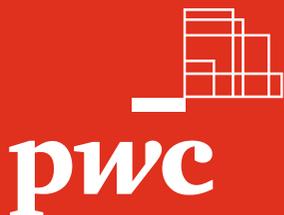


COVID-19

# Summary of Pan-European Relief Measures

February 2021



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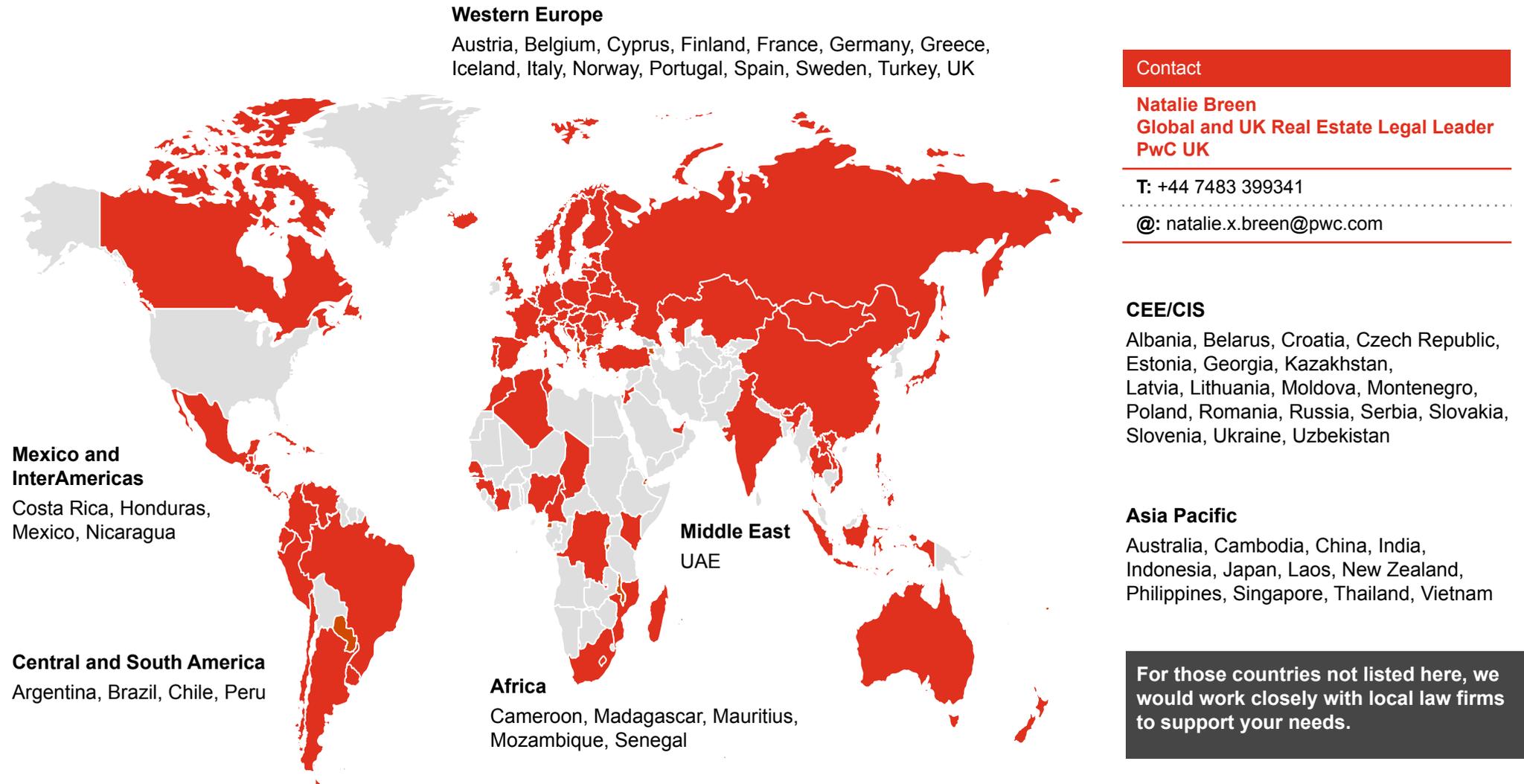


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# Austria

## Tenant Relief Measure

Currently Austria has not introduced new specific rent relief measures.

However, in the case of "extraordinary circumstances", making the premises fully or partially unusable (a concept similar to force majeure), the Austrian Civil Code already provides for rent reductions as high as 100%.

These provisions are not mandatory and, therefore, any lease agreement needs to be examined for any deviations from the Civil Code rules.

Key considerations in respect of the Civil Code are as follows:

- Currently, it is almost undisputed that COVID-19 constitutes extraordinary circumstances in the sense of the aforementioned provisions.
- However, the question whether or not, and to what extent, COVID-19 makes premises (partially) unusable is being extensively discussed.
- Subject to provisions of the specific lease agreement, the more premises are affected by the "lockdown ordinances" issued by the Ministry of Social Affairs and Health, the higher chance a lessee has for rent reductions.
- Such rent reductions need to be claimed by the lessee. Further rent payments by lessees should be subject to the condition of reclaiming, since any unconditional payments might be construed as a waiver of rent reduction claims.

Austria content as at 13 January 2021

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# Belgium

## Tenant Relief Measure

Currently Belgium has not introduced specific rent relief measures.

However there may be other remedies available, for instance:

**Force majeure** can be used to exonerate a party of its contractual liability for the duration of the event qualified as force majeure. Force majeure is generally defined as an unforeseeable and inevitable event occurring after the conclusion of a contract which renders the performance of the contractual obligations of a party to the contract impossible.

- Currently, it is almost undisputed that COVID-19 constitutes an unforeseeable and inevitable event in the sense of the aforementioned provisions.
- However, the question whether or not, respectively to what extent COVID-19 can be used to adjust, suspend or waive their payment obligations (rent and charges) is being extensively discussed. Some arguments could be used on tenants' side and the landlords' side to claim or refuse to adjust, suspend or waive the tenant's payment obligations.
- As the situation and the containment measures have no real precedent in Belgium, there is no black or white situation and there is room to argue and most likely negotiate.
- Tenants may argue:
  - The closure ordered by the government of non-essential shops and businesses which cannot comply with social distancing renders the rent payment obligation impossible for the period of the closure;
  - Lease agreements must be executed in good faith as a general principle. Requesting the payment of the rent may constitute an abuse of right by the landlord. The judge may reduce the right to its normal use and therefore grant a rent reduction (see below – Case Law);

- Even if not directly impacted by a closure measure, other measures (for example, limitations of travel, cancellation of public events) have a similar effect on the tenants' business, i.e. they render the performance of the payment obligations by the tenants impossible for the relevant period. Arguing differently would put these businesses and their stakeholders (in particular the workforce) at risk;
- Force majeure applies to payment obligations in contract based on reciprocal obligations (such as lease agreements) if the one which invokes it cannot benefit from the consideration. No application of *genera non pereunt* in this case (see below – landlords' argument).
- Landlords may argue:
  - Money being fungible, it is possible to substitute it with an equivalent (according to the principle *genera non pereunt*).
  - Difficult financial situation (even insolvency) cannot constitute force majeure even if it is linked to external circumstances (whatever their characterization may be) (application of the principle *genera non pereunt*).
  - Force majeure, does not involve a suspension of the contractual obligations for its duration but rather a postponement of these obligations (e.g. by extending the contract by an equivalent duration (shift in duration));
  - Force majeure does not aim at transferring the economic risk entirely to the landlord;
  - A tenant cannot invoke force majeure in case of default on its side.

