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1 Introduction

1. Epidemic of coronavirus, designated as SARS-CoV-2, which is a disease inflictor of Covid-19 (*Covid-19*), affects all areas of life, including legal relations. The aim of this document is to assist you to get at least a basic view of some of the impacts of this epidemic and of measures adopted by authorities of the Czech Republic in this connection (the *Measures*) on relations with your employees, contractual relationships and some other legal relations.
2. To the extent prescribed by law, the state shall be liable for damage caused in consequence of certain Measures which may typically consist in impossibility to pursue business at all, or in a usual way. Such liability was clearly also the reason for the change of the attitude of the Czech Government to the Measures adopted under the state of emergency, and currently, is subject to discussions as to the extent to which the state shall compensate the damage to the entrepreneurs. The government's practice was successfully challenged in court proceedings. We are dealing with the liability of the state in Section 3 (see page 3).
3. The Measures seriously interfere with employment relationships where they affect the very possibility of the employees to work and of the employer to assign work to the employees which is connected with the emergence of obstacles to work, obligation to pay the corresponding compensation of wages, which the state compensates under stipulated conditions, or with even a possibility to terminate the employment relationship. We are dealing with these issues in Section 4 (see page 6).
4. In relations (not only) among the entrepreneurs, the Measures may lead to a change of existing contractual relationships (emergence of liability for default or for damage) or to a possibility to terminate such relationships (whether by withdrawal from a contract or as a consequence of frustration of a contract). A breach of Measures or breach of an obligation to take preventive measures may lead to a rise of a new liability for damage. It will be essential to seek solutions which will not only comply with the law, but which will also satisfy the requirements of good morals within the meaning of equitable distribution of economic impacts among the affected parties. Some Measures which are allegedly aimed at mitigating consequences of the combat against Covid-19 directly interfere with particular, previously arisen as well as newly arising, contractual relationships and newly regulate the rights and obligations of contractual parties. We are dealing with these issues in Section 5 (see page 9).

5. For your information, we attach brief overviews of selected Measures (reserving their incompleteness or further corrections also with regard to a very dynamic development), together with a brief (not always exhaustive) summary of their contents (the contents of some now valid Measures are stated in greater details; please note that, for the time being, the overview of Measures are in Czech only, while we will gladly provide you more information in English or German upon your instruction). We are dealing not only with restrictive Measures but also with Measures the aim of which is to mitigate impacts of the fight against Covid-19, whether by reliefs from statutory obligations or by an opportunity to receive financial assistance from the state (Section 6; see page 16).
6. Due to the Measures adopted, damage on the part of entrepreneurs and significant difficulties with fulfilment of previously concluded contracts may often arise. With regard to the above-mentioned, we recommend gathering relevant evidence of all damage caused in consequence of the Measures and to claim such damage in time. At the same time, we recommend identifying and reviewing problematic contractual relationships, in particular, as regards contractual provisions on so-called *force majeure* and material change in circumstances, and assessing legal consequences in case of a breach of such contracts.
7. The opinions formulated in this document may not be relied on in any particular case that requires individual assessment at all times. It may not be excluded that competent authorities will reach other conclusions at their decision-making procedure than those presented herein. With regard to the dynamics of the development of the Measures, further changes are expected.
8. We are, of course, gladly at your disposal, should you wish to get further information, or necessary legal assistance.

2 Elementary Legal Framework

9. The Measures have been and are being adopted on various legal basis which is relevant, *inter alia*, in connection with the possibility to claim compensation for damage caused as a result of the Measures.

[Crisis Act Measures]

10. Some Measures are being adopted under the Constitutional Act No. 110/1998 Coll., on Security of the Czech Republic, as amended (the **Security Act**), and a follow up Act No. 240/2000 Coll., on Crisis Management and on Amendments of Certain Acts (Crisis Act), as amended (the **Crisis Act**) (we refer to these measures hereinafter as to the **Crisis Act Measures**).
11. Crisis Act Measures are being adopted with a reference to a resolution of the Government of the Czech Republic which has, by its resolution No. 194 from 12 March 2020 (No. 69/2020 Coll.), under Articles 5 and 6 of the Security Act, decided on declaration of state of emergency (the **State of Emergency**) for the territory of the Czech Republic due to health threat by Covid-19, namely for 30 days, commencing from 12 March 2020, 2 p.m. The State of Emergency was subsequently extended, firstly, until 30 April 2020 by the government's

resolution No. 396 from 9 April 2020 (No. 156/2020 Coll.), adopted on the basis of the approving resolution of the Chamber of Deputies of the Parliament of the Czech Republic No. 1012 from 7 April 2020. Now, another extension at least until 17 May 2020 is anticipated based on the approving resolution of the Chamber of Deputies of the Parliament of the Czech Republic from 28 April 2020. In compliance with Article 6(2) of the Security Act, this period may be extended again only with another prior consent of the Chamber of Deputies of the Parliament of the Czech Republic which may also decide on an earlier termination of the State of Emergency.

12. Crisis Act Measures within the State of Emergency may, for the necessary period and to the necessary extent, restrict rights and freedoms the list of which is provided in Section 5 of the Crisis Act. Crisis Act Measures may be adopted by the so-called crisis management authorities, in particular, by the Czech Government (Section 6 of the Crisis Act), selected ministries (Sections 9 – 12a of the Crisis Act) and the Czech National Bank (Section 13 of the Crisis Act).
13. A list of selected Crisis Act Measures adopted by the Government of the Czech Republic as of 27 April 2020 is attached hereto in Annex No. 1.

[Health Act Measures]

14. Other Measures were adopted before the declaration of the State of Emergency and are being adopted under Section 69 of Act No. 258/2000 Coll., on Protection of Public Health (the *Health Act*), which regulates extraordinary measures in connection with epidemic and a risk of an emergence thereof (such measures hereinafter the *Health Act Measures*).
15. A list of extraordinary measures in connection with epidemic and a risk of an emergence thereof, which may be adopted in the absolutely necessary extent, is provided for in Section 69 Health Act.
16. Health Act Measures may be adopted by the so-called protection of public health authorities, in particular, the Ministry of Health (the *MoH*) and Public Health Offices (an example of a Health Act Measure adopted by a Public Health Office is an extraordinary restriction of movement of persons in the municipality of Litovel and neighbouring municipalities). Formally, these are measures of general nature, ie. acts which are neither legislation, nor administrative decisions.¹
17. A list of selected Health Act Measures adopted by the MoH as of 27 April 2020 is attached hereto in Annex No. 2.

