

Russian Government Adopts Regulations on Rent Deferrals for Tenants in Light of Coronavirus Pandemic

April 9, 2020

Pursuant to the recently enacted federal law contemplating rent relief for tenants affected by measures to combat the spread of the coronavirus (the “Rent Relief Law”)¹, the Government has now adopted implementing regulations (the “Government Regulation on Leases”)² in respect of the right of a tenant to have its 2020 rent payment obligations deferred within 30 days of the relevant tenant’s request. The Rent Relief Law and the Government Regulation on Leases apply to real estate leases entered into before the authorities adopted the “high alert” or emergency regime for the relevant region.

SUMMARY: As discussed below, the Government Regulation on Leases: (1) limits rent relief to businesses “that have suffered the most in connection with the pandemic” but does not define what businesses those are; (2) sets out that the rent deferred is 100% rent accruing during high alert/emergency regime and then 50% rent accruing from end of such regime to October 1, 2020, with the deferred rent then repaid (without interest) in installments in 2021-2022; and (3) puts forward non-binding recommendations that landlords in some way reduce rents where tenants cannot use premises during the high alert/emergency regime and that regional/local governments should give tax/rent relief to landlords.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

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¹ Russian Federal Law No. 98-FZ, effective April 1, 2020, discussed in our prior alert memorandum at <https://www.clearygottlieb.com/news-and-insights/publication-listing/russian-federal-assembly-passes-legislation-to-provide-relief-to-russian-tenants>.

² Resolution No. 439 dated April 3, 2020, published and effective as of April 6, 2020.
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1. The Government Regulation on Leases specifies that only legal entities (and individual entrepreneurs) conducting business in areas that have suffered most in connection with the pandemic qualify for rent relief but the regulation does not define exactly what those businesses are. It might be expected this will soon be clarified.

One might be able to draw by analogy from the government regulation³ promising debt relief under credit facilities for small and medium size businesses⁴ carrying out specific activities (per the OKVED⁵ classification system) in the following sectors:

- restaurants and other public catering
- tourism and hotels
- consumer services such as beauty salons, barbershops, laundries and repairs
- sports and physical activities such as gym clubs
- transportation and airport activities
- culture and entertainment (but not including cinemas)
- education and exhibitions.

The above would seem likely to represent the minimum set of businesses to benefit from rent relief.⁶ Again, clarification might be expected on this point, including whether it will apply not only to small/medium-sized businesses but also large enterprises, and reportedly⁷ there are ongoing discussions to expand the list and capture more businesses, including non-food retail.

The rent deferral right applies both to private and state (municipal) property. On the other hand, the

³ Government Resolution No. 434 dated April 3, 2020.

⁴ Being Russian legal entities (and individual entrepreneurs) having: revenue and employees within the following thresholds: (i) RUB 800 mln (approx. USD 10.6 million) and 100 workers for small size businesses and (ii) RUB 2 billion (approx. USD 26.4 million) and 250 workers (with some exceptions) for medium size businesses; and charter capital of which (i) no more than 49% is held by large businesses (ii) no more than 25% is held by the state and certain non-commercial entities (this prong (b) is subject to exceptions, e.g., for high-tech companies).

Government Regulation on Leases states no relief is given to tenants under residential premises.

2. In terms of defining the rent relief afforded tenants and when the deferred rent is to be ultimately paid:

- the deferred portion comprises: (i) 100% of rent for the period while the “high alert” or emergency regime for the relevant region remains in force and (ii) once the relevant regime is terminated, 50% of rent for the period from such termination until 1 October 2020;
- the deferred portion must be paid between 1 January 2021 and 1 January 2023 (inclusive) in equal installments, not more frequently than once per month; each such payment must not exceed 50% of the monthly rent (regardless of when the lease expires);
- no penalties and interest accrue on the deferred portion;
- landlords may not circumvent these rules by requiring other payments from tenants in connection with the deferral; and
- payments for utilities and maintenance expenses (if included in rent) are not deferred; however, if the landlord’s obligation during high alert / emergency regime to make such payments is deferred (or excused in full) then likewise the tenant’s obligation is deferred or, if so follows from the lease terms, excused in full.

The deferral rules apply to leases of all relevant businesses regardless as to when the relevant addendum (specifying the terms of deferral) is signed.

A register to record small and medium size businesses is maintained by the Federal Tax Service and available at <https://rmsp.nalog.ru/>.

⁵ Russian Classification of Economic Activities adopted by Order of Rosstandart No. 14-st dated January 31, 2014 (as amended).

⁶ A very similar list of entities qualifying for possible emergency relief (differing only in details of airport and transportation activities covered) was published by the Ministry of Economic Development on March 27, 2020 https://www.economy.gov.ru/material/news/ekonomika_bez_virusa/pravitelstvo_opredelilo_22_otrasli_kotorye_per_vymi_poluchat_gospodderzhku.html.

⁷ See: <https://pln-pskov.ru/society/374544.html>.

Landlord and tenant may negotiate more tenant-friendly terms but are prohibited from agreeing terms less friendly to the tenant. Likewise, the Russian Government and regional/municipal authorities may establish more tenant-friendly rules for leases of state (or municipality) owned property but not less friendly terms.

3. The Government Regulation on Leases also recommends (but does not require) that:

- landlords reduce rent taking into account (i) no actual activities by tenants in the leased properties as well as (ii) the non-business days established by Presidential decrees; and

- regional and local authorities adopt support measures for landlords by providing reliefs in respect of the payment of property tax, land tax and rent for state (municipally) owned lands (for the period of rent deferral). Moscow authorities have already adopted a number of relief measures in this regard (Moscow Government Resolution No. 212-PP dated March 24, 2020).

If you have any questions, or if you wish to discuss the Government Resolution on Leases further, please feel free to contact your usual contacts at the firm.

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