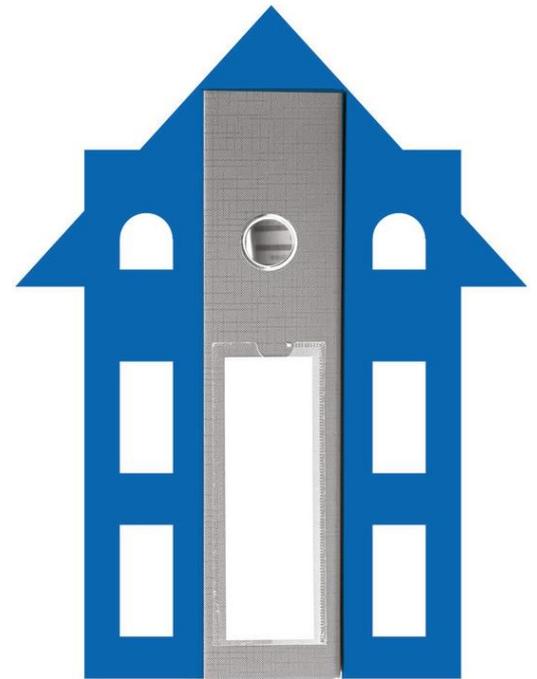


## Legal Alert

### Lease agreements expired

*10 April 2020*



**The Polish parliament has introduced an anti-crisis law known as the "Anti-Crisis Shield." As from 1 April 2020 leases in shopping centers shall expire. The provisions of the Anti-Crisis Shield law are imprecise and mutually inconsistent; they also raise doubts in the context of civil law. We recommend concluding bridge agreements to protect landlords and tenants.**

#### **Legal situation regarding lease agreements**

- Pursuant to the Anti-Crisis Shield Act, in commercial centers with a sales area of more than 2,000 m<sup>2</sup> (in such centers the trade is temporarily prohibited except for pharmacies, food and grocery stores) during the time of the ban on operations due to the pandemic, the mutual obligations of the parties to lease or similar contracts shall expire.
- In our opinion, this provision does not result in the expiration of the contracts of those tenants whose shops were not closed due to the pandemic.
- Interpretation of the intent of this provision could lead to the conclusion that the lease as such remains in force and only the parties' obligations under the lease agreement expire temporarily (i.e. for the time of the pandemic ban). But such an interpretation (despite rational arguments for its application) would require ignoring completely the wording of the law as introduced. It is also difficult to determine the subject of a contract that contains no rights and obligations, and whether such a contract can be considered as existing at all.

#### **What impact can this law have on tenants and landlords?**

- The problem arises as to who is responsible for the loss of the tenant's property, especially in situations such as flood, fire or theft.
- The landlord may obtain a right to payment for non-contractual use of the premises, if the tenant does not vacate the premises.
- The law may put the landlord in breach of loan covenants, such as the debt service coverage ratio and commercialisation level.

#### **Get in touch**

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- Security instruments provided by the tenants such as bank guarantees and submission to enforcement will have to be renewed in most cases.
- Other tenants may terminate their contracts due to the low level of revenues stemming from low commercialization of the shopping malls.

## Our recommendation

To avoid potential negative effects of the Anti-Crisis Shield Act and many uncertainties the Anti-Crisis Shield brings, we recommend the tenants and the landlords to conclude agreements as a bridge solution for the crisis period. Such agreements are intended to mitigate the risk of expiry of the lease contract and to keep the business and legal relationship alive. Because the wording of the Anti-Crisis Shield is extremely imprecise and introduces previously unknown legal institutions, there is no case law that can be relied upon to predict what position the courts may take. An agreement covering all currently known risks seems to be the best risk-management policy.

## Coronavirus

### We offer support in a time of crisis

If you need legal advice on the impact of the coronavirus threat on your business, our multidisciplinary team is ready to work with you.

Contact us at: **[coronavirus@eversheds-sutherland.pl](mailto:coronavirus@eversheds-sutherland.pl)**

If your company operates abroad and you need legal support in a specific country, the international team of Eversheds Sutherland is ready to assist.

## Publications

Our articles on the epidemic's impact on business may be found on *our Polish site*.

Lots of valuable legal information about other countries can be found on *Coronavirus Legal Hub* launched by Eversheds Sutherland.