

Changes in Regulation of the Construction Industry

With the amendments to the Town-Planning Code passed on 28 November 2011, regulation of the construction industry is undergoing significant changes. First and foremost, these affect expert review of design documentation and liability associated with ownership and possession of real estate.

Expert review of design documentation and engineering survey results

In accordance with the Town-Planning Code of the Russian Federation ("TPC"), effective 1 April 2012, real estate developers will be able to choose whether between state or private expert review of design documentation and engineering survey results.

State expert review of design documentation and engineering survey results will be mandatory for hazardous facilities, historical sites, structures built on the continental shelf of the Russian Federation or in the waters of inland seas or the territorial sea of the Russian Federation, defence and security facilities, structures to be built or refurbished with Russian Federation budgetary financing, and others.

In the amended TPC the period allotted for state expert review of design documentation and engineering survey results has been reduced appreciably, from 3 months to 60 days.

Organisation and conduct of private expert reviews

The organisation and conduct of private expert reviews of design documentation and engineering survey results, the amounts of fees and the payment procedures are to be regulated by a decree of the Russian Federation Government which has yet to be passed. Until such decree is enacted, in practice it will be difficult for developers to obtain a private expert review.

Requirements applicable to experts

Private expert review of design documentation will be performed by an individual or legal entity that has been certified (for individuals) or accredited (for legal entities). The certification and accreditation procedures are already established and described in detail in the TPC.

Information about individuals and legal entities that have been certified or accredited to conduct private expert reviews will be kept in state registers and published on the Internet, which should make it easier for those seeking a private expert review to ensure that the experts in question possess the necessary credentials.

Key issues

- Expert review of design documentation and engineering survey results
- Use of buildings
- Compensation for harm

Conflict of interest

A new rule introduced to the TPC is the express prohibition barring the conduct of a private expert review by any expert who has a personal interest in the outcome of the review or who themselves or whose immediate relatives took part in preparing the design documentation or engineering survey results.

Challenging expert review findings

The findings of state or private expert review of design documentation and engineering survey results may be challenged by the developer or technical supervisor or their appointed representatives in an expert commission up to 3 (three) years after the findings are approved. Such expert commissions are constituted by the federal government agency responsible for state policy and regulation in the sphere of construction, architecture and town-planning.

The decision of the expert commission may be further appealed in court.

Use of buildings

A number of amendments to the TPC, such as those concerning liability associated with ownership and possession

of real estate, will take effect not on 1 April 2012, but 1 January 2013.

The TPC has been appended with a new Chapter 6.2 regulating the use of buildings and other structures, which are required to meet the applicable technical regulations and design documentation. It is clearly and expressly stated that the duty to ensure safe operation of buildings and other structures rests with the owner of the building, the entity possessing the building on other grounds (lease, right of economic management or day-to-day management, etc.) or the entity providing property management services on a contractual basis in relation to the building (unless provided otherwise by law).

Failure to comply with the technical regulations and design documentation may lead to suspension of use of the building or facility.

Compensation for harm

On 1 July 2013 provisions will become effective which regulate compensation for personal injury or damage to the property of individuals or legal entities caused by the collapse of or defects in permanent structures, or by failure to comply with

safety regulations during the construction or use of buildings and other structures.

We note, however, that the amendments relating to compensation for harm do not apply to cases where harm is caused by the collapse of or defects in multi-family residential buildings.

Amount of claims for compensation for harm

According to the amendments, in cases where the event causes personal injury or death to an individual, the victim or his/her relatives, in addition to having the rights enshrined in the civil legislation to seek compensation for harm caused (e.g., costs of medical treatment, lost salary etc.), are also entitled to claim for compensation over and above compensation for harm caused, in the following amounts:

- injury of medium severity – RUB 1 million;
- severe injury – RUB 2 million;
- death – RUB 3 million.

Persons liable for compensation for harm

Claims for compensation for harm caused and for compensation over and above compensation for harm caused may be

brought against the owner of a building, the concessionaire (unless provided otherwise in the concession agreement), the developer and the technical supervisor (if under the agreement with the technical supervisor the latter is obliged to pay compensation for harm caused), unless said persons can prove that the harm was caused wilfully by the victim or by third parties or resulted from force majeure.

Self-regulated organisations in the sphere of construction previously bore secondary liability for harm caused by their members. This has now been replaced by joint and several liability.

Right of recourse

A building owner, concessionaire, developer or technical supervisor that has paid compensation for harm caused or compensation over and above compensation for harm caused has right of recourse in respect of such amounts against the persons who did the work that was defective (during construction and/or use of a building) and led to the damage or injury to third parties. Such persons are jointly and severally liable to the building owner, concessionaire, developer or technical supervisor.

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