

Key Amendments to Construction Legislation

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A number of amendments to Russia's Town-Planning Code and other laws concerning construction came into force recently. These amendments affect the interests of property owners, developers, technical employers, contractors and co-financing investors under any agreement relating to co-financed construction (Federal Law №214-FZ of 30.12.2004).

The principal amendments are as follows:

- In 2012, the non-state expert assessment of design documentation and/or survey results was introduced, as well as a procedure for appealing expert opinions regarding design documentation and/or survey results;
- At the beginning of 2013, amendments entered into force extending the validity of specifications for connecting capital structures to utilities systems;
- As of July 1, 2013, amendments will enter into force in respect of liability for injury caused as a result of destruction of and/or damage to immovable property; and
- On Jan. 1, 2014, amendments will take effect in respect of additional collateral for the liability of developers under any agreement that relates to co-financed construction.

Non-state expert assessment and procedure for appealing expert opinions of design documentation and/or survey results

The Ministry of Regions of Russia Decree No. 126 on Approval of the Procedure for Appealing Expert Opinions on Design Documentation and/or Survey Results of 23.03.2012 ("Ministry of Regions Decree № 126") and the Russian Government Resolution No. 272 on Approval of the Regulations on the Organization and Performance of Non-state Expert Assessment of Design Document and/or Survey Resolutions of 31.01.2012 ("RF Government Resolution № 272") approved the procedure for settling disputes that arise if a developer or technical

employer does not agree with an expert opinion relating to design documentation and/or survey results and also introduced non-state expert assessments.

In particular, Ministry of Regions Decree № 126 stipulates that a developer or technical employer can appeal an expert opinion within three years of the approval of the relevant document. The decree set out the procedure to be used for any such appeal, as well as the set of documents that should be provided to the relevant state authorities for any such appeal. Such an appeal is an administrative procedure.

Ministry of Regions Decree № 126 and RF Government Resolution № 272 are therefore meant to protect the interests of developers and technical employers by increasing expert accountability and should have a positive effect on the immovable property market as a whole.

Specifications validity extended

In accordance with Federal Law № 318-FZ on Amendments to the Russian Town-Planning Code and Certain Legal Acts of the Russian Federation of 30.12.2012, amendments entered into force at the beginning of 2013 that extended the validity of specifications for connecting capital structures to utilities systems. In particular, in respect of housing developments, the specifications must be valid for at least five years, while in other cases for at least three years. Specifications were previously only issued for a two-year period.

This amendment is very likely to speed up the process of preparing and obtaining approvals for construction, given that developers will be less likely to spend additional time and effort in extending the validity of specifications.

Liability for injury caused as a result of destruction of and/or damage to immovable property

In accordance with the Federal Law № 337-FZ on Amendments to the RF Town-Planning Code and Certain Legal Acts of the Russian Federation of 28.11.2011, amendments will take effect in the summer of 2013 that will mean two different procedures applying in respect of liability for injury caused by the destruction of and/or damage to immovable property. In particular, they are dependent upon:

- (1) whether the building is an apartment block or other real estate;
- 2) at which stage of construction the injury was caused; and/or
- (3) whether any force majeure was involved,

Owners, developers, technical employers or contractors may be liable for injury resulting from destruction of and/or damage to immovable property. In certain circumstances, federal or regional authorities may also be liable.

These amendments are intended to increase the liability of owners, developers, technical employers and contractors in relation to consumers (both individuals and legal entities).

Additional requirements in respect of collateral for the liability of developers under any agreement which relates to co-financed construction (Federal Law №214-FZ of 30.12.2004).

In accordance with Federal Law № 294-FZ on Amendments to Certain Legal Acts of the Russian Federation of 30.12.2012, additional requirements for securing the obligations of developers under agreements which relate to co-financed construction (Federal Law №214-FZ of 30.12.2004) will come into force at the beginning of 2014. In particular, in addition to the existing requirement for a pledge over the relevant land plot or land plot lease rights, the new amendments will require a bank suretyship or insurance in relation to the developer's civil liability. The above documents are required, in particular, when filing any agreement on co-financed construction for state registration. Any agreement which relates to co-financed construction may not be registered without a bank suretyship or civil liability insurance being included in the set of documents for state registration.

Notably, on the one hand, this amendment increases the accountability of developers in relation to investors under any agreement that relates to co-financed construction, while on the other hand, it will be reflected in higher prices, since developers will most likely pay the cost of obtaining the bank suretyship/civil liability insurance by raising prices, rather than out of their profits.

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