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COVID-19 IMPACT

ON REAL ESTATE PROJECTS

in the wake of the second wave

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FRANCE

As a result of the renewed outbreak of Covid-19 cases, a public health state of emergency introduced by the Law of 23 March 2020 n°2020-290 has once again been declared in France and the Decree of 29 October 2020 n°2020-1310 implements the rules for a second lockdown. In Article 4, the Decree prohibits any travel outside a person's place of residence, other than for exceptional purposes. Public health has now been recognised by the European Court of Justice as an overriding reason relating to public interest which may justify restrictions on the freedoms of movement guaranteed by the Treaties, such as the freedom of establishment and the free movement of capital.

THE IMPACT OF COVID-19 RELATED RESTRICTIONS ON THE REAL ESTATE MARKET

In these circumstances, studies clearly show that the tourism and leisure sector is seriously impacted (hotels, transport, airline companies, amusement parks, restaurants, etc.). All parties involved agree that a return to normal will not be possible before 2022. Similarly, the non-food retailing sector is directly affected as a result of shop closures.

STATE AID TO MITIGATE THE NEGATIVE IMPACT AND INTERIM LEGISLATION

- **State aid to tenants and business owners**

The tax credit is in addition to the grants from the Covid-19 solidarity fund already awarded to businesses which have been particularly affected by the economic, financial, and social consequences of the epidemic (Decree 2020-371 of 30 March 2020). In addition, two ordinances dated 25 March 2020 (2020-316 and 2020-306) cancel a landlord's right to rely upon a cancellation clause due to a failure to pay rent during the public health crisis, although they do not in any way call into question the fact that the rent is due and payable.

- **Tax incentives**

Operators in the hotel sector or indeed tenants of office spaces have made a strong case for rent relief. A tax credit will be created for the benefit of such persons in order to encourage landlords to waive part of their rent for the benefit of small businesses which have been shut down by the administrative authorities, together with restaurants, hotels, cafés and gyms.

The grant of this tax credit will be conditional upon the waiver of at least one month's rent out of the months of October, November, and December 2020. The Prime Minister announced on 12 November 2020 that the tax credit will be equivalent to 50% of the forfeited rent (and not 30% as previously intended) for all companies with up to 250 employees, and up to two-thirds of the rent for companies with between 250 and 5,000 employees.

EFFECT ON FOREIGN INVESTMENTS

EU Regulation of 19 March 2019 ((EU) 2019/452), which applies as from 11 October 2020, leads to a consolidation of the foreign investment control mechanisms, by establishing a framework for the screening of direct foreign investments into the European Union. It only concerns investments made within the European Union by a natural person of a third country or an undertaking of a third country.

In France, a Decree (supplemented by an Order) temporarily consolidates the regulations on foreign investments in French companies whose shares are listed on a regulated market and which operate in “sensitive” economic sectors (Decree 2020-892 and Order ECOT2015728A). Accordingly, up until 31 December 2020, (i) a natural person, who is not a citizen of an EU Member State or a State which is party to the EEA or (ii) an entity whose shareholders in the chain of control are not governed by the laws of one of these States or are not citizens of such States, which intends to cross, whether directly or indirectly, the 10% threshold on voting rights in a company incorporated under French law whose shares are listed on a regulated market must apply to the French Minister for the Economy for authorisation to do so.

CONTRACT NEGOTIATIONS & PROJECT DEVELOPMENT IN THE WAKE OF SECOND COVID-19 WAVE

The response to the crisis may take a contractual form, if the parties have agreed either to exclude public health risks, or to include them in, the list of those events which may affect the proper performance of the contract. Businesses are, in fact, forced to consider the impact of the public health crisis on the performance of on-going contracts or on the finalisation of those contracts which are still in the negotiation process. The management of this contractual risk includes three phases: identifying contracts which are at risk, assessing the risk and making the decision and the subsequent management of the risk in issue. The financial expert, in particular, will be a key player in helping companies assess the impacts of the crisis on the profitability of contracts, often by modelling potential scenarios.

