

LEGAL UPDATE

State Assistance in Paying Rent

On 9 June 2020, Parliament approved an amendment to Act No. 71/2013 Coll. on granting subsidies within the competence of the Economy Ministry of the Slovak Republic as amended, which **regulates the method of providing financial assistance to undertakings in paying rent for rented premises.**

Recipients of assistance are lessees, i.e. undertakings that were unable to use rented premises for the agreed purpose because their business operations had to be closed or the use of such premises was substantially restricted by a ban on public entry into the indoor premises of an establishment resulting from the measures adopted by public health authorities to prevent the consequences of spreading the dangerous contagious human disease COVID-19 (so-called “*difficulty of use*”). Difficulty of use also includes cases where the use of rented premises for the agreed purpose was prevented by the suspension of classes in schools and school establishments. Unlike previously published by the media, it appears that this aid will also apply to businesses whose activities have only been restricted, not completely shut down (for example, they only provided services through a window).

Applicants for a contribution are lessors on behalf of lessees. A lessor does not need to be a business undertaking; the lessor may be a natural person or a legal entity. An application must always identify the person with access to an electronic mailbox, because information on the approval of a contribution will be sent to the electronic mailboxes of the lessee and the applicant (lessor). Applications are only in electronic form, using the form published by the Ministry. A subsidy will be paid to the account of the lessor. The applications are received from 24 June 2020 until 30 November 2020 via the public administration electronic portal slovensko.sk. The electronic system for applications’ submissions allows lessors and/or lessees to be represented by an attorney to file and sign the application. Nevertheless, it is not possible to attach the power of attorney to the application. It still has to be available for any subsequent control of the application for a subsidy.

A lease agreement between a lessor and a lessee may also be governed by a law other than Slovak law, but it must have given the lessee the right to use the subject matter of the lease as of 1 February 2020 at the latest. Any amendments to the agreement made after 12 March 2020 will not be taken into consideration for the purpose of granting a subsidy. This means that if an adjustment to the amount of rent is agreed after that date, this change should not influence the amount of the subsidy.

The subject matter of the lease cannot consist of premises designed for human habitation, and it must be the premises where the lessee sells goods or provides services to end consumers, including related service spaces and storage rooms. According to the explanatory report, such premises also include car parks.

The *granting of a subsidy is conditional* upon the conclusion of an agreement between the lessor and the lessee on a reduction of rent. An application for granting a subsidy with the qualified electronic signatures of both the lessor and the lessee is also considered an agreement, which is why it is not necessary to enter into a separate agreement for the purpose of obtaining assistance.

The *amount of a subsidy* will be determined by how much the lessor discounts the rent, which means that the state will make a contribution in the same amount. The lessee is required to pay the remaining rent, i.e. the amount that is neither covered by the discount nor by the state subsidy. At the same time, it applies that the amount of a subsidy may not exceed an amount corresponding to 50% of rent for the period of difficulty of use of the subject matter of the lease. If the lessor is an administrator of state assets, rent will be “automatically” reduced by law to one-half, i.e. the contribution amounts to 50% of the rent.

It is not possible to include *payments for services and supplies associated with the lease* (e.g. payments for utilities) in the amount of rent for this purpose. If these payments form part of the rent and their amount cannot be separated from the amount of the rent, it applies that the amount of payment for services and supplies associated with the lease is 5% of the amount of the rent by which the rent will be reduced for the purpose of obtaining a contribution. The lessee is required to make payments for services and supplies associated with the lease. If these payments cannot be separated from the amount of the rent, they are paid in the amount of 5% of the rent. If the amount of rent depends on turnover, the turnover item cannot be included in the calculation of the amount of the rent for the purpose of a subsidy.

If a lessee has already paid rent fully or partially for the period of difficulty of use of the subject matter of the lease, it is possible to apply for a subsidy/discount for an equivalent period in the future.

An application must enclose *representations* to the effect that

- the recipient (i.e. the lessee) is not subject to bankruptcy proceedings, is not in a state of bankruptcy or restructuring, nor a bankruptcy petition against the recipient has been dismissed due to a lack of assets,
- the recipient is not subject to legally valid prohibition of receiving subsidies or subventions,
- the recipient is not subject to legally valid prohibition of receiving aid and support from European Union funds.

The Ministry of Economy has enabled that subsidies are provided also to companies in difficulties in order to broaden the scope of applicants for a subsidy. A lessee that falls under the category of microenterprise or a small enterprise in difficulty can apply for a subsidy unless it has received rescue or restructuring aid. Medium and large enterprises may apply for subsidies under a [separate minimal aid scheme for economic stimulation in relation to outbreak of COVID-19 – De minimis](#).

Other conditions laid down in the Act on Budgetary Rules of Public Administration, i.e. the recipient has settled his or her financial relations with the state budget, is not subject to repossession proceedings, did not breach the ban on illegal employment according to special legislation over the past three years and has no record of outstanding payments of social and health insurance contributions, are considered fulfilled. In contrast to other subsidies provided by the Economy Ministry, recipients will not have to prove that they have a clean criminal record.

If the requested amount of a subsidy exceeds 100,000 euros, it is mandatory to identify the ultimate beneficial owner in the application. If it is ascertained that the attached representations or identification of the ultimate beneficial owner are false, the applicant will be required to return the subsidy.

Regardless of whether an application or an agreement on a discount between the lessor and the lessee is submitted, the amendment allows all lessees to pay the remaining rent for the period of difficulty of use in instalments, namely up to a maximum of 48 equal monthly instalments (i.e. payable during the following 4 years), which are due from the first month following the end of the emergency situation, unless a different repayment period is agreed upon. If the lessee has already paid the rent, the lessee may exercise the right to pay the rent in instalments for an equivalent period in the future. During the period of payment in instalments, the lessor or the lessor's legal successor is not allowed to unilaterally increase the rent unless the right to unilaterally increase the rent was agreed prior to 1 February 2020.