

Newsletter

New rules for leases on the suspension of a tenant's business

19 July 2022

Dear Ladies and Gentlemen,

Please be informed that new Federal Law No. 332-FZ ("Law") was passed on 14 July 2022 allowing the landlords to claim from the tenant the average monthly rent or to terminate the lease if the tenant's commercial activity is suspended.

Which agreements are covered by the Law

The law applies if under the lease agreement of the premises/building:

- the tenant is a shopping or restaurant company under the direct or indirect control of a person from an "unfriendly" state (according to the list approved by the Russian Government, which includes, among others, all EU countries); and
- the rent is calculated as a part of the income resulting from the use of the leased property or otherwise depending on the commercial activity of the tenant; and
- the tenant has suspended or terminated the use of leased property for his commercial activity; and
- the rent has decreased significantly (more than by 50 per cent compared to the same period in 2021).

Rights of the landlord in the event of suspension

- claim the rent¹ for the period of suspension in the amount of average monthly rent for 2021 (or for the period from January 2022 to 24 February 2022 if the use of the leased property commenced on 01 January 2022); and
- withdraw² from the lease agreement, if:

- the tenant has not renewed the use of the leased property after 10 days from receiving the landlord's claim; or
- the tenant refused to pay the rent in the amount of average monthly rent for 2021 (did not make the payment within 10 days after receiving the landlord's claim).

In this case, statutory or contractual liability (fines, penalties) does not apply to the landlord. The landlord's right of unilateral withdrawal cannot be exercised from the date of termination of foreign control over the tenant.

These provisions of the Law will remain in force until 31 December 2022.

Landlord's restrictions on withdrawal

In any case, the Law provides that the landlord is not entitled to amend or withdraw from the agreement concluded before 24 February 2022 on the following grounds:

- the control of a foreign unfriendly person in respect of the tenant is terminated after 24 February 2022, and the tenant has changed its business name/commercial designation/brand/service mark; or
- the control of a person from "unfriendly" state is terminated and control of a Russian legal entity/citizen (or foreign entity controlled by Russian entity/citizen) is established in respect of the tenant after 24 February 2022.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our Real Estate Practice, please let us know in reply to this email. We will be glad to provide you with our materials.

¹ The right applies to the period commencing from 14 July 2022

² The right applies to the period commencing from 12 September 2022

Note: Please be aware that all information provided in this letter was taken from open sources. Neither ALRUD Law Firm, nor the author of this letter bear any liability for consequences of any decisions made in reliance upon this information.

If you have any questions,
please do not hesitate
to contact ALRUD partner

Sincerely,
ALRUD Law Firm



Andrey Zharskiy

Partner, Advocate,
Solicitor of England & Wales

Real Estate, Energy, Natural
Resources and Infrastructure,
Corporate/M&A

T: +7 495 234 96 92 / ext. 1160

E: andrey.zharskiy@alrud.com