The Polish draft law commonly referred to as the “Anti-Crisis Shield” (adopted by the Sejm last weekend) poses many questions in regard to lease relations between landlords and tenants at retail facilities of more than 2,000 m². Firstly, due to its ambiguous wording, there are doubts whether it covers all retail facilities or only those offering retail space above 2,000 m², and whether it covers all lease agreements in effect at such facilities or only those affected by the restrictions.

Also, the idea and the legal consequences of a “binding statement” to the effect that a tenant intends to extend their existing contract on the same terms and conditions are rather confusing. We may assume that the legislator’s intention was to give tenants a choice: decide whether they prefer (1) a “temporarily expiry” of lease rights and obligations during the trade ban for their simultaneous extension by a period of this ban, plus six additional months, or (2) if they want to pay the rent and the charges during the trade ban. If a given tenant chooses option (1), it must submit the extension statement within three months from the date on which the trade ban has been lifted.

The draft law does not provide for any compensation for landlords from the state for
the “temporary expiry” of lease rights and obligations. Also, it does answer the question if the landlord is obligated to accept the extension offer or if it may present a counteroffer to the tenant.

There are also several doubts as to the landlord’s right to dispose of the premises during the period of the lease rights and obligations “temporary expiry.” Theoretically, the landlord may be entitled to lease the premises to a tenant who is allowed to trade (e.g., pharmacy, grocery), especially that landlords must make their payments to banks and service providers, so they may be looking for all possible options for obtaining any income from the real estate.

The draft legislation does not refer to the tenants’ goods on the premises. We may assume that the landlord shall not be obliged to store the tenants’ goods at the retail facility, so they might offer tenants paid storage of their goods on the premises.

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