

Client Update

Top 10 Legal Developments in the Russian Real Estate, Construction and Infrastructure Market in 2015

MOSCOW

Alyona Kucher
ankucher@debevoise.com

Roman Sadovsky
rsadovsky@debevoise.com

Vadim Kolomnikov
vgkolomnikov@debevoise.com

The international law firm Debevoise & Plimpton LLP presents a brief overview of what in our view are the ten most significant developments in Russian legal regulation (including legislative initiatives) and court practice in the real estate, construction and infrastructure sectors in 2015:¹

(A) LEGISLATION

1. **Substantial Changes to Land Code**
2. **Adoption of Uniform Federal Law on Public-Private Partnership and Amendments to the Law on Concession Agreements**
3. **Provision for Conclusion of Special Investment Contracts**
4. **Adoption of New Rules for the System of Registration of Immovable Property**
5. **Amendments to Provisions of the Civil Code on Unauthorized Construction**
6. **Other Changes to Legislation**

¹ Please note that this overview does not attempt to describe all major developments in the law and court practice that took place in 2015.

A similar overview was prepared by Debevoise & Plimpton LLP in 2014:
<http://www.debevoise.com/insights/publications/2014/12/top-10-legal-developments-in-the-russian>

(B) DRAFT BILLS

7. **Fundamental Change to Framework of Land Code**
8. **Amendments to the Section of the Civil Code on Rights in rem**
9. **Attempt to Legislate on the Nature and Relations Involving Parking Spaces**
10. **Introduction of Concept of Complex Real Estate in Civil Law**
11. **Tightening of Regulation of Ownership of Agricultural Land by Foreigners**

(C) COURT PRACTICE

12. **Supreme Court Clarifications on Real Estate Issues**
13. **Supreme Court Clarifications on Challenges To Cadastral Value**
14. **Issues Related to Building Permits**
15. **Lease Agreements and Exit of the Lessee from a Lease Agreement because of Difficult Economic Times**

(A) LEGISLATION**1. Substantial Changes to Land Code**

On March 1, 2015 the principal changes made in 2014 to the Land Code of the Russian Federation and certain legislative acts came into force; these have important consequences for how land plots are formed, how land is allocated for construction, and how land plots from public lands are leased.

In particular, the provisions of the Land Code relating to the procedure for allocation of public lands underwent significant modification. Generally speaking, the sale and lease of land plots is carried out by taking bids at auction. Prior to the changes, there were two separate procedures for the allocation of land plots from public lands for construction purposes: with or without prior agreement on the location of objects. An auction may be scheduled by the public owner or private entity. The Land Code establishes an extensive list of exceptions whereby the sale or lease of land is carried out without bids being taken (*e.g.*, for the implementation of large scale investment projects at federal or regional level,

conclusion of an agreement for an integrated community development, conclusion of a concession agreement, etc.).

For lessees of public lands, an important development is the provision, pursuant to which a lessee of public land does not have the pre-emptive right to renew a lease agreement without a tender being conducted (other than where the Land Code provides that a land plot may be allocated without a tender being conducted). The rental amount is a material term in concluding a lease agreement, and if this term is not specified, the lease agreement will be deemed not concluded. The Land Code sets forth the maximum lease term for which a land plot may be leased, based on the purpose for which the land is intended to be used (e.g., for construction and reconstruction of buildings and structures, land plots are provided under a three to ten-year lease; land plots are provided under a lease of up to 49 years to owners of buildings and structures or premises within such buildings or structures situated on the leased land plot).

The changes also deal with the hitherto problematic issue of the status of construction in progress where the lease agreement for public lands is terminated. Thus, unless the law provides otherwise, an item under construction may be removed from the ownership of the titleholder by court decision and sold by public tender. The proceeds from the sale of such item are paid to the former titleholder, minus the cost of holding the public tender.

