

Legal Highlights: All Change for Land Law 2015!

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Business risks and opportunities

Now that the economy is in trouble, developers leasing land from the state have to navigate the tough times and yet face even more challenges, such as the recent legislative developments that came in on 1 March 2015, together with Federal Law No. 171-FZ of 23 June 2014 "On Amending the Russian Land Code and Certain Russian Legislative Acts." This law includes a number of new provisions on public land acquisition, with the state tightening the screws by exercising increased control over public land plot lessees.

Permitted use change

It is now specifically prohibited (Art. 39.8, section 17, of the Russian Land Code) to amend a tender-based lease for a publicly owned land plot in order to alter the permitted land use. In this, the law upholds what the Praesidium of the Russian Supreme Commercial Court set up earlier (in its Judgement No. 1756/13 of 25 June 2013). Previously, a developer that leased a land plot from municipal authorities for building a warehouse, for instance, could reach an agreement with the local authorities and alter the type of permitted use to construction of a trade facility, but this is no longer possible.

Overdue construction

When a construction schedule is not observed, this might constitute a major breach of the lease terms and entail early lease termination.



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Outstanding rentals

The cadastral value, which keeps on creeping higher and higher, has dragged up both land tax and rentals to a material rise, too. At the end of 2014, lessors owed about RUB 10 bn for land to Moscow Region municipal authorities. Note that outstanding rentals also constitute grounds for early termination of a lease.

Administrative penalties

Other news that might be unpleasant for developers is that, at the third and final reading on 27 February, the State Duma approved government amendments to the Russian Code of Administrative Offences. These raise the penalties imposed for land offences: the new law introduces administrative penalties as a percentage of the land plot cadastral value for the most common land offences, including failure to comply with the intended land use.

If a land plot is not used for its intended purpose or rural land and land for housing and other development is not used during the set term, a penalty ranging from 1.5% to 10% of the cadastral value may be imposed on legal entities, instead of a RUB 40,000–50,000 fine.

One-time lease extension without tender

Indeed, all these changes imply new potential risks threatening loss of land rights. Yet one of just a few remaining loopholes for a developer is that, as the owner of construction in progress located on a public land plot, it may lease the given land plot, once only, for a term of three years, in order to complete construction, without any tendering. Even so, this may be done only if the title to the construction in progress was registered by 1 March 2015 or the land plot had been leased out by the same date. Moreover, such right may be exercised if the land

plot has not been previously provided to any former owner of the construction in progress (Art. 3, section 21, of the Federal Law of 25 October 2001 "On Rendering Russian Land Code Effective").

Selling pending developments by tender

The law entitles the authority disposing of land to enter a court claim for construction in progress to be sold by tender. The condition is that a lease concluded previously, on a tender basis, for the land plot under such a facility terminate (for instance, owing to failure to pay rental or observe the construction due dates). Curiously enough, the owner of the construction in progress can try to prove that the construction is overdue because of the actions (omissions) of the authorities or operators of the utility networks to which the facility was technically linked. Then the claim to sell the construction in progress is to be dismissed.

Should construction in progress be offered for sale by tender but there are no bidders, the facility may be purchased for state or municipal ownership at its original price. If the authorities have no use for it, the owner of the construction in progress may lease the plot without tender in order to complete construction.

To sum up, what we see in development now is the economic crisis engulfing the economy bottom up and, to make things worse, the authorities are scrutinizing public land lessors in general and construction timeliness in particular even more strictly.

* Goltsblat BLP is the Russian practice of Berwin Leighton Paisner (BLP), an award-winning international law firm headquartered in London and with offices operating in major commercial and financial centres throughout the world — Moscow, Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong, Paris and Singapore.

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