



## Legal Concepts of Private Tradable Rights to Immovable Property in the Russian Federation

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### Background

The Russian Federation is a country with 148 million people and total area of 17 million square kilometers.

Following the Socialist Revolution of 1917 all land in the Russian Federation has been nationalized and has remained in state property until early 90<sup>th</sup> when the country has started its policy of market oriented reforms.

Historic traditions and culture have a great influence on the attitude to land in any country. Russian land tenure traditions are heavily influenced by common land use practices that have existed before the 1917 Revolution and collective land use of Soviet Era.

The question of land purchases and sales is probably the most discussed item concerning land tenure in the Russian Federation. It is the main reason for a more than a four year debate in the Russian Federation State Duma (Federal Parliament) over the adoption of the *Draft Land Code* which is expected to finally settle this issue. The only remaining obstacle is the sale of farm land.

### Private Property

The concept of private land property was first introduced in the Russian Federation in the *Law on the Land Reform* (November 23, 1990) and the *Law on Property in the RSFSR*<sup>1</sup> (December 24, 1990). Those two legislative acts have broken the State property monopoly to land and introduced the idea of private land ownership. Article 6, Paragraph 2 of *The Law on Property* said:

#### *Article 6*

*2. Parcels of land can be in private, state or municipal ownership as well as in the ownership of public associations (organizations) or can be provided to be held by individuals, legal entities ....*

This was further supported by the December 15, 1990 amendment made in the Article 12 of the old *Constitution of the RSFSR* and the new *Constitution of the Russian Federation* which was adopted on December 12, 1993 in the result of the nationwide referendum.

The *Constitution of the Russian Federation* has secured private property right in land. In Chapter 1 *Fundamentals of the Constitutional System*, Article 9 one can find the following statement:

- 1. Land and other natural resources are used and protected in the Russian Federation as fundamentals of life and activities of people living in the corresponding area.*
- 2. Land and other natural resources can be in private, state or municipal property.*

Chapter 2. on *Rights and Freedoms of an Individual and a Citizen* in Article 35 further states that:

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<sup>1</sup> Russian Soviet Federate Socialist Republic

1. *Private ownership right is protected by Law.*

And in Article 36 that:

1. *Citizens and their associations have the right to hold land in private property.*

2. *Holding, enjoyment and disposal of land and other natural resources is freely carried out by their owners, provided that they are not harming the environment and do not interfere with rights and lawful interests of other persons*

The Russian Law identifies three main types of property in Russia:

- property of citizens and legal entities
- state property (federal property and the property of a subject of the Russian Federation)
- municipal property

For the reasons of this study we will only describe the property rights of citizens and legal entities which is really the private property. The *Civil Code of the Russian Federation*<sup>2</sup> defines the private property right in Article 209:

*Article 209 The Content of Property Right*

1. *The owner possesses the rights to hold, to use and to dispose of his property.*
2. *The owner at his own pleasure may take any actions in respect of the property in his possession as long as they do not conflict with Laws and other legal acts and do not harm rights and interests of other persons as they are protected by the Law, including he (the owner) may alienate his own property to property of other persons or transfer to them rights to hold and to use and to dispose of the property while remaining its owner, or to use the property as collateral or to exchange in any way or to dispose of it in any other way.*
3. *Holding, use and disposal of land and other natural resources is carried out freely by the owner to the extend their turnover is allowed by Law (Article 129) and as long as it does not harm the environment and rights and lawful interests of other persons.*
4. *The owner may transfer his property into trust management to other person (trust administrator). The transfer of property into trust management does not consequently effect the transfer of ownership right to the trust administrator who must manage the property in the interests of the owner or other persons as requested by the owner.*

*Article 213 The Ownership Right of Citizens and Legal Entities*

1. *Any kind of property can be in property of citizens and legal entities with exclusion of certain types of property which according to Law may not belong to citizens or legal entities.*
2. *The quantity and value of property belonging to citizens and legal entities is not limited with exclusion of cases when such limitations are set by Law for purposes described in Paragraph 2, Article 1 of this Code.*

