

CORONAVIRUS: STATE AID TO BE PROVIDED TO TENANTS

Due to Coronavirus pandemic, the operation of retail shopping facilities in the Czech Republic has been affected by restrictions imposed by the public authorities from 12 March 2020. In this respect, the Czech Government approved a state aid programme which aims to support tenants affected by the restrictions above (the "**Programme**"). After having been approved by the Czech Government on 18 May 2020, a notification of the Programme to the European Commission is necessary. Thereafter, the Programme will be announced by the Czech Ministry of Industry and Trade. The purpose of this Briefing is to provide a brief overview of the Programme conditions as proposed by the Czech Government. Should you have any queries, please do not hesitate to contact us.

OVERVIEW OF THE PROGRAMME

The state aid will be provided to tenants prohibited from operation of their establishments (i.e. prevented from sale of goods and services in the commercial premises) due to the restrictions imposed by public authorities in relation to Coronavirus pandemic situation.

The Programme stipulates that the relevant establishment must have been subject to mandatory closure during certain period between 13 March 2020 and 30 June 2020 (i.e. even mandatory closure lasting one day would be sufficient). The beneficiary cannot be owner of such establishment and it cannot be affiliated to the landlord. The above conditions should reduce a risk that the state aid will be misused. However, certain entities might be unfairly disadvantaged by these conditions (e.g. tenants who have been affected by the restrictions only indirectly). By analogy, the Programme also applies to subleases.

One of the Programme essential conditions is provision of 30% rent reduction (discount) for a period of months April, May and June 2020 by landlords. The Programme explicitly permits provision of a discount in the form of an agreement or arrangement between landlord and tenant as well as in the form of an amendment to the lease agreement. However, the wording of the Programme indicates that these might not be the only options in respect to provision of a discount (landlords might also use certain other methods of granting a discount when conclusion of amendment to a lease agreement might be administratively complicated). Further, landlords should also consider tax implications when deciding on a form of the rent discount.

Another essential condition of the Programme is payment of 50% of the rent for a period of April, May and June 2020 by tenants on a day preceding the day of the request at the latest. Therefore, there is a risk that tenants will pay only 50% of the rent (as required by the Programme) and not the remaining 20% of the rent which is to be paid from tenants' own sources. Given to the above, landlords should be very cautious when determining the terms of the rental discount.

The state aid will correspond to 50% of the rent for the months of April, May and June 2020. However, the monthly amount of the state aid cannot exceed the monthly rent amount paid by a tenant before 12 March 2020. The Programme also contains total limit for the state aid to be provided to single tenant. The total amount granted to any one tenant under

the Programme cannot exceed CZK 10,000,000. This total limit will be important in particular for tenants who operate their business in a large number of leased premises. Should the respective lease agreement expire before 30 June 2020, the state aid will be provided only for period from 1 April 2020 till the end of the respective lease term.

Furthermore, special conditions apply when an establishment owned by the State of the Czech Republic is leased to a tenant under Act No. 219/2000 Coll., Act on property of the Czech Republic. In such a case the tenant is obliged to pay 80% of the rent and VAT from such amount before submission of the state aid request. The state aid amount will equally increase to 80% of the rent as the Czech Republic is not obliged to provide tenants with a rent discount.

REQUEST CONDITIONS

The state aid will be granted to tenants upon their request. The request form (and related instructions) will be published by the Czech Ministry of Industry and Trade. The request may be submitted by the tenant (or the subtenant in case of sublease).

Each request must be accompanied by the following annexes:

- Tenant's declaration in particular regarding its status of competent applicant ("*způsobilý žadatel*" as defined in the Programme), its non-debt declaration in respect of debts to public authorities, declaration that the tenant is not subject to liquidation, insolvency etc. The tenant's declaration must also contain its waiver of the right to demand any compensation from the Czech Republic in relation to the rent for the period from March 2020 to June 2020.
- Landlord's (i) declaration regarding existence of the lease agreement before 12 March 2020 and information on the lease term and (ii) declaration that landlord and tenant are not connected persons.
- Document evidencing full payment of the rent for certain period prior 12 March 2020 (as specified in the Programme).
- Document evidencing payment of the rent which should be subsidised (i.e. at least 50% of the rent for a period of April, May and June 2020).
- Document evidencing payment of VAT from 70% of the rent for a period from 1 April 2020 till the request submission (provided the rent became due before the request submission).
- Draft of the agreement between the Czech Republic and the tenant regarding settlement of possible tenant's claims against the Czech Republic due to SARS CoV-2 coronavirus related measures (draft of the agreement must be signed by the tenant).

Please note that the Programme contains representation that the Czech Ministry of Industry and Trade reserves a right to demand other documents in relation to the request and that there is no legal right to obtain the state aid (i.e. any requests might be rejected at the discretion of the Czech Ministry of Industry and Trade).

IMPORTANT TO NOTE

In preparation of this Briefing we have relied solely on the wording of the Programme as was made available to us informally. Please note that the exact conditions of the Programme might be amended by the Czech Ministry of Industry and Trade in connection to the approval process by the European Commission. Due to the lack of applicable court precedents and other interpretation tools that would give guidelines for interpretation, this Briefing represents solely a professional opinion of Clifford Chance Prague LLP, which can be used in particular for information purposes. It is possible that the relevant courts and public authorities may have different opinions on the legal interpretation of the above issues.

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