

A nighttime photograph of a city skyline, likely Hong Kong, featuring numerous illuminated skyscrapers and a harbor with a bridge and boats. The lights reflect on the water, and the overall scene is vibrant and detailed.

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# The impact of COVID-19 on Latin America Real Estate Lease Portfolios

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# The impact of **COVID-19** on Latin America Real Estate Lease Portfolios

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The escalating global Coronavirus (COVID-19) outbreak raises many questions for the parties to commercial leases. Does the outbreak constitute a force majeure event? Do tenants need to keep paying rent under all circumstances? Our aim is to answer some of these pressing questions and provide you with the most up to date information on laws and regulations across the Latin America region as they impact commercial leases.

Our network of lawyers across seven jurisdictions has compiled the following list of some of the most common questions we are seeing from landlords and tenants. We hope this advice allows you to make more informed business decisions in the days and weeks ahead.

- If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?
- If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?
- If the tenant cannot use its property, does it have to continue paying rent?
- Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?
- Could the parties claim that COVID-19 is a force majeure event which excuses the parties from performing the lease obligations?
- Could the parties argue that the lease contract is frustrated by COVID-19?
- Do landlords and tenants commonly obtain business interruption insurance?

Please note that guidance and laws affecting employers in each jurisdiction may continue to change. The information in this document is presented as of March 23, 2020 and the high level guidance in this document is not intended to be comprehensive legal advice.

We thank the Real Estate Practice Group leaders and lawyers who contributed the content, for their willingness to share their expertise and for the time they spent in preparing the responses. We are also grateful to our knowledge and business development teams who helped prepare this guide.

You can also visit the [Baker McKenzie Coronavirus Resource page](#) to access a wealth of reference materials around this topic.

Click on each country to find out the answers to the questions.



Argentina



Brazil



Chile



Colombia



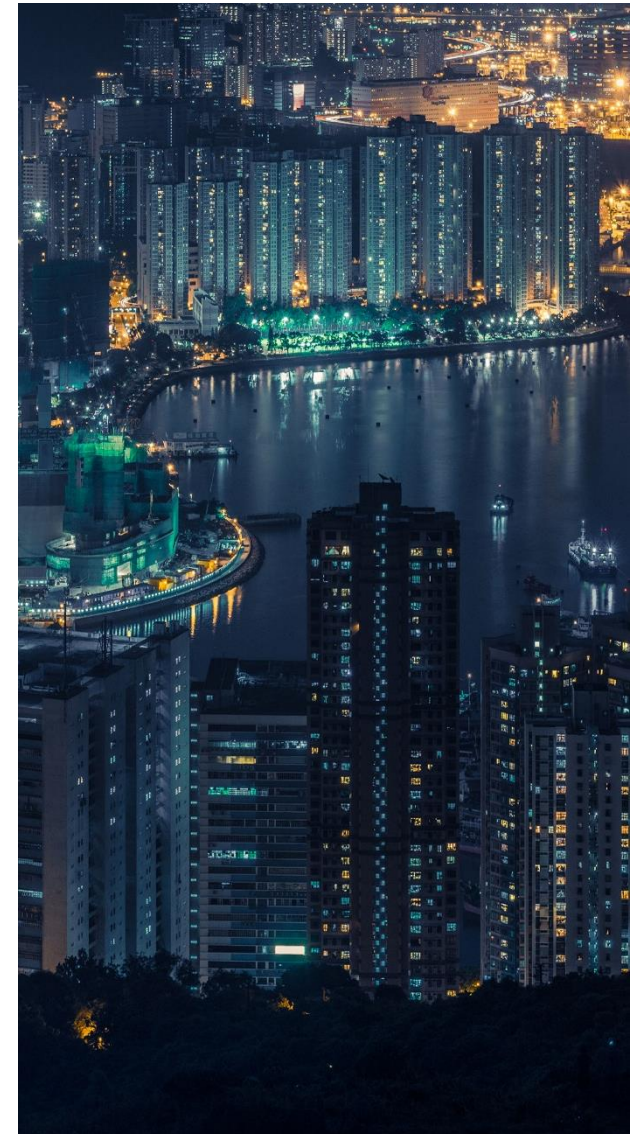
Mexico



Peru



Venezuela



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For more information, please do not hesitate to contact our team members below:



