

RANDA HAVEL ■ LEGAL

How can the lessee eliminate or reduce the negative impacts of the situation?

In connection with efforts to slow down the spread of the COVID-19 virus, the government decided on Thursday, March 12, 2020, to declare state of emergency in the Czech Republic. In the following days, it has adopted a number of emergency measures.

The list of these measures is being expanded every day and will certainly have far-reaching impacts in the economy as well. In this respect, the most important measures are the general restriction on the free movement of persons, the ban on the operation of most shops (except groceries, pharmacies and other stores selling vital goods) and catering facilities, the ban on the sale of accommodation services, restrictions of travel and transport, ban of cultural and sporting events. As a result, many entrepreneurs will suffer significant economic losses.

As a result of the governmental measures, the lessees of the establishments concerned are prevented from using the leased premises for the agreed purpose of lease and from conducting their business therein. Even short-term closures of several weeks will mean significant economic losses for the lessees.

However, the lessee may not be exempted from the obligations arising from the lease, in particular from the obligation to duly pay the rent, service charges, etc. Breach of these obligations by the lessee may be penalized by the lessors, for instance by contractual penalties, exercising retention rights, claiming for the damages or by the termination of the lease agreement.

So how can the lessee eliminate or reduce the negative impacts of the situation?

Agreement with the lessor on a reasonable compensation

First of all, it is advisable to try to make an agreement with the lessor to provide a reasonable compensation for the duration of the government restrictions, such as a rent discount, rent free or other form of compensation.

In the event that such agreement with the lessor is not possible, the lessee has several options how it can possibly unilaterally reduce its rental costs and thus reduce its damages arising in connection with the governmental restrictions.

Temporary Rent Discount

Lessees may request the lessor to provide it with a reasonable rent discount for the duration of government restrictions. From the legal point of view, such request could be based on the impossibility of using the leased premises for the agreed purpose of lease which means that there is no consideration by the lessor in relation to the paid rent.

Initiating Negotiations to Change the Conditions of the Lease Agreement

As a result of the governmental restrictions, the lessee also may have right to initiate negotiations to change the terms and conditions of the lease agreement due to change of circumstances. The lessee shall, however, initiate such negotiations with the lessor within a reasonable period of time, no later than 2 months after the change in circumstances has occurred. If the lessor does not agree with a suggested change of the lease agreement, the lessee may apply to a court to make a decision.

Termination of the Lease Agreement

The ultimate solution of the situation by the lessee may be the termination of the lease if such lease was agreed for a definite period due to the change of circumstances on which the parties apparently relied on when the obligation arising from the lease agreement was created to the extent that the lessee cannot be reasonably required to continue the lease.

The wording of the Lease Agreement is always decisive

It must be noted that lessees' rights for rent discounts or other forms of compensation or for the termination of the contract are very often limited in the lease agreements. In the most cases, such rights are completely excluded or are set different conditions upon which they can be exercised. **In order to assess the possible rights of the lessee and to determine the next steps towards the lessor, we always recommend as a first step to make a detail analysis of the lease agreement.**

Compensation for Damages Caused by Crisis-related Measures

For the sake of completeness, we add that, as a result of the governmental restrictions, the lessees may be also entitled to claim damages against the state with regard to the adopted crisis measures under the Crisis Act. For more details, please see our newsletter dealing with this topic.

The measures undoubtedly impact certain industries and services significantly more than other industries. The state should aim to make sure that economic losses are borne by the whole society as the measures adopted in times of a crisis have as their goal to protect the health and lives of all of us.

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