



## Strengthening Protection of Participants in Share Construction

June 30, 2010

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Federal Law No.119-FZ “On introducing amendments to the Federal Law ‘On state registration of rights to real estate and transactions therewith’ and certain legislative acts of the Russian Federation” dated June 17, 2010 (hereinafter the “**Law**”; [published in Rossiyskaya Gazeta on June 21, 2010](#)) came into effect on June 21, 2010, save for the amendments to the Tax Code of the Russian Federation, which will come into effect starting from October 01, 2010.

The Law has made a number of significant amendments to the Federal Law “On state registration of rights to real estate and transaction therewith” (hereinafter the “**Law on State Registration**”), Federal Law “On mortgage” (hereinafter the “**Law on Mortgage**”), Federal Law “On participation in share construction of apartment buildings and other real estate facilities and on introducing amendments to certain legislative acts of the Russian Federation” (hereinafter the “**Law on Share Construction**”), the Code on Administrative Offences of the Russian Federation (hereinafter the “**Administrative Code**”), and the Tax Code of the Russian Federation (hereinafter the “**Tax Code**”).

The Law is primarily targeted at strengthening protection for participants in share construction (hereinafter the “**participants**”) and prohibits developers from using “promissory-note” or other schemes for attracting participant money in violation of the Law on Share Construction.

### Developer services exempt from VAT

The Law establishes that the developers’ services rendered under an agreement for participation in share construction entered into pursuant to the Law on Share Construction are exempt from VAT.

A developer, when entering into an agreement for participation in share construction, was previously required to pay VAT, but at the same time the sale of homes and apartments (with a registered ownership title) was exempt from VAT starting from January 01, 2005 (pursuant to Subclause 22 Clause 3 Article 149 of the Tax Code). It urged developers to enter into “indirect” agreements, register their own ownership title to residential premises (hereinafter the “**apartments**”) with further sale of residential premises to the public under sale and purchase agreements. The lawmakers’ intentions were that the amendments would be an incentive for developers to sell apartments under agreements for participation in share construction.

### Amendments to Law on Share Construction

Pursuant to the amendments, only a share participant is entitled to declare through court that a transaction associated with attraction of money from

individuals, which has been concluded not in compliance with the Law on Share Construction, is invalid.

The Law has changed a notion of “developer” defined in the Law on Share Construction. Now a “developer” means not only a tenant of a land parcel, but also a subtenant.

The Law on Share Construction previously established a five year warranty term for a share construction facility. The Law has made an exception to this term associated with engineering and technological equipment. The warranty term for such equipment is set forth by the agreement and cannot be less than three (3) years.

The Law clarified purposes for which money attracted from the public may be used. Such purposes include construction of apartment buildings and other facilities, compensation for expenses related to acquisition of rights to land parcels, drafting of design documentation and performance of engineering surveys for construction, construction of engineering and technical supply systems, etc.

The amendments establish that the apartment price in the agreement for participation in share construction may be divided in two parts - money for developer’s services and money allotted for construction of the facility. This provided, a developer may use money received as payment for its services without any restrictions. In the event a developer violates the permitted use of the money to be used only for the facility construction, the agreement for participation in share construction may be terminated in court at the participant’s initiative.

### State registration of agreements for participation in share construction and participant’s rights

The timeframe for the state registration of agreements for participation in share construction is reduced from ten to five business days.

Pursuant to the amendments pertaining to state registration of a participant’s right to a share construction facility, only one original copy of the agreement for participation in share construction is to be submitted and it is to be returned to the participant after the registration.

### Mortgage of a share construction facility

The Law introduced amendments pertaining to the mortgage of a share construction facility to the Law on Share Construction and the Law on Mortgage. At present, a record on mortgage occurred by virtue of the Law on Share Construction with respect to the mortgage of a building and/or a land parcel is deemed invalid within five business days on grounds of the developer’s application and a commissioning certificate submitted by the developer, and with respect to the mortgage of a share construction facility – also on grounds of a document confirming that such facility has been transferred to a participant.

Pursuant to the Law, residential and non-residential premises which do not constitute share construction facilities are not deemed pledged starting from the date a developer receives a commissioning permit.

The pledge of a land parcel where a share construction facility has been built is terminated only after all share construction facilities have been

transferred to the participants.

## Administrative liability of parties attracting participant money

Pursuant to the amendments introduced by the Law to the Administrative Code, not only parties which are not entitled to attract participants' money but also parties attracting such money in violation of the Law on Share Construction may be held liable for an administrative offence. In addition, the penalties have been increased: officers may be imposed a penalty in the amount from 20,000 to 50,000 Rubles (previously 15,000 to 20,000 Rubles); legal entities – in the amount from 500,000 to 1,000,000 Rubles (previously 400,000 to 500,000 Rubles). The lower threshold of penalties for publishing incorrect design documentation in the mass media or on the Internet has instead been reduced.

Liability has been added for parties who failed to submit appropriate information to the control and supervisory bodies in the sphere of share construction.

This provided, a person who violated the procedure for attracting participants' money may be held liable for each separate case of unlawful attraction of participants' money.

## Additional information

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*This review covers only a portion of issues related to the topic. The purpose of this review is to provide our clients and other interested parties with information on changes in the legislation which may, to a certain extent, affect their business or interests. This review is not a legal opinion and does not substitute required legal consultations or opinions on certain issues.*

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