It is, moreover, possible that a contract may offer a different economic interest from that which originally determined the parties’ commitment. Imagine, for instance, an agreement to sell (and deemed by law to be a sale) for the implementation of a real estate, industrial or commercial project which is partly undermined by the Covid-19 crisis. Unforeseen circumstances are excluded but the parties could argue that “a key element has disappeared”. In other words, if the real estate project cannot be performed in full or can only be performed on different terms from those which had been agreed, but it is not impossible or excessively onerous, a third alternative may be to consider the contract to be null. Furthermore, if the strict definitions of force majeure and unforeseen circumstances do not allow for effective action to be taken to tackle possible injustices, the judge will not hesitate to use the traditional tools at his disposal, including the principle of good faith and the duty to cooperate.

The public health crisis makes it necessary to adapt the conditions governing the performance of contractual obligations with regard to the requirement of good faith. To this end, in a case dated 26 October 2020, the judge hearing an interlocutory application noted that contracts must be performed in good faith, which means that the parties are bound, in the event of exceptional circumstances, to check whether such circumstances do not require an adjustment to be made to the terms of performance of their respective obligations. In this case, the judge found that the tenant's sector of activity had suffered considerable economic disruption as a result of the lockdown, and that the tenant provided evidence, in the form of letters, that he had approached his landlord in an attempt to find an amicable solution. He inferred from this that there was, therefore, a serious issue concerning the claim for payment and dismissed the landlord's application for interlocutory relief.

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HUNGARY

The state of emergency relating to COVID-19 was first declared on 11 March 2020. Restrictions on travel, shopping, public transport, and education were respectively imposed. On 18 June 2020, the state of emergency was revoked and was then replaced by a state of pandemic preparedness, generally regarded as a less restrictive version of the state of emergency. Although certain restrictions were waived, such as designated shopping hours, strict new limitations were imposed on cross-border transactions and travel. Effective from 1 September 2020, Hungary restored the 14-day quarantine requirement for persons entering the country, together with strict border control in an attempt to limit the spread of the pandemic. On 4 November 2020, the Hungarian Government introduced a second state of emergency pursuant to Government Decree 478/2020. (IX.3.) and imposed stricter measures, including the closure of sports and entertainment facilities and a midnight curfew. Since the number of cases remained high, the Government ordered further regulations on 11 November 2020, including an 8pm curfew and the closure of universities and secondary schools (484/2020 (XI. 10.) Government Decree).

THE IMPACT OF COVID-19 RELATED RESTRICTIONS ON THE REAL ESTATE MARKET

- **Commercial and industrial property**

The pandemic had a significant negative impact on the real estate market in Hungary in the spring of 2020. The sector has yet to make a full recovery, given the expanding second wave of COVID-19 and related restrictions. A 30% decrease in sales and investments is expected since demand is at its lowest level for a decade. While the recession caused by COVID-19 is likely to continue into 2021, most experts regard it as a temporary, rather than a long-term, trend. In fact, the real estate market had started to stagnate even before the pandemic, which might be the reason for the relatively fast recovery in prices after the first wave, since Hungary is still regarded as one of the best destinations for real estate investments in the European Union. Real estate related to logistics and e-commerce is expected to achieve the highest results in the coming months.

- **Construction projects & Infrastructure**

There is a growing demand for new-build residential properties with modern infrastructure, driven in part by the recent reduction in the applicable rate of VAT to 5%. Construction, however, remains problematic and supply is insufficient. A decrease of 3-5% in the number of construction projects is expected. Pandemic-related restrictions often cause delays and other types of default require a revision of the relevant construction agreements in order to mitigate the negative impacts and negotiate the conditions for moving forward with the relevant project. The process is rarely seamless, because force majeure clauses, which are specifically designed to provide for this type of pandemic, are seldom included in standard-form construction agreements.

- **Resorts and holiday apartments**

The travel restrictions have resulted in a lack of foreign tourists in Hungary. While many Hungarians took their vacations in Hungary (e.g. at Lake Balaton), this was not sufficient to compensate for the significant losses resulting of the absence of foreign tourists.