3 Compensation of Damage Caused by the Measures

18. Legal basis for a particular Measure is crucial for assessment of a claim for damages of a person affected by the Measure against the state.

¹ The Municipal Court in Prague further elaborates on this issue in its judgment file No. 14 A 41/2020.

[Crisis Act Measures]

19. As regards the Crisis Act Measures, Section 36 of the Crisis Act applies according to which the state shall compensate the damage (ie. both actual damage, and lost profit) caused to legal entities and individuals with causal link to crisis measured under the Crisis Act. The state may only be exempted from this liability if the harmed party itself caused the damage. The monetary compensation shall be provided by the crisis management authority that ordered the crisis measure or training during which or as a result of which the damage or harm occurred.
20. A claim for damages, together with its reasoning, shall be submitted by the legal entity or individual in writing at the competent crisis management authority within 6 months from the moment it learnt about the damage, however, within 5 years from the emergence of the damage at the latest; otherwise the right ceases to exist. In extraordinary cases, the crisis management authority may award damages also after the lapse of the deadline for submission of the application or even without such application, however, within 5 years from the emergence of the damage at the latest.
21. It is significant that the beginning of the 6-months' limitation period for bringing the claim for damages for the damage caused in causal link to the Crisis Act Measures is dependent on the moment when the party harmed learnt about the fact that it has suffered proprietary damage of certain kind and extent, which can be objectively denominated in money and claimed before a court. The beginning of this period is affected neither by the course, nor the result of negotiations or court proceedings led by the party harmed against the insurance company for payment of insurance premium (see judgment of the Supreme Court from 22 October 2009, file No. 25 Cdo 3798/2007).
22. It applies that the state and not the crisis management authority is liable for the damage caused to individuals and legal entities in causal link to crisis measures. In a dispute relating to damages in civil proceedings, the state shall be represented by the Ministry of Interior (judgment of the Supreme Court from 17 June 2009, file No. 25 Cdo 1649/2007).
23. Assertion of claims for compensation of damage caused as a result of Crisis Act Measures will be an exceptional situation and answers to all connected questions are not clear yet. However, it may be assumed with a degree of certainty that general principles applicable to other damage claims shall apply also to such applications for damages. The application for damages under the Crisis Act will, therefore, need to specify, in particular, the facts behind the damage, including the amount of the damage, and to prove causal link between the damage and the Measure adopted. Establishment of the causal link may be particularly complicated since it must be the causal link between the Measure and the damage caused and not damage caused generally as a result of the pandemic. Currently, it is particularly recommendable to duly record damage caused and keep due records thereof.

[Health Act Measures]

24. As regards the Health Act Measures, Section 97 of Health Act applies, according to which *“The costs inflicted by the fulfilment of the obligations relating to the protection of public*

health shall be borne by the person on whom such obligation is imposed, unless this act or special laws provide otherwise.”

25. Currently, no special legislation provides for a right of the affected persons to damages, and, therefore, such claim does not arise by virtue of law.
26. **[Change of Legal Regime of the Measures]**
27. Some Crisis Act Measures were subsequently turned by the government into Health Act Measures adopted by the MoH. This applies also to key Measures restricting retail sale and the sale of services, or free movement of persons which were, in the period from 14 March, or 16 March 2020, respectively, until 24 March adopted under the Crisis Act, and from 24 March 2020 6 a.m. substituted by new Health Act Measures.
28. Clearly, the government acted with a view to mitigating impacts of the claims to damages under the Crisis Act for the state which could on its own represent an argument for enforceability of the damage caused by the Health Act Measures in the (full) regime of the Crisis Act.
29. Moreover, some Crisis Act Measures were overcome by the subsequent Health Act Measures, however, were not formally cancelled (in this regard, we refer to Annexes Nos. 1 and 2) which makes the situation rather confusing.
30. Currently, there is a discussion relating to the enforceability of the claim for compensation of damage caused not only as a result of the Crisis Act Measures but also as a result of the Health Act Measures with various legal argumentation (including, for example, possible liability of the state for damage under Act No. 82/1998 Sb., on Liability for Damage Caused at Exercise of Public Authority by Decision or Incorrect Administrative Practice, as amended).
31. Within this discussion, it is also argued that the extent of damage will be so significant and the situation in which the damage arises is so historically unique that it could prove mutually more advantageous if the state and the entrepreneurs come to an agreement in a reasonable form on the extent of the compensation (from the point of view of the entrepreneur, also the speed of payment of such compensation will be of significant importance – without such agreement, it will be necessary to await court decisions which, however, may be unprecedentedly overloaded by claims for damages). In any case, it is recommendable, at this moment, to continuously count and evidence the damage.
32. The above-mentioned practice of the government or MoH, respectively, was found illegal also by the Municipal Court in Prague which annulled four Health Act Measures (relating to the prohibition of free movement and prohibition of retail subject to stipulated exceptions) by its judgment file No. 14 A 41/2020. The court held, *inter alia*, that although this epidemics represents a completely extraordinary state, Czech laws contain rules for this situation provided in the Crisis Act, which shall be strictly observed in the interest of protection of democracy and state of law. By declaration of the state of emergency, the government “switched” the legal regime to a special scheme while it was the duty of all executive authorities to reflect this circumstance at their decision-making. Although the

MoH generally has the power to adopt extraordinary measures to overcome the epidemic, by declaration of the state of emergency, the government demonstrates that the problem reaches such scale that it cannot be solved by standard procedures anticipated by general laws. In this situation, special power of the government arises to limit fundamental rights and freedoms by crisis measures since it is presumed that only massive limitations of such rights may lead to overcoming the crisis situation. The Crisis Act is in this sense a special law in relation to the Health Act and shall take precedence over it. According to the court, the MoH, thus, exceeded its powers and acted illegally by adopting the annulled Measures which also led to distortion of constitutional guarantees of separation of powers since the government is under constant supervision of the Chamber of Deputies of the Parliament of the Czech Republic when adopting the Crisis Act Measures. The court also shared some doubts whether the Health Act anticipates also such fierce and general limitation of fundamental rights and freedom (Measures relating to the whole territory of the Czech Republic and all inhabitants).