Limitations on property can only be applied for reasons of:

- protection of the fundamentals of the Constitutional rule
- morality
- health
- rights and lawful interests of other persons
- defense
- state security

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<sup>2</sup> Further on CCRF

The rightful reasons for appearance of the property right are also described in the CCRF. The property right may only appear following a set of defined legal actions of individuals, legal entities or governments of different levels:

- sale/purchase
- exchange
- gift
- inheritance
- other forms of alienation

*Article 218 Basis for Acquiring of the Property Right*

2. *The ownership right to property that has an owner can be acquired by other person on the basis of sale/purchase contract, exchange, donation or other transaction of alienation of such property.*

*In case of death of a citizen the ownership right to property that has belonged to him is passed on as inheritance to other persons in accordance with a will or the Law.*

*In case of reorganization of a legal entity the ownership right in property it has belonged to is transferred to legal entities who are legal followers of the reorganized legal entity.*

The CCRF<sup>3</sup> also specifies that any persons (individuals or legal entities) who are openly using any property for more than fifteen years have the right to enter into ownership rights in such property (Article 234, CCRF) and also have the right to claim their right in court before the expiration of the fifteen year term.

*Article 235 Basis for Termination of Ownership Right*

1. *The ownership right is terminated in cases of alienation of property by the owner to other persons, owner's refusal from ownership right, loss or distraction of property or loss of property right in accordance with Law.*

2. *Enforced alienation of property is not allowed with exclusion of following cases:*

- 1) *enforcement penalty in cases of property commitment*
- 2) *alienation of property which in accordance with Law can not belong to such person*
- 3) *alienation of property in connection with alienation of a parcel*
- 4) *buy-out of objects of cultural value and pets which are not well taken care of*
- 5) *requisition*
- 6) *confiscation*
- 7) *alienation of property in cases described in Paragraph 4 Article 252, paragraph 2<sup>4</sup>, Article 272<sup>5</sup>, Articles 282, 285, 293.*

*At owners discretion and according to privatization Laws state or municipal property, a property is alienated into ownership of citizens or legal entities.*

*Turning of property belonging to citizens and legal entities in state property (nationalization) is carried out on the basis of Law on property with value compensation defined according with the rules set in Article 306 of this Code.*

*Article 236 Self refusal of Ownership Right*

*A citizen or a legal entity may self refuse from the ownership right to the belonging property by a declaration or other action that clearly demonstrates his or its alienation from*

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<sup>3</sup> Chapter 17 (Articles 260 - 275) will become effective from the date of effectiveness of the Land Code of the Russian Federation.

<sup>4</sup> 2. *A participant in shared property has the right to claim his share out of joint property.*

<sup>5</sup> *Article 272 Consequences of loss of the right to use the land parcel by the owner of immovable property.*

*possession, use and disposal of property and without the intention to maintain any right to it whatsoever.*

*The self refusal of the ownership right does not entail the termination of rights and obligations of the owner in respect of the property concerned until ownership rights to it are acquired by other person.*

*Article 239 Alienation of Immovable Property in Connection of Alienation of a Land Parcel it is Attached to*

- 1. In cases when the alienation of a land parcel for state or municipal needs or in connection with improper use of land is impossible without the termination of ownership rights to buildings, structures or other immovable property attached to the land parcel, such property may be alienated from the owner through a purchase by the state or a public bidding sale procedure according to rules specified in Articles 279-282 and 284-286 of this Code.*

*The request to alienate the immovable property is not fulfilled if the state body or a body of a local self rule which has made such request to court will not prove that the use of such land parcel in purposes it is alienated for is impossible without the termination of the ownership right in such immovable property.*