The commercial lease act (art. 6) provides that at the end of each 3 year period, a tenant can ask the judge to **adjust the rent** provided that, due to exceptional circumstances, the rental value of the property is at least 15% lower compared to the applicable rent. The new circumstances shall have a lasting effect justifying the rent adjustment. Such request must be made by the tenant during the last 3 months of the ongoing 3 year period.

# Belgium

## Tenant Relief Measure (cont'd)

Notwithstanding any contractual provision, a judge can grant **moderate delays for payment** and suspend proceedings. In doing so, the judge shall consider the situation of the parties (a.o. the delays already granted to the debtor) and use this power with great caution (article 1244 of the Belgian Civil Code).

### Case Law

Various decisions were rendered on whether a tenant is relieved from its obligation to pay the rent during the lockdown period / period during which its business is closed down following a decision of the Belgian government:

- *Decision favourable to the tenant*: a judge ruled that a tenant was entirely relieved from paying rent during the lockdown period due to the closure measure qualified as force majeure (Justice of Peace of Etterbeek, 30 October 2020, *J.L.M.B.*, 2021, p.32);
- *Decision favourable to the lessor*: a judge ruled that the tenant was obliged to pay its rent during the lockdown period as the lessor had fulfilled its obligation to deliver the leased premises and that the tenant can not prevail himself of the force majeure against the lessor (Justice of Peace of Ixelles, 29 October 2020, *J.L.M.B.*, 2021, p.29);
- A decision held that a lessor abuses its right when it demands the payment of the rent during the lockdown period. The judge granted a rent reduction to the tenant (Justice of Peace of Brussels, 19 November 2020, *J.L.M.B.*, 2021, p.35).

The current case law is therefore not unanimous. Further, the above mentioned decisions have been issued by lower jurisdictions and higher courts may decide otherwise.

Belgium content as at 3 February 2021

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# Cyprus

## Tenant Relief Measure

Currently Cyprus has not introduced any specific rent relief measures.

However, there is some relief for tenants:

- Any eviction process was suspended (and new eviction orders were not be issued) until **30 September 2020**.
- The suspension of eviction does not affect the right of the owner to bring legal action against the tenant for the unpaid rents (the tenants remain fully liable to pay the rent during the months of March - September).
- The above only applies to premises built before 31 December 1999.
- The suspension of eviction does not apply to tenants who have defaulted payment of rents before 29 February 2020.

In addition, a tax credit may be given to a landlord, equal to 50% of the decrease of the monthly rent, which the landlord conducted voluntarily, provided that the decrease of the rent is not greater than 50% and not less than 30% of the monthly rent. This is subject to the following:

- The tax credit is for a maximum of 3 months within tax year 2020 (irrespective of the agreed months of the rent decrease).
- The decrease of rent is effected through a written agreement between the landlord and tenant.
- The tax credit is not given if the landlord and the tenant are related persons.
- The tax credit may be used against the total income tax charge of the landlord for tax year 2020.
- Any tax refund that results from the tax credit cannot exceed the amount of tax that has been paid.

Cyprus content as at 4 January 2021

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# Denmark

## Tenant Relief Measure

Currently Denmark has not introduced specific rent relief measures.

Danish law does not in general provide for any rent relief in situations similar to the Covid-19 pandemic.

However, under Danish law, an event qualified as force majeure may under certain circumstances relieve a party of its contractual liability. In general, force majeure is defined as an outside and unpredictable event that makes it impossible for a contracting party to properly fulfil its contractual obligations and which the affected party could not foresee, prevent or overcome. Although, the Danish Courts generally interpret force majeure restrictively, we consider it likely that the Covid-19 pandemic will be considered a force majeure event by the Danish Courts. There is, however, currently no case law supporting this.

The main effect of force majeure is exemption from liability, i.e. the party who fails to comply with its contractual obligations as a result of force majeure is not liable to pay damages to the other party. The party claiming force majeure has to prove that it is impossible to fulfil the contract, and that such impossibility is a result of the force majeure event.

We consider it likely that the parties to a rental agreement will be able to claim force majeure due to the Covid-19 pandemic, i.e. that it is impossible to fulfil (all) the parties' obligations under the rental agreement.

The relevant rental agreement may of course also include specific regulation covering a situation like the Covid-19 pandemic, but this is in our experience the exception rather than the rule.

Although, the Covid-19 pandemic may be considered a force majeure event; as a main rule, lack of funds is not considered force majeure (regardless of the reason), and a tenant will generally not be entitled to refuse to pay rent due to the Covid-19 pandemic. The fact that the tenant is obliged to close down its business and not use the premises (due to government orders) does not change this.

It may be considered that the tenant is entitled to terminate the rental agreement for cause due to not being able to use the premises as agreed (due to government orders). But this is highly uncertain, and a termination for cause by the tenant thus imposes a significant risk on the tenant. On the other hand, the landlord will most likely not be able to terminate for cause, due to the tenant (due to government orders) not fulfilling its contractual obligation (if any) to keep its business open.

As appears from the above, the tenant is in general not entitled to refuse to pay rent due to the Covid-19 pandemic. Also, the general legal position of the parties to a rental agreement is somewhat unclear. It is thus our clear recommendation that the parties seek to find an amicable solution, such as a reduction or postponement of rent payments during the Covid-19 pandemic, as this will in general be in the best interest of both parties.

Denmark content as at 15 January 2021

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# Estonia

## Tenant Relief Measure

### COVID-19 specific measures

By now, all COVID-19 specific measures for commercial tenancies have ended in Estonia.

Until June 2020, the lessees of shopping centers could apply for a rent compensation of up to 25% from the initial rent. The compensation was paid only if the lessor had already decreased the rent, the lessee was ordered to partially or completely close its premises (shop) due to COVID-19 and the turnover of the lessee's business had decreased by 30%.

### Force majeure

In Estonia, as well as in other jurisdictions, force majeure can be used to excuse a party of its contractual liability for the duration of the event qualified as force majeure. However, the obligation to pay money cannot generally be excused by force majeure. Thus, in a situation where an undertaking's activities have been suspended by emergency measures, it does not have the right to refuse to fulfil its financial obligations on grounds of force majeure.

