Real estate and construction

General approach
This chapter relates to real estate and construction matters in Russia, which are governed by a complex body of laws and regulations. Key legislation in this respect includes:
— the Civil Code of the Russian Federation (the “Civil Code”);
— the Land Code of the Russian Federation (the “Land Code”);
— the Town Planning Code of the Russian Federation (the “Town Planning Code”);
— the Forest Code of the Russian Federation;
— the Water Code of the Russian Federation;
— Federal Law No. 102-FZ “On Mortgage (Pledge of Immovable Property)” dated 16 July 1998 (the “Law on Mortgage”); and

Rights to real estate
Russian law provides for two basic types of rights to immovable property:
— the ownership right (freehold); and
— the right of lease (leasehold).

Public and private ownership rights
Real estate (including land plots) in the Russian Federation may be owned publicly or privately. In relation to land, we would like to outline a number of local specificities.

Public land ownership
Publicly-owned land means that the land is owned by the State (i.e. the Russian Federation or a region) or a municipality. Historically, substantial areas of land in Russia (particularly in the City of Moscow, which has regional rather than municipal status) have been, and remain, state-owned.


Public land plots may be privatised, subject to a number of statutory restrictions. For example, land plots falling within specially protected areas (such as national parks) or areas required for defence (such as military aerodromes) may only be state-owned.

Private land ownership
Any legal entity or individual may own private land in the Russian Federation, subject to certain restrictions which regulate the legal status of the land plot.
Foreign nationals and legal entities enjoy the same rights to land plots as Russian individuals and legal entities. However, in respect of the ownership of land, foreign investors may not own:
— land in certain border territories or other territories specifically designated in the Land Code or federal laws (such as, for instance, land located within the boundaries of sea ports); or
— agricultural land. This rule also applies to Russian companies with a foreign participation of more than 50% in their charter capital; foreign investors (as widely defined above) may only lease agricultural land.

**Other rights to or affecting land plots**

Russian land legislation also provides for other types of land rights, such as (among others) the right of permanent perpetual use of the land plot and the right of inheritable use. However, the use of such rights has no practical application for foreign investors.

As in other countries, an easement (or servitude) may be established over a land plot which is owned by a third party. This grants the land user a variety of rights (including the right to build linear facilities such as cable lines and pole lines). The easement may be public or private and the distinction depends on the range of persons who benefit from it. If the easement is required for a particular individual or legal entity, then only a private easement may be established in respect of the relevant land; if the general public enjoys the easement, then a public easement may be established.

Since 1 September 2018, the Land Code provides for a specific legal regime for public easements established in connection with the construction of linear objects (e.g. for the placement of utility infrastructure facilities, the storage of construction supplies, siting roads and railways into tunnels). This regime is aimed at protecting the interests of all those involved in the development of linear facilities.

Under Russian law, it is possible to enter into an easement agreement not only with the owner of the land, but also with its legal holder (a tenant, a land user enjoying the right of free use, etc.).

**Real estate transactions**

**Sale and purchase transactions**

**Cadastral and state registration**

A publicly- or privately-owned land plot may be bought and sold provided that (i) it has undergone all cadastral registration formalities; and (ii) the title to the land plot has undergone state registration (save for non-delineated public lands that municipal authorities, or, in the case of Moscow and Saint Petersburg, regional authorities, can dispose of without state registration).

There are some cases when the state registration of title to the land plot can be performed simultaneously with its cadastral registration (e.g. formation of a new land plot, provided certain conditions are met).
Both procedures require the submission of certain documents to the state registration authority (i.e. the Federal Service for State Registration, Cadastre and Cartography) or its regional/local departments (“Rosreestr”) (the “Registrar”). Documents can be submitted to the Registrar’s offices in any region of the Russian Federation regardless of the immovable property’s location.

Until fairly recently, there were two main information resources for cadastral registration and state registration of rights to immovable property, namely the State Cadastre of Immovable Property and the Unified State Register of Rights to Immovable Property and Transactions therewith. In practice this often resulted in the duplication and inconsistency of records made in these two independent systems. However, since 1 January 2017, these two systems were merged into a new information resource, i.e. the Unified State Register of Immovable Property (the “State Register”) maintained by the Registrar in electronic form.

The State Register contains information on both immovable property and the rights thereto. In particular, it includes: (i) a register of immovable property; (ii) a register of rights to, liens on and encumbrances over immovable property; (iii) a register of boundaries (e.g. the boundaries of the regions of the Russian Federation and municipalities, boundaries of use-restricted zones, territorial zones and other special territories); and (iv) registration files, cadastral maps and document journals.

Rights to buildings and structures in Russia are not effective until they are registered in the State Register. Such state registration (as evidenced by an extract from the State Register) is the only confirmation of the existence of the ownership right. Only a court decision may overrule state registration.

Since 15 July 2016, ownership certificates, which used to be the main confirmation of state registration of the ownership right to immovable property, are no longer issued and fully replaced by extracts from the State Register.

Since 1 January 2017, cadastral extracts also no longer exist. Starting from this date, both state cadastral registration and state registration of rights to immovable property are evidenced by a sole extract from the State Register.