STATE AID TO MITIGATE THE NEGATIVE IMPACT AND INTERIM LEGISLATION

- **State aid to tenants and business owners**

Hungary has introduced statutory moratoriums resulting in extended deadlines for certain tax, administrative and judicial procedures, as well as for the payment of loans and other debts. In particular, a deferral of payments relating to the principal debt, interest and fees has been introduced until 30 June 2021. A moratorium will apply, until 31 December 2020, on the payment of instalments of the purchase price and of rent by natural persons participating in the National Asset Management Program. In addition, real estate asset managers will not be able to exercise their right to terminate based on any failure to pay rent during this payment moratorium. Furthermore, in certain sectors (tourism, catering, entertainment, gambling, the film industry, performing arts, events organization and sport service providers), lease agreements for non-residential premises cannot be terminated by the State, by companies owned by the state or municipality or by companies in which the state or municipality has a controlling interest, up until 30 June 2021.

- **Tax incentives**

New tax legislation concerning both corporate and personal tax has been introduced to mitigate the negative impact of the pandemic. Taxpayers, including in particular small enterprises, were entitled to postpone the payment of certain taxes. A waiver of the tourist tax until 31 December 2020 has been enacted to support the recovery of the tourist sector, while airlines are granted an exemption from the obligation to pay social security charges for their employees. Furthermore, certain tax procedures related to corporate taxpayers are being revised to render them less burdensome and to facilitate the filing of documents.

EFFECT ON FOREIGN INVESTMENTS

Act LVIII of 2020 provides a legal definition of the term foreign investor (i.e. an individual or legal entity registered in another member state of the European Union/European Economic Area or Switzerland) and has introduced new rules on foreign investment control; investments by foreign investors in Hungarian companies which pursue certain strategic activities will have to be notified to the Ministry of Innovation and Technology, if (i) the total value of the investment exceeds HUF 350 million (i.e. 973,000 EUR) and (ii) as a result of the transaction, the foreign investor acquires, whether directly or indirectly, a majority control in that strategic company. Strict sanctions are set out in the event of non-compliance with the requirements, including substantial fines, and a failure to comply may even render the transaction void.

CONTRACT NEGOTIATIONS & PROJECT DEVELOPMENT IN THE WAKE OF SECOND COVID-19 WAVE

- **Enforcing Force Majeure & MAC clauses in contracts signed before COVID-19**

Regardless of the fact that the pandemic may cause objective and insurmountable impediments to the performance of certain contractual obligations, the latter remain binding unless certain requirements are met.

Specific force majeure clauses may be negotiated and included in a contract in advance, in order to provide for an exemption of liability in the event of unforeseeable and unavoidable events, which make performance of the contractual obligations impossible.

In the absence of such a clause, in order to avoid liability for a breach of contract, two legal defences can be relied upon under the Civil Code, depending upon the party's intention and the nature of its contractual obligations: (i) if the party is unable to comply in full with its contractual obligation (e.g. late or partial performance) due to an unforeseeable and unavoidable event outside its control, but does not intend to terminate the contract, then it can rely upon an exclusion of liability for damages, (ii) the principle of impossibility may apply when the party intends to depart from the contract because performance is fundamentally impossible due to a legal, economic or other impediment.

In the event of an exclusion of liability, the defaulting party has to prove that it was impossible to perform the contract at the time of the event. Whereas, in the event of impossibility, the contract will be deemed to have been terminated. In the context of the pandemic, it is, therefore, necessary to examine whether performance has become impossible for a reason which is not attributable to either party. However, these provisions will be assessed by the courts individually, on a case-by-case basis, with specific attention to the nature of the contract, the existing circumstances and their causal connection with the pandemic, as well as the actual effects on (non-)compliance.

