

Top 5 Legal Developments in Russian Real Estate in the First Six Months of 2021

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The international law firm Debevoise & Plimpton LLP presents a brief overview of the most remarkable and significant developments in Russian legal regulation (including legislative initiatives) and court practice in the real estate, construction and infrastructure sectors in the first six months of 2021.

LEGAL REGULATION

1. REFORM OF REGIMES OF STATE SUPPORT OF INVESTMENT PROJECTS

The legislation on the regimes of state support of investments was amended to clarify a number of provisions. It is expected that these amendments will be able to eliminate various uncertainties and gaps in regulation posing a hindrance to the implementation of investment projects with the state support and help the investor to choose a respective preferential regime.

Agreements for the Promotion and Protection of Investments (“APPIs”)

On 2 July 2021, a federal law was adopted aimed at reforming the APPI regime.¹

As minimum investment thresholds depend on the sphere of the project, the law sets forth criteria for determining whether an investment project relates to culture, healthcare, education, sports, environment, agriculture, etc. If a project can be attributed to several spheres, the larger minimum investment threshold will apply for the purposes of execution of the APPI.

¹ Federal Law No. 344-FZ on Amendments to the Federal Law on Promotion and Protection of Investments in the Russian Federation and Article 15 of the Federal Law on the Contract System for the Procurement of Goods, Work and Services to Meet State and Municipal Needs dated 2 July 2021.

The law includes (i) a range of criteria for the reimbursement of investor expenses upon the execution of the APPI; (ii) a list of purposes for which such funds may be applied; (iii) the procedure for the application of the stabilisation clauses and other clarifications.

Priority Social and Economic Development Areas (“PSEDAs”)

Clarifications have been issued in respect of the conditions that must be met and the documents that need to be filed by a PSEDA resident to purchase land plots under buildings, structures and/or facilities:²

- PSEDA resident is the owner of buildings, structures and/or facilities located on the land plots and their creation was envisaged by the implementation agreement; and
- PSEDA resident has fulfilled its obligations to make required investments, including capital investments, in due time and its obligations to create jobs if it was set forth in the implementation agreement.

Special Investment Contract (“SPICs”)

On 23 December 2020, a sample form of the SPIC was approved.³ The document contains the following provisions, among other things:

- scope of the SPIC;
- obligations of the investor, Russian Federation, constituent entity of the Russian Federation, municipality;
- monitoring of the investor obligations under the SPIC;
- modification and termination of the SPIC, liability of the parties; and
- supplemental terms and conditions for the execution of the SPIC.

2. STATE REGISTRATION OF IMMOVABLE PROPERTY

On 30 April 2021, amendments were adopted to the Federal Law on State Registration of Immovable Property.⁴ The new amendments are aimed at further facilitation of certain

2 Decree of the Russian Government No. 709 on Amendments to the Rules on the Disposition of State-Owned or Municipally Owned Land Plots, Buildings, Structures and Facilities Located in the Priority Social and Economic Development Area and Infrastructure Facilities of the Priority Social and Economic Development Area by the Management Company Performing Managing Functions in the Priority Social and Economic Development Area Transferred to Its Leasehold or Ownership dated 4 May 2021.

3 Order No. 4605 of the Ministry of Industry and Trade of Russia on the Approval of the Sample Form of the Special Investment Contract.

registration procedures relating to immovable property and filling up various gaps. The key changes include the following:

New Grounds for Filing a Cadastral Record and State Registration of Title

The grounds for filing a cadastral record and state registration of title include, among other things:

- awards of arbitral tribunals for which writs of execution were issued by a court of general jurisdiction or an *arbitrazh* (commercial) court;
- technical plans;
- inspection reports (for filing a cadastral record or state registration of the cessation of title or for filing a cadastral record in connection with the liquidation of a building, structure, property under construction, premises or parking spaces); and
- approved layout plan of the area prepared upon a complex cadastral survey.

In addition, a clarified list of circumstances for filing a cadastral record separately from the state registration of title now includes the following:

- changes to the permitted use of land plots;
- formation of a land plot out of the lands the state title to which is not delimited provided that it does not give rise to any rights or encumbrances subject to registration; and
- creation or redevelopment of a real property pursuant to an operation certificate provided that it does not give rise to any grounds for the registration of title to new immovable property.

Registration of Sale and Purchase Transactions upon Liquidation of Seller

Where a seller that is a legal entity is wound up or de-registered from the Unified State Register of Legal Entities (“USRLE”) by the time of the state registration of the transfer of title to a property pursuant to a sale and purchase transaction, the state registration will require:

- an application by the buyer;

⁴ Federal Law No. 120-FZ on Amendments to the Federal Law on State Registration of Immovable Property and Certain Legislative Acts of the Russian Federation dated 30 April 2021.

- an extract from the USRLE confirming the liquidation or de-registration of the seller from the register as an inoperative legal entity; and
- documents confirming the performance of the sale and purchase agreement by the parties (including the payment of the purchase price under the agreement in full).

Registration of Title Held by Co-Owners

The application for filing a cadastral record and/or state registration of title to property arising from the date of state registration which is acquired in shared ownership must be filed by all such tenants in common acquiring such property in shared ownership.

3. LOWERING ADMINISTRATIVE BARRIERS IN CONSTRUCTION

On 28 May 2021, the Russian Government decided to reduce the scope of mandatory requirements applicable in construction.⁵ From 1 September 2021, the number of mandatory requirements in construction will reduce by more than half and the new list of requirements will be effective for six years (until 1 September 2027). In particular, the following requirements were condemned:

- requirements restricting the use of new materials and design solutions;
- norms referring to optional regulations serving as guidelines; and
- norms that proved difficult to ensure compliance with.