**Buildings on land plots**

The Land Code prohibits the transfer of land without the buildings and structures standing on it. Ownership rights to a building may only be transferred together with the rights (be it ownership or lease rights) to the land plot underlying this building. In exceptional cases, title to parts of a building may be transferred separately from the land if it is impossible to separate the respective part of the land plot, or if there is a restriction on the acquisition of this land plot.
Owners of buildings located on a land plot other than their own generally enjoy a pre-emptive right to purchase the land plot, or a preferential right to lease it. If a land plot is in state or municipal ownership, owners of buildings generally have exclusive rights to privatise the land plot.

**Privatisation**
If buildings, structures or industrial facilities are being privatised, the underlying land must also be privatised at the same time.

A building owner has pre-emptive rights to obtain ownership or lease rights to a publicly-owned land plot on which the owner’s building stands.

In case of ownership, the buyout price is determined by the authority owning the land. In any event, the price of such land plot must not exceed its cadastral value or any other price if so established by applicable law (except for cases when the land plot is to be sold through an auction).

**Sale and purchase agreement**

**General**
Certain conditions of a real estate sale-purchase transaction are deemed material and must be clearly determined in a sale and purchase agreement, such as the subject matter (i.e. the land plot or building/structure/premises) and the price. In addition, parties to an agreement are entitled to set out their own list of supplemental contractual provisions that they consider to be material to the transaction. The material contractual conditions must be recorded and reflected in the State Register.

If a sale and purchase agreement does not provide the material terms and conditions, it is deemed not to have been concluded. This means that (i) the purchaser does not acquire the ownership right to the land plot or real estate; and (ii) the land plot or real estate must be vacated and returned to its owner in its original state and the sale price returned to the purchaser. These consequences arise only if a court declares the sale and purchase agreement as not having been concluded.

**Purchase of future property**
Sale and purchase agreements in relation to future property are considered valid, but the buyer’s title to the property only arises after its commissioning and the subsequent registration of the seller’s title1.

In most cases, investment contracts in Russia are recognised as sale and purchase agreements in relation to future property.

In practice, this means that, when a project is structured around an investment contract, the investor is denied ownership rights if the property is under construction or it is actually

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1 Ruling No. 54 of the Plenum of the Supreme Commercial Court of the Russian Federation dated 11 July 2011.
completed but the developer has not registered ownership. The reason for this is that legally the real estate does not exist until it is registered. Although according to the current court practice there is no risk that an investment agreement will be considered as not having been concluded, an investor can only compel the developer to transfer the property once the developer has registered its own initial ownership to the property. Thus the investor is not able to register its ownership immediately after commissioning. Until such registration, the only option provided to the investor is to terminate the agreement and/or claim losses. This solution is far from desirable for investors. There are options for investors which can be tailored for each project and require expert contract drafting. These can include securing obligations via pledges, penalties and/or independent (including bank) guarantees and, for substantial real estate finance projects, using corporate mechanisms to take control over the developer.

**Allocation of land for construction**

Where the main type of permitted use is construction, publicly-owned land may only be granted on lease, unless exceptions apply².

**Registration of transfer of title**

The transfer of ownership title to real estate must be registered in the State Register. The sale and purchase agreement itself does not have to be registered but merely submitted and examined as part of the registration process.

When the applicant is a Russian legal entity, the Registrar is obliged to request its constituent documents directly from the competent authorities as a part of the interagency information exchange system and, therefore, it is not obligatory to submit constituent documents.

The Registrar must immediately notify the individual or entity holding rights over immovable property of the state registration application having been filed in respect of its property. As a general rule, after seven working days from the application date, the ownership title to the real estate can be state registered.

The ownership title to immovable property is deemed to legally exist on the date of state registration. However, rights to property which arose before Federal Law No. 122-FZ “On State Registration of Rights to Immovable Property and Transactions” came into force (in January 1998) are deemed valid even if they are not registered.

Any person acting in good faith may rely on any record made in the State Register. Where a person incurs losses as a result of illegal or incorrect data having been entered into the State Register due to a fault of the Registrar, that person is entitled to claim compensation from the federal budget.

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² Please see the Acquisition of public land for construction section below on page 166.
If parties to a sale and purchase agreement choose to conclude it before a notary (they are not obliged to do so unless the transaction relates to shares in a co-owned property), the notary must check the validity of the transaction. Since 1 February 2019, the notary also deals with registration formalities with the Registrar unless the parties have agreed otherwise. In this case, the state registration of the real estate rights takes three working days (or one working day if the documents are submitted by the notary in electronic form) and the notary is responsible for the validity of the transaction.

It is possible to submit an application and the documents required for the state registration of rights in electronic form, through special e-services of the Registrar. As this development is still fairly recent, the practice of paper-based registration still continues to be widely used.

Any person may request general information about real estate (such as the owner or registered encumbrances) in the form of an extract from the State Register in paper or electronic format\(^3\).

However, information relating to the content of the documents based on which the title has been created, and the properties owned by a certain individual or legal entity, may only be requested by the owner of the relevant property.

