an agreement can only be based on the theories already described above. So, Brazilian Courts have the power to do so, and they will do so, depending on the characteristics of each specific case.

4. Relevant literature & case law 1 / 6

LAWSUIT NR.	LANDLORD	LESSEE	REQUEST	REQUEST GRANTED?	RENT REDUCTION (in %)	PERIOD OF THE RENT REDUCTION	FUTURE COMPENSATION OBLIGATION	DECISION UPON AN INJUNCTION?	TRIBUNAL	LEVEL OF JURISDICTION	LEGAL GROUND
2063701-03.2020.8.26.0000	Caca Patrimonial Ltda.	Autostar Comercial e Importadora S.A.	Suspension of rent payment	NO	N/A	N/A	N/A	YES	TJSP	2nd	Lack of requisites for the concession of an injunction
			Rent reduction Suspension of rent payment / Establishment of temporary rent	YES	50%	From april until reopening	Not specified	YES	TJSP	2nd	Present the requisites for the concession of the injunction - art. 300 of teh Code of Civil Procedure; Possibility to readequate the rent
2068208-07.2020.8.26.0000	Caca Patrimonial Ltda.	Eataly Brasil Comércio e Distribuição de Alimentos Ltda.	Rent reduction / Suspension of payment of minimum rent and of proportional rent (Shopping Mall Lease)	NO	N/A	N/A	N/A	YES	TJSP	2nd	Lack of hipossuficiency of the lessee; Activity not completely paralyzed; Possibility of termination (art. 478 of the Civil Code) or revision of the terms of the agreement (art. 479 of the Civil Code) by negotiatio
2086485-71.2020.8.26.0000	Xar Administradora e Incorporadora Ltda. e outros	Floresta de Barueri Produtos Naturais Ltda.	Suspension of rent payment / Additional reduction of minimum rent	YES	Payment only of the percentage rent (over the sales) and the condominium fees	Until the Shopping Mall reopens	N/A	YES	TJSP	2nd	Present the requisites for the concession of the injunction - art. 300 of teh Code of Civil Procedure; Possibility to readequate the rent
2069513-26.2020.8.26.0000	Companhia Metrô-Norte	Acesso - Her Jóias Eireli	Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Discounts have already been granted by landlord and partially increased by the First Level Jurisdiction Court; Need to analyze evidence to infer the situation of the parties
032996-30.2020.8.26.0100	Horácio Sabino Coimbra - Comércio e Participações Ltda.	T4F Entretenimento S.A.	Suspension of rent payment /	YES	50%	April and May	Not specified	YES	TJSP	2nd	Present the requisites for the concession of the injunction - art. 300 of teh Code of Civil Procedure; Possibility to reduce the rent

4. Relevant literature & case law 2 / 6

LAWSUIT NR.	LANDLORD	LESSEE	REQUEST	REQUEST GRANTED?	RENT REDUCTION (in %)	PERIOD OF THE RENT REDUCTION	FUTURE COMPENSATION OBLIGATION	DECISION UPON AN INJUNCTION?	TRIBUNAL	LEVEL OF JURISDICTION	LEGAL GROUND
2060555-51.2020.8.26.0000	Shopping Buriti Mogi Empreendimento Imobiliário SPE Ltda.	Data Cafeteria Ltda. - EPP	Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Lack of the requisites for the concession of the injunction - art. 300 of teh Code of Civil Procedure; Injunction revoke
2076358-74.2020.8.26.0000	Mute Participações Ltda.	F. Mota e Verreschi Assessoria de Cobrança e Serviços Ltda.	Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Lack of the requisites for the concession of the injunction - art. 300 of teh Code of Civil Procedure; Injunction revoked
1017516-15.2020.8.26.0002	Condomínio Civil do World Trade Center de São Paulo	Estok Comércio e Representações S.A. - Tok & Stock	Rent reduction	YES	50%	From April until the shops reopen	Not specified	YES	TJSP	1st	Decision does not cite any legal ground
0089376-91.2020.8.19.0001	LPA Empreendimentos Hoteleiros Ltda.	Jorge Antonio Salvatore	Rent reduction	YES	50%	Last month paid until shops reopen	Not specified	YES	TJRJ	1st	Modification of the factual basis of the contract
0087727-91.2020.8.19.0001	5T Agroindustrial Ltda. e outros	Cláudia da Silva Almeida	Suspension of rent payment / Rent reduction	YES	50%	Not specified	NO	YES	TJRJ	1st	Present the requisites for the concession of the injunction - art. 300 of teh Code of Civil Procedure; Proof of hyposufficiency of the lessee
1004363-06.2020.8.26.0004	JKSL Participações Ltda.	Rita Gonçalves de Carval	Rent reduction	YES	80%	Initially, for 90 days	Not specified	YES	TJSP	1st	Shut down of commerce by the State Government decree; Decision does not cite any legal ground Not proven hyposufficiency of the lessee; Request excessively
0714253-79.2020.8.07.0001	José Antonio Bueno Magalhães Junior	Maria Elisa Eichler e outros	Rent reduction	NO	N/A	N/A	N/A	YES	TJDF	1st	Lack of unequivocal demonstration of impossibility to pay the rent.
2070513-61.2020.8.26.0000	Imobiliária e Construtora Novaurbe Ltda	PIRÂMIDE QUEOP'S IMÓVEIS LTDA	Suspension of rent payment / Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2ª	Lack of demonstration of contractual unbalance by virtue of force majeure.

4. Relevant literature & case law 3 / 6

LAWSUIT NR.	LANDLORD	LESSEE	REQUEST	REQUEST GRANTED?	RENT REDUCTION (in %)	PERIOD OF THE RENT REDUCTION	FUTURE COMPENSATION OBLIGATION	DECISION UPON AN INJUNCTION?	TRIBUNAL	LEVEL OF JURISDICTION	LEGAL GROUND
5013483-62.2020.4.04.0000	EMPRESA BRASILEIRA DE INFRA-ESTRUTURA AEROPORTUÁRIA - INFRAERO	L. FIOROTTO COMERCIO DE ALIMENTOS LTDA	Suspension of the concession agreement and the rent payment	NO	N/A	N/A	N/A	YES	TRF4	2nd	Need to consider the whole term of the agreement, not only a few weeks or months while the shut down is in force.
5016877-77.2020.4.04.0000	EMPRESA BRASILEIRA DE INFRA-ESTRUTURA AEROPORTUÁRIA - INFRAERO	L&B INDUSTRIA DO VESTUARIO EIRELI	Suspension of the concession agreement and the rent payment	NO	N/A	N/A	N/A	YES	TRF4	2nd	Lack of demonstration of contractual unbalance by virtue of force majeure. Need to consider the whole term of the agreement, not only a few weeks or months while the shut down is in force.
5014269-09.2020.4.04.0000	EMPRESA BRASILEIRA DE INFRA-ESTRUTURA AEROPORTUÁRIA - INFRAERO	APPLAUSE BRASIL - TECNOLOGIA TEATRAL EIRELI	Suspension of the concession agreement and the rent payment	NO	N/A	N/A	N/A	YES	TRF4	2nd	Lack of demonstration of contractual unbalance by virtue of force majeure. Need to consider the whole term of the agreement, not only a few weeks or months while the shut down is in force.
5014001-52.2020.4.04.0000	EMPRESA BRASILEIRA DE INFRA-ESTRUTURA AEROPORTUÁRIA - INFRAERO	PALHAS DA TERRA II COMERCIO DE BIJUTERIAS LTDA	Suspension of the concession agreement and the rent payment	NO	N/A	N/A	N/A	YES	TRF4	2nd	Lack of demonstration of contractual unbalance by virtue of force majeure. Need to consider the whole term of the agreement, not only a few weeks or months while the shut down is in force.
1008520-88.2020.8.26.0564	Casas Bahia Comercial Ltda.	Via Varejo S/A	Suspension of rent payment / Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	1st	Despite the fact that the COVID-19 pandemic is an unforeseeable event, the party has not demonstrated it caused excessive onerosity.
2080646-65.2020.8.26.0000	All Brás Shopping Center Ltda	MARI LUCRICIA LAURA CHOQUE 23464990800 - ME	Suspension of rent payment, or the maintenance of the percentage discount already offered by landlord throughout the period of the pandemic	PARTIALLY	60%	Until the end of the calamity state period	Not specified	YES	TJSP	2nd	Partially favorable decision to the lessee. Maintenance of the discounted granted by landlord extrajudicially until the end of the calamity period.

4. Relevant literature & case law 4 / 6

LAWSUIT NR.	LANDLORD	LESSEE	REQUEST	REQUEST GRANTED?	RENT REDUCTION (in %)	PERIOD OF THE RENT REDUCTION	FUTURE COMPENSATION OBLIGATION	DECISION UPON AN INJUNCTION?	TRIBUNAL	LEVEL OF JURISDICTION	LEGAL GROUND
2075034-49.2020.8.26.0000	ADELSON FRANCISCO COELHO	RODRIGO CÉSAR DO NASCIMENTO	Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Reconhecimento de que os reflexos econômicos da pandemia de Covid-19 não caracterizam força maior a autorizar ao Poder Judiciário que interfira em contrato livremente pactuado.
2070568-12.2020.8.26.0000	CELSON FERRAZ MORETTI	MCS Comercio Varejista de Roupas Ltda Me (Nome Fantasia: Badauê Moda Festa Campinas)	Suspension of rent payment / Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Recognition by the Court that the economic impacts of the Covid-19 pandemic do not allow the Courts to interfere in freely negotiated agreement.
2066940-15.2020.8.26.0000	LUIZ AUGUSTO FARNETTANI	Goldpac Comércio e Indústria de Plásticos Ltda.	Suspension of rent payment / Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Recognition by the Court that the economic impacts of the Covid-19 pandemic do not allow the Courts to interfere in freely negotiated agreement.
2071938-26.2020.8.26.0000	JOÃO MASSAMITSU UEDA	ITAPECERICA POINT SUPER LANCHES LTDA EPP	Suspension of rent payment / Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Recognition by the Court that the economic impacts of Covid-19 pandemic affect both parties and cannot be evaluated upon an injunctive request.
2084581-16.2020.8.26.0000	Wagner Willian Knoelle	Brand Company Publicidade e Comunicação EIRELI-EPP	Suspension of rent payment / Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	The Tribunal decided to hear the landlord before deciding the merits. The Tribunal did not grant the request after considering that the lessee was in default before the pandemic started.
1012095-57.2020.8.26.0224	SB Bonsucesso Administradora de Shoppings S. A.	BOSNICH E RODRIGUES VIAGENS E TURISMO LTDA	Suspension of rent payment / Rent reduction	NO	N/A	N/A	N/A	YES	TJSP	2nd	Force majeure applicability recognized (art. 393 of the Civil Code)

