13. Property Rights

13.1 Introduction


The Land Code, together with Federal Law No. 101-FZ “On the Circulation of Agricultural Land” of 24 July 2002 as amended (the “Agricultural Land Law”), which entered into force in January 2003, confirmed private land ownership in Russia. In furtherance of the Land Code, Federal Law No. 172-FZ “On Reclassification of Land and Land Plots from One Category to Another” of 21 December 2004, as amended (the “Land Reclassification Law”), detailed the procedures for the reclassification of land and land plots from one category to another. The Land Reclassification Law defines the powers of federal authorities, authorities of the constituent entities of the Russian Federation (see Section 13.3), and local authorities in the procedure for changing the categories of land plots. The uniform mechanism instituted at the federal level for moving land plots from one category to another is a significant development in making the land market in Russia more transparent.

For historical reasons, such as the fact that transactions with real properties (other than land plots) became possible earlier than transactions with land plots, at present Russian law still treats land plots and buildings as separate objects of real estate. Despite this, however, there is a concept of a single object of real estate embodied through provisions that prohibit the disposal of a land plot and a building located on such land plot separately from each other when such properties are owned by one and the same owner. When a building is located on a land plot that is state or municipally owned, and unless there are other buildings or structures on the land plot owned by third parties, the owner of such building has an exclusive right to lease or buy such land plot.
Under Russian law, the most common types of rights to real estate available to investors are the right of ownership and the right of leasehold. However, there are, for the moment, different regulations with regard to land plots and buildings.

13.1.1 Land

The Land Code distinguishes the following rights to land: the right of ownership (by the Russian Federation, constituent entities of the Russian Federation, municipalities, private individuals, and legal entities), leasehold, the right of perpetual (indefinite) use, the right of free use, the right of lifelong inheritable possession, and easements (servitudes). Starting from 1 March 2015 land plots are not granted with the right of perpetual (indefinite) use and the right of lifelong inheritable possession, although if granted before this date these rights remain effective. Land plots are generally available to investors under the right of ownership and lease.

13.1.2 Right of Ownership

The general principles of land ownership are set forth in the Constitution of the Russian Federation, adopted in December 1993. The Constitution establishes the principle of private ownership of land but does not regulate land relations in detail. The core legislative act governing land relations is the Land Code, which establishes fundamental terms and procedures for land use. The Land Code is further supplemented by other federal laws regulating land issues, often referred to in the Land Code. For instance, the Land Code has limited applicability to agricultural land, as it expressly provides that the circulation of such land is also the subject of a separate law, the Agricultural Land Law. The Land Code is also supplemented by regional laws and other regulations, which the constituent entities of the Russian Federation may issue in compliance with the Land Code. In case of conflict between such laws and the Land Code, the latter enjoys preferential status.

The possession, use and disposal of land plots classed as agricultural land are regulated by the Agricultural Land Law. Not all agricultural
land, however, is subject to the Agricultural Land Law and restrictions envisaged in this law. It does not extend, for example, to those land plots that were provided to individuals for the construction of individual homes or garages, for smallholdings or dachas, or land plots underlying buildings and other structures. Transactions with such land plots are governed by the provisions of the Land Code. Agricultural land plots may be held under the right of ownership, perpetual (indefinite) use, lifelong inheritable possession, or free fixed-term use, and such plots may also be leased.

Ownership of municipal or state land plots, where such land plots are free from any buildings or structures, may be granted (for purposes other than development and construction or for the use of an existing building or facility when special rules apply) to individuals and legal entities, as a rule, through bidding in a tender or auction. Such bidding may also be held for right to conclude a lease for a land plot. The organization of such tenders or auctions is detailed in Chapter V.1 of the Land Code and regulations providing for the implementation of Chapter V.1 of the Land Code.

Due to changes to the Land Code introduced by Federal Law No. 171 “On Amendments to the Land Code of the Russian Federation and Other Legislative Acts of the Russian Federation” of 23 June 2014 (“Law 171”), from 1 March 2015 ownership or lease of municipal or state land plots will be granted through a public (open) auction except for specific cases an exhaustive list of which is provided in the Land Code. In accordance with the new provisions of the Land Code (and subject to very few exceptions), public land zoned for development can only be granted in lease (through a public auction).

The procedures for preparation, organization and conducting of an auction are described in detail in new Articles 39.11–39.13 of the Land Code. The auction may be held in an electronic form. The procedure for holding an auction in electronic form is to be determined by a federal law. As of the date of this guide such a federal law has not yet been adopted.
13.1.3 Foreign Ownership

Although there is no express provision permitting land ownership by foreigners (including stateless persons), the Land Code may clearly be interpreted as allowing such ownership, except in cases where it is specifically prohibited. In 2004 the Constitutional Court of the Russian Federation confirmed this liberal and pro-foreigner interpretation of the Land Code. Foreigners have the right to acquire into lease or ownership vacant land plots (for construction purposes) or land plots under existing buildings, subject to the following restrictions set out in the Land Code:

- Foreigners are specifically prohibited from owning land plots (i) in border areas, a list of which was approved by the President on 9 January 2011 by Presidential Decree No. 26 (the “Decree”) for the first time since the adoption of the Land Code in October 2001; (ii) in other particular territories of the Russian Federation pursuant to other federal laws. Additionally, the President may establish a list of the types of buildings and other structures the foreign owners of which will not enjoy the pre-emptive right to buy out or lease land underlying such buildings and structures. In accordance with Federal Law No. 137-FZ “On the Entry into Effect of the Land Code of the Russian Federation” of 25 October 2001 (the “Land Code Implementation Law”) as amended, before the adoption of the Decree, the border restrictions applied to all border areas;

- Foreigners are prohibited from owning agricultural land. The Agricultural Land Law further specifies that foreign nationals and foreign legal entities (and stateless persons) may only lease agricultural land plots. This restriction on foreign legal entities also extends to Russian legal entities in which the equity participation of foreign nationals, foreign legal entities, and/or stateless persons exceeds 50%;
Foreigners are prohibited from owning land plots located within the boundaries of sea ports.