Although, since 4 August 2018, it is generally required to register most of the existing encumbrances\(^4\), certain types of encumbrances (protective zones of cable lines and gas transmission lines, sanitary protection zones, etc.) are still not always recorded in the State Register. For this reason, it is highly advisable to conduct onsite investigations and legal due diligence of the land plot and any properties located on it, and to review the documents kept by the Registrar (e.g. the extracts from the State Register).

Recent practice of state registration

The Law on State Registration (effective since 1 January 2017) provides for certain changes to the procedure of state registration of real estate. The main goal of these changes is to ensure better protection for state registration applicants, increase the liability of the Registrar and its officers and reduce the related investment risks.

However, despite some positive innovations, certain provisions of the Law on State Registration may adversely affect the real estate market players’ activities. For example, the Registrar now has more grounds to deny the state registration of rights.

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\(^3\) [https://rosreestr.ru/wps/portal/p/cc_present/FGRN_1](https://rosreestr.ru/wps/portal/p/cc_present/FGRN_1)

\(^4\) Please see the Zones with restricted use section below on page 165.
Formally, the Law on State Registration provides for a single ground for such denial – failure to eliminate reasons preventing the state registration of rights within the period (being for up to three months in most cases) for which the Registrar has suspended the state registration. However, at the same time there are currently 65 grounds allowing the Registrar to suspend the state registration. Quite a number of these grounds are controversial, in particular because an applicant has no control over some of them. As a result of the state registration reform, the number of potential grounds to deny state registration has increased from 30 to 65.

Leases

Land leases
The following persons may (subject to certain restrictions) lease a land plot: (i) Russian and foreign individuals; and (ii) Russian and foreign legal entities.

In practice, in the case of lease of public land, the land lease agreement will contain general provisions dictated by the landlord. As such provisions come from legal acts adopted by the relevant municipal or state body, there is little scope for negotiating any amendments. The conclusion of the lease will also generally presuppose a tender process (subject to certain exceptions).

A lease agreement in respect of a privately-owned land plot may include any provisions provided they do not contradict the mandatory requirements of Russian law.

Material conditions of the lease, such as the subject matter (i.e. the land plot itself) and amount of the rent, must be clearly determined in the lease agreement.

If a lease agreement does not meet the above requirements, it is deemed not to have been concluded. If this occurs, the land plot must be vacated and returned to its owner, and any rent already paid to the landlord must be returned to the tenant save for the amounts due from the tenant for actual use of the land plot.

Term
Russian legislation does not impose any general limit on the term of a lease of a privately-owned land plot.

The maximum lease period for a publicly-owned land plot is 49 years. In addition, certain limits exist on leases of specific types of land. For example, the maximum permitted term for a lease of agricultural land or forest land is also 49 years. The maximum permitted term for a lease of coastal land is 20 years.

The Land Code sets maximum terms for 21 types of leases in respect of publicly-owned land plots. For example, a lease agreement for a land plot required for the construction of buildings and structures may now be concluded for a term of three to ten years, a lease agreement of a land plot required for integrated urban development – for a term of three to five years. The maximum term of a lease agreement concluded for
the purposes of placing linear facilities (e.g. power transmission lines, pipelines, railways, etc.) is 49 years. A 49-year maximum term will also apply to lease agreements to be entered into with owners of buildings located on publicly-owned land plots and to other public land lease agreements unless a specific maximum lease period is expressly provided by the Land Code.

Therefore, the impact of the lease term should be assessed before any material investments are made.

Any lease agreement concluded for a term of one year or more is subject to registration in the State Register. In the absence of the state registration, the lease agreement is deemed binding upon its parties, but remains unenforceable against third parties (i.e. anyone except the tenant and the landlord). In such cases, the tenant forfeits its preferential right to renew the lease agreement. In the event of a sale, a new owner of the land plot may claim termination of such long term lease agreement which has not been duly registered.

The Civil Code provides that, where a lease agreement does not specify the lease term, then it is deemed to have been concluded for an indefinite term. In such cases, the lease may be terminated simply by either party serving a termination notice to the other party at least three months before the intended date of termination.

Upon expiry of the lease, a tenant has a preferential right to conclude a lease of the same land plot for a new term by operation of law. However, the lease agreement may expressly exclude this preferential right.

If the tenant continues to use the land plot after the expiry of the lease term and the landlord does not object, the lease will be considered to be renewed on the same conditions for an indefinite term and may be terminated at any time by either party serving a termination notice three months in advance. Russian courts usually consider this provision of the Civil Code as a mandatory one. Therefore, courts are likely to strike down clauses providing for the automatic prolongation of a lease. In order to avoid this uncertainty, a lease should contain an undertaking by the parties to enter into a new lease for the same term and on the same conditions.

