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## COVID-19 and commercial leases – new court decisions

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### Introduction

Since the start of the COVID-19 pandemic, there have been three lockdowns in Austria. During each of these periods, the customer area of shops had to be closed to the public, except for certain essential retail stores (ie grocery stores and pharmacies).<sup>(1)</sup> Restaurants could offer takeaway and delivery services only (subject to certain restrictions) and hotels were shut subject to certain exceptions (eg, persons who were staying at the hotel at the start of the lockdown could remain and certain business-related lodging was permitted).

This situation has created significant uncertainty regarding tenants' right to claim a COVID-19-related rent reduction (for further details please see "COVID-19 and commercial leases – one year on"). The Austrian courts recently issued two new decisions on this matter.

### Bookstore

The first decision, handed down by the Vienna Higher Regional Court (second instance), concerned a 100 square metre bookstore in Vienna.

During the first lockdown (16 March 2020 to 13 April 2020), the bookstore was closed. It delivered books to a few regular customers. The shop's turnover was reduced to 2% to 5% compared with the same period in 2019.

The tenant filed a claim for a two-thirds reduction of rent (including service charges). The court held as follows:

- The governmental measures aimed at preventing the spread of COVID-19 constituted a *force majeure* event and entitled the tenant to reduce the rent.
- Tenants may reduce their rent if the premises cannot be used for the purpose specified in the lease agreement (or if such use is possible only to a limited extent).
- The fact that the tenant had applied for (and received) state aid for the first lockdown had no effect on its right to a rent reduction. The court explicitly held that this may be different for the second and third lockdowns.
- The tenant's claim for a two-thirds rent reduction (including service charges) was moderate and landlord friendly. A full rent reduction was not reasonable as the bookstore had continued to use the basement as a storage site.

This decision is final – an appeal to the Supreme Court is no longer possible.

## **Bar**

The second decision concerned a bar. During lockdown, the bar had to close entirely at first; subsequently, it was – theoretically – allowed to open only from 10:00pm to 11:00pm.

The court held that the bar could not be used at all and that, therefore, the tenant was entitled to a 100% rent reduction.

This decision is not final and may be appealed.

## **Comment**

These decisions are unsurprising. Notably, the first (and more interesting) decision concerns only the first lockdown. It will be interesting to see whether state aid received during the second and third lockdowns will affect tenants' right to a rent reduction.

It remains to be seen how the Supreme Court will rule on rent reductions in the context of the COVID-19 pandemic.

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## **Endnotes**

(1) The list of stores which were allowed to open varies for the different lockdowns