

October 2020

DECREE-LAW 34/2020, OF 20 OCTOBER, ON URGENT MEASURES TO SUPPORT THE ECONOMIC ACTIVITY DEVELOPED IN LEASED BUSINESS PREMISES

SUMMARY

As announced, on 22 October 2020, Decree-Law 34/2020, of 20 October, of the Generalitat de Catalunya, was published in the DOGC, which establishes a series of measures in favour of tenants of business premises affected by the restrictions arising from the right against the COVID-19 pandemic. Below is our analysis of this new standard by the way of various questions about its scope and meaning.

1. Is it a regulation of the *rebus sic stantibus* clause?

The *rebus sic stantibus* clause has not been regulated in general, but it is an ad hoc provision for price intervention during the pandemic and while the restrictive measures of industrial or commercial activity last.

However, it does intend to tackle the excessive and supervening hardship of contractual benefits, proposing a distributive criterion of the negative consequences of the bans, suspensions and restrictions derived from the pandemic, socialising the risk.

In any case, in the First Final Provision, the competent Department of the Generalitat is summoned to draw up a bill to regulate this figure and incorporate it into the Catalan legal system.

2. Is it a definitive regulation?

No, it is a decree-law and, therefore, according to article 64.2 of the Statute of Autonomy of Catalonia, it must be validated by the Parliament within the next 30 days. If it is not validated, it would be repealed.

There is also the possibility that it may be appealed to the Constitutional Court, in which case it is also possible that its validity could be suspended.

3. Does it mean that the *rebus sic stantibus* clause is not applicable in Catalonia?

No, to the extent that the jurisprudential doctrine of the *rebus sic stantibus* is not made positive, it is still generally in force.

In any case, the statement of reasons for the decree-law expressly establishes that the measures established therein are compatible with the right of the parties to seek legal assistance to exercise any other claim related to the contract.

4. What type of premise lessor falls within its objective scope?

The explanatory memorandum of the decree-law refers especially to “properties rented for commercial use, including cultural, educational, sports and recreational activities, as well as services that are particularly affected by this health crisis, such as aesthetics, hospitality and restoration”.

Currently, restricted activities are included in Resolution SLT/2546/2020, of 15 October, modified by Resolution SLT/2568/2020, of 19 October and can be consulted on the Generalitat website¹.

5. What solutions does the decree-law implement?

- A. It is based on the possibility of the lessee affected by restrictions to request from the lessor “a reasonable and equitable modification of the conditions of the contract in order to restore the balance of benefits and in accordance with the requirements of good faith and honesty in dealings”, by registered fax or other reliable means.

The parties have one month to reach an agreement.

Once the request is received, the lessor will not be able to issue an invoice for the amount of the rent and other expenses until the month of the negotiation period for the contractual modification has elapsed, unless an agreement is reached.

- B. If an agreement is not reached within that period, the following rules will apply to rents and other amounts charged to the tenant (e.g. property tax, community expenses, fees, utilities, etc.):

- a. Cases of suspension of activity development: 50% reduction of the income and other expenses during the suspension.

Currently, it applies to bars, restaurants, beauty centres, bingo halls, casinos, amusement arcades and playrooms.

- b. Cases of partial restriction, consisting of a proportional reduction equal to 50% of the loss of the property use; 50% of the capacity reduction; 50% of the timetable reduction; or 50% of the reduction due to other limitations.

For example, if the capacity is restricted by 70% (that is, capacity limited to 30%), the 50% reduction of the restriction would mean a 35% reduction in rent.

Currently, it applied to theatres, shops, 24-hour stores and hotels.

- c. The provision of home delivery services or product collection in the establishment does not affect the application of the planned reductions.

¹ <https://web.gencat.cat/en/actvem/restriccions-territorials/catalunya/index.html>

C. Contribution to the payment of additional guarantee incomes.

The additional guarantees given by the lessee to the lessor, excluding the legal guarantee and others deposited in competent official bodies, may be applied, at the request of the lessee, to the income to be accrued, once modified.

The lessee must restore these additional guarantees within a maximum period of 1 year from the disappearance of the restrictive measures.

D. Possibility of terminating the contract without penalty.

In the event that the activity suspension measures last more than three months in the course of a year from the entry into force of the decree-law (October 22, 2020), the tenant may choose to withdraw from the contract without penalty, from the moment this circumstance occurs and up to three months after the complete cessation of the measures, reliably notifying the lessor party one month in advance.

6. What happens if previous agreements have been reached between the landlord and the tenant?

The tenant can invoke the decree-law regardless of the agreements reached by the contracting parties previously, allowing for two possible cases:

- a) That the prior agreement is more beneficial for the tenant than the measures provided for in the decree-law. In this case, the prior agreement is maintained.
- b) That the previous agreement is less beneficial for the tenant: In this case, the tenant may invoke the decree-law measures.

Please note: *The content of the current document may be affected or modified by future decisions that the competent authorities make on the matter.*

ANY QUESTIONS?

At DWF-RCD we work to respond to the doubts that the current situation may raise. If you have any questions, do not hesitate to contact us.

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