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“Beware the LEASE”

When entering the Slovenian market, one of the company's first steps is usually the obtainment of adequate business premises and most frequently, the newcomers lease those out. As the business evolves, so do the company's needs for space and location. If mistakes are made while negotiating and concluding the first lease agreement and not enough attention is dedicated to the question, the company may find itself in a pickle once it wants to terminate the lease agreement in order to relocate as the lease of business premises in Slovenia is governed by a special law, the Business Buildings and Business Premises Act (“Act”).

Thus, special attention and engagement of a business-oriented and commercially specialized company is warmly advised to anyone, and especially to foreign companies entering the Slovenian market for the first time. To illustrate why, please find a couple of specifics and quirks of the regulation below. These are of course also interesting from the lessor's point of view and can be used to its advantage; nonetheless, I am dedicating this short review to lessees in order to shine a light on an often forgotten part of the law.

First lesson: Proceed cautiously when concluding a lease agreement for an indefinite period of time.

Pursuant to Article 24 of the Act, a lease contract that has been concluded for an indefinite period shall be terminated by cancellation after the expiration of the period specified in the lease contract itself (notice period). This period shall not be less than one year.

It is safe to say that a notice period of one year can be inconvenient and can unnecessarily obstruct the relocation of the company. A lease for an indefinite period of time should thus only be concluded when the location is permanent and the client has no need for flexibility in this regard.

Second lesson: A notarial deed is only sensible in very specific circumstances.

Sometimes, lessors demand that the lease agreement is concluded in the form of a directly enforceable notarial deed. Often times, such a demand is fueled by a conviction that the termination and vacation of the premises will be easier and faster and that the application of the provisions of the Act can be circumvented.

The latter is untrue; the notarial deed may enable a faster collection of unpaid rent amounts after they are due, but cannot eliminate the obligation of termination through the court, which is the following lesson to be taken away from this text.

Third lesson: Regular termination must be done through the court.

Pursuant to Article 26 of the Act, any contract on the lease of business premises must be terminated by a court.

In practice, this means that a termination can be as lengthy as well as pricey if the lease agreement is not evaluated from the point of view of the client and with its best interest at heart. If the lease period can be determined, the go-to solution should be a lease for a set (definite) period; any deviations and prolongations can always be solved with an annex, as an early termination is the least practical way to go.

Fourth lesson: Withdrawal from the agreement (due to breach) is a different story.

The Slovenian jurisprudence (and even the Constitutional Court of the Republic of Slovenia) has in the past considered whether the withdrawal from the agreement due to breach of the latter should be handled by the court as well.

The conclusion of the courts was that the withdrawal from the contract is a unilateral statement and that the contract is terminated without a court intervention. Furthermore, for the withdrawal

from the contract, the lessor does not have to file a special notice of cancellation with the court, but a request or an action for the vacation of the business premises before the court and, if necessary, effecting it through an enforcement procedure.

In conclusion.

Please bear in mind that the above examples are only the most run-of-the-mill complications that can arise in practice due to mandatory provisions of the Slovenian local law governing the leases of business premises. Practice often exceeds imagination. Since the dynamics and interdependency of the provisions in any lease agreement are forces to be reckoned with, every agreement should be evaluated as a whole, and this short description of the legal area is only the first step in outlining the pitfalls that may befall you.

Any lease should be evaluated by a business-oriented professional while taking into consideration the legal specifics of the area as well as the plans and needs of the client. While the above-indicated provisions may serve its purpose (as envisioned by the legislator) and provide the company – either on the lessor or the lessee side – with certain security and confidence that they cannot be evicted overnight, they can - when not taken into account on time and not applied correctly – inhibit the progress and evolution of the company.

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