

Relief for commercial tenants in Qatar under COVID-19 measures

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During this critical time where many business operations have been limited and businesses across the world are taking steps to mitigate the effect of COVID-19 on economies, many commercial tenants are unable to keep their premises open or operational due to restrictive measures taken by respective governments to curb the spread of the pandemic. Yet, many commercial tenants are still bound by costly terms of their commercial leases.

In Qatar, although many master developers have agreed to waive or reduce fees and/or rents in order to ease the burden on their commercial tenants, this has not been the case across the board. This article focuses on the impact COVID-19 has had and is continuing to have on commercial leases and the potential relief available to tenants under Qatari Law.

The position in this article is subject to change if the Qatari legislature may intervene to regulate certain aspects of this important sector in light of the economic impact of COVID-19.

Force majeure

Force majeure is an event that is outside of the control of one or both contracting parties that renders the performance of their contractual obligations impossible. It essentially frees both parties from liability or obligation under a commercial contract. In the absence of a valid force majeure clause in the contract, one may turn to the applicable Qatari laws governing force majeure. Article 188 of Qatar Law No. 22 of 2004 on the Civil Code ('Qatar Civil Code') governs the conditions of a force majeure event and its consequences. Article 188 provides that in contracts binding on both parties, where performance by one party is made impossible due to an extraneous cause beyond the party's control, such obligation(s) and correlating obligation(s) should also be extinguished and the contract should be deemed rescinded *ipso facto*. On the other hand, should the impossibility of performance be partial, the creditor may either enforce the contract to the extent of the obligations that may be performed, or demand termination of the contract. In a nutshell, there are two conditions that are considered essential for of the application of force majeure: (i)

the unpredictability of the event at the time of entering into the contract; and (ii) the fact that it could not be avoided. Needless to say, if the impossibility was due to the fault of the defaulting party, there would be no force majeure. It is worth noting that a competent court in Qatar has the discretion to decide, on a case-by-case basis, depending on the facts and evidence submitted before it, whether the conditions of force majeure have been met so that it may release the affected party from its obligations. Currently, due to the courts' suspension in Qatar as part of the measures applied by the Government of Qatar to curb the spread of COVID-19, there are no legal precedents on the matter of COVID-19. However, we believe that it is highly likely, in the current circumstances, that a Qatari court will rule COVID-19 to be a force majeure event that may release a commercial tenant from its obligations under the relevant lease agreement if that Qatari court believes that the facts of the relevant case are sufficient to meet the conditions of force majeure. Such a decision may be based on multiple factors involved in the case, for example, the overall effect of COVID-19 on the commercial tenant's business, full or partial operation of the commercial tenant's premises, closure or inaccessibility of premises due to restrictions put in place by the Government or otherwise.

Other remedies for commercial tenants under Qatar law

Although force majeure may be the first option that comes to mind, there are provisions under the Qatar Civil Code that specifically relate to lease agreements and provide relief to commercial tenants in certain circumstances. Article 602 of the Qatar Civil Code provides for a specific remedy for tenants who can no longer use the leased property due to an act of a public authority which causes considerable deficiency in the use of the property. Under Article 602, a tenant may terminate the lease or request an adjustment of the amounts owed under the lease. To seek relief under this provision, it is essential to lodge a claim with the Rents Dispute Committee that has jurisdiction to hear such claims and the discretion to either terminate the lease or adjust the lease amounts in light of the circumstances. At this critical time, it is important that our clients, whether landlords or tenants, are aware of the provisions of their lease agreements and the provisions of the relevant laws. This awareness would allow them to take the proper legal action in order to minimise the effects of COVID-19 on their business.

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