Under the Decree border territories are defined to include municipal districts and cities (in their geographical entireties) adjacent to the border.

Among the border territories are the city of Sochi (and other near-shore municipalities in Krasnodarsky Krai), four districts in Leningrad Oblast (the Lomonosovsky, Kingiseppsky, Slantsevsky and Vyborgsky districts), the Kronshtadtsky District in St. Petersburg, a number of municipal districts in the Bryansk, Tyumen, Rostov, Voronezh and Belgorod Oblasts, most of the municipalities in Kaliningrad Oblast, a great many municipal districts in the Far East, and others.

Pursuant to the Land Code, the prohibition of land ownership in border territories applies to foreign legal entities (including entities acting in Russia through branches or representative offices), foreign individuals and stateless persons, but, unlike in the case of agricultural land, does not apply to Russian legal entities wholly or partially owned by foreign investors.

The Decree provides neither for a transitional period, nor a clear indication as to what should be done with land plots within restricted border territories acquired by foreigners before the adoption of the Decree. These matters are not addressed by the Land Code or the Land Code Implementation Law either. Arguably, the lack of transitional or implementation rules in the Decree reflects the intention of its authors to prompt foreign owners of lawfully acquired land in border territories to dispose of such land in accordance with general principles envisaged in the Civil Code. In particular, according to Article 238 of the Civil Code, if an owner owns property that may not be owned by that owner by virtue of law such property must be alienated by the owner within a year from the moment when the ownership right arose unless the law specifies another term for alienation of the property. Court practice (which is very scarce as of
the date of this guide) uses this general principle when considering disputes with regard to land plots owned by foreign owners or stateless persons in border areas.

In the context of other provisions of the Land Code dealing with the concept of unity of title to land and facilities (buildings) built thereon, in the absence of any exemptions in the Decree for foreign owners of developed land plots, a foreign person will also have to dispose of all the facilities and buildings developed on all such land plots that it owns. As of the date of this guide law and court practice are silent on whether this concept will apply and whether a foreign owner should also dispose of the facilities (buildings) located on the land plot or only the land plot.

13.1.4 Lease

Foreign legal entities and individuals may be granted leases to land plots. Such leases for state or municipally owned property are usually based on a standard local form. As of the date of this guide, neither the Civil Code nor the Land Code stipulates a statutory maximum length for a land lease, the lease term in most cases does not exceed 49 years. However, a new Article 39.8 of the Land Code establishes different lease periods for which land plots may be granted. In particular, the period for which a land plot may be leased depends on the permitted use of the land plot and may be determined (i) in years (from 3 to 49 years); (ii) as the period of implementation of an investment project; (iii) as the effective period of certain other agreements (for instance, concession agreements; license agreements); (iv) as a period of reservation of land plots for state and municipal needs; and (v) otherwise in accordance with federal laws. Under the new rules the owners of buildings and structures located on a land plot may be granted a lease for a term of not more than 49 years. A lease for 3 to 10 years may be granted for construction and reconstruction of buildings and structures.

The level of rent payments for the majority of land leases granted by the state or municipalities is set by a general local decree. At the same
time, rental payments charged by all public lessors should conform to the general principles envisaged in the Land Code as amended by Law 171 and Decree of the RF Government No. 582 dated 16 July 2009, as amended. The general principles require public lessors to adhere either to the market rent rate or a cadastral value-determined rate (where rental payments are calculated as a percentage of the land’s cadastral value). The rent became an essential term of a land lease agreement from 1 March 2015.

In Moscow a lessee must pay for the right to lease any land in excess of the area of the existing buildings on that land. In St. Petersburg the level of rent is determined by City Law No. 608-119 On the Method for Determination of Rental Payments for Land Plots Owned by St Petersburg of 5 December 2007, as amended. If the right of ownership to a land plot has not been delimited (i.e., allocated either to the Russian Federation or to its constituent entity), the level of rental payments for such land plot is established by a resolution of the St. Petersburg government. In both cases/cities the lease rates vary depending on the location of the site, the type of land use and status/activity of the lessee, etc.

The Land Code provides a lessee with certain basic rights. As of the date of this guide a lessee that properly fulfills its obligations under a lease has a pre-emptive right to renew the lease at the end of its term. The renewal rights of a lessee under a land lease are to be treated in conjunction with both the pre-emptive right to purchase the land granted to the lessee (where the leased land is state or municipally owned) and the exclusive right of the owners of the existing buildings and structures to purchase or lease the underlying land plot. In accordance with Article 39.8 a lessee does not have the pre-emptive right to enter into a new agreement without an auction unless the land plot was initially granted to the lessee without an auction (for instance, to owners of buildings and structures located on the land plot) or the land plot was granted at an auction for gardening and country (dacha) activities.
Significantly, the provisions of the Civil Code, in so far as they apply to land leases, are supplemented by the Land Code in a number of areas. In particular, the Land Code sets forth a series of modified rights for land lessees. Their applicability in part depends upon the precise drafting of a lease. For example, the presumption under Article 615 of the Civil Code that a lessee needs the lessor’s consent to sublease has been reversed for lessees of land. Of particular significance is the provision that a lessee of state or municipally owned land (other than state enterprises) under a lease with a term exceeding five years is free to assign its rights under the lease, to mortgage such rights, or grant the land plots for sublease to third parties, subject only to giving notice to the lessor. This rule to give notice to the lessor also applies to land leases with private lessors (in contrast to the prior-consent requirement established under Article 615(2) of the Civil Code) provided that the assignment and sublease are within the lease term under the land lease agreement. The assignee of a land lease does not need to enter into a new land lease.

