

Real Estate Flash

March 2020

Effects of the coronavirus pandemic and the governmental crisis measures on the real estate market

On 12 March 2020 the Czech government declared a state of emergency in response to the spreading of the SARS-CoV-2 coronavirus. The disease itself and the crisis measures substantially change the assumptions underlying public budgets and financial plans of businesses for 2020, as well as the everyday functioning of our society this year.

The current situation is described by law as a **change in circumstances**. Although every contract is in general characterised by its binding nature and the impossibility to be changed without the consent of the other party, a change in circumstances may be an exception from the rule. Consequences of a change in circumstances include excusable delay, a change of the content of a contract and, in some cases, even its termination.

The Civil Code contains a number of provisions which reflect a change in circumstances. On the other hand, it depends on the actual content of a contract and/or exclusion of the application of the statutory regime whether or not a change in circumstances will affect a given legal relationship.

A. Leases

Both the prohibition of retail sale and services in establishments and the restriction of free movement may have a significant impact on the relationship between landlords and tenants. In connection with such a change in circumstances questions arise as to who will consequently bear the risk of income losses resulting from this extraordinary event.

Not every agreement forms a full agreement between parties that excludes the application of the general regulations contained in the Civil Code. Thus, the relationship may be governed not only by the content of the agreement but also by the statutory regulations that permit renewing negotiations on the content of an agreement on the grounds of a substantial change in circumstances, demanding a rent reduction or even terminating the lease agreement. The ability to reach reasonable compromises will be crucial for landlords and tenants as well.

B. Real estate financing

Attention also needs to be paid to loan agreements under which purchases of commercial premises are financed. A potential loss of income from leases may influence landlord's ability to comply with financial and other criteria set out in the loan agreement.

The risk of a breach of the terms and conditions of loans is a reason to analyse loan agreements and to actively deal with the risk of a failure to pay the rent. Therefore, it is likely that binding criteria of a loan agreement will influence negotiations between the tenants and the landlord.



C. Contracts for work

The coronavirus pandemic also affects the construction sector. Due performance of contractual obligations is dependent on the availability of labour and affected by delays in the supply of construction materials caused by the closure of borders and restrictions on the cross-border movement of persons.

The consequent delay gives rise to questions as to who is responsible for it and how any damage incurred can be excluded or reduced. In some cases extraordinary circumstances may be a reason for starting negotiations on a change of the price for work.

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D. Force majeure

The key question is whether the coronavirus pandemic along with the governmental crisis measures constitute force majeure. The purpose of the concept of force majeure under Czech law is to protect the obligated party against the duty to compensate the other party for damage in a situation where the other party cannot fulfil its contractual obligation due to an unforeseeable obstacle that was created beyond its will and control.

The current extraordinary circumstances may constitute force majeure for some, whereas for others not. In a particular situation the assessment of whether criteria for the application of force majeure have been fulfilled will always depend on the content of a given contractual relationship and the obligation affected by force majeure.

Although force majeure may be defined more broadly in the agreement, the fulfilment of the criteria for its application may not affect the obligation to pay contractual penalties or the potential right of the other party to terminate the agreement. The foregoing suggests that force majeure currently requires special attention in terms of prevention, as well as the resolution of the consequences of breaches.

E. Future agreements

A change in circumstances may also affect concluded agreements on future purchase agreements and future lease or other agreements. Where an agreement does not explicitly exclude the application of the Civil Code there is a risk that the obligation to conclude a future agreement will cease to exist due to a substantial change in circumstances.

HAVEL & PARTNERS has been actively dealing with the mitigation of the adverse effects of the coronavirus crisis on legal relationships relating to real estate since its very onset. As the largest law firm on the Czech and Slovak markets with the highest number top rankings over the last ten years, we are prepared to support you in this uneasy time.

Should you need any assistance in connection with the issues discussed above or with any other matters, our team is always fully at your disposal. You can follow our regular updates on our [website](#).

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