

LAKATOS, KÖVES ÉS TÁRSAI  
ÜGYVÉDI IRODA

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## FAQ: HOW DOES THE COVID-19 AFFECT LEASE AGREEMENTS

### IS THE COVID-19 EPIDEMIC CONSIDERED AS FORCE MAJEURE UNDER HUNGARIAN LAW?

Hungarian statutory law does not regulate “force majeure”, however, epidemics are known in Hungarian jurisprudence and generally considered as force majeure. A force majeure event may have the effect of a so called “frustration” (in Hungarian: “*lehetetlenülés*”) under the Hungarian Civil Code, provided that it renders the performance of an agreement impossible.

### WHAT DOES FRUSTRATION MEAN?

Hungarian jurisprudence distinguishes between three different types of the impossibility of performance: legal impossibility, physical impossibility and so-called economical – or subjective – impossibility:

1. **physical impossibility** of performance is when a performance is physically impossible (e.g. the building in which the leased premises are located is destroyed)
2. **legal impossibility** is when a performance is legally prohibited or not possible for a considerable period (e.g. if the operation of a shop is prohibited by a Government measure).
3. **economical impossibility** is the case when the performance is objectively possible, but because of the significant change of circumstances, the contractual obligation cannot reasonably be performed or the performance no longer serves the interest of the obligor – which is the case of the so-called “loss of interest”. However, Hungarian judges tend to look at the “loss of interest” as a general business risk that should be borne by all actors of the economy and do not accept this to dismiss someone from its contractual undertakings.

### CAN AN AGREEMENT BE AUTOMATICALLY CONSIDERED FRUSTRATED DUE TO A FORCE MAJEURE EVENT?

No. In order for an agreement to be considered frustrated, the party referring to such frustration must prove that there is a causal link between the force majeure event and the impossibility to perform the agreement.

### CAN A TENANT TEMPORARILY SUSPEND THE PAYMENT OF THE RENT BY CITING FRUSTRATION WITHOUT THE CONTRACT BEING TERMINATED?

No. In case of frustration the entire contract shall be deemed terminated. Therefore, if the conditions of frustration are not met, the suspension of a contractual obligation (e.g. the payment of the rent) without the consent of the other party constitutes a breach of the agreement and may trigger the termination of the agreement by the other party, as well as the obligation of the party in breach to compensate the non-breaching party for damages incurred due to such breach.

### CAN THE TENANT OR THE LANDLORD BE EXEMPT FROM THE COMPENSATION OF DAMAGES IF IT BREACHES ITS CONTRACTUAL OBLIGATIONS DUE TO CIRCUMSTANCES CAUSED BY THE COVID19 EPIDEMIC?

A party may be exempt from the liability to compensate damages if it can prove that (i) the breach of contract was caused by a circumstance that was outside of its control and (ii) was not foreseeable at the time of concluding the contract, and (iii) it could not be expected to have avoided that circumstance or averted the damage. While the first two conditions are most likely to be proven by referring to the COVID19 epidemic alone, the existence of the last condition due to the COVID19 epidemic alone, i.e., whether it could be expected that the breaching party avert the damages caused is questionable and will be examined by the court on a case to case basis.

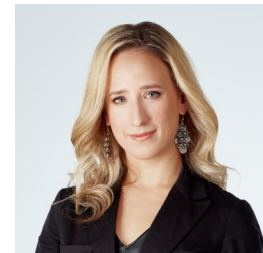
### WHO TO CONTACT?

If your business is listed or otherwise affected by the state of emergency, please do not hesitate to contact any member of our team:

Attila Ungár	attila.ungar@lakatoskoves.hu	+36 20 972 5878
Júlia Várkonyi	julia.varkonyi@lakatoskoves.hu	+36 70 478 3072
Tamás Oláh	tamas.olah@lakatoskoves.hu	+36 70 416 4384



Attila Ungár  
Founding Partner  
[attila.ungar@lakatoskoves.hu](mailto:attila.ungar@lakatoskoves.hu)



Júlia Várkonyi  
Lawyer  
[julia.varkonyi@lakatoskoves.hu](mailto:julia.varkonyi@lakatoskoves.hu)



Tamás Oláh  
Lawyer  
[tamas.olah@lakatoskoves.hu](mailto:tamas.olah@lakatoskoves.hu)

**Lakatos, Köves and Partners**  
1075 Budapest  
Madách Imre út 14.  
Tel: +36 (1) 429 1300  
Fax: +36 (1) 429 1390  
[www.lakatoskoves.hu](http://www.lakatoskoves.hu)

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