Alternatively, the party may ask the court to order an amendment of the contract to account for the adverse change in circumstances, provided that certain prerequisites are met (e.g. the negative impact is substantial, the event was unforeseeable at the time of execution of the contract and does not qualify as a normal business risk). The court procedure is often regarded as burdensome and seldom provides effective and timely solutions to the dispute. Given the scope of the COVID-19 impact, if there is no properly-worded force majeure clause in the affected contracts, it might be challenging for the parties to come to an agreement on an allocation of the costs and mitigation of the damages.

- **Provisions for COVID-19 in negotiation of future contracts**

Since the concept of force majeure in Hungary is not based on a legal definition, its legal framework is mainly determined by judicial practice. In general, a specific force majeure clause can be negotiated and included in every contract, and its contents and conditions for enforcement agreed in advance by the parties to ensure that the contractual situation properly reflects their intentions. Given the complications concerning performance and the need to account for the negative impact of the pandemic on existing contracts, it is likely that force majeure clause will be included more often in future contracts, in order to avoid disputes and lengthy court procedures.

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BULGARIA

Bulgaria has been placed in a state of epidemic emergency (*извънредна епидемиологична обстановка*) up until 30 November 2020. This new regime was introduced in May 2020 to replace the state of emergency declared by Parliament on 13 March 2020. Since the first state of emergency sparked intense public debate questioning the rather broad discretion shown by the government in restricting citizens' fundamental rights and freedoms with very limited accountability, Parliament urgently enacted a Law on Measures and Actions during the State of Emergency of 13 March 2020 and introduced a new regime ("an emergency epidemic situation") within the framework of the Health Act. This grants the Health Minister a broad discretion to impose restrictive measures in response to a public health crisis. The effectiveness of this approach remains questionable.

The restrictions currently include closing of restaurants and non-essential commerces, schools and universities, a recommendation for people to work from home and stricter social distancing for three weeks until 21 December 2020.

THE IMPACT OF COVID-19 RELATED RESTRICTIONS ON THE REAL ESTATE MARKET

- **Commercial and industrial property**

Up until September 2020, the real estate market had effectively recovered from the stagnation in the spring caused by the state of emergency lockdown and had even showed signs of growth in Sofia due to increased demand. The main effect of the public health crisis so far has been increased interest in suburban houses and residential properties outside the crowded city centres, driven by the expansion of working from home arrangements implemented by many employers and the relatively high rates of return on property investments (e.g. compared to bank deposits).

- **Construction projects & Infrastructure**

Bulgaria was ranked seventh in the European Union, in terms of the largest annual decrease in construction output for the month of August, according to data from the European statistical office, Eurostat. Construction output in Bulgaria has dropped by 4.9% on an annual basis. The reduction has accelerated by comparison with July and June, when decreases of 4% and 2.2% were respectively registered.

- **Resorts and holiday apartments**

The hospitality industry in Bulgaria depends on foreign tourists to such an extent that the travel restrictions resulted in major losses in the spring, a feeble recovery in the summer and an expectation of negative demand in the coming winter.

STATE AID TO MITIGATE THE NEGATIVE IMPACT AND INTERIM LEGISLATION

- **State aid to tenants and business owners**

Financial support for small and medium-sized companies has been provided in various forms within the framework of the Operational Program for Innovation and Competitiveness, which was first launched in the spring of 2020 and remains active until the end of 2020. These measures are designed to support businesses struggling with a decrease in turnover and help them navigate the challenges caused by pandemic restrictions. Businesses must prove a reduction in turnover of at least 20%, as compared to the same period in 2019. Most of the formalities and procedures can be effected online, which significantly facilitates access for entrepreneurs.

Another support scheme has been set up to help employers retain their personnel and thus avoid lay-offs. This so-called 60/40 Scheme, which was first introduced in the spring of 2020, has now been extended until the end of 2020. Eligible employers may apply for state compensation in order to cover part of the wages and social security contributions for their employees.

- **Tax incentives**

The standard VAT rate of 20% has been reduced to 9% on a temporary basis until 31 December 2020 for certain services and goods, in order to mitigate the negative consequences of the COVID-19 pandemic (including, for example, restaurant and catering services, books, tourism services, sport facility services, etc.).