*Article 242 Requisition*

- 1. In cases of natural disasters, accidents, epidemic, epizootic as well as under any other circumstances of emergency character, the property may be alienated from the owner in the interests of society by the decision of the government authority according to procedures and on conditions set by the Law with compensation of the value of property been paid out to him (requisition).*
- 2. The value of requisitioned property may be appealed in court.*
- 3. A persons whose property was requisitioned has the right following the action of circumstances which have justified requisition, to appeal in court the return of remained property.*

*Article 243 Confiscation*

- 1. In cases set by the Law the property may be alienated from the owner without compensation on a court decision in a form of a sanction for a crime or other Law offense (confiscation).*
- 2. In cases described by the Law the confiscation may be carried out in accordance with administrative procedure. The decision on confiscation taken according to administrative procedure may be appealed in court.*

## **Immovable Property**

The legislative basis for description of private tradable rights to immovable property are defined in the Part 1 of the *Civil Code of the Russian Federation*. This description is defined based on specifics features of the immovable property.

Paragraph 1, Article 130 of the *CCRF* defines immovable property as follows:

*The immovable things (immovable property, real estate) include land parcels, parts of mineral deposits, separate water bodies and everything tightly attached to land, i.e. objects which movement is impossible without coursing considerable damage to them, including forests, perennial crops, buildings, structures<sup>6</sup>.*

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<sup>6</sup> The translations used in this paper are not official.

*Immovable things also include such object subject to state registration as aircrafts and sea vessels, boats and space vehicles. The Law may define other property objects as immovable things.*

Article 129 of the CCRF defines *Turnoverability of objects of civil rights*.

- 1. The objects of civil rights in land may be freely alienated or conveyed from one person to another in a form universal legal chain (inheritance, reorganization of a legal entity) or by other means, provided that they were not removed from turnover or limitations were not enforced on their turnover.*
- 2. The types of objects of civil rights which are not allowed to be included in turnover (objects withdrawn from turnover) must be directly specified in Law.*

*Types of objects of civil rights which may belong only to certain types of participants of turnover or which turnover is only allowed subject to special authorization (objects with limited turnover capacity) are specified by Law .*

- 3. Land and other natural resources may be alienated or transferred from one person to another by other means to the extend there turnover is allowed by Laws on land and other natural resources.*

### **Land Transactions**

The turnoverability of immovable property in the wide sense is understood as the opportunity to freely dispose of the objects of civil rights through their transfer to other persons. The turnover of land parcels is carried out on contract basis in accordance with the CCRF and related land legislation. Paragraph 3 of Article 129 of the CCRF specifies that turnover of land parcels in the Russian Federation is subject to limitations as described by corresponding Laws.

In terms of market accessibility land is broken into three levels of limitations:

- land withdrawn from turnover
- land with limited turnover
- land not withdrawn from turnover

Individuals and legal entities are not allowed to take part in transactions involving lands with limited turnover. Such as:

- cultural and historic sights;
- state natural reserves, monuments, national parks, dendrology parks, nature parks, botanical gardens, and areas reserved for similar purposes;
- areas used for defense purposes;
- wildlife reserves;
- recreational lands;
- areas with mineral deposits;
- areas contaminated by radiation, chemical or biological poisoning;
- state science and research institutions, educational institutions, breeding and seed producing farms;
- secured areas, military and civil cemeteries.

A land parcel can not be offered on the market in cases when:

- there is an existing dispute;
- the property is arrested.

In cases of land transfers when third party interests are involved transactions with such parcels can take place according to special procedures and only with approval from third parties involved (land lords, mortgage holders and etc.).

All transactions with immovable property may take place only on contract basis. A contract has to be written in one document describing the transaction and signed by persons acting as parties in a transaction or someone who has the power of an attorney to act on their behalf.