The lessor and the lessee may terminate the lease (i) by mutual agreement, (ii) unilaterally - in the circumstances stipulated in the lease, or (iii) by a court order - in the circumstances provided by the Civil Code, the Land Code or in the lease. The Land Code contains provisions that deal with termination of land leases in conjunction with a court order. For example, the following constitute grounds for termination of a land lease:

- Misuse of the land plot (a more stringent test than under Article 619 of the Civil Code requiring either substantial or repeated violations);
- Use of the land plot that results in a decline in the fertility of agricultural land or, importantly for industrial users, a material deterioration in the environmental situation;
- Failure to correct a range of other intentional environmental violations of applicable land use regulations; and
• Where the designated purpose of the land plot is agricultural production or development - failure to use the land plot for its designated purpose for more than three years.

13.1.5 Other Rights to Land

Prior to 1 March 2015 the right of perpetual (indefinite) use could be granted to state and municipal institutions, federal treasury-owned enterprises, and state and local authorities. Legal entities that possessed land plots on the right of perpetual (indefinite) use before the introduction of the Land Code and which do not fall under the above categories had to convert and re-register their rights either as lease or ownership by 1 January 2004. This deadline has been extended several times and was finally established as 1 July 2012 as a general rule, and as 1 January 2015 with regard to land plots under transportation, communications and utilities lines. Failure to convert the rights by the established deadlines will trigger an administrative penalty of RUB 20,000–100,000. The penalty is established with effect from 1 January 2013. As the civil circulation of land plots held on the right of perpetual (indefinite) use is restricted — e.g., such land plots cannot be sold, leased, mortgaged, or assigned — the disposal of such land plots by legal entities (that do not fall under the above categories) will always require the prior conversion of the right of perpetual (indefinite) use into another title (e.g., for commercial legal entities - into lease or ownership).

13.1.6 Acquisition of Rights to Land Plots for Construction Purposes (Other than Residential Construction)

Law 171 and Federal Laws No. 217, No. 224 and No. 234, all of 21 July 2014, amended the Land Code significantly in the part of provision of land plots for construction and non-construction purposes. As stated above, amendments to the Land Code as per Law 171 are effective from 1 March 2015. However, in accordance with Law 171, the provisions of the Land Code which existed before 1 March 2015 should apply (until 1 March 2018) to the process of
granting land into lease or perpetual (indefinite) use or uncompensated use if it started before 1 March 2015.

As of the date of this guide, acquisition of rights to state or municipally owned land plots is carried out in accordance with the procedures currently envisaged in the Land Code. In particular, the Land Code distinguishes two kinds of procedure: (1) at public auction (for construction purposes land plots are granted only for lease), and (2) without a public auction at a resolution of the authorized body (only in exceptional cases stipulated in the Land Code for lease or ownership depending on the basis for such granting).

As a general rule land plots are granted into ownership or lease only at public auctions. The Land Code describes in detail how such auctions should be prepared and conducted. It should be noted that if the main permitted use of the land plot is for construction of buildings/structures, then such land plot may be granted only on lease for twice the term established by the competent federal authority for carrying out engineering survey works, architecture / construction planning and construction of building/structures. Thus, by Order No.137/pr of 27 February 2015 the Ministry of Construction, Housing and Utility Infrastructure of the Russian Federation adopted regulations on the standard lease periods for public land plots, the maximum being 54 months.

An auction can be held only through live bidding. Upon adoption of the relevant law, such auctions will be held through electronic (on-line) bidding. An auction can be initiated by a person interested in acquiring the land plot in question, but if the target land plot has not been formed, such interested party should prepare the layout plan of the land plot86 (if the territorial land-surveying plan is not formalized)

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86 Apart from land plots located within the boundaries of cities with federal status or within the boundaries of settlements. In these cases the layout plan of the land plot is prepared by the authorized body.
and arrange for the cadastral works to be performed on the target land plot.

Starting from March 1, 2015 the rights to state or municipally owned land plots can be granted without an auction only in exceptional cases, envisaged in the Land Code (irrespective of the existence of the territorial planning documents and town-planning rules and regulations and formation of the land plot). The most common case is state or municipally owned land plots being granted in ownership or lease to the owners of the building / structures located on such land plots. Other cases of granting state or municipally owned land plots without an auction are much rarer. Such land plots can be granted:

- in ownership or on lease to a legal entity that entered into an agreement on complex development of the territory (developing transport, utility and social infrastructure facilities as provided for by Article 46.4 of the Russian Town-Planning Code);

- on lease
  - further to a resolution of the Russian Government or higher public official of the Russian constituent entity (for implementation of major investment projects) and these grounds, unlike most of the new rules, are commonly viewed as vague and unspecific;
  - to the party to a concession agreement (i.e., to the concessionaire);
  - to an entity that has entered into an agreement on development of a built-up area (residential development, replacing condemned buildings);
  - for a new term to the lessee to whom the land plot was initially granted without an auction;
To the owners of uncompleted structures - only once for completion of construction (see 13.1.8 below).

- in some other cases.

13.1.7 Exclusive Right

As mentioned in Section 13.1.6 above, the owners of buildings and structures that are located on land plots owned by the state, a constituent entity of the Russian Federation or by a municipality have an exclusive right to buy or lease the underlying land plots (Article 39.20 of the Land Code). With regard to facilities erected on such land plots after the Land Code had become effective, this rule means that an owner of the facility, upon state registration of title (see Section 13.4 below), may opt either for extension of the lease, extension of the lease and subsequent acquisition of the land plot into ownership, or immediate acquisition of the land plot into ownership. Possession of a valid lease contract does not preclude the owner of the facilities from acquiring the underlying land plot into ownership before the expiry of the lease. The Land Code does not establish a deadline by which the owners of the facilities should exercise their right. With regard to facilities erected before the entry into effect of the Land Code, the rule is generally the same, although when the underlying land plots had been granted on the right of perpetual (indefinite) use then in accordance with the Land Code Implementation Law, as amended, the owners of facilities located on such land plots must purchase or lease such land plots before 1 July 2012 (in the case of land plots under transportation, communications and utilities routes — before 1 January 2016).