## **Argentina**

**Alejandra Bugna**  
Partner

alejandra.bugna  
@bakermckenzie.com



## **Brazil**

**Heloísa Barroso Uelze**  
Partner\*

heloisa.uelze  
@trenchrossi.com



## **Brazil**

**Danielle Valois**  
Partner\*

danielle.valois  
@trenchrossi.com



## **Brazil**

**Marcia Calafate**  
Partner \*

marcia.calafate  
@trenchrossi.com



## **Chile**

**Andrés Wagner**  
Senior Counsel

andres.wagner  
@bakermckenzie.com



## **Colombia**

**Alejandro Mesa**  
Partner

alejandro.mesa  
@bakermckenzie.com



## **Mexico**

**Juan Bernardo García**  
Partner

juan.garcia-garza  
@bakermckenzie.com



## **Mexico**

**Jose Larroque**  
Partner

jose.larroque  
@bakermckenzie.com



## **Mexico**

**Fabián Monsalve-Agraz**  
Partner

fabian.monsalve-agraz  
@bakermckenzie.com



## **Peru**

**Marco Alarcón**  
Partner

marco.alarcon  
@bakermckenzie.com



## **Venezuela**

**Maria Celis**  
Partner

maria.celis  
@bakermckenzie.com

\*In cooperation with Trench Rossi e Watanabe.

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# Argentina

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1	<b>If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?</b>	No. It is not standard for leases in Argentina to contain a tenant's covenant to comply with all legal obligations or statutory requirements. However, tenants must comply with all laws and regulations. Third parties are allowed to report any breach of the public health emergency regulations to the relevant authorities.
2	<b>If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?</b>	Costs may be recoverable from the tenant. Usually lease agreements establish that the costs/actions related to ownership of the property are assumed by landlord. Costs/actions related to the use of the property are assumed by tenant. Consequently, those costs would have to be assumed by tenant. Common spaces will be the responsibility of the building in general and unless an extraordinary cost is incurred, it will be charged as a common expense and paid by the tenant. The landlord usually pays if an extraordinary cost is incurred.
3	<b>If the tenant cannot use its property, does it have to continue paying rent?</b>	No, the tenant may not have to continue to pay if it can prove COVID-19 as a force majeure event. There is a general provision of law that would release payment obligations if the premises cannot be used. However, for COVID-19 to be a force majeure event, the tenant would have to prove that the tenant is unable to use the premises. The impact will need to be negotiated in good faith by the parties taking into consideration the effect of COVID-19 on both parties.
4	<b>Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?</b>	No. It is not common for leases to contain a keep-open covenant. However, shopping centers usually have such a covenant, which should be reviewed based on the emergency regulations.
5	<b>Could the parties claim that COVID-19 is a force majeure event which excuses the parties from performing the lease obligations?</b>	This is arguable. Lease agreements generally have clauses on force majeure events and should be reviewed in each case. In principle, although COVID-19 is a force majeure event, it must have a direct impact on the premises. The impact should be evidenced by the tenant. If the tenant can use the premises, COVID-19 would not excuse lease obligations. Again, this will be subject to analysis on a case-by-case basis depending on the specific situation and the emergency regulations.
6	<b>Could the parties argue that the lease contract is frustrated by COVID-19?</b>	No, probably not. There is no concept of automatic termination by reason of frustration of contracts in Argentina.
7	<b>Do landlords and tenants commonly obtain business interruption insurance?</b>	No. It is not common practice to have business interruption insurance for lease agreements.
8	<b>Are there any other relevant points that you would like to highlight?</b>	Residential leases may be subject to emergency regulations in the near future to address the situation.

1	<b>If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?</b>	Yes. Tenants would have to comply with any mandatory regulations or governmental legislation which come into force.
2	<b>If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?</b>	Costs may be recoverable from the tenant. Unless the lease specifies differently, such costs are considered common expenses ( <i>despesas ordinárias</i> ) pursuant to law and chargeable to the tenant.
3	<b>If the tenant cannot use its property, does it have to continue paying rent?</b>	Yes, to the extent that such avoided use is not attributed to a problem in the real estate itself, the tenant may have to continue to pay. It is not common for leases to contain a rent suspension clause, entitling the tenant to cease payment of rent where the property is damaged, destroyed or inaccessible. Negotiation between the parties about any suspension of rent is always recommended.
4	<b>Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?</b>	Yes. It is standard for retail leases. If the closure is mandatorily determined by an authority, this should not be considered a breach of the agreement.
5	<b>Could the parties claim that COVID-19 is a force majeure event which excuses the parties from performing the lease obligations?</b>	Yes, possibly. The parties may be able to claim to the extent that COVID-19 has a direct impact which prevents them from complying with their obligations under the lease. If the lease has a section on force majeure and the event exceeds the term of tolerance provided in such section, the consequence specified in the agreement (e.g. termination) may be triggered.
6	<b>Could the parties argue that the lease contract is frustrated by COVID-19?</b>	Yes, possibly. The parties may be able to claim to the extent that COVID-19 prevents a party from complying with their obligations under the lease. If the lease has a section on force majeure and the event exceeds the term of tolerance provided in such section the consequence specified in the agreement (e.g. termination) may be triggered.
7	<b>Do landlords and tenants commonly obtain business interruption insurance?</b>	No. Although legally viable, it is not common in Brazil.
8	<b>Are there any other relevant points that you would like to highlight?</b>	In this crisis period it is always advisable that landlords and tenants negotiate and reach a common solution that works for both parties.