Of the other amendments, the following are notable for their practical importance:

- the definition of land plot has been clarified;
- new rules have been established for how land plots are formed;
- the procedure for creating an easement has been changed;
- certain types of rights *in rem* to land plots, such as use in perpetuity and right of occupancy for life with the right to bequeath, have been abolished;
- the law now sets forth the possibility of swapping publicly-owned land plots for land plots held in private ownership, etc.

(See Federal Law No. 171-FZ on Amendments to the Land Code of the Russian Federation and Certain Legislative Acts of the Russian Federation, dated June 23, 2014.)

Another important set of amendments to the Land Code that came into force on April 1, 2015 governs the expropriation of land plots for state and municipal

needs. The Land Code now has a new Chapter (VII.1) dedicated to the procedure for the expropriation of land plots.

As a general rule, the expropriation of land plots may be carried out for the purposes of the construction and reconstruction of federal, regional or municipal facilities provided such facilities are included in approved land-use planning documents and approved project site design documentation.

Land plots may be expropriated if the authorized bodies decide to do so at their own discretion or in certain cases on the application of organizations specified in the law (such as natural monopolies and subsoil users).

The amendments to the Land Code address the issue of information missing from the EGRP on registered rights to immovable property subject to expropriation. In this case, the competent authorities themselves search for such persons by sending out requests for information and publishing an announcement on the planned expropriation in the media. If no documents are presented confirming rights to such real estate, a court decision may be sought declaring the property in question public property.

An important change to the Land Code relates to a provision on agreements on expropriation, whereby if a titleholder does not return a signed agreement on expropriation within 90 days from receiving the draft agreement, the authorized agency may file a claim with the court for the seizure of the land plot.

The amendments to the Land Code set forth in detail the procedure for determining the amount of compensation due in the event of the expropriation of a land plot. In determining the value of the expropriated property, real estate items situated on the land plot to be expropriated and not built in accordance with its permitted use or in breach of the terms of a lease agreement for public land are not taken into account; any transactions performed by the titleholder after he is notified of the decision on expropriation are not taken into account if such transactions give rise to an increase in the losses to be included in the compensation amount, etc.

If the parties whose property is being expropriated agree, the agreement on expropriation may, instead of compensation, provide for the allocation of other immovable property in exchange for the property being expropriated.

(See Federal Law No. 499-FZ on Amendments to the Land Code of the Russian Federation and Certain Legislative Acts of the Russian Federation, dated December 31, 2014.)

2. Adoption of Uniform Federal Law on Public-Private Partnership and Amendments to the Law on Concession Agreements

Prior to the adoption of a uniform Federal Law on Public-Private Partnership, PPP projects were implemented in the regions of the Russian Federation on the basis of regional PPP laws. In the absence of a uniform federal law, various risks arose in the implementation of such projects (e.g., the risk that provisions of the regional law and/or the PPP agreement would not comply with federal law), which complicated the implementation of individual projects.

The new Federal Law on PPP has addressed many problematic issues arising in practice in connection with the implementation of PPP projects, and also draws a distinction between these and concession agreements, which are governed by Federal Law No. 115-FZ on Concession Agreements, dated July 21, 2015.

Some of the more important innovations introduced by the Federal Law on PPP include the following:

- **Subject matter of PPP agreements:** an exhaustive list of potential objects was established (e.g., private roads or sections of roads; aircraft; airfields and airports; health facilities; educational, cultural, sporting, leisure and tourist facilities).
- **Parties to PPP agreements:** public partner and private partner. The private partner may only be a Russian legal entity. There are exceptions to the list of legal entities that cannot be parties to a PPP agreement: e.g., state and municipal unitary enterprises; commercial partnerships and companies controlled by the Russian Federation, a region of the Russian Federation or a municipal body, as well as subsidiaries controlled by such persons. A PPP agreement may also include a financing entity that may enter into a direct agreement with the public and private partner on joint cooperation under the project.
- **Mandatory features of PPP agreements:** (i) construction and/or reconstruction of the object of the agreement by the private partner; (ii) financing of all or part of the project by the private partner; (iii) operation and/or technical servicing of the object of the agreement by the private partner; (iv) right of ownership of the private partner to the object of the agreement subject to a charge being placed over such object in favor of the public partner to secure the performance of the obligations of the private partner under the PPP agreement.
- **Signing of a PPP agreement:** as a general rule, PPP agreements are signed at tenders held in the form of open or closed bids. The private partner may be

the PPP project proponent, in which case (in the absence of any other potential participants) the PPP agreement is signed without bidding being announced. The land plot (or forest plot, water body or subsoil site) is allocated to the private partner for implementation of the PPP project without a tender being held.

