

LEGAL UPDATE

Protection of Lessees during the COVID-19 Crisis

A draft bill¹ passed preventing lessors of real estate, including flats and non-residential properties, to unilaterally terminate lease due to delay of lessees with payment of rent, including payments for performance usually associated with the lease, which are due during the period between 1 April 2020 and 30 June 2020. Abovementioned protection shall apply only provided the late payment by a lessee was caused by circumstances resulted from spread of dangerous contagious human disease COVID-19. Subject to meeting the abovementioned conditions a lessor shall not be able to unilaterally terminate the lease until 31 December 2020. The reason of late payment consisting in circumstances which resulted from the spread of dangerous contagious human disease COVID-19 must be sufficiently proven by the lessee, while other reasons for unilateral termination of lease by the lessor (statutory or contractual) shall not be affected by this regulation.

The method of identification of reasons of late payment caused by the circumstances resulted from the spread COVID-19, and their validation, are not further specified and we assume that they can cause application issues in practice. Situation should be relatively clear in the case of operations which were imposed by public authorities to be closed and their operators provably lost income (or their income/sales decreased significantly). Proof of existence of abovementioned statutory reason will be, however, more complicated in case of the operations which were not imposed to be but their revenues decreased due to lower demand for their services/products or because of enormous outage of workforce. Under our opinion also in these cases it should be possible to seek for protection pursuant to the passed regulation, however it will be necessary to undoubtedly prove that the lessees:

- (i) found themselves in financial difficulties and are not able to pay due rent and/or payments for services and supplies associated with the lease, and
- (ii) that such situation was caused by circumstances which resulted from the spread of COVID-19 (i.e. inability to pay (full or partial) caused by the crisis situation).

When proving connection of the circumstances we recommend to consider – while there are no specific guidelines for these cases – subsidiary application of criteria

¹ The Government draft bill, amending Act No. 62/2020 Coll. on certain emergency measures in relation to the spread of dangerous contagious human disease COVID-19 and in the justice, and amendments to certain laws, passed by the Slovak Parliament on 22 April 2020

and procedures stated in other statutory or government regulations adopted for the purpose of reduction of impacts of the COVID-19 crisis (e.g. calculations for revenue decrease given for purposes of providing financial aid from the state) which we discuss in our other posts.

The legislation approved for now does not in any way relieve lessees of their obligation to pay due rent, including due payments for related services and supplies associated with the lease, while we also note that it neither addresses other consequences of not paying rent. I.e. the passed regulation does not restrict lessors to apply e.g. interest on late payments or contractual penalty due to late payment of rent.

As regards leases the Government announced to adopt several measures to reduce the impacts of COVID-19 crisis in this area, including automatic reduction of rent for the duration of COVID-19 crisis in specified cases (like to balance the impacts between lessors and lessees) and financial aid from the state to lessees, however, so far there has not been published even a proposal of such measures.