



CODE OF CONDUCT

German retail, service, gastronomy, and
retail real estate industries

Code of Conduct

of the German retail, service, gastronomy, and retail real estate industries, serving as a joint guideline for cooperation during the coronavirus crisis, its management, and the proactive and sustainable design of the subsequent soft opening phase

Preamble

The parties to this document, representing key groups involved in brick-and-mortar retail (tenants) and owners (landlords), have drawn up the following principles for the German retail, service, catering and retail real estate industries in order to agree upon a Code of Conduct for joint work during the coronavirus crisis, the subsequent soft opening phase, and the expected follow-up phase.

This has been undertaken with the unanimous understanding that the effects of the coronavirus crisis, for which neither side is at fault, can only be overcome in a joint effort. Through fair and cooperative dealings, on an equal footing, balanced sharing of burdens should always be pursued. With regard to discourse with political authorities, all parties should ensure that the entire value chain is always presented as a unified whole.

The parties agree that compliance with the Code of Conduct only serves to lay the foundation for subsequent government support measures and legal regulations to ensure the survival of the industry. Against this backdrop, both parties must take immediate action on the political scene to ensure that supplementary and further-reaching support programs are set up at short notice and that legal regulations are adopted. Until then, the following shall apply:



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Overarching objectives have been established:

1. to prevent legal disputes between tenants and landlords amid the current crisis and to concentrate activities on rescuing the German retail, service, catering, and retail real estate industries in order to ensure the survival of the parties involved and safeguard the diversity of the retail trade,
2. to ensure and present a unified approach across the entire industry, including raising awareness among key policy makers,
3. to ensure competent responses as challenges rapidly evolve and to provide a basis for further discussion,
4. to guide further policy-making in the review and implementation of the principles, and
5. to facilitate a common approach in all jurisdictions.

Overarching and fundamental principles

1. The owners (landlords) of shopping centers and retail properties as well as retail, service, and gastronomy businesses (tenants) have a mutual interest in the business continuity and preservation of the German retail, service, and gastronomy landscapes.
2. Landlords shall encourage tenants to approach them to discuss relevant issues as well as the effects that the current coronavirus crisis and its officially ordered measures have on tenancy agreements, and to work towards mutual solutions or results. Through fair and cooperative dealings, on an equal footing, balanced sharing of burdens should always be pursued.
3. Landlords as well as retailers, service, and gastronomy businesses shall agree that they should, under certain circumstances, grant each other detailed access to business documents to enable a mutual basis for solutions to be worked out.
4. The agreed common principles are intended to apply temporarily, that is, for as long as the COVID-19 pandemic and the consequences of the official orders related to the pandemic remain an issue for both rental parties.



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5. All tenants, landlords, premises, and shopping centers differ in their structures as well as in their business arrangements; therefore, it is not possible to establish common principles that regulate all tenancies equally, e.g., with regard to rents, service charges, and other lease details.
6. Rental agreements have different structures and are at different stages. Both parties have different organizational structures and financial resources. As a result, every rental agreement must be treated on a case-specific basis, taking into account different factors and issues, including
 - whether the tenant/landlord is in financial distress due to the COVID-19 pandemic;
 - whether the tenant/landlord is an SME;
 - whether the rental agreement is structured as a sales-based rental agreement;
 - whether the lease has just been signed, has expired or is about to expire, or is a "holdover";
 - whether the tenant is already in default;
 - whether the tenant/landlord is in receivership or in insolvency.



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Agreed rules of conduct and objectives of landlords and tenants during the period of the coronavirus crisis

The following recommendations have been developed as goal-oriented and helpful rules of conduct for all parties during the period of the coronavirus crisis. They should prove useful in the implementation of uniform, fair, and partnership-based solutions for both parties. These rules of conduct are not legally binding, but represent a voluntary commitment on the part of landlords and tenants who voluntarily commit themselves to them.

1. Landlords and tenants shall agree to a short-term, temporary moratorium on eviction due to non-payment of rent, which shall apply to all commercial tenancies that are clearly subject to serious consequences caused by the current coronavirus crisis. In this context, possible further regulations issued by the legislature, which may have an overriding effect, must be taken into account.
2. Landlords and tenants intend, depending on each individual situation, to agree on deferrals, rent relief, reductions, or other individual solutions for a certain period of time for affected tenants. Both parties also intend to discuss temporary changes to the lease agreements as well as concessions, such as term extensions. This is to be individually considered between the parties on a case-by-case basis.
3. Tenants can use relevant financial data as well as other business information to substantiate the economic situation caused by the coronavirus crisis in order to increase the landlord's understanding of the tenant's solvency during the affected period. This shall also include information on any government aid programs that have been utilized. In return, the landlord can provide relevant financial data on the economic situation of the respective rental property in order to present his or her situation just as credibly.
4. In the case of branch operations, financial support can be based on the tenant's overall financial capacity (within the scope of his or her group of companies), if necessary, taking into account other concessions, such as an extension of the lease term.



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5. Landlords and tenants shall agree that support should only be given to tenants who, based on current estimates, will resume operations after the COVID-19 crisis and become financially viable again within a defined recovery period.
6. Owners of commercial real estate should ensure that any benefits from government subsidies or tax relief provided in connection with the COVID-19 pandemic that they receive in relation to their properties will also benefit their tenants in proportion to the economic impact that the COVID-19 pandemic causes.
7. Landlords and tenants who are not significantly or only marginally affected by the effects of the coronavirus crisis are expected to comply with their leases.
8. Landlords undertake to examine and, if necessary, take all possible measures that are deemed to be expedient in terms of the Code of Conduct. These may include cost-cutting measures during the operation of the property, suspension of repayments, waiver of interest on arrears, or extension of loan periods.
9. Landlords and tenants are lobbying with the umbrella organizations of their respective industries for governments to reduce statutory levies that increase the parties' cost burden for the period of the effects of the coronavirus crisis. Additional, short-term direct support for tenants and landlords by the public sector is expressly being sought in a joint manner.
10. Landlords and tenants shall work together with the central associations of their respective industries to campaign for sales promotion measures (further flexibility of opening hours, open Sundays, etc.) for the period following the crisis.



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Final statement

All parties involved in the entire value chain covered by this Code of Conduct hereby acknowledge that the dynamic development of the coronavirus crisis and the resulting official measures may render it impossible to implement the recommendations presented, or that the circumstances may necessitate fundamental reconsideration. On the basis of the fair and cooperative approach agreed herein, all parties shall work together to find the best possible solutions. This Code of Conduct does not supersede any judicial decision and is initially deemed to be agreed until the end of 2020. It will be extended by an additional six months if, at the end of 2020, the legislature has not created an adequate legal basis for the various issues relating to the effects of the coronavirus crisis.