Assignment
It is generally permitted (subject to certain restrictions) to sublease, assign, mortgage or contribute lease rights to a land plot to the charter capital of a company. Unless otherwise provided for in the land lease agreement, sublease, assignment and mortgage agreements may be entered into without the landlord’s consent (but subject to a subsequent notification by the tenant). In any event, there are a number of circumstances when the tenant’s right to sublease or mortgage a land plot, or assign lease rights, may not be
Termination

The Civil Code grants both a landlord and a tenant the right to terminate the lease unilaterally, either in the limited number of circumstances stipulated by the Civil Code (via court procedure) or as expressly agreed in the lease agreement itself. In the latter case, both in-court and out-of-court procedures may be used.

The Land Code stipulates additional circumstances in which a landlord may terminate a lease. These include, among others, use of the land in a way that is inconsistent with its category and permitted use, and appropriation by the state.

In relation to state or municipal land, the Land Code also grants a landlord the specific ground for early termination of a lease concluded for a term of more than five years. If a tenant commits a material breach of the terms and conditions of such lease agreement, the landlord may apply for a court order enabling it to unilaterally terminate the lease early.

Commercial leases of buildings, structures and premises

Commercial lease sector

The commercial lease market is generally dominated by the private sector of the economy, what results into the legal relationships being heavily influenced by commercial needs, the return on investment and the level of yield.

The commercial lease sector (especially in Moscow, the Moscow Region, Saint Petersburg and other large Russian cities) is also affected by international practice in respect of rent and methods of rent calculation: so-called “net”, “double net” and “triple net” leases. A “triple net” lease (the most common type) is a lease where the tenant is obliged, in addition to the payment of the base rent, to compensate the landlord for all expenses associated with the leased property (including multitenant buildings) such as property taxes, insurance, utilities, and maintenance and operation costs. “Triple net” leases are usually used for long-term lease relations for large malls, business centres and warehouses due to their alleged positive impact on taxes, cash flow and other factors.

Structuring lease arrangements in respect of existing buildings, structures or premises

Long-term lease (the “LTL”)

An LTL is a lease agreement which lasts for one year and more. An LTL is considered as fully enforceable against third parties only upon state registration in the State Register. Either party to the LTL can apply to the Registrar and submit the LTL for registration. During the registration procedure, the Registrar will examine the validity of the LTL.

Material conditions of any lease should, therefore, be clearly determined, including the subject matter of the LTL (i.e. building, premises or structure) and
the amount of rent or the rent calculation method.

An LTL can now be registered simultaneously with state cadastral registration of the leased premises based on their technical plans prepared by a duly qualified cadastral engineer.

The documents for the state registration of an LTL may now be submitted in electronic form.

**Short-term lease (the “STL”)**

An STL is a lease agreement executed for a period of less than one year (usually 11 months or 364 days). As the term of an STL is less than one year, it does not require state registration. It, therefore, only needs the signatures of the parties to be binding and effective.

**Structuring lease arrangements in respect of buildings, structures or premises under construction**

As in the past it was absolutely impossible to lease future property under Russian law, market players developed the following two- or three-tiered legal structure:

— Preliminary Lease Agreement (the “PLA”);
— STL; and/or
— LTL.

Although now it is legally possible to enter into a lease agreement for future property, market players still widely use this lease structure (or its variations) in their operations.

**PLA**

When a building, or any other property, is under construction, and a potential tenant wishes to “mark out” the building, as well as particular premises within the building, and “fix” the amount of rent, it enters into a PLA with the prospective owner to regulate their pre-registration relationship.

Before the owner’s title to a building and the building itself are registered in the State Register, no lease rights in respect of the building or premises within it arising out of an LTL can be registered. The PLA, in its turn, sets out the parties’ undertaking to enter into the principal lease agreement in future and contains various pre-lease obligations (such as the time period for construction, the tenant’s requirements to fit-out works in the building and/or premises).

In order to be legally valid, the PLA must clearly determine its subject matter, sufficiently describe the property to which it relates, and establish all the material terms and conditions of the principal lease agreement to be entered into (the “Principal Agreement”).

Parties to a PLA should determine a time period within which they are obliged to enter into the Principal Agreement. If no time period is specified, the parties must enter into the Principal Agreement within one year from the date of execution of the PLA. If the parties fail to enter into the Principal Agreement within this time period, the PLA will terminate. However,
if the failure to enter into the Principal Agreement was caused by one of the contractual parties, courts may force the defaulting party to enter into the Principal Agreement.

**Principal Agreement – STL and LTL**
The STL and/or the LTL are executed after the initial state registration of the landlord’s ownership title to the building/premises in the State Register. The STL, if one is signed, remains in effect and is subject to renewal until the LTL is duly state registered and becomes effective.

**Lease for future property**
It is possible to lease out a future property, e.g. a building or facility under construction, or a building, facility or land plot an ownership title to which has not been registered yet.

Lease agreements for future property are considered valid, but the tenant’s lease rights to the property only arise after completion of the construction and the subsequent registration of the landlord’s title over it.

Lease agreements for future property are becoming more and more popular in practice. The market players use them as an alternative to the two- or three-tiered legal scheme (PLA, STL and/or LTL).

However, pre-transaction anti-monopoly control will apply to the acquisition and lease of production assets such as industrial-purpose structures, facilities of communal infrastructure if:
— their assets book value exceeds 20% of the book value of the fixed production and intangible assets of the seller or the landlord; and
— certain worldwide asset value or revenue thresholds of the relevant groups of companies are exceeded.

