



Legal Alert

26 June 2020

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Call for applications regarding COVID – Rent program

The Ministry of Industry and Trade (“Ministry”) published on its website a Call for a program to support entrepreneurs affected by the worldwide spread of COVID-19 caused by the SARS-CoV-2 virus, the so-called “COVID – Rent” (“Call”).

Within the program, CZK 5 billion is to be distributed, with the proviso that this limit can be both increased or not exhausted. The funds are intended for eligible applicants as a result of emergency measures related to the coronavirus pandemic. The aid in the form of subsidy should therefore cover part of the rent for the relevant period from 1 April 2020 to 30 June 2020.

Applying for support

The program has already been approved by the European Commission as a form of permissible State Aid. Applicants for support from this program have been able to start submitting applications for support from 26 June 2020, until 30 September 2020.

The applicant will be able to submit only one application per establishment, unless it is an establishment within which more than one tenant operates. In this case, applicants will be able to submit separate applications for individual parts of the establishment.

Submission must be made via the AIS MIT information system available on the Ministry’s website. Applicants will go through a registration process, which will require a functional e-mail address and the so-called eidentity (NIA), requiring an applicant to have at its disposal one of the following means of electronic identification:

- ▶ an eID card with chip;

- ▶ a National Point for Identification and Authentication account; or
- ▶ a Starcos Chip Card of První identifikační autorita, a.s.

Following registration, the applicant will be given access to the completion and submission of the application after logging into the system. Subsequently, the applicant should also be allowed to monitor the progress of the application and, if necessary, to supplement or modify it.

If the applicant wishes to submit an application by an intermediary, it will still be necessary for the applicant to register and then subsequently the applicant will have to register the intermediary, for whom the condition of registration will also be a functional e-mail address and eidentity, through its account.

Given the right of the Ministry to change the conditions for providing support, ongoing monitoring of the Ministry’s website is recommended.

Basic parameters and terms

The aid is to be determined as a certain percentage of the relevant rent, i.e. the total rent for the months of April to June 2020, in the amount before the discount provided by the landlord on the basis of the Call. In the event that rent is not fixed and is calculated in another fashion, e.g. turnover rent, only the basic rental rate without the turnover component can be considered as eligible expenditure.

In addition, the Ministry wishes to prevent an artificial increase in rent payments in the relevant period in order to obtain higher support, and therefore the amount of rent in the relevant period will be compared with the rent paid before 13 March 2020, which it must not exceed.

VAT paid on rental payments is excluded from all support calculations.



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Each applicant may obtain a maximum of CZK 10,000,000 under the program, while it is not possible to receive further support for the above-mentioned eligible expenses.

Eligible applicants

There are several partial preconditions that the applicant has to meet to gain the support.

Entrepreneurs performing business activities pursuant to *Act No. 455/1991 Coll., on trade licensing (Trade Licensing Act), as amended*, or other legal regulations, both legal and natural persons, will be able to submit an application. However, the category of entrepreneurs whose business activity consists exclusively in renting an establishment is excluded.

The applicant must use the establishment as a tenant or sub-tenant, following a tenancy or subtenancy agreement concluded and effective before 13 March 2020. In addition, the applicant had to be prohibited from selling retail goods or providing services for at least part of the period from 13 March to 30 June 2020 at that establishment.

Furthermore, the applicant must not be a person related to the landlord, so it must not be:

- ▶ A close person in accordance with Section 22 of *Act No. 89/2012 Coll., The Civil Code, as amended*;
- ▶ A controlled or controlling person according to Section 74 et seq. *Act No. 90/2012 Coll., on business companies and cooperatives (Act on Business Corporations), as amended (hereinafter the "Act on Business Corporations")*;
- ▶ A person "acting in concert" according to Section 78 of *Act on Business Corporations*;
- ▶ A person exercising significant influence, or a person to whom significant influence is exercised in accordance with Section 22, Paragraph 5 of *Act No. 563/1991 Coll.,*

on accounting, as amended (hereinafter the "Accounting Act") and

- ▶ A person who is part of one consolidation unit together with the landlord according to Section 22, Paragraph 6 of the *Accounting Act*.