On 11 August 2020, a revision of the Local Taxes and Fees Act enacted tax relief for businesses which had been forced to suspend their business activity because of pandemic-related restrictions. This has enabled municipal councils to grant a limited exemption for a certain period in 2020 in respect of the refuse collection fee owed in respect of properties owned by such companies and which are located in the relevant municipality.

This fee is often a very substantial part of the operating costs for an industrial property and the tax relief might have tangible effect on mitigating the negative impact of the public health crisis. On the other hand, this measure will transfer the burden to the municipality's budget and smaller counties might be unwilling to forego such an important part of their revenue.

EFFECT ON FOREIGN INVESTMENTS

No specific restrictions on, or incentives for, foreign investments have been introduced as part of the government response to the pandemic.

CONTRACT NEGOTIATIONS & PROJECT DEVELOPMENT IN THE WAKE OF SECOND COVID-19 WAVE

- **Enforcing Force Majeure & MAC clauses in contracts signed before COVID-19**

In recent months, many entrepreneurs and investors have experienced challenges in performing their obligations agreed under an existing contract. As a result of restrictions related to the public health crisis, deliveries have been delayed, workforces have been reduced and sales have struggled to match forecasts. In addition, there is often an issue as to whether COVID-19 related restrictions qualify as events of force majeure or as a material adverse change (business frustration), thus exempting the debtor from liability for failure to perform in time or in full.

Bulgarian law does not make specific provision for pandemics in terms of the consequences of connected contractual breaches. Neither the state of emergency nor the emergency epidemic situation under the Health Act qualify per se as events of force majeure or as a material adverse change which would exclude any liability for defaulting obligors.

By definition, force majeure is an unforeseeable and unavoidable event, which has a direct, negative impact on the possibility for the obligor to perform a contractual obligation. It does not include a situation where the obligor is already in default at the time of occurrence of the force majeure (i.e. the debtor must be acting in good faith). If the preceding conditions are met, liability for failure to perform will be excluded for so long as the event of force majeure continues.

Hence, the COVID-19 related restrictions may qualify as force majeure – depending on the specific facts and circumstances of each case. Furthermore, the obligor has a choice whether or not to invoke the force majeure clause. If it does so, the creditor has to be notified and informed in detail about the situation and the negative impact of the alleged force majeure event on the agreed performance. Companies often elect to document the event by means of a force majeure certificate, which can be issued upon request by the Bulgarian Chamber of Industry and Commerce.

The rules tend to be more complex and more difficult to enforce with respect to a material adverse change defence and it will often prove necessary to issue court proceedings. In this case, the obligor will bear the burden of proof to show that performance of the agreed contractual obligation has become unfairly onerous to such an extent that it amounts to a material adverse change, which would exclude liability for a resulting default.

In any case, an obligation to pay cannot be excluded by means of either option.

- **Provisions for COVID-19 in negotiation of future contracts**

Considering the current development of the public health crisis, it is likely that COVID-19 related restrictions and policies will continue to have a negative impact on contract performance in the coming months. However, if they affect a contract which was entered into after the start of the pandemic, then neither force majeure nor a material adverse change (business frustration) can be relied upon – the possibility of the pandemic having a negative impact on performance is no longer unforeseeable and it may not even qualify as being unavoidable, since the parties would have had an opportunity to adjust the terms and conditions of the contract to the current circumstances, however challenging they may be. When negotiating contracts in the near future, it would be prudent to include a specific provision stipulating for the possibility of a negative impact related to restrictions and to agree in advance terms which have equivalent consequences to those of the statutory provisions for force majeure.



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IN COOPERATION WITH D'ORNANO PARTNERS

ROMANIA

The restrictive measures imposed by the government to mitigate the negative effects of the COVID-19 pandemic in Romania have been updated frequently in recent weeks. On 9 November 2020, the Romanian President, Klaus Iohannis, announced a new set of restrictions on mobility and business activity, effective immediately, for a 30-day period, including a 9pm curfew for retailers, school closures, mandatory mask-wearing and a recommendation that employees work from home. It is expected that stricter restrictions may be imposed as the crisis unfolds.