33. The judgment of the Municipal Court in Prague implies that if the state of emergency has been declared, executive authorities are obliged to proceed under the laws regulating this extraordinary situation, ie. in particular, under the Crisis Act. This applies particularly in cases of fierce and general interference with fundamental rights and freedoms as was the case of the challenged Measures. However, according to the Municipal Court in Prague, certain powers under the Health Act falling strictly under the health resort remain preserved even under the state of emergency, e.g. allocation of beds in health care institutions.

4 Labour Law Context

[Obstacle at Work on the Employee's Part]

34. In connection with Covid-19, particularly the following obstacles at work on the employee's part come into consideration within the meaning of applicable provisions of Act No. 262/2006 Sb., Labour Code, as amended (the **Labour Code**):

- 34.1 temporary incapacity to work (in case of infection by Covid-19) (Section 191 of the Labour Code);

This is the ordinary regime of incapacity to work within the meaning of Section 55 of Act No. 187/2006 Coll., on Sickness Insurance, as amended. Compensation of wages shall be provided in the ordinary regime (Sections 192 - 194 of the Labour Code).

- 34.2 quarantine ordered to the employee under the Health Act (Section 191 of the Labour Code);

Quarantine is ordered by a doctor mandatorily in cases provided for in the Measures. This applies, in particular, to persons who returned from designated risk areas (the MoH continuously updates a list thereof) and, furthermore, to persons who were in contact in a person who has been positively tested for Covid-19. Compensation of wages shall be provided in the ordinary regime as in case of temporary incapacity to work (Sections 192 - 194 of the Labour Code). Under the programme for promotion of employment Antivirus, approved by the government, the employers should be entitled

to an allowance amounting to 80 % of the paid wage compensation and statutory deductions but not exceeding CZK 39,000 per employee.

34.3 care for a child under the terms provided by the law (Section 191 of the Labour Code);

Under the state of legislative emergency, the government amended Act No. 187/2006 Coll., on Sickness Insurance, as amended, so that during the period of extraordinary measures declared by the government of the Czech Republic, or the MoH relating to the ban on physical presence of children, pupils and students in facilities and schools, the closure of which constitutes a reason for emergence of a right to care allowance or a right to service leave with provision of service income:

- the period of entitlement to care allowance shall be extended,
- the maximum age for the grant of the right to care allowance shall be amended so that this right shall now relate also to children younger than 13 years,
- entitlement to care allowance shall be extended also to care for disabled persons in the common household even without any age limit provided a facility caring for such persons was closed,
- care allowance may be paid also retroactively.

34.4 long term care for a relative or person living in the common household (Section 191a of the Labour Code).

This obstacle at work will presumably be rather exceptional in connection with Covid-19 and the conditions thereof have not been affected by the Measures so far.

[Obstacle at Work on the Employer's Part]

35. Two different situations of obstacles at work on the employer's part may be distinguished:

35.1 A downtime occurs as a result of the Measures which may consist, in particular, in a temporary disruption caused by interruption of supply or powers, erroneous work underlying documents or other operating causes for which the employee cannot pursue the work.

This is an obstacle at work under Section 207 lit. a) of the Labour Code. The employee is entitled to a wage compensation amounting to 80 % of his average wages provided he has not been assigned alternative work. Antivirus programme should cover 60 % of the paid wage compensation and statutory deductions but no more than CZK 29,000 per employee (due to the limitation of the wage compensation with 80 % of the average wage, this threshold might actually be lower).

35.2 As a result of the Measures, business premises of the employer were closed, and, thus, the employer could not assign work to the employees.

This is an obstacle at work pursuant to Section 208 of the Labour Code, and the employee is entitled to a wage compensation amounting to 100 % of his average wage (except for employees with uneven distribution of regular working time (in Czech: *konto pracovní doby*)). The employers shall obtain from the Antivirus

programme a contribution amounting to 80 % of the paid wage compensations and statutory deductions but no more than CZK 39,000 per employee.

- 35.3 As a result of the measures adopted by the Czech Republic (or other states) in relation to the fight against Covid-19, the sales of the products or demand for the services of the employer temporarily dropped (so-called partial unemployment), and, therefore, the employer cannot assign work to the employee in the extent of the weekly working hours.

This is an obstacle at work pursuant to Section 209 of the Labour Code. The employees of an employer with a trade union are entitled to a wage compensation provided for in an agreement between the trade union and the employer, however, amounting to 60 % of their average wages at the least. In case there is no trade union at the employer, this agreement may be substituted by internal regulation adopted unilaterally by the employer (again, the wage compensation must amount to 60 % of the average wage at the least). If the employer did not adopt the corresponding internal regulation, the employee shall be entitled to a wage compensation amounting to 100 % of his average wage. The employer will be entitled to receive from the Antivirus programme a contribution in the amount of 60 % of the paid wage compensation and statutory deductions but no more than CZK 29,000 per employee (this threshold applies in case that the employer pays to the employee a wage compensation amounting to 100 % of his average wage).

In this case, the employer may ask the Employment Office for a contribution pursuant to Section 115 of Act No. 435/2004 Coll., on Employment, as amended (if applicable with regard to Antivirus conditions).

36. Contributions from the Antivirus programme shall be provided through Employment Offices based on employers' applications. The Ministry of Labour and Social Affairs issued a detailed manual for employers accessible on the website of the ministry: <https://www.mpsv.cz/antivirus>. In case of fulfilment of all conditions, we recommend to apply for a contribution at the respective Employment Office.

[Reason for Termination]

37. As a result of the Measures, reasons for a notice from the employment by the employer may exist, namely, in particular where:
- 37.1 the employer's undertaking or its part closes down (Section 52 lit. a) of the Labour Code);
- 37.2 the employee becomes redundant under the employer's decision on other organizational changes (Section 52 lit. c) of the Labour Code). However, in this case, the reason for a notice is not fulfilled if the working position of the employee concerned will be "re-established" after the Measures cease to be effective.
38. The employment of the employee during the probationary period may be terminated by the employer for any reason or even without stating a reason. However, the employer may

not terminate the employment in the probationary period within the first 14 days of the employee's temporary incapacity to work (quarantine).