A content of contract on transfer of immovable of property is specified in Law. A land transaction contract contains following information:

- type of a transaction (exchange, purchase/sale, donation, mortgage and etc.)
- description of parties in the contract
- description of the land parcel including its legal characteristics (easements and servitudes), registration number, location, total area, information about immovable property attached to the land parcel and etc.)
- existence or non-existence of limitations on transactions with a land parcel and attached immovable property
- basis for acquisition of rights to land parcel and attached immovable property (purchase, inheritance, exchange and etc.)
- description of the rights of third parties that may apply to the land parcel (mortgage, lease, servitude)
- date the transfer of rights becomes effective
- price of contract
- duration of contract (in cases when a parcel is provided to be used or leased by other persons)
- rights and obligations of parties
- responsibilities of parties

According to Paragraph 3, Article 433 of the CCRF the transfer of rights in immovable property is considered valid only after it has been registered according to the *Law on State Registration of Rights to Immovable Property and Transactions with It* (July 21, 1997).

Article 6 of the *Law on State Registration of Rights to Immovable Property and Transactions with It* (July 21, 1997) recognizes rights to immovable property that have existed before the Law became effective on February 1, 1998.

Land transactions are taxed by the government. The tax amount depends on the type of transaction (gift, inheritance, sale and etc.). According to the *Law on State Duty* a duty is collected by the notary at the time proving of real estate contract. The size of duty varies between 3% and the minimum should not be lower than the minimum monthly personal income which is established by the Government and adjusted according to inflation.

According to *December 7, 1993 Presidential Decree # 2118* the individual who sells the land parcel is paying personal income tax. Legal entities are paying profit tax according to the *Law on profit of enterprises and organizations*.

The procedures of land sale from one individual to another are well defined. The form of a land sale contract is approved by the Goscomzem of Russia. There is still some legal vacuum concerning the sale of land from an individual to legal entity or between legal entities. Those kinds of transaction are neither allowed nor disallowed. The legal analysis of such transactions allows to conclude that they are not illegal. The CCRF describes conditions of contracts of any kind. Article 8 of the CCRF states that civil rights and obligations are involving from actions which are either described or not described by laws. This means that civil rights and obligations can develop on the basis of a contracts which does not contradict laws. This lives only one case when a land sale contract may be recognized as illegal. It is when a sale of a land parcel will result in the change of use purposes of the parcel as it was set by authorities.

### **Transfer of Land from Sate to Private Property**

In the Russian Federation there has been neither restitution no compensation of loss of immovable property to previous owners or their descendants. The Russian Government has made the decision to introduce private property to land through mostly free of charge wide distribution of land to Russian citizens. Such decision was influenced by two considerations:

- the policy to create the class of new land owners as the support basis for economic and political reforms;
- the Revolution, the Civil War, the WWII and seventy years of communist rule have wiped out any traces of existence of immovable private property rights.

As of January 1, 1999 there were about 38 million land ownership certificates issued in the country. The transfer of land from state to private property has started in 1990 and is still continuing. During the years of reforms different land use types were gradually introduced into turnover. In the beginning of economic and political reforms the Russian society was mostly open to the idea of introduction of private land property in agricultural sector. However many people at that time did not understand that private property also includes such rights as to sell land and to mortgage land.

The initial prime goal of the Land Reform was the improvement of the efficiency of farm production. In the Soviet Union most farm inputs were used by state and collective farms. In most cases been inefficient they were heavily criticized by society. It was believed that introduction of private family farming would reverse the situation and create environment for free development of agriculture and rural areas.

The land tenure transformation process was started in march of 1990 when *The Law on Legislative Basis of the USSR and Union Republics on Land* become effective. One month later on April 25, 1990 the Presidium of the Supreme Soviet of the RSFSR has adopted the Resolution which has taken land in rural areas from the administration of state and collective farms and has put it under the authority of local administrations. Local administrations were ordered by the Federal Government to provide land parcels to individuals for construction of private housing, personal household land plots, gardening, pasture and hay harvesting.

The development of land tenure has continued with adoption of the following Federal Laws: *On Land Reform, On Peasant (Farm) Business, On Social Development of Rural Settlements, On Program of Revival of Russian Village and Development of Agri-Industrial Complex* and amendments made to Articles 11 and 12 of the old *Constitution*. Those legislative acts have allowed private property in farm land for individuals who were using land as individual farmers, or whose private house was standing on the land parcel, or those who had gardens and orchards, as well as for collective-cooperative farms and large farms where property was broken into shares.

