

THE LEGAL CONSEQUENCES OF THE MEASURES TAKEN WITHIN THE SCOPE OF THE GLOBAL COVID-19 PANDEMIC, THE WORKPLACE LEASE AGREEMENTS AND THE NON-PAYMENT OR LATE PAYMENT OF RENTS

Due to the respiratory infectious disease known as Coronavirus (Covid-19), mandatory and discretionary measures have been taken to prevent this pandemic from spreading across the country. In the workplaces that are directly or indirectly affected by the restrictive measures, sustaining the business life has become almost impossible, and these commercial and economic negative impacts have started to be experienced in every sector. However, the legal regulations serve the purpose of minimizing some of these negative effects and in our article, the legal status will be examined related to the performance of the parties arising from the leases of the workplaces that are suspended or restricted or that are indirectly affected by the measures even if there has been no restriction order.

The summary of the measures taken by the Turkish Government in chronological order is as follows:

- **On 16.03.2020**, in accordance with the circular issued by the Ministry of Interior, activities of theaters, cinemas, performance and concert halls, wedding venues, music halls/restaurants/cafes, refreshment bars, pubs, taverns, coffee houses, cafeterias, shisha salons, and cafes, internet salons and cafes, all types of amusement arcades, all types of indoor children's play areas (including those inside restaurants and shopping malls), tea gardens, association bars, amusement parks, swimming pools, baths, saunas, thermal springs, massage parlors, SPAs, and sports centers have been temporarily suspended in 81 provinces.
- **On 21.03.2020**, in accordance with the additional circular sent by the Ministry of Interior, the activities of barbers, hairdressers and beauty salons have been temporarily suspended on March 21, 2020, as of 6:00 PM.
- **On 22.03.2020**, in accordance with the Presidential decision numbered 2279, all the ongoing enforcement and bankruptcy proceedings have been suspended until April 30th, 2020 except the execution

proceedings regarding the maintenance claims and in this context, it is decided not to initiate party and proceeding transactions, not to take new enforcement and bankruptcy requests, and to execute and enforce the precautionary distraint.

- In addition to the amendments made in different laws and practices under **the Law No. 7226 on AMENDMENT OF SOME LAWS**, which has been adopted by the Grand National Assembly of Turkey on **25.03.2020** but not yet published in the official gazette, within the scope of the temporary second article, **a regulation regarding the workplace lease agreements has been included** in the following provision: **"The failure to pay the lease amounts for workplaces from 1 March 2020 to 30 June 2020 will not be considered as a valid reason to terminate the lease and to ask for eviction."**

I. THE LEGAL STATUS OF THE LEASES OF THE WORKPLACES WHICH HAVE BEEN COMPLETELY SHUT DOWN OR SUSPENDED BUSINESS AS PART OF THE PUBLIC MEASURES

Due to the measures taken in accordance with the legal regulations as part of preventing the spread of COVID-19, some businesses have been completely shut down and some of them have suspended activities. As the pandemic is temporal, in other words, as it is not permanent with regard to the businesses which have been mandatorily affected by the legal regulations, the case of impossibility of performance which is defined as **"temporary impossibility of performance"** in law, is in question in terms of the workplace lease agreements. Although the legal concept, which we define as the temporary impossibility of performance, is not included in the scope of national legislation, it is a common and acknowledged fact established by the verdicts of the Court of Cassation.

As a result, the duration of the measures is indefinite in terms of the workplaces that have been completely shut down and suspended business as part of the public measures at the moment and these periods

can be extended and shortened within the scope of the pandemic measures. In case of “temporary impossibility of performance” growing out of a legal or administrative decision, the obligations of the parties arising from the lease contracts are deemed to be suspended and the parties cannot be expected to perform their obligations arising from the lease contract during this period. However, in case that this period extends unpredictably, the duration of the parties' sufferance can be determined through an objective and fair assessment of each concrete case. As a result, when the risk associated with COVID-19 is reduced or completely eliminated, the termination or continuation of lease contracts will have different economic consequences for the parties depending on each specific case. Accordingly, the termination of the contract is one possibility, but especially for the workplaces which have not been mandatorily suspended there is another viable way through the application of Article 138 of Turkish Code of Obligations that stipulates the adaptation of the lease in terms of the rent in case of a force majeure.

