



## COVID-19: Rent abatement negotiations

April 2020

COVID-19 is impacting the ability of businesses to operate in their leased spaces, especially in the retail and restaurant sectors. This is set to create tensions between landlords and tenants. Research from the UK shows that fewer than 41% of tenants in the retail and restaurant sectors paid their rent that fell due on the most recent quarterly rent day.

Landlords and tenants will be keen to get through this crisis while protecting their investments and businesses. It is important that landlords and tenants actively engage with each other to put appropriate agreements in place if a business finds itself unable to pay rent.

A rent abatement is an agreement whereby the tenant is allowed to temporarily suspend their lease payments or reduce the amount they need to pay each month.

In this article we give some insight and advice to tenants and landlords on how best to restructure existing leases in this unprecedented trading environment, which is expected to continue for at least the next 12 months.

### Tenant's perspective

Many tenants faced with a requirement to temporarily close their business due to COVID-19 restrictions will be faced with a total loss of revenue. Where possible, the business will try to avoid any ongoing business costs and cancel any avoidable payments to creditors in order to survive.

In taking such actions, it is advisable that the business owner communicates the decision to suppliers, landlords, funders and other creditors. It is important to confirm that once the current restrictions are lifted their ultimate goal is to return to business as usual as soon as possible and that they intend to engage with creditors and put arrangements in place to deal with the existing debt.

If a business trades from leased premises and they find themselves unable to pay rent, the very first thing they should do is open up a dialogue with their landlord. This is the crucial first step to help both parties work out a solution to the short-term cash flow issues caused by the crisis.

To encourage a spirit of collaboration, try to engage with your landlord via a direct phone call or video conference rather than relying on written communication. Setting up a communications approach that facilitates dialogue and negotiation, where you have the opportunity to explain the impact that COVID-19 is having on your business, the current cash flow challenges and your future prospects, will be key in arriving quickly at an amicable agreement.



As a tenant you will need to present a detailed overview of the business, including prior financial statements and turnover figures going back at least two years. The business trading model should be explained so that the landlord can interpret projected revenues, margins and net profit to better understand what rent is affordable for the tenant and the reasonableness of any proposals being made.

Once a spirit of co-operation is established, it is easier to explore the merits of different approaches and their impact on rental flows – for example, whether to continue trading as before, if there is a need for examinership process to clear out legacy liabilities, or whether the required step is the liquidation of the current entity and the granting of a lease to a new trading entity.

Tenants need to be aware that the landlord will often be in a similar situation. They will have their own cash flow challenges such as mortgage payments on bank funding secured against the property – payments that they rely on collecting rent to make. As a result, the bank will need to be consulted and approve any changes to leases, and tenants need to anticipate this delay when implementing any plan. Getting the consent of the bank is important for the tenant as otherwise any agreement made between the landlord and tenant may later be deemed void and overturned by the bank, should they decide to challenge it, which is their normal right under standard mortgage terms.

Where possible, we suggest that tenants continue to pay rent at some level during the closure and negotiation period as a sign of goodwill.

Landlords are more likely to be supportive if approached at the earliest juncture and dealt with in an open and transparent way. The key to the process is having good financial information that is well presented and easy to interpret, and allows the landlord to understand the predicament and appreciate the genuine intent of the tenant to engage fully to resolve the situation. Landlords and tenants, and their financial advisors, need to engage in a businesslike manner to agree a common-sense approach where each party is allowed to share in the available profits of the tenant's business.

## Landlord's perspective

For landlords, the key objective is to maintain continuity of rent, and landlords will need to sense-check what rent is affordable or attainable in the current business environment. The landlord has most likely spent a significant amount of capital in acquiring the premises, and the financial strength of the tenant and the lease agreement in place will be paramount in understanding any increased financial risk they face.

While landlords in the first instance will look to lean into the resources of the tenant or guarantors, there is always a danger that not showing some flexibility and willingness to engage will lead to tenants ceasing all payments as a form of counter-leverage in any negotiations. This would only serve to make it more difficult to get an agreement from the tenant on rent levels and to recommence payment of rent.

A recognition of the tenant's challenges and a willingness to discuss a fixed window of rent concession based on due diligence and a strict reporting of trading levels will likely be a better stance for most landlords.

