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Coronavirus - Commercial Property Update

Coronavirus – Commercial Property Guidance

The economic impact of coronavirus is already affecting all businesses, the majority of which are now required to re-evaluate every aspect of their operations. A particular area of focus for many businesses is to review obligations and financial liabilities in respect of let business premises.

The restrictions announced by Boris Johnson on 23 March have led to fundamental changes in the way businesses operate with staff required to work from home unless it is essential that they travel to work. Some businesses, such as pubs, restaurants and non-essential shops, have been required to close entirely. This briefing note provides a summary of the immediate options available to both tenants and landlords.

Tenants - How can I reduce my financial liabilities?

- **Protection from Eviction for Business Tenants:** On 23 March, the government announced that commercial tenants who cannot pay their rent because of coronavirus will be protected from eviction. These measures will mean no tenant can be forced out of their premises if they miss a rent payment up to 23 June. However, tenants should be aware they will still be liable for rent arrears accrued during this period after that date.
- **Voluntary Arrangements:** Many landlords and tenants are agreeing voluntary arrangements to ease the immediate financial burden on tenants and to reduce the risk of tenant insolvency. These include changing the rent payment dates from quarterly to monthly, temporary reductions in the rent and, in some cases, rent free periods. Tenants should proactively approach landlords to discuss whether they are prepared to agree to such an arrangement.
- **Business Rates Relief:** The government has announced a package of measures to support businesses including a 12-month business rates holiday for all retail, hospitality, leisure and nursery businesses in England. This should provide some immediate financial relief to tenants.



- **Business Interruption Insurance:** Tenants should check their insurance to confirm whether they have opted for cover which includes loss arising from infectious diseases. Tenants should contact their insurers as soon as possible to notify them of any potential claim in respect of losses incurred if they are unable to operate from their business premises.
- **Break Options:** Many leases contain a mechanism for the lease to be terminated on service of a certain period of notice by the tenant. If it is possible for the business to continue to function without the premises, it may be sensible to trigger the break. It is of critical importance that, if tenants do serve notice to break, notice is served in strict compliance with the procedure set for doing so and that the conditions for the operation of the break are complied with. The advice of a solicitor should be sought to ensure compliance.

Landlords – How should I respond to a tenant claiming financial distress?

- **Enforcement of Tenants' covenants vs Tenant retention:** Tenants' obligations to pay rent, service charge and other sums due under their leases will in most cases continue despite coronavirus. However, landlords should be mindful that enforcing strict compliance with lease terms may result in tenant insolvency leaving the premises empty at a time when it is likely to be difficult to find a replacement tenant. It may therefore be in a landlord's interest to agree to a voluntary arrangement to help a tenant in financial distress. Landlords should approach negotiations with tenants constructively to ensure the medium and long term sustainability of both businesses.
- **Tenant Impact Statements:** Before agreeing to a voluntary arrangement with a tenant in financial difficulties, landlords should request an impact statement with copies of management accounts, confirmation that no dividends will be payable to the tenant's owners or investors for the duration of any rent concession and evidence that the tenant's business interruption insurance does not cover their business losses arising from coronavirus.
- **Rent Deposits:** Where a rent deposit is held by the landlord, the landlord may be able to use the deposit to cover a period during which the tenant is unable to pay rent. The terms on which the deposit is held should be reviewed and legal advice sought where necessary. The landlord should obtain express agreement from the tenant that the rent deposit will be restored to the full amount by a set date where the terms under which the rent deposit is held do not already provide for this.



- **Services at Multi-Let Buildings:** Landlords should, where possible, reduce the services provided at multi-let buildings, to reduce the financial burden on tenants and to offset the risk that tenants will subsequently be unable to pay the service charge. That notwithstanding, landlords should ensure compliance with any obligations to provide services where there is no option to scale back under the lease terms.
- **Insurance:** Landlords' insurance may cover any loss of rent arising from infectious diseases where a tenant is unable to meet its obligations. Insurers should be contacted as soon as possible to establish whether insurance covers losses incurred in these circumstances.

The current social and economic landscape provides major challenges for both landlords and tenants alike. Where voluntary arrangements are agreed by landlords and tenants these should be recorded formally by way of a deed of variation or side letter which has been properly executed by the parties. Legal advice should be sought by both parties.

Who do I contact for support and advice?

For more information on how we can support you during this time please contact one of our Commercial Property law specialists.



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