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公司实务

## 疫情影响下承租人如何获得租金减免

### How to Seek Rental Reduction/Exemption under the COVID-19 Situation

出现的挑战

#### Challenges

由于疫情影响,大部分企业的生产经营受到了非常大的影响,部分企业处于停工停产状态。另一方面,企业的生产经营成本,例如房屋租金、员工工资等仍继续存在。在这种情况下,企业的生存压力剧增。

Due to COVID-19, the production and operation of most companies are affected. Some of them have to suspended business operation. On the other hand, the costs such as rental and salary for the employees remain. Under such circumstances, the pressure for survival increases rapidly.

由于企业停工停产,导致企业无法正常使用所承租的房屋。在这种情况下,作为承租方的企业希望房东能减免租金,以减轻企业的运营成本,这种要求是否可行?国家在政策层面是否有相应的配套规定出台?

The operation suspension leads to the result that the leased property by the company cannot be utilized as usual. So is it possible the company, as the lessee, may request for exemption/reduction of rental so that to reduce its business costs? Is there any policy made by the government in this regard?

#### I. 承租国有企业经营性房产的中小企业可申请获得租金免除

##### **SEMs who lease state-owned commercial properties are eligible for rental exemption**

针对疫情,多个省市都已出台关于中小企业减免其承租的国有企业经营性房产租金的政策措施。例如,根据上海市人民政府于 2020 年 2 月 7 日印发的《上海市全力防控疫情支持服务

企业平稳健康发展的若干政策措施》规定，中小企业承租本市国有企业的经营性房产（包括各类开发区和产业园区、创业基地及科技企业孵化器等）从事生产经营活动的，先免收 2 月、3 月两个月租金。

Due to COVID-19, local government at provincial levels has issued policies on rental exemption for small and medium-sized enterprises (“SMEs”) who leased stated-owned commercial properties. For instance, according to Several Policies and Measures for Fully Controlling the Epidemic Situation and Supporting the Smooth and Healthy Development of Enterprises in Shanghai issued by Shanghai government on February 7, 2020, SMEs that lease stated-owned commercial properties in Shanghai (including development zones and industrial parks, entrepreneurial bases, and science-tech business incubators) will be exempted with rental payment for February and March of 2020.

根据上述政策规定，我们认为，上海地区中小企业申请并获得租金免除需满足如下条件：

Based on above policy, the conditions for enjoying the rental exemption in Shanghai include:

- (1) 所承租的房屋系国有企业经营性房产。通常情况下，如房屋不动产登记证书显示所承租房屋系国有企业持有，则可以初步认为满足了免除的前提条件。如企业对于出租方是否属于国有企业不确定，可以通过上海市国资委网站（[www.gzw.sh.gov.cn](http://www.gzw.sh.gov.cn)）查询确认；

The leased property shall be a state-owned commercial property. Usually it can be confirmed if the property is registered under the name of a state-owned company. If you are not sure of the identity of the landlord (namely, whether it is a state-owned company or not), you may search through the website [www.gzw.sh.gov.cn](http://www.gzw.sh.gov.cn).

如果中小企业承租的房屋系国有企业经营性房产，但该中小企业系通过转租方式承租的，则中小企业应向转租方申请并获得租金免除，而不能直接向出租方要求免除。

In addition, if the property owned by the state-owned company is leased by a SME though a second landlord, the SME as the lessee is still able to enjoy the rental exemption from the second landlord instead of directly from the landlord.

- (2) 申请免除租金的承租企业必须是中小企业。那么，如何确认是否属于中小企业？根据工信部等部门印发的《中小企业划型标准规定》（工信部联企业〔2011〕300号），举例如下：

The lessee that may request for rental exemption shall be a SME. So, how to define a SME? According to Provisions on Classification Standard for Small and Medium-sized Enterprises jointly issued by the Ministry of Industry and Information Technology and other departments, here are some examples to identify a SME:

- 工业企业：从业人员 1000 人以下或营业收入 40000 万元以下；

Heavy industry: staff headcount < 1000, or business revenue < CNY 400 million;

- 批发业：从业人员 200 人以下或营业收入 40000 万元以下；  
Wholesale trade industry: staff headcount < 200, or business revenue < CNY 400 million;
  - 零售业：从业人员 300 人以下或营业收入 20000 万元以下；  
Retail industry: staff headcount < 300, or business revenue < CNY 200 million;
  - 餐饮业：从业人员 300 人以下或营业收入 10000 万元以下；  
Restaurant and catering industry: staff headcount < 300, or business revenue < CNY 100 million;
  - 软件和信息技术服务业：从业人员 300 人以下或营业收入 10000 万元以下。  
Software and IT industry: staff headcount < 300, or business revenue < CNY 100 million;
- (3) 可免除租金的期限。根据现行政策，先免收 2 月、3 月两个月租金。  
So far the rental for February and March of 2020 can be exempted.