THE IMPACT OF COVID-19 RELATED RESTRICTIONS ON THE REAL ESTATE MARKET

- **Commercial and industrial property**

Prior to the sanitary crisis, Romania offered one of the highest rates of return on real estate investments in the European Union. After the first lock-down, in the spring of 2020, recovery has been slow and most retailers are concerned that, if similar restrictions are applied in the final quarter of 2020, annual sales could decrease by more than 50% compared to 2019. Currently, the curfew does not impact in-store shopping and the holiday season is, therefore, expected to provide a much-needed boost for sales. Investments in industrial property remain stable due to the anticipated, long-term, growth trend for the Romanian economy, especially those relating to logistics projects, thanks to the expansion of e-commerce.

- **Construction projects & Infrastructure**

Large transport infrastructure projects recorded a positive development in 2020, partly in response to the negative impacts of the COVID-19 pandemic on other sectors of the economy. The government has committed to increase public spending by way of massive investments in the development of the Romanian transport infrastructure. Two new public contracts have already been signed in 2020 for the construction of the A13 motorway in Transylvania, together with a segment of the Sibiu-Pitesti motorway, a few further projects are expected to be signed before the end of 2020 and three development projects concerning the A7, A8 and A13 are in the planning process.

- **Resorts and holiday apartments**

Since the hospitality sector is mainly driven by local demand (up to 80%), the absence of foreign tourists in 2020 has been mitigated to a certain extent. However, as most business travel is still suspended, recovery is expected to be slow and will probably take several years.

STATE AID TO MITIGATE THE NEGATIVE IMPACT AND INTERIM LEGISLATION

- **State aid to tenants and business owners**

An amendment to the Romanian law on the acquisition of farmland came into effect on 13 October 2020 and significantly restricts the acquisition of farmland (i.e. agricultural land outside urban areas) for investment purposes other than for agriculture. It was published in State Gazette no. 741 of 14 August 2020 as Law no. 175/2020 (i) amending and supplementing Law no. 17/2014 on the regulations regarding the sale and purchase of agricultural land located outside buildable areas, and (ii) amending Law no. 268/2001 on the privatization of companies administering the State's publicly- and privately-owned agricultural land and for the creation of the State Domains Agency.

The amendment significantly expands the number of persons and entities with pre-emption rights and imposes more complex administrative rules for such transactions. Furthermore, there are restrictions on the (direct or indirect) sale of farmland for an 8-year period, which is intended to safeguard the use of land exclusively for agriculture. Sanctions for breaches of these rules range from nullifying the transaction to taxing any profits from the sale at a rate of 80%. There is a general concern on the part of foreign investors and renewable energy developers that this may have a substantial adverse impact on future real estate developments. The revised rules will apply not only to future acquisitions, but also to any transactions for which the publication of the sale offer is pending. Legal practitioners consider that the wording of the law is unclear, which raises concerns about enforcement.

- **Tax incentives**

As part of the tax incentives package designed to facilitate business recovery, which was introduced by the Government Emergency Ordinance no. 181/2020 of 26 October 2020, municipal councils are authorized to grant exemptions and/or decrease local property taxes. The measures are to be implemented before 2 December 2020 and eligible residents may submit applications to benefit from such measures by no later than 21 December 2020.

EFFECT ON FOREIGN INVESTMENTS

No specific restrictions on, or incentives for, foreign investments have been introduced as part of the government's response to the pandemic. Foreign investment projects that were in the pipeline at the start of 2020 remain largely unaffected by COVID-19, most of them proceeding as planned, especially in the field of transport infrastructure projects.

