

**FINAL VERSION: 8 April 2020**

**GUIDANCE RELATING TO RENT AND OTHER PAYMENTS**

**FOR LANDLORDS AND TENANTS OF JERSEY COMMERCIAL PROPERTY DURING COVID-19  
CRISIS**

**1. PURPOSE OF THIS GUIDANCE**

Court applications for rent arrears, lease cancellations and consequential orders for possession and eviction ("**Tenancy Disputes**") are currently unlikely to be heard as a result of the COVID-19 pandemic and the related Government of Jersey measures to manage the risk of contagion within the Island. In so far as such proceedings might be determined by the Petty Debts Court, the Magistrate as Judge of that Court has published a direction to the effect that any such cases have been adjourned. As to the Royal Court, it has issued guidance that it will only determine urgent civil (and certain children and criminal) cases, which would not include Tenancy Disputes.

While the Courts are not hearing Tenancy Disputes, the Government of Jersey wishes to issue guidelines by way of this Guidance to be read in conjunction with a related Practice Direction to be issued by the Royal Court and the Magistrates Court ("**the Court**"), as to how they will deal with Tenancy Disputes in due course. Pursuant to the Practice Direction the Court will, amongst other things, assess the conduct of both Landlords and Tenants (which for the purposes of this Guidance shall include any party including a guarantor of the obligations of a Tenant under any Lease) and their reasonableness during the period specified by the Court from time to time (the "**COVID-19 Period**"). This Guidance is advisory, but compliance or non-compliance may be taken into account as stated herein.

The purpose of the Guidance is to promote good conduct and reasonable behaviour from both Landlords and Tenants during the COVID-19 Period. It seeks to minimise interference in the normal contractual relationships between Landlords and Tenants ("**the Parties**" and each "**a Party**"), but promotes the need for flexibility and pragmatism to be shown in exceptional times like these.

This Guidance applies to any lease, tenancy, licence, concession or other agreement (by any name called) which provides for the occupation on commercial terms of commercial property (which includes without limitation office / retail / hospitality & leisure / warehousing / registered lodging houses (but not individual lodging units) and any property part commercial and part residential) and the words "Lease", "Landlord" and "Tenant" are to be construed accordingly.

This Guidance shall commence on the date of issue and apply during the COVID-19 Period. It shall apply principally in respect of the Tenant's obligations to pay rent and other payments due under Leases for commercial property, but also to the discharge

by both Landlord and Tenant of their respective general obligations under the terms of such Leases. It applies only to Commercial Property. It is not intended to apply where there has been any unresolved rent arrears or other sums due or breach of the terms of a Lease prior to the coming into force of this Guidance of which the Tenant has been notified in accordance with the terms of the Lease. Any voluntary arrangement reached between the Landlord and the Tenant may however include such matters.

This Guidance shall not operate to release either (i) any Tenant from its continuing obligation to pay rent and other payments (“**Sums Due**”) and to discharge its obligations under the terms of any Lease or (ii) any Landlord from its continuing obligation to discharge its obligations under the terms of any Lease (in each case “**Obligations**” and “**Compliance with Lease Terms**” and each shall be construed accordingly).

The Government of Jersey hopes that litigation in relation to Leases will only be required as a matter of last resort. In circumstances where proceedings are issued after the COVID-19 Period, it is anticipated that in accordance with the Practice Direction to be issued by the Court, the Court will take into the account the contents of this Guidance and the extent to which Parties are shown to have complied with or failed to follow this Guidance in dealing with the other Party under a Lease during the COVID-19 Period.

## **2. OVERRIDING PRINCIPLES**

The Government of Jersey requires that each Party to a Lease of commercial property in Jersey acts in an open, transparent and reasonable manner in meeting the obligations and expectations set out under this Guidance (“**Overriding Principles**”).

## **3. VOLUNTARY ARRANGEMENTS FOR SUMS DUE AND COMPLIANCE WITH LEASE TERMS**

The following process should be followed during the COVID-19 Period by the Parties in respect of any Sums Due and any failure of Compliance with Lease Terms.

