Federal act on rent reductions during COVID-19 lockdown fails in Parliament

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Previous developments

To address the legal uncertainty relating to rent payments for business premises that had to close due to emergency regulations issued by the Federal Council to combat COVID-19, the Federal Council was asked to submit a draft act to Parliament reflecting the concerns of two identical motions from Parliament.

In particular, the motions asked for a rent reduction of 60% during the Spring 2020 lockdown from 17 March 2020 until 21 June 2020 (for further details please see Legal uncertainty over rent reductions due to COVID-19 remains and Proposed federal act on rent payments during COVID-19 lockdown).

Given the controversy surrounding the act, in September 2020 the Federal Council submitted the dispatch for the proposed COVID-19 Business Rental Act to Parliament without asking for adoption of the federal act.

Parliamentary debates

Both competent preparatory committees of the National Council and the Council of States proposed to Parliament not to enter into discussions on the proposed COVID-19 Business Rental Act.

Nonetheless, on 29 October 2020 the National Council entered into discussions with a small majority. On 30 November 2020 the National Council discussions took place, introducing, among other things, a rent reduction of 50% as a compromise. In the overall vote, the National Council dismissed the draft COVID-19 Business Rental Act by 100 votes to 87.

On 2 December 2020 the Council of States followed the preparatory committee's recommendation and decided not to enter into discussions on the draft COVID-19 Business Rental Act by 30 votes to 14. As a result, the proposed COVID-19 Business Rental Act has failed in Parliament and is thus off the table on a national level.

The main arguments for the dismissal were:

- the retroactive intervention in private law contracts;
- the legal uncertainty with regard to the question of whether the proposed act had a sufficient constitutional basis;
- the lack of differentiation of the degrees to which individual tenants are affected; and
- the fact that gastronomic businesses and other small and medium-sized enterprises (SMEs), also in their position as a tenant, will be covered by the hardship scheme under the federal COVID-19 Act (see below). (Federal Act on the Statutory Principles for Federal Council Ordinances on Combat-ing the COVID-19 Epidemic (COVID-19 Act), SR 818.102.)

Federal hardship scheme

On 25 November 2020 the Federal Council adopted a COVID-19 Hardship Ordinance (Ordinance on Hardship Measures for Companies in connection with the COVID-19 Epidemic (COVID-19 Hardship Ordinance), SR 951.262.) based on the COVID-19 Act, which entered into force on 1 December 2020.
Under certain circumstances and subject to conditions, the confederation and the respective cantons will support SMEs that suffered particular hardship due to COVID-19 owing to the nature of their economic activity, particularly businesses connected with:

- the events industry;
- travelling fairs;
- service providers in the travel industry; and
- tourism businesses.

Therefore, the confederation will participate in the cantonal expenditures for hardship. The maximum amount of the commitment credit has not yet been set by the Federal Council and approved by Parliament.

The measures, as part of cantonal hardship schemes, may include contract of sureties, guarantees, loans or non-repayable subsidies paid to businesses.
Parliament is currently discussing the expansion of the hardship scheme, particularly with regard to tenants of business premises that had to close during the Spring 2020 lockdown.

Cantonal legislation on rent reductions during COVID-19 lockdown

In the meantime, seven cantons have adopted their own legislation on rent reductions in their territories. The nature and scope of the support differs between the cantons.

However, as opposed to the dismissed COVID-19 Business Rental Act, none of these cantons oblige landlords to grant rent reductions. The most common cantonal system is the so-called 'one-third rule', where the respective canton will take over one-third of the rent if landlords voluntarily grant a one-third rent reduction. If landlords do not agree on rent reductions, the

canton does not make a contribution and tenants must pay full rent.

Comment

Various tenants have already reached mutual agreements on rent reductions regarding the Spring 2020 COVID-19 lockdown with their landlords. If they have not yet done so, landlords and tenants should re-enter into negotiations to find a mutual agreement on rent reductions. The cantonal legislation on rent reductions and provisions of the dismissed COVID-19 Business Rental Act may serve as a guideline.

The topic of COVID-19 rent reductions will likely lead to court decisions in the future.

This article has been published by Michael Lips (Partner) and Andrea Rohrer-Lippuner (Associate) on 11 December 2020 at International Law Office (ILO), London.

No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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