



A CHANGE IN MONETARY AND CREDIT POLICY MAY SERVE AS GROUNDS FOR CONTRACTUAL TERMS AND CONDITIONS TO BE REVIEWED

For the attention of lessees of real estate who have the contract price set in foreign currency

Pepeliaev Group advises that the State Commercial Court for the city of Moscow has issued a notable decision in recognising a change in the monetary and credit policy carried out by financial authorities as grounds for the terms and conditions of a lease agreement to be reviewed.

The State Commercial Court for the city of Moscow has upheld the claims of Public Joint-Stock Company 'Vimpel-Communications' against its lessor¹ that the terms and conditions of the lease contract for non-residential premises should be amended. The value of the contract is set in foreign currency. The court has recognised rouble's dramatic devaluation resulting from a change in monetary and credit policy as sufficient grounds for the terms and conditions of such contract to be reviewed.

The issued decision amends the contract so that a foreign currency 'corridor' is set for payments, and this is based on the Russian rouble rate against the US dollar as at the date of payment.

The court issued such decision despite the parties including a so-called 'currency clause' in the contract to directly exclude the possibility of the contract being terminated or amended owing to an economic downturn.

To confirm its position, the lessor referred to article 451 of the Russian Civil Code, which states that a material change in circumstances may serve as grounds for the contract between business entities to be amended or terminated. According to the lessor, a change in the Russian financial authorities' approach which manifested itself in their giving up in 2014 the policy of the 'managed floating rate' represented a material change in the circumstances on the basis of which the parties entered into the lease contract. Such change resulted in exchange rates changing dramatically.

Why the decision is notable

The courts have never recognised a change in the exchange rate or a general economic downturn as a material change in circumstances within the meaning of article 451 of the Russian Civil Code.

There is no unanimity in case law with respect to this issue: inflationary developments themselves are not classed as unforeseen events. Parties that enter into a contract should assess the economic situation, and, to this end, they should not rule out the possibility that the prices may rise when the transaction is being performed.

As at the date of this alert, the decision of the State Commercial Court for the city of Moscow was not issued in full. Thus, the court's position with respect to this case is still subject to detailed analysis, including the reasons why the court upheld the claims to amend the contract and rejected the claims to terminate the contract.

The defendant may appeal against such decision within a month. However, if it does not and the court decision takes effect, the position of the court stated in such decision may establish new case law and become grounds for courts to reconsider similar contracts

¹ Decision (the operative part of it) of the State Commercial Court for the city of Moscow dated 29 December 2015 in case No. A40-83845/15.

What to think about and what to do

We recommend that lessees under contracts with a price set in foreign currency pay attention to what happens with this decision in the future. This is because, in the long run, the parties to such contracts may have an opportunity to change contractual terms and conditions owing to exchange rates increasing sharply in the existing economic situation.

Help from your adviser

Pepeliaev Group's lawyers are available to provide qualified legal support in terms of researching and assessing various methods of terminating and amending contractual obligations. They will also assist with drafting all the documents necessary for doing so.

Our lawyers have extensive experience of representing clients in court, where they provide the whole range of high-quality legal assistance clients need.

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