

COVID-19 – THE EFFECT ON COMMERCIAL LANDLORDS AND RENT COLLECTION

RENT COLLECTIONS HAVE BEEN SEVERELY AFFECTED BY COVID-19. THE RETAIL AND LEISURE SECTORS HAVE BEEN WORST HIT WITH AN ESTIMATED 30% OF RENTS COLLECTED FOR THE MARCH QUARTER COMPARED WITH 60% IN THE OTHER COMMERCIAL SECTORS.

Landlords' hands have been tied in relation to their available remedies for recovery of rents. The Coronavirus Act 2020 and its associated regulations prevent landlords of commercial premises taking the following, more aggressive, actions:

1. Forfeiture for non-payment of rents (including basic rent and service charge);
2. Service of statutory demands and winding-up petitions; and
3. Commercial rent arrears recovery (aka "CRAR").

These restrictions are set to stay in place until 30 June 2020 but it remains to be seen whether they will be extended for a further period. In any event, the June quarter's rent collections are likely to be even more severely affected, in particular, across the retail and leisure sector.

We are aware of a substantial number of commercial tenants seeking rental holidays. It would be sensible to carefully scrutinise management accounts to assess the financial health of tenant entities in order to contain where possible unscrupulous exploitation by some tenants.

Where appropriate, it may be in the best interests of a commercial landlord to enter into a dialogue with its tenants with a view to agreeing that rent payments be suspended in the interim on the understanding that arrears are 'rolled up' and repaid over an agreed payment timetable; some tenants are suggesting a 9-month holiday with the arrears being paid over the remainder of the term.

Landlords may choose to explore with tenants the payment of interest on accrued sums in arrears as the trade-off for an interim rent concession. It may be possible to negotiate further commercial benefits as well such as, for example, the removal of a break clause or a service charge cap.

It would be prudent to formally document any rental concession agreement to avoid unintended consequences such as variations to the tenancy terms or the inadvertent release of a guarantor. Also, care needs to be taken to ensure that such an agreement could not be construed as an increase in rent which could create unintended consequences – for example, security of tenure issues.

FOR FURTHER INFORMATION



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