

Rental fee in Ukraine during the quarantine

Since 17 March 2020, mass events involving more than 10 people have been prohibited in Ukraine. Business entities are also prohibited to operate, if their activities relate to visitors reception, including public eating places, shopping and entertainment centres, other entertainment facilities, fitness centres, cultural institutions, retail and consumer service centres, etc.

Accordingly, businesses have begun exploring the options for optimizing their costs, in particular, rental fee for premises not used in the quarantine. In the same context, interpreting the quarantine as a force majeure (event of insuperable force) should be also referred to the topical issues.

Most lessees and lessors will find common ground and agree on a waiver, reduction or deferral of the rental fee for the quarantine period, fixing these changes in a supplementary agreement to the original one. If such an agreement has not been reached, the terms of the lease agreement should be carefully considered, especially sections on the procedure for payment, changes in the rental fee, an early termination thereof and force majeure.

If a lease agreement contains the terms of its early termination at the lessee's initiative, those as to exemption from paying the rental fee over the period, during which the lessee is unable to use the premises for an intended purpose, or conditions as to reducing the rental fee, then a lessor should be served a respective request in writing. Such a request in writing should explain the real impossibility of using the rented premises (due to the prohibition of a company operation; inability to get to the office or receive visitors, etc.) and contain an offer to negotiate.

If, however, a lease agreement contains no such clauses, a lessee should refer to the provisions of the applicable legislation. Thus, according to the Civil Code of Ukraine, lessee is exempted from a rental fee for the use of property for all the time, during which the property could not be used by it due to the circumstances the lessee has no control over. Meanwhile, the legislation contains no comprehensive list of such circumstances.

Pursuant to the Commercial Code of Ukraine, a rental fee is a fixed sum payable, regardless of the consequences of the lessee's business. Its amount may be changed by the parties' agreement and in other cases provided for by law. Lessee has a right to request reducing the rental fee, if, due to the circumstances, for which it is not responsible, the commercial terms, as stipulated by a lease agreement, have changed or the rented space condition has significantly deteriorated.

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In addition, lease agreements often provide for the rules in respect of the time, during which lessors provide lessees with an access to rented space and the liability for not complying therewith. But in connection with the introduced quarantine measures, the lessor cannot provide such an access.

Therefore, if lessee confirms its inability to comply with the assumed obligations under the lease agreement through the quarantine (such a confirmation should be a certificate issued by the Chamber of Commerce and Industry of Ukraine or regional chambers of commerce and industry), the lessor is not entitled to charge any fee under such an agreement. The applicable legislation allows the lessee to initiate amendments to the lease agreement and to request reducing the rental fee or even exempting therefrom.