The Federal Law on PPP will enter into force on January 1, 2016.

(See Federal Law No. 224-FZ on Public-Private Partnership and Municipal Private Partnership in the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation, dated July 13, 2015.)

On May 1, 2015, important amendments to the Federal Law on Concession Agreements came into force. As in the case of the similar provision of the Federal Law on PPP, concession agreements may be concluded with the proponent of such agreement without holding a tender.

If the authorized agency issues its approval, it will publish an offer on the Internet to enter into a concession agreement, and if there are no expressions of interest from third parties, the agreement is signed with the proponent without bidding being announced.

(See Federal Law No. 265-FZ on Amendments to the Federal Law on Concession Agreements and Certain Legislative Acts of the Russian Federation, dated July 21, 2014.)

3. Provision for Conclusion of Special Investment Contracts

Following the adoption of the Federal Law No. 488-FZ on Industrial Policy in the Russian Federation dated December 31, 2014, investors may now enter into special investment contracts.

In accordance with the provisions of this law, investors that are party to a special investment contract undertake, within the time specified by the contract, to establish or modernize and/or develop industrial production on the territory of Russia, the continental shelf, or Russian exclusive economic zones, and the Russian Federation or a region of the Russian Federation undertakes during this period to provide incentives to industrial operations.

The investor may be any legal entity or sole entrepreneur. The other party to the contract is the Russian Federation, a region of the Russian Federation and/or a municipal body. Investors that sign special investment contracts receive government support, including subsidies from government budgets at various

levels, tax incentives, and exemption from the application to the investor for the duration of the contract of legislation and regulations that enter into force after the contract is concluded and which are adverse to the investor compared to the situation at the time the contract is signed (the so-called “grandfathering clause”).

The Russian government has approved rules for the conclusion of special investment contracts in pursuance of this law.

(See Federal Law No. 488-FZ on Industrial Policy in the Russian Federation dated December 31, 2014, Decree No. 708 of the Government of the Russian Federation on Special Investment Contracts for Certain Sectors of Industry, dated July 16, 2015.)

4. Adoption of New Rules for the System of Registration of Immovable Property

In July 2015, the Federal Law on State Registration of Immovable Property was adopted, which will combine the information currently included in the state cadastre of immovable property and the Unified State Register of Rights to Immovable Property and Transactions Therewith. Thus, a new Unified State Register of Immovable Property (“EGRN”) will be created, which will include: (i) a register of immovable property (property cadastre), (ii) a register of rights, restrictions on rights and encumbrances on immovable property, (iii) a register of information on boundaries of user-restricted zones, (iv) register records, (v) cadastral plans and (vi) document journals.

The Federal Law on State Registration of Immovable Property should aid in unifying the registration and cadastral records on immovable property, eliminating any discrepancies between the information in the cadastre and the register of rights to immovable property, and implementing the principles of openness and public transparency of the register. Some of the more important provisions introduced by the Federal Law on State Registration include the following:

- There will be one body keeping cadastral records on immovable property and registering rights to immovable property, which will be Rosreestr and its local offices;
- It will be possible to either file a cadastral record and register immovable property concurrently (*e.g.*, creation, formation or liquidation of an item of immovable property) or to file a cadastral record and register rights separately (*e.g.*, only a cadastral record will be filed if an item of immovable property is created on the basis of a permit for the commissioning of a

facility issued by an authorized body under the system of interagency cooperation with Rosreestr);