### Other remedies

Although there are no COVID-19 specific measures at the moment, it is still possible to implement legal remedies. For example:

- the right to cancel the contract if there exists a reasonable excuse. An excuse is reasonable if, upon the occurrence thereof, a party who wishes to cancel cannot be presumed to continue performing the contract taking into account all the circumstances and considering the interests of both parties.
- possibility to require the other party to the contract to amend the contract in order to restore the original balance of obligations of the parties or, if this is not possible or reasonable, to terminate the contract. Such a right may arise in a situation where, the circumstances under which a contract is entered into

change after the entry into the contract and this results in a material change in the balance of the obligations of the parties. Its implementation may be particularly relevant in the case of long-term contracts, such as leases. However, there are several restrictions on the exercise of this right.

These provisions are not mandatory and, therefore, any lease agreement needs to be examined for any deviations from the law.

Estonia content as at 22 January 2021

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# Finland

## Tenant Relief Measure

Currently Finland has not introduced any generally applicable rent relief measures. Individual landlords, including pension funds and municipalities, have introduced rent relief measures.

In the case where premises are fully or partially unusable, Finnish law provides rent reductions up to 100%. However, this provision is not based on mandatory law and its applicability to COVID-19 is unclear. In extraordinary circumstances, it may be possible to modify the terms of a lease agreement by a court ruling. All lease agreements must be assessed case-by-case.

Finland content as at 7 January 2021

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# France

## Tenant Relief Measure

### Specific Covid relief

The law of 14 November 2020 authorizing the extension of the state of emergency provides for measures to protect tenants whose activities are affected by a closure or access restrictions.

As from 17 October 2020, and until the expiry of a period of two months from the date on which the activity ceases to be affected, the companies concerned may not incur financial penalties or actions against them for late or non-payment of rents or rental charges corresponding to the period during which the activity is affected. Real and personal guarantees cannot be implemented and precautionary measures are excluded.

In practice, these measures give tenants the possibility of deferring rents and charges, without the risk in particular of the lease being terminated. Tenants will nevertheless be required to pay their debts at the end of the protection period.

In addition, for the same period, tenants are protected from a reduction or suspension of the supply of electricity, gas or water in the event of non-payment of bills. They are entitled to defer payment.

Eligibility criteria are set by a decree of 30 December 2020. The scheme is reserved for companies with fewer than 250 employees (including all employees of related entities), with a turnover of less than €50 millions and a turnover loss of more than 50% for the month of November 2020.

### Rent relief

The law of December 29, 2020 grants a tax credit to lessors who agree, no later than December 31, 2021, to waive rents due for the month of November 2020.

These waivers must benefit tenants who are prohibited from receiving the public during November 2020 or who operate in a particularly affected sector and who have fewer than 5,000 employees (including all employees of related entities). The tenant must not be in difficulty on 31 December 2019 or in receivership on 1 March 2020.

The tax credit is equal to 50% of the amount waived. Where the tenant has at least 250 employees, the amount of the renunciation is withheld up to 2/3 of the rent.

### Solidarity Fund

Tenants can benefit from general aid which is aimed at any company (company, individual entrepreneur). The scheme varies depending on the month concerned, the size of the business, the sector of activity and the closures imposed, according to the criteria set by the decree of 30 March 2020, as last amended by the decree of 2 November 2020.

France content as at 4 February 2021

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# Germany

## Tenant Relief Measure

On 17/18 December 2020, German Government has strengthened the tenants' position for negotiations on lease reductions by introducing a statutory provision on the question of how government COVID-19 measures affect commercial leases. According to this newly introduced Art. 240 § 7 EGBGB, it is presumed that in the case of closures or impairments of the operation of a leased property due to governmental COVID-19 measures (according to the explanatory memorandum of the provision, these include, among others, closures, restrictions of the number of persons), material changes to the basis of the contract (*Störung der Geschäftsgrundlage*) exist. However, the explanatory memorandum clarifies that tenants are still obliged to provide evidence that maintaining the unchanged contract is unreasonable (*unzumutbar*) for them, taking into account the circumstances as a whole.

Apart from that, Germany currently has not introduced any further specific rent relief measures.

German Government has introduced blocks on termination in tenancy law due to COVID-19 Mitigation Act from 27 March 2020, in force since 01 April 2020:

- Termination of leases for payment default in the period from April 2020 to June 2020 is excluded for residential and commercial leases where the non-payment is due to the COVID-19 pandemic, but the tenant will have to evidence (glaubhaft machen) the connection. This period may be extended by statutory order until the end of September 2020.
- The regulation is initially applicable until the end of June 2022. This will give tenants some 2 years to make up for rent arrears.

- The only relief for tenants is the exclusion of the statutory special right of termination for payment default. The Act does not provide whether the tenant's payment obligation – e.g. due to closure orders – is reduced because of property defects or under the principles of *clausula rebus sic stantibus*. Mutual agreements by the parties, therefore, is recommendable.
- In view of the considerable encroachments on landlords' rights – likely affecting the ownership guarantee under Art. 14 of the German Constitution – it will be essential how they are embedded into the planned public support measures.
- Publication of COVID-19 Code of Conduct on 06 April 2020: Rules of conduct between landlords and tenants of retail properties for the duration of the COVID-19 pandemic and the subsequent restart phase; a total of 10 recommendations for action to which both parties can commit themselves.

## Back to Work Provisions

- In all COVID-19 related orders of the federal states the unavoidable gathering and accumulation for business, professional or official reasons is considered an exception to the ban on assembly.
- Specific infection protection and hygiene standards for retail and gastronomy as a model for back to work measures for office.
- SARS-CoV-2 occupational safety standard of the Federal Ministry of Labour and Social Affairs to be used as guideline for employers to implement an operational measure concept for temporary additional measures to protect against SARS-CoV-2 infections:
  - **Specific technical measures:** e.g. separation of workspaces, installation of dividing walls, adjustment of cleaning intervals;

# Germany

## Back to Work Provisions (cont'd)

- **Specific organizational measures:** e.g. ensuring sufficient protective distances of at least 1.5 metres, adjustment of working time and break schedules, reporting system for suspicious cases;
- **Specific personal measures:** e.g. obligation to wear mouth-nose protection, preventive occupational medicine and protection of particularly endangered people;
- **Works canteens:** e.g. reducing seating at the tables.
- Employers are responsible for implementation of such measures.
- The scope and requirements of these measures can be adjusted at any time in the light of current developments by a committee of representatives from the health and insurance sector, the RKI, trade unions and employers' associations as well as politicians and other experts;
- Industry-specific concretisations and additions required, partially already implemented by corresponding orders of individual federal states;
- Recommendation to stay working from home, if possible.

Germany content as at 15 January 2021

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# Ireland

## Tenant Relief Measure

The Emergency Measures in the Public Interest (Covid-19) Act 20 enacted on 27 March 2020 put government measures to assist tenants of residential property on a statutory footing.

