

Client Update

Top Five Legal Developments in the Russian Real Estate Market in the First Half of 2017

The international law firm Debevoise & Plimpton LLP presents a brief overview of the most significant developments in Russian legal regulation (including legislative initiatives) and court practice in the real estate, construction and infrastructure sectors in the first half of 2017.¹

(A) LEGISLATION

1. Reform in Self-Regulation of Construction

On July 1, 2017, amendments to the Russian Town Planning Code came into force related to the reform in self-regulation, including in respect of self-regulating organizations (“SROs”). Some of the changes include the following:

- certificates of admission to work critical to the safety of the objects of capital construction will no longer be required, and membership in a respective SRO will be evidenced by an excerpt from the register of members of such self-regulating organization;
- works under an agreement made with the developer and technical supervisor may only be performed by individual entrepreneurs and legal entities that are members of an SRO in relevant areas (subject to certain exceptions, e.g., membership in an SRO is not required for contractors with liabilities under a construction agreement less than RUB 3 million);
- engineering surveys, architectural and building design and construction may be performed by an entity that has at least two employees with a certain level of education, relevant

¹ This overview does not attempt to describe all major developments in the law and court practice that took place in the first half of 2017.

Similar annual overviews were prepared by Debevoise & Plimpton LLP in 2013-2016:
<http://www.debevoise.com/insights/publications/2016/12/top-10-legal-developments>;
<http://www.debevoise.com/insights/publications/2015/12/top-10-law-developments-in-real-estate-practice>;
<http://www.debevoise.com/insights/publications/2014/12/top-10-legal-developments-in-the-russian>;
<http://www.debevoise.com/insights/publications/2014/03/top-10-legal-developments-in-russian-real-estate>

specialization and professional experience, and the respective national register of specialists should contain information on such employees;

- only legal entities that are SRO members can act as technical supervisors;
- SROs may have secondary liability for the liabilities of its members under construction agreements made on the basis of competitive procedures.

2. Prohibition on Offshore Companies Engaging in Privatization of State-Owned and Municipal Immovable Property

On July 1, 2017, the prohibition on acquisition of state-owned or municipal property by offshore companies came into force. Legal entities that are controlled by an offshore company or a group of persons that includes an offshore company also fall under the prohibition. A comprehensive overview of this law was prepared by Debevoise & Plimpton LLP in July 2017:

<http://www.debevoise.com/insights/publications/2017/07/acquisition-of-russian-assets>.

3. New Rules for Determination and Development of Aerodrome Environs

A law has been adopted changing the procedure for determination and use of aerodrome environs. In particular, the aerodrome environs are divided into seven subzones, each with its respective limitations and restrictions on the use of land plots and/or immovable properties located thereon and on economic or any other activities.

The developers carrying out the construction of aerodrome facilities will be required to prepare a draft resolution of the competent governmental authority on determination of aerodrome environs and obtain approval for such draft resolution from the relevant federal and local governmental agencies. The law also provides for the obligation of such developers to compensate for any damages caused to individuals, legal entities or public authorities due to any limitations or restrictions in the aerodrome environs on the use of immovable property or conduct of activities.

(B) DRAFT LAWS

4. Reinstatement of Notarization of Real Estate Transactions

There is a draft law that requires notarization of any real estate transactions subject to state registration unless otherwise provided by the law.

(C) COURT PRACTICE

5. Attempt to Terminate a Lease Due to Economic Sanctions

In an action brought by VTB Bank for the termination of a nonresidential premises lease due to foreign trade sanctions imposed on VTB Bank, the Supreme Court of the Russian Federation

upheld a common approach of court practice stating that the imposition of sanctions is not a material change of circumstances pursuant to Article 451 of the Civil Code of the Russian Federation that can serve as a ground for the termination of a lease agreement by a court order. The court held that as the lessee bank, being a professional participant in the financial services market, should have anticipated a potential unfavorable economic situation.

6. Recovery of Payment for the Use of Property under a Lease

In a case concerning the recovery of payment for the use of property from PJSC Airport Koltsovo as unjust enrichment, the Supreme Court of the Russian Federation expressed the following important positions for the real estate lease market:

- the lack of state registration of a supplement to the lease does not in itself undermine the obligations between the parties related to the use of property; the state registration of the lease is intended to provide interested persons an opportunity to know about a long-term lease, while the respective rights of the parties to the transaction arise upon its signing or actual performance;
- the lessee must pay for the use of property until such property is returned to the lessor, regardless of whether the lease is terminated.

7. Compensation of All Investor Expenses Incurred in an Infrastructure Project

In June 2017, the *Arbitrazh* Court of Moscow considered a concession agreement dispute which has an important impact on implementation of infrastructure projects and on public-private partnership market in respect of potential compensation of all investor expenses related to construction.

The court found that procurement under a concession agreement where the concession provider covers costs of construction, redevelopment or operation in full must comply with the law on the contract system for the procurement of goods, work and services to meet state and municipal needs. In addition, the court held that this rule is also applicable to relations with the investor structured as a PPP (e.g., concession agreement, investment agreement, public-private partnership agreement).

This issue of concessions and state procurement triggered many discussions among market participants, and the Russian Federal Antimonopoly Service prepared a draft law permitting the state to compensate the expenses incurred by the concession holder in full under the existing concession agreements. As for new concessions, the bill provides that such full compensation of investor expenses may occur only upon completion of construction and commissioning of an object, but in any event not earlier than the fifth anniversary after the date of execution of the concession agreement.

On August 28, 2017, the Ninth *Arbitrazh* Appeal Court set aside the judgment of the *Arbitrazh* Court of Moscow, but on the date of this overview the full text of the judgment has not been published.

8. Ban on Reclamation of Residential Premises by the State from Good-Faith Purchasers

In June 2017, the Constitutional Court of the Russian Federation considered a case regarding reclamation by the state of an apartment as “ownerless property” (*bona vacantia*) from a good-faith purchaser. The court stated that the authorities had failed to timely register such property; therefore, reclamation of such property from an individual who relied on the register in good faith and registered ownership title to such property is not acceptable unless it is discovered that the individual knew or should have known that the seller did not have the right to dispose of the residential premises.

The Government of the Russian Federation has introduced a draft law to the Russian State Duma proposing a ban on the reclamation by the Russian Federation or a constituent entity of the Russian Federation or a municipality of residential premises acquired by a good-faith purchaser, including where such property was received free of charge or such entities lost their title to it beyond their will.

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Please do not hesitate to contact us with any questions.

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