- The time required to complete the filing of a cadastral record and registration of rights to immovable property will be reduced;
- An extract from the EGRN will be the only document evidencing state registration of rights. Certificates of state registration of rights will no longer be issued;
- The Federal Law on State Registration of Immovable Property has not embraced the practice of the Higher *Arbitrazh* Court of the Russian Federation in respect of the registration of the lease of part of a property: for state registration of the lease of part of a property, a cadastral record will need to be filed in respect of the leased part;
- The list of grounds for the suspension of the cadastral record and state registration by the authorized agency has been considerably expanded; and
- A significant innovation is the interagency cooperation of the authorities when it comes to entering information in the EGRN. Thus, the authorities, including the courts and notaries, will be required to ensure that they forward the relevant information to the registration body for entry in the EGRN. The titleholder of the property will merely receive confirmatory notification that the information has been entered.

For the most part, the Federal Law on State Registration of Immovable Property will come into force from January 1, 2017.

(See Federal Law No. 218-FZ on State Registration of Immovable Property, dated July 13, 2015.)

5. Amendments to Provisions of the Civil Code on Unauthorized Construction

Significant amendments have been introduced to Article 222 of the Civil Code of the Russian Federation on unauthorized construction. On the whole, the amendments are aimed at simplifying the procedure for declaring construction as unauthorized and making it more difficult to establish ownership rights to unauthorized construction.

First of all, a more precise definition of unauthorized construction has been provided:

- the definition now states that a building, structure or other construction may be deemed unauthorized construction;
- unauthorized construction is construction carried out on a land plot not allocated in the proper manner or the permitted use of which does not allow for the construction of such a facility on the land plot;
- in deeming construction unauthorized due to breach of town planning and building provisions and rules, the standard of materiality has been eliminated, which may considerably simplify the process of deeming construction unauthorized.

Secondly, the legislators have laid out the conditions under which, if all of the conditions are met, a court may acknowledge ownership title to unauthorized construction, as follows:

- the person carrying out the construction must possess the right to carry out construction on the land plot in question;
- on the day of the application to the court, the construction must comply with all land development plan documentation, land use and development rules, or the mandatory construction requirements set forth in other documents;
- the unauthorized construction must not infringe the rights and legitimate interests of other persons and must pose no threat to an individual's life or health.

(See Federal Law No. 258-FZ on Amendments to Article 222 of the Civil Code of the Russian Federation and the Federal Law on the Entry Into Force of Part One of the Civil Code of the Russian Federation, dated July 13, 2015.)

6. Other Changes to Legislation

- The Air Code of the Russian Federation has been amended in relation to obtaining consent for capital construction in the vicinity of an airfield. Such consent must now be obtained from the operator, who may be the owner of the airfield, or may operate the airfield under a lease agreement or other legitimate grounds.

(See Federal Law No. 254-FZ on Amendments to the Air Code of the Russian Federation and Certain Legislative Acts of the Russian Federation, dated July 13, 2015.)

- A law has been adopted extending the period for completing a simplified procedure formalizing rights to private housing construction on a land plot intended for private housing construction or for private cultivation and dachas (smallholdings) (the so-called “dacha amnesty”) by three years to March 1, 2018.

(See Federal Law No. 20-FZ on Amendments to Certain Legislative Acts of the Russian Federation, dated February 28, 2015.)

- The Ministry of Housing and Construction (Minstroy) has established a new method for determining the time required to complete engineering surveys, the architectural and building design and the construction of buildings and structures, which is relevant to the lease period of public land made available following an auction. Previously, the time period for each type of work was expressly defined, whereas the amendments now provide that such time periods are determined depending on the area of the capital construction object.

(See Order of Minstroy No. 630/pr, dated September 1, 2015, on Amendments to Order No. 137/pr of the Ministry of Housing and Construction of the Russian Federation, dated February 27, 2015, on Establishment of the Period Required to Complete Engineering Surveys, the Architectural and Building Design and the Construction of Buildings and Structures.)

