

## **Introduction of the Amendments to the Commercial Building Lease Protection Act**

On September 24, 2020, the legislators passed several amendments to the Commercial Building Lease Protection Act (the “Act” or as amended, the “Amended Act”) in the National Assembly. Reflecting the ongoing economic impact of COVID-19, the most significant revisions to the Act include (i) limiting certain actions that can be taken against tenants for rent arrears which occur during the period of six (6) months from the effectiveness of the Amended Act and (ii) recognizing economic fluctuations caused by “Class 1 infectious disease” as a valid reason for requesting and adjustment in rent and other payments associated with the lease of commercial buildings. These amendments will go into force immediately from the date of their enforcement and will apply to lease agreements in effect at the time of its promulgation.

### **1. Restrictions on certain actions that can be taken against tenants, including lease termination, due to rent arrears (special temporary protections for tenants)**

Prior to the amendment, the Act had granted rights for landlords, including the

power to terminate the lease, against tenants for failing to make rent payments for three (3) or more months. The Amended Act however provides temporary one (1) time relief for tenants which prohibits the landlords from terminating a lease for rent delinquency occurring during the six (6) month period from the effective date of the amendment. Essentially, rent delinquency during the six (6) month period will not constitute a cause for termination of the leases. These exceptions apply to all commercial building lease and sublease agreements regardless of size of key money deposit (or converted key money deposit calculated taking into consideration the monthly rents).

#### **Article 10(9) of the Amended Act (Temporary exemptions pertaining to lease renewal requests, etc.)**

The overdue rent owed by the tenant during the period of six (6) months from the enforcement date of the Act shall not be considered rent arrear for the purpose of:

- (i) Article 10(1)(1) (reasons for refusal of request for lease renewal);
- (ii) Proviso of Article 10-4(1) (reasons for excluding recovery of premium paid by the tenant); or
- (iii) Article 10-8 (termination of lease due to rent arrear).

Other rights of the landlord to take measures or actions against the tenant due to overdue rent payment(s) are not affected.

Article 10(9) attempts to mitigate the risk that the tenant may lose his or her business opportunity due to failure to pay rent. Conversely, the provision acts to restrict the potential actions the landlord may take against the tenant pursuant to Articles 10(1)(1) and 10-8 of the Act. However, other rights of the tenant (such as the right to deduct overdue rent payments from the security deposit) remain unchanged.

## **2. Right to request rent adjustment due to fluctuations in economic conditions caused by COVID-19**

Fluctuations in economic conditions due to “Class 1 infectious disease” such as COVID-19 is classified as a new type of infectious disease under Article 2(2) of the

Infectious Disease Control and Prevention Act and are legally recognized as an event triggering the right of a party to exercise the right to request adjustment of rent (Article 11(1) of the Amended Act). Such provision provides a stronger legal basis for which the tenant may request reduction in rent due to the economic impact of COVID-19.

Further, Article 11(3) attempts to balance the conflicting interests of the parties. Article 11(3) of the Act stipulates that in the event that the landlord readjusts the rent to the amount prior to rent reduction due to fluctuations in economic conditions, the landlord may readjust the rent by greater than the 5%, upper limit originally set under Article 4 of the Enforcement Decree of the Act. In practice, this may allow the landlord to be more inclined to lower the rent since it may be readjusted by a greater scale than previously. Essentially, this provides the tenant with an immediate relief while providing the landlord a greater latitude going forward. However, Article 11 does not apply to agreements with security deposit amount that exceeds the key money deposit threshold as prescribed in the Presidential Decree.

#### **Article 11 of the Amended Act (Right to request adjustment in rent, etc.)**

(1) If rent or security deposit provided for the commercial building cannot satisfy outstanding taxes, utility bills or other required payments on the building given the fluctuations in economic conditions caused by “Class 1 infectious disease” pursuant to Article 2(2) of the Infectious Disease Control and Prevention Act, the parties may request an adjustment in such rent or security deposit; provided, however, that any increase in such rent or security deposit shall not exceed the threshold as prescribed by Presidential Decree.

(2) If the landlord requests an increase in rent pursuant to Paragraph (1) above due to a reason attributable to fluctuations in economic conditions caused by “Class 1 infectious disease” pursuant to Article 2(2) of the Infectious Disease Control and Prevention Act, the limit on rent increase stipulated under Paragraph (1) shall not apply until the readjusted rent reaches the level of the pre-reduction rent amount.

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Should you have any questions regarding the contents of this newsletter, please do not hesitate to contact us.

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