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Preferential term for the acquisition of land in Moscow at the reduced rates is extended until July 1, 2012

On November 22, 2011, the Russian Federation State Duma adopted Federal Law № 321954-4 concerning amendments to Articles 2 and 3 of the Federal Law, "On introduction of the Land Code of the Russian Federation and certain legislative acts of the Russian Federation" (hereinafter - the "Law").

I. Acquisition of property

The most anticipated change in the Law is the extension of the preferential term for the acquisition of state land owned by individuals who are entitled to its privatization at the reduced rates of 20% and 45% of the cadastral value.

Terms for the renewal of land rights have been changed several times over the past eight years. In accordance with the current version of Article 2 the deadline for the privatization of land at a preferential rate was January 1, 2012. The Law moved this deadline to July 1, 2012. The same extension also concerned the terms for changing the right to use land permanently to the lease right or the right to acquire the land by the legal entities which are according to Article 3, part 2 of the current edition obliged to renew the right to use the land permanently.

II. The right of early termination of investment contracts and land lease contracts entered into for the reconstruction of real estate objects

The Law establishes the right to early termination of investment contracts / lease agreements entered into by investors with the authorities in Moscow and St. Petersburg. In fact, it entails an unlimited increase in the rights of one party in the contract. With its adoption it will be enough for the city to send a termination notice to the counterparty, and after one month the contract shall automatically be terminated.

The grounds for such a right will be:

1. Significant infringement on the agreement's conditions:

- the non-fulfillment of the construction or reconstruction obligations of immovable property within the prescribed period;
- the absence of construction or reconstruction permits after the completion of a five-year term if the contract does not contain the completion date of construction or reconstruction; and

2. A substantial change of circumstances from the time of entering into the agreement by the parties:

- the non-fulfillment of contractual obligations due to the inability to provide the land plot or due to encumbrance of the land plot or an object of immovable property located on the land plot with rights belonging to a third party.

The Law contains similar provisions regarding the right of early termination of lease agreements entered into before January 1, 2011, for the purposes of construction or reconstruction of immovable property.

Special conditions are envisaged for the unilateral termination of the agreement: the city authorities can obtain such a right if less than 40% of construction and reconstruction works that are stipulated in the project documentation are performed as of the last day of the deadline.

Among the changes beneficial for the tenant we should mention the legislature's abolishment of mandatory participation in a tender in order for a land owner with an incomplete construction site, whose ownership rights were registered before January 1, 2012, to receive the right to purchase the land for leasing purposes.

III. Indicating public authority as the equity owner in investment projects

If an investment contract in relation to a construction project was entered into prior to January 1, 2011, common ownership by the investor and public authority applies until the state registration of rights to such object is completed.

This innovation eliminates the opportunity for an investor to independently determine a buyer for an investment object when exiting the investment agreement, as common ownership implies the necessary consent of all owners in order to sell.

IV. The expected timing of entry into force

Following its adoption in the third reading the Law was sent to the Federation Council and on the same day, November 22, 2011, it was sent to the Executive Committee. On November 29, 2011, the responsible committees and the Legal Department of the Federation Council recommended its approval.

The Law will be forwarded to the President of the Russian Federation no later than December 12, 2011, and he will promulgate it within 14 days. If the deadlines for the legislative process are met, the Law will go into force no later than January 6, 2012. The Law stipulates that its main provisions will come into effect straight upon publication.

The Law envisages special terms regarding its entry into force, namely concerning the legislative regulations upon termination of investment agreements and acknowledgement of share ownership under investment agreements as of February 1, 2012. This also applies to termination of lease agreements as of April 1, 2012.

It should also be noted that the legislative regulations regarding termination of lease and investment agreements also apply to the agreements which were executed before the Law's effective date in cases when the parties' obligations under such agreements were not fulfilled.