- The Act prevents the termination of residential tenancies and rent increases for an initial period of 3 months. In addition, Government will provide rent support for residential tenants struggling with rent payments due to Covid-19.
- These provisions do not act as a 'rent holiday', and the tenants will still be liable for any unpaid rent.
- A late amendment to the legislation has created uncertainty for landlords and tenants of commercial property around the ability of commercial landlords to terminate leases of commercial property. It is not clear whether the intention of the Act was to only impact residential tenancies rather than commercial tenancies as well.

**The Residential Tenancies and Valuation Act 2020** which was enacted on 1 August 2020 includes measures on rental protections including bans on evictions notices.

- This Act defines the new emergency period from 2 August 2020 to 10 January 2021. These new rental laws protect tenants economically affected by COVID-19 who have fallen into rent arrears and who are at risk of losing their tenancy. It requires landlords to notify the residential tenancies board of any proposals to terminate a tenancy for nonpayment of rent and a minimum of 90 days' notice in the Notice of Termination must be given.
- These protections also apply to licensees of student accommodation as well as tenancy dwellings.
- The Act also clarifies that commercial tenancies are not affected by the prohibition on tenancy terminations and the usual process applies for terminating commercial leases for failure to pay rent or for any other breach of covenant.

**The Residential Tenancies Act 2020** introduced temporary pauses on tenancy terminations taking effect during an Emergency Period. The legislation provides that whenever the movement of a person is restricted to within 5 kilometres of their home (i.e. when Level 5 restrictions are imposed), the temporary restriction on ending a tenancy will apply.

### Commercial rates deferral:

- All businesses were granted a waiver of commercial rates due to local authorities up to 31 December 2020. A commercial rates relief will apply for the first 3 months of 2021 for areas affected by Level 5 restrictions, with a small number of categories excepted. The excluded categories include utilities, banks, large supermarkets and certain corporates.

**A Code of Conduct between Landlords and Tenants for Commercial Rents ("the Code")** was released on 1 October 2020. The Code acknowledges the current landscape where firms are experiencing liquidity gaps and debt overhangs. The aim of the Code is to facilitate discussions between landlords and tenants impacted by Covid-19. It sets out that parties should act in good faith and in an honest and transparent manner. It lists some of the issues to consider when determining the impact of Covid-19 and public health restrictions on a business and the need for concession and also some suggested options for new arrangements. The Code will apply until 31st July 2021.

Ireland content as at 08 January 2021

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# Italy

## Tenant Relief Measure

**Law Decree no. 18 of 17 March 2020 (“Cura Italia Law Decree”)** provides for the following measures:

- Tax credit for rent equal to 60% of the rent paid in March 2020 for buildings falling under the Italian cadastral category C1 (i.e. shops and boutiques.) which were **closed** due to the lockdown measures and **regardless** of their **turnover**.
- Enforcement of evictions is suspended until 30 June 30 2020 (for both residential and non-residential buildings).
- Moratorium: payment of mortgages, leasing and loans instalments could be suspended until 30 September 2020 without additional charges, to the benefit of SMEs suffering from liquidity problems due to the Covid-19 epidemic.
- To the benefit of sports federations, sports clubs or other companies or associations with registered office (or fiscal domicile or operating headquarters) in Italy, which have public sports facilities under concession or lease agreement:
  - sport facilities rent payment is suspended until 30 June 2020. The rents will be paid by 31 July 2020 (available payment in 4 instalments);
  - possible 50% rent reduction from March to July 2020.

**Law Decree no. 23 of 8 April 2020 (“Liquidità Decree”):**

- Large companies, SMEs, entrepreneurs, professionals, or associations and companies between professionals, located in Italy and suffering the Covid-19 epidemic, may apply for **loans secured by a public guarantee to be allocated to support lease rent or lease of business rents payment**, personnel costs, investment activities, increase the working capital aimed at supporting the production facilities and the business activities located in Italy.

- Rent payment for State-owned buildings used by companies under concession or lease agreement is suspended from 1 March 2020 to 31 July 2020. The rents will be paid by 31 October 2020 (available payment by instalments).

**Law Decree no. 34 of 19 May 2020 (“Rilancio Decree”)** provides for the following measures aimed at supporting tenants:

- Tax credit for rent:
  - equal to **60%** of the paid rent for lease, leasing or other use agreements [or **30%** of the paid rent for services agreements or lease of business, both including at least one building for non-residential use] during **March, April and May 2020** [or April, May and June 2020 for seasonal tourist facilities]. Please note that the tax credit for the month of March cannot be combined with the tax credit of the Cura Italia Decree for the same month of March.
  - for **non-residential buildings** and to the benefit of entrepreneurs or professional with (i) **2019 revenues not exceeding Euro 5 MLN**; and (ii) **50% turnover reduction** compared to the same month in 2019.
  - to the benefit of **hotels and accommodations** (regardless to their turnover) and to the benefit of **non-commercial entities, third sector entities or recognized religious bodies** (for their institutional buildings).
  - equal to **50%** of the rent for buildings jointly used for business and residential purposes (unless the professional owns, in the same municipality, another building for business use only).

The tax credit is exempt from taxation and may be transferred (i) by the tenant to the landlord, in exchange for a corresponding reduction in the rent or (ii) by both tenant or landlord, to credit institutions or banks (so-called “**Assignment of credit**”).

Please note that, in order to benefit from the tax credit, the rent amount must be paid in full or, if the landlord agrees to the assignment of the tax credit, net of the assigned tax credit percentage.

# Italy

## Tenant Relief Measure (cont'd)

- Hotels and accommodations are exempted to pay the property tax first instalment (“**IMU**”).
- Reduction of non-residential buildings electricity bills fixed costs on May, June and July 2020.
- Exemption from public spaces and areas occupation tax from 1 May 2020 until 31 October 2020 (“**TOSAP**” and “**COSAP**”).

**Law Decree no. 104 of 14 August 2020** provides for the following measures:

- Tax credit for rent:
  - Extended also to the month of June 2020 (and July 2020 for seasonal tourist facilities).
- Hotels, accommodations, cinemas, theaters, concert halls, discos, dance and nightclubs (provided that the owner of the building is the manager of the business activity) are exempted to pay the property tax second instalment (“**IMU**”).
- Moratorium: the suspension of payment of mortgages, leasing and loans instalments is extended (i) until January 31, 2021 to the benefit of SMEs; and (ii) until March 31, 2020 to the benefit of companies in the tourism sector.
- Tax credit for tourist accommodation facilities: the tax credit equal to 65% of the expenses incurred for building renovation, energy efficiency increase or purchase of furniture and furnishings to the benefit of tourist accommodation facilities (including spa and agritourism facilities) is extended for the tax period 2020 and 2021.

