



OBJECTIVE: restore the balance between the parties  
OPTIONS

JUDICIAL

Tenant

- Use of the premises as provided under the contracted conditions is not permitted
- Imbalance in performance: rent payment
- Is it possible to stop paying rent unilaterally? No, risk of claim for payment and eviction by the owner.
- Possible contestation: alleging the alarm status.
- You will have to bear the costly and timely risk associated with legal proceedings, which are currently 9-12 months behind schedule.

Owner

- Claim for payment and eviction by the owner upon rent default
- Risk of contestation on the grounds of the exceptional situation and force majeure
- Bearing the temporary and economic cost of legal proceedings
- Loss of income and inability or difficulty to collect rent in the future
- Execution of bank guarantee: yes, it is possible, but it may condition the contract and future relations with the tenant.

EXTRAJUDICIAL

Tenant / Owner

- **Tenant:** Written communication to the owner containing specific requests: suspension, moratorium or reduction of monthly rent, expense review, contractual term ...
- **Owner:** Response to the new situation and assurance of the activity's continuity by both parties. The owner bears fixed costs derived from the tenant's possession of the premises, though without activity.
- **Owner and Tenant: Negotiating a new contract or modifying certain clauses – *Rebus sic stantibus* principle or redressing the balance between the parties**
  - ✓ Rent revision based on current market terms and options for future adaptation
  - ✓ Agreeing on fixed and variable rent
  - ✓ Extension of the mandatory contract time limit
  - ✓ Revision, possible reduction of common fixed costs such as cleaning, surveillance, etc.
  - ✓ Not applying the CPI during mandatory closure period
  - ✓ Applying an increased CPI in the future
  - ✓ Taking out compulsory insurance to cover *force majeure* events
  - ✓ Include *force majeure* wording expressly mentioning COVID-19 and clarifying that any further development worsening the situation which leads to an impossibility of performance after certain day shall constitute a force majeure event.
  - ✓ Include clauses allowing for the adjustment of opening dates or subsequent re-negotiation, or which incorporate a reservation of a right of withdrawal due to COVID-19 issues.
- Avoid assuming that "back to normal" will be back soon.

*The rebus sic stantibus* principle shall not be applicable if:

If the parties have expressly or implicitly assumed the risk that a circumstance would occur or should have occurred because, by virtue of the circumstances and/or nature of the contract, such a risk was reasonably foreseeable, it is not possible to determine the existence of a circumstance alteration since, by definition, it implies the non-assumption of risk (**recently decision 5/2019 of 9 January**). There can be no question of unforeseeable alteration when it is within the normal risks associated with the contract (**decisions 333/2014 of 30 June, 64/2015 of 24 February and 477/2017 of 20 July, among others**).

OTHER SITUATIONS

OFFICES

If the activity has not been prohibited, *force majeure* cannot be invoked.

INDUSTRIAL FACILITIES

The activity has not been prohibited. *Force majeure* cannot be invoked. Evaluate whether 15-day "hibernation" applies – RD 10/2020

Provided that no prior agreement has been reached before the publication of Royal Decree-law 15/2020:

