

September 2021

LEGISLATIVE CHANGES IN SLOVENIA IMPACT THE FUTURE OF LEASE AGREEMENTS FOR BUSINESS PREMISES

THE AMENDMENT OF THE HOUSING ACT BRINGS SIGNIFICANT CHANGES FOR COMMERCIAL LEASE RELATIONSHIPS

On 19 June 2021, the amendment to the Housing Act¹ entered into force and brought a number of changes regarding Slovenian real estate legislation. With respect to the leasing of business premises, the amendment significantly changed commercial leasing regulation by repealing the Business Premises Act² as of the day the amendment to the Housing Act entered into force.

The provisions of the Business Premises Act continue to be applicable to all commercial leases established before 19 June 2021, while the commercial leases concluded after this date are no longer governed by the Business Premises Act.

It is not clearly defined whether the provisions of the Business Premises Act will still be applicable in the event of a prolongation of the lease term of an existing lease agreement after 19 June 2021. Thus, we recommend that the parties to the lease agreement include *a provision in the amendment stipulating that the provisions applicable to the lease agreement*, i.e. the provisions of the Business Premises Act, shall also apply to the amendment agreement.

MAIN CHANGES IN REGULATION OF THE LEASE AGREEMENTS FOR BUSINESS PREMISES AS OF 19 JUNE 2021

Lease agreements for business premises concluded after 19 June 2021 shall be governed by the provisions of the Code of Obligations³ (Article 587 to Article 618) and/or the provisions of the relevant lease agreements.

The statutory provisions governing the lease agreement pursuant to the Code of Obligations are mostly voluntary. Therefore, the regulation of commercial leases is left open for the parties to freely

¹ *Zakon o spremembah in dopolnitvah Stanovanjskega zakona (SZ-1E)*, Official Gazette RS, No. 90-1868/2021 dated 4 June 2021.

² *Zakon o poslovnih stavbah in poslovnih prostorih (ZPSPP)*, Official Gazette SRS, No. 18/74, as amended.

³ *Obligacijski zakonik (OZ)*, Official Gazette RS, No. 97/07, as amended.

set out the terms of their lease agreements for business premises, yet still the parties need to consider certain mandatory provisions. The parties cannot exclude:

- (i) the landlord's liability for material defects on the leased premises if the use of the leased premises is withheld from or denied to the tenant (Articles 593 and 594);
- (ii) the landlord's liability for legal defects (Article 599);
- (iii) the landlord's right to terminate the agreement if the tenant does not use the leased premises in accordance with the provisions of the lease agreement or the purposes of the leased premises or if the tenant is not maintaining the leased premises which might lead to significant damage for the landlord (Article 601);
- (iv) the mandatory provisions that the sublease expires at the latest when the lease expires (Article 609); and
- (v) the tenant's right to terminate the lease agreement due to the leased premises posing a threat to health (Article 616).

Unless otherwise agreed in the lease agreement, the lease agreement is governed by the general provisions of lease agreements pursuant to Code of Obligations. Therefore, it is crucial that the parties precisely regulate the lease relationship in the agreement.

KEY POINTS TO CONSIDER WHEN ENTERING INTO A LEASE AGREEMENT FOR BUSINESS PREMISES AFTER 19 JUNE 2021

The provisions of the Code of Obligations bring a number of differences compared to the previous legislation, such as:

1. Statutory termination period

The statutory termination notice period for lease agreements concluded for an unlimited period pursuant to Article 616 of the Code of Obligations is eight (8) days (unless otherwise agreed in the lease agreement), whereas the mandatory minimum termination notice period pursuant to the Business Premises Act was 12 months, and a shorter period could not have been agreed by the parties to the lease.

Pursuant to the Business Premises Act, a valid unilateral termination of the lease agreement for business premises for convenience was only possible through a court, whereas the Code of Obligations does not stipulate such a formality, and a simple termination notice suffices for a valid termination of the lease.

2. Landlord's right to terminate a lease agreement with immediate effect

Pursuant to the Code of Obligations, a landlord has the right to terminate the lease agreement with immediate effect (without a termination notice period) if:

- (i) the tenant is not using the leased premises in accordance with the provisions of the lease agreement or the purpose of the leased premises (Article 601);
- (ii) the tenant neglects the maintenance of the leased premises, which constitutes a risk that the landlord may suffer significant damage (Article 601);
- (iii) the tenant is late with the payment of the rent and does not pay the rent even within fifteen (15) days of the landlord's demand (Article 603); or

- (iv) the tenant subleases the leased premises without the landlord's consent (if the lease agreement allows a sublease with the landlord's prior consent, or, if the sublease is not allowed) (Article 607).

