

The Supreme Arbitration Court explained provisions of the Russian Civil Code regarding lease



On 25/01/2012 the Plenum of the Supreme Arbitration Court issued a ruling «On introduction of amendments into the ruling of the Plenum of the Supreme Arbitration Court (SAC) of 17/11/2011 No. 73 «On certain aspects of application of the Civil Code rules on the lease contracts».

The ruling clarified some of the problematic issues of application of the legislation which almost every owner of the real property items and every tenant come across. In particular, the Supreme Arbitrazh Court of the RF explained how to prolong lease contracts effect to respect of the state-owned property, whether it is possible to enter into contracts before putting the building into operation and state registration of the property title, how it influences the rent, etc.

A part of the property may be leased

The SAC Plenum ended a discussion on whether it is possible to lease part of the property (item). In accordance with the ruling, article 607 of the Civil Code of the RF does not restrict the right of the parties to enter into such agreement which entitles to use part of the item. If the contract for lease of part of the land plot or any other property item is concluded for a period not less than a year then the encumbrance shall be created over the whole property.

The cadastral certificate is not needed for the registration of contract for lease of part of the premises

Pursuant to part 3 article 26 of the Federal law of 21/07/1997 No. 122-FZ "On the state registration of rights to the real property and transactions with it", if only part of the property is leased the lease contract must be submitted for registration together with cadastral certificate of the premises containing the information on the area of the leased property. In its letter of 09/07/2012 No. 14-3117/12 the Russian State Register explained that part of the premises as a subject of the deal shall be identified for the purposes of state registration by the authorized agencies (organizations) during cadastre entry (and during transition period - at the time of state technical registration). In accordance with the court practice if individuals agree on boundaries of the leased part of premises for the purposes of state registration, it does not imply its proper description (identification), as the information on the real property is entered into the Unified State Register of Rights to Real Estate and Transactions therewith only on the basis of documents issued by the competent authorities.

However, the Plenum of the SAC took an opposite stand. If the rights of the landlord to the premises (as well as to the land plot, building or construction) a part of which is rented out have already been registered with the Unified State Register of Rights to Real Estate and Transactions therewith, the parties may submit

to registration authorities a document signed by them which contains a graphic or textual specification of that part of the premises which will be used by the tenant. Consequently if the parties agreed upon the subject-matter of the agreement, it is illegal to refuse to register the lease contract due to failure to provide the relevant cadastral certificate.

The Plenum also found that if the leased item had not been properly identified in the lease contract, but the contract had been performed by the parties (for example, if part of the premises had been actually provided to the tenant and the tenant used it), the parties shall not be entitled to challenge the validity of such contract on the bases related to identification of the leased item.

The lease contract may be concluded with regard to the property which is not the landlord's property yet

The SAC affirmed the validity of the lease contract entered into with regard to property which was not legally owned by the landlord at the time of conclusion. If the landlord who assumed an obligation to transfer such property to a tenant failed to fulfil its obligation (including if the property was not created by him or acquired from the third party) he will be obliged to compensate damages incurred by the tenant. The difference between the rent payments set out by the lease contract and the market rent rate of that area may be collected from such landlord as damages.

The lease contract may be concluded before the building is officially put into operation

The SAC solved the long-term problem of the landlords leasing their property in the projects under construction. Till the present time the developers were forced to use complicated forms of preliminary agreements in order to disguise the actual relations. Now the parties to such contracts can avoid a lot of difficulties: the SAC explained that the contract shall not be deemed to be invalid if the permission to put the construction into operation has not been obtained by the moment of the lease contract conclusion. However, parties found responsible of operating the capital construction project without the relevant permission will be imposed the applicable administrative sanctions.

The Plenum also noted that the provision of the leased property to the tenant before putting it into operation for repair and finishing work does not violate the provisions of the RF Urban Planning Code.

However, any lease contract concluded with regard to buildings erected without proper legal authorization shall be deemed null and void.

The rent may be changed within a year, but a unilateral change may be considered as an abuse of right

Pursuant to c. 3 article 614 of the Civil Code of the RF except as otherwise provided by the lease contract the amount of rent may be increased as agreed by the parties but not more often than once a year. The SAC explained that as this provision is optional the parties to contract

may specify other minimal terms (more often than once a year) for revision of the rent, even if the lease contract itself does not provide for possibility to increase rent.

However, if the lease contract entitles the landlord to change the rent unilaterally, the rent may be changed more often than once a year.