### **(i) Tenant’s Obligations**

- a. The Tenant shall give at least one week’s written notice to the Landlord of any anticipated difficulty on the Tenant’s part in paying Sums Due and/or anticipated inability of Compliance with Lease Terms of a material nature;
- b. The Tenant shall upon the request of the Landlord provide such evidence in support of its financial hardship leading to inability to pay Sums Due as the Landlord may reasonably require, including amongst other information:
  - i. its most recent monthly bank statements for its business;
  - ii. a summary cash flow statement; and
  - iii. confirmation that its business falls within those affected businesses required to cease or substantially modify its trading activities by

reason of COVID-19 and the related Government measures and/or cease to occupy or access the premises that are the subject of the relevant Lease.

- c. The Tenant shall upon the request of the Landlord provide such evidence in support of its inability of Compliance with Lease Terms as the Landlord may reasonably require.
- d. Save to the extent that such evidence shall be required for the obtaining of legal advice or in any related Court proceedings, the Landlord shall keep confidential any such evidence provided by the Tenant. It shall not be unreasonable for the Tenant to require the Landlord to enter into a confidentiality agreement or non-disclosure agreement with the Tenant prior to the Tenant providing such evidence.
- e. The Tenant shall at all times endeavour to continue to meet all its obligations under the Lease to the extent permitted by law during the COVID-19 Period and shall upon the request of the Landlord provide such evidence in support of its endeavours to do so.

**(ii) Landlord's Obligations**

- a. The Landlord shall give at least one week's written notice to the Tenant of any anticipated difficulty or inability on the Landlord's part of Compliance with Lease Terms of a material nature;
- b. The Landlord shall upon the request of the Tenant provide such evidence in support of its difficulty or inability of Compliance with Lease Terms as the Tenant may reasonably require. Save to the extent that such evidence shall be required for the obtaining of legal advice or in any related Court proceedings, the Tenant shall keep confidential any such evidence provided by the Landlord. It shall not be unreasonable for the Landlord to require the Tenant to enter into a confidentiality agreement or non-disclosure agreement with the Landlord prior to the Landlord providing such evidence.
- c. the Landlord shall at all times endeavour to continue to meet all its obligations under the relevant Lease to the extent permitted by law during the COVID-19 Period and shall upon the request of the Tenant provide such evidence in support of its endeavours so to do.

**4. AGREED CONCESSIONS IN RESPECT OF SUMS DUE**

The Landlord (subject to paragraph 7 of this Guidance), upon receipt of the Tenant's notice in respect of Sums Due and adequate evidence in support of its claim of financial hardship, shall pursuant to the Overriding Principles seek to agree with the Tenant at least one of the following options:

- i. A partial deferral of Sums Due
- ii. A complete deferral of Sums Due
- iii. A partial waiver of Sums Due
- iv. A complete waiver of Sums Due
- v. Early termination of the Lease and surrender to the Landlord of the premises demised thereunder on terms agreed between the parties.

In the case of options 4. i to iv ("**Payment Concessions**"), deferral or waiver shall apply from the date of agreement until the expiry of the COVID 19 Period or such longer Period as may be agreed by the Parties.

#### **5. AGREED CONCESSIONS IN RESPECT OF INABILITY OF COMPLIANCE WITH LEASE TERMS**

The Landlord and Tenant in the event of the giving of notice by either one to the other and providing adequate evidence in support of its claim of inability of Compliance with Lease Terms shall pursuant to the Overriding Principles seek to agree at least one of the following options:

- i. A partial deferral of Obligations
- ii. A complete deferral of Obligations
- iii. A partial waiver of Obligations
- iv. A complete waiver of Obligations
- v. Early termination of the Lease and surrender to the Landlord of the premises demised thereunder on terms agreed between the parties.

