

A much condensed version of this article appeared in the November 1997 issue of the *BISNIS Bulletin*, published by the U.S. Department of Commerce's Business Information Service for the Newly Independent States.

LONG-AWAITED RUSSIAN LAW ON THE REGISTRATION OF RIGHTS TO IMMOVABLE PROPERTY ENACTED

by

*Ethan S. Burger and Irina Paliashvili,
Russian - Ukrainian Legal Group, P.A.
Washington, D.C., Kiev and Moscow*

I. INTRODUCTION

For almost three years, Russian legislation has required that the origin, transfer and termination of ownership and other rights¹ to immovable property (*i.e.* land, buildings, and other structures) undergo state registration in a unified register by institutions of justice in accordance with a procedure established by a federal law (*see* Russian Federation ("RF") Civil Code, November 30, 1994, Article 131, Points 1 and 6). The failure to register a transaction involving immovable property can result in its invalidation (RF Civil Code, Article 165). As is the case with many normative requirements in Russia, the aforementioned registration requirement has not been consistently observed, particularly outside of the major cities.

Russia's failure to effectively implement a system for the registration of rights to immovable property has been the product of a multitude of factors. First, until July 1997, there was no federal law regulating the registration of rights to immovable property. In the absence of such a law, a series of partially implemented presidential edicts, governmental decrees and other normative acts at the federal,² regional and local levels have served as ineffective gap fillers.

¹ Such other rights include rights of (i) full economic jurisdiction, (ii) operative management, (iii) lifetime inheritable use, (iii) permanent use, (iv) mortgage, and (v) servitude.

² President Yeltsin and the Russian Government have exercised broad powers under Articles 90 and 115 of the Russian Constitution (the exercise of which is authorized by Article 3, Point 4 of the Russian Civil Code in the absence of contrary federal legislation or constitutional provisions) by issuing various normative acts on the subject of the state registration of rights to immovable property; *see e.g.* Presidential Edict No. 2130, "On the State Land Cadastre and the Registration of Documents on Rights to Immovable Property", dated December 11, 1993; Fundamental Regulations, "On the Pledge of Immovable Property -- Mortgage" approved by Directive No. 96-rz of the Deputy Chairman of the Council of Ministers of the Russian Federation, dated December 22, 1993; Presidential Edict No. 293, "On Additional Measures for the Development of Mortgage Loans", dated February 28, 1996; Regulations on the Structure and Procedure for Record Keeping of Cadastre Numbers of Objects of Immovable Property and the Procedure for Completing forms for the State Registration of Rights to Immovable Property and Transactions with it", approved by Government Decree No. 475, dated April 15, 1996; Presidential Edict

A second factor has been the failure of the federal government to take the lead in establishing the above-mentioned unified register of rights to immovable property. It was not until February 1996 that a Federal Commission for Immovable Property and the Appraisal of Immovable Property (hereinafter the “Federal Commission”) was established to ensure the creation and maintenance of the unified register. As a consequence, non-uniform local registration systems have taken root throughout the country (the structures of which are often determined by bureaucratic history and successful empire-building strategies rather than good administrative practice).³

A third factor is that the bodies conducting the state registration of rights to immovable property, like most administrative bodies throughout the country, usually lack the material resources and qualified personnel to effectively fulfill their functions. The result of this has been unreliable record-keeping of interests in immovable property.⁴

With the enactment of the Federal Law “On the State Registration of Rights to Immovable Property and Transactions with It”, (hereinafter the “Registration Law”), signed by Russian President Yeltsin on July 21, 1997, officially published on July 30, 1997 and entering into effect on January 31, 1998, there is reason to hope that the situation will change for the better. This development is significant because the widespread availability of money from banks and international lending institutions for mortgages and project finance depends on a stable macro-economic environment and the existence of reliable real estate records. With annual inflation for 1997 in Russia within the 12-16% range (it was in triple digits just a few years ago), there is reason to believe that investment that previously looked too risky may now be worth pursuing. A brief overview of the Registration Law’s structure and major provisions is provided in the following section.

II. STRUCTURE AND MAJOR PROVISIONS

No. 1270 “On the Approval of a Procedure for Providing Information on the State Registration of Rights to Immovable Property and Transactions with It”, dated August 27, 1996; and “Procedure for the Establishment of Payments for the Presentation of Information on the State Registration of Rights to Immovable Property and the Use of Received Funds”, approved by Russian Federation Ministry of Finance, the Russian Federation State Property Committee and the Russian Federation Land Committee, October 1996.

³ Unified registration systems have been or are soon to be in place in cities such as Tver, Novgorod, Nizhnyi Novgorod, and Pskov with the help of USAID-sponsored technical support.

⁴ Yet another, and by no means insignificant factor has been the public’s general distrust of the authorities which when combined with the fear that the disclosure by a citizen or a company of its real estate holdings could result in unsolicited “offers of protection” or demands from criminal elements that a given property be sold at below market prices. Such concerns are unlikely to be reduced by the adoption of any legislation, in particular that which makes information about the private holding of immovable property publicly available.

The Registration Law is organized into six chapters concerning (i) general principles, (ii) bodies conducting state registration of rights to immovable property, (iii) the procedure for such state registration, (iv) special rules governing the state registration of specific types of property and transactions (enterprises, condominiums, commonly-owned property, newly-created objects, leases, servitudes, court-established rights, mortgages, and trusts), (v) liability of bodies and individuals for failure to comply applicable requirements, and (vi) final and transition provisions. While the Registration Law does not contain many new substantive concepts, it does evince more of an awareness of the federal nature of country⁵ than the prior normative acts of the Russian President and Government in this area.

The Registration Law provides that the state registration of rights to immovable property and transactions with it (hereinafter “state registration”) is a legal act of recognition and confirmation by the state of the origin, limitation (encumbrance), transfer or termination of rights to immovable property in accordance with the Russian Civil Code. The state registration is to be undertaken by means of an entry into a Unified State Register (hereinafter the “Unified Register”) maintained by the appropriate “institution of justice”⁶ for the registration district⁷ within which the relevant object of immovable property is located (Registration Law, Articles 2 and 33). An institution of justice may only conduct registration activity envisioned by the Registration Law. Each institution of justice is to be led by a Registrar appointed by the RF Government with the consent of the executive body of the relevant Subject. A single federal body (probably the Federal Commission) will be responsible for the establishment of procedural rules as well as coordination and oversight over the establishment and operation of the Unified Register by the institutions of justice (Registration Law, Articles 9, 10 and 15).

A right-holder or party to a contract wishing to register its rights to immovable property must submit an application (in two complete sets) accompanied by documents establishing the existence, origin, transfer or limitation (encumbrance) of rights in accordance with applicable legislation, as well as pay a fee, to the appropriate institution of justice. The institution of justice will then issue a receipt to the applicant for the application. Assuming that the rights to immovable property are ultimately registered on

⁵ The RF is divided into 89 separate political subdivisions or “Subjects” consisting of 21 republics, six territories (*krai*), 49 regions (*oblasti*), two cities of federal significance (Moscow and St. Petersburg), one autonomous region, and ten autonomous districts (*okrugi*) (RF Constitution, Article 65).

⁶ The procedure for the establishment and structure of institutions of justice for state registration is to be determined by the RF Subjects with the consent of the relevant executive body of the RF Government. (Registration Law, Article 9, Point 2). The RF Subjects must establish their respective institutions of justice prior to January 1, 2000. It is not entirely clear how the Register will be maintained by Subjects (by January 31, 1997) that have not yet established bodies authorized to operate it (Registration Law, Article 33, Point 2).

⁷ Generally, such registration districts should have boundaries corresponding to the relevant RF Subject’s administrative-territorial units (Registration Law, Article 1).

the basis of such application, their validity will be recognized from the time of receipt by the appropriate institution of justice of a complete application, the date of which shall be entered into the Unified Register (Registration Law, Article 16).

The institution of justice will then conduct a legal analysis of the application and, if necessary, verify the legality of the relevant transaction. In addition, it will confirm that the application and accompanying documents are consistent with previously registered rights and that there are no other bases for the denial or suspension of registration (Registration Law, Article 13).

The state registration will be confirmed to the applicant by the issuance of an official certificate. The registration of an agreement or other documents relating to a transaction will be confirmed by the completion on the face of the relevant document(s) of a special registration inscription the format of which is to be determined in forthcoming rules on the operation of the Unified Register (Registration Law, Article 14). The Registration Law identifies instances where the registration of rights may be denied. Such a denial may be appealed in either a Russian court of general jurisdiction or a commercial (*arbitrazh*) court (Registration Law, Article 20).

The Unified Register itself is to consist of separate sections for each object of immovable property. The institution of justice is to open a section in the Unified Register upon the start of the registration of rights to an object of immovable property. Such object is to be identified in the Unified Register by a unique cadastre (if no cadastre number exists a temporary number will be used). Each section in turn is organized into three sub-sections containing, respectively:

- (i) a short description of each object of immovable property: address (location), type (name) of the object, its area (actual by cadastre plan or by documents), designated use and other relevant information;
- (ii) entries on the ownership and other rights to each object of immovable property, name of the right-holder, relevant personal identification or details of a legal entity, address, relevant right-holder, type of right, the amount of share of a right, the name and details of right-establishing documents, the date of inclusion of the entry, the name of the Registrar and his signature; and
- (iii) entries on limitations (encumbrances) of rights (servitude, mortgage, trust management, lease, arrest of property, application for a right of claim in respect of an object of immovable property and others), the date of inclusion of the entry, the name of the Registrar and his signature. Additional information must be presented in the case of limitations (encumbrances) such as mortgages or pledges of rights to immovable property.

