

COVID-19 Update

Real Estate

9 June 2020

COVID-19 and rent for business premises: State intervention becomes apparent

As is well known, the forced closure of a large number of business operations (lockdown) decreed by the Swiss Federal Council by means of emergency legislation has triggered an ongoing tenancy law controversy on the question of whether and to what extent rent is owed during the lockdown. After many tenants and landlords have tried to find amicable solutions following an appeal by the Swiss Federal Council, the Swiss Parliament is now looking for a state-wide solution through a motion passed yesterday.

Shortly after the Swiss Federal Council ordered the closure of various businesses by emergency law, a lively discussion arose on how the COVID-19 pandemic and the related measures of the Swiss Federal Council should be dealt with under tenancy law. In order to at least temporarily relieve pressure from the debate, the Swiss Federal Council decided, by means of the COVID-19-Ordinance Leases, to extend the period for termination due to late payment from 30 to 90 days (or from 60 to 120 days for usufructary leases) and called on tenants and landlords to resolve the further consequences of the lockdown by mutual agreement (see also COVID-19 Update of 30 March 2020).

Subsequently, a large number of tenants and landlords tried to reach an amicable settlement of the consequences of the lockdown. In addition, individual cantons - namely the cantons of Basel-Stadt, Fribourg, Geneva, Neuchâtel and Vaud - pursued their own approaches to solving the problem, which typically involved the canton taking over at least part of the rent.

The Swiss Parliament now opposes to the Swiss Federal Council's strategy of refraining as far as possible from state intervention in private-law relationships and instructs the Swiss Federal Council by way of a motion to define the rights and obligations of the rental parties for the period of the lockdown, at least in part.

In particular, the motion provides that tenants whose rent does not exceed CHF 20,000 per month and property only owe 40% of the contractually agreed rent for the duration of the forced closure. If the rent is between CHF 15,000 and CHF 20,000, both parties have the possibility of opting out of the aforementioned arrangement, although the modalities of such an opt-out are currently unclear. In addition, the Swiss Federal Council should provide for a hardship fund for landlords in the amount of CHF 20 million.

At the same time, the amicable solutions already reached between the parties to the tenancy agreement should not be called into question

retrospectively. The Swiss Federal Council is therefore instructed to ensure in its legislative proposal that agreements already reached between parties remain valid, although the implementation of this objective is likely to be somewhat at odds with the general rules of contract law.

The motion does not regulate the relationship between the new regulation pursuant to the motion and the cantonal measures already in place. In particular, landlords with properties in the cantons concerned could be faced with the question of whether they will later be confronted with claims for restitution from the cantons that have already assumed part of the rent on the basis of the cantonal regulation. Similar questions could arise for landlords whose tenants have received compensation from insurance companies for loss of business.

Finally, it should be noted that the Swiss Federal Council has also recognised that the measures requested in the motion severely interfere with the principle of private autonomy and the landowners' property rights, which in particular raises the question, if the regulation requested by the Swiss Parliament constitutes a material expropriation for which compensation must be paid.

It remains to be seen how the Swiss Federal Council will implement the motion. According to statements by the Swiss Federal Council, the drafting of an implementation bill will take at least until mid-September, on which the Swiss Parliament will then decide in its December session at the earliest.

Please do not hesitate to contact us in case of any questions on this topic.

Legal Note: The Information contained in this COVID-19 Update is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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