Under Russian law, if a land plot is required for state or municipal needs such land plot may be expropriated by state or municipal authorities with compensation to the owner for the land plot. The procedure for expropriation of land plots for state and municipal needs is described in detail in the Civil Code and the Land Code as amended by Federal Law No. 499-FZ of 31 December 2014 with effect from 1 April 2015.
13.1.8 Unfinished structures (construction in progress)

Further to Article 239.1 of the Civil Code (effective from 1 March 2015) adopted to support the new provisions of the Land Code on granting public land for construction purposes which came into effect from 1 March 2015, a building located on a state or municipally owned land plot and which is not completed (an unfinished facility) can be withdrawn pursuant to a court order and sold at public auction upon the expiry of the land lease agreement (this rule applies to land lease agreements concluded after 1 March 2015) unless the owner proves that it was unable to finish the facility due to reasons specifically provided by the law. The Land Code provides for granting the state or municipally owned land plot on lease without an auction to the owner of the unfinished building, which acquired its ownership right to such building at public auction or (if the withdrawal has not been initiated or satisfied) to the initial owner of the unfinished building. The land lease right is granted only for completion of the building and on the condition that such land plot has not been provided on the same basis to any of the owners of such unfinished building before.

13.2 Other Real Estate

13.2.1 Ownership

Russian legislation permits both Russian and foreign nationals and legal entities to own real estate (apart from land plots) such as buildings, premises (such as parts of buildings), structures and other facilities. In general, the rules relating to the use, disposal, and sale of real estate are set forth in the Civil Code, which guarantees the freedom to sell, rent, and carry out other transactions with real estate. Title to real estate is usually acquired through a sale-purchase transaction or by means of new construction. For legal entities formed in the course of privatization of state- or municipally owned enterprises it is usual that title to buildings and structures was obtained as a result of such privatization.
In the past Russian courts have largely treated sale-purchase transactions with buildings and structures that were incomplete at the moment of execution of a sale and purchase agreement or were not registered in the name of the seller as invalid (on different grounds). In these circumstances parties wanting to buy or sell such “pending” real estate had to enter either into preliminary sale and purchase agreements (to be followed, upon completion of such buildings and structures and registration of the seller’s title thereto, by main sale-purchase agreements) or investment agreements, both types of agreements being far from “safe havens” for both parties in terms of enforceability.

However, the Plenum of the Supreme Arbitrazh Court in Resolution No. 54 dated 11 July 2011 “On Certain Matters of Resolving Disputes Arising from Agreements on Real Estate to be Developed or Acquired in the Future,” explicitly confirmed the validity of sale and purchase agreements with regard to such “future real estate.” At the same time, registration of title transfers from the seller to the buyer, i.e., acquisition of ownership rights by the buyer would be possible only after putting a real estate facility into operation (to be evidenced by a commissioning permit issued by the local administration) and state registration of the seller’s title to it. Also the Plenum maintained that investment contracts executed in the past, if they meet certain criteria, should also be construed as contracts for the sale and purchase of “future real estate”.

In accordance with the Civil Code, property rights arise after their state registration, if such state registration is required by law. State registration of the ownership right to real estate and encumbrances of such right is governed by Federal Law No. 122-FZ “On State Registration of Rights to Real Estate and Transactions Therewith of 21 July 1997,” as amended (the “Registration Law”). At the request of a legitimate acquirer of title (or at the request of both parties under a sale-purchase agreement), the authority in charge of the state registration of rights to real estate must state register the title and issue an ownership certificate evidencing the registration of title (see Section 13.3 below).
For all owners of real estate, the ownership right has to be state registered in accordance with the procedure set forth in the Registration Law. The exceptions to this rule relate to rights to real estate that were acquired prior to the adoption of the Registration Law. The owner of such real estate is not obligated to state register its rights unless it wishes to enter into any transaction involving its real estate (e.g., lease, mortgage, sale).

Obtaining an ownership certificate is a fairly straightforward process, as long as an applicant seeking to obtain such a certificate can clearly demonstrate that the real estate in question was purchased, constructed, or privatized in accordance with the procedures established by law. As a general rule, before an ownership certificate is issued such real estate must be recorded in the State Cadastre of Immovable Property (described in more detail in Section 13.3 below). Recording real estate in the State Cadastre of Immovable Property and state registration of ownership rights with the Register (as defined in Section 13.3 below) are designed as a single (one-window) process.

Title to real estate acquired through privatization sometimes cannot be registered as a result of deficiencies in the underlying privatization documentation. In the past, state-owned real properties were granted to state-owned enterprises for economic management or use. During the privatization process of the early 1990s such real properties were usually transferred into the ownership of those enterprises, which were formed on the basis of Soviet state-owned enterprises that operated and used such real properties on the basis of various “usage”-type rights. A newly privatized enterprise thus “inherited” such real properties from the state-owned enterprise, provided that the real properties as recorded on the balance sheet of the state-owned enterprise were easily identified in the privatization plan of the newly formed (privatized) enterprise. The problem of title registration is not unusual for legal entities that are the legal successors to such Soviet era state-owned enterprises. Such legal entities may, however, register title by virtue of having held and used property for 15 years in good
faith, openly and without interruption (acquisitive prescription) on the basis of a court order.