It is expected that the new version of the standards will help to remove restrictions on innovations in the industry and reduce the period and cost of construction while maintaining a high safety level.

⁵ Decree of the Russian Government No. 709 dated 28 May 2021 on the Approval of the List of National Standards and Sets of Rules (Parts of Such Standards or Sets of Rules) Whose Mandatory Application Ensures Compliance with the Requirements of the Federal Law on the Technical Regulations for the Safety of Buildings and Structures and Repeal of Decree of the Russian Government No. 985 dated 4 July 2020.

COURT PRACTICE

4. THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION TOOK THE SIDE OF BONA FIDE PURCHASERS OF REAL ESTATE

The Constitutional Court of the Russian Federation considered⁶ a request to review the constitutionality of a Civil Code rule pursuant to which an owner can claim a thing from a bona fide purchaser if such owner lost their title to it against their will (Article 302(1) of the Russian Civil Code).

The appellant purchased an apartment from a seller who earlier bought the same apartment from his relative. The spouse of the first seller claimed a half-share in the ownership title to the acquired apartment since she was married to the first seller at the time of sale and her spouse had failed to obtain her consent for the alienation of the apartment.

The Constitutional Court upheld the constitutionality of the challenged rule, stating, however, that the case in which the former wife of the first seller had claimed a share in the ownership title to the apartment from the appellant was subject to review:

- the former spouse (co-owner of the joint marital property) who is not specified in the EGRN, as a party interested in retaining their title to the joint marital property, should take measures on their own to keep it under control, including where it is in their interests taking actions for the purposes of timely division of such property;
- such spouse may take actions aimed at having themselves registered in the EGRN as a co-owner having title to the assets constituting joint marital property.

Where no such actions were taken, it is not appropriate to leave the adverse consequences of the transaction consummated without spousal consent on the bona fide participant in civil law relations who relied on the information contained in the EGRN and became the owner of the property;

- the spouse cannot be treated as having lost their title to the property against their will if the former spouse has no interest in what will happen to their assets and/or relies on the other former spouse for the exercise of powers of the owner in respect of their joint marital property.

⁶ Ruling No. 35-P of the Constitutional Court of the Russian Federation dated 13 July 2021 in Case for the Review of the Constitutionality of Article 302(1) of the Civil Code of the Russian Federation in Connection with the Complaint of E.V. Mokeev.

This position of the Constitutional Court may become extremely significant for the real estate market as there is no source of information on marriages in Russia open to the general public;⁷ therefore, the purchaser often has to rely on the information in respect of the seller's marital status provided by the seller (given that such statements of the seller in respect of their marital status not being a contractual representation are not legally binding or protect the purchaser).

In this situation, failure to obtain consent of the seller's spouse may pose a real threat to the sale and purchase transaction and the ownership title of the bona fide purchaser. This risk gains even more significance in circumstances similar to those described in the Ruling of the Constitutional Court where the property was acquired not directly from a person who had failed to obtain spousal consent, but from a third party down the chain of transactions; in this case, the determination of the marital status of all sellers along the chain of transactions and whether they had obtained consent of their spouses is an unreasonable and almost unrealistic burden placed on the ultimate purchaser.

The subject Ruling of the Constitutional Court may potentially protect bona fide purchasers from such risks. However, emergence of such cases also demonstrates the importance of legal due diligence of the purchased assets, development of appropriate transaction documents, including as regards respective representations, pre-closing covenants (including the provision of the spousal consent), liability for untrue representations and breach of other obligations under the agreement, consequences of the deal's unwinding, etc.

LEGISLATIVE INITIATIVES

5. REGULATION OF STATUS OF APARTMENT HOTEL UNITS

Presently, the Russian State Duma considers a draft law⁸ in the first reading which proposes the concept of a "multifunctional building" as a building containing both residential and non-residential premises located in the public business zone outside the boundaries of residential development.

Such multifunctional buildings will be subject to separate criteria of location in the territorial zones and requirements for the layout of residential and non-residential premises in the building. The key condition for making such combination possible will be the requirement that access to residential and non-residential premises may not be from the same hallway. In

⁷ Russia maintains the Unified State Register of Acts of Civil Status (<https://zags.nalog.ru/services/ags/>), however, the purchaser can obtain information from such register upon the provision of the details of the seller's certificate of marriage or divorce only.

⁸ The record form and the text of draft law No. 229418-7 on Amendments to the Town Planning Code of the Russian Federation and Certain Legislative Acts of the Russian Federation in Respect of the Regulation of Certain Legal Relations Arising in Connection with the Construction of Multifunctional Buildings is available here.

addition, the access of owners of non-residential premises to the residential premises must be restricted.

It is additionally proposed that the Housing Code of the Russian Federation apply to multifunctional buildings (the rules regulating relations arising in connection with apartment buildings) and individuals acquiring apartment hotel units at the construction stage have the benefit of the laws on shared participation in construction⁹ to ensure protection of their interests.

It is also proposed to determine the procedure of providing services to the premises in a multifunctional building, charging for utilities, operations of management companies and other provisions.

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

MOSCOW



Alyona N. Kucher
ankucher@debevoise.com



Vadim Kolomnikov
vgkolomnikov@debevoise.com

⁹ Federal Law No. 214-FZ on Participation in Shared Construction of Apartment Buildings and Other Real Estate Properties and Amendment of Certain Legislative Acts of the Russian Federation dated 30 December 2004.