

BRIEFING:
RENTAL LIABILITIES DURING LOCKDOWN.
WHAT OPTIONS DO TENANTS HAVE?

The recent pandemic has significantly impacted how businesses are operated, with many effectively closed because of government lockdowns. Moscow is no different from the rest of the world, and huge numbers of businesses have suffered dramatic decreases in sales revenues, whilst premises are closed. This in turn, has put huge pressure on the ability of companies to pay their rent. In this briefing, we set out an update on the Russian government's new legislative measures designed to ease the burden for tenants at this difficult time.

The Russian Federation has issued a new Federal Law dated 1 April, 2020 No. 98-FZ (the "New Law") in order to solve some of the current issues arising from the pandemic. In particular, if the high alert regime has been declared in a specific region (most regions have already declared it, including Moscow), then tenants are entitled to require deferral for rent to be owing throughout 2020. Landlords are obliged to conclude appropriate addenda (supplemental agreements) with tenants within 30 days of receipt of such a request from a tenant.

Please note the New Law applies to the following:

- either state or private immovable property; and
- lease agreements signed before the date of the high alert regime.

N.B. High alert regime – this is a situation in which the people and authorities are told to be ready because there is strong possibility of the escalation of troubles, in this case coronavirus.

Whilst the deferral mentioned, does not necessarily lead to a decrease in rent, it does allow a tenant to pay rent in instalments at a later date, which gives a welcome boost to cash flow in the current environment (for more on the instalments, please see below). However, where it is impossible for the tenant to use the property, the New Law states that a decrease of rent for the period of 2020 may apply.

The Government of Russia issued a Regulation dated 3 April, 2020 No. 439 (the "New Regulation") to put the meat on the bones of the New Law. The New Regulation recommends that the landlord provides a decrease in rent depending on: (1) actual suspension of the tenant's activity (e.g. number of days when the tenant's shop was closed); and (2) in respect of non-working days established by the latest Orders of the President of Russia. In turn, the Russian state authorities were recommended to provide landlords with holidays for property tax and land plot rent during the period of deferral given by landlords to their tenants.

Unfortunately, the New Regulation does not apply to residential property. The deferral applies to rent to be paid from the start date of the high alert regime (e.g. in Moscow - 5 March, 2020) up until 1 October, 2020 with the following terms and conditions:

- deferred rental payments must be paid no earlier than 1 January, 2021, but not later than 1 January, 2023 in several instalments (no more than one payment per month required, all payments must be in equal sums and less than half of monthly rent stipulated in the original lease agreement);
- if the high alert regime is cancelled before 1 October, 2020, landlords must also provide deferral of 50 % of the rent to be paid for the period starting on the date on which the high alert regime ceases and ending on 1 October, 2020;
- penalties, interest and other sanctions for late rent payment must not be imposed;
- landlords are prohibited from charging additional fees for the rent deferral; and
- deferral does not apply to compensation for utility bills unless the landlords are granted a release from those utility bills by the utility provider.

Case-study

Company "A" runs a restaurant in Moscow and has an existing lease agreement with Company "B" regarding premises where the restaurant is located. The monthly rent is RUB 1,000,000, and it needs to be paid before the beginning of each month. In accordance with the Moscow Mayor's decree dated 5 March, 2020 No. 12-UM the high alert regime was declared in Moscow starting from 5 March, 2020. On 28 March, 2020 Company "A" had to close its restaurant following the Mayor's decree dated 26 March, 2020 No. 31-UM. Unfortunately, as a consequence, the restaurant is making no money now.

Company "A" should send to Company "B", its landlord, an official letter requiring the landlord to enter into an additional agreement regarding rent holidays. Then, Company "B" will be obliged to conclude this addendum within 30 days. The parties need to prepare such document on the basis of the New Regulation, sign it, and proceed under the new payment scheme.

The new payment scheme for Company "A" should be as follows. Company "A" would have been obliged to pay RUB 6,000,000 for the period from 1 April, 2020 until 1 October, 2020 if there had been no high alert regime. RUB 6,000,000 should be deferred and paid by Company "A" within the period from 1 January, 2021 until 1 January, 2023, i.e. in 24 monthly payments in the amount of RUB 250,000 each. These payments will be added to the ordinary monthly rent leaving a monthly total of RUB 1,250,000 during the new rental period.

Before signing an appropriate addendum, Company "A" is also entitled to require decrease of rent for the period from 28 March, 2020 until the date when restaurants in Moscow will be allowed to be reopened. This amount is negotiable, and you would be well advised to involve legal counsel.

Conner& Company, 8 April, 2020

Further assistance

If you require assistance negotiating with or notifying your landlord, and the preparation of necessary documents, please call Luke Conner on +7 968 756 31 68 or email at lconner@connerco.ru. www.connerco.ru

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