Those Laws did not cover other types of land users. The early 90<sup>th</sup> can be also characterized by serious limitation of private property right to sell land.

The Supreme Soviet (Parliament) imposed a ten year moratorium on the sale of land for those parcels which were privatized free of charge and a five year moratorium for parcels of land that were purchased by their owners. However those moratoriums did not last for as long as they were meant to.

Other essential ownership rights at that time were also seriously limited. Mortgaging, donations, exchange, leasing, transfer of land into company stock in the form of a land share were only allowed in cases when owners were not been able to exercise their rights mostly due to such reasons of absentee ownership as:

- temporary work inability due to health reasons
- army draft
- entry into college or university
- ownership right transferred to under age persons in result of inheritance

Such limitations of land ownership rights have resulted from political debate and compromise between different groups in Parliament acting in favor or against private land ownership concept.

The December 27, 1991 #323 Presidential Decree *On the Urgent Measures for Implementation of the Land Reform* and the December 29, 1991 #86 Federal Government Resolution *On the Order of Reorganization of Collective and State Farms* were aimed at dealing with this situation. Collective and state farms in Russia were ordered to be reorganized. Within one year they were supposed to be

transformed into stock companies in property of employees or members of collective farms or retired people who used to work at those farms. Those groups of population were provided land shares. Land shares could be used to establish a private family farm, or they could be transferred into company stock of a newly reorganized former state or collective farm, or sold to or exchanged with other members of collective farm or employees of state farm or to the farm itself.

Although in most cases very few real changes occurred the people who at that time were brave enough to leave large farms and start individual farming practices became the most successful private farmers in the country. Those who did it later were not so lucky.

Initially teachers, physicians, social workers and people working in service sphere were not given access to land shares. This was corrected when the President of the Russian Federation has issued the September 4, 1992 # 708 Decree *On the Order of Privatization and Reorganization of Enterprises and Organizations of Agri-Industrial Complex*. In cases where land shares were already distributed those groups of population had the opportunity to claim their land through land redistribution funds administered by local governments. Those funds were also used to distribute land free of charge to people from outside rural areas who wanted to become involved in private farming or other similar activities.

The March 2, 1992 # 213 Presidential Decree *On the Order of Establishing Quota for the Free Transfer of a Land Parcel into Property of Citizens* has given local district administrations the right to set land quotas that could be transferred to citizens free of charge. The quota of free of charge land was calculated according to the formula:

1. *To establish that at decision on a free land quota to be transferred into property is based on the total area of farm land within farm enterprises in a district with exclusion of land area transferred under the administration of rural Councils of Peoples Deputies been divided by the total number of people working in agriculture (including retired people previously working in agriculture and those engaged in social sphere in rural areas).*

*The number of people working in agriculture only includes workers of collective and state farms, other agricultural enterprises, and people who have retired from those farms.*

As changes in ownership patterns in rural areas became more and more visible and as private businesses were also establishing in other sectors of economy the demand to create opportunities for private land ownership outside agricultural sector were growing.

The Executive Government was making attempts to create opportunities for land ownership in all groups of population. The Presidential Decree of March 25, 1992 #301 *On the sale of land plots to individuals and legal entities at the time of privatization of state and municipal enterprises* was aimed to provide that individuals and legal entities with the right to buy land parcels into property at the time of privatization of state or municipal enterprises or at the time of expansion or additional construction. This Decree also specified that such parcels can be leased. It has also stipulated that land parcels provided to individuals and their associations for entrepreneurial activities may be transferred to them into property if they wish so.

The development of land market was further strengthened by The October 27, 1993 # 1767 Presidential Decree *On Regulation of Land Tenure and Development of Agrarian Reform in Russia*. This document has given strong support to the idea of private property in land, simplified land registration process, underlined the right to mortgage and lease land and lifted the then existing moratoria on the resale of land.