Also, under Federal Law No. 381-FZ “On State Regulation of Trade Activities in the Russian Federation” dated 28 December 2009, food retailers with a market share in a given locality exceeding 25% are prohibited from acquiring or leasing additional outlets in that locality.

**Mortgages**
**Creating a mortgage**
Both ownership and lease rights to land and buildings may be mortgaged; there are no restrictions against this in either the Land Code or the Civil Code. Rights to buildings and parts of buildings may also be mortgaged.

The terms and conditions of mortgages are governed by the Law on Mortgage, which requires mortgages over the completed buildings and the underlying land plot be granted simultaneously.

A security interest over a land plot or other property is generally created

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5 Please see the Anti-monopoly issues chapter on page 43.
by the parties entering into an express mortgage agreement. However, a mortgage may arise by operation of law (for example, a bank giving a loan to buy a property will become a mortgagee until the sale price is repaid in full).

A mortgage agreement must be drafted as a single contract and signed by both parties who may choose to do so before a notary. Any mortgage agreement except for a mortgage over the lease rights under non-registerable STLs must be further submitted to the Registrar. Mortgage agreements concluded before 1 July 2014 only come into effect upon registration in the State Register, failing which they are null and void. Mortgage agreements concluded from 1 July 2014 no longer need to be state registered. They therefore come into effect upon signing. However, mortgages as encumbrances over real estate still need to be state registered based on a mortgage agreement.

Since 1 February 2019, the parties to a notarised mortgage agreement have two registration options:
— follow the general rule and let the notary submit a notarised application; or
— expressly agree to the contrary in the mortgage agreement and submit a joint application and a set of necessary documents to the Registrar themselves.

The Law on State Registration sets out the time period within which the Registrar must complete the registration formalities. For a mortgage of a land plot and non-residential property under a notarised agreement, the time period is three working days from the date of submission of the application to the Registrar (or one working day if the documents are submitted in electronic form) or five working days if the set of documents is submitted through a special multifunctional centre. For mortgages of land plots and non-residential property under a simple agreement, the time period is seven working days (if the application is made directly to the Registrar) or nine working days (if the application is made via a multifunctional centre).

**Enforcing a mortgage**

If a significant breach of a secured obligation occurs, the mortgagee may enforce the mortgage. There are two methods of enforcement: (i) through the courts; or (ii) through an out-of-court enforcement procedure (provided that the possibility of the out-of-court procedure is prescribed for in the mortgage agreement or a separate agreement between the mortgagee and the mortgagor).

Russian legislation provides for the following options when the mortgagee is enforcing the mortgage:
— appropriation of the mortgaged property by the mortgagee or sale of the mortgaged property by the mortgagee to a third party; or
— sale at an auction.
In a number of cases, the use of the out-of-court enforcement procedure is prohibited (for instance: if the first and second ranking mortgages provide for different types of enforcement procedures or if the mortgage secures different obligations in favour of co-mortgagees).

The Law on Mortgage also sets out a procedure for the distribution of the proceeds received as a result of the enforcement of the mortgage. For example, for both the out-of-court and court enforcement procedures, the sale proceeds are distributed subject to the priority of claims between (i) all mortgagees that filed their claims; (ii) other creditors; and (iii) the mortgagor. Priority between the mortgagees who filed their claims would have to be determined on the basis of the entries in the State Register.

Resolution of real estate disputes
In Russia commercial disputes between legal entities may be referred to the competent state courts or, if the parties so elect, to arbitration tribunals. However, submission of a dispute for resolution at an arbitration tribunal should be carefully considered for the following reasons:
— if a dispute is arbitrated, an interested party will have to obtain an enforcement order through the Russian state courts to make an entry into the State Register based on the arbitral award (e.g. an entry on the ownership title to the property or an entry on the state registration of an LTL, etc.);
— if a real estate dispute relates to registration issues, such dispute can only be submitted to state courts; and
— if a real estate dispute involves some kind of public relations other than state registration arrangements (e.g. issuance of construction or commissioning permits), such dispute can also only be settled by state courts.

Planning and construction issues
Different land categories and types of permitted use are assigned to land plots in order to optimise their utilisation.

Land categories
Under the Land Code, land in Russia is divided into seven land categories (each with a designated prescribed use):
— agricultural land;
— land of settlement;
— industrial land (for the purposes of industry, energy production, transport, communication, television, radio broadcasting, cosmic activities, defence and other special purposes);
— land containing specially protected areas and objects (e.g. nature parks);
— forest land;
— land near water; and
— reserved land.

Specific regulations may apply, depending on the land category. For example, when agricultural land is being sold, Russian regions enjoy pre-emptive rights of purchase, as do municipal
Doing business in Russia

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authorities, in the situations provided for by the relevant regional legislation. As mentioned above, foreign investors (including companies and individuals) are not allowed to own agricultural land, but may only obtain lease rights. Agricultural land that is not used in accordance with its designated prescribed use may be expropriated from its owner under a court decision.

