

23 January 2025

## INFORMATION FOR CLIENTS

### 2024 RESULTS AND 2025 TRENDS - FOREIGN BUSINESS. REAL ESTATE AND CONSTRUCTION. COURTS AND INTERNATIONAL ARBITRATION

In this Information Letter, we will look at the most important business regulation that has been adopted in Russia in 2024 and the novelties with which 2025 has begun. We will focus on the new risks, primarily in the real estate and construction sectors, that businesses should be aware of when operating in Russia.

The following key regulatory developments in the area of legislation and current case law will be examined further:

- Regulation of foreign business: extending restrictions (**Section 1**);
- Land disputes: trends in case law in defense of developers (**Section 2**);
- Real estate transactions: new legal risks (**Section 3**);
- Construction disputes: novelties of case law in the sphere of evidence (**Section 4**);
- Courts and arbitration: rising fees and new restrictions on international arbitration (**Section 5**).

## 1. REGULATION OF FOREIGN BUSINESS: EXTENDING RESTRICTIONS

### 1.1. EXTENSION OF RESTRICTIONS ON FOREIGN BUSINESS FROM “UNFRIENDLY” JURISDICTIONS

For the third year, legislation and case law have been clarifying and updating restrictions and prohibitions related to sanctions and the activities of foreign companies from those states recognized as “unfriendly” by the Russian Government. In particular, the following restrictions remain relevant and have been extended to 2025:

- Restrictions on the corporate rights of foreign companies from “unfriendly” jurisdictions are extended for 2025: the restrictions relate to the payment of dividends and the exercise of voting rights in management bodies,
- The list of securities owned by foreign persons and of interests in stakes in Russian companies in respect of which temporary management has been introduced by the Federal Property Management Agency has been extended,
- As of January 1, 2025, there is a ban on the use of data protection equipment whose countries of origin are foreign states from “unfriendly” jurisdictions,
- In 2025, the Bank of Russia together with the Ministry of Finance issued a clarification on the extent to which issuers have the right not to disclose information on the securities market in order not to fall under the new sanctions.

### 1.2. RESTRICTIONS ON TRANSACTIONS INVOLVING FOREIGN PERSONS

As of today, the requirement to use a special bank account of type “C” and to coordinate with the Government Commission many types of transactions in which the counterparty of a Russian resident is a person from an “unfriendly” state remains relevant. In addition, at the recent meeting of the subcommittee of the Government Commission it was decided that it is necessary to obtain the permission of the President of the Russian Federation for transactions involving shares and interests with a market value exceeding 50 billion rubles. The Government Commission’s approval must be obtained strictly prior to the conclusion of the transaction, and failure to obtain such approval may result in the invalidity of the transaction and the return of everything received.

At the same time, the Russian Government is currently considering a draft law supplementing the Code of Administrative Offenses with a new article: “Failure to comply with measures

(countermeasures) aimed at ensuring the financial stability of the Russian Federation". This article provides for liability for transactions or operations that violate the prohibitions established by anti-sanctions legislation – it is planned to establish fines for such violations for individual entrepreneurs and legal entities in the amount of 20 to 40% of the transaction amount.

### 1.3. POSSIBILITY OF BANKRUPTCIES OF FOREIGN COMPANIES IN RUSSIA

One of the key Supreme Court cases in 2024 was [a case](#) which recognized the ability of Russian courts to hear foreign bankruptcy disputes where the dispute is closely connected to Russia. Such cases can be heard in Russia and not abroad. In this instance, two ways of trying the case are possible: the introduction of main bankruptcy proceedings by a Russian court in respect of the foreign company as a whole or the opening of secondary cross-border bankruptcy proceedings in Russia in respect of only those assets of the foreign entity that are located in Russia.

## 2. LAND DISPUTES: TRENDS IN CASE LAW IN DEFENSE OF DEVELOPERS

### 2.1. ACQUISITION OF LEASEHOLD RIGHTS IN GOOD FAITH

In one of its key land cases for the year of 2024, the Russian Supreme Court [recognized that it is possible](#) for a bona fide developer to acquire a construction lease from an unauthorized person. If the developer was misguided in good faith - then even if the original lessee had no right to assign the lease to another person, such a lease will still be deemed to have arisen and the buildings erected on such leased land will not be considered unauthorized.

