

LEASE OF NON-RESIDENTIAL PREMISES TURNS INTO LEASE OF PREMISES FOR BUSINESS PURPOSES

rutland ježek, a Prague law firm on main changes in the lease of non-residential premises under Czech law

The new Civil Code (Act No. 89/2012 Coll.) repeals and replaces Act No. 116/1990 Coll., on lease and sublease of non-residential premises. **There is even a completely new term regarding this kind of lease** – the former lease of non-residential premises will henceforth be referred to as the **lease of premises for business purposes**, or rather **the lease of a space or room if the purpose of the lease is conducting business**.

Subpart No. 3 of the part regulating the lease is included in the new Civil Code (the “NCC”) as a special regulation in relation to the general provisions of the lease, while the subsidiary use of such provisions is in the provisions containing the definition of premises for business purposes. Concurrently, the regulation establishes the third category of premises, namely spaces or rooms the purpose of which is neither living nor conducting business. This category falls within the general regulation of the lease. Regarding the extent of regulation of the lease of premises for business purposes, there is virtually the same number of sections, whereas it has been incorporated into Sections 2302-2315 of the NCC.

However, the NCC also abolished certain conditions set by the previous law on lease and sublease of non-residential premises. Above all, it is necessary to mention that all regulation in this part is now dispositive. These are general rules dealing with this type of lease and the parties are allowed to regulate their relationship according to their needs, provided that it falls within the principle of good manners. **The lease agreement does not have to be in writing anymore.** It is also no longer necessary to wait for the final building approval (in Czech: *kolaudace*), which is a manifestation of an explicitly stated duality of private and public law stated in Section 1 Subsection 1 of the NCC. There are no specific requirements for the lease agreement anymore, and it is therefore sufficient to negotiate the subject of the lease and the fact that the lessor is entitled to remuneration for its use. The purpose of the lease does not have to be explicitly expressed in the lease agreement if the space or room is used for business purposes at least predominantly. However, the lessee is not allowed to engage in other activities or change the way or conditions of use (contrary to the purpose of the lease agreement, to any arrangement between the parties or to reasonable expectations at the conclusion of the agreement).

At the same time, the NCC introduces conditions which the previous regulation did not contain. These include provisions relating to the termination of the lease in particular. From now on, the termination notice of the lease has to contain a reason, otherwise it is invalid. Changes were also made to the notice period, which presently begins on the day following the submission of the notice and not from the first day of the month following the delivery of the notice, as was the case in the previous regulation. Moreover, on the issue of the notice period, the NCC distinguishes between termination of the lease for a fixed term only for exhaustively listed reasons (3 months), and a general termination of the lease for an indefinite term (the basic notice period shall be 6 months which will always be used if the lease is for more than 5 years and in case the other party could not have expected the other party to terminate the lease; 3 months if there is an important reason for the termination).

In addition, the NCC introduces objections to the termination of the notice. They are required to be submitted in writing within one month from the date on which the notice was delivered to the other party. It is an absolute limitation period and thus its expiry leads to the termination of the right to seek review of the reasons for the notice. In this context, the NCC further stipulates that the notice is considered valid and accepted by the lessee without objection, if the space is vacated in accordance with the notice. All of these provisions hereby provide both the lessor and the lessee with greater legal certainty in the event of disputes regarding termination of the lease by a termination notice.

Newly, the regulation allows for advertising boards and similar signs to be placed on a building or a land with the consent of the lessor, while at the same time provides that the lessor may refuse the approval only for an important reason. Provided that the lessee submitted a written request in this matter, the approval is deemed granted if the lessor does not respond to the request within a period of one month. Subsequently, the NCC establishes the obligation to remove these signs and put the property into its original condition upon termination of the lease.

The provision of Section 2315 deals with the **concept of the customer base** which in simple terms is a set of customers who have become accustomed to use the services of the previous tenant at a given location, and if anyone else ran a same or similar business at the same location, these customers would most likely continue using services or buying goods of the new provider (e.g. usually the case of bakers, butchers, and similar businessmen). In this matter, the NCC introduces a compensation for the takeover of the customer base after the termination of the lease. If the lease is terminated by lessor's termination notice, the lessee is entitled to compensation for the benefit of the lessor or a new lessee which was gained by taking over the customer base of the previous lessee. However, if the lease was terminated for gross violation of the lessee's duties, the lessee is not entitled to such compensation.

Contact:

Monika Rutland, partner

rutland ježek, law firm

t: +420 226 236 600

e: mrutland@rutlandjezek.com

About **rutland ježek**:

The rutland ježek law firm in Prague focuses mainly on business law, real estate law, litigation, finance and banking law; the firm is ready to provide adequate comprehensive consulting thus offering an alternative for clients of international law firms. The international dimension of the provided services is guaranteed by its track record and cooperation with leading law firms in most European countries, the USA and other jurisdictions. Czech lawyers of the rutland ježek team have long experience in providing legal consulting to transnational corporations, large Czech companies as well as medium size firms and individuals, acquired in leading international law and tax firms. More on www.rutlandjezek.com.