



Will Businesses be Able to Get an Extension on Their Lease? SCHNEIDER GROUP Comments

On April 1, 2020, Federal Law No. 98-FZ of April 1, 2020 “on amendments to certain legislative acts of the Russian Federation on the prevention and liquidation of emergency situations” was published and came into force (hereinafter, “Law No. 98-FZ”).

We will review and comment on the provisions of the Law № 98-FZ concerning the possibility of tenants of real estate to receive a deferred payment or reduction of rent. In contrast to the Order of the Government of the Russian Federation from 19.03.2020 № 670-r “On measures to support small and medium-sized businesses,” which provides for the introduction of deferred payment of rent for tenants of state property, Law № 98-FZ does not limit the possibility of its application only to state or municipal property. Accordingly, the provisions of Act No. 98 may apply to property of any form of ownership, including private property.

The text of Article 19 of the Law No. 98-FZ concerning the measures proposed in relation to real estate lease agreements is given below with our comments:

Article 19

- 1. To establish that with regard to the real estate lease agreements concluded before the adoption in 2020 by the state authority of the subject of the Russian Federation in accordance with Article 11 of the Federal Law No. 68-FZ of December 21, 1994 “On Protection of Population and Territories from Natural and Man-caused Emergency Situations” (in the wording of this Federal Law) the decision on the introduction of a regime of increased readiness or emergency situation on the territory of the subject of the Russian Federation shall be made within 30 days from the date of the tenant’s application. Requirements to the conditions and terms of such delay shall be established by the Government of the Russian Federation.*

COMMENTARY: Lessees under lease agreements entered into prior to the adoption in 2020 by the state authority of increased readiness or emergency situation have the right to require the lessor to enter into

an additional agreement providing for a delay in payment of rent in 2020. At the same time, the lessor is obliged to enter into such additional agreement. For this purpose, the Russian government must establish the terms and conditions of such a postponement.

Until such additional agreement is concluded by the parties, the lessee is obliged to pay the rent on the old terms and conditions.

At the same time, the right to deferral **shall not result** in the inability to use the property or any other difficult circumstances of the lessee. As a general rule, any tenant has the right to require the landlord to enter into a deferral agreement. It is only necessary to wait for an explanation from the government about the terms and conditions of the postponement.

- 2. The amount of rent under real estate lease agreements concluded prior to the adoption in 2020 by the state authority of a subject of the Russian Federation in accordance with Article 11 of Federal Law No. 68-FZ of December 21, 1994 "On Protection of Population and Territories from Natural and Man-caused Emergency Situations" (in the wording of this Federal Law) of the decision to introduce a regime of increased readiness or emergency situation on the territory of a subject of the Russian Federation may be changed at any time by agreement between the parties.*

COMMENTARY: The meaning of including this part in Law No. 98-FZ is unclear. The parties are not limited in what they can change by their agreement to the terms and conditions of their lease agreements. This does not improve or worsen the situation of tenants in any way.

- 3. The lessee under real estate lease agreements has the right to demand a reduction of the rent for the period of 2020 due to the impossibility to use the property related to the adoption by the state authority of the subject of the Russian Federation in accordance with Article 11 of the Federal Law No. 68-FZ of 21 December 1994 "On the Protection of the Population and Territories from Natural and Man-caused Emergency Situations" (in the wording of this Federal Law) of the decision to introduce a regime of increased readiness or emergency situation on the territory of the Russian Federation.*

COMMENTARY: The lessee is **entitled to demand** that the lessor reduce the rent for 2020 due to the inability to use the real estate due to the introduction of the high readiness regime or emergency situation on the territory.

In contrast to the provisions of paragraph 1 of Article 19 of Law № 98-FZ on deferred payment of rent payments, when demanding a reduction of rent the lessee must **prove the inability to use the property**. In the absence of clarifications in part 3 of Act № 98-FZ on how exactly it is impossible to use the property, it is assumed that the inability to use the property in accordance with its intended purpose, specified in the lease agreement. As for lease agreements in which the parties have not specified the intended purpose of the property to be leased, the risks are likely to fall on the shoulders of the lessees, as in theory, the lease agreement does not prohibit the use of this immovable property for purposes not limited by the state authorities (for example, to accommodate a food store).

Another problem with the introduced norm is that it does not establish a mechanism or procedure for calculating the amount of rent reduction. However, Act No. 98-FZ does not say that it is possible not to pay the rent in full for the period of inability to use the property. Accordingly, the amount of rent reduction must be determined based on the results of negotiations between the parties.

When justifying the amount of the requested rent reduction, the lessee may potentially refer to the need to preserve a share of rental expenses in relation to the total amount of his or her income, which has significantly decreased. At the same time, this approach may work for retail business premises, but may not be suitable for office tenants. Another option may be to refer to an increase in the tenant's expenses due to the impossibility of using the office – for example, IT expenses associated with providing remote access to each employee, and so on.