Entries are also to be made as appropriate in a “Special Notes” section indicating the existence of rights of claim against a specific object. Each entry in the Unified Register is

to be identified with a registration number. The Unified Register is to be maintained in hard copy and, if possible, in a computer file version as well. In the event of a discrepancy between the hard copy and computer file version of an entry, the hard copy will be used (Registration Law, Article 12).

The Unified Register will also contain case-files of right-establishing documents for each object of real property. In the event of a discrepancy between data in the Unified Register and a right-establishing document, the latter will prevail (Articles 12 and 13).

Although the RF Civil Code requires the registration of rights to immovable property, the Registration Law only requires their registration in the Unified Register if such rights arise after January 31, 1998. Rights to immovable property that legally arose prior to this date are nonetheless deemed to be valid. This rule is likely to present significant problems in the future because relevant documents establishing rights to immovable property are likely to be misplaced or destroyed over the years, thus making it difficult or perhaps impossible to determine what rights in fact exist. A holder of such rights, of course, may register them in the Unified Register after the fact of their creation. It will not be possible to undertake the state registration of limitations (encumbrances) or another transaction involving an object of immovable property, however, unless such property has already been entered in the Unified Register (Registration Law, Article 6). Furthermore, to avoid the risk that persons may claim by the use of fraudulent contracts to have property rights they do not have, it is advisable that all property holders register their rights.

The Registration Law operates on the general principle that information contained in the Unified Register has an open character. Any individual or legal entity has the right to obtain information contained in the Unified Register concerning a specific object of immovable property within five days of the submission of a properly prepared written application and the payment of a fee established by the relevant RF Subject, a ceiling on which will be set by the RF Government. Information on the contents of certain “right-establishing” documents, however, may be provided to the right-holders themselves, persons acting under a power of attorney issued by such right-holders, and officials acting within the scope of their official activity (Registration Law, Articles 7, 8 and 11).

III. THE ISSUE OF IMPLEMENTATION

As noted at the outset, when examining normative requirements in Russia one must distinguish between the existence of written rules and their observance. The Registration Law identifies a large number of milestones for the RF Government and the Subjects to accomplish in order to make the state registration system a reality.⁸

⁸ Article 32 identifies the following measures necessary for the implementation of the Registration Law:

“The Government of the Russian Federation shall:

Since the state registration system is envisioned to be, to a large degree, self-financing,⁹ its success will depend on property holders' perceptions of its reliability and value to them. As the public becomes more aware of the consequences of the failure to register rights to immovable property (including the invalidation of such rights), it is likely that the state registration will take hold, thus generating the required revenues to finance its effective performance.

As the state registration system matures, banks and other financial institutions are likely to more readily lend money to individuals and legal entities to purchase objects of immovable property and undertake investment projects.

* * * * *

-
- approve the federal program of step-by-step development of a system of state registration of rights to immovable property and transactions with it;
 - determine federal bodies of executive power of the Russian Federation that shall be responsible for the preparation of normative documents and methodological materials, coordination of cooperation of institutions of justice for the registration of rights and bodies for the record-keeping of objects of immovable property in the system of state registration of rights to immovable property and transactions with it in accordance with the present Federal Law;
 - approve Model Regulations on the institution of justice for the registration of rights to immovable property and transactions with it; and
 - no later than three months before the entry into effect of the present Federal law, approve Rules for maintenance of the Unified State Register.

2. Subjects of the Russian Federation shall:

- establish regional programs for the development of a system of state registration of rights to immovable property and transactions with it in their corresponding territories;
- have the right to delegate to bodies of local self-government part of their authority in the area of organization of the system of state registration of rights envisioned by the present Federal Law; and
- gradually introduce a system of state registration of rights for which purpose they shall undertake the necessary structural and function transformation and use for the state registration of rights bodies (organizations) effectuating the registration of those or other right and record-keeping of objects of immovable property.
-

⁹ Article 11, Point 11 of the Registration Law provides that “the system of state registration of rights shall be established at the expense of payments for registration and presentation of information on the registration of rights, or budgetary funds and other sources not prohibited by legislation.” Fees received for payment for registration or the receipt of information from registration bodies may only be used for purposes connected with state registration (Article 11, Point 3).