II. THE LEGAL STATUS OF THE LEASES OF THE WORKPLACES WHICH HAVE BEEN SUBJECT TO PUBLIC RESTRICTION ORDER ON THEIR ACTIVITIES OR THOSE WORKPLACES WHICH HAVE NO RESTRICTION ORDER ON THEIR ACTIVITIES BUT HAVE BEEN INDIRECTLY AFFECTED BY THE COVID-19 PANDEMIC

A. THE EFFECTS OF THE REGULATION INCLUDED IN THE TEMPORARY SECOND ARTICLE OF THE LAW NO. 7226 WHICH HAS ENTERED INTO FORCE AS PART OF THE MEASURES AGAINST COVID-19 ON THE WORKPLACE LEASE AGREEMENTS

As explained above, it is regulated under the Law No. 7226 that the failure to pay the lease amounts for workplaces contrary to the respective contract, from 1 March 2020 to 30 June 2020, will not be considered as a valid reason to terminate the lease and to ask for eviction. Under this regulation, measures taken against the COVID-19 pandemic are not considered as valid reasons to terminate the lease agreements. However, it is an undeniable legal fact that the pandemic and the relating measures constitute a force majeure event in terms of the workplace lease agreements. The following regulation is included into Article 138 of the Turkish Code of Obligations No. 6098: **“If an extraordinary situation which is not foreseen and not expected to be anticipated by the parties at the time of the conclusion of the contract arises from a reason not attributable to the debtor and changes**

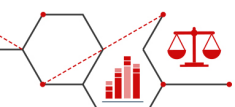
the existing facts at this time against the debtor in such a way as to violate the rules of good faith, if the debtor has not yet fulfilled their obligations or fulfilled their obligations by reserving their rights arising from the excessive difficulty of the performance, the debtor shall have the right to request from the judge the adaptation of the contract to the new conditions, or to revoke the contract if this is not possible. In case of contracts of continuing obligations debtor shall terminate this contract. This provision also applies to foreign currency debts.”

Considering the new regulations within the scope of the temporary second article of the **Law No. 7226 on AMENDMENT OF SOME LAWS** together with Article 138 of the Turkish Code of Obligations, the workplaces that have difficulty in paying rents due to the measures against the COVID-19 pandemic can follow the legal actions below as a precaution for financial problems they may face during this period when the pandemic measures are in place and after these measures are lifted.

1. If the rent payment is to be made between the dates of 01.03.2020 – 30.06.2020 which is included within the scope of the temporary article above, you must inform the lessor while making this payments that “the rent payment can become extremely difficult due to the COVID-19 pandemic and therefore you reserve the rights to sue and claim arising from it in the future”. The following sentence should be included in the remittance/EFT statement: **“We reserve all kinds of rights to sue and claim including the adaptation of the lease due to COVID-19.”**

2. At the stage of concluding the contract, a request should be made to the other party for partial rent payment through a written warning stating that the lease agreement has become intolerable due to the COVID-19 pandemic which could not be foreseen by the parties and therefore considered as a force majeure. The legal terms and notices that will establish the legal basis for an adaptation case likely to be filed in future should be included.

3. In case that the rent payments have been made without prejudice as declared in Nr. 1 above and the written warning declared in the article Nr. 2 has been issued to the property owner, legal procedures such as adaptation proceedings are likely to be initiated after the pandemic measures have been lifted to minimize the economic losses faced by the companies arising from the lease agreement. Regarding the



scope of the legal procedures, your financial interests and the legal strategy to minimize your losses arising from the lease agreement will be explained to you by our expert staff. However, it is important to re-emphasize that making the rent payment without prejudice and issuing a written warning which will establish the ground for any prospective legal process are of top priority and essential.

B. THE EFFECTS OF THE REGULATION INCLUDED IN THE TEMPORARY SECOND ARTICLE OF THE LAW NO. 7226 WHICH HAS ENTERED INTO FORCE AS PART OF THE MEASURES AGAINST COVID-19 ON THE NON-PAYMENT OR LATE PAYMENT OF RENTS

As described above, although there is no legal regulation for the postponement of the rental payments pursuant to the temporary second Article, in case that the rental payments could not be performed between the dates of 01.03.2020 – 30.06.2020 **-reserving the rights of the lessor to collect after the measures have been lifted-(there is no legal regulation on this subject yet)**, restrictions are imposed on the lessor's legal rights to request termination of the lease or the eviction of the immovable property in accordance with the Presidential decision dated 22.03.2020 and the legal regulations dated 25.03.2020. In other words, if you are unable to pay the rent within the specified date range, it is not possible to be evicted from the leased property by the lessor or your lease to be terminated on the basis of valid reasons. In addition, if this period is not extended again in accordance with the legal regulations, it is not possible to commence enforcement proceedings against you due to the rental payments that have not been performed until 30.04.2020.

On the other hand, those legal regulations apply only to the workplace lease agreements and have no effect on the residential lease agreements. Although those above-mentioned legal regulations restrict the lessor's rights of termination and eviction, there is no restriction for the leaseholder regarding those rights. In other words, after the measures regarding COVID-19 pandemic are lifted, the leaseholder businesses which are in a state of huge economic loss making it impossible for them to continue the lease can terminate the lease agreements immediately and without any compensation and without waiting for the end of the contract period, based on valid reason.

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