CMS Expert Guide to COVID-19 impact on lease agreements

Law and regulation of rental agreements in the UAE during Covid-19
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1. **Is a lessee eligible for rent reduction due to a significant decline in footfall and consequently its turnover as a result of COVID-19?**

If the rent, or at least part of it, is based on turnover (which is often the case with retail leases) then the lessee will in any event pay less rent. However, in respect of any base rent (not connected to turnover), there is unlikely to be a right for the lessee to seek a reduction under the terms of its lease, although many large commercial lessors are offering rent holidays and/or relief packages to lessees, even though there is nothing under UAE federal or local law that mandates this right. In the event that a lessee fails to pay rent, the Abu Dhabi and Dubai governments have released directives stating that there will be an exemption on evictions for two months. This means that commercial and residential lessors cannot currently forfeit leases until at least after 30 April 2020. This date may be extended.

2. **Is a lessee eligible to temporarily close its leased space - on its own initiative – and opt for rent reduction as a result of COVID-19?**

Not unless the terms of the lease expressly provide for this, which is unlikely in the UAE. If a lessee elects to close its premises of its own volition, it will likely be in breach of any keep-open covenant. Only in exceptional circumstances, however, will specific performance of “keep open” covenants be enforced, so if a lessee elects to close a store then the lessor is unlikely to obtain a Court order forcing a lessee to re-open, but the lessor may have a damages claim. It would, however, be highly unlikely that the lease would allow for a rent suspension under these circumstances.

3. **Is a lessee eligible for rent reduction in the event its leased space is closed following an order by the Government as a result of COVID-19?**

It is highly unlikely that this would be provided for in any UAE leases. There is nothing in any UAE federal or local laws providing for a rent reduction in this scenario, although rent holidays are being offered at the discretion of lessors (please see our response to the first point).

4. **What kind of security is generally provided by a tenant in connection with a lease, a bank guarantee, a deposit or otherwise?**

Rent deposits are common in the UAE, and parent company guarantees and bank guarantees to a lesser extent.

5. **Could a lessee consider other legal options, such as a lease termination, not paying rent at all or other options as a result of COVID-19?**
It currently appears unlikely that a lessee could use COVID-19 as a means to terminate its lease. However, the position is moving rapidly, and this may change in practice and/or under law. Historically, for example, the UAE Courts have interpreted force majeure as an act of God, but it only takes one successful test case with COVID-19 in the Courts, for other lessees to then successfully argue that force majeure due to COVID-19 would cause a rent suspension. Lessees should consider engaging with their lessors to attempt to work together to find a solution during this period. We understand that there has been a AED 100 billion support package launched by the UAE Central bank to support the resilience of the UAE’s economy, but it is yet to be seen whether the Government intends to specifically offer any bail out packages to lessees.

Authors

Key contacts

Geoff Smith
Partner
Dubai

Geoff Smith
Dubai