

Foreign lessees beware of new lease rules

16 August 2022

Special regulation* now applies to lessees that are organisations in the trade and catering sectors and associated with states that are listed* as “unfriendly” by the Russian government.

According to the new regulation, when a lessee suspends the use of a leased property or stops using it, this may have negative consequences for the lessee if the following conditions are simultaneously met:

- the contractual rent is wholly or partly dependent on the commercial performance of the lessee (e.g. when it is set as a proportion of the lessee’s income, an arrangement usually referred to as “turnover rent”); and
- the rent to be paid has fallen significantly because the leased property is not being used.

A rent reduction is deemed significant when it amounts to a reduction of more than 50% compared to the same period in 2021 (or, if no rent was paid in that period, compared to the average monthly rent for 2021). If the leased property was only used in 2022, the calculation is based on the average monthly rent for the period from 1 January 2022 until the lessee suspended use of the property or stopped using it altogether.

In such a case, the lessee could face the following negative consequences:

- the lessee will, for the period when the use of the property was suspended or terminated, have to pay the average monthly rent for 2021 or, if the leased property was only used in 2022, for the period from the beginning of 2022 to 24 February 2022 inclusive; and
- the lessor may unilaterally terminate the lease if the lessee has not resumed the use of the leased property or has not paid the rent in the above amount within ten working days of receiving the lessor’s request to do so.

It is important to note that, in such a case, the lessor’s termination of the lease cannot give rise to penalties or other liability.

In addition, special rules are provided for lessees **that are no longer controlled by persons or entities related to an “unfriendly state”**.

First, from the date of the change of control, such lessees will no longer be subject to the above rule which allows lessors to unilaterally terminate their leases.

Secondly, the lessor is precluded from varying or terminating a lease concluded earlier (before 24 February 2022) (even if this ground for termination is set out in the lease) when:

- there has been a change of control in favour of a Russian person or entity in relation to the lessee; or
- the lessee has ceased to be controlled by a person or entity related to an “unfriendly state” and the lessee has changed its trade name, business designation, trademark or service mark.

This prohibition on termination or modification of the lease is valid until the end of 2023 and applies when the lessee is no longer controlled by a person or entity related to an “unfriendly state” after 24 February 2022.

Many of the rules in the law in question have already come into force and will generally remain in force until the end of 2022, unless this deadline is later extended.

Thus, at a time of mass exodus of foreign lessees from the Russian commercial real estate market, the legislator provides lessors and new owners of foreign businesses with additional measures to protect their interests.

We already saw a similar regulation during the COVID-19 pandemic. So we can assume that, as on that occasion, parties to a lease will only resort to the new grounds for termination of the contract in exceptional cases where they are unable to agree on new lease terms or the termination of the relevant lease.

Also, as the number of companies leaving the Russian market keeps growing, we cannot rule out an increase in litigation, including in relation to the application of the new rules we have outlined above.

* *In Russian*

For further information, please email the authors or your usual contact at our firm.

Authors



Artashes Oganov
Partner
Head of Real Estate
E artashes.oganov@seamless.legal



Dmitry Bogdanov
Senior Associate
Real Estate
E dmitry.bogdanov@seamless.legal

Co-authored by Elena Foteeva, Paralegal in Real Estate.

As of 15 June 2022, we are SEAMLESS Legal. Our new domain name is @seamless.legal; emails sent to previous addresses will be redirected.

[Contact us](#)

[Unsubscribe](#)

[Manage preferences](#)

[Visit our website](#)