1	<b>If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?</b>	Yes. Leases in Chile often contain a tenant's covenant to comply with all legal obligations or statutory requirements.
2	<b>If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?</b>	Costs may be recoverable from the tenant, unless something different has been agreed on the lease contract. Leases usually establish the allocation of costs and actions relating to public requirements: <ul style="list-style-type: none"> <li>costs and actions related to the ownership of the asset fall to the landlord</li> <li>costs and actions related to the occupancy of the asset fall to the tenant.</li> </ul>
3	<b>If the tenant cannot use its property, does it have to continue paying rent?</b>	No, the tenant may not have to continue to pay, but this depends on the terms of the lease, provided that the tenant was not responsible for the event that caused the property to become unusable and the responsibility of the event rested on the landlord.
4	<b>Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?</b>	Yes. It is standard for retail leases. However, the closure of the premises due to a governmental quarantine or shutdown may be construed as an event of force majeure by local courts.
5	<b>Could the parties claim that COVID-19 is a force majeure event which excuses the parties from performing the lease obligations?</b>	No, probably not. Under Chilean Law, COVID-19 (as a pandemic) is not an event of force majeure, but in the event COVID-19 causes the performance of an obligation to become impossible (e.g. either because of factual reasons or because the government decrees a local ban), then it could be trigger an event of force majeure.
6	<b>Could the parties argue that the lease contract is frustrated by COVID-19?</b>	Yes, possibly. Under Chilean Law, COVID-19 is not an event of force majeure, but in the event it makes the fulfilment of an obligation impossible (e.g. either because of factual reasons or because the government decrees a local ban), it could be construed as an event of force majeure. Frustration can be claimed by the tenant, if the property is unusable for a reasonable period of time, and it is foreseeable that landlord will not be able to cure the defect.
7	<b>Do landlords and tenants commonly obtain business interruption insurance?</b>	No. It is not common for tenants nor landlords to have such insurance.





1	<b>If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?</b>	Yes. Leases in Colombia often contain a tenant's covenant to comply with all legal obligations or statutory requirements.
2	<b>If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?</b>	Costs may be recoverable from the tenant. If the property is subject to the horizontal property regime, any repair and maintenance of the common areas must be performed by the administration of the building in which the property is located. Monthly administration services are paid by the tenant, so if there is an increase in said value for the maintenance that must be done, the tenant should pay it (as long as it is justified).
3	<b>If the tenant cannot use its property, does it have to continue paying rent?</b>	Yes, the tenant may have to continue to pay. In general, if the property has defects which limit its suitability for the agreed use, the tenant may demand an appropriate reduction in rent for as long as the premises are damaged or inaccessible.
4	<b>Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?</b>	No. It is not common for leases to contain a keep-open covenant. However, more recently, a keep-open covenant is being included in leases in shopping centres.
5	<b>Can the parties claim that COVID-19 is a force majeure event, which excuses the parties from performing the lease obligations?</b>	Yes, possibly. For the parties to consider COVID-19 as an event of force majeure, there must be a causal link between the impacts of COVID-19 and the impossibility of performing the obligations under the lease. If such a causal link exists, the force majeure event would allow the agreements to be suspended. In any case, based on the principle of good faith, the parties must act diligently to mitigate the effects of force majeure. It is common practice for leases to include a force majeure section, whereby if such event arises for a term of approximately 180 days, the lease will automatically terminate. However, if the parties did not expressly agree that an event of force majeure is cause for termination, neither party could terminate the lease, since it would be understood that it is doing so without just cause, for which it would have to indemnify the other party. Where an event is irresistible and unpredictable, it would be considered a force majeure event under the Colombian Civil Code. For a party to invoke a force majeure event, these conditions must be met.
6	<b>Could the parties argue that the lease contract is frustrated by COVID-19?</b>	Yes, possibly. Provided the agreement contains a section whereby a force majeure is a cause for termination. Nevertheless, if the agreement does not contain such section, a termination for an event of force majeure will be understood as a termination without cause and thus the terminating party must indemnify the other party. If the force majeure suspension clause was not agreed in the agreement, and the likelihood to suspend the performance due to the outbreak is high, or significant, our recommendation is to execute an amendment to the agreement in which the parties agree on a potential suspension as a result of the event.
7	<b>Do landlords and tenants commonly obtain business interruption insurance?</b>	No. Such type of insurance does not exist in Colombia. In Colombia, there are insurances between the parties, such as the performance bond, whereby the tenant guarantees the landlord that it will comply with its obligations, including the rent payment.

