

PETERKA PARTNERS

THE CEE LAW FIRM

RETAIL

Due to the current situation, almost all retailers (except alimentary, grocery, drugstores and pharmacies) must have their shops closed.

The first recommendation to retailers-tenants is to review their lease contracts, in particular as far as it concerns **the existence and applicability of a force-majeure clause** (if any), **the possibility of termination or renegotiation of certain contracts** if necessary, etc.

Despite the above, tenants remain generally liable for their commitments and should take into account that the possibility of their termination or renegotiation is only exceptional. Potential defaults with the fulfilment of contractual obligations towards business partners, which could occur due to the current situation, should be dealt with very seriously as they could lead eventually to insolvency.

Unless agreed expressly in the lease, as a potential remedy, Czech law contains a concept of what is known as “**substantial change in circumstances**”, which could help businesses deal with the current situation.

The COVID-19 pandemic may represent such substantial change in circumstances creating gross disproportion in the rights and duties of the parties by disadvantaging one of them either by disproportionately increasing the cost of the performance or disproportionately reducing the value of the subject of performance, the affected party has the **right to claim the renegotiation of the contract** with the other party if the conditions stipulated by law are fulfilled. However, asserting this right does not entitle the affected party to suspend the performance.

Therefore, tenants very likely have some leeway to obtain at least some concessions from landlords if they do not have a direct claim for any rebates or damages.

However, retailers should look for legal advice before contacting their landlords in order not to worsen their negotiating position from the very beginning.

REMEDIES

Czech law provides for the general obligation of the Czech Republic to reimburse affected legal entities for any damage that has arisen in connection with measures taken under the Crisis Act, which includes governmental measures as a consequence of the current “state of emergency” due to the spread of the COVID-19 disease declared under the Crisis Act. However, each claim for reimbursement always needs to be assessed on a case-by-case basis.

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INSURANCE

Retailers are well advised to review their insurance policies to see if they provide for any coverage of damages and loss profits in relation with closure of their shops. The coverage is usually conditioned by deterioration of the leased premises but some policies do not include such condition.

The document reflects the status as of March 20, 2020.

This document is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case.