The new approach of the Supreme Arbitration Court to lease disputes resolution may be and should be used by the market participants when structuring their contractual relations, as well as when resolving the disputes arisen from the earlier concluded contracts.

CONTACT INFORMATION:



IGOR
CHUMACHENKO

Partner, Head of
Real Estate, Land &
Construction Practice

Chumachenko@vegaslex.ru



NIKOLAY
ANDRIANOV

Senior Associate
Real Estate, Land &
Construction Practice

Andrianov@vegaslex.ru

Additional information about the products and services of VEGAS LEX can be found at www.vegaslex.ru.

Current issue contains an overview of the recent legislative changes.

The presented material should be treated as general information and not as professional advice.

© Law firm VEGAS LEX

VEGAS LEX is one of the largest law firms headquartered in Russia, with over 100 lawyers based in Moscow, Volgograd and Krasnodar. Since 1995 we have been providing services in every region of Russia, as well as in other countries of the world.

PRACTICE AREAS:

- Capital Markets, Securities, Listings
- Competition & Antitrust
- Compliance. Anti-bribery compliance.
- Corporate and M&A
- Dispute resolution and pretrial conflict settlement. Mediation
- Environment
- Energy
- Forensics
- Innovative Projects
- International Arbitration
- International Property
- International Taxation
- Investments. Project Finance
- PPP & Infrastructure
- Real Estate, Land & Construction
- Taxation
- Regulatory and GR issues. Law-Making

KEY INDUSTRIES:

- Automotive
- Aviation
- Chemical & Petrochemical Industries
- Energy & Natural Resources
- Finance & Securities Markets
- Food Products & Agriculture
- Housing & Utilities
- Information Technology
- Infrastructure & PPP
- Insurance
- Life sciences
- Metallurgy & Mining
- Nanotechnology
- Public sector
- Real Estate & Construction
- Telecommunications

RECOMMENDATIONS & RECOGNITION:

- European Legal Experts 2012
- Best Lawyers 2012
- International Financial Law Review 2012
 - ▶ Restructuring and insolvency
 - ▶ Corporate and M&A
 - ▶ Project finance
- Chambers Europe 2012
 - ▶ PPP
 - ▶ Competition/Antitrust
 - ▶ Dispute Resolution
 - ▶ Tax
- PLC which lawyer? 2012
 - ▶ Competition/Antitrust
 - ▶ Insurance
- The Legal 500 EMEA 2012
 - ▶ Dispute Resolution
 - ▶ Real Estate
 - ▶ PPP
 - ▶ Corporate and M&A
 - ▶ Tax
 - ▶ Energy & Natural Resources
- Russia's leading rankings "Pravo.ru-300", 2012
 - ▶ Competition/Antitrust
 - ▶ Dispute resolution
 - ▶ Tax
 - ▶ Real Estate
 - ▶ Energy & Natural Resources
 - ▶ Intellectual property
 - ▶ International arbitration

OUR CLIENTS:

Bank of Communications China, Belon, Brevan Howard Fund, British Airways, Fitch Design Consultants Ltd., Gazprom dobycha Astrakhan, Gazprom neft, Vnesheconombank, HOCHTIEF, Ilyushin Finance Co., Interregional Distribution Grid company of Volga, Lamnalco, MAN, Mosenergosbyt, MTD Products Inc., MTS, M.Video, PhosAgro AG, R-Quadrat, RESO Holding, RusHydro, Rockwool, ROSNANO, ROSNO, Russian Funds, SITRONICS, Sun InBev, Unilever, Vitkovice Power Engineering, WABCO, WPP

COOPERATION:

Ministry of Economic Development, Ministry of Transportation of the Russian Federation, Ministry of Regional Development, Federal Antimonopoly Service, Federal Tariff Service, Federal Financial Markets Service, Committees of the State Duma and the Federation Council, Vnesheconombank, various federal agencies, PPP and Investment Commission of the Russian Union of Industrialists and Entrepreneurs, Protection Committee of the National Securities Market Association, Agency of Strategic Investments and Initiatives, IMEDA, Agency for Strategic Initiatives (ASI), etc.

MOSCOW

Tel.: +7 (495) 933 0800
Fax: +7 (495) 933 0802
vegaslex@vegaslex.ru

VOLGOGRAD

Tel.: +7 (8442) 266 312/313/314/315
Fax: +7 (8442) 266 316
volgograd@vegaslex.ru

KRASNODAR

Tel.: +7 (861) 274 7408
Fax: +7 (861) 274 7409
krasnodar@vegaslex.ru