The Business Premises Act entitled the landlord to terminate the lease agreement with immediate effect for the same reasons, but with respect to the rent payments, the tenant was deemed to be in default with the payment of monthly rent and costs if the rent was not paid for more than two months as of the day when the tenant was reminded by the landlord.

Under the Business Premises Act, the landlord had an additional reason for termination of the lease agreement with immediate effect (i.e. if the landlord, for reasons beyond his/her control, was permanently unable to use the premises designated for the performance of his/her business activity, and therefore needed the leased premises for his/her own purposes). However, the parties can contractually include such termination right.

3. Right to terminate a lease agreement with immediate effect due to leased premises posing a risk to health

Pursuant to Article 616 of the Code of Obligations, both the landlord and the tenant have a right to terminate the lease agreement with immediate effect (without a termination notice period) in the event the leased premises poses a risk to health, whereas the Business Premises Act did not include any such provision (the provisions of the Code of Obligations were applicable).

4. Tenant's right to terminate a lease agreement in the event of the transfer of title of the leased premises to a new owner

Pursuant to Article 613 of Code of Obligations, the tenant has a right to terminate the lease agreement in the event of the transfer of title of the leased premises to a new owner, subject to statutory termination periods (eight (8) days). The Business Premises Act did not include any provision with respect to the tenant's right under such circumstances; however the provisions of Article 613 of the Code of Obligations were applicable.

5. Tenant's right to terminate a lease agreement due to material or legal defects

Pursuant to the Code of Obligations (and different to the Business Premises Act), the tenant may also terminate the lease agreement due to a defect of the leased premises:

- (i) if the leased premises have a defect which interferes with the agreed or normal use of the leased premises (i.e. material defect (*stvarna napaka*)), which cannot be rectified (Article 597); and/or
- (ii) if a third person owns any right to the leased premises or a part thereof (i.e. legal defect (*pravna napaka*)) and enforces any claim against the tenant or arbitrarily takes the leased premises from the tenant, and consequently the tenant's right to use the leased premises is restricted (Article 599).

The landlord's responsibility for material defects can be contractually limited or excluded.

6. Change of the fixed term lease into a lease for an unlimited period of time

Pursuant to Article 615 of the Code of Obligations, a lease agreement for a fixed term is changed into a new lease agreement for an unlimited period by operation of law if the tenant continues to use the leased premises after the expiry of the lease term and the landlord does not object to the continuing use. All security instruments granted by third parties as security for payments pursuant to the lease agreement for a fixed term cease to exist as of the expiry of the original fixed lease term.

7. Possibility to sublease the leased business premises without the landlord's prior consent

Pursuant to Article 605 of the Code of Obligations, unless otherwise agreed in the lease agreement, the tenant may sublease the leased premises to a third party if the landlord does not suffer any damage by such sublease. In such event, no prior written consent of the landlord is required for the sublease of the leased premises as was the case pursuant to the Business Premises Act.

However, the parties may determine in the lease agreement that the sublease of the leased premises to a third party is not allowed or is possible only with a prior written consent of the landlord. In such case, the landlord may refuse its consent only for a justified reason.

CONCLUSION

As mentioned above, **19 June 2021** became an important milestone in Slovenia with respect to the regulation of commercial lease agreements.

We recommend our clients to be very thorough in the future when entering into a lease agreement for business premises and take into consideration all the points mentioned above in order to ensure all aspects of the lease are well-defined and fully covered in the lease agreement.

About WOLF THEISS

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 340 lawyers in 13 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

For more information about our services, please contact:



Markus Bruckmüller

Partner

markus.bruckmueller@wolftheiss.com

T: +386 1 438 0010



Petra Jermol

Counsel

petra.jermol@wolftheiss.com

T: +386 1 438 0015



Neža Vončina

Associate

neza.voncina@wolftheiss.com

T: +386 1 438 0031

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

WOLF THEISS Attorneys-at-Law, Slovenian Branch
Odvetniška pisarna WOLF THEISS – Podružnica v Sloveniji
Bleiweisova 30, 1000 Ljubljana, Slovenia

www.wolftheiss.com