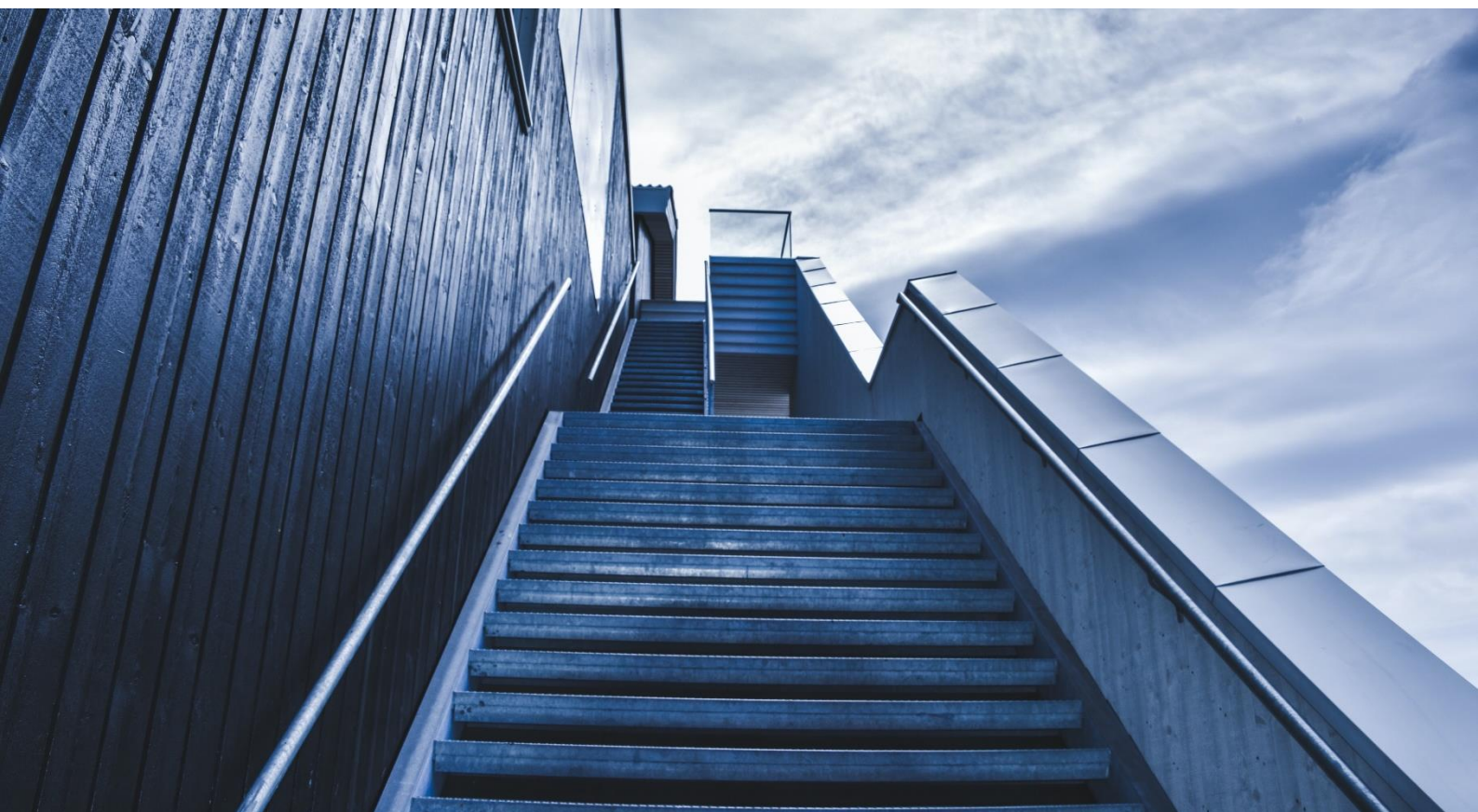


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Commercial Lease at
Shopping Centres and
Impact of Covid-19

COVID-19



1

Modus Operandi for a Tenant who has Become a Hostage of Covid-19 Pandemic

The pandemic of Covid-19 disease has turned everybody's life upside down both professionally and personally. The Cabinet of Ministers of the Republic of Latvia (hereafter, **the Cabinet**) actively works to introduce as effective mechanisms for stalling and managing the spread of virus as possible, as a result of which on 25th of March 2020 a decree¹ was adopted which stipulated that only the following retailers shall be open on weekends and public holidays in all shopping centres while also ensuring the measures of social distancing:

- ☺ Grocery stores;
- ☺ Pharmacies (including veterinary pharmacies);
- ☺ Optics stores;
- ☺ Pet shops;
- ☺ Hygiene and household products stores;
- ☺ Construction and gardening stores.