13.2.2 Common Property

Until recently, the regime of common ownership (a situation where real estate properties belong to several owners) was applied only with regard to owners of premises in a multi-apartment building, while the situation for non-residential buildings remained unregulated. Considering disputes between owners of premises in non-residential buildings (i.e., office, warehouse, retail, administrative buildings, etc.) the courts (including the Presidium of the Supreme Arbitrazh Court) frequently refused to apply the law by analogy, and on this basis refused to recognize a claimant’s right of common ownership in non-residential buildings. The Plenum of the Supreme Arbitrazh Court took an entirely different position in Resolution No. 64 dated 23 July 2009 “On Certain Matters Concerning Court Practice Regarding Disputes Between Premises’ Owners with Respect to Their Rights to Common Property in a Building” (Resolution No. 64), expressly indicating that in the absence of direct regulation the owners of premises in a non-residential building must be guided by legal analogy, that is, by the rules governing common ownership in multi-apartment buildings. Thus, a line was drawn under the long-term lack of clarity.

Pursuant to Resolution No. 64, the owner of separate premises in a non-residential building always has a share in the right of common ownership to common property of the building - independently of whether or not such right is registered in the Register (please refer to Section 13.3 for the definition).

Resolution No. 64 embraces the concept of common property in a non-residential building, including the following: premises designated for serving more than one unit of premises in the building, and also landings, stairs, halls, lifts, lift shafts and other shafts, corridors, technical floors, attics, basements housing engineering communications or other equipment serving more than one unit of
premises in the building (technical basements), roofs, supporting and non-structural constructions of the building, mechanical, electrical, sanitary and other equipment located externally or inside the building and serving more than one unit of premises. This definition is an almost verbatim repetition of the description of common property in a multi-apartment building given in the Housing Code of the Russian Federation, with the exception that the Plenum of the Supreme Arbitrazh Court does not directly add the underlying plot of land to the common property of a non-residential building. Applying legal analogy to complex relations lends clarity to a fundamental question, but inevitably leads to the emergence of certain new ambiguities.

It is not clear whether underground car-parks housing engineering communications are deemed to be technical basements (which, in accordance with the definition, are common property).

13.2.3 Lease

Foreign legal entities and individuals may be granted leases to other real properties (apart from land plots). Like leases of state or municipality-owned land plots, leases of other real properties in state or municipal ownership are usually based on a standard local form.

The Civil Code provides a lessee with certain basic rights. When a property is leased it must be in the condition stipulated by the lease. Thereafter, unless the lease specifies otherwise, the lessor is liable for the repair of defects of the premises. If the lessor fails to carry out the necessary repairs, the lessee can opt either for a reduction of the rent or termination of the lease and compensation of the losses incurred. A lessee that properly fulfills its obligations under a lease has a pre-emptive right to renew the lease (i.e., enter into a new lease for the same premises, but not necessarily on the terms of the preceding lease) unless this right is expressly excluded by the lease contract.

The lease survives the change of ownership over the leased property except in the event of some foreclosures that meet certain criteria. The lease of buildings and structures assumes the right to use (either in
lease or under another right of usage) the land plot which underlies such buildings and structures and which is necessary for their operation and use. As with the lease of land plots, the lessor and the lessee may terminate the lease (i) by mutual agreement, (ii) unilaterally in circumstances stipulated in the lease, or (iii) by a court order in the circumstances provided by the Civil Code or in the lease.

Lease agreements for one year or longer must be state-registered and as provided by Article 433 of the Civil Code are deemed concluded upon such state registration. In 2015 Article 433 was amended to provide that unless the law provides otherwise, transactions which are subject to state registration are deemed concluded for third parties upon such state registration (and for the parties to the transactions they come into effect upon execution unless the transaction documents provide otherwise). However, Part II of the Civil Code (Article 651) still provides that a lease comes into effect upon its state registration without distinguishing between the effects of state registration for third parties and parties to the lease. Therefore, in accordance with a conservative interpretation of the law, even for the parties to a long-term lease such lease comes into effect only upon its state registration.

Lease agreements for less than a year (that is, less than any 365-day period) do not require state registration and become valid when signed. To avoid the obligation of state registration, which can be a time consuming process, leases are often concluded for less than a year and renewed on a regular basis. If the procedure is properly described in the lease, such renewal of the lease is regarded as conclusion of a new lease for a period of less than a year.

13.3 State Registration of Rights to Real Estate

The right of ownership of, and other proprietary interests in, real properties, their creation, encumbrance (e.g., mortgage, leasehold for a term of one year or more, easement, etc.), transfer and termination are subject to state registration. Rights to real estate (rights in rem) come into existence only upon their state registration. The Registration Law stipulates procedures for the identification and registration of rights to
real estate. In many cases, registration of title is a prerequisite for the validity and enforceability of transactions involving real estate.

Before 1 March 2013, such transactions with real estate as sale/purchase of residential premises, sale/purchase of enterprises, annuity contracts, gift contracts required state registration to be valid and effective. From 1 March 2013, said transactions do not require state registration and are deemed concluded from the moment the agreement is signed by the parties. However, where such transactions provide for a transfer of title (e.g. sale/purchase of residential premises), the acquisition of title must be state registered.

Lease transactions (in addition to rights or titles) with real estate made for a term of one year or longer are subject to state registration, and become effective only upon such registration. The state registration is evidenced by a registration stamp on a lease agreement.

Due to recent amendments to the Registration Law and Cadastral Law (as defined below), an application for state registration of a right to real estate or a real estate transaction and an application to register a real estate property with the State Cadastre of Immovable Property may be submitted electronically from any place within the Russian Federation. However, in accordance with RF Government Resolution No. 2236-r of 1 December 2012 these statutory norms should be fully implemented and the relevant services should be fully available on the territory of the Russian Federation by December 2018 (in practice this may happen earlier in certain regions of the Russian Federation, including Moscow). Therefore, currently the registration process is carried out by the registration authorities at the location of the real estate in question.

Additionally, in an attempt to simplify the document submission process the Registration Law was changed to provide that applications for state registration of rights and encumbrances (restrictions) of such rights can be filed in hard copy (paper) and electronically not only with the state registration authorities directly but also through multifunctional governmental and municipal service centers (MFCs).
Under the Registration Law, state registration of a right to real estate and/or registration of a transaction with real estate takes ten business days, although in practice this term may be extended up to three months as a result of suspension or refusal of registration. The grounds for suspension or refusal of registration of rights/transactions are specified in the Registration Law. Refusal of state registration can be contested only in court.