- Non-refundable contribution: to the benefit of stores and retail activities of sale of goods or services to the public located in municipalities (listed in the Law Decree) used to an high flow of foreign tourism, which during June 2020 have suffered a reductions in turnover of at least 2/3 compared to the month of June 2019 as a consequence of the decrease in foreign tourism due to the Covid-19 epidemic. The amount of the contribution is between a minimum of Euro 1,000.00 for individuals and 2,000.00 for companies to a maximum of Euro 150,000.00.
- Exemption from public spaces and areas occupation tax (“**TOSAP**” and “**COSAP**”) extended until December 31, 2020.

Finally, the Italian government introduced:

- the access to loans or other financing measures also to small and medium-sized enterprises with up to 499 employees;
- special loans for real estate investment operations in the tourism and hotel sectors and in real estate activities, with a minimum duration of 10 years and an amount greater than €500,000, with the possibility of cumulation with other forms of guarantee, including mortgages.
- tax benefits (like deductions from taxable income and/or tax credits) to support investments (carried out within year 2020 and made through capital increase transactions) in companies based in Italy or permanent establishments of companies based in EU or SEE, which have suffered a reduction in turnover linked to the COVID-19 epidemic.
- Super bonus 110%: tax credit equal to 110% of the expenses incurred from 1 July 2020 to 31 December 2021, for energy efficiency or anti-seismic interventions, photovoltaic systems installation or infrastructure for electric vehicles to the benefit of offices, stores, warehouses or companies premises located in a residential complex (i.e. a “*condominium*”), provided that the interventions are carried out by the residential complex itself.

# Italy

## Tenant Relief Measure (cont'd)

**Law Decree no. 137 of 29 October 2020** provides for the following measures:

- **Non-refundable contribution:** to the benefit of operators of the economic sectors with VAT number listed in Annex 1 to the Law Decree (such as, but not limited to, hotels, hostels, tourist villages, student accommodation, residences, campsites, restaurants, cinemas, theatres and other activities related to the management of swimming pools, trade fairs, stadiums, gyms, discotheques, entertainment centers, etc.). The contribution is paid by the Italian Tax Agency directly to the businesses' current accounts, provided that: (i) the amount of turnover for the month of April 2020 is less than 2/3 of the amount of the turnover for the month of April 2019 (taking into account the date on which the goods were supplied or the services were carried out); or (ii) regardless the decrease in the turnover, the operators listed in Annex 1 to the Law Decree have opened the VAT number starting from 1 January 2019.
- **Tax credit for rent:** extended for the months of October, November and December 2020 (regardless from the revenues amount recorded in the previous tax period), with the possibility of assignment of credit to the property owner.
- Exemption from payment of the 2020 property tax second instalment (“**IMU**”) to the benefit of operators of the economic sectors listed in Annex 1 to the Law Decree in relation to the buildings used for such activities (provided that the owner of the building is the manager of the business activity).

**Law no. 178 of 30 December 2020** provides, *inter alia*, for the following measures:

- Exemption from payment of the property tax first instalment for 2021 (“**IMU**”) to the benefit of operators of tourism and entertainment sector (such as, but not limited to, hotels, tourist villages, hostels, holiday camps, room rentals, holiday flats, bed & breakfast, residences and campsites, real estate used in connection with trade fairs or events, discotheques, dance halls, nightclubs etc.), provided that the owner of the building is the manager of the business activity.

Italy content as at 8 January 2021

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# Luxembourg

## Tenant Relief Measure

### Current law as per the civil code

- In the case where premises are fully or partially unusable or have been destroyed, Luxembourg law provides rent reductions or possibly lease termination. This provision is by extension applicable to the commercial lease and some precedents confirm the possibility to reduce the rent.
- However, its applicability to COVID-19 is unclear and especially the point to know if the administrative closure of the premises can constitute a “partial legal destruction” of the premises.

### Specific Covid relief

Two draft bills are currently being considered by Luxembourg parliament, which remain in progress:

- On transitory dispositions for the rental agreements with regard to the sanitary crisis: aiming at prohibiting the termination of the lease by the landlord in the situation where a non-payment of the rents occurred between 1 April and 30 June 2020; the residential and rural leases would be concerned.
- On the suspension of the rents of the commercial and for a professional use leases during all the state of crisis aiming at suspending for these leases the rents payment obligation during the period of the state of crisis, as well as the related prohibition for the landlord to terminate the lease for such a non-payment (these rents would have to be paid at the latest on 30 June 2021, otherwise the landlord could terminate the lease at that time).

In order to implement rent relief measures in parallel of the two draft bills currently in progress, the law of 19 December 2020 on the State revenue and budget for the financial year 2021 implemented a tax measure to induce the landlords to voluntarily reduce the rents linked to commercial leases through a tax rebate equivalent to twice the amount of the rent reduction (granted for a maximum amount of EUR 15,000).

### Force majeure

Like in many jurisdiction, force majeure can be used to exonerate a party of its contractual liability.

Force majeure is a concept included in the Luxembourg civil code (article 1148) and the case law defines it as an unforeseeable and inevitable event occurring after the conclusion of a contract which renders the performance of the contractual obligations of a party to the contract impossible. However, in Luxembourg the question of the force majeure being temporary is being discussed on a case by case basis. Also the fact that the rent is a monetary obligation can be a barrier to the force majeure because of the adage *genera non pereunt*.

Based on a first instance court decision dated 29 July 2020, the Luxembourg judge considered that the closing of shops during the Covid-19 crisis constitutes a force majeure so that the landlord is released from his obligation to enable the tenant to use the premises. As a consequence, since the landlord is not responsible for the impossibility for the tenant to use the leased premises, the tenant cannot rely on the plea of non-performance of the contractual obligation and must therefore fulfil his obligation to pay the rent.

This first case seems to indicate that the concept of force majeure for the Covid-19 crisis can not be used to waive the rent payment obligation, however, such question of whether or not, and to what extent COVID-19 can be used to adjust, suspend or waive the tenant's payment obligations (rent and charges) is still being extensively discussed and court decision from higher instance might confirm such decision.

# Luxembourg

## Tenant Relief Measure (cont.)

### Hardship clause

The Luxembourg civil code does not include any provision about the hardship clause in contracts.

However, even if this concept has been rejected by the case law for a long time, some recent precedents considered the criteria of the hardship (without recognizing it). Indeed, to verify the possibility of an hardship situation, the judges require at least a contract with reciprocal obligations and that an economic modification which could not have been predicted at the time the contract was entered into by the parties. The modifications must be significant enough to justify the modification of the contract by a judge.

Moreover, the tenant may beforehand try to renegotiate the contract with the landlord by using the obligation to execute the contract in good faith.

Finally it is impossible to draw conclusions now on the question as to whether the Luxembourg judges would consider that the hardship clause would apply to Covid.

### Other specific measures

Suspension of the forced execution of evictions ordered for residential leases until 31 March 2021.

