

## COVID 19 – RENT DEFAULT: PRACTICAL CONSIDERATIONS FOR COMMERCIAL LANDLORDS

### THE RESTRICTION IMPOSED BY THE CORONAVIRUS ACT 2020 WHICH PREVENTS A COMMERCIAL LANDLORD FROM FORFEITING A TENANT'S LEASE FOR NON-PAYMENT OF RENT IS SET TO CONTINUE UNTIL 30 JUNE 2020. OTHER REMEDIES HAVE SINCE BEEN CURTAILED AS WELL.

This restriction will not, however, unless formally agreed by the landlord, operate to extinguish any rental liability. In addition, therefore, to exploring the possibility of negotiating an acceptable rental concession through collaborative dialogue, the landlord is well advised as part of this assessment to consider mitigating its own cashflow exposure by reviewing any financial security that it received prior to the grant of the lease.

Areas to be considered:

1. **Guarantors:** Although it is necessary for the scope of a guarantee to be checked, if properly drafted, the guarantor should be primarily liable for discharging all tenant liabilities. This assumes that the guarantor has not been inadvertently released.

2. **Previous tenants and their guarantors:** In certain circumstances, it may be possible to pursue these parties after a lease has been assigned provided that a formal payment demand (i.e. a section 17 notice) is made within the six-month period after the sum owed fell due.
3. **Rent deposits:** The terms of the rent deposit agreement should be reviewed to understand, for example, the circumstances in which a landlord is entitled to draw against the deposit and the tenant's commitment to 'top up'. Deposit withdrawals would alleviate a landlord's cashflow burden in the short term but this could detrimentally impact investment value if the sum withdrawn is not promptly topped up.
4. **Underleases:** A landlord can, following service of a formal notice under section 6 of the Law of Distress Amendment Act 1908, force an undertenant to pay its rent direct to the landlord until any arrears have been paid.

In order to effectively manage rental default, it would be sensible to identify the options available to a landlord prior to tenant engagement to ensure that the parameters of the negotiation are readily understood.

### FOR FURTHER INFORMATION



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