In the case of options 5. i to iv ("**Obligation Concessions**"), deferral or waiver shall apply from the date of agreement until the expiry of the COVID 19 Period or such longer Period as may be agreed by the Parties.

#### **6. FORMALISING VOLUNTARY ARRANGEMENTS**

- a. Upon an agreement being reached pursuant to the provisions of paragraphs 4 or 5 of this Guidance a written agreement shall be prepared and signed by the Landlord and the Tenant ("**Temporary Voluntary Arrangement**"). Such Temporary Voluntary Arrangement may be used as the proof required under Article 53 of the Income Tax (Jersey) Law 1961 for tax relief for rent not paid.
- b. Where a Temporary Voluntary Arrangement has been entered into, the Landlord shall not issue any Tenancy Dispute for recovery of Sums Due, the discharge of Obligations, termination of the Lease or an order for possession of the Property and eviction by virtue of such Sums Due or such breach of Obligations, provided

the Tenant continues to comply with all its other obligations under the Lease which are not subject to the Temporary Voluntary Arrangement.

- c. Where a Temporary Voluntary Arrangement has been entered into, the Tenant shall not issue any Tenancy Dispute for the discharge of Obligations or for termination of the Lease by virtue of such breach of Obligations, provided that the Landlord continues to comply with all its other obligations under the Lease which are not subject to the Temporary Voluntary Arrangement.
- d. Where a Temporary Voluntary Arrangement has been entered into, each Party thereto must advise the other when their circumstances change and when it is no longer suffering from financial hardship or is no longer suffering an inability to adhere to Compliance with Lease Terms (as the case may be) to the extent that they are once again able to discharge in whole or part all obligations due by them under the Lease. In such circumstances the Parties shall re-assess the terms of the Temporary Voluntary Arrangement using the same principles as set out in this Guidance.

## **7. INABILITY OF LANDLORD OR TENANT BY WAY OF FINANCIAL HARDSHIP TO ENTER INTO A TEMPORARY VOLUNTARY ARRANGEMENT**

- a. Where a Landlord is also suffering from financial hardship to the extent that it would not be reasonable for it to agree a Payment Concession or an Obligation Concession, it shall provide evidence of its financial hardship in writing to the Tenant. In such circumstances, the Landlord shall not be required to agree a Payment Concession or an Obligation Concession.
- b. Where a Tenant is also suffering from financial hardship to the extent that it would not be reasonable for it to agree an Obligation Concession, it shall provide evidence of its financial hardship in writing to the Landlord. In such circumstances only, the Tenant shall not be required to agree an Obligation Concession.
- c. In the event that the Landlord does not consider the Tenant has adequately evidenced its financial hardship, the Landlord shall be required to set out its reasons for reaching that conclusion in writing to the Tenant.
- d. In the event the Tenant does not consider the Landlord has adequately evidenced its financial hardship, the Tenant shall be required to set out its reasons for reaching that conclusion in writing to the Landlord.
- e. In the event the Tenant's reasons are later not deemed adequate by a Court in any Tenancy Dispute, the Court shall be entitled (but not obliged) to make such adverse inferences or orders against the Tenant as it considers fit
- f. In the event the Landlord's reasons are later not deemed adequate by a Court in any Tenancy Dispute, the Court shall be entitled (but not obliged) to make such adverse inferences or orders against the Landlord as it considers fit.

- g. Save to the extent that such evidence shall be required for the obtaining of legal advice or in any related Court proceedings, the Party receiving the evidence shall keep confidential any such evidence provided by the other Party. It shall not be unreasonable for the Party providing the evidence to require the receiving Party to enter into a confidentiality agreement or non-disclosure agreement prior to providing such evidence to the receiving Party.

## **8. COMPLIANCE WITH THIS GUIDANCE**

Actions taken or not taken by the Landlord and/or the Tenant under this Guidance may be used (i) as evidence in any Tenancy Dispute or (ii) in respect of any application of the Landlord or the Tenant for any financial support packages as the Government of Jersey may make available during the COVID-19 Period and thereafter.