Impossibility to increase the rents of the residential leases until 30 June 2021 (intended to be prorogated until the 31 December 2021).

More generally:

- a reform regarding residential leases with the aim in particular to better frame that sector is in progress;

- an increase of some allowances regarding energetic renovations and heating systems based on renewable energies (so called “prime house”) is ongoing; and
- a special fund to support housing development has been established in Luxembourg aiming at facilitating the public investment in the housing.

Luxembourg content as at 8 January 2021

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# Netherlands

## Tenant Relief Measures

Rent relief: Currently the Netherlands has not introduced any specific rent relief measures.

Some arrangements have been made after negotiations between sector organisations and retailers, but these are only applicable between those parties. These measures include:

- Converting quarterly rents into monthly rents;
- if necessary, retailers will be allowed postponement of payment for the months April, May and June 2020;
- retailers do not have to comply with the obligation to operate;
- remission of payment obligations will only be discussed if, after 3 months, the actual impact is clear per retailer, per lessor and / or per location separately. The way of remission of payment will be determined once the parties have determined their damages as a result of COVID-19.

Retailers without a substantial drop in turnover (at least 25%) are not entitled to these measures. In June 2020 these arrangements were supplemented with additional arrangements. The sector organisations and retailers agreed to waive 50% of the rent for the months of April and May 2020 and to carry forward the rent of June 2020 to next year. These arrangements are supported by public authorities and financial institutions.

**Contractual provisions:** Under Dutch law the (contractual) terms and conditions agreed by parties are decisive (as far as these do not conflict with mandatory law). In the Netherlands most commercial lease agreements are based on templates established by the Dutch Real Estate Council (“**ROZ**”) and the applicable general terms and conditions (“**GT&C**”). Under these GT&C a tenant is not allowed to suspend its payment obligations. In general, reduction of rent can only be claimed in the event of a defect to the leased space. Even in the event a defect occurs, the

commonly applicable GT&C rules out any claim based on a defect, unless the defect is attributable to the landlord.

Please note that this is based on the "standard" ROZ lease agreements and GT&C, but parties may agree otherwise in the lease agreement.

Legal concepts: Dutch law, also provides for some legal concepts like (i) force majeure, (ii) unforeseen circumstances and (iii) the standards of reasonableness and fairness, which may be used as a remedy (provided that the criteria are met).

**Force majeure** indicates a non-attributable impossibility to fulfil a contractual obligation. Generally, if a party (such as a tenant) would fail to perform its contractual obligations, that party may (i) be obliged to perform its obligations under the agreement anyway and (ii) may also be obliged to compensate the counterparty's loss / losses. In case the failure to perform is not attributable to that party, there may be a situation of force majeure (if so, the party invoking force majeure cannot be obliged to perform and will not be liable for losses of the other party).

**Unforeseen circumstances** are circumstances that occur after the commencement of an agreement, which circumstances were not included in the agreement. At the request of a party the court can amend the agreement or (wholly or partly) dissolve the agreement if the unforeseen circumstances are of such a nature that the other party may (taking into account the reasonableness and fairness) not expect unchanged continuation of the agreement. The court will not amend or dissolve an agreement in the case where the unforeseen circumstances where a risk remains, and instead account of the party that requested amendment or dissolution.

**The standards of reasonableness and fairness** is a concept which stipulates that a rule - such as a clause in a contract - is not applicable insofar this, given the circumstances, would be unacceptable to standards of reasonableness and fairness. Furthermore, an agreement does not only have the legal effects which parties agreed upon, but also those which arise from law, usage (common practice) or the standards of reasonableness and fairness

# Netherlands

Since the current circumstances, as a result of COVID-19, are extraordinary and unprecedented, it is unsure how judges / courts will decide in main proceedings relating to COVID-19. However, there have been a number of summary proceedings in which the courts can only take provisional measures and ruled that a court in a main proceeding may regard COVID-19 as an unforeseen circumstance. There are also some judgments in summary proceedings in which the judge took the position (i) that the corona crisis qualifies as an unforeseen circumstance and that in case a lessee cannot use the leased space due to government measures, this may also qualify as a "defect" under the lease agreement and (ii) that the lessee may be entitled to rent reduction and (iii) that it may be reasonable to share the pain between the parties since the current situation is not attributable to the lessor or the lessee. For now, it is still uncertain whether this will actually be the case in rulings of courts in main proceedings and – if so – what the consequence will be in respect of rent/payment obligations. Given this uncertainty, landlords and tenants were encouraged to discuss with each other in order to see whether they could reach a workable solution. We understand, however, that half of the tenants in the retail sector could not make such arrangements with their landlords, resulting in financial difficulties for the tenants. There are still increasing signs from the market (i) that the financial consequences as a result of COVID-19 should be shared as much as possible between parties and (ii) that the government should take measures (for example rent relief measures).

Netherlands content as at 8 January 2021

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# Norway

## Tenant Relief Measures

Currently Norway has not introduced any specific rent relief measures.

However, the government has introduced a cash benefit scheme. The government will cover a part of the fixed costs for companies that experiences a significant decrease in turnover due to Covid-19 and the following infection control measures.

### *Force majeure*

Force majeure can be used to excuse a party of its contractual liability for the duration of the event qualified as force majeure. However, the obligation to pay money cannot generally be excused by force majeure. Thus, in a situation where an undertaking's activities have been suspended by emergency measures, it does not have the right to refuse to fulfil its financial obligations on grounds of force majeure.

Norway content as at 26 January 2021

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# Poland

## Tenant Relief Measures

From 28 December 2020, partial lockdown was once again introduced in Poland, including restrictions relating to the operation of shopping centres (as a rule, from 28 December 2020 until 31 January 2021, the shopping centers shall remain closed, apart from e.g. grocery stores, stores with books and press, drugstores, pharmacies, pet stores, construction stores, etc.).

No “new” tenant relief measures have been introduced, nonetheless, along with the introduction of a ban on trade in shopping centres, the view has emerged in the public discourse that another lockdown has reinstated the applications of previously introduced tenant relief measures based on the “anti-crisis shield 1.0” adopted on 31 March 2020. However, legal experts argue about the automatic application of these measures to the following lockdowns and nothing has yet been officially clarified in this regard.

The aforementioned tenant relief measures in respect of lease agreements included:

- **Expiration of the mutual obligations of the parties to the lease agreement:** The parties to lease agreements in shopping centres with the sale area above 2,000 sqm were exempted from their obligations under the agreements. The regulation was not fully clear. However, as we understood:
  - the waiver applied to the tenants who were prohibited from conducting their activities under the regulations issued by the Minister of Health and the Council of Ministers;
  - the waiver seemed to mean, in particular, that the tenants were not obliged to pay the rent and other charges;
  - the waiver was retroactive and effective from the moment of imposing the above listed prohibitions;

- the tenants were not obliged, within 3 months from lifting the prohibitions, to submit a binding offer for prolongation of the lease for the period of prohibitions increased by 6 months;
  - the failure to submit the offer did not mean that the landlord was not bound by the waiver, and, in particular, the tenant might have been invoiced for the period of the prohibition; and
  - the landlord was not obliged to accept the offer.
- **Prolongation of the lease:** the tenants might have prolonged the lease agreements (under the existing terms and conditions) by a given period. The right to prolong might have been exercised with respect to leases which period ended at a given time at the latest and provided that the tenant was not in a default under the agreements (the “default” has been defined under the draft bill).
  - **Termination of the lease:** the landlords were prohibited from terminating the lease agreements or terminating the amount of the rent by a given period. The prohibition did not apply, in particular, if the termination was justified by the tenant's breach of the lease agreement or law provisions regulating the way of use of premises.

Poland content as at 15 January 2020

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# Portugal

## Tenant Relief Measure

Tenants are allowed not to pay the rent during the state of emergency period and in the first month thereafter.

This regime shall apply:

- To establishments open to the public for retail trade and service provision activities that are closed or have their activities suspended by legislative or administrative order, including in cases where they maintain the provision of electronic commerce activities, or the provision of services at a distance or through an electronic platform; and
- To restaurants and similar establishments, including in cases where they keep their activity for the exclusive purpose of take away or home delivery.

This regime was also extended to establishments that remained closed after the end of the state of emergency under a legal provision or administrative measure requiring the closure of premises or the suspension of activities, approved pursuant the Covid-19 pandemic. Thus, these tenants are allowed not to pay the rent during the period in which their establishments are closed or the activity is suspended until the third month thereafter provided that this occurs on or before 31 December 2020.

This regime is applicable to rents due as from 1 April 2020 until 31 December 2020.

The payment of the due rents will always have to be settled between January 2021 and the end of December 2022 at the latest.

Regarding the lessees whose establishments are closed, by legal or administrative order, since at least March 2020, and which, on 1 January 2021, still remain closed (such as bars and nightclubs) the debt settlement period begins only on January 1, 2022 and is extended until December 31, 2023. Additionally, such tenants may also request the postponement of payment of rents during the period in which their establishments are closed throughout 2021.

COVID-19 | Commercial real estate measures

PwC

If there are bank guarantees associated with lease agreements or other forms of commercial real estate exploitation, the landlord may not enforce them on the grounds of non-payment of the rent while the exceptional situation arising from the pandemic continues.

The effects of any type of termination of the lease agreements by the landlord are suspended until 30 June 2021 (except in case of breach of the agreement by the tenant).

In order to protect the retailers in shopping centres, it was established that the minimum monthly remuneration shall be reduced in proportion to the reduction in monthly turnover, up to a limit of 50% of the value of the monthly turnover when such establishments have a decrease in their monthly sales volume compared to the monthly sales volume for the same month in 2019 (or, when such is not applicable, to the average sales volume of the last six months prior to the declaration of the first state of emergency, or of a shorter period, if applicable).

This regime will be in force during the first quarter of 2021, and may be extended, by order of the Government, until June 30, 2021, if the exceptional situation of prevention, containment, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and COVID-19 disease extends beyond the first quarter of 2021.

Please note that Portugal has entered into a new lockdown on 15 January 2021, thus it is expected the present rules to be amended in the following weeks.

Portugal content as at 15 January 2021

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# Russia

## Tenant Rent Relief measure

### Current law as per the Civil Code

Russian law provides for such legal concepts as (i) unforeseen circumstances, (ii) act of authorities, and (iii) force majeure, which can be used as a remedy for tenants. Applicability of these concepts to Covid-19 is yet to be tested. All lease agreements must be assessed case-by-case.

### Unforeseen circumstances

Unless otherwise set out in a contract, an essential change of the circumstances, from which the parties have envisaged when concluding the contract, shall be the ground for its amendment or cancellation. The change of the circumstances shall be recognised as essential, if they have changed to such an extent that in case the parties could have wisely envisaged it, the contract would not have been concluded by them or would have been concluded on essentially different terms. If the parties fail to agree to amend or cancel the agreement, the dispute shall be settled in court.

### Act of authorities

If as a result of an act of authority, the performance of the obligation has become impossible in full or in part, the obligation shall be terminated in full or in the corresponding part. The parties, which have suffered losses as a result of this, shall have the right to claim compensation. If the act is cancelled, the obligation shall be restored, unless otherwise set out in the contract or the creditor has refused to perform the obligation.

### Force majeure

A person, who has failed to perform the obligation, while performing the business activity, shall bear responsibility, unless it proves that the proper performance has

been impossible because of a force-majeure, i.e., because of the extraordinary circumstances, which it was impossible to avert under the given conditions.

Some acts of Russian authorities declared Covid-19 and measures taken to prevent virus spreading as force-majeure. However, in case of a dispute, a decision on whether a particular event can be qualified as force majeure shall be made by court. The main issue that courts will study is the cause and effect link between the circumstances and inability to perform the contractual obligations.

## Specific Covid-19 relief

### General rules

Rules have been introduced by the emergency Covid-19 Law dated 1 April 2020. The rules are applicable to lease contracts signed before the "high alert" regime was introduced.

Under this law landlords shall (i) postpone rent payments; and (ii) decrease the rent.

Eligibility of the rent postponement measures were further clarified in the Russian Government decree dated 3 April 2020. They apply to tenants of commercial real estate representing most negatively affected areas of business (tourism, hotels, restaurants, sports, culture, transportation, etc). In general, these companies are allowed to pay the sixth-months rent accrued in 2020 during 2021 – 2023 in equal installments. No interest shall accrue.

In the case where the premises are unusable due to the public authorities act, the Covid-19 Law provides for tenant's right to request the rent reduction in 2020. The rent reduction is still at the landlord's discretion, however, the tenant can challenge the landlord's decision in court.

The question whether or not, and to what extent, Covid-19 and measures taken around it make premises unusable is under discussion.

# Russia

SMEs representing the COVID-19 affected industries (the list of such industries was approved by the Government) shall have the right to request the rent decrease under a lease agreement signed prior to the date when the emergency regime was introduced. This applies to the premises occupied for the respective businesses. The rent shall be decreased for up to a year term.

If the parties fail to agree on the rent decrease the tenant shall have the right to unilaterally terminate the lease by 1 October 2020 with no obligation to compensate any losses for early termination of the lease. Landlords retain security deposits, if any.

## **Specific rules for public property lease**

Special regulation was adopted on rent postponement for SMEs leasing state property (in fact, it means payment transfer from 2020 to 2021). In Moscow tenants, whose activity was suspended by “lockdown ordinances”, have a right of exemption from rent for the period of suspension.

Russia content as at 29 January 2021

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# Spain

## Tenant Relief Measure

The Spanish Government has recently approved commercial tenant relief measures for individuals and small-to-medium-sized companies (“PYMES”) by virtue of Royal Decree-Law 15/2020 of 21 April 2020 on urgent complementary measures to support the economy and employment.