(B) DRAFT BILLS

7. Fundamental Change to Framework of Land Code

On December 9, 2014, the State Duma adopted in the first reading a bundle of amendments to the Land Code that would abolish the division of lands into categories and establish transition to territorial zoning from January 1, 2018. The rules for use of a territory within any particular territory would provide for one or more types of permitted use of land plots. This draft bill with approved amendments was tabled for the consideration of the State Duma during the autumn session of 2015.

(See Bill No. 465407-6 on Amendments to the Land Code of the Russian Federation and Certain Legislative Acts of the Russian Federation Pertaining to the Transitioning from Dividing Lands into Categories to Territorial Zoning.)

8. Amendments to the Section of the Civil Code on Rights *in rem*

On May 19, 2015, the State Duma Committee on Criminal, Civil, Arbitrazh and Procedural Law held a round table which actively discussed the bundle of

amendments to the Civil Code related to rights *in rem*. In particular, the issue of the introduction to Russian legislation of such a limited right *in rem* as building leasehold was raised once again.

Following the discussion, the participants decided that reform of the Civil Code as it relates to rights *in rem* was vital, but that the existing Bill should be revised in light of the relevant land and other natural resource legislation.

We recall that the Bill also provides for the introduction of certain regulations related to possession, including the concept, objects, and methods of acquiring possession and unified rules for protection of possession; in addition to building leasehold, it is proposed that limited rights *in rem* be expanded to include the right of perpetual possession of land, usufruct, the right to acquire another person's immovable property, the right of limited possession of a land plot, etc.

Due to the substantial changes made to land legislation in 2015, the amendments to the Civil Code relating to rights *in rem* were not discussed in the State Duma.

(See Bill No. 47538-6 on Amendments to Parts One, Two, Three and Four of the Civil Code of the Russian Federation, as well as to Certain Legislative Acts of the Russian Federation.)

9. Attempt to Legislate on the Nature and Relations Involving Parking Spaces

At present, the law does not contain a definition of a parking space or its legal nature, the particulars of its state cadastral record, or any rules governing the civil relations involving parking spaces.

There have been a number of approaches taken in court practice and in the practice of various local departments of Rosreestr to define the legal nature and to state registration of parking spaces:

- A parking space is defined as an immovable thing and is included in the state cadastre of immovable property as premises. The Ministry of Economic Development of the Russian Federation (“MED”) states that if a parking space meets the criteria of separation and detachment from other premises in a building or structure, it may be recorded as premises.²
- Parking spaces are subject to state registration as part of immovable property.

² See Letter No. Д23-2475 of the MED, dated June 9, 2011.

- A parking space is not deemed an immovable property item, however the tenancy-in-common ownership of a building or premises, with individual shares in the ownership pro rata to the size of the parking spaces situated in such buildings and premises, is what may be subject to state registration. Rules for use of the parking spaces may be set forth in an agreement among the owners of the building or premises in which the parking spaces are situated or by a court decision on the rules for use of such buildings or premises.
- A parking space is treated as the common property of the building and cannot undergo state registration in any form.

In 2014, Bill No. 558636-6 on Amendments to Certain Legislative Acts of the Russian Federation (conferring the status of immovable property on parking spaces), which proposed that parking spaces be deemed a part of premises intended for motor vehicles to be kept within a building or structure, was drafted and tabled to the State Duma. It was decided that this definition of a parking space as a part of premises was not quite appropriate and that this bill required further work. At the present time, the status of the Bill is “being prepared for first reading” and the revised version of the Bill has not yet been tabled.

In August 2015, the MED began drafting a new bill on the legal regulation of parking spaces: On Amendments to Certain Legislative Acts of the Russian Federation (relating to civil relations governing unsequestered parts of nonresidential premises situated in buildings and structures, including parking spaces and retail and office premises). At present, the text of this bill has not yet been published.