A couple of days later, after the first weekend when these restrictions were enforced, namely, on 29th March 2020 this list was updated² establishing that in addition to the foregoing press stands, vaccination booths and dry cleaners also may stay open.

¹ 25th March 2020 Decree No 119 "Amendments to 12th March 2020 Cabinet of Ministers Decree No 103 "Re Declaration of the Emergency Situation" (see: <https://www.mk.gov.lv/lv/aktualitates/par-arkartejas-situacijas-izsludinasanu>).

² 29th March 2020 Decree No 138 "Amendments to 12th March 2020 Cabinet of Ministers Decree No 103 "Re Declaration of the Emergency Situation" (see: <https://www.mk.gov.lv/lv/aktualitates/par-arkartejas-situacijas-izsludinasanu>).

2

How would the “Shopping Centre” be Defined?

Upon introduction of these restrictions initially there was confusion about which definition would be applicable to establish whether a particular building would be recognized as a shopping centre (hereafter, **the Centre**).

By the decree of 26th March 2020³ the Ministry of Economics (hereafter, **the Ministry**) specified that the shopping centre is a building which is fitted out for permanent and systematic sales:

- ☒ with the total sales area at least 10,000 m²; or
- ☒ where at least 10 traders or service providers operate individual sales outlets.

Consequently, if these criteria set forth by the Ministry are not met, premises or a building shall not be recognized to be a shopping centre and shall not be subject to the restrictions established with regard to their operation on weekends and holidays.

³ 26th March 2020 Ministry of Economics Decree No 1 -6.1/2020/54 "Re Amendments to 20th March 2020 Decree No 1-6.1/2020/51 "Re Provision of Social Distancing at Sales Outlets".

Ban on Opening Premises for Visitors and Force Majeure

The impact of force majeure is to be evaluated in light of each particular contractual relationship and **along general lines. Covid-19 itself shall not be deemed a force majeure event for the most part; however, taking into account that there are currently companies which, based on the Cabinet's decree, are directly forced to close their stores located in the Centres on weekends and public holidays most probably all elements comprising the concept of force majeure recognized in the legal literature and case law of Latvia will be met.**

Upon establishing occurrence of a force majeure event, in general, it has the following legal consequences:

- ⊖ performance of contractual obligations is suspended for the period while the force majeure event lasts;
- ⊖ the losses caused to the other party are not to be reimbursed;
- ⊖ adverse consequences of the default on obligations may not set in.

3

Modus Operandi for a Tenant Subject to the Restrictions Established by the Cabinet

Entrepreneurs who sell various goods in premises leased in a Centre, for example goods which are sold in grocery stores or hygiene and household products stores (such as cleaning products) but their line of business is retail of furniture must keep their stores closed on weekends and holidays, unless it is possible to physically isolate those parts of the store where the goods on the list developed by the Cabinet are sold.

The same applies to permissible reduction of space. Such possibilities are to be evaluated, and it must be possible to record and prove that the reduction is made properly and in view of the spirit and purpose of the law based on which such restrictions have been introduced. If the space of the store is reduced, at the same time it must be assured that visitors are able to keep the distance of 2 meters among themselves.

Taking into account that the restrictions change frequently, it is possible that the list developed by the Cabinet of those stores which can be open on weekends and holidays might be updated. Therefore, it is advisable to constantly follow the set of restrictions that might be apply to the business of the tenant and to actively communicate and collaborate with the landlord in order to find as positive a solution for both parties as possible.

Action Plan in Case of Occurrence of Force Majeure Event

If the decrees passed by the Cabinet force a company to keep the premises leased by it at a Centre closed on weekends and holidays, first of all, the leases and their content are to be evaluated; namely, the force majeure clauses contained therein. **The parties may have also agreed in the lease about a course of action and additional provisions in case of a force majeure event setting in. Even if a lease does not contain a force majeure clause, general legal framework provided in the law may always be relied on.**

Upon engaging in negotiations with the landlord about the situation that has occurred, tenants should bear in mind that the force majeure event arising out of the Cabinet decrees to keep certain stores closed currently does not exist constantly but only for the period of time which is set as a restriction in the Cabinet decrees. Accordingly, during the remainder of the time when the Centre is open all stores may be open while following the established measures of safety and health. Consequently, during that time when stores are open tenants cannot refer to the force majeure event.