In the case at hand, a disabled citizen received a land plot with the right to lease it for construction under a preferential procedure, but subsequently assigned this right to a third party who did not have the relevant privilege. The transaction was challenged by the prosecutor's office. However, the Supreme Court pointed out that since the developer had agreed with the local authorities to construct a building on the plot, the prosecutor's office's subsequent reference to the invalidity of such a lease and the requirement to demolish the constructed building was unfounded: the developer's legitimate expectations should be protected and the construction lease should remain in force.

### 2.2. RESTRICTIONS ON REDEEMABLE AREA OF LAND PLOT AND ITS PURPOSE

In the [Overview of Case Law](#) the Supreme Court of Russian Federation introduced restrictions on the right to buy out public land plots without bidding by the owner of real estate located on them.

First, the court pointed out the importance of taking into account the area of the land to be purchased - if it significantly exceeds the area of the constructed building, such privatization is inadmissible. In addition, it is important to consider its functional purpose - the right to buy out a land plot without bidding should be blocked when its type of permitted use does not correlate with the type of real estate located thereon.

### 2.3. IMPORTANCE OF CHANGING TYPE OF PERMITTED USE OF A LAND PLOT BEFORE CONSTRUCTION BEGINS

The case law [continues the trend](#) towards the impermissibility of deliberate disregard for urban planning restrictions. In one of the Supreme Court cases, an entrepreneur built blocked residential houses on agricultural land without obtaining a construction permit and then wanted to sell them. Ultimately, the courts sided with the local authorities, who demanded the demolition of such unauthorized constructions, despite the fact that the houses were not dangerous to life and health. According to the courts, the entrepreneur did not even try to change the type of permitted use and obtain a construction permit, which means that he acted in bad faith and his interests are not subject to protection.

## 3. REAL ESTATE TRANSACTIONS: NEW LEGAL RISKS

### 3.1. NON-APPLICATION OF STATUTES OF LIMITATIONS TO SEIZURE OF PROPERTY IN CORRUPTION CASES

At the end of 2024, the Constitutional Court [took a position](#) on the non-application of the statute of limitations established by civil law to claims by the Prosecutor General's Office to seize property obtained by state officials as a result of corruption violations. Previously, the Supreme Court considered it possible to limit such claims with reference to the expiration of the statute of limitations period. However, the issue reached the Constitutional Court, which supported the Prosecutor General's Office in this matter – such statutes of limitations are not set forth yet, but can be established in the future by a separate law and should be significantly longer than the current three-year statute of limitations. In addition, the Constitutional Court pointed out that not only the acquired property, but also the property into which it was subsequently transformed, can be seized without time limitation, i.e. the Court actually introduced the tracing of corruption assets. At the same time, such seizure may be limited by the good faith of the acquirer, and the standard of verification of such good faith should be analyzed by the courts on a case-by-case basis.

### 3.2. NON-COMPLIANCE WITH COUNTER-SANCTIONS LEGISLATION MAY LEAD TO INVALIDATION OF TRANSACTION

In one of the court cases, the risk of invalidation of the entire transaction was realized if the parties did not comply with the counter-sanctions legislation when making the transaction. In particular, a wholly foreign-owned subsidiary sold a repair and maintenance base to a Russian buyer. However, the parties neither obtained the authorization from the Government Commission nor did they use a special "C" bank account for settlements. In the end, the courts did not even take into account the parties' subsequent application to the Government Commission - such authorization should have been obtained before the transaction was concluded, and if it was not obtained, the entire transaction is invalid and the assets must be returned.

### 3.3. CHANGES IN QUALIFICATION OF REAL ESTATE TRANSACTIONS AS MAJOR TRANSACTIONS

The Supreme Court has dramatically changed its practice with regard to the recognition of real estate transactions as major. By virtue of the law, a major transaction is a transaction that meets two criteria simultaneously: qualitative (i.e. significantly affects the company's activities) and quantitative (exceeds 25% of the book value of the company's assets). However, the Supreme Court decided that even if the price of the real estate does not exceed 25% of the company's asset value, a transaction involving its alienation may still be recognized as a major transaction if the qualitative criterion is present. For example, when the alienation of the real estate resulted in the impossibility of further profit generation using this real estate - in particular, due to the transfer of a ready-to-operate fitness center worth 10% of the company's assets to another person.

## 4. CONSTRUCTION DISPUTES: NOVELTIES OF CASE LAW IN SPHERE OF EVIDENCE

### 4.1. RAISING STANDARD OF PROOF IN CONSTRUCTION DISPUTES

Case law is gradually consolidating the approach according to which a unilateral acceptance certificate alone does not yet confirm the fact that the contractor has performed the works. Thus, if there is a dispute between the parties as to whether any stage of the works was performed at all, the contractor's reference to a unilateral act alone is not sufficient. Even if the entire facility has been constructed and delivered, the Supreme Court notes the need to analyze all the as-built documentation that must be executed in respect of individual works, and also points out the need for a forensic examination in the event of a dispute.

