



COVID-19 Update: Ban on Forfeiture, and Government Issues Best Practice Guidelines for the Industry



By **Duncan Hubbard**
Partner | Real Estate



By **Livia Li**
Associate | Real Estate

The Government passed the *Coronavirus Act 2020* in March 2020 which provides various emergency measures. Amongst these, a ban on forfeiture of lease was imposed from 25 March 2020 to originally 30 June 2020 so that landlords may not forfeit a lease where it is due to non-payment of rent during this period. Please refer to our [earlier article](#) for more in-depth discussion on this piece of legislation.

The Government has since extended this ban on forfeiture to 30 September 2020. This extension is made by *The Business Tenancies (Protection) from Forfeiture: Relevant Period (Coronavirus) (England) Regulations 2020*, which came into force on 29 June 2020.

In addition, The Code of Practice for commercial property relationships during the COVID-19 pandemic was published on 19 June 2020. This is a voluntary code and does not change the underlying legal relationship or lease agreements. It outlines what the Government (having consulted with industry bodies) recommends to be best practice guidelines to be considered (and possibly adhered to) by the players in the commercial property industry.

The full guideline can be accessed [here](#).

A few of the key points to note include:

- when tenants are seeking concessions, they should provide transparent explanations, supported by financial information of their business. The same principle of transparency and explanation should be provided by landlords when rejecting the tenant's request for concession;
- in considering tenant's request for renegotiation of rent, landlords may wish to consider factors such as duration of closure period, effect on trading extra costs to adhere to social distancing requirements, any government support

available and tenant's past track record;

- the code also provides some examples of arrangements which can be entered into between the landlord and the tenant. It is important to note that these are merely suggestions and, therefore, the parties are not obliged to follow these:
 1. rent-free period;
 2. deferral of rent;
 3. rent variations to reflect current market rate, or rent adjusted to align with turnover;
 4. landlords accessing the rent deposit during periods where the tenant requires a rent reduction, to be topped up later on; and
 5. disapply default interest, and others
- service charge to reduce to align with the lack of use of the premises. It is encouraged that landlords pass on any savings to the tenants, and any solution the parties reach in relation to a service charge should take account of the RICS Professional Statement Service Charges in Commercial Property, 1st edition, and of all RICS guidance in relation to service charges and COVID-19.