(See Draft Federal Law No. 558636-6 on Amendments to Certain Legislative Acts of the Russian Federation; Draft Federal Law on Amendments to Certain Legislative Acts of the Russian Federation (relating to civil relations governing unsequestered parts of nonresidential premises situated in buildings and structures (including parking spaces and retail and office premises))
<http://regulation.gov.ru/projects#npa=39290>.

10. Introduction of Concept of Complex Real Estate in Civil Law

At the end of 2014, the MED prepared a draft Federal Law on Amendments to Certain Legislative Acts of the Russian Federation Introducing the Concept of Complex Real Estate. The bill is set to amend Article 133.1 of the Civil Code of the Russian Federation (Unified Real Estate Complex) by establishing the concept of the inviolability of a land plot and the real estate situated on such land plot.

It is proposed that a unified real estate complex be defined as a set of buildings and structures unified by a single intended purpose and held in title by one person situated on one or more land plots. The land plot is included in the unified real estate complex if it is held in title by the person that owns all of the buildings and structures situated on such land plot.

The bill proposes the establishment of the classic *superficies solo cedit* principle, whereby any transactions leading to the alienation of a unified real estate complex apply to all of the property included therein.

The bill also addresses the state registration of rights to and the cadastral record pertaining to a unified real estate complex.

(See draft Federal Law on Amendments to Certain Legislative Acts of the Russian Federation (introducing the concept of “complex real estate”)
<http://regulation.gov.ru/projects/List/AdvancedSearch#npa=18940>.)

11. Tightening of Regulation of Ownership of Agricultural Land by Foreigners

The Ministry of Agriculture of the Russian Federation has drafted a bill on Amendments to the Federal Law on Transactions Involving Agricultural Land to improve the use by foreign nationals of land plots that are included in agricultural land. The bill is at the stage of public discussion on preparation of a draft, and as of the date of this client update the text has not been published.

The bill proposes clarifying the provisions of the law related to a prohibition on legal entities whose ultimate beneficial owners are foreign nationals or stateless persons from holding title to land plots included in agricultural land. The amendments could also trigger an obligation on the part of legal entities to disclose information on their beneficial owners when filing documents with Rosreestr for the state registration of transactions. The bill could also regulate the minimum and maximum lease term concluded by foreigners for land plots included in agricultural land (from 3 to 10 years), and establishes eligibility requirements for foreign nationals wishing to conclude lease agreements for land plots included in agricultural land, etc.

(See draft Federal Law on Amendments to the Federal Law on Transactions Involving Agricultural Land (to improve the use by foreign nationals of land plots that are included in agricultural land)
<http://regulation.gov.ru/projects/List/AdvancedSearch#npa=39497>.)

(C) COURT PRACTICE

12. Supreme Court Clarifications on Real Estate Issues

In its Plenary ruling on Section I of the Civil Code of the Russian Federation, the Supreme Court of the Russian Federation clarified a number of important issues related to the real estate regulatory framework.

The Supreme Court stated that as a general rule it is not mandatory to complete state registration of a property for such property to be deemed immovable property. Thus, (i) buildings and structures built prior to the introduction of the system of state registration of rights to immovable property, and (ii) legally constructed buildings and structures (including prior to the registration of title thereto by the person who has lawful possession of them) are immovable things.

The Supreme Court also resolved the issue of what test should be used to decide whether a facility that is being legally constructed can be deemed an immovable property (construction in progress): the minimum requirement is that work on the foundation or comparable work must have been completed. The tessellation of a land plot that does not meet the criteria of a structure forms a part of the land plot and is not deemed a separate immovable thing.

Another important issue resolved by the Supreme Court is that the law as it applies to owners of premises in residential buildings on matters of common property in such buildings now applies similar provisions of the law by analogy to owners of premises in nonresidential buildings (Art. 249, 289 and 290 of the Civil Code of the Russian Federation and Art. 44-48 of the Housing Code of the Russian Federation).

(See Ruling No. 25 of the Plenum of the Supreme Court of the Russian Federation on the Application by the Courts of Certain Provisions of Section I of the Civil Code of the Russian Federation, dated June 23, 2015.)