## 4.2. TAKING INTO ACCOUNT FAULT OF BOTH PARTIES IN CONSTRUCTION DELAYS

In one of its decisions, the Supreme Court established the approach that a contractor is not obliged to pay liquidated damages if the delay is caused by the client's own actions. Since damages are a measure of liability, if the client delays the issuance of design documentation and fails to provide the contractor with the documents necessary for the performance of works, such a contractor is not only entitled to a reduction in the amount of the damages, but should be completely exempted from paying them.

## 4.3. NEED TO DETERMINE STATUS OF UNAUTHORIZED CONSTRUCTION

The Supreme Court has put an end to a whole series of court cases that began in 2022. In these cases, the courts first refused the authorities to demolish unauthorized constructions, and then refused to recognize the developer's title to them. However, the Supreme Court pointed out that such a situation creates a perpetual suspension - the building is not demolished, but it is not put into operation. In this regard, the Supreme Court concluded that if there is a decision to refuse to demolish a building, the refusal to recognize its ownership creates an imbalance between public and private interest and violates the stability of economic turnover - in the case of already existing refusal to demolish, such unauthorized construction should be legalized.

# 5. COURTS AND ARBITRATION: RISING FEES AND NEW RESTRICTIONS ON INTERNATIONAL ARBITRATION

## 5.1. POSSIBILITY OF TRYING REAL ESTATE DISPUTES IN NON-STATE COURTS

In its Overview of Case Law, the Supreme Court once again pointed out that real estate disputes may be considered by arbitration courts. The fact that such rights require state registration and may affect the rights of third parties does not mean that they are non-arbitrable and contrary to public policy. In case the parties use the arbitration procedure to circumvent the law in bad faith, the affected third parties can always file a lawsuit with a state court for non-recognition of such an arbitration decision or refusal to enforce it.

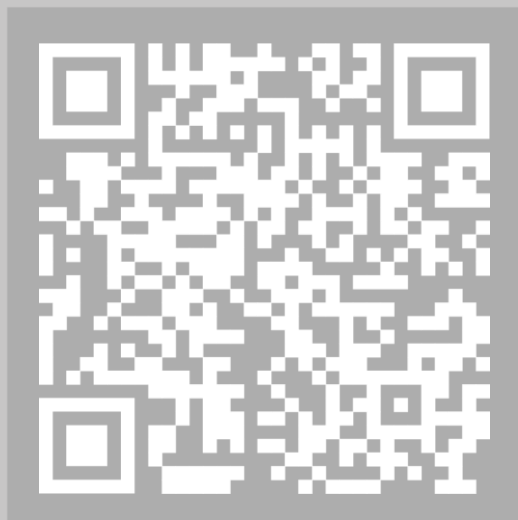
## 5.2. CURRENT PROBLEMS WITH PARTIES' CHOICE OF FOREIGN JURISDICTIONS FOR DISPUTE RESOLUTION IN INTERNATIONAL ARBITRATION

The case law is gradually developing a tendency to ignore the parties' arbitration clauses on the consideration of disputes in foreign arbitrations in favor of recognizing the exclusive competence of Russian courts in disputes with a foreign element. Thus, the Russian state courts recognize exclusive jurisdiction if there are reasons to doubt [the impartiality of foreign arbitrators](#), if, taking into account the costs and difficulty of paying the arbitration fee, [an appeal to a foreign court is not reasonable](#), or if such an appeal is an attempt to circumvent sanctions. In this regard, parties to arbitration clauses are encouraged to agree on neutral jurisdictions to resolve disputes.

## 5.3. NEW WESTERN SANCTIONS PACKAGE NOT RECOGNIZING RUSSIA'S ANTI-LAWSUITS BANS

However, Western sanctions are combating this trend. The EU's recently adopted 15th package of sanctions [introduced a new rule](#) that prohibits the recognition and enforcement of judgments of Russian state courts that have recognized exclusive jurisdiction contrary to an arbitration clause previously agreed by the parties. According to the EU, this practice is aimed at protection of European companies, which in disputes involving Russian counterparties are forced to resort only to Russian state courts and are disproportionately fined if they violate this rule.

**Sirota & Partners**



Updates on important developments  
in the area of real estate and construction  
are available in our Telegram channel  
in Russian language.