COVID-19: Global Real Estate Guide - Philippines

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# COVID-19 Impact on Real Estate

## If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?

As of 8 November 2021

Yes.

Leases in the Philippines often contain a mutual warranty of landlord and tenant that the performance of the lease contract would not violate any law or regulation. A landlord may use such warranty as basis for requiring a tenant to comply with all "legal obligations".

## If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?

As of 8 November 2021

Costs would usually be recoverable from the tenant.

Typically, the list and rate of service charges are open/variable, so the costs may be added if incurred in accordance with the principles of good estate management.

## If the tenant cannot use its property, does it have to continue paying rent?

As of 8 November 2021

Yes, the tenant may have to continue to pay.

Leases in the Philippines do not normally contain a rent suspension clause. However, where applicable, force majeure may possibly be invoked to suspend the payment of rent.

## Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?

As of 8 November 2021

Yes.

A keep-open covenant is standard in retail leases.

However, a tenant cannot be compelled to keep the leased premises open for trading contrary to any government or regulatory order.

## Could the parties claim that Covid-19 is a force majeure event which excuses the parties from performing the lease obligations?

As of 8 November 2021

Yes, possibly.

Leases in the Philippines normally contain force majeure clauses. These are generally based on the principles from the Civil Code of the Philippines and jurisprudence. Depending on the stipulated terms, such clause may be used as basis for suspension of rent payment and delivery by landlord of certain services. There are leases, however, that expressly allow the suspension of rent payment and delivery by landlord of certain services, in cases of force majeure. Leases also usually allow the termination of the contract due to a force majeure event that persists for an agreed period.

In instances where the lease is silent with respect to force majeure, non-compliance with contractual obligations may be excused based on the Civil Code. The following are usually required for a party to be excused from an obligation by reason of force majeure:

the party who wishes to be excused from the obligation was not the cause of the breach

the event must either be unforeseeable or unavoidable

the event must render it impossible for the party to fulfill his obligation in a normal manner, and

the party must be not have aggravated the damage caused to the other party.

## Could the parties argue that the lease contract is frustrated by Covid-19?

As of 8 November 2021

Yes, possibly.

A party may be excused from performing its obligation if it becomes legally or physically impossible to do so, without the fault of the said party. This may possibly be used as basis to terminate the lease if the leased premises remain inaccessible for a prolonged period of time due to COVID-19.

## Do landlords and tenants commonly obtain business interruption insurance?

As of 8 November 2021

No.

Business interruption insurance is not usually required under leases in the Philippines.

## Are landlords and tenants negotiating amendments to leases?

As of 8 November 2021

Yes.

Landlords and tenants of leases that are up for renewal are negotiating appropriate amendments to leases in light of the COVID-19 situation. The amendments generally contemplate including COVID-19 and other similar pandemics or epidemics in the definition of force majeure, which, under Philippine law and subject to certain conditions, could potentially excuse a party from its contractual obligation. Some amendments also aim to provide relief and remedies specific only to possible COVID-19 implications.

## As businesses re-open are there any new requirements to adhere to?

As of 8 November 2021

Yes.

Cities, municipalities, and provinces in the Philippines are still under various alert levels based on the COVID-19 transmission and healthcare facility utilization rates within their respective territorial jurisdictions. Businesses may reopen, subject to following minimum health protocols (e.g., wearing of face masks and face shields, adequate ventilation, frequent and proper disinfection, appropriate physical distancing, curfew hours). The Philippine government also currently restricts the operational capacity of businesses depending on the industry (i.e., essential vs. non-essential) and the alert level in effect in the area where the business operates. Additional control measures are also imposed in certain industries.

Different local government units within the Philippines have also issued local ordinances that require businesses operating within their jurisdiction to comply with requirements in addition to those required by the national government.

## Are there other emerging trends or key issues for landlords and tenants?

As of 8 November 2021

**Negotiations**

Landlords and tenants are expected to consider the effects of the COVID-19 pandemic in negotiating new or renewal of lease agreements, in particular clauses on force majeure, rent relief, lease term, and holdover rights.

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