The May 16, 1997 # 485 Presidential Decree *On Guaranties to Owners of Immovable Property Objects to Purchase into Ownership Land Parcels under Such Objects* has stated that at the time of a sale of a land parcel (shares of land parcels) occupied by privatized buildings and structures the purchase price will be set at the level of not less five times the amount of land tax existing at the time of application. The amount of land tax was really a nominal figure.

The Law *On the Right of the Citizens of the Russian Federation to Own and Sell Land Parcels for Personal Subsidiary Farming, Dachas, Gardens and Private Housing (December 23, 1992)* has made

possible the transfer of land in cities, settlements and rural areas to individuals to be held in private property for such specific use types as private subsidiary farming, gardening, new construction of private housing and privatization of land under existing private housing and structures.

The individuals who fell under this category were also given the right to sell their land parcels to other citizens of the Russian Federation regardless of the time of entering into private property rights. The quantity of land they could sell was limited to the size of a parcel that could be freely transferred into private ownership in each particular administrative district.

The specifics of privatization of land parcels occupied by orchards, gardens and dachas are set in Article 28 of *The Federal Law On Orchard, Garden and Dacha Noncommercial Associations of Citizens (April 15, 1998)*.

Russian citizens and their associations who have received land parcels from the state or from municipalities on the basis of a perpetual inherited use right, lease or time limited use right have the right to privatize such land parcels in accordance with Laws and other regulatory acts of the Russian Federation and its Subjects. This Law sets the order of land privatization by a garden, orchard or dacha association as well as by an individual using an individual land parcel within such association. Individuals were given the right to privatize such land parcel separately from the association and without its permission. The permission to privatize land is given by local municipal administration within one month after the application has been submitted by an individual. The resolution of the local authority serves as legal grounds for State registration of ownership rights.

Russian Law also provides the right to buy a land parcel on competitive basis through a bid tender or an auction. An owner may sell his land parcel from an auction with assistance of the local office the Russian Federation State Committee for Land Policy<sup>7</sup>. This procedure is described in the *May 30, 1993 # 503 Resolution of the Council of Ministers of the Russian Federation On the Approval of the Order of Sale and Purchase of Land Parcels by Citizens of the Russian Federation*. The way of sale either a tender bid or an auction is decided by the owner.

The *January 5, 1998 # 2 Resolution of the Russian Federation Government On the Order of the Procedure for Organization and Execution of Bidding Procedures (Auctions, Tenders) for Sale of Land Parcels to Citizens and Legal Entities Located in Urban and Rural Settlements or Their Lease Rights* describes land sale procedures when the Government or a local authority is acting as the seller of the state or municipal property to citizens or legal entities.

The sale of a land parcel into private property to be used for private subsidiary agricultural production, or as dacha, a garden or an orchard, or for construction of individual housing and support structures in cities, towns and rural areas is done individually by an owner on the basis of a contract with a buyer or with the assistance of the local office of the Russian Federation State Committee for Land Policy through and auction or a tender.

### **Land and Attached Immovable Property not Held by the Same Persons**

Russian Law allows separate ownership of buildings and parcels. This is not only a historical legacy of the past when land was public and houses could belong to individuals. The Law describes this kind of situations as perfectly normal. Cases where the owner of a land parcel and the owner of immovable property are not the same person are described in the *CCRF*.

