

## Coronavirus: what effect will the Covid-19 pandemic have on tenants' leasehold liabilities?

Given that leases do not contain force majeure clauses, and they will not be frustrated by any temporary restriction or inability to occupy the premises, tenants and guarantors will remain bound by their lease obligations and, in particular, their liability for the rent.

Unless Covid-19 is covered as an Insured Risk, which is unlikely, payment of rent will not be suspended.

Many tenants will be seeking rent suspensions or credits to allow their businesses to continue and care must be taken not to vary any lease without the consent of any guarantor as any material variation could release any security.

Going forward, Covid-19 may well affect rental values and this will no doubt raise various issues in relation to both past and future rent reviews. Clearly, keep open clauses in retail premises may well be breached.

Unfortunately, tenant default and insolvency is bound to increase substantially and the table below sets out a snapshot of the options available to a landlord under the four most commonly used insolvency procedures.

Some of the procedures below impose a moratorium on landlords, restricting the actions they are able to take. We would advise taking early advice in relation to any tenant who you suspect is, or may be, about to enter an insolvency procedure. There may be steps a landlord can take to protect its position or challenge the process, or mitigate its position once the process is underway.

	Administration	CVA binding the Landlord	Voluntary liquidation	Compulsory liquidation
CRAR (Commercial Rent Arrears Recovery)	No, except with permission of Court/ administrator	Will depend on the terms of the CVA	Yes, but may be challenged by the liquidator	No, except with permission of Court
Sue tenant for rent	No except with permission of Court/ administrator	Will depend on the terms of the CVA	Yes, but may be challenged by the liquidator	No, except with permission of Court
Sue guarantor for rent	Yes	Will depend on the terms of the CVA	Yes	Yes
Forfeiture of lease by proceedings*	No, except with permission of Court/ administrator	Will depend on the terms of the lease and CVA	Yes, but this could be challenged by the liquidator	No, except with permission of Court



	Administration	CVA binding the Landlord	Voluntary liquidation	Compulsory liquidation
Forfeiture of lease by peaceable re-entry *	No, except with permission of Court/ administrator	Will depend on the terms of the lease and CVA	Yes, but this could be challenged by the liquidator	Inadvisable without permission of Court
Withdrawal from Rent Deposit	Will depend on the terms of the rent deposit deed	Will depend on the terms of the CVA and rent deposit deed	Likely, but will depend on the terms of the rent deposit deed	Likely, but will depend on the terms of the rent deposit deed
Divert sub-tenant rent to landlord	Yes, but may be challenged by the administrator	Will depend on the terms of the CVA	Yes, but may be challenged by the liquidator	Yes, but may be challenged by the liquidator
Can the lease be disclaimed by the tenant's insolvency practitioner?	No	No	Yes, the landlord can also require the liquidator to choose between disclaiming the lease within 28 days or losing its right to do so	Yes, the landlord can also require the liquidator to choose between disclaiming the lease within 28 days or losing its right to do so

\*Any landlord considering forfeiture should take advice as soon as the tenant goes in default. Unless the landlord is careful, its actions (including the use of many of the enforcement methods listed above, including CRAR) may waive its right to forfeit the lease.

If you have any queries, please contact any member of the Property Litigation team at Forsters.



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