The Russian real estate registration authorities widely advertise their intention to reduce the registration period and make the registration procedures simpler and more transparent. In particular, the registration period of seven business days is stated in newly adopted Federal Law No. 218-FZ “On State Registration of Real Estate” of 13 July 2015 (the “New Registration Law”) which will replace the Registration Law from 1 January 2017. The registration authorities maintain the Unified State Register of Rights to Real Estate and Transactions Therewith (the “Register”), which indicates the history and the current legal status of a real estate object. The Register also records various “registrable” encumbrances over real estate (including long-term leases, mortgages and easements) and restrictions (such as freezing orders against, or court disputes relating to, the real state object and certain injunctions), and from 1 March 2013 — the objections of ex-owners to the state registered ownership right of a new owner provided that such ex-owner applies to court with the relevant claim within three months after the registration of the objections. However, the law is silent as to the period within which an ex-owner can apply to the registrar with its objections.

The registration authority issues a certificate in a statutorily defined form that certifies by which right an object of real property is held by a legal entity or individual, and which encumbrances and/or restrictions, if any, are established with regard to such object. Information on state-registered transactions with immovable property is also included in the Register. Basic information on the right holder(s) and restrictions (encumbrances) of such rights is open to the public, and can be provided for a fee within five business days to any
person submitting a written application to the registration authority. It is possible to apply for information from the Register electronically.

Prior to state registration of title, land plots and real estate objects (buildings, structures, premises) must also undergo cadastral registration. However, applications for cadastral recording of real estate objects and state registration of rights to such real estate objects may be submitted simultaneously. The procedures and rules for the state cadastral registration of land and buildings (including premises as parts of buildings) are outlined in Federal Law No. 221-FZ “On the State Cadastre of Immovable Property” of 24 July 2007 (the Cadastral Law), as amended effective from 1 March 2008. Under the Land Code, only land plots that have undergone state cadastral registration can be bought or sold or subject to other transactions. The State Cadastre of Immovable Property is established pursuant to the Cadastral Law and contains detailed information on all real properties, including land plots, buildings, structures, premises and other facilities. Information contained in the State Cadastre of Immovable Property is openly available to the public.

As a single source of information on real estate available in electronic format, the State Cadastre of Immovable Property became operational from 1 January 2013. The Cadastral Law provides for a unified system of state cadastral registration of all basic types of real estate, including land plots, buildings, premises, unfinished construction, complex immovable property objects, territorial and functional zones and zones with usage conditions.

With effect from 1 March 2009, the government agency that performs state registration of rights to real properties (formerly named the Federal Registration Service) has been renamed the Federal Service for State Registration, the Cadastre and Cartography (Rosreестр) and also became responsible for cadastral registration of real estate (including land plots). The Cadastral Law does not apply to forests, perennial plantations, bodies of water, subsoil resources, marine vessels or aircraft.
Further to the New Registration Law, starting from 1 January 2017 the cadastral recording and registration of rights to real estate facilities are to be consolidated into a unified system of recording and data management - the EGRN (Unified State Register of Real Estate). The Unified Register will include data on real estate facilities and their boundaries as well as information on existing rights and encumbrances. The New Registration Law provides that starting from 2017 applications for cadastral recording and registration of rights to real estate can be submitted to any authorized registration office throughout Russia, irrespective of the region where real estate facilities are located. The New Registration Law also sets new terms for cadastral recording and registration and their suspension; establishes new procedures for submission of documents and introduces other changes in the existing system of cadastral recording and registration.

13.4 Classification of Real Estate

There is no official legislative classification of real estate (properties) in Russian law. In practice, real properties are classified on the basis of their intended use (e.g., residential or non-residential for buildings, agricultural or industrial for land plots, etc.). The designated use should be identified in the lease, the certificate of ownership, as well as in the technical documentation and cadastral documents.

Buildings, structures and other facilities require various obligatory state permits and approvals. The Town Planning Code of 29 December 2004, as amended (the Town Planning Code), stipulates the documents to be obtained and procedures to be followed for carrying out construction. Construction activities are also governed by regional and municipal legislation, such as, for instance, the Town Planning Code of the City of Moscow (as amended), adopted by Moscow City Law No. 28 of 25 June 2008, which came into effect on 10 July 2008.
13.5 Payments for Real Properties

Under Russian Federal Law No. 173-FZ On Currency Regulation and Currency Control dated 10 December 2003 (the Currency Regulation Law) as amended, payments for real estate (sale-purchase, lease, other transactions) are permitted both in Russian rubles and in foreign currency provided that payments in foreign currency meet the requirements for such payments stipulated in the Currency Regulation Law and other currency control normative acts and regulations. Payments between Russian residents can be carried out in rubles only. Where a seller or buyer, or both the seller and the buyer (or the lessor and the lessee) are foreign legal entities, settlements in foreign currency are possible. Settlements between foreign residents (including legal entities and individuals) can be carried out through foreign (non-Russian) bank accounts. However, transactions with real properties may trigger Russian tax consequences even if carried out outside Russia.

13.6 Residential Real Estate

Up until the early 1990s most apartments in the Russian Federation were state or municipally owned. However, most apartments have since been privatized and many new residential developments have been constructed by investors and most of these apartments are in private ownership. Relations arising in connection with residential real estate are regulated by the Housing Code of 29 December 2004 (the Housing Code), which came into effect on 1 March 2005. The Housing Code (as amended) defines categories of residential property, which include a residential house (cottage), an apartment in a multi-storey (multi-apartment) building or a room in such an apartment, as well as various forms of rights to residential real estate. The Housing Code provides for use of residential property for residence by individuals. Residential premises may be also used by individuals for their professional and entrepreneurial activities (as an individual entrepreneur) provided that such activities do not violate (i) the rights and legitimate interests of other individuals; and (ii) statutory requirements established for the residential premises.
13.7 Mortgage of Real Properties

13.7.1 General

A mortgage arises either by virtue of law or a mortgage agreement. Mortgage rights must be state registered and are invalid without such registration.