#### *Article 552 Rights in Land Parcel in Case of a Sale of a Building, Structure or Other Attached Immovable Property*

1. *According to a building or other immovable property sale contract the buyer together with the ownership right in such immovable property is transferred the right in part of a land parcel which is occupied by said immovable property or is needed for its use.*

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<sup>7</sup> The agency of the Russian Federal Government responsible for land administration with vertical administrative structure that covers the whole country

2. *In cases when a seller is the owner of a land parcel with attached immovable property which is brought up for transfer, the buyer is provided ownership right or lease right or other right in corresponding part of a land parcel as specified in the contract.*

*If the contract does not specify the right in corresponding land parcel to the buyer of immovable property then the buyer is been transferred the ownership right in the part of the land parcel which is occupied by the immovable property and is necessary for its use.*

3. *The sale of immovable property attached to the land parcel which is not in ownership of the seller is allowed without the agreement from the owner of such parcel, provided it does not conflict with condition of use to part of such parcel set by the Law or a contract.*
4. *At the time of sale of such immovable property the purchaser receives the right to use the corresponding part of the land parcel on the same conditions as the seller of immovable property.*

#### *Article 553 Rights to Real Estate at the Time of Sale of Land Parcel*

1. *In case when a land parcel with attached building, structure or other immovable property in ownership of the seller is transferred to the purchaser without the transfer of such immovable property into the ownership of the purchaser the seller maintains the right to use the part of the land parcel which is occupied by the immovable property and is necessary for its use and accordance with conditions set in the sale contract.*

*If the conditions of use of the corresponding part of the land parcel are not specified in the sale contract the seller retains the right of limited use (servitude) in the part of a land parcel which is occupied by immovable property and is necessary for its use in accordance with its purpose.*

The non-effective Chapter 17 of the CCRF also deals with issues of the owner of immovable property not been the owner of the land property to which the property is attached (Article 271). The owner of the immovable property attached to the land parcel has the right to use the part of the land parcel unless it is otherwise described in Law or in a resolution of local authority on the granting of the land parcel or in a contract with the parcel owner.

#### **Land Ownership by Foreigners**

Although the idea of foreign land ownership brings out negative response in all groups of Russian society the current legislation does not clearly limit the right of foreign citizens or stateless individuals to have land parcels in private property. Articles 35 and 36 of the Constitution of the Russian Federation do not make any exclusions for anyone to have property in the Russian Federation regardless of their citizenship, age and etc.

The December 24, 1993 # 2287 Presidential Decree *On Brining Land Legislation in Correspondence with the Constitution of the Russian Federation* has terminated Article 7 of the *Land Code* and Article 4 of the *Law on the Land Reform*. Those two articles were only leaving foreigners the opportunity to lease land and their termination has opened the opportunity for them to have land in property. It is expected that the new *Land Code*, after it is adopted will only leave foreigners the right to lease land on long term basis.

The most common case of land been owned by a foreigner is when a foreign company decides to buy land under a business it has privatized. The Land Law in Russia is using the term «foreign investor» rather than «foreign legal entity». It is common for a foreign investor in Russia to act as a Russian registered legal entity. According to the June 14, 1992 # 631 *Presidential Decree On the Order of Sale of Land Parcels at the Time of Privatization of State and Municipal Enterprises, Their Expansion and Additional Construction and also Provision of Land to Citizens and Their Associations for Inrepreneural Activities* foreign individuals and legal entities may become owners of land parcels occupied by privatized state and municipal enterprises.

There is no clear answer in Russian Law as to whether a Russian legal entity with 100% foreign capital may be the owner of a land parcel in cases when a land parcel is bought through means other than privatization of an enterprise, i.e. purchase from another owner such as the state or a municipality.

The Russian Law does allow Russian legal entities with a share of participation of foreign capital to have land parcels in property which were used as a form of a contribution into company stock. According to Paragraph 2 of the October 27, 1993 # 1767 Presidential Decree *On Regulation of Land Tenure and Development of Agrarian Reform in Russia* citizens and legal entities in possession of private ownership rights have the right to sell, to pass on to heirs, to donate, to mortgage, to lease, to exchange or to transfer a land parcel or its part as a contribution into stock capital of corporation, partnership or cooperative including those with who have foreign investors.

A procedure commonly used in cases of 100% company ownership by foreign capital is to provide such businesses with land parcels on long term lease basis where the right to lease land would be purchased from a local authority on competitive basis.

