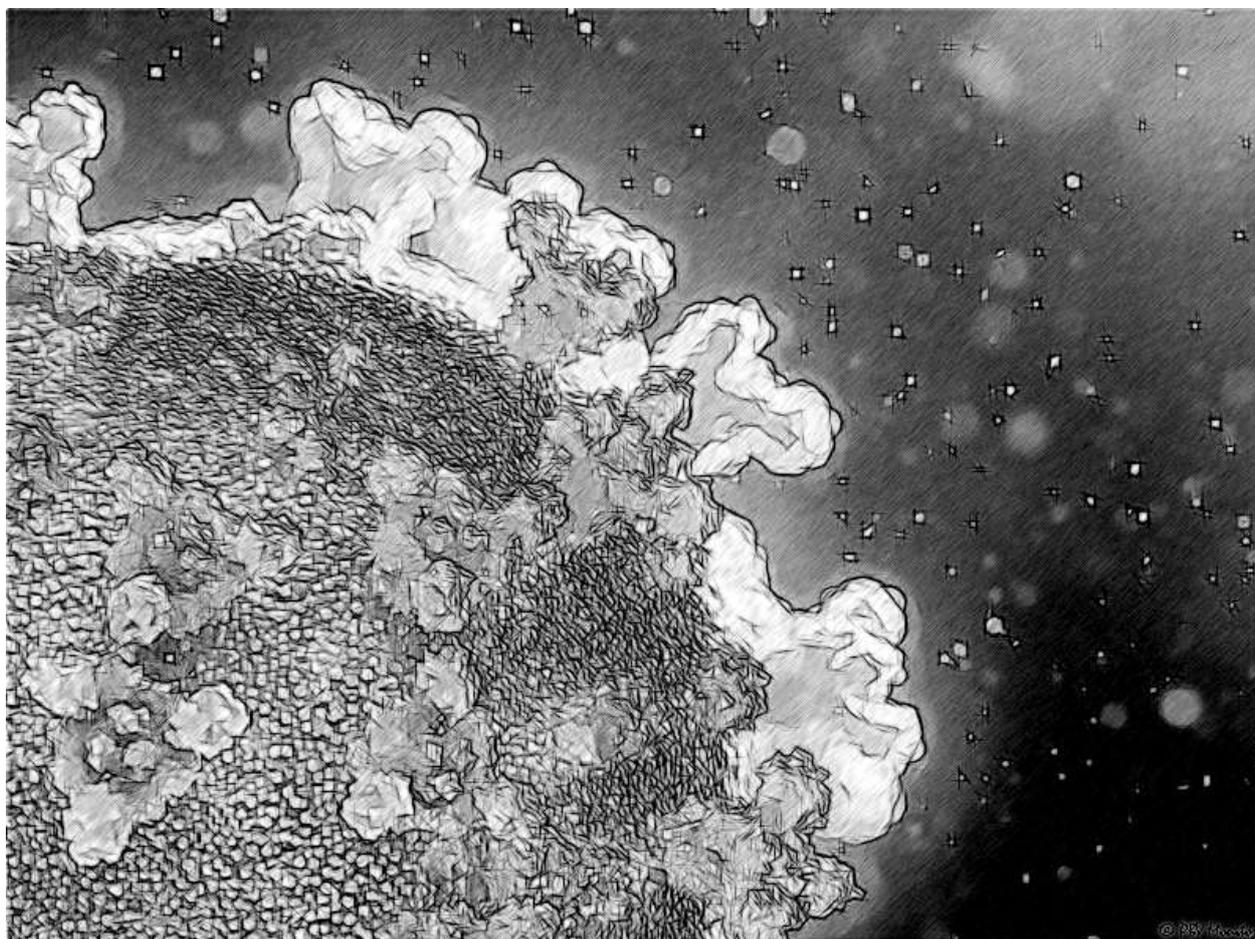


# Retail Leases Under Covid-19



With the aim to avoid the spreading of Covid-19, the DPCM regulation, issued on March 11, 2020 has provided for the closing of non-essential retail shops.

The rule is based on the so-called “*factum principis*”, well-known principle of private law regarding contractual obligations. Specifically, it refers to the inability to fulfill a debtor’s obligation to his contractual duties, without incurring any liability.

Currently, retail operators are running for cover asking their landlords for either a lease suspension or a renegotiation of the contractual terms in order to share the financial burden. It is a matter of trust and confidence in a long lasting partnership given the unpredictability of when commercial activities will resume (a possible risk is that the March 25 deadline will be postponed to April 3rd) and, furthermore, on how long the pandemic’s negative effects on economy will last.

Most of the lease agreements/business leases do not include specific sections that mandate the parties to renegotiate for *force majeure* as a result of a pandemic or *factum principis*. We believe that, from now on, such clauses will be included in future contracts to closely regulate such circumstances (which will stimulate interesting debates and further negotiations).

Given the global crisis, and without a specific contractual provision, tenants shall count on their commercial counterparts’ common sense, on general principles of our legal system and, if necessary, on general principles of international law (*Unidroit e Principles of European Contract* – sometimes used in Italian debates to enforce a general duty on behalf of the parties to renegotiate excessively cumbersome clauses).

Privacy

In fact, in the Italian legal system, specific rules that oblige a landlord (or any disadvantaged party) to renegotiate contractual terms in such a situation, do not exist.

However, the Civil Code foresees the option to adjust excessively cumbersome clauses to rebalance the contractual sinallagma, under the principle of preserving the contract (for example, section 1463, 1464, 1467 c.c., 1256 c.c., and also section 1623 c.c.).

Without specific contractual clauses, or an agreement with landlords or a state financial subsidy and in the case the negative effects on the economy from this pandemic are protracted, the only remedy for tenants is to recede for serious reasons (however, with a 6 month notice period) or the resolution of the same for excessive burden.

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