Essentially, the most suitable categories for development and commercial construction are industrial land and land of settlement. It is possible to build warehouses, commercial buildings and production facilities on the land plots within these categories provided that the type of the land’s permitted use allows it.

Permitted use of land

Each land category has different conditions for the use of land, and the Land Code requires that each plot be used only in accordance with the applicable category and established type of permitted use.

Since 2014, a type of permitted use of a land plot may only be determined in strict compliance with the classifier of types of permitted land use (the “Classifier”) which provides for an exhaustive list of the types of permitted use. Local authorities have to bring local regulations on the territorial zoning (i.e. the rules of land use and development) in line with the Classifier by 1 January 2021. Although this deadline is almost reached, not all local authorities have yet aligned their local regulations with the Classifier.

Change of land category and permitted use

Land category

It is possible to change the category of a particular land plot. For example, regional authorities may change a land plot’s category from “agricultural” to “industrial” (e.g. for the allocation of a warehouse complex) subject to a number of obligatory procedures. A land plot may be assigned to the category of land of settlement only when it is annexed to the territory of a certain settlement (included in the borders of that settlement). This can be done only by amending/adopting a general plan of a certain settlement. Most settlements have now adopted their general plans. However, there are some rural settlements where town planning documentation is still missing.

Changing the category of forest land or land near water is more complicated (as it involves federal authorities) and is strictly regulated. Legislation provides an exhaustive list of circumstances allowing a change of category in these cases.

Permitted use

The owner of a land plot may change the type of permitted use at its own discretion according to the adopted town planning documentation (general plan of the settlement and rules of land use and development). Where town planning documentation is not adopted,
permitted use of a land plot cannot be changed. Also, it is generally prohibited to issue construction permits if rules of land use and development have not been adopted.

**Zones with restricted use**
Before recent law developments entered into force on 4 August 2018, the Russian legislation contained only fragmentary regulation of zones with restricted use. A new Federal Law introduced to the Land Code a new chapter on the legal status of zones with restricted use, thereby harmonising the legislation. In particular, an exhaustive list of 28 zones with restricted use was established. This list includes, among others, zones of energy industry facilities, railways, sanitary protection zones, etc. The Russian Government has to approve separate regulations for each type of zone with restricted use and has done so for most of such zones. It is also planned that the State Register will contain information about the boundaries of all zones with restricted use.

Developed land plots which are affected by zones with restricted use may only be used in strict compliance with the legal regime of the respective zones. Otherwise, the affected buildings and structures located on them may be subject to demolition. If they are demolished, their owners or other legal holders are entitled to demand their market repurchase price and/or compensation for losses from the owner of the capital structure around which the relevant zone is established, or from the state or municipal authorities.

**Town planning framework**
The Town Planning Code stipulates that each urban settlement must adopt its town planning documents, including: (i) regional and municipal territory planning documents that establish the boundaries of various development zones in large territories; (ii) city general plans that set out the boundaries of various functional development zones within individual urban settlements; and (iii) rules for land use and development that establish territorial zoning and describe in detail what may be done in each territorial zone of each urban settlement. The town planning documents establish territorial and functional zoning of the settlement territories and indicate existing town planning limitations, such as “red lines” and protection zones. Construction planned for any new development must comply with the prescribed town planning limitations and zoning. For example, the construction of a large shopping mall in a recreational zone would not be permitted.

On 28 March 2017, the Moscow Government approved the rules for land use and development in Moscow. Any new development in Moscow must strictly comply with the requirements including (among others) the permitted use of a particular land plot, certain construction limitations and maximum buildings’ height.

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Another important document in respect of a particular land plot is the land plot development plan ("GPZU"). This document contains all information on the land plot which is relevant for construction: the type of permitted use, boundaries, minimum offsets from the boundaries, technical conditions for connection to engineering communications, etc. The land plot development plan is one of the mandatory documents that must be submitted in order to obtain the construction permit.

Construction
The construction process in Russia involves various key parties:
— a client ("zastroystschik") – the entity who wants to build a property for itself or for its subsequent sale or lease;
— a technical customer ("tekhnicheskiy zakazchik") – a special professional company engaged by the client to supervise and manage the construction of the property;
— a general designer ("generalniy proektirovshchik") who develops the design documentation;
— a contractor ("podryadchik") or general contractor ("generalniy podryadchik") who performs the construction works for the client, either by itself or through subcontractors; and
— various specialised engineering entities that carry out surveys required for the construction.

The client must have rights to the land plot (ownership or lease) where construction is envisaged.

Since the majority of land in Russia is still state-owned, before commencing any construction project, it is important to assess the issues of the land acquisition and obtaining authorisations and permits required for construction on it from various state authorities.

Acquisition of public land for construction
The Land Code stipulates a specific procedure for making publicly-owned land available to individuals and legal entities for construction purposes. Both Russian and foreign individuals or legal entities interested in obtaining land for construction may apply to the relevant authority for the allocation of a land plot. Any refusal to allocate land may be challenged in court (subject to certain restrictions).