4. Relevant literature & case law 5 / 6

LAWSUIT NR.	LANDLORD	LESSEE	REQUEST	REQUEST GRANTED?	RENT REDUCTION (in %)	PERIOD OF THE RENT REDUCTION	FUTURE COMPENSATION OBLIGATION	DECISION UPON AN INJUNCTION?	TRIBUNAL	LEVEL OF JURISDICTION	LEGAL GROUND
1030378-15.2020.8.26.0100	Companhia Santa Cruz	Kfa Agencia de Viagens e Turismo Ltda - Epp	Suspension of rent payment / Rent reduction	YES	Suspension of the promotion fee and defer the payment of the minimum.	Until 31/12/2020	Não especificado	YES	TJSP	1st	Probable right to have the unforeseeability theory applied to the case. Contractual unbalance.
1010893-84.2020.8.26.0114	Administradora Shopping Parque das Bandeiras Ltda	Restaurante e Chopperia Alves & Facin Ltda Me	Suspension of rent payment	YES	Suspension of the promotion fee and defer the payment of the minimum.	Until the property remains closed	Não especificado	YES	TJSP	1st	Contractual unbalance.
1008477-94.2020.8.26.0001	Center Norte S/A Construção Empreendimentos Administração e Participação	Marisa Miyakava Wang - Epp	Suspension of rent payment / Rent reduction	PARTIALLY	50%	Until the property remains closed	Não especificado	YES	TJSP	1st	Excessive onerosity and loss of the lessee.
1019491-72.2020.8.26.0002	Multiplan Empreendimentos Imobiliários S.a	Antix Confeções Ltda. Epp	Suspension of rent payment	PARTIALLY	Suspension of the minimum rent on the promotion fund.	Until the circulation restrictions are raised.	Não especificado	YES	TJSP	1st	Excessive onerosity and loss of the lessee.
101771-97.2020.8.26.0002	Multiplan Empreendimentos Imobiliários	Tkl Comércio de Calçados Infantis e Acessórios Ltda - Epp	Suspension of rent payment / Rent reduction	YES	33%	90 days	Não especificado	YES	TJSP	1st	The existence of a Decree determining the shut down of operations.
1006230-09.2020.8.26.0562	NI - Administração e Locação de Imóveis Ltda.	Buffet Mario Kids Eireli	Suspension of rent payment / Rent reduction	YES	60%	90 days	Não especificado	YES	TJSP	1st	Excessive onerosity and loss of the lessee.
2065998-80.2020.8.26.0000	THEREZE MONTEIRO DA COSTA]	VBR GASTRONOMIA & ALIMENTOS EIRELLI	Suspension of rent payment / Rent reduction	YES	50%	60 days	Não especificado	YES	TJSP	2nd	Unforeseeability Theory.
8034833-89.2020.8.05.0001	SALVADOR NORTE SHOPPING S.A.	SINDICATO DOS LOJISTAS DO COMERCIO DO ESTADO DA BAHIA	Suspension of rent payment / Rent reduction	YES	70%	While the property remains closed	Não especificado	YES	TJBA	2nd	Onerosidade excessiva e prejuízo ao locatário.
0707596-27.2020.8.07.0000	Não especificado	Não especificado	Suspension of rent payment / Rent reduction	YES	35%	Between March and May	Não especificado	YES	TJDFT	2nd	Restrictions for the operation of lessee.
0022449-49.2020.8.19.0000	ALIANSCE SHOPPING CENTERS S. A.	REST ANMAR COMÉRCIO DE ALIMENTOS EPP	Suspension of rent payment / Rent reduction	YES	70%	Until the final decision of this case	Não especificado	YES	TJRJ	2nd	Restrictions for the operation of lessee
2081753-47.2020.8.26.0000	Caaa Patrimonial Ltda.	AUTOSTAR COMERCIAL E IMPORTADORA LTDA.	Suspension of rent payment / Rent reduction	YES	50%	While the property remains closed	Não especificado	YES	TJSP	2nd	Restrictions for the operation of lessee
2074399-68.2020.8.26.0000	Condomínio Shopping Center Piracicaba	D'colchões Comércio de Colchões Ltda	Suspension of rent payment / Rent reduction	YES	50%	60 days	Não especificado	YES	TJSP	2nd	Restrictions for the operation of lessee

4. Relevant literature & case law 6 / 6

LAWSUIT NR.	LANDLORD	LESSEE	REQUEST	REQUEST GRANTED?	RENT REDUCTION (in %)	PERIOD OF THE RENT REDUCTION	FUTURE COMPENSATION OBLIGATION	DECISION UPON AN INJUNCTION?	TRIBUNAL	LEVEL OF JURISDICTION	LEGAL GROUND
2073789-03.2020.8.26.0000	DEGNI E WESTPHALEN ADMINISTRADORA DE BENS E PARTICIPAÇÕES LTDA	VIA ROSSA PIZZARIA LTDA. - EPP	Suspension of rent payment / Rent reduction	YES	50%	120 days	Não especificado	YES	TJSP	2nd	Restrictions for the operation of lessee
2069928-09.2020.8.26.0000	AIRTON SPACASSASSI	Santana ME	Suspension of rent payment / Rent reduction	YES	50%	Not specified	Não especificado	YES	TJSP	2nd	Restrictions for the operation of lessee
2067001-70.2020.8.26.0000	Vipasa Valorização Imobiliária Paulista S.A	GIRONA MODAS EIRELI - EPP	Suspension of rent payment / Rent reduction	YES	Payment of the rent based on the percentage of the sales.	Until normal commercial activities return.	Não especificado	YES	TJSP	2nd	Restrictions for the operation of lessee
2065372-61.2020.8.26.0000	STO EMPREENDIMENTOS IMOBILIÁRIOS E PARTICIPAÇÕES S/A	FILLITY MODAS E CONFECÇÕES LTDA.	Suspension of rent payment / Rent reduction	YES	50%	Until normal commercial activities return.	Não especificado	YES	TJSP	2nd	Restrictions for the operation of lessee



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Introduction

The Costa Rican government adopted several temporary measures with social distancing and limited physical interactions being the primary focus.

The central government has adopted the following measures:

- 1. Border Shut-Down.** The borders were closed to foreign travelers that are not Costa Rican citizens or residents. People that were in the country since Dec 19th 2019 with unresolved immigrant status (tourist or in process of securing residency or working permit) have been allowed to stay in the country thru Sept 20th, 2020.
- 2. National Tourism and Cultural Sites.** National Parks, museums and other cultural activities around the country as well as beaches and other areas have been closed until the 30th of June to avoid citizens and residents or non residents with pending immigration status to not move from their community. Limited curfews are being slowly reduced but vehicle restrictions limiting the amount of vehicles on the road remain.
- 3. Non Essential Business.** Essential business was allowed to be open throughout the pandemic. Non essential business has been slowly reopening and should be fully reopened by Sept 20th 2020. Still, the industries and businesses that are open for business are required to operate at 50% capacity and in some cases at only 25%.
- 4. Large Gatherings Prohibited** without a date for easing restrictions.

1. What are the legal possibilities for deferred

There haven't been any specific provision or guidance from central government on this issue because it is a contractual issue.

Many contracts may include provisions pertaining to extreme situations or 'force majeure'. Informal and unsophisticated relationships, which are the vast majority in Costa Rica, have been addressed mainly between parties and contractual law.

In most cases, however, debts or renters that are in industries or activities that have been affected by the pandemic and it's developing economic after-math have been granted relief, usually consisting on differing payment to a later date.

In the case of loans in particular, most banks have differed payment for the months of April, May and June to a later date, usually at the end of the term.

Other larger businesses with systemic implications may receive extended relief depending on how the business is being affected our to the pandemic.

The central government provided certain additional relief for businesses which were: a) relax minimum payment requirements of insurance premiums particularly if those are tied to business and industries that have been decimated by the virus; b) relax minimum working hours for employees and dues owed to the Public Health Insurance; and c) differed payment of income and sales taxes to Dec 2020.

2. What are the legal possibilities for a rent reduction?

The Civil Code of Costa Rica does contemplate situations that go over and beyond normal conditions identified as 'force majeure' or 'acts of god'.

However, for a particular person to receive relief based on this statute, there must be a direct link between the 'act of god' and the payee's ability to make a payment.

3. What are the legal possibilities to amend the lease?

The only legal possibility to amend leases or contracts without requiring the specific consent of both parties is if a material condition of that relationship changes or if the intended purposes has been fulfilled.

Under those circumstances, however, the contractual relationship would end, not amend.

'Force Majeur' or 'Act of God' provisions could apply under the scenarios indicated above.

4. Relevant literature & case law



Latin – America Panama

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Introduction

All Economic activity, except for essential services, was partially closed in Panama on mid-March 2020. Commercial establishments could continue operating as long as “work from home” policies are adopted. Since then, the government has allowed a gradual economic re-opening according to a phased schedule of six blocks of different types of economic activities.

All Economic activity, except for essential services, was partially closed in Panama on mid-March 2020. Commercial establishments could continue operating as long as “work from home” policies are adopted. Since then, the government has allowed a gradual economic re-opening according to a phased schedule of six blocks of different types of economic activities.

So far two blocks have opened:

Block 1 (since May 13): e-commerce retail sales, mechanical workshops, technical service, industrial aquaculture, and artisanal fishing.

Block 2 (since June 1st): construction of public works, non-metallic mining, and industry. The textile, electronics and electricity sectors will also be able to resume operations. Also, parks, places of worship, and sporting facilities could reopen at 25% capacity, however, following a spike in coronavirus cases they have been closed again. Last weekend the government announce the opening of

Block 3 (non-essential wholesale & retail, professional services) for Monday the 22 of June 2020. Venues like pubs, restaurants, and theaters will not likely be allowed to open at least until July.

Commercial establishments in the opened blocks must comply with the sanitary protocols of the Ministry of Health for a safe return for workers to their workplace and inform the Ministry of Labor the names of the workers who will return to their jobs.

The partial confinement measures or lockdown have been based on gender and ID number for the whole country. Movement is restricted to a two-hour window based on gender and the last digit of everyone's ID number or passport number if an individual is not a citizen of Panama. Hours of circulation during the lockdown are intended only for essential purchases by one person per household. Lockdown measures were relaxed last week, but the government has reinstated some following a spike in coronavirus cases. The following measures are still in force:

- The provinces of Panama and Panama Oeste will return to movement restrictions based on gender and ID number, starting on June 8. For all other provinces, there is only a curfew from 7 pm to 5 am, Monday through Sunday. Normal exceptions apply for holders of permission letters (salvoconductos).
- Anyone leaving their residence must keep social distancing and wear a face masks that covers their nose and mouth. Any individual not wearing a mask is subject to possible detention and fine.
- Cultural events, festivals, visits to the beach, contact sports, or any other activity that violates social distancing are not permitted.
- Borders are still closed to travelers, and any Panamanian arriving in the country must go into a 14-day quarantine.
- Schools need to apply for an approval from the ministry of Education to impart online classes (virtual learning).

The government has increased tests and quarantine programs; however, it needs more testing in highly contaminated areas to slow its outbreak.

Protests have sprung up in the city of Panama, demanding an end to lockdown measures designed to help contain the spread of the virus.

1. What are the legal possibilities for deferred payment of rent?

In response to the evolving COVID-19 (coronavirus) outbreak and due to the loss and suspension of employment and commercial activities that has made it impossible for the tenants to comply with timely payments of the leases the government of Panama passed Executive Decree No.145 of 1 May 2020 in relation to leases, eviction procedures and related matters.

In its article 5, it provides that for as long as the declared State of National Emergency is in force and up to two months thereafter, all payments of rent, raising of rent and or penalties for the unilateral termination of a lease contract and any interest for late payment are “frozen”. It is not clear if the word “frozen” meant that payments could be deferred in any way or if the amount of the payments could not be modified during said period and therefore this will eventually have to be tested in courts. This article applies to commercial, residential, professional, industrial, or educational lease contracts.

Other relevant articles of said Executive Decree provide that:

- All eviction procedures are suspended for the time the State of National Emergency declared by the government is in force.
- The landlord that by any de facto actions or methods suspends the gas, water, electric or other services to the leased property will be penalized in accordance with law 93 of 1973.
- At the end of the specified period, the tenant that after the State of National Emergency unjustifiably refuses to pay to the landlord all deferred payments during said period will be penalized in accordance with law 93 of 1973.
- The landlord and tenant may enter into an agreement in relation to the deferred payments. Said agreement will have a duration of up to two years from the date they are registered with the pertinent government authority and will remain in force for as long as the tenant is fulfilling his obligations.

- The tenants not affected /impacted economically in their income by the State of National Emergency, that do not comply with the payments of their lease, will be penalized in accordance with Law 93 of 1973.

It is important for the tenant to recognize that rent deferral requires payment later; it does not forgive rent payment unless it is agreed with the landlord.

We would not be surprised if in actual practice many tenants are unilaterally deferring payment of rent based on their financial situation. Legal advice is highly recommended before any agreement or actions are taken by either party.

2. What are the legal possibilities for a rent reduction?

Rent reduction, as such, is not mentioned in Executive Decree 145 of 1 May 2020. A tenant economically affected by the Coronavirus Pandemic may not unilaterally reduce the rent. He only has the benefits of Executive Decree 145 mentioned above and the terms and conditions of his lease agreement.

In view of this, tenants would have to consider more general remedies, such as:

- Demand the termination of the agreement if it is excessively onerous (Civil Code art. 1161-A). Said action cannot be taken unilaterally by the affected party, it will have to be decided by a court of justice.
- Invoke Force Majeure (Articles 990 and 34d of our Civil Code). Tenant may invoke Force Majeure to be exempted temporarily from fulfilling his obligations. Any of these actions will require a thorough examination of the circumstances and merits of each case before proceeding.

3. What are the legal possibilities to amend the lease?

The amendment of the lease is possible and in fact it is recommended that both landlord and tenant communicate and share whatever economic hardship they are facing to amend the lease for their mutual benefit and to avoid possible costly legal actions. Said amendment should not violate any mandatory or public policy rule.

4. Relevant literature & case law

Executive Decree 500 of 19 March 2020
Executive Decree 145 of 1 May 2020.
Executive Decree 405 of 11 May 2020
Executive Decree 423 of 13 May 2020
Executive Decree 453 of 29 May 2020
Civil Code of Panama
No relevant case law available yet.

Asia-Pacific



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Introduction

The National Cabinet in Australia announced on 7 April 2020 that the States and Territories of Australia would implement, through State and Territory legislation and regulation, a Mandatory Code of Conduct (National Code) to provide relief to COVID 19 impacted small and medium sized commercial tenants.

The National Cabinet in Australia announced on 7 April 2020 that the States and Territories of Australia would implement, through State and Territory legislation and regulation, a Mandatory Code of Conduct (National Code) to provide relief to COVID 19 impacted small and medium sized commercial tenants.

The purpose of the National Code is to impose good faith leasing principles for application to such commercial tenancies, and seeks to share, in a proportionate, measured manner, the financial risk and cashflow impact during of the COVID-19 crisis, whilst seeking to appropriately balance the interests of tenants and landlords.

The National Cabinet in Australia is a forum created specifically to deal with the COVID-19 crisis. It comprises the Prime Minister of Australia and the leaders of each State and Territory government within Australia. It does not have formal power, but develops principles that are then expected to be implemented by each State and Territory government.

Accordingly, the National Code does not have legislative effect, and there has been some divergence across Australia in the implementation of the National Code by each State and Territory government. Despite this, the summary below sets out the National Code position as a convenient reference point for the extent to which it has been implemented by the legislation enacted by the various State and Territories.

- New South Wales (NSW) introduced the Retail and Other Commercial Leases (COVID-19) Regulation 2020 (NSW) (NSW Regulations) on 24 April 2020.

- Victoria introduced the COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic) (Victorian Act) on 24 April 2020 and the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (Vic) (Victorian Regulations) on 1 May 2020.

- The Australian Capital Territory (ACT) introduced the Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (ACT) (ACT Declaration) on 11 May 2020, supported by non-binding guidance notes (ACT Guidelines).

- South Australia introduced the COVID-19 Emergency Response Act 2020 (SA) (SA Act) on 9 April 2020 and the COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020 (SA) (SA Regulations) on 15 May 2020.

- Queensland introduced the COVID-19 Emergency Response Act 2020 (Qld) (QLD Act) on 23 April 2020 and the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Qld) (QLD Regulations) on 28 May 2020.

- Western Australia introduced the Commercial Tenancies (COVID-19 Response) Act 2020 (WA) (WA Act) on 24 April 2020 and the Commercial Tenancies (COVID-19 Response) Regulations 2020 (WA) (WA Regulations) on 29 May 2020.

- The Northern Territory and Tasmania are yet to enact implementing legislation.

Although there are differences between the National Code and the State and Territory specific legislation that has been passed to implement the National Code, a commercial tenant will generally be entitled to legislative protections if it meets the following criteria:

- the relevant tenant is a small to medium enterprise with an annual turnover of less than \$50 million per year (measured at the group level for corporate groups); and
- the relevant tenant has suffered financial distress, demonstrated by eligibility for the Australian government employment support scheme known as JobKeeper. JobKeeper is a temporary subsidy paid to businesses that have experienced a 30% fall in revenue (and have an annual turnover of less than \$1 billion), comprising a payment of \$1,500 per fortnight for each eligible employee of the relevant business. The principles contained in the National Code are also intended to apply "in spirit" to the leasing arrangements of all businesses affected by the COVID-19 pandemic regardless of whether they meet the specific eligibility criteria, but having fair regard to the size and financial structure of those businesses. However, this potentially wider application has not been carried through to the majority of State and Territory specific legislation.

1. What are the legal possibilities for deferred payment of rent?

The principles of the National Code include that landlords must offer to provide rent relief to eligible tenants, proportionate to the reduction in the tenant's turnover, during the course of the COVID-19 pandemic and a reasonable recovery period thereafter. Rent relief may extend to a 100% rent reduction and is to be comprised of rent waivers and deferrals. Alternate outcomes such as pausing or hibernating rent payments may also be used to reach commercially agreed outcomes.

The National Code acknowledges that all leases and premises are different, and that each commercial arrangement must be dealt with on a case by case basis.

Rent deferrals should be made repayable over the greater of the balance of the lease term and 24 months after the COVID-19 pandemic and a reasonable recovery period. Landlords must not impose any fees, interest or charges in relation to any agreed rent waivers and deferrals. In other words, tenants must not be left in a worse position by reason of a grant of rent relief.

State and Territory specific legislation differ from the National Code as follows:

- The NSW Regulations do not impose strict mandatory requirements for compliance with the National Code principles (although the principles are referenced in the regulations). In particular, there is no mandatory minimum repayment period for deferred rent, as required by the National Code, and the duration of any rent relief is not prescribed. If requested by either party to the lease, eligible tenants and their landlords are required to renegotiate the rent payable and other lease provisions in good faith, having regard to the economic impacts of COVID-19 and the leasing principles in the National Code.
- In Victoria, tenants must follow a prescribed process to request rent relief, which must then be offered by landlords within 14 days. It is open to the parties to agree on a rent relief package that is appropriate for the particular circumstances of the lease. The landlord's offer must take into account the reduction in the tenant's turnover, any waiver or other reduction of outgoings, whether failure to provide relief would compromise the tenant's ability to fulfil its obligations under the lease and the financial ability of the landlord to provide rent relief (including whether the landlord has been provided any relief by lenders).
- The ACT Declaration adopts the overarching principles of the National Code and places particular emphasis on landlords and tenants engaging in good faith negotiations to agree on rent relief arrangements. The ACT Declaration does not prescribe matters, outside of those contained in the National Code, to be taken into account in agreeing the amount of any rent relief. However, the ACT Guidelines indicate that the financial position of the landlord will be relevant to the level of any rent relief offered to the tenant.
- In South Australia, there is no express proportionality requirement in determining the applicable rent reduction. The parties must have regard to the economic impacts of the COVID-19 pandemic on both parties to a commercial lease, including any impact on the ability of the landlord to provide rent relief. The SA Regulations also require third parties (such as guarantors and mortgagees) to be involved in discussions about rent relief.
- In Queensland, either party to a lease may initiate rent relief negotiations and, once initiated, both parties must provide each other with supporting information relevant to the negotiations (such as financial information). Once sufficient information has been exchanged, the landlord must offer a rent relief package to the tenant within 30 days. There is no express proportionality requirement in determining the applicable rent relief. Rather, the landlord's offer must have regard to all circumstances of the lease including any reduction in the tenant's turnover, any

waiver or other reduction of outgoings, whether failure to provide relief would compromise the tenant's ability to fulfil its lease obligations, and the financial position of the landlord. Any rent deferral must provide for the deferred rent to be amortised and paid back over a period between 2 years and 3 years commencing from 1 October 2020.

- In Western Australia eligible tenants must follow a prescribed process to request rent relief and landlords must respond to the request with an offer of rent relief within 14 days (although a different time frame may be mutually agreed). The landlord's offer must be at least proportionate to the reduction in turnover experienced by the tenant. On receipt of the landlord's offer, the parties must negotiate with a view to agreeing the rent relief package in accordance with the principles set out in the WA Regulations. As a default position for deferred rent (which may be deviated from by agreement), if the rent relief comprises a rent deferral, the deferred rent must be amortised over the greater of the remaining lease term or a period not less than 2 years. Landlords must not request payment of any part of the deferred rent until the earlier of the day the emergency period ends in Western Australia (being 29 September 2020) and the expiry of the lease term (excluding any extensions).

2. What are the legal possibilities for a rent reduction?

The principles of the National Code also include that permanent rent waivers must account for at least 50% of any rent reduction (unless waived by the tenant).

Rent waivers should make up a higher proportion where the tenant would otherwise be unable to fulfil their lease obligations and having regard to the financial ability of the landlord. Any rent waivers may not be recovered by landlords.

In practice, this would operate as follows:

- a tenant experiencing a 40% decrease in turnover as a result of measures taken to deal with the COVID-19 pandemic would be entitled (in principle) to a rent reduction of 40%, with at least half of this reduction being a permanent waiver;
- if the monthly rent was \$10,000, the tenant would pay \$6,000 each month; and
- \$2,000 each month is deferred, whilst \$2,000 each month is permanently waived.

The position under the State and Territory specific legislation is as follows:

- In NSW, there is no express requirement for 50% of any rent relief to be made up of rent waivers. However, the NSW Regulations require landlords to renegotiate

the rent payable with eligible tenants in good faith, having regard to the economic impacts of COVID-19 and the leasing principles in the National Code. Whilst strict compliance with the National Code is not required, this will likely mean that 50% will provide a starting point for negotiations in practice.

- In Victoria, any rent reduction must comprise a rent waiver of at least 50%, unless otherwise agreed by the parties.
- In the ACT, there is no express requirement for 50% of rent relief to be made up of rent waivers. However, the ACT Regulations require parties to take into account the principles of the National Code in negotiating the rent payable. The ACT Government has also implemented a rates relief package, with a tiered category system indicating the level of support that will be provided to landlords who have engaged in good faith negotiations with their tenants, through a reduction in general rates payable on commercial properties with an average unimproved value of A\$2 million or below (subject to the landlord providing rent reductions to impacted tenants).
- In South Australia, there is no express requirement for 50% of rent relief to be made up of rent waivers. However, the SA Regulations require parties to take into account the principles of the National Code in negotiating the rent payable. Whilst strict compliance with the National Code is not required, this will likely mean that 50% will provide a starting point for negotiations in practice.
- In Queensland, any rent reduction must comprise a rent waiver of at least 50% of any rent reduction unless otherwise agreed.
- In Western Australia, any rent reduction must comprise a rent waiver of at least 50%. However, landlords in Western Australia are also required to provide more than 50% as a rent waiver to their tenants if the relevant landlord has the financial capacity to do so and a failure to provide more than 50% would compromise the tenant's ability to fulfil its obligations under its lease. There is no guidance as to how the assessment of the landlord's financial capacity to waive more than 50% should be conducted.

3. What are the legal possibilities to amend the lease?

Leases may be amended by agreement between the landlord and tenant, to the extent permitted under the National Code. The principles of the National Code require tenants to continue to observe the terms of their lease, subject to any agreed amendments. This is expressed as a prerequisite to the applicability of the National Code, with any material disregard of the lease by the tenant to result in forfeiture of the National Code protections.

The principles of the National Code also prohibit landlords from taking certain actions, including:

- increasing rental amounts payable by tenants;
- terminating the lease or drawing on tenant securities for the non-payment of rent; or
- requiring a tenant to pay fees, interest or charges on waived or deferred rent.

The principles of the National Code provide that tenants should be provided with the opportunity to extend the term of their lease for an equivalent period of the rent waiver and deferral period (on the existing terms and conditions).

The position under the State and Territory specific legislation differs from the National Code as follows:

- The NSW Regulations do not expressly amend eligible leases, but rather affect the enforcement of those leases by restricting almost all landlord enforcement actions (including termination, eviction, enforcement of guarantees, damages, and any other common law or statutory remedies) against eligible tenants for breaches of their lease (e.g. failure to pay rent, failure to pay outgoings or not being open for business during required hours).
- The Victorian Regulations express several obligations as forming part of eligible leases, thereby creating contractual obligations which must be observed. For example, the prohibition on rent increases, the requirement for landlords to offer extensions to lease terms equivalent to the period for which any rent is deferred, the requirement for landlords to pass on any reduction in outgoings to tenants and the prohibition on landlords charging interest, fees or charges on unpaid rent all form part of eligible leases.
- The ACT Declaration does not expressly amend eligible leases, but rather affects the enforcement of those leases by prohibiting landlords from giving a termination notice or taking other prescribed actions against tenants for prescribed breaches (i.e. failures to pay rent, outgoings or other amounts, or to operate the business during required hours), unless good faith negotiations with regard to the National Code have occurred.
- The SA Act and the SA Regulations modify the terms of eligible leases to give effect to the provisions of the SA Act and the SA Regulations. The SA Act also suspends the operation of any provisions in commercial leases that would be inconsistent with the Act (e.g. fixed rental increases) until after the expiry of the Act.

• The QLD Regulations impose certain obligations and restrictions on parties to eligible leases, but those leases are not expressly amended. Parties to an eligible lease are free to negotiate agreements that are inconsistent with the QLD Regulations. Any agreements struck between landlords and tenants prior to the commencement of the Regulations remain valid, however those agreements do not prevent either party from seeking to negotiate further rent relief under an affected lease.

• The WA Act expressly modifies the terms of eligible leases to give effect to the operation of the Act and it is not possible to exclude the WA Act from applying to those leases. The restrictions in the WA Act on landlord enforcement actions and the freeze on rent increases during the emergency period will apply as a matter of law without the need for a written variation.

Separately, if the parties reach agreement on a rent relief package, the WA Regulations provide that the changes to the lease can be formalised by way of a written variation or any other written agreement that gives effect to the rent relief. Where the parties had entered into a rent relief agreement before the WA Regulations were enacted, eligible tenants are entitled to revisit the terms of their agreements to assess whether they fall short of the benefits provided under the WA Regulations. Tenants who believe that their existing arrangements are less favourable than what might be provided under the WA Regulations are entitled to apply for rent relief following the procedure in the WA Regulations. This is likely to mean that parties may need to enter into further lease variations to document new rent relief arrangements which align more closely with the WA Regulations.


4. Relevant literature & case law
KWM alert

National Code
Click to see full article



Mandatory Code of Conduct for commercial leases:
what does it mean for you?

New South Wales
Click to see full article.



Natal Code of Conduct for commercial leases
New South Wales; mandatory regime comes into force

Victoria
Click to see full article



Victoria implements its version of the National Code for commercial leases

Australian Capital Territory
Click to see full article



Natal Code of Conduct for commercial leases
The ACT scheme arrives

South Australia
Click to see full article



South Australia introduces Regulations giving effect to the National Code of Conduct for commercial leases

Queensland
Click to see full article



Queensland implements its version of the National Code of Conduct for commercial leases

Western Australia
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Western Australia implements its version of the National Code of Conduct for commercial leases

4. Relevant literature & case law
KWM alerts

- Regulatory framework
National Cabinet Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19
Retail and Other Commercial Leases (COVID-19) Regulation 2020 (NSW)
COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic)
COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 Regulations (Vic)
Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (ACT)
COVID-19 Emergency Response Act 2020 (SA)
COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020 (SA)
Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Qld)
Commercial Tenancies (COVID-19 Response) Act 2020 (WA)
Commercial Tenancies (COVID-19 Response) Regulations 2020 (WA)

Case Law

No relevant case law available at the time of writing.



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Introduction

The first Coronavirus (Covid-19) cases were officially identified in Indonesia at the beginning of March 2020, but the Government of Indonesia (“GoI”) first took measures to prevent the spread of the virus as early as the beginning of January 2020. In accordance with Law No. 24/2007 on Disaster Response, the National Agency for Disaster Management assigned the Covid-19 crisis the status of Disaster of Special Circumstances on 28 January 2020.

A National Task Force to ensure the collaboration of various ministries and agencies from the central and sub-national levels of government through to ministries, agencies, the National Police and Military, the private sector, social institutions, and universities in fighting the further spread of the virus was created by Presidential Decree on 13 March 2020. A day later, Covid-19 was declared a “national non-natural disaster” by the President’s spokesperson; however it was only formalized on 13 April 2020 when a Presidential Decree on Determination of the Spread of the Covid-19 Disease Non-Natural Disaster as a National Disaster was issued. The President, in a media conference, urged the public to work, study, and conduct religious practices from home as of 15th March. Large crowds, activities such as taking exercise in public areas, and social gatherings, were to be avoided.

However, due to the increase in cases, the GoI realized that further restrictions were necessary. Therefore, President Joko Widodo signed a Government Regulation in lieu of Law on Large-Scale Social Restrictions and a Presidential Decree on Public Health Emergency Status on 31 March 2020. These permitted local governments to introduce Large-Scale Social Restrictions (“PSBB”), such as the closure of public places, restrictions on the use of public transport, and limitations on travel to and from the restricted regions. Separately, measures were introduced to ensure the continuation of essential business activities.

By 22 April, two provinces (DKI Jakarta and West Sumatra) and 21 cities/municipalities had imposed PSBB. In mid May 2020, there were discussions on the easing of PSBB in regions where the curve in the graph that showed the incidence of Covid-19-positive cases had ‘flattened’ (levelled out). DKI Jakarta, however, is now moving to a transitional phase, slowly allowing the resumption of social and economic activities. It appears the transition phase was driven by economic need, although the increase in the number of Covid-19-positive cases has also levelled out in DKI Jakarta due to PSBB.

The economic consequences of the Covid-19 are indeed severe. The GoI has announced an economic stimulus package of Rp 641.17 trillion (US\$43 billion) to handle the Covid-19 crisis, with funds allocated for the healthcare sector, creating social protection for the poor, introducing tax incentives and credit for businesses as well as a recovery program for the Indonesian economy, in addition to direct and indirect tax, economic stimulus, employment related, customs, and other measures. However, it is expected that more funds will be needed for economic recovery though.

As the Covid-19 situation in Indonesia is very much in a state of flux, policies enacted by either central or regional government are being adjusted or amended as circumstances demand.

1. What are the legal possibilities for deferred payment of rent? *

According to Article 1560 Indonesian Civil Code (“ICC”), one of the principal obligations of a lessee is to pay rent at the determined times. A lessee may defer payment of rent if it can be established that Covid-19 results in force majeure (“FM”). For this the lessee, as regulated by Article 1244 – 1245 ICC, will need to prove: (a) the occurrence of an unforeseen event; (b) the unforeseen event was not within its control, and (c) it acted in good faith.

In accordance with the principle of freedom of contract, the parties to a contract are free to agree on what precisely constitutes FM for the purposes of their contract, and whether it can be invoked in case of non-performance and/ or the late performance of the contract. In general, many commercial contracts governed by Indonesian law will contain an FM clause, although commercial lease contracts sometimes limit the scope of FM or even explicitly exclude the possibility to defer payment of rent.

If the contract does contain an FM clause, it will often specifically refer to 3 types of disaster (among other FM events) in line with the disaster classifications set out in Law No. 24/2007 on Disaster Response, i.e. (a) natural disaster, (b) non-natural disaster, and (c) social disaster. As regards a “non-natural disaster,” this is defined by Law No. 24/2007 as a disaster that is caused by, among other things, epidemic and plague (the categorization of “epidemic” and “plague” as non-natural disasters may be explained by the fact that the term “natural disaster” in Indonesia generally refers to disasters that are caused by extreme weather events or movements or eruptions of the Earth).

Crucially from the perspective of a party considering servicing a notice of FM, as mentioned above, Covid-19 was declared a “national non-natural disaster” on 14 March 2020. Consequently, this should afford a sound legal basis for declaring an event of FM, given that, as also mentioned above, almost all FM clauses in contracts governed by Indonesian law will often specifically cover non-natural disasters. However, we wish to note that even if the FM clauses specifically cover non-natural disasters, the three requirements described in points (a)-(c) above should still be fulfilled. Furthermore, FM is generally interpreted very narrowly by the Indonesian courts, with the defense only being allowed where performance was rendered completely impossible by the FM event.

In the case PT Pertamina (Persero) v PT Wahana Seno Utama, the Indonesian Supreme Court did conclude that the economic disruption caused by the Asian Financial Crisis in 1997/98 constituted an event of FM. However,

there have been many other decisions where the Supreme Court has applied the opposite approach, ruling that economic disruption does not constitute a ground for FM. As far as we are aware, there have so far not been any cases before an Indonesian court in which a party incurred an FM clause to delay performance of a contractual obligation (including deferral of rent payment) because of Covid-19 and/or its economic consequences.

Generally, we wish to note that Indonesian law does not adhere to a strict system of precedent and that judicial decisions at all levels primarily turn on the facts. Accordingly, it should not be assumed that even the massive difficulties that are likely to be caused by Covid-19 will be treated as coming within the scope of FM by the courts, particularly where this is not specifically provided for in an FM clause.

* Parts of this answer were earlier published in an ABNR legal update, which can be downloaded here.

2. What are the legal possibilities for a rent reduction?

Due to the Covid-19 situation, many lessees in Indonesia are prevented from enjoying their rented property, as the government ordered the closure of shops and offices.

We do not see any clear legal possibility for rent reductions under the ICC. Therefore, we view that rent reduction is only possible if both lessee and lessor can agree on an amendment to a lease to reduce the rent, which in practice may commercially take into account the FM situation.

Despite the above, one could argue – although it may be too far-fetched and unprecedented – that these government measures have resulted in a defect of the leased property. Following such line of thought, according to Article 1552 ICC, the lessor is responsible to the lessee for all the defects of the leased property, which prevent the lessee’s enjoyment of the property, even where such defects were unknown to the lessor at the conclusion of the agreement. If such defects cause damages to the lessee, the lessor must compensate for such damages. The article creates strict liability instead of liability on fault on the part of the lessor. This means that the mere presence of a defect results in the lessor’s attributable default of the contract. Accordingly, a lessor cannot claim FM.

According to Article 1381 ICC, obligations under a contract may be discharged by set off. This means that if defects of the leased property prevent the lessee’s enjoyment of the property, the lessee should in principle be entitled to set off the claim for damages against its rent obligation, provided the procedures to claim default have been followed correctly.

However, it is questionable if Covid-19 creates a defect in the meaning of Article 1552 ICC, which is rather narrow. The defect should relate to the leased property itself, not the enjoyment of property. Furthermore, commercial lease contracts sometimes explicitly exclude the possibility of a reduction in rent in the event of defect in the leased property. In any event, as far as we are aware, there have so far not been any cases before an Indonesian court in which a party claimed reduction of rent because Covid-19 constituted a defect that prevented enjoyment of the property.

3. What are the legal possibilities to amend the lease? **

A lessee could of course always try to renegotiate the lease. Should the lessor not be willing to do so, Indonesian law as a civil law jurisdiction recognizes the importance of good faith in contractual relations, as specifically provided for by Article 1338(3) ICC, which requires all contracts to be performed in good faith.

In the past, the principle of good faith has been used by the Supreme Court to mitigate the consequences of unforeseen events by amending or inserting contractual terms. For example, in a 1955 case, the Supreme Court considered the impact of currency devaluation on the amount a borrower was required to repay under a mortgage agreement that was entered into prior to the Second World War.

According to the terms of the contract, the borrower was required to repay Rp 50. However, the value of the Indonesian currency had collapsed in the intervening period. In its decision, the Supreme Court held that the principle of good faith meant that risk of currency devaluation must be borne by both parties and thus increased the amount that should be repaid by the borrower based on the prevailing price of gold as a benchmark.

More recently, in Haryo v Bank Pasar Dwimanda in 1996, the Supreme Court adjusted contractual provisions based on Article 1338(3) ICC by reducing the annual rate of interest under the contract from 39.6 percent to 15 percent. Overall, the chances of success of any attempt to avail of Article 1338(3) to amend a contract in present circumstances are likely to be low. However, as mentioned above, Indonesia's lack of a developed system of precedent means that everything will ultimately turn on the specific facts of the case.

** Parts of this answer were earlier published in an ABNR legal update, which can be downloaded [here](#).

4. Relevant literature & case law

Rahmat S.S. Soemadipradja, *Penjelasan Hukum tentang Keadaan Memaksa (Syarat-syarat Pembatalan Perjanjian yang Disebabkan Keadaan Memaksa/Force Majeure)*, Jakarta: Nasional Legal Reform Program 2010

Retnowulan Sutantio & Iskandar Oeripkartawinata, *Hukum Acara Perdata (Dalam Teori Dan Praktek)*, Bandung: Mandar Maju C.V. 2009

M. Zamroni, *Penafsiran Hakim Dalam Sengketa Kontrak: Kajian Teori Dan Praktik Pengadilan*, Surabaya: Scopindo Media Pustaka 2020

Supreme Court Decision No. 1787 K/Pdt/2005 dated 28 Mei 2008 (PT Pertamina (Persero) v PT Wahana Seno Utama)

Supreme Court Decision No. 983.1/Pdt/1991, dated 26 September 1996 (Haryo v Bank Pasar Dwimanda)



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Introduction

As countermeasure against the further spread of COVID-19, the Japanese government declared on 7 April 2020 the state of emergency initially limited to certain regions of Japan, including Tokyo; on 7 May, the scope was extended to the entire country. Following a decrease of the number of new infections confirmed, the state of emergency was lifted in 42 of the 47 prefectures on 21 May 2020 and for the remaining prefectures Kanagawa, Saitama und Chiba, the capital Tokyo and the northern island Hokkaido on 25 May 2020. The condition for the lift of the state of emergency was that the weekly number of new infections in the respective prefecture does not exceed 0.5 per 100,000 inhabitants.

The state of emergency enables the governors of the prefectures to take certain preventive measures, including the prohibition of large-scale events, the closure of public facilities (e.g. schools) or the provisional conversion of use of public facilities for public health purposes. Further, the governors are entitled to request the inhabitants to voluntarily abstain from certain activities (voluntary self-restraint, jap: "Jishuku"), i.e. to limit going out, travelling, the use of public transportation and contacts to other persons to cases absolutely necessary. Also business entities are requested to exercise self-restraint, and to implement, to the extent possible, measures contributing to the avoidance of crowds in the workplace and in public transportation, e.g. by implementing home office, flexible working hours, commuting outside peak times, etc. Certain entities, e.g. large shopping malls or departments stores, cinemas, bars etc. were requested to exercise self-restraint by temporarily closing their business. As the term „self-restraint“ indicates, none of the aforementioned measures can be enforced in a compulsory manner, and there are no legal sanctions for violations of the governor's request. Nevertheless, large parts of the

society comply with these requests since the social pressure to comply is high and violations may result in loss of reputation.

1. What are the legal possibilities for deferred payment of rent?

There is no legal right of tenants to defer their rent payments due to COVID-19. One exception is that the lessor itself has decided to provisionally close the leased facilities as a measure of voluntary self-restriction. In case of a delay with the rent payments, the lessor is entitled to request delay interests, which, following the implementation of the new Japanese Civil Code on 1 April 2020, amount to 3% annually (Paragraph 2 Article 404 Civil Code) unless otherwise stipulated in the lease agreement. Factually, in many commercial lease agreements, higher delay interests (often 14.6 %) are agreed.

In case of a failure to pay rent in spite of a warning stipulating an adequate term for the payment, the lessor is entitled to terminate the lease agreement based on Article 541 of the Civil Code, provided that the outstanding

payments substantially damage the relationship of trust between the lessor and the tenant (principally, delays of 1-2 months alone are not justifying a termination). Article 419 paragraph 3 of the Civil Code explicitly stipulates that debtors of monetary obligations, e.g. tenants with respect to their rent payments, are not entitled to refuse the performance of their obligations based on force majeure, so that even if the "self-restrain of a tenant qualified as force majeure, the tenant would not be exempted from its rent payment obligation.

If a deferral of rent payments is sought by the tenant, a mutual agreement between the tenant and the lessor needs to be reached. To ease the situation for commercial tenants under the state of emergency, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT), by letter via the real-estate and lessors' associations, issued a request to lessors on 31 March 2020 to grant to commercial tenants unable to pay their rent following income losses due to COVID-19, a deferral of their rent payments. However, this request is not legally enforceable.

On May 2020, the government has resolved a bill according to which commercial tenants may be granted subsidies covering a part of their rent payments in case their sales income has been reduced due to the COVID-19 pandemic by 50% or more in one month, or by 30% in consecutive three months, compared to the same period in the preceding year. Commercial tenants meeting these conditions principally may receive subventions covering 2/3 of their monthly rent payments, up to at maximum JPY 500,000 per month (small and middle-sized companies) or JPY 250,000 (individuals), for a time period of 6 months between June and December 2020. In the second supplementary budget adopted by the parliament on 12 June 2020, subsidies for rent payments of commercial tenants have been further increased under certain conditions up to a maximum of JPY 1 million monthly for small and middle-sized companies and JPY 500,000 monthly for individuals, available for a total period of 6 months.

2. What are the legal possibilities for a rent reduction?

The question whether a commercial tenant is entitled to request rent reductions based on COVID-19 mainly is determined based on Article 32 of the Act on Land and Building Leases as well as Article 611 of the Civil Code.

Article 32 of the Act on Land and Building Leases grants the tenant a right to request a rent reduction with effect for the future. The right to request an amendment is granted to both parties; the condition is that the rent has become inadequate because the value of the land or the building has increased or decreased due to a change of taxation or public charges, or other economic

circumstances, or based on a comparison with the rent of the buildings of a similar type in the surroundings. To this end, an income decrease of a commercial tenant due to COVID-19 will, in principle, not be sufficient to request a rent reduction based on this provision; relevant is whether the value of the leased premises, or the rent level in the surroundings, has decreased. Whether COVID-19, in the long term, will have a permanent effect on the economic situation and the real estate market will need to be closely monitored. For the time being, rent reductions based on Article 32 of the Act on Land and Building Leases may not be justified.

Paragraph 1 Article 611 Civil Code does not require that the rent has become inadequate; the provision has the following wording: "in case a part of the premises is destroyed, damaged, or cannot be used for other reasons not attributable to the tenant, the rent has to be reduced accordingly (...)". The main issue is to what extent the non-usage of commercial premises due to COVID-19 is attributable to the tenant. If the non-usage of commercial premises is not attributable to the tenant, the tenant may in principle claim rent reduction. For example, in the case the business of the tenant falls in the scope of a request of a provisional business suspension by the governor based on the state of emergency, we consider that the tenant generally has a right of rent reduction. Even if the suspension request is not legally enforceable, the compliance with the request of a public authority will not be considered as reason attributable to the tenant. On the other hand, if the tenant, as a measure of voluntary self-restraint, decides to reduce its business activities although its business does not fall in the scope of application determined by the governor, a right to request rent reduction can be denied. Important is that Article 611 does not stipulate any concrete ratio for the rent reduction so that finally, negotiations between the lessor and the tenant will be required.

3. What are the legal possibilities to amend the lease?

As stated in item 1 above, even if the COVID-19 pandemic could be considered as force majeure event, this would have no effect the rent payment obligations of the tenant. Unless the parties mutually agree on an amendment of the lease agreement, the options of the tenant are principally limited to the measures stated in items 2 and 3 above.

4. Relevant literature and case law

There are no court decisions related to the impact of COVID-19 on commercial lease agreements available yet.

Introduction

As at the time of writing, Singapore has ended its “circuit breaker” period, which was termed as such to reflect the temporary suspension of both business and social activities in the country.

As at the time of writing, Singapore has ended its “circuit breaker” period, which was termed as such to reflect the temporary suspension of both business and social activities in the country.

For a two-month period of 7 April 2020 to 1 June 2020, the Singapore government had identified a limited number of businesses as “essential service providers” which were permitted to operate while complying with statutorily-imposed social distancing measures.

Examples of essential service providers include, amongst others, supermarkets, clinics, restaurants and transportation. All other businesses that did not fall within this category were to be closed and could only operate if its employees were able to work from home. Entertainment venues such as pubs and bars were the first to shutter its doors in late March. Most retail outlets followed suit a week after in April. Within a few weeks, lights were off in shopping malls in both central shopping districts such as Orchard Road and in the suburban residential districts. The legal sector has seen a 20% to 30% surge in pandemic-related queries relating to issues of rent, employment and performance of contract obligations.

In terms of social control, the Singapore government had progressively introduced measures to restrict movement and interaction amongst people. The wide-ranging prohibitions were enacted as law under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 and impose controls in both the public and private sphere.

With the end of the “circuit breaker” period, certain restrictions continue to apply albeit with some lifting of measures. Businesses that operate in settings with lower transmission risks, such as manufacturing facilities or the financial services sector, were permitted to operate with continued safe distancing measures. Most retail outlets, however, remains closed.

1. What are the legal possibilities for deferred payment of rent?

Since the enactment of the COVID-19 (Temporary Measures) Act 2020 (“Act”), any commercial tenant that is unable to pay rent under its lease can rely on the Act to seek temporary relief from performing its payment obligations subject to certain conditions being met. This allows a commercial tenant to be temporarily relieved from paying rent for a prescribed period of 6 months (or unless otherwise extended or shortened by the Minister for Law in Singapore). For a tenant to be entitled to this statutory relief, it must serve a notification for relief on its landlord upon meeting the following conditions:-

- (a) the contract is a lease or licence of non-residential immovable property;
- (b) the contract was entered into before 25 March 2020 (unless such contract was renewed automatically);
- (c) the tenant is unable to pay rent or other money due on or after 1 February 2020; and
- (d) the tenant’s inability to pay rent or other monies must be, to a material extent, caused by the COVID-19 pandemic.

Once notice has been served, the landlord would be statutorily barred from usual self-help remedies such as setting off outstanding rent payments against the security deposits or commencing any action against the tenant. The landlord is also prohibited from unilaterally raising interest rates or from imposing new charges on delayed payments, in a bid to prevent or discourage the tenant from seeking the relief granted under the Act. The Act arose out of a need to provide temporary relief from legal action for those who were caught off-guard during this pandemic and resultantly are unable to perform their contractual obligations. It does not go so far as to extinguish the payment obligations of the tenant which remain due and payable on a later date. It also does not protect parties who have entered into new contracts after 25 March 2020, presumably as parties would have been aware of the severity of the COVID-19 pandemic.

In early June, a new amendment Bill seeking to amend the Act has also been passed which allows eligible tenants to opt for a restructuring of accumulated rental arrears in equal instalments, with interest capped at 3% p.a., to allow for more time to repay arrears which has accumulated for the period of 1 February 2020 to 19 October 2020. For commercial properties, the maximum amount of arrears that can be paid in instalments is 5 months’ base rent. For industrial and office properties, the maximum amount of arrears that can be paid in instalments is 4 months’ base rent. Eligible tenants will be notified by the Inland Revenue of Singapore if they are entitled to such relief. To apply for the statutory repayment scheme, an eligible tenant must serve notice on their landlords before 19 October 2020 and start payment of the first instalment no later than 1 November 2020. The repayment of the arrears may be done over the remainder of the lease term or over the following 9 months, whichever is shorter. To ease the cashflow burden on the landlord, the Bill also provides credit reliefs to the landlords depending on whether such landlords are individuals, SMEs, or large corporate and/or REIT landlords. Such relief include extending the landlords’ loan tenure by up to the corresponding deferment period for payment of rent by their tenants, deferring both principal and interest repayments to a later date, or extending times for REITs to distribute their taxable income. As at the time of writing, the Bill has only passed its first reading in Parliament and thus the amendments to the Act are not yet in force. It is likely that the amendments to the Act will be enacted and in force sometime in June or July.

Notwithstanding the statutory reliefs that are available, the Singapore Government encourages landlords and tenants alike to continue communicating in good faith

and to work through solutions to keep businesses alive. The Ministry of Law has emphasized that “it is really in everyone’s interests to take a sensible approach, to ensure everyone comes out of this together, ready to recover.”

The relief under the Act does not extend to residential leases.

2. What are the legal possibilities for a rent reduction?

The Singapore government has introduced various statutory reliefs for tenants of a commercial property who has been badly affected by the COVID-19 pandemic. Such reliefs include a rent reduction due to the enhanced property tax rebates introduced by the Singapore government in early April or an exemption from holding over under a lease if a tenant is unable to vacate its premises due to the COVID-19 pandemic. In addition, a tenant who is classified as an eligible SME would also be entitled to additional rent relief provided by way of cash grants to be co-funded by both the Singapore government and the landlord.

The property tax rebates are granted to the landlords of commercial properties, with the expectation that the benefit of such rebates passed to the tenants in the form of rent reduction or cash payouts. Under the Act, a landlord’s failure to pass on the benefit of the property tax rebates in accordance with the Act without reasonable excuse is an offence. The extent of rebates granted depends on the sector in which these commercial properties operate. For example, premises that are used as a retail building will be able to receive an enhanced property tax rebate rate of 100% while premises that are used as an office or for an industrial purpose will be able to receive an enhanced property tax rebate rate of 30%. As such, hotels, restaurants and tourist attractions need not pay property taxes for the year of 2020 as part of the COVID-19 aid package. The Act also provides safeguards for the Tenant. It states that, with effect from 22 April 2020, if any landlord receives any remission of property tax in response to the COVID-19 pandemic, the landlord must pass the benefit of such remission to the tenant. This may be paid either as a sum of monies or set off against any rent payable by the tenant. The landlord is also not allowed to impose any conditions when passing on the benefit of the property tax rebates.

Under the new Bill, a tenant who is an SME may qualify for additional rent relief by way of cash grants. For a tenant to qualify for such cash grants, the tenant must have (i) not more than S\$100 million turnover in 2019, (ii) a substantial drop in average monthly revenue due to COVID-19 (e.g. where a tenant’s average monthly revenue from April to May 2020 on an outlet level is

reduced by 35% or more, compared to the corresponding period in 2019) and (iii) the lease agreement must have been entered into before 25 March 2020. The extent of relief granted also depends on the type of properties to which the tenancy relates. The Bill provides that upon the service of a notice of cash grant from the Inland Revenue Authority of Singapore, rent for certain prescribed periods under the lease agreements are treated as waived. In total, eligible SMEs may receive up to 4 months' waiver of base rental for qualifying commercial properties, and up to 2 months' waiver of base rental for industrial and office properties.

Lastly, for tenants who are holding over after the expiry of its lease, the Bill provides that such a tenant will be exempt from its payment obligations for holding over under the lease if it is unable to vacate business premises after the expiry of its lease due to COVID-19. Ordinarily, under standard lease terms, a tenant could be liable to pay double rent or other charges for the period after the expiry of the lease or licence, even though the failure to vacate the premises is through no fault of their own.

The Bill also provides relief to the landlords. In the event that the landlord is unable to provide the additional rental waiver, the landlord may also seek an assessment on the grounds of financial hardship. An assessor will take into consideration the annual value of the landlord's properties and the proportion of the landlord's dependence on the rental income for his livelihood. If the landlord meets the grounds of financial hardship, the assessor can halve the amount of additional rental relief that needs to be provided by the landlord. In addition, landlords who are individuals with ongoing loan repayment obligations could defer both principal and interest repayment up to 31 December 2020.

3. What are the legal possibilities to amend the lease?

Under the new Bill, a tenant would also be entitled to an extension of its rent-free fitting out periods under its lease if the tenant has engaged a contractor for its renovation and fitting works and such contractor was unable to complete its renovation and fitting out works due to COVID-19. This was intended to ameliorate the disruptions to the construction industry, which had been hit particularly hard as a large number of workforce (comprising of foreign workers) have been quarantined on a large-scale basis in Singapore. In particular, the Bill provides that a tenant may make an application to an assessor who will make a determination whether it is just and equitable in the circumstances of the case or any prescribed term in the affected contract to be varied, released or discharged. As at the time of writing, the exact scope of this relief and the assessor's powers have not been determined and the Ministry of Law has indicated that it will release more details at a later date.

Apart from statutory remedies, generally, most landlords and tenants in Singapore have not considered and allocated the risks resulting from pandemic-related events. As such, clauses which provide for a variation of the lease terms in an event like the COVID-19 pandemic are little to none, unless this had been specifically drafted in based on parties' intentions. An exception to this would be the extension of fit-out periods. In addition to the statutory relief explained above, certain commercial leases may provide that fit-out periods may be extended if the landlord has suspended or withdrawn the fit-out period and that such suspension was not attributable to the default by the tenant. In such a case, a tenant may rely on the terms of its lease without applying for statutory relief.