1	<b>If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?</b>	Yes. Leases in Mexico often contain a tenant's covenant to comply with all legal obligations or statutory requirements. Tenants would have to comply with any mandatory regulations or governmental legislation which come into force. In certain states and for certain types of leases (i.e. residential leases), the landlord is the one legally obliged to maintain the premises compliant with any health and safety legal requirements. This provision is typically waived in most leases.
2	<b>If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?</b>	Costs may be recoverable from the tenant. Usually the lease will specify the costs payable or reimbursable to the landlord and there will typically be a cap on such costs.
3	<b>If the tenant cannot use its property, does it have to continue paying rent?</b>	Yes, the tenant may have to continue to pay, subject to the exceptions mentioned below. It is not common for leases to contain a rent suspension clause, entitling the tenant to cease payment of rent where the property is damaged, destroyed or inaccessible. If a suspension clause is not included, in Mexico, any suspension of rent is generally provided by statute if caused by reason of force majeure. In certain states if the tenant totally loses the ability to the use and enjoy the property due to force majeure, it may have the right not to pay rent during such impediment (or to request a rent reduction in case of a partial loss of use) and if the cause lasts for more than 2 months, then the tenant has the right to terminate the lease. This provision of law is commonly waived in commercial leases, and in certain states it is forbidden by law to waive to this provision.
4	<b>Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?</b>	Yes. It is standard for retail leases. The application of force majeure will in general overrule the keep-open covenant if the tenant cannot stay open due to public order restrictions, and in such case landlord would not be able to enforce the keep-open covenant. This is a general provision in the Civil Codes of most states.
5	<b>Could the parties claim that COVID-19 is a force majeure event which excuses the parties from performing the lease obligations?</b>	Yes, possibly. There are clauses in some leases (typically mandatory term, triple net leases) that provide that the parties will not be liable for a delay or breach of obligations under a lease even if such delay or breach is caused by force majeure. In the event that COVID-19 causes the performance of an obligation to become impossible (e.g. either because of factual reasons or because the government decrees a local shut-down), then it could be a trigger to attempt to classify it as an event of force majeure.
6	<b>Could the parties argue that the lease contract is frustrated by COVID-19?</b>	Yes, possibly. Under the Civil Codes of different states in Mexico, the parties may be able to claim that the lease is frustrated, as a force majeure event.
7	<b>Do landlords and tenants commonly obtain business interruption insurance?</b>	Yes. Business interruption insurance is common in triple net leases and in a relevant portion of more sophisticated commercial leases. The key issue is whether the events causing the interruption are covered under force majeure and thus rent is payable by the insurance company.
8	<b>Are there any other relevant points that you would like to highlight?</b>	Under general contract law principles, a landlord and tenant are free to negotiate and agree to incorporate any of the foregoing concepts into a commercial lease, barring any prohibitions under applicable law, except for provisions that under such applicable law cannot be waived by the parties. The foregoing concepts reflect customary terms, and the actual lease should be reviewed with respect to any specific questions relating to a particular property.



