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Charles Amar has extensive experience on all aspects of real estate law with a particular focus on issues related to real estate investment, project development, construction, and asset management.

He regularly advises domestic and foreign clients seeking expert advice and innovative solutions on significant and complex transactions involving property, whether already developed or at the planning stage.

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COVID-19 THE IMPACT ON LEASES AND RENTAL PAYMENTS IN CAMBODIA

The COVID-19 global pandemic continues to rage and tenants in Cambodia are now looking carefully at whether this situation can be considered a force majeure event in order to seek a cessation or reduction of their rental payments.

On 11 March 2020, the World Health Organization (“WHO”) officially declared the outbreak of the coronavirus disease 2019 (“COVID-19”) a global pandemic.

In response, the Royal Government of Cambodia has implemented various protective measures and restrictions in order to control and prevent the further spread of the virus. This has involved the closure of all schools, universities, training centers, museums, cinemas, concert halls, bars, casinos, massages and spas, gyms and fitness centers.

These measures automatically resulted in business losses for their operators leading to severe difficulties in paying their employees, suppliers, landlords, mortgages and so on down the line.

Various tenants have expressed their concerns regarding the current situation and are interested to know whether this crisis can be considered as a force majeure event which would allow affected tenants to claim rent reductions or cancellations.

Force majeure is not expressly defined by the Cambodian Civil Code which only refers to the right of tenants to claim rent reductions on the basis of force majeure. Article 606 of the Civil Code provides that “if a lessee who has leased land with a view to profit therefrom receives less profit than the amount of the rental by

reason of force majeure, he may demand that the rental be reduced to the amount of such profit.”

Therefore, two cumulative conditions must be fulfilled in order to validly claim rent reductions. The tenant must have (i) leased land (this may exclude scenarios where the tenant only rents the premises or building) and must have (ii) received less profit than the rent amount due to a force majeure event.

These conditions would be easier to evidence in the case of cinemas, bars or casinos for example as they have been forced to close their businesses and thus deprived of their ability to generate any profit as a result of the COVID-19 crisis. However, this would be more challenging to prove in the case of private schools or universities (especially those which have developed e-learning systems) unless they could provide evidence on the issuing of discounts or reductions on student tuition/enrollment fees to their students.

It is thus crucial to evaluate whether the COVID-19 crisis can be considered as a force majeure event. Given that the Civil Code does not provide any definition, it is necessary to review whether such a definition is mentioned in the lease agreement executed by the parties. If no definition is provided in the terms of the



lease, it will be at the discretion of judges or arbitrators to determine whether force majeure is duly triggered by COVID-19 and applicable to the lease's terms and obligations.

In this respect, the judge will also pay due attention to when the lease was executed. If the lease was executed in February or March 2020, it will be much more difficult for the tenant to claim that COVID-19 was unexpected as the parties must have been aware of the pandemic at that time.

Another option open to parties of a perpetual lease (i.e. a lease term between 15 to 50 years) is the right to request the Court to review the rental amount if one of them considers that the circumstances have changed from those existing at the time during which they executed the lease.

Article 249 of the Civil Code provides that "if the rent is no longer appropriate on account of change in circumstances, either party may request the Court to increase or decrease the rent to an appropriate amount".

A tenant that files a claim will therefore need to evidence that following the COVID-19 crisis there was a demonstrable change of circumstances justifying its right to claim a rental amount reduction. The tenant will also need to provide evidence as to what should be the appropriate amount that it will pay with particular reference to current market practices and average rental rates.

Whether a rent reduction will be awarded will be subject to the discretionary powers of the judges as the Civil Code does not provide any relevant rent calculation methods.

In conclusion, in order to consider whether the tenant can claim rent reductions or rent cancellations due to this COVID-19 crisis, it will be necessary to review (i) the wording of the force majeure clause where the lease includes such a clause and (ii) if the conditions provided by the Civil Code are fulfilled. In this respect, it is highly recommended that tenants seek assistance from legal professionals before sending any notices of claims to their landlords.



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