

# Focus on Legislative Drafts No. 249 and No. 250 adopted by the National Council of the Principality of Monaco on 6 April 2020



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Following exchanges between the National Council and the Government of Monaco within the framework of the Joint Committee for the Follow-up of Covid-19, two legislative drafts have been introduced and urgently examined by the National Council, in order to be rapidly translated into governmental draft laws.

**Draft Law No. 249 prohibiting unfair dismissals, making teleworking compulsory on positions allowing it and carrying other measures related to the COVID-19 crisis (retroactive to 18 March 2020, with the exception of criminal provisions)**

- **PROVISIONS IN CONTRACTUAL MATTERS** (sales, service provision, loans, leases, etc.)
  - Periodic penalty payments
  - Penal clauses
  - Cancellation clauses and conditions (express or implicit)
  - Clauses providing for forfeiture, where their purpose is to penalise failure to fulfil an obligation within a specified period of time
  - Delays affecting the fulfilment of conditions precedent

## Objectives:

To avoid pecuniary penalties, the annulment of the effects of the contract, the deprivation of a right provided for in the contract.

To facilitate the revival of economic activity, avoiding significant outflows of money for professionals in the sale or service provision.

To prevent evictions based on a cancellation clause, and for late payment of rent not to be accompanied by penalties to increase it.

## Proposed legal provisions:

It is proposed that the time periods that would have expired during the two-month suspension period (subject to extension) from 18 March 2020 to deal with the COVID-19 pandemic virus, be deemed not to have commenced or taken effect.

These would take effect at the end of the suspension period if the debtor had not performed its obligation before that time.

The rate of penalty payments and the application of penal clauses that took effect before 10 March 2020 would be suspended during the said period.

With regard to contracts for the sale or services provisions, it is proposed that professionals should have the option either of deferring the initial performance of the contract by offering a credit note to their customers, provided that the sale or provision of service can be postponed within a maximum period of 18 months, or by making a subsequent repayment by instalments.

Public contracts concluded by the State of Monaco, the Commune of Monaco or public establishments are excluded from this scheme, because of their very specific contractual regime.

- **PROVISION IN LABOUR MATTERS**

- **Dismissal**
- **Termination of a fixed-term contract**
- **Teleworking**
- **Sanitary measures**

Objectives:

Neutralisation of dismissals and terminations of fixed-term contracts related to the COVID-19 pandemic situation.

Role of the Commission provided for in Article 16 of Law No. 459 of 19 July 1947, as amended, which is usually responsible for accepting or refusing the dismissals of staff representatives.

Proposed legal provisions:

Except in the event of serious misconduct on the part of the employee, any dismissal decided or notified during the two-month suspension period (subject to extension) from 18 March 2020 to deal with the COVID-19 virus pandemic, could only be carried out after the approval of the Commission provided for in Article 16 of Law No. 459 of 19 July 1947, as amended, which should ensure that the planned dismissal is not related to the situation linked to the COVID-19 virus pandemic.

For dismissals notified or carried out prior to the date of application of this Law, the period of execution of the notice period would be suspended, for its remaining duration, for as long as the period of suspension to deal with the COVID-19 virus pandemic lasts.

Except in the event of serious misconduct on the part of the employee, any termination of a fixed-term contract at the exclusive initiative of the employer, occurring during the two-month suspension period to deal with the COVID-19 virus pandemic, (subject to extension) starting on 18 March 2020 could only be carried out after the approval of the Commission provided for in Article 16 of Act No. 459 of 19 July 1947, as amended, which should ensure that the considered termination is not related to the situation linked to the COVID-19 virus pandemic.

When these conditions for teleworking are not met and the physical presence of the employee is required at the workplace, the employer is obliged to comply with the health prevention measures laid down by the Minister of State, under penalty of a fine amounting between €600 and €1,000.

- **COMMUNICATION AND COMPANY OPERATING RULES**

- **Communication of act or document**
- **General Meeting, administrative, supervisory or management bodies**

Objectives:

To facilitate the communication by e-mail of any act or document between the Administration and the members of the Board of Directors, the members of Shareholders' Meetings or corporate bodies.

To provide that virtual attendance and remote consultations may validly supplement or replace the physical attendance and consultations required on the spot.

Proposed legal provisions:

As an exception to legal, regulatory or statutory obligations, the convening or communication of a deed or document by post (simple or registered letter with acknowledgement of receipt) may be validly made by electronic message allowing the issuer to be identified.

By way of derogation from legal, regulatory or statutory obligations, the body competent to convene a general meeting, or a meeting of an administrative, supervisory or management body, or the legal representative acting on delegation from this competent body, could decide that the meeting be held by means of a telephone or audiovisual conference allowing the identification and guaranteeing the effective participation of the members and other persons entitled to attend, who are deemed to be present for the calculation of the various quorum and majority rules.

The decisions of the general meeting or of the administrative, supervisory or management bodies referred to in the first subparagraph may also be taken by simple written consultation of their members.

All this for as long as the period of suspension to deal with the COVID-19 virus pandemic lasts, without any nullity being thereby incurred.

**Draft Law No. 250 on various measures relating to commercial, industrial, craft and office leases in response to the Codiv-19 virus pandemic (retroactive to 18 March 2020)**

- **Professional leases, for activities listed by Sovereign Order**
- **Payment of rents**

Objectives:

Protection of tenants, sub-tenants, assignees whose assignment has been validly granted, or their successors in title benefiting from a commercial, industrial or artisanal lease in accordance with Act No. 490 of 24 November 1948, as amended, as well as managing tenants subject to the provisions of Act No. 546 of 26 June 1951, tenants or sub-tenants of a lease for office use, persons accommodated in a business centre.

To provide lessors with a recurring cash flow.

Proposed legal provisions:

During the suspension period starting on March 18, 2020 to deal with the COVID-19 pandemic, it is proposed that the rent be monthly (notwithstanding any clause to the contrary providing for quarterly payments), with a mandatory minimum reduction of 20% of the amount of the rent, accompanied by a deferral of 30% of the monthly rent over the two complete quarters following this period.

The Beneficiaries would thus pay only 50% of the monthly amount of rent contractually due at each payment due date during the suspension period, with the balance being subject to deferred payment by instalments.

It would be open to the parties to provide for rent rebates of more than 20% by way of an amendment to the initial contract.