5 Civil Law Context

39. Private law relationships between individuals and legal entities are governed by Act No. 89/2012 Coll., Civil Code, as amended (the *Civil Code*). Significantly, the Civil Code does not apply to relationships where the state acts in a superior, authoritative position. Thus, it neither regulates the liability of the state for damage caused to an individual in consequence of the Measures, which is regulated by special laws (in particular, the Crisis Act, Health Act; see above).
40. In contractual relationships, it is always important, in particular, what and under which circumstances has been agreed between the parties in a contract, since most of the provisions of the Civil Code are not mandatory and the parties may deviate therefrom by a contract. The following general conclusions may, thus, not be applied to particular situations without their further examination.

[Liability for Damage]

41. The Civil Code distinguishes between a breach of obligations stemming out of the law (ie. obligations existing by virtue of law; so-called statutory liability) and obligations stemming out of a contract (ie. existing as a result of conclusion of a contract; so-called contractual liability).

Statutory liability for damage

42. Statutory liability for damage (see Section 2010 of the Civil Code) caused in consequence of the Measures will be excluded since the adoption of the Measures excludes the fault of a contractual party that could not affect it whatsoever.
43. On the contrary, the liability for damage caused in consequence of a breach of the Measures will not be excluded since such breach would constitute a breach of law within the meaning of Section 2910 of the Civil Code. Further preconditions for the emergence of such liability for damage are: (i) a breach of an absolute right or another right protected by the Measure breached (typically, a right to protection of life or health of the harmed party), (ii) infliction of a harm and (iii) causal link between the breach and the harm.
44. Liability for damage caused by a breach of an obligation to take preventive measures (which imposes a general duty act in a way so as to prevent any unreasonable harm to freedom, life, health, or property of another, if required by the circumstances of the case or the customs of private life) may also arise (Section 2900 of the Civil Code). When examining whether the required level of care has been complied with, it may be, without any doubt, also taken into account whether recommendations issued by the respective authorities have been complied with (for example, recommendations of the government contained in the Crisis Act Measures).

Contractual liability for damage

45. In some cases, the Measure may impede a contractual party from fulfilment of its contractual obligation wherefore such contractual party shall be liable towards the other contractual party for the damage caused in consequence of such breach. However, the party can be released from this liability if it proves that it was temporarily or permanently prevented from fulfilling its contractual obligation by the Measure which may be considered an extraordinary, unforeseeable and insurmountable obstacle arisen independently on the party's will (see Section 2913 of the Civil Code). The party breaching its contractual obligation must inform the other party of the existence of such obstacle (i.e. a vis maior event), otherwise, it might be liable for damage caused by a lack of such information.
46. Significantly, the wrongdoer shall not be released from his contractual liability by reference to the Measure if he was already in default with fulfilment of the obligation in question at the time of effectiveness of the Measure (thus, for example, he was obliged to supply goods on 10 March, could have supplied them on 20 March but the supply did not occur in consequence of the Measures) (Section 2913(2) of the Civil Code).
47. Neither shall be the wrongdoer released from the liability for damage if he was contractually required to overcome the consequences of the Measure (Section 2913(2) of the Civil Code). For example, in case of a business contract where the supplier undertook to arrange for supplies of goods even in case of emergence of some circumstances defined in the contract (force majeure), he cannot be released from the liability for damage caused by a failure to supply goods, should such circumstance occur.
48. The wrongdoer shall neither be released from his liability if he was prevented from the fulfilment of his contractual obligation by an obstacle arising from his personal circumstances. It will always be necessary to prove particularly the causal link between the Measure and its consequences for wrongdoer's personal circumstances. For example, if the supplier of the goods does not supply goods due to existence of a Measure, it does not necessarily mean that he is not liable for the damage caused (for example, if the supplier could have created reasonable stock, could have purchased goods from another sub-supplier not affected by the Measure etc.). However, if it was proved that the Measure influenced the wrongdoer's personal circumstances so much that the liability for damage may not be reasonably attributed to him, this could constitute a reason for a release from liability.
49. It will always be relevant what the parties have agreed in a contract as the provisions on the release from the liability are not mandatory and may be modified or excluded by an agreement of contractual parties.

[Liability for Default]

50. Generally, a debtor who fails to perform his debt duly and in time is in default (Section 1968 of the Civil Code). A creditor is in default if he fails to accept a properly offered performance or fails to provide the debtor with the assistance necessary to discharge the debt (Section 1975 of the Civil Code).

51. The fact that the default of the creditor or the debtor occurred does not affect the existence of the default as a consequence of the Measure. Yet, consequences of the default stipulated by the laws might, but do not have to be, modified.
52. Under the law, the debtor in default is thus generally still obliged to perform and the creditor is entitled to enforce the performance of the debt, or to withdraw from or terminate the contract under the statutory and contractual conditions. The creditor in default is still obliged to accept the performance or provide the necessary assistance. The party in default bears the risk of damage to the thing under the statutory conditions (Sections 1974, 1976 of the Civil Code). However, this does not indicate that the debtor cannot release from the adverse consequence in the form of his liability due to the Measure.
53. In case of default with performance of a monetary debt, the creditor may claim interests on late payments, save for where the debtor is not liable for the default. Hence, it cannot be entirely excluded (although the scope of these cases will be, considering the purely monetary consequence of the breach of the obligation, rather limited) that the debtor will not be obliged to pay interests on late payments, if the default occurred in consequence of a Measure (the burden of proof of this fact lays on the debtor).
54. If the parties agreed on a contractual penalty for the case of a breach of contractual obligations, it may be generally claimed since - in accordance with the usual understanding of the contractual penalty in our laws - the grounds for exemption from liability do not have an impact on the obligation to pay the contractual penalty, unless agreed otherwise. Depending on the facts of the case, it may not, however, be excluded that the court would not grant the right to a contractual penalty (e.g. if its impact on the debtor would be inadequately hard) or would consider enforcement of a claim to a contractual penalty an abuse of rights or an act in contradiction to good morals (e.g. if claiming the contractual penalty would not correspond to parties' expectations). A possibility of decrease of the contractual penalty by the court up to the amount of damage caused by the breach in question is also always an option (Section 2051 of the Civil Code). It is always necessary to take into account the particular circumstances of the case and the contractual provisions.
55. Under the default regime, at least to the extent to which the creditor's interest to minimize the consequences of the default is also realized, also a right to withdraw from the agreement for default of the other party will principally apply. It applies also here that situations might arise in consequence of the Measures in which the respective party cannot make use of its right to withdraw from the contract.
56. In case of fixed contracts (ie. contracts with a precisely stipulated term of performance where the contract or the nature of the obligation indicate that the creditor can have no interest in a delayed performance), the contract terminates upon the beginning of the debtor's default, unless the creditor informs the debtor without undue delay that he insists on the performance of the contract, and, thus the effects of the withdrawal from the contract occur (Section 1980 of the Civil Code).