CONTRACT NEGOTIATIONS & PROJECT DEVELOPMENT IN THE WAKE OF SECOND COVID-19 WAVE

The restrictive measures imposed by the government in response to the COVID-19 crisis may lead to delay and/or even a failure to perform contractual obligations. In order to avoid liability, the defaulting party has two main options: to claim force majeure or a material adverse change. Contracts for a project development or an acquisition of real estate will usually include specific provisions for both these options. However, whether such a claim can be successfully relied upon will depend upon the specific circumstances of each case. The declaration of a state of emergency or the imposition of restrictive measures by the government will not automatically qualify as an event of force majeure or a material adverse change – they will need to have a specific, direct and negative impact on the performance of the relevant obligation, to such an extent that performance is either impossible (force majeure) or unfairly onerous for the debtor.

With respect to the second wave of COVID-19, in particular, neither exemption can be relied upon for contracts entered into after the start of the pandemic in early 2020 – given the development of the crisis, it is now general knowledge that restrictive measures may (and indeed are quite likely to) be imposed. Accordingly, any obligor who agreed an obligation during the period when the crisis was unfolding would be unable to claim in good faith that its negative effects were unforeseeable. Contract negotiations should, accordingly, take into account the fact that the pandemic is likely to have an adverse impact on the agreed performance, since, although the crisis itself remains unavoidable, the resulting restrictions are no longer unforeseeable. In particular, the Parties should provide for ways to mitigate any negative impact which may occur, allocate the anticipated costs, and agree on a mutually acceptable exit clause.

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IN COOPERATION WITH D'ORNANO PARTNERS



SERBIA

THE IMPACT OF COVID-19 RELATED RESTRICTIONS ON THE REAL ESTATE MARKET

- **Commercial and industrial property**

Publicly available data shows that sales of real estate only fell by a few percentage points as compared to the same period in 2019. Nonetheless, it is clear that the commercial and industrial property market is under considerable pressure due to the COVID-19 situation. Most notably, the retail sector is progressively shifting towards e-commerce. Many companies are, furthermore, endeavouring to organize for their employees to work from home during the epidemic. The following months should provide a clearer picture as to how this market will develop in the future.

With regard to industrial properties, factories across Serbia continue to operate (with shorter or longer interruptions), like most companies. Accordingly, they continue to occupy large production facilities as before, but it is noticeable that there is, for some reason, a lower demand for warehouse space, which was generally considered to be an extremely resilient sector. On the other hand, the residential real estate market has not experienced any major changes compared with 2019. Moreover, residential real estate prices have remained fairly stable, although many people predicted, and indeed hoped for, a fall in prices. There are even signs of an increase in sales of second homes.

- **Construction projects & Infrastructure**

Construction activity across Serbia has, in general, followed its intended course, despite the epidemic. In general, construction sites for ongoing projects are operating normally, apart from the fact that preventative health measures have to be complied with on-site. Maybe the best example is the Eagle Hills' project called "Belgrade Waterfront", which is being developed in Belgrade. Based on publicly available information, this project is progressing as planned and there is no indication that the epidemic has threatened it, in terms of either deadlines or financial expectations. A similar assessment could be applied to the "K-District" and "Novi Dorćol" projects, which will also establish luxury business-residential condominiums in the heart of Belgrade's old town centre.

- **Resorts and holiday apartments**

The hotel and leisure sectors have doubtless suffered the biggest and, unfortunately irreversible, losses of approximately 90%. City centre hotels were and still are under the greatest pressure, being almost empty pending the return of foreign tourists. On the other hand, larger numbers of Serbian citizens spent their summer holidays in hotels, private resorts, and private accommodation in various locations outside the cities, which resulted in very high profits for their respective owners.

It was not uncommon for averagely equipped houses, located in the countryside, to be advertised on popular web sites for 2,000 euros for a 2-night/3-day booking, the price for which would be up to 10 times lower in normal circumstances. In order to help this sector survive the crisis, the Serbian government has offered aid for privately-owned hotels in 67 municipalities and cities, in the form of subsidies in Serbian dinar (RSD), which are equivalent to 350 euros per “individual bed” and 150 euros per room.

