

IMPORTANT AMENDMENTS TO RUSSIAN LEGISLATION CONCERNING REAL ESTATE LEASE, IMPLEMENTED IN LIGHT OF CORONOVIRUS (COVID-19) PANDEMIC

The new law has imposed an obligation on the lessor to grant an extension for payment of rent, and gave the lessee the right to demand rent reduction for 2020

In light of the unfavourable epidemiological situation in Russian cities (including Moscow and Saint Petersburg) special high alert regime has been put in place. Operations of many companies have been suspended, while citizens shall not leave their houses unless absolutely necessary.

The Federal law of 1 April 2020 No. 98-FZ (hereinafter – the **Law**) regulates, among other things, consequences of such measures for the parties of lease contracts. The new rules will significantly impact the commercial lease contracts in Russia.

1. What new rules are put in place?

If the lease contract had been concluded before the authorities put in place the high alert regime or emergency situation regime, then a lessee has a right to demand an extension for payment of rent (a deferred payment plan) for the year 2020, and the lessor is obliged to agree on such amendment to the lease contract within 30 days. The mechanics of such deferred payment plans (including eligibility criteria, terms of extension, etc.) are to be set by the Government of Russia. The relevant governmental regulation should be forthcoming.

Nota bene: the mechanism of obtaining extension for payment of the rent (deferred payment) will become operational only after the Russian Government sets the details of such mechanism (requirements and terms of deferred payment plan).

Further, according to the Law the lessee is entitled to demand reduction in the amount of rent to

be paid in 2020 in case the lessee cannot use rental property because of the high alert regime or emergency situation regime.

Case: the lessee is renting a shop in a shopping mall. The local authorities 'closed' the shopping mall and no visitors are allowed to enter the shopping mall due to restrictions imposed in light of COVID-19 situation. Therefore, in practical terms the lessee cannot use the rental property (there are no visitors in a shopping mall). In such scenario the lessee is entitled to demand reduction in the amount of the rent payable in 2020. In case of dispute, the court will most likely allow the lessee not to pay the rent for the whole period, when the shopping mall was closed, and the lessee could not use the rental property to operate the shop.

The Law also provides that the amount of rent under real estate lease contracts, entered into before the authorities had put in place the high alert regime or emergency situation regime, can be amended by the parties' agreement any time in the course of 2020.

Nota bene: the parties to the real estate lease contracts could have amended the contractual terms on rent any time even prior to enactment of the Law.

2. Which lessee is entitled to demand an extension for payment of rent or reduction in the amount of rent to be paid?

The Law does not provide any exceptions to the general rules, as described above. However, the Law should be interpreted taking into account the goals and timing of its enactment and cannot be relied on for non bona fide purposes. The purpose of the Law is to ameliorate the negative impact of restrictions, imposed by authorities due to coronavirus pandemic, on businesses which cannot use their rental property in current circumstances, or which found themselves in dire financial situation. If a lessee continues its operations despite implementation of the high alert regime (ex., grocery shop or pharmacy, which continue to operate), then such a lessee will not be entitled to demand an

extension for payment of rent or reduction in the amount of rent to be paid.

3. For what period an extension for payment of rent should be granted by a lessor?

Specific terms of extension are to be determined by the Government, which rules should be forthcoming. Earlier this year the Russian Government by its Decree of 19 March 2020 No. 670-r has granted to small and medium sized businesses an extension of one year in payment of rent under real estate lease contracts with the Federal Government (the businesses can pay rent for 2020 in 2021 in equal instalments).

4. Do the new rules on deferred payment of rent apply to the rent accrued for the period before the relevant restrictions have been put in place by authorities?

The Law does not specify that an extension for payment of rent applies only to the rent, accrued after the high alert regime or emergency situation regime are put in place.

If the Government does not issue special rules in this regard, then, most likely, a lessee will be entitled to demand an extension for payment of rent with respect to the rent accrued before the relevant restrictions have been implemented.

5. Does a lessee have an obligation to pay rent for the period, when he/she could not make use of the rental property because of the restrictions implemented by authorities?

Russian case law has developed a rule to the effect that if a lessee is not able to make use of the rental property due to circumstances, which are out of the lessee's control, then a lessee is not obliged to pay rent for the whole period when rental property cannot be used. It follows that the rent for 2020 shall be reduced upon request of a lessee in proportion to the period of time, when the lessee could not in fact make use of the rental property. It goes without saying that the Law does not prevent the parties from reaching an agreement on other options and ways of reduction in the amount of rent to be paid.

6. What consequences will follow if a lessor refuses to agree on a deferred payment plan or on rent reduction?

If a lessor will not grant a legitimate demand of a lessee under the Law for an extension for payment of rent, then even in case a lessee does not pay the rent in accordance with the terms of the initial lease agreement, the court will most likely refuse the lessor's claim for recovery of rent on the basis of abuse of rights doctrine and the new Law provisions. If a lessor does not agree to amend the real estate lease agreement in order to reduce rent pursuant to provision of the Law, then a lessee is entitled to bring a claim in court and seek variation of the real estate lease agreement by court judgment. In this case the court will determine the way and amount of rent reduction for 2020.

7. How the Law will operate if the term of lease expires, when the high alert regime or emergency situation regime are still in place, and the lessee does not want to renew the lease?

In that case a lessor upon demand from a lessee is obliged to reduce the amount of rent for 2020 in proportion to the period of time, when a lessee could not make use of the rental property, and agree on deferred payment of the reduced rent in accordance with the rules, which will be set by Russian Government.

8. Can a lessor increase rent while the high alert regime or emergency situation regime are in place, if the lessor is entitled to increase rent under the contract?

The Law does not limit the right of a lessor to increase rent once a year if the relevant contractual provision was agreed by the parties in the real estate lease contract. However, if such rent increase will result in rent being disproportionate to the average market price (i.e. following the increase the rent to be paid will be significantly higher than the average market price), then such conduct of a lessor can be qualified by the court as an abuse of right, and the relevant rent increase may be invalidated by the court judgment.

9. Can a lessee terminate the real estate lease contract unilaterally if a lease is not able to make use of the rental property due to restrictions imposed by authorities?

The Law does not contain special rules on unilateral termination of a real estate lease contract. Therefore, general rules of the Civil Code apply. If the real estate lease contract does not contain a clause, which allows a lessee to unilaterally terminate the lease contract in case the rental property cannot be used, then a contract can be terminated by the parties' agreement. If the lessor does not consent to early termination of the lease agreement, then a lessee can file a claim seeking termination of the lease contract due to material change in circumstances. However, in the latter case a lessee will need to prove in court that further performance of the lease contract will lead to substantial loss for a lessee.

10. Do the new rules established by Law apply to the sublease contracts?

According to article 615(2) of the Civil Code of the Russian Federation the rules on the lease contracts apply to sublease contracts unless other rules are established by law or other legal acts. Hence, a lessee under sublease contract is also entitled under the Law to demand from its lessor a deferred payment plan for payment of rent or reduction in the amount of rent to be paid in 2020.

You can get more detailed information of this alert from our experts:

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