

THE IMPACT OF COVID19 EPIDEMIC TO LEASE AGREEMENTS

The state of emergency due to COVID 19 pandemic was proclaimed in the Republic of Serbia on March 15th 2020, and the Decree on Measures during the State of Emergency („Official Gazette of RS“, no. 31/2020 dated March 16th 2020) and the Decree on Organization of Work with the Employer during the State of Emergency („Official Gazette of RS“, no. 31/2020 dated March 16th 2020), both aiming to regulate in more detail the effects of introduced state of emergency, followed right after. Decrees do not regulate the duration of the state of emergency, whereas the Constitution of the Republic of Serbia prescribes that the state of emergency may last up to 90 days, and it may be renewed under the same conditions upon the expiry of the 90 day deadline. Therefore, it may be expected that the state of emergency shall last for a period not shorter than 90 days.

The state of emergency also affects the business operations of lessees and lessors of business premises, which include both business offices and retail premises. Negative effects are reflected in declined turnover, which causes the failure of lessees to pay the rent and other lease related expenses. On the other hand, the lessors are also confronted with the issue of meeting their respective obligations set down in executed lease agreements, especially in case when their obligations include the obligations related to guaranteed minimum of visitors, working hours, and similar. Still, the lessors are in somewhat better position than the lessees, since the lessors may postpone the payment of their obligations towards financial institutions for 90 days, including the payment obligations related to project financing of construction of the leasable premises¹, all in accordance with the special Decision of the National Bank of Serbia on Temporary Measures for Preservation of Stability of the Financial Systems, which allows them to, at least temporarily, reduce their expenses and use the collected funds for other purposes.

In situation of significant decrease in turnover, being the result of measures introduced by Government of the Republic of Serbia, the lessees have justified reason to request the lessors that the rent payment, as well as the payment of other lease related expenses, is suspended, or that the amount of rent is decreased for the time of duration of the state of emergency.

¹ Unfortunately, the mentioned postponement refers only to obligations towards the banks with their registered seat in the Republic of Serbia, and not to potential obligations towards the banks with their registered seat abroad.

The laws of the Republic of Serbia do not provide for the right of lessees to suspend the payment of rent and other lease related expenses stipulated in the lease agreements in case of described state of emergency, and under condition that the lessors carry out their respective contractual obligations, except in case that such right of lessee is explicitly stipulated under the lease agreement.

Having in mind that the Decrees that regulate the effects of introducing the state of emergency in more detail, or the Decision of the National Bank of Serbia that safeguards the financial system, neither prescribe the prohibition of business operations of retail businesses, nor they allow for the suspension of obligation of payment of rent and other lease related expenses, these special regulations that regulate the relations of legal entities during the state of emergency also cannot be considered as the ground for suspension of obligation of rent payment during the state of emergency.

In the described situation, the lessees are left only with the option stipulated under the provisions of the Law on Obligations and Torts regulating the matter of „fundamental change of circumstances“ (*lat. rebus sic stantibus*). This right of the lessees does not meet the interest of the lessors, since the mentioned legal institute allows a lessee merely to request the termination of the lease agreement, whereas the lessor would have the right (but not the respective obligation) to offer that the lease agreement is modified under the fair contractual terms. In case that the lessor does not propose the said modification of contractual terms, the lessor would be entitled to fair amount of damages suffered due to termination of the agreement. It is important to note that the mentioned legal institute of “fundamental change of circumstances” implies that the mentioned rights may be exercised within the legal procedure before the competent Courts of Law.

Of course, the thorough case analysis, and especially thorough analysis of the provisions of existing lease agreements should be conducted in each particular case in order to determine whether the suspension of rent payment would be possible without endangering the survival of the agreement itself thereof.