



# Legal Alert

23 April 2020

## Weinhold Legal

### Legal regulation of real estate leases in connection with the coronavirus pandemic

On 23 April 2020, the Parliament of the Czech Republic discussed and approved two draft laws (discussed in more detail below) on mitigating the effects of the coronavirus pandemic on lessees of **commercial and residential real estate**.

As soon as the draft laws are signed by the President and published in the Collection of Laws, they will enter into force on the day of their promulgation. This can be expected in the coming days.

#### Commercial real estate leases

*The bill on certain measures to mitigate the effects of the SARS CoV-2 coronavirus epidemic on lessees of business premises (Chamber of Deputies Press No. 816) was approved by the Chamber of Deputies as referred to the Senate. The Senate's amendments were not accepted. The bill regulates **the lease, sublease and also usufructuary leases of business premises**.*

Its aim is to provide a lessee with certainty for a specified period of time **that its lease will not be unilaterally terminated by the lessor solely due to a delay in the payment of rent under the conditions set out by this act** (discussed in more details below).

Initially, this act was also to cover delays in the **payment of services related to the use of business premises**. However, due to the imbalance emerging from the situation where a lessor has to continue to pay to suppliers for energies and other services, this part has been deleted and the protection of the lessee will thus only concern any delay in paying rent. The lessee will be obliged to pay for services connected with the use of the business premises in the same

way as before with the same risks in the event of a delay.

**A lessor thus may not terminate a lease, sublease or usufructuary lease agreement, or withdraw from these contracts during the so-called protection period**, which is set as the period from the entry into force of this act until 31 December 2020.

In relation to **the lessee's delay in paying rent**, the draft law sets out two conditions that must be met in order for the lessee to be entitled to this protection:

- (i) the delay must **occur within the so-called decisive time** – i.e. from 12 March to 30 June 2020 and
- (ii) it must be **the result of a restriction resulting from an emergency measure adopted during an epidemic which made it impossible or substantially difficult for a lessee to carry on business**.

The lessee will be obliged **to certify to the lessor that the second of the above conditions is met in its case**. According to the bill, a lessee has a fifteen-day period to certify that, starting on the day when the lessee's first delay in paying the rent occurs. However, the bill does not specify how the lessee should certify that the conditions are met.

Thus, the justification of the amendment proposal, thanks to which the certification in the draft law was modified by the Chamber of Deputies, may be a certain guide. The amendment proposal mentions that **various types of documents, both in written and electronic form**, should be used to certify these facts - this can be both formal documents (e.g. extract from the Trade Register) and informal documents (e.g. correspondence).

The lessor may **agree** with the lessee **on different conditions** within the contractual freedom and thus meet his needs in other ways, or adjust the conditions defined in the law in more benevolent way. However, the rights arising from the bill must not be reduced to the detriment of the lessee,



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i.e. a lessee may still enjoy the protection offered by the new law even in the event of a separate agreement with its lessor on the same subject matter.

It is important to point out the fact that the lessor may **terminate the lease for different reasons**, so termination of the lease by the lessor is not an absolute impossibility.

Attention must also be paid to the fact that the bill does not interfere in any way **with other rights of the lessor arising from the lessee's delay**. This means that the lessor will subsequently be able to demand from the debtor not only the payment of rent, but also the payment of interest for the period beginning with the occurrence of the lessee's delay and ending with the payment of the due rent. In addition, it would not affect the lessor's ability to satisfy his rent from the deposit.

**The lessee will be obliged to pay the due rent by the end of the protection period**, i.e. by 31 December 2020. If he fails to do so, or declares that he will not pay the due rent within this period, the lessor may terminate the rent with a five-day notice.

After the expiry of the emergency measures adopted during an epidemic, but not earlier than the end of the state of emergency, **the lessor will be able to terminate the lease even if it will not be reasonable to require him to tolerate the above restrictions**. These may be cases where these restrictions could have liquidation effect on the lessor or could endanger his ability to provide the necessary nutrition, etc.

### Residential real estate lease

*The bill on certain measures to mitigate the effects of the SARS-CoV-2 coronavirus epidemic on lessees of premises used to satisfy housing needs, on recipients of loans provided by the State Housing Development Fund and in connection with the provision of services related to the use of flats and non-residential premises in dwellings (Chamber of Deputies Press No. 815) was also approved by the Chamber of*

Deputies in the wording in which it was referred to the Senate. The Senate amendments were also not accepted by the Chamber of Deputies in respect of this bill. This legislation applies to **the lease and sublease of an apartment, house or its part** and addresses the situation similarly to the lease of commercial real estate and thus **provides a lessee with a protection against unilateral termination of the lease by the lessor only due to any delay in rent payment under the conditions set out in this act** (discussed in more detail below).

As in the case of commercial real estate, **the lessee's obligation to pay for services related to the use of the apartment or house is retained** and no exceptions apply to the consequences of the lessee's delay in their payment.

Even in the case of residential leases, **the lessor is not allowed to terminate a lease or sublease agreement or withdraw from them for the duration of the protection period** (lasting also from the entry into force of the law until the 31 December 2020) if termination or withdrawal from the contract would be justified only by the lessee's delay with the payment of rent.

However, **the conditions relating to the lessee's delay** are slightly different from the conditions concerning the commercial leases, namely:

- (i) **the occurrence of a delay at the decisive time** which is set as the period lasting from 12 March till the day following the date of expiry of the emergency measure adopted during an epidemic, with the latest end being 31 July 2020,
- (ii) **the occurrence of a delay mainly as a result of a constraint resulting from an emergency measure adopted during the epidemic which made it impossible or substantially difficult for lessee to pay his rent properly.**



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**The lessee will be obliged to prove the condition under point (ii) to the lessor** without undue delay by a certificate issued by the Labor Office of the Czech Republic. In connection with this provision, the methodological instruction is to set out the form and requisites of the documents that the lessee should provide with the application for the issuance of the certificate in question.

As with commercial real estate, **it is possible to negotiate different conditions**, but only for the benefit of the lessee, **the lessor retains the possibility of terminating the lease for other reasons, or in case it will not be reasonable to require him to tolerate such restrictions**, the lessor also retains other rights arising from the lessee's delay with payment.

In addition, **the lessee's obligation to pay the due rent by the end of the protection period is the same**, but the lessor's ability to terminate the rent differs, as he may do so even if it becomes unquestionable that the lessee will not pay the due rent in time. In this case he may terminate the rent without notice.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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