There is only one Law in current legal system that indirectly disallows foreigners from ownership of land in Russia. It is the Federal Law of April 15 1998 # 66FL *On Orchard, Garden and Dacha Non-commercial Associations of Citizens*:

*Article 18*

3. *Foreign citizens and stateless Individuals may become members of orchard, garden and dacha non-commercial associations of citizens if land parcels are provided to them on lease or temporary use basis.*

This Law may be interpreted as saying that foreigners can only be provided land for said purposes on lease of temporary use basis.

The issue of acquisition of a land parcel by a foreign individual for construction of a family home to live in is not well specified by the land Law. However the legal analysis of existing Law does give such opportunity.

## Legislative Basis for Transfer of Land into Private Property

The legislative basis for transfer of land into private property and transactions with land in the Russian Federation are laid down in the following acts and regulatory documents:

### Federal Laws

1. *The Constitution of the Russian Federation*
2. *The Civil Code of the Russian Federation*<sup>8</sup>
3. *The Land Code of the Russian Federation*<sup>9</sup>
4. *The Federal Law On the Right of the Citizens of the Russian Federation to Own and Sell Land Parcels for Personal Subsidiary Farming, Dachas, Gardens and Private Housing (December 23, 1992)*
5. *The Federal Law On General Guidelines of Organization of Local Self Administration in the Russian Federation (August 25, 1995)*
6. *The Federal Law On State Registration of Rights to Immovable Property and Transactions with It (July 21, 1997)*
7. *The Federal Law On Orchard, Garden and Dacha Noncommercial Associations of Citizens (April 15, 1998)*

### Decrees of the President of the Russian Federation<sup>10</sup>

1. *The December 27, 1991 #323 Presidential Decree On the Urgent Measures for Implementation of the Land Reform*
2. *March 2, 1992 # 213 Presidential Decree On the Order of Establishing the Quota for the Free Transfer of a Land Parcel into Property of Citizens*
3. *The March 25, 1992 # 301 Presidential Decree On the Sale of Land Parcels to Citizens and Legal Entities at the time of Privatization of State*
4. *The June 14, 1992 # 631 Presidential Decree On the Order of Sale of Land Parcels at the Time of Privatization of State and Municipal Enterprises, Their Expansion and Additional Construction and also Provision of Land to Citizens and Their Associations for Entrepreneurial Activities.*
5. *The September 4, 1992 # 708 Presidential Decree On the Order of Privatization and Reorganization of Enterprises and Organizations of Agri-Industrial Complex.*
6. *The October 27, 1993 # 1767 Presidential Decree On Regulation of Land Tenure and Development of Agrarian Reform in Russia*
7. *The December 24, 1993 # 2287 Presidential Decree On Brining Land Legislation in Correspondence with the Constitution of the Russian Federation*
8. *The March 7, 1997 # 337 Presidential Decree On Implementation of Constitutional Rights of Citizens to Land*
9. *The May 16, 1997 # 485 Presidential Decree On Guaranties to Owners of Immovable Property Objects to Purchase into Ownership of Land Parcels under Such Objects*
10. *The November 26, 1997 # 1263 Presidential Decree On the Sale or Lease of Land Parcels to Citizens or Legal Entities Located in Urban or Rural Settlements for Construction Purposes*

### Federal Government Resolutions

11. *The December 29, 1991 #86 Federal Government Resolution On the Order of Reorganization of Collective and State Farms*
12. *The May 30, 1993 # 503 Resolution of the Council of Ministers of the Russian Federation On the Approval of the Order of Sale and Purchase of Land Parcels by Citizens of the Russian Federation*
13. *The January 5, 1998 # 2 Resolution of the Russian Federation Government On the Order of the Procedure for Organization and Execution of Bidding Procedures (Auctions, Tenders) for Sale of Land Parcels to Citizens and Legal Entities Located in Urban and Rural Settlements or Lease Rights*

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<sup>8</sup> Further on CCRF

<sup>9</sup> Existing version

<sup>10</sup> In absence of corresponding Federal Laws Presidential Decrees act as Laws

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