Under the Land Code, there is a two-step approach to the provision of land which involves firstly, the planning of territory use, and secondly, the allocation of the land plot in accordance with the designated use.

As a general rule, where the main type of permitted use is construction, a land plot may only be granted for lease. However, in certain circumstances, land plots may be sold through an auction (e.g. for farming purposes) or without a tendering process7.

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7 See Article 39.3(2) of the Land Code.
Allocation of land plots for construction is generally possible through a tendering process only in the form of an electronic auction.

Under the Land Code, there are 46 special grounds under which it is possible to lease a land plot without a tendering process (e.g. where an interested party is a legal entity that is responsible for the construction of power, heat, gas or water supply utilities or for implementation of a major investment project).

An interested party may itself initiate an auction. In this case, it is responsible for carrying out all the preparatory works required for formation of the publicly-owned target land plot.

Save for a few exceptions, a tenant does not have the priority right to renew the lease agreement for a publicly-owned land plot without an auction. This is aimed at enhancing competition in the land market and combating the abuse of rights by bad faith market players. In practice, however, the parties to a lease of public land often follow Article 621 of the Civil Code, which provides that, if a tenant continues to use a land plot after the expiry of the lease term and the landlord does not object, then the lease agreement is considered to be renewed for an indefinite term.

Furthermore, there is an exception from this general prohibition. In particular, a tenant may renew a lease agreement of a publicly-owned land plot without an auction if all of the following conditions are met: (i) the land plot was initially granted without a tender; (ii) the application to enter into a new lease agreement is made before the expiry of the current one; (iii) no other person has an exclusive right to the land plot; (iv) the current lease agreement has not been terminated; and (v) the grounds permitting the conclusion of the land lease agreement without a tender remain applicable before the lease expires.

Apart from the above, land plots may also be provided to a person by the state or municipal authorities through investment schemes or public private partnership schemes. In these cases, the title to the land plot is provided to the successful bidder within the time period set out in the respective agreement.

**Seizure of land plots for state and municipal needs**

The procedure for the seizure of land for state and municipal needs has the following key aspects: (i) a detailed state authorities’ decision-making process for the seizure of land plots; (ii) a procedure for preparing and concluding seizure agreements; and (iii) the specifics of fixing the amount of compensation in view of the land seizure – such compensation is payable not only to landowners, but also to land users and tenants of land plots.

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8 Please see the Infrastructure and public private partnerships chapter on page 217.
Holders of natural monopolies, subsoil users and other persons listed in the Land Code may initiate a land seizure procedure. Once the seizure decision is adopted by the relevant state authority, it is valid for three years from the date of adoption and may be challenged in court.

**Expropriation of incomplete construction facilities**

If a lease agreement of a publicly-owned land plot underneath a construction facility is terminated, the incomplete facility will be expropriated from the developer. An incomplete construction facility is disposed of by sale through an auction. Such a disposal will be possible only if all of the following conditions are met: (i) construction of the asset was not completed by the termination date of the lease agreement; (ii) the land plot was provided pursuant to a tender; and (iii) the delay in the asset’s construction is not due to any action (or omission) of state or local authorities, or persons operating the utility networks to which the asset has to be connected. The purpose of these rules is to encourage developers to meet deadlines for construction projects on leased publicly-owned land plots. These provisions, however, do not apply where a lease agreement has been concluded before 1 March 2015.

Only a court may adopt a decision to dispose of an incomplete construction facility upon a claim to sell the facility through an auction. The claim may be filed by a state or municipal body authorised to dispose of the relevant land plot. The proceeds of the sale must be transferred to the former owner of the incomplete construction facility (i.e. to the developer). However, the developer may extend the term of the lease agreement of a publicly-owned land plot without an auction once, in order to complete the construction. This can only be done if (i) an authority has failed to file a court claim to expropriate the incomplete construction facility within six months after the expiry of the lease term; (ii) the court has dismissed such a claim; or (iii) the asset has not been sold through an auction.

**Construction permits**

Any construction activity may only be performed on the basis of authorisations and permits issued by state authorities unless an exception applies. The list of such permits and authorisations may differ depending on the type of property to be constructed.

A construction permit must be obtained prior to the commencement of any construction works. This is a formal document that confirms that the design documentation meets the compulsory requirements of applicable law.

Construction permits are issued only in the following cases: (i) the applicant has valid rights to the land plot; (ii) the applicant has received a positive (state or non-state) expert opinion on the design documentation (if applicable); and (iii) there are no contradictions between the documents on rights to
the land plot, the design documentation and the land plot development plan.

The Town Planning Code requires the applicant for a construction permit to have rights (ownership or lease) to the land plot. If someone constructs a building on a land plot over which it has no rights, the building may be declared an “unauthorised structure” by the courts or municipal authorities, and demolished at the expense of the person who developed the “unauthorised structure”.

A holder of rights to the land plot (acting as the client in the construction process) or a technical customer (engaged by the client and acting as its agent) may obtain a construction permit.

A construction permit contains a number of essential elements such as the time period for the construction works, the area of the constructed property and the name of the client. A valid construction permit is one of the documents required to commission the constructed property.

