

## Coronavirus: An update for the UK Hotel industry

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Social distancing and travel bans had a dramatic impact on occupancy rates in the lead up to the government's directive that all but essential businesses should close their doors. With all regular trade suspended since 24 March, the landscape is evolving on a daily (if not hourly) basis. Here we have set out a summary of key points for the industry in the UK:

### Hotel leases

#### **Rent**

Hotel operators and owners should keep talking with their stakeholders. What that means in practice will vary – but reaching agreement on an extraneous rent-free or reduced-rent period might be possible. Devolving to monthly rather than quarterly invoicing to assist cash flow might sound attractive, but is unlikely to assist sites that have closed and where trade has dried up altogether. Big players like British Land have already adopted a policy of offering a three month rent waiver to assist smaller F&B and hospitality tenants which might indicate a positive mood of support towards the industry.

Operators should keep records of past trading performance up to date and available. Landlords will be more minded to grant concessions to businesses which have good prospects of recovery when the hard times are over, rather than those that were already struggling before the virus hit.

Whether an agreement is reached or not the government has ordered a moratorium on forfeiture for rent arrears until 30 June 2020. In the same vein, the Court has suspended the hearing of winding up petitions until June at the earliest. [For owners the incentive to do a deal with tenants is strong.](#)

#### **Turnover rent**

Rents calculated by reference to turnover might offer short-term respite for hotel operators depending on how the specific clauses are constructed. Operators in leasehold premises should check leases to review calculations and should not rely on their landlords to get this right.

#### **Keep open requirements**

Leases which reserve a turnover rent are likely to contain keep open obligations – and impose harsh penalties for failure to observe these trading limits. Given the government's directive for wholesale non-essential business closure, it is unclear whether these penal provisions will bite and in effect occupiers' obligations to follow statutory directives are likely to trump their landlord's ability to recover damages.

### Hotel management contracts

#### **Performance test/guarantees**

KPIs linked to any financial metrics under a hotel management contract are likely to be breached. Operators will rely on carve outs for force majeure to save them from the spectre of termination or the obligation to top up a profit guarantee or meet other financial commitments. Gloomy trading in the run-up to and months after the crisis may confuse the picture. Parties should review hotel management contracts carefully to see whether owner termination or other rights come into play.

#### **Budget readjustment**

It goes without saying that hotels owners should expect shortfalls against budgeted performance due to the spread of the outbreak. Departures from approved budgets caused by emergency situations are permitted under most hotel management contracts. What owners will want to see is

revised budgets that keep a tight handle on operating costs without compromising the asset.

## Industrywide

### **Force Majeure**

The legal issues are not entirely straightforward, but it is very unlikely that any legal arguments such as 'force majeure' events or 'frustration of the contract' will work to release a tenant from its obligations under an operating lease. Hotel management contracts might contain specific force majeure provisions and hotel owners and operators should check agreements and consider whether these provisions might be triggered in response to the outbreak to assess what the implications are. A force majeure event that results in closure might give rise to a mutual right of termination and so for hotel owners or operators who were looking for a way out before the outbreak, sustained closure might provide a moment to re-cast relationships.

### **Insurance**

The Association of British Insurers has said that the vast majority of businesses won't have purchased cover for business disruption that will enable them to claim on their insurance for trading losses. The exception perhaps being a small minority of typically larger brands that might have purchased an extension to their cover for business interruption. Policies should be checked, but insurance proceeds are expected to be unavailable for most.

### **Closure, security and repair**

Providing security for premises that are closed as a result of the outbreak is considered essential work and is not restricted under current government directives. Security arrangements might need to be reviewed in light of prolonged closure and hotel owners and operators should both consider the adequacy of inspection and maintenance provisions to prevent avoidable damage and disrepair during closure. Bear in mind lenders' and insurers' conditions are likely to be more stringent when dealing with closed premises and close attention should be paid to the requirements of both to avoid unthinkable breach scenarios.

### **Rating relief**

Ratings relief will be available for a period of 12 months from 1 April for all hospitality and leisure businesses. This comes as a huge injection of support from the government and will provide welcome respite. Back office support offices might also consider taking advantage of empty rates relief if all or part of their premises become redundant as a result of the outbreak. Empty rates relief is available for a period of up to 3 months.

### **Options for employees**

Hotel owners and operators will be quick to sympathise with the plight of employees in the sector, many of whom are likely to be on 'zero hours' contracts and will understandably be nervous about their future. Agreeing a temporary reduction in pay or hours with employees together with other measures such as employees voluntarily using up holiday and giving up discretionary benefits to reduce costs, might help hotel operators weather the storm and are likely to be greeted more favourably by the workforce than the prospect of redundancy. Workers that are not working and are sent home are likely to be eligible for the government's furlough scheme with wages guaranteed at a rate of 80% of salary up to a maximum of £2,500 pcm.

However, making redundancies might be an inescapable reality and employers will need to consider statutory periods of collective consultation before they are able to make redundancies.

### **Solvency risks**

The government has announced a moratorium on claims against directors personally for wrongful trading. This is designed to keep businesses trading where the possibility of insolvency might otherwise have stagnated activity because of directors' reluctance to run the risks of attracting personal liability for trading while insolvent. If the business enters into a formal insolvency process the actions of directors in the lead up to proceedings will come under a higher degree of scrutiny and so notwithstanding the government's moratorium, the importance of keeping good written records of key decisions is elevated.

If negotiation with creditors is not successful or simply not sufficient, there might be no alternative to a formal insolvency process. If hotel owners or operators find themselves in this position they should speak to an insolvency specialist who will be able to provide guidance on the processes and possible outcomes.

### **Adapt**

In a global crisis of this scale the human cost is paramount. But, extended periods of pan-market closure are unheard of and as businesses adapt to help them weather the crisis, hotel owners might consider whether now is the time for feasibility testing across the portfolio. Deciding whether to refurbish, re-flag, sell or buy will be aided by teams of professional advisors, many of whom will be well set up to feed into these plans remotely.

A final reminder...

Whatever the forecast for particular operators, owners or brands, these are uncertain times and the impact of the outbreak will be unprecedented. Communication is key – whether it be with guests, loyalty members, landlords, employees, suppliers or other creditors. There is no silver bullet to weathering tough times but early and effective communication with all key stakeholders will give parties the best prospects of emerging from the crisis with their values and businesses intact.

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