In addition, the applicant must not be in arrears with the payment of liabilities to stated institutions and support providers (e.g. to the Tax Office, the Czech Social Security Administration, health insurance companies, municipalities, etc.), which were due by 12 March 2020.

The applicant must also not have used up the aid to the amount of the ceiling defined by the temporary framework of the European Commission per applicant, i.e. EUR 800,000.

Furthermore, the conditions for the provision of support are divided according to whether the establishment is located in a state owned or non-state owned building.

Conditions for establishments in a non-state owned building

If the establishment is located in a non-state owned building, the following requirements apply:

- ▶ The landlord is obliged to provide the tenant with a discount of at least 30 % of the relevant rent before submitting the application for support, which can be proven, for example, by a concluded agreement, an amendment to the tenancy agreement, or a decision of a local authority;
- ▶ The tenant is obliged to pay at least 50 % of the relevant rent. In the event of postponement of payments on the basis of an agreement or according to *Act No. 210/2020 Coll., on certain measures to mitigate the effects of the SARS CoV-2 coronavirus epidemic on tenants of business premises*, it will be necessary to pay this part of the



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rent no later than the day before the application. Payment in the form of mutual set-off of liabilities and receivables is also possible.

The amount of the support will be up to 50 % of the relevant rent.

Conditions for establishments in a state owned building

With regard to an establishment in relation to which the landlord must comply with *Act No. 219/2000 Coll., on the property of the Czech Republic and its appearance in legal relations, as amended*, which also applies to the property in question, conditions will vary slightly.

In such a case, the landlord is not allowed to provide a discount on rent, so the tenant will have to pay at least 80 % of the relevant rent (the same rule applies in the case of postponing the payments as mentioned above - i.e. payment no later than the day before the application – as well as in the case of set-off).

The amount of support will be higher for these establishments - 80 % of the relevant rent, i.e. it will be 30 % higher due to the impossibility of providing a discount by the landlord.

Procedure for provision of support

The Ministry will conduct a formal evaluation of the application in the procedure for the provision of support, in which the only participant will be the applicant. It will assess whether the application was submitted by an eligible applicant and whether it contains all the requirements and annexes. The requirements are determined by the provisions of Section 14, Paragraph 3 of *Act No. 218/2000 Coll., On budgetary rules and on the amendment of certain related acts (Budgetary Rules), as amended (hereinafter the “Budgetary Rules”)* and Article 10.2. of the Call. The annexes consist of affidavits and

documents according to Article 10.4 of the Call. These are documents proving the fulfilment of other conditions for the provision of support (such as the provision of a discount by the landlord, payment of part of the rent, etc.). All necessary confirmations and forms should be available within the AIS MIT information system.

In the event that an ineligible applicant applies for support, the proceedings will be terminated. If any of the requirements or annexes of the application are missing, or the application contains other flaws, the applicant will be asked to eliminate them in the event that the flaws are remediable. If all the pre-conditions examined by the Ministry are met, the application will be recommended for support.

The support will then be provided by 31 December 2020 in connection with the Decision on the provision of subsidy. We would like to emphasize here that there is no legal claim to its provision.

Follow-up inspections and detection of violations of the rules

After issuing the Decision on the provision of the subsidy, the beneficiary will be obliged to keep all documentation for another 10 years.

At the same time, the beneficiary will be obliged to allow the Ministry and other control bodies to perform controls.

We would also like to point out that it is necessary to provide true information when submitting the application, otherwise the applicant is exposed to the risk of negative sanctions described below.

In the cases provided by the provisions of Section 15, Paragraph 1, letter a) to f) of the Budgetary Rules, the support may

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be subsequently withdrawn. These are, for example, situations where:

- ▶ the support was provided on the basis of incomplete or false information; or
- ▶ the Decision on the provision of the subsidy was issued in violation of national law or law of the European Union.

If the applicant provides false information, he may also face criminal prosecution for suspicion of committing the crime of subsidy fraud in accordance with Section 212 of *Act No. 40/2009 Coll., The Criminal Code, as amended*.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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