13. Supreme Court Clarifications on Challenges to Cadastral Value

The Supreme Court clarified a number of substantive issues related to challenges to the cadastral value of real estate. Some of the more important clarifications include the following:

- the former owner of the property and a lessee may also ask the court to review the cadastral value if they have a legitimate interest in the matter;
- the defendants in administrative cases on the determination of the cadastral value of real estate as the market value are the governmental or municipal

agency that approved the cadastral value and the governmental agency performing the function of state cadastral appraisal;

- should issues arise requiring special expertise, the Court (at its own discretion or upon the petition of a party to the case) may appoint an expert review aimed at establishing the market value of the property, which must also verify compliance of the report on the market value of the property with the requirements of the law on appraisal activities;
- if one of the titleholders to a property files a request for review of the cadastral value and the other titleholders do not consent to the challenge to the cadastral value of such property, this does not serve as good and sufficient reason to deny the request;
- from September 15, 2015, challenges to a determination of the cadastral value of real estate are undertaken in accordance with Chapter 25 of the Code of Administrative Court Procedure of the Russian Federation No. 21-FZ, dated March 8, 2015 (Administrative Proceedings Challenging Cadastral Value); and
- the cadastral value determined by the court is used to calculate the tax base for the tax period during which the request was filed and until the relevant act confirming the latest cadastral appraisal comes into force. In other cases (e.g., for determining the rental amount or buyout price) the cadastral value determined by the court is applied from January 1 of the calendar year during which the request was filed and until the latest cadastral value is recorded. For the purposes of recalculating the tax base, the court must hear a case on review of the cadastral value even if the new cadastral appraisal has already been recorded.

(See Ruling No. 28 of the Plenum of the Supreme Court of the Russian Federation on Certain Issues Arising in Court Practice When Hearing Cases on Challenges to the Determination of the Cadastral Value of Real Estate, dated June 30, 2015.)

14. Issues Related to Building Permits

In 2015, the Supreme Court heard a number of cases on various aspects of obtaining and amending building permits. Some of the Supreme Court's clarifications have an important bearing on the implementation of various types of construction projects:

- In one case, the Supreme Court of the Russian Federation stated that a developer may commence construction of a facility only after a building permit is obtained, and all procedures required by the law have been performed and documents prepared for the purposes of obtaining a permit

and undertaking the construction have been issued. The authorized agency may not issue a building permit after construction has commenced.

(See Ruling of the Supreme Court of the Russian Federation, dated June 16, 2015, in Case No. 309-KT15-209, A07-7616/2014.)

- The list of grounds for amending a building permit set forth in Article 51 of the Town Planning Code is not exhaustive. In certain cases, the specifications of a capital construction facility may depart from the project documentation (e.g., more floors may be added); however, the reasons for such amendments to the project documentation must be non-prejudicial. For example, the developer decides to increase the number of floors in the facility, and if there is no evidence that the part already completed complies with the project documentation, this will serve as a ground to deny the request to amend the existing building permit.

(See Ruling of the Presidium of the Supreme Court of the Russian Federation, dated November 11, 2015, in Case No. 301-ITK15, A65-4542/2014.)

15. Lease Agreements and Exit of the Lessee from a Lease Agreement Because of Difficult Economic Times

Many lease agreements in the commercial real estate market are denominated in foreign currency (in USD or Euro). Due to the devaluation of the Russian ruble, lessees have initiated negotiations for a reduction in rent, for fixing the exchange rate and, in some cases, for having a court terminate the agreement because of the rapid decline of the ruble. Given this problem, we set forth the views of the courts on whether the lease agreements may be terminated:

- A sharp change in the exchange rate and an increase in the rate of inflation cannot serve as a ground for the termination of a lease agreement by a lessee in connection with a material change of circumstances pursuant to Article 451 of the Civil Code of the Russian Federation.³

(See, e.g., Ruling of the Arbitrazh Court of the Moscow Region No. Ф05-15009/2015, dated November 6, 2015, in Case No. A40-67481/2015.⁴)

³ See also the article by Debevoise & Plimpton LLP on this topic in the *Vedomosti* newspaper, dated April 20, 2015, No. 69 (3815).

