



Coronavirus: How will it affect lease relationships?

What will be the impacts of the state of emergency on the relationships between lessors and lessees? Is it possible to substantiate the requirements for termination or change of concluded agreements by pandemic occurrence? What will be the right approach towards lessees' requirements and how can the impacts of governmental measures be mitigated?

I am a lessor of business premises. How should I deal with requirements for a rent discount?

Under the Civil Code, a lessee is entitled to require a rent discount if defects of leased premises make their use difficult or if somebody prevents the lessee from the usage thereof. The premise does not have a defect if the usage thereof is restricted by the state of emergency announced by the government of the Czech Republic. In such a case, the lessee is not ipso facto entitled to the rent discount, the provision thereof is only a business decision that can facilitate to preserve good relationships between parties. In each case, conditions of a particular lease agreement are decisive for assessing the rights and obligations of the parties.

I am a lessor of business premises. How should I cope with an outage of delivered services?

From a legal perspective, the pandemic occurrence and a related state of emergency represent a so-called force majeure forming an obstacle in performing a contractual obligation. A force majeure does not relieve parties of the obligation to perform their duties (deliver services or goods) but under certain circumstances, it can relieve a party of a liability for damage caused by their non-performance within a determined time limit. However, it cannot be applied if the non-delivery of services or goods was not a business decision of a supplier or if a delay existed already at the time of a force majeure occurrence.

Will the pandemic occurrence affect the validity of concluded lease agreements? May lessees enforce their changes or even termination?

As a result of a pandemic, a substantial change in circumstances could occur, causing a particularly gross disparity of rights and obligations of the parties (e.g. obligations of the lessee of a closed shop or an empty hotel towards the lessor).

In such a case, the lessee as a disadvantaged party could seek negotiations on the new terms of an agreement. Upon proposal, a court may decide on the terms or cancellation of the relevant contract, if parties do not reach an agreement. This does not apply under assumption that the lessee assumed a danger of change in circumstances, i. e. in the case of standard lease agreements entered into between business persons.

An obligation of parties could expire if, after concluding an agreement, it becomes objectively and permanently non-performable (not performable with difficulties or greater costs). A debtor (i.e. the lessee unable to pay a rent in our case) has to demonstrate a subsequent impossibility to perform. In the case of a pandemic, the impossibility to perform is usually a temporary one therefore a subsequent impossibility could be successfully argued only in the case of a lease relationship that is to be terminated before the end of the pandemic under a lease agreement.

The terms of changes or termination of lease agreements always depend on the wording of particular lease agreements that may exclude certain described processes or, on the other hand, extend them in favour of

a disadvantaged party as lease relationships are regulated by a dispositive provision of the Civil Code, i.e., parties may regulate mutual relationships differently from the letter of the law.

We are completing a shopping centre or office building development - what consequences can be expected in connection with the pandemic or commencement of operation?

From the perspective of an owner or future lessee of a shopping centre or office building, postponement of a building completion date can be expected due to suspension of construction work together with a potential non-adherence to the dates for a hand-over of the premises to the lessee for starting an operation or fit-out work of the lessee.

This risk or failure to meet the date of operation commencement is factually pending where completion fit-out work is performed by the lessee itself.

In the event of non-performance of the obligation to complete construction of the premises or fit-out work in agreed times due to the current crisis situation, a reason for a discharge of liability for damage will apply, i.e. a damage caused by such a non-performance of such an obligation due to a force majeure event.

If a lease agreement for newly built premises is to be entered into based on a previously concluded agreement on future agreement, it is advisable to consider that at the time between the conclusion of the agreement on future agreement and the date on which the lease agreement is to be entered into, such a substantial change in circumstances occurred that it cannot be reasonably required from the lessee that it conclude the lease agreement.

According to reference books, the above-mentioned rule can also be applied if commonly known circumstances change as e.g. an economic situation in a certain country. Therefore, one can imagine that with reference to the overall state of the economy impacted by the pandemic, the conclusion of a lease agreement can be rejected.

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