

# Poland: Closing Commercial and Service Establishments at Commercial Facilities Due to the COVID-19 Epidemic Versus Rent at Large Commercial Facilities

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On March 13, 2020, the Minister of Health issued the Regulation on **Declaring the State of Epidemic Threat within the Republic of Poland** whereby, as of March 14, 2020, the following business operations (at commercial facilities with a sales area of more than 2,000 square meters) were temporarily prohibited:

1. Retail trade, for commercial space lessees whose core business is retailing in:

- Textiles
- Garments
- Shoes and leather goods
- Furniture and lighting equipment
- Radio and television equipment or household appliances
- Stationery and books

1. Restaurant and entertainment operations.

On March 20, 2020, the Minister of Health issued the Regulation on **Declaring the State of Epidemic within the Republic of Poland**. As a result, in addition to the above, as of March 21, 2020, the following business operations were prohibited, until revoked, at commercial facilities with a sales area of more than 2,000 square meters:

1. Retail trade, for commercial space lessees, barring those whose core business is sales of:

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- Food
  - Cosmetic products other than those intended for scenting or beautification
  - Toiletries
  - Cleaning agents
  - Medicinal products, including at pharmacies and limited service pharmacies
  - Medical devices
  - Specialty food products
  - Newspapers
  - Construction and refurbishing materials
  - Pet articles
  - Fuels
2. Services, for service space lessees, barring those whose core business is rendering the following services: medical, banking, insurance, mail, laundry or restaurant, though consisting only of food preparation and delivery services
  3. Retail or service operations at commercial islands.

Due to the above-mentioned regulations, many lessees have been unable to conduct their business or service operations at said facilities, though the legislator has not released them of the obligation to pay the lease rent, nor has it introduced any mechanism toward reducing or compensating such rent. Several lessees have issued letters to their facility owners in which they request a rent vacation or renegotiation, or they have even made statements that they are withholding rent payments for the period when they have been rendered unable to operate at the facility, quoting clauses pertaining to *force majeure*, an extraordinary change of circumstances, the absence of mutual consideration or legal defect.

Last weekend, the government presented for consultation its **draft act addressing the so-called anti-crisis shield**. As per the contemplated schedule, the draft act is expected to be enacted on March 24, and on March 27, it will be debated in the Senate. The effective date is anticipated to be April 1, at the latest.

As follows from the draft act justification, as it is impossible for lessees to operate because of the enacted prohibitions, submitting to such emergency regulations may be considered a *force majeure* event affecting the possibility of fulfilling obligations both on the part of the lessor and the lessee. This means that the parties to a lease agreement are not held liable for non-performance.

As per the government's proposal, the contemplated act is expected **to indicate a rent reduction for the duration of the ban or restriction at 90% of the rent amount agreed upon in the lease.**

If the 90% rent reduction should prove inadequate to either the lessor or the lessee, they will be able to seek to have the rent increased or further reduced accordingly, having regard to the principle of equity and community life. In practice, this will entail taking legal action.

If, however, a lease agreement should provide for more beneficial solutions for the lessee (e.g., releasing it entirely from the obligation to pay the rent during such emergency period), the lessee may avail itself of such provisions.

It is likely that the draft act will undergo certain changes during the legislative process.

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