

RECOVERY OF ARREARS IN THE CONTEXT OF CORONAVIRUS

Many landlords are reporting that they received less than 50% of rents due for the March 2020 quarter and certain sectors were even harder hit. As the June quarter approaches, landlords are asking what they can (and can't) do to collect rents due. Whilst landlords' hands are temporarily tied in some respects, rent remains payable as long as landlords do not waive any rights in the meantime. Care should be taken in the drafting of any concessions to tenants or acceptance of part payments of rent.

RESTRICTIONS CURRENTLY IN PLACE

- Moratorium on forfeiture for non-payment of rent until 30 June 2020 (may be extended).
- CRAR limited to situations where there is at least 90 days of unpaid rent.
- The Government is implementing new legislation which (as currently drafted) prevents (a) winding up petitions being presented based upon a statutory demand served between 1 March and 30 June 2020; and (b) any other winding up petition unless the creditor has reasonable grounds to believe Coronavirus is not the underlying cause of the company's financial difficulties.

WHAT ACTIONS CAN LANDLORDS TAKE?

- Send letters before action and, if necessary, commence debt proceedings at Court if the level of arrears justifies the time and expense.
- Check if there are guarantors or former tenants/guarantors who are still liable (if relevant, remember to serve Section 17 notices on former tenants/guarantors within 6 months of sums falling due).
- Don't forget CRAR – as time goes on, 90 days of arrears may accrue.
- Draw down on rent deposits.
- Check insurance policies in case there is coverage in these circumstances and make notifications promptly where relevant.
- Consider if the tenant is in difficulty for non-Coronavirus related reasons and whether it would be appropriate to present a winding up petition. It may also be possible for 2 or more creditors to present a petition jointly, even if a tenant's financial difficulties stem from Coronavirus.

THINKING MORE BROADLY TO PROTECT LONG-TERM ASSET VALUES

With action in relation to arrears restricted, landlords are looking for more creative solutions to help tenants in the short term, while protecting long-term asset value. Some of the wider actions we are seeing include:

- Agreeing future rent reviews at an uplift now in return for rent holidays for tenants in the short-term.
- Agreeing lease re-gears, in particular reversionary leases being entered into to extend the term in return for a rent-free period now.
- Offering rent-free periods on lease renewals negotiated outside Court in order to get tenants with good covenant strength signed up for the longer term. Some of the new leases contain rent cesser provisions in relation to Coronavirus-type circumstances.
- More thought is being given to the timing of serving Section 25 notices to trigger renewals, the length of termination periods given in such notices, the impact on interim rent, and also seeking adjournments to delay producing rental valuations where Court proceedings are underway.

If you require more detailed advice or have any questions, please do not hesitate to get in touch with your usual AG contact or one of the lawyers listed below.



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