However, even when it is allowed to keep a store at a Centre open, consumers still avoid public spaces as much as possible, where they could be exposed to the risk of contracting Covid-19 disease caused by the coronavirus. Therefore, a drop in turnover is unavoidable in these circumstances. To this end it is advisable not to hesitate to engage in negotiations with the landlord possibly resulting in an agreement on a discount on the rent also on the days when the store may be open to customers.

The tenant may offer other attractive and interesting solutions to the owner of the Shopping Centre in exchange for current reduction of the rent.

It is always worthwhile to look back at the negotiations for conclusion of the particular lease and the draft versions of the contract in order to recall what was important for each of the parties during the contractual negotiations but which may nonetheless have not made it into the final wording of the lease. That could serve as inspiration for making an offer, if the specific interest was excluded from the executed version of the lease.

For example, the landlord could agree to a reduction of the rent if it was possible to reach an agreement about extension of the lease period or lease of other premises available from the landlord. In the current situation the landlords should keep in mind that successful payment (or collection) of the rent is possible only from a solvent company; therefore, the rapid changes in the market situation are to be respected. Consequently, possible solutions might depend on the particular circumstances and interests of the parties, as well as on the mutual ability to secure their undertakings in a legally correct way.

At any rate, both the tenant and the landlord should record their intention and offer made to the other party so that in the worst scenario, if it leads to a formal dispute, the party would be able to prove its position and the fact that it has done everything in its control to mitigate the opposite party's loss. The same applies to any activities carried out by the entrepreneur to mitigate its own losses. During any negotiations any rights asserted should be exercised in good faith, which means that neither of the parties can speculate on the Covid-19 situation without basis or to use the support granted or restrictions imposed by the government as an excuse.

4

State Support Mechanisms

In order to overcome this period of crisis as efficiently as possible, the entrepreneur needs to evaluate whether it requires and is eligible to receive the state support. As regards the real estate tax, larger municipalities have already adopted decisions allowing application for extension of the due date of tax payments, if the delay has occurred as a result of the consequences of Covid-19 pandemic..

Furthermore, it is possible to qualify for **the downtime benefit and division of the apportionment of outstanding tax payments into instalments or deferment thereof for a period of up to three years, as well as to apply to the support programmes of ALTUM – a loan for working capital and guarantee of a loan repayment holiday.**

In addition, pursuant to provisions of the Act on the Measures for Prevention and Overcoming of National Threat and Its Consequences due to Spread of Covid-19, for the period of validity thereof, **a release of the rent or reduction thereof shall be applied** to a business entity operating in the industries suffering from the crisis, if it is a tenant **in the real estate of a public person and a capital company controlled by a public person, or leases movable property from them.** Also, a default interest shall not be imposed in these situations nor contractual penalties in case of late payment, save for payments for consumed utilities and other property maintenance services.

Said act is a specific legal framework and provides benefit for a small proportion of tenants; however, the concepts contained therein could be considered by entrepreneurs operating in the private sector as well.

5

Effects of Covid-19 Crisis will Persist in Future

It can be anticipated that the Covid-19 crisis will change many habits of consumers along with tenants and landlords.

Firstly, the current trends show rapid development of technological solutions where the current situation serves as a catalyst. Secondly, many entrepreneurs strive, as fast as possible in these circumstances, to reorient themselves to offering their goods and services remotely, even reinventing their profile altogether. That means that, possibly, in future the classic Centres as we now know them may become a minority. Instead, platforms for socializing and enjoying company of others, which will include offering of services and sale of goods, could crop up instead.

Right now, speaking of the lease, every entrepreneur needs to think several steps ahead and try to understand whether the current premises will be necessary on the same scale, in the same location and for the specific line of business in the future. Meanwhile, the owner/operator of the Centre will have to consider whether they will be able to provide the existing concept of Centre with the same or even increased flow of consumers, or should it consider new and innovative solutions and tenants.

Therefore, it should be carefully weighed whether it is worthwhile for one or the other party to stick to the current model of contract, because the present crisis provides a unique opportunity to already now explore new and creative ways of collaboration. Consequently, temporary solutions on the issue of rent may be combined with more far-reaching visions, seeking even greater mutual benefit and added value in this situation.



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