## II. 如承租非国有企业经营性房产，是否还有可能要求租金减免？

### **Is it possible for the company that leases a non-stated-owned property to request for rental reduction?**

显然，大部分企业承租的商业用房屋并不符合政策确定可享受租金免除的范围。但是，因疫情影响，现实中确实存在企业无法正常使用房屋或业务受到严重冲击的情况。那么，在这种情况下，如何实现租金的减免呢？我们从以下几种情形来做分析：

Obviously, currently most companies whose leased properties are not qualified to enjoy rental exemption. However, due to the COVID-19, indeed many companies are not able to make use of the leased properties properly, or the business relating to the leased property is affected seriously. Then, are they still able to ask for rental reduction? In this aspect, we would like to analyze in different scenarios:

#### (1) 所承租房屋因疫情影响，被政府要求关闭或停业的情形

The leased property/business relating to the leased property is ordered to shut down by the government due to the impact of COVID-19.

例如，湖北省疫情防控指挥部发布通告：武汉市除涉及重要国计民生的企业，其他企业先按不早于 3 月 20 日 24 时前复工复产；限制清单主要包括\*\*\*所、培训机构、堂食餐饮等，疫情解除前不得而复工复产。

For instance, according to the government policy in Hubei province, except for enterprises essential to national economy and people's livelihood, all enterprises in Wuhan city are not allowed to resume work before 24:00PM March 20th. This restriction covers entertainment venues, training institutions, restaurants, etc.

上述因政府措施导致房屋无法使用的，可按照合同法规定的不可抗力原则处理，承租人  
可以要求减免房租。

Thus, if the leased property cannot be used due to above restriction, we think the lessee is entitled to request for reduction of the rental on the ground of Force Majeure event.

(2) 承租房屋经营业态倚重客流量，因疫情影响客流量下降的情形

The business in relation to the leased property is affected due to the decrease of customer flow as result of COVID-19

例如，酒店、酒吧、餐厅、商场、培训机构等经营业态多依赖于客流量。如因疫情影响在营收发生重大减损的情况下，承租方可依据情势变更或公平原则要求适当调整租金。 Businesses like hotels, bars, restaurants, shopping malls, training institutions, etc. heavily rely on customer flow. If the business revenue decreases due to the COVID-19, the lessee is also allowed to request for reasonable decrease to rental in the principle of fairness/change of objective circumstances.

(3) 其他类型商业用房屋租金的减免

Rental reduction for other commercial properties

其他类型房屋，如写字楼、仓库等，尽管因疫情影响使用受到一定限制，但尚未到无法使用的程度，因此一般很难要求减免租金。

For other properties, such as office buildings and warehouses, usually as the use of the property is not affected, so it is difficult to request for rental reduction in such case.

### III. 企业承租的居住用房屋是否可以要求租金减免?

#### **Any chance to request for rental reduction in relation to residential property leased by a company?**

作为一项员工福利，有些企业会向高管类员工提供居住用房屋。那么，如果此类房屋因疫情影响无法使用，企业是否可以要求减免租金？在此，我们将根据承租房屋的不同情形进行分析：

Sometimes, a company may provide its employee the leased residential property as part of employee benefit. If such property cannot be used as usual, can the company request for rental reduction? In this case, we would like to analyze this in different scenarios:

(1) 员工以自身名义签署的租赁合同

Property which is leased in the name of the employee

这种情况一般是指员工以自己名义签署租赁合同，企业根据员工提供的租赁发票给予报销租金。

In such case, the employee concludes the lease agreement in his own name, and the company reimburses the rental for the employee against the invoice of the rental.

如果该员工存在因疫情影响而存在客观情况无法使用房屋的，例如，员工因当地政府管控措施无法返回房屋所在地，导致无法使用房屋的，则员工本人可以不可抗力为由要求房东租金减免。

Let's assume that the employee is not able to use the property due to the COVID-19. For instance, the employee is not able to return to the place where the leased property is located due to the travelling restriction, and therefore is not able to use the property as usual, we think the employee can request for rental reduction on the ground of Force Majeure event.

(2) 企业以自身名义签署的租赁合同

Property which is leased in the name of the company

如果租赁合同系企业以自身名义签署，并由指定员工使用的。在这种情况下，如果该员工因疫情影响而存在客观情况无法使用房屋的，企业是否有权要求房东租金减免呢？我们认为，这种情况还要根据租赁合同本身的签署情况做进一步区分：

In such case the company concludes the lease agreement in its name and allows the designated employ to use it. So if the employee is not able to use the property due to the COVID-19, can the company request for rental reduction? We think the answer can be found in the following situations:

如果企业所签署的租赁合同中，明确约定了入住人员的，而该等员工确因疫情影响无法使用房屋，我们认为企业可以不可抗力为由，要求房东租金减免。但是，如果租赁合同并未明确入住人员，即使实际居住人存在无法使用房屋的客观情况，一般情况下可以认为企业可以另行安排使用房屋，无法以不可抗力为由要求租金的减免。

Let's assume that in the signed lease agreement, there is a clause which specifies the name of the employee who shall be the actual user of the property, then if such employee is not able to return and use the property, we think the company is entitled to request for rental reduction on the ground of Force Majeure event. However, if no name of employee as the actual user of the property is specified in the lease agreement, it could be difficult to request for rental reduction on the ground of Force Majeure event even if the actual user is affected by the COVID-19, as the landlord may argue any other employee of the company is allowed to use it.

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