

LEASE PAYMENT EXEMPTION IN UKRAINE DURING COVID-19 PANDEMIC

Let us kindly inform you that according to recent legislative changes with respect to COVID-19, in order to provide support to businesses during the quarantine period, the Parliament of Ukraine has adopted several legislative acts regulating, inter alia, the issue of an exemption of a lessee from its lease payment during the COVID-19 quarantine period.

Please find below a brief summary of such legislative developments.

General regulations

According to Article 762 (6) of the Civil Code of Ukraine, **a lessee shall be exempted from its lease payment for any time during which the leased property could not be used by it because of circumstances beyond its control.**

Also, under Article 286 (2) of the Commercial Code of Ukraine, the lessee has the right to demand a reduction in the amount of the lease payment if, due to circumstances for which it is not responsible, the conditions of economic management as stipulated in the contract have changed or the condition of the leased object has significantly deteriorated.

Special measures

In order to provide support to businesses at which it is expressly prohibited to conduct activities during the quarantine, especially with activities providing for the reception of visitors (areas for retail, catering, entertainment, fitness, etc.), the Parliament of Ukraine has adopted the following legislative changes in the field of rental relations.

Under Part 5 Section 1 of the law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Safeguards in Relation to the Spread of Coronavirus Disease (COVID-19)” as of 30.03.2020, **from the moment of the introduction of the quarantine to prevent the spread of COVID-19 in the territory of Ukraine until its completion** in accordance with the procedure established by law, **the lessee may be exempted from payment for the use of property in accordance with Article 762 (6) of the Civil Code of Ukraine.**

Importantly, on 13 April 2020, the Parliament of Ukraine passed the Law of Ukraine “On amendments to the Law of Ukraine ‘On the State Budget of Ukraine for 2020’”, which provides that **“the measures introduced by the authorities, which prohibit certain types of economic activities with the use of leased property or substantially restrict access to such property of third persons, shall be considered as circumstances under which the lessee is not responsible in accordance with Part 2 Article 286 of the Commercial Code of Ukraine and Parts 4 and 6 of Article 762 of the Civil Code of Ukraine”.**

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Thus, such provision clarifies that if the lessee cannot use the leased premises because of the introduction of the COVID-19 quarantine – this shall be considered as a circumstance under which the lessee may be exempt from its lease payment.

Application

Such **exemption from lease payment shall not apply automatically**: in order to take advantage of the opportunity provided by the law, the lessee should inform the leaseholder in writing immediately of its intention to take advantage of the exemption from the lease payment. In addition, making changes to the lease agreement may be needed.

Before taking advantage of the exemption from the lease payment, the provisions of the lease agreement should be analysed: sometimes lease agreements provide the right of the lessee to an exemption from the lease payment for the period during which the property could not be used by the lessee because of circumstances beyond its control. If the lease agreement does not contain such provisions, the lessee may apply directly Article 762 (6) of the Civil Code of Ukraine and the abovementioned provision of the law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Safeguards in Relation to the Spread of Coronavirus Disease (COVID-19)”.

If the leaseholder does not agree with the lessee’s exemption from its lease payment, this issue may be considered by a court.

It should be noted that the **exemption from the lease payment does not mean the exemption from other payments** stipulated in the lease agreement such as a fee for maintenance of the premises, a marketing payment, utilities, etc.

For any further information and assistance with respect to the above, and any other COVID-19 related legal matters, please do not hesitate to contact our **COVID-19 Help Desk** at: covidhelpdesk@peterkapartners.com.

Best regards,
The Kyiv PETERKA & PARTNERS Team