STATE AID TO MITIGATE THE NEGATIVE IMPACT AND INTERIM LEGISLATION

Since the beginning of the epidemic, the Serbian government has adopted various economic measures to mitigate the consequences of COVID-19 on businesses, including: (i) fiscal benefits; (ii) direct grants and (iii) loans to maintain current liquidity and for working capital requirements.

More specifically, these measures have extended the deadlines for: (i) payment of payroll taxes and contributions, (ii) advance payments of corporate income tax, and (iii) advance payments of tax on self-employed income. In addition, companies and entrepreneurs in the private sector have been awarded direct, non-refundable grants to be used exclusively for the payment of employee salaries and benefits. Moreover, eligible business entities in Serbia are allowed to apply for loans to maintain current liquidity and for working capital requirements. These loans are granted by the Development Fund of the Republic of Serbia and by commercial banks operating in the Republic of Serbia. It is interesting to note that an extension of the deadlines for payment of property taxes in Serbia was initially considered, but this proposal was not included in the final version of the economic measures.

Furthermore, there is as yet no specific form of government aid for tenants. During the state of emergency, it was common practice, based on goodwill, for landlords to agree a reduction in rent of up to 50%.

Additionally, during the state of emergency, the City of Belgrade postponed the invoicing of rent for commercial, municipal premises. Within 30 days of the end of the state of emergency, tenants could choose how to pay their outstanding rent. (They could either opt to pay the outstanding rents by 31 December 2020, with a 50% discount, or to pay the whole amount of the deferred rent in 2021 by means of 12 monthly instalments.) Please list the main support measures, the applicable procedures and timelines (very briefly) and comment on their effectiveness.

EFFECT ON FOREIGN INVESTMENTS

There are currently no known measures which are specifically designed to attract foreign investors to Serbia but, according to the Serbian media, foreign investments have not been withdrawn and, in this regard, Serbia is in no worse a position than last year.

CONTRACT NEGOTIATIONS & PROJECT DEVELOPMENT IN THE WAKE OF SECOND COVID-19 WAVE

- **Enforcing Force Majeure & MAC clauses in contracts signed before COVID-19**

The majority of legal experts in Serbia agree that the state of emergency should, in general, be deemed to be an event of force majeure, since it is an event outside the parties' control that could not be foreseen, avoided, or eliminated. It should, however, be noted that force majeure does not automatically release the contracting parties from their obligations. It is necessary for the event to have a direct impact on the parties' ability to perform their specific obligations. However, it will be more common for events of force majeure to have an indirect impact and this could lead to confusion (if, for example, it is no longer sustainable for a tenant to pay rent, because his earnings are reduced as a result of the epidemic). Therefore, all situations in which the contracting parties refer to force majeure should be assessed on a case-by-case basis and it is, therefore, very difficult to anticipate the outcome of potential disputes.

- **Provisions for COVID-19 in negotiation of future contracts**

As for future contracts and the stipulation of COVID-19-related provisions, it is likely that contracting parties will take more care when negotiating their terms and when drafting contractual provisions. It is to be expected that contracting parties will, in general, show more caution when stipulating their rights and obligations under their respective contracts, in addition to a tendency to provide for more detailed clauses concerning events of force majeure.



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IN COOPERATION WITH D'ORNANO PARTNERS



About D'ORNANO PARTNERS

D'ORNANO PARTNERS is an international law firm with offices in Paris, Bucharest and Budapest.

Deeply rooted in Central and South-East Europe and in France, our lawyers offer in-depth knowledge of local markets combined with unparalleled international experience.

We promote an integrated multi-disciplinary, cross-border approach, based on our strong capabilities and synergy between our European offices which work in close collaboration. We provide tailored legal assistance in the following main sectors.

Expertise

- **Transactions: Mergers & Acquisitions**
- **Real Estate**
- **Strategic Litigations**
- **Projects & Structural Investments**
- **Legal Support**

One impressed client says that he is “always available and he produces high-quality work”, before adding: “We trust his judgement and opinions on matters, he has a very good knowledge of the local laws and situations”. (Chambers and Partners 2020)