There are, however, some exceptions to this general rule. In particular in connection with non-residential real estate, non-capital buildings and structures can be built without obtaining a construction permit. This type of property was recently introduced in Russian law. Non-capital buildings and structures are defined as objects that are not attached permanently to a land plot and whose technical characteristics allow them to be moved, dismantled and subsequently assembled without significant damage to their purpose and change to their main parameters.

**Unauthorised structures**

In August 2018, certain amendments were introduced into Russian law to relax the regulations on unauthorised structures:

— a capital structure can now be qualified as an unauthorised structure only if it was built in violation of the rules and regulations that were in effect both when (i) the construction commenced; and (ii) such unauthorised construction was revealed;

— a facility cannot be qualified as an unauthorised structure if it was built in violation of the restrictions for the use of a land plot, and the owner of this facility did not know and could not have known about these restrictions;

— a court or municipal authority may now allow an unauthorised structure to be brought into compliance with (i) the rules for land use and development; (ii) town planning documentations; and (iii) obligatory construction

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9 Please see the Unauthorised structures section below.


requirements. This right was added to the right to decide on the demolition the unauthorised structure – which existed in the past; and
— minimum and maximum terms for the demolition (from three months to one year) and for bringing an unauthorised structure into compliance with the applicable requirements (from six months to three years) were introduced.

Commissioning
Property commissioning is the second most significant formal milestone in the construction process. Commissioning may be divided into two stages:
— acceptance of the works performed by the contractor/subcontractors by the client; and
— commissioning of the constructed property by the competent authorities.

The first stage is critical in respect of the contractual relationship with the contractor or general contractor. Following the acceptance of the works, a contractor or general contractor is entitled to claim for payment for the works performed (the payment mechanism is usually determined in the construction agreement). The warranty period begins to run from the date of acceptance.

The second stage is crucial for the state registration of the property. During this stage, the state construction supervisory authority examines the compliance of the constructed property with the construction permit, the design documentation and the land plot development plan. If certain parameters (such as the total area, total structural volume, etc.) differ, the commissioning permit will not be issued, and it will be impossible to register the property in the State Register until the revealed deficiencies are fully eliminated.

Since 1 January 2017, the state cadastral registration of a newly-built building or structure is based on the application of the authority issuing the commissioning permit which must submit this application to the Registrar within five working days. Moreover, it is now clearly specified that, for the purpose of the state registration of the ownership title to a newly-built building or structure, it is sufficient that a lease agreement for the land occupied by the property be effective as at the commissioning date.

Membership in self-regulatory organisations and licences
Legal entities providing the following construction and design activities must become members of self-regulated organisations ("SROs") which authorise them to carry out certain activities:
— designing buildings and structures;
— constructing, reconstructing and carrying out major repairs of buildings and structures; and
— engineering and surveying for the purposes of constructing buildings and structures.
With some exceptions, none of the survey, design and construction activities mentioned above are permitted without an SRO membership. Failure to comply with this requirement could result in criminal or administrative liability.

Both Russian and foreign legal entities may be members of an SRO. SRO membership fees depend on the type of activity and may be substantial.

In addition, some construction-related activities are still subject to licensing requirements. Examples of these activities include the installation of firefighting systems or the operation of some industrial facilities classified as posing fire or explosion hazards.

In July 2016, important amendments to the Town Planning Code concerning SROs and admission to the above-mentioned survey, design and construction activities were approved by Federal Law No. 372-FZ dated 3 July 2016 (the “SROs Amendments”). Most amendments came into force on 1 July 2017 (with some exceptions mainly concerning a new approach to the organisation of SROs’ activities and the management of SROs, which became effective on 4 July 2016).

The most significant changes imposed by the SROs Amendments are the following:

— SROs for construction companies operate on a regional basis (i.e. any construction company must be a member of the SRO which is registered in the region of the Russian Federation in which such construction company is itself registered). Exceptions from this regional registration principle are only provided for foreign legal entities and Russian companies incorporated in regions where no construction SRO was incorporated.

— All admission certificates issued by SROs were invalidated as of 1 July 2017. Therefore, the only document confirming the right to perform survey, design and construction activities will be an extract from the register of an SRO’s members (which will be valid for one month from the date of its issuance).

— Technical customers must be members of an SRO in order to legally perform their activities.

— In addition to the general indemnification fund (securing liabilities of SRO members in the event of personal injury or property damage resulting from the destruction or damage to a building or structure), there are some cases when SROs are required to set up another compensation fund securing contractual liabilities of the SRO’s members for non-fulfilment or improper fulfilment of their contractual obligations under the agreements concluded through tender procedures (i.e. under agreements with public authorities, or state, municipalities and other publicly-owned counterparties).

— The SROs Amendments also regulate in detail requirements applicable to
Any legal entity or individual may own private land in the Russian Federation, subject to certain restrictions which regulate the legal status of the land plot.

(i) SROs; (ii) SRO members (such as an obligation to hire at least two postgraduate engineers having sufficient work experience and listed in the national register of specialists); (iii) special standards and internal documents of SROs; and (iv) other related organisational aspects of SROs’ activities.