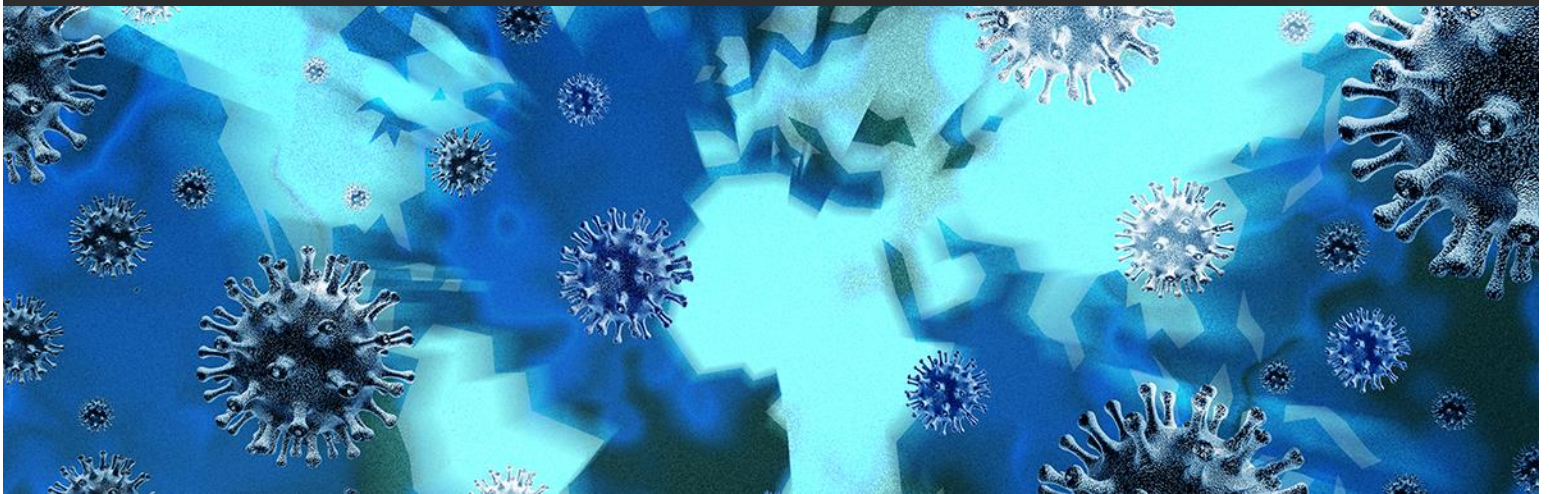


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



April 9, 2020

Poland’s ‘Crisis Shield’ from the Real Estate Perspective

On 21 March 2020, a project of a bill amending the recently enacted Emergency Act related to the Prevention, Counteracting and Combating of the COVID-19 Pandemic, was presented by the Polish government and known as the “Crisis Shield”. The Crisis Shield has not been officially published on the Government Legislative Center yet.

The 100-plus page bill contains detailed provisions designed to protect entrepreneurs and their businesses in the face of the advancing pandemic. The bill has received a lot of attention and comments from commercial real property operators and commercial and legal advisors. It would come into force on the day following the date of its promulgation, which the government expects to take place the week of 30 March, 2020.

In this GT Alert, we outline selected elements of the Crisis Shield affecting the real estate industry. It is not our intension to assess whether proposed solutions will be successful.

90% Rent Cut in Shopping Centers

An automatic 90% rent reduction will be made available to tenants of shopping centers i.e. in commercial facilities with a sales area exceeding 2,000 m², whose operations were prohibited or restricted for the duration of the epidemic emergency/emergency threat, if tenants obey the ban, provided that their lease agreements do not contain more favorable reductions. The statutory reduction will apply not only to tenants which have been barred from doing any business in shopping centers, but also those whose business was

restricted (as in the case of restaurants, which had to close to patrons but may provide take-away catering or home delivery of meals to customers).

The bill states, on the other hand, that based on the principle of equity, a court may, at the landlord's or tenant's request, define the rate of such reduction differently, i.e., it may either increase or decrease it.

Tenants to be Released from Liability for Breach of Contract

In the event of a breach of the provisions of the lease by a tenant caused by that tenant upholding the legal ban on or restriction of business in shopping centers, the tenant will be released from liability for such non-performance or inadequate performance of the contract (including from contractual penalties).

In light of the proposed provisions, the tenant would not face liability for breaching the lease agreement to engage in business during the opening hours of the shopping center. The landlord on the other hand, would not be authorized to demand a contractual penalty for such breach or to claim any other damages for loss incurred as a result of the compulsory closing of the shop by the tenant.

Extension of Leases of Premises Until 30 June 2020

The lease term for premises that would expire once the act comes into force but before 30 June 2020 would be extended until that date on the same terms, provided that the tenant submits a relevant declaration of will to the landlord on the last day of the validity of such lease at the latest.

The bill does not specify any form in which such declaration can be made., therefore any form should be acceptable. This right does not apply to a tenant that had payment arrears during the half-year period preceding the Act coming into force with regard to at least one settlement period for rent or other fees if the total amount of such arrears exceeded the value of one month's rent. Likewise, a tenant who during the validity of the lease used the premises for purposes other than intended or caused damage to the premises or sublet or made them available to third parties without the landlord's consent cannot submit a declaration on the extension of the lease to the landlord.

No Lease or Rent Amount Termination Until 30 June 2020

The bill would bar the possibility of termination of the lease by the landlord (or of the rent) until June 30, 2020. This ban would apply both to fixed-term and indefinite-term leases. However, a lease can still be terminated before 30 June 2020 if the tenant breaches its provisions or the provisions of the regulations governing the manner of use of the premises.

The bill does not make it clear, however, how a lease termination declaration made despite such limitation should be treated: as one producing no legal effect, or as effective but only starting on 1 July 2020. A termination notice delivered before that date should be delivered to the tenant again after 30 June 2020, to be on the safe side.

Extension of Deadline for Payment of the Perpetual Usufruct Fee

Perpetual usufruct fees for 2020 may be paid by 30 June 2020.

Possibility of Real Estate Tax Relief

Commune councils will be authorized to enact an exemption from the real property tax for part of 2020 to groups of entrepreneurs whose financial liquidity deteriorated as a result of the adverse economic consequences of COVID-19. Additionally, the commune head or town mayor will be authorized to issue orders extending the deadline for the payment of the real property tax by such entrepreneurs for April, May and June until 30 September, 2020 at the latest.

Exemption of Projects Related to Counteracting COVID-19 from the Requirements Governing Investment Process

The bill maintains the exemption, introduced on March 8, 2020, for construction works, and the change in the use of built structures, if they are related to the counteracting of COVID-19, from all regulations imposed by the Building Law, the Act on Land Use Plans (including regulations contained in local zoning plans) and the Act on Heritage Preservation.

One difference, when compared to the recently enacted Extraordinary Act related to the Prevention, Counteracting and Combating of COVID-19 is that relevant investors will be obliged to notify the local government bodies responsible for construction matters about, without limitation, the type and scope of the works and also, should such works normally require a building permit, ensure that management and supervision over the work is exercised by a person holding the requisite building certificates.

Equally important, such works may still require environmental consent as the proposed act did not exclude the application of the provisions of the Act on the disclosure of information about the environment and its protection, the participation of the society in environmental protection and the environmental impact assessment.

Longer Wait for Individual Tax Rulings

The deadline for issuing individual tax rulings is extended from three to six months, regardless of whether the application for the tax ruling was submitted before or after the effective date of the act.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

This GT Alert is limited to non-U.S. matters and law.

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