⁴ See also Judgment of the Moscow Arbitrazh Court, dated July 31, 2015, in Case No. A40-40300/15; Judgment of the Moscow Arbitrazh Court, dated August 31, 2015, in Case No. A40-92004/15; Judgment of the Moscow Arbitrazh Court, dated August 14, 2015, in Case No. A40-22624/2015; Judgment of the Moscow Arbitrazh Court, dated July 14, 2015, in Case No. A40-61955/15; Judgment of the Moscow Arbitrazh Court, dated April 16, 2015,

- If the lessee vacates the leased premises ahead of time (prior to the expiration of the lease agreement in the ordinary course of business), this does not serve as a ground for the termination of the lessee's obligation to pay the rent.

(See, e.g., Ruling of the Supreme Court No. 305-ЭC15-8055, dated July 30, 2015, in Case No. A41-37997/14; Ruling of the VAS No. VAS-5068/14, dated April 21, 2014, in Case No. A40-29126/2013, Ruling of the VAS No. VAS-9513/13, dated July 31, 2013, in Case No. A04-6503/2012.)

* * *

We would be happy to answer any questions you may have regarding the above matters.

in Case No. A40-206306/14-127-327; Judgment of the Moscow Arbitrazh Court, dated March 27, 2015, in Case No. A40-212036/14.

DEBEVOISE & PLIMPTON LLP SELECT REPRESENTATIONS IN REAL ESTATE AND CONSTRUCTION FOR 2015

In 2015, Debevoise & Plimpton LLP provided legal support for many real estate and construction projects. We present our select representations for 2015:

- A major company in the oil industry in its more than \$1 billion acquisition of the Evolution Tower office building in the Moscow International Business Center (Moscow-City) from City Palace LLC;
- A major company in the oil industry in preparation, conducting negotiations and finalizing the draft of the agreement for the provision of technical supervisor services for the project of the refurbishment of the Evolution Tower office building in the Moscow International Business Center (Moscow-City);
- A major company in the oil industry in preparation, conducting negotiations and finalizing the Design and Build contractor agreement for the project of the refurbishment of the Evolution Tower office building in the Moscow International Business Center (Moscow-City);
- A major steel-making company in preparation and finalizing of a draft lease agreement for a Class A office building in the center of Moscow;
- A major steel-making company on various matters in a project for the construction of a production facility, including resolution of disputes with the general contractor; and
- A major developer in litigation seeking to have a denial of the granting of a land plot and of the conclusion of a lease agreement for the construction of a residential building in Moscow ruled unlawful.

REAL ESTATE AND INFRASTRUCTURE PROJECTS IN RUSSIA AND THE CIS

Debevoise & Plimpton LLP has extensive experience in the provision of services for real estate, construction and infrastructure projects. Our real estate practice group advises both Russian and international companies on the following matters:

- Due diligence. Project structuring.
- Land use and development, including issues of the permitted use of land plots, land use and development rules, land plot development plans, lease and conveyancing of land plots, etc.

- Conduct of tenders, requests for proposals and review of proposals submitted by all project participants.
- Drafting and negotiating agreements with design firms, general contractors, subcontractors, direct contractors and vendors.
- Legal advice during the project design and construction phases.
- Development of project finance structure (including project financing).
- Drafting and negotiating agreements with banks and other creditors (including security packages).
- Drafting and negotiating lease, contractor and service agreements in the operation of real estate facilities.
- Legal advice on settlement of claims and arbitration under the project.
- Restructuring real estate, design and construction companies (including pre-IPO or as part of the sale of shares to members of the public or to a strategic investor).
- Legal representation of clients in the acquisition of companies and assets.
- Advice on various matters involving real estate and infrastructure projects (including regulatory matters).