We would advise landlords to follow a process which assures tenants that they will strive to devise a workable solution if the tenant provides an "open book" approach on their trading position in the two financial years before COVID-19 and during the period for which any abatement may be sought.

Based on the time needed to unravel the restricted travel patterns and return to normal routines after COVID-19, we would anticipate that agreements on abated rent will need to run until at least the end of June 2021.

Due to the suddenness and devastating impact on trading brought about by COVID-19, landlords are likely to be left in a rent arrears position by the time an agreement is reached. We would suggest that this is settled either by a once-off payment or an agreement that any deposit previously paid at the commencement of the lease is set off against the arrears as a contra, and that any challenges by the tenant prior to the rent abatement are waived. We also suggest that in the interim, any rent arrears amount, even if the requirement is to eventually forgive it, be set aside and only formally written off at a future point, after the tenant has performed on other aspects of the rent abatement agreement.

It may also be useful to explore an extension to the lease. Extending the term of the lease or removing the next tenant break option could add value to the residual lease and compensate the landlord for the missed payments that they have to absorb during the period of abatement.

In summary, landlords will need to obtain the best available advice and quickly get an understanding of likely tenant behaviour so that the engagement is progressed in such a way that the flow of future rent is maximised. All rental concessions should be contingent upon the tenant keeping to their side of the bargain. If a tenant has been problematic in better times, then perhaps the landlord needs to make a decision early to get vacant possession and advertise for a new tenant.



## For tenants and landlords

Any amendment to the lease needs to be properly documented, including the abatement period and what terms are in place for when the abatement period expires.

It is normal for concessions on rent levels to be made personal to the tenant so they cannot be assigned to a third party at a premium, as the landlord is making a compromise which should not unduly benefit the tenant on an exit.

It is likely that the closed period will push many companies in what was already a weakened retail and restaurant landscape to the edge of viability or even towards insolvency. It is expected that to give many retail and restaurant tenants the best chance of success, they will look at insolvency solutions such as examinership and liquidation to obtain a compromise from unaffordable creditors and allow a fresh start.



Landlords will typically have a clause in their lease that gives the ability to forfeit a lease and take back control of their property in the event of a tenant insolvency. This might require a pre-agreement where the landlord waives the right to enforce the forfeiture clause in the lease to allow the early resumption of trade and rent. Also, the landlord's position as a creditor should not be disadvantaged because they tried to help the tenant survive by offering the abatement.

It usually makes better business sense for landlords to reduce their tenant's rent and avoid the costs of having to strip out the unwanted fit-out following a lease termination and the possible holding cost of a vacant unit.

Therefore, it is very often the case that dealing with the incumbent on a goodwill basis, where there is willingness for sharing of pain and where the benefit of tenant goodwill can be leveraged, has advantages for both the landlord and the tenant.

## How we can assist you

As accountants with significant experience in dealing with unaffordable leases following the 2008 financial crisis, Crowe is well placed to guide you through the process of putting a new arrangement in place that ensures continuity of rent and protects the value of your existing lease.

At Crowe, we have completed numerous negotiations on behalf of landlords and tenants. With our expertise we can help negotiate a new arrangement that can be quickly implemented and makes the best of the situation for both parties.

For further advice, or if you need assistance with any specific rent abatement agreements in which you are involved, please contact me or a member of my team.

## Stay updated



### Restructuring and insolvency solutions for your business

In this web article we detail some of the restructuring and insolvency solutions for business owners facing cash flow difficulties due to COVID-19. [Read more.](#)



### COVID-19: Managing the impact

Keep informed about the range of COVID-19 supports and solutions available to help your business navigate the challenges by visiting our dedicated COVID-19 Resource Hub.



[Visit COVID-19 Resource Hub](#)

## About us

Established in 1941, Crowe is a leading accountancy and business advisory firm in Ireland. Throughout our 75-year history, we have developed an unrivalled understanding of the Irish business environment and built a national reputation in auditing, tax and business consultancy.

We work with a variety of clients across commercial and public sectors. Our services include Audit & Assurance, Tax, Corporate Insolvency & Recovery, Corporate Finance, Consultancy, and Outsourcing.

We are also independent members of the eighth-largest accountancy network in the world, with colleagues in over 750 offices across 130 countries. Through this global reach we are able to offer clients a seamless service when trading internationally.

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