Federal Law No. 102-FZ On Mortgage of Immovable Property of 16 July 1998, as amended (the Mortgage Law) stipulates the following essential terms of a mortgage agreement: (i) description of the mortgaged property (described to the extent sufficient to identify it), its location, and valuation; (ii) nature, scope and maturity date of the obligation secured by mortgage; (iii) the right on which the mortgaged property is held by the mortgagor; and (iv) the name of the registration authority that registered the mortgagor’s right to the mortgaged property. When requested, and subject to the payment of state duty, local offices of the state registration authority (as of 1 March 2009 named the Federal Service for State Registration, the Cadastre and Cartography) can provide information on whether a specific real property is mortgaged. Such information is provided in the form of an extract from the Register.

According to the Mortgage Law, the following types of real properties can be subject to a mortgage:

- Land plots (including agricultural land plots). However, land plots that have been withdrawn from or are limited in circulation, and (with a few exceptions provided by the Mortgage Law) the land plots held by the state or municipalities cannot be mortgaged;

- Enterprises i.e., complexes of immovable and movable properties registered as a single real estate property;

- Buildings, structures and other immovable property used for business activities;
- Residential houses, apartments and parts thereof consisting of one or several separate rooms;
- Cottages, garages, and other structures for personal use;
- Aircraft, space objects, sea and river vessels; and
- Lessee’s lease rights to real properties — “to the extent mortgage of lease rights does not contradict federal law and the nature of lease relations.”

Buildings and structures can only be mortgaged together with the land plots underlying these buildings and structures or together with the lease rights to such land plots.

The existing mortgage of a land plot is automatically extended to cover a building or structure erected on such land plot by the mortgagor, unless otherwise provided by the mortgage agreement. This provision of the Mortgage Law entitles a mortgagee to extend the mortgage over a land plot to all buildings and structures that may be developed on it, without the need for a subsequent addendum to the mortgage agreement.

The terms and conditions of a mortgage may restrict the owner or user’s capability to dispose of the property, including its contribution to charter capital and/or lease to third parties. The disposal of mortgaged property generally requires the mortgagee’s consent unless the mortgage agreement provides otherwise. Notwithstanding such consent, the mortgage survives the change of ownership over the mortgaged property, or the change of holder of such property, unless and until the primary obligation secured by the mortgage is performed. Following this, the property must be released from mortgage. The release of property from mortgage is performed through the procedure of cancellation of the mortgage entry in the Register.
The Mortgage Law provides that, unless otherwise provided in the mortgage agreement or by federal law, a building, structure or any other non-residential property and an underlying land plot, as well as a residential house or an apartment that was purchased or constructed with loans from banks or other lenders is deemed to have been mortgaged from the date of state registration of the ownership right of the relevant purchaser/investor to the respective non-residential or residential property (and the underlying land plot). With regard to residential property the Mortgage Law further provides that foreclosure by the mortgagee on a mortgaged residential house or apartment and disposal of such property constitutes grounds for termination of the occupancy rights of the mortgagor and the family members residing together in such residential house or apartment, provided that this residential house or apartment was mortgaged under a mortgage agreement to secure the return of a loan granted for the purchase or construction of such residential house or apartment, or a loan granted to refinance a previous construction / acquisition loan.

The implications of these provisions of the Mortgage Law are that a mortgagee can now demand that a mortgagor vacates the mortgaged property if the mortgagee intends to foreclose on it. However, this rule would apply only if the mortgaged property were mortgaged to secure the repayment of a loan taken out by a mortgagor to purchase or construct a property or to refinance a previous construction / acquisition loan. It is also important to note that those individuals who occupy mortgaged property pursuant to a lease or a “hiring” agreement (under Russian law, a specific type of a residential lease where the lessee is a private individual) cannot be evicted upon foreclosure on the mortgaged property. Such a lease or hiring agreement concluded prior to the mortgage agreement or after the mortgage agreement with the mortgagee’s consent will remain in force and can be terminated only under specific circumstances provided for by the Civil Code or applicable housing legislation.
13.7.2 Foreclosure on mortgaged property

There are two types of foreclosure on mortgaged property: in court and out-of-court. With regard to out-of-court foreclosure, prior to 7 March 2012, the parties could enter into a contract for the transfer of the mortgaged property to the mortgagee to discharge the secured obligation only after an event of default under the secured obligation had occurred. In the absence of such contract, a mortgagee could not automatically acquire rights to the mortgaged property if an event of default occurred, and in most cases the mortgaged property had to be sold at a public auction, with the proceeds then being used for repayment of the debt.

With effect from 7 March 2012, the transfer of the mortgaged property to the mortgagee after an event of default has occurred is possible if the parties stipulate so in the mortgage agreement. There are three methods for out-of-court foreclosure: (i) a sale at a public tender; (ii) a sale at an open auction (subject to some exceptions where a sale at a closed auction is also possible) and (iii) appropriation of the mortgaged property by a mortgagee.

Out-of-court foreclosure on mortgaged property is prohibited with regard to certain classes of immovable property (such as immovable properties owned by the state and municipalities and residential properties owned by individuals). The Russian Civil Code amended as per Law 367 (as defined below in Section 13.7.5) establishes additional cases applicable to real estate where out-of-court foreclosure is not allowed:

(a) residential property which is the only residential property owned by an individual. However, after establishing grounds for foreclosure, the parties may conclude an agreement on out-of-court foreclosure;

(b) pledged property is of significant historical and cultural value;
(c) a pledger is an individual recognized in the established by law manner as a missing person;

(d) pledged property is pledged under a preceding and subsequent pledge agreement that provides for different procedures for foreclosure;

(e) pledged property is pledged to different pledgees to secure different obligations.

