

Catalonian Government regulation for industrial and commercial leases affected by COVID-19 restrictions

Last November 18, 2020, the validation of Decree-law 34/2020, of 20 October, was published. This Decree-law has an important impact on industrial and commercial leases as it may allow tenants to request rent reductions or to unilaterally terminate the relevant lease agreements in the context of the crisis caused by the COVID-19 virus. The main features of this Decree-law, in force since 22 October 2020, are as follows:

<p>1. Which leases will be affected?</p>	<ul style="list-style-type: none"> • Commercial and industrial leases signed after 1 January 1995 which, as a result of COVID-19 pandemic, are subject to legal measures devoted to: <ul style="list-style-type: none"> (a) the suspension of the activity carried out in the relevant leased asset; or (b) the limitation of the material utilization of the leased assets. • In both cases, the tenant will be allowed to request to the landlord a reasonable and proportionate modification of the terms and conditions of the lease agreement with the aim of restoring the fairness of the obligations of each of the parties under the same and always in accordance with good faith requirements.
<p>2. What will happen if the parties do not reach an agreement?</p>	<p>(A) Rent reduction</p> <ul style="list-style-type: none"> • If, within one month following the above mentioned tenant's request, the parties do not reach an agreement in connection with the new terms and conditions to be included in the lease agreement, the tenant will be entitled to: <ul style="list-style-type: none"> (a) a 50% rent reduction, in case it is decreed that the tenant's activity in the leased asset should be suspended (other amounts to be paid by the tenant will be also subject to this 50% reduction); or

	<p>(b) a reduction of the rent and other amounts to be paid by the tenant under the lease agreement in a proportion equal to half of the loss of use of the property, in case of a partial limitation of the tenant's activity in the leased asset (reduction of the maximum capacity allowed, allowed spaces, restriction of opening hours to the public, etc.). It shall be understood that this rent reduction could not be higher than 50% of the rent in force.</p> <ul style="list-style-type: none"> The tenant will also be entitled to request to the landlord the utilization of any additional guarantee that may have been granted (other than the statutory legal deposit) in order to pay the amounts of rent due under the lease agreement. However, the tenant will be obliged to return the relevant guarantees in the earlier of the following dates: <ul style="list-style-type: none"> (a) within one year as from the date on which the relevant suspension or limitation of the tenant's activity has ceased; or (b) before the end of the term of the lease agreement. These rent reduction measures will be effective as from the date on which they were requested by the tenant. <p>(B) Early termination</p> <ul style="list-style-type: none"> In case that the restrictions referred to in paragraphs (a) and (b) of section 1 above are in force during an aggregate term of more than 3 months within the period between 22 October 2020 and 22 October 2021, the tenant will be allowed to early terminate the lease agreement without being obliged to pay any penalty to the landlord due to this reason and provided that he serves 1-month prior written notice to the landlord. This early termination right will be in force up to 3 months after the complete cessation of these restrictions.
<p>3. Do the agreements previously reached between the parties prevent the application of the measures set forth in Decree-law 34/2020?</p>	<ul style="list-style-type: none"> No. The tenant may benefit from the rights set forth in this decree-law regardless of similar agreements that he may have reached with the landlord before the entry into force of Decree-law 34/2020 (22 October 2020).

Contacts



Emilio Gómez
Partner
T +34 91 349 82 72
emilio.gomez@hoganlovells.com



Miguel Ferre
Sr. Associate
T +34 91 349 80 06
miguel.ferre@hoganlovells.com