1	<b>If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?</b>	No. It is not standard for leases in Peru to contain a tenant's covenant to comply with all legal obligations or statutory requirements. However, tenants would have to comply with any mandatory regulations or governmental legislation which come into force.
2	<b>If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?</b>	Costs may be recoverable from the tenant. Leases usually establish the allocation of costs and actions relating to public requirements: <ul style="list-style-type: none"> <li>costs and actions related to the ownership of the asset fall to the landlord</li> <li>costs and actions related to the occupancy of the asset fall to the tenant.</li> </ul> Accordingly, the landlord may be able to recover these costs from the tenant.
3	<b>If the tenant cannot use its property, does it have to continue paying rent?</b>	No, the tenant may not have to continue to pay, but this depends on the terms of the lease, provided that tenant was not responsible for the event that caused the property to become unusable. Such a provision is found in certain commercial leases.
4	<b>Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?</b>	No. It is not common for leases to contain a keep-open covenant. However, more recently, a keep-open covenant is being included in leases in shopping centers.
5	<b>Could the parties claim that COVID-19 is a force majeure event which excuses the parties from performing the lease obligations?</b>	Yes, possibly in the case of retail leases. In the case of commercial leases (i.e. retail), if tenants cannot use the premises, payment of rent may be suspended. Depending on the nature of the lease, where a tenant continues to use the property (i.e. home, warehouse) a force majeure event does not excuse lease obligations. However, typically leases do not include a force majeure clause.
6	<b>Could the parties argue that the lease contract is frustrated by COVID-19?</b>	No, probably not. The non-use of the property due to COVID-19 is temporary. Obligations can be suspended during the term COVID-19 affects their fulfillment. However, the lease contract may be terminated if the affected party –justifiably – loses interest in the performance of the obligation or considers that such fulfillment is no longer useful. This should be considered in a case by case basis and the affected party will need to prove it. The other party may contest through an arbitration/judicial proceeding.
7	<b>Do landlords and tenants commonly obtain business interruption insurance?</b>	No. In general, lease agreements do not contain provisions that require the parties to obtain business interruption insurance. In practice, the landlord or the tenant may obtain insurance which covers the loss of rent.



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| <b>1</b> | <b>If the government has imposed additional public health requirements, can the landlord compel the tenant to comply with these?</b>   | <p>No.</p> <p>It is not standard for leases in Venezuela to contain a tenant's covenant to comply with all legal obligations or statutory requirements.</p> <p>However, tenants would have to comply with any mandatory regulations or governmental legislation which come into force.</p> <p>Although the lease laws do not provide for eviction in the event of non-compliance with health or public health standards, a landlord may require the termination of the lease or even compensation for damages if the tenant fails to comply with emergency public health standards.</p> |
| <b>2</b> | <b>If compliance with public health requirements falls to the landlord, who pays for items such as an enhanced cleaning regime, additional cleaning of common areas, any deep cleaning, provision of additional refuse removal, for example?</b> | <p>The landlord may have to pay in residential and office leases. While costs may be recoverable from the tenant in retail leases.</p>  |
| <b>3</b> | <b>If the tenant cannot use its property, does it have to continue paying rent?</b>  | <p>No, the tenant may not have to continue to pay, but this depends on the terms of the lease. It is common for commercial and office leases to contain a rent suspension clause, entitling the tenant to cease payment of rent when the premises are damaged, destroyed or inaccessible.</p>   |
| <b>4</b> | <b>Is it common for leases to contain a tenant's keep-open covenant? If so, might a governmental quarantine or shutdown put the tenant in breach? How would a landlord enforce the covenant?</b>   | <p>No.</p> <p>It is not common for commercial leases to contain a keep-open covenant.</p> <p>However, more recently a keep-open covenant is being included in leases in shopping centers.</p>   |
| <b>5</b> | <b>Could the parties claim that COVID-19 is a force majeure event which excuses the parties from performing the lease obligations?</b>   | <p>No, probably not.</p> <p>However, the lease agreement can be terminated if performance has become impossible for a reason that cannot be attributed to the parties, such as government measures due to COVID-19.</p>   |
| <b>6</b> | <b>Could the parties argue that the lease contract is frustrated by COVID-19?</b>  | <p>Yes, possibly.</p> <p>Under the Venezuelan Civil Code, the lease agreement can be terminated if performance has become impossible for a reason that cannot be attributed to the parties.</p> <p>Furthermore, Courts have recognized the right to terminate the contract if performance of parties' obligations have become excessively cumbersome from an economic standpoint because of an extraordinary and unforeseeable event.</p>   |
| <b>7</b> | <b>Do landlords and tenants commonly obtain business interruption insurance?</b>   | <p>No.</p> <p>Business interruption insurance is not usually required as part of the standard insurance provisions in a lease.</p>  |

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