



20 APRIL 2020

CORPORATE & COMMERCIAL AND REAL ESTATE ALERT

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Property Industry Group announces relief package for retail tenants amidst the COVID-19 pandemic

In a response to the President's announcement of a national lockdown on 23 March 2020, the South African REIT Association, South African Property Owners Association and the South African Council of Shopping Centres formed what is presently known as the Property Industry Group. Since then, the Property Industry Group has been working together to find solutions in response to the harmful economic effects of the national lockdown.

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As a possible solution the Property Industry Group, on 7 April 2020, announced an industry wide retail tenant assistance relief package. This "relief package" focuses on small, medium and micro enterprises (SMMEs), being those entities which have an annual turnover of up to R80 million, across all sectors and seeks to provide assistance and support to SMMEs which are unable to operate during the national lockdown. Although SMMEs are the primary focus, the Property Industry Group has extended the scope to include large retailers heavily affected by the lockdown.

What does the announcement entail?

At its essence, the proposal made by the Property Industry Group recommends, in broad terms, (1) certain minimum and maximum rental discount percentages where rental will be waived partially or fully, as well as rental deferments; and (2) the eligibility requirements for such proposed relief.

Who does the proposal apply to?

Recommendations are made in respect of three categories of tenants: (1) SMMEs; (2) entities trading in non-essential goods and services; and (3) entities trading in essential goods and services.

SMMEs

In respect of SMMEs, the Property Industry Group has devised a schedule setting out the proposed minimum rental discounts or rental deferments that may be applicable to SMMEs categorised by the level at which the SMME has been affected by the national lockdown. Although not expressly stated, these are presumably SMMEs trading in non-essential goods and services. The offerings are as follows:

1. highly impacted retailers, for example companies selling time and services such as restaurants, hairdressers, travel agents or take-aways, may be offered:
 - a. a 35% to 100% rental discount for April 2020, as well as further relief in the form of interest-free rental deferments over six to nine months from 1 July 2020; and
 - b. up to 50% rental discount for May 2020, as well as further relief in the form of interest-free rental deferments over six to nine months from 1 July 2020.

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Although not expressly stated, these presumably include both SMMEs and non-SMMEs trading in essential goods and services.

2. medium impacted retailers, for example companies selling products that do not have a limited shelf life, may be offered:
 - a. a 35% to 50% rental discount for April 2020, as well as further relief in the form of interest-free rental deferments over six to nine months from 1 July 2020; and
 - b. up to 25% rental discount for May 2020, as well as further relief in the form of interest-free rental deferments over six to nine months from 1 July 2020.
- b. 15% rental discount for May 2020, as well as further relief in the form of 35% rental deferment over six months from 1 July 2020.

Entities trading in essential goods and services

In addition to this, the relief package sets out a proposal for entities trading in essential goods and services. Although not expressly stated, these presumably include both SMMEs and non-SMMEs trading in essential goods and services. The offering in this regard is as follows:

Entities trading in non-essential goods and services

The Property Industry Group also set out a proposal for entities trading in non-essential goods and services. Although not expressly stated, these presumably include non-SMMEs trading in non-essential goods and services. The offerings are as follows:

1. state owned entities or government tenants (excluding temporary testing, laboratories and healthcare services housed free) will not be offered any "relief" in terms of the proposal; and
 2. retailers with an annual turnover above R80 million may be offered a:
 - a. 35% rental discount for April 2020, as well as further relief in the form of 15% rental deferment over six months from 1 July 2020; and
 - b. 15% rental discount for May 2020, as well as further relief in the form of 35% rental deferment over six months from 1 July 2020.
1. retailers of essential goods and services which offer:
 - a. more than 75% essential services; or
 - b. essential services, but elect to close, are not offered any "relief" in terms of the proposal; and
 2. retailers which offer partial essential services, which means that less than 75% of their service or product offerings are classified as essential services, will be offered the following relief:
 - a. in respect of the essential services/goods portion, no "relief" in terms of the proposal;
 - b. in respect of the non-essential goods/services portion – as per retailers with annual turnovers above R80 million, as well as a deferment recovery

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The proposal suggests that landlords will, on a case-by-case basis, also consider providing relief for office, industrial and hospitality tenants where the lockdown has severely impacted the tenant and where it is justified, and that these tenants will negotiate relief terms directly with their landlords.

period over six months from 1 July 2020, pro-rated by essential goods/services turnover vs non-essential good/services turnover (or gross lettable area if specifically agreed). Thus, a percentage will be deducted based on the proportion of the entity's products or services that constitute essential services compared to the proportion of the entity's products or services that constitute non-essential services.

Office, industrial and hospitality tenants

The proposal suggests that landlords will, on a case-by-case basis, also consider providing relief for office, industrial and hospitality tenants where the lockdown has severely impacted the tenant and where it is justified, and that these tenants will negotiate relief terms directly with their landlords. No rental discount percentages or rental deferrals are, however, proposed in respect of these types of tenants though.

What are the parameters of the relief package?

1. In terms of the relief package "rental" is defined as including rent, operating costs and parking costs for the months of April 2020 and May 2020. The relief does not apply to rates, taxes, utility costs, insurance and other recovery amounts. Tenants are still liable for the full amount of these additional costs.
2. In order to qualify for this relief retail tenants are required to undertake not to retrench staff during the relief period.

3. Tenants' accounts must have been in good standing at the end of February 2020 to be offered assistance from the landlord in terms of this proposal.
4. The proposal was formulated on the assumption that the national lockdown does not extend beyond 21 days. It remains to be seen whether this will be revisited in light of the lockdown extension.
5. The payment for rental for the months of April and May 2020 should be done by no later than 17 April 2020 and 7 May 2020, respectively, and apply to all discounts and deferrals.

To date, there has been no indication that this announcement is legally binding on tenants and landlords. For now, it serves as a guideline and an attempt to assist the relevant parties to come to an amicable solution which is economically viable for both the tenant and the landlord. At present, the announcement is twofold and allows landlords the flexibility and discretion to make an informed decision on the appropriate "relief" offered to tenants, but also gives tenants an indication of the minimum and maximum "relief" to be offered and what they can expect when entering into negotiations with their landlords.

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