

**Regulatory aspects of lease relations  
in connection with the spread  
of the coronavirus disease (COVID-19)<sup>i</sup>**

**1. General information**

On April 1, 2020, the Federal Law No. 98-FZ dated March 31, 2020 “*On amendments to certain legislative acts of the Russian Federation on the prevention and liquidation of emergency situations*” (hereinafter the “**Law No. 98-FZ**”) entered into force.

Law No. 98-FZ establishes, among other, several measures aimed at stabilization of lease relations and the possibility to amend lease agreements upon initiative of lessees. The following measures may be applied provided that the high alert regime or emergency situation (hereinafter the “**HAES Regime**”) has been implemented within the territory of the relevant Subject of the Russian Federation:

- Within 30 days from receipt of the request of the lessee, the lessor shall enter into an additional agreement to the lease agreement concluded before the implementation of HAES Regime, which shall grant a postponement in payment of rent for 2020.
- Upon agreement the parties may amend the amount of rent at any time during 2020.
- Upon agreement the parties may reduce the amount of rent in case the lessee is unable to use the leased real estate due to the implementation of the HAES Regime (paragraph 3 of article 19 of the Law No. 98-FZ).
- On April 30, 2020, the Presidium of the Supreme Court approved the “Review of certain issues of judicial practice related to the application of legislation and measures to counteract the spread of the new coronavirus infection (COVID-19) No. 2 in the Russian Federation” (hereinafter - “**Review No. 2**”), which inter alia clarifies the application by the courts of the provisions of Law No. 98-FZ on leases.

**2. Protection mechanisms applicable to the lessees**

Further to Law No. 98-FZ, on April 3, 2020 the Government of the Russian Federation adopted the Decree No. 439 (hereinafter the “**Decree No. 439**”), regulating the postponement of payment of the rent:

- The postponement shall be granted to the lessees engaged in the activities related to the most affected sectors of economy. The list of such activities is provided in the Decree of the Government of the Russian Federation No. 434 dated April 3, 2020. Such list of affected sectors, activities of airports, tourism, hotel industry,



activities in the sectors of transport, culture, leisure, sport, relax and entertainment, food service, provision of domestic services to the public sanatorium-resort activity, retail trade in non-food goods and others. The lessee has to communicate personally to the lessor of being active in one of the most affected sectors of the economy.

- The lessee is not obliged to confirm the inability to use the leased property or to confirm other circumstances.
- The provisions of the Decree No. 439 apply to all real estate with the exception of residential premises, provided that the relevant lease agreement was entered into before the implementation of the HAES Regime.

Terms of rent postponement are the following:

- The postponement period starts from the moment of implementation of the HAES Regime and lasts until October 1, 2020.

In accordance with the Review No. 2, the obligations of the parties under a lease agreement are considered to be amended to provide the lessee with a delay of the payment of the rent from the date of implementation of the HAES Regime in the territory of the subject of the Russian Federation, regardless of the date of conclusion of the additional agreement or the date of entry into force of a court decision injuncting the lessor to enter into such additional agreement. The parties are also entitled to agree that the amendments to lease obligations are effective from an earlier date.

- During the period of the HAES Regime the postponement applies to 100 % of rent. Upon cancellation of the HAES Regime, the postponement until October 1, 2020 applies only to 50 % of the rent.
- The rent arrears accrued for the above period shall be paid in equal monthly installments within the period from January 1, 2021 to January 1, 2023. Lease termination does not entail the termination of the obligation to repay the debt. A detailed schedule for debt restructuring may be provided by the parties in an additional agreement and the monthly installment of the debt shall not exceed half of the monthly rent.
- The postponement does not apply to utility and property maintenance payments, in case such payments are included in the rent.
- Penalties shall not be applied during the postponement period.
- The court may refuse to protect the right of the lessee, in whole or in part, if the lessor proves that the lessee was not effectively damaged and does not evidently suffer in the situation of deterioration as a result of the spread of coronavirus infection, and his claims are manifestly in bad faith.
- Parties are entitled to reduce the amount of rent. In accordance with paragraph 3 of Article 19 of Law No. 98-FZ, the rent is subject to reduction if the lessee was unable to use the leased property. Review No. 2 clarifies that rents are subject to reduction from the time when the specified impossibility to use the property for the originally agreed purpose has occurred regardless of the date of conclusion of the additional agreement for the reduction of the rent or the effective date of the court decision injuncting the lessor to amend the rent accordingly. The lessee is

also entitled, as an objection to the claim to pay the rent, to indicate that the lessor unreasonably avoided the conclusion of an additional agreement.

