

COVID-19 : Government Measures to Compensate Landlords and Tenants

1. Government Order to Close or Shut Down Premises

A) Compensation Available under the Infectious Disease Control and Prevention Act (“IDCPA”)

- Under the “IDCPA, in order to prevent further spread of an infectious disease, the government (i.e., Minister of Health and Welfare, Mayors/Governors, or heads of local districts) may take the following measures against places where persons with the infectious disease are present or places deemed infected by the pathogen of the infectious disease: (i) temporary closure; (ii) prohibition of entry of the general public; (iii) restriction on movement within the relevant places; (iv) other measures to block passage; or (iv) disinfection or other necessary measures (collectively, the “**Closure and Other Measures**”) (subparagraphs 1 and 7 of Article 47 of the IDCPA). With respect to losses resulting from the Closure and Other Measures, the relevant government authority shall pay compensation to the affected person(s) based on the results of deliberation and resolution by the relevant compensation deliberation committee (Article 70(1)4 of the IDCPA).
- According to Ministry of Health and Welfare’s press release on December 14, 2015, in connection with the spread of MERS in 2015, the government decided to pay compensation

of KRW 500,000,000 in total to 35 shops and 22 drug stores that had been ordered by the government to temporarily shut down their businesses.

B) Scope of the Compensation under the IDCPA

- Pursuant to the IDCPA, (i) the scope of the government’s compensation for losses from the Closure and Other Measures shall be limited to an amount equivalent to “the costs of the facilities, equipment and/or labor that have been rendered unavailable by such closure, entry prohibition, movement restriction or passage blocking,” and (ii) the scope of compensation for losses from a disinfection order issued by the government shall be limited to an amount equivalent to “the costs required for disinfection of the relevant place or other necessary measures” (Table 2-2 under Article 28(1) of the Enforcement Decree to the IDCPA). In determining the amount of compensation, if the person who has suffered a loss caused or increased the loss by violating the obligation to take measures as provided for in the applicable statutes, the relevant government authority may decide to not pay the compensation or reduce the amount thereof (Articles 70(2) and 70(3) of the IDCPA).
- The IDCPA further provides that if it is difficult or impractical to apply the existing compensation standards due to the nature of a given infectious disease, the Minister of Health and Welfare may come up with and announce a different coverage and scope of compensation (Remarks in Table 2-2 under the Enforcement Decree to the IDCPA).
- According to the Bill Information System of the National Assembly, a bill for partial amendment of the IDCPA has been proposed and submitted to the National Assembly. The bill contains provisions to (i) expand compensation for private business establishments and (ii) provide compensation for losses incurred by patients with infectious disease whose movements have been announced. Therefore, depending on whether the amendment bill of the IDCPA is adopted, the coverage or scope of compensation may be expanded.

C) Procedure for Receiving Compensation under the IDCPA

- Persons who wish to receive the above compensation for losses under the IDCPA may file a claim for compensation with the relevant government authority that issued the order, together with documents evidencing the losses. The claim shall include: (i) the details of the losses; (ii) the period during which the losses were incurred; (iii) the claimed amount of compensation; and (iv) the basis for calculation of such claimed amount (Form No.

31 under Article 46 of the Enforcement Rule of the IDCPA). Based on such claim, the compensation deliberation committee will deliberate and determine whether or not to compensate for the claimed losses and the amount of compensation.

- If the person seeking the compensation believes that the amount of loss compensation determined by deliberation and resolution of the compensation deliberation committee is lower than the actual amount of losses, the person may dispute the decision by filing an administrative claim within 90 days of notification (Article 20 of the Administrative Litigation Act).
- Based on the Ministry of Health and Welfare’s press release dated March 3, 2020, the COVID19-related compensation deliberation committee was formed on February 17, 2020, and the first meeting of compensation deliberation committee was held on March 3, 2020. Further, according to the Ministry of Health and Welfare’s press release dated March 17, 2020 and April 9, 2020, the Ministry has secured a budget of 700 billion won for such compensation, among which KRW 102 billion were determined by the compensation deliberation committee to be paid out on April 9, 2020, starting with 146 medical institutions that suffered the gravest damage. Compensation for retail stores and private business establishments are to proceed without delay.