57. Even in this connection, it is relevant what contractual parties agreed upon, since provisions of the Civil Code on default are not mandatory and parties may deviate from them in a contract.
58. Some contractual relationships are modified in consequence of Measures adopted with the declared purpose to mitigate impacts of restrictive Measures on some groups of debtors and to limit or modify consequences of their possible default. These are, in particular, the following:
 - 58.1 modification of consequences of the default on the part of lessees with the payment of the rent (see Clauses 70 - 72 below);
 - 58.2 possibility to postpone credit instalments (see Clause 84.1 below);
 - 58.3 mitigation of the obligation of the tour operator to return payments for the tour to the client (see Clause 84.2 below);
 - 58.4 limitation of the amount of sanctions payments in case of consumer credits and other financial services accepted by individuals (see Clause 84.6 below).

[Frustration of Contract]

59. Under Section 2006 of the Civil Code, if, after the conclusion of a contract, a debt becomes impossible to be discharged, the contract shall cease to exist due to frustration of the contract. A performance is not impossible if the debt can be discharged under more difficult conditions, at higher costs, with the help of another person or only after a determined period.
60. The Measures may without any doubt prevent performance of the debt. It will nevertheless be necessary to examine in every particular case, whether the conditions pursuant to Section 2006 of the Civil Code have been met, particularly with regard to the temporal nature of the Measures (and, hence, also the temporal impossibility to discharge a debt).
61. Where the stipulated performance fixed to a particular period is affected by the Measure (for example an excursion in the period of existence of a restrictive Measure which prevents its realization) this could lead to a termination of the contract under Section 2006 of the Civil Code. On the contrary, where the performance is not fixed to particular period (typically, for example supply of goods), such contract is not terminated under Section 2006 of the Civil Code.
62. Where only a part of performance becomes impossible to be provided, the contract terminates in full, if the nature of the obligation or the purpose of the contract of which the parties were aware at the conclusion of the contract indicate that the performance of the rest is irrelevant for the creditor. Otherwise, the contract terminates only to the extent of the affected part (see Section 2007 of the Civil Code).
63. In case of a frustration of a contract, the debtor is obliged to inform the creditor that the performance of the debt became impossible without undue delay after he became or must have become aware thereof. Otherwise, he shall reimburse the creditor for the damage

caused by a lack of timely information of the impossibility of performance (Section 2008 of the Civil Code).

[Material Change in Circumstances]

64. The extent of the Measures is unprecedented and they will often constitute a circumstance not relied upon by the parties entering into a contract before the adoption of the Measures. The Measures may constitute a material change in circumstances within the meaning of Section 1765 of the Civil Code provided they create a gross disproportion in the rights and obligations of the parties by disadvantaging one of them either by disproportionately increasing the costs of performance or disproportionately reducing the value of the subject of the performance. In such case, the affected party may claim the renegotiation of the contract with the other party, if it is proved that it could neither have reasonably expected nor affected the change and that the change occurred or became known to the affected party only after the conclusion of the contract. Nevertheless, assertion of this right does not entitle the affected party to suspend the performance.
65. It applies, however, that the party who assumed the risk of the change in circumstances does not enjoy the right to claim the renegotiation of the contract. Contractual clauses within this meaning are very often to be found in the contracts between entrepreneurs, whether unilateral (the risk of the change is assumed only by one of the parties), or bilateral (the risk is assumed by both parties and Section 1765 does not apply).
66. If Section 1765 applies and the parties fail to agree in a reasonable time, the court may amend or cancel the contract under the terms specified in the court's decision. The court is not bound by the applications of the parties. A court shall dismiss an application to change an obligation, if the affected party did not assert the right to renegotiate the contract within a reasonable time after it must have ascertained the change in circumstances, whereas this time limit is presumed to be two months (Section 1766 of the Civil Code).

[Impact on Lease Contracts]

67. Even impacts of the Measures on rights and obligations pursuant to lease contracts will need to be assessed primarily in the light of provisions of these contracts which may contain deviations from the law. Of course, our above-mentioned general conclusions apply also to lease contracts.
68. Unless a lease contract provides otherwise, the lessor is entitled to the payment of the rent in the full amount, even though the lessee could not temporarily use the subject-matter of the lease in consequence of the Measures, as the law does not envisage a rent reduction in such case (Sections 2208 or 2210 of the Civil Code).
69. The mere existence of the Measures constitutes neither a right of the contractual parties to terminate the lease contract that may only arise in case of defects of the subject-matter of the lease or in case the subject-matter of the lease is not fit for use (Section 2227 of the Civil Code), which, however, does not arise in consequence of the Measures (the subject-matter of the lease is not unfit for use, it only cannot be used in consequence of the Measures). The reason for termination may probably exist only in case of a lease of a flat for

a definite period, namely based on Section 2287 Civil Code, under which the lessee may terminate the lease of a flat for a definite period in case of such change of circumstances clearly relied upon by the parties at the time of conclusion of the lease contract in a way that the lessee cannot be reasonably asked to continue with the rent.

