

## Compensation for takeover of customer base

**How to arrange an office extension so you don't have to move...**

**When representing clients in lease negotiations for office space, we often encounter a common theme: how to increase usable space over time while avoiding the complicated process of terminating the lease agreement, looking for new premises and negotiating a new lease. For this purpose, you can agree to include a guaranteed expansion clause or right of first refusal clause in your lease agreement.**

In the case of guaranteed expansion, the landlord gives the tenant the right, under certain circumstances, to increase the use of the premises during the lease term. If the tenant does not exercise this right, it shall expire upon the agreed deadline.

Right of first refusal is arranged in the event of:

- the vacating of a selected area within the building;
- the termination of a lease agreement with a current tenant; and/or
- the decision by the landlord to conclude a lease agreement in relation to a selected area with a third party.

In such a situation (i.e. before signing an agreement with a third party), the landlord shall inform the tenant of its intention to lease the premises to a third party and will allow the tenant to exercise its right of first refusal in relation to the vacated premises.

Both of the arrangements described above give tenants significantly more options when deciding on whether to stay in the same office or relocate.

Lukáš Zahrádka

**Compensation for the takeover of a customer base was introduced into Czech law by the current Civil Code as a brand new concept and its brief regulation is contained in a single paragraph.**

This specific claim arises to the tenant towards the landlord upon termination of the lease by withdrawal on the part of the landlord, as compensation for the advantage consisting in the takeover of the customer potential of the space. The assumption is that the tenant increased the value of the leased space, because its customers became accustomed to shopping for specific goods (or services) in the space in question.

The entitlement does not arise if the tenant was given notice for a serious breach of its obligations.

The legislation, however, does not answer the essential question: How the amount of compensation is determined? There are two basic options to be considered. The amount of compensation can be determined as:

- the amount of money invested in the space, i.e. to build the customer base; or
- the difference between the usual amount of rent for premises with an established customer base and the usual amount of rent for empty premises.

Neither of the above methods is completely unproblematic. Before the above-mentioned works itself out in practice, the best thing one can do as regards compensation for takeover of customer base is to tread cautiously. What basic recommendations can therefore be briefly given?

The landlord is best advised to negotiate the exclusion of the application of the provisions in question in the contractual relationship in writing. If you are a tenant, you should arrange the most accurate parameters decisive for the entitlement to compensation, especially its subject matter and how to quantify the amount of compensation.

Tomáš Mls



## Validity of lease agreements concluded prior to the issuance of an occupancy permit

According to the Building Act effective until 2006, it was determined that a building can be used only for the purpose intended in the occupancy permit or building permit. Under previous laws, it was also true that if the lease agreement was concluded for a purpose other than what was defined in the occupancy permit or before an occupancy permit was issued for the premises, i.e. was concluded in violation of the law, this led to the invalidity of the lease agreement.

In a recent judgment (file ref. no. 31 Cdo 945/2013), the Supreme Court came to the logical and practical conclusion that if the parties to the lease agreement duly ensured that the effectiveness of the agreement (i.e. the start of the lease) would not begin before an occupancy permit was issued and this decision comes into force, the lease agreement would be valid. Such an approach leads to fulfilment of the requirement under the Building Act for commercial premises to be leased for the purposes for which they are structurally intended.

Yet, even though under the current Building Act it follows that a building can be used only for the purpose specified in the building permit, occupancy permit or decision, today the situation is different.

The conclusion of a lease agreement for a purpose that does not comply with the occupancy permit or decision or building permit, or for premises that have not been approved for use at all, **does not give rise to its invalidity.**

On the other hand, the use of premises without approval or contrary to it is still a violation of the Building Act. It is an administrative offence for which the building office can impose a fine of up to CZK 2,000,000.

Therefore, before entering into a lease agreement, we recommend that you always check for what purpose and whether an occupancy permit to use the leased premises was issued.

Stanislav Servus, Dominika Veselá

## Land and personal easements

**An easement is a restriction of one's property rights used for the benefit of another. The easement is always bound to certain thing and obliges its owner to tolerate someone else's activities or to refrain from activities to which the owner would otherwise be entitled.**

In practice, this generally involves the obligation of the property owner not to obstruct the activities of others, such as passage over land, or to refrain from doing something, such as building a house higher than one storey.

There are two kinds of easements: land and personal. Land easements are the right of the owner of a property to use another plot in a certain way. Personal easements, on the other hand, are always the right of a specific person (defined by name) to use a thing owned by someone else.

A typical **land easement** is an accommodation road, which establishes the right to travel over land by vehicles, such as your neighbour's right to drive through your yard to get to his own cottage. This will constitute a land easement, because the right to go through the site will not only pertain to the neighbour – the current owner of the neighbouring property – but also any other owner of a neighbouring property. If your neighbour sells the land, the new owner will have the right to drive through your yard. If you sell your property, the new owner will have to tolerate the neighbour driving through their land.

By contrast, a **personal easement** always entitles only a specific person to exercise certain rights. A typical personal easement is the entitlement to lifetime use of an apartment or house. In this case, the authorized person is only one particular person and the easement extinguishes with his/her death, meaning that in principle it cannot be transferred to another person.

The law grants freedom in establishing easements, so for example it is possible, in justified cases, to establish an accommodation road as a personal easement. The right to pass through the land will be established only in favour of one particular person.

Therefore, when establishing an easement, pay attention to the correct definition of the type of easement, and thus the beneficiaries, so that everything corresponds with the purpose of the easement and the actual will of the parties.

Dominika Veselá

### Dvořák Hager & Partners Czech Republic

Oasis Florenc, Pobřežní 394/12  
186 00 Prague 8  
Czech Republic

tel.: +420 255 706 500  
fax: +420 255 706 550  
e-mail: praha@dhplegal.com

### Dvořák Hager & Partners Slovakia

Cintorínska ul. 3/a  
811 08 Bratislava  
Slovakia

tel.: +421 2 32 78 64 – 11  
fax: +421 2 32 78 64 – 41  
e-mail: bratislava@dhplegal.com