The above list is open and the law may provide for other grounds that prohibit out-of-court foreclosure.

By general rule, out-of-court foreclosure of the pledged property should be completed through auction, to be held in accordance with the statutory requirements or an agreement between a pledgee and pledger. However, under the new rules, if a pledger is engaged in business/entrepreneurial activities, the agreement between the pledger and pledgee may also provide for foreclosure by means of (a) appropriation of the pledged property by the pledgee; and (b) the pledgee selling the pledged property to a third person. However, in both cases the pledged property is to be assessed at no less than its market value. If the outstanding amount of the secured obligation is less than the market value of the pledged property the difference is to be returned to the pledger.

13.7.3 Mortgage certificates

A mortgage certificate can be issued to the mortgagee at any time after the state registration of the mortgage and until termination of the secured obligation. Mortgage certificates can be transferred to a depositary for registration and custody, which is evidenced by a respective note on the document. Such a note should also disclose if the custody is temporary (in which case the certificate’s holder can at any time require that registration and custody of its certificate is canceled) or obligatory. The type of custody can be chosen by the issuer or by the subsequent holder of the mortgage certificate.
13.7.4 Mortgage agreement vs mortgage certificate

The Mortgage Law protects the position of mortgage certificate holders by providing, inter alia, that in case of discrepancies between the provisions of a mortgage agreement / main agreement containing the secured obligation and the provisions of the respective mortgage certificate, the provisions of the mortgage certificate have priority unless at the time of acquisition of such certificate its acquirer was aware or should have been aware of such discrepancies.

13.7.5 Pledge

Federal Law No. 367-FZ of 21 December 2013 (Law 367) introduced certain amendments to Part 1 of the Russian Civil Code regarding pledge. Save for a few provisions, the amendments have been effective since 1 July 2014. After this date the provisions of the Mortgage Law apply to the extent that they correspond to the new provisions on pledge of the Russian Civil Code.

The amendments introduce a new concept “ranking of pledges,” which will allow pledgees and pledgers to change seniority pledges by agreement. The object of pledge may be pledged to several pledgees whose pledges will be of the same seniority and who will have equal rights to the pledged property (co-pledgees).

Law 367 specifically states that provisions of the Mortgage Law and Registration Law regarding state registration of mortgage agreements do not apply to mortgage agreements made after 1 July 2014. This means that a mortgage agreement is valid from the moment of its signing by the parties, however, the mortgage as an encumbrance becomes effective only after its state registration. Currently, registration procedures of mortgages have certain specifics. For instance, a registration period may not exceed one month from the documents submission to the registration authority. However, the mortgage of land plots and buildings is to be registered within fifteen working days and the mortgage of residential property within five
working days. State registration of a mortgage certified by a notary is carried out within five working days.


In furtherance of Presidential Decree No. 1108 dated 18 July 2008, the Supreme Arbitrazh Court of the Russian Federation prepared a draft bill introducing many amendments to the Russian Civil Code, which, if Russian lawmakers were to adopt the bill in the form of the current draft, would result in significant changes of many fundamental provisions of Russian real property law and, in particular, would affect the existing provisions of the Russian Civil Code on real estate leases and ownership title to buildings and land. They would also introduce new types of title allowing holders to develop and use immovable property. Amendments to the Russian Civil Code are introduced in blocks. The amendments related to real estate in 2012–2013 revised provisions of Part 1 of the Russian Civil Code.

The first amendments to the Civil Code (Part 1, Chapters 1–4) were introduced by Federal Law No. 302-FZ of 30 December 2012 (Law 302), most of them are effective from 1 March 2013. The amendments include a general provision on state registration of rights to property if such state registration is envisaged by other laws. The amendments on state registration of real estate rights repeat the requirements of the Registration Law.

Subsequent amendments to the Russian Civil Code related to real estate were introduced by the following laws:

- Federal Law No. 100-FZ of May 7, 2013 (Law 100). Under Law 100, general provisions on transactions, representation, terms and the limitation period were amended. In particular, now transactions that are made in breach of law are deemed contestable, not invalid as before. The three year period for the effectiveness of a power of attorney was abolished.
Currently, a power of attorney may be issued for any term. The amendments became effective 1 September 2013;

- Federal Law No. 142-FZ of July 2, 2013 (Law 142). Law 142 deals with objects of civil rights. The amendments refined definitions of a thing (separable and non-separable things), securities and other objects. A new concept “a single real estate complex” has been introduced. The amendments under Law 142 became effective 1 October 2013;

- Law 367 (as defined in Section 13.7.5 above) deals with amendments regarding pledge and is described in more detail in Section 13.7.5 above; and

- Federal Law No. 99-FZ of 5 May 2014 (Law 99) deals with numerous amendments regarding legal entities which to certain extent affect real estate transactions.

- Federal Law No. 42-FZ of 8 March, 2015 came into force on 1 June 2015 and introduced a number of amendments dealing with general regulation of commercial agreements: new types of security (suretyship securing the due discharge of non-monetary obligations, independent guarantee, security deposit); pre-contractual liability for bad faith negotiations; warranties and indemnities and remedies for their breach. These updates are to be considered while drafting and entering into any type of real estate agreement.

- Federal Law No. 258-FZ of 13 July 2015 gives municipal authorities the right to acknowledge buildings and facilities as “unauthorized structures” (i.e., buildings or facilities constructed without the necessary approvals or permits) out of court if such buildings or facilities were built on land plots granted in violation of the established procedure or contrary to
town-planning and construction regulations. Under Russian law, no transactions are permitted with “unauthorized structures” and the developer of an “unauthorized structure” does not acquire ownership title to it.