70. However, in connection with the epidemics, two special statutes were adopted which interfere with lease relationships, namely Act No. 209/2020 Coll., regulating the lease of flats, and Act No. 210/2020 Coll., regulating the lease of business premises.
71. Under the former act, the lessor cannot unilaterally terminate the lease of the flat in a protection period, ie. until 31 December 2020, only for the reason that the lessee is in default with the payment of the rent, provided the default arose in the relevant period, ie. from 12 March 2020 until the day following the day on which the particular extraordinary measure against epidemics expire, however, until 31 July 2020 at the latest, namely mainly in consequence of limitation stemming out of extraordinary measures against epidemics which prevented the lessee to duly pay the rent or made the payment substantially difficult. The right of the lessor to terminate the rent for other reasons and other rights of the lessor arisen in consequence of the lessee's default remain unaffected. If the lessee does not pay all his debts from the rent, which became due in the relevant period, until 31 December 2020, the lessee shall be entitled to terminate the lease without notice period. The same applies if the lessee declares or it becomes otherwise clear that these debts will not be paid in the protection period. However, upon the termination of the state of emergency, at the earliest, the lessor may require termination of the rent if he cannot be reasonable required to bear the limitations in the provided extent, in particular, if he himself could fall into a state of material distress in consequence of the limitations.
72. Under the latter act, the lessor cannot unilaterally terminate the lease in a protection period, ie. until 31 December 2020, only for the reason that the lessee is in default with payment of the rent provided the default arose in the relevant period, ie. from 12 March 2020 until 30 June 2020 in consequence of limitation stemming out of extraordinary measure against epidemics which prevented the lessee to pursue its business or rendered the payment substantially difficult. The right of the lessor to terminate the rent for other reasons and other rights of the lessor arisen in consequence of the lessee's default remain unaffected. If the lessee does not pay all its debts from the rent which became due in the relevant period until 31 December 2020, the lessee shall be entitled to terminate the lease with the termination period of 5 days. The lessor has this right also if the lessee declares that it will not pay the debts from the rent in the protection period. If the lease terminates before the expiry of the protection period, the lessee is obliged to pay all debts which became due in the relevant period until 30 days upon the termination of the lease.
73. Under the order of the government No. 202/2020 Coll., stipulating the price moratory on rent for flats, it applies that the rent for flats may not be increased within the period from the effective date of the order (24 April 2020) until the expiry of the extraordinary measure (crisis measure of the government adopted under the State of Emergency or extraordinary

measures of the MoH or Public Health Offices adopted for prevention of further proliferation of Covid-19).

[Good Morals Corrective]

74. The consequences of the Measures are and will be enormous. The current situation represents a huge challenge for all areas of life, including law and morals. It is clear that application of laws may lead to solutions which will not be considered reasonable or equitable within the meaning of distribution of losses incurred in consequence of Measures among the concerned parties. Now, more than ever, it is important to bear in mind the good morals corrective imposing an obligation to take into account all the above-mentioned and to seek for equitable just solutions.
75. Pursuant to Section 2(3) of the Civil Code, the interpretation and application of laws must not be contrary to good morals and must not lead to cruelty or ruthlessness offensive to ordinary human feeling. This provision dictates that a judge examines compliance of solutions stemming out of the law (contractual provisions) with good morals which may be understood as a sum of ethical, generally respected and acknowledged principles, which are subject to development in place and time, the observance of which is often ensured also by laws so that each act is in compliance with general moral principles of democratic society (see decision of the Constitutional Court from 26 February 1998, file No. II. ÚS 249/97). Good morals, therefore, represent a certain assurance, or corrective, that may mitigate excessive rigidity of the law. As noted by the Constitutional Court, the notion of “good morals” may not be interpreted merely as a sum of moral rules used as a corrective or supplementing the content factor of performance of subjective rights and obligations, but rather as an instruction to the judge to rule in compliance with equity which ultimately entails pursuing and enforcing a way of finding the real justice (decision of the Constitutional Court, file No. II.ÚS 2062/14, from 25 November 2016).
76. It may be presumed that in connection with resolution of legal questions and disputes relating to the fight against Covid-19, there will be plenty of cases where one of the contractual parties will rely on a conflict of the legal act or performance of rights in question with good morals, and the case-law in this field will be subject to a dynamic development.
77. It is always recommendable that the contractual parties do not rely solely on explicit wording of law or contractual provisions in their mutual dealings but rather try to consider also the (significantly less comprehensible) aspect of good morals so that the final solution complies therewith. In this regard, some other provisions of the Civil Code using the notion of good morals may be cited, namely, apart from Section 2(3) of the Civil Code, in particular:
- 77.1 Section 545 of the Civil Code under which: *“Legal acts produce legal consequences expressed therein, as well as legal consequences arising from a statute, good morals, customs and regular dealings of parties.”*;
- 77.2 Section 547 of the Civil Code under which: *“Legal acts must, in terms of their content and purpose, be consistent with good morals and statutes.”*;

77.3 Section 580 of the Civil Code under which: *“A legal act is also invalid, if it is contrary to good morals or contrary to a statute, if so required by the sense and purpose of a statute.”*; or

77.4 Section 588 of the Civil Code under which: *“The court shall, even of its own motion, take into account the invalidity of a legal act which is manifestly against good morals or which is contrary to a statute and manifestly disrupting public order. This also applies in cases where a legal act requires the provision of a performance which was impossible from the beginning.”*

6 Measures for Mitigation of Covid-19 Impacts

78. Measures for mitigation of impacts of the fight against Covid-19 may be adopted based on general, as well as newly adopted laws (as of 30 March 2020)⁴.

79. As regards contents and form, these measures are very diverse and the dynamics of their development are considerable.

80. The following are examples of Measures of the government or the ministries mitigating some obligations of entrepreneurs:

80.1 measure of the Ministry of Finance published in the Financial Bulletin No. 7/2020 (discharge from VAT to tax payers in connection with specified gratuitous supplies of goods or services where the obligation to pay the tax arose from 12 March 2020 until the end of the state of emergency; discharge from the administrative fee for issuance of the confirmation of no debts or of the balance of the personal tax account for applications submitted in the period from the effective date of the decision until 31 July 2020);

80.2 measure of the Ministry of Finance published in the Financial Bulletin No. 6/2020 (discharge from VAT for tax payers in connection with gratuitous supplies of listed (medical) goods or goods used for its production where the duty to pay the tax arose from 12 March 2020 until the end of the state of emergency; discharge from the interests accrued on the advance payments for road tax in the tax period of 2020, due until 15 April 2020 and until 15 July 2020, under the condition that the advance payments will be paid until 15 October 2020);

80.3 measure of the Ministry of Finance published in the Financial Bulletin No. 5/2020 (option to submit, without any sanctions, tax return for the income tax of individuals and legal entities until 1 July 2020 and discharge from some other sanctions);

80.4 measure of the Ministry of Finance published in the Financial Bulletin No. 4/2020 (conditions for discharge from some sanctions).

