

ClientInsight: Real Estate

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Lease of Real Estate Special Alert

Lease of Future Real Estate and Other Court Clarifications on Lease Matters. Recent Trends and Market Practice

On 25 January 2013 the Plenary Session of the Supreme Commercial Court of the Russian Federation (the "Court") approved Resolution No. 13 on the application of the Russian Civil Code provisions on lease agreements (the "Resolution") which was made available to the public in March 2013.

The Resolution provides long-awaited clarifications on a number of lease matters such as lease of a part of a real estate property, lease of future real estate (including lease before a commissioning permit is obtained), absence of state registration of a long-term lease agreement, rent adjustments and other important matters.

Lease of future real estate

The Resolution clarifies that a landlord shall be the registered owner of the property by the moment of physical transfer of the property to the tenant, which enables a future owner of the property to enter into a lease agreement before state registration of rights to such property. By this clarification, the Court has confirmed that such leases shall not be void.

Furthermore, the absence of a commissioning permit for a property no longer prevents its future owner from transferring the premises of the property to a tenant for fit-out works. By clarifying this, the Court has actually legalized the widespread market practice of performance of fit-out works by future tenants before the property is commissioned.

Poor description of the property

The Resolution aims to limit the malpractice of challenging lease agreements actually performed by the parties by reason of defects in the description of the property. Therefore, as clarified, even if the property is not described in detail but the parties perform the lease and there are no disputes between them in relation to any material terms of the lease, such agreement may not be challenged as void or non-concluded.



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Rent

The Resolution focuses on a number of rent matters widely discussed for years. It has now been clarified that the parties to a lease agreement are free to adjust the rent more often than once a year even if such option is not stated in the lease agreement. If, however, the lease agreement grants to the landlord a right to unilaterally adjust the rent, such right may be exercised only once a year.

Lease of part of a real estate property

The Court sets forth its position on the lease of part of a real estate property. When submitting documents for the state registration of a lease, the parties to the lease agreement may file a signed document containing a graphic and/or textual description of the relevant part of the property. The cadastral passport of the relevant property being encumbered with a lease does not need to be filed, provided such passport has been previously filed with the registration authority in relation to such property.

Such approach does not apply to state and municipal authorities' land leases.

On 7 May 2013, the Federal Cadastral Chamber of Rosreestr (the Federal Service for State Registration, Cadaster and Cartography) issued clarifications (Letter No. 08-0412-VB) focusing on leases of parts of real estate property. The document reflects the position of the government authorities in charge of the state registration of rights to real estate that a lease of a part of a real estate property may only be performed if the boundaries of such part are delimited by building structures (e.g. walls). These clarifications of the registration authorities seem to contradict the approach taken by the Court in the Resolution and to narrow the statutory regulation with respect to this matter. However, pending further development of court practice and formulation of the positions of government authorities, they should be noted by all the market players concerned.