

# Legal protection of lessee's interests in case of foreign currency lease

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## Foreign currency lease

- ▶ Article 317 of the Civil Code of the Russian Federation allows nomination of price in foreign currency (or conventional units), while payment shall be in Russian rubles only, **so foreign currency lease is technically legal**
- ▶ Common practice over the years
- ▶ Goal – to shift currency loss risks onto lessees (as developers/owners have their credits in foreign currency as well)
- ▶ As a result, after destabilization of ruble lease expenses increased up to 20%-40% of the turnover of the lessees
- ▶ **IS IT FAIR?**



# Government reaction



## Bill on prohibition of foreign currency lease

- ▶ Drafted by the Ministry of Industry and Trade (“Minpromtorg”)
- ▶ Goal is to establish a legal ban on denominating rental and other payments under lease agreements (such as maintenance charges, service charges, marketing fees, etc.) either in a foreign currency or in so-called "conventional monetary units“
- ▶ So far still under discussions within the Government
- ▶ Strong lobby against this Bill from landlords and potential investors
- ▶ Business is pessimistic (lot of loopholes in the Bill, therefore ”dead law”)





## Possible negotiation options

- ▶ Currency rate corridor (or fixing the maximum exchange rate) – see VimpelCom case
- ▶ Currency grace period (fixing the ruble rent for short-term period: 6M, 1Y...)
- ▶ In case of foreign lessor – change the governing law and court jurisdiction outside Russia...



# Legal protection of the lessee (cont'd)

## Usual tricks (points of attention)

- ▶ Fixing the rent in rubles, but regular recalculation according to some coefficient (foreign currency exchange rate, gold/oil index...)
- ▶ Main rent in rubles, but other payments (such as maintenance charges, service charges, marketing fees, etc.) in foreign currency
- ▶ Turnover fee: Conversion into foreign currency at the end of the reporting period or at the day of each transaction?
- ▶ Warranty deposit: Fixed amount in foreign currency (therefore, replenishment at the beginning of each prolongation period)
- ▶ Warranty deposit: Return in rubles at the exchange rate at the date of payment, or at the exchange rate at the date of return?





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**THANK YOU!**

**QUESTIONS?**

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