- Public authorities of the relevant Subjects of the Russian Federation shall develop regulations on measures for the support of the lessors who have granted rent postponements to the lessees. Such support measures may relate to corporate property taxes, land taxes and other.
- The provisions of Law No. 98-FZ are also applicable to lease agreements for portions of real estate properties.

### **3. Protection mechanisms applicable to small and medium-sized business**

Federal Law No. 166-FZ dated June 8, 2020, amended Law No. 98-FZ. According to the amendments, small and medium-sized companies operating in the sectors of the economy that were the most affected by the spread of coronavirus infection<sup>1</sup> have right to terminate a lease agreement concluded for a specified period no later than October 1, 2020. The early termination shall be done in consistency with Article 450 of the Civil Code of the Russian Federation (hereinafter – the “**Civil Code**”), subject to the following conditions:

- the lease agreement was concluded before the decision on the introduction of the HAES Regime;
- lease agreement is concluded with respect to buildings, structures, non-residential premises and their parts, which are used in the activities identified as the most affected;
- the lessee approached the lessor with a proposal to reduce the amount of the rent or amend other conditions but the agreement between the parties was not reached within 14 days from the date the lessee contacted the lessor.

If the lessee has exercised its right to unilateral cancellation of the agreement, losses associated with such termination, including lost profit, cannot be recovered. In this case, the security payment that the lessee paid to the lessor shall not be reimbursed to the lessee.

### **4. Other protection mechanisms applicable to all lessees**

The measures aimed at prevention of the spread of the coronavirus disease introduced by the Government of the Russian Federation affect the business cycles of a large number of lessees of real estate, which leads to difficulties in the execution by the latter of their contractual obligations. The lessees engaged in the activities which are not included in the Decree No. 439, as well as lessees wishing to reduce the rent or change other terms of the lease, are entitled to start negotiation procedures with their lessors on the basis of the following arguments:

---

<sup>1</sup> The list of the most affected sectors of the economy was set forth by Decree of the Government of the Russian Federation No. 434 dated April 3, 2020 (see above).

- *Impossibility of performance (articles 416, 417 of the Civil Code of the Russian Federation (hereinafter the “Civil Code”))*

An obligation is terminated when, due to circumstances occurred after the obligation was created for which neither of the parties is responsible, such obligation became impossible to be fulfilled. The impossibility of fulfillment of an obligation may in particular occur due to legislative restrictions if such restrictions are not related to the unlawful activity of a party to the obligation.

For example, in case an activity became prohibited due to a legislative act, the party which became unable to continue performing such activity shall inform the other party of the impossibility of performance. An obligation is terminated if the debtor acted in good faith in such circumstances and promptly noticed the other party of the impossibility of performance. Upon termination of the obligation on this grounds, the creditor shall not be entitled to apply penalties and punitive damages. It should be taken into account that in case the counter-performance under the agreement was made before the termination of the obligation, it shall be returned pursuant to the rules on unjust enrichment.

- *Material change in circumstances (Article 451 of the Civil Code)*

In case of a material change in circumstances, an agreement may be terminated or amended. A change in circumstances is considered material if the circumstances have changed to such extent that if the parties could have reasonably envisaged it, the agreement would not have been concluded or would have been concluded on essentially different terms.

With regard to lease agreements a special provision provided in article 614 of the Civil Code shall apply, according to which a lessor is not obliged to pay rent for the period when he was unable to use the leased object due to circumstances beyond his control. The same provision is provided in paragraph 3 of article 19 of the Law No. 98-FZ. In practice, it is usually difficult to prove the occurrence of conditions provided for by article 451 of the Civil Code, in particular the fact that “*the execution of the agreement without amending its terms would have violated the balance of property interests of the parties corresponding to the agreement and would have entailed such a damage to the concerned party that such party could have been substantially deprived of what it could have counted on upon the conclusion of the agreement*” (paragraph 2 (3) of article 451 of the Civil Code). Moreover, in contractual practice, the parties often exclude the application of article 451 of the Civil Code to lease relations.

- *Force majeure circumstances (Article 401 of the Civil Code of the Russian Federation)*

Extraordinary and unavoidable circumstances are considered force majeure. Force majeure circumstances do not depend on the will of the parties.

Despite the fact that some legal acts already recognized the coronavirus as force majeure (e.g. the Decree of the Mayor of Moscow No. 12-UM dated March 5, 2020 “*On the implementation of high alert regime*”), the applicability of the force majeure provisions depends on the direct causal relationship between the occurred force majeure and impossibility of performance of an obligation. It should be noted that the occurrence of force majeure does not terminate the obligation of the debtor in case the performance remains possible after it ceased to exist.

\*

\* \*

---

<sup>i</sup> This article was prepared as a brief overview of the law and does not constitute a legal advice of “Pavia e Ansaldo”.