D) Claim for Compensation Upon Voluntary Closure of Premises by Landlord

- The term “administrative guidance” means an administrative action, such as guidance, recommendation and advice by an administrative agency to encourage or discourage a particular person regarding performance of certain acts, within the scope of duties or affairs under its jurisdiction in order to achieve specific administrative aims (subparagraph 3 of Article 2 of the Administrative Procedures Act). Given that administrative guidance is a non-binding recommendation premised on voluntary cooperation of the counterparty, if an owner of a building voluntarily closes down the building based on recommendations for prevention of epidemics, even though the government does not order a closure, the owner may be deemed to have complied with an administrative guidance of the government.
- However, the Korean Supreme Court has previously held that so long as an administrative guidance, being a non-binding act without compulsory effect, does not deviate from this purpose, the administrative agency issuing such guidance shall not be liable to compensate for any loss that may arise to the counterparty to which the guidance was issued (Supreme Court Decision No. 2006 Da 18228 on September 25, 2008). According to this decision, it is highly unlikely that, absent special circumstances, the court will

allow a claim for compensation filed against the government by a building owner who voluntarily closes down the building based on the government's recommendations for control and prevention of spread of an infectious disease.

- Moreover, the Ministry of Health and Welfare announced in an explanatory note dated February 14, 2020, "The media coverage that the government decided to compensate for losses to the affected private business establishments is not true, and nothing has been decided on the loss compensation for private business establishments, because that is an issue to be decided after discussion among related departments and deliberation of the National Assembly on the amendment bill of the IDCPA." Therefore, The Ministry of Health and Welfare's current position seems to be that the government will provide compensation only to those business establishments, with respect to which the Closure and Other Measures were taken, pursuant to the existing provisions of the IDCPA.
- Accordingly, for a voluntary closure of a building by the building owner, other than the closures based on the Closure and Other Measures taken under the IDCPA, it would be difficult to obtain compensation for losses or damages from the government, absent special circumstances.

2. Benefits to Landlords for Voluntary Reduction of Rent

A) Tax Credits for Landlord of a Commercial Building under the Restriction of Special Taxation Act

- Pursuant to the Restriction of Special Taxation Act (as amended and enforced on March 23, 2020 by Law No. 17073), if a landlord engaged in real estate leasing business reduces the rent of a tenant (specified in the Presidential Decree) in a commercial building, from January 1, 2020 to June 30, 2020, the landlord will be entitled to a deduction of income taxes or corporate taxes that is equivalent to 50% of the amount of the rental reduction (Article 96-3 of the Restriction of Special Taxation Act).
- The Enforcement Decree to the Restriction of Special Taxation Act (as amended and enforced on April 14, 2020 by Presidential Decree No. 30609), a 'person engaged in real estate leasing business' in Article 96-3 of the Restriction of Special Taxation Act means a person who is registered as an operator of real estate leasing business with respect to a commercial building under the Income Tax Act, the Corporate Tax Act and the Value-Added Tax Act, and the 'tenants specified in the Presidential Decree' means small business owners who leased a commercial building before January 31, 2020 and are still using it for business purposes (except those tenants engaged in finance and insurance business,

real estate business, or working for an international or foreign institute) (Table 4 under Article 96-3(1) of the Enforcement Decree to the Restriction of Special Taxation Act). In summary, if a landlord who is registered as an operator of real estate leasing business with respect to a commercial building lowers rents for a tenant who is qualified as a small business owner, the landlord will be entitled to a deduction of taxes that is equivalent to 50% of the amount of the rental reduction.

- According to the above Enforcement Decree to the Restriction of Special Taxation Act, a person who desires to obtain such tax credits shall submit to the head of the competent tax office a return of tax base for the relevant tax year and an application for tax credits, together with (i) a lease agreement signed immediately before the rental reduction, (ii) a document evidencing agreement on reduction of rents, (iii) tax invoices or other document showing payment of rents, and (iv) a document showing that the tenant is qualified as a small business owner under the Restriction of Special Taxation Act (Article 96-3(6) of the Enforcement Decree to the Restriction of Special Taxation Act).

B) Benefits provided by Municipal Governments

Apart from the above, municipal governments are offering various benefits for landlords who agree to rental reductions. The details for such benefits are provided in notifications and ordinances issued by municipal governments in jurisdictions where the relevant buildings are located. Some of the key types of benefits offered by municipal governments are summarized below.

① Support for costs of building repairs and electrical safety checks and provision of building disinfection services

- According to the Seoul city government's "measures for people's livelihoods affected by the prolonged state of emergency due to the COVID-19 pandemic," if a landlord reduces the rent for a shop in a commercial building, whose converted lease deposit (monthly rent × 100 + lease deposit) is KRW 900 million, the landlord will be entitled to reimbursement of the costs of building repairs and electrical safety checks, on an actual cost basis, for up to 30% of the amount of the rents reduced (not exceeding KRW 5 million). However, the costs for building repairs are limited to repair works aimed to enhance the durability of the building, such as waterproof, electrical and wood works, and the costs for electrical safety checks are paid once a month in proportion to the amount of rents reduced. In addition, the Seoul city government provides disinfection services for commercial buildings on a weekly basis, and offers promotional opportunities, such as indicating 'Good Landlord' mark on its real estate app.
- A person who desires to apply for the above supports needs to submit application documents to the competent Gu office from April 2020 after signing a rent reduction agreement with the tenant (together with the tenant's business registration certificate, lease agreement, and statement of costs).

