



Acquisition of State and Municipal Land Plots by Private Investors

From March 1, 2015 amendments to the Land Code of the Russian Federation (“Amendments”) will take effect. The Amendments establish a new legal basis for selling and leasing state and municipal land plots (“Land Plots”) to private investors.

Acquisition of Rights to Land Plots for Construction Purposes

The Amendments confirm the current practice regarding the acquisition of Land Plots for construction purposes:

- Land Plots with the permitted use “construction of buildings and structure” may only be leased.
- After the completion of construction works the investor is entitled to acquire legal ownership of the completed building as well as extended lease rights or legal ownership of the Land Plot under the building.

The term for the lease of the Land Plot is from three to ten years. The term may be twice as long if such a longer term is necessary for the completion of construction.

What is new is that the only way to lease a Land Plot for construction will be in an auction. However, after completion of the construction, legal ownership of the building and the Land Plot may be acquired without an auction.

The Amendments provide a number of exceptions where rights may be acquired without an auction, including acquisition of:

- Legal ownership or leases of Land Plots within a certain territory by persons which are parties to agreements with state or municipal bodies on complex development of such territory; and
- Leases of Land Plots for large-scale or socially im-

portant projects based on a resolution by the President, the Government or the governor of a subject of the Russian Federation.

The Amendments provide for general rules (which currently apply only to residential areas) on the acquisition by an auction of lease rights to Land Plots within a certain area for the complex development of technical or business parks.

Russian and foreign citizens are still permitted to acquire legal ownership to Land Plots for individual housing construction or peasant (farmer) households. According to the Amendments, such acquisition requires an auction if there is more than one applicant.

Auction Procedure Effective as of June 1, 2015

According to the Amendments, an auction may be held only after the following conditions are fulfilled:

- The borders of the Land Plot are defined (which may be done in the cadastral plan or in a demarcation project delineating the borders for Land Plots in certain areas);
- The Land Plot is registered at the cadastre and the Russian Real Estate Register EGRP;
- The technical conditions (by which the utility providers confirm the technical possibility of the connection of the building with the network of engineering communications) are provided.

Auctions will be held in electronic form, except for auctions for the sale of rights to citizens for the purposes of individual housing construction and farming.

The initial price of a Land Plot in an auction is equal to its cadastral value and the initial rent for a lease is 1.5% of the cadastral value, if the cadastral value was determined not earlier than five years prior to the auction. Otherwise, the market value will be used.

Land Plots with Incomplete Buildings

There are new rules for leases of Land Plots for construction purposes which expired prior to the completion of the building:

If the lease was entered into prior to March 1, 2015 and the lease term expires thereafter, the investor has the right to enter into a new lease agreement without auction, provided that it has registered its ownership right to the incomplete building.

For new leases taking effect after March 1, 2015, if upon the expiry of the lease term the building is incomplete:

- The state or municipality may, within court procedures, arrange for the public sale of the incomplete building. In this event, the new owner of the incomplete building has the right to enter into a lease agreement on the Land Plot under the incomplete building without auction.
- If the state or municipality does not start court procedures for the public sale within six months of the expiry of the lease term or the court denies the claim for public sale, the investor has the right to enter into a new lease agreement without auction.

Bona-Fide Acquisition of Real Estate

As in many Western jurisdictions, Russian law protects an investor who acquires in good faith real estate from an unauthorized seller against the claims of the real owner. On October 1, 2014, the Presidium of the Highest Court of the Russian Federation approved an overview on principles on this issue which provide for more legal certainty regarding such good faith acquisition.

The subject of the overview were lawsuits on the return of residential premises to state and municipal bodies. However, it is likely that the same principles will be applied to the acquisition of other types of real estate from private and public owners.

Some of the more important principles are:

The invalidity of the purchase agreement does not hinder a bona-fide acquisition.

The investor acts in good faith and may acquire ownership, if:

- It has reviewed all documents which are necessary for the establishment of rights to the relevant real estate, clarified all aspects for the seller's acquisition of ownership and inspected the real estate;
- It reviewed all documents for the acquisition of ownership, it financed the purchase with a loan secured by a mortgage and with own means, and the rights of the seller were reviewed not only by the investor, but also by a broker and by the financing bank.

On the other hand, the investor does not act in good faith if there are circumstances which must create doubt about the ownership of the seller, in particular, if:

- Upon entering into the purchase agreement the ownership of the seller is not registered in the EGRP or there is a remark registered in the EGRP about a legal dispute regarding the ownership;
- Within the last one and half years the real estate was three times subject to donation or sale at a price substantially below market price.

A good faith acquisition is ruled out in any event (even if the investor acted in good faith), if:

- The real owner was not a party to the agreement on the purchase of real estate and the registration of the investor as the owner was achieved by the supply of faked documents;
- At the signing of the purchase agreement the real owner was not represented by a properly authorized person.

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