

LEASE VARIATION FOR TENANTS DURING COVID-19 AS AT 31/3/2020



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Current circumstances have seen a restriction on the number of sittings being offered by the Royal Court and, although the Royal Court is currently still passing contracts on a Friday afternoon at the revised time of 12:30pm – the next available date is this Friday, 3rd April – it is unclear whether this will continue following the Court's Easter Vacation.

Recent weeks have seen tenants who are unable to use their premises as a result of quarantining restrictions and/or staff sickness, or as a result of the recent Island-wide 'lockdown', approach their landlord to try and secure a rent suspension or rent holiday or to simply stop paying!

This has resulted in a number of creative solutions, including:

- swapping to monthly rental payments, rather than quarterly;
- a suspension on rental payments for a short period, sometimes on the proviso that the 'missed' rental payments are spread out over a fixed period (and added to the normal rent) once all has returned to normal;
- temporary reductions in rent;
- rent suspension/holidays in exchange for the cancellation of a future right to break;
- a permanent or temporary conversion to rent being calculated on a 'turnover-only' basis (with a base minimum payable, regardless of the tenant's actual turnover); and
- a 3 or 6 month rent suspension with an extension of the lease by a further 3 or 6 months (so the landlord ultimately does collect the lost rent).

Once the terms of any solution have been agreed with the landlord, it is important that they are properly documented to ensure the lease itself is not inadvertently varied or any landlord obligations waived. Variation can be achieved with a side letter in the case of paper leases with a term of 9 years or less but if the lease is for a term of more than 9 years, this will require a variation contract to be passed before the Royal Court.

Tenants also need to be alive to the fact that currently, as a matter of law, the tenant needs to continue to pay the rent due under the terms of their lease without deduction or set-off, notwithstanding the fact they may have had to close their business as a result of the Government of Jersey's imposition of the Island-wide 'lockdown', **unless** they can agree a concession or

variation with their landlord or until such time as the Government of Jersey passes legislation to change the rights of landlords and tenants under commercial leases.

It is our view (although there has been no specific guidance on this point) that following the Easter Vacation, if the Property Court is closed, it would be possible to make an application to the Samedi Court sitting on a Friday afternoon to 'pass' a variation contract, given the exceptional circumstances we find ourselves in. However, it is not possible at this stage to say for certain!

Our advice is: if you have already agreed a solution with your landlord – document it!

Contact

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you have any questions or concerns about how the Pandemic could affect your lease of commercial premises, or would like advice on any of the topics we have touched upon in this Briefing, please get in touch with a member of BCR Law's Commercial Property Team using the contact details below:

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