(see <https://www.mpo.cz/cz/rozcestnik/pro-media/tiskove-zpravy/opatreni-na-pomoc-podnikatelum-a-zivnostnikum--253690/>)

81. The following are examples of mitigating Measures of the government or ministries for the purposes of direct financial assistance:

- 81.1 **Compensation bonus for self-employed persons** – provided based on Act No. 159/2020 Coll. to self-employed persons on the basis of an application which shall be submitted within 60 days upon the end of the bonus period. The applications shall be processed by the tax authority. Compensation bonus may be applied for by a self-employed person who does not participate in sickness insurance as an employee and who was active as of 12 March 2020 or whose self-employing activity was suspended anytime after 31 August 2019 provided it could not pursue the activity at all or partially above the usual extent in consequence of a threat to health or crisis measures. The amount of the compensation bonus amounts to CZK 500 for each calendar day in the period from 12 March until 30 April 2020 (the maximum amount is thus CZK 25,000).
- (<https://www.mfcr.cz/cs/aktualne/tiskove-zpravy/2020/mf-spousti-primou-podporu-pro-zasazene-o-38055>)
- 81.2 **Targeted Programme for Promotion of Employment (Antivirus)** – the programme governs particularly payment of compensations to employers for paid wages compensations (see <https://www.mpsv.cz/web/cz/antivirus/>);
- 81.3 **Programme Care Allowance for Self-employed Persons** – regulates conditions for payment of care allowance to self-employed persons (see <https://www.mpo.cz/cz/rozcestnik/pro-media/tiskove-zpravy/o-osetrovne-pro-osvc-bude-mozne-zadat-od-1--dubna--a-to-pres-zivnostenske-urady--253699/>);
- 81.4 **Guarantees of EGAP** – in compliance with the resolution of the Government of the Czech Republic from 23 March 2020 No. 297, a proposal of guarantees by Export and Guarantee Insurance Company for enterprises with over 250 employees of up to aggregate sum (including existing products) of insurance capacity of CZK 330 billion should be prepared. Governmental draft amendment to the Act on Insurance and Financing of Export with State Support, discussed under No. 817 in the Chamber of Deputies, was signed by the President on 20 April and shall be published in the Collection of Laws soon.
- 81.5 **COVID Technologies – Promotion of Business Activity** focused on production of medical equipment. The Business and Innovation Agency should announce the first call named COVID 19 Technologies as soon as possible. At least CZK 300 million should be at disposal. See <https://www.agentura-api.org/cs/schvalen-novy-program-podpory-op-pik-technologie-covid-19/milionu-korun>.
- 81.6 **Additional funds for the Programme for the Rural Development of the Czech Republic for the period 2014–2020** – in compliance with the resolution of the Government of the Czech Republic from 23 March 2020 No. 290, the Minister of Agriculture should submit a modification of the programme document for its discussion and approval by the European Commission.
- 81.7 The company **Support and Guarantee Agricultural and Forest Fund, a.s. under the authority of the Ministry of Agriculture**, adopts measures for support of farmers

(see <https://www.pgrlf.cz/2020/03/24/pgrlf-prijima-opatreni-na-podporu-ceskych-zemedelcu/>).

- 81.8 Subsidy within the programme **Czech Rise Up – Intelligent Measures against COVID-19**, the aim of which is to promote expedite implementation of new solutions which can help in the fight against coronavirus infection. Within the programme, it will be possible to obtain a subsidy up to CZK 5 million for: purchase of material for production of protective and medical equipment, wages of employees involved in production, expedite financing for technological solutions, expedite financing for brand new innovative solutions. (see <https://www.oppik.cz/dotacni-programy/czech-rise-up-chytra-opatreni-proti-covid-19>).
- 81.9 **Programme COVID II** support for self-employed persons and small and medium-sized entrepreneurs affected by the measures against proliferation of coronavirus – conditions for provision of guarantees by the Czech-Moravian Guarantee and Development Bank, a.s., the aim of which is to increase the availability of credits to small and medium-sized entrepreneurs. The programme is funded from the EU structural funds within the Entrepreneurship and Innovation Operational Programme and does not apply to Prague. **Allocation of CZK 4 billion (with scheduled increase to CZK 5 billion) which will enable to provide a guarantee for credits amounting to over CZK 20 billion** (see <https://www.mpo.cz/cz/rozcestnik/pro-media/tiskove-zpravy/opatreni-na-pomoc-podnikatelum-a-zivnostnikum--253690/>).
- 81.10 **Programme COVID I – interest-free credits from** the Czech-Moravian Guarantee and Development Bank, a.s., allocation of CZK 5 billion. Receipt of applications was lodged as of 20 March 2020 8 a.m. (see <https://www.mpo.cz/cz/rozcestnik/pro-media/tiskove-zpravy/opatreni-na-pomoc-podnikatelum-a-zivnostnikum--253690/>).
82. Mitigating Measures are contained also in laws adopted in the state of legislative emergency by the Chamber of Deputies on 24 March 2020 at the Chamber’s 42nd meeting in an expedited procedure and amending the existing legislation which were subsequently in an expedited procedure discussed and approved by the Senate and immediately signed by the President and which have, thus, already become effective. These laws include
- 82.1 Act No. 137/2020 Sb., on Certain Amendments in the Field of Registration of Sales in Connection with Declaration of the State of Emergency (restriction of the obligations of the entities obliged to register sales);
- 82.2 Act No. 136/2020 Sb., on Certain Amendments in the Field of Social Security Premiums and Contribution for the State Employment Policy and Pension Insurance in Connection with Extraordinary Measures during Epidemic in 2020 (reliefs for self-employed persons in the field of payment of advances and premiums for pension insurance and contribution for the state employment policy);
- 82.3 Act No. 135/2020, on Special Rules for Admission to Certain Types of Education and Completion Thereof in the School Year 2019/2020 (reaction to the school closure);

