

COVID-19 Update

Real Estate

3 December 2020

Covid-19-Commercial Rental Act rejected

After the Swiss National Council had already decided on Monday not to act on the draft of the Covid-19-Commercial Rental Act prepared by the Swiss Federal Council, the Swiss Council of States has now also resolved not to act on the draft, thus drawing a line under a controversial proposal. Tenants and landlords of affected commercial leases who have not yet achieved an agreement on the consequences of the Covid-19 pandemic thus have to find individual solutions.

The forced closure of a large number of businesses during the first wave of the Covid-19 pandemic in spring (lockdown), which the Swiss Federal Council decreed by means of emergency legislation, has given rise to an ongoing controversy in Switzerland over the question of whether and to what extent rent is owed during the lockdown. After many tenants and landlords endeavoured to find amicable solutions in response to a corresponding appeal from the Federal Council, Swiss Parliament initially wanted to pursue a state solution and, in its motion passed in June 2020, requested the Federal Council to prepare a draft act to regulate the effects of the Covid-19 pandemic and the associated closure of business operations on lease agreements (see Newsflash of 9 June 2020).

The draft Covid-19-Commercial Rental Act prepared on this basis would have created a seemingly clear regulation regarding the rent owed during the lockdown, although its practical implementation would have raised various questions. However, the scope of the intended regulation would have been very limited in terms

of both substance and time. In particular, the draft act would have provided for an ex-post reduction of the net rent for affected commercial leases by 60% for the duration of the Covid-19 lockdown and related operating restrictions. In terms of substance, the draft act would have been limited to leases with agreed rent levels of less than CHF 20,000 per month, and in terms of time it would only have covered the first wave of the Covid-19 pandemic.

As a result of the rejection of the draft act, affected tenants and landlords may – outside the scope of state-financed incentives offered by some cantons – no longer expect any state regulation of the effects of the Covid-19 pandemic on commercial leases. Moreover, a final and conclusive precedent from the Swiss Federal Supreme Court on the controversial question of whether the rent is fully owed during the state-imposed closure of business operations will most likely remain unavailable for quite some time and, once available, may only set a limited precedent for all affected commercial leases depending on the specifics of the relevant facts and circumstances underlying a given case.

Consequently, affected tenants and landlords, who have not yet been able or willing – often due to the anticipated Covid-19-Commercial Rental Act – to reach a mutual agreement on the consequences of the Covid-19 pandemic on their leases, are now left with the task of finding individual arrangements, as appropriate.

Depending on the specifics of a given case, an amicable solution may hence be in the interest of the parties involved.

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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