② Property tax credits

- Based on the press releases and brief dated March 23, 2020 issued by Seongnam city government, Seongnam city government will reduce property taxes in 2020 to be imposed in July and September up to 100% in proportion to the rate of rental reduction; provided, however, that if the amount of reduced property taxes is in excess of KRW 500,000, the applicable rate of tax reduction shall not exceed 85%, and tax credits will not be given for regional development taxes and local education taxes that are imposed together with property taxes. In addition, those engaged in gambling and adult entertainment business will not be entitled to tax credits.

③ Local tax credits

- According to a press release dated March 30, 2020, Bucheon city government has decided to provide property tax credits up to 50% for landlords who have reduced rents for three months and longer, exempt residence taxes on small business owners whose places of business are temporarily closed down because of a visit by a confirmed person, and exempt motor vehicle taxes on people who use a car for their livelihood. Once the proposal for local tax benefits is adopted by the extraordinary session of the National Assembly scheduled for the next month, these local tax credits will be provided on a temporary basis starting with the motor vehicle taxes.

3. Reductions in Usage Fees for Government Owned Properties

A) Reduction on Usage Fees for Government Owned Properties

- Pursuant to the Enforcement Decree to the State Property Act (as amended and enforced on March 31, 2020 by Presidential Decree No. 30546), if an applicable period is determined and announced by the office of general administration, annual usage fees for state owned properties may be reduced for small business owners financially stricken by acts of God, spread of infectious disease or economic recession for the applicable period, by an amount computed by multiplying the value of the relevant property by a rate of at least 30/1,000 to an amount computed by multiplying the value of the relevant property by a rate of at least 10/1,000 (Article 32(1) of the State Property Act and Article 29(1)(6) of the Enforcement Decree thereto). In addition, according to a public notification titled “Temporary reduction on usage fees and rents on state properties for small business owners” issued on April 1, 2020 by the Ministry of Economy and Finance (MOEF’s Public Notification No. 2020-8), (i) usage fees for state properties are reduced to 10/1,000 of the value of the relevant property; (ii) the applicable period for such reduction is from April 1, 2020 to December 31, 2020; (iii) the maximum amount of reduction is 20 million won; and (iv) small business owners may receive the benefits of reduction by filing an application

with an authority managing the relevant state property within 180 days from the date of the public notification.

- Based the Korea Asset Management Corporation's press release issued on April 9, 2020, the Korea Asset Management Corporation is reducing rents on its managed state properties for small business owners by up to 80% by changing the rate from 2.5% to 5% of property value to 1% of property value.

B) Reduction on Usage Fees for Public Properties by Municipal Governments

- According to the Enforcement Decree to the Act on Public Property and Commodity Management (as amended and enforced on March 31, 2020 by Presidential Decree No. 30583), annual usage fees for public properties are to be determined by a decree of the relevant municipal government to the extent not exceeding an amount equivalent to 10/1,000 per annum of the evaluated property value, and if a person who is authorized to use and benefit from a public property suffers damage from a disaster, such person may be entitled to a reduced rate on a temporary basis after going through deliberation of the public property deliberation council (Article 22(1) of the Act on Public Property and Commodity Management and Article 14(1) of the Enforcement Decree thereto).
- For instance, according to the Seoul city government's "measures for people's livelihoods affected by the prolonged state of emergency due to the COVID-19 pandemic," the Seoul city government has decided to reduce rents for small corporations and business owners occupying space in public properties by 50% for six months. In this case, (i) if small business owners file an application for reduction, (ii) the Seoul city government will review and propose the case to the public property deliberation council, (iii) and provide the said benefits after notifying the results of deliberation by the public property deliberation council.

C) Reduction on Rents by Public Institutions

- The Ministry of Public Administration and Security issued a press release dated March 20, 2020, that a total of 78 public institutions, including Seoul Metro and Seoul Agro-fisheries & Food Corporation, have voluntarily reduced, or extended due dates for, rents for small business owners leasing space on properties owned by public institutions. As of March 20, 2020, rent reductions worth 36.1 billion won have been given to 18,475 tenants.

Should you have any questions or comments about the contents of this newsletter, or if we can be otherwise helpful, please do not hesitate to contact us.

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