- 82.4 Act No. 134/2020 Sb., Amending Act No. 592/1992 Sb., on General Health Insurance Premiums, as amended (reliefs for self-employed persons in the field of general health insurance premiums);
- 82.5 Act No. 133/2020 Sb., on Certain Amendments in the Social Security in Connection with the Extraordinary Measures during Epidemic in 2020 (amendment of the conditions for a right to care allowance);
- 82.6 Act No. 129/2020 Sb., Amending Act No. 355/2019 Coll., on the State Budget of the Czech Republic for 2020 (amendments of the individual chapters of the budget, increase of the deficit).
83. Other supportive Measures (of non-financial nature) comprise for example emergency package of the Ministry of Foreign Affairs (resolution of the Government of the Czech Republic from 18 March 2020 No. 253), including support for Czech companies in 5 areas: (1) Practical information regarding implementation of foreign operations in the coronavirus-connected situation with a number of restrictions in the given country; (2) Assistance of embassies in case of problems with implementation of business; (3) Search for and analysis of opportunities, assistance with search for and verification of suitable partners; (4) Assistance with and sharing of information through a series of webinars and online consultations; (5) Use of services of local experts who will assist a company on the spot at negotiation and implementation of business.
84. Other Measures the aim of which is to mitigate consequences of the epidemics include acts which shall mitigate impacts on selected fields of legal relationships. These acts include, in particular, the following:
- 84.1 Act No. 177/2020 Coll., **on Certain Measures in the Field of Payment of Credits in Connection with COVID-19 Pandemics**, based on which the debtor may announce to the creditor that he intends to use the protection period for the reason of negative economic impact of the pandemics on the debtor. The protection period shall last until 31 October 2020 or until 31 July 2020 (subject to the debtor's choice). The period for fulfilment of monetary debts from the credit contract and the period of existence of the guarantee for the rent shall be *extended*. A right to an interest shall arise to the creditor for the protection period which in the case of a debtor – consumer, shall amount to the default interest at the level of repo rate announced by the Czech National Bank plus 8 %, unless a lower interest has been stipulated, or in case of a debtor – businessman, it shall amount to the agreed interest. Until 31 October 2020, the creditor shall not have a right to payments stipulated or provided for the case of default with the fulfilment of the debt from the credit contract; this does not apply in case of default of a debtor who is a legal entity.
- 84.2 Act No. 185/2020 Coll., **on Certain Measures to Mitigate the Impacts of the Epidemics of Coronavirus Denoted as SARS CoV-2 on the Field of Tourism**, based on which the tour operator (travel agency) may use a protection period until 31 August 2020 and postpone the return of money to the customers for the tours cancelled due to the coronavirus epidemics with scheduled departure from 20 February until 31 August 2020,

namely on the basis of a written announcement to the customer and issuance of a voucher for the tour in the minimum amount of all payments paid by the customer. If the customer does not buy a replacement tour in the protection period and does not use the voucher, the travel agency shall return all payments to him within 14 days after the end of the protective period (ie. until 14 September 2021). In case of particularly vulnerable groups of customers (e.g. seniors above 65 years, disabled or unemployed persons) the protection period shall end already upon refusal of the tour. Furthermore, the act also provides conditions of issuance of the voucher for a tour in case the contract on a tour terminated under Section 2533 of the Civil Code and a cancellation fee was paid.

84.3 Act No. 191/2020 Coll., **on Certain Measures to Mitigate the Impacts of the Epidemics of Coronavirus SARS CoV-2 on the Parties to Court Proceedings, Harmed Parties, Crime Victims and Legal Entities and on the Amendment of the Insolvency Act and Civil Proceedings Act**, provides for an option to apply for **remission of missed deadlines** in procedural law, in particular, in civil proceedings, administrative proceedings, enforcement and execution proceedings, insolvency proceedings, proceedings under the Act on the Constitutional Court, as well as in the criminal proceedings, if the deadline was missed for a justifiable reason dwelling in an extraordinary measure during epidemics.

The act further provides that **the obligation of a debtor to file an insolvency application** does not apply until the expiry of 6 months from the end or cancellation of an extraordinary measure during epidemics, however, until 31 December 2020 at the latest. An insolvency application filed by a creditor in the period from 24 April 2020 until 31 August 2020 shall not be considered. The debtor may propose extraordinary moratory or discharge from payment of debts included in remission of debts (*oddlužení*).

As regards the activity of legal entities, for the period of existence of the extraordinary measures, however, until 31 December 2020 at the latest, the act extends the **possibility of the bodies of legal entities to decide outside of a meeting** in a written form or with the use of technical devices also to the cases where the articles of association do not provide so. If the act or the articles of association do not provide for the terms of decision-making outside of a meeting, they shall be determined by the statutory body (in case of the superior body) or by the body itself (in case of other bodies).

Furthermore, the act **extends the term of office of a member of an elected body of a legal entity** whose term of office would have expired during the existence of extraordinary measures, namely until 3 months upon the day following the day on which the extraordinary measure terminated.

Should **the statutory period for discussion of the financial statements** of a limited liability company, stock company or cooperative expire earlier than 3 months upon the end of the extraordinary measures, the act extends the deadline so that it expires 3 months after the end of the measures, however, on 31 December 2020 at the latest.

Furthermore, the act provides certain **special rules for enforcement of judgments** and execution which imply that until 30 June 2020, no enforcement by sale of movable assets and immovable property where the debtor has his permanent residence shall be pursued.

- 84.4 Act No. 209/2020 Coll., **on Certain Measures to Mitigate the Impacts of Epidemics of Coronavirus SARS -CoV-2 on the Lessees of Premises Serving to Satisfy Housing Needs, on the Beneficiaries of Loans Provided by the State Fund for Housing Development and in Connection with Provision of the Performances Connected with the Use of Flats and Non-Residential Premises in the Houses with Flats**, the contents of which are described above in Clause 71,
- 84.5 Act No. 210/2020 Coll., **on Certain Measures to Mitigate the Impacts of Epidemics of Coronavirus SARS CoV-2 on the Lessees of Business Premises**, the contents of which are described above in Clause 72,
- 84.6 Act No. 186/2020 Coll., Amending Act No. 257/2016 Coll., on Consumer Credit, regulates **the highest permissible amount of the default interest** in case of debts from consumer credits where the consumer is in default longer than 90 days. The creditor is only entitled to a default interest corresponding to the interest determined by the lending interest rate amounting to the repo rate provided by the Czech National Bank for the first day of the calendar half-year in which the default arose plus 8 %, unless a lower default has been agreed. It similarly applies also to deferred payments, monetary loans, credits or similar financial services of individuals other than consumers. In such case, the sum of all claimed contractual penalties may not exceed one half of the aggregate sum of the deferred payment, monetary loan, credit or other similar financial services. This regulation shall apply also to contracts concluded before the effective date of this act. The act further regulates also the possibility of a creditor to claim a difference between the amount of default interest/contractual penalties chargeable under the contract and provided highest permissible amount of default interest as costs.
85. A list of selected Measures for mitigation of the impacts of Covid-19 adopted until 29 March 2020 with a brief annotation is provided in Annex No. 4.
86. For further information relating to mitigating Measures, we recommend to follow the websites of the Government of the Czech Republic and the corresponding ministries.