Pursuant to this Royal Decree-Law, individuals and PYMES who lease a property for use other than as a dwelling, or for industry, and:

- a. whose business has been halted as a result of the measures approved; or
- b. whose monthly turnover has fallen by 75%,

may apply to the lessor within 1 month of the Royal Decree-Law, where the lessor is a public housing company or entity, or a large owner - meaning the natural or legal person who owns more than 10 urban properties, excluding garages and storage rooms, or a constructed area of more than 1.500 m<sup>2</sup>.

The granting of a moratorium on the payment of rental income will be applied automatically. It will be effective for the period of time that the state of alarm and its extensions lasts, as well as the following monthly payments, if that period is insufficient in relation to the impact caused by the COVID-19, which may be extended consecutively, without exceeding 4 months.

This rent will be deferred, without penalty or interest, from the next rental payment, by dividing the instalments over a period of 2 years, which will be counted from the time when the state of alarm is overcome, or from the end of the 4 month period mentioned above (and always within the period during which the rental contract or any of its extensions continues to be in force). The lessor will have to accept this moratorium as long as the parties do not a prior agreement for the deferral or reduction of the rent.

<sup>1</sup> Companies which, for 2 consecutive financial years, meet at least two of the following circumstances at the closing date of each financial year: (a) That the total assets do not exceed €4m; (b) That the net amount of their annual turnover does not exceed €8m; and (c) That the average number of workers employed during the year does not exceed 50.

In the case of leases for use other than that of housing whose lessor is different to those defined above, the lessee may request from the lessor, within 1 month from the entry into force of this Royal Decree-Law, temporary and extraordinary deferment of the payment of rent, provided that such deferment or a reduction in rent has not been agreed to voluntarily by both parties. In this case, the use of the deposit is allowed so that the lessee can pay the rent with more solvency.

With regard to other types of lessees (large companies) the terms and conditions expressly agreed by the parties to the lease in relation to extraordinary situations or force majeure must be considered.

In the event that the parties have not agreed upon any measures in the event of extraordinary measures or force majeure, Spanish Law includes the form of force majeure and sets out (with exceptions) that “no one shall be liable for those events which could not have been foreseen, or which, if foreseen, were unavoidable”. It is unclear whether this can be directly applicable to the COVID-19 situation, and in any event would need to be reviewed on a case by case basis.

Additionally, case law has recognised the *rebus sic stantibus* clause, similar to the international hardship clause, which allows for the modification of the obligations of an agreement, and even the termination in some cases, when, due to supervening circumstances, the economic balance of the contract is broken and it is impossible or very burdensome for one of the parties to comply with it. The *rebus sic stantibus* clause is an exceptional and extraordinary remedy which is rarely accepted by courts and, again, would have to be analysed on a case by case basis.

Spain content as at 26 January 2021

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# Switzerland

## Tenant Relief Measure

Operators of restaurants, stores and other businesses open to the public that had to close or were restricted because of the Corona pandemic will **not receive partial rent relief**. The Swiss Parliament rejected the draft law stipulating a 60 percent relief. Companies severely affected by the Corona crisis can still hope for money from the federal government and the cantons under the hardship rule. It is however a more bureaucratic path. The cantons will have to examine each individual application. Some cantons will pay a-fonds-perdu contributions, others will only give credits. Exceptionally, a few cantons in Switzerland have decided for cantonal partial rent relief.

The Swiss tenant law stipulates that a rent reduction can be requested if there is a defect in the rented property (art. 259d of the Swiss Code of Obligations ["CO"]). There is currently a debate as to whether the effects of the state-imposed lockdown qualify as such a defect in the rented property.

The question also arises whether the current situation leads to the impossibility of providing a performance according to art. 119 CO. The legal consequence of which would also be a rent reduction. Opinions are currently divided on these matters. It is also important to note that a contractual deviation from these rules is permitted. For this reason, the individual rental contracts must be considered on a case-by-case basis.

Switzerland content as at 8 January 2021

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# Ukraine

## Tenant Relief Measure

In accordance with Resolution No.1236, dated 9 December 2020, the Cabinet of Ministers of Ukraine established quarantine and other restrictive measures.

The following tenant relief measures have been introduced by Law No.530-IX, dated 17 March 2020 (as amended); by Law No.540-IX, dated 30 March 2020 (as amended):

- For tenants, whose activities have been prohibited/restricted during the quarantine period, lease agreements of state and municipal property, that shall expire during the quarantine period, shall be extended until the end of the quarantine period and for one more month.
- If tenant's activity was prohibited during the quarantine period, he shall not pay rent under lease agreements of state or municipal property.
- The tenants may be exempted from lease payment in accordance with part 6 of Article 762 of the Civil Code of Ukraine for the time during which the leased property could not be used due to circumstances that tenants are not responsible for.
- The statute of limitations applicable to lease claims is extended for the duration of the quarantine period.

Some local municipal authorities also introduced specific measures on certain territories, such as rent payment reduction for use of municipal property in Kyiv.

Ukraine content as at 5 January 2021

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# United Kingdom

## Tenant Relief Measure

Under the **Coronavirus Act 2020** several measures have been introduced to tackle many of the impacts of Covid-19.

- Temporary relief measures from forfeiture to commercial tenants as a result of non-payment of rent began on 26 March 2020 and have now been extended to 31 March 2021, or such later date as may be specified.
- This relief covers all sums payable under leases, not just principal rent (e.g. service charge and insurance premiums) and interest will also still be due and accruing on any outstanding payments.

## The Taking Control of Goods and Certification of Enforcement Agents (Amendment) Coronavirus Regulations 2020

has also been enacted.

- This regulation temporarily suspends the Commercial Rent Arrears Recovery (“CRAR”) process, preventing landlords from using CRAR unless an amount of at least 366 days’ rent was due. This was increased to 366 days on the 25 December 2020 and applies until 31 March 2021.

The **Corporate Insolvency and Governance Act 2020**, has also been introduced and contains measures to extend the commercial tenant relief to prevent landlords in certain circumstances from taking other actions in order to claim unpaid rent, such as using statutory demands or issuing orders to begin winding up proceedings.

- Statutory demands can still be served, however no winding-up petitions can be presented for a failure to make payment of the sums demanded before 31 March 2021. Winding-up petitions can only be presented if the creditor is able to show grounds that Covid-19 has not had a financial effect on the tenant company, or that the tenant company would not have been able to pay its debt regardless of the effects of Covid-19.

The government also published a **Government Code (Conduct between Landlords & Tenants)** guidance note on 19 June 2020. This is not a mandatory code, but sets out voluntary suggestions for landlords and tenants to act transparently and to act reasonably when negotiating alternative payment plans or other concessions in good faith.

UK content as at 5 February 2021

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