

## Update: Relaxation of the General Ban on Access to Shops

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The Ordinance of the Federal Minister of Social Affairs, Health, Care and Consumer Protection concerning interim measures to prevent the dissemination of COVID-19 (Federal Law Gazette II No. 96/2020) has prohibited access to the customer areas of business premises of retailers and service providers as well as of leisure and sports facilities for the purpose of purchasing goods or services or using leisure and sports facilities since 16 March 2020. Exceptions to that ban have been provided for in various sectors (e.g. pharmacies, food retailers, drugstores, etc.).

The fourth amendment to this ordinance (Federal Law Gazette II No. 151/2020) now brings – on the one hand – partial **relief for the retail sector** but on the other hand also introduces **further protective measures**, as summarized below:

### 1. Partial Relief of the Ban on the Access of Customer Areas

As announced by the Austrian Chancellor Kurz at a press conference on Monday, 6 April 2020, the ban on access of retail premises will be partially lifted **from 14 April 2020**.

Accordingly, the ban on the access to customer areas will not apply to customer areas of "other business premises" (which serve the sale, manufacture, repair or processing of goods) if the **customer area inside does not exceed 400 m<sup>2</sup>** (that limitation to 400 m<sup>2</sup> does not apply to premises in business sectors that are already excluded from the ban of access, which is expanded to also cover stores for building materials and iron and timber trade as well as DIY and garden stores).

The following additional requirements apply to such "*other business premises*":

- The size of customer areas of shops will be **added up** for calculating the 400 m<sup>2</sup> threshold, if (i) shops are connected by physical structures (e.g., shopping centers), and (ii) customer areas are entered through such physical structures.

In our view, which we could not confirm with competent authorities, entrance through the same "**physical structures**" will only be relevant if those are **fully closed to the outside world** (except for entrance doors). We take this view based on the fact that the ordinance refers to customer areas "*inside*", thereby showing that the risk of infection (which is to be minimized by the ordinance) is perceived to be higher in closed rooms. The same can be seen from regulations issued in mid-March, whereby public events were prohibited if the number of the participants exceeded 100 (indoor) or 500 (outdoor).

Accordingly, shops should in our view be allowed to open in line with this restriction if customers can enter it from the outside world.

- **Changes** that have been made to the size of customer areas after 7 April 2020 will not be taken into consideration for calculating the 400 m<sup>2</sup> threshold.

Therefore, closing off parts of shops that have a customer area exceeding the 400 m<sup>2</sup> threshold (in order to meet the threshold) will not allow an opening of that shop.

## 2. Conditions for the Partial Opening of "Other Business Premises"

The exception to the ban on access to "*other business premises*" described above only applies if the following conditions are met:

- The operator must take appropriate measures to secure that no more than **one customer per 20 m<sup>2</sup>** of the "*overall trading space*" (which we would assume is identical with the "*customer area*" mentioned above) is simultaneously present in the customer area. Where the customer area is smaller than 20 m<sup>2</sup>, only one customer may be present at the same time.

## 3. General Conditions for the Opening of Business Premises

In addition, the following conditions apply to all (i.e. also to the previously applicable) exceptions to the ban of access:

- **Customers as well as employees** having contact with them must wear **protective masks** ("*mechanical protection well covering the area of mouth and nose*"), serving as a protection against droplet infection; this does not apply to children under the age of six. Due to this wording, both so-called quick

mouth and nose masks (*Mund-Nasen-Schnellmasken* – MNS) as well as other means of covering the mouth and nose (e.g. scarf or cloth) will in our view be permitted for these purposes.

- A **distance of at least one meter** from other persons must be maintained.

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