

Amendments to the Kuwait lease law

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Introduction

In a response to the COVID-19 crisis, and after several discussions by the Parliamentary Legislative Committee, Law No. 15 of 2020, amending some provisions of Law No. 35 of 1978, regarding real estate leasing ('RE Law') was issued.

The amendments were an inevitable attempt to mitigate the projected overflow of cases being filed with the Kuwait courts as a result of tenants' failures to fulfil their financial obligations under their respective lease agreements.

This article highlights the amendments to the RE Law and touches upon the statutory protections afforded under the same.

Key amendment concepts

The amendment provides that "in all cases, a ruling may not be issued to vacate a leased premises if the tenant fails to pay the rent during a period within which the Council of Ministers decides to suspend work in all public facilities of the state, in order to protect security, public peace, or public health". Furthermore, the court will have the discretion to determine the method of late rental payment by the tenant, on a case-by-case basis. In our view this is the paramount addition to the RE Law which will alleviate the pressures faced by tenants during the global pandemic.

The amendment further stipulates that "in cases that deal with rents owed during the period that the Council of Ministers suspends activities to protect public health, then the period of suspension is not calculated within the dates stipulated in this law, provided that its calculation is resumed with effect from the day the Council of Ministers allowed work to return."

In other words, this will not be a rent free period, however, the payment of rent will be altered in a way so as to ensure that the landlord receives all money owed under the agreement and the tenant is able to make such payments in a way which will not compromise his/her standard of living, taking into consideration that many individuals' jobs have been impacted."

Furthermore, the amendment states that a single judge rental division will be established within the courts to be composed of one or more rooms as may be necessary. This new Division shall have sole jurisdiction to adjudicate the lease related disputes, irrespective of the value, and compensation arising therefrom. This is a welcomed departure from filing claims within the general court system and separating the same into specialised courts to deal with such landlord/tenant issues. This will not only alleviate the pressure on the general court system, but is expected to also allow the cases to receive specialist attention.

Implications of the new amendments

Pursuant to Article 10 of the RE Law the tenant must pay the rent in accordance with the written agreement. Without the passing of this amendment, landlords would have been entitled to file a case before the Kuwait courts to evict the tenant for failing to pay any rents due. Under the RE Law, a landlord's right to evict a tenant is limited to certain scenarios such as: (i) failure to pay rent as required, noting that it must be paid at the beginning of each month if the lease is monthly, or otherwise at the beginning of any contracted period for lease in other cases; (ii) if it is shown that the leased estate is prone to collapse and may expose the safety of tenants to danger, or should a resolution imposing demolition be issued by the competent town planning authority; (iii) If the residence is being used for illegal activities; or (iv) if the tenant subleased the leased estate or part thereof or assigned the lease contract to a third party without obtaining written consent of the landlord.

As such, the efforts of the legislature to protect tenants during the COVID-19 crisis, are evidenced in the new amendment, by providing relief to tenants from paying rent during these recognised suspended periods. Without the amendment, landlords could have put pressure on the tenants to pay all rents due and threatened eviction if the demands could not be met. Given the economic hardships brought about by the COVID-19 crisis such as loss of jobs, reduced wages, hiring freezes etc., the amendment has offered a much welcomed, and needed, haven for tenants during this difficult period, while at the same time accommodating the resumption of normal rental obligations after the suspension periods are lifted. In doing so, the rights of both the landlord and tenant are preserved, as the rent is not cancelled outright, but rather, the court will review each case brought before it and choose an appropriate mechanism of payment.

Additionally, the legislature has made an effort to speed up rental dispute procedures by implementing a system whereby a single judge will review the case as opposed to the previous system whereby the three judges formed the panel. This single judge together with the specialised court will be able to hear the disputes related to leases, regardless of their value, and potential compensation arising therefrom.

Key 'Things to Know' as a tenant

Rent increase: An important aspect of the RE Law, which remains unchanged by the amendment, is that it provides that the rent cannot be increased for a period of five years, from the date of signing the agreement. Once the lease expires, and where the rent is significantly less than the market price, then the landlord is permitted to increase the rent.

Notice period: The RE Law provides that a tenant must provide the landlord with his or her intent not to renew the lease: (i) 15 days prior to its expiration in the event that the lease duration is three months or less; (ii) one month prior in the event the lease duration is between three and six months; and (iii) two months where the duration of the lease exceeds six months. Notice should always be formally served in writing.

Applicability on investment agreements

It is important to note that the RE Law does not extend to investment agreements, which are commonly used instruments by commercial premises owners, to aid them in avoiding the pro-tenant provisions of the RE Law. In an investment agreement, the contractual provisions will be upheld and will be read alongside the Civil Code and Commercial Law. A "lessee" will not benefit from the statutory protections offered to a

lessee in a traditional lease agreement as detailed above. As mentioned, an investment agreement is commonly used in commercial settings and will generally contain intrinsic clauses which you would not traditionally find in a lease agreement.

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