

COVID-19 | In response to the Government's guidelines our London office will be closed although we will continue to operate without disruption. [Read more here.](#)

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LAYTONS^{LLP}

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COVID-19 and Commercial Leases

Given the unprecedented announcements from the Government recently, commercial landlords and tenants are now under extreme pressure, which will almost inevitably impact on the tenant's ability to pay rent and both parties' ability to comply with their covenants under the lease. We set out a brief guide to assist commercial tenants in these extremely challenging times.



Insurance

In the first instance, all tenants should check any relevant insurance and obtain a copy of any landlord's insurance policy to confirm whether the current situation allow the tenant (or the landlord) to make a claim. Some leases include a provision for suspension of rent in the event of an insured risk although these tend to apply to circumstances where the property itself is damaged.

Rent

Further to that, almost all leases will, inevitably include provisions to pay rent. If the tenant fails to pay rent, then the landlord has a number of options, including forfeiting the lease, distraining on goods (i.e. seizing them), issuing a statutory demand and/or a winding up petition or simply issuing proceedings to recover the outstanding rent plus interest and costs.

Forfeiture

Almost all commercial leases allow the landlord to forfeit the lease (which may be done by changing the locks without the need for any warning or court action) if rent is unpaid. In addition, the majority of leases prohibit the tenant from setting off (reducing) rent in relation to any breach of the lease by the landlord.

Force Majeure

In certain circumstances, a commercial lease might also allow one or other party to suspend their obligations (including rent payment) in certain specific events that are outside either party's control. These are referred to as "force majeure" events. Many leases, particularly older leases, do not include these provisions. However, if they do, then the terms of these provisions would need to be reviewed carefully to confirm whether the current situation applies and, if so, what the effect is.

Closure

In the event that the tenant is unable to remain open, the following points are potentially relevant:

Frustration

If the tenant is unable to operate it is potentially possible to argue that the lease has been "frustrated", which could allow one or other party to terminate it. However, this would be difficult to argue, particularly if the closure was only temporary and the tenant may not wish to terminate its lease.

Tenant's Obligations

The tenant may also have specific obligations to remain open although it is very difficult to predict how the landlord would be able to enforce this obligation in the current circumstances.

Landlord's Obligations

It is also possible that the landlord may be in breach of its obligations to provide services and/or access, in which case, this may form grounds for the tenant to claim damages or terminate the lease in more extreme circumstances. However, it is also

likely that the landlord's obligations are limited to events within their control.

Government Announcements

The Government has made a number of announcements, including the following, which the tenant should also look into: ·

- a Statutory Sick Pay relief package for SMEs
- a 12-month business rates holiday for all retail, hospitality and leisure businesses in England·
- small business grant funding of £10,000 for all business in receipt of small business rate relief or rural rate relief·
- grant funding of £25,000 for retail, hospitality and leisure businesses with property with a rateable value between £15,000 and £51,000
- the Coronavirus Business Interruption Loan Scheme offering loans of up to £5 million for SMEs through the British Business Bank·
- a new lending facility from the Bank of England to help support liquidity among larger firms, helping them bridge coronavirus disruption to their cash flows through loans·
- the HMRC Time To Pay Scheme

It is likely that there will be further assistance provided, particularly in the event that Government orders businesses to close, and we recommend that tenants review the position regularly.

Extra protection for businesses with ban on evictions for commercial tenants who miss rent payments

The Government has also, recently announced additional provisions in the draft Coronavirus bill, which is currently going through parliament.

These include protection for commercial tenants that are unable to pay rent due to the

Coronavirus, over the next three months.

The bill is awaiting royal ascent and will apply to 30 June 2020, with a further option to extend this period.

Commercial Negotiations

Finally, bearing in mind that there is a significant possibility that both parties may be in breach of one or more of their obligations, and assuming that neither party wishes to terminate the lease, then this would be a potential opportunity to seek to negotiate a rental reduction and/or suspension.

Please contact us If your business is faced with any of the issues raised.



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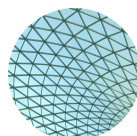
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