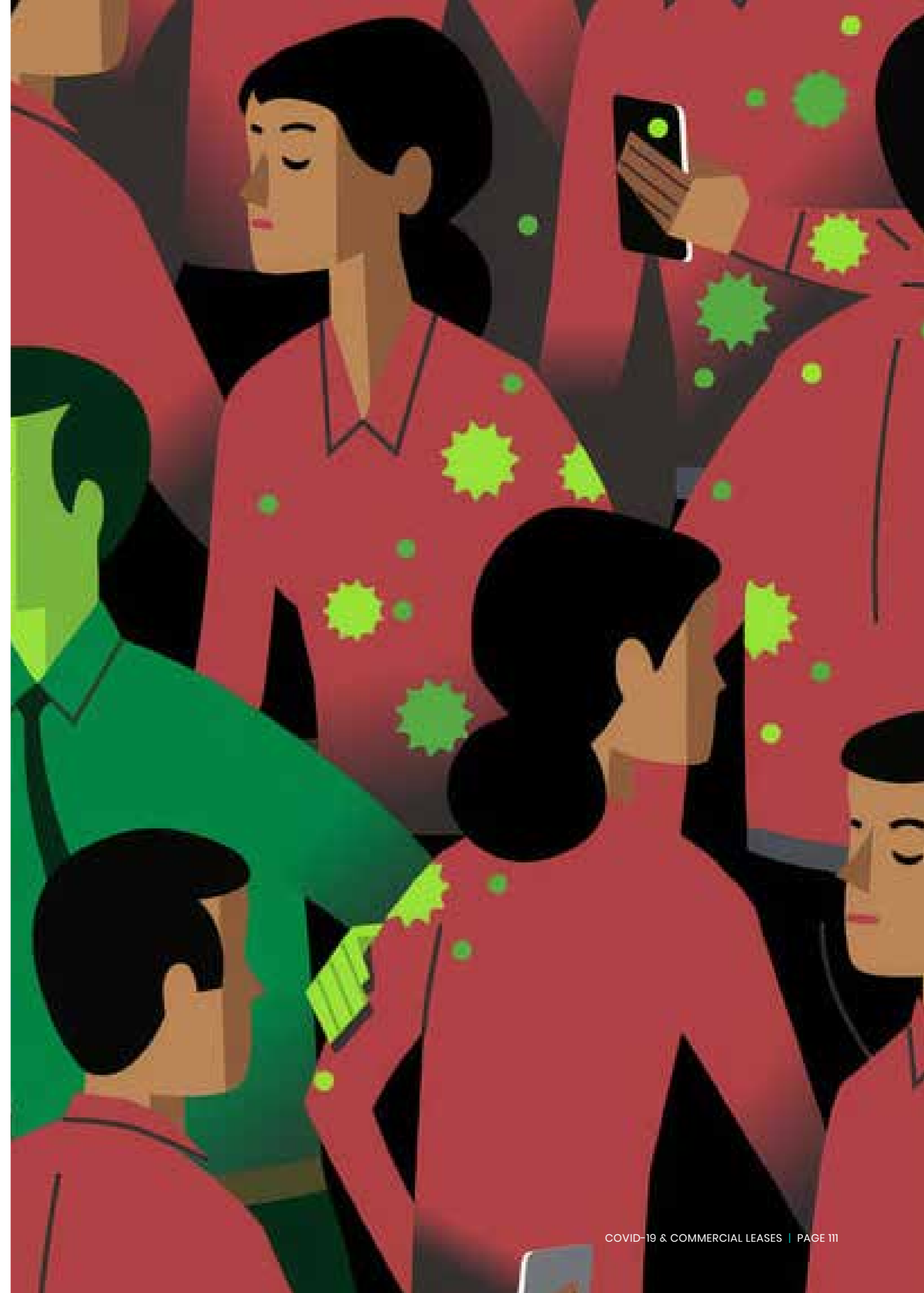
In light of this, most tenants would have to consider more general remedies found in its contract – such as force majeure clauses – or under common law – such as the doctrine of frustration. However, many standard commercial leases in Singapore do not contain force majeure clauses. If there is such a clause, a force majeure clause may only be helpful if it contains express language to provide for a variation of its contractual obligations such as an extension of time to make payments of rent. Like many other jurisdictions, there is no universal definition of what constitutes a force majeure under Singapore law. All depends on the contract.

In unprecedented times, it is expected that both the Act and contractual relief would be insufficient to keep up with the concerns of a landlord and its tenants. At present, Singapore is still in the midst of the suspension of certain business and social activities, which has resulted in a sharp decline in revenue for most tenants. While the government has introduced several measures to ease cash flow for landlords and tenants alike, it remains to be seen if there are other concerns which have yet to surface when the economy progressively opens. As such, it would be important for landlords and tenants to always maintain a cooperative relationship with an aim to allocate the risks and losses relating to the COVID-19 pandemic as and when these arise.

4. Relevant literature & case law

COVID-19 (Temporary Measures) Act 2020
COVID-19 (Temporary Measures) (Amendment) Bill (Bill No. 28/2020) passed on 5 June 2020
COVID-19 (Temporary Measures) (Control Order) Regulations 2020

As at the time of writing, there are no relevant case law available.



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KIM & CHANG

Introduction

The outbreak and rapid spread of COVID-19 brought confusion in the market economy and the society as a whole. During the period of social distancing, businesses slowed down all across the industry sectors and people's lifestyles changed. Schools were closed and the government issued temporary orders to prevent large social gatherings based on their authority vested under the Act on Infectious Disease Control and Prevention.

More specifically, certain business establishments (like bars and clubs and fitness centres) and gathering activities (like religious services and protests) were restricted or otherwise strongly discouraged during the peak of the spread of COVID-19. If any confirmed case of infection is found to have been to any business establishment, such business establishment is ordered for mandatory shut down and to undergo sterilization. Real and widespread business hardship was felt as the result.

Businesses are slowly returning to work while undertaking strict precautionary measures like asking patrons to wear masks and installing body temperature check-points before admitting patrons to their business places. Strong emphases continued to be placed on personal hygiene and social distancing.

From the legal standpoint, the outbreak of COVID-19 has raised a few immediate questions in the commercial lease market – whether the outbreak of COVID-19 would fall under a force majeure event to suspend the parties' obligations under the lease, particularly the rent payment, or otherwise trigger a statutory right to demand rent reduction. The retail tenants raised the questions first whose businesses were most immediately affected by the social distancing.

1. What are the legal possibilities for deferred payment of rent?

We do not have any laws or court precedents directly on point since the case of epidemic/pandemic on the parties' obligations in the context of commercial leases has seldom been tested. Traditional force majeure clauses may have limited applications in case of suspending or otherwise deferring tenants' obligations to pay rent and other fees due under the leases. Generally, a force majeure exemption will apply if a tenant was physically prevented from making the payment due to a bank shutdown or unavailability of the banks' wiring services caused by a force majeure event. Loss of revenue caused by epidemic/pandemic by itself may not readily trigger the force majeure exemption to suspend or defer the payment obligations by the tenants; however, since it is a case-by-case question based on the specifics of each case, we expect to find out further how the courts' view is formed over time as the actual cases from COVID-19 grow.

2. What are the legal possibilities for a rent reduction?

Korean tenants and landlords have certain statutory rights under the law (namely, the Korean Civil Act and the Commercial Building Lease Protection Act) to demand increase or reduction of rent based on substantial circumstantial changes. Based on limited court precedents available, such statutory right has been recognized in very limited and exceptional cases so far. Whether or not the overall slowdown in the

market economy caused by COVID-19 would be recognized as the justifiable cause for rent reduction under the law remains to be seen.

In more recent years, there have been a few lower court cases that recognized a cause for rent reduction based on substantial circumstantial changes. One such case was substantial drop in the sales at an airport duty-free shop caused by dramatic drop in the volume of foreign travellers to Korea due to certain political conflicts between the countries. In that case, the court recognized a cause for the rent adjustment and ruled in favor of the tenant.

So far, tenants' request for rent reduction and deferral has been dealt with by the landlords on a case-by-case basis, and there may have been only a few cases of legal actions initiated by the tenants resulting from COVID-19. We will learn more the impact the outcome

of such actions may have on the landlord-tenant relationship dynamics in the Korean leasing market in the time to come.

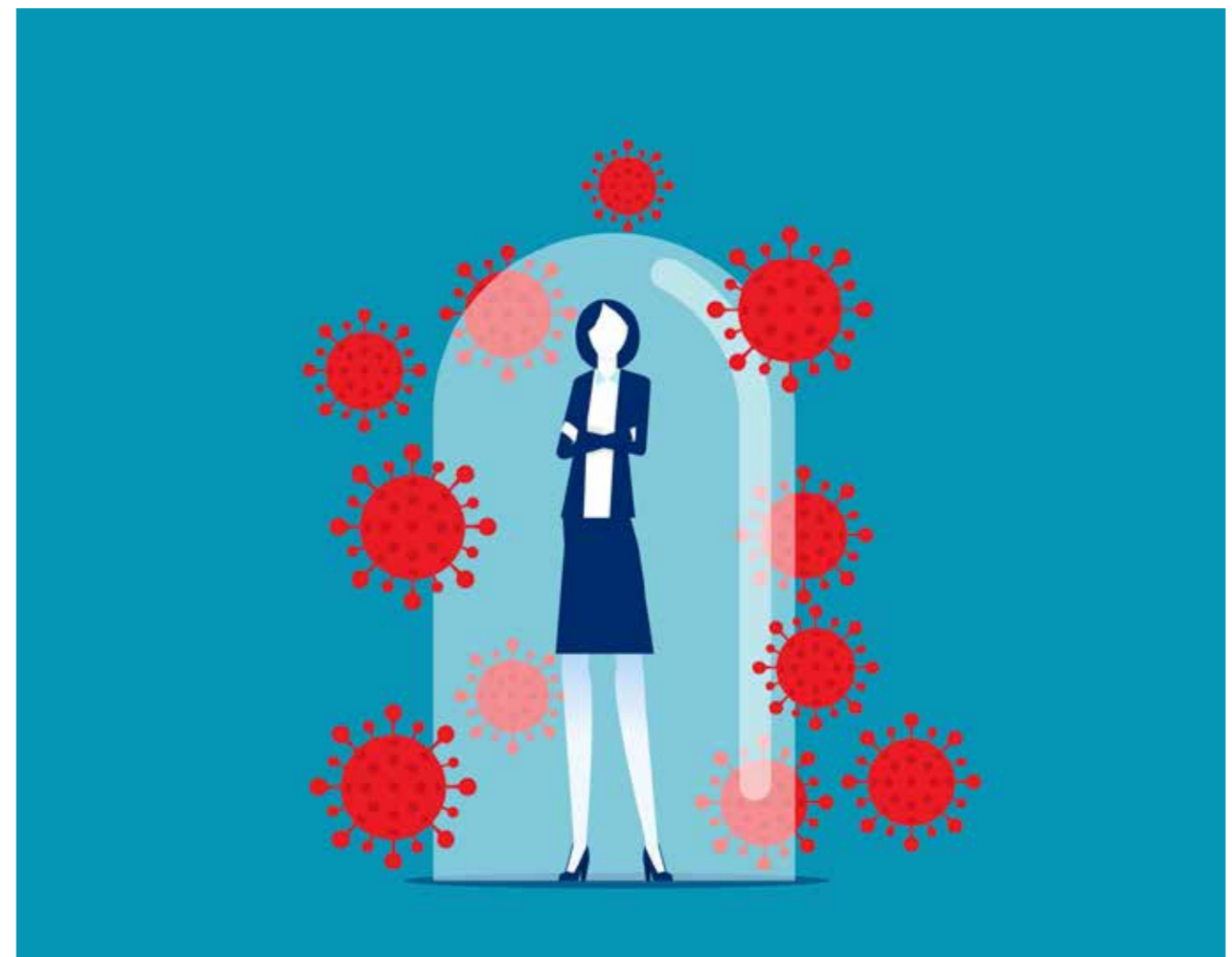
3. What are the legal possibilities to amend the lease?

Other than the statutory right for rent adjustment based on substantial circumstantial changes explained above, there is no statutory ground directly on point to demand amendments of existing lease terms and conditions.

Parallel to court cases and based on such outcome, the Korean government and the legislators may also consider and discuss any legislative amendments to protect the tenants' interests in responds to the COVID-19 crisis.

4. Relevant literature & case law

No COVID-19-specific case law available yet.



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Introduction

The coronavirus outbreak or COVID-19 pandemic in Thailand has had a tremendous effect on every unit of society. From the small individual livelihoods (e.g. taxi drivers, stall vendors or tourist guides), to giant business chains (e.g. hotels, department stores or restaurants) they have all been affected by the consequences of the pandemic. Even some governmental bodies have ceased operations to prevent the spread of the virus.

The coronavirus outbreak or COVID-19 pandemic in Thailand has had a tremendous effect on every unit of society. From the small individual livelihoods (e.g. taxi drivers, stall vendors or tourist guides), to giant business chains (e.g. hotels, department stores or restaurants) they have all been affected by the consequences of the pandemic. Even some governmental bodies have ceased operations to prevent the spread of the virus. For example, courts all over Thailand have announced a decree to postpone the examination of witnesses (in non-emergency cases) which had been scheduled to take place between 24 March 2020 and 31 May 2020. These effects have been triggered by the nature of the pandemic itself and the legal measures introduced by the government to combat it. Before 24 March 2020, Ministry of Public Health was in charge of handling the coronavirus outbreak, however following a dramatic increase in the number of cases and deaths in Thailand and other countries, the government set up a specialized body, the Centre for Covid-19 Situation Administration (CCSA), to specifically supervise the fight against the pandemic in Thailand. Following the establishment of the CCSA, the government has recommended people stay at home as much as possible. The following schemes have been enforced to prevent the spread of the virus;

- On 3 April 2020, the government ordered a nationwide curfew from 10 p.m. to 4 a.m. Subsequently, on 17 May 2020, the time of the curfew was adjusted from 11 p.m. to 4 a.m. as the number of COVID-19 cases has dropped steadily over the last few weeks.
- On 22 March 2020, the government ordered the closure of those places where people assemble or have physical contact, such as, department stores, restaurants, gyms, educational institutions, hairdressers, Thai massage shops, etc. However, following a decrease in the number of cases since the beginning of May 2020, the government has eased these measures by trialing the opening of those places under strict supervision.
- Since 26 March 2020, the government has discouraged people from travelling to other provinces. Police have played a role by screening those people traveling on the intercity roads. If anybody shows signs of having an infection or fever, police will inform the relevant authority, and such authority can order the person to put into state-quarantine for 14 days. After these measures had been rigorously enforced for approximately two months, the number of new cases per day decreased. Since the beginning of May 2020, on some days, no new cases have been reported. The CCSA reports the number of case, both inside and outside of Thailand, and also provides updates on the measures that the government is taking, every day on TV. The positive outcome which is reflected in the daily number of new cases does not come only from the measures, but it is also due to the cooperation and alertness of the people throughout.

1. What are the legal possibilities for deferred payment of rent?

With regard to a lease agreement in Thailand, the law governing the legal aspects of the lease is contained in the Civil and Commercial Code of Thailand (the “CCC”). The agreement between a landlord who operates a commercial lease as their business and the end-user is additionally governed by the Consumer Protection Act B.E. 2522 (1979).

There is no specific provision determining the legal possibilities for deferred payment of rent under any circumstance in Thailand. However, when considering the general provisions regarding contract law under the CCC, there are reasonable grounds to not pay rent to landlords during the outbreak of the COVID-19 pandemic. Section 372 of the CCC states that if the performance of an obligation becomes impossible due to a cause not attributable to either party, the debtor (in this case is the landlord) has no right to receive any counter performance. In this situation, it is impossible for most landlords, especially in those places that are ordered to remain closed, to deliver the property in a suitable condition for the purpose for which it is leased to the tenants. Pursuant to previous Supreme Court judgments, orders issued by governmental bodies can be deemed to be a cause of impossibility for a party to perform its obligations, because such schemes and orders of the government are not attributable to either party. Therefore, tenants may refer to Section 372 of the CCC to insist that the landlords have no right to receive rental payment as well. The tenant may defer or skip the payments incurred for the duration of the government shut-down order. Nevertheless, opinion on this legal issue still varies.

2. What are the legal possibilities for a rent reduction?

There is only one possibility provided under the CCC to reduce the amount of rental payment, This is set out in Section 568, which states that if the leased property is partially lost, due to no fault of the tenant, the tenant may demand that the rent be reduced in proportion to the part lost. Notwithstanding the above, there are no legal grounds for the tenant to ask for a rent reduction under Thai law due to the COVID-19 pandemic.

Rent reduction takes place only by negotiation or a benevolent landlord’s offer. The government has not yet enforced any legislation that applies to this issue.

3. What are the legal possibilities to amend the lease?

There is no provision under the CCC that mentions the amendment of the contract when the circumstances change. Thai law has adopted the Roman law’s principle of ‘*clausula rebus sic stantibus*’, but it is minimally prescribed in the CCC. There are only a few sections, Section 5, 218 and 219, which apply the legal outcome

of impossible performance. However, there is no provision that applies in the case where it becomes excessively onerous for either party (hardship) to perform its obligations and/or if it needs to renegotiate the contract. This is an Achilles’s heel of Thai law in that there is no appropriate provision to apply when the contract requires an amendment. Therefore, to amend the lease, the parties have to recommence negotiations, with a new offer and acceptance thereof, as if no contract has previously been agreed.

4. Relevant literature & case law

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Introduction

The outbreak of Covid-19 and the measures taken by the Nigerian government across all levels to curtail its spread have adversely affected businesses in Nigeria. Measures taken by the government include closing the Nigerian borders (land, air and sea), imposing travel restrictions within the country and a total lockdown in Lagos State (the commercial nerve centre of Nigeria), Ogun State (a close neighbour to Lagos State) and Abuja (the Federal Capital Territory) from March 30, 2020 to May 4, 2020. These measures have essentially affected the movement of goods and services except for essential goods (such as food and medical supplies) and essential services.

The outbreak of Covid-19 and the measures taken by the Nigerian government across all levels to curtail its spread have adversely affected businesses in Nigeria. Measures taken by the government include closing the Nigerian borders (land, air and sea), imposing travel restrictions within the country and a total lockdown in Lagos State (the commercial nerve centre of Nigeria), Ogun State (a close neighbour to Lagos State) and Abuja (the Federal Capital Territory) from March 30, 2020 to May 4, 2020. These measures have essentially affected the movement of goods and services except for essential goods (such as food and medical supplies) and essential services.

Although the total lockdown in the country's key commercial cities is now being relaxed in phases, government continue to issue guidelines on non-pharmaceutical interventions in order to curb the spread of Covid-19. Notable of those intentions are; limited opening/operating hours for markets, offices and businesses, curfew from 10pm to 4am daily (until this week the curfew hours were 8pm to 6am), complete ban on religious gatherings and activities and social distancing – significant reduction in the usual capacity of buildings and other facilities to

ensure strict adherence to the social distancing rules. These measures have disrupted businesses and resulted in loss of livelihoods, jobs or businesses, with the resultant effect that a lot of tenants (commercial and residential) are now struggling to meet their rental obligations. Sadly, the regulatory regime on this issue is grossly inadequate to provide succor to tenants who find themselves in this difficult and unfortunate situation. Whilst there have been various economic interventions from the government and its agencies with a view to easing the pain of the citizens in the wake of Covid-19, no intervention has been specifically targeted at this area.

1. What are the legal possibilities for deferred payment of rent?

Rent deferment in the context of the current circumstance is alien to Nigerian law. Therefore, notwithstanding the effect of Covid-19, tenants will generally be liable to pay their rent in full unless the relevant lease agreements provide otherwise. In our experience, lease agreements do not usually contain provisions permitting rent deferment except in limited cases where, for example, due to damage/destruction to the demised premises, same is rendered temporarily unfit for habitation.

In such instance, the relevant lease agreement may grant the tenant rent holiday during the period that the demised premises remain uninhabitable, but this will generally not benefit a tenant in the current Covid-19 circumstance.

On the basis of the foregoing, deferment of rent is unlikely to be a suitable remedy for tenants who have been adversely affected by the effect of Covid-19, and are therefore unable to pay rent. Consequently, rent deferment in the context of Covid-19 will only be possible where a landlord and its tenant mutually agree to re-negotiate the terms of the lease in order to accommodate rent deferment. Where this is done, it is important that parties capture the new understanding in a document to be executed by both parties in order to effectively change the relevant provisions of the previous agreement.

2. What are the legal possibilities for a rent reduction?

Similar to rent deferment, there are no provisions under Nigeria law which permits rent reduction in the current Covid-19 situation. Whilst there are usually rent review clauses in tenancy agreements (particularly tenancy for a long period), these clauses are usually inserted for the landlord's benefit in order to ensure that the landlord is able to obtain rent at the current market rate (for similar/comparable properties) from the sitting tenant, notwithstanding that the relevant lease agreement was signed a long time ago and the rent indicated therein may not reflect current rental value. On this basis, rent review clauses typically anticipate increase in rents, rather than reduction in rents. It is therefore unlikely that a tenant affected by the current situation can turn to a rent review clause for respite. Consequent on the foregoing, a tenant will only enjoy rent reduction if the tenant is able to enter into negotiations with the landlord for rent reduction. Again, reduced rent will need to be properly recorded and executed by both parties (particularly the landlord) in order to override the previously agreed rent.

3. What are the legal possibilities to amend the lease?

Under Nigeria law, agreements (including lease/tenancy agreement) cannot be amended unless parties agree to do so. Therefore, a tenant who is desirous of amending the provisions of a lease agreement in order to cushion the effect of Covid-19 cannot do so unilaterally. Such tenant must enter into negotiations with the landlord in order to achieve the proposed amendments. Where parties resolve to amend a lease, they should execute an addendum or other supplemental document, which would essentially capture the new understanding and effectively supplement the primary lease agreement. Where the landlord refuses to accede to the tenant's

request for amendment, the tenant may plead force majeure in order to excuse its non-performance, provided the lease agreement contains force majeure provisions and the list of force majeure events listed in the agreement include the outbreak of pandemic, epidemic (or such similar wording) or a catch-all word or phrase (which may be construed to cover such event) is used. In view of the foregoing, the extent to which force majeure can avail a tenant under the current pandemic situation is very much in doubt, as most standard simple lease agreements do not contain force majeure provisions or the scope of the events contemplated therein are usually restricted.

A tenant who is unable to benefit from the principle of force majeure due to the limitations indicated above may rely on the doctrine of frustration. In order words, the tenant may plead that the lease is frustrated as a result of Covid-19, being an intervening event so fundamental as striking the root of the agreement. The law is settled in Nigeria that the doctrine of frustration may apply to leases in rare cases. The courts typically apply very strict test in determining whether or not a lease transaction is frustrated. Thus, whether or not a lease transaction is frustrated will be a question of fact to be determined by the court based on individual cases. Therefore, tenants are advised to seek specific legal advice on the options open to them before taking any action during the current pandemic situation.

4. Relevant literature & case law

Practical Approach to Law of Real Property in Nigeria (2nd Edition) by Prof. I.O. Smith.
Nigerian Law of Contract by Prof. I.E. Sagay.
Araka vs. Monier Construction Company Limited (1978) 2 L.N.R. 60.
Mazin Engr. Ltd